



PUBLIC INQUIRY INTO LIVERPOOL CITY COUNCIL

**COMMISSIONED UNDER S 438U OF THE LOCAL
GOVERNMENT ACT 1993 (NSW)**

**PUBLIC HEARING
SYDNEY**

**WEDNESDAY, 27 AUGUST 2025
AT 10.28 AM**

DAY 22

APPEARANCES

**T McDonald SC, Senior Counsel Assisting
Ms B Anniwell, Counsel Assisting
Mr E McGinness, Counsel Assisting
Mr J Emmett SC with Mr D Parish and Mr N Andrews, Counsel for the
Liverpool City Council
Ms K Richardson SC, Counsel for Mayor N Mannoun
Mr J Hunt, Counsel for Mr P Ristevski
Mr D Tynan, Counsel for Mr J Breton**

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<THE HEARING RESUMED AT 10.28 AM

<JASON BRETON, ON FORMER OATH

5 **COMMISSIONER:** Good morning.

MR HUNT: Commissioner, with leave, my name is Hunt, H-u-n-t, solicitor. I'll be appearing today in place of Ms Catherine Hamilton-Jewell for Mr Ristevski. We had foreshadowed to counsel assisting that Ms Hamilton-Jewell was unavailable, and
10 hopefully we won't be required today. But if need or the time for cross-examination arises, we may make an application to defer that till Ms Hamilton-Jewell is available.

COMMISSIONER: All right. I'm not sure we'll get there today, but -

15 **MS McDONALD:** I don't think so.

COMMISSIONER: - thank you.

MR HUNT: In one sense, hopefully not.
20

MS McDONALD: Mr Breton, before continuing with some questions about a different topic, you had some homework last night?

MR BRETON: Yes, I did. Yes.
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MS McDONALD: And my recollection is the homework was you were to look at the councillor intranet to see what material and - and in particular, some of those work health and safety information sessions or training sessions had been
30 downloaded onto the intranet?

MR BRETON: Yes.

MS McDONALD: What did you find?

35 **MR BRETON:** So my advice is that the induction advice to councillors - that is, advice provided by Denman senior counsel in 2015.

MS McDONALD: Was that Mr Hodgkinson?

40 **MR BRETON:** Denman - senior counsel - counsel - Denman with the advice. I saw, in relation to councillors' obligations under the Workplace Health and Safety Act -

MS McDONALD: Okay.

45 **MR BRETON:** My advice from officers within Council is that in advance of the Hodgkinson detail, this advice - it's only two-page advice -

MS McDONALD: Okay.

MR BRETON: - was given in induction. And in relation to the 7/7/25 Clayton Utz safety advice, my understanding is that is now on the intranet portal. The councillors do, in fact, have an intranet portal. The one challenge we still haven't overcome is to what extent the general manager or otherwise can assess whether councillors have done the remedial training.

So what we have done is we are looking now to include - under our current learning management system, if "Mr Breton" didn't do something I'd have to go back and scroll through it, and at the end of the PowerPoint I'd have to tick a box and it would record me as being complete. So we're now going to include that process in - for councillors as well, where they miss training opportunities. And further, we've - as of this morning, based on yesterday's evidence, we've re-engaged Clayton Utz to pick up Mr Ristevski and the four Labor councillors who did not attend the 7/7/25 session, and have organised for that training to be undertaken.

MS McDONALD: Okay. Thank you. All right. Moving to a different topic. Code of conduct.

MR BRETON: Yes.

MS McDONALD: If we can start with the various policies. Now, I think it's - at least from 2022, it appears that the Council policies on code of conduct usually are two that operate together. So there's actually the code of conduct and then there is the code of conduct procedures.

MR BRETON: Correct.

MS McDONALD: Would we first bring up document INQ.001.001.1134, please. Yes. Thank you. I'm not going to take you to detail to this document, but you can see on its first page it was adopted on 30 August 2022?

MR BRETON: Yes.

MS McDONALD: And if we go to the next page, page 2, you can see there's the various parts: definition, general conduct obligations, pecuniary interest, non-pecuniary, et cetera.

MR BRETON: Yes.

MS McDONALD: Now, would we then go to - I'm sorry - document INQ.014.001.0002. And it can be live streamed. And if we move down the page slightly, you can see that that document has been adopted 21 May of this year.

MR BRETON: Correct.

MS McDONALD: And this is the current code of conduct?

MR BRETON: It is.

5 **MS McDONALD:** And I don't want to get into a comparison of the two documents, but is it fair to say that the changes in - or a number of the changes between the two codes, they were relatively minor?

MR BRETON: Yes.

10 **MS McDONALD:** But under the new code, the directorate responsible is now the Corporate Support, Legal and Governance?

MR BRETON: Yes.

15 **MS McDONALD:** Previously, it had been the Office of the CEO?

MR BRETON: Yes.

20 **MS McDONALD:** So distinguishing between minor changes, arguably that's a substantive change in the procedure under which code of conduct complaints are pursued or followed?

MR BRETON: Agreed.

25 **MS McDONALD:** All right. Now, as I said to you, hand-in-hand there is then the code of conduct procedures. And if you would bring up please INQ.001.001.1135. Yes. And if we move down, you can see:

30 "Liverpool City Council Code of Conduct procedures."
This was adopted on 31 August 2022?

MR BRETON: Yes.

35 **MS McDONALD:** And if we move just to the index or table of contents on page 2, you can see it's got administrative framework, how can a complaint be made, how they're to be managed, preliminary assessment, et cetera.

40 **MR BRETON:** Yes.

MS McDONALD: And when the code of conduct in May was brought into play, there was a corresponding Code of Conduct procedures that was brought in?

45 **MR BRETON:** Yes.

MS McDONALD: If you would bring up INQ.014.001.0003. And it can be live streamed. You can see there Code of Conduct Procedures?

COMMISSIONER: Not yet.

MS McDONALD: Sorry.

5

COMMISSIONER: You've got the advanced screening.

MS McDONALD: Yes.

10 **MR BRETON:** Yes.

MS McDONALD: If we go to the date on that first page. So that's the current code of conduct procedures?

15 **MR BRETON:** Correct.

MS McDONALD: And I'll take you back to this document shortly, but again, without going into a detailed comparison between the August 2022 version and the current version, there were some minor changes?

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MR BRETON: Yes.

MS McDONALD: But the directorate responsible now is, as I outlined, Legal and Governance and not the Office of the CEO?

25

MR BRETON: Correct.

MS McDONALD: And having a code of conduct and having the procedures, that, in a sense, is mandated by the Act and relies on a model code of conduct for local councils developed by the Office of Local Government?

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MR BRETON: That's correct.

MS McDONALD: And just at this introductory stage, if we can bring up that document, INQ.042.001.0001. And it can be live streamed. That's the Model Code of Conduct for Local Councils 2020?

35

MR BRETON: Yes.

40 **MS McDONALD:** Would you move through to page 25, please. I just, at this stage, wanted to draw your attention to the special complaints management arrangements.

MR BRETON: Yes.

45 **MS McDONALD:** And if you can have a look at paragraph 5.48, it provides:

"The general manager may request in writing that the Office of Local Government enter into a special complaints management arrangement with the Council in relation to code of conduct complaints made by or about a person or persons."

5 **MR BRETON:** Yes.

MS McDONALD: And under 5.9, it set - sorry, paragraph 5.49. It sets out where the office may agree to enter into such arrangement and it sets out:

10 "Imposes an undue disproportionate cost burden on the Council's administration of its code of conduct, impede or disrupt the effective administration by the Council or impede or disrupt the effective functioning of the Council."

15 **MR BRETON:** Yes.

