
**Report on Investigation into the conduct
and behaviour of the Retirement
Commissioner, Ms Diane Maxwell.**

8 April 2019

Maria Dew QC

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1. EXECUTIVE SUMMARY

- 1.1. Ms Diane Maxwell was appointed as the Retirement Commissioner in June 2013. She was reappointed for a further three-year term, due to finish in June 2019.
- 1.2. The Retirement Commissioner is required to fulfil the relevant functions and requirements of the New Zealand Superannuation and Retirement Income Act 2001 and certain functions under the Retirement Villages Act 2003. The Retirement Commissioner is a statutory office also operating under the name of the Commission for Financial Capability (**CFFC**).
- 1.3. The State Services Commissioner initiated this investigation into the behaviour and conduct of Ms Maxwell in her capacity as the Retirement Commissioner, at the request of the Minister of Commerce and Consumer Affairs, the Hon. Mr Faafoi.
- 1.4. The investigation arose as a result of Minister Faafoi receiving two written complaints, in late 2018, from two unnamed individuals alleging bullying behaviour by Ms Maxwell, in her capacity as the Retirement Commissioner. In late 2018, the media also reported concerns of alleged bullying behaviours by Ms Maxwell from eleven (11) unnamed former staff.
- 1.5. The investigation commenced in accordance with the Terms of Reference dated 12 December 2018 (**Appendix A**) and was completed on 8 April 2019.
- 1.6. The investigation involved separate interviews with a total of 24 former and current CFFC employees during Ms Maxwell's term in office. This group includes:
 - (a) Sixteen (16) former employees who allege they had seen or experienced bullying or inappropriate conduct by Ms Maxwell; and
 - (b) Eight (8) employees who are all current CFFC staff. They are largely supportive of Ms Maxwell and do not report any bullying or inappropriate behaviour by Ms Maxwell.
- 1.7. The staff at CFFC, as at December 2018, totalled some 28 permanent employees together with approximately 8 contractor or fixed term roles.

- 1.8. The definition of “bullying”, for the purpose of this investigation, is that provided in the CFFC Bullying, Harassment & Discrimination Policy 2016, which states *“It is generally described as unwanted behaviour that you find offensive, intimidating or humiliating. The unwanted behaviour is repeated and has a detrimental effect on your dignity, safety and wellbeing.”*
- 1.9. This investigation has also taken into account the WorkSafe New Zealand *“Preventing and responding to bullying at work, Good Practice Guidelines”* (2014 and 2017), which provides guidance in defining bullying as *“repeated and unreasonable behaviour directed towards a worker or a group of workers that can lead to physical or psychological harm”*.
- 1.10. The interviewees who came forward did so understanding that their names and interview statements would need to be disclosed to Ms Maxwell in full and that there was no guarantee as to their anonymity in the final report.
- 1.11. The 16 interviewees who raised concerns about bullying and inappropriate conduct by Ms Maxwell provided a large number of alleged incidents over a period from 2014 to 2018, inclusive.
- 1.12. The key allegations were extracted from the interview statements and set out in a summary document provided to Ms Maxwell, which covered the following:
- (a) The central allegations of bullying including demeaning and belittling criticism of employees and their work. There were also alleged incidents of aggressive and isolating behaviour towards staff; and
 - (b) There were other allegations of inappropriate conduct by Ms Maxwell relating to her critical and dismissive communication with staff, her communication with staff regarding the future of the Wellington office, limiting the role of the Manager, People & Culture after she raised turnover concerns with Ms Maxwell, permitting an inappropriate drinking culture and breaches of employee confidentiality.

Bullying conduct not established

- 1.13. Each of the bullying allegations was assessed against the CFFC and WorkSafe NZ definitions. Applying these definitions of bullying, this investigation has found that Ms Maxwell has not bullied current or former staff of the Retirement Commissioner. The investigation has also found that Ms Maxwell has not breached her obligations under s118(2)(a) of the Crown Entities Act 2004, to ensure “good and safe work conditions” so far as they relate to providing conditions free from workplace bullying.
- 1.14. The key reasons for these findings are:
- (a) in some cases, there was insufficient evidence to make a finding that the event occurred in the manner alleged or employees’ memories of events were not accurate when tested against other witnesses or contemporaneous documents;
 - (b) a good number of allegations were established as having occurred, but were not assessed as unreasonable behaviour;
 - (c) in respect of three incidents, the conduct alleged was established as unreasonable but was not “repeated” towards the employee the subject of the behaviour; and
 - (d) finally, standing back and considering Ms Maxwell’s conduct over the period of her tenure, it does not establish a pattern of unreasonable and repeated behaviour, sufficient to amount to bullying in accordance with the definitions used in this investigation.
- 1.15. During this investigation, Ms Maxwell has stated that many of the former CFFC employees who are complainants in this investigation, have had reason to be unhappy with her decisions and this caused them to report an adverse view of her. Ms Maxwell says this is either because of performance concerns she raised with the complainant staff, their positions being made redundant or fixed term contracts not being renewed. I have considered this proposition. However, I am not persuaded that this explains why 16 employees, whose employment spans different periods between 2014 through to 2018, have reported similar concerns to this

investigation. I note that of the 16 complainant employees, 11 resigned without being the subject of any formal performance management or disciplinary issue at the time of their resignations. Nine of those resignations all occurred in the two years 2017 and 2018, and all reported concerns with Ms Maxwell's conduct.

- 1.16. The performance concerns were, in my view, only significant for one employee, and in that case the allegations against Ms Maxwell were not upheld. I do not accept that the three employees made redundant at different times over the period 2015 to 2018, have raised their concerns because they were made redundant. I take the same view in relation to the two fixed term employees who raised concerns. It was their concern at Ms Maxwell's behaviour they had in common, not the various ways in which they left CFFC.
- 1.17. Many of the 24 interviewees acknowledged that Ms Maxwell has some strong leadership qualities and that they respected her progressive thinking, creativity and passion for the role. Some also acknowledged that she could show a caring attitude at times. Ms Maxwell has produced evidence to the investigation of her emails to staff showing her care and concern for them at times.
- 1.18. However, overall these positive attributes were reported by the majority of the interviewees, as not being sufficient to counteract the negative impact of Ms Maxwell's communication style on the employees who resigned and others who departed with concerns relating to Ms Maxwell.
- 1.19. I have considered whether any complainant interviewees have come forward out of any material self-interest and therefore misrepresented or exaggerated events. There is always an element of self interest in having a complaint validated. However, the complainants were not required to come forward to this investigation. They did so voluntarily. A number of complainant interviewees expressed concern for their careers because their statements would be shown to Ms Maxwell and possibly published in this final report. Despite this, they proceeded and, in most cases, gave statements against their own self-interest in remaining anonymous to Ms Maxwell. In the final event, this report has redacted

the names of employees because the public interest did not require the naming of individual employees.¹

- 1.20. While the allegations of bullying have not been upheld, I was satisfied that the former staff interviewed came forward out of a genuine concern for the workplace culture at CFFC and the impact that Ms Maxwell's communication style had on them and others.

Other inappropriate conduct established

- 1.21. The investigation also considered whether there has been any other inappropriate behaviour by Ms Maxwell, that amounts to a breach of employment obligations towards any employee. I have made the following findings in relation to the alleged inappropriate conduct by Ms Maxwell:

- (a) During 2018, there were two separate occasions when Ms Maxwell breached the privacy of two CFFC employees, by disclosing their confidential information to others within CFFC, without their consent; and
- (b) All other allegations of inappropriate conduct were not established.

- 1.22. However, I was satisfied that from at least April 2018, Ms Maxwell was not sufficiently open to the advice being given to her by the Manager, People & Culture about her communication and leadership style being a factor in staff turnover. I am reinforced in this view by Ms Maxwell's approach taken in this investigation. When Ms Maxwell was informed of the number of former employees who have found her communication style too abrasive and challenging, she has been reluctant to accept this has been a genuine concern. Despite this, I do not consider this failure meets the threshold for inappropriate conduct, as used in this investigation, which requires a finding of a breach of legal duty.

- 1.23. This investigation has highlighted that there is an aspect of Ms Maxwell's communication style that has not worked effectively for a range of staff. However, I also acknowledge that during the past two years, 2017 and 2018, Ms Maxwell has found herself in an increasingly demanding and autonomous role and with her own

¹ Refer to reasons set out in Minute No 2 dated 8 April 2019 (Appendix D).

health concerns, all of which likely contributed to her engagement with staff over this period.

Retirement Commission (CFFC) Policies

- 1.24. This investigation has found that the CFFC written policies on Bullying Harassment and Discrimination, Protected Disclosures and Sensitive Expenditure (in relation to alcohol expenditure), are satisfactory but would benefit from enhanced clarification including in relation to the procedure for raising concerns about the Retirement Commissioner. Training for employees on all these policies should also be implemented on a regular basis.

2. BACKGROUND

Terms of Reference

2.1. The Terms of Reference provide that I have been appointed to investigate and make findings to the State Services Commissioner, regarding the following:

1. *Whether the allegations that Ms Maxwell has, in her capacity as Retirement Commissioner, bullied current or former staff of the Retirement Commissioner can be substantiated.*
2. *Whether Ms Maxwell fulfilled the obligations under section 118(2)(a) of the Crown Entities Act 2004 to ensure “good and safe working conditions”, so far as those conditions relate to providing working conditions free from bullying.*
3. *Whether the agency has systems and policies in place to support the appropriate and efficient management of staff concerns or complaints, including to manage and resolve complaints of inappropriate behaviour in the workplace.*
4. *Any other matters that arise during the course of the investigation that give rise to an allegation of inappropriate behaviour by Ms Maxwell in her capacity as Retirement Commissioner.*
5. *Any other relevant matters necessary to provide a complete report on the above.*

2.2. This investigation commenced following the request of Minister Faafoi that the State Services Commissioner exercise his powers and functions under sections 6 to 10 of the State Sector Act 1988 to review the conduct and behaviour of the Retirement Commissioner.

2.3. For the purposes of this investigation, pursuant to section 23(1) of the State Sector Act 1988, the State Services Commissioner has delegated his functions and powers under sections 7 to 9, and 10 of the State Sector Act 1988 to the investigator.

2.4. In particular, the State Services Commissioner has certified that it is reasonably necessary that the provisions of the Inquiries Act 2013 specified in section 9A (2) of

the State Sector Act apply in relation to the investigation. This is because the investigation is to be carried out in accordance with the following principles:²

- (a) Powers and duties should be exercised independently, impartially and fairly.
- (b) Where there is a potential for any adverse findings against an individual or organisation, the principles for natural justice should be observed.
- (c) The Investigator should have powers to regulate the procedures of the investigation, including the gathering of evidence.
- (d) Given the nature of the allegations, and the need to balance the public interest in disclosure against the privacy interests of Ms Maxwell and potential witnesses, the Investigator should have the power to restrict access to the information received.

Employees who come forward

2.5. The investigation has completed interviews with 24 CFFC employees, both current and former.³ Of the 24 employees who provided interview statements, 16 former employees allege bullying or inappropriate conduct by Ms Maxwell against them or a colleague.

2.6. The 16 former staff who allege bullying or inappropriate conduct by Ms Maxwell are:

1. Employee 1, Manager, May 2015 to October 2017, Resigned.
2. Employee 2, May 2016 to July 2017, Fixed Term.
3. Employee 3, General Manager, July 2017 to April 2018, Resigned.
4. Employee 4, Manager, October 2017 to May 2018, Resigned.
5. Ms Julia Bockett, Manager, People & Culture, August 2017 to October 2018, Resigned.

² Terms of Reference dated 12 December 2018, Appendix A.

³ There was a 25th interviewee who withdrew shortly after their interview. This 25th person's evidence has not been taken into account in the investigation.

6. Employee 5, April 2016 to February 2018, Resigned.
 7. Employee 6, September 2014 to October 2017, Redundancy.
 8. Employee 7, July 2017 to June 2018, Resigned.
 9. Employee 8, November 2017 to November 2018, Resigned.
 10. Employee 9, June 2016 to December 2018, Resigned.
 11. Employee 10, employed July 2014 to October 2014, Resigned.
 12. Employee 11, September 2007 to March 2015, Contractor resigned.
 13. Employee 12, early 2011 to June 2015, Redundancy.
 14. Employee 13, May 2015 to July 2017, Redundancy.
 15. Employee 14, General Manager, October 2014 to July 2018, Resigned.
 16. Employee 15, June 2018 to December 2018, Fixed Term.
- 2.7. Of those interviewed, 8 individuals did not raise any allegations against Ms Maxwell. They are all current employees of CFFC:
1. Employee 16, employed since April 2012.
 2. Employee 17, since February 2015.
 3. Employee 18, since September 2015.
 4. Employee 19, since October 2017.
 5. Employee 20, since March 2017.
 6. Employee 21, since January 2018.
 7. Employee 22, since January 2018.
 8. Employee 23, since July 2018.
- 2.8. The majority of these 8 current employees spoke highly of Ms Maxwell and her leadership. They respected her progressive thinking and creativity. Others

commented that she is visionary and dynamic. There was also a sense of admiration expressed for her passion for the role.

2.9. Several of the current employees interviewed also credited the work that Ms Maxwell had done both in changing the vision of the CFFC and supporting and engaging with vulnerable communities. Some also spoke of their gratitude for the opportunities that Ms Maxwell has given them, and the freedom and flexibility she has afforded them to carry out and develop that work.

2.10. All of the current employees interviewed acknowledged that Ms Maxwell's leadership and communication style is direct and can be challenging. Some of the current staff interviewed observed that this style, and the change of culture that Ms Maxwell brought to CFFC, did not work for everyone.

Investigation process

2.11. This investigation took place over a three-and-a-half-month period from 20 December 2018 to 8 April 2019. The process for the investigation is set out in the Investigator Minute 1 and the Information Sheet to Participants, both dated 20 December 2018, each made available to interviewees. The investigation process undertaken is set out in more detail in **Appendix B** attached.

2.12. In the course of this investigation, I have received CFFC documents from interview participants, the Retirement Commissioner Ms Maxwell and the Retirement Commissioner's office. I have reviewed all of this documentation. All relevant documentation produced to the investigation, including all witness statements, have been disclosed to Ms Maxwell and subject to interim confidentiality orders.

Standard of proof

2.13. I have made factual findings as to whether any allegations made against Ms Maxwell are established on the balance of probabilities. The standard of proof required must be consistent with the gravity and the consequences of the allegations. As this is an independent investigation, I do not consider it is appropriate to place any onus on either complainants or respondent to prove or disprove the allegations.

Process of factual findings

- 2.14. I have made factual findings on all the matters that I considered material and that would assist me as to whether the key allegations are established or not. I have also considered whether, when all the evidence is looked at together, it establishes any pattern of behaviour amounting to bullying in accordance with the definitions used in this investigation.
- 2.15. I did not consider it necessary to make written factual findings in relation to every example of the workplace conduct complained of, as there are a large number of allegations. I have also not set out, in full, in this report the statements of the interviewees or Ms Maxwell in relation to each allegation. I have fully considered all the statements given in drawing my conclusions.
- 2.16. I have not given any weight to hearsay statements. However, I have recorded the statements made to me during the interviews to ensure that I have fairly recorded what was said to me.
- 2.17. In determining conflicts in the witness statements, I have considered the following relevant factors:
- (a) The witness manner and demeanour while giving their witness statement. Face to face interviews were conducted with all but 3 participants who provided phone interviews;
 - (b) Potential bias and to what extent a witness may be giving evidence based on self-interest;
 - (c) Internal consistency, whether evidence given by a witness is consistent with other aspects of their own evidence;
 - (d) External consistency, whether the evidence is consistent with that given by other witnesses and/or consistent with contemporaneous documents; and
 - (e) Whether a witness gives non-advantageous concessions freely.
- 2.18. A draft of this report has been provided to Ms Maxwell for her response, prior to this report being finalised. Relevant portions have also been shown to some key

interviewees, where it was appropriate to provide them with the opportunity to give feedback. All responses provided have been taken into account.

CFFC policies

2.19. I have been provided with the following CFFC policies:

- (a) Bullying, Harassment & Discrimination (BDH) Policy, dated 2016;
- (b) Code of Conduct, dated January 2018;
- (c) Health and Safety Policy, current;
- (d) Sensitive Expenditure Policy, dated February 2018;

Definition of bullying

2.20. The definition of “bullying”, for the purpose of this investigation, is that provided in the CFFC Bullying, Harassment & Discrimination Policy 2016, being *“It is generally described as unwanted behaviour that you find offensive, intimidating or humiliating. The unwanted behaviour is repeated and has a detrimental effect on your dignity, safety and wellbeing.”*

2.21. Examples of bullying provided in the CFFC policy include: insulting someone, picking on someone, setting someone up to fail, overbearing supervision or overloading someone with work, using abusive and humiliating language and excluding someone. I note at the outset that there have been no allegations of physical abuse by Ms Maxwell.

2.22. This investigation has also taken into account the WorkSafe NZ Guidelines, which define bullying as *“repeated and unreasonable behaviour directed towards a worker or a group of workers that can lead to physical or psychological harm”*.

2.23. The WorkSafe NZ *Preventing and responding to bullying at work* Good Practice Guidelines also provide guidance on what bullying does, and does not, include:

- (a) “Repeated behaviour” is persistent (occurs more than once) and can involve a range of actions over time. “Unreasonable behaviour” means actions that a reasonable person in the same circumstances would see as

unreasonable. It includes victimising, humiliating, intimidating or threatening a person.

- (b) Workplace bullying is not: – one-off or occasional instances of forgetfulness, rudeness or tactlessness – setting high performance standards – constructive feedback and legitimate advice or peer review – a manager requiring reasonable verbal or written work instructions to be carried out – warning or disciplining workers in line with the business or undertaking’s code of conduct – a single incident of unreasonable behaviour – reasonable management actions delivered in a reasonable way – differences in opinion or personality clashes that do not escalate into bullying, harassment or violence.

