

**QUEENSLAND INDUSTRIAL RELATIONS COMMISSION**

CITATION: *Nesbit v Metro North Hospital and Health Service*  
[2020] QIRC 066

PARTIES: **Nesbit, Anthony**  
(Applicant)

v

**Metro North Hospital and Health Service**  
(Respondent)

CASE NO: TD/2019/30

PROCEEDING: Application for reinstatement

DELIVERED ON: 6 May 2020

HEARD AT: Brisbane

HEARING DATE: 12, 13 and 14 November 2019

MEMBER: Hartigan IC

ORDER: **The application is dismissed.**

CATCHWORDS: INDUSTRIAL LAW – APPLICATION FOR  
REINSTATEMENT – UNFAIR DISMISSAL –  
HARSH, UNJUST OR UNREASONABLE –  
Whether the dismissal could also be considered  
harsh, unjust or unreasonable.

LEGISLATION: *Industrial Relations Act 2016* (Qld), s 316, s 317 and  
s 320

*Public Service Act 2008* (Qld), s 187 and s 188

CASES: *Bostik (Aust) Pty Ltd v Gorgevski (No 1)* (1992) 36  
FCR 20

*Briginshaw v Briginshaw* (1938) 60 CLR 336

*Byrne v Australian Airlines Ltd* (1995) 185 CLR 410

*Gold Coast Health District v Walker* (2001) 168 QGIG 258

*Queensland Teachers' Union of Employees (for Norman Wayne Armstrong) v State of Queensland acting through Department, Education, Training and Arts* [2009] QIRC 11

APPEARANCES:

Mr A. Nesbit, Applicant

Ms A. Freeman of counsel for the Respondent,  
instructed by Crown Law

### Reasons for the Decision

#### The application

- [1] Mr Anthony Nesbit applies for reinstatement<sup>1</sup> following the termination of his employment from his substantive position as Nursing Director, Patient Flow Unit ("PFU") at the Royal Brisbane and Women's Hospital ("RBWH") by his employer, Metro North Hospital and Health Service ("the Service"), on 8 March 2019. Mr Nesbit contends that the dismissal was unfair as it was harsh, unjust or unreasonable.<sup>2</sup>
- [2] The termination of Mr Nesbit's employment followed a disciplinary procedure commenced by the Service pursuant to the *Public Service Act 2008* (Qld) ("the PS Act").
- [3] The allegations, although relating to Mr Nesbit's conduct arising out of, or connected to, his assistance of a colleague with a proposed grievance process,<sup>3</sup> are disparate in nature. In summary, the seven allegations were that Mr Nesbit:
- (a) breached the confidentiality of Ms Leonie Carlidge-Gann, Clinical Nurse Consultant when he discussed her current grievance process with Ms Tracey Daelman, Assistant Nursing Director, PFU;
  - (b) used his work mobile phone number to make and a send text messages for personal matters for the period 16 September 2017 to 11 July 2018 in breach of the Use of ICT Services Policy;
  - (c) in approximately April 2018, attempted to influence a completed recruitment process for the Assistant Nursing Director Patient Flow Unit, RBWH;

---

<sup>1</sup> *Industrial Relations Act 2016* (Qld) s 317.

<sup>2</sup> *Ibid* s 316.

<sup>3</sup> And promotion appeal.

- (d) that between 27 March 2018 and 30 April 2018, used the ICT system to send emails that were not in connection with his employment;
- (e) on multiple occasions during April 2018, used inappropriate language in email communications to Ms Cartlidge-Gann when referring to staff of the Service;
- (f) attempted to cover up his actions in relation to allegations three and four (subparagraphs (c) and (d) herein) as evidence in an email to Ms Cartlidge-Gann dated 26 April 2018; and
- (g) deliberately mislead Ms Geary when he advised her that he had not had any contact with Ms Cartlidge-Gann during discussions on 13 and 19 July 2018.

[4] The Service determined that the allegations were substantiated and that, by his conduct, Mr Nesbit contravened, without reasonable excuse, a standard of conduct under the *Code of Conduct* for the Queensland Public Service ("Code of Conduct"). Such a contravention is a ground for discipline within the meaning of s 187(1)(f) of the PS Act.

[5] Mr Nesbit contends that the dismissal was unfair in that it was harsh, unjust or unreasonable.<sup>4</sup> The phrase "harsh, unjust and unreasonable" was considered in *Bostik (Aust) Pty Ltd v Gorgevski (No 1)*<sup>5</sup> by the Full Court of the Federal Court.<sup>6</sup> After stating that the words were ordinary non-technical words intended to apply to a variety of situations, the Full Court concluded that "a court must decide whether the decision of the employer to dismiss was, viewed objectively, harsh, unjust or unreasonable."<sup>7</sup> The Full Court noted that relevant considerations included, the circumstances leading to the decision to dismiss and also the effect of the decision on the employee. It was further noted that any harsh effect on the individual employee, whilst clearly relevant, is not conclusive. Other matters should be considered, including the gravity of the conduct.

[6] The grounds Mr Nesbit relies<sup>8</sup> on in seeking reinstatement are as follows:

- (a) the dismissal was predicated on demonstrably flawed data;
- (b) the dismissal was based on allegations not reasonably substantiated;
- (c) the decision to dismiss was made in respect of conduct for which there had been no prior warning, discipline, or other performance management; and/or
- (d) the dismissal was a disproportionate response to any wrongdoing by the Applicant

[7] I will consider these grounds within the context of the matters I must have regard to pursuant to s 320 of the *Industrial Relations Act 2016* (Qld) ("IR Act").

---

<sup>4</sup> *Industrial Relations Act 2016* (Qld) s 316.

<sup>5</sup> (1992) 36 FCR 20, 28.

<sup>6</sup> Applied in *Byrne v Australian Airlines Ltd* (1995) 185 CLR 410, 467 (McHugh and Gummow JJ).

<sup>7</sup> *Ibid.*

<sup>8</sup> As stated in Mr Nesbit's application for reinstatement filed on 29 March 2019.

- [8] Mr Nesbit carries the onus of proving that the dismissal was unfair pursuant to s 316 of the IR Act.<sup>9</sup>
- [9] However, as Mr Nesbit was dismissed following a disciplinary procedure under the PS Act, it will fall upon the Service to establish, to the reasonable satisfaction of the Commission, that Mr Nesbit was guilty of the conduct as alleged. In this matter, the Service contends that the chief executive was reasonably satisfied<sup>10</sup> that Mr Nesbit contravened, without reasonable excuse, a standard of conduct applying to him under an approved code of conduct of the *Public Sector Ethics Act 1994* with respect to the substantiated allegations.
- [10] A finding that Mr Nesbit's dismissal was not authorised by the relevant provisions of the PS Act is not determinative of whether Mr Nesbit's dismissal was unfair.<sup>11</sup> However, if such a finding were made, and it was not compatible with the understanding between Mr Nesbit and the Service about the circumstances in which the Service was liable to dismiss, it would "...be but a short step to conclude that the dismissal was 'unjust'"<sup>12</sup>.
- [11] The civil standard of proof, being on the balance of probabilities, applies to the determination to be made in this matter. The principles enunciated in *Briginshaw v Briginshaw*<sup>13</sup> ("Briginshaw") apply to the relevant standard of proof. Whilst not altering the civil standard of proof, the principles in *Briginshaw*, identify that the nature and gravity of the subject matter may be considered when determining if the standard of proof has been met.<sup>14</sup>

### **Background to termination**

#### *Mr Nesbit's employment with the Service*

- [12] Mr Nesbit has had a long and established career in nursing which culminated in his appointment as Nursing Director, PFU.
- [13] Mr Nesbit holds a Bachelor of Nursing and a graduate Certificate in Emergency Nursing. He commenced his employment as a student nurse at the RBWH in 1988. Whilst at the RBWH, he worked in various positions including as Clinical Nurse, Emergency Department.
- [14] Between 1997 and 2000, Mr Nesbit was employed as the Clinical Nurse Manager at the Wesley Emergency Centre.

---

<sup>9</sup> *Gold Coast District Health Service v Walker* (2001) 168 QGIG 258 (Hall P).

<sup>10</sup> *Industrial Relations Act 2016* (Qld) s 187(1)(f)(ii).

<sup>11</sup> *Gold Coast Health District v Walker* (2001) 168 QGIG 258, 259.

<sup>12</sup> *Gold Coast Health District v Walker* (2001) 168 QGIG 258, 259; *Queensland Teachers' Union of Employees (for Norman Wayne Armstrong) v State of Queensland acting through Department, Education, Training and Arts* [2009] QIRC 11, [203] and [204].

<sup>13</sup> *Briginshaw v Briginshaw* (1938) 60 CLR 336.

<sup>14</sup> *Ibid*, 361-362 (Dixon J).

- [15] Following his return to the RBWH in 2000, Mr Nesbit commenced performing higher duties in senior roles, including acting in the role of Nursing Director, Critical Care and Clinical Support Services.
- [16] In 2005, Mr Nesbit was appointed as the Nursing Director, PFU. Mr Nesbit was appointed the inaugural Nursing Director of the PFU and had been one of the lead staff members instrumental in developing the unit. Mr Nesbit described the PFU as a group of services within the hospital that support the entry, exit and movement of patients through the hospital, including, the reintegration of patients into the community. His evidence is that the PFU at the RBWH was one of the first of its kind in Australia.
- [17] The Nursing Director, PFU, is a Level 12 nursing role. In the role, Mr Nesbit was responsible for directly supervising up to 21 full time employees and indirectly supervising 198 full time employees. With the inclusion of part time employees, Mr Nesbit had approximately 350 indirect reports. The Service describes the position as a "very senior position within the RBWH".
- [18] Whilst in the position of Nursing Director, PFU, Mr Nesbit acted in senior leadership roles, including, relevantly, the Executive Director, Nursing and Midwifery Services, RBWH and the Service.
- [19] Mr Nesbit was employed in his substantive role as Nursing Director, PFU from 2005 until his employment was terminated on 12 February 2019.
- [20] The length of Mr Nesbit's employment with the Service, the seniority of the positions he held and acted in, together with his responsibilities, are relevant considerations to the determination of whether the dismissal was an unfair dismissal and will be considered further below.

*Secondment to Prince Charles Hospital and subsequent return to the RBWH*

- [21] Mr Nesbit's secondment to Prince Charles Hospital, and the reasons for it, and his subsequent return to RBWH are contextually relevant to the allegations.
- [22] Mr Nesbit submits that the termination of his employment should be considered within the context of him having had a difficult working relationship with Ms Alanna Geary, Executive Director of Nursing and Midwifery Services, RBWH in the preceding 4 years. Mr Nesbit directly reported to Ms Geary.
- [23] In or about April 2017, a meeting was held between Mr Nesbit, Ms Geary and Mr Whelan, Manager for Workplace Relations, RBWH, during which Ms Geary made complaints about Mr Nesbit's performance. Mr Nesbit says that Ms Geary had conducted a performance appraisal of his work at or around the same time but made no formal complaint about his performance during the appraisal.

- [24] Ms Geary's evidence is that she advised Dr Dines and Mr Drummond of her concerns about Mr Nesbit's performance, although she confirmed under cross-examination that her concerns had not been formalised and Mr Nesbit had never been given an opportunity to formally respond to her concerns.
- [25] In or about October 2017, Mr Whelan and Ms Geary alleged further performance issues and indicated they required Mr Nesbit to attend an Independent Medical Assessment ("IMA") by a psychiatrist.
- [26] Mr Nesbit contends that the direction to attend the IMA was invalid but, in an attempt to resolve the matter, he says he reluctantly agreed to attend the assessment.
- [27] In any event, Mr Nesbit describes the examination process as being constructive as he reports that the view of the Independent Medical Examiner ("IME"), to some extent, validated what he described was occurring in the workplace with Ms Geary.
- [28] The report from the IME was not produced in evidence but Mr Nesbit stated that a number of recommendations were made, including, that Ms Geary not be his direct report for a period of time. To facilitate this, the Service nominated alternative positions in which Ms Geary would not be directly supervising Mr Nesbit in the short-term.
- [29] After some negotiations between the parties, Mr Nesbit ultimately agreed to move from the workplace, he says reluctantly, by accepting the RBWH's offer to place him on a temporary secondment to the Prince Charles Hospital.
- [30] A description of the seconded position was provided in an email from Ms Geary to Mr Nesbit dated 16 November 2017. The position was described as follows:

... This is a time limited project until at this stage, the end of the financial year (mid Feb – end of June) and would be required to review current nursing structure and function in relation in alignment of overall TPCCH governance and in relation to reviewing patient flow and bed/ward allocations, considering the option of setting up a Patient Flow Unit similar to what we have here at RBWH. Your role as the Project Officer would be to discuss, engage with staff, run focus groups, undertake and write up a project plan, subsequent business cases, implementation plan(s) and report directly to Cherie and Anthony. The time frames are relatively tight but the envisaged outcome would articulation of the plan to key stakeholders, pitching to the TPCCH Executive for ongoing consideration in written and probably presentation of finding

...

