



TRANSCRIPT OF PROCEEDINGS

THE HON RONALD SACKVILLE AO QC, Chair
MS BARBARA BENNETT PSM, Commissioner
MR ALASTAIR McEWIN AM, Commissioner

**THE ROYAL COMMISSION INTO VIOLENCE, ABUSE, NEGLECT AND
EXPLOITATION OF PEOPLE WITH DISABILITY**

PUBLIC HEARING 23

THURSDAY, 19 MAY 2022 AT 10.07 AM (AEST)

DAY 4

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Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

Thursday, 19 May 2022

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RESUMED 10.07 AM

10 CHAIR: Yes, good morning, everybody, and welcome to this, the fourth day of the 23rd Public hearing of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. We commence with the Acknowledgement of Country. We wish to acknowledge the Gadigal People of the Eora Nation, the traditional custodians of the land upon which this hearing is taking place, and on which my colleagues and I are participating in this hearing, and we wish to pay our respects to their Elders, past, present and emerging.

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We also pay our respects to all First Nations people who may be present in the hearing room or who are following the proceedings on the live stream. Mr Adamson, thank you for returning today. Yes, Ms Gleeson.

20 <**WITNESS WAYNE ADAMSON, ON FORMER OATH**

<**EXAMINATION BY MS GLEESON, CONTINUING**

MS GLEESON: Good morning, Mr Adamson.

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MR ADAMSON: Good morning.

30 MS GLEESON: Could the witness be shown first of all document in hearing bundle E, tab 130. Mr Adamson, this is the report by Worksite Investigations dated 7 September 2020, and you can see on the front page it says there were instructions to conduct an investigation in response to a notification from NDIS Quality and Safeguards Commission of 27 May 2020. This was the report that was requested - required under section 26 by the NDIS that we discussed yesterday?

35 MR ADAMSON: Yes.

MS GLEESON: And did you assist in the preparation of this report?

40 MR ADAMSON: I was interviewed by Mr Wise, yes.

MS GLEESON: Thank you. To your understanding, the function of this report was to explore the processes and procedures in place at the Mount Druitt site to determine whether or not anything could have been done to prevent the offences that occurred?

45 MR ADAMSON: That's my understanding.

MS GLEESON: Can I ask you to go to page 5 which is 0285. You can see toward the end of the page there, there's a heading Training Process.

50 MR ADAMSON: Yes.

MS GLEESON: That was one of the matters that was being explored in this report. Was it a matter that you discussed with Mr Wise?

5 MR ADAMSON: Yes, we discussed this training.

MS GLEESON: Now, you gave evidence yesterday in response to a question from the Chair about the training that was provided to you when you commenced at around the time that Mr Nuumaalii commenced employment with Afford and you said:

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"I had one day visiting the site, that was it, and then I did the online training modules before I started."

MR ADAMSON: That's correct.

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MS GLEESON: Then you went on to explain that you otherwise educated yourself about the statutory requirements for disability servicing providers and there was no training on reportable incidents when you started employment?

20 MR ADAMSON: That's correct.

MS GLEESON: Now, this report commences by saying that Afford has a documented procedure in relation to staff training. Can you see that in the first paragraph -

25 MR ADAMSON: Yes, I see.

MS GLEESON: The second-last paragraph and then goes on to say that this procedure is version 1 and was approved for implementation on 21 January 2020, being six months after Mr Nuumaalii's employment. So that this - the procedure that he's referring to is not something that was in place at the time you were employed or Mr Nuumaalii was employed.

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MR ADAMSON: That's my understanding, yes.

35 MS GLEESON: He then goes on to say:

"That's not to say there was no form of training procedure, but it appears that the recording of training was not systematised prior to 21 January 2020."

40 You see that?

MR ADAMSON: Yes.

MS GLEESON: Is that consistent with your understanding?

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MR ADAMSON: Yes. Yes, so from my - yes.

MS GLEESON: Alright. It then goes on to talk about the baseline training employees must undertake, and I just want to ask you a couple of questions about the training that is

described in this report and how some of it works. First of all, if I can ask you to go over to page 6, 0286. It firstly talks about - and this is in the third paragraph on that page, that:

5 "There is an HR computer system and each employee is required to access Afford's Code of Conduct."

And there's a record of that and a screenshot has been provided to confirm that Mr Nuumaalii completed the code of conduct training. You see that?

10 MR ADAMSON: Yes.

MS GLEESON: Did you undertake that code of conduct training?

MR ADAMSON: It was done through the online modules when I first started.

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MS GLEESON: Can you tell us very briefly what that involved.

MR ADAMSON: It was just around - there was rights, responsibilities, speaking up, just -

20 MS GLEESON: Did it, for example -

MR ADAMSON: It was all through the online system, yeah.

25 MS GLEESON: Did it, for example, give any outline of the rights of persons with disability?

MR ADAMSON: It did, from my memory, yes. It was three years ago since I done it.

30 MS GLEESON: When you say it was three years ago am I to take from that that there hasn't been any refresher on code of conduct training since that time?

MR ADAMSON: There has just been circulated emails once the policy has been updated.

35 MS GLEESON: Do you read those emails and refresh yourself on what's in code -

MR ADAMSON: When they come through, yes, and they get discussed in team meetings.

40 MS GLEESON: Then it goes on in the next paragraph to talk about an external company called ELMO to enable employees to complete online training. Before I ask you some questions, I'll just take you down two paragraphs. It says there that:

45 "The training module contains an assessment component but the assessment components completed by Daniel Nuumaalii were not able to be viewed because Afford just gets a notification that the training was completed successfully."

Do you see that?

MR ADAMSON: Yes.

MS GLEESON: At the time that you were District Manager were you aware what the training modules comprised for Lifestyle Assistants who commenced employment with Afford?

5 MR ADAMSON: No.

MS GLEESON: You didn't have any oversight -

MR ADAMSON: No.

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MS GLEESON: - over what was actually in that training module.

MR ADAMSON: That's correct.

15 MS GLEESON: Is that because HR was in command of that process?

MR ADAMSON: That's correct.

MS GLEESON: And then over the page - this is on page 7 - there's then a heading 'NDIS Training'.

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MR ADAMSON: Yes.

MS GLEESON: It notes that:

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"Each Lifestyle Assistant is required to complete an orientation which incorporates NDIS-specific modules, including disability awareness, abuse and neglect, keeping clients safe, along with acceptable behaviour."

30 MR ADAMSON: Yep, I see that.

MS GLEESON: And then it goes on, three paragraphs down:

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"Annexed is a copy of Daniel Nuumaalii's certificate of completion of the NDIS worker orientation module, Quality Safety and You."

Which he completed on 13 June 2019.

MR ADAMSON: Yes, I see that.

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MS GLEESON: Do you remember completing the same online module?

MR ADAMSON: From memory, no.

45 MS GLEESON: I take it sitting here you can't tell us anything about what's contained in that online module?

MR ADAMSON: It's been three years. I can't remember.

MS GLEESON: I note that you said it's been three years since you did the training. Was it your understanding that the Lifestyle Assistants and Team Leaders and Senior Lifestyle Assistants that were employed at Afford had to undertake this training also?

5 MR ADAMSON: For the Lifestyle Assistants, yes.

MS GLEESON: Did you think it would be appropriate to keep yourself informed as to whether or not this particular model offered by the NDIS was appropriate and covered all of the things that you considered that Lifestyle Assistants and Senior Lifestyle Assistants and Team Leaders needed to know about the subjects of disability awareness, abuse and neglect and keeping clients safe?

10 MR ADAMSON: All our training and all the training records were kept by HR and done by HR - the training officers, so they were the ones who were ultimately responsible for ensuring everyone was completing them.

MS GLEESON: In the next paragraph, it refers to interviews with 11 Lifestyle Assistants from Mount Druitt, each of which confirmed that they were notified of the training they had to complete and were advised it was a mix of face-to-face and online training. Is the face-to-face and online training component they identify consistent with the training that you received?

MR ADAMSON: The training I done was - so the one day was face-to-face, that was a handover.

25 MS GLEESON: Yes.

MR ADAMSON: And then the other one was online, so it was not - it was just online modules, not online training.

30 MS GLEESON: Do you know what the face-to-face module involves when a Lifestyle Assistant is employed at a day centre at about this time?

MR ADAMSON: It just depends on what training they're doing. There's a whole suite of training packages available so it could be medication, could be first aid, could be various types of training module that they're attending.

MS GLEESON: Again, you're not intimately familiar with it because that is something that HR is -

40 MR ADAMSON: It's all controlled external from myself, yes.

MS GLEESON: The next topic that's addressed in this report is buddy shifts. It says Afford introduced the buddy shift check list on 11 June 2019, which was the day Mr Nuumaalii commenced his employment. And the check list, it says about five lines down in the paragraph, was:

50 "Developed to instigate a formal system whereby it can be recorded that staff were being inducted to the site correctly."

And then he says:

"It's understood that there were teething problems with having Team Leaders complete the buddy shift check lists."

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Now, accepting that this was about the time that you commenced, are you able to tell us what was contained in the buddy shift check list that was completed after a buddy shift had been undertaken?

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MR ADAMSON: It was just an assessment on the new employee, just a list of tasks that they set out to do to help them understand who their clients are, you know, what we do, where they can find things like the ER red alert, contact details, so it's just - it's basically like a sheet for the person that was training them to go over with that new staff so they were aware of their roles and responsibilities as they were learning, since joining Afford.

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MS GLEESON: And that was a mechanism, then, whereby it could be determined whether there were any problems, at least at the outset, or any red flags that needed to be escalated to Team Leaders and District Managers so that any new employee could be further assessed, is that -

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MR ADAMSON: Yes, that's right, and just to make them feel comfortable but also have a person they can leverage, given that the person who is doing the buddy shift training with them generally was the Senior Lifestyle Assistant, so that way they're starting to build that relationship to speak up and seek assistance when they need it.

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MS GLEESON: The next paragraph says that a search reveals that while Mr Nuumaalii worked at three different sites for Afford, there was only one completed buddy shift checklist for him, and that was at Kings Park on 18 June. Was it of concern to you that there was no buddy shift check list completed for his - his commencement at Mount

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Druitt?
MR ADAMSON: No. So he worked at a few other sites prior to Mount Druitt becoming his primary site, and the - the buddy shifts that were completed at Kings Park were the same as what they would have been at Mount Druitt.

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MS GLEESON: Except, of course, that Kings Park and -

MR ADAMSON: It was different locations.

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MS GLEESON: - and Mount Druitt are two different centres.

MR ADAMSON: Yes.

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MS GLEESON: Do you know whether he did a buddy shift when he started at Mount Druitt?

MR ADAMSON: To my knowledge, I'm not sure, no.

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MS GLEESON: Was that something you thought it would be important to inquire into after finding out about the offences that Mr Nuumaalii committed?

MR ADAMSON: Afterwards, we looked for it but we could not find anything.

5 MS GLEESON: Did you make any inquiries of the Team Leader and other employees at the Mount Drutt site as to whether he did undertake a buddy shift?

10 MR ADAMSON: So at the time of the incident with Daniel Nuumaalii, the Team Leader that was there at the time was terminated so we were unable to get any information from her as to what she had put in place.

MS GLEESON: What was the time period between when - before or after between when you discovered Mr Nuumaalii's crimes and when this Team Leader was dismissed?

15 MR ADAMSON: She was dismissed three to four weeks before we actually found out, so it was just before the police notified us.

MS GLEESON: Was any attempt made to contact her in relation to Mr Nuumaalii and any information she could give about his employment?

20 MR ADAMSON: I'm not sure. A lot of that was just left with HR.

MS GLEESON: All right. And there's reference there in the - if you turn to page 8 -

25 CHAIR: Sorry, just before we get there, you've said that the Team Leader was dismissed several weeks before Afford learned of Mr Nuumaalii's conduct; is that right?

MR ADAMSON: That's correct.

30 CHAIR: Did it occur to anybody to inquire whether the reasons for the dismissal of the Team Leader might have had something to do with the circumstances that led to Mr Nuumaalii's abuse?

35 MR ADAMSON: No. She was on performance management for a range of different performance-related matters.

40 CHAIR: Precisely. If someone's in - under consideration for performance in their duties and that someone is responsible for Mr Nuumaalii, wouldn't you want to know whether there's some connection between her deficiencies, if it was a her, and what actually happened? At least before coming to the conclusion that there was nothing we could do to prevent it?

MR ADAMSON: The way it worked is everything was controlled by HR so -

45 CHAIR: Right, so HR is responsible.

MR ADAMSON: We have no -

50 CHAIR: HR is responsible for all training, HR is responsible for discipline, HR is responsible for determining whether people are doing their job.

MR ADAMSON: Yes.

CHAIR: What are you responsible for?

5 MR ADAMSON: I am responsible - I worked with them to do their job, but, ultimately, the way it was working in the organisation at that time is anything, when it came to performance, had to be all run by HR.

CHAIR: But you would have to have an interest in whether people --

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MR ADAMSON: Yeah, we had an interest. We provided input.

CHAIR: And did you?

15 MR ADAMSON: Yes.

CHAIR: And what view did you form about the connection, if any, about this person who has responsibilities as Team Leader and the circumstances that gave rise to the abuse?

20 MR ADAMSON: There was different circumstances leading up to her dismissal.

CHAIR: Sorry.

MR ADAMSON: There was different circumstances that led to her being dismissed.

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CHAIR: Were they? What were they?

MR ADAMSON: A lot of it was around her communication with families, not reporting on, you know, the accurate claiming, not doing various mandatory requirements such as holding regular team meetings, actively checking to ensure the overall compliance side of things was done which formed part of the PACES audit.

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CHAIR: They sound like pretty comprehensive failures to perform duties, do they not?

35 MR ADAMSON: Yes.

CHAIR: And when you've got someone who's comprehensively failing to perform their duties, you'd want to know what consequences follow, wouldn't you?

40 MR ADAMSON: Yes, in hindsight, yes.

CHAIR: I'm just trying to understand how either Mr Wise or anybody at Afford could come to the conclusion that there was nothing, in effect, that we could have done to stop this. It just seems that the relevant questions or many of the relevant questions weren't asked, for whatever reason. What do you say about that?

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MR ADAMSON: You're right.

CHAIR: Thank you.

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MS GLEESON: I'll just note in passing on page 8, the second-last paragraph from Mr Wise's perspective, he concluded that:

5 "Afford had in place a process that allowed there to be verification that employer training had been completed."

Can I move on, then, to the next heading which is the 'Injury Incident Reporting Process'. Mr Wise notes that during the recruitment process, prospective employees are asked to complete a sample incident report form, and there's evidence of Mr Nuumaalii having completed that exercise successfully. Do you see that?
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MR ADAMSON: Yeah.

MS GLEESON: And then over the page, there's reference to a policy and procedure for abuse and neglect and, two paragraphs down, that policy having been discussed with new employees during their orientation programs and being supplemented by a video entitled 'Abuse and Neglect' which gives a more digestible explanation of what is required by employees.
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20 MR ADAMSON: Yes, yes.

MS GLEESON: Are you familiar with the video 'Abuse and Neglect'.

MR ADAMSON: Yeah, that's one of the ELMO modules, the online modules.
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MS GLEESON: Did you undertake that module?

MR ADAMSON: I did.

30 MS GLEESON: Do you agree that it's a digestible explanation of what's required by employees?

MR ADAMSON: Yes. Yes, it was.

35 MS GLEESON: Can I ask whether, in addition to the many videos and training modules that were provided by external suppliers that we've seen referred to in this report, was any training provided for Lifestyle Assistants when they commenced employment on the individual support needs of Afford clients at the centres that they were to work at?

40 MR ADAMSON: No. So there would be - the only real discussions would be in team meetings if there were changes or anything like that. It would be discussed to the whole team as well as their support needs available in the client profile folders on site.

MS GLEESON: But if a Lifestyle Assistant commenced and very shortly after their commencement was going to be assigned to clients at the centre, no effort was made to familiarise them with the individual needs of the clients that they were going to be attending to?
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MR ADAMSON: No. That's correct.
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MS GLEESON: And I take it, it was left to them to inform themselves from the client material that was stored on CIMS and in the paper files relating to --

MR ADAMSON: They will generally have support from their Senior as well.

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MS GLEESON: The Senior being one of the Senior Lifestyle Assistants.

MR ADAMSON: Senior Lifestyle Assistants, correct.

10 MS GLEESON: Can I ask you, then, to turn to page 10. No, it - yes, no, it is page 2, 0290, but there should be text on it.

MR ADAMSON: I have a blank page.

15 MS GLEESON: I might need to just show you a paper version, I apologise.

CHAIR: We're talking page 10 of the Wise report?

MS GLEESON: Yes. It's simply not coming up on the screen, Chair. I might need, while that's being attended to, to move on to something else and come back. Thank you. We'll move on while we're just dealing with that technical problem. While we're doing that, could the witness now be shown the document behind Hearing Bundle D, tab 128. You can see that this is a final report for a reportable incident, and it was submitted on 25 September 2020. Can you see that?

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MR ADAMSON: I can.

MS GLEESON: And it says it was approved by you?

30 MR ADAMSON: Yes.

MS GLEESON: Is this a report that you prepared?

MR ADAMSON: It was prepared by our HR executive at the time.

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MS GLEESON: And then you signed off on it; is that -

MR ADAMSON: I uploaded it to the portal, the client --

40 MS GLEESON: Did you have any input into its preparation?

MR ADAMSON: Just with the knowledge and information that I had from meetings with police and the like.

45 MS GLEESON: So you had some input into the content?

MR ADAMSON: Just the discussions we had with her, yes.

MS GLEESON: Can I ask in relation to some of the matters in this report - which I'll come to in a moment, but we've already seen the incidents reports that go in and they ask -

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MR ADAMSON: Yes.

5 MS GLEESON: - direct questions about how it is the affected person, how it is that they're being responded to and the investigations that are being undertaken. Was it the case that, to the extent that there were any investigations being undertaken into the outcome of Mr Nuumaalii's offences, that they were - that was being run by HR?

10 MR ADAMSON: Yes.

MS GLEESON: Right. Can I ask you to go to page 5188. If you can go down to the third heading which is Involvement of Impacted Persons in Assessment. It says:

15 "We have been working with the families to get input on the clients' views due to the clients being nonverbal."

MR ADAMSON: Yes.

20 MS GLEESON: Now, you've just said that this was a report that was completed by HR. Were HR working with the families? Were you working with the families? Who was working with the families?

25 MR ADAMSON: So working with the families was myself and the Team Leader. Primarily the Team Leader who, at the time, knew the clients a lot more better than what I did, given the large number of clients that I looked after.

30 MS GLEESON: It's just interesting because, as you may recall from the evidence that was given by the family members of the affected people that came to us, that Suzie, for example, said that she received no contact at all from Afford beyond an initial call from a female employee to tell her to go to the police station and then a call from Steven Herald. Do you remember that?

MR ADAMSON: Yeah, that's right. I remember them both calling Suzie.

35 MS GLEESON: And Sally said that she only received one call from Mr Herald notifying them of what had occurred and then offering counselling. Do you remember that?

MR ADAMSON: I remember her saying that, yes.

40 MS GLEESON: And Lilly, whose son was not identified as being a subject of the offences, said she was not contacted at all about what had happened with Mr Nuumaalii, and when she contacted the centre to find out what was going on, obviously concerned about whether Simon was a person who had been affected by this conduct, she was told that due to privacy and confidentiality considerations, the staff couldn't discuss it.

45 MR ADAMSON: That's correct. We couldn't disclose who - she wanted to know who was actually involved. They wanted to form a group so that - like a comfort group.

50 MS GLEESON: Right. But part of her inquiry, her evidence was, was she wanted to find out what was happening - what had happened with Simon.

MR ADAMSON: There was no request, to my knowledge, from her about this.

5 MS GLEESON: She said in her evidence that the uncertainty she had about whether anything had happened to Simon was devastating to her. That was the evidence she gave. You can understand, don't you, that the family members of clients at the centre, both the clients who knew that their sons were affected and the other clients who did not know whether or not Mr Nuumaalii had had any contact with their family members, deserved to know that Afford had considered what had happened to all of the clients and had
10 considered the risks to their family members and that they could get an assurance that their family members were going to be safe at the Mount Druitt centre. Do you agree with that?

MR ADAMSON: I agree, but I was just following instructions given to me from above.

15 MS GLEESON: And who was giving you instructions?

MR ADAMSON: They were coming from my direct line manager and the CEO.

20 MS GLEESON: Sally also says that she received no assistance or support from Afford during Mr Nuumaalii's trial, and Suzie said that she only received support from a Team Leader when she attended the sentencing. Do you know whether Afford offered any support to the family members of the affected clients of Afford while the legal process was going - was taking place?

25 MR ADAMSON: To my knowledge, that was all being looked after by the CEO. He was the one who was making the contact with the family, but in terms of Sally and Nicola, myself and the Team Leader met with her and representatives from Gilgai on a number of occasions.

30 MS GLEESON: Sally and Suzie also said they didn't receive a formal apology from Afford. Do you remember that?

MR ADAMSON: I have no recollection if the CEO gave one.

35 MS GLEESON: And, importantly, they said that Jason and Toby never received an apology from Afford in a way that they could understand. Do you remember that?

MR ADAMSON: Yeah, to my knowledge, no.

40 MS GLEESON: And neither Jason nor Toby received an offer of compensation or an offer of a refund of fees. Do you remember that?

MR ADAMSON: That was all above me.

45 MS GLEESON: Sally gave this evidence. She said:

"I just want to tell you how I felt. I felt the day that he was arrested that Afford's gone, 'I wash my hands of him. He's been arrested, that's it. We don't need to deal with anything else'."

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Do you remember her giving that evidence?

MR ADAMSON: I do.

5 MS GLEESON: Sally says that following the assault, she repeatedly called to make an appointment and her calls were not returned and she ended up having to call the CEO to go down to the Mount DrUITt centre and have a meeting.

MR ADAMSON: Yes, I remember her saying that.

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MS GLEESON: Now, I just want to ask you some questions. You heard the evidence as it was given. I've just reminded you of what it was. You were the District Manager who was responsible for the centre that employed the man who undertook this abuse.

15 MR ADAMSON: Correct.

MS GLEESON: And he undertook the abuse while he was discharging his duties as an employee at that centre?

20 MR ADAMSON: Yes.

MS GLEESON: Do you feel any personal responsibility for what happened to each of the men who suffered this abuse?

25 MR ADAMSON: No, everything was done in place. I mean, I couldn't predict that it was going to happen.

MS GLEESON: Do you think it's appropriate that the men who were affected by this abuse and their family members be given an apology for what happened and the way that it was managed by Afford?

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MR ADAMSON: It could be. I mean, the CEO and all that have gone now. It would be after the fact. You know, if it didn't happen, it should have happened at the time.

35 MS GLEESON: Do you think it is appropriate for Afford now, knowing because it's being explored by this Commission, to give an apology to the men who were affected by Mr Nuumaalii's abuse and their families for not only the fact that it occurred and was done by one of their employees but also for the way it was managed after the abuse was discovered. Do you think it's appropriate for an apology to be given?

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MR ADAMSON: Yes. Some sort of apology should be given.

MS GLEESON: Thank you.

45 CHAIR: For what exactly?

MR ADAMSON: Just for the - you know, the whole incident. You know, obviously - you know, what happened - happened to - to those clients is, you know, is horrific, you know, goes against everything, you know, that we all stand for and just to, you know - you can't change, you know, what happened, but just to, you know, acknowledge and, you know,

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just offer that, yeah, you know, sincerest apology. You know, it should have been done at the time. I don't know if the CEO done it at the time to the families. I wasn't a part of those conversations.