2.24. Both the definition in the CFFC Policy and the WorkSafe definition were provided to interview participants and Ms Maxwell at the outset of their interviews.

The Retirement Commissioner

2.25. The Retirement Commissioner is established under the Retirement Income Act 1993. The New Zealand Superannuation and Retirement Income Act 2001, confirms that the Retirement Commissioner is a corporation sole and that the Commissioner is the Board for the purposes of the Crown Entities Act 2004.

2.26. The Retirement Commissioner is required to fulfil the relevant functions and requirements of the New Zealand Superannuation and Retirement Income Act 2001 and certain functions under the Retirement Villages Act 2003. The key functions specified in the New Zealand Superannuation and Retirement Income Act 2001 Act, section 83, include:

- (a) to develop and promote methods of improving the effectiveness of the retirement income policies from time to time implemented by the Government of New Zealand;
- (b) to promote education, and publish information, about financial matters to assist individuals to make financial decisions confidently and informedly; and
- (c) to review the retirement income policies being implemented by the

Government and to report to the Minister at 3-yearly intervals in this regard.

- 2.27. The Retirement Commissioner operates an office under the name of the “Commission for Financial Capability” (“CFFC”). The work of the office is described on the CFFC website as:

“an independent government-funded organisation helping people to get ahead financially. We work to ensure the retirees of today and tomorrow are equipped with the financial knowledge, skills and confidence to make good financial decisions at every stage of their lives and reach retirement in good financial health”.

- 2.28. The Retirement Commissioner has no Board of Directors or Chief Executive, in the sense those terms are traditionally understood. Accordingly, the Retirement Commissioner has sole control over the organisation (within the confines of government as discussed further below).

- 2.29. This aspect of the structure of CFFC was something that several interviewees stated was problematic in terms of raising concerns and overall accountability. Ms Maxwell herself acknowledged the difficulties that can arise in this structure where she did not have a Board of Directors or a structure for escalating matters beyond her role.

- 2.30. When Ms Maxwell was appointed in June 2013, the office was largely Wellington-based and most of the employees lived and worked in Wellington. The focus of the Commission was largely on financial literacy.

- 2.31. Following Ms Maxwell’s appointment in June 2013, there was a strategic shift in the work and profile of the Retirement Commissioner. While maintaining the overall focus on the wellbeing of retirees, the Commission began to focus more on work with younger generations (the retirees of the future), and more vulnerable groups in society. The Commission’s goal has been to *“operate as a strategic centre, thought leader and test hub”*, and to focus on *“sustainable and enduring behavioural change”*.⁴

⁴ Commission for Financial Literacy and Retirement Income, Statement of Intent, 2014 - 2018.

- 2.32. In addition to this change in strategy, Ms Maxwell and several other interviewees have described a shift at CFFC in the focus from traditional marketing to content production.
- 2.33. Since 2014, there has been a period of significant change at CFFC. In particular, the Wellington office has gone from approximately 20 employees to one fulltime employee. The Auckland office also increased from 2-3 employees to a staff of some 36 permanent, fixed term and contractor staff as at December 2018.
- 2.34. The permanent Auckland office opened in December 2014. In 2015, CFFC exited its premises in Wellington and the employees in that office reduced over the 2015 and 2016 period. The interviews of Wellington and Auckland staff from this period, confirm the anxiety and tensions caused by this change.
- 2.35. Several of the interviewees noted the fundamental change that has taken place at the Commission over this period, and the “cultural clash” that resulted. The longest standing employee, Employee 16, described the appointment of Ms Maxwell and subsequent changes as “*a radical cultural shift*” for the organisation.
- 2.36. During 2016, CFFC had an extremely busy period with the culmination of the three-yearly Review of Retirement Income Policies tabled on 19 December 2016. CFFC also hosted an OECD Conference in New Zealand in October 2016, which was a significant undertaking. Former staff members reported that this was a particularly busy time period, in which the office was under a lot of stress. Employee 1 described it in the following terms “*we were extremely stretched by the end of that year, and a few wheels came off*”.
- 2.37. Ms Maxwell has also described 2017 as “a perfect storm” for CFFC. In particular, several disruptive events took place in 2017:
- (a) In March 2017, a copyright error was made which resulted in two staff being involved in a disciplinary process.
 - (b) In May 2017, \$10 million of government funding was awarded across four years for embedding financial capability in schools. Ms Maxwell says that this required recruitment of an additional six roles, plus new skills, capabilities and networks required by CFFC.

- (c) In June 2017, a restructure took place at CFFC which created three new roles out of what had been one role, and consolidated the two marketing and content teams into one team.
- (d) In October 2017, the change of government brought a new Minister and a new Letter of Expectations which required CFFC to adapt and evolve strategies and workstreams.
- (e) In October 2017, Ms Maxwell suffered concussion from an accident and was undergoing rehabilitation until May 2018. While she remained at work for much of this period, Ms Maxwell reports this accident did result in some short-term memory impacts and required some shorter days. In conjunction with another health issue in early 2018, Ms Maxwell notes this made her less available to the team and more reliant on the Leadership Team.

2.38. Over the last five years, CFFC has changed significantly in terms of structure, roles and employees. During this investigation, I was provided with more than 20 different CFFC organisation structure charts for the period July 2013 to November 2018.

2.39. I have also been provided with CFFC employee termination data for the same period which shows that from February 2015 to November 2018, 33 permanent employees left CFFC. The termination reasons recorded are:

- 26 resignations
- 5 redundancies
- 2 other

2.40. The level of turnover was a concern for many of the staff interviewed given the small size of the CFFC office. Several staff reported this level of turnover created inefficiencies, loss of momentum on projects and anxiety for staff.

2.41. There are only five redundancies noted in the resignation data for the period 2015 to 2018, so while restructuring was a factor in employee terminations, it was not the principal cause of turnover. The 26 resignations, over the same period, is the largest contributing factor and is high for a relatively small organisation.

2.42. This background provides some context to the working environment at CFFC over the time of some of the key allegations of bullying behaviour. I note that while many of the allegations relate to the 2017 period, the resignations and concerns raised about Ms Maxwell's conduct were not clustered exclusively in 2017, they do range from employees interviewed with concerns dating from 2014 through to late 2018.

3. TERMS OF REFERENCE ONE: Whether Ms Maxwell as Retirement Commissioner has bullied current or former staff of the Retirement Commissioner?

The interviewees who complained of bullying type behaviours provided a large number of alleged incidents. This report has dealt with the key allegations under the name of the employee who is reported as experiencing the bullying, in order to determine if the conduct meets the CFFC/WorkSafe definitions of bullying in relation to that employee.

There are five former employees who allege key bullying incidents. Their allegations are dealt with below.

A. Employee 1

- 3.1. Employee 1 was employed with CFFC as a Manager from May 2015 to October 2017. The role reported to the Retirement Commissioner. Employee 1 states the relationship with Ms Maxwell was working well up until March/April 2017, when she sensed that Ms Maxwell stopped engaging with her.
- 3.2. In May 2017, there was a disciplinary issue in respect of a copyright error made at CFFC. Employee 1 was one of two employees involved in the disciplinary investigation at that time. This was inevitably a source of anxiety and concern for both Employee 1 and Ms Maxwell at the time.
- 3.3. In June 2017, Ms Maxwell initiated a restructure of the Leadership Team (LT) and other roles to create new positions including the National Manager Government Relations; Finance and IT Manager; Manager, People & Culture; and Events Manager. The LT role of General Manager, Corporate Services was to be disestablished and Employee 1 had a change in reporting line from the Retirement Commissioner to a General Manager.
- 3.4. Employee 1 reports starting to suffer with symptoms of work stress in mid-2017 because of the work environment she says was created by Ms Maxwell.

3.5. She resigned from CFFC in September 2017, having found a new role outside CFFC. Employee 1 maintains she left CFFC due to Ms Maxwell's behaviour. At her exit interview, with the CFFC Manager, People & Culture, she disclosed her concerns about Ms Maxwell's behaviours and that this was the cause of her leaving.

(i) Employee 1: 5 May 2017, Ms Maxwell's conduct towards Employee 1 at Friday night drinks.

3.6. Employee 1 alleges that on 5 May 2017, Ms Maxwell yelled at her at Friday night drinks after a few glasses of wine. She said she wrote the incident down at the time as she was so shaken by it.

3.7. Employee 1 states that she made an off the cuff comment about children loving their parents even when they were evil. She reports that Ms Maxwell yelled at her, saying she was wrong, and saying that Employee 1 was *"perpetuating the guilt that children feel when their parents abuse them by normalising it. I can't stand it when people like you say children should still love their parents no matter what, that is crap"*.

3.8. Employee 1 reported that Ms Maxwell was yelling and was red in the face. When Employee 1 tried to tell her that she misheard the comment, Ms Maxwell shouted her down. She said that Employee 18 tried to intervene but that Ms Maxwell shouted across him and kept attacking her.

3.9. Employee 1 said that she felt frightened and vulnerable and was so shaken that she went to the bathroom and burst into tears. She reports that Ms Maxwell came to the bathroom a few minutes later and apologised to her through the bathroom door. Ms Maxwell then apologised again when Employee 1 came back into the office.

3.10. Ms Maxwell recalls the event. She says that she wasn't intoxicated. She acknowledges that she made a mistake and spoke to Employee 1 *"too sharply"* in the context of a boisterous discussion, and that she sounded harsh. She denies yelling at Employee 1. She also denies that she was unreasonably angry, or that she had lost control, as alleged by Employee 1.

- 3.11. Ms Maxwell says that she doesn't recall using the words that Employee 1 has alleged and she doesn't think she would have. She confirms that she apologised to Employee 1 in the bathroom.
- 3.12. Employee 18 recalls the event. He recalls that the conversation was intense, and that Employee 1 said something like *"you hear children still love their parents even when they are evil"*. Employee 18 remembers Ms Maxwell telling Employee 1 that she was wrong, and that Ms Maxwell expressed very strong views. He says that she was *"driving her point really hard"*.
- 3.13. Employee 18 says he recalls *"something along the lines"* of being *"shouted down"* himself by Ms Maxwell when he supported Employee 1's position. As to whether Ms Maxwell was shouting, Employee 18 recalled her voice being raised, but says that he is not sure that he would consider it shouting.
- 3.14. I accept that this incident occurred largely as Employee 1 described it. Her account, with the notable exception of the description of yelling and shouting, is largely supported by Employee 18.
- 3.15. Ms Maxwell realised that she had crossed the line, as demonstrated by her apology at the time and her acceptance in her interview that she made a mistake in the way she spoke to Employee 1.
- 3.16. I find on the evidence that Ms Maxwell's behaviour on this occasion was unreasonable, and that it was distressing for Employee 1. It was unacceptable behaviour on Ms Maxwell's part, as she has accepted.

(ii) Employee 1: May 2017, asked to recruit General Manager

- 3.17. Employee 1 reports that on 17 May 2017, Ms Maxwell told her that her role was being restructured and that she would no longer report directly to her, but would report to a new General Manager instead.
- 3.18. Employee 1 alleges that Ms Maxwell then asked her to recruit a new General Manager. Employee 1 sat in on the interviews, in which Ms Maxwell told the applicants that Employee 1 would be reporting to them. Employee 1 says that the applicants looked surprised by this, and Employee 1 felt undermined and belittled.

- 3.19. Ms Maxwell confirmed that Employee 1 helped with the recruitment process for the new General Manager. She says that this new role was not a job that Employee 1 herself could apply for, given the different skillsets required. Ms Maxwell says that she asked Employee 1 if she wanted to play a role in the recruitment, so that she could help choose a person she would get along with. She said Employee 1's involvement in the recruitment was to signal to the applicant that Ms Maxwell rated Employee 1 and trusted her, and that it showed she was a senior member of the team.
- 3.20. Employee 1 remained part of the LT as noted in the LT Minutes in 2017 until her final date of employment in late October 2017.
- 3.21. I am not satisfied that involving Employee 1 in the recruitment process was unreasonable or bullying conduct. This was an unusual HR practice (a manager reporting to the role would not usually recruit for the role) and open to causing embarrassment, as it did.
- 3.22. However, Employee 1 was a senior member of CFFC and at that point on the LT herself. It was therefore not unreasonable to ask her to assist in the recruitment. However, it indicates a lack of care in following usual HR practices which, if followed, would not have risked causing this embarrassment for Employee 1.

(iii) Employee 1: 19 May 2017, Employee 1 to avoid contact with fellow LT member

- 3.23. On Friday 19 May 2017, Employee 1 went out for lunch with an LT colleague. This was two days after Ms Maxwell had told Employee 1 that the LT colleague's role was being restructured, and that Employee 1's own role would be changing reporting lines.
- 3.24. Employee 1 alleges that later that evening, Ms Maxwell called her at home and "*quite aggressively*" asked her about her lunch with her colleague. Employee 1 says that Ms Maxwell told her to "*stop being friendly with [her colleague]*" and said "*its best you don't talk with [your colleague] about anything other than work, meeting for lunch is not a good idea*".

- 3.25. Employee 1 reports that the tone and aggressive nature of that call on a Friday night was upsetting, that she was shaken and upset, and felt there was an underlying threat.
- 3.26. Ms Maxwell recalls the phone call taking place. However, she denies being aggressive or inappropriate. She denies using the words alleged by Employee 1, and says that her words were: *“can I just remind you that while we go through a restructuring, we need to think about the conversations we are having particularly because of what occurred with the music rights issue”*.
- 3.27. I accept that the tone and context of the call is likely to have combined to have felt threatening to Employee 1. While it may not be unusual for senior managers to call each other outside work hours, Employee 1 was being called and as she understood it was being told to limit her contact with her colleague, when they were both members of the LT. Ms Maxwell’s words could reasonably have been open to misinterpretation. It was unwise of Ms Maxwell to have made this call given the risk that it would be perceived as threatening, as it was by Employee 1.
- 3.28. However, it is not possible for me to find on the evidence of this one call, without any other witnesses or document to assist, that Ms Maxwell said anything unreasonable or threatening in this call.

(iv) Employee 1: September 2017, unreasonable criticism of Money Week rulers

- 3.29. CFFC Money Week took place in September 2017. This is a key week for CFFC in promoting what they do and interacting with the community. During Money Week, some CFFC staff including Employee 1 handed out rulers which had “Money Week” branding on them.
- 3.30. Employee 1 reports that after Money Week finished, Ms Maxwell was very critical of her and the person who ordered the rulers, in front of other CFFC staff. She alleges that Ms Maxwell said something along the lines of: *“these are rubbish, ridiculous, they are an embarrassment we shouldn’t be giving these out, what were you thinking”*.

- 3.31. Employee 1 says that although this was a tiny thing, it was completely unreasonable on top of many other incidents she states she experienced from Ms Maxwell. She reports this incident as belittling and undermining.
- 3.32. Ms Maxwell accepts that she provided negative feedback on the rulers. She denies that she said the words alleged. She says that she said "*I didn't love them*".
- 3.33. In Employee 3's second interview, she said that the Money Week rulers were used by Ms Maxwell as an example that the team was not creative enough, and that Ms Maxwell said "*who uses rulers anymore*". Ms Maxwell was also critical of the person who ordered the rulers, in front of Employee 3.
- 3.34. On the evidence, I am satisfied that Ms Maxwell did likely give repeated negative feedback about the rulers and this was upsetting for Employee 1 given her efforts. However, I am not satisfied that she called the rulers "*rubbish*" or that this reaches a level of unreasonable feedback.

Findings in relation to Employee 1

- 3.35. In relation to the four key allegations made by Employee 1, I find:
- (i) 5 May 2017, the Friday night drinks incident involved unreasonable conduct by Ms Maxwell;
 - (ii) May 2017, the request to assist in recruiting a General Manager was an unusual HR practice, but was not unreasonable given Employee 1's senior role;
 - (iii) 19 May 2017, the Friday night phone call to Employee 1 was not established on the evidence as unreasonable; and
 - (iv) September 2017, criticism of the Money Week ruler was not established as unreasonable.
- 3.36. The established unreasonable behaviour relates to one incident for Employee 1. This is not sufficient to amount to bullying of Employee 1. However, I wish to acknowledge that Employee 1's concern at Ms Maxwell's conduct in the latter stage of her employment was genuine and that it caused her to resign.

B. Employee 2

- 3.37. Employee 2 was employed at CFFC under a fixed term employment agreement between May 2016 and July 2017. She reported to a General Manager. She left CFFC in July 2017.
- 3.38. Employee 2 reports three separate incidents of conduct by Ms Maxwell towards her personally that she experienced as either demeaning or offensive. She also states that she witnessed other dismissive and undermining behaviours by Ms Maxwell towards others in the office. Overall, she experienced the Retirement Commissioner's behaviour as disrespectful towards her and others. She believed it crossed the line from being legitimate disagreement or conflict in the workplace to disrespectful conduct that she considered was bullying.
- 3.39. The specific allegations she has raised are set out below, including a fourth allegation raised by another member of staff about Ms Maxwell's conduct towards Employee 2.

(i) Employee 2: Early 2017, Nail polish request

- 3.40. Employee 2 alleges that in early 2017, Ms Maxwell "beckoned" to her with her finger to come into her office. Once in Ms Maxwell's office, Ms Maxwell told her that her nails were wet, and asked if Employee 2 would get the nail polish out of her bag. Employee 2 did so and then walked out of the room.
- 3.41. Employee 2 does not recall them engaging in a friendly manner and does not recall Ms Maxwell thanking her. Employee 2 reported that this made her feel demeaned and disrespected as a senior CFFC employee.
- 3.42. Ms Maxwell did not recall this event. However, she acknowledged that it could have happened when she was involved in media filming her at short notice, causing her to tidy her nails for any shots of her at her desk reading or typing. She denied that she would have "beckoned" Employee 2 with her finger. She said that if she did ask Employee 2 to get something out of her bag, it would have been courteous and warm, and *"may have been a clumsy attempt to engage with her, woman to woman"*. Ms Maxwell said that it would have certainly never have been said with the intention of upsetting, demeaning or humiliating her.