Tony I believe that you have the required skills, the position is within the expectations of a NG12 and it is an opportunity for you to work in another organisation under a supportive leader undertaking a role which you have sound background knowledge of.

- [31] Mr Nesbit undertook the secondment between February and July 2018. Unfortunately, the position Mr Nesbit was seconded to did not eventuate in the form described by Ms Geary in her email of 16 November 2017 or, ultimately, at all. It seemed to be accepted

by both parties, that despite Mr Nesbit being removed from his substantive position and placed on secondment, the seconded position, in the end, did not exist.

- [32] Mr Nesbit found himself in the position of having been seconded to the Prince Charles Hospital with only limited useful work available to perform. Mr Nesbit states that he brought this situation to the attention of his line manager at the Prince Charles Hospital and made himself available for any other work that was available at the hospital. He also took additional leave throughout this period.
- [33] Mr Nesbit further stated that he utilised his available time by continuing to assist people who contacted him for advice about patient flow and project work. His evidence was that he continued to be regularly contacted by a variety of people with respect to matters pertaining to patient flow units due to his diverse and lengthy experience. For instance, Mr Nesbit had been system manager for the patient flow manager software and IT continued to contact him for assistance whilst he was on secondment.
- [34] In addition to the above, prior to commencing the seconded position, Mr Nesbit and Ms Geary discussed the progression of a recruitment process for the Assistant Nursing Director position within the PFU. This position reported directly to Mr Nesbit's substantive position of Nursing Director. Ms Geary had previously advised<sup>15</sup> Mr Nesbit that he would "naturally be on the panel" because he was the substantive officer that the position directly reported to.
- [35] However, on 15 March 2018, Ms Geary sent Mr Nesbit an email advising that he was not on the panel. Mr Nesbit responded to Ms Geary by email the same day. He advised Ms Geary that given the recruitment was for a permanent position, and although he was not due to return to his substantive position for three months, he considered it reasonable to be involved in the recruitment of the position.
- [36] He further advised Ms Geary that he considered his exclusion from the recruitment process to be demeaning and requested that Ms Geary reconsider his exclusion from the recruitment panel. That did not occur, and Mr Nesbit was not involved in the recruitment process.
- [37] The failure of the seconded position to eventuate in the manner initially proposed was clearly disappointing to Mr Nesbit. Particularly, given he had reluctantly agreed to be removed from his substantive position to undertake the secondment. The disappointment Mr Nesbit felt about the seconded position appears to have been intensified by the refusal to include Mr Nesbit on the recruitment panel.
- [38] The recruitment panel included Ms Dale Dally-Watkins, the acting Nursing Director whilst the applicant was on secondment, and Ms Geary.

---

<sup>15</sup> Exhibit R16 at page 29. See also T2-46, L28-41.

- [39] Ms Cartlidge-Gann, who had held the role of acting Assistant Nursing Director, for over 2 years had applied for the advertised position however she was unsuccessful. Ms Tracey Daelman was the successful applicant.
- [40] It was within this context that Ms Cartlidge-Gann purportedly contacted Mr Nesbit for his assistance. The extent and nature of the assistance provided by Mr Nesbit to Ms Cartlidge-Gann forms the basis of several of the allegations. The communication between them is alleged to have included matters regarding Mr Nesbit assisting Ms Cartlidge-Gann with lodging a grievance concerning Ms Dally-Watkins and Ms Geary's conflict of interest and requesting that the recruitment panel for the Assistant Nursing Director position be reconstituted.

### **Disciplinary procedure**

- [41] The chronology of the disciplinary procedure in contentious and Mr Nesbit does not complain of any procedural irregularity with respect to the disciplinary procedure. The relevant steps with respect to that procedure are that:
- (a) On or around 5 July 2018, Mr Nesbit returned to his substantive position as Nursing Director, PFU.
  - (b) On 1 November 2018, Dr Dines, Executive Director, RBWH, issued a show cause letter. As noted above, the show cause letter included seven allegations relating to Mr Nesbit. Mr Nesbit was placed on notice that Dr Dines considered, on the information available to her, that there may be grounds for Mr Nesbit to be disciplined pursuant to the PS Act. Relevantly, the grounds for discipline identified in this notice included conduct that amounted to misconduct, together with conduct that contravened, without a reasonable excuse, a Code of Conduct provision.
  - (c) On 14 November 2018, Mr Nesbit submitted a written response to the allegations.
  - (d) On 15 November 2018, the Queensland Nurses and Midwives Union ("QNMU") on behalf of Mr Nesbit, provided additional written correspondence in response to the allegations.<sup>16</sup>
  - (e) Mr Nesbit was given a further opportunity to respond to allegation two. On 20 December 2018, Mr Nesbit provided a further response to the Show Cause Notice.
  - (f) On 16 January 2019, Mr Nesbit was issued with a second show cause letter in which Dr Dines advised that she found the seven allegations against him to be substantiated and that she was considering the penalty of the

---

<sup>16</sup> These submissions supplemented submissions filed by Mr Nesbit on 14 November 2018.

termination of his employment and invited Mr Nesbit to show cause as to why he should not be dismissed.

- (g) Mr Nesbit provided a response to the second show cause letter on 7 February 2019.
- (h) On the basis of the findings that the seven allegations were substantiated, Dr Dines determined that there were grounds to discipline Mr Nesbit pursuant to the PS Act, namely, section 187(1)(f), in that Mr Nesbit had contravened, without reasonable excuse, a standard of conduct under the Code of Conduct, namely Principles 1.1, 1.5, 4.1 and 4.3 of the Code of Conduct.<sup>17</sup> Dr Dines considered that, given the nature of the allegations, the termination of Mr Nesbit's employment was appropriate and necessary in the circumstances. Dr Dines forwarded a brief to Mr Shaun Drummond, the Chief Executive of the Service, recommending that he consider the termination of Mr Nesbit's employment.
- (i) On 8 March 2019, Mr Drummond, Chief Executive, on behalf of the Service, wrote to the applicant and informed Mr Nesbit that his employment would be terminated with immediate effect.

### **Was Mr Nesbit guilty of the conduct alleged by the Service?**

#### *The evidence*

- [42] Mr Nesbit gave evidence in support of his case. Mr Nesbit did not call any other witnesses.
- [43] The Service relied on the evidence of Dr Dines, Ms Pinese, Ms Daelman, Mr Nicholls, Ms Geary and Mr Drummond.
- [44] Mr Nesbit cross-examined all of the Service's witnesses except for Mr Drummond. Mr Drummond was made available as a witness and his affidavit was tendered into evidence by consent, however, Mr Nesbit indicated that he did not require Mr Drummond for cross-examination.<sup>18</sup>
- [45] The material relied on by the Service largely took the form of the documentation that was included in the show cause process and that was before Dr Dines and Mr Drummond as the decision-makers. The only relevant additional documentary evidence was provided through Mr Nicholls, being Telstra documents that were directly relevant to allegation two and indirectly relevant to other allegations.

---

<sup>17</sup> The ground that Ms Nesbit's conduct amounted to misconduct within the meaning of s 187(1)(b) of the PS Act was not substantiated.

<sup>18</sup> T2-54 L12-47, T2-56, L42.

## The allegations

***Allegation One - It is alleged on 25 July 2018 that Mr Nesbit breached the confidentiality of Ms Leonie Cartlidge-Gann, Clinical Nurse Consultant when he discussed her current grievance process with Ms Tracey Daelman, Assistant Nursing Director, PFU.***

[46] The Service provided Mr Nesbit with the following particulars in support of allegation one:

- (a) You spoke to Ms Daelman in an office with the door open and suggested that you were aware of a grievance process regarding the recruitment process for the Assistant Nursing Director.
- (b) You divulged information in relation to Ms Cartlidge-Gann's unrest with the process however that Ms Daelman should not be concerned as she was the successful applicant in the open merit process...
- (c) On 27 July 2018 Ms Alanna Geary, Executive Director Nursing and Midwifery asked you to respond to the incident on 25 July 2018. During the meeting you advised Ms Geary that you support Ms Daelman and that you were shocked Ms Geary was aware there was a 'grievance' going on...

[47] The Service alleges that the conduct referred to in allegation one is not conduct that meets a standard of the Code of Conduct, relevantly section 1.5 and consequently, Mr Nesbit would be liable to discipline if the allegation was substantiated.

[48] The Code of Conduct contains the ethics principles and their associated set of values prescribed in the *Public Sector Ethics Act 1994*. The Code of Conduct sets out the standards of conduct for each ethics principle. The relevant principles include:

- (a) Principle 1: Integrity and impartiality;
- (b) Principle 2: Promoting the public good;
- (c) Principle 3: Commitment to the system of government; and
- (d) Principle 4: Accountability and transparency.

[49] The Code of Conduct sets out standards of conduct for each principle. The standards of conduct for Principle 1 includes "1.5 Demonstrate a high standard of workplace behaviour and personal conduct". Standard 1.5 is, relevantly, in the following terms:

### **1.5. Demonstrate a high standard of workplace behaviour and personal conduct**

We have a responsibility to always conduct and present ourselves in a professional manner, and demonstrate respect for all persons, whether fellow employees, clients or members of the public.

We will:

- a. treat co-workers, clients and members of the public with courtesy and respect, be appropriate in our relationships with them, and recognise that other have the right to hold views which may differ from our own
- b. ....

*Information considered in the show cause process*

[50] During the show cause process Mr Nesbit denied the allegation. He says that he was unaware of a grievance between Ms Daelman and Ms Cartlidge-Gann at the time and so was certainly not discussing this with Ms Daelman on 25 July 2018. He further states that Ms Daelman had asked him if he knew why Ms Cartlidge-Gann had been rude to her on the phone, and his response was merely a discussion speculating as to why this might have been.

[51] In Mr Nesbit's response on 14 November 2018 he further submitted, inter alia, that:

- *I am aware that she [Ms Cartlidge-Gann] had a grievance process related to a formal warning she had received during her work, but this never came up in the discussion with Ms Daelman.*
- *Ms Cartlidge-Gann never advised me she has initiated a grievance process against Ms Daelman or sought my assistance with such a grievance.*
- *Ms Geary, after some discussion indicated she accepted there was some misunderstanding around the matter and left my office.*
- *That afternoon I followed up with Ms Daelman to apologise for any confusion created and assure her of my support. We clarified with each other the matter and determine a plan on how to work together to support each other in managing and supporting Ms Cartlidge-Gann.*

[52] In addition to Mr Nesbit's responses, Dr Dines says she also considered the following material:

- (a) an email chain between Mr Nesbit and Ms Cartlidge-Gann dated 16 April 2018 to 30 April 2018 which included the following comments:

When the current panel is removed ... insist I convene the next panel. I think that would be appropriate given the reason given (sic) for why I couldn't be on the initial one doesn't exist. What do you think? Lol.

Attached is the promotions appeal, utilising the attached template. I've completed the key parts for your review...

Anyway, hope the appeal process and what you need to do is clear and without much left for you to do but fill in the formalities and send in...

- (b) An email sent from Ms Daelman to Ms Geary at 3.52 PM on 25 July 2018 stating:

Tony has also spoken with me this afternoon and continues to say he has no contact with Leone however then told me that he is aware she is currently going through the process to

question the appointment of my position but that I shouldn't be concerned as I was successful in an open merit based process...

*Dr Dines' findings*

- [53] At the conclusion of the show cause process Dr Dines made the following findings:
- (a) Mr Nesbit's denial of the grievance was not credible given the content of the 26 to 30 April 2018 emails, including, the references to the appeal process and the panel indicated that Mr Nesbit was well aware of Ms Cartlidge-Gann's grievance;
  - (b) there was no reason or motivation behind why Ms Daelman would have fabricated the conversation and then written a contemporaneous email; and
  - (c) when considering all of the evidence before her she preferred the evidence of Ms Daelman as to the conversation having occurred over that of Mr Nesbit and considered that this therefore meant that Ms Cartlidge-Gann's confidence had been breached.
- [54] Dr Dines clarified that she came to her findings in the absence of the telephone records. Dr Dines says that she deemed that the telephone records "simply confirmed" her view given that they showed that Mr Nesbit had called and texted Ms Cartlidge-Gann on many occasions.

*Mr Drummond's findings*

- [55] Upon reviewing the brief provided to him by Dr Dines, including the emails from Ms Daelman to Alana Geary dated 25 July 2018, Mr Drummond concluded that allegation one was substantiated. Mr Drummond found that he accepted the veracity of what was contained in the documents and considered that there was no apparent reason for Ms Daelman to have lied about the conversation that she had with Mr Nesbit and where he had discussed the grievances that Ms Cartlidge-Gann had with the recent appointment of Ms Daelman to her role.