MS McDONALD: All right. We'll return to that some time today. Could we move back to the current code of conduct, which was document INQ.014.001.0002. And it can be live streamed. And if we turn to part 3, General Conduct Obligations, at page 6. This sets out a number of matters, but I'll just draw your attention to some of them.
20 For example, under General Conduct - excuse me for a minute. I should have gone to page 3 to begin with.

Under Introduction, under the second paragraph it sets out the minimum standards of conduct for council officials. And it's prescribed by regulation to assist council
25 officials to understand and comply with standards of conduct expected of them, enable them to fulfil their statutory duty and then, finally, to act in a way that enhances public confidence in local government. And then if you go to the paragraph that commences "Councillors". Yes:

30 "Councillors, administrators, members of staff, delegates and any other person a council's adopted code of conduct applies to must comply with the applicable provisions of their council's code of conduct."

35 **MR BRETON:** Yes.

MS McDONALD: So if we're concentrating on councillors, including the mayor, they must comply with this code of conduct?

40 **MR BRETON:** They must.

MS McDONALD: And if we then return to page 6, General Conduct Obligations, we've got General Conduct. And it provides, for example:

45 "You must not conduct yourself in a manner that is likely to bring the council or other council officials into disrepute; contrary to statutory requirements or the council's administrative requirements or policies; improper or unethical; abuse of power; causes, comprises or involves intimidation or verbal abuse."

And then I'll jump to (g):

5 "Constitutes harassment or bullying behaviour under this code or is unlawfully discriminatory."

MR BRETON: Yes.

10 **MS McDONALD:** Then just jumping ahead, we've got 3.3 to 3.5, dealing with fairness and equity. And then - before 3.6, harassment and discrimination.

MR BRETON: Yes.

15 **MS McDONALD:** Then if we turn to 3.8, a special - or a section which deals with bullying.

MR BRETON: Yes.

20 **MS McDONALD:** Providing:

"You must not engage in bullying behaviour towards others."

25 And then examples of what bullying involves. And then under 3.12 there's a reference to the Work Health and Safety Act.

MR BRETON: Correct.

30 **MS McDONALD:** And identifying that councillors owe the statutory duties under that Act and then setting out specifically what is required.

MR BRETON: Yes.

35 **MS McDONALD:** All right. Then there are some other obligations which I won't come to at the moment. Sorry, I will. If you go to page 8, the second headed Obligations in Relation to Meetings. And that provides:

40 "You must comply with rulings by the chair at council and committee meetings unless a motion dissenting from the ruling is passed. You must not engage in bullying behaviour towards the chair, other council officers or any members of the public present during the council meetings."

And then:

45 "You must not engage in conduct that would otherwise be inconsistent with the orderly conduct of meetings."

MR BRETON: Yes.

MS McDONALD: All right. Then if we can leave that and then move to the code of conduct procedures, which was document INQ.014.001.0003. And that can be live streamed. Now, the first section I want to take you to is 3.17 on page 7. This is
5 appointment of complaints coordinators, and it provides:

"The CEO must appoint a member of staff of the council or another person" -
and we'll jump over that. Go to page 8:
10 ".. to act as a complaints coordinator."

MR BRETON: Yes.

15 **MS McDONALD:** And under 3.9, you're not allowed to undertake the role of the complaints coordinator.

MR BRETON: Good. Yes.

20 **MS McDONALD:** Currently, who have you appointed to be the complaints coordinator?

MR BRETON: Yeah, so it's David Day, D-a-y, the manager of Governance.

25 **MS McDONALD:** Would you jump back to page 6. And this is still under the administrative framework. We've got the establishment of a panel of conduct reviewers. There's a reference to, under 3.1, the council establishing a panel of conduct reviewers. The next one is there can be a sharing of a panel of conduct reviewers with other councils. Liverpool Council has established a panel of conduct
30 reviewers?

MR BRETON: Under 3.1, yes.

35 **MS McDONALD:** And are they a panel consisting of outside organisations which, if it comes to that, can undertake either a preliminary assessment of a complaint and an actual investigation of a complaint?

MR BRETON: And/or an investigation, yes. Correct.

40 **COMMISSIONER:** Who does Mr Day report to?

MR BRETON: David Galpin, the general counsel.

COMMISSIONER: And then -
45

MR BRETON: Up to me.

COMMISSIONER: Directly? Mr Galpin reports to you or through -

MR BRETON: No. So it goes David Day into David Galpin, into Farooq Portelli as director, into Jason Breton.

5

COMMISSIONER: Thank you.

MS McDONALD: You do have a role under the Code of Conduct procedures, in that in the majority of cases the complaint is made to you?

10

MR BRETON: Yes.

MS McDONALD: There's obviously some exceptions, if the complaint was obviously about you.

15

MR BRETON: About me, yes. Yeah.

MS McDONALD: But - excuse me - if a complaint is made to you, in a sense, do - or not "in a sense". Do you do an initial - if I use the word "triage" - or superficial, but not in a pejorative way, assessment of the complaint?

20

MR BRETON: I think triage is exactly the right word, just to see what the conditions are and where it meets the code of conduct or otherwise, and then it's referred to the code of conduct assessor.

25

MS McDONALD: In that triage, you're given the ability to dismiss the complaint at that point, in certain circumstances?

MR BRETON: Yes.

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MS McDONALD: And if we bring up, on page 10, under paragraph 5.3 - so it's towards the bottom of the page. This paragraph which deals with complaints that may be declined at the outset, does that reflect what you can - the possibilities, once you have conducted that triage, that you could possibly do with the complaint?

35

MR BRETON: They - (a) to (e) are my options, yes.

MS McDONALD: Right. So there's kind of prerequisites. So you've got to come within - if I describe it as the jurisdiction of what is a code of conduct complaint -

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MR BRETON: Yes.

MS McDONALD: There's a time limitation with the complaint?

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MR BRETON: Yes.

MS McDONALD: And then in (c), if you consider it trivial, frivolous, vexatious or not made in good faith.

MR BRETON: Yes.

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MS McDONALD: Relates to a matter the substance of which has already been considered and addressed by the Council and does not warrant further action, or is made in a way that would allow the alleged conduct and any alleged breaches of the code of conduct to be readily identified.

10

MR BRETON: Yes.

MS McDONALD: Can I just ask you, under (d), have you ever used that?

15

MR BRETON: No.

COMMISSIONER: What's something that might come within (d), in your view, given that it hasn't come across your desk?

20

MR BRETON: Yeah, it - well, it - hypothetically, it looks like some - maybe a code of conduct from councillor to councillor that has - to be in - part of a motion or a resolution or an action or non-action in relation to a councillor and whether it met that level. I think that's the intent.

25

COMMISSIONER: Or some -

MR BRETON: Because -

COMMISSIONER: I'm sorry.

30

MR BRETON: Sorry.

COMMISSIONER: Didn't mean to -

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MR BRETON: I just think there's - where - where - because I'm just relying on the words "addressed by the Council".

COMMISSIONER: Yes.

40

MR BRETON: I'm assuming that's the governing body.

MS McDONALD: Now, once you've conducted your triage and you're satisfied that none of (a) to (e) applies, does the complaint then go to the complaints coordinator?

45

MR BRETON: It does.

MS McDONALD: And your understanding of what the complaints coordinator then does?

5 **MR BRETON:** Well, the complaints coordinator would - then maps it against the code of conduct. So it's passed a triage and it is a complaint for consideration. And then the code of conduct - the complaints coordinator would then make an assessment about which part of the code it breaches and would tell -

10 **MS McDONALD:** Or potentially breaches.