- 3.43. In her second interview, Employee 2 challenged Ms Maxwell's characterisation of this as a human moment in the context of their respective roles and the limited interaction they had in their working relationship.
- 3.44. I accept this incident occurred, largely as described by Employee 2 and as acknowledged by Ms Maxwell. I accept that Employee 2 found the incident unusual and that it was uncomfortable for her, hence her recollection of it. I also accept that Employee 2 felt offended by the request as she felt it was demeaning of her given that she and Ms Maxwell did not have a friendly relationship in the workplace.
- 3.45. However, I do not find this is something that viewed objectively was "unreasonable" behaviour in the workplace. It was a request for assistance with a personal task. If such requests with personal matters had been repeated, there may be cause for concern in the context of a working relationship, but it was not.

(ii) Employee 2: May 2017, repeated questioning at a Leadership Meeting.

- 3.46. Employee 2 alleges that in May 2017, she was called into an LT meeting at short notice. Employee 2 was not a member of the LT. She says that in the meeting, Ms Maxwell asked her a question about a research project. Employee 2 didn't know the answer and said so in the meeting.
- 3.47. Employee 2 says that Ms Maxwell asked her the same question four times, even though she was "floundering and turning red". She said that Ms Maxwell persisted with the questioning in front of the LT. Employee 2 reports that she was so humiliated that she cried after leaving the meeting.
- 3.48. Employee 2 alleges that her head was down while she was being questioned but that when she looked up, she heard Ms Maxwell say something similar to "*see what I mean*" to either Employee 14 or another member of the LT, who she recalls had tried to get Ms Maxwell to stop her questioning.
- 3.49. Employee 1 also reported this incident to the investigation. Employee 1 said that it felt like Employee 2 was being mocked, and the implication was that she was a fool because she didn't have an opinion. Employee 1 reported that it felt embarrassing.

Employee 1 said that Ms Maxwell's tone was aggressive, and that she snapped at Employee 2.

- 3.50. Employee 14 does not reference this incident in his interview statement but does confirm that at times Ms Maxwell would criticise staff and LT members in the LT meeting, in a way that made others uncomfortable.
- 3.51. Ms Maxwell did recall this event. She denied that her conduct was unreasonable. Ms Maxwell said that she asked Employee 2 for her perspective, and when Employee 2 said that she would need the data, she said to her *"don't worry about that, just give us your view"*.
- 3.52. Ms Maxwell accepts that she would have said *"just give us your view, tell us what you think"* twice, but no more. She said that she doesn't remember Employee 2 turning red or looking awkward. She said that she did not say *"see what I mean"*.
- 3.53. Employee 2 in her second interview remained clear that the question was asked four times, and that she felt *"really humiliated"*.
- 3.54. I accept that this incident largely occurred as Employee 2 describes it, as it was supported by Employee 1 and to a lesser extent by Employee 14's general observation of Ms Maxwell's conduct at these meetings, which they reported caused embarrassment at times.
- 3.55. I accept that Employee 2 was asked to provide the LT with her views at short notice and that Ms Maxwell questioned her between 2 and 4 times. In any event, it was sufficient for Employee 2 and Employee 1 to feel highly uncomfortable in the room at the time.
- 3.56. I find it likely this incident involved unreasonable conduct by Ms Maxwell, where she has repeatedly asked Employee 2 for her views in a way that made her so embarrassed that she left the room and cried afterwards. Ms Maxwell should have handled this questioning more sensitively, so as not to embarrass Employee 2. I accept it caused genuine distress to Employee 2.

(iii) Employee 2: May 2017, criticism of Employee 2's work to an external third party.

- 3.57. This allegation of bullying was not raised by Employee 2, but by Employee 1. Employee 1 said that around the time of the LT meeting event described above, Ms Maxwell sent an email to an external party copying in Employee 2 and Employee 1. The email was about Employee 2 misinterpreting some data. Employee 1 alleged that the email was highly critical of Employee 2 and Ms Maxwell had emailed something along the lines of *"it is unacceptable, this sort of mistake shouldn't be made, this sort of mistake would make me look a fool externally, I can't tolerate this sort of performance"*.
- 3.58. Ms Maxwell produced an email chain in response to this allegation. That email shows that her first email says *"Thank you for that clarification [contractor] – I had used your numbers in the interim – slightly concerned about [Employee 2's] interpretation of the numbers"*. Her second email says *"[Employee 2] – can you please note the difference here and discuss with [Employee 1] – I'm concerned that we will be giving the media the wrong info if we don't get these analyses right"*.
- 3.59. Ms Maxwell said that she copied Employee 1 and Employee 2 into the first email to the contractor by mistake, and then having realised she had done so, copied them into the second email for transparency, so that Employee 2 would not think there was a side conversation about her going on.
- 3.60. Ms Maxwell also noted that the contractor, who the email was sent to, was not in an external party but was a regular contractor to CFFC between 2015 and 2017, working closely with Ms Maxwell.
- 3.61. When these emails were put to Employee 2, she said that she recalled the email. A search of emails on the same issue around this date did not produce any other more critical email by Ms Maxwell. Employee 2 accepts that she probably did misinterpret the data and that Ms Maxwell had a right to say so, though it was more public than was comfortable for her.
- 3.62. This allegation is not upheld. Employee 1's recall of the contents of the email and the context in which it was sent, proved to be incorrect. The email was fairly raising a concern by Ms Maxwell about the accuracy of figures that had been produced by Employee 2. The email was sent to a contractor who had been working with CFFC

staff at the time. The concern was being raised in a reasonable way so that the contractor could assist Employee 2.

(iv) Employee 2: May 2017, told to leave role and told of new senior appointment, in a humiliating manner.

3.63. Employee 2's fixed term contract at CFFC was due to finish in April 2017. However, her manager told her just before the expiry of the term that she could continue in the role past that date and expressed that it would be "business as usual", and so she remained working. Her manager left shortly after, in May 2017.

3.64. In around mid – May 2017, Employee 2 states that Ms Maxwell called her into the boardroom and told her that she was no longer needed and that she expected her to leave. Employee 2 said it felt like she was being dismissed.

3.65. Employee 2 reports that she then saw people being interviewed for the new General Manager role and she felt like the department was being restructured but she had no knowledge of it, other than through the grapevine.

3.66. Employee 2 later recalls being in a meeting with a contractor who was helping Ms Maxwell with recruitment for the new role. She says that Ms Maxwell came into the room, and without acknowledging her at all, had a conversation with the contractor in front of her about the new appointee to the role. Employee 2 states this made her feel undermined.

3.67. Ms Maxwell says the meeting with Employee 2 occurred on 10 April 2017. She denies Employee 2's recollection of the meeting. Ms Maxwell produced a series of emails from the April 2017 period.

3.68. In particular, Ms Maxwell produced an email to Employee 2's Manager dated 10 April 2017, which was sent following the meeting with Employee 2. This email records "*Met with [Employee 2] this morning and took her through our thinking – she was great. She was pleased that I had talked to her about where we are heading and we had a productive discussion about it*" ... "*She said – 'what you're telling me is that in 2-3 months you may not need me anymore, I really appreciate you letting me know and giving me an update'*".

- 3.69. When these emails were put to Employee 2, she accepted that on reflection, Ms Maxwell did not say “*it’s time to leave*”, but said that this is how she felt.
- 3.70. In respect of the contractor, Ms Maxwell states that the contractor was on the panel to interview candidates for the new role.
- 3.71. I accept that the meeting on 10 April 2017, happened largely as Ms Maxwell reports in her email at the time. It is likely that she did discuss Employee 2’s expected departure under her fixed term agreement being within the next few months. It is also likely that Employee 2 took from this conversation that she was being asked to leave within the next few months.
- 3.72. This conversation, with Employee 2, was not dealt with on the basis of internal or external Human Resources assistance.⁵ There is no evidence that the discussion was documented with Employee 2. This circumstance will have contributed to the opportunity for misunderstanding as this was not best practice for such a conversation. However, I am not satisfied that it was unreasonable to provide Employee 2 with information about the future of the role. I am not satisfied that Ms Maxwell spoke to Employee 2 in an unreasonable manner in May 2017.

Findings in relation to Employee 2

- 3.73. In respect of the four key allegations related to Employee 2, I find as follows:
- (i) Early 2017, the request to assist with Ms Maxwell’s nail polish was not unreasonable conduct. While it was unusual, it was not part of any repeated pattern of similar personal requests of Employee 2.
 - (ii) May 2017, the repeated questioning of Employee 2 at the Leadership Team meeting was unreasonable;
 - (iii) May 2017, the feedback on Employee 2’s work was not unreasonable;
 - (iv) May 2017, the manner in which Employee 2 was told about the new CFFC Manager was not unreasonable.

⁵ The Manager, People & Culture was not recruited until October 2017.

3.74. On the basis of the findings above, there is not sufficient evidence of a persistent pattern of seeking to humiliate, Employee 2. I am therefore not satisfied that Ms Maxwell's behaviour towards Employee 2 amounts to bullying. However, I do accept that Employee 2 was genuine in her discomfort with the way Ms Maxwell interacted with her, in the latter period of her employment.

C. Employee 3

3.75. Employee 3 was employed with CFFC as a Manager between July 2017 and April 2018. Employee 3 reported directly to the Retirement Commissioner during the 10 months of her employment.

3.76. Employee 3 resigned from her role with CFFC to take up another role, but she states that the cause of her departure was that she could not work with Ms Maxwell. Employee 3 states that Ms Maxwell had a way of admonishing members of staff and the senior leadership team in front of others that made her and others feel uncomfortable and belittled. Employee 3 states that she started using external services in January 2018 to cope with the work stress she experienced. Employee 3 noted this external assistance had started for personal reasons initially but had become about the impact on her health and confidence of working with Ms Maxwell's behaviour.

3.77. Ms Maxwell states that she had performance concerns with Employee 3. However, this was never escalated to a formal performance management process. At the time of Employee 3's resignation, Ms Maxwell states that she thought her performance had improved. There is email evidence on 1 and 16 February 2018, in which Ms Maxwell was encouraging of Employee 3's performance.

3.78. Before Employee 3 left CFFC, she provided an exit interview to Ms Julia Bockett, Manager, People & Culture and told her that the cause of her leaving was Ms Maxwell's behaviour.

(i) Employee 3: November 2017, unreasonable criticism of Employee 3 regarding a video voiceover.

3.79. In November 2017, CFFC worked on a campaign to promote the CFFC budget calculator. Employee 3 team had repurposed a video that had previously been used

by CFFC, including re-recording the video, using Employee 3's voice for the voiceover to save time and money.

- 3.80. Employee 3 alleges that in front of her team, Ms Maxwell said that her voice was like a *"private schoolgirl"*. She reports that this was loud enough for everyone to hear, and that she found this demeaning and offensive.
- 3.81. Employee 4, a member of Employee 3's team who worked on the video, also reported a similar critical comment made by Ms Maxwell when giving Employee 4 feedback on the voiceover. She alleges that Ms Maxwell said Employee 3 sounded like a *"posh spoilt private school girl"*, and also told Employee 4 she did not know what she was doing, as it didn't represent CFFC's audience, and *"if you want something done right you have to do it yourself"*.
- 3.82. Employee 3 also alleges that in a later conversation, Ms Maxwell told her that the video had caused her stress as she had had to ask someone else to do the re-voice which upset them, and that Employee 3 had caused an issue between Ms Maxwell and the other person. Employee 3 says she felt terrible and guilty at being told she had caused an issue for Ms Maxwell and that she hadn't met Ms Maxwell's expectations.
- 3.83. Ms Maxwell accepts that she was critical of Employee 3's voice over to both Employee 3 and Employee 4. Ms Maxwell did not deny that some of this critical feedback will likely have taken place in front of the team.
- 3.84. Ms Maxwell acknowledges that she said words to the effect that Employee 3 sounded like a *"posh school girl"*. She also acknowledges she said that Employee 3 sounded *"well-spoken, like someone who had been to a private school"*, in the context that CFFC was trying to engage more with disadvantaged communities. She states that criticism of a voiceover can be *"brutal"*, because you are making comments like the voice is *"too high"*, or *"too low"* or *"too posh"*.
- 3.85. Ms Maxwell also accepts that at short notice, she did arrange for someone else to redo the voice over, but says that it did not cause stress to her. Ms Maxwell accepts she told the team that if the other person was busy, they wouldn't be able to do it. The other person was used, unpaid, for the final voiceover.

- 3.86. In her second interview, Employee 4 said she does not accept Ms Maxwell's view of this event. She said that if Ms Maxwell had used the words "*too well spoken*" that would be fine, but maintains that the feedback was personal and derogatory of Employee 3.
- 3.87. I accept that Ms Maxwell likely did say words to the effect that Employee 3 "sounded like a posh private school girl". That she used those words, or similar, is consistent with Ms Maxwell's own statement, and those of Employee 3 and Employee 4. I also accept that Ms Maxwell expressed her frustration at the voiceover not meeting her expectations and that she likely expressed frustration at having to ask someone else to redo the voiceover at short notice. I accept that Employee 3 felt offended by the way Ms Maxwell expressed these sentiments to her.
- 3.88. However, I do not accept that this amounted to anything more than very direct feedback about Ms Maxwell's preference for the voice required for that piece of work and her expressing frustration about the pressure she felt this caused her.
- 3.89. Therefore, I do not accept that it was unreasonable in the circumstances. However, it is an example of how Ms Maxwell's manner has offended those she has worked with. These messages could have been delivered in a more considerate manner.

(ii) Employee 3: Late 2017, a demeaning comment regarding playing with hair at meetings.

- 3.90. Employee 3 alleges that in late 2017, Ms Maxwell told her that she played with her hair in meetings and that Ms Maxwell was sick of looking at her doing so and that Employee 3 was to stop. She alleges that Ms Maxwell told her that this mannerism of Employee 3's annoyed her. Employee 3 was shocked, and found this offensive. She said that Ms Maxwell also told her that she had talked to other LT members about their mannerisms that she didn't like.
- 3.91. Employee 4 reports that Employee 3 told her about this shortly after it happened.
- 3.92. Ms Maxwell accepts that she did have a conversation with Employee 3 about playing with her hair during all-of-staff meetings, and that she had similar conversations with other members of the LT. This conversation took place in a one

on one meeting. Ms Maxwell explained that the context for this was that she was concerned that members of the LT did not seem to be listening when other staff spoke.

3.93. Ms Maxwell says that she told Employee 3 that members of the LT needed to be actively listening, and that when she is looking down at her hair, there was no eye contact, and so she needed to be looking up at others when they were speaking.

3.94. I accept that Employee 3 found this offensive and that Ms Maxwell's point could have been made without reference to personal habits. However, I am satisfied on the evidence that Ms Maxwell's provided reasonable feedback, in the context of trying to improve the LT's engagement at meetings and having given similar feedback to others on the LT at the time. This allegation is not established as unreasonable conduct, for the purposes of the definition of bullying.

(iii) Employee 3: Late 2017/Early 2018, unreasonable criticism of Employee 3 and her teams' work.

3.95. Employee 3 reports that in late 2017, there was a team meeting in which Ms Maxwell said that work that Employee 4 had done relating to the CFFC budget calculator was "*shit*". Employee 3 reports that Ms Maxwell said that the team needed to try harder, and that Ms Maxwell needed to be closer to the team. Employee 3 said this undermined her, as Ms Maxwell was essentially saying that Employee 3's leadership was so poor that Ms Maxwell had to become involved.

3.96. Employee 4 supports the allegation that there was a team meeting around that time in which Ms Maxwell told the whole team that a campaign was "*shit*", and largely supports Employee 3's account of the tenor of that meeting. Employee 4 said that the meeting was very much seen by her as undermining Employee 3. This was reported as a meeting that seemed to focus on criticism of Employee 3 in front of her team.

3.97. In relation to these meetings, Ms Maxwell denies using the word "*shit*" in relation to individual's work. Other employees interviewed, do not have any specific recollection of Ms Maxwell using this word in relation to staff members' work. Ms Maxwell states that in creative meetings, she gives feedback such as "*I don't love it*"

or *"I'm concerned"* and that people may come away from the meeting and summarise the meeting as her saying *"it was shit"*.

3.98. Employee 3 maintained in her second interview that she recalls Ms Maxwell using the word *"shit"* in relation to the work in that meeting.

3.99. Employee 19, another employee in the team was present at the meeting but does not recall whether Ms Maxwell used the word *"shit"* in relation to the team's work. However, she is clear that Ms Maxwell was wasn't happy with the work from the team. Employee 19 stated that she could see that Ms Maxwell's very direct feedback made people feel intimidated.

3.100. No witness has suggested this type of language was used by Ms Maxwell in emails. I have not seen any emails where she has used this word in the context of employee work. I did note one email in April 2018, produced by Ms Maxwell in which she used the words *"Above all we need to recruit people who 'give a shit'..."* Employee 16 did acknowledge that the word, *"would not mischaracterise her tone"* at times when she was giving critical feedback, though he could not recall incidents where she had used the word. It appears likely that Ms Maxwell has used this word in the work environment from time to time, given the email above and the staff recollection of the word at least characterising her tone.

3.101. I accept that Employee 3 and Employee 4 felt uncomfortable with the critical feedback and that some of the critical messages to Employee 3, would have been better delivered in private. I accept that Employee 4 and Employee 3 interpreted Ms Maxwell's feedback in that meeting as her saying the work was *"shit"*. However, given the conflicting oral recollections, I am not able to establish that the word *"shit"* was used by Ms Maxwell in relation to employee work on this occasion or that there was anything unreasonable about the words used by Ms Maxwell in giving her critical feedback to the team in this meeting.

