

**ABUSE IN CARE ROYAL COMMISSION OF INQUIRY  
STATE REDRESS INQUIRY HEARING**

**Under** The Inquiries Act 2013

**In the matter** of the Royal Commission of Inquiry  
into Historical Abuse in State Care  
and in the Care of Faith--based  
Institutions

**Royal Commission:** Judge Coral Shaw (Chair)  
Dr Andrew Erueti  
Ms Sandra Alofivae

**Counsel:** Mr Simon Mount, Ms Hanne Janes,  
Mr Andrew Molloy, Mr Tom Powell  
and Ms Danielle Kelly

**Venue:** Level 2  
Abuse in Care Royal Commission  
of Inquiry  
414 Khyber Pass Road  
AUCKLAND

**Date:** 21 October 2020

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**TRANSCRIPT OF PROCEEDINGS**

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(Opening waiata and karakia)

**CHAIR:** Ata marie ki a koutou katoa, tena koe, Ms Janes.

**MS JANES:** Kia ora katou, we are moving on to our second MSD witness, Mr Garth Young, who will be led by Ms Aldred.

**CHAIR:** Tena koe, Ms Aldred.

**MS ALDRED:** Tena koutou katoa.

**ERNEST GARTH YOUNG**  
**QUESTIONED BY MS ALDRED**

Q. Thank you, Mr Young. Can you confirm that your full name is Earnest Garth Young?

A. Yes.

Q. Your name is Garth?

A. That's correct, yes.

Q. You have prepared a brief of evidence?

A. Yes.

Q. Dated 31 July 2020?

A. That's right.

Q. You have a copy of that brief of evidence before you this morning?

A. I do, yes.

Q. So, I'm going to lead you through parts of your brief of evidence, on the understanding that those parts that aren't read are taken as read by the Commission.

And so, as I've just been reminded, if you could speak slowly and clearly, please, for the signers and the stenographer.

1           So, just beginning at the introduction to your brief of  
2 evidence, Mr Young, could you please start from  
3 paragraph 1.2 and read the rest of that section?

4 A. Certainly. I am the Lead Claims Adviser with the Historic  
5 Claims Team at the Ministry of Social Development. A role I  
6 have held since late 2018.

7           I have been employed by the Ministry or its predecessors  
8 since 1984 when appointed as a social worker first in  
9 Invercargill, then in Whangarei. I carried a varied  
10 caseload that included care and protection matters, youth  
11 offending, adoptions and caregiver training. While in  
12 Whangarei, I became a senior social worker, leading a team  
13 of care and protection social workers before becoming a  
14 social work trainer running courses across Tai Tokerau and  
15 in Auckland.

16           In 1997, I became manager of the Parliamentary services  
17 team for Child, Youth and Family in Wellington. As Child,  
18 Youth and Family began a commitment to addressing historic  
19 claims of abuse, I was seconded into a position that  
20 ultimately became manager of the Historic Claims Team. I  
21 remained manager until 2012/13 when I was appointed chief  
22 analyst of historic claims until my current appointment.

23           Is that speed - just slow down a -little.

24 **CHAIR:** As I reminded people yesterday, just breathe  
25 occasionally.

26 A. I hold a Postgraduate Diploma in Social Sciences from Massey  
27 University (1993).

28           As Lead Claims Adviser, I am primarily responsible for  
29 providing expert advice on social work practice and its  
30 relationship to the assessment of claims. In doing so, I  
31 support and advise claimant support and claim assessment  
32 team leaders and members on a wide range of issues and may  
33 be required to review and/or advise on particularly complex  
34 claims. As required, I also assist the development of  
35 strategy and policy in relation to historic claims.

1 Q. Now, at section 2 you just describe the scope of your  
2 evidence. Can I just have you read paragraph 2.1, please,  
3 Mr Young?

4 A. Certainly. My colleague Linda Hrstich-Meyer, my colleagues  
5 sorry, Linda Hrstich--Meyer and Simon MacPherson, have set  
6 out in their briefs of evidence the development of the  
7 Historic Claims Team from 2004 through to the present day  
8 and other related matters such as litigation around the  
9 redress process and address matters raised by survivors in  
10 their briefs of evidence.