MR BRETON: Potentially breaches. And would tell me - give me that advice and then would ask me if I concur, and the direction it should take.

15 **MS McDONALD:** All right. So just as an example, you'll get advice from the complaints coordinator that, look, what has been raised in this, if it is proven or substantiated it is likely to bring the Council into disrepute?

MR BRETON: Yes.

20 **MS McDONALD:** And then would give a recommendation along the lines of - and I'm just putting them broadly - that you can deal with it?

MR BRETON: Yes, I have alternate means of redress.

25 **MS McDONALD:** Or it should be sent to a conduct reviewer for preliminary assessment?

MR BRETON: Correct.

30 **MS McDONALD:** And are they really the two options?

MR BRETON: Pretty much. They're either - we're either going to deal with it in-house or it's going outside for a preliminary assessment.

35 **MS McDONALD:** All right. And when you say dealing with it in-house, that's dealing with it by you?

MR BRETON: Yes.

40 **MS McDONALD:** And I think, as you describe, these alternative -

MR BRETON: Means of redress?

MS McDONALD: Yes.

45

MR BRETON: Yep.

MS McDONALD: Are they set out in the code?

MR BRETON: Yes.

5 **MS McDONALD:** And whereabouts are they?

MR BRETON: I can't refer the exact section. It gives me the option in relation to - it actually states alternate means of redress. Typically that's counselling, and that's happened on a number of occasions.

10

MS McDONALD: Actually, I think if you look at 5.24 - on page 13, sorry. And this is dealing with conduct of - code of conduct complaints about councillors. And, sorry, I think to be fair, if we go back to 5.20. There it identifies certain complaints where you've got to refer them to the Office of Local Government?

15

MR BRETON: Yes.

MS McDONALD: And just as an example, the first one, where there's an allegation of a breach of the pecuniary interest provisions.

20

MR BRETON: Correct.

MS McDONALD: Then if we move to 5.22, that gives you the option of no action - as long as it doesn't come within 5.20, you can consider it and say no action is warranted?

25

MR BRETON: Yes.

MR EMMETT: Well, I object. That's not quite what it says.

30

MS McDONALD: I'm looking at 5.22. You can - sorry, 5.22. You can decide to take no action about a councillor, excluding 5.20 matters, where you consider that no action is warranted in relation to the complaint.

35 **MR BRETON:** That's right. So I have no discretion under 5.20. But if it doesn't hit those markers, yes, I can take no action.

MS McDONALD: That's one of your options.

40 **MR BRETON:** Yes.

MS McDONALD: And then -

45 **MR EMMETT:** I - now is not the time for the debate, but there are two ways to read that clause. Just to be - and I don't want to go off on an unnecessary side debate, but the proposition appears to be that the CEO may take no action other than one of the actions identified in 5.20.

COMMISSIONER: That was what I understood to be put.

MS McDONALD: Well, sorry, I didn't mean to put -

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COMMISSIONER: Well, Mr Breton has made clear he has no discretion if 5.20 is engaged.

MS McDONALD: Yes.

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COMMISSIONER: 5.22 only arises if he is outside 5.20. Have I missed something?

MS McDONALD: No, that's what I thought I -

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MR EMMETT: I think -

COMMISSIONER: Are we all square?

20 **MS McDONALD:** I asked him - that's -

COMMISSIONER: All right.

25 **MS McDONALD:** - what the evidence was. There's a group of complaints under 5.20 where, in substance, you don't have any discretion because of their nature?

MR BRETON: They're referrals.

MS McDONALD: And they've got to go to OLG?

30

MR BRETON: Correct.

MS McDONALD: If they don't come within 5.20, then you've got certain options?

35 **MR BRETON:** Yep.

MS McDONALD: One of the options is that I just took you to at 5.22?

MR BRETON: Yes.

40

MS McDONALD: Which is you consider no action is warranted?

MR BRETON: Yes.

45 **MS McDONALD:** And in those circumstances under 5.3, you've got to give the complainant some reasons?

MR BRETON: Yes.

5 **MS McDONALD:** Then under 5.24, this is another possible option. If you consider it practicable and appropriate to do so, you - and I'm just jumping on ahead - then excluding 5.20 matters, you can try and resolve the complaints about councillors by alternative means, and then there are some examples of the alternative means.

MR BRETON: Yes.

10 **MS McDONALD:** Explanation, counselling, training, mediation, informal discussion?

MR BRETON: Yes.

15 **MS McDONALD:** And the section underneath that says that if you do take that alternative means, it's not to be taken as a determination that there's actually been a breach -

20 **MR BRETON:** Correct.

MS McDONALD: - of the code. And again, in 5.25, there's a requirement of informing the complainant -

25 **MR BRETON:** There is.

MS McDONALD: - in writing. And if we jump across to 5.26 - so if there's a complaint, it's not in the carve-out of 5.20, you haven't finalised it under 5.23 or resolved it under 5.24, it's then got to be referred to the complaints coordinator?

30 **MR BRETON:** Yes.

MS McDONALD: So it goes back to Mr Day?

35 **MR BRETON:** Correct.

MS McDONALD: And at that point, is the option - not the option, I'm sorry, withdraw that. The next stage in the process, is it a preliminary assessment?

40 **MR BRETON:** Yes.

MS McDONALD: Now, the preliminary assessment - and I'm just asking you this, in a sense, hypothetically - if there was a year - a financial year and suddenly in October you get your first code of conduct complaint, can that preliminary assessment be dealt with internally or has it got to go out to one of your conduct reviewers?

MR BRETON: It can be dealt with internally or go out to a conduct reviewer.

MS McDONALD: All right. And as I said, the example where there's just one, it could be dealt with internally?

5 **MR BRETON:** Yes.

MS McDONALD: And if it's going to be dealt with internally, is that done by David Day or -

10 **MR BRETON:** Yes.

MS McDONALD: All right. And again, in this hypothetical example, if a preliminary assessment is undertaken, Mr Day concludes that there is something there in respect of the complaint. It then moves to an investigation?

15 **MR BRETON:** Yes.

MS McDONALD: And with our hypothetical example, can that investigation be undertaken by Mr Day or has it got to go to an outside -

20 **MR BRETON:** It doesn't have to go. It could be, yes.

MS McDONALD: Right. So it could still be dealt with internally?

25 **MR BRETON:** Yes. Yes.

MS McDONALD: And then once it's dealt with internally, depending on the result, there are certain repercussions?

30 **MR BRETON:** Yes.

MS McDONALD: All right. But there is the potential for it to be dealt with internally?

35 **MR BRETON:** There's the potential under this hypothesis, yes.

MS McDONALD: Right. And also was it your experience - I'm sorry, withdraw that. We've heard evidence that up to a certain point, Liverpool City Council actually had their internal ombudsman?

40 **MR BRETON:** Yes.

MS McDONALD: Were you working there when the internal ombudsman was still there?

45 **MR BRETON:** Yes.

MS McDONALD: The internal ombudsman could be a person to conduct preliminary assessments, investigations, et cetera?

MR BRETON: Yes.

5

MS McDONALD: Could you just excuse me for a minute.

COMMISSIONER: While we're dealing with this at the general level, Mr Breton, could we - Operator, could we just go back to clauses 5.23 and 5.24. Probably need 10 5.22 as well, I'm sorry. There we go. Putting to one side the 5.20 category, which the - no issue of discretion arises. When you're looking at whether to proceed under 5.20, that is, to take - you consider no action is warranted -

MR BRETON: Yes.

15

COMMISSIONER: - or whether to resolve it by the alternative means provided for in 5.24, what sort of matters are you thinking about or looking at?