5 CHAIR: I think you've accepted in questions I asked earlier that Afford didn't ask a number of relevant questions that would have been of assistance to determine whether Afford bore any responsibility for what had happened. If you accept that, isn't that a proper subject matter for apology as well?

10 MR ADAMSON: Yes.

CHAIR: By the way, you said, I think, that you met with Sally and representatives of Gilgai on a number of occasions?

15 MR ADAMSON: Yes.

CHAIR: Was that after the incident?

MR ADAMSON: That was after the incident.

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CHAIR: Do you have a record of those meetings?

MR ADAMSON: It was - we arranged the meeting by text message but my phone changed, but we had plenty of conversations.

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CHAIR: Sorry, were these meetings in person?

MR ADAMSON: They were in person at the Mount Druitt centre, yes.

30 CHAIR: But you haven't got a record of what transpired at those meetings.

MR ADAMSON: No, it was just a general conversation just to hear Sally and Nicola, just to hear - you know, hear their words, provide them with, you know, some comfort, see how Jason was and, you know, what supports we could put in place in terms of the continuation of his support and offering up other known Lifestyle Assistants that they were comfortable with, because the services that he was having were still in the home, so just, you know, providing them with some, you know, some known workers that they felt comfortable with. And they - they recommended some workers that they felt that, you know, they were comfortable in having coming into their home and caring for Jason at the time.

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CHAIR: Is it not standard practice to make some notes about meetings of that kind?

MR ADAMSON: Yeah, it - normally, it would be, yeah. In that time it was, yeah, just an oversight. That's something we didn't do. It was more just listening with them and just -

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CHAIR: But it was an oversight that occurred on each occasion you met with them.

MR ADAMSON: Yeah, on the two occasions. Yeah, it was just more about listening to them and just, you know, working with them.

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CHAIR: Yes. Thank you.

5 MS GLEESON: Just staying on the page that we are on, the second thing that is said under 'Involvement of Impacted Persons in Assessment', you say:

"We've implemented known workers for each client or will have buddy shifts carried out if the families approve the new workers to work with the client."

10 You see that?

MR ADAMSON: Yes.

15 MS GLEESON: And you also speak about a change in location so that there's now a more open day plan program, giving visibility to the site.

MR ADAMSON: Yes.

20 MS GLEESON: The second matter is not necessarily of direct relevance to Mr Nuumaalii's offences, because he committed all of them while he was off site, providing personal care.

MR ADAMSON: That's correct.

25 MS GLEESON: In relation to the first matter, I've asked you about Sally making efforts to try and make an appointment to discuss what happened to her son. There eventually was a meeting, wasn't there?

30 MR ADAMSON: There was a couple of meetings, yes.

MS GLEESON: She went to the centre, met with you, and the meeting was arranged.

MR ADAMSON: Yeah, that's right.

35 MS GLEESON: But she had to make that effort.

MR ADAMSON: No, that's not correct.

40 MS GLEESON: No one came to her.

MR ADAMSON: No, we had already prearranged that.

45 MS GLEESON: When you say you prearranged that, her evidence was she had to go down to the Mount Druitt centre, you happened to be there and she spoke to you, and that is how the meeting came about.

MR ADAMSON: No, that's not correct. We arranged it with her prior to her coming.

50 MS GLEESON: She said that during that meeting she made three suggestions. The first is consistent with what you have in the report to the NDIS, which is that the new Lifestyle

Assistants coming to the house, there should be a person that - that Sally and - and Jason knew and were comfortable with coming with them to training them - to train them; that's right?

5 MR ADAMSON: That's correct.

MS GLEESON: She said that a Senior Lifestyle Assistant came with new Lifestyle Assistants a couple of times after the meeting - three or four times after the meeting and then that stopped. Is that consistent with your understanding?

10

MR ADAMSON: Yeah, they - the Senior Lifestyle Assistants would go if there was - the known workers were unavailable.

MS GLEESON: It's been presented here as something which will be a policy that's imposed going forward for quite some time, but her evidence is it only occurred on a few occasions. Why is that?

15

MR ADAMSON: For the senior attending?

20 MS GLEESON: Yes.

MR ADAMSON: So the senior would only attend if other staff were not available, given how early the start was for Jason's morning care.

MS GLEESON: The second thing that she - she suggested was that there be random spot checks by someone at Afford of learning assistants who were undertaking personal care, and she said that your response was that that would be too costly. What do you say about that?

25

30 MR ADAMSON: That's incorrect.

MS GLEESON: Well, it didn't happen.

MR ADAMSON: They didn't happen. We were working on transitioning Jason to come back into the centre. So rather than being so community-based, having him come back into the centre.

35

MS GLEESON: But personal care was going to be provided to - to clients of Afford at the Mount DrUITT centre even if it wasn't going to be provided to Jason on an ongoing basis. That's right, isn't it?

40

MR ADAMSON: That's right, yes.

MS GLEESON: And what Sally was identifying here were not just concerns applicable to Jason, but concerns that were applicable to anyone at the Mount DrUITT site who was receiving personal care outside the centre.

45

MR ADAMSON: My understanding is Jason was the only one that was getting personal care outside.

50

MS GLEESON: Why - I withdraw that. The next suggestion was installing security cameras in Afford cars, which you said wouldn't be allowed.

MR ADAMSON: That's right. We can't have cameras in the vehicles facing clients.

MS GLEESON: Why not?

MR ADAMSON: It's the same reason why we can't have cameras facing inside the centres.

MS GLEESON: Can you identify for me the legislative requirement that precludes that happening.

MR ADAMSON: It's a part of the, to my understanding, NDIS Code of Conduct. It's clear in there that you can't have cameras inside the centre. So we do have them outside the centres and we do have a number of vehicles that have dash cam.

MS GLEESON: The last thing she suggested was that she wanted to be put in contact with other families who had been affected by what Mr Nuumaalii did, but she says that you did not put her in touch with those families.

MR ADAMSON: Yeah, at the time we were unable to disclose who the other impacted people were because it was still an ongoing police investigation.

MS GLEESON: Who told you that you could not do that?

MR ADAMSON: So it was the direction coming from above and I believe that was the direction given to the CEO from the police.

MS GLEESON: In relation to each of the suggestions that Sally made that weren't taken up, did you go to anyone else up the chain to investigate whether or not they could be undertaken?

MR ADAMSON: So I spoke to my line manager about it but she said that was the policy and that we can't do it.

MS GLEESON: You did that, I take it, after she raised it at the meeting.

MR ADAMSON: Yeah, that's right. Even before the meeting when we were trying to work out how we discuss it with the team, how it would be discussed with the team, but we were waiting for the police to come back and the police actually gave us the okay to discuss what happened with the team.

MS GLEESON: Just coming back to what you told the NDIS about there being buddy shifts or known workers attending on clients, I've already asked you about Sally saying that this only happened on a couple of occasions. You presented it to the NDIS as if this is a policy that will be implemented, not just for this client but with - with any client, because you just say for each client and therefore working with the clients.

What was your intention in saying that? Was it designed to - to be a policy that was implemented only in respect of the affected clients or was it a policy that was to be implemented for any client that was going to have one-on-one contact with Afford's clients?

5

MR ADAMSON: I believe in reading that it's actually not specifying that it is a policy. It's - this is the improvements that we're going to do to help those impacted clients.

10 MS GLEESON: It says you implemented it. That sounds to me like, if it's not a policy, it's a process that's going to be undertaken on an ongoing basis.

MR ADAMSON: It was a process to help them during that time, yes.

15 MS GLEESON: You didn't tell the NDIS in this document that it was a temporary measure, did you?

MR ADAMSON: No, it was only a measure that was put in place if there were new workers.

20 MS GLEESON: But what I'm saying is you are presenting this to the NDIS as something that is being instituted on an ongoing basis to address the issue that's arisen with the abuse that occurred while Mr Nuumaalii was in a one-on-one situation with the clients?

25 MR ADAMSON: It was only for those that will need it, yeah.

MS GLEESON: But you didn't suggest it was temporary, did you?

MR ADAMSON: Well, it's there for new -

30 MS GLEESON: Well, you didn't, did you?

MR ADAMSON: No, but it's there for new workers. So -

35 MS GLEESON: Well, I think we heard evidence yesterday that there was a substantial turnover of employees at Mount Druitt so there were going to be new workers on an ongoing basis, weren't there?

MR ADAMSON: It's not just Mount Druitt. It's also the sector. But yes.

40 MS GLEESON: I'm directing you to Mount Druitt and it's right, isn't it, that you expected there were going to be workers coming into the centre on an ongoing basis.

MR ADAMSON: Yes, but after meeting with the families, they only wanted those known workers.

45

MS GLEESON: What I want to identify is did you monitor whether what you had told the NDIS was going to happen in relation to the clients, was happening on an ongoing basis? Did you check whether or not it was continuing to happen?

MR ADAMSON: So speaking to the Team Leader and the Senior, they were delivering those services. So the Senior was going there, as well as known staff that the family had requested. So, where possible, we were sending those known staff.

5 MS GLEESON: Yes, and then Sally said that it stopped after two or three occasions for her.

MR ADAMSON: That was for the Senior attending.

10 MS GLEESON: And you didn't update the NDIS that the process you told them that was put in place had ceased?

MR ADAMSON: No.

15 MS GLEESON: Can I take you to - on the same page, the top section which is 'Additional Information Since the Five-Day Report'. The third entry down you say:

20 "All the boys that have been impacted have been progressing very well at Mount Drutt day program. They're all attending and showing no signs or behaviours when attending the site."

MR ADAMSON: Yes.

25 MS GLEESON: Is that information that you gave?

MR ADAMSON: That's information I gave with observations when I was on the site but also speaking to Team Leaders and staff as well.

30 MS GLEESON: What specific supports were provided by Afford to Jason, to Toby and to the other young men who were affected by this conduct following the abuse?

MR ADAMSON: In terms of their day-to-day supports or -

35 MS GLEESON: Yes.

40 MR ADAMSON: - other supports? They were receiving one-to-one supports. Jason was - as I said, he was community-based, but we were still trying to work with the family to have him transition to come back to the centre one day a week, and get him to start to integrate. The other impacted clients were still going about their normal regular daily activities, accessing the community, doing paid activities, as well as in-house activities.

45 MS GLEESON: Were any steps taken to speak to either any specialists treating any of these boys such as behavioural support specialists, psychiatrists, anyone else who was engaged in the management of the clients about what had happened to them, and so that they could then take steps to ensure that if there were - was any evidence that trauma had been suffered, that that was being appropriately managed. Did you do that?

MR ADAMSON: To my - no, I don't remember.

MS GLEESON: Did Afford take any steps to bring in any external specialists to monitor the boys to make sure that if there was any signs of trauma for these boys that it was being appropriately managed?

5 MR ADAMSON: No, Afford didn't.

MS GLEESON: Can I take you now to 5200.

CHAIR: Sorry, what's 5200.

10

MS GLEESON: Sorry. That's page 17 of the report.

CHAIR: Thank you.

15 MS GLEESON: Now, it states here, and this is the third paragraph down:

"This investigation was not aimed at responding to the specific details of the reportable incident reports because the specifics of the incidents are the subject of a New South Wales Police investigation."

20

MR ADAMSON: That's correct.

MS GLEESON: And I think you gave evidence yesterday that at the time that this report was created, you were no longer in contact with New South Wales Police during the investigation and prosecution?

25

MR ADAMSON: Yeah, they would only come to the centre when they needed to access information, but it was all done through the CEO and the executive of the HR at the time.

30 MS GLEESON: Did you at any time become aware that not all of the conduct that was depicted on the videos that were taken from Mr Nuumaalii's phone were the subject of the charges that were laid against him?

MR ADAMSON: No.

35

MS GLEESON: Do you know whether any steps were taken to identify whether there was any conduct that wasn't the subject of charges that may still be of concern to Afford?

MR ADAMSON: No.

40

MS GLEESON: For example, if the videos depicted abuse that wasn't of a nature of an assault such as taunting the clients, swearing at the clients, ridiculing the clients, inflicting psychological and emotional abuse, do you agree that that was also serious and needed to be the subject of investigation by Afford?

45

MR ADAMSON: If known and they were presented, yeah, definitely.

MS GLEESON: To your knowledge, nothing was done by Afford to investigate whether there were any matters that weren't the subject of the police charges that Afford still needed to concern itself with.

50

MR ADAMSON: To my knowledge, no. It was all - as I said, it was all handled by the CEO.

5 MS GLEESON: And to your knowledge, no investigation was undertaken after the Worksite Investigation was concluded and the police investigation concluded?

MR ADAMSON: That's correct. It was just those two.

10 MS GLEESON: And that was both before and after Mr Nuumaalii was convicted and sentenced?

MR ADAMSON: I can't remember if it was before and after.

15 MS GLEESON: To your knowledge, did Afford introduce any additional staff training or debriefing on the incident at any time, not just after the incident while the police investigation was in place, but after the conviction and sentencing had occurred?

MR ADAMSON: So the 'Abuse and Neglect' policy was updated. That was circulated to
20 all staff. We also have started with the - so staff at the moment no longer use their personal mobile phones, as it was discussed in the other witness statement. So Afford has purchased some phones now that will be - be used. There was - the way the recruitment is done now - so in the past recruitment was all done by the Recruitment team with no involvement with Team Leaders and District Managers. So the Team Leaders and District Managers
25 now play an active part in recruitment and they're able to ask more specific questions and scenario-based questions for all new - new Lifestyle Assistants that are coming on board.

CHAIR: When was the mobile phone policy introduced?

30 MR ADAMSON: So it's only recently been introduced, within the last three months. The mobile phones is - so having photos sent to families is, you know, something that they all posted on Facebook for private Facebook groups is something that the families enjoyed because it got - it was allowing them to see how their loved one's day was and get, you know, updates and photos of, you know, things when they were out at parks or special
35 events and the like.

CHAIR: But the problem was the use of private mobile phones of staff to do that?

MR ADAMSON: Yeah, that's correct.
40

CHAIR: So what's the current position? Are staff permitted to take photographs in any circumstances?

MR ADAMSON: So if a client has a consent form that they're consenting to have their
45 photograph taken, then they will take those photos on an Afford phone rather than their personal phone.

CHAIR: Right. So staff are now not permitted to use their personal phones to take
50 photographs of participants in the program?

MR ADAMSON: That's correct.

MS GLEESON: And you just told the Chair that that was implemented earlier this year?

5 MR ADAMSON: That's correct.

MS GLEESON: So that's -

MR ADAMSON: A recent change.

10

MS GLEESON: - a matter of a year and months after it first came to the attention of Afford that this had occurred in that the offences occurred and were videoed on a personal phone.

15 MR ADAMSON: That's correct, yes.

MS GLEESON: Why did it take so long to institute a policy -- fairly simple to implement?

MR ADAMSON: I think with a change of management coming in with a different view
20 on things, and they've been able to identify a lot more, you know, recent compliance areas
and this was one that they saw was a, you know, key risk. So that's why it's been
implemented. In the past, it was always encouraged, you know, from - from the top down
and, you know, families loved having those photos and it was also a way for staff as well,
so if there was an emergency, they were able to call red alert so they were using their own
25 phones for that as well. But now having provided phones, all of those will be controlled by
Afford.

CHAIR: You only had to read Mr Wise's report to realise it was a key risk. Isn't that the
30 case?

30

MR ADAMSON: Yes.

CHAIR: Yes.

35 MS GLEESON: Were you aware that at least as at November 2020, there was another
problem with phones which was that Lifestyle Assistants were being told at team meetings
that they were spending too much time on their personal phones when they should be
attending to the needs of their clients?

40 MR ADAMSON: There has been some various complaints about that from members of
the public, but it - after we - we do the investigation and we find out that a lot of it is, you
know, updating photos, updating progress notes or answering incident reports.

MS GLEESON: So it's necessary for the clients while they're - what you've just told me is
45 that it's necessary for the Lifestyle Assistants, while they're attending to the clients, to
access their phones to, firstly, access the CIMS management system to get client
information and, secondly, access progress notes so that they can comply with their
invoicing responsibilities, and they're doing that on their phones while they're supposed to
be attending to the clients. Is that what you're telling me?

50

MR ADAMSON: No. No. I'm saying if they have to make a red alert phone call, that's when they'd access it or if they're taking photos and sending those photos across to families - a lot of the time, they want it at that moment in time, and updating it on Facebook and the like so it shows that, you know, this is where we are at this moment in time.

MS GLEESON: But you just told me that part of the explanation as to why Lifestyle Assistants were on their phones while they were supposed to be attending to clients is so that they could consult CIMS and also enter their progress notes.

MR ADAMSON: Yes, there's a range of reasons why they would access their phones, yes.

MS GLEESON: They're matters that shouldn't be undertaken while they're supervising clients, are they?

MR ADAMSON: No, and that's why they - you know, they get escalated up through and they get discussed in team meetings and if there's any staff that are doing it, then, obviously, you know, they're spoken about and it gets discussed in their, you know, in their supervision meetings and if it's a continued pattern then it's raised up through HR so there can be performance discussions about it.

MS GLEESON: It doesn't sound to me, Mr Adamson, like that is necessarily a performance issue for the individual Lifestyle Assistants. If they need to be doing that work while they're attending to clients, then isn't that a problem for Afford as to how it is that they're arranging responsibilities around the time - the working hours that the clients have available? Shouldn't they have more time before the clients arrive at the site or after the clients leave the site so that they can perform those duties and not have to do them while they're supposed to be attending to the clients?

MR ADAMSON: Yeah, they should.

MS GLEESON: Was - at any time, either before or after Mr Nuumaalii was convicted, a safety audit undertaken at the site in relation to the risk that was presented by his offences?

MR ADAMSON: No. So we moved to a - a new site. So the Paull Street site was vacated.

MS GLEESON: Was a risk assessment undertaken in relation to the risk that was presented by Mr Nuumaalii being able to commit these offences while he was caring for Afford's clients?

MR ADAMSON: To my recollection, no.

MS GLEESON: Are the procedural changes that were made to reduce the risk of the abuse happening again, those that you've told us about in your evidence today, do you have anything to add to that?

MR ADAMSON: No.

MS GLEESON: Now, just to finish up on this, after the final report was released - I won't take you to these documents.

MR ADAMSON: Okay.

5 MS GLEESON: I want to get the chronology out. After the final report was released, you were informed by the NDIS that the allegations concerning Nuumaalii affected a number of participants and that they all needed to be separately notified to the NDIS; is that right?

10 MR ADAMSON: Yes, at the time of the notification, we'd done them all in one, listed all the impacted clients, and then the NDIS came back and asked if we could just put them individually, so that way they could be stored against each individual's NDIS profile that they hold.

15 MS GLEESON: When you did that, I've taken you to a part of both the 'Reportable Incident Reports' and also the final report that required you to address - to inform the NDIS about what was being done in relation to the needs of impacted people. You saw that?

MR ADAMSON: Yes.

20 MS GLEESON: Did you amend the reports that you submitted so that they then related to what was being done in relation to every individual client or did you just copy over the information --

25 MR ADAMSON: All the information that was provided in the one was provided in each individual's 'Reportable Incident'.

30 MS GLEESON: So no individual attention was paid to making sure that the NDIS knew what was being done in relation to the impacts of Mr Nuumaalii's abuse on the specific clients that you were - you were addressing in the reports?

MR ADAMSON: Yeah, as I said, they were just all transferred across and then it was closed out by the NDIS.

35 MS GLEESON: I want to turn now to some of the matters that were raised by the parents we heard from on Monday in addition to what I've already asked you about. The first is in relation to the evidence that was given in relation to Service Agreements. Now, at paragraph 4.17 of your statement, you say that one of the means by which Afford enables choice and control is by tailored Service Agreements. Do you remember that?

40 MR ADAMSON: Sorry, what page is that on?

MS GLEESON: Excuse me for a moment. Do you agree with me that that's what you said in your statement?

45 MR ADAMSON: Sorry. What page was that on?

CHAIR: I think you need to take 4.16 and 4.17 together, Ms Gleeson, of the statement, which is on page 12 -

50 MS GLEESON: Thank you.

CHAIR: - of the document. Do you have that, Mr Adamson?

MR ADAMSON: I do. Thank you. Yes, sorry, I have it in front of me now.

5

MS GLEESON: And you address in page 4.16 of your statement that Afford respects disability service users' rights for choice and control and that - you provide a description of the process in paragraph 3(a) of your statement. If you can then go back to paragraph 3.3 of your statement. Have you got that?

10

MR ADAMSON: -- there. Yep.

MS GLEESON: You say there that when you're preparing a Service Agreement for a new Afford client, you're responsible for reviewing the draft Service Agreement that's created by the Customer Care Team after they've met with the client and their support people.

15

MR ADAMSON: Yes.

MS GLEESON: Then if you go down to 3.9 and 3.10 you say you're also responsible for overseeing and approving the preparation of Service Agreements for existing customers when the existing agreement has expired or there need to be changes to the client's plan.

20

MR ADAMSON: Correct.

MS GLEESON: Now, in either case, do you, yourself, meet with the clients and/or their support people in relation to the needs of the clients and how that should be built into the Service Agreement?

25

MR ADAMSON: There's only been a few times that I've met with families but generally it's done by our Customer Care Team or, if they're doing a walkthrough of the site, they meet with the Team Leader.

30

MS GLEESON: When you say they're doing a walkthrough of the site, do you mean the support people?

35

MR ADAMSON: That's right, taking the potential client or the family through the site so they have a visual of it.

MS GLEESON: And the evidence of each of the parents that we heard from on Monday was that their experience was that once the term of the first Service Agreement that they entered into had expired, they saw the next Service Agreement that was offered to them either being emailed to them or sent home in the client's backpack. Do you remember that?

40

MR ADAMSON: I do remember that.

45

MS GLEESON: Do you think that that is - that preparation of a Service Agreement and - preparation of a Service Agreement in a template form and sending it to the client necessarily means that any change in the needs of the client as between when the first agreement was entered into and the next agreement has met any changes in the needs of the client over that time?

50

MR ADAMSON: Yeah, there could be a number of changes.

MS GLEESON: But sending an already prepared agreement -

5

MR ADAMSON: They shouldn't be sending it, no.

MS GLEESON: - home in a backpack is not addressing those changes, isn't it?

10 MR ADAMSON: Absolutely not. They should not be doing that.

MS GLEESON: Sally told us on Monday that the Service Agreement that she was required to sign for the 2019 year included clauses, and it's probably worthwhile going to the agreement. It's at Hearing Bundle A, tab 13. And if you can go to the page 0044, and you can see there clause 5.9 says that:

15

"If the cost of the services or the amount of funding available for any of the services appearing in the quote has increased during the term of the agreement, the parties agree that Afford will be entitled to amend the quote."

20

Which - and I can tell you that the cost of the services means the amount that's in the quote:

"They can amend the quote to reflect the increase in the cost and to immediately charge the increased costs for the services in full."

25

Do you see that?

MR ADAMSON: Yes, I do.

30

MS GLEESON: And also at 5.10 that:

"The participant agrees to be personally liable to Afford for the costs of the services if the participant has overspent their NDIA funds."

35

MR ADAMSON: Yes.