*The evidence before the Commission*

- [56] Mr Nesbit's evidence in chief, whilst largely reflecting his responses provided during to the show cause process, relevantly, also addressed the following:
- (a) on the date of the discussion with Ms Daelman (25 July 2018), he was not aware that there was a grievance process regarding the matter. Mr Nesbit says that he had a discussion with Ms Cartlidge-Gann in late April/early May 2018, when she approached him for advice regarding a promotion appeal that she was planning to action on the advice of her industrial representative and with their support;
  - (b) Mr Nesbit says that he advised Ms Cartlidge-Gann that she was ineligible to lodge a promotion appeal due to her pay level. She subsequently advised, after

checking with her industrial representative, that Mr Nesbit's advice was correct. She thanked him for her his support and advised that she would not be progressing the matter; and

- (c) further, Mr Nesbit says that, due to his role, if there had been a grievance against Ms Daelman, directly or in relation to the recruitment process, then he would have been a delegate for the matter, or, at the least, aware of the grievance, which he says he was not.

[57] Mr Nesbit submitted that, on the balance of probabilities, he could not be found to have engaged in this conduct, as it was merely a matter of a case of his word against someone else's and Dr Dines favoured the account of Ms Daelman in circumstances where there was no information beyond her word against his.

[58] Under cross-examination, Mr Nesbit accepted that he made comments to Ms Daelman during the conversation on 25 July 2018 as follows:

- (a) that Ms Cartridge-Gann has asked him to help her with something; and
- (b) that in response to a question from Ms Daelman as to whether he assisted Ms Cartridge-Gann in the process he had said "look that wouldn't be appropriate for me if there was anything – if that was progressing, I wouldn't be able to help".

[59] Mr Nesbit further agreed in cross-examination that the conversation with Ms Daelman occurred in Ms Daelman's office with the door open and that there were other staff within hearing distance of the conversation.

[60] Ms Daelman's evidence in chief addressed the alleged conversation with Mr Nesbit and detailed the conversation on 25 July as follows:

- (a) Mr Nesbit advised that he was assisting Ms Cartlidge-Gann with her appeal regarding Ms Daelman's position;
- (b) Ms Nesbit advised Ms Daelman that Ms Cartlidge-Gann should have got the position rather than Ms Daelman and referred Ms Dally-Watkins having worked with Ms Daelman in the past;
- (c) Ms Daelman said she did not disagree that Ms Cartlidge-Gann must be upset about the process however the position had been upgraded from a nurse grade 10, to a nurse grade 11 and that Ms Daelman had worked in the surgical Assistant Nursing Director position which was also a grade 11 position;
- (d) Mr Nesbit replied by confirming that he would not be helping Ms Cartlidge-Gann with the process of appeal, that Ms Cartlidge-Gann had requested him to do something which he couldn't do, and that he needed to cover himself as he had recently been in "hot water".

[61] Whilst Mr Nesbit did cross-examine Ms Daelman, he did not cross-examine her with respect to the conversation on 25 July 2018 or what was allegedly said during that conversation.

[62] Following the alleged conversation on 25 July 2018, Ms Daelman forwarded a contemporaneous note of the conversation to Ms Geary by email at 3.52pm. Ms Daelman's email relevantly stated, inter alia, as follows:

...Tony has also spoken with me this afternoon and continues to say he has no contact with Leonie however then told me that he is aware she is currently going through the process to question the appointment of my position but that I shouldn't be concerned as I was successful in an open merit based process.

[63] Ms Daelman's email correspondence of 25 July 2018, together with an email chain between Mr Nesbit and Ms Cartlidge-Gann dated 16 April 2018 to 30 April 2018, were in evidence before the Commission. As noted above, these documents were considered by Dr Dines and Mr Drummond in making their respective decisions.

[64] The email chain between Ms Cartlidge-Gann and Mr Nesbit is headed "Re: Promotions appeal". The content of the email chain addresses a draft letter which Mr Nesbit assisted Ms Daelman to draft which identifies a grievance Ms Cartlidge-Gann had regarding the decision not to award her the Assistant Director Nursing position and her concern that because Ms Dally Watkins had issued her with a formal warning she may have had a conflict of interest in being chair of the interview panel for the Assistant Nursing Director position.

[65] An example of one of the emails in the email chain is an email between Mr Nesbit and Ms Cartlidge-Gann dated 27 April 2018 and sent at 5.40am stating, inter alia, as follows:

...Attached is the Promotions Appeal, utilising the required template. I've completed the key parts for your review. I think it's strong. It states bias leading to COI is the cause for the appeal. What is considered COI in policy is identified as being present in the case – it's there by the fact a Grievance is present – conflict. I also think there is evidence of actual bias through Dale's action - the timing being significant....

...Attached also is a scanned copy of the Appeals Guide, the appeals directive and the conflict of interest procedure.

I think I'd risk being squashed to be a fly on the wall when some first become aware of the Appeal and basis of it...

[66] Mr Nesbit submits allegation one should not be substantiated because he was not aware of a grievance lodged by Ms Cartlidge-Gann in respect of Ms Daelman and therefore he says he could not have breached confidentiality of any issues that he was unaware of.

[67] Mr Nesbit further submits that there was no reference to any other person being present in the conversation which is the subject of the allegation and that the basis for Dr Dines findings was the preference of Ms Daelman's version of events.

*The findings regarding allegation one*

- [68] I am required to determine whether I am reasonably satisfied that a ground for discipline exists.
- [69] Under cross-examination, Ms Nesbit accepted that he had a conversation with Ms Daelman on 25 July 2018 in her office.<sup>19</sup> He further accepted that this conversation was able to be heard by other staff and that during the course of the conversation there was a discussion about Ms Cartlidge-Gann and her disappointment in not being awarded the Assistant Nursing Director position.<sup>20</sup> Accordingly, I find that these components of the allegation are substantiated on the evidence.
- [70] Mr Nesbit does not accept, however, that he breached Ms Cartlidge-Gann's privacy by discussing her current grievance process with Ms Daelman.
- [71] Despite the email chain having the heading "Re-promotions appeal", Mr Nesbit was insistent that he was assisting Ms Cartlidge-Gann with her response to a formal warning, rather than a promotion appeal. Mr Nesbit contended that the response to the formal warning was a completely separate process to any grievance or promotion appeal Ms Cartlidge-Gann had associated with the recruitment process.
- [72] However, the subject matter of the emails themselves and the attached draft letter indicate that Ms Cartlidge-Gann did have a grievance with respect to the promotion decision and that Mr Nesbit was assisting Ms Cartlidge-Gann to draft a promotion appeal with respect to the decision to appoint Ms Daelman as opposed to Ms Cartlidge-Gann to the Assistant Nursing Director position.
- [73] Given the content and subject matter of the emails and the draft letter, I do not accept Mr Nesbit's evidence that his assistance of Ms Cartlidge-Gann was limited to her response to the formal warning. His evidence in this respect is contradicted by the clear meaning and effect of the emails and draft letter.
- [74] Mr Nesbit stated further under cross-examination<sup>21</sup> that he advised Ms Daelman, during the course of the conversation on 25 July 2018, that it would have been inappropriate of him to assist Ms Cartlidge-Gann in any such grievance process. If Mr Nesbit did make this statement to Ms Daelman, then it is inconsistent with his conduct as recorded in the email chain but provides an explanation as to why he denied his involvement, firstly, during the show cause process, and again, before the Commission. That is, he understood such conduct to be inappropriate.
- [75] I find that Mr Nesbit did assist Ms Cartlidge-Gann with respect to her promotion appeal. It follows that at the time of the conversation with Ms Daelman, Mr Nesbit had the knowledge that Ms Cartlidge-Gann was aggrieved by the decision to appoint Ms

---

<sup>19</sup> T1-39, L31-25.

<sup>20</sup> T1-43, L12-38.

<sup>21</sup> T1-41, L8-12.

Daelman to the position. Such knowledge is consistent with the version of the conversation attributed to Mr Nesbit and recalled by Ms Daelman.

- [76] It was Mr Nesbit, given his prior involvement with Ms Cartlidge-Gann, who knew that Ms Cartlidge-Gann was aggrieved by the decision not to appoint her to the Assistant Nursing Director position.
- [77] The fact that Ms Cartlidge-Gann did not ultimately lodge the promotion appeal does not indicate that she did not have a grievance. But the fact that it was not lodged limits the pool of people who knew about Ms Cartlidge-Gann's grievance. Mr Nesbit was one of those people.
- [78] Mr Nesbit had intimate knowledge of the extent and nature of Ms Cartlidge-Gann's grievance about the decision to appoint Ms Daelman to the position involved because he assisted, over the course of several days, Ms Cartlidge-Gann to draft the promotion appeal. This was not information that Ms Daelman had knowledge of until Mr Nesbit advised her of it in the conversation.
- [79] Mr Nesbit complains that the acceptance of Ms Daelman's account is a case of accepting one person's word over another. However, there is supporting documentation in the form of the contemporaneous note of the conversation recorded in the email from Ms Daelman to Ms Geary following the conversation on 25 July 2018. Further the information contained in the email chain between Mr Nesbit and Ms Cartlidge-Gann is consistent with the matters said to be discussed in Ms Daelman's version of the conversation rather than Mr Nesbit's version of the conversation.
- [80] On this basis, I have formed the view that Mr Nesbit did discuss Ms Cartlidge-Gann's grievance about the recruitment process associated with Ms Daelman's appointment to the role in a conversation with Ms Daelman on 25 July 2018, and consequently, he breached Ms Cartlidge-Gann's privacy in doing so.
- [81] From the evidence, there was no legitimate basis for Mr Nesbit to disclose the information relating to Ms Cartlidge-Gann and, given that he denies doing so, no such basis was proffered by him. The information was information that was personal to Ms Cartlidge-Gann and had the potential to impact on her employment. The disclosure of such information also had the potential to intrude on the relationships Ms Cartlidge-Gann had in the workplace. By disclosing the information to Ms Daelman, Mr Nesbit removed the power and control Ms Cartlidge-Gann had over her personal information and how and to whom, if at all, she chose to disclose that information.
- [82] Mr Nesbit's conduct was not conduct that treated Ms Cartlidge-Gann's private information with courtesy and respect. He unilaterally chose to disclose the fact that Ms Cartlidge-Gann was aggrieved by the appointment of Ms Daelman in circumstances where he had previously assisted Ms Cartlidge-Gann to draft a promotion appeal with respect to the decision to appoint Ms Daelman. In this respect Ms Nesbit's conduct is

not conduct that complies with a standard of the Code of Conduct and is a ground for discipline.<sup>22</sup>

***Allegation Two: It is alleged that Mr Nesbit used his work mobile phone ... to make calls and send text messages for matters for the period 16 September 2017 to 11 July 2018 which are in breach of the Use of ICT Services Policy.***

- [83] The particulars relied on by the Service with respect to allegation two are as follows:
- (a) You have been issued with a work mobile phone ... by the Service for the purpose of making and receiving work related calls as the Nursing Director, Patient Flow Unit.
  - (b) As per DoH Policy – Use of ICT services ... it is the expectation of the Service that **'limited personal use'** for calls and text messages (SMS) applies when using the work phone and these should *'be infrequent'*.
  - (c) You used your mobile phone to consistently make calls and send text messages (SMS) **outside your normal span of work hours** that do not appear to be in connection with your employment to two different phone numbers as outlined in the attached documents (**Attachment 7 – ... highlighted in blue and ... highlighted in pink**).
  - (d) You have used your work mobile phone to make calls and send messages (SMS) that do not appear to be in connection with your employment and are deemed to be more than 'limited use' as per the *Use of ICT Policy*.
  - (e) The mobile number ... has been identified as not having any connection with your employment.
  - (f) The mobile number ... has been identified to belong to Ms Leonie Cartlidge-Gann.
  - (g) From October 2017 to 4 July 2018 you were not performing your substantive role as the Nursing Director Patient Flow Unit, RBWH and Ms Cartlidge-Gann was on sick leave from 30 April 2018 and remains on leave from the Service.

[84] The Service provided Mr Nesbit with copies of the documents referred to in the particulars.

[85] The Service contends that if the conduct relating to allegation two is able to be substantiated, then it will support a finding that Mr Nesbit will have contravened, without reasonable excuse, a standard of conduct under the code of conduct, specifically principle 4.3.

[86] As noted above, principle 4 relates to accountability and transparency. Standard 4.3 relevantly provides:

We are accountable for all resources that we use in the course of our duties.

We will:

- (a) be economical and avoid waste and extravagance in the use of public resources for proper purposes

---

<sup>22</sup> *Public Service Act 2008* (Qld) s 187(1)(f).

...

- [87] The Service alleges that Mr Nesbit failed to ensure appropriate use of official resources, public property and facilities in that he vowed to be economical, and avoid waste and extravagance in the use of public resources for proper purposes, and in accordance with official policies, when he consistently used his work mobile for matters that were not in connection with his employment.