MR BRETON: Yeah, it gets above the frivolous threshold. So it's somewhere 20 between the frivolous nonsense threshold and a legitimate code of conduct. And it could be about - it's typically where a - somebody makes a code of conduct complaint but doesn't really understand the code of conduct - what a code of conduct is. So one of those ones that falls into the gap but is not deliberately frivolous or vexatious, but may be one where it didn't - didn't take it to any threshold.

25

COMMISSIONER: So that's a 5.22 situation, no action required?

MR BRETON: That's a 5.22, with explanations back to the author as to why that rationale was applied.

30

COMMISSIONER: All right. What about a 5.24? Sort of things, as you're exercising your mind -

MR BRETON: Yep.

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COMMISSIONER: - when you consider whether an approach under 5.24 is appropriate?

MR BRETON: Yes.

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COMMISSIONER: I should say have you ever done it?

MR BRETON: Yes, I've done it a number of times. And my typical approach in 5.24s is to send not only the author of the allegation a response under alternate 45 means - that is, I've spoken to the person complained of a number of times in the last year and basically said, "Look, you're sailing close to the mark here. This behaviour is" - "You're right on the threshold." That's the kind of advice. But then what I do is

I copy all the councillors in under LCC Councillors email and put a generic issue about - I think the last one was be careful about the use of social media posts because they may be a breach of code of conduct and you need to be wary about what you post and it's - and the residual implications of such.

5

COMMISSIONER: So that's a form of counselling?

MR BRETON: That's a form of counselling, yes.

10 **COMMISSIONER:** Have you ever used 5.24 to resolve a complaint by having a councillor undertake further training?

MR BRETON: Not in my tenure, no. So I haven't used training. Haven't really used negotiation. But I have used explanation, counselling and discussion - informal
15 discussions.

COMMISSIONER: Mediation?

MR BRETON: No mediation.
20

COMMISSIONER: Voluntary apology?

MR BRETON: I haven't had a voluntary apology.

25 **MS McDONALD:** Have you sought or suggested?

MR BRETON: Yes. There was one instance where - there was one instance of a comment about a councillor being "a fat pig", and the reference was to Ms Piggy out of the Muppet Show, and the connection wasn't, therefore - that met the
30 threshold, and I just suggested that, "Perhaps the next time you see that person, that might warrant an apology."

COMMISSIONER: So in considering 5.22 and 5.24, is there a consideration of the nature and extent of the conduct you're dealing with?
35

MR BRETON: I think so. Again, I still try and work to thresholds - what's reasonable. And if the threshold is achieved - it's really kind of non-negotiable for me. I just send it away, particularly in the current circumstances.

40 **COMMISSIONER:** And how do you arrive at the threshold, as to whether you can proceed under a 5.24 or a - it's one that needs to, as you say, go away?

MR BRETON: Yeah.

45 **COMMISSIONER:** As in, go to an - go to the code of conduct.

MR BRETON: Yeah, under the Fair Dinkum Act, Commissioner, I just take my lived experience and my understanding of the Act and the code of conduct procedures, and I apply a pretty sensible, reasonable person approach to what is and what isn't, and that's where I kind of get my - that informs my decision.

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COMMISSIONER: Does it - whether this conduct is a one-off or a course of conduct -

MR BRETON: Yes.

10

COMMISSIONER: - play into your consideration as well?

MR BRETON: It does. Also - again, it does. Every one of those considerations informs what I do, where it falls within the threshold - sorry, under the threshold under 5.24, because the original author - that's if we take the "Ms Piggy" example - was quite remorseful, and it was done and dusted, finished. So I think that was useful.

15

MS McDONALD: So with the last example that you gave, that - your finding was that it - I keep on using the word the "jurisdiction" -

20

MR BRETON: Yes.

MS McDONALD: - it came within the jurisdiction of the code of conduct?

25

MR BRETON: The last example fell under 5.24, where it could be -

MS McDONALD: No, no, no. I'm just taking it by stages.

MR BRETON: Okay.

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MS McDONALD: So I thought under -

MR BRETON: Yes, it did. Yes.

35

MS McDONALD: - 5.22 - you look at it and you think, "This is frivolous," et cetera. It wasn't that it came within - for example - it could have been seen under general conduct obligations as verbal abuse, for example?

MR BRETON: Yes.

40

MS McDONALD: Harassment or bullying behaviour, something like that?

MR BRETON: Yes, but it kind of didn't reach the threshold. Because again, the connections -

45

MS McDONALD: I don't understand what you mean by the "threshold".

5 **MR BRETON:** Well, verbal harassment would indicate that there was an author who said, in this hypothesis, to the other person, "You're a fat pig and you can't conduct your" - "you can't sit on your council chair, you're that fat." That's verbal abuse. The connection between an animal artefact of the Muppet Show didn't get there. It was an inference. So I don't think that gets to my reasonable test of verbal abuse on a one-off.

10 **MS McDONALD:** All right. So I'm just trying to work out - you did find it came within the code of conduct.

MR BRETON: Yes.

15 **MS McDONALD:** But because of the nature of the complaint, what it was about, you made the determination that you could deal with it under -

MR BRETON: 5.24.

20 **MS McDONALD:** - 5.24.

MR BRETON: Correct. There's been a few other examples - I can't - of note, but a number of times I remember just sending the generic emails on the back of that, just to tighten up the behaviour generally, and councillors would often ring me and say, "Is that about me?" But that was my - that was my approach, just to make sure
25 that it was generally informed.

MS McDONALD: And to your -

30 **COMMISSIONER:** Is there -

MS McDONALD: I'm sorry. Go on.

COMMISSIONER: Is there any - in doing that, do you have a conversation - just prompted by that last answer, someone reads the all-councillor email and inquires
35 with you whether it's about you - do I take it from that example that you may not necessarily have a conversation with the person about whom the complaint has been made, as part of this process?

40 **MR BRETON:** No, in addition. So -

COMMISSIONER: You do both?

MR BRETON: First of all, I'd write a - I'd talk to or write an email to the complainant.
45

COMMISSIONER: Yes.

5 **MR EMMETT:** And then the generic email would go to all of them, so that there was no disclosure of the complainant. It was a general theme. And these were typically themes around behavioural themes about what's appropriate, and just guidance from the CEO in relation to, you know, some of the expectations and the thresholds.

10 **COMMISSIONER:** What about one-on-one discussion - informal discussion or counselling with the person about whom the complaint has been made? That is, the person who is alleged to have engaged in the relevant behaviour.

MR BRETON: The alleged victim of the -

COMMISSIONER: No, no, no. The -

15 **MR BRETON:** Sorry, the -

COMMISSIONER: The perpetrator.

20 **MR BRETON:** Yes, a number of times.

COMMISSIONER: Every time? You would have a conversation with the person whose behaviour has been called into question?

25 **MR BRETON:** No, because I'm - I can't work on the single hypothesis. So the conversations that I apply to the author of the complaint in - in my experience, has been because of escalation rather than a single issue.

COMMISSIONER: Just so I'm clear in my mind, a code of conduct complaint comes in about a staff member.

30 **MR BRETON:** Yep.

COMMISSIONER: Let's take it out of the councillor regime for the moment.

35 **MR BRETON:** Yep. Okay. Yep.

COMMISSIONER: The same process applies. It comes to you.

40 **MR BRETON:** Yep.

COMMISSIONER: You look at it and you go, "Well, it's not frivolous or vexatious. It could engage a clause" - 3.1, for example, but this person doesn't seem to be engaging in this sort of behaviour at all, and it's at a relatively low level on your threshold scale. What do you do with it then?

45 **MR BRETON:** It looks like a 5.24.