(iv) Employee 3: Early 2018, Employee 3 subject to aggressive body language in one on one meeting. Employee 3 left the meeting in tears.

3.102. The meeting rooms at the CFFC workplace are glass walled and accordingly people in the rooms are visible to others in the workplace.

- 3.103. Employee 4 alleges that in early 2018, Ms Maxwell and Employee 3 were in a meeting room together and she witnessed Ms Maxwell's aggressive body language towards Employee 3. She reported that Employee 3 was sitting there with her shoulders slumped, quietly. Employee 4 says *"it kept going until she was reduced to tears. DM didn't stop when she was crying, she kept going at her"*. She said that after 30 – 45 minutes, Employee 3 came out and had been crying so much that she had to leave the office.
- 3.104. Employee 4 reports that Employee 3 later told her that Ms Maxwell told other people that Employee 3 was crying because Ms Maxwell was counselling her over a recent personal issue. However, this was untrue as it was not the reason for Employee 3 leaving the meeting.
- 3.105. Employee 14 also reports that around the end of 2017/early 2018, he saw Employee 3 crying after leaving a meeting with Ms Maxwell. He said that Ms Maxwell told him that Employee 3 was crying because she was going through a personal issue.
- 3.106. Ms Maxwell says that she had two meetings with Employee 3 in which Employee 3 was crying. She says that both took place in December 2017. In the first, Employee 3 told her about the personal issue. Ms Maxwell said that she sat and listened as Employee 3 talked, asked questions, and checked that she was ok. She told Employee 3 that she could do whatever she wanted to do, and that it might be worth telling her colleagues so that people could "cut her some slack". She reports that Employee 3 was upset in this meeting, but not as much as she was at the next meeting.
- 3.107. Ms Maxwell said the second meeting was also in December 2017, and Employee 3 was sitting across the table from her. Ms Maxwell thinks this was on the day when Employee 3's personal relationship concluded. They started the meeting and then Ms Maxwell could tell within a minute that Employee 3 was distressed. She asked Employee 3 if she was ok, at which point Employee 3 started crying.
- 3.108. Ms Maxwell said that they talked for over 20 minutes, and Employee 3 went into detail about the personal matter. Ms Maxwell reports that Employee 3 was distraught. Ms Maxwell thinks she went and got tissues and came back and gave

them to Employee 3. She then told Employee 3 that she could manage the situation however she liked, and take time out for a coffee or work from home. At the end, Ms Maxwell said that they shouldn't try to have a meeting then, and asked Employee 3 again if anyone was aware of it, because she was going to need some help. Ms Maxwell denies that any performance issues were discussed at that meeting.

- 3.109. Employee 3 did not raise these events in her first interview. In her second interview, Employee 3 confirmed that the meetings were in December 2017. In relation to the first meeting, she agrees with Ms Maxwell's description of the meeting, and says that Ms Maxwell was good with her in that meeting.
- 3.110. Employee 3 recalls the second meeting on the day that her personal relationship ended. She disagrees with Ms Maxwell's description of the meeting. She says that two other people were initially in the meeting with them; Employee 19 and another employee, and that Ms Maxwell "*got stuck in*" to her about managing their workloads.
- 3.111. Employee 3 alleges that the other employees were asked to leave the room, and Employee 3 was asked to stay behind. After they left, Employee 3 reports that Ms Maxwell told her that she had to get better at managing her team, and talked to Employee 3 about her leadership failings. At this point, Employee 3 "*cracked*" and cried, and told Ms Maxwell that it was a significant day personally and that Employee 3 needed a break from Ms Maxwell's criticism.
- 3.112. Employee 3 says that at this point, Ms Maxwell was trying to be helpful about her upset, but she didn't want to be in the room discussing it with her and left the room crying. Employee 3 says that at that meeting, the reason for her tears was not the breakdown of her relationship, but because Ms Maxwell was critical of her work.
- 3.113. Employee 3 and Ms Maxwell both agree that Employee 3's tears in the first meeting in December 2017 were a result of Employee 3's personal issue, and that they had a good talk about it.
- 3.114. Employee 3 and Ms Maxwell disagree about the cause of Employee 3's tears in the second meeting in December 2017. I accept that Employee 3 is genuine when she

says that the tears were caused by Ms Maxwell's criticisms about her work albeit that the personal issue may still have been impeaching her mood.

3.115. I find that it is likely that Ms Maxwell was giving Employee 3 critical feedback about work and/or her performance, prior to Employee 3 beginning to cry. However, Employee 3 agrees that when she started crying, Ms Maxwell was trying to be helpful. There is no suggestion from Employee 3's evidence that Ms Maxwell kept talking about performance issues when Employee 3 started to cry.

3.116. Accordingly, I do not find that Ms Maxwell's actions were unreasonable, although I accept that the situation was distressing for Employee 3. The allegation of bullying is not established.

(v) Employee 3: Early 2018, a demeaning comment made regarding Employee 3's CFFC video.

3.117. Employee 3 alleges that Ms Maxwell made a demeaning comment in relation to a video she had worked on for a campaign.

3.118. A staff member told Ms Maxwell that Employee 3's video had got a lot of views on the CFFC website, and that the audience demographic was largely males aged 25 to 45. There was a small group of employees enjoying a discussion about this. Ms Maxwell is then alleged to have said it was because she was *"being flirty and using your voice and trying to use your eyes, like I was seducing men watching"*.

3.119. Employee 3 says that Ms Maxwell said this in a mocking way, in front of others in her team and in the office. Employee 3 felt disrespected and hurt by the comment.

3.120. Ms Maxwell denies making the statement alleged. She says that her comment was *"a video of [Employee 3] talking about her jeans is going to do more views than [another employee] talking about his cars"*. She says there was no criticism of Employee 3 intended. She admits that her comment could be taken to have had a sexual element due to the context, but that she was the fifth person in the office to make a comment about it. Ms Maxwell says she was simply contributing to the discussion.

3.121. In her second interview, Employee 3 said that Ms Maxwell knew how it was perceived at the time due to the reaction in the room, and that she could have corrected her intention then.

3.122. I accept that Ms Maxwell's comment was likely to have occurred largely as Employee 3 reports and that it had a sexual undertone, given Ms Maxwell's admission of this. I accept that Employee 3 felt disrespected and hurt by this. I am not satisfied that Ms Maxwell's comment was unreasonable in the context of the staff discussion. It is likely that other people were engaging in a humorous discussion about the matter and Ms Maxwell was seeking to contribute to the light-hearted discussion. It appears to me that this was perhaps an ill-judged attempt at joining into the discussion, at a time when her relationship with Employee 3 was already under some strain. This event does not amount to bullying.

(vi) Employee 3: Early 2018, unreasonable criticism of Employee 3's work

3.123. Employee 3 alleges that in early 2018, Ms Maxwell criticised a photoshoot for the CFFC Sorted website. She said that Ms Maxwell told her that she "*hated*" it, it was "*shit*", and that it had "*kept her up at night*".

3.124. Ms Maxwell confirms that she thought the photographs were too constructed and that she would have given feedback on them. She denies saying the work was "*shit*". She said she wouldn't use the words "*I hate that*", and she did not talk about it keeping her up at night. She says that her phrase for constructive feedback is usually "*I don't love it*" as she believes this opens the door for discussion.

3.125. I accept that Ms Maxwell gave critical feedback in relation to this work. However, I am not satisfied on the evidence that Ms Maxwell's feedback was as expressed by Employee 3. It is very difficult without more to be certain if the criticism was as harsh as described. A party receiving critical feedback can understandably be offended but this does not make it unreasonable. This allegation is not established.

(vii) Employee 3: Early 2018, physically "ripped up" work of Employee 19

3.126. Employee 3 reported that Employee 19 took a document showing artistic direction for photography shots into Ms Maxwell's office to show her. Following that

meeting, Employee 3 reports that Employee 19 said Ms Maxwell had ripped up her work and put it in the rubbish bin in front of her.

3.127. Ms Maxwell accepts that she put Employee 19's work in the rubbish bin, but denies that she ripped it up. Ms Maxwell said that Employee 19 is very creative, but had been struggling with the written brief. She said that briefs were not needed for internal photoshoots in any event and she was making this point in the meeting.

3.128. Ms Maxwell said she wanted Employee 19 to just feel free to go out and take photos, and said to her *"you take wonderful photos, go out and take some photos and just use your instincts"*. She did not put any photographs that Employee 19 had taken in the bin, it was just the written brief.

3.129. Ms Maxwell produced an email relating to the photographs which Employee 19 subsequently took. This shows that Ms Maxwell's feedback to Employee 19 on the photos was: *"Love them! They are fantastic..."*.

3.130. Employee 19 was interviewed in relation to this event. Employee 19's account is largely consistent with that of Ms Maxwell. In particular, Employee 19 confirms that the work was put into the rubbish bin, but does not recall it being ripped up. Employee 19 said she didn't feel offended by this. She said it was unusual and less than ideal, but that she understood that Ms Maxwell was encouraging her.

3.131. I am satisfied that Ms Maxwell did not rip up Employee 19's work. In the context, as explained by Employee 19, I do not find that putting her work in the rubbish bin, was unreasonable, as a gesture to explain her point. This allegation is not established.

(viii) Employee 3: January/February 2018, unreasonable isolation of Employee 3 by failure to engage with her over work priorities and ignoring her after her resignation

3.132. Employee 3 alleges that in January or February 2018, she tried to have a one on one session with Ms Maxwell about priorities and direction for the team. In preparation for this meeting, Employee 3 wrote material on the whiteboard on the wall of Ms Maxwell's office.

- 3.133. Employee 3 reports that Ms Maxwell came into the room and was not interested in engaging and wouldn't give her comments. She says that Ms Maxwell physically turned her back to the whiteboard while in her seat. Employee 3 found this demoralising. She says that Ms Maxwell then "started in on criticisms of her that she had heard before".
- 3.134. Ms Maxwell says that this is not an accurate characterisation of their meeting. She said that they sat at the table and discussed what Employee 3 had written up on the whiteboard. Ms Maxwell said that due to the layout of her office, the only way to have a conversation facing Employee 3 at the desk was to have her back to the work on the wall. Ms Maxwell says that she did give some feedback to Employee 3 in that meeting, around workload and prioritising work.
- 3.135. In her second interview, Employee 3 rejected Ms Maxwell's account of the meeting and maintained that Ms Maxwell turned her back on her while Employee 3 was speaking to matters on the whiteboard.
- 3.136. On the evidence, I cannot find that this allegation is established. I accept that in context, and due to the layout of the office and the discussion they were having, Ms Maxwell did not deliberately turn her back on Employee 3. Her criticism of Employee 3 will have left her deflated. However, I do not find sufficient evidence of unreasonable conduct by Ms Maxwell.

(ix) Employee 3: 20 February 2018, unreasonable criticism of Employee 3 in team meeting over Sorted website budget bid

- 3.137. Employee 16 raised a concern about Ms Maxwell's treatment of Employee 3 in front of members of the team in a meeting, on or around 20 February 2018. This was in relation to a budget bid for the Sorted website. Employee 16 said that Ms Maxwell brought up the budget bid as work that should have been done, that she had previously told Employee 3 needed to be done by October 2017. He reports that Ms Maxwell's tone conveyed that it was something that Employee 3 had failed to do.
- 3.138. Employee 16 said that it appeared to him that what Ms Maxwell was saying was not possible, and that Employee 3 had not been asked to do the work. He said this impression came from discussion with Employee 3, but also because he would have

expected to be involved himself if this needed to be done. He said that despite this, the meeting continued with Ms Maxwell being critical of Employee 3. Employee 16 reports that this was very awkward.

3.139. Ms Maxwell produced a chain of emails in relation to this allegation which indicated that Employee 3 had been asked to produce this work some months earlier.

3.140. Ms Maxwell's explanation and documents were put to Employee 3 in her second interview. Employee 3 said she was embarrassed that Ms Maxwell raised the issue in that meeting. She said at that point, it was too late to do the budget bid, and while Ms Maxwell was annoyed at her because of this, this was not what they were meant to be discussing in that meeting. Employee 3 says she was made to feel inadequate.

3.141. In response to Ms Maxwell's explanation and documents, in his second interview Employee 16 said that he was happily surprised that he had misinterpreted the situation.

3.142. On the evidence before me, I am satisfied that Employee 3 did know about the budget bid, and that she knew what Ms Maxwell was talking about in that meeting. Accordingly, I do not find that questioning Employee 3 about the budget bid was unreasonable, albeit that it may have been better to do this without her team present.

Findings in relation to Employee 3

3.143. In relation to the nine key allegations related to Employee 3, I find:

- (i) November 2017, criticism of the video voice over, not established as unreasonable;
- (ii) Late 2017, comment about playing with hair, not established as unreasonable;
- (iii) Late 2017/early 2018, critical feedback given to Employee 3 and her team was not established as unreasonable;
- (iv) Early 2018, aggressive conduct towards Employee 3 in a one on one meeting is not established;

- (v) Early 2018, comment about Employee 3's video is not established as being unreasonable;
- (vi) Early 2018, criticism of the Employee 3's Sorted work, not established as unreasonable;
- (vii) Early 2018, physically ripped up work of a staff member, this did not occur as alleged and was not established as unreasonable in the context of the discussion with the employee;
- (viii) January/February 2018, unreasonable isolation of Employee 3 is not established;
- (ix) 20 February 2018, unreasonable criticism of Employee 3 over a budget bid is not established.

3.144. None of the conduct alleged by Employee 3 has been established as unreasonable conduct by Ms Maxwell. The actions of Ms Maxwell, at various times between late November 2017 and early 2018, have clearly been critical of Employee 3 and at times this has taken place in front of others, which has impacted Employee 3 and those staff.

3.145. I was satisfied that Employee 3 was genuine in the distress she felt at Ms Maxwell's critical feedback. It is clear that the way Ms Maxwell provides feedback has had a tendency to upset staff, including senior staff. This should be a reflection for Ms Maxwell on the way she delivers feedback.

3.146. However, I am not satisfied that it is unreasonable conduct that amounts to victimising, intimidating or threatening a person in the nature of bullying. The allegations of bullying by Ms Maxwell towards Employee 3 are not established.

D. Employee 4

3.147. Employee 4 was employed with CFFC from October 2017 to May 2018. She reported to Employee 3, a General Manager. This was a permanent role, 4 days per week.

3.148. Employee 4 alleges that she was bullied by Ms Maxwell on several occasions, and that she witnessed others in particular, Employee 3, being bullied by Ms Maxwell.

She raised her concerns about Ms Maxwell with the Manager, People & Culture, in January 2018, but did so confidentially. Employee 4 also identified herself as one of the anonymous parties who wrote to Minister Faafoi in late 2018. The other anonymous complainant did not identify themselves to the investigation.

3.149. Employee 4 resigned from her role with CFFC after Employee 3 left, largely because she says felt she had lost the “*buffer*” of Employee 3 between her and Ms Maxwell. Employee 3 and Employee 4 had worked together previously. They both stated they remain work colleagues only and do not socialise outside of work.

3.150. Ms Maxwell has stated in this investigation that she had performance concerns with Employee 4 prior to her resignation. However, these were not escalated into any formal performance management process.

(i) Employee 4: Early 2018, unreasonable comment “you don’t dress your children up like shit...”

3.151. Employee 4 alleges that in early 2018, Ms Maxwell unreasonably criticised her work on the Christmas voiceover campaign. She said they were alone in Ms Maxwell’s office and Ms Maxwell said to her “*you don’t dress your children up like shit to take them to day-care or school so why did you put this campaign to market?*”. Employee 4 reports this made her feel terrible and that it was a very significant event for her.

3.152. Ms Maxwell denies saying the words alleged. Ms Maxwell acknowledges that she did provide critical feedback. She said she finds the statement alleged as inexplicable and strange.

3.153. In her second interview, Employee 4 maintained that she was clear that Ms Maxwell had said the words as alleged. She said that she can picture herself standing in the office hearing it, because it was such a moment for her.

3.154. Employee 3 did not raise this incident in her first interview. In her second interview, she was asked if she could recall Employee 4 reporting such incident at the time. Employee 3 stated that she did recall Employee 4 reported her upset and the reference to her children, immediately after that meeting. I found Employee 4’s evidence of her upset and her direct recall of the words used by Ms Maxwell

involving her children compelling. I do not accept that she has misconstrued or invented this event.

3.155. I have been mindful that Employee 4 and Employee 3 were both mistaken in their interpretation of two other incidents; the first relating to the allegation of “ripping up work” and the second relating to the alleged urgent work required from Employee 4 (discussed below). In both events, Employee 4 was relying on hearsay from Employee 3, for the most part. This is not the case in this current allegation.

3.156. I have also considered whether Employee 4 was misrepresenting or exaggerating this incident. There are certainly views expressed about Ms Maxwell’s conduct in her anonymous email to the Minister, that have not been established on the evidence presented to this investigation. I consider it likely the emotional impact of her dealings with Ms Maxwell has impacted her view of events. Employee 4 had a poor view of Ms Maxwell’s leadership style and this has been expressed in her email to the Minister and in this investigation. However, I do not consider she has fabricated this experience.

3.157. I have taken into account both Employee 4 and Ms Maxwell’s demeanour in the interviews, they both appeared equally anxious and at times distressed in their interviews. Therefore, I have made allowance for the fact that they did not present as well as they might in normal circumstances.

3.158. I have also considered their relative self-interest, namely:

(a) Ms Maxwell has a strong self interest in denying this comment. I do note that Ms Maxwell has at times been prepared to make some non-advantageous concessions, which is to her credit.

(b) Employee 4 also has some self-interest in supporting her allegations made to the Minister and to this investigation. However, as stated at the outset of this report, she did not have to come forward and identify herself to the investigation and Ms Maxwell. I consider she has come forward out of genuine concern albeit that many of her allegations have amounted to either differences of views on the culture and direction of the CFFC office, concerns not supported by the evidence, or otherwise incidents that occurred but are not established as bullying.