*Information considered in the show cause process*

- [88] Mr Nesbit denied allegation two and provided the following response, on 14 November 2018, during the show cause process:

- *The two numbers ... are numbers I have consistently called in relation to work matters.*
- *You have noted that one of the numbers was Ms Cartlidge-Gann's work issued mobile number. The other is a number used by a Metro North Information Technology Services Officer, now a West Moreton Health Services officer.*
- *I provide mentorship and support to many staff working health and am involved in many diverse areas of healthcare provision... A major area of involvement is Information Technology. I am well known and well regarded by many in Metro North Information Technology, where I am utilised as a clinical support person for many projects and initiatives relevant to my role as Nursing Director PFU. While I was not performing my usual work as Nursing Director Patient Flow Unit, RBWH, I was still in the role and still involved in patient flow related work. During the period also, due to struggling to find sufficient and meaningful work, I did make myself available to assist wherever possible...*
- *...I have always worked long hours in my role and regularly work outside of normal business hours performing my duties.*
- *I advise that on an ad hoc basis I paid money through the standard processes to cover any private calls made on my work mobile. You should easily be able to confirm this through the relevant business team.*
- *... I took ownership of my work mobile number ... from 3 August 2018 and now fund this myself.*

- [89] Mr Nesbit, via his union representative, provided additional submissions on 15 November 2018 as follows:

- *Mr Nesbit advises that while the records are inaccurate, his phone contact with the two (2) numbers you detail was, at all times, work related.*
- *... the records you provided would indicate that on 19 April 2018 Mr Nesbit somehow sent almost 80 SMS messages within one minute at 11.44am, and 25 SMS messages within one minute at 15.25pm.*
- *In any event Mr Nesbit advises he frequently made payments to cover any personal use on his work issued mobile phone, and if these calls had been personal, he would have had no problem paying for them.*

[90] In his further response during the show cause process on 20 December 2018, Mr Nesbit relevantly provided the following further information:

- *I now self-fund all of my mobile smart device activity, both work and personal usage, ensuring a reality beyond doubt. In fact, for over 12 months I have separated my work and personal smart device use to separate devices and mobile phone numbers. Attached is paperwork to verify I have done this.*
- *I had no reason to use my work supplied account for personal use at the time it is alleged I did.*
- *Attached is one receipt issued by the hospital that includes a payment for personal use of my work issued phone while away on work business. It is my recollection that \$50 (noted on the receipt in brackets) of the total amount paid was for use of my work phone for personal use while away.*
- *...for the majority of the time I was issued with a work mobile phone I maintained a file in my filing cabinet at work for documentation related to my work issued mobile phone. In 2017 while on leave however, my filing cabinet was reviewed and many of the files in it at the time, including the file created to my mobile phone, were not kept as part of what I believe was a clean-up and reorganisation of the cabinet.*

*Dr Dines' findings*

[91] Dr Dines considered Ms Nesbit's mobile phone records and his responses to the show cause process.

[92] Dr Dines considered Mr Nesbit's submission that the records were flawed insofar as they recorded multiple texts being sent at the same time. Dr Dines ultimately concluded that the fact that the phone records recorded multiple messages within one-minute period did not mean the whole of the records were unreliable, such that she could not rely upon them to corroborate other evidence she was considering.

[93] Further, Dr Dines stated she had regard to Mr Nesbit's response wherein he stated that he had made personal payments to cover any personal use of his work-issued mobile phone. In addition to providing Mr Nesbit with a further opportunity to make submissions with respect to this, Dr Dines arranged for inquiries to be made to verify the information given by Mr Nesbit. Ms Geary made those enquiries and could not find any record of Mr Nesbit ever having made payments for any personal use of his work mobile phone.

[94] Mr Nesbit response of 20 December 2018 attached a receipt from 2012 which he relied on in support of his claim that he had paid \$50 towards the use of his mobile phone. Dr Dines concluded that that receipt did not relate to the time period in question and further it was a receipt for "travel expenses" and made no mention of Mr Nesbit's mobile phone. The material provided by Mr Nesbit did not support his submission.

[95] On that basis, Dr Dines substantiated allegation two.

*Mr Drummond's findings*

[96] Dr Drummond substantiated allegation two. He states that he considered the mobile telephone records of Mr Nesbit's work phone. He concluded that upon perusal of the records, that Mr Nesbit had contacted Ms Cartlidge-Gann regularly and outside of normal work hours.

*The evidence before the Commission*

[97] Mr Nesbit denied allegation two and contended that:

- (a) both of the numbers referred to in the particulars are numbers directly related to Mr Nesbit's work, as one of the numbers belonged to Ms Cartlidge-Gann and the other number belonged to a staff member from Metro North Information Technology Service that Mr Nesbit worked closely with and supported;
- (b) further the data relied on was demonstrably flawed throughout for example, on 11 July 2018, the data indicated Mr Nesbit sent over 80 texts within several minutes which he contends could not have been possible; and
- (c) the numbers utilised by Mr Nesbit complied with the ITC policy and there is no evidence other than the flawed data relied on by the Service.

[98] Mr Nesbit further relied on information he had previously provided during the show cause process, that he had a personal telephone service provider which supported his submission that he used a personal telephone number for personal use.

[99] During the hearing, Mr Nicholls, an Operations Specialist (Telecommunications Billing) for eHealth Queensland gave evidence. Mr Nicholls' role includes managing the monthly processing of the telecommunications bills for Queensland Health, including for bills for the Service.

[100] Mr Nicholls gave evidence that the mobile telephone supplied by the Service to Mr Nesbit was attached to a Telstra plan. Mr Nicholls referenced Telstra's customer terms which he said were separate to the contract plan details and available on Telstra's website. He states that the customer terms identify that a text or SMS message of up to a maximum of 160 characters counts as a single message. If a text is longer than 160 characters, it will generate multiple text messages, depending on its length, with the same date/time stamp on any mobile telephone record. He further added that if there were multiple recipients of the same text message, this will also create additional same date/time records.

[101] Whilst Mr Nesbit did cross-examine Mr Nicholls, he did not disturb Mr Nicholls' evidence with respect to the explanation he provided, by reference to the Telstra customer terms, as to why the telephone records may display multiple messages with the same or similar time/date stamp.

*The findings regarding allegation two*

- [102] During the show cause process, Mr Nesbit's primary defence with respect to allegation two (and all allegations insofar as they referred to the telephone records) was that the telephone records were "demonstrably flawed". In support of this submission, he pointed to occasions whereby the records indicated that he sent multiple texts or SMS messages within a short period of time. An example that he referred to during the course of the hearing was a record of 11 July 2018. This record indicates that Mr Nesbit sent approximately 80 text messages over a period of several minutes. Mr Nesbit's submission is that he did not do this and it would be near impossible to do so.
- [103] The evidence of Mr Nicholls provides some greater explanation as to why the telephone records may record Mr Nesbit as sending multiple text messages over a short period of time. Mr Nicholls' evidence in that regard was that if a text was longer in 160 characters, or sent to multiple recipients, it would generate a record of there being multiple text messages sent with the same date and time stamp.
- [104] Mr Nesbit did not disturb Mr Nicholls' evidence in cross examination, and I am satisfied that the evidence of Mr Nicholls provides a reasonable explanation as to why the telephone records depict multiple text and/or SMS messages with the same date and time stamp. Mr Nicholls' evidence does not support Mr Nesbit's contention that the telephone records are demonstrably flawed.
- [105] Mr Nesbit further contends that the telephone numbers identified by the Service include contacts that were work-related. In this regard he relied on his earlier evidence that during the period of his secondment, employees of the Service continued to contact him to seek his advice. One of the numbers particularised by the Service, as being a number that Mr Nesbit contacted often and out of hours, was that of Ms Cartlidge-Gann.
- [106] It is accepted by Mr Nesbit that Ms Cartlidge-Gann contacted him whilst she was on leave and he was on secondment to the Prince Charles Hospital. Ms Cartlidge Gann began accessing sick leave in or around April 2018 and therefore any contact to and from Ms Cartlidge-Gann from then on and during the period of her extended sick leave, could not relate to Mr Nesbit's substantive or seconded position. Similarly, it could not relate to any work being performed by Ms Cartlidge-Gann as she was on leave.
- [107] In light of the above, there would be no reason for Mr Nesbit to be in regular contact with Ms Cartlidge-Gann for work-related purposes. The telephone records depict a flurry of text messages between Mr Nesbit and Ms Cartlidge-Gann during April and May 2018, which coincided with the period in which Mr Nesbit was sending her emails regarding the promotions appeal. There are many further additional entries, text messages and calls between Mr Nesbit and Ms Cartlidge-Gann beyond the period of his assisting her with the promotion appeal.

- [108] I find that given Mr Nesbit was not performing his substantive position and Ms Cartlidge-Gann was on a period of leave during the period alleged by the Service, the telephone communications between them were not work related. For reasons addressed further with respect to allegation three, I do not consider Mr Nesbit's contact with Ms Cartlidge-Gann with respect to the promotion appeal to be contact performed in the discharge of his duties.
- [109] Mr Nesbit further contends that he had a separate personal telephone number for his personal use. There is no reason not to accept his evidence in this regard, however, that does not provide an explanation as to why he logged numerous telephone calls and text messages with Ms Cartlidge-Gann during the period of her sick leave and/or his secondment to the Prince Charles Hospital on his telephone supplied by the Service.
- [110] The terms of the ICT policy and relevant standard were put to Mr Nesbit during the course of cross-examination.<sup>23</sup> Mr Nesbit accepted that the terms of the standard lists some examples of what "limited personal use" might be. It was put to Mr Nesbit, and he accepted, that it says "personal use that conforms to the requirements outlined above and that would be considered limited and reasonable includes" family matters, education, fax information, copying and printing and checking public transport timetables. The contacts with Ms Cartlidge-Gann do not fall within the description of "limited personal use".
- [111] In addition to this, regard was had to the number of telephone communications logged during the period of October 2017 to July 2018. This is the period that Mr Nesbit was not performing his substantive duty and includes the period of the secondment during which he says he performed limited substantive work. Even accepting that Mr Nesbit was contacted from time to time to provide advice to his colleagues, that alone does not provide a reasonable explanation as to the high number of communications logged by Mr Nesbit during that period.
- [112] Ms Geary's evidence is that telephone bills for other employee's work mobile telephones were ordinarily in the vicinity of between \$30-\$40. Mr Nesbit's telephone bill was over \$100.
- [113] On the basis of the material in evidence, I am reasonably satisfied that the telephone records may be relied on to support a conclusion that Mr Nesbit did not comply with the ICT policy. Those records do not support that Mr Nesbit used the telephone for limited personal use.
- [114] Further, I am reasonably satisfied, based on that conclusion, that Mr Nesbit has contravened, without reasonable excuse, a standard of conduct under the Code of Conduct, specifically principle 4.3.<sup>24</sup>

---

<sup>23</sup> T1-101, L6-23.

<sup>24</sup> This is a ground for discipline in accordance with the *Public Service Act 2008* (Qld) s 187(1)(f).

***Allegations Three, Four and Five***

[115] Allegations three, four and five are detailed, as follows:

- (a) Allegation Three: It is alleged that in approximately April 2018 Mr Nesbit attempted to influence a completed recruitment process for the Assistant Nursing Director Patient Flow Unit, RBWH.
- (b) Allegation Four: It is alleged that between 27 March 2018 and 30 April 2018 Mr Nesbit used the Queensland Health ICT system to send emails that were not in connection with his employment as a Nursing Director.
- (c) Allegation Five: It is alleged that on multiple occasions during April 2018, Mr Nesbit used inappropriate language in email communications to Ms Cartlidge-Gann when referring to staff of the Service.

[116] The Service dealt with allegations three, four and five together and relied on the same particulars with respect to each of the allegations. The reasons for this are each of the allegations arise out of email communications between Mr Nesbit and Ms Cartlidge-Gann. The particulars relied on by the Service with respect to allegations three, four and five are as follows:

- a) On 15 March 2018 at 6:08pm ... you forwarded Ms Cartlidge-Gann an email from Ms Geary titled *'FW: Re Assistant Nursing Director Recruitment (sic).'*
- b) In an email dated 27 March 2018 ... to Ms Cartlidge-Gann, you wrote:

*"Doing the letter it's beyond belief what's been pulled here. Dale looks disgraceful here. She may be angry. Stay Calm. She's really not fit to chair the panel on how she's managed this. Alanna of course will not do the right thing here. They won't admit wrong – they'll likely just want it to go away (sic) now. You really just want a fair crack at the job and Dale to leave you alone... they are extremely cocky. Dale may just get aggressive because you have held her to account. I think Alanna might sit back a bit here – her foot in your camp is looking good. Good luck."*

- c) On 26 March 2018 you sent an email from your Queensland Health account to Ms Cartlidge-Gann with the subject *'letter'*. Attached to this email was a document that had been edited using track changes ...
- d) In an email dated 25 April 2018 ... to Ms Cartlidge-Gann you wrote:

*'this will hold everyone to account in some way though, even if it just shows them up as poor at their job. When the panel is current panel is removed I think as a very separate matter, insist I convene the next panel. I think that would be very appropriate given that reason given for why I couldn't be on the initial one doesn't exist. What do you think? Lol.'*

- e) In an email dated 26 April 2018 ... Ms Cartlidge-Gann advised,

*'I couldn't do this appeal without your level of support critiquing and going through everything with the fine tooth (sic) comb.'*

- f) In an email dated 27 April 2018 to Ms Cartlidge-Gann you advised the following:
- a. *'attached is the promotions appeal using the required template. I've completed the key parts for your review. I think it's strong. It states bias leading to COI is the cause for the appeal. What is considered COI in policy is identified as being present in the cause – it's there by the fact that a grievance is present – conflict. I also think there is evidence of actual bias through Dale's action – the timing being significant. What you're requesting, to recommence from the point that through her actions showed bias, is almost the perfect argument and request. As you'll see there's just the formalities to fill in...'*
  - b. Attached also is a scanned copy of the Appeals guide, the appeals directive and the conflict of interest procedure.
  - c. I think I would risk being squashed to be a fly on the wall when one first becomes aware of the Appeal and the basis of it. A simple oversight/risk missed in the planning and throughout? And they were so close...could smell victory...?! Yes, I'd risk it.
  - d. If you're talking to Doreen let her know we're trying to take the bull down. I'll be the matador and you'll be the clown.
- g) In an email dated 30 April 2018 to Ms Cartlidge-Gann you wrote:
- a. *'who knows how Alana might twist things'*
  - b. *Anyway I hope the appeal process and what you need to do is clear and without much left to do but fill in the formalities and send it in.*

...