COMMISSIONER: Yes.

MR BRETON: But there's been a number of examples from councillors against staff.

5

COMMISSIONER: All right. So just pausing there.

MR BRETON: Yep.

10 **COMMISSIONER:** It's a 5.24. Will you reach out to the person who is engaged in the behaviour as part of the 5.24 process?

MR BRETON: Yes.

15 **COMMISSIONER:** All right. And do what?

MR BRETON: One of the options.

COMMISSIONER: All right.

20

MR BRETON: Typically, it's informal discussion and counselling.

COMMISSIONER: All right. And as part of the finalisation of the complaint, is a record kept of you having done that?

25

MR BRETON: Yes.

COMMISSIONER: How?

30 **MR BRETON:** It'd be via email, whether it was via email from me or the complaints coordinator.

COMMISSIONER: Recording what, the conversation?

35 **MR BRETON:** Recording the action.

COMMISSIONER: All right. So the counselling might be your informal discussion is delivered verbally?

40 **MR BRETON:** Yes.

COMMISSIONER: And the email records what?

45 **MR BRETON:** Well, "As discussed, Mr Breton, please," you know, "refrain from" - that kind of -

COMMISSIONER: All right. And do you - now taking it to the councillor environment, we get to the same threshold, you're looking at a 5.24. Do you speak to the councillor about whom the complaint has been made?

5 **MR BRETON:** I do and I have.

COMMISSIONER: And is that recorded?

MR BRETON: Yes. Again, the same - same circumstances, so -

10

COMMISSIONER: So that's different to the all-councillor reminder?

MR BRETON: It's in addition to. Yeah, it's in addition to. The all-councillor reminder's typically one where I know that I can cast a net about a general theme and re-correct potential behaviours and protect them. Yep.

15

COMMISSIONER: But in addition to that, there's a -

MR BRETON: There's formal advice.

20

COMMISSIONER: And then the counselling or the informal discussion has been recorded -

MR BRETON: Yes.

25

COMMISSIONER: - with the person about whom the complaint has been made?

MR BRETON: Yes.

30 **MS McDONALD:** And just from your answers to the Commissioner, it seems that the factors you take into account in determining whether you'll pursue your options under 5.24 include - is it aberrant behaviour? Like, a one-off by the person. I'm just talking about - not determinative, but things that you take into account.

35 **MR BRETON:** Yes. To the extent that in the last year or two, I - I've been less discretionary and sent them all the same way. I've been less - I've concerned myself less about that because of the different mix of where the complaints have come from. So having some parity in process was - then kind of made it more - a more reasonable approach. That is, if it came from a councillor about the staff, I need to show some parity in approach. So I've probably been less considerate of 5.24 and more determined to display parity and equality in the process.

40

MS McDONALD: All right. So on a practical level, given what has occurred with complaints within Council over, let's say, the last nine months -

45

MR BRETON: Yes.

MS McDONALD: - you've found that you're less likely to exercise your discretion under 5.24, but you'll just - you'll refer it to a preliminary assessment?

5 **MR BRETON:** Due to the unprecedented circumstances which Liverpool Council finds itself in.

10 **MS McDONALD:** But what's prompting that, from one of your answers, is that, in a sense, you want to be - I'm just trying - you'll remember the quote - above Caesar, Caesar's wife - that you don't want any allegation of differentiation in treatment or -

15 **MR BRETON:** That's exactly correct. I don't - in retrospect - in retrospective examination, I want to have evidenced that I have treated everybody and every circumstance equally and with parity, and some of the - the real trick is to where they hover above or - or close to the thresholds, but I've erred now on the side of caution. So if we have a retrospective examination, you will see the same process applied equally, irrespective of which direction the original complaint came from.

20 **MS McDONALD:** Is it fair to say - and this is not being critical, but because of the circumstances that Council - that you and the Council have faced, that you're operating - exercising, I'm sorry, your discretion under 5.24 in a different way to the way you would have exercised it if there's just, in a year, five complaints, eight complaints, something like that? And as I said, I'm not being critical in what you're doing, but I'm just trying to look at the impact of the circumstances facing Council at the moment.

25 **MR BRETON:** It's - that's a fair thing to say. And again, it's not - it is my discretion, though, and it's my discretion and I've - again, I - I can see the horizon and I understood very quickly that I needed to make sure that it was transparent, parity was applied, and this is to remove any perception retrospectively that one was in
30 favour of one person or another. And I think I've applied it that way.

MS McDONALD: Right. Excuse me for a minute. I want to turn - still under this topic - to a subtopic, and this is looking at a macro level from - for the last financial year and extending into this financial year - as I said, at a macro level, the number of
35 complaints and cost to Council that's arisen.

MR BRETON: Yes.

40 **MS McDONALD:** Now, in March and June of this year, have you been reporting to the Council, providing statistics about complaints and number of complaints, how they're being dealt with and costings?

MR BRETON: Yes.

45 **MS McDONALD:** Now, if you can just excuse me for a minute. Would you bring up, please, INQ.009.001.0007. This can be live streamed. Now, we're going to the first page. You can see Council Agenda for the meeting on 26 March of this year.

MR BRETON: Yes.

5 **MS McDONALD:** And would you move through to page - I think it's 163. Can you see Code of Conduct Complaints?

MR BRETON: Yes.

10 **MS McDONALD:** And if we move to Executive Summary:

"This report provides information regarding complaints received in the current reporting period."

15 Which is the - 1 September to 31 August.

MR BRETON: Yes.

20 **MS McDONALD:** Okay. I think I used the term "in the lead-up to this in the financial year", but the reporting period is slightly different.

MR BRETON: Yes.

25 **MS McDONALD:** All right. And then if we move towards the bottom of the page, we've got complaint numbers.

MR BRETON: Yes.

30 **MS McDONALD:** And again, are we taking it that - hold on. Table 1 is for the same period, but 2023 to 2024?

MR BRETON: Yes.

35 **MS McDONALD:** So if we have a look there, you've got, for '23/'24, five complaints?

MR BRETON: Yes.

40 **MS McDONALD:** And then above that, to the date of writing this report, you've got 67.

MR BRETON: Correct.

45 **MS McDONALD:** Then you've - then import some information from the Office of Local Government.

MR BRETON: Yes.

MS McDONALD: And if we're looking at the '23/'24 year, the council with the most complaints actually recorded 38?

MR BRETON: Yes.

5

MS McDONALD: And then you've got some mean and median average numbers?

MR BRETON: Yes.

10 **MS McDONALD:** All right. Then could we move across to page 164, please. And you make the comment that the number of code of conduct complaints received to date are much higher than in previous years. And then if we move down to - we've got a table number 2, Status of Complaints.

15 **MR BRETON:** Yes.

MS McDONALD: And there you've - so the 67 at that point - where you've got 14 complaints being investigated - sorry, I might start with the second row. You've got 24 that have gone out for a preliminary assessment?

20

MR BRETON: Yes.

MS McDONALD: The 14 being investigated, does that assume they have been assessed on a preliminary nature?

25

MR BRETON: Taken the next step, yes.

MS McDONALD: And that's the next step. Then you've got 23. Is that under the - after you've done your triage and Mr Day is now considering them?

30

MR BRETON: Correct.

MS McDONALD: One has been dealt with by other action. So is that under 5.24?

35 **MR BRETON:** Correct.

MS McDONALD: There's a pecuniary interest, which comes under 5.20. So you've sent that off to OLG?

40 **MR BRETON:** Yes.

MS McDONALD: And then four which are complaints declined at the outset. Is that during your triage?

45 **MR BRETON:** Correct.