3.159. On balance, I accept that on this occasion it is likely that Ms Maxwell did say words similar to those alleged by Employee 4. I accept that at times Ms Maxwell has been prone to giving abrasive feedback. I have previously accepted that, at times, Ms Maxwell has likely used the word “shit” in discussions with staff. I was satisfied that Employee 4 was clearly affected by the fact that her children had been mentioned, and she stated that this was a “big moment” for her. I consider it unlikely that she has made this incident up entirely or is wholly mistaken, which is Ms Maxwell’s position. I have placed little weight on the hearsay confirmation of this incident by Employee 3.

3.160. This type of criticism went beyond constructive feedback and was unreasonable and demeaning.

(ii) Employee 4: Early 2018, unreasonable criticism of Employee 4 in one on one meeting over video content.

3.161. Employee 4 alleges that in early 2018, Ms Maxwell unreasonably criticised her in a discussion about the use of video content. Employee 4 reports that Ms Maxwell stared at her, got angry, and said “*do you think video content is below you*”. Employee 4 replied that she didn’t, and then they spent more than a minute staring at each other. Employee 4 says that Ms Maxwell used staring as a tactic.

3.162. Ms Maxwell responds that Employee 4’s characterisation of that meeting is “*wholly incorrect*”. She reports that Employee 4 said that the CFFC work that she had been involved in was a waste of time, and that it was beneath her. She said that Employee 4 became aggressive towards her, and directed an enormous amount of personal dislike towards her in that meeting.

3.163. In her second interview, Employee 4 denies that she was aggressive towards Ms Maxwell, and denies saying that the work was a waste of time or that it was beneath her.

3.164. I have been presented with two contrasting accounts of this meeting. I accept that this was an uncomfortable meeting for both of them and that they likely challenged each other’s points of view and both became upset at the contrary views expressed. However, on the evidence available, I am not satisfied this involved any unreasonable conduct by Ms Maxwell.

(iii) Employee 4: February/March 2018, urgent work request by Ms Maxwell

- 3.165. Employee 4 alleges that in February or March 2018, Ms Maxwell told Employee 3 that Employee 4 had to produce a work plan in respect of frauds and scams within three days. Employee 4 says one of these days was her day off. Employee 4 said she worked hard to complete it in the requested timeframe, including working on her day off. Employee 4 says that Ms Maxwell would have known that to complete it would require her to work on her day off. However, she says that Ms Maxwell was critical of Employee 3 for making Employee 4 work on her day off, and told Employee 3 that she had to manage her team members' time better.
- 3.166. Ms Maxwell responds that this is a mischaracterisation of her request, and denies that there was any urgency around her request for the work plan. Ms Maxwell says that she didn't want Employee 4 to work on her day off, as she has children.
- 3.167. Ms Maxwell has produced various emails in support of her response. The email to Employee 3 containing her request for this work does not give any indication as to urgency. Ms Maxwell's email to Employee 3 in relation to Employee 4's day off states: *"Please don't let her do this stuff on her day off. The [work] plan for frauds and scams and the numbers for FB live can be done when she gets back. Time off is time off and it matters – can you let her know?"*.
- 3.168. In her second interview, Employee 4 says that despite what Ms Maxwell's emails say, Ms Maxwell's face to face message was very different. She says that she got a message directly from Ms Maxwell that it was urgent. Employee 4 states that Ms Maxwell then questioned the time in lieu that Employee 4 asked for, to compensate for doing the work on her day off.
- 3.169. In Employee 3's second interview, Employee 3 says that this is an example of Ms Maxwell "flipping" on things, i.e. she initially created pressure and then changed her mind. Employee 3 says that Ms Maxwell's email does not convey all of the verbal and non-verbal communication that Ms Maxwell was sending.
- 3.170. I accept that Employee 3 and Employee 4 genuinely felt that there was some pressure and urgency around this work plan. However, based on the contemporaneous emails, there is no evidence that this pressure was caused by a specific request from Ms Maxwell. The emails she sent are reasonable, and in fact,

demonstrate concern for Employee 4 in protecting her time off. This allegation is not established.

(iv) Employee 4: February/March 2018, humiliating and belittling conduct including:

(a) aggressively told not to use “pitch to media”;

(b) told an animated video was sexist and rubbish.

3.171. Allegation (a) – Employee 4 alleges that in February or March 2018, Ms Maxwell heard Employee 4 use the phrase “pitch to media”, and told her never to use that phrase. However, Employee 4 then heard Ms Maxwell use the phrase herself.

3.172. Ms Maxwell explained that there was a discussion about the way in which they referenced their engagement with the media. She said that she and another CFFC employee both said that the word “pitch” tends to put media off, and therefore in documents and conversations with the media, they don’t use the word “pitch”. However, Ms Maxwell accepts she may have used the word internally in meetings.

3.173. Employee 4, in her second interview, agreed that this was a phrase they would only use internally. She said she would not need to be told not to use it externally, and felt she was being put down for no good reason.

3.174. I accept Ms Maxwell’s explanation of the circumstances. I find that it was not unreasonable. This allegation is not established.

3.175. Allegation (b) – Employee 4 alleges that in February or March 2018, Ms Maxwell told her that an animated video that she was working on was “*rubbish*” and “*sexist*” (an animated woman in a one-piece bathing suit on a beach). Employee 4 says that she felt that Ms Maxwell was looking for any excuse to shut another one of her projects down.

3.176. Ms Maxwell recalls giving feedback on this work but denies using the words “*rubbish*” and “*sexist*”, and says that she wouldn’t use the word “*sexist*” because she doesn’t like that word. She says that she did tell Employee 4 that the woman in her bathing suit “*wasn’t great*”, and told Employee 4 that she was concerned about the image.

3.177. In her second interview, Employee 4 denies that Ms Maxwell said that *“it was not great”*. Employee 4 maintained that she is clear that Ms Maxwell used the words *“sexist”* and *“rubbish”*.

3.178. I accept that Ms Maxwell gave negative feedback on Employee 4’s work. However, I am not able to make a finding as to what words were used and therefore whether they were unreasonable in the circumstances.

(v) Employee 4: April/May 2018, isolation by ignoring Employee 4 at the end of her employment.

3.179. Employee 4 has alleged that towards the end of her employment, Ms Maxwell ignored her. She said that it got to the point where she would be in a conversation with Ms Maxwell and another person, and Employee 4 would ask Ms Maxwell a question but Ms Maxwell would answer to the other person. Employee 4 alleges that this occurred five or six times, and occurred just prior to her resignation, but got much worse when she resigned.

3.180. Ms Maxwell denies that she ignored Employee 4 at the end of her employment. She produced emails from April 2018 which she says indicate a cordial relationship after Employee 4 resigned. The emails confirm that Ms Maxwell agreed to Employee 4 working from home for her remaining notice period on two days per week.

3.181. Ms Maxwell states that during this time, Employee 4 was in the office occasionally for meetings. She says after the upsetting meeting that she had with Employee 4 in early 2018 she had determined not to be alone in a room with her again. However, she maintains that her subsequent dealings with Employee 4 were all professional, clear and cordial.

3.182. In her second interview, Employee 4 clarified that her allegation related to the period following her resignation, but before she went to two days per week. She provides an example of being at the Money Week sneak peak in May 2018. This was an event held in Wellington from 4pm-6.30pm attended by Minister Faafoi, and likely involving preparation time during the day. Employee 4 alleges that despite her having managed most of the event, Ms Maxwell did not speak to her

that day, even when standing with others. She says this period of isolation went on for a few weeks.

3.183. I accept that Employee 4 found the period prior to and after her resignation an uncomfortable and difficult time in her relationship with Ms Maxwell. However, in relation to this allegation, there is insufficient evidence to make a finding that Ms Maxwell deliberately ignored Employee 4. Accordingly, this allegation is not established.

Findings in relation to Employee 4

3.184. In relation to the five key allegations made by Employee 4, I have found:

- (i) Early 2018, comment by Ms Maxwell *“You don’t dress your children up like shit to take them to day-care or school so why did you put this campaign to market?”* – This allegation was established as unreasonable conduct;
- (ii) Early 2018, criticism of Employee 4 in a one on one meeting, this was not established as involving unreasonable conduct;
- (iii) February/March 2018, urgent work request, this did not involve any unreasonable conduct by Ms Maxwell;
- (iv) February /March 2018, told not to use “pitch to media” phrase and that video was rubbish and sexist, these allegations were not established as involving any unreasonable conduct;
- (v) April/May 2018, isolation of Employee 4, this allegation is not established on the facts as involving isolating conduct by Ms Maxwell.

3.185. While there is one established incident of unreasonable behaviour, there is no evidence of a pattern of unreasonable behaviour towards Employee 4 that could amount to bullying of her.

3.186. I was satisfied that Employee 4 was genuine in the distress she felt at Ms Maxwell’s critical feedback on occasions but this was not bullying conduct.

E. MS JULIA BOCKETT, MANAGER, PEOPLE & CULTURE

3.187. Ms Julia Bockett commenced employment with CFFC as the Manager, People and Culture in August 2017, through until her resignation in October 2018. She was recruited by and reported to the Retirement Commissioner.

3.188. Her employment was part-time for CFFC, working 2 days per week, Tuesday and Wednesday. The role was not formally part of the LT. However, Ms Bockett regularly attended the full LT meetings between October 2017 and March 2018. This changed to a more limited LT meeting attendance from March 2018. The role was tasked with improving the culture of the office, providing general HR support and supporting the LT in recruitment.

3.189. Ms Bockett is a senior and experienced Human Resources Manager. Prior to coming to the role with CFFC she had some 16 years of experience including in Human Resources roles with large companies. Ms Bockett resigned from CFFC to take up a national role as General Manager, Human Resources for a large corporate business. Ms Bockett states she resigned from CFFC because she was no longer able to be effective in the role and she did not wish to recruit another talented person into the environment.

3.190. Set out below are the allegations raised.

Julia Bockett: March – October 2018, unreasonable criticism and isolation of Ms Bockett in response to her raising concerns with Ms Maxwell over turnover and exit interview feedback.

3.191. Ms Bockett states that in or about January or February 2018, she had become concerned at the number of exit interviews she was conducting with departing staff who were reporting concerns with Ms Maxwell's leadership style. At that point, Ms Bockett had conducted some 5 exit interviews (4 resignations and 1 redundancy) between October 2017 to early February 2018, in which concerns about Ms Maxwell's leadership style had been raised.

3.192. Ms Bockett says she had a conversation with Ms Maxwell about the exit interviews in the first two months of 2018. In that conversation, she told Ms Maxwell in a generalised way what she had heard in the exit interviews to that date. Ms Bockett

did not raise “bullying” with Ms Maxwell. Ms Bockett says that she tried to be diplomatic about the aspects that related to Ms Maxwell. However, she recalls it was probably one of the most challenging conversations she had had in her career to date as Ms Maxwell “*demanded specifics about it and didn’t accept the general feedback*”.

- 3.193. Ms Bockett says she also checked with the LT about her turnover concerns to gain an understanding of the context, but she experienced a reluctance by the LT to discuss it.
- 3.194. On 1 March 2018, Ms Maxwell sent an email to the LT and Ms Bockett, that she would like to revert to weekly meetings for the whole CFFC team, “*So – I’d like us to keep the LT meeting to time. Can I suggest we meet as a core LT for the first fifteen minutes and then depending on the agenda we would have other members of the broader team join us. So [colleague], join us to do the minutes, [colleague] would join us for Logistics involving the LT, Julia for HR issues.... This makes the LT meeting a tighter, more focused meeting*”.
- 3.195. Ms Bockett’s role was the only senior role being removed from the full LT in March 2018. Prior to this email, the Minutes of the LT record Ms Bockett having consistently attended the full LT meetings from October 2017 until March 2018. After the 1 March 2018, email from Ms Maxwell, Ms Bockett’s attendance at the LT meetings became only as required in respect of HR agenda items she raised. It is apparent from the emails produced that Ms Bockett was invited to submit agenda items for the LT meetings as from March 2018 and that she did continue to attend some LT meetings, in part.
- 3.196. In or around March 2018, Ms Bockett states that her informal approach to her concerns, over the exit interviews and turnover, was not working. She undertook an analysis of the turnover within CFFC. She states she saw turnover as a potential sign of poor culture within an organisation so looked to check this.⁶ Ms Bockett states that her analysis confirmed that there appeared to be 40-50% unplanned turnover (i.e. resignations) in CFFC in the year to March 2018. In her experience,

⁶ The WorkSafe NZ *Preventing and Responding to Bullying at Work Guidelines* 2017, pages 20-21 also confirm that reviewing staff turnover and exit interviews can be used to check for organisational wellness.

this was high for any organisation. Ms Bockett put this matter on the agenda for the next March LT meeting.

3.197. On 20 March 2018, Ms Bockett is recorded as having been invited to attend the LT meeting to present on culture and turnover. The Minutes record for this part of the meeting:

“Julia tabled a document providing a framework for developing a strong CFFC organisational culture. Diane and Julia had reviewed this the week prior. In light of the rate of unplanned turnover (44%) in the current financial year and managing this as an organisational risk, Julia seeks input from the LT as to what they believe the priority areas are.”

3.198. The document Ms Bockett tabled at the meeting was a “CFFC Organisational Culture” diagram with existing and proposed initiatives for organisational wellness, including 360-degree feedback and leadership capability and development as proposals.

3.199. Ms Bockett sensed that the LT were reluctant to look at the reasons for this high turnover at the meeting. She states that when she raised her concern about the likely recruitment and training costs of turnover, Ms Maxwell was critical of her and challenged her in the meeting. She recalls Ms Maxwell saying that she felt ambushed by this matter being raised at the LT meeting. Ms Bockett states that Ms Maxwell looked for other causes for turnover by saying they needed to be better at recruitment and that hiring decisions had been poor.

3.200. Ms Bockett’s overall impression was that Ms Maxwell made the discussion very uncomfortable and the LT were not encouraged to have an honest conversation about the causes and impact of turnover.

3.201. After this meeting, Ms Bockett reports that as from April 2018, Ms Maxwell began removing her from the LT meetings. She said it was reported back to her by others in the LT, that Ms Maxwell had said they no longer saw “eye to eye on culture” and that she was no longer the “right fit”. This was confirmed by Employee 3.

- 3.202. On 27 March 2018, Ms Bockett was again invited to a part of the meeting. On 10 April 2018, she is recorded as having attended the full meeting, though it is noted Ms Maxwell was not present for that meeting.
- 3.203. Ms Maxwell denies that she excluded Ms Bockett from the LT meetings because of the turnover concerns being raised. Ms Maxwell points to her email of 1 March 2018, which she says was sent prior to Ms Bockett raising her concerns. Ms Bockett was shown this email in her second interview and she states the email arrived after she had raised her exit interview concerns with Ms Maxwell earlier in 2018.
- 3.204. Ms Maxwell states that she became concerned in the 20 March 2018 meeting, that Ms Bockett excitedly raised a suggestion in the meeting *“we don’t know if you’re committing fraud or not”*. She also recalls that Ms Bockett mentioned that turnover of a staff member can cost one year’s salary and so on that basis CFFC had incurred a cost of \$880,000. She felt that these were inappropriate comments to have made.
- 3.205. On 13 April 2018, Ms Maxwell sent an email to Ms Bockett and the LT. The email stated:
- “Julia - I am a little concerned about the feedback I’m getting about meetings behind closed doors and the impact it’s having on staff who are feeling uneasy about “whisperings” as they describe them. In the planning of your role it was never intended to become an agony aunt and I want to ensure we are not losing sight of the important things we have agreed to do...”*
- 3.206. The email goes on to give instructions to Ms Bockett to package up any themes from the exit interviews and that she would like this to be “professional, clear and succinct”. Ms Maxwell’s email also requests details of a staff survey proposal to consider. The email suggests that recruitment processes need to be improved and a cause of turnover may have been the failure to recruit the right people.
- 3.207. Ms Bockett acknowledges in her second interview that she raised the cost of turnover and referred to fraud as an example of risks for the business. Ms Bockett raised the example of “fraud” as an example to illustrate a point not as an allegation or implication of fraud by Ms Maxwell. Given that she is an experienced HR professional this did not seem unreasonable. I did not see anything in the CFFC

documents or Ms Bockett's demeanour that led me to believe she was unmeasured in her views.

- 3.208. Ms Bockett recalls that after the 20 March LT meeting, Ms Maxwell asked to meet with her. Ms Maxwell has been able to place this meeting as happening on 17 April 2018, as she made short notes in preparation for the meeting.
- 3.209. The 17 April 2018 meeting is reported, by both Ms Bockett and Ms Maxwell, to have been a challenging meeting. Ms Maxwell put her concerns about Ms Bockett's approach at the 20 March LT meeting. Ms Maxwell's notes record *"Focus on things in the email ... conversations about what's bothering people – your comfortable space – talking about problems. A more measured approach, ... Comment – don't know if your committing fraud... 880k... Clear professional turned into whispers."*
- 3.210. It is clear from Ms Maxwell's own notes that this was likely a robust conversation and she was making it clear to Ms Bockett that she was unhappy with her approach.
- 3.211. Ms Bockett recalls that Ms Maxwell started the meeting by saying that Ms Bockett had been "unprofessional" and "unmeasured" in her approach during the LT meeting and that she had never worked with an HR Manager who had approached the issue the way she had. Ms Bockett reports that this had the impact of "unmanning" her in this meeting.
- 3.212. In or about mid May 2018, the "Exit Interview Themes" document was presented verbally to Ms Maxwell by Ms Bockett. Ms Maxwell was not provided with a copy at the time as it was held confidential by Ms Bockett. By this time, two more employees had resigned. This themes document lists the seven employees who had given exit interviews. It details, in an anonymous way, their concerns about Ms Maxwell's leadership and communication style. The document records employee comments such as *"I feel like I am next on her list to target", "I don't think Diane realises the effect she has on people" "I feel like Diane talks about the poor performance of others behind their backs", "I have never had feedback about my work in this way, I feel totally deflated"*.
- 3.213. She recalls that Ms Maxwell challenged the feedback, dismissing the concerns and querying whether Ms Bockett had invited the interviewees to speak about Ms

Maxwell. Ms Bockett explained that she had used a standard exit interview template, and these common concerns arose from the employees.