11 I do not repeat their evidence here, except to note areas  
12 of their evidence which relate to the topics set out below.

13 Q. And the topics you set out in your brief of evidence are  
14 really a summary of the matters that you've been asked to  
15 comment on by the Royal Commission; is that correct?

16 A. That's correct.

17 Q. Yes. And if I could take you over the page, please, to  
18 section 3 of your evidence and have you start dealing with  
19 the first of those topics, which relates to the composition  
20 and functions of various working groups, and if you could  
21 just start reading at 3.1?

22 A. Certainly. There have been a number of groups set up to  
23 assist in developing and implementing policy around redress  
24 which I discuss below. By way of brief introduction, the  
25 groups covered by the Royal Commission's request that I will  
26 describe are as follows:

27 (a) The Inter-departmental Working Group, from 2004 until  
28 approximately 2009, comprised representatives from multiple  
29 Crown Agencies. It was established at an early stage in the  
30 Crown's consideration of historic abuse claims. Its purpose  
31 was to develop high-level, Crown---wide policies principles.

32 (b) the Historic Claims Steering Group in 2006 was  
33 comprised of senior Ministry officials. Its objective was  
34 to provide high level direction to the Ministry's management  
35 of historic claims.

1 (c) the Historic Claims Strategy Group 2008 until  
2 approximately 2014 comprised senior Ministry officials and a  
3 Crown Law representative. Its purpose was to provide a  
4 forum for strategic discussion of the Ministry's management  
5 of historic abuse claims and the associated litigation.

6 (d) the Historic Claims Completion Strategy Governance  
7 Group from 2013 to 2018. It comprised senior Ministry  
8 officials and representatives of Crown Law and the Ministry  
9 of Education. Its objective was to identify strategies for  
10 improving efficiency in the resolution of claims with a view  
11 to having all pre--1993 historic claims resolved by the end  
12 of 2020. This group oversaw the development of the Two Path  
13 Approach.

14 In general, I note that the two cross-government- groups  
15 (the Interdepartmental Working Group and the Historic Claims  
16 Completion Strategy Governance Group) were established to  
17 develop a whole of Crown approach to claims. The Historic  
18 Claims Steering Group and Historic Claims Strategy Group  
19 were specific to the Ministry's management of claims (while  
20 bearing in mind all of Crown considerations).

21 Q. Thank you, Mr Young. From paragraphs 3.3, for the remainder  
22 of that section, you describe for the Commission in quite  
23 significant detail the functions and work of each of those  
24 groups that you have described. We will ask the  
25 Commissioners to take those matters as read, rather than  
26 having you read it. And so, if I could get you now, please,  
27 to turn right over to page 10 of your brief of evidence and  
28 section 4, which you will find at the foot of page 10,  
29 relates to the process for collecting information on  
30 confirmed and alleged perpetrators of abuse.

31 Could you commence, please, reading from paragraph 4.1 of  
32 your brief?

33 A. As noted above, the Commission has asked me to comment on  
34 two somewhat overlapping issues:

1 (a) the processes and timeframes for collecting,  
2 analysing and sharing information about known perpetrators  
3 of abuse, both within the Ministry and with other agencies,  
4 for use in claims assessment and settlement offers; and

5 (b) any processes by which information about the  
6 outcomes of the Ministry's referrals to Police, such as  
7 convictions, were shared between the Ministry and other  
8 Crown Agencies for use in claims assessment and settlement  
9 offers.

10 As these two questions both relate to sharing information  
11 about alleged perpetrators, I have first set out some  
12 general comments on how this type of information impacts on  
13 the Ministry's approach towards settlement of claims.

14 For an allegation of abuse to be accepted for the purpose  
15 of settling a claim, it is not, and never has been, a  
16 requirement that the alleged perpetrator of abuse must have  
17 been charged or convicted. Similarly, the Ministry has  
18 never required evidence of abuse by an alleged perpetrator  
19 to be documented in official records in order for that  
20 allegation to be accepted for the purpose of settlement.  
21 Nor did we routinely ask the Police for information on the  
22 alleged abuser. However, if we believed that they may have  
23 faced charges or been convicted, then we would generally  
24 have sought this information.