MS McDONALD: Right. Then if we move to page 165, you set out a cost estimate for the 46 complaints.

MR BRETON: Yes.

5

MS McDONALD: Well, at the bottom of the page you say:

"Summarised is the cost of dealing" -

10 Sorry, could we whiz up to the bottom of 164. Yes. There. Table 3 summarises the costs of dealing with 67.

MR BRETON: Yes.

15 **MS McDONALD:** But then if we turn to table 3, it's headed Cost Estimates for the 46 Complaints.

MR BRETON: Sorry, can I see the page above, the comment? I'm sorry, the table above. Yeah. So "67", it should read.

20

MS McDONALD: Sorry, is it just a typo?

MR BRETON: Yes. Yes. Should read "67".

25 **MS McDONALD:** So back on page 165, cost estimates, that should be for the 67?

MR BRETON: Sorry, I'll need to see the table again, because I'm just wondering whether the - 67 minus 46 picks up the 21 - in the end, even if the - some of those issues were cost neutral, we can talk about the cost of the 67 because the 67 were presented. So I'm working on 67. So it should read "67".

30

MS McDONALD: All right. Back to page 165. Can you just give an outline of how you've estimated this?

35 **COMMISSIONER:** Just I think this -

MS McDONALD: Sorry.

COMMISSIONER: - report was written by Mr Galpin.

40

MR BRETON: Yes.

COMMISSIONER: And -

45 **MR BRETON:** I had -

COMMISSIONER: - what's the process? Did these -

MR BRETON: It would -

COMMISSIONER: - reports get prepared and -

5

MR BRETON: It was prepared, but I was intimately around this report.

COMMISSIONER: All right. Just wanted to -

10

MR BRETON: I know the -

COMMISSIONER: - make sure, in fairness -

MR BRETON: I know the fundamentals of it.

15

COMMISSIONER: Just wanted make sure that -

MR BRETON: Yep.

20

COMMISSIONER: - you had some input. That's fine.

MS McDONALD: So you've got estimated staff time to date, estimated staff time to conclusion. So that's an estimate based on the fact - for example, Mr Day is spending some of his working time -

25

MR BRETON: Three days per week.

MS McDONALD: Yes.

30

MR BRETON: Yeah. It's on those descriptors below. So we did an hourly rate for the head of Governance, the senior governance officer and the general counsel. We assumed that - those assumptions that David, et cetera, will be working three days a week and the GC would give us half a day a week on those numbers, and we applied the hourly rate to a final rate.

35

COMMISSIONER: That's the hourly rate of the cost of their wages to -

MR BRETON: The cost of their wages in not doing other work, yeah, and dealing with these.

40

MS McDONALD: And then it states your time and the director of Corporate Support hasn't been included?

MR BRETON: Correct.

45

MS McDONALD: And then if we jump back to the table, you've got Code of Conduct Reviewers to Date. So where matters have been sent out -

MR BRETON: Yep.

MS McDONALD: - external to Council?

5

MR BRETON: That's by invoice. That's - that number's pure. Yep.

MS McDONALD: So that's just over 42,000. And then an estimate of - the cost to conclusion will be, what, an additional 144,000?

10

MR BRETON: And that number's not pure, because it comes off the back of a contractor saying, "It'll be this, this, this, and fries with that," and you get a number which typically has some duck eggs on at the back. So we think it was 144,000 rough - rough order of magnitude.

15

MS McDONALD: All right. Now, at the June meeting you gave - or presented an updated report?

MR BRETON: Yes.

20

MS McDONALD: Would you bring up, please, INQ.009.001.0032. And it can be live streamed. That's the cover page or the first page for the agenda for that 18 June meeting.

25

MR BRETON: Yes.

MS McDONALD: Would you go through to page 148.

MR TYNAN: I might just clarify, Commissioner, that this document falls into the same category as the last one, because it's not authored by -

30

COMMISSIONER: Yes. Again, Mr Breton, this one - authored by Mr Day and approved by Mr Portelli, but was a similar process engaged in the last -

35

MR BRETON: I was all over it, Commissioner.

COMMISSIONER: All right. Thank you.

MS McDONALD: All right. The Executive Summary identifies growth in the number of complaints received and the associated resource implications.

40

MR BRETON: Yes.

MS McDONALD: If we move down to the report, complaint numbers - so the last one we had - we were at 67.

45

MR BRETON: Correct.

MS McDONALD: And now we're at 115.

MR BRETON: Yes.

5

MS McDONALD: And as it identifies, new complaints since last report: 48.

MR BRETON: Yes.

10 **MS McDONALD:** And then you've got the LCC conduct complaints for '23/'24, which were five. Again, you refer to the mean average, median average, et cetera.

MR BRETON: Yes.

15 **MS McDONALD:** So for the whole of the reporting period, '23/'24, you had five, and now, as at June, you've got 115?

MR BRETON: Correct.

20 **MS McDONALD:** And then if we could go to page 149 and table 2 - again, if we - maybe if we start with the last entry before the total. So again, the triage section - or if the complainant decides to - those complaints have disappeared?

MR BRETON: Yes.

25

MS McDONALD: You've then got either a 5.20 referral to the OLG or no action following preliminary assessment. So that's - I'm getting confused now. Is that the 5.22 conduct?

30 **MR BRETON:** It could be. Or the scenario may be that I thought it was and the assessor thought it wasn't. So basically I thought it had met something. I'd sent it away with - to have a look at it, and David Day has disagreed with my triage.

MS McDONALD: All right.

35

MR BRETON: It might fall in that gap.

COMMISSIONER: So you've gone your initial - you refer it to Mr Day. It goes to either his preliminary assessment or an external?

40

MR BRETON: Or - yep.

COMMISSIONER: It could be either?

45 **MR BRETON:** Yes.

COMMISSIONER: And the results of that come back and say -

MR BRETON: Yes. I just recall there was - there was a tranche, say, of 12 and the preliminary assessor said, "Look, the first 10 are good, but the last two aren't." That's where it falls in that category.

5

MS McDONALD: Okay. Then complaints dealt with by other actions, they're probably the 5.24?

MR BRETON: The 5.24s, yes.

10

MS McDONALD: Then you've got initial assessment by Governance team.

MR BRETON: Yes. So these are ones that have passed my desk.

15

MS McDONALD: So -

MR BRETON: The report's been written at a point of time, and there are nine still that I haven't had a feedback from David Day yet.

20

MS McDONALD: All right. And then 27 have gone off to preliminary assessment?

MR BRETON: Yes.

25

MS McDONALD: And then 64 now have moved to a - if I can call it a fully fledged investigation.

MR BRETON: Yeah. And with -

30

MS McDONALD: Again by an external investigator.

MR BRETON: Yes. In tranches typically of 12, yep.

MS McDONALD: I'll come -

35

COMMISSIONER: So what - I'm sorry.

MS McDONALD: Sorry. No, no.

40

COMMISSIONER: So on those numbers, at the point this report was written there were 100 complaints live, if I can put it that way?

MR BRETON: Yes.

45

MS McDONALD: Would we then move to 150 - page 150. This time the costing that you've provided is limited to external costs?

MR BRETON: Yes.

MS McDONALD: And where you have code of conduct reviewers, they're the entities or the people conducting the preliminary assessments?

5 **MR BRETON:** External ones, yes.

MS McDONALD: Yes. Sorry, external ones.

MR BRETON: Yep.

10

MS McDONALD: And then the actual investigators are those doing the full-blown investigation?

MR BRETON: Yes.

15

MS McDONALD: And your cost in that reporting period that I've identified is over 216,000?

MR BRETON: Yes.

20

MS McDONALD: Now, underneath that, you refer to staff time dealing with complaints has increased?