3.214. Ms Bockett also raised with Ms Maxwell the options of a Speak Out Service or a Cultural Survey, as a means to address workplace culture concerns. She states that Ms Maxwell opposed these ideas and neither were introduced. Ms Bockett also alleges that Ms Maxwell verbally told her to stop conducting exit interviews after she had presented the Exit Interview Themes document to Ms Maxwell.

3.215. On 18 May 2018, Ms Maxwell emailed the Leadership Team to propose a new role for an Operations Manager and that the role would have the Finance, Office Manager and Human Resources roles report to it.

3.216. On 21 August 2018, the new Operations Manager is recorded as attending her first LT meeting. It was around this same time that Ms Bockett resigned. CFFC has not been able to provide evidence that exit interviews have been conducted in relation to 5 staff who have resigned between July and November 2018. CFFC has not conducted a culture survey since Ms Bockett's proposal for this, though an EAP speak out service does exist for CFFC staff.

Findings in relation to Ms Bockett

3.217. I am satisfied that Ms Bockett was careful and considered in her statement to the investigation, albeit that without access to documents her recollection of the dates of events was hampered. The sequence of events that she described in her statement was largely borne out by the CFFC documents produced to the investigation.

3.218. I have taken into account that after March 2018, Ms Bockett was invited to submit LT agenda items and attend as required through to the end of her employment in October 2018. Her recollection that she was excluded from the LT meetings was therefore partially incorrect, as she was still invited to offer agenda items and attend to address those items. However, overall her concern about being restricted from full attendance at LT meetings remains.

3.219. I have also considered whether Ms Bockett had any material self interest in misrepresenting or exaggerating events. I do not consider this was a realistic

possibility. Ms Bockett resigned from her role and left to take up another senior role. She was not required to come forward, though I note she had spoken publicly about her concerns to the media in November 2018. I consider that she has come forward to this investigation out of a genuine concern about Ms Maxwell's conduct.

3.220. I consider it more likely that Ms Bockett's explanation of events is largely correct. She raised some challenging issues for Ms Maxwell in or about February 2018 and from March 2018, Ms Maxwell limited her involvement in the LT meetings and later advised her that her role would report to an Operations Manager role and not directly to the Retirement Commissioner. I also accept that Ms Bockett considered she had received some form of discouragement about continuing with exit interviews from Ms Maxwell. I could not be satisfied that this was a direct instruction. I have found that CFFC did not continue with an exit interview process in the months prior to her departure or since.

3.221. I agree with Ms Bockett that given she was raising legitimate concerns over culture and turnover, it seems highly unusual not to continue to have a senior experienced HR Manager attend the full LT meetings, just as regularly as previously.

3.222. I do not accept Ms Maxwell's explanation that she wanted to reduce the size of the team attending the LT meetings, as sufficient explanation. It is unclear how this made the LT meetings more effective. I note that the Manager, People & Culture was the only senior role that was removed from attending the full LT meetings in Ms Maxwell's 1 March 2018 email.

3.223. Ms Maxwell did produce email evidence that she continued to look to improve the CFFC culture and work with Ms Bockett. However, the way she went about this, raises a real question as to whether it was effective. I accept Ms Bockett's evidence that Ms Maxwell was not open to the feedback given about her leadership style and instead directed Ms Bockett in her role in a way that ultimately disempowered her and resulted in her resignation.

3.224. I do accept that Ms Maxwell legitimately saw a need for an Operations Manager role, but this did not explain why there was any need to limit the Manager, People & Culture from attendance at the full LT meetings prior to the appointment of the Operations Manager or even the need for the change in reporting line. This was

also done without any material consultation with Ms Bockett and would have appeared to Ms Bockett as a demotion of her role.

- 3.225. Ms Maxwell notes that she had previously changed reporting lines for other staff away from direct reporting to her without consultation. While this is correct, I do not accept the circumstances were aligned, those staff had not been regular attendees at LT meetings previously.
- 3.226. Ms Bockett was unclear whether this conduct amounted to bullying. However, she considered Ms Maxwell's conduct in relation to her role was evidence of poor leadership.
- 3.227. Ms Maxwell's conduct in relation to Ms Bockett from March 2018, involved unusual management in the circumstances. However, this is not bullying of Ms Bockett. Ms Maxwell was entitled to limit Ms Bockett attendance at the full LT meetings and ultimately to change reporting lines for Ms Bockett, as she was not formally a member of the LT.

F. OTHER STAFF BULLYING ALLEGATIONS

Employee 5: July/August 2017, spoke harshly to Employee 5 in CFFC meeting with external tax consultant.

- 3.228. Employee 5 was employed from April 2016 to February 2018. Employee 5 says that one of the reasons he left was a lack of internal career progression at CFFC. However, he also attributed his leaving to the fact that people at CFFC felt unsafe and that there was a sense of a bullying culture.
- 3.229. Employee 5 and Employee 9 both allege that Ms Maxwell made offensive and belittling comments to Employee 5 at a meeting in mid-2017.
- 3.230. Employee 5 says that in July/August 2017, a tax expert was visiting the team. He says that he was having a good discussion with the expert, and made a comment about making Capital Gains Tax a voting issue. He says that Ms Maxwell said that it was "stupid", although he acknowledges she probably didn't use that actual word, but she made a few comments and he felt humiliated and that people around him were looking at him and feeling sorry for him.

- 3.231. Employee 9 also reported Ms Maxwell snapping at people “quite harshly” if they asked questions she didn’t like. As an example, he reports that Ms Maxwell would say “*that isn’t an appropriate question, what are you thinking?*”. He said he remembers Ms Maxwell doing this to Employee 5 in front of the whole team with an external tax consultant present. Employee 9 did not think that the question by Employee 5 was unreasonable.
- 3.232. Ms Maxwell believes that this allegation relates to a talk at CFFC on 23 May 2017 by a media commentator on tax matters. To give context, she says that CFFC is required to be politically neutral, and that in her role as Retirement Commissioner, she takes formal positions on issues and then communicates them. Ms Maxwell noted that Capital Gains Tax is one such issue where the Commission staff are required to be careful when articulating their personal views to external parties, to ensure those views aren’t taken to be the formal position of the Commission.
- 3.233. She says that the tax expert’s talk took place at a sensitive time, being one month before the commencement of the pre-election period on 23 June 2017. Ms Maxwell was mindful of this.
- 3.234. Ms Maxwell does not specifically recall speaking to Employee 5 at this meeting. However, she said she would not have undermined him in the way it has been characterised, and would not have used the words alleged. She says that what she would have done is to have stepped in to clarify CFFC’s position, by saying something like “*can I for a moment give you our formal position*” or “*we don’t have a position yet, but once we do, I will pass it on*”.
- 3.235. Ms Maxwell acknowledges that this may have made Employee 5 feel his view was not important, or was wrong. She acknowledges that Employee 5 may have felt demeaned if she had stepped in, however says this is due to his lack of understanding about her role and her obligations.
- 3.236. I find that it is likely that in the meeting, Ms Maxwell did step in when Employee 5 was speaking. However, there is not enough clear evidence to establish the exact words used and after such a period of time this is understandable. I acknowledge that Employee 5 would have felt uncomfortable and embarrassed as this is confirmed by Employee 9.

3.237. However, I accept Ms Maxwell's explanation that she had to ensure that in such forums there was no risk of the formal CFFC position being misunderstood. It was reasonable for Ms Maxwell to step in, in this context. There is not sufficient evidence that she did this in an unreasonable manner. This allegation is not established.

Employee 6: March/June 2017, spoke harshly to Employee 6 regarding her work.

3.238. Employee 6 was employed with CFFC for three years from September 2014 until her role was made redundant in October 2017. Employee 6 states that she came forward to the investigation because of her concerns about Ms Maxwell's increasingly dismissive conduct towards her and others at CFFC from 2016 onwards.

3.239. Employee 6 alleges that in March 2017, she presented a report to Ms Maxwell. Employee 6 and Employee 2 were present when this happened. They allege that Ms Maxwell gave feedback along the lines of *"do you have to write this way, really I have so much to read, seriously do you have to write like this"*. Employee 6 said that the undermining aspect of this feedback stood out to her, and that this behaviour had started to feel repeated and unwanted.

3.240. Employee 2 also reported this incident and her recollection is largely consistent with that of Employee 6. Employee 2 said that Ms Maxwell was putting Employee 6 down for the way she wrote the report, and that her tone was dismissive. She reports that Ms Maxwell said: *"I don't understand this, who could understand this language?"*.

3.241. Ms Maxwell denies saying what is alleged. She says that her words were *"[Employee 6] can we think about how we are communicating this; can we think about how to communicate this in an easy to read style"*. By way of context, Ms Maxwell said that the CFFC focus is on the use of plain English. She said that Employee 6's report was written in such a way that if you were not a subject matter expert you may not understand it.

3.242. I accept that Ms Maxwell did give Employee 6 critical feedback on this report. I acknowledge that Employee 6 felt undermined by this, and that Employee 2 felt that Ms Maxwell was being dismissive. However, it was not unreasonable for Ms Maxwell to give feedback to Employee 6 as to the readability of her report. I am

concerned that after such a period of time, without contemporaneous records that witnesses' memories of the words used risks being coloured by the way they felt about the criticism. As a result, I cannot be satisfied that this was done in an unreasonable way. Accordingly, this allegation is not established.

Employee 7: Mid 2017/Mid 2018 demeaning behaviour towards Employee 3 and Employee 4

- 3.243. Employee 7 was at CFFC from July 2017 to June 2018. Employee 7 initially reported to Ms Maxwell directly, and then to Employee 3.
- 3.244. Employee 7 says he resigned due to a combination of factors. His key reasons were his concern at the high staff turnover, the challenges it created in his role and Ms Maxwell's conduct towards other staff, all of which made him feel anxious and contributed to a negative environment. He states he resigned to protect his health. When Employee 7 resigned, he raised his concerns confidentially in his exit interview with Ms Bockett.
- 3.245. Employee 7 reports witnessing Ms Maxwell engaging in demeaning behaviour towards Employee 3 and Employee 4 between mid-2017 and mid-2018.

Concerns about conduct towards Employee 3

- 3.246. Employee 7 reports that he saw day to day behaviour by Ms Maxwell towards Employee 3 that he felt was manipulative. He alleges that Ms Maxwell would say things to Employee 3 like *"I don't remember this"*, *"Why have you done this"*, *"I don't understand why you are thinking this"* and *"I never said that"*. He says that he noticed this when he knew for certain that Ms Maxwell was aware of the situation, which is why he found it manipulative. He reports that this behaviour made him feel anxious for himself and for Employee 3. He described the behaviour towards Employee 3 as *"belittling"*, and says he found it stressful to watch.
- 3.247. Employee 6 separately reported hearing Ms Maxwell making negative comments towards Employee 3. Employee 6 reports Ms Maxwell said something like *"this is not marketing"* and she found this demeaning and undermining towards Employee 3.

- 3.248. Ms Maxwell says that she doesn't recall saying the things that Employee 7 or Employee 6 have alleged. She denies using demeaning language. Ms Maxwell says that what she did say to Employee 3 as an ongoing theme was *"we are building content, it needs to be good, good enough to be seen"*.
- 3.249. I accept that Employee 7 and Employee 6 are genuine in the concerns about the way they observed Ms Maxwell speaking to Employee 3 and that they were uncomfortable observing this. These were conversations that Ms Maxwell would clearly have been better to have had in a one on one meeting with Employee 3.
- 3.250. I find that it is likely that at times, Ms Maxwell was unwise to have given this critical feedback in front of other staff, in a way that made them feel uncomfortable. I find that it must have been done on more than one occasion to have become noticeable to Employee 7 and Employee 6.
- 3.251. However, given that the witnesses had difficulty giving anything more than a generalised allegation that this occurred over the period of Employee 3's employment, I am not able to establish that this was unwarranted or unreasonable feedback sufficient to meet the threshold for unlawful bullying. Accordingly, this allegation is not established. I accept that it is an example of a communication style by Ms Maxwell that has made staff genuinely uncomfortable.

Concerns about conduct towards Employee 4

- 3.252. Employee 7 also reported his concern about the way that Ms Maxwell treated Employee 4. He says that it appeared to him that whatever Employee 4 did, Ms Maxwell was not happy with it. He recalled instances where he was in the room with Employee 4 when she was showing work to Ms Maxwell and Ms Maxwell would "have a go at her". He says that Ms Maxwell would say things like *"This isn't what we want to be doing"* and *"I can't believe we are wasting time and money on this"* in front of other people. He also reports that Ms Maxwell was "putting [Employee 4's] work down".
- 3.253. Ms Maxwell denies using the words alleged by Employee 7, and says she wouldn't have said anything close to that. She says that there were times when constructive and reasonable feedback was misinterpreted by people. She denies being demeaning towards Employee 4.

3.254. On the available evidence and for the reasons discussed above in relation to Employee 3, this allegation is not established as bullying. However, I accept that it is another example of communication that should not have taken place in front of other staff and a communication style by Ms Maxwell that has made staff genuinely uncomfortable. Employee 7 left on good terms with Ms Maxwell so his observations cannot be said to be tainted by any issues about his performance.

Employee 8: November 2017, belittling comment about tweet posted

3.255. Employee 8 was at CFFC from November 2017 to November 2018. She reported to Employee 3. Employee 8 alleged she observed conduct by Ms Maxwell towards Employee 3 that made her uncomfortable. Employee 8 resigned as a result of a sense of a lack of direction and security in her role, which she related to Ms Maxwell's leadership.

3.256. Employee 3 alleged that Ms Maxwell was critical of Employee 8. In particular, she reports that Employee 8 did a Christmas post at the end of November 2017, and when Employee 3 asked Ms Maxwell what she thought of it, Ms Maxwell said "*it is just really boring*" in front of the whole office. Employee 3 said that Employee 8's face fell when she heard that.

3.257. Ms Maxwell does not recall this event. However, she denies that she speaks like this, and says that she is much more likely to have said that the post was "*dry*". Ms Maxwell has produced an email showing the terminology she typically uses when giving feedback, which shows her using the word "*dry*".

3.258. In her second interview, Employee 3 maintained that Ms Maxwell used the word "*boring*", but accepts that she may have also said "*dry*" or "*bland*".

3.259. I accept that Ms Maxwell gave negative feedback on Employee 8's post. I accept that Employee 3's recollection was that Ms Maxwell said it was "*boring*". However, there is insufficient evidence to find that any unreasonable words were used. The words appear likely to have included "*dry*" or "*bland*" and understandably this has been taken as meaning "*boring*".

3.260. I note that Employee 8 did not make an allegation about this event in her own interview statement. I am not satisfied that this was anything more than robust

critical feedback. This allegation is not established. Other allegations made by Employee 8 were not sufficiently specific to warrant investigation or related to her interactions with others.

Employee 9: October 2018, meeting with Ms Maxwell regarding Employee 9's behaviour towards others

- 3.261. Employee 9 was employed at CFFC from June 2016 to December 2018. He resigned and at the time of the investigation was working at CFFC as a contractor. Employee 9 reported to Employee 18 during his employment.
- 3.262. Employee 9 states that he had concerns for the wellbeing of himself and other staff at CFFC, and that he sought external assistance to help him cope with the work environment. He says that he reported his concerns about the “chaotic” and “uncomfortable” environment to Ms Bockett during her employment.
- 3.263. Employee 9 makes one allegation of bullying by Ms Maxwell against him. He has also alleged that she had an inappropriate communication style towards Employee 18, his manager.
- 3.264. On 9 October 2018, Employee 9 states Ms Maxwell called him to a meeting, which was a follow up meeting about some of his behaviours. He alleges that in the meeting, Ms Maxwell said something to him along the lines of *“I heard that you have thrown me and [Employee 18] under the bus. I am tired of your behaviour – if this continues, I will take you down a formal process.”* When Employee 9 asked for an example of what she alleged, Ms Maxwell said she *“could you not talk I haven't finished”*. He alleges that she repeatedly threatened him with a formal disciplinary process in the meeting, and refused to give him examples of what she was talking about.
- 3.265. Ms Maxwell produced documents which provided context for the meeting, which indicated previous issues with Employee 9's conduct. Ms Maxwell says that Employee 9 knew what she was talking about, as it was not the first time that they had discussed it. Ms Maxwell outlined the issue in an email to him prior to the meeting. This email was produced to the investigation and confirms Ms Maxwell's position. Ms Maxwell states she couldn't tell Employee 9 who the complaints were

from at that stage, as this required a formal process. Ms Maxwell states that she wanted to give Employee 9 the opportunity to improve before any formal process.

3.266. I acknowledge that Employee 9 may have felt that he was being threatened with a formal process. However, I accept Ms Maxwell's characterisation that she was trying to communicate that this was a final chance to reflect and improve before a formal process was undertaken. I do not find that this allegation amounts to unreasonable conduct or bullying of Employee 9.

Concerns about conduct towards Employee 18

3.267. Employee 9 also reported that Ms Maxwell would often say critical things about Employee 18 to Employee 18 while he was present. Employee 9 reported that very regularly, Ms Maxwell would treat Employee 18 in a way that he felt was inappropriate and that made him uncomfortable.

3.268. He alleges that in August 2016, Ms Maxwell said "*what do I pay you for*" and "*there are going to be repercussions because of your actions*" to Employee 18 in front of Employee 9. He alleged that Ms Maxwell's voice was raised. He says that when he asked Employee 18 if he was ok after these occasions, Employee 18 assured him that he was fine.