MS GLEESON: Now, do you agree with me that that means that if there is some change to the services that have been provided during the term of the agreement, Afford is firstly entitled to amend the quote regardless of whether or not that increased need is covered by the - covered by the client's NDIS plan. Do you agree with me on that?

40

CHAIR: I think you mean not amend the quote, amend the charge.

MS GLEESON: Yes, I think the effect of the clause is you amend the quote and that amends the charge.

45

CHAIR: Yes.

MS GLEESON: Do you agree that that is the effect, that Afford can amend the charges that are being placed on the client's account regardless of whether or not the NDIS plan has funds to cover that change?

5 MR ADAMSON: If it's agreed by the families and there's a change in circumstances, then yeah, a new quote will be done up and signed off.

MS GLEESON: And if the change that's made exceeds what's allowed for in the plan, the effect of 5.10 is that the client is then personally liable for the shortfall between what is
10 now being charged and what the NDIS plan covers. Do you agree with that?

MR ADAMSON: Well, that's - in my time, it's - we've never used - that's never been charged, but also with the plans we don't - we don't get access to the client's NDIS plan. So we work with the families on the services that they want and then we put that in the
15 Service Agreement in faith that, you know, they have those funds available. If it's an NDIA-managed client we can service book and that's how we'll find out, off the service booking, if there's funds available for that line item, but if it's a plan-managed or a self-managed client we have no visibility to what their actual package amount is and we're just taking it off what the families are telling us that that's what they have.

MS GLEESON: We heard evidence from Dianne on Tuesday that, on occasion, there would be a change in services such as a need to increase service support ratios and when that happens sometimes there was a discrepancy in the amount charged to the NDIS funds and the plan that was in place while the client was waiting for there to be an amendment of
20 the NDIS plan.

MR ADAMSON: Yeah, that's what she said, yeah.

MS GLEESON: Yes. To your knowledge is that something that still happens?
30

MR ADAMSON: If there's a change in circumstance and their clients are waiting for a reassessment of their plan, and if funds are available, we still, you know, we continue with the services that they're requesting, if they're changing, say, their ratio. That happens.

MS GLEESON: What steps are in place to prevent that happening so that clients and their families aren't hit with additional charges that they may not be able to afford which aren't covered by the NDIS?
35

MR ADAMSON: So we try to provide, where possible, for families and plan managers to provide us with the NDIS plan so that way we know how much funding they have for each - each core item, but they don't provide that to us. So we are just taking it as what the families are requesting, that once we do up the quote they're able to work with their plan manager to see that those funds are available.
40

MS GLEESON: Sally says that what happened to her is that - and this must be the case when agreements are being sent home in backpacks or being emailed to clients -
45

CHAIR: I don't think Mr Adamson has been asked whether he agrees that's what happened. I'm not sure that was put to him. Do you agree that has happened?
50

MR ADAMSON: Sorry. What was -

CHAIR: Sorry.

5 MR ADAMSON: What was the question?

CHAIR: Do you agree that sometimes agreements are being sent to the homes of the parents or the supporters of the particular participant in the backpack of the participant?

10 MR ADAMSON: Yes, so that does happen. So families ask for them to be emailed home or to be sent home. Generally, the worker will carry it home.

CHAIR: Whatever the reason, it does happen.

15 MR ADAMSON: Yes.

CHAIR: All right. It does happen. Okay.

MS GLEESON: I think the evidence you gave is that shouldn't be happening.

20

MR ADAMSON: It shouldn't be happening, unless it's been requested by the family.

MS GLEESON: Sally says that the terms that I took you to in the Service Agreement that was presented to her weren't brought to her attention before she signed the agreement?

25

MR ADAMSON: Was this for this new one or was it from the original -

MS GLEESON: Well, the original and the new one, as I understand it.

30 MR ADAMSON: So for the original one I'm not a part of Customer Care so I wouldn't know what they do when they have those initial discussions but when there's a - a new plan is being created because the old one has expired then, yeah, the Team Leaders would be discussing this with them.

35 MS GLEESON: Well, she says it wasn't discussed with her.

MR ADAMSON: And given that Team Leader at that time and now hearing the evidence from her for the first time, I would probably back that decision that she's come up with, that evidence there, because that was one of the downfalls of that Team Leader in her performance issues.

40

MS GLEESON: I take it from that that you agree that that should have been brought to her attention.

45 MR ADAMSON: That should have been raised, yeah, definitely.

MS GLEESON: She says that she was given a quote that exceeded Jason's NDIS plan and was then pressured to sign the new agreement with the increased quote amount or Jason would have been suspended from the service. Did you hear that evidence?

50

MR ADAMSON: I did hear that evidence, yes.

MS GLEESON: Now, I accept - I'm not suggesting this is something you were responsible for. It occurred before you started with Afford. But do you agree with me that that is
5 unacceptable to place that pressure on Sally to get her to sign the agreement?

MR ADAMSON: Absolutely. Should not be happening.

MS GLEESON: What mechanisms are in place now at day centres to ensure that clients
10 and their support people are properly informed about the terms of their Service Agreements and are only signing them if they're informed of and comfortable with the terms of those agreements?

MR ADAMSON: Yeah, so the Team Leaders when they're issuing a new Service
15 Agreement for existing clients, they're having a lot more open collaboration with those - with the families about the services that they need as well as, you know, the ratios, the time period and the length of the Service Agreement so they're - you know, they are happening across all the sites. I know from new intake, Customer Care doing a great job with the team when there's new clients coming on board. They're actually meeting with
20 them multiple times, either via phone or in person.

During COVID, it was obviously a challenge to meet people face-to-face, so where we could do them virtually, we were doing them virtually or over the phone, but those conversations are taking place and will continue to take place and we will enhance the way
25 we do that at Afford.

CHAIR: The evidence that we heard described what, in legal terms, at least used to be known as a contract of adhesion, standard contract of adhesion, that is, a contract that is drafted by a particular service provider and that is presented to someone to sign and
30 ordinarily with no opportunity to negotiate for different terms to be inserted in the agreement. With the agreements that are signed with new participants in the program these days, is the agreement in standard form?

MR ADAMSON: I believe it is. I believe it is.
35

CHAIR: Exactly. So what has changed?

MR ADAMSON: Nothing's changed.

CHAIR: You see, what you've got and what you're describing is a system where staff at Afford are supposed to explain what the agreement means. Now, for example, you said clause 5.9 means that the charges can be - additional charges can be levied if the client agree. That's not what clause 5.9 says at all. Clause 5.9 says if the cost of services or the amount of funding increases, it's Afford's option to increase the charges. Now, I'm
40 wondering whether these are the sorts of things that are explained by Team Leaders or whoever's responsibility is to the people concerned and whether they have a genuine opportunity to negotiate changes, alterations in the terms of the standard contract that was presented to them? Do they?
45

MR ADAMSON: To my knowledge, no.
50

CHAIR: No. And one reason for that is they're not given, are they, a realistic opportunity for independent advice before signing the agreement?

5 MR ADAMSON: I'm not sure.

CHAIR: Sorry?

10 MR ADAMSON: So we don't ask for it back straightaway, or to my experience. I mean, there may be individuals who have shoved them in faces and said "sign now", but normally it's taken away and then it's coming back at a later date. What Customer Care do for new intakes - you know, I'm not a part of that team or that business so I'm not sure what discussions they have with, you know, potential new clients. But it's definitely an area of opportunity, definitely.

15

CHAIR: The evidence we heard on Monday was from parents who were clearly well informed and quite - understood pretty well what had happened and what the procedures were. They found it difficult, if not impossible, to make any changes to the agreements, and indicated that they did not necessarily understand what the terms of the agreement meant in practice. I would imagine that there are plenty of parents of participants who would not have the advantages, perhaps, of education, of ability to read English with facility. What would they do? Or more accurately, what does Afford do to help them?

20

MR ADAMSON: Yeah, I can't answer. I don't know.

25

CHAIR: Can't answer that? Whose responsibility is that within Afford?

MR ADAMSON: That would be the Customer Care.

30

CHAIR: The which?

MR ADAMSON: The Customer Care National Manager.

35

CHAIR: Right.

COMMISSIONER BENNETT: Following up the Chair's questions, each of the parents who spoke to us had initially used Afford Support Coordination.

40

MR ADAMSON: Okay. Yeah.

COMMISSIONER BENNETT: Does that report to you?

MR ADAMSON: No.

45

COMMISSIONER BENNETT: Right. Well then when they moved away and got independent support coordination, they had a better understanding and greater choice. Do you have contact with the Afford Support Coordination people?

MR ADAMSON: No. We have contact with them, but we don't get into - it's a completely separate department so we would contact them when we are dealing with a client that they are providing support coordination for, but, yeah, that's about it.

5 COMMISSIONER BENNETT: I'll have - I'll ask some questions later to the CEO.

MR ADAMSON: Yeah.

10 MS GLEESON: The Commissioner has just asked you questions about the role of Support Coordinators. When Afford is acting as Support Coordinator, they have access to the NDIS plans of the customer, don't they?

MR ADAMSON: They would.

15 MS GLEESON: And that was certainly the case for Toby?

MR ADAMSON: Well, our Support Coordination would, but, yeah, to my knowledge we don't have it from our side.

20 MS GLEESON: But when Afford is acting as Support Coordinator, you do.

MR ADAMSON: I wouldn't know. I'm not in Support Coordination.

25 CHAIR: Ms Gleeson, I would like to make sure that there's an opportunity for my colleagues to ask questions, so I'm just wondering how long we're going to be, bearing in mind -

MS GLEESON: I'm going to go over the break but not by long.

30 CHAIR: Not by - yes, I believe you. All right. Well, then, we'll continue till 11.30, we'll have the break and then you'll complete your examination with appropriate rapidity.

MS GLEESON: Alacrity.

35 CHAIR: Yes.

40 MS GLEESON: Can I move on to Lilly. One of her concerns was about the safety of the new centre at Mount Druitt. We heard from Lilly that she raised issues concerning the location of the Mount Druitt centre because it was near a methadone clinic and she saw needles in the car park. Do you remember that evidence?

MR ADAMSON: I do.

45 MS GLEESON: She says that she raised a complaint with you about that but she never heard back about it.

50 MR ADAMSON: I never spoke to Lilly about the new centre at all. My understanding was when we moved her - Simon was no longer an Afford client. He was off for COVID and then hadn't returned.

MS GLEESON: She says that she also raised a complaint with you and the CEO in October 2019 about her difficulties of the Lifestyle Assistant who was causing her son stress and triggering his behaviours.

5 MR ADAMSON: That's correct.

MS GLEESON: Do you remember her saying that?

MR ADAMSON: Yes.

10

MS GLEESON: She says that complaint was not dealt with.

MR ADAMSON: It was dealt with. We dealt that with her, and we actually emailed her off a complaints closure letter as well.

15

MS GLEESON: Was the effect of the complaint closure letter was that there was nothing to be done because that particular Lifestyle Assistant had left Afford?

MR ADAMSON: The Lifestyle Assistant did leave Afford, but we did investigate it and, you know, we offered her our apology that we couldn't assist her during that time of the goddaughter's birth. At my recollection, there was no prior notice that I knew of that she needed at that time.

20

MS GLEESON: Was that done in writing, the apology that you said you gave?

25

MR ADAMSON: The - that's correct.

MS GLEESON: So there would be an email that I apprehend was produced to the Commission -

30

MR ADAMSON: No, it was posted out but it's on our complaints system with all the time stamps and the like.

MS GLEESON: All right. It wasn't only the families, was it, that raised concerns about the hazards that existed at the centre. Erynn gave evidence also that she raised concerns at the previous centre on Paull Street about a wheelchair of one of the clients not being able to access all the parts of the house safely. She says that when she raised that with you, you told her to toughen up.

35

MR ADAMSON: Yeah, I remember giving that evidence, and looking at the statement, I wasn't employed at Afford at that time. So it wasn't me she actually heard that from.

40

MS GLEESON: Are you saying that you weren't employed during the period in which - in which the Mount Druitt site operated from Paull Street?

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MR ADAMSON: I was there for a period of time, for the latter parts of it.

MS GLEESON: How do you know that you weren't there when you had this meeting?

MR ADAMSON: I wasn't there. So looking at the statements, it - the period that she said, I wasn't employed at Afford. The door was - the door had always been widened when I was there.

5 MS GLEESON: Lilly said that she observed, on occasions when she was called down to the centre to pick up Simon, that there was simply not enough staff on-site at the time for Simon's one-to-one support ratio to be met, and she said that that was something that happened at both Paull Street and the new centre.

10 MR ADAMSON: So the staff ratios are always correct at the sites. There's -

MS GLEESON: And -

MR ADAMSON: I'm not sure where she's got that from. And there's -

15

MS GLEESON: Well, how are you satisfying yourself of that matter?

MR ADAMSON: We have the roster -

20 CHAIR: Don't talk over each other, if you don't mind. Yes, you were going to say something, Mr Adamson.

MR ADAMSON: Yes, so we have the staff allocation and the staff roster as well which clearly has the ratios of the staff to client. So as an outsider coming in, they may see three
25 clients to one staff but that may potentially be the ratio of those clients.

MS GLEESON: Just going back to Erynn's evidence, you've said that she gave in her statement a year that was prior to you started at Afford. I'm not sure whether you remember - it was a small matter - but the effect of her evidence on Tuesday was that a
30 particular paragraph had an error in it and the time period that she was referring to was 2019 and that's when you were employed at Mount Druitt. That's right, isn't it?

MR ADAMSON: I was there from June '19, yes.

35 MS GLEESON: So you accept, don't you, that if she's positively identified you as being the person who made that comment, she's doing it within the time period in which you were the District Manager.

MR ADAMSON: Well, I don't accept that it was me.

40

MS GLEESON: The last concern that Lilly raised was about Simon not being able to use his augmented and alternative communication device because of concerns around the use of an iPad at the centre.

45 MR ADAMSON: Yes.

MS GLEESON: She gave this evidence. She said:

50 "I work at a school, and this is the way we encourage independence. Communication is the key to good behaviour as well. A lot of the behaviours are caused because their

needs and wants aren't met, and that's due to you not knowing what their needs and wants are because they can't communicate."

5 She then went on to say that when she left Afford and the support worker was engaged to provide one-on-one home support, he's able to use his AAC device, as it's called, with a number of other communication behaviour supports and he's flourishing. I want to explore with you in circumstances in which you have a client who comes to the centre with a communication aid, why that client would be told that they can't use that communication aid when it is so obviously a benefit to their being able to communicate and for them being able to both develop and thrive at the centre. Why would a client be told that that could not be done?
10

MR ADAMSON: Well, it shouldn't be done and in my time, we've had plenty of clients, and we still do have clients that bring in their aids. If we were to tell them that, no, they can't have it, then obviously that's a restrictive practice.
15

MS GLEESON: I note the time, Chair. The next matter's probably going to take more than a minute.

20 CHAIR: Yes. All right. It's now nearly 11.30. We'll adjourn until 11.45. Thank you.

<ADJOURNED 11.28 AM

<RESUMED 11.46 AM

25 CHAIR: Yes, Ms Gleeson?

MS GLEESON: Just to finish up, Mr Adamson, I just want to take you to a recent incident affecting a client of Afford's, and get your views on what the outcome of that incident displays. Can I take you firstly to Hearing Bundle E, tab 200. You can see here that this is an email chain. If I can ask for you to go - to be taken firstly to 4143. You can see there that this is an email which is copied to you dated 1 July 2021.
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MR ADAMSON: Yes.
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MS GLEESON: Now, before I ask you questions about this email, can I just remind you that this is an incident that concerned a new client who was attending Club Afford, was taken on an outing to Brooklyn. This particular client had an affinity with water and whilst on a walk with the Lifestyle Assistant entered the water, slipped and fell, and Marine Rescue had to be called to retrieve him from the water. Do you remember this incident?
40

MR ADAMSON: Yes, vaguely remember it, yes.

MS GLEESON: All right. Can I just show you - take you through the first email in the chain on 4142. Now, can I first just take to you - and I accept here that this is - this is an email that you're not copied into, but I just want to ask you about what's in the email. First of all, it's said in the second line:
45

"I cannot see how we would proceed with a warning to the staff. If anything, we would only proceed to a caution or a reminder about being more careful near water for all our clients."

5 This is an email from the Senior HR Business Partner. I ask of you to accept two things: the first is that this is, again, an example of HR being the investigator of an incident in relation to the safety of a client of Afford?

MR ADAMSON: That's correct.

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MS GLEESON: And the second thing is that she's - the first thing she's addressing herself to is what the consequence should be for the staff.

MR ADAMSON: Yes.

15

MS GLEESON: And in this case, you would infer from what she said is that the staff haven't done anything wrong, this has happened, so that there would be no need for there to be a formal warning to the staff that were involved.

20 MR ADAMSON: That's what she's put there.

MS GLEESON: But then she says:

"What I did find through the interviews -"

25

So one assumes that she's interviewed the relevant staff, firstly, that there were no behaviours communicated to Club Afford staff from the group home staff, so that it hadn't been communicated to the group home staff - to the Club Afford staff that there was this particular behaviour of the client, that he had an affinity with the water. And then, secondly, that there was no communication about the client unbuckling his seatbelt.

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One of the other things that occurred in the investigation of this incident is that it was reported by the staff that during the transports, this particular client would regularly unbuckle his seatbelt and have to be told, "No" and to put it back on, and that an issue was raised about how many staff members needed to be available in the transport to make sure he was safe. The next -

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CHAIR: I think we can read the email. Have you got questions to put to Mr Adamson about that?

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MS GLEESON: Yes.

CHAIR: Mr Adamson, did you see this email at any stage?

45 MR ADAMSON: No.

CHAIR: Right. So this is the first time you've seen it?

MR ADAMSON: Yes.

50

5 MS GLEESON: Can I ask you, firstly, about the first two bullet points, then. To the extent that it's said that there was no communication in relation to these matters, do you agree with me that, at this stage, this being late 2021, what appears to have occurred is that a client has come to Club Afford and not all of the information that pertains to his behaviours had been received by Afford?

MR ADAMSON: That's what it says there.

10 MS GLEESON: Do you agree with me that it's important, when a new client comes on, not only that the client comes armed by his support people by a group home, by a respite centre relevant to the client, but that the day centre should be actively seeking out the information that is relevant to that client?

15 MR ADAMSON: For new clients, that doesn't come from the day program. That would come from Customer Care.

MS GLEESON: Yes, but it appears on this occasion that that hasn't occurred?

20 MR ADAMSON: So the information they give us is - we've taken it that they've got all the information available or disclosed to them.

25 MS GLEESON: Do you agree with me that if Customer Care is the relevant department that needs to gather the relevant information, they need to seek that out when a new client comes to the -

MR ADAMSON: That's a part of the onboarding process.

MS GLEESON: And it hasn't happened here?

30 MR ADAMSON: Reading that, I would say no.

MS GLEESON: The second - the third bullet point says that:

35 "There was no information on CIMS or known by any staff about this client's fascination with water and all of the staff stated that if they were aware of this, they would not have gone to Brooklyn. They would have gone to an alternate location for their activity."

40 Now, do you agree with me - you've answered a number of questions about the adequacy of the client information on the CIMS system, that as at mid-2021, it was still a problem that the client's information was not up to date on the CIMS system?

45 MR ADAMSON: Well, if they didn't get the information upfront, then it wouldn't be put onto CIMS.

MS GLEESON: Then the last issue that was recorded in this email is that CIMS didn't have all the information required, including when this client was taken to get medical attention, his Medicare card details?

50 MR ADAMSON: Yes, that's what it says.

MS GLEESON: Now, that's information that should certainly have been provided as part of the onboarding process for a new client, isn't it?

5 MR ADAMSON: Yes, that's - it should be.

MS GLEESON: But it hasn't made its way into the system?

MR ADAMSON: No, it hasn't.

10

MS GLEESON: And do you agree with me that that suggests that as at mid-2021, a period not so long ago, that there were still problems with there being up-to-date information in relation to clients?

15 MR ADAMSON: Coming from Customer Care, I mean, they do all that, and we do our - our regular audits, but if this was a new client, yeah, all that information would come from them.

MS GLEESON: And the - and the consequence here is that because that information was not recorded in the system, the staff didn't have access to it and that directly affected the manner in which they were able to respond to the incident. Because they didn't know that he had these behaviours, and when they took him to get treated, they didn't have all of the information that would allow him to be effectively treated. Do you agree with that?

25 MR ADAMSON: That's right. If staff don't have the information provided, it's not there.

CHAIR: Why were you copied into the first email on 1 July but not the second?

MR ADAMSON: That would be the District Manager notifying HR, which was the process of - to look into the matter.

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CHAIR: And did you have any part in the process of looking into it?

MR ADAMSON: So HR would generally work with the District Manager at that level.

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CHAIR: So, is the answer, "No"?

MR ADAMSON: No.

40 CHAIR: Yes, Ms Gleeson.

MS GLEESON: Just one final document. If I can just take you to the Risk Assessment for this incident, and that's behind Hearing Bundle E, tab 202. This form is entitled Risk Assessment Master Form, and you can see that it's got an approval date of November 2018 at the bottom of the document. Are you familiar with this form?

45

MR ADAMSON: Yes.

MS GLEESON: What's it used for?

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MR ADAMSON: It's used to assess any risk that happens throughout the organisation.

5 MS GLEESON: And when you say "any risk that happens throughout the organisation" does that mean it that it could be a risk in relation to a particular client in relation to something - a particular site, in relation to a particular activity?

MR ADAMSON: Yeah, it could be used for it, yeah.

10 MS GLEESON: And what happens to the form once it's been completed?

MR ADAMSON: So, again, it gets saved on the system and it will also form part of the risk - so the investigation will be sent across to HR as well - so the risk assessment.

15 MS GLEESON: All right. Do you know whether those risk assessments are captured - I withdraw that question. Can I just take you to the second page of this document. You can see that the second column outlines the hazard, and you can look very briefly and see that it refers to the incident that I've described. It then has particular risk controls which would be instituted in order to - to mitigate the risk that's presented by - by this particular client's behaviours.

20 And it's got three matters there which are specific to the client and directed appropriately at making sure that his behaviour is - is anticipated and managed. Do you agree with that?

25 MR ADAMSON: Yes, that's what it says.

MS GLEESON: What it doesn't say in this document is that there were issues on the day in relation to there being sufficient information recorded in Afford's systems about this client's medical details?

30 MR ADAMSON: No. It doesn't.

MS GLEESON: And it doesn't say that there was an issue on the day with there being adequate communication of this client's behaviour so that the staff were armed with the information they needed to prevent the risk. Do you agree with that?

35 MR ADAMSON: Yes, I agree.

MS GLEESON: And do you agree that they are risks that should have been recorded in this form if it's to perform the function that it's intended to?

40 MR ADAMSON: They should, yeah.

MS GLEESON: Thank you. Those are all the questions that I have.

45 CHAIR: Thank you very much, Ms Gleeson. I'll ask Commissioner McEwin whether he has any questions for Mr Adamson.

COMMISSIONER McEWIN: Thank you, Chair. Thank you, Mr Adamson, for your evidence. There are two things that I want to understand better from what you've said

today and yesterday. The first matter is about your interaction with the participants of the day program, which you - when you were District Manager.

MR ADAMSON: Yes.

5

COMMISSIONER McEWIN: The first thing is Ms Gleeson asked you about the Service Agreement, and your responsibility is to make sure that the Service Agreement was appropriate for the needs of the participant, and you said you sometimes met - a few - you meant a few times with families. So it was not clear to me, did you meet a few times with some families or did you meet with individual participants and their families. Tell me a bit more about that.