[117] The Service contends that if the allegations are substantiated then it would support a finding that Mr Nesbit contravened, without reasonable excuse, a standard of conduct under the Code of Conduct specifically:

- (a) principle 1.5 - demonstrate a high standard of workplace behaviour and personal conduct, when Mr Nesbit failed to treat colleagues with courtesy and/or respect, as outlined in allegation five; and/or
- (b) principle 4.1 - ensure a diligence in public administration, when Mr Nesbit failed to treat all people equitably and consistently as outlined in allegation three; and
- (c) principle 4.3 - ensure appropriate use of official resources, public property and facilities in that Mr Nesbit failed to be economical, and avoid waste and extravagance in the use of public resources for proper purposes, and in accordance with official policies, when he consistently used the ICT system for purposes not in connection with his employment as outlined in allegation four

*The information considered in the show cause process*

[118] Mr Nesbit denied the allegations. In addition to the documents containing the email chain between Mr Nesbit and Ms Cartlidge-Gann, together with attachments, the show cause process also considered Mr Nesbit's written response to the allegations.

[119] In Mr Nesbit's written response dated 14 November 2018, he relevantly submitted, in summary, as follows:

- I had no conflict of interest in the recruitment process referred. I was not on the panel for the recruitment process nor was I in any way involved in the recruitment process. This left me able to assist any staff that approached me for assistance. I assisted three staff across various stages of the process, without bias, not just Ms Cartlidge-Gann.
- I have read the correspondence provided to me to substantiate this claim and considered it in relation to allegation 5. While I acknowledge the tone of the correspondence is negative at times, I believe this reflects my feelings of isolation and exclusion. I can't see anything significant in relation to the allegation of using 'inappropriate language'.
- The emails referred to are a reflection of the time and were always intended to be private and confidential between recipients, without all the usual end notes and disclaimers.
- It is wrong to say I attempted to undermine a recruitment process. All staff have the right of appeal and assistance to do so by their individual support persons not involved in the process. Regarding the recruitment process, I advised Ms Cartlidge-Gann I believed she did not have grounds to lodge an appeal...
- I find no evidence to support the claim I inappropriately used the Queensland Health ICT system. As mentioned, I assisted three staff in various stages/aspects of the recruitment process upon request, doing so for all staff that requested my assistance. I did so as I was not directly involved in the recruitment process and therefore had no conflict of interest.
- Again, it is wrong to say the e-mails in question were not in connection to my employment, they obviously are. I advise again as I have previously advised Ms Geary. I do not have a personal relationship with Ms Cartlidge-Gann.
- I do have a professional relationship with Ms Cartlidge-Gann that has been positive and supportive. My support to her was never meant to infer agreement necessarily.

[120] On 15 November 2018, Mr Nesbit submitted a further response, via his union representative, relevantly submitting, in summary, the following additional matters:

- Mr Nesbit advises that he denies these allegations entirely and provides further details in his response.
- Mr Nesbit advises that, for the period of the emails you provided between himself and Ms Cartlidge-Gann, he was not working in his substantive role and so had nothing to do with the recruitment processes for the Assistant Nursing Director. In any event Mr Nesbit advises that he strongly felt that any grievance Ms Cartlidge-Gann was planning to pursue was futile and that the process had been fairly applied. He states that he informed Ms Cartlidge-Gann of his thoughts and

advised her not to take it any further. As he was not working in his substantive role, Mr Nesbit advises that he would not have had any opportunity to interfere with the recruitment process even if he had wanted to.

*Dr Dines' findings*

- [121] Dr Dines substantiated the three allegations made against Mr Nesbit arising out of his email communications and the assistance he provided to Ms Cartlidge-Gann in relation to her proposed appeal of the promotion decision.
- [122] Dr Dines did not accept Mr Nesbit's submission that he had advised Ms Cartlidge-Gann that her grievance was futile, as the evidence in the form of the emails and draft proposed promotion appeal document suggested otherwise and demonstrated Mr Nesbit's support and encouragement towards Ms Cartlidge-Gann in the progression of her grievance in relation to the promotion.
- [123] Dr Dines concluded, on the evidence before her, that Mr Nesbit provided Ms Cartlidge-Gann with significant support with her grievance in relation to the recruitment process. Dr Dines concluded that the level of support provided by Mr Nesbit was disproportionate to an acceptable professional working relationship, particularly when considering the information contained within the particulars provided in support of allegations three to five.
- [124] Further, Dr Dines did not accept Mr Nesbit's contention that emails to Ms Cartlidge-Gann were in connection with his employment or the duties he performed.
- [125] Dr Dines found that the content of the subject matter contained within the emails to be highly improper and the nature of the material was such that it went beyond what could be considered an acceptable level of support from someone who held the substantive position of Nursing Director.
- [126] Dr Dines found that whilst the ICT policy permitted limited and reasonable personal use that the email communications relied on did not comply with the requirement of the use being "limited and reasonable".
- [127] In relation to allegation five, Dr Dines had regard to Mr Nesbit's submission that the tone of the emails was at times negative. Dr Dines did not accept Mr Nesbit's submission that the tone reflected his feelings of isolation and exclusion at the time as being a reasonable explanation for the behaviour. Dr Dines found the Ms Nesbit's tone, when referring to his colleagues, to be highly inappropriate and offensive.

*Mr Drummond's findings*

- [128] With respect to allegation three, Mr Drummond formed the view that the evidence before him was credible and he did not accept Mr Nesbit's explanation that the emails were always meant to remain private.

- [129] Mr Drummond did not accept that Mr Nesbit had told Ms Cartlidge-Gann that her promotions appeal was futile. Mr Drummond concluded that the content of the emails from Mr Nesbit seems to suggest the opposite.
- [130] Further, Mr Drummond found that the explanations for the conduct provided by Mr Nesbit gave him further cause for concern, as it appeared that he did not understand the seriousness of the allegation and that he was attempting to downplay the conduct. Mr Drummond concluded that he did not consider that Mr Nesbit's explanations excused or explained the conduct. He found allegation three to be substantiated.
- [131] With respect to allegations four and five, Mr Drummond concluded that those allegations were substantiated on the evidence.
- [132] Mr Drummond found that Mr Nesbit had used the Queensland Health ICT system to send emails that contained inappropriate language and that the emails were not in connection with Mr Nesbit's employment and contrary to the use of ICT services policy. The email chain from April 2018 was of particular concern to Mr Drummond and he considered that Mr Nesbit's explanation, that all staff have a right to appeal and obtain assistance, conveyed a fundamental misunderstanding Mr Nesbit had of his role as a senior employee within the Service of providing such assistance.

*Evidence before the Commission – allegation three*

- [133] Mr Nesbit's evidence in chief<sup>25</sup> was that the email communications and draft letter that were relied on by the Service with respect to allegation three were related to a non-disciplinary formal warning issued to Ms Cartlidge-Gann and did not relate to the recruitment process as alleged.
- [134] Further, Mr Nesbit's evidence was that he assisted Ms Cartlidge-Gann to the extent that he reviewed the draft letter she had written in relation to the formal warning. He says that draft letter was unrelated to the recruitment process for the Assistant Nursing Director position.
- [135] Mr Nesbit's further evidence was that, notwithstanding these matters, Ms Cartlidge-Gann advised him that she intended to lodge a promotion appeal but was doing so with the advice, and support of, her union representative. Mr Nesbit says that he raised a query with Ms Cartlidge-Gann's about her eligibility to lodge a promotion appeal but provided broad and general support to her.
- [136] The email chain between Mr Nesbit and Ms Cartlidge-Gann was in evidence. Those emails included the following communications from Mr Nesbit to Ms Cartlidge-Gann:

(a) Email from Mr Nesbit on Thursday 26 April 2018 at 7.28am:

**Subject: Promotions Appeal draft**

---

<sup>25</sup> As stated in his affidavit filed on 20 June 2019, Exhibit A1.

...

Seriously Leonie, you can't lose here – there's precedence[sic], and yours is stronger. This just screams now that Deidre has gone soft on this, unless she's just really crappy at her job and doesn't know it. This will hold everyone to account in some way though, even if it just shows them up as poor at their job. When the current panel is removed I think as a very separate matter, insist I convene the next panel. I think that would be very appropriate given that reason given for why I couldn't be on the initial one doesn't exist. What do you think? Lol

(b) Email from Mr Nesbit on 30 April at 12.50pm:

**Subject: RE: Promotions Appeal draft**

...

Anyway, hope the appeal process and what you need to do is clear and without much left for you to do but fill in the formalities and send in. The only additional thing that I thought of to support COI more is note that as part of the grievance process Alanna has supported Dale's view despite the evidence to the contrary and therefore has a COI in the matter as she is the delegate that has signed off on the recruitment process. In the similar case noted the panel chair was both the chair and delegate, signing at both. The similarity is the same in in effect greater – you have the same COI – both chair and Delegate, the [sic] being there's only one person involved in the example, but two in your case.

[137] Despite Mr Nesbit's denial that he assisted Ms Cartlidge-Gann with a promotion appeal in his evidence in chief,<sup>26</sup> Mr Nesbit did appear to concede, in his submissions<sup>27</sup> that he may have assisted Ms Cartlidge-Gann with a promotions appeal. His submission was that if Ms Cartlidge-Gann had no right to make a complaint in respect of the recruitment process, then by definition, he could not have influenced the decision by encouraging her to make a fruitless complaint. In the alternative he argued that if Ms Cartlidge-Gann did have the right to make a complaint in respect of the recruitment process then it was entirely open for him to advise her about what process was available to her and what her prospects were.

[138] With respect to the email sent on 26 April 2018 at 7.28 am, Mr Nesbit submitted that he was asking nothing of Ms Cartlidge-Gann and was simply making a speculative statement made out of frustration, that Ms Cartlidge-Gann would have understood.

*The findings regarding allegation three*

[139] Allegation three arises out of the emails between Mr Nesbit and Ms Cartlidge-Gann that are in evidence. Mr Nesbit's emails of 26 April 2018 and 28 April 2018, referred to above, identify that Ms Nesbit has assisted Ms Cartlidge-Gann by formulating the grounds to appeal the decision of the recruitment panel and further, that he proposes to Ms Cartlidge- Gann that she insist that he be on a reconvened panel.

---

<sup>26</sup> Affidavit of Anthony Nesbit filed 20 June 2019, Exhibit A1.

<sup>27</sup> Affidavit of Anthony Nesbit filed 28 October 2019, Exhibit A3.

[140] In addition to drafting a version of the promotion appeal for Ms Cartlidge-Gann to review, Mr Nesbit, in the email of 28 April 2018, provides advice to Ms Cartlidge-Gann as to why and how she could argue that the chair and delegate on the recruitment panel had a conflict of interest with respect to her. In doing so, he arms Ms Cartlidge-Gann with assistance to formulate the grounds for her appeal, and provides advice and information as to how she can seek a review of the promotion decision with the aim of disturbing the decision of the recruitment panel that Mr Nesbit has been excluded from.

[141] Mr Nesbit's email of 26 April 2018 states that:

[w]hen the current panel is removed, I think as a very separate matter, insist I convene the next panel. I think that would be very appropriate given that reason given for[sic] why I couldn't be on the initial one doesn't exist.

[142] I do not accept Mr Nesbit's submission that he was "asking nothing of Ms Cartlidge-Gann". This submission is inconsistent with the words Mr Nesbit uses in the email. The words Mr Nesbit states are clear, that is, he requests Ms Cartlidge-Gann to *insist* that he convene the next panel. Accordingly, not only does Mr Nesbit suggest that Ms Cartlidge-Gann seek, inter alia, to have the current panel removed but, in addition, he suggests that she also request (insists) that he convene the next panel.