MR BRETON: Yes.

25

MS McDONALD: And then you just provide - or the report provides an estimate that from 17 December to 30 June 2025 - that costing of staff time is over 103,000.

MR BRETON: Yes.

30

MS McDONALD: All right. And if I can just refer to the next paragraph:

"The staff time required to deal with increased code of conduct complaints was unplanned. It's impacted on the delivery of other planned work and will continue to do so."

35

And:

"There was no budget allocated for the costs of external conduct reviewers, and these costs have had to be identified from other sources."

40

MR BRETON: That's correct.

MS McDONALD: So to put it bluntly, if we look at the 216,000-odd, there was no line item in the budget that was passed the previous year?

45

MR BRETON: No, we certainly didn't expect that.

MS McDONALD: And you've had to find the funds within the general unallocated funds pool?

5 **MR BRETON:** Yeah. At this stage they're coming from the - the chief executive officer's - there's a little innovation fund area. So we're taking it from a really productive area and we're spending it on this.

10 **MS McDONALD:** All right. Now, that was the report in June. I understand there's the August council meeting.

MR BRETON: Tonight.

15 **MS McDONALD:** Tonight, sorry. Are you doing an updated report on this for it or is this every kind of quarter or -

MR BRETON: No, I - no, there's no paper in tonight on this.

20 **MS McDONALD:** All right. Can you give - this might be a little bit unfair off the top of your head, but can you give an indication to the Commissioner - have the number of complaints increased?

MR BRETON: They have.

25 **MS McDONALD:** And the corresponding external costs incurred has increased?

MR BRETON: They have. Exponentially. That is, if you divided the pure cost by the numbers, I could expect a rise - on loose numbers, were around 400 grand.

30 **MS McDONALD:** So from the 216 -

MR BRETON: Yeah. Somewhere between 350, 400, around - rough order of magnitude, based on the pure numbers, because depending on what time it is at the moment, we have 145 to 150.

35 **MS McDONALD:** Complaints?

MR BRETON: Yep.

40 **COMMISSIONER:** And is the 350 to 400 actual -

MR BRETON: No, I'm not - I'm just -

COMMISSIONER: - money that's been expended?

45 **MR BRETON:** I'm making an assessment based on the cost to date.

COMMISSIONER: Yes.

MR BRETON: Off one-one - what was the number there? One hundred and -

5 **COMMISSIONER:** 115?

MR BRETON: So I've got 30 to 35 more. So I'm just making a rough-order estimate that we've picked up another 100,000-odd in costs because they're at investigation stage, not preliminary.

10

COMMISSIONER: So -

MR BRETON: But the tranches have moved along.

15 **COMMISSIONER:** And we can probably get some more detail through documents -

MR BRETON: Yep. Yeah.

20 **COMMISSIONER:** - in due course, but just so I understand the answer, the 350 to 400 is what your expectation is of the overall outlay to externals?

MR BRETON: And internal.

25 **COMMISSIONER:** And internals.

MR BRETON: So the overall cost to the business, if we put it that way, at the moment of the 145 has to be around the 400 mark.

30 **COMMISSIONER:** Are you moving away from this document?

MS McDONALD: I was going to move to a new -

COMMISSIONER: Yes.

35

MS McDONALD: Sorry, a subtopic of code of conduct.

COMMISSIONER: Could we go to the next page, please, Operator. And just a little bit further down. Thank you. Counsel assisting took you to the paragraph:

40

"The staff time required to deal with increased code of conduct complaints was unplanned."

Do you see that?

45

MR BRETON: Yes.

COMMISSIONER: And then the next sentence:

"It has impacted on the delivery of other planned work and will continue to do so."

5 **MR BRETON:** Yes.

COMMISSIONER: Do you have a understanding of what that was a reference to?

10 **MR BRETON:** It's every other thing we do, Commissioner. The first 30 to - 30 minutes to two hours of my day could be dealing with code of conduct complaints.

COMMISSIONER: All right.

15 **MR BRETON:** David Day, who's doing an exceptional job, is at - 100 per cent of the time on code of conduct complaints and not - and so some of the other areas around governance and other duties and our business as usual is materially affected by this issue.

20 **COMMISSIONER:** Can you give me a sense of what those other areas that Mr Day and Mr Galpin and -

MR BRETON: Yeah. Well -

25 **COMMISSIONER:** I think there was another -

MR BRETON: We have got -

COMMISSIONER: - position mentioned.

30 **MR BRETON:** Well, in Mr Galpin's area - he's a jack of all trades, but we -

COMMISSIONER: Yes.

35 **MR BRETON:** His time is so important to some of the initiatives we have around investments, circular economy, deeds, contracts for sale, that kind of work. So we lose him for that. And with David Day's day - excuse the pun - all the other governance functions in relation to other issues of concern or complaint management, these things fall away.

40 **COMMISSIONER:** Compliance?

45 **MR BRETON:** Yeah, compliance. Something we - we've done a lot of work on - compliance and around unsolicited proposals, et cetera. These are things I need their heads focused on, and we haven't got the capacity to put on more staff for it. And the capability now is exhausted - that is, we - there's nowhere else to go. This is our - this is our approach.

MS McDONALD: Can I just confirm - in answer to a question from the Commissioner, you said Mr Day's - 100 per cent of his time is dealing with code of conduct complaints?

5 **MR BRETON:** Pretty - yes. I mean, I'm not - I don't want to give evidence for Mr Day. He's doing an exceptional job in keeping up with the load. Because in the end, whilst the triage is quite rudimentary, he actually goes into the detail. And in his first assessment needs to, you know, provide all the rationale, all the legal framework and then, of course, make the arrangement for it to be dealt with internally or
10 externally.

MS McDONALD: I was going to move to another subtopic.

COMMISSIONER: Yes.
15

MS McDONALD: Is that an appropriate time?

COMMISSIONER: Yes. We'll take a short -

20 **MR BRETON:** Okay.

COMMISSIONER: - break, Mr Breton. I know we started late, but I understand there were some discussions between the parties happening. So we'll resume at noon. So if you wouldn't mind being back here just before that, I'd be grateful.
25

MR BRETON: Okay. Thank you.

COMMISSIONER: Thank you.

30 **<THE HEARING ADJOURNED AT 11.43 AM**

<THE HEARING RESUMED AT 12.10 PM

MS McDONALD: Thank you. Mr Breton, can I just ask you - or clarify some
35 evidence you gave earlier today - and that was under the code of conduct and the code of conduct procedures - the different roles between a conduct coordinator and a conduct reviewer. And reading the codes - or the code and the procedure, the conduct coordinator appears to have an administrative role while a conduct reviewer can look more at the substantive complaints. Is that your understanding of the
40 distinction?

MR BRETON: The distinction's correct. The application is not. So David Day is the - is the conduct coordinator and would also handle any administration in relation to that code of conduct. So it's one person, where - under the internal Ombudsman
45 model, I think those two - there was an administrator that would look at all the administration of the office, and that person would also take the role of conduct coordinator, from an administrative perspective.

MS McDONALD: All right. So is your evidence that Mr Day, in a sense, wears two hats?

5 **MR BRETON:** Yes.

MS McDONALD: He is the conduct coordinator - sorry, complaints coordinator.

10 **MR BRETON:** Complaints coordinator. Yes.

MS McDONALD: Sorry. And he is also the conduct reviewer.

MR BRETON: He does everything. Yes.

15 **MS McDONALD:** All right.

COMMISSIONER: He's the conduct reviewer for those that are reviewed in-house?

20 **MR BRETON:** In-house.