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MR ADAMSON: Yeah, so if a family was coming on-site and I was there, I would meet them, I would be introduced to them, so that way they know who I was and I was able to, you know, talk about who we are, what we offer and work closely with the Customer Care Team. But quite often, a lot of the meetings were off-site, but if they did request me to go with them off-site, I would definitely make myself available where I could.

15

COMMISSIONER McEWIN: Okay. So that I understand you completely, you were responsible for making sure that the Service Agreement was appropriate to the individual participant's needs. So did you not meet directly with that participant to understand their developmental needs, their capacity building needs, their communication needs? So you're saying you did not meet with them, and if not, why not?

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MR ADAMSON: That's all a part of the Customer Care intake process. That doesn't fall within my scope of what I do.

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COMMISSIONER McEWIN: So what I'm trying to get you to - I want to understand. So you were responsible for making sure that the client who has the NDIS plan and the Service Agreement to provide what is to be provided under that plan, you can't say for sure that, for the individual participant, you were able to understand what their individual needs were, developmental needs, etcetera.

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MR ADAMSON: We only work with them after they have signed up, so after they have joined the team.

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COMMISSIONER McEWIN: Okay. Thank you. The second and final matter is we heard from parents that when they engaged with Afford, they wanted to either make sure that their child could use what we call AAC, so alternative or augmented and alternative communication, or iPads or apps on the iPad, and we heard that they weren't able to do that and often they were just not used all day in the services. Do you have any comments on that?

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MR ADAMSON: So, in my experience in my time, they definitely do take place and they take still place today. If we were denying our clients access to their AACs, then that would be a restrictive practice that we'd need to report on.

45

COMMISSIONER McEWIN: Well, we heard from parents earlier in the week that, for example, their child's communication ability declined when they were at Afford, and then we heard now that with their one-on-one support their communication had improved and,

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in some cases, gotten better than what it was before Afford's program. So what do you say about that?

5 MR ADAMSON: I think it just depends on the individual. I know those clients are being serviced by ex-Afford staff. So, you know, no doubt in the ability in the staff. I just - they're probably working a lot closer with families, given that they are one-to-one and they are the only workers providing that services ongoing for those clients that have left.

10 COMMISSIONER McEWIN: Right. Thank you. Thank you, Chair.

CHAIR: Commissioner Bennett?

15 COMMISSIONER BENNETT: No, thank you.

CHAIR: Mr Adamson, at paragraph 3.3 of your statement, you say, as far as the draft Service Agreement is concerned:

20 "The District Manager reviews it to ascertain whether the services are appropriate and to ensure that the correct NDIS line item is recorded against each service item."

Can you just explain what you actually did with each Service Agreement that came to you in order to ascertain whether the services were appropriate? And, secondly, what is involved in ensuring that the correct NDIS line item is recorded?

25 MR ADAMSON: Yes. So when it will come to us for - for approval from the Team Leader, we would review it based off the quotes and the ratios that the family was requesting. So we'd do that. And we'd look and make sure that the rates are correct as well, so the hourly rate, the daily rate, the transport rates, as well as -

30 CHAIR: I'm trying to know, first of all, you say:

"To ascertain whether the services are appropriate."

35 What does that mean? What were you doing to ascertain that the services were appropriate, presumably for the individual participant?

MR ADAMSON: Yeah, making sure that we are able to provide those services.

40 CHAIR: Yes, but what were you doing to determine that the services were appropriate?

MR ADAMSON: Working with the Team Leaders.

45 CHAIR: I'll try again. What did you do in working with the Team Leaders to determine whether what was being offered or suggested was, in fact, appropriate for the individual participant? Or did you just get something that you were asked to tick?

MR ADAMSON: No, it wasn't something that I was asked to tick. It was just --

50 CHAIR: Well, would you be good enough to explain what you actually did.

MR ADAMSON: Yes, so we'd - as I said, we'd get the agreements and we'd work with the Team Leaders but we'd also work with the families and making sure that the services that they're wanting is that's what it's actually saying in that agreement.

5

CHAIR: All right. Could we have, please, on the screen if it's possible the document, being the Service Agreement behind Bundle A, tab 13 at page - it's IND.0136.0002.0049. It's the Service Agreement in respect of Jason. Can we bring that up? Apparently not. Can you just check. Yes. Thank you. We need to go to page 0049 of that document. That's it. Yes. Can you see that document?

10

MR ADAMSON: I can.

CHAIR: It has unit costs - \$56.81 per hour, \$63.21 - and over the page, if we go to the next page, there are different unit costs - \$86.18 and then another \$63.21. What are those figures and where do they come from?

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MR ADAMSON: So they're the line items as per the NDIS price guide for the services that the clients are requesting and for the hours that they're requesting.

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CHAIR: So if we take the - go back to the first of the two pages, which is page 9 of 12, on the - looking across the first line, that talks about 12 point hours per week by 52 weeks.

MR ADAMSON: Yeah.

25

CHAIR: Equals 650 hours.

MR ADAMSON: Yes.

30

CHAIR: What would be the process that led to that being the starting point for a costing?

MR ADAMSON: I'm not sure of the exact process. I do know that the - this would be work - so this one here in particular is for the personal care, so it's working with the family and making, you know, if that - if that's an approved part of their - their funding, then that's where that was coming from.

35

CHAIR: But you said you didn't see the NDIS plan. That's not part of -

MR ADAMSON: That's right, so if it's - we may not see it but the families are telling us that they have it.

40

CHAIR: So you don't see the plan but you get information from the families as to what's in the plan?

45

MR ADAMSON: Correct.

CHAIR: Why don't you see the plan?

MR ADAMSON: Because they're under no obligation to give us one.

50

CHAIR: Do you ask for it?

MR ADAMSON: Yes.

5 CHAIR: But they refuse?

MR ADAMSON: Yes.

10 CHAIR: But they still answer your question as to how much in the plan for particular services.

MR ADAMSON: Correct.

15 CHAIR: Seems a little odd.

MR ADAMSON: It does.

CHAIR: Very good. So these unit costs reflect a price chart, in effect, from NDIS?

20 MR ADAMSON: That's correct.

CHAIR: Who determines what the appropriate unit costs will be of the selection from that which is provided by the NDIS?

25 MR ADAMSON: We just follow the price guide, so whatever they -

CHAIR: But in order to follow the price guide, you have to characterise the services that are being provided, because they can vary from \$56 an hour to \$80-odd an hour; correct?

30 MR ADAMSON: They can.

CHAIR: So who makes the judgment as to which is the correct box to tick as far as the price is concerned?

35 MR ADAMSON: So we have - it's built into our systems where we select it and it automatically gives us the dollar figure.

40 CHAIR: And what does the participant, or usually the family of the participant, know about this selection of prices?

MR ADAMSON: It's generally when we give them the Service Agreement or we're having the conversations with them.

45 CHAIR: But the Service Agreement will be just like this?

MR ADAMSON: Correct.

CHAIR: How do they know what it means?

50 MR ADAMSON: I'm not sure. I don't know.

CHAIR: How do they know why these particular amounts have been selected?

MR ADAMSON: I don't know.

5

CHAIR: Don't know? All right. Thank you. Is there anybody - any counsel or representative who wishes to apply to ask any questions of Mr Adamson?

MR FOGARTY: No, thank you, Commissioners

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CHAIR: Thank you very much. In that case, Mr Adamson, thank you for coming to the Royal Commission to give evidence. We appreciate your assistance. Thank you.

MR ADAMSON: Thank you.

15

<THE WITNESS WITHDREW

CHAIR: Feel free to leave. Yes. Mr Griffin.

20

MR GRIFFIN: Chair, I understand the technical team need five minutes to set up for the next two witnesses.

CHAIR: Very good. All right. We'll take a very short adjournment to allow for the system to be adjusted.

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<ADJOURNED 12.09 PM

<RESUMED 12.17 PM.

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CHAIR: Yes, Mr Griffin.

MR GRIFFIN: Chair and Commissioners, I call Joanne Toohey and Michael Allen.

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CHAIR: Yes, thank you very much. Thank you, Ms Toohey and Mr Allen, for coming to the Royal Commission today to give evidence. We appreciate the assistance that you have provided thus far. I will ask my Associate, who is just to your right, to administer the oath to each of you, and if you would be good enough to follow his instructions. Then I shall ask Mr Griffin to ask you some questions.

40

<WITNESSES JOANNE TOOHEY AND MICHAEL ALLEN, SWORN

<EXAMINATION BY MR GRIFFIN SC

CHAIR: Thank you very much. Yes, Mr Griffin.

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MR GRIFFIN: Commissioners, the statement of Joanne Toohey dated 28 April 2022 appears in Hearing Bundle D at tab 1. The statement of Michael Allen dated 28 April 2022 appears at Hearing Bundle D, tab 2. And the supplementary statement of Mr Allen dated 11 May 2022 appears at Hearing Bundle D, tab 2A.

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CHAIR: Yes. Thank you.

5 MR GRIFFIN: Ms Toohey and Mr Allen, can I indicate to you that I will endeavour to direct my questions to one or other of you. However, the person to whom the question is not directed, if you have a burning desire to clarify or elaborate on the answer given by the first, please feel free to do so. What I'm interested in doing is getting the benefit of your combined experience in relation to the topics I want to take you to.

10 In the event that I ask a question which you're not able to answer, we can take questions on notice, but insofar as you can, I'll prefer it if you'll give your best effort to answer so that we can bring this matter to a close in terms of the Public hearing by the end of this week.

MR ALLEN: Of course. Thank you.

15 MR GRIFFIN: I think, Mr Allen, yesterday, in telling the Chair that you were going to be the witnesses today, I made a mis-statement by suggesting you had been Chair of the Afford Board since 2015. What I intended to say was you've been on the Board since 2015. You've been the Chair since, I think, late 2021.

20 MR ALLEN: That's correct, following the AGM in 2021.

MR GRIFFIN: Thank you. Ms Toohey, you have a background of being a registered nurse.

25 MS TOOHEY: That's right.

MR GRIFFIN: You have a degree in psychiatric nursing.

MS TOOHEY: That's right.

30 MR GRIFFIN: You have undertaken Australian Institute of Company Directors course.

MS TOOHEY: That's right.

35 MR GRIFFIN: And you have very extensive experience in community care and residential services.

MS TOOHEY: Correct.

40 MR GRIFFIN: Firstly, working for Uniting?

MS TOOHEY: Yes.

MR GRIFFIN: And then with the Benevolent Society.

45 MS TOOHEY: That's right.

MR GRIFFIN: In your work with the Benevolent Society, did you have any involvement with the NDIS?

50

MS TOOHEY: I did. We participated in the transfer of disability services from New South Wales government. We transferred over the clinical disability services. That was about six years ago, and that's when the organisation first became involved with the NDIS. We then also were successful in achieving the early childhood - early intervention program up in Queensland as well.

MR GRIFFIN: So when you joined Afford as the CEO, you had a fair degree of familiarity with the NDIS?

MS TOOHEY: That's right.

MR GRIFFIN: And in broad terms, you've had about 30 years' experience in the not-for-profit sector?

MS TOOHEY: I have.

MR GRIFFIN: You were appointed as CEO of Afford in October 2021?

MS TOOHEY: That's right.

MR GRIFFIN: Would you describe the subsequent events as being a steep learning curve for you?

MS TOOHEY: Steep learning curve in terms of uncovering and continuing to discover the issues and problems within the organisation, yes.

MR GRIFFIN: And as of today, is that an ongoing issue for you, or do you feel you're now on top of those issues?

MS TOOHEY: There are still things that we're still discovering. I have a new executive team which is now formally in place. The last person commenced this week. As each of those executives have come in and further unpacked each of their areas, we continue to find issues and concerns.

MR GRIFFIN: Is it accurate to say that you've engaged in what I might call a root and branch analysis of Afford since you became the CEO?

MS TOOHEY: That would be a correct analysis, yes.

MR GRIFFIN: And, in particular, what issues have come to your attention in recent times? Can you give the Commission some examples?

MS TOOHEY: I'll give you an example of one that Mr Adamson referred to earlier. So it was in preparation for the Royal Commission as well to get across the serious incidents that occurred in the organisation over the last three years, I obviously read the investigation reports that had been completed by the external investigators to get reassurance that, in fact, the actions that were required as a result of those investigations were, in fact, completed.

5 The issue of the mobile phones was one in particular, for example, where I understand that the previous CEO had refused to purchase the required mobile phones to allow that action to be implemented. As soon as that became apparent, then we ceased the use of mobile phones immediately, obviously, and purchased the required mobile phones. The staff were informed they were not to use personal mobile phones while they were on duty.

MR GRIFFIN: Thank you. Mr Allen, you've had a long and distinguished career in New South Wales public service.

10 MR ALLEN: Thank you for describing it that way, yes.

MR GRIFFIN: And, in particular, you've had a very long career with Housing New South Wales.

15 MR ALLEN: Yes, I have.

MR GRIFFIN: And you were the Director-General/CEO of the organisation from 2006 until 2014.

20 MR ALLEN: That's correct.

MR GRIFFIN: You were appointed to the Board of Directors, initially as a non-Executive Director of Afford in 2015.

25 MR ALLEN: That's correct.

MR GRIFFIN: You became the Deputy Chair of the Board in 2020.

MR ALLEN: That's right.

30

MR GRIFFIN: And you were appointed the Chair of Afford on 15 December 2021.

MR ALLEN: That's correct.

35 MR GRIFFIN: During your period on the Board, you've been a member of various board committees.

MR ALLEN: Yes, I have.

40 MR GRIFFIN: And I'll come back to that later. But in summary, Ms Toohey and Mr Allen, you both have, for different reasons, very extensive experience of what is entailed in the role of a CEO in a large organisation.

MS TOOHEY: That's right.

45

MR ALLEN: Yes.

MR GRIFFIN: Mr Allen, can I just ask you something about the financial arrangements of Afford, and I don't intend to delve into this in any detail. Afford is not-for-profit enterprise?

50

MR ALLEN: That's correct, a registered charity.

5 MR GRIFFIN: When you examine the accounts at the end of the year, you hope that there's a difference between the revenue and the expenditure?

MR ALLEN: A positive difference, yes.

10 MR GRIFFIN: And if you record a surplus, do you have a reserve in place at Afford to deal with future plans and contingencies?

MR ALLEN: Yes, there are some reserve funds set aside. The balance of the funds would be reinvested in further services or facilities.

15 MR GRIFFIN: I'll come to that in a moment. Do you know what the current reserves of Afford are?

20 MR ALLEN: I couldn't give you an accurate figure off the - off the top of my head. Some of our current reserves include bank loan facilities, but in the vicinity of approximately \$28 million.

MR GRIFFIN: Has that reserve figure increased in each of the last five or six years or does it fluctuate from year to year?

25 MR ALLEN: It's a figure that fluctuates from year to year.

MR GRIFFIN: Does \$28 million represent a high point of reserves, in your experience at Afford?

30 MR ALLEN: Yes, it would represent a high point, I think. Whether it's the highest, I can't recall precisely, but it's certainly a high point, yes.

MR GRIFFIN: You mentioned that, generally speaking, the surplus is reinvested in the activities of the organisation?

35

MR ALLEN: That's correct.

MR GRIFFIN: Who determines the priorities for the allocation of reinvestment in the organisation?

40

MR ALLEN: That would be derived from the Strategic Plan of the organisation and translated into an operational business plan, generally for the year ahead and included in the annual budgetary process that both the organisation would go through and the Board would approve.

45

MR GRIFFIN: And is some of the surplus devoted to the acquisition of new properties?

MR ALLEN: Yes, that's correct.

MR GRIFFIN: And was that, in the last five years, part of the general growth strategy of the organisation?

MR ALLEN: Yes, that's one part of the growth strategy, yes. There are other parts.

MR GRIFFIN: Are some of the surplus funds devoted to employing staff additional to the existing staff?

MR ALLEN: Yes, as the organisation has grown, yes, that's taken place.

MR GRIFFIN: And are some funds allocated for the training of staff?

MR ALLEN: Yes indeed.

MR GRIFFIN: Are you able to tell the Commission in broad terms what percentage of the surplus in any one year would be devoted to increased staffing, firstly, and, secondly, the training of staff?

MR ALLEN: I'm sorry, I wouldn't have specific percentages readily in my memory. That would change from year to year, but I'm more than happy to take that as a question on notice, if that's helpful?

MR GRIFFIN: Thank you. But, in summary, the current position of Afford is it does have access to reserve funds and, on an annual basis, usually access to a surplus that it can devote to the sorts of items I've been referring to?

MR ALLEN: Yes, that's correct.

MR GRIFFIN: Would you describe the current position of Afford from a financial point of view as being robust and healthy?

MR ALLEN: Yes, I would.

MR GRIFFIN: Ms Toohey, based on your extensive experience working in organisations, do you agree with the proposition that the culture, ethics and standards of an organisation are primary driven by the CEO and by the board?

MS TOOHEY: Yes, I do.

MR GRIFFIN: Why do you hold that view?

MS TOOHEY: Because, ultimately, the board and the CEO are responsible for both the strategic direction of the organisation, but also ensuring that the organisation is meeting its overall purpose, and for a not-for-profit, the purpose of the organisation should be reflected in everything that we do everyday and how we behave.

MR GRIFFIN: Would you agree with the proposition that the CEO sets the day-to-day standard of the organisation?

MS TOOHEY: I would.

MR GRIFFIN: And that, typically, the board will guide and direct and check whether there is adherence to the standards?

5 MS TOOHEY: Yes, I do. I agree with that.

MR GRIFFIN: As a general proposition in a large organisation, does culture come from a top-down approach to be most effective?

10 MS TOOHEY: I think that the top-down approach plays a very large part, but I also firmly believe that culture also comes from the bottom up as well.

MR GRIFFIN: In what respects?

15 MS TOOHEY: Well, because, for me, the CEO, for example, I will set the overall standard, the executive team, the leadership team, how we work. I mean, that all goes to sort of culture, how we engage with our staff, a whole range of things, how we interact with our customers, our external stakeholders, all of that sort of plays a part. But also I think that, you know, how local teams are managed, the relationship they have with their
20 direct line managers, you know, how, for example, say in Afford, how our - how our participants are serviced every day, the interactions with the families, interaction teams have with each other - each other as well, also plays a really strong part in the culture as well.

25 And when you have an organisation such as Afford which is a large geographically dispersed organisation, that local emphasis, for me, also plays a really strong part in the overall culture of the organisation, because it can often be hard for staff to feel connected to the overall - to both the organisation and its purpose.

30 MR GRIFFIN: Since you've joined Afford as CEO, how have you ascertained what the existing culture was, and what are you doing to measure a positive change in culture?

MS TOOHEY: So, for me, when I first started, it was the end of the Delta outbreak, so it was remote, which was not ideal. I've spent quite a bit of time talking to staff. I've started
35 to, now that I have a team in place, meet with families. We have instigated town halls, for example, across the organisations. So staff have direct live access to the executive team. That gives us a bit of a sense about how things are going.

I like to do that. I like to have direct contact with staff. And now that I have the exec team
40 in place - and I think you would have seen it reflected in the Business Improvement Plan - we are looking to do a staff engagement survey about September this year so that we can get a baseline of where we're currently sitting.

MR GRIFFIN: Thank you. Mr Allen, you've heard those answers?

45 MR ALLEN: Yes.

MR GRIFFIN: Do you agree with what Ms Toohey has said, firstly, and, secondly, is there anything you wish to add?

50

MR ALLEN: Yes, I do agree with what Ms Toohy has said. I think that is both appropriate and best practice and, no, there's nothing I'd like to add. Other than as Chair of the Board, she and all of her staff would have both my and the Board's full support in ensuring the best possible culture for the organisation.

5

MR GRIFFIN: Mr Allen, can I take you to the composition of the Board of Afford. I understand from the constitution you're required to have at least five but not more than 10 directors?

10 MR ALLEN: That's correct.

MR GRIFFIN: Is it the current situation you have six directors?

15 MR ALLEN: We have seven directors now. There was a seventh director we appointed in the last two weeks.

MR GRIFFIN: Historically, has the number been six in your time on the Board?

20 MR ALLEN: Yes, it has. Most recently it has.

MR GRIFFIN: It would seem, Mr Allen, that if I look at the period from 2015 to 2021, you've been on the Board for the duration of that period?

25 MR ALLEN: Yes.

MR GRIFFIN: Clifford Haynes has also been a colleague of yours on the Board for that period?

30 MR ALLEN: Yes.

MR GRIFFIN: Alan Travers, similarly.

MR ALLEN: Yes.

35 MR GRIFFIN: And Ross Fowler.

MR ALLEN: That's correct.

40 MR GRIFFIN: And that was during the time where there was typically six Board members?

MR ALLEN: No, there was seven at that time. The - one director has retired since then, and another director, he has resigned or taken a leave of absence for 12 months.

45 MR GRIFFIN: And in addition to the four people I've just mentioned, including yourself, who have been on the Board at least from 2015 to 2021, in 2016 you were joined by Eva Ballai.

50 MR ALLEN: That's correct.

MR GRIFFIN: Is that how to pronounce her name?

MR ALLEN: Yes, Ballai.

5 MR GRIFFIN: And she joined in 2016 and she's still a member of the Board?

MR ALLEN: Yes, she's the Director that's taken the leave.

MR GRIFFIN: And there was a Director Mario Bellantonio?

10

MR ALLEN: That's correct.

MR GRIFFIN: Who was on the Board in 2015 and I think, from memory, ceased in 2020.

15 MR ALLEN: That's correct. Sorry, he ceased in 2020, but he had been on the Board for a much longer period prior to 2015.

MR GRIFFIN: Yes, I think he had been on the Board from 1986 to 2008 or something like that.

20

MR ALLEN: It was a very lengthy period, as I recall.

MR GRIFFIN: And, historically, Afford has had very long-serving directors since its inception.

25

MR ALLEN: Yes, that's my understanding.

MR GRIFFIN: How do you go about identifying and, to use my word, recruiting a director for the organisation?

30

MR ALLEN: Historically, the organisation had recruited directors from the known networks of the existing directors. In 2020, we changed that completely and we went through an open public and competitive process to recruit new directors on an expertise basis.

35

MR GRIFFIN: What caused you to make the change from what I might call "identifying friends of friend", or "associates of associates", to one of a more formal process you've just described?

40 MR ALLEN: Because a more formal process is considered best practice, and, certainly, we follow the guidance of the Australian Institute of Company Directors, and I led that process.

MR GRIFFIN: I don't wish to cast any aspersions on any individual in asking this question, but have you considered imposing a time limit on sitting on the Board?

45

MR ALLEN: That hasn't been considered at this stage but I am aware that that is a relatively common practice amongst other boards.

50 CHAIR: Why did it take so long to adopt best practice for the selection of directors?

MR ALLEN: I can't comment on - on the periods of time prior to me being on the Board, Chair, but certainly after I joined the Board and we got to a stage where we had fairly consistent board - board representational numbers, there weren't any vacancies, but with
5 some impending vacancies and the vacancy created by Mr Bellantonio's departure, I discussed with the Board at that time what would be better practice to recruit new directors to fulfil those vacancies.

CHAIR: How many vacancies were there between 2015 and your ascension to the Chair?
10

MR ALLEN: There - well, approximately five. So there were two who became directors, and Mr Griffin has mentioned those - at least one of those. And they, if you like, were recruited under the old system by a Chair of some time ago. And - and then there were three new directors recruited in 2020 as part of what I have described as the "better
15 practice" process.