[143] The reason for Mr Nesbit's behaviour seems to stem from his disappointment with respect to his exclusion from the panel. Mr Nesbit alludes to this in his submissions<sup>28</sup> when he submits that he made the statement to Ms Cartlidge-Gann "out of frustration".

[144] It follows, that I consider Mr Nesbit's assistance of Ms Cartlidge-Gann goes well beyond what he describes as "acting as a work colleague, experienced with Queensland Health Processes. There is nothing unreasonable about that, and it is a stretch beyond proper bounds to construe my actions as a method of influencing a recruitment process."

[145] I have concluded that Mr Nesbit's actions are not limited to perfunctory, procedural matters as he submits. Mr Nesbit's actions included drafting a promotion appeal, drawing some of the grounds of appeal, including with respect to the alleged conflict of interest, the provision of advice as to how Ms Cartlidge-Gann should formulate her arguments and suggestions as to the relief she should seek, including the removal of the current panel. Mr Nesbit's interest in this outcome is identified when he suggests to Ms Cartlidge-Gann that she insist he be the one to convene a fresh recruitment panel. Mr Nesbit appears to be motivated to assist Ms Cartlidge-Gann to have the recruitment panel's decision reviewed and he be appointed to convene a fresh panel as a reckoning for the decision to exclude him from the panel.

---

<sup>28</sup> Affidavit of Anthony Nesbit 28 October 2019, Exhibit A3.

[146] I am of the view that on the evidence before the Commission, allegation three is substantiated and that Mr Nesbit's conduct as particularised with respect to allegation three does not meet with a standard in the Code of Conduct.

*Evidence before the Commission – allegation four*

[147] In addition to the emails that were in evidence and referred to above with respect to allegation three, further emails dated 26 March 2018 and 27 March 2018, together with attachments between Mr Nesbit and Ms Cartlidge-Gann were also in evidence.

[148] Relevantly, attached to Mr Nesbit's email to Ms Cartlidge-Gann on 26 March 2018 was a copy of a draft letter written by Ms Cartlidge-Gann to Ms Dally-Watkins. The draft letter sought to raise a grievance with respect to the issuing of a written formal warning by Ms Dally-Watkins to Ms Cartlidge-Gann and the rationale for issuing the letter. The draft letter is four pages in length and contains extensive editing and amendments which have been track changed. After some equivocation,<sup>29</sup> Mr Nesbit accepted under cross-examination that all of the tracked changes to the correspondence were authored by him.

[149] Following sending the draft letter to Ms Cartlidge-Gann, Mr Nesbit emailed her on 27 March 2018 at 9.48am, in the following terms:

Doing the letter, it's beyond belief what's been pulled here. Dale looks disgraceful here. She may be angry. Stay calm. She's really not fit to chair the panel based on how she's managed this. Alanna of course will not do the right thing here. They won't admit wrong – they'll likely just want it to go away now. You've asked for things though. You also have the facts and truth on your side. You really just want a fair crack at the job and Dale to leave you alone re your hours in particular. Perhaps bring up your hours, get support for a fair process for the job (it's hard now not to give to you). Barter in a sense with thin in exchange for dropping it? Just a thought. They are extremely cocky. Dale may just get aggressive because you've held her to account. I think Alanna might sit back a bit here – her foot in your camp is looking good.  
Good luck.

[150] Mr Nesbit's evidence was that whilst he admitted to occasionally using the system to send emails not in connection with his employment, he never breached the "limited use" that was considered acceptable and outlined in the ICT policy.

[151] Mr Nesbit stated that the emails relied on by the Service were directly connected to his employment. In this regard he stated that Ms Cartlidge-Gann approached him for support and he provided this to the best of his ability. Mr Nesbit stated that he has regularly supported staff when requested in this way in the performance of the Nursing Director role.

*The findings with respect to allegation four*

---

<sup>29</sup> T1-51, L9; T1-56, L34-47; T1-76, L38-39.

- [152] I do not consider that the extent of support provided by Mr Nesbit nor the content of the communications he had with Ms Cartlidge-Gann is consistent with the proper discharge of his duties. Mr Nesbit had a significant history of holding very senior nursing roles within the Service. I do not accept his submissions, given the length and breadth of his employment as a senior nurse, that the assistance he provided to Ms Cartlidge-Gann was conducted in the discharge of his duties.
- [153] Mr Nesbit contended that because he continued to hold in the substantive role of Nursing Director his actions in relation to Ms Cartlidge-Gann was consistent with the support and mentoring he provided to all staff in his unit. I find his assistance went well beyond providing perfunctory advice about the process of lodging an appeal. He actively advised Ms Cartlidge-Gann with respect to her appeal and formulated arguments and strategies for her to adopt.
- [154] I do not consider that the emails sent between 27 March 2018 and 30 April 2018 from Mr Nesbit to Ms Cartlidge-Gann were in connection with his employment. Further, I find his actions with respect to the degree and nature of the assistance provided to Ms Cartlidge-Gann, together with the extent and nature of the criticisms he made of Ms Dally-Watkins and Ms Geary to be inconsistent with the proper discharge of his duties.
- [155] It follows from these conclusions that the emails were not sent in the performance of Mr Nesbit's role with the Service. As noted above, the use of limited personal use of the ICT system is permitted. However, given the nature and content of the emails, it could not be said they relate to "limited personal use" within the meaning of the policy.
- [156] For these reasons, I consider allegation four to be substantiated and find that Mr Nesbit's conduct was not consistent with a standard of conduct under the Code of Conduct.

*Evidence before the Commission – allegation five*

- [157] The email communications relied on by the Service in relation to allegation five were the same emails relied on with respect to allegations three and four and were in evidence before the Commission.
- [158] In summary, the email communications relied on by the Service were from Mr Nesbit to Ms Cartlidge-Gann and included comments by him about other senior members of the Service who were involved in issuing the formal warning to Ms Cartlidge-Gann and were on the recruitment panel for the Assistant Nursing Direction position. The comments included, by way of example, the following:

- (a) ...Dale looks disgraceful here. She may be angry. Stay calm. She's really not fit to chair the panel on how she's managed this. Alanna of course will not do the right thing here. They won't admit wrong – they'll likely just want it to go way [sic] now ... You really just want a fair

crack at the job and Dale to leave you alone... They are extremely cocky. Dale may just get aggressive because you've held her to account.<sup>30</sup>

- (b) [t]his will hold everyone to account in some way though, even if it just shows them up as poor at their job.<sup>31</sup>
- (c) I think I'd risk being squashed to be a fly on the wall when one first becomes aware of the Appeal and the basis of it. A simple oversight/risk missed in the planning and throughout? And they were so close...could smell victory...?! Yes, I'd risk it.

...

If you're talking to Doreen let her know we're trying to take the bull down. I'll be the matador and you can be the clown<sup>32</sup>

- (d) who knows how Alanna might twist things<sup>33</sup>

[159] Mr Nesbit's evidence<sup>34</sup> was that the correspondence had a tone and manner that he regretted. He said, however, that the correspondence reflected his ongoing frustration at the discrimination and breaches of trust that he was subject to by his line manager over the last few previous years.

[160] Mr Nesbit provided as example of his frustration in the following terms:

...while I was direct line manager for the Assistant Nursing Director, Patient Flow Unit positions that had been recruited to during my brief secondment, I was denied involvement in the recruitment process for them, at dissonance to what was allowed for peers at the time.

[161] Ms Nesbit expanded further upon his reaction to being excluded from the recruitment panel for the Assistant Nursing Director position, as follows:<sup>35</sup>

...I supported fully the process and outcome of the recruitment process; I objected to the breach of trust and discrimination that occurred by being denied a place on the panel as agreed previously. I was frustrated at myself for not insisting harder at the time that was agreed to was upheld, affording me the same treatment as my peers in the same situation. I felt extremely demeaned by the retraction of what was agreed to.

[162] Mr Nesbit further stated,<sup>36</sup> however, that:

...Despite my circumstances at the time and my concern for Ms Cartledge-Gann my approach was unacceptable and not my usual standard. Also, it doesn't reflect my respect and regard for those involved who I have worked with for many years, despite the significant issues of the last four to five years that are a separate matter.

### *The findings regarding allegation five*

---

<sup>30</sup> Affidavit of Alanna Dines filed 29 July 2019, Exhibit R3.

<sup>31</sup> Exhibit R2, email dated 25 April 2018 at 7.28am.

<sup>32</sup> Exhibit R2, email dated 27 April 2018 at 5.40am.

<sup>33</sup> Ibid email dated 30 April 2018 at 12.50pm.

<sup>34</sup> Affidavit of Anthony Nesbit filed 20 June 2019, Exhibit A1.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

- [163] The basis of the allegation is the language Mr Nesbit adopts, contained in emails to Ms Cartlidge-Gann about his colleagues Ms Dally-Watkins and Ms Geary. Ms Dally-Watkins was relevantly, acting in Mr Nesbit's substantive position, and he reported to Ms Geary in that position. Ms Cartlidge-Gann reported to Mr Nesbit.
- [164] The language used in the emails is emotive language. The statements made by Mr Nesbit are critical of Ms Dally-Watkins and Ms Geary and describes them as being "disgraceful", "angry", "not fit to chair the panel", "will not do the right thing", "will not admit wrong", "poor a their job" and "who knows how Alanna might twist things."
- [165] By making these statements, Mr Nesbit is calling into question Ms Dally-Watkins and Ms Geary's character, their fitness and ability to perform their work and questions the probity of their conduct. I consider the language used by Mr Nesbit to describe his colleague and direct line manager as inappropriate.
- [166] I also consider the inappropriateness of the language to be compounded by the fact that Mr Nesbit held a very senior position within the Service as Nursing Director, PFU and that he said those matters to someone who reports not only to him but also to Ms Dally-Watkins and Ms Geary.
- [167] Mr Nesbit submits that he regrets stating some of the thing stated but he said those things out of frustration stemming from his relationship with Ms Geary and the exclusion from the recruitment panel. Whilst there may be some reasonable basis for Mr Nesbit to feel aggrieved about the failure of the seconded position to eventuate and for being excluded from the recruitment panel, that is not a reasonable excuse for him to use the language he adopted in the context of the emails.
- [168] Whilst this may be an explanation as to why Mr Nesbit felt aggrieved, it is Mr Nesbit who is ultimately responsible for managing his feelings and conduct in the workplace. Rather than raising his concerns about these matters in accordance with the proper processes, Mr Nesbit channelled his feelings towards Ms Dally-Watkins and Ms Geary into assisting Ms Cartlidge-Gann to formulate the promotion appeal with the purpose of having the recruitment process set aside and with the aim of having him convene a fresh panel. This does not provide a reasonable excuse for the conduct. Accordingly, I find allegation five substantiated and that further a ground to discipline Mr Nesbit exists.<sup>37</sup>

***Allegation Six: That Mr Nesbit attempted to cover up his actions in relation to allegations three and four as evidenced in an email to Ms Cartlidge-Gann dated 26 April 2018.***

- [169] Allegation six arises out of the email communication between Mr Nesbit and Ms Cartlidge-Gann dated 26 April 2018 and a statement he made to Ms Cartlidge-Gann

---

<sup>37</sup> *Public Service Act 2008* (Qld) s 187(1)(f).

stating that he would delete the email and empty it to trash. The Service relied on the following particulars in support of the allegation:

In an email dated 26 April 2018 at 7:28am to ... Ms Leonie Cartlidge-Gann you wrote:

*"I've had to send this via my work a/c as I now can't access my big pond. I'll delete and empty trash though. If you reply forward to my big pond."*

[170] The ground for disciplinary action relied on with respect to allegation six is s 187(1)(f) of the PS Act. Relevantly, it was alleged that Mr Nesbit contravened, without reasonable excuse, a standard of conduct under the Code of Conduct specifically: Principle 1.1 – Commit to the highest ethical standards, in that Mr Nesbit failed to ensure his decision making was ethical as outlined in allegation six.

*Information considered in the show cause process*

[171] The Service had regard to the content of the email of 26 April 2018 together with Mr Nesbit's responses provided during the show cause process.

[172] In Mr Nesbit's response dated 14 November 2018 he states (in part):

- *I deny I attempted to 'cover up' my 'action' in relation to allegations three to five... My actions with regard to deleting e-mails, including from my e-mail trash, in the e-mail referred to and noted in your letter at allegation six relates to my ongoing concern that inappropriate access to my full work e-mail service was being provided to staff other than those who I had provided it to, which was only my ESO at the time.*
- *I had previously raised my concern regarding this with Ms Geary and Mr Whelan on the two occasions... I advised that I had concerns regarding my ESO, Michelle O'Dell sharing her password with Ana-Maria Tongia, Senior Administration Officer, PFU and other AO's within the unit which afforded them full access to my e-mails... I told Ms Tongia I did not want this at the time, but she said this was supported by Ms Geary.*
- *I raise this only to explain my actions and motivation in relation to fully deleting e-mails from my e-mail account, as I noted in my correspondence to Ms Cartlidge-Gann dated 26 April 2018.*
- *... I deny allegations three to five and deny allegation six as a naturally occurring flow on from this, offering the above explanation for my actions at the time.*

...