COMMISSIONER: As opposed to those that -

MR BRETON: That get -

25 **COMMISSIONER:** - Mr Day, with your imprimatur, sends externally?

MR BRETON: Correct.

30 **MS McDONALD:** And that was - I was going to lead to those -

MR BRETON: Yeah.

35 **MS McDONALD:** Reference to some of the answers you gave beforehand - that in our hypothetical example or those halcyon days when the Council got five -

MR BRETON: Yes.

40 **MS McDONALD:** - complaints per year, it was possible that Mr Day could put on his conduct reviewer hat -

MR BRETON: Yes.

MS McDONALD: And deal with a preliminary assessment?

45 **MR BRETON:** Yes.

MS McDONALD: And could then move to an actual investigation.

MR BRETON: He could have done everything from the administration of the conduct complaint and reviewed it and then investigate it. Yes. The whole life cycle of a complaint could have been done, if not for scale and volume. Yes.

5

MS McDONALD: All right. Excuse me for a minute.

COMMISSIONER: That would still, though, be subject to the nature of the complaint, wouldn't it?

10

MR BRETON: Yes.

COMMISSIONER: Even if the Council had one a year, if that one was -

15

MR BRETON: Exceptional. Yes.

COMMISSIONER: I'm not going to nominate the type of conduct, but of -

MR BRETON: Yes.

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COMMISSIONER: There must be a level at which it would just be inappropriate for the Council to deal with it in-house.

MR BRETON: Better to - yeah, just to allow separation.

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COMMISSIONER: Yes.

MS McDONALD: Just with, again, that hypothetical example, questions of either apprehended bias or pre-judging - having, for example, Mr Day undertaking a preliminary assessment and then the investigation, is that something you take into account when determining what to do with the complaint? Do you understand the point I'm making?

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MR BRETON: I think - my challenge in the question is around bias.

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MS McDONALD: Apprehended bias. So not actual bias, but the fact that somebody looks at it and says, on a preliminary assessment, "Go forward."

MR BRETON: Yeah.

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MS McDONALD: And then the same person then looks at it as an investigation.

MR BRETON: Yeah, I get it. I think it's a double-edged sword, because you get - with that singular point of approach, you get consistency in application of the policies and procedures. That's a benefit. The disadvantage - it could be an apprehended bias, particularly if - again, bias exists everywhere, and it would

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typically only be discovered retrospectively that perhaps Mr Day had a bias towards a certain person.

5 **MS McDONALD:** I'm not talking about - it's an apprehended bias.

MR BRETON: Okay.

10 **MS McDONALD:** It's that idea of a person outside would sit back and think, "Look, that's a bit unfair that the person who undertook that job then moves and undertakes this job."

MR BRETON: Okay.

15 **MS McDONALD:** But I think it might actually - when we move to the spreadsheet, it might arise in different circumstances.

MR BRETON: Okay.

20 **MS McDONALD:** But I was just wondering if, off the top of your head, that's something that you turn your mind to in determining the next steps.

MR BRETON: I don't think it's fair to say that I have turned my mind to that particular issue.

25 **MS McDONALD:** Okay. Now, before the break I've taken you to your two reports this year at the different council meetings, which identify that there's been a considerable increase in the number of complaints. Now, in those circumstances, the different steps that you've set out with the procedure - you still do your triage?

30 **MR BRETON:** Yes.

MS McDONALD: Mr Day then gets the matter to do his review?

35 **MR BRETON:** Yes.

MS McDONALD: And report back to you, which can be along the lines of not within the code, or you - recommend that you deal with it under 5.24, or, "I can deal with it as a preliminary assessment," or, "We move it" - or, "We engage outside agency or entity to conduct the preliminary assessment."

40 **MR BRETON:** Yes.

MS McDONALD: And I think, under the procedure - well, it requires that you have a panel of conduct reviewers.

45 **MR BRETON:** Yes.

MS McDONALD: And I take it that constitution of the panel - is that done through either an expression of interest or a tender procedure?

MR BRETON: Yes.

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MS McDONALD: At some particular point. So you've got - you go through that, you've got your panel with a number of investigative entities.

MR BRETON: Yes.

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MS McDONALD: Can you just give me an indication of how many are on the panel?

MR BRETON: My best estimate's around six to 12.

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MS McDONALD: Six to 12.

MR BRETON: That's - that's what I believe.

20 **MS McDONALD:** All right. Now, again referring back to the two tables that I took you to that were presented to Council, with the number of complaints, has Council started to keep a spreadsheet from a certain time, recording the details of the complaints, details about dates, who the complainant is, et cetera, and then tracing through what has occurred with the complaint?

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MR BRETON: It has.

MS McDONALD: And in that spreadsheet, is there some information which - I'm sorry, I'll withdraw that. In the spreadsheet, there's actually some description of what the complaint actually entails?

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MR BRETON: Yes.

35 **MS McDONALD:** Also, under the code of conduct procedure, when you're at the stage of a preliminary assessment, is it usually the case that the subject of the complaint hasn't been told about it yet but the complainant has been informed that the complaint's moved to a preliminary assessment?

MR BRETON: Yes.

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MS McDONALD: If a determination is then made after the preliminary assessment to move to a full-blown investigation, the subject of the complaint is informed then?

MR BRETON: Yes.

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MS McDONALD: All right. Commissioner, there is a spreadsheet, roughly, with those details in it. It covers a number of complaints - and if I can put it broadly, some

of which have been completed, others are preliminary assessment's been undertaken, it's moved to an investigation stage. Others are at the preliminary assessment stage. I do want to take Mr - sorry, I intend to take Mr Breton to the spreadsheet, asking him some questions about it. But in the circumstances, our submission is it would be appropriate to move to a private session.

COMMISSIONER: I don't have a difficulty with that. I'm just thinking ahead. It seems on the cards that I'm going to have to write something about this at some stage. We don't have to resolve this now, but I would like some assistance from anybody who is willing to give it as to how I might do that, in circumstances where there are open investigations. It may be that I don't need to go into the detail of any of the particular complaints and it can be dealt with in a global way, but I understand the basis of the application, and I take it no one wants to be heard against it. All right. Everyone who's in the room can remain? Yes. All right. Pursuant to section 12B of the Royal Commissions Act, I direct that the next passage of the hearing take place in private and that those who are in the room can remain in the room. Is the usual direction about the transcript appropriate?

MS McDONALD: Yes.

MR EMMETT: The answer is yes.

COMMISSIONER: Yes.

MR EMMETT: There is one matter that - it may be appropriate to raise, depending on what's to be done next, and that is it may be appropriate to authorise the transcript to be shown to investigators. If a decision is made that you, Commissioner, would be assisted by understanding or those assisting you would be assisted by understanding the position of investigators in relation to live complaints - that is, can it be published, can it not, what can be published - it may be appropriate to bring them into the tent, if I could put it that way.

COMMISSIONER: All right.

MR EMMETT: That doesn't (crosstalk) now.

COMMISSIONER: All right.

MR EMMETT: Yes.

COMMISSIONER: And I further direct, pursuant to section 12B of the Royal Commissions Act, that the transcript of this passage - that is, this private passage of the hearing - not be published otherwise than in accordance with the usual direction. And I'll just wait for the nod that we're in private session. And if the door needs to be open to allow oxygen and -

MS McDONALD: Thank you.

COMMISSIONER: At any stage, that it can happen. I don't think we have people wandering the halls, so it can be opened. And I've got a reasonable - Mr Breton and I have got a reasonable sightline to the door. If anything arises, we'll have it closed.
5 All right. Thank you.

<THE HEARING ADJOURNED TO PRIVATE SESSION AT 12.23 PM