CHAIR: But there was no impediment to setting up a procedure that amounted to best practice. The question of vacancies is something that is unpredictable, isn't it?

20 MR ALLEN: Yes, that's right, Chair.

CHAIR: Yes.

MR GRIFFIN: When you mentioned vacancies, I indicated at the start that my reading of your constitution indicates that you can have a minimum of five but a maximum of 10
25 directors. So when you say "vacancies" you have in mind a certain number, and that that number remains six or seven, and it's only when someone retires that a vacancy occurs, as opposed to a situation that considered, "well, we could expand to 10 if we felt the need."

30 MR ALLEN: Yes, that's correct, Mr Griffin and we are expanding closer to 10 at the present because we've also gone to market through a well reputed and experienced organisation to recruit a further director in addition to the one that we have recently appointed.

35 MR GRIFFIN: On your current board, do any directors suffer from a relevant disability?

MR ALLEN: No, not that I'm aware, but the recruitment process that we're going through now for a new director, we are specifically seeking a director with either a personal or
40 a - either a direct or indirect experience of disability.

MR GRIFFIN: Why have you not previously considered appointing at least one, and if they have the expertise more, people with disabilities?

MR ALLEN: The Board hadn't turned its mind to that possibility at that time.
45

MR GRIFFIN: Can I ask you to give some thought to that as you're sitting there now. Why hadn't initially you, and more generally the Board, turned their mind to the issue I've just raised?

MR ALLEN: The Board had people with indirect experience of disability represented on the Board, and either through family circumstances or through association with - excuse me - other organisations providing services to people with disability or, indeed, someone like myself who had been involved in great detail in researching the housing needs of people with disability.

MR GRIFFIN: Do you understand the concept of someone having “lived experience” of disability?

MR ALLEN: Yes, I do, and I absolutely agree that we should have someone on the Board to reflect that.

MR GRIFFIN: And you say that under the current recruitment process that is, in your estimation, likely to happen?

MR ALLEN: That is our specific intention, Mr Griffin.

CHAIR: What prompted the realisation that this was an appropriate course?

MR ALLEN: The Board identified that that was a deficiency in our range of experience.

CHAIR: What led the Board to identify that as a deficiency?

MR ALLEN: The Board felt in the renewal of the organisation which we are undergoing under Ms Toohey's leadership, that the Board also needed to undergo some renewal, and that's part of the reason why we've continued the recruitment process, but also part of the reason why we've identified that the more indirect experience of people with disabilities that current directors have, that should be improved or expanded, sorry, is a better word by recruiting a director with a much more direct experience of disability.

MR GRIFFIN: Ms Toohey, in your seven to eight months in the job have you advised the Board in relation to the issues I have been raising with Mr Allen?

MS TOOHEY: The Board and I have had very open conversations about, I suppose, the different skills and mix around - sitting around the Board table, which included having someone who either had a disability or had a direct lived experience of disability. That was part of the conversation that we were having more broadly about how we ensure that the voice of someone with a disability actually flows through into governance of the organisation and the Board actually have that direct access to hearing that voice. And - and the more broader the consumer experience framework that we've put in, that we're currently putting in place at the moment.

MR GRIFFIN: My examination of the membership of the current Board indicates that Mr Fowler has been a board member for 18 years, Mr Travers for 13, Mr Haynes for 11, Mr Allen for seven. Once again, I'm not seeking to cast any aspersions on the individuals and their motivation, but on the basis of your experience as CEO dealing with boards before you came to Afford, do you have a view about time limits on a board?

MS TOOHEY: I do.

MR GRIFFIN: What's your view?

5 MS TOOHEY: I think that, initially, three by three-year terms is appropriate. I think organisations change dramatically, particularly in our sector. There's constant change. And, for me, that's exactly the same as being the leadership in the organisation. You're looking for that constant renewal.

CHAIR: If you take - sorry, have you finished?

10 MS TOOHEY: That's fine. Yes.

CHAIR: If you take a period of 13 years, I think, was one example Mr Griffin gave and look back on Afford 13 years ago, it was a fundamentally different organisation that bears very little relationship to the organisation now; is that not the case?

15 MS TOOHEY: That's correct. Yes, that's correct.

CHAIR: And therefore, the responsibilities of a director now very much - very different and more onerous than they would have been 13 years ago.

20 MS TOOHEY: They are.

COMMISSIONER BENNETT: You mentioned that you're looking for a person with disability for the Board. Do you have employees with disability in the organisation?

25 MR ALLEN: Yes, we do. In our Australian Disability Enterprises component of the business. If the intent of your question is to ask me whether I believe that we have enough people with disability in mainstream roles, I do not believe we have enough people with disability in mainstream roles. I raised that with the former CEO as a major concern of mine, and I've had a similar discussion with Ms Toohey since she joined the organisation.

COMMISSIONER BENNETT: What percentage, at the moment, of your staff are people with disabilities?

35 MR ALLEN: With the people within the ADE, the Australian Disability Enterprise component of the organisation, it's about -

MS TOOHEY: 25 per cent.

40 MR ALLEN: - 25 per cent. Thank you, Ms Toohey.

COMMISSIONER BENNETT: Working for the ADE?

45 MR ALLEN: That's correct.

COMMISSIONER BENNETT: In leadership roles and - or as employees doing the work in - I think it's referred to as "the factory", isn't it?

50 MS TOOHEY: I can answer that, if you - if you like. The supported employees do a variety of different roles. There's been quite a strong emphasis by the executive of

Employment Services to ensure that people actually have a career path. So we have people with disabilities in our ADEs who work in Team Leader roles, for example, who do - you know, drive forklifts, some of them are working on the - in the production areas, but - but there are people who are, in fact, in those Team Leader leadership roles.

5

COMMISSIONER BENNETT: But not in your day programs?

MS TOOHEY: Not in our day programs.

10 COMMISSIONER BENNETT: Or the group homes?

MS TOOHEY: No, one of the issues that the organisation currently has in relation to data around that is that we actually don't collect that data around our employees. It's already an identified issue which the new executive is aware of.

15

COMMISSIONER BENNETT: Thank you.

COMMISSIONER McEWIN: Before Mr Griffin goes on, can I ask you, Mr Allen, to go back to the question Mr Griffin asked about the proposition of having people with lived experience on the Board, and you talked about direct and indirect. Can I just confirm my understanding, or your understanding, is people with direct experience are disabled people, and people with indirect experience are family members, associates. So can I be very clear, is your priority to recruit disabled people?

20 MR ALLEN: Our priority is to recruit someone with a disability, yes.

COMMISSIONER McEWIN: Yes. But so I'm very clear, you understand the distinction between direct and indirect.

25 MR ALLEN: Yes. Yes, I do, and that's very much our intention, to recruit a new director who has a disability themselves.

COMMISSIONER McEWIN: Yes. Thank you.

30 MR GRIFFIN: Mr Allen, can I take you to your supplementary statement at paragraph 1.3. That is Hearing Bundle D, tab 2A. Do you have a copy of your statement in front of you?

35 MR ALLEN: Yes. Yes, I do.

40

MR GRIFFIN: At paragraph 1.3, you say words to the effect:

"None of the Directors receive any remuneration."

45 Is that correct?

MR ALLEN: That's correct. We're all volunteers.

50 MR GRIFFIN: All volunteers and you're a charity, a registered charity?

MR ALLEN: That's correct.

MR GRIFFIN: Does that statement apply to doing work on the Board as well as to doing work on committees?

5

MR ALLEN: That's correct.

MR GRIFFIN: When I go to your Afford constitution at Hearing Bundle E, tab 265D - I'm not sure if we can bring that up, but clause 43 of the constitution has a heading "Interests of Directors", and it says, in part:

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"Directors may be paid an aggregate of \$229,500 per annum."

Can you explain to the Commissioners what that provision in the constitution envisages?

15

MR ALLEN: That's a future provision in the constitution should the Board and the members determine at some future time that payment of the remuneration for directors is appropriate.

MR GRIFFIN: And do I read it to mean that, under the current constitution, the organisation can pay \$229,500 to directors in aggregate, meaning that one director could get \$150,000, or is it envisaged that that amount would be divided by the number of directors as to eligibility to receive it?

20

MR ALLEN: It would be the latter, Mr Griffin, but there is no formula for those arrangements because that remuneration's not being paid and it's not intended to be paid at this point in time.

25

MR GRIFFIN: What prompted the Board to put that in the constitution?

30

MR ALLEN: I think the Board was prompted by the arrangements that had been put in place in a number of other not-for-profit charitable organisations that the Board was aware of that were paying their directors.

MR GRIFFIN: But you say today there's no intention at this point in exercising that right to payment?

35

MR ALLEN: No, there is no intention and there have been no discussions.

CHAIR: What date was this constitution adopted? I'm trying to find it in the document. It may be there. I can't see it.

40

MR ALLEN: My recollection, Chair, is it probably goes back a couple of years.

CHAIR: Couple of years?

45

MR GRIFFIN: You joined the Board, I think, on 27 March 2015?

MR ALLEN: That sounds correct.

50

MR GRIFFIN: Mr Steven Herald was appointed CEO, I understand, in March 2015. Was he the CEO when you were appointed to the Board or were you on the Board just prior to him being appointed?

5 MR ALLEN: No, he was the CEO when I joined the Board.

MR GRIFFIN: Did you become familiar with what the process was in recruiting Mr Herald and the reasons why he was appointed?

10 MR ALLEN: I'm broadly aware - I'm not familiar with the detail of the process but - the Board went through to recruit Mr Herald. I presume it was a relatively standard process through an appropriate recruitment agency.

MR GRIFFIN: What did you understand the particular skills and expertise that Afford was seeking from Mr Herald?

15 MR ALLEN: My understanding is that the Board were interested in recruiting someone who had some experience in a disability organisation, and Mr Herald had been CEO of a smaller disability services organisation, I think from my memory located in the Sutherland area. But the Board were particularly interested, I understand, in recruiting someone who had more commercial business experience in advance of the implementation of the NDIS, which was a completely fundamental change to the funding and financial arrangements for disability services organisations.

20 MR ALLEN: My understanding is that the Board were interested in recruiting someone who had some experience in a disability organisation, and Mr Herald had been CEO of a smaller disability services organisation, I think from my memory located in the Sutherland area. But the Board were particularly interested, I understand, in recruiting someone who had more commercial business experience in advance of the implementation of the NDIS, which was a completely fundamental change to the funding and financial arrangements for disability services organisations.

25 Prior to the introduction of the NDIS, Afford's clients were directed to Afford. There was very little choice or control, and the funding arrangements were fairly simply a cheque from the New South Wales Government every six months with an annual acquittal process. And, as we know now, the world of the NDIS, quite appropriately, is completely different and clients have choice and control. But organisations have to promote and market their services to gain clients and to retain clients.

30 MR GRIFFIN: So was the fundamental situation, as you understood it, that Afford would have to live in a very open marketplace?

35 MR ALLEN: That's correct, and I think the way it was described to me at the time, that it was very much a retail business model.

MR GRIFFIN: And one of the benefits of recruiting Mr Herald was seen to be his commercial expertise?

40 MR ALLEN: That's correct.

MR GRIFFIN: And his marketing ability?

45 MR ALLEN: Yes, I believe so.

MR GRIFFIN: And his ability to grow the organisation in the new environment which was - would be the NDIS?

50 MR ALLEN: Yes, that's correct.

MR GRIFFIN: Over the next five years or so that Mr Herald was the CEO, were you involved in discussing his performance and monitoring his performance as part of your duties as a Board member?

5

MR ALLEN: Yes, I was.

MR GRIFFIN: At any stage during that period of time, did you or the Board develop concerns about the way he was performing his role?

10

MR ALLEN: Yes, the Board developed some concerns in the latter period of Mr Herald's employment.

MR GRIFFIN: When you say "the latter period" when did those concerns first crystallise?

15

MR ALLEN: Approximately the last year or so of his employment.

MR GRIFFIN: And in summary, what were the nature of the concerns that emerged at Board level?

20

MR ALLEN: The Board was informed from a number of complaints or allegations that had been made against the then CEO, and other broader areas of the organisation's operation and concern, the Board's concern at the effectiveness of those areas of operation.

25

MR GRIFFIN: Now, it's not the role of this Royal Commission, Mr Allen, to determine who was right and who was wrong in relation to any issues within the organisation, but what were the nature of the complaints which were coming forward?

30

MR ALLEN: Some of the complaints were about the operation of the way certain areas of the organisation were operating. Some of the complaints were about the level of capability of some members of the senior management or executive team, and there were a number of complaints or allegations about the then CEO's personal behaviour.

35

MR GRIFFIN: Subsequently, did the CEO tender his resignation?

40

MR ALLEN: Yes, he did.

MR GRIFFIN: I think you make the point in your statement that his resignation wasn't sought by the Board?

45

MR ALLEN: No, it wasn't at that time.

MR GRIFFIN: Is it correct that having tendered his resignation, he then sought to withdraw it?

50

MR ALLEN: Yes, he did. He sought to retract his resignation.

MR GRIFFIN: And did the Board decline his request to retract the resignation?

55

MR ALLEN: Yes, the Board did. The Board had lost confidence at that stage.

MR GRIFFIN: As a matter of inference does it flow from that, that had he not tendered his resignation, the Board would have dismissed him?

5 MR ALLEN: In fairness, Mr Griffin, that's a hypothetical. I can't really answer that without seeking the views of the other directors on the Board at the time.

MR GRIFFIN: I want to press you on that, Mr Allen, because the Board had an opportunity to allow him to withdraw his resignation, and he declined. That would at least suggest to an outsider that the Board at that point had reached the view it would be better if he left?

MR ALLEN: The Board, as a result of one of the investigative processes, had issued some time prior the then-CEO with a first and final warning letter as a part of a disciplinary process. A subsequent investigation was underfoot when the CEO resigned, but that had not been completed, nor had it been reported to the Board at the time. I can only offer you a personal view, not a view on behalf of the other directors, but if you're asking me, as I think you are, would it have been likely that I would have been prepared to continue with that CEO, my answer is no, I would not have been prepared to do that.

20 CHAIR: What was the date of his resignation?

MR ALLEN: Chair, it was March of 2020.

25 MR GRIFFIN: '20?

MR ALLEN: Sorry, '21. March of 2021. I think it was around 14 or 16 March.

CHAIR: Just to get the chronology right, there was a report - a disciplinary investigation report of May 2020?

MR ALLEN: That's correct.

CHAIR: That made adverse findings -

35 MR ALLEN: It did.

CHAIR: - against the previous CEO?

40 MR ALLEN: And that led to the issue of the disciplinary letter.

CHAIR: Why was it determined that the findings were insufficiently serious to warrant the termination of the previous CEO's employment at that point?

45 MR ALLEN: As I recall, Chair, there were 11 allegations. Six of those allegations were substantiated, and some were not substantiated, and I think one at least was partially substantiated. The Board had a detailed discussion with its advisors on the basis of the report and the findings. The Board took the view it's always an extremely serious consideration, both to the organisation and for the individual to dismiss a CEO, and the

Board felt that Mr Herald should be given one final opportunity, and that was reflected in the letter that was issued to him.

CHAIR: The second report concerning the previous CEO is dated 7 July 2021?

5

MR ALLEN: That's correct.

CHAIR: So that report was completed four months after the resignation of the previous CEO?

10

MR ALLEN: That's correct, and that's what I indicated, Chair, that that report had not been completed, nor had the findings been presented to the Board at that time. But the allegations had been made and the engagement of an investigator to complete the investigation had been commenced prior to the CEO's resignation.

15

CHAIR: And ultimately 11 of the 15 allegations were found to be substantiated?

MR ALLEN: That's correct.

20

CHAIR: And they were serious?

MR ALLEN: Yes, they were.

25

MR GRIFFIN: Mr Allen, is it the case that after six years in the position you were personally relieved when he resigned?

30

MR ALLEN: Mr Griffin, I'm not sure that it's fair or accurate to describe it as "relief". I felt it was really important for the organisation to be renewed and that that would only take place with a new CEO and, indeed, a new executive team. So I was pleased that the organisation was going to have that opportunity to renew itself and to deliver what I think it should do more strongly in terms of its social mission and its commitment to our customers and their carers and families.

35

MR GRIFFIN: And you were personally relieved that that happened?

MR ALLEN: Whether it's relief or another emotion, Mr Griffin, was I - was it the right thing for the CEO to be gone at that time, the former CEO? Yes, it was. If you're encouraging me to say "relieved", then I'm comfortable to say I was relieved.

40

MR GRIFFIN: I note the time, Chair.

CHAIR: Yes. Thank you. It's now five past one, shall we resume at 1.50? Is that convenient? We'll resume at 1.50. Thank you both.

45

ADJOURNED 1.02 PM

RESUMED 1.47 PM

50

CHAIR: Yes, Mr Griffin.

MR GRIFFIN: Chair, during the luncheon adjournment, two documents were brought to my attention. I've provided copies of those documents to you, Chair, and the Commissioners. Earlier this week in a counsel-to-counsel discussion with Mr Watson on behalf of Afford, I inquired in broad terms whether the Royal Commission would be receiving on behalf of Afford an apology in relation to the issues which are being discussed at this Public hearing.

I indicated to Mr Watson of Senior Counsel that if there was to be an apology, I required a copy. I would then consider if and when it could be introduced into evidence in this hearing. I explained to Mr Watson that this was the approach I'd adopted with Life Without Barriers in Public hearing 20 for a number of reasons which I needn't go into at this stage.

Prior to me saying anything else in respect of the matter, can I invite you, Chair, to give Mr Watson an opportunity in case he wishes to say anything at this point.

CHAIR: Yes, Mr Watson, is there anything you wish to add.

MR WATSON: I can confirm every word that Mr Griffin has just said.

CHAIR: Thank you.

MR WATSON: We had that conversation.

CHAIR: Thank you very much. Yes, Mr Griffin.

MR GRIFFIN: Can I say on the record that I've had a long experience of dealing with Mr Watson of Senior Counsel, and he has always been someone of the highest probity and ethical standards. I accept completely what he's said.

CHAIR: Yes. Thank you.

MR GRIFFIN: In those circumstances, Chair, is there anything that you wish to add in relation to the issue before I continue?

CHAIR: I would like to invite, perhaps, Mr Allen in particular to explain why, in the light of what Mr Griffin has communicated and Mr Watson has confirmed, we should find that an apology of sorts has been apparently released to news media independently of this Royal Commission?

MR ALLEN: Chair, I understand a statement - a media statement was placed on Afford's website that is available. I'm not sure that it's necessarily in a full form of an apology. I didn't understand that was the case.

CHAIR: The document that I have is headed 'Afford', and it says this:

"Afford Chair, Mike Allen, and CEO, Joanne Toohey, extend their appreciation to the Disability Royal Commission for the opportunity to appear and provide input into its vital and important work. Afford fully supports the work of the Disability Royal Commission and recognises the impact and importance of public hearings to provide an opportunity for Australians to hear and understand the lived experience of people

with disability. The experiences of people with disabilities are deeply upsetting and shine the light on the need for significant measures necessary for greater equality and understanding of the experiences of people with a disability."

5 There is then a quote, and the quote is attributed to Ms Toohey:

10 "Firstly, I want to personally and on behalf of Afford send my deepest sympathies to the impacted people and their families involved in Disability Royal Commission hearing 23 for the failings and heartache caused. The Disability Royal Commission is an incredibly important process for us. It will provide us with additional insight and information to better understand how we can continue to improve our care and services for the people we support, their carers and families, and what new mechanisms and initiatives need to be implemented.

15 Along with the team I have recently appointed at Afford, I am absolutely committed to continuing the restructure and transformation of our organisation to ensure the people in our care are given every opportunity to live their best life. We understand we must work to identify and mitigate risks and we are and will continue to do this to ensure the safety of the people we support."

20 And then it goes on to give a whole list of bullet points about how Afford is going to continue to honour this commitment with transformative organisational measures. This statement appears to have been reported, although I'm not - the document I've got is a report in the Canberra Times that is based upon this press release.

25 I'm just wondering why you would have chosen to issue a document that can be taken as a press release - at least it's been picked up by the news media, whether that's been done by a public relations person engaged by Afford or it has just happened some other way. I wouldn't have thought this is an appropriate way to proceed in the face of a Royal Commission, but perhaps you might explain?

30 MR ALLEN: Chair, I sincerely apologise for our actions and any inconvenience or distress that that's caused for the Commission.

35 CHAIR: We don't get -

MR ALLEN: It was -

40 CHAIR: We don't get distressed, Mr Allen, what we do is investigate in accordance with our Terms of Reference, in accordance with the legislation that governs us and in accordance with the principles of law, and we therefore conduct our investigations in ways that involve the exercise of compulsory powers, the adducing of evidence in various forms, and, on the basis of that, we reach conclusions. But there are expectations about the way in which people are called to give evidence ought to proceed.

45 MR ALLEN: Chair, I apologise for not meeting the Commission's expectations. Both myself and Ms Toohey and most of the members of the organisation's new senior executive have been here every day and every minute of this hearing this week. And we were deeply moved by the evidence that was provided by parents and carers from Afford. 50 And at the very least, we felt it was important to acknowledge our sympathy for the

circumstances that they have experienced, and I - but I apologise. It was well intended but --

5 CHAIR: It does seem distinctly odd to have done that in the form, in effect, of a press release rather than before this Royal Commission where the issue of an apology has been raised on several occasions. I would have thought for someone with your experience and Ms Toohey's experience, that would have been, I have to say, blindingly obvious.

10 MR ALLEN: I can only apologise, Chair. I'll have the statement withdrawn from the website.

15 CHAIR: The other point about it is that, at a human level, I would have thought that if an apology was to be proffered, the first people that ought to receive the apology are those who have been affected, and not learn about it, as I assume they will learn about it, either by reading the Canberra Times or, more likely, following what's going on in this Royal Commission from the start of proceedings at 1.50 pm. In any event, I shall now leave it to Mr Griffin.

20 MR GRIFFIN: Thank you, Chair. A moment ago, Mr Allen, I indicated that I wouldn't go into the reasons why I had adopted the approach I adopted in respect of the Life Without Barriers apology, but I can say this: when people claim they have been subject of abuse or they're the family members of people who have been the subject of abuse, the trust between them and a service provider has been broken. You would accept that proposition?

25 MR ALLEN: Yes, I would.

MR GRIFFIN: They have been traumatised in particular ways. You'd accept that?

30 MR ALLEN: Yes.

MR GRIFFIN: The reason I adopted the approach in Public hearing 20 and alluded to in my discussions with Mr Watson was that it's extremely important for the Royal Commission, which adopts a trauma-informed approach to its work, that people in the category I'm referring to do not hear about an apology in the media for the first time. Do you accept that proposition?

35 MR ALLEN: Yes, I do, Mr Griffin. But it wasn't intended as an apology; it was intended to express our sympathy. We fully intend to apologise to these people in a much more personal and different way.

40 MR GRIFFIN: I'm gratified to hear that, Mr Allen. But when the release says:

45 "I want to personally on behalf of Afford extend my deepest sympathies to the impacted people and their families for the failings and heartache caused."

You say that's not an apology?

50 MR ALLEN: Mr Griffin, our intentions were - our - we had good intentions. We were clearly misguided in the way we've handled the matter, and for that I apologise to you also, and to the staff.

CHAIR: Yes, but it would be helpful to answer Mr Griffin's question, which carries with it, I think, an implicit question about whose failings is this public statement intended to refer to.