3.269. Ms Maxwell denies making the statements alleged in front of Employee 9, and denies that her voice was raised. She said that if Employee 9 was there, it would have been because they were discussing how they were tracking on something they were working on. In relation to an insurance issue they had, Ms Maxwell says that she would have been saying "*how are we going, what is our timing, can I understand why we are behind, do you need more resource, what do we have to do*". Ms Maxwell maintains that Employee 18 was not uncomfortable about these sorts of conversations.

3.270. Employee 18 cannot specifically recall Ms Maxwell making these statements to him. He says that the conversations that he and Ms Maxwell had about work were generally robust. He acknowledges that Ms Maxwell did express frustration to him around two pieces of work, but never yelled at him. He said he did not perceive Ms Maxwell's behaviour towards him as bullying and that he had expressed that he was comfortable with the feedback to Employee 9 when asked.

3.271. In the context of the working relationship between Employee 18 and Ms Maxwell, what Employee 9 perceived to be bullying appears to have been robust discussions which Employee 18 himself was not upset by. I do not find that this amounts to unreasonable behaviour by Ms Maxwell in the circumstances.

Employee 10: October 2014, resignation letter alleged bullying behaviour

3.272. Employee 10 worked at CFFC from July 2014 to October 2014. She reported to a Manager. She states that she resigned very quickly, as she realised that it was a very poor working environment, and that she couldn't do anything to change it.

3.273. On 30 October 2014, after Employee 10 resigned, she wrote a letter to her manager recording her concerns, and requested an exit interview.

3.274. In Employee 10's letter dated 30 October 2014, she states that she is leaving due to "grave concerns" regarding aspects of workplace behaviour at CFFC. This included "inappropriate and erratic decision-making by management in a disrespectful and unprofessional way", people being "cut down" in front of others. She describes the environment as "toxic", and says that there are behaviours which can only be described as "bullying". The letter did name Ms Maxwell as a cause of concern but otherwise only made a generalised allegation of a bullying culture. Employee 10 states she had an exit interview with her manager about the poor behaviour that she had witnessed. CFFC has not located any written exit interview with Employee 10.

3.275. Employee 10 received a written response from Ms Maxwell in November 2014 which denied the allegations and which Employee 10 considered diverted the concerns away from Ms Maxwell.

3.276. Ms Maxwell has produced emails relating to Employee 10's employment. The emails disclose that Employee 10 was being challenged about her non-attendance at work meetings by her manager and was close to being performance managed for this non-attendance, but resigned before this occurred.

3.277. These documents show that Ms Maxwell believed that Employee 10's assertions about the culture at CFFC were incorrect. Ms Maxwell took employment law advice on her response to Employee 10 from an external law firm. In her response to

Employee 10, Ms Maxwell said that she was “not aware of any allegations of bullying”, but that such allegations are taken very seriously. She invited Employee 10 to meet for coffee to talk further. This invitation was not taken up by Employee 10.

3.278. Having reviewed the correspondence prior to Employee 10’s resignation, I am satisfied that her manager had been experiencing some challenges in managing her attendance at work. It was not clear from the resignation letter that she was complaining about bullying conduct by Ms Maxwell. The Retirement Commissioner acted appropriately in seeking external legal advice and responded to the resignation letter. This allegation of bullying behaviour is not established.

Findings in relation to other staff allegations

3.279. I am not satisfied that the behaviour complained of by these six other staff was unreasonable or repeated behaviour that meets the definition of bullying under the CFFC policy or the WorkSafe New Zealand definition.

3.280. However, the concerns raised are evidence of a range of former CFFC employees reporting that they had concerns with Ms Maxwell’s style of communication. Some of this appeared to me to be the inevitable product of Ms Maxwell being in a challenging and demanding role and her reasonable but critical feedback. However, there is also some cause for concern that her style is too direct and blunt for a range of employees in the organisation.

Final Summary of Bullying Allegation Findings

3.281. In summary, the various allegations of bullying conduct have not been established.

3.282. There have only been three incidents of unreasonable behaviour established, namely:

- (a) 1 May 2017, Ms Maxwell’s conduct towards Employee 1 at the Friday night drinks in speaking aggressively to her to the point that she left the room crying;

- (b) May 2017, Ms Maxwell's conduct towards Employee 2 at a LT meeting, where she repeatedly questioned Employee 2 in a way that was humiliating and resulted in Employee 2 crying after the meeting; and
- (c) Early 2018, Ms Maxwell's conduct towards Employee 4 during a one on one meeting, in which Ms Maxwell provided unreasonable and offensive feedback to Employee 4 using words to the effect *"you don't dress your children up like shit to take them to day-care or school, so why did you put this campaign to market?"*

3.283. The investigation has not found evidence of sufficiently repeated and unreasonable behaviour to warrant a finding of bullying.

4. TERMS OF REFERENCE TWO: Whether Ms Maxwell has fulfilled the obligations under s118(2)(a) of the Crown Entities Act 2004, to ensure “good and safe working conditions” so far as they related to providing work conditions free from bullying?

- 4.1. The Retirement Commissioner also holds her appointment subject to the Crown Entities Act 2004. The Act provides at s118 that all Crown entities, if they employ employees must operate personnel policy that complies with the principle of being a good employer, make the policy available to employees and ensure compliance with that policy.
- 4.2. A “good employer” is defined in s118 as an employer who operates a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions requiring good and safe working conditions.
- 4.3. I find that Ms Maxwell has not breached the obligation to ensure good and safe working conditions so far as they relate to bullying, as the allegations of bullying have not been upheld in this investigation.

5. TERMS OF REFERENCE THREE: Whether the agency has systems and policies in place to support the appropriate and efficient management of staff concerns or complainants, including to manage and resolve complaints of inappropriate behaviour in the workplace?

5.1. The relevant CFFC policies that I have been provided with include:

- (a) CFFC Code of Conduct, January 2018;
- (b) Bullying, Harassment and Discrimination Policy, 2016;
- (c) Health and Safety Policy, undated.

Do these systems and policies support the management of staff concerns and complaints?

5.2. The CFFC Code of Conduct (the Code) itself is comprehensive in dealing with the types of behaviour that fall within the ambit of "acceptable" behaviour and it covers the topics expected to be addressed in a Code for an agency such as this. Relevantly, it includes:

1.2. **Our Responsibilities and Expectations:** *"We should maintain the highest level of professionalism and ethical behaviour. This means that each of us must use good judgement and think about whether our conduct or actions are appropriate to the situation"*. It then provides that CFFC and the employee will work together to (amongst other things):

- (a) maintain open and effective communication and harmonious working relationships that encourage partnership, openness, involvement, and accountability; and
- (b) create a climate where ideas, creativity, and innovation are fostered and the contribution of each staff member is valued.

1.3. **Respect for the Rights of Others:** employees, contractors and consultants at CFFC have a *"clear duty to contribute to the smooth*

operation of the workplace" by behaving toward their "colleagues and the public with courtesy and respect", with examples of what this entails, including to:

- (a) avoid behaviour which might endanger or cause distress to [their] colleagues, or contribute to disruption of the workplace; and
- (b) not to harass, bully or otherwise intimidate colleagues.

1.4. **Honesty and Integrity:** those bound by the Code must *"deal fairly and in good faith with work colleagues"*, must *"observe the principles of fairness and impartiality in all aspects of [their] work"* and *"uphold the values of CFFC and protect its reputation and assets"*.

1.5. **Protected Disclosures:** The Code defines serious wrongdoing as including *"unlawful, corrupt, or irregular use of public funds or resources; conduct that poses a serious risk to public health or safety, the environment, or maintenance of the law (including the prevention, investigation and detection of offences and the right to a fair trial); conduct constituting an offence; or conduct by public officials which is grossly improper"*.

5.3. The Protected Disclosures section does not expressly anticipate a complaint against or involving the Retirement Commissioner. The section only provides that *"CFFC expects, however, that if possible, you should first approach your manager, or the Manager, People & Culture, and the Retirement Commissioner with your concerns"*. This gap needs to be addressed, preferably in a separate CFFC Protected Disclosures policy, providing a process for disclosures in respect of the Retirement Commissioner. However, I note that bullying allegations would not typically be raised through Protected Disclosure mechanisms.

5.4. Generally, the CFFC Code sets a good foundation to support the management of staff concerns or complaints, in setting clear guidance about expectations of CFFC employees. However, it does not address clearly how complaints about or involving the Retirement Commissioner will be dealt with.

- 5.5. The Code should also reference and provide a link to the more detailed Bullying, Harassment and Discrimination Policy.

Bullying, Harassment and Discrimination Policy

- 5.6. The Bullying, Harassment and Discrimination Policy (BHD Policy) includes definitions of what amounts to bullying, harassment and discrimination. Each definition provides a non-exhaustive list of the types of behaviours that might amount to bullying, harassment or discrimination. However, the policy does not refer to the Employment Relations Act 2000, the WorkSafe New Zealand Guidelines, or to the Human Rights Act 1993 or to the definitions of discrimination and harassment in those Acts. It would also be of assistance to employees for the policy to list examples of what is not bullying behaviour.
- 5.7. The BHD Policy does set out the responsibilities of both the employer and employees of CFFC in relation to bullying, harassment and discrimination.
- 5.8. Unlike the Code, it is not clear whether the BHD Policy applies to contractors and consultants, as the BHD Policy does not have a "coverage" section. The Responsibilities section only addresses the responsibilities of employer and employee, but it does not address whether contractors and consultants are subject to the same expectations and it does not expressly cover the Retirement Commissioner.

Health and Safety Policy

- 5.9. The CFFC Health and Safety Policy (H&S Policy) is a one-page document and is therefore not a comprehensive policy. It states that CFFC is *"committed to ensuring the health and safety of workers, and to comply with all obligations under the Health and Safety at Work Act 2015"* and that CFFC will *"encourage a culture of responsibility by proactively identifying and managing risks, and ensuring employees are engaged in matters that could affect their health and safety."*
- 5.10. The H&S Policy states that *"CFFC's Leadership Team will create a great health and safety culture by demonstrating leadership in this area through their own actions."*
- 5.11. The H&S Policy touches on the importance of prevention and how to respond to health and safety concerns and incidents. While it is succinct, and it reflects in broad terms the requirements of the Health and Safety at Work Act 2015 (HSWA),

the H&S policy does not focus on risk management and it does not directly address bullying or harassment or link to the BHD Policy.

- 5.12. CFFC provides an “EAP Service, Ethics and Compliance Reporting Programme”, which provides a confidential reporting pathway for reporting concerns. However, this does not provide any clear pathway for escalating the concerns external to CFFC or the Retirement Commissioner.

Are these policies an appropriate means of managing staff concerns or complaints, and managing and resolving complaints of inappropriate behaviour in the workplace?

- 5.13. The CFFC policies provide an adequate foundation for managing and resolving staff concerns and complaints. However, each of the policies would benefit from a thorough review to ensure they are more comprehensive as noted above and that they each provide a clear process of escalation of complaints beyond the Retirement Commissioner, when required.
- 5.14. The policies should also be the subject of regular training and reminders for CFFC staff, as such policies are generally more effective if supported with employee training.

6. TERMS OF REFERENCE FOUR and FIVE: Whether there are any other matters that give rise to an allegation of inappropriate behaviour by Ms Maxwell or other matters necessary to complete this report?

- 6.1. During the course of the investigation, witnesses interviewed reported concerns about Ms Maxwell's conduct that did not contain any allegation of bullying. However, the concerns warranted investigation under the wider Terms of Reference as alleged inappropriate behaviour.
- 6.2. The test for "inappropriate behaviour" for the purposes of this report is unlawful conduct or is otherwise conduct that would amount to a breach of an employment agreement, breach of the duty to act in good faith towards employees under the Employment Relations Act 2000 or a breach of the "good employer" obligation under s118, Crown Entities Act 2004.
- 6.3. The statutory duty of good faith requires the parties to an employment relationship to be active and constructive in establishing and maintaining a productive employment relationship.⁷ This requires the parties to be responsive and communicative and to ensure that they act reasonably so that the mutual obligations of trust and confidence implied in every employment relationship, are maintained.
- 6.4. There are several key allegations under this heading:
- (a) That Ms Maxwell engaged in inappropriate communication with members of the CFFC staff, including being critical or dismissive of staff to other CFFC staff, both in their presence and when they were not present;
 - (b) That Ms Maxwell engaged in inappropriate communication and Human Resources practices relating to the closure of the CFFC Wellington office between October 2014 and May 2015;
 - (c) That Ms Maxwell engaged in inappropriate conduct as from May 2018 by preventing the Human Resources exit interview process for departing staff and declining to engage in the use of a Speak Out service, culture survey or Statement of Performance Expectations for organisational wellness, after

⁷ Employment Relations Act 2000, s4.

the high staff turnover was noted as a concern by the Manager, People & Culture;

- (d) That Ms Maxwell permitted an inappropriate drinking culture at CFFC;
- (e) That Ms Maxwell breached the confidentiality of CFFC staff personal information on three occasions, by:
 - (i) disclosing details of a staff member's sensitive personal information;
 - (iii) disclosing the details of an employee's reduction in salary, to another staff member; and
 - (iii) requiring a CFFC staff member to disclose a criminal conviction to the CFFC office.

(a) Being critical and dismissive of individual CFFC staff to other CFFC staff

6.5. This behaviour was reported by at least eight of the employees interviewed. These alleged behaviours include:

- (a) being critical of LT members in LT meetings and at other team meetings, which made employees uncomfortable and was unprofessional; and
- (b) being critical of Wellington based staff during the period 2014 to 2015, for example referring them as "comfy cardie" staff.

6.6. The examples of these behaviours were put to Ms Maxwell for her response. Ms Maxwell denies that she has acted inappropriately and considers that she has always given constructive feedback to LT members and other staff.

6.7. Ms Maxwell states that her feedback would not include the statements alleged, such as "*this is old fashioned*" or "*you are wasting our time*", but that she would have challenged staff along the lines of "*is this contemporary?*" "*would it connect with our audience?*". She states that she is empathetic and would be alive to any risk that someone is in distress. However, at times she notes that she does need to be able to ask uncomfortable questions and challenge staff in meetings.

- 6.8. On the evidence available, I have not been satisfied that Ms Maxwell's conduct in providing feedback to the LT or other staff has been so unreasonable that it has met the threshold for "inappropriate behaviour", under this investigation.
- 6.9. I acknowledge that interviewees did report that Ms Maxwell has demonstrated care and concern towards them at times. This was also confirmed by emails that Ms Maxwell produced which attested to her consideration of employees at different times during her tenure.
- 6.10. However, this investigation has established that there are at least nine employees, in the last 3 years, who have found Ms Maxwell's leadership style abrasive and unpleasant. This group includes four members of her former senior leadership team. It is likely that at times, Ms Maxwell is missing some of the upset her style is causing, despite her view that she is empathetic with employees. This does raise a material issue for Ms Maxwell as to whether her leadership style is effective for a reasonable range of employees.

(b) Communication about the CFFC Wellington office – 24 October 2014

- 6.11. Three former CFFC staff came forward to the investigation to raise their concerns about Ms Maxwell's conduct towards the Wellington office during late 2014 and early 2015. Their principal complaints were that Ms Maxwell was dismissive of the Wellington office staff contribution and that she was difficult to engage with on work tasks that they wanted to progress.
- 6.12. The principal allegation made related to Ms Maxwell meeting with Wellington staff on 24 October 2014, at which it is alleged she told them that the Wellington office would likely be closed by March 2015. They reported that this conduct by Ms Maxwell was very upsetting for Wellington staff and there was no advance notice of the agenda or support offered for this meeting. Employee 12 stated that the meeting became heated as a result and he became upset and angry, which he apologised for later in the meeting.
- 6.13. One of the former staff members, Employee 10, was based in Auckland and did not attend this meeting. Her reports are therefore largely based on her discussions with Wellington staff. I have treated her statement with some caution on this matter given that it is largely hearsay on that issue.

6.14. A staff note of Ms Maxwell's October 2014 meeting, was produced to the investigation by Employee 12. The note had been taken by another staff member at the time, but they did not come forward to the investigation. Employee 12 and Employee 16 both attended the meeting and confirmed that it summarised the meeting accurately, though was not verbatim.

6.15. Ms Maxwell denies being unreasonably critical of the Wellington staff or telling the staff at the 24 October meeting that the Wellington office was closing. Ms Maxwell reports that she wanted to be transparent with the Wellington office staff about the need to relocate the office to smaller premises. Ms Maxwell states that with the election coming up people were asking her about the security of their roles as they were likely to be offered other roles and that they had a right to know about the relocation ahead of time.

6.16. I am satisfied that the notes produced by Employee 12 fairly summarise Ms Maxwell's comments made to the meeting. They include:

1. *The Wellington office is not working;*
2. *There is a question of what we do with the Wellington office going forward.*
3. *There have been comments from stakeholders that the Auckland and Wellington office are disconnected..."*
6. *With [Wellington staff member] leaving, there is a concern about keeping momentum going in Wellington.*
7. *If approached for other roles we know what is being thought about.*
8. *The cut off date for deciding what happens in Wellington is 31st March 2015."*

6.17. While the meeting certainly discussed the option of moving the office to co-locate with another government department, it is apparent from these notes that staff heard a clear message that the Wellington office was not working and was being closed or substantially reduced in the March 2015. Employee 16 attended that

meeting and he acknowledged that staff could reasonably have taken this message from the meeting.

- 6.18. Ms Maxwell did not prepare any written document for the 24 October 2014 meeting and no written communication was given to staff at the meeting. This will have increased the risk for misunderstanding.
- 6.19. Shortly after this meeting, Ms Maxwell did follow up with emails to staff. In Ms Maxwell's email to staff on 31 October 2014, she confirmed that CFFC was looking to exit the current Wellington premises by the end of March 2015.
- 6.20. After this point, it appears that Ms Maxwell took appropriate employment law advice on managing the restructuring of the Wellington office. I do not consider there is any basis to be critical of the process after the 24 October meeting.
- 6.21. This allegation does not reach the threshold for "inappropriate conduct" as set for this investigation. However, this initial meeting did cause distress for staff. This could have been minimised by a clear written communication from Ms Maxwell at the meeting and avoiding any comment that staff may want to consider other roles.