25 This does not mean that information on convictions are  
26 irrelevant to the consideration and settlement of claims.  
27 Confirmation that criminal offending occurred will be  
28 relevant when assessing the facts of a claim.

29 Q. Thank you. And then if you could just skip over paragraph  
30 4.5 and read paragraph 4.6?

31 A. There were no set timeframes for the processing and  
32 forwarding of information concerning alleged offenders  
33 within the Ministry or externally. However, as much as  
34 possible, when allegations are made that may concern current

1 staff or caregivers, we make efforts to confirm their  
2 identities and take appropriate action as set out below.

3 Q. And if I could just have you read, please, from 4.7 of your  
4 brief of evidence which relates to the gathering of  
5 information?

6 A. Certainly. In 2005 a key function of the embryonic Historic  
7 Claims Team was responding to requests made under the  
8 Privacy Act for the records of people who had been in State  
9 care. Primarily, those requests came from the solicitor  
10 representing potential claimants. Other requests were made  
11 under the Official Information Act for administrative  
12 records of varying sorts.

13 Q. And, sorry, if you could keep reading please?

14 A. Yes.

15 Q. I think I'll get you to read up to paragraph 4.11, from 4.8?

16 A. Okay. In the process of responding to those requests we:

17 (a) Collated the names, roles and dates of employment at  
18 various residences since we had not, at that stage, and  
19 still have been unable to, identify a centralised record of  
20 past residential staff; and

21 (b) identified any instances of abuse or maltreatment by  
22 Ministry staff or caregivers recorded in Ministry documents  
23 (generally records of the institution).

24 That information was collated in a variety of  
25 spreadsheets. The purpose of collecting this information  
26 was three-fold; to help develop a picture so far as written  
27 records can of staffing across residences and across years,  
28 to identify any instances of abuse and maltreatment of  
29 children and young people, and to inform our assessment of  
30 claims.

31 Confirmed perpetrators, or instances where allegations  
32 were made and documented but not confirmed one way or the  
33 other, were also identified in the course of assessing  
34 individual claims. For the purpose of assessment of  
35 allegations the Ministry would search personal, staff/HR and

1 administration files. Public information sources such as  
2 media reports and the sensible sentencing trust database  
3 would be checked, I've written cross-checked there but that  
4 is an error and it should just read checked. This has  
5 occurred consistently over the life of the Historic Claims  
6 Team.

7 Relevant information on alleged perpetrators was filed  
8 under the name of the individual concerned for reference  
9 purposes.

10 Q. Thank you, Mr Young. You next turn to two documents that  
11 the Royal Commission has specifically asked you to deal  
12 with. Those are the document that Cooper Legal drafted  
13 entitled "Culture of abuse and perpetrators of abuse at  
14 Department of Social Welfare institutions" and another one  
15 is a memorandum that you drafted partially in response to  
16 that for the Ministry. Could you please just begin reading  
17 from paragraph 4.13?

18 A. Certainly. Early in 2006 we received from Cooper Legal a  
19 document titled "Culture of abuse and perpetrators of abuse  
20 at Department of Social Welfare institutions". It  
21 summarised the claims many of Cooper Legal's clients made by  
22 the nature of the abuse they suffered while placed in a  
23 number of state institutions and community-based programmes.  
24 The document also identified 235 ex--residential and  
25 programme staff members who allegedly abused or maltreated  
26 residents.

27 Q. Thank you, Mr Young. If I could just have you pause there  
28 and have that document brought up, please, it's MSC 0650.  
29 Thank you.

30 This is the document from Cooper Legal?

31 A. That's correct.

32 Q. And the Commission will have its own copy of this document,  
33 so I won't take you through it in detail. It contains a  
34 reasonably detailed introduction and overview, and then  
35 deals with each institution in turn. But I thought it would

1 be useful just to take you to a couple of pages in relation  
2 to a specific institution to just give an idea of the kind  
3 of allegations that are contained in the document.

4 So, if I could have, please, page 23 of that document  
5 brought up on the screen? And perhaps we'll just have the  
6 third paragraph called out, please, as an example.