5

MR GRIFFIN: Let me go back a step, Mr Allen. I don't know what the Commissioners think, but as Counsel Assisting, I don't want to hear weasel words. It's an apology or it's not an apology. You can't have it both ways. Do you now regard this media release as an apology to the impacted people?

10

MR ALLEN: Mr Griffin, it's not my practice to use weasel words. It wasn't intended as an apology, but on reflection, listening to the language that you've used, yes, I would accept that it is an apology and that most people would do that.

15 MR GRIFFIN: Who does this media release apologise to, and for what are you apologising?

MR ALLEN: It's a general apology to all of those people who have appeared as witnesses at the hearing this week, and it was based on listening to that evidence and being deeply moved and concerned that it would at least provide some acknowledgement of the experiences of those people, ahead of doing something much more personal and hopefully much more meaningful and sincere in acknowledging and apologising for their experiences with Afford.

25 MR GRIFFIN: Does the apology extend to the family of Merna Aprem?

MR ALLEN: Apologies had already - have already been extended to the family of Merna Aprem, but it is fair to say that the acknowledgement and, indeed, what we've agreed is an apology, does extend to all of the Afford clients that have been referenced here this week in this hearing.

30

MR GRIFFIN: You and Ms Toohey are mentioned in the document. Do you purport in this document to speak on behalf of any relevant staff member of Afford that might have been involved in relation to any of the people to whom the apology is directed?

35

MR ALLEN: The - the statement was on behalf of the whole organisation. Have I misunderstood your question? I'm sorry, Mr Griffin.

MR GRIFFIN: When you say "on behalf of the whole organisation", there are clearly many, many employees of Afford that have nothing to do with any of the people to whom the apology is directed. They work in all different locations. They do different jobs. Is this apology intended to extend to those particular employees or executives who are involved with the particular participants or families that are subject of this inquiry?

40

MR ALLEN: It certainly wasn't intended to encompass every single employee of Afford, but it was meant as an acknowledgement from the organisation and the leads of the organisation.

45

MR GRIFFIN: Who ultimately decided to release this document?

50

MS TOOHEY: I did.

MR GRIFFIN: Did you consult with anyone prior to releasing the document?

5 MS TOOHEY: I liaised with my Head of Media around it, and as Mr Allen said, it wasn't
intended at all to be in breach of anything to do with the Royal Commission. I mean,
obviously we have a lot of families and participants who would have been looking at the
website, for example, and I was just very keen for people to see that, in fact, as Mr Allen
10 says, that we have been deeply moved and affected by the things that we've heard this
week, which is the reason that I've been here every day so that I can actually hear it first-
hand. It wasn't intended as anything else but just to express that, you know, that heartfelt
sort of feelings that certainly I had and I know Mr Allen also had.

CHAIR: It clearly is intended to do something else, isn't it? It's intended to show that
15 Afford is doing all sorts of things that demonstrates that it's now doing a good job. That's
what it's intended to do, isn't it?

MS TOOHEY: With respect, those - those things that are listed in that documentation
20 have already been shared with the families and the participants across the organisation
before.

CHAIR: How does that answer my question? My point is very simple. It's not just an
apology. It's an attempt to justify what Afford is now doing. Now, that may or may not be
right. But it's not correct to say that this is an apology plain and simple, motivated
25 by - well, as far as one can tell, motivated by concern for the people who've given evidence
and for the participants in the program who suffered abuse, whether at the hands of the
person who was convicted or others? One only has to read the document to see it. By the
way, is the language that is quoted - is that your language? Or was that written for you by
someone else?

30 MS TOOHEY: That was written for me but it is my style of language.

CHAIR: Was that written for you by your media person?

35 MS TOOHEY: Yes.

CHAIR: That media person is Nicole Hogan?

40 MS TOOHEY: That's right.

CHAIR: What media section does your organisation have? What is it?

MS TOOHEY: We have a Brand and Engagement function, a new Brand and Engagement
45 function in the organisation so we have a Media and PR Adviser, along with five other
roles in that function which do internal/external communication, marketing, brand.

CHAIR: I see.

50 MR GRIFFIN: Ms Toohey, as a matter of basic human courtesy, did you consider
personally contacting the individuals that are the subject of this apology before this was

released?

5 MS TOOHEY: I had contemplated contacting the individuals, both the families involved who I knew that were going to be involved in the Royal Commission prior to the Royal Commission. One was to alert them, all the affected people, in relation to the Daniel Nuumaalii incident, even if they weren't appearing, to let them know that it was being discussed because I didn't want them to suddenly find out during the hearing themselves.

10 But we received legal advice that it wouldn't be appropriate for me to make contact with potential witnesses prior to the - prior to the Royal Commission. But it had been discussed on numerous occasions about having contact because I was concerned that they would - that they would hear about it third-hand.

15 MR GRIFFIN: I appreciate that you were contacting them to the extent that matters would come up during this Public hearing. My specific question was did you consider contacting them to tell them that this document was going to be released, before it was released?

MS TOOHEY: Not before the document was released, no.

20 MR GRIFFIN: Why not?

MS TOOHEY: My intent had been to make contact with the families after the Royal Commission, just to arrange for a one-on-one meeting with them.

25 MR GRIFFIN: Can you imagine what it feels like to be someone that's been traumatised at the hands of your organisation, to read in the media an apology, without being spoken to first?

30 MS TOOHEY: Yes, I can, and I am really, really sorry about it.

MR GRIFFIN: Given your very extensive experience, why did that not occur to you before this was done?

MS TOOHEY: I don't know why it didn't occur to me.

35 CHAIR: Can I make a suggestion?

MS TOOHEY: It should have. It should have.

40 CHAIR: That is, the inference that may be open is that what was the primary motivation was to protect the reputation of Afford; is that right?

45 MS TOOHEY: No, I don't - I don't - I don't agree with that. I mean, the primary motivation was to let people know that, in fact, we did feel quite deeply about it. And to give reassurance to our participants and our families that is -

50 CHAIR: You realise that an alternative that was available was to speak to your legal representatives to indicate that you would - wanted to make an apology but that you wanted to do it in a way that respected the undoubted wishes and took account of the experiences of the people who had been traumatised by these events, and you wanted to

5 get advice as to how this might be done so that your counsel or legal representatives could discuss it with the Counsel Assisting the Royal Commission so that the laudable objectives that you've expressed could have been achieved, but in a way that ensured that the people who are most concerned receive the apology in a way that is consistent with not making their position even worse than it was previously?

MS TOOHEY: I understand that.

10 CHAIR: Yes.

MR GRIFFIN: Before I move off this topic, Ms Toohey, and so it cannot be suggested that I'm being dramatic about this, since I've mentioned this in the Public hearing, one of the people concerned has contacted our counselling section. That's the effect of putting a reputation of an organisation before the needs of individual, is the proposition I'm putting to you. And you can treat it as a rhetorical question, if you wish.

MS TOOHEY: No, I am really sorry. I am truly sorry for the impact that it's had.

20 MR GRIFFIN: Can I move now to more prosaic issues. Mr Allen, Afford has had a series of Strategic Plans since you've been on the Board.

MR ALLEN: Yes, it has.

25 MR GRIFFIN: And they're typically a three-year plan.

MR ALLEN: Generally, it has been a two-year plan with a third year broadly outlined.

MR GRIFFIN: Right. And in broad terms, do those plans set out the aims, ambitions, aspirations of the organisation for that period of time?

30 MR ALLEN: Yes, that's correct.

MR GRIFFIN: And they also set out what the priorities are as directed by the Board?

35 MR ALLEN: Yes.

MR GRIFFIN: And when you first came on the Board, I think you've given evidence already that a priority of the Board was to, in my words, make Afford ready for the new world of NDIS.

40 MR ALLEN: That's correct.

MR GRIFFIN: And that involved a much more commercial approach than had been taken previously?

45 MR ALLEN: Yes.

MR GRIFFIN: And it involved recruiting a CEO and senior personnel that could meet those new requirements?

50

MR ALLEN: Principally the CEO, yes.

5 MR GRIFFIN: Are you aware of what I might call writing instructions, unquote, were given to Mr Herald as to what the Board expected from him in respect of the first Strategic Plan?

10 MR ALLEN: As I've indicated earlier - excuse me - Mr Herald had been recruited prior to me joining the Board. The first Strategic Planning session that I participated in with the Board was in 2016. I'm not clear of what instructions were given to Mr Herald prior to that by the former Chair.

MR GRIFFIN: Let's move to 2016. What was the content of those discussions with Mr Herald when the Strategic Plan was being formulated?

15 MR ALLEN: The broad intention - or the outcome of the Strategic Planning session in 2016 was for the organisation to expand its services and facilities in the Greater Western area of Sydney, traditionally the heartland of the organisation, and to look at what future services might be provided under the NDIS.

20 MR GRIFFIN: Were the future services both in terms of specific services being provided but also geographical ambitions in terms of opening new services?

25 MR ALLEN: The future geographic ambitions were those I described for Greater Western Sydney at that time. The future services were services that might be required by a person with a disability but were not at that time being provided by Afford. The context of those Strategic Planning discussions were that the Board had made a commitment that Afford should be what I describe as a full-service provider, that is, it should provide all of the necessary services that a person with a disability might require. And that was the commitment made at that time in advance of the NDIS.

30 MR GRIFFIN: In 2016, did Afford operate outside New South Wales?

MR ALLEN: No.

35 MR GRIFFIN: In that plan, was it contemplated that Afford would extend its services interstate?

MR ALLEN: No.

40 MR GRIFFIN: Subsequently, did that occur?

45 MR ALLEN: Yes, that occurred in the next two-year cycle. In 2018, the outcome - one of the outcomes of that Strategic Plan was expansion geographically into South-East Queensland and North-Western Melbourne.

MR GRIFFIN: And subsequent to 2018, have services been extended to all other states with the exception of Tasmania?

50 MR ALLEN: No, as an outcome of the 2020 Strategic Planning process, expansion included South Australia and Western Australia only. No other jurisdictions.

MR GRIFFIN: But am I correct in drawing from that that the only state that you anticipate not doing work in is Tasmania?

5 MR ALLEN: In addition to the territories, yes.

MR GRIFFIN: Yes. In the 2016 plan, was Mr Herald required to meet certain targets in respect to the number of facilities being operated, the revenue being garnered?

10 MR ALLEN: I don't recall that there were specific targets for property acquisition, just a general desire to increase the number of group homes particularly available for Afford clients. That was part of what was taking place or was about to take place with the introduction of the NDIS, and, indeed, at that time, Afford was being funded by the then Department of Ageing, Disability and Home Care to construct some additional group
15 homes to relocate residents from what was then a large-scale residential facility outside of Penrith called Cherrywood.

There were no specific financial targets set outside of the - through the Strategic Plan outside of the normal budgetary process. But having said that, it was - I don't want to
20 mislead you. There was certainly a desired intention to ensure that the organisation focused reasonably and appropriately on its financial viability and solvency because there was significant concern with the move to the NDIS that financial viability and, indeed, solvency could be placed at risk, and we have seen that take place.

25 Part of Afford's growth has come about as a result of merging with two smaller organisations whose solvency - who were on the verge of insolvency. One was in the St George area in Sydney. That was an organisation called WALCA, W-A-L-C-A, centred on Bexley. The other organisation was called Redlands, which I - to the best of my
30 memory is in the western suburbs area of Brisbane.

MR GRIFFIN: In summary, Mr Allen, if you go broke, you're not going to be of any use to anyone, are you?

35 MR ALLEN: That's exactly right, yes, Mr Griffin. And the desire of Afford was to provide more services to more people in more places.

MR GRIFFIN: That desire to provide services and financial viability had to be balanced with the quality of service being provided, didn't it?

40 MR ALLEN: Absolutely. It was never intended that quality should be compromised.

MR GRIFFIN: In 2016, what were the components, in your mind, of what would be essential to provide first-class quality services?

45 MR ALLEN: I think that would have been first-class facilities, so in terms of group homes or day program facilities or the other facilities that Afford operates and did operate at that time for ADEs, training, and the Board had - training and staff development, and the Board made it clear to the CEO that the Board expected that there would be a very high standard of training and funded appropriately for staff coming into the period of the implementation
50 of the NDIS, at the very least.

MR GRIFFIN: Looking back from today, do you think you met the objectives as a board of ensuring that the training was first class?

5 MR ALLEN: I think, by and large, Afford's training has been very good, and I've certainly received feedback over the years from staff and others that they felt Afford's training was very good. Am I now questioning that as a result of the evidence I've heard at the hearing this week? Yes. Absolutely, I am.

10 MR GRIFFIN: In what ways are you now questioning the belief you previously held?

MR ALLEN: The lack of engagement, particularly of frontline staff and frontline managers in the provision of training. And the volume of training that is not being delivered directly by Afford employees that, in a sense - notwithstanding the value of
15 virtual modules that can be completed at the convenience of individuals and was certainly very beneficial during COVID and Delta, I would like to see more training and development delivered by the organisation directly, not contracted out.

MR GRIFFIN: Ms Toohey, you're a very experienced CEO. What do you do, as a CEO, to
20 satisfy yourself that what's being reported up to you is accurate? By that, I particularly mean do you have any views about what I will call walking the floor, turning up unannounced at a facility to see with your own eyes what's happening?

MS TOOHEY: I do.

25 MR GRIFFIN: Can you elaborate upon those?

MS TOOHEY: So, for me, the walking the floor is both for myself and the executive team, as well as the senior leaders within the organisation. I have great expectation that the
30 senior leaders as well as all of our corporate office have a deep understanding of what we do as an organisation and the quality of what we do. So, yes, I do have a walk-the-floor approach. The other thing that I like to do is I don't like family meetings, for example, just being held by local managers.

35 That has its place and should be occurring on a regular basis, but I like to attend family meetings, as I've now been doing, to hear first-hand what the - what the great things are that families love about us but also what the concerns that they also might have about what we're doing. So, you know, I think that the performance reporting that you get in an organisation is only one part of the story, and there has to be a much more sort of
40 qualitative approach to the information that you gather as a CEO.

MR GRIFFIN: If you're going to visit a site, do you tell the people at the site in advance you're coming?

45 MS TOOHEY: Usually, I do. You know, I think unannounced audits have their place. We now have an internal audit team which is specifically focused on our quality practice and safeguarding. That team will do unannounced audits, and as I said, that has its place. I like sites to know that I'm coming because then if families want to talk to me they know that I'm there. They can - you know, families can come in and see me. Participants might want
50 to see me.

5 You know, I mean, like I said, for me, it's always a balance and, you know, I don't also want staff to always see that when I turn up, I'm turning up unannounced and it might have a punitive sort of impact, you know, in relation to things I might seek. My team will tell you I'm very observant in terms of what I see, even when I'm going to a planned visit. They will often go away with a list of things that I've - that I've picked up. So - and, you know, I think that just comes from the fact that I've come from an operational background, yeah.

10 MR GRIFFIN: I don't wish to diminish the reasons why you would tell people you're coming, but some of us have an experience of the world that when we know the boss is coming we're on our best behaviour and the boss doesn't see what really happens. Have you considered that aspect?

15 MS TOOHEY: Yes.

MR GRIFFIN: How do you counteract that natural human reaction to the boss telling you they're coming?

20 MS TOOHEY: Well, I think it goes to the frequency in which you do your visits as well. You know, if you're someone who just does an annual visit to a site then, you know, that almost becomes tokenistic, if you like. If you have an approach where you like to be out and about and sort of touching and feeling our service delivery, which is one of the things that attracted me about, you know, coming to Afford then the staff get used to the senior leadership team or myself actually being out and about and around. And I think that's
25 a - that's a more valuable - that's a more valuable thing.

MR GRIFFIN: I want to put a related question to you, Mr Allen, and it revolves around the fact that how can you be satisfied that what the CEO is reporting to the Board
30 accurately reflects what's happening on the ground? In your time on the Board, had the Board ever had any policy of random visits to facilities being run by Afford?

MR ALLEN: No. Directors have visited a number of facilities on a number of occasions over my years on the Board, but not - not random, unexpected visits. There's usually been a
35 small number of directors undertaking those visits. So there was concern to make sure that it happened in a way that didn't disrupt service to our clients. But I'm also someone who has a deep experience of service delivery and I would like to think has an eye for how things are working and ways to talk with staff about their experiences but also opportunities to talk with clients. So it's not just about observation or everything being well
40 presented on the day.

MR GRIFFIN: But when I take out of the number of site visits those visits which would coincide with the opening of a facility, where I expect board members would probably turn up if they could, and visits where there might be an announcement of a grant or some other
45 matter, or visits where there might be a local politician present for purposes of some event, put those to one side, in your experience on the Board, how often do board members randomly drop in on facilities to get a first-hand view of what's happening?

MR ALLEN: Firstly, I generally didn't attend the openings or the announcements, but as
50 I've indicated earlier, neither have I visited facilities on a random basis. Always on an

organised basis for the reasons I've mentioned. But I also drive past facilities in my general and wider area on a regular basis so that I can familiarise myself not only with their location, but also with the way the facilities are presented and any other observations. Now, I know that's only very much a windscreen inspection, as I would describe it in my experience, but that's another dimension that does help provide some insight into how facilities are operating.

MR GRIFFIN: I want to suggest to you, Mr Allen, that's a property inspection, as if you were contemplating buying a property. I'm talking about going to a facility and speaking informally to the frontline workers to get the unvarnished view of how it's going. Do you do that?

MR ALLEN: On a prearranged visit basis, yes, I do speak to frontline workers and without their managers being around and seek their feedback. I have also done that at various staff events and client functions. There are a number of ways that directors can interact with staff in a way that allows a constructive conversation.

MR GRIFFIN: Mr Allen, you're a former very senior bureaucrat, and you would know over many years that the one thing that excites a government department is a Ministerial visit - excites in the sense that the whole place is transformed overnight because the Minister's coming. I'm trying to get at that issue that if you only go, to use my words, by appointment, how can you satisfy yourself you're seeing what's really happening?

MR ALLEN: I understand the point you're making, Mr Griffin, but I'm not sure any Afford staff would consider a visit from me in the same context as a Ministerial visit. But the other measure the Board put in place in 2019 was an Independent Community Visitor program where the organisation engaged a former Office of the Ombudsman Community Visitor to undertake random visits to all of Afford's group homes in the same way that the OCV, the Ombudsman's Community Visitor program operates, and those reports were provided through to the Board, and they did take place on a random basis.

MR GRIFFIN: And did you find those reports useful as a board?

MR ALLEN: Yes, I found them very insightful because we also asked for the management response advice to any concerns and issues that had been raised by the Community Visitor, and the Board did ask the Community Visitor to come and present to a board meeting - not regularly, I must admit, but at least once a year.

MR GRIFFIN: And the reason for that is the Community Visitor from time to time raised issues the Board wasn't aware of; correct?

MR ALLEN: That's correct.

MR GRIFFIN: And the reason they did that was (a) because they were independent, and (b) because they worked on a random basis. Do you agree?

MR ALLEN: Yes, I agree. I think it was also important that they didn't come with any status or authority that a board member might do which might make a staff member reluctant to make a comment regardless of the randomness of the visit. But I don't dispute your principal point, Mr Griffin, that there is value to be obtained from random visits.

MR GRIFFIN: Can I circle back and ask you, in light of that, after this hearing, will you, as a Board, adopt the policy of randomly attending Afford sites?

5 MR ALLEN: I will certainly discuss that with my fellow directors and be very clear. I'm not trying to obfuscate, Chair, I'm sorry. I - yes, I intend to do that, and I will discuss with my director colleagues their participation in that. But at the same time, I would also want to discuss it with Ms Toohey to ensure that, in doing it on a random basis, we had some understanding of the times that would be not so much most convenient but less disruptive to the operation of a facility, because our client care must come first.
10

MR GRIFFIN: Now -

CHAIR: Mr Allen, can I ask you this: the starting point is that, as I understand it, none of the directors gets paid?
15

MR ALLEN: That's correct.

CHAIR: Do you think that if directors were paid, that it would be likely that they would attend to the fiduciary duties and other duties more diligently than if they are unpaid?
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MR ALLEN: In all honesty, Chair, I think all of our directors do fulfil their duties diligently and generally work hard. Some of us have greater time capacity because of - in my case being semi-retired. Not everyone has that opportunity. But I don't think being paid changes the level of diligence. I think -
25

CHAIR: Certainly doesn't change the legal obligations of a director, does it?

MR ALLEN: No, it does not. No, it does not. I think all that it does do in some organisations is perhaps recognise the amount of time that directors commit to the organisation and it is, if not complete recompense, at least some acknowledgement of the time that directors might provide. But there's no reason as volunteers we can't find a way to make it work even for those that work full time.
30

CHAIR: But I take it you can understand, having listened to the evidence, why one might think that perhaps the Board hadn't been doing its job as well as it might during a period from five years preceding your appointment as Chair?
35

MR ALLEN: I can completely understand that, Chair.
40

CHAIR: Sorry?

MR ALLEN: I said I can completely understand that view, yes.

CHAIR: Yes. Thank you.
45

MR GRIFFIN: Can I just clarify something with you, Mr Allen. Did you say that you engaged the Community Visitor to visit group homes?

MR ALLEN: That's correct.
50

MR GRIFFIN: What about facilities that weren't group homes where you're providing services?

5 MR ALLEN: The Board perceived that the greater risk was in group homes where potentially the oversight or supervision of clients was much less than at day programs, where there are more staff either supervising or over-sighting staff - clients at the facility, and if they were outside the facility, there should have been an appropriate staff ratio. Other facilities such as Australian Disability Enterprise facilities, so factories or the like,
10 are inspected as part of the statutory process either through a government agency or through the local council.

MR GRIFFIN: What about day programs?

15 MR ALLEN: As I've indicated, the level of risk was perceived to be lower in day programs, but I've listened very intently to the evidence this week and certainly that's something that Ms Toohey and I will discuss. We've already acknowledged that Afford needs to improve in a substantial number of areas, and one of those is we've recruited an extremely capable and experienced Executive Director to head up our Customer
20 Experience and Safeguarding area, and she's been here every day this week too.

MR GRIFFIN: Do you now accept that it's not safe to assume that day programs won't have the potential for abuse?

25 MR ALLEN: Yes, I do.

MR GRIFFIN: Is it fair to say that that assumption had not been previously made by the Board?

30 MR ALLEN: Yes, I think so. I don't think the Board necessarily understood the level of risk.

MR GRIFFIN: Why didn't the Board previously understand the level of risk inherent in a day program?

35 MR ALLEN: Because of the nature of the day programs and the number of staff that were operating from those programs, there should have been sufficient staff available to both manage the facility and to supervise and work with our clients and there should have been a much lower level of risk as a result of the ratio of staff. The Board perceived that there
40 was a higher risk in group homes, and that's why the focus of the Community Visitor was on the group homes, because there is a lower level of staff and supervision in those facilities and sometimes no staff there at all.

45 MR GRIFFIN: Generally in group homes, there's more than one staff member working, in your experience, isn't there?

MR ALLEN: At different times of the day there may be, but it's hard to make a generalisation because of the different circumstances of group homes, the number of people and range of supports they might be getting each day. In a number of our group
50 homes, residents are quite independent in their lifestyles, as they should be.

MR GRIFFIN: And one of the risks of the day program is that even though the participants might go to a location, they then may go out to various activities. You agree with that?

5

MR ALLEN: Yes, I do.

MR GRIFFIN: And they might be in the company of only one staff member when they take those trips?