(c) Alleged inappropriate conduct by failing to support HR practices designed to address concerns over culture, turnover and Ms Maxwell's leadership style.

- 6.22. This matter has been addressed under Terms of Reference One, as part of the potential bullying concern raised by Ms Bockett. I have not found Ms Maxwell's conduct towards Ms Bockett was bullying of her. I now turn to consider if there was any other conduct in this regard, that meets the threshold for "inappropriate" conduct.
- 6.23. Ms Bockett describes that after she started at CFFC some employees came to her with concerns about Ms Maxwell's leadership style and the negative impact it was having on them. However, those employees consistently reported to her they did not wish to raise formal complaints.
- 6.24. She implemented exit interviews on starting with CFFC. They had not previously been conducted to her knowledge. After some months in the role, Ms Bockett found it unusual that she was conducting exit interviews so frequently in a relatively small organisation. She also observed a common theme emerging of concern over

Ms Maxwell's leadership style. Ms Bockett noted the lack of any process for escalating concerns, where those concerns related to Ms Maxwell. She was also hampered by the unwillingness of staff to raise any formal complaint.

6.25. Ms Bockett, states that as from April 2018 she considered Ms Maxwell blocked her attempts to address concerns over turnover and concerns about Ms Maxwell's leadership style. Ms Bockett reports that Ms Maxwell deflected the cause of turnover, away from her own behaviour. She also reports that Ms Maxwell distanced her once she raised these concerns about staff turnover and the exit interview feedback in early 2018.

6.26. Ms Bockett stated that some time after the LT meeting in March 2018, Ms Maxwell suggested to her that exit interviews were not worthwhile. CFFC has confirmed that it has not had a process for exit interviews since Ms Bockett's departure.

6.27. Ms Bockett noted the News Room Media Report dated 30 November 2018, "Retirement Commissioner Diane Maxwell denies culture of bullying claim" in which Ms Maxwell is interviewed and is reported as saying:

"Maxwell said that while she was given feedback from her human resources manager about concerns from former staff, she reflected on it with the manager and acknowledged that it was mixed with positive feedback, combined with a difficult period of restructuring and redundancies and at times disciplinary and performance issues.

As a result of the feedback Maxwell said she introduced a new operations role that ensured there was a senior and experienced full time HR resource available rather than part time."

6.28. Ms Bockett says that the new Operations Manager, appointed in October 2018 was not a senior experienced HR role. CFFC does not currently have any specialist internal HR Advisor resource, as the Manager, People & Culture role has remained vacant since October 2018.

Ms Maxwell's response

6.29. Ms Maxwell has acknowledged in her statement in this investigation that the current Operations Manager role, is not a specialist Human Resources Advisor.

However, Ms Maxwell denies she had any intention to side-line Ms Bockett. Ms Maxwell alleges that Ms Bockett acted unprofessionally in the way she raised the turnover concerns during the LT meeting in March 2018. Ms Maxwell also states that there was a legitimate need to engage a new Operations Manager role and that it made sense for Ms Bockett to report to this new role.

- 6.30. Ms Maxwell denies that she ever instructed Ms Bockett to stop exit interviews. She points to her email in April 2018, produced to the investigation which contains a suggestion to Ms Bockett to include additional questions in the exit interview template.
- 6.31. After April 2018, emails produced by Ms Maxwell do show that she looked to engage with Ms Bockett on the exit interview themes and ways in which to improve the culture and well-being of the CFFC staff. She also gave some consideration of a culture survey. However, the turnover and culture discussions were not noted in the CFFC LT minutes again after May 2018 through to December 2018.

Finding in relation to Ms Maxwell's failure to support HR initiatives designed to address concerns over conduct and turnover related to Ms Maxwell's leadership style.

- 6.32. Ms Bockett was invited to suggest agenda items for the LT meetings after April 2018, and to this extent her concerns about turnover could have continued to be raised by Ms Bockett. However, Ms Bockett had taken the view, after April 2018, that Ms Maxwell was extremely reluctant to accept her own leadership style may be a key cause of staff turnover, so the matter was not raised again.
- 6.33. I find that Ms Maxwell did fail to recognise and support the HR initiative by Ms Bockett which was aimed at addressing Ms Maxwell's own communication style. This was then combined with Ms Maxwell's decision to limit Ms Bockett's participation in the full LT meetings, when this was likely most needed. I accept that Ms Maxwell's reluctance to acknowledge her own part in the turnover issues will have impacted any material progress.
- 6.34. I am satisfied that this conduct had the effect of suppressing discussion of her leadership style, as being a serious concern causing staff turnover.

6.35. However, I am not satisfied that this conduct meets the threshold for inappropriate conduct, as set for the investigation. I cannot be certain that this was deliberate conduct by Ms Maxwell, as Ms Maxwell did take steps to continue to involve Ms Bockett. However, Ms Maxwell failed to confront the legitimate concerns that were being raised by an experienced HR practitioner.

(d) Alleged inappropriate drinking culture at CFFC

6.36. There were several staff who raised their concern that CFFC had a practice of paying for regular Friday night drinks for Auckland CFFC staff. They stated this was unusual for a state sector organisation and they considered it was inappropriate.

6.37. Based on the interview statements and Ms Maxwell's response there is common ground as to how the weekly Friday night drinks occur. The drinks commence at around 3pm- 3.30pm and staff are encouraged to attend in the open plan space at the CFFC offices. Food, wine and beer are offered to staff. The staff generally attend until 5pm and at times some members of staff stay later. Ms Maxwell attended but usually only for a few drinks before she left, generally before others.

6.38. The LT team did not have any formal roster to ensure that the drinks were concluded and that staff were not left unattended with alcohol. However, no one interviewed reported any serious staff misconduct incident that arose out of Friday night drinks. There was no formal complaint made by CFFC about behaviour at Friday night drinks prior to this investigation.

6.39. Ms Maxwell states that she considered this an appropriate discretionary spend by her as the Retirement Commissioner. In her view, it is designed to build collegiality within the team. The cost was in the region of \$400 - \$500 per month, which put the yearly spend at about \$5,000 per year. Ms Maxwell produced evidence that she had monitored the spend and that it was within this budget in October 2018.

6.40. Ms Maxwell states that at times MBIE members of staff were hosted at the drinks and that the spending was transparent through the NZ Audit processes. The Sensitive Expenditure Policy for CFFC dated February 2018, provides that any expenditure on food and beverage (including alcohol where appropriate) is permitted provided that it has a justifiable business purpose, principally involves employees and may involve external guests hosted by CFFC.

6.41. The policy also provides *“A limited amount of alcohol may be provided by CFFC for employee social events. A reasonable ration of alcohol to food when entertaining external stakeholders/guests in an official capacity is acceptable”*.

6.42. The alcohol expenditure by Ms Maxwell appears to sit within the discretion given to her under the Sensitive Expenditure Policy. I do not find anything inappropriate about this expenditure, although the evidence of controls on the limit and supervision of alcohol at Friday night drinks should be improved by CFFC.

(e) Alleged breaches the confidentiality

6.43. There are three alleged breaches of confidentiality by Ms Maxwell.

Employee 3

6.44. It was reported by both Employee 3 and Employee 14, that in or about December 2017 or January 2018, Employee 3 was involved in a one on one meeting with Ms Maxwell. Employee 3 left the meeting upset and in tears and this was noticed by Employee 14.

6.45. Immediately after the meeting Ms Maxwell spoke to Employee 14 and he reported Ms Maxwell told him that Employee 3 was upset because of a personal relationship issue. Employee 3 had not consented to this information being disclosed and was later upset that it had been disclosed by Ms Maxwell.

6.46. Ms Maxwell accepts that she did make the disclosure to Employee 14. She admits it was a mistake, but she says she was worried that Employee 3 was not telling anyone and she thought her level of distress was such that she needed to tell someone.

6.47. I find that Ms Maxwell did breach Employee 3’s privacy by disclosing her confidential personal information to another member of staff, without her consent.

Employee 1

- 6.48. Employee 1 states that on 15 May 2017, Ms Maxwell disclosed to her the fact that another member of the LT had had their salary substantially reduced, as a result of changes to their portfolio. Employee 1 recalls being shocked at this disclosure as she felt it was unnecessary and not appropriate.
- 6.49. Ms Maxwell admits that she did discuss the reduction in salary as alleged but that she did so because she was directly asked whether the salary had reduced. Ms Maxwell notes that the CFFC LT team salaries are reported publicly by gender and in \$10,000 bands, and that it was a question of equity for the LT team to be aware of. Ms Maxwell did not readily accept it was inappropriate, but noted it as a reflection for her.
- 6.50. I find that it was inappropriate to have disclosed details of the reduction in an LT member's salary details, even if asked to do so. I find it unlikely that Employee 1 directly asked for this information to be disclosed, given the shock she reported feeling at the time, which I accept was genuine.

Employee 18

- 6.51. The third allegation, relates to whether Ms Maxwell required Employee 18 to disclose a drink driving conviction to the CFFC staff in January 2018. This incident was reported by two staff who said they were asked to attend a whole of staff meeting called by Ms Maxwell to hear the disclosure from Employee 18.
- 6.52. Ms Maxwell accepts that this event occurred and that she encouraged Employee 18 to share his conviction with colleagues, as she considered it was better for his reputation that he did so. Ms Maxwell produced her email dated 24 January 2018, to Employee 18 regarding their discussion. Her email states "*...can you please have a think about how you want to tell your colleagues? I think it is important that you talk about it in a way you did with me yesterday – which was very open, honest and authentic.*"
- 6.53. Employee 18 was interviewed on this matter. He reported that he was not pressured or required to make the disclosure to other staff by Ms Maxwell, as he

determined this was the best way for him to deal with it. I therefore find that Ms Maxwell did not act inappropriately.

6.54. In summary, the alleged breaches of confidentiality related by Employee 3 and Employee 1 have been upheld.

7. CONCLUSIONS AND RECOMMENDATIONS

Terms of Reference One and Two: Bullying Allegations

- 7.1. This investigation has concluded that Ms Diane Maxwell has not bullied current or former staff of the Retirement Commissioner.
- 7.2. The investigation has also concluded that Ms Maxwell has not breached her obligations under s118(2)(a) of the Crown Entities Act 2004, to ensure “good and safe work conditions” so far as they relate to providing conditions free from workplace bullying.

Terms of Reference Three: Policies

- 7.3. The investigation has concluded that Retirement Commissioner and CFFC have generally had adequate systems and policies in place to support the management of staff concerns and complaints, including to resolve complaints of inappropriate behaviour. However:
- (a) There is no clear written procedure for CFFC staff to raise concerns regarding the Retirement Commissioner externally of the Retirement Commissioner;
 - (b) Prior to this investigation, no current staff member raised any formal written complaint of bullying or inappropriate behaviour by the Retirement Commissioner for investigation, so the systems and policies in place have not been tested to determine if they are adequate for employees; and
 - (c) A review of the CFFC policies during this investigation, has highlighted the need for enhancement of the Bullying Harassment and Discrimination Policy, the policy on Protected Disclosures and the Sensitive Expenditure policy (as it relates to alcohol expenditure) and to provide on-going training to staff on these policies.

Terms of Reference Four and Five: Any other allegations or matters

- 7.4. The investigation has concluded that there were two occasions of inappropriate conduct by Ms Maxwell in 2018, when she breached the confidentiality and privacy of CFFC employees:
- (a) in disclosing an employee's sensitive personal matter to another employee without the employee's consent; and
 - (b) in disclosing a change in salary for a member of the CFFC leadership team to another member of the CFFC leadership team, without the employee's consent.
- 7.5. The investigation has concluded that there has not been any other inappropriate behaviour by Ms Maxwell, that amounts to a breach of any legal duty.
- 7.6. However, the investigation has found that Ms Maxwell has had five staff resign from CFFC in the 12 months preceding this investigation.⁸ Each of these five staff report that a material cause of their resignation was the impact on them of Ms Maxwell's conduct in the workplace. This has occurred, where the performance of these staff was not the subject of any formal non-performance or disciplinary process at the date of resignation. In total, there have been some nine departures from CFFC in the last two years, 2017 and 2018, that I consider have reported material concerns with Ms Maxwell's conduct.
- 7.7. The majority of the staff interviewed confirmed that Ms Maxwell has some strong leadership qualities and that they respected her progressive thinking, creativity and passion for the role. However, overall these positive attributes were reported by the majority of interviewees, as not being sufficient to counteract the negative impact of Ms Maxwell's communication style on some employees.



Maria Dew QC, 8 April 2019

⁸ The period from October 2017 to October 2018, involved resignations from five CFFC staff; Employee 1, Employee 3, Employee 4, the Manager, People & Culture and Employee 8, who each reported Ms Maxwell's conduct as being a key cause for their resignation.

Appendix A - Terms of Reference

[to be attached]

Appendix B - Investigation Process

1. The investigation was open to any current and former staff of the Retirement Commissioner who wished to come forward with information. It was also open to contractors or others who have worked with CFFC, if they had relevant information to assist the investigation.
2. An Information Sheet for Interviewees was provided to CFFC staff and published to the State Services Commission website on 20 December 2018. Interviewees were entitled to have a legal representative or any other support person with them. Any other party present at the interview, was subject to the same confidentiality obligations as the interviewee, which were set out in the Information Sheet.
3. Participation in the investigation was voluntary in the first instance. However, I reserved the right to exercise my powers to compel people under 10(1)(c) of the State Sector Act 1988, if I considered it was necessary to do so to ensure a fair process in the investigation.
4. In the course of the investigation, there were only two people that I requested come forward to an interview; Employees 19 and 20. This was, because having interviewed others, it became apparent that it was necessary to interview both of these people to ensure a fair and thorough investigation.
5. In the early part of the investigation, several current staff at CFFC approached the investigation by email to request that I consider making the interview process an “opt out” process rather than “opt in”, and that I interview every person who is a current or former staff member of CFFC in the period of Ms Maxwell’s tenure. The rationale given was that staff would find it easier to come forward if people were required to do so, and that this would ensure that I interviewed everyone who might have relevant information.
6. While I gave serious consideration to this request, it would have been a significant undertaking to attempt to contact all former CFFC staff and contractors since 2014 and interview each one including all current staff and contractors. I declined to adopt this approach, preferring to keep participation on a voluntary basis and to ensure that the investigation did not become unduly delayed given the timeframes

provided for the investigation. I was also satisfied that sufficient people were coming forward on a voluntary basis.

7. The investigation involved 24 interviewees, including a range of current and former CFFC employees, who provided witness statements.
8. CFFC staff were invited to come forward to be interviewed as from 20 December 2018 until 30 January 2019. These interviews took place in mid to late January 2019. The interviewees provided written statements taken during the interview. The typed written statement was not verbatim, but recorded in all material respects what the interviewee had to say. The interview statement attached any documents produced by the interviewee. This statement was then signed by the interviewee, and then produced to Ms Maxwell in its entirety.
9. Each interviewee was asked if there was anyone else that they thought that I should interview, as a cross-check to ensure that I was interviewing the majority of parties with relevant information. The responses confirmed that the majority of key parties have been interviewed. However, there were approximately three former employees who were mentioned in interviews who did not come forward. I am satisfied that I have heard from a range of parties and that it was not necessary to compel parties to come forward.
10. There was one additional former CFFC staff member who was interviewed but they withdrew from the process and declined to confirm their interview statement. This interview has been disregarded in the investigation.
11. Ms Maxwell was provided with the signed interview statements prior to her interview. She was also provided with a written summary of all of the key allegations.
12. Ms Maxwell was interviewed over two days, in mid-February 2019, with her counsel present. During the course of the interview a written interview statement was taken. Ms Maxwell was provided with her interview statement following the interview and was given two days to review it and sign it once finalised. Ms Maxwell also provided me with her initial written response and CFFC documents to support her response. Ms Maxwell also provided further written responses and submissions provided by her counsel, Ms Mai Chen, ChenPalmer Partners.

13. Following receipt of Ms Maxwell's statement, I conducted second interviews with some participants. I also conducted a first interview with Employee 19 at Ms Maxwell's request. These further interview statements were also provided to Ms Maxwell.
14. At the conclusion of the interviews when drafting of this report had commenced, one further witness, employed with CFFC in 2014, came forward and offered to be interviewed. The interviewee was advised that as it was late in the investigation process, the offer could only be considered if the person had critical new information for the investigation. The interviewee responded and acknowledged that on this basis, an interview was not necessary.
15. The draft report was provided to Ms Maxwell for comment on 19 March 2019. This feedback has been taken into account in the final report. The State Services Commission was also provided with a draft of the report for comment. Some key participants were provided with the opportunity for feedback on portions of the report that related to their employment.

Confidentiality of the process

16. The confidentiality of the investigation process has been important for participants and Ms Maxwell. At the outset, the investigation put in place interim suppression orders pursuant to section 15(2) of the Inquiries Act 2013 to protect the confidentiality of the process by Minute dated 20 December 2018. **(Appendix C)**
17. In addition, other steps taken to ensure the confidentiality of the process included:
 - (a) The solicitors assisting the investigation managed a confidential email address for participants to liaise with the inquiry.
 - (b) All interviews were conducted away from CFFC, at locations in Auckland and Wellington and via telephone. The interviews were not audio recorded.
 - (c) All participants proceeded on the basis that they would not disclose the contents of their interview or interview statement to any other person, other than their support person or representative who was obliged to maintain the same confidentiality obligations.

Appendix C – Minute No 1 dated 20 December 2018

Appendix D – Minute No 2 dated 8th April 2019