*Dr Dines' findings*

[173] Dr Dines noted that Mr Nesbit denied the allegation and he submitted he was concerned about other employees accessing his account and that is why he made the statement. Dr Dines' did not accept Mr Nesbit's submissions and concluded that she was of the view that Mr Nesbit knew the content of the emails in allegations, three four and five were inappropriate by the mere content of the emails and that is why he stated they would be deleted.

[174] Dr Dines' reasons included her conclusion that as an employee of the Service, Mr Nesbit was expected to ensure his email communication at all times remained in line with the Code of Conduct and that each time he logged onto his computer he agreed to abide by the Code of Conduct. She concluded that by sending the emails Mr Nesbit did not abide by his responsibilities under the Code of Conduct.

*Mr Drummond's findings*

[175] Mr Drummond did not accept that Mr Nesbit sought to delete the emails for the privacy and security of Ms Cartlidge-Gann as this was contradicted by the evidence. Mr Drummond considered that the April 2018 emails in which Mr Nesbit said to Ms Cartlidge-Gann that he would "delete and empty trash" suggested to Mr Drummond that he wanted to permanently erase the messages that he otherwise would have sent via his private bigpond account, because he was aware that what he was doing was inappropriate.

*Additional evidence before the Commission*

[176] Mr Nesbit's evidence<sup>38</sup> was that the reason he stated that he would delete the email was to assure Ms Cartlidge-Gann that the correspondence remained private. He says that his intent was to ensure he did not breach Ms Cartlidge-Gann's confidentiality in the matter, not in order to cover his actions to hide wrongdoing on his part.

[177] Further, his evidence was that Ms Cartlidge-Gann requested that Mr Nesbit not use his work email for communications in relation to the matter. Ms Cartlidge-Gann was not called by Mr Nesbit as a witness.

[178] Further, during the show cause process, Mr Nesbit submitted that the reason he said he would delete the emails was because other staff were inappropriately accessing his emails.

*The findings regarding allegation six*

[179] The email was sent on 26 April 2018. It was sent during a stream of email communications between Mr Nesbit and Ms Cartlidge-Gann. These email communications were sent by Mr Nesbit from his work email account.

[180] Mr Nesbit did not call Ms Cartlidge-Gann as a witness with the consequence that his evidence that she requested he send the emails from his private account was uncorroborated. However, it is noted that Mr Nesbit sent emails both before and after 20 April 2018 addressing the same or similar subject matter from his work email account. If Ms Cartlidge-Gann had a genuine concern with regard to this, it is unlikely that she would have consented to Mr Nesbit to continue to communicate via this method.

---

<sup>38</sup> Affidavit of Anthony Nesbit filed 20 June 2019, Exhibit A1.

[181] I do not consider Mr Nesbit was acting in a proper and transparent manner with respect to his assistance of Ms Cartlidge-Gann. He accepted under cross-examination that it could be viewed as inappropriate to assist her with a promotion appeal. It is consistent with this that Mr Nesbit did not want a record of these communications between himself and Ms Cartlidge-Gann.

[182] I find the allegation substantiated. I do not accept the matters proffered by Mr Nesbit, that he was concerned about Ms Cartlidge-Gann, and consequently, I do not accept that this provides a reasonable excuse for the conduct. I consider that the conduct does provide a ground to discipline Mr Nesbit.<sup>39</sup>

***Allegation Seven: It is alleged that Mr Nesbit deliberately mislead Ms Geary when he advised her that he had not had any contact with Ms Cartlidge-Gann during discussions on 13 and 19 July 2018.***

[183] Allegation seven arises out of several conversations between Mr Nesbit and Ms Geary, after he had returned to his substantive position of Nursing Director.

[184] The particulars relied on by the Service to support allegation seven are as follows:

- (a) You advised Ms Geary on 13 July 2018 that you had no contact with Ms Cartlidge-Gann and had not been aware of her (sick leave) extension until this morning.
- (b) You advised Ms Geary in a meeting dated 19 July 2018 that you had not been in contact with Ms Cartilage-Gann
- (c) During the meeting Ms Geary raised your phone bill with you, specially that it indicated you had made calls and sent text messages to Ms Cartlidge-Gann and that you were trying to support her through a difficult time
- (d) Your phone records for the period 16 September 2017 to 11 July 2018 indicated you sent text message and made calls to the mobile number ... which is believed to belong to Ms Cartlidge-Gann.

[185] The ground of discipline alleged to be relevant with respect to allegation seven is Mr Nesbit contravened, without reasonable excuse, a standard of conduct under the Code of Conduct. Specifically, principle 1.5 – Demonstrate a high standard of workplace behaviour and personal conduct, in that Mr Nesbit failed to be honest in a discussion with Ms Geary.

*Information considered in the show cause process*

[186] The file notes of the conversation recorded by Ms Geary following the conversations with Mr Nesbit on 13 July 2018 and 19 July 2018 were considered in the show cause process together with Mr Nesbit's responses.

---

<sup>39</sup> *Public Service Act 2008* (Qld) s 187(1)(f).

[187] Mr Nesbit provided a response to the show cause process on 14 November 2018 which included the following:

- I deny I deliberately mislead Ms Geary by contacting Ms Cartlidge-Gann as alleged in allegations seven... I reiterate I have a professional, direct reporting, working relationship with Ms Cartlidge-Gann. I do not have a personal relationship outside of this. I have never afforded Ms Cartlidge-Gann any treatment I would not offer to any other staff member who has directly reported to me or I have had a professional working relationship with.

[188] In a further response dated 15 November 2018 drafted with the assistance of the QNMU further submissions were made on behalf of Mr Nesbit as follows:

- Mr Nesbit advises that this allegation relates to a misunderstanding with Ms Geary, which he believed had been resolved at the time. He further advises that he understood Ms Geary's question about Mr Nesbit's contact with Ms Cartlidge-Gann to be related only to the previous few days, and his knowledge of an extension of her sick leave. In that context Mr Nesbit advises that he answered the question honestly; he hadn't spoken to or heard from Ms Cartlidge-Gann in the preceding days and was unaware of any extension of her sick leave until told by Ms Geary.
- Mr Nesbit advises that he had no intention to mislead Ms Geary as to his contact with Ms Cartlidge-Gann and answered the question he believed, at the time, she had asked.

*Dr Dines' findings*

[189] Dr Dines substantiated allegation seven. She found that given the telephone records of 29 June 2018 and 10, 11 and 13 July 2018 that it was likely Mr Nesbit had contact with Ms Cartlidge-Gann leading up to the conversation with Ms Geary. Dr Dines concluded that Mr Nesbit's response was not reasonable and in the context of Ms Geary's conversation with Mr Nesbit, it was expected that he would have been open and transparent in relation to any contact he had had with Ms Cartlidge-Gann not only in the last few days but more generally.

[190] Dr Dines further found that Mr Nesbit had been in contact with Ms Cartlidge-Gann and she formed the view that Mr Nesbit would have been aware of Ms Cartlidge-Gann's sick leave extension, at the time of the discussion on 13 July 2018.

[191] Further, Dr Dines considered that Mr Nesbit's submission, that he did not have a personal relationship with Ms Cartlidge-Gann, to be contradictory to an explanation he provided to Ms Geary in a conversation on 19 July 2018 and with the evidence regarding the significant support he had provided to Ms Cartlidge-Gann.

*Mr Drummond's findings*

[192] Mr Drummond referred to the file notes of the conversation taken by Ms Geary of her conversation with Mr Nesbit on 13 and 19 July 2018 and the mobile telephone records. Mr Drummond states that he found the allegation to be substantiated and in particular he relied on the file notes of Ms Geary in forming his conclusion.

[193] Mr Drummond states that he did not primarily rely on the telephone records but did consider them insofar as he says they supported the allegations and the documentary evidence before him in terms of the file notes.

*The evidence before the Commission*

[194] The file notes made by Ms Geary were in evidence before the Commission.

[195] Ms Geary's file note dated 13 July 2018 was in the following terms:

**File Note – 13 July 2018**

Have received email notification that Leonie Cartlege-Gann is continuing on sick leave in lieu of annual leave until 31 August 2018. Spoke to Tony who stated he was shocked but had no contact with Leonie so had not been aware of this extension until the email this morning. I mentioned to Tony that both Dale and Tracey had attempted to contact Leonie to ensure the CIS mobile phone was returned. Leonie had not to date returned the phone and given that she was on extended sick leave I deemed it imperative that the work mobile phone be returned. Given that Leonie has ignored requests from Tracey and Dale, I requested that Tony as the ND Patient Flow make contact with her and ask for it to be returned by COB Friday 20 July 2018. I stated to Tony it was not his responsibility to go and get it, and I had no problems if Leonie wished to have it couriered back at the expense of the RBWH.<sup>40</sup>

[196] Ms Geary's file note dated 19 July 2018 was, relevantly, in the following terms:

**File Note – 19 July 2018**

...

The second was the phone bills of Leonie Cartledge-Gann and his own. Tony has said on numerous occasions including to myself that he has no personal relationship with Leonie. In the past couple of weeks there have been several times where due to various reasons Tracey Daelman had spoken to Tony with regard to the telephone Leonie has in her possession to be returned and he has made reference to the fact that he has no contact with Leonie. I have also spoken to Tony and he has reiterated that he has no contact with Leonie. However, I am now in possession of the itemised phone calls for both his and her accounts and there is clearly communication going on between the two individuals through SMS and phone conversations. I raised this with Tony and clearly stated that while he had every right to make contact with Leonie and I was certainly not questioning his relationship with her what the phone bills demonstrated was that he was untruthful in his comments regarding his relationship and therefore this went to his credibility. After a few minutes Tony agreed that he did indeed have a relationship with her and was trying to support her through a difficult time. Once again, I stated that there were no issues with him having communication with her however he needed to be clear to his colleagues especially when there was clear evidence to the contrary.

After the formal meeting Lisa left the room to attend another meeting and Tony stayed briefly in the office. He apologised for the fact that he had not told me of his relationship with Leonie. I once again stated that I could not support him if he did not tell me the truth. I repeated that I understood

[197] Mr Nesbit's evidence was that on or about 11 July 2018, Ms Daelman, whom Ms Geary had requested retrieve Ms Cartledge-Gann's phone, had advised Mr Nesbit that she had

---

<sup>40</sup> Affidavit of Alanna Geary filed 29 July 2019, Exhibit R16.

been having difficulty contacting Ms Cartlidge-Gann about the phone. Mr Nesbit offered to try and contact Ms Cartlidge-Gann to assist Ms Daelman. Mr Nesbit says that he then texted Ms Cartlidge-Gann later that day on 11 July 2018 about the telephone. He points to the telephone records as supporting his evidence that he texted Ms Cartlidge-Gann on that day.

- [198] This version of the conversation was put to Ms Daelman and accepted by her under cross-examination.<sup>41</sup>
- [199] Mr Nesbit's further evidence<sup>42</sup> was that when he spoke to Ms Geary on 13 July 2018, he had not received a response from his text to Ms Cartlidge-Gann sent several days earlier.
- [200] Mr Nesbit submitted that he understood Ms Geary's questioning of Mr Nesbit about his contact with Ms Cartlidge-Gann to be limited to whether Ms Cartlidge-Gann had contacted him in the previous few days about the return of the telephone.
- [201] In addition to the file notes, the Service relied on and referred to a text message exchange between Ms Cartlidge-Gann and Mr Nesbit on 18 July 2018, to support the contention that they had been in communication with one another.

*The findings regarding allegation seven*

- [202] Whilst I find allegation seven to be substantiated, the finding is only in respect of the particulars as they relate to 19 July 2018.
- [203] With respect to Mr Nesbit's communication with Ms Geary on 13 July, I do not accept that Mr Nesbit deliberately intended to mislead Ms Geary. Mr Nesbit had a conversation with Ms Daelman and said he would text Ms Cartlidge-Gann about her return of the mobile phone. Mr Nesbit was not hiding that contact. I accept his evidence that when he responded to Ms Geary on 13 July 2018, he was doing so within the context of having texted Ms Cartlidge-Gann and not received any response from her within the last few days. Accordingly, his evidence was that he did not know Ms Cartlidge-Gann was taking extended sick leave and he had received no recent contact from her.
- [204] However, with respect to the particulars relied on, on 19 July 2018 I find the allegation substantiated.
- [205] On that occasion, Ms Geary's questioning of Mr Nesbit was much broader and open. On that occasion, Ms Geary asked the question in the context of the telephone bill in excess of \$100 which indicates a number of SMS and telephone calls with Ms Cartlidge-Gann. However, when Ms Geary asked Mr Nesbit this question, she had not produced the bill to him. Ms Geary says Mr Nesbit's response was a firm statement,

---

<sup>41</sup> T2-32 L1-9.