10

MR ALLEN: They may well do, but there should be a risk assessment completed before that visit or trip takes place.

MR GRIFFIN: But my point is, isn't there inherently a risk in having someone off-site with one staff member that the Board should have been mindful of?

15

MR ALLEN: I think it's fair to say, Mr Griffin, that the Board expected the staff and the senior management to undertake their - their duties diligently and professionally and appropriately for the circumstances or the context. I'm not trying to use weasel words, but the Board was aware of risks, but expected that those were reasonably acknowledged and dealt with by the staff.

20

MR GRIFFIN: I want to take you to some events in 2021 when the Board engaged Ansvar, that's A-N-S-V-A-R, to conduct a quality review of enterprise risk management of Afford and subsequently a report was provided in December 2021. That report, Commissioners, appears at Hearing Bundle E, tab 208. While that's coming up, Mr Allen, you understood that Ansvar is a subsidiary of the Benefact Group established in the United Kingdom over a century ago.

25

MR ALLEN: Yes, I'm broadly aware of their background.

30

MR GRIFFIN: I think they describe themselves as an ethical insurer committed to their community, with all the profits going to charitable causes. So it's that sort of organisation.

35

MR ALLEN: Yes, I understand that.

MR GRIFFIN: So one of the attractions of engaging them was that they had a long history in the field.

40

MR ALLEN: Indeed.

MR GRIFFIN: The report involved a review of Afford's documents and interviewing board members and senior managers.

45

MR ALLEN: That's correct.

MR GRIFFIN: Were you interviewed?

MR ALLEN: Yes, I was.

50

MR GRIFFIN: What was the nature of the interview which was conducted with you? What was its scope? What was discussed?

5 MR ALLEN: It was a discussion about the Risk Management Framework that Afford had in place. There was discussion about the Risk Management Review that the Board commissioned in 2019 from BDO, a fairly large financial and risk management firm. And there was discussion with me about my views on the nature of the risks facing the organisation.

10 MR GRIFFIN: I want to take you to several recommendations made by Ansvar and ask you whether you accept the following conclusions in that Report about the training that the Board should receive.

MR ALLEN: Mm-hmm.

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MR GRIFFIN: The Report says at page 19:

20 "Board training on incident management and open disclosure has not been developed. The organisation should ensure the system review of incident management includes specific training for directors and management to support their accountabilities and responsibilities."

Can you recall that recommendation?

25 MR ALLEN: I do, but I'm sorry, I'm having difficulty reading it on the screen, but I recall the recommendations, yes.

MR GRIFFIN: Was that accepted by the Board, that recommendation?

30 MR ALLEN: All the recommendations of the Report were accepted by the Board.

MR GRIFFIN: Ansvar then went on to say:

35 "The Board should receive training on contemporary clinical and safeguarding governance approaches for directors."

At page 15.

40 MR ALLEN: And we've already commenced that process with our new Executive Director of Customer Experience and Safeguarding.

MR GRIFFIN: And they also made an observation:

45 "The Corporate Governance Policy needs review including to -"

And I quote:

- "create an emphasis on governing for vulnerable people."

50 On page 11.

MR ALLEN: Yes, that recommendation has been accepted and that review is already underfoot.

5 MR GRIFFIN: Why did the Corporate Governance Policy not already include that concept?

MR ALLEN: I do think it included that concept but it didn't include it with sufficient weight and sufficient emphasis.

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MR GRIFFIN: So as a general proposition, the Board has accepted all the recommendations of Ansvar?

MR ALLEN: That's correct.

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MR GRIFFIN: But would you say that, in some cases, you were already doing some of those things, they were just recommending they be done in a particular way?

MR ALLEN: We've started implementation of the - or the work to implement the recommendations and we started that work as quickly as we could. Certainly the review of the Governance Framework was under consideration prior to the review. I had, as Chair, already commenced some initial work on that review myself.

20

MR GRIFFIN: Ms Toohey, did you want to add anything on that topic?

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MS TOOHEY: No. I mean, it's just important to note that the Ansvar risk review was - the reason that that was undertaken was for me to be able to get a very quick clear snapshot of where the issues were in relation to risk management in the organisation, and as you would have seen in the Improvement Plan, all recommendations were accepted by the Board. They are in our Improvement Plan and work had already begun. Ansvar has also been commissioned to come back and do a mid-term review and then another review at the end of the first year to make sure we're on track. And the reason I selected Ansvar in the first place was because they had come recommended from a colleague who had also used them to undertake a full risk review.

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CHAIR: On page 15 of the document that Mr Griffin has taken to you, under that heading Performance Metrics, it says:

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"Afford has developed a suite of key performance indicators to monitor the operations of the organisation. The indicator set is largely finance orientated. It includes some aspects of staff satisfaction and more recently has included care and safeguarding aspects."

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The evidence that we've heard has been consistent, that for a long period, perhaps until very recently, the organisation has been finance - to use this language - finance-orientated, and staff satisfaction seems to have been addressed previously by the bonus system and other mechanisms. Was that driven by the Board? And if so, why was the Board so finance-orientated rather than service-orientated and safety-orientated?

50

MR ALLEN: It wasn't driven by the Board, Chair, and whilst the Report talks about some

of those indicators being added more recently, more recently is about two and a half years ago that those other indicators were added. My recollection is around 2019 that the Board raised concerns with the then CEO that there was insufficient information coming to the Board on a number of customer safety and customer care indicators, as well as compliance indicators, like restrictive practices and reportable incidents.

COMMISSIONER BENNETT: In relation to the Board, which we seem to have a series of questions on, does the Board, as a group, keep themselves up to date or receive expert advice on contemporary thinking of disability and inclusion and the changing debates about how people live and what choice and control actually means, and the development of independence and capacity building?

MR ALLEN: Yes, the Board - firstly, yeah, Afford is a member of National Disability Services, NDS. We've had the New South Wales NDS State Manager come and talk at board meetings about contemporary practice. We've also had senior local managers from the NDIA come and talk to the Board about best practice. I think you - the intent of your question really is could we have done better? Yes, we could have. Should we do more? Yes, we should.

CHAIR: But the Board - I might anticipate Commissioner McEwin here - has the Board had any training in the Convention on the Rights of Persons with Disability?

MR ALLEN: Not specifically but broadly. Directors are required to undertake the NDIS worker orientation module, and that, in part, amongst other things, is covered in that module, but we, as I indicated earlier, have already had one presentation from our new Executive Director of Customer Experience and Safeguarding, and that's the beginning of the process to better educate the Board of some of those matters.

CHAIR: And what about instruction or training in the requirements of the NDIS Act and the multitude of regulations and standards under that Act?

MR ALLEN: That's also something that we spoke with the new Executive Director about and that, again, is covered in part, I would acknowledge briefly, in the worker orientation module of the NDIS Commission, but it also doesn't prevent directors from participating in other courses or programs, and - and I'm not sure what other directors have done, but I've certainly done that in a variety of different ways. For example, the AICD have a particular program called Governing for Vulnerable People which I did a couple of years ago, and there are other ways, the disability forums or expos and other things that take place, and an opportunity to expand one's knowledge. But as I indicated in my earlier answer, I don't think we've done that well enough. I would acknowledge that and I think we need to do more, yes.

COMMISSIONER BENNETT: The Board has a critical role in the oversight of the financial arrangements of the organisation. You talked earlier about strong surplus and strong financial position. How much of your revenue is from the NDIS?

MR ALLEN: The majority of the revenue is from the NDIS. Not all of it. Afford have a number of investment properties from which it derives income, rental and so on, but it's fair to say the majority of the income clearly comes from the NDIS.

COMMISSIONER BENNETT: So 75 per cent?

MR ALLEN: I would expect it would be more than that.

5 MS TOOHEY: No, it's about 98 per cent.

COMMISSIONER BENNETT: From the NDIS.

MR ALLEN: That's correct.

10

MS TOOHEY: No, sorry, excuse me, no, sorry, it's about 92 per cent, I think, NDIS and some from the Commonwealth through our employment services.

COMMISSIONER BENNETT: And wage subsidies and things like that for your AED?

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MS TOOHEY: Yeah. Yeah. That's right.

COMMISSIONER BENNETT: So probably 75 per cent directly from the NDIS?

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MS TOOHEY: At least.

COMMISSIONER BENNETT: What proportion of your budget is spent on staffing? I ask that question because we heard evidence of overworked, staff ratios not being met, limited or no training or capacity because they were overworked not to do training, not able to do the admin. Now, if 75 per cent of the budget is there from the NDIS, that is, related to individual plans - and I'm trying to work out what portion, given you're in such a strong financial position, as you described, is being spent on the actual services to people with disability that attract that funding?

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MS TOOHEY: So I can probably answer that, if you like. The recent analysis I did around employee expenses, just to get a sense of where we were sitting in the sector, because I like external benchmarking to see how things are going, we're sitting around 78 per cent of our revenue being actually spent on staff, which is very high for the sector, in fact. I think that the issues that have been raised over the last few days in relation to administration, particularly in relation to the role of Team Leader, I think what's important to understand is that, historically - which is just in the throes of being changed at the moment - there have been a lot of activities in the organisation that have been completely decentralised.

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So all of the claiming, the billing, those activities have all been completely decentralised. There is no administration support across service delivery at all presently. So the Team Leaders, in fact, have picked up an enormous amount of work that would have traditionally - I would say at least 50 per cent of their current workload - would have sat in a head office environment. So Finance should be looking after our claiming and billing, for example, because otherwise what it means is we're expecting people whose sole focus is around supervising service delivery to actually be - also understand financial analysis and the wage analysis they were talking about and things like that.

45

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So, you know, we completely accept that the current work, administration workload of our frontline staff is disproportionate and has to - and has to cease. Staff not having time to do administration work, the new Chief Operations Officer has already identified that as an

issue. Where we are expecting staff to have administration activities as part of their role, we've got to ensure that they actually have the right amount of time to do that.

5 I do not expect staff to take work home after-hours. It's unacceptable for our frontline staff to be taking work home because we don't allocation the time that they need in their day to complete what we're asking to do in their role.

10 COMMISSIONER BENNETT: So the surplus that's acquired, is that from - could you conclude it was that the money that you received from the NDIS, the full amount was not fully spent on providing services or, you know, staff on-costs or rental of buildings but not fully spent on people with disability?

15 MS TOOHEY: I might - I might answer that. So, look, I think the frontline staffing levels were - were certainly good. I'm quite satisfied with our level of staffing on the front line. We will change in the middle of it, changing what people will do but I don't think service delivery was where the issue was. If you look at the Improvement Plan I put forward, what you can see is that, essentially, what I'm doing at the moment is really building a new corporate office.

20 So the area of the organisation that was probably neglected in relation to surplus generation was that area that actually supports, monitors and governs the organisation which is its corporate environment. So our corporate overheads, for example, were sitting at just over eight per cent which is the sort of levels you would expect to see in a very efficient for-profit organisation, certainly not a not-for-profit. And a lot of the activities
25 that you see in it the Improvement Plan are actually things that are just not in the organisation currently.

30 So, you know, I think what suffered in the organisation as a result of the surplus generation was the core of the organisation which should be the function that supports the organisation and provides that independent oversight governance. And that's the area that has suffered because of the surplus.

35 COMMISSIONER BENNETT: If it's all right, could I - just two more questions. Thank you. I asked -

CHAIR: Why are you asking -

COMMISSIONER BENNETT: Can I ask you as well.

40 CHAIR: Yes.

45 COMMISSIONER BENNETT: Thank you. I want to talk a little bit, just very quickly, while we're on staffing, on the Customer Care Team. We heard that - evidence was given to us that they were paid on a commission basis and that commission is based on the size of the package in how much money that the person with disability has. Is that still the arrangement for those staff?

50 MS TOOHEY: It's still the arrangement until 1 August. So what I've had to do since I came in was tackle things one layer at a time in relation to the restructuring. I just could not hit the whole organisation at the same time, and plus I also didn't have the team around

me that I needed to have in place because the team that was there was - were only people who were acting in roles until I put a new exec team. The area of our service delivery is just, at present, going through an enormous restructure, and the Customer Care Team operating model, if you like, is currently being reviewed.

5

So what we're doing is looking at that end-to-end consumer experience and saying to ourselves, well, what is the experience that we actually want people to have with the organisation and then what does the Customer Care Team sort of look like in relation to that. The commissions will stop - stop --

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COMMISSIONER BENNETT: But they have been paid on a spotter's ratio of how much they bring in?

MS TOOHEY: They are. It's - look, and to be - not to be fair to the organisation, but it's a model that you will often see in aged care for example, with retirement villages. You'll often see that there's a sales approach to the attraction of, you know, new customers, if you like, to an organisation. I think making - it's a bit like the PACES - ACES and PACES bonus scheme, making commissions or extra payments, for example, around those activities that are, in fact, part of someone's job as opposed to the actual outcomes we're achieving, yeah, it does not sit well with me at all. Which is why it stopped.

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COMMISSIONER BENNETT: Last question I've got is about support accommodation - sorry, support coordination, which is one of the NDIS approved activities for Afford. Does the Support Coordination, are they a group of individuals and do they report to you?

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MS TOOHEY: No, they don't report to me. They report to the Chief Operations Officer.

30

COMMISSIONER BENNETT: Can I ask you some questions about them?

MS TOOHEY: Sure.

COMMISSIONER BENNETT: The role of the Support Coordination - Coordinator is primarily - their priority is the independent support to the person with disability?

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MS TOOHEY: That's right.

COMMISSIONER BENNETT: How does Afford - I'll rephrase that. Do the Afford Support Coordinators seek out a range of services that best meets the needs of the person with a disability outside of Afford's service menu?

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MS TOOHEY: Yeah, absolutely. Absolutely. Yeah.

COMMISSIONER BENNETT: Could you provide information to us at exactly - giving concrete examples of people's plans where they have gone to other support services outside of Afford?

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MS TOOHEY: I can't give - I'm happy to take that on notice. Yes, I'm more than happy to take that on notice.

50

COMMISSIONER BENNETT: Take that on notice. Thank you.

MR GRIFFIN: Chair, I'm touched that Commissioner Bennett believes I have some power in this room.

5

CHAIR: Yes, but she's been disabused of that notion.

COMMISSIONER BENNETT: Certainly.

10 MR GRIFFIN: Just two short matters before we have the break. Mr Allen, you heard evidence from previous witnesses talking about the Mount Druitt facility.

MR ALLEN: Yes.

15 MR GRIFFIN: And a theme was the building only had one exit, that there was a methadone clinic nearby, and there were a lot of used needles in the vicinity.

MR ALLEN: Yes.

20 MR GRIFFIN: Assuming those assertions were correct, would that be the sorts of factors you would take into account in determining whether or not to purchase or utilise a facility?

MR ALLEN: I don't assume those factors are correct. I have been recently to that particular facility. The methadone clinic is in the grounds of the Mount Druitt Hospital. It is some distance away. Methadone is an orally-administered drug and is not related to syringes being around the place, which was I think, in fairness, the implication. There were no syringes in the surrounding area at - on the day I went. That may have simply been happenstance, and I well accept that.

25
30 But is that - and there are - there is more than one exit, and Afford had to have a - would have had to have a development application approved by the local council to deal with fire safety and access and egress in that facility. But do I think that that particular building is of a standard and a presentation that Afford should be offering to its client? No, I do not. The building, in my words, is relatively rundown and so are the surrounds.

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The building, to me, looks like an owner who's waiting for somebody to make them a better offer to knock it over and they're not spending much on it and there's a lot of new development happening around there. But it is well located. It is part of the wider Mount Druitt Shopping Precinct that it's - that's book ended by Mount Druitt Square on one end and, next door to the facility, the Mount Druitt Central Shopping Centre. So I've probably given you a much longer answer than you were expecting to your question.

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MR GRIFFIN: Your perception is accurate. If it's not fit for purpose, what are you doing about it?

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MR ALLEN: Mr Griffin, I didn't say it wasn't fit for purpose. What I said was that I don't think it is representative of the standard or image that Afford wants to portray.

MR GRIFFIN: Do you intend to do anything about it?

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MR ALLEN: I've already spoken to the CEO and written to the CEO about that.

5 MR GRIFFIN: And one final matter to both of you: is it correct that Afford does not have any formal structure through which people with disability are represented in its governance and leadership structures?

MS TOOHEY: That's correct at the moment. Yes.

10 MR ALLEN: It is fair to say that. I would make a point. The Board did propose a Carers' Advisory Council be implemented, from memory, back in late 2019, early 2020. It was not well supported by management at that time, and then other factors came into play and Ms Toohey and I and our new Executive Director have already had preliminary discussions about a better carer and parent representative group that includes people with disability.

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MR GRIFFIN: Did anyone at Afford follow the hearing in Public hearing 13 involving Sunnyfield which occurred from 24 to 28 May and again on 10 September 2021?

MS TOOHEY: Yes, I - yes, I watched it.

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MR GRIFFIN: You watched it.

MS TOOHEY: Yep.

25 MR ALLEN: I followed it more broadly. I didn't watch all of that.

MR GRIFFIN: As a result, when the report of Public hearing 13 was published on 5 April this year, Ms Toohey, have you read that Report?

30 MS TOOHEY: I have, yeah.

MR GRIFFIN: Has that caused both you and the Board to revisit this issue of the involvement of people with disability in governance and leadership structures?

35 MS TOOHEY: It actually reinforced the conversations that we'd already been - we'd already been having. I had - when I first started with the organisation, I actually asked Mr Allen to put the advisory panel on hold because I wanted to make sure that our broader consumer engagement framework was more comprehensive than that. That it wasn't just a group that reports, that sits in the organisation, that our consumers were involved in a
40 co-design of our service delivery models and a range of other things, and that, as the organisation hadn't undertaken any formal consumer feedback mechanisms, for example, on a routine basis, I wanted to make sure that there was a whole - that it was one part of a bigger framework that we wanted to have in place, but it will certainly be in place by the
45 mid next year. I did give the Board a copy of the Sunnyfield report as well, because I thought there was some really important learnings and lessons in there that came out of that hearing.

MR GRIFFIN: A milestone in your mind is mid next year?

50 MS TOOHEY: No. No, mid this year.

MR GRIFFIN: This year?

MS TOOHEY: Yes.

5

MR GRIFFIN: What do you hope to be in place by the middle of this year?

MS TOOHEY: By the middle of this year, we will have established exactly what the framework looks like. So that's all the parts. How do we want consumers to engage with the organisation? What's the role of consumers in the organisation? I'm just very keen for something like a council to not just seem to be tokenistic. I want them to have genuine meaning and engagement.

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MR GRIFFIN: And if the Royal Commission subsequent to this hearing was to write to Afford seeking a report on these issues within six months of today -

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MS TOOHEY: Yes.

MR GRIFFIN: - would both you and you, Mr Allen, be content to do that?

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MR ALLEN: Absolutely.

MS TOOHEY: Yep.

MR GRIFFIN: It might be an appropriate time to break.

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CHAIR: I think Commissioner McEwin has got a question.

COMMISSIONER McEWIN: I thought I'd like to ask some questions on that topic before we break and direct it to both of you. Mr Allen, earlier you talked about recruiting a disabled person to the Board, and in 5.2, you confirmed that you've discussed the appointment of a director and the establishment of an advisory group consisting primarily of people with disability. Why only one disabled person? Why not recruit, say, to have a majority of your board members be disabled people, giving up the - and I'll direct the question to perhaps both of you now. Why not recruit the majority, given that the purpose of the organisation, its primary purpose is direct support to disabled people? Have you thought about that?

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MR ALLEN: Yes, and I have no difficulty with - with that view. It's simply a matter of, at this point in time, orderly transition of board renewal in a way that doesn't destabilise the organisation and best supports Ms Toohey and her executive team in the important work that they're doing to renew the organisation. We have two vacancies available, and if we come up with two excellent people, then we will appoint both of them and look to put in place a reasonable board rotation so that we have opportunities to recruit even more directors.

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COMMISSIONER McEWIN: If the Chair can indulge me for a few more minutes. But why not as part of renewal - and you've recruited a few people recently. Why couldn't they have been disabled people, given you're so conscious about renewal. Why couldn't those more recent appointments have been disabled people?

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MR ALLEN: Look, they could have been, in fairness.

COMMISSIONER McEWIN: But why not?

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MR ALLEN: At that point in time, the Board was mostly focused on - on expertise and - and experience of disability, not necessarily someone with a disability.

10 COMMISSIONER McEWIN: Are you saying disabled people are probably - one final question, then I might reflect during the break, but are you saying expertise in what, in disability? How would you get that from a non-disabled person?

15 MR ALLEN: I'm not disagreeing with the view that you put forward, Commissioner. Could we have done more to recruit more people with disability to the Board? Yes, of course we could have done. But at that point in time when we went through a more significant recruitment in 2020, of - we went through a public process, an open process and advertised on various not-for-profit websites. We didn't attract anyone with a disability.

20 But I've already given consideration to the other ways, like a closer work with the Australian Institute of Company Directors, who is running a specific program now of training people with disability or putting people with disability through their company director course, and we can have a look at how we can engage much more broadly, not just by appointing directors with disability, but engaging people with disability.

25 There's also an observership program that is run in partnership with the AICD. We clearly need to do better in incorporating both the views and the people with disability in the way the Board operates and the organisation operates.

30 COMMISSIONER McEWIN: I'm conscious of time. I'll pause there. I may have more questions for you on that later. Thank you.

35 MR GRIFFIN: May I ask one supplementary question as a result of Commissioner McEwin's question. Is your search confined to people with physical disability or are you considering people with intellectual disability or some other form of disability?

MR ALLEN: We're not constraining the form of disability.

MR GRIFFIN: Thank you, Chair.

40 CHAIR: It's now 3.10, almost. We shall resume at 3.25. Just before we finish, though, can you give an indication, Mr Griffin, of what the likely course is of this afternoon and tomorrow?

45 MR GRIFFIN: I'll go through till 4 this afternoon, and I anticipate that we will go through till lunchtime tomorrow. When I give that estimate, your Honour, I'm very good at estimating how long I will be, less so how long a witness will be.

50 CHAIR: I see that politeness precludes you from mentioning other possibilities. We will resume at 3.25.

ADJOURNED 3.07 PM

RESUMED 3.24 PM

5 CHAIR: Yes, Mr Griffin.

MR GRIFFIN: Mr Allen, are you familiar with a document entitled "The Afford Way".

MR ALLEN: Yes, I am.

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MR GRIFFIN: Commissioners, you will find that in Hearing Bundle E, tab 252. The first principle enunciated in that document is:

"The client is paramount."

15

It states:

"We follow the disability standards and rights."

20 But no explanation of how or what they are or how they should be followed is given in that document. Isn't that a deficiency in the document?

MR ALLEN: Yes, it is.

25 MR GRIFFIN: If you were casting such a document today, what would its characteristics be?

MR ALLEN: It would be much more clearer around the rights and opportunities that we should be providing to our clients and much more focused on the quality of services and the safety of services, at the least.

30

MR GRIFFIN: And so when a phrase such as:

"The client is paramount."

35

I suggest to you what that really means is that everything you do should be through that prism. Do you accept that proposition?

MR ALLEN: That's correct.

40

MR GRIFFIN: How has Afford changed in 2022 compared to what was happening under the direction of Mr Herald in respect of that issue? Perhaps Ms Toohey might be best placed to answer.

45 MS TOOHEY: I think the differences already evident are that there are greater conversations around outcomes. I think it goes back to the response I gave earlier which was around the organisation being focused on its purpose, as opposed to just on financial return or - or elements such as that, for example. The introduction of the new Consumer Experience and Safeguarding Team is sending a very clear message internally and
50 externally that, in fact, the consumer is at the centre of our organisation.

And the engagement that we're having now with families, for example, is another way of, you know, doing that as well. I think that the new executive and senior leadership structure and the teams that sit within that across our corporate environment, again, also send a very clear signal that, you know, the clients or the consumer is, in fact, central for us as an organisation. Removing the ACES - things like removing the ACES and PACES scheme, the buzz nights being removed, those sorts of things, it's actually about the quality of what we do and the outcomes we're actually achieving, not - the other things are just done as part of our job.

MR GRIFFIN: Can I deal briefly with the PACES scheme. Mr Allen, what was the rationale behind the Board approving PACES?

MR ALLEN: My recollection is that the Board didn't approve the implementation of PACES, but it is absolutely fair to say the Board were briefed on the CEO's intention to put that system in place. It was put in place in advance of the implementation of the NDIS in New South Wales and it was intended to incentivise staff to, in my words, go the extra mile in providing service to our clients, but also to put in place a rigorous regime around compliance and checking.

MR GRIFFIN: If there are two main players in the equation, one being the participants you're providing services to, and the second being your staff members, why isn't the aphorism of Paul Keating apposite, that "in a two horse race, back self-interest every time"?

MR ALLEN: I don't dispute that view, and PACES has ceased to operate in the organisation.

MR GRIFFIN: That's not really addressing the question. PACES was continued for some period of time with the knowledge of the Board and approval of the Board in the way that you just explained.

MR ALLEN: Yes, it - it did, and that was under the - under the acceptance that it was a reasonable thing to do in an environment that was completely different to what the NDIS - for what the - from what the organisation operated under previously and was strongly supported as an effective incentive and reward and recognition measure for staff by the former management of the organisation.

MR GRIFFIN: Were you here when Dianne gave evidence?

MR ALLEN: Yes, I was. I've been here all this week.

MR GRIFFIN: Dianne was a young woman that came out of school at 17 and decided she wanted to work in the area of disability; correct?

MR ALLEN: Yes.

MR GRIFFIN: She didn't require any incentive or any motivation, did she? She saw that as being very worthwhile work to undertake and then made a career from it. You agree with that?

MR ALLEN: Yes, I do.

5 MR GRIFFIN: If one assumes that people working for Afford are well motivated and dedicated to performing such an important task of providing assistance and services to people with disability, why would you imagine they would need a financial incentive to do the work?

10 MR ALLEN: The view at the time was that it was related to the change in the operation of the organisation and significantly different ways of - of doing business across the organisation, and because the former management were strong supporters of a distributed compliance checking process and they argued strongly that such an incentive and reward scheme, they considered appropriate in the new commercial world of the NDIS.

15 MR GRIFFIN: But PACES wasn't based on a nuanced qualitative assessment of the work someone was doing. It was based on recruiting participants. It was based on issues which were all about growth, meeting targets, wasn't it?

20 MR ALLEN: Yes, it was, not just about growth targets but compliance targets -

MR GRIFFIN: Yes.

MR ALLEN: - also.

25 MR GRIFFIN: Upon reflection - I appreciate it's now been abolished, but on reflection, do you now accept that the criteria behind PACES were misguided?

MR ALLEN: Yes, I do.

30 MR GRIFFIN: Do you accept my proposition that you should work from an assumption that your staff are dedicated to the task they're given?

MR ALLEN: Yes, I do.

35 MR GRIFFIN: And that they will do it, if given the resources and opportunity, to a high level?

MR ALLEN: Yes, they will.

40 MR GRIFFIN: That wasn't driven by frontline workers, that scheme, was it?

MR ALLEN: No.

45 MR GRIFFIN: It was suggested by Mr Herald from the perspective of a CEO; correct?

MR ALLEN: It was certainly proposed and developed by the former CEO, yes.

50 MR GRIFFIN: And on reflection, it was more apposite to a bank or some other private organisation, wasn't it? A series of incentives and bonuses, for - just so people would do the job they're being paid to do anyway.

MR ALLEN: It was certainly much more reflective of a commercial model, regardless of what form of business.

5 MR GRIFFIN: And Afford is a registered charity?

MR ALLEN: Yes.

10 MR GRIFFIN: Why was it thought that one could simply translate from the commercial world to the not-for-profit world a scheme with these characteristics?

MR ALLEN: Because the not-for-profit world time of the NDIS still has a number of commercial elements. It is, in fact, a much more commercial business that we operate these days because of the nature of the NDIS, but importantly so because of the strengths and benefits for our customers.

15 MR GRIFFIN: Upon reflection, isn't it expressing not much faith in your staff if you believe you had to give them a bonus scheme to get them to perform at the level you wanted?

20 MR ALLEN: It certainly wasn't intended to -

MR GRIFFIN: I'm not suggesting it was intended that way. I'm asking to you reflect on how it now looks with the benefit of reflection.

25 MR ALLEN: It can certainly look that way, yes.

MR GRIFFIN: Ms Toohey, what's your current view in relation to anything which might be described as incentivising staff?

30 MS TOOHEY: I think there are different ways to incentivise staff. Short-term incentives or bonuses, if you want to call them, for particular roles in organisations are not uncommon in the sector for particular levels, but they are based on key performance targets in relation to that role and the outcomes that are expected, and it's quite structured, the approach. For me, staff - incentives for staff are broader than just financial incentives.

35 So a reward and recognition program needs to encompass a range of things. It needs to be part of your broader employee value proposition, you know, the - why someone chooses to work for Afford, for example. It's not just about the money that people get, because we do pay above award for our frontline staff, but it's about their development and their career opportunities and their engagement with our purpose and, you know, the love they have of their work every day. I mean, that to me is the things that incentivise staff.

40 MR GRIFFIN: And the concentration on financial reward can have the effect of putting participants at risk, can't it? It skews one's priorities, potentially?

MS TOOHEY: I think - I think it can drive particular behaviours, yes.

45 MR GRIFFIN: It skews one's priorities.

50

5 MS TOOHEY: It skews one's priorities, but it does - but also it does drive behaviours, though, as well, you know, and I think that the introduction of PACES in the organisation wouldn't have needed to occur, for example, if, in fact, you had an internal audit team in place that were actually making sure those compliance activities were happening. It was really used as a monitoring process to make sure those compliance activities were happening so - you know.

10 MR GRIFFIN: Picking up on the question of compliance, when you joined Afford, what was the nature of the CEO's reporting, if any, to the Board on questions of compliance?

MS TOOHEY: The approach that I take or -

15 MR GRIFFIN: The approach you found in place when you arrived and then, if your approach was different, how it was different?

MS TOOHEY: The interim CEO who was before me, who was there for four and a half months, yeah, was very open and transparent in relation to compliance in the organisation. And that certainly continued since I've come into the organisation. So the Board are fully aware of any compliance activity going on, the current investigations and issues with the Quality and Safeguards Commission, for example. You know, I share all the correspondence, those sorts of things. So the Board gets full visibility on that.

25 MR GRIFFIN: Is what you provide to the Board governed by the Corporate Governance Policy of Afford?

MS TOOHEY: No, not necessarily, not necessarily. I just - my preference is always to be fully transparent.

30 MR GRIFFIN: Can I take you to Hearing Bundle D at tab 27, the Corporate Governance Policy. My understanding was that one of the roles of that policy was to set out the requirements for CEO to report to the Board. Was that your understanding?

MS TOOHEY: Mm-hmm.

35 MR GRIFFIN: You need to answer for the purposes of the transcript.

MS TOOHEY: Yes. Sorry.

40 MR GRIFFIN: Thank you. And it says at clause 3.3.4(a):

"The Chief Executive Officer's report is a key component of the Board agenda."

That would be uncontroversial, wouldn't it?

45 MS TOOHEY: That's right.

MR GRIFFIN:

50 "It is through such report that directors are kept apprised of Afford's operations and activities. It also serves as major documentary evidence of the extent to which

directors are required to be kept informed and were informed of the activities."

MS TOOHEY: Yes.

5 MR GRIFFIN: If I take to you an example of a previous CEO report at Hearing Bundle E, tab 33, that's a report from Mr Herald to the Board from February 2019, issue 1. Agree that example of the priority being financial performance?

MS TOOHEY: Yes.

10

MR GRIFFIN: Yes. No? Not coming up?

MS TOOHEY: It's coming. It's there now.

15 MR GRIFFIN: Just take a moment to look at that, if you could. I just want to raise with you, Mr Allen, if I could, given the fact you were on the Board at the time. Do you agree that, in that report, the priority from Mr Herald seemed to be financial performance?

MR ALLEN: Yes, I would agree with that.

20

MR GRIFFIN: My reading of that report is very self-congratulatory in its tone. Firstly, do you agree with that characterisation and, if so, did you find that type of reporting informative as a board member?

25 MR ALLEN: I agreed with your - I agree with your comments about the tone. I found those sorts of comments in the CEO's report not to be acceptable, and I made that point to him on a number of occasions.

MR GRIFFIN: In what way was the tone of the CEO's report not acceptable to you?

30

MR ALLEN: It was self-congratulatory, and the focus on finance, financial performance, was one that I felt should be balanced with our performance in the delivery of quality services to our clients. The number of discussions I had with the former CEO, he expressed a similar view but a different - utilising financial performance as a metric for customer satisfaction.

35

MR GRIFFIN: Did you make your views clear to Mr Herald?

MR ALLEN: Yes, I did.

40

MR GRIFFIN: Did he respond in any particular way?

MR ALLEN: He had a different view.

45 MR GRIFFIN: Did that mean he continued to report in that fashion, despite your concern?

MR ALLEN: I think some subsequent reports were modified.

MR GRIFFIN: That report speaks of three openings in one month.

50

MR ALLEN: Yes.

MR GRIFFIN: Was that emblematic of the scale and speed of growth of Afford during this period in 2019?

5

MR ALLEN: Not necessarily, no.

MR GRIFFIN: No?

10 MR ALLEN: There certainly would be months during that time where there may have been three, but it certainly wouldn't be three every month on a regular basis. And it depends how they were achieved, whether they were all acquisitions or whether they were properties that we'd taken over from another organisation. I'm not sure that that would be the case at that time.

15

MR GRIFFIN: How did the Board satisfy itself that the new centres, either greenfield new or taken over from another organisation, were being managed and staffed appropriately?

20 MR ALLEN: From reports by the CEO and the relevant Executive Managers reporting to the CEO. Excuse me. Or by personal visits from the Board that were arranged from time to time.

25 MR GRIFFIN: That report also lists significant personnel changes at senior management level. Without getting into detail, as a board, were you concerned about the turnover of senior management at Afford in 2019?

MR ALLEN: Yes.

30 MR GRIFFIN: What was the nature of your concern?

MR ALLEN: That the turnover was too high, and that potentially could be an indicator to underlying - other underlying problems.

35 MR GRIFFIN: When you say it was "too high", by a factor of what? Was it double what you would expect normally or -

40 MR ALLEN: The metric I used was, in fact, my own experience, as a CEO and the level of turnover I would have reasonably expected in my Senior Executive Team. And this was much higher. You know, I can't - I can't recall thinking whether it was twice as high or more, but it was certainly significantly higher than I would have expected would otherwise be the case.

45 MR GRIFFIN: And based upon your experience, what does one do when you get an unexplained significantly higher turnover of senior management? How do you react to that?

50 MR ALLEN: Well, certainly the Board through the Chairperson, should be addressing that issue with the CEO and trying to get a better understanding what some of the challenges and issues were that were causing that, and to also provide some information on that to the Board because it was a general level of concern.

MR GRIFFIN: Based on your recollection, did the then Chair undertake that task and report back to the other board members?

5 MR ALLEN: Yes.

MR GRIFFIN: And what was the nature or the summary of that report as to the explanation of a high turnover?

10 MR ALLEN: There was particularly high turnover in the Chief Financial Officer's role, and the CEO himself had been a Chief Financial Officer in larger commercial organisations and was a chartered accountant, and the Board concluded it was very difficult for him to have a relationship with the CFO because he kept encroaching on the CFO's areas of responsibility, and one of the outcomes was the recruitment of a financial
15 controller, rather than a CFO, and acknowledging that there were some CFO responsibilities that would transfer to the CEO.

MR GRIFFIN: You heard evidence yesterday from Rachel that internal promotion was actively supported and encouraged by the CEO when she was at Afford.

20 MR ALLEN: Yes, and -

MR GRIFFIN: Just let me conclude. Sometimes people promoted -

25 MR ALLEN: It was also encouraged -

MR GRIFFIN: - did not have, in her opinion, the skill or ability to perform adequately in that management role and you will recall the Chair summed up that evidence by reference to the Peter Principle.

30 MR ALLEN: Yes.

MR GRIFFIN: You're familiar with that principle.

35 MR ALLEN: I am familiar with it.

MR GRIFFIN: In a nutshell, it says in any organisation if you stay around long enough, you get promoted to the level of your incompetence. My general question is did you share Rachel's concern at the time about the preponderance of internal promotion?

40 MR ALLEN: That - the series of allegations made by Rachel was lodged as a protective disclosure, and within the constraints and confines of the legislation applicable to that, I shared what information I could.

45 MR GRIFFIN: Did you share her concern that there seemed to be, to use my words, a disproportionate amount of internal promotion in the organisation, and that frequently that promotion didn't, in her view, match the person with the job they were moving into?

50 MR ALLEN: I certainly shared some elements of that.

MR GRIFFIN: Which elements did you share?

MR ALLEN: The concerns that she had expressed about a couple of specific managers.

5 MR GRIFFIN: So you personally had enough information to know that, at least in two cases, you thought she was on the money, on that topic?

MR ALLEN: I don't think it's appropriate to say that I had enough information to form a clear view at that time. But I certainly had suspicions as a result of the views - excuse me - that she had expressed. I had known her for some time and regarded her quite highly.

MR GRIFFIN: Would you accept that it's important in an organisation to promote on merit?

15 MR ALLEN: Absolutely.

MR GRIFFIN: Would you also accept that it's healthy for an organisation to recruit as widely as they can before filling a position?

20 MR ALLEN: Yes, I would, but it is also appropriate to give people within an organisation an opportunity to grow and develop, and perhaps participate in a formal succession planning process.

MR GRIFFIN: Is this an issue which was taken up with Mr Herald before he left?

25 MR ALLEN: I'm not sure that it was.

MR GRIFFIN: Ms Toohey, do you have a view, based on what you now know about this issue of internal promotion in circumstances where it's suggested that it's not merit based?

30 MS TOOHEY: I don't think it's a black-and-white answer. I'm - certainly for leadership roles across service delivery or senior executive roles, even if I have a strong internal candidate, I still like to go externally to market, and that then gives confidence to myself and the Board that, in fact, we're selecting the right people for the roles and we've got great talent which is always good. I like people to have the opportunity to put up they're hand to express interest in promotion so it signifies that that's where they want to go so it's great for development opportunities and development plans.

40 I think, picking up on Mr Allen's point around internal succession planning, I think when you start to get to service delivery and you're looking at Team Leader roles, for example, and management roles, what you've got to make sure you do is actually set those people up for success. So, you know, it's important that if I come in as a Lifestyle Assistant, for example, and I'm interested in management progression that I'm given those opportunities either through an acting process or a selection process for a role that's available. But the organisation has to make sure that they wrap the support and development around those people when that happens.

45 MR GRIFFIN: That's because you're recognising that the person on the day of their promotion might not have all the skills you'd like them to have, but you're confident they can grow into it.

MS TOOHEY: Exactly. Exactly. Yeah.

5 MR GRIFFIN: But you've got to protect the participants in the programs by making sure that that person grows into the role properly supported.

MS TOOHEY: That's right.

10 MR GRIFFIN: From your examination of what happened in the past, insofar as you have done that, do you think that was a problem with Afford?

15 MS TOOHEY: I think that, for me, people were promoted to different - if I take different senior management levels, I think people were promoted to senior management roles that didn't have the skills and experience required. I think there was possibly a reluctance to recruit externally as well. Because I think the ex-CEO probably liked to have known people around him. I think that across our service delivery, we've had some - we've got some great people who have, in fact, worked - worked their way up the management levels to different roles.

20 I think, though, however, we expect people to still take that leap between frontline to Team Leader, and that, for me, is our biggest issue that we have in the organisation, without wrapping that support. But I think - I think some of the lack of contemporary practice in the organisation and that contemporary thinking that was being talked about before is really because we're not - we haven't been bringing new contemporary thinking into the
25 organisation over the last few years.

MR GRIFFIN: You would have heard the evidence earlier this week about the turnover of Team Leaders?

30 MS TOOHEY: Yes.

MR GRIFFIN: Can I ask you a more general question: as a CEO, do you have in your mind what might be regarded as a standard or acceptable ratio of turnover in an organisation such as Afford?

35 MS TOOHEY: I think organisations like ours go through peaks and troughs. On average, over a 12-month period, I like to see it sit around between 17 to 19 per cent. You know, I think - sometimes it's hard work and, you know, people either move on to different things or leave for a variety of different reasons, but, for me, the turnover is only one indicator
40 anyway. You have to wrap it up with your formal engagement assessment processes and your workers' compensation and, you know, those sorts of things because they tell a whole picture. So that between 17 to 19 per cent.

45 MR GRIFFIN: Have you put in place a program of exit interviews for people leaving the organisation so you can garner from them their take on their time at Afford and their experience and their suggestions?

50 MS TOOHEY: I haven't - I haven't yet. I have spoken to a few people who have left in other roles, but my new Executive Director - she only started on Monday, so it's in her plan.

MR GRIFFIN: It's now Thursday.

MS TOOHEY: Don't worry, they've been feeling the pain.

5

MR GRIFFIN: But I take it as a general proposition you think that's valuable thinking.

MS TOOHEY: Absolutely. Yes, absolutely, yeah.

10 CHAIR: Can I ask Mr Allen a question. Mr Griffin has drawn your attention to the CEO's report of January 2019.

MR ALLEN: Yes.

15 CHAIR: And you've agreed that that document has as its highest priority financial matters. I've just been - this is the first time I've seen the document, and I've just been reading through it. The entire thrust of the document is that, "This is a business. We're in competition with our competitors, Life Without Barriers and so on, but my goodness we're doing well because we're getting more customers, we're growing faster than others or we're
20 growing organically, 30 per cent. We've got the third highest equity at \$69 million. Afford is the highest profitability over the last three years, more than triple our closest competitor", and so on and so forth.

25 Nobody reading this could be under any illusions as to what the CEO was trying to do. He was trying to increase the size of the business. He wanted to increase the revenue. And he wanted to increase profit. He thought it was very important to increase profit. He thought it was a good thing that there was a profit of \$7 million, and he expressed lots of concerns about the odd circumstances where profit might have been affected. Is this typical of the reports that you got during your time as a director before you became Chair?

30

MR ALLEN: I don't necessarily think that report is typical of the reports. The former CEO had a very - a strong view that financial performance in a business like Afford's was reflective - was very reflective of success across the range of - or positive performance across a range of areas in the business. That is, if we had more customers coming to us,
35 that was reflective of our reputation and the quality of the services that we were providing. So it is fair to say he viewed most things through a financial lens.

CHAIR: That assumption is plainly incorrect, isn't it, in this context?

40 MR ALLEN: I think it is, yes.

CHAIR: And you can tell that if you look very carefully at this document - the third page, I think it is - but, in any event, it's the page that has 4569 at the bottom. Under the heading Growing Pains:

45

"We will be reducing District Managers in day programs New South Wales by increasing span of control from four sites up to seven. We will now have far west, south-west and central as districts."

50 So he's curbing the services in order to save money, isn't he?

MR ALLEN: I don't think he was curbing the services, but he was certainly stretching the areas of responsibility for District Managers, yes.

5 CHAIR: I would have thought that translates into at least lesser supervision of the provision of services. If you're giving District Managers more responsibilities and obligations, then presumably they're going to have to devote more time to tasks such as administration and so forth, and less time to supervising the quality of services that are provided through the day program. It's inevitable, isn't it?

10 MR ALLEN: Yes, you're correct, Chair. I'm sorry, I interpreted your earlier question to mean it was a reduction in services, not a reduction in the supervision of services, but I agree with the latter point that you've made.

15 CHAIR: What I'm really getting at is that you - well, you say that this isn't necessarily typical. But as a director reading this report, it's very difficult to escape the conclusion that what the CEO was doing was running the business as if it were a business with the guidelines of profit, revenue, increasing size. There's hardly a mention in here of anything that is to do with providing quality services to the people with disability who are meant to be the focus of the organisation.

20 Now, if my assumption is right that this is the reading of this document, it's a bit difficult to see how the Board couldn't have got up and basically said this CEO is not doing his job.

25 MR ALLEN: The Board received reports in two volumes, Chair. This report is from volume 1 which is the fairly typical reports that boards would receive across most organisations. The Board asked and required a volume 2 report at that time which went into much more detail in terms of the reporting from the customer services staff and line management in terms of the quality of services and the experience of customers at various facilities. That information was provided to the Board. No, it was not headlined in the CEO's report.

30 CHAIR: I see. I'm not sure whether we have that, but no doubt Mr Griffin can pursue that, if possible. But are you saying that volume 1 was intended to be - by the Board to be focused on financial matters, and financial matters only?

35 MR ALLEN: No. It wasn't intended to be only, but the Board wanted more detailed information about our customers and our facilities and the Board asked for a significant amount of detail, and it wasn't practical to include it in the volume 1 of the Board papers and that's why a second volume that included that information was produced.

40 CHAIR: Yes. Have you got a question? Yes, I think Commissioner Bennett has one.

45 COMMISSIONER BENNETT: I just wanted to add to whether it's normal or not, and I'm not - that's obviously your assessment. But in the July 2020 CEO report, which is document 1956, I'm just quoting your then CEO, and it says here:

50 "We should not be embarrassed by our profits in a competitive market where other companies are losing money charging the same prices. A bloated workforce will bring lethargy and will see a reduction in the quality as the hungry can-do attitude is lost."

MR GRIFFIN: Commissioners, the document is E48 in the bundle.

CHAIR: Sorry?

5

MR GRIFFIN: Document E48 in the bundle.

CHAIR: Yes. Yes, it is.

10 COMMISSIONER BENNETT: Page 69 of 168.

CHAIR: Yes. Well, page 68 of 168 starts off:

15 "Top five ... A fabulous result in tough times ... \$3 million profit ... So we end the year with a surplus of \$12,529,59!!!!"

Four exclamation marks. That's pretty clear.

MR ALLEN: It is very clear.

20

CHAIR: The CEO thinks it's important.

MR ALLEN: Yes.

25 CHAIR: Yes. Alright. Yes, Mr Griffin.

MR GRIFFIN: I note the time, Chair. Can I invite Mr Allen overnight to look at hearing bundle E, tab 32 to 56 -

30 CHAIR: Yes.

MR GRIFFIN: - which are the reports from Steven Herald and let me know in the morning if, having read all those reports, he has a contrary view to the view that's been put to him?

35

MR ALLEN: I will. Thank you.

MR GRIFFIN: As I said, Chair, I note the time.

40 CHAIR: My goodness. Yes. Alright. Thank you. Well, we'll adjourn until 10 am tomorrow.

ADJOURNED 4.02 PM TO FRIDAY, 20 MAY 2022 AT 10.00 AM

45

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