<sup>42</sup> Affidavit of Anthony Nesbit filed 20 August 2019, Exhibit A2.

that he had not had any contact with Ms Cartlidge-Gann at all. It was only once he had said that then Ms Geary produced the telephone bill and Mr Nesbit admitted that he had been "trying to support her [Ms Cartlidge-Gann] through a difficult time".

[206] Mr Nesbit's submissions only deals with the allegation in so far as it relates to the particulars with respect to 13 July 2018. However, Mr Nesbit was cross-examined with respect to the conversation on 19 July 2018 as follows:<sup>43</sup>

You accept though, that when she asked you had you had any contact, you said, "no"?---  
Initially, yes.

And then you realised that that was creating confusion, and then you tried to ---?---No, I – I –  
to be honest, that – it was actually wrong. And, I mean, I – I ---

Because you had [indistinct] ---? ---I said "no" out of shock. I – I ---

Right? ---I apologi – yeah.

Right? --- And then I - - -

So you - - -? ---It created more confusion.

Okay. So you accept that saying "no" was incorrect?---Yes.

[207] On the basis of the evidence before the Commission, I find that allegation seven is substantiated. I consider the conduct of Mr Nesbit with respect to allegation seven to have contravened, without reasonable excuse, a standard of conduct under the Code of Conduct.

**Matters to be considered in deciding whether the dismissal was harsh, unjust or unreasonable: s 320 IR Act**

*Mr Nesbit's submissions*

[208] Mr Nesbit submitted that the decision to dismiss him from his employment was in respect of conduct for which he had been given no prior warning, a performance plan or other performance management.

[209] Mr Nesbit states that the events from which the allegations stem, are from a difficult working relationship previously with Ms Geary.

[210] Mr Nesbit further submits that he had not, in his career of 30 years, been the recipient of warnings or performance management prior to the events which are the subject of these allegations or from which the allegations stemmed.

[211] Mr Nesbit further submits that the use of termination of employment for the conduct is a harsh response to the allegations capable of being substantiated. Importantly, he says

---

<sup>43</sup> T1-112, L31-45.

that he did not act in a manner that would demonstrate a risk to patient safety. Mr Nesbit further submits that he did not act in any manner which would reasonably cause the Service to turn its mind to the termination of his employment.

[212] Finally, Mr Nesbit submitted that a decision to terminate his employment means he faces the prospect of losing stability of his income, and consequently, risks of significant deterioration both in his ability to gain further employment but also in living circumstances, particular as it relates to stable housing.

[213] The Service made submissions in summary, as follows:

- (a) that Mr Nesbit engaged in conduct which was in breach of the Code of Conduct;
- (b) Mr Nesbit's conduct fell "way short of what was expected of him as such a senior member of the RBWH";
- (c) Mr Nesbit's conduct amounts to insubordination and a lack of honesty and insight into the inappropriateness of his actions;
- (d) that the letter of termination clearly set out the reasons for the Mr Nesbit's dismissal which related to his conduct capacity and performance;
- (e) Mr Nesbit's dismissal was based on findings by Dr Dines that the seven allegations had been substantiated;
- (f) Mr Nesbit was provided a number of opportunities to respond to the allegations which he took advantage of with the assistance of his union representative;
- (g) the Service considered the submissions made by Mr Nesbit, and Dr Dines and Mr Drummond gave detailed reasons for their decisions with respect to the findings and decision to terminate Mr Nesbit's employment respectively;
- (h) both Dr Dines and Mr Drummond had regard to Mr Nesbit's personal circumstances, including the impact and effect termination would have on him;
- (i) as a long-standing senior public servant proficient in the Code of Conduct and standards that applied to him, Mr Nesbit should have no doubt as to the standard of conduct required of him;
- (j) after the findings in respect to the allegations were made, Mr Nesbit was provided with a further opportunity to respond in relation to penalty;
- (k) the penalty of dismissal was not disproportionate to the gravity of Mr Nesbit's conduct;

- (l) as a long-standing and senior employee, Mr Nesbit was obliged to be an exemplary role model to other staff and act in accordance with the Code of Conduct;
- (m) Mr Nesbit had an obligation to be truthful in his dealings with the Service;
- (n) in respect of the allegations of attempting to influence the recruitment process, engaging in inappropriate correspondence and language concerning other employees and senior members of staff and attempting to conceal one's actions, it is submitted that a penalty at the higher end of the scale is appropriate, especially considering the senior role that Mr Nesbit held within the workplace;
- (o) Mr Nesbit did not dispute that as a Nursing Director he was required to:
  - i. ensure that his conduct that the highest ethical standards when for filling his responsibilities;
  - ii. to ensure that his decision-making was ethical;
  - iii. to demonstrate a high standard of workplace behaviour and personal conduct;
  - iv. to conduct themselves in a professional manner at the workplace;
  - v. to treat co-workers with courtesy and respect;
  - vi. to seek to achieve high standards of public administration;
  - vii. to ensure appropriate use of official resources, public property and facilities;
- (p) that Mr Nesbit's failure, even now, to admit his conduct or show any insight into the seriousness of his conduct, has resulted in the Service not having the necessary trust and confidence in Mr Nesbit if he were to return to the workplace; and
- (q) overall, Mr Drummond, as the ultimate decision-maker, considered that the conduct the subject of allegations three, five and six were the most serious and that this conduct completely ended the trust the Service had in Mr Nesbit to act appropriately as a senior public servant.

**Section 320(a) of the IR Act: Was Mr Nesbit notified of the reason for his dismissal?**

[214] Mr Nesbit was notified of the reasons for his termination on 12 March 2019 by correspondence, which was approved and signed by Mr Drummond on 8 March 2019.

**Section 320(b): Did the dismissal relate to operational requirements or Mr Nesbit's conduct, capacity or performance?**

[215] Mr Nesbit's dismissal related to his conduct. For the reasons set out above in my findings, I am satisfied that Mr Nesbit engaged in conduct that contravened, without reasonable excuse, a standard of conduct under the Code of Conduct within the meaning of s 187(1)(f) of the PS Act.

[216] In doing so, I found that Mr Nesbit behaved in a way that was inconsistent with his obligations to ensure that his conduct met the highest ethical standards, that demonstrated a high standard of workplace behaviour, treated co-workers with courtesy and respect and ensure the appropriate use of official resources.

**Section 320(c): Had Mr Nesbit been warned about the conduct, capacity or performance; or was he given an opportunity to respond to the allegation about the conduct, capacity or performance?**

[217] Mr Nesbit had not been warned about his conduct, prior to his dismissal, in respect to the allegations.

[218] Mr Nesbit contends that the decision to dismiss was in respect of conduct for which there had been no prior warning, discipline or other performance management and that the events from which the allegation stem arise out of his difficult relationship with Ms Geary.

[219] Whilst it appears that Mr Nesbit's motivation for at least some of the conduct stemmed from his disappointment with respect to the secondment and failure to be included on the recruitment panel, such disappointment does not provide a "reasonable excuse" with respect to the conduct.

[220] The substantiated conduct is not consistent with Mr Nesbit's obligations pursuant to the standards under the Code of Conduct, nor with the longstanding very senior role which Mr Nesbit performed within the Service. Given these matters, I do not find that the failure to warn Mr Nesbit about his conduct can or should materially contribute to a finding that his dismissal was unfair.

[221] Further, Mr Nesbit was given an opportunity to respond to the conduct during the course of the show cause process. In this regard, he was provided with several opportunities to respond to the show cause notice and the show cause on penalty notice. Mr Nesbit's responses were considered and referred to in the decision on findings made by Dr Dines and the decision to terminate Mr Nesbit's employment made by Mr Drummond. Consequently, Mr Nesbit was given an opportunity to respond to the allegations and the proposed disciplinary action.

**Section 320(d): any other matters the commission considers relevant.**

*Was Mr Nesbit's dismissal disproportionate to the conduct?*

- [222] Mr Nesbit submits that because of the impact that the termination of employment will have on him, that a termination of employment was a harsh outcome given that there were other alternatives available to the Chief Executive under s 188 of the PS Act.
- [223] Mr Drummond, in his letter of termination dated 8 March 2019 to Mr Nesbit, addressed the reasons why he considered termination of employment to be appropriated, which in summary stated:
- (a) as the Nursing Director within the PFU, Mr Nesbit held a position of considerable trust and responsibility the terms and conditions of Mr Nesbit's position required him to lead by example and act as an exemplary role model to other employees including by upholding the values of the Service and the Code of Conduct in all that he did and demonstrating fairness and equity towards all staff;
  - (b) as an employee of almost 19 years, there was an expectation that Mr Nesbit would have been well aware of the standards of conduct expected of him;
  - (c) Mr Drummond was of the view that the actions of Mr Nesbit must be viewed together with his persistent denials, lack of insight or remorse regarding his conduct;
  - (d) that trust and honesty are critical elements of the employment relationship and Mr Nesbit's actions have seriously impacted any trust and confidence in Mr Nesbit, particularly in his ability to perform a senior nursing role;
  - (e) further Mr Drummond noted that in determining an appropriate outcome, he considered the options available to him including by considering a demotion however, concluded that in light of Mr Nesbit's behaviour and the lack of insight he has demonstrated during the process, he did not consider that to be appropriate. Mr Drummond also indicated that he did not believe that a financial penalty or reprimand as being proportionate to the actions.
- [224] In considering the issue of proportionality of penalty to the conduct, I have also had regard to the impact the decision to terminate Mr Nesbit's employment will have on him. In his favour, he is an accomplished senior employee of long-standing service with no prior disciplinary matters. There is no doubt that the termination of his employment will have an impact on him. However, equally, and against his favour, such an employee is expected to conduct themselves in a manner that is consistent with a standard of conduct contained in the Code of Conduct.

- [225] Ultimately, I conclude, that Mr Nesbit, as a very senior and long-term employee with the Service, did know that the conduct in which he engaged in with respect to the allegations was not of a standard expected of a public service employee. I have formed that view having regard to Mr Nesbit's admitted understanding of the Code of Conduct, the nature of the conduct engaged in and the manner in which he gave his evidence when questioned directly about the conduct.
- [226] A troubling aspect of this matter is that Mr Nesbit continued to deny before this Commission that he assisted Ms Cartlidge-Gann with respect to the promotions appeal. Such a position was at odds with the documentary evidence that was before the Commission. His responses under cross-examination with respect to his conduct and the content of the emails to Ms Cartlidge-Gann were neither persuasive nor compelling. In contrast to most of the evidence he provided, when Mr Nesbit responded in cross-examination to questions regarding the email trail and the draft letter, his responses become illogical, contradictory and unconvincing.
- [227] For the reasons referred to above, Mr Nesbit was aware of the standards but chose to ignore them in respect of his communication with Ms Cartlidge-Gann. Perhaps he did so because he was motivated by his own disappointment with respect to the secondment to the Prince Charles Hospital, which was further exacerbated by his exclusion from the recruitment panel. However, as noted above, that does not excuse his behaviour. Mr Nesbit was clearly unable to separate the disappointment he felt from the obligation he had as a senior employee of the Service to conduct himself in a manner that was consistent with a standard of conduct. Ultimately, Mr Nesbit's conduct was inconsistent with the Code of Conduct and the standards expected of an employee of his senior position.
- [228] In my view, having regard to his position as Nursing Director of the PFU and the trust and confidence placed in him by the Service, Mr Nesbit's dismissal was proportionate to the conduct in which he engaged in respect of the substantiated allegations.
- [229] For this reason, I have concluded that Mr Nesbit's dismissal was not disproportionate to the substantiated conduct.

### **Conclusion**

- [230] The ultimate issue for determination in this proceeding was whether Mr Nesbit's dismissal from his position as Nursing Director of the PFU was harsh, unjust or unreasonable.
- [231] Mr Nesbit was dismissed because the Service was reasonably satisfied that, in respect of allegations one to seven, he had engaged in conduct, without reasonable excuse, which was in breach of the Code of Conduct within the meaning of s 187(1)(f) of the PS Act.

[232] I am satisfied that on the evidence before this Commission, Mr Nesbit engaged in the conduct the subject of the allegations. For this reason, the dismissal was substantively fair.

[233] As referred to above, Mr Nesbit's dismissal was procedurally fair.

[234] Mr Nesbit did not meet the relevant requirements imposed upon him as an employee by a standard of conduct of the Code of Conduct in respect of the allegations and consequently contravened that standard. I agree with the decision-maker's findings that allegations three, five and six are the more serious of the allegations and ended the Service's trust and confidence in Mr Nesbit as an employee of the Service.<sup>44</sup> For these reasons, Mr Nesbit's dismissal was proportionate to the conduct.

[235] For the reasons referred to herein, and having regard to the matters referred to in s 320 of the IR Act, I have formed the view that Mr Nesbit's dismissal was not unfair within the meaning of s 316 of the IR Act.

[236] Mr Nesbit's application for reinstatement is dismissed.

---

<sup>44</sup> Mr Drummond's evidence was that although he determined allegations one, two, four and seven to be substantiated, they had no bearing at all on his decision to terminate Mr Nesbit's employment.