7 **CHAIR:** Does this relate to a specific institution,  
8 this particular passage?

9 **MS ALDRED:** I believe this is -

10 A. It looks like it's Kohitere.

11 Q. Yes, Kohitere. So, this is just an example and it gives a  
12 reasonably - -it gives you an idea of the kind of  
13 allegations, it includes physical abuse from one of the  
14 forestry instructors, it describes punching and throwing  
15 boys.

16 Then if you could call up, please, that longer paragraph  
17 towards the end? Similarly, you will see there the  
18 perpetrator is named, that has been redacted for the  
19 purposes of the hearing, but a named perpetrator and  
20 reasonably and some detail of what they are alleged to have  
21 done at Kohitere-.

22 And then that can go and if you could turn to page 24,  
23 please, it's the following page. And you will see, Mr  
24 Young, there that, again, there are allegations about staff  
25 members, about the top six entries are named staff members,  
26 but the allegations are a little less specific in some  
27 cases, describing a staff member as physically abusive in  
28 several cases.

29 And then if you could go, please, to the rest of that  
30 section, from "Teacher" to the end of that section, and here  
31 we have a selection of unnamed staff members who are  
32 described with some of the things that they are alleged to  
33 have done recorded.

34 So, just to give the Commission a flavour of that  
35 document and, as I said, I am sure that they will have the

1 opportunity to review it, could you just confirm that this  
2 is a representative sample of the kinds of allegations or  
3 the level of detail in the document?

4 A. I would say that that's reasonably representative of the  
5 document as a whole. There's obviously other parts  
6 contained different types of allegations, allegations of  
7 sexual abuse and neglect, but, yeah, that's reasonably  
8 representative.

9 Q. Yes, sorry, I didn't mean to suggest that the allegations  
10 are representative of the whole document -

11 A. No.

12 Q. But rather, just the sort of level of detail?

13 A. Yes, I would agree.

14 Q. Thank you. Was information provided in the document about  
15 who the survivors or claimants were?

16 A. No, there was, -it identified how many of Cooper Legal  
17 clients had made allegations but not by name.

18 Q. Thank you. And I think you then go on to describe the  
19 response to that memorandum by the Ministry, so if I could  
20 have you, please, continue reading your brief of evidence  
21 from paragraph 4.14?

22 A. In response to this paper, I drafted a memo to the Historic  
23 Claims Steering Group on 28 August 2006 providing a summary  
24 of the background investigation work that had been carried  
25 out as a result of Cooper Legal's paper. The Ministry's  
26 responses are detailed below.

27 Cooper Legal's paper was very helpful in providing us  
28 with an understanding of the experiences some residents had  
29 endured and of the issues that we could expect to arise in  
30 forthcoming claims.

31 One of the first responses to the document was to  
32 identify if any of the named alleged perpetrators were still  
33 employed by the Ministry and, if so, whether they might  
34 present a risk to Ministry clients.

1           Of the 235 ex-residential- staff named by Cooper Legal's  
2 clients, nine were identified as current employees of the  
3 Ministry and working in various capacities. A Working Group  
4 representing historic claims, legal services, operations,  
5 the Chief Social Worker and people and capability agreed a  
6 process by which any potential risk for current clients  
7 would be managed while meeting the Ministry's employment  
8 obligations.

9           That process involved the General Manager Operations for  
10 the then Department of Child, Youth and Family Services and  
11 a Senior HR Manager meeting with the nine staff members.  
12 They were advised of any allegations made against them, that  
13 no determination had yet been made about any allegation,  
14 that their employment was not in jeopardy at that stage and  
15 of the support services available to them if needed.

16           In conjunction with the relevant managers of the staff  
17 concerned, an assessment was also made of whether or not any  
18 of them presented a potential risk to clients. In one case,  
19 the staff member was placed on special leave because of the  
20 nature of the allegations and because of his position, which  
21 placed him in direct contact with children and young people.

22           To the best of my knowledge, none of those nine were  
23 subsequently confirmed by independent means to be  
24 perpetrators of abuse.

25           As well as the Ministry's internal process, it considered  
26 referral to the Police in respect of the alleged criminal  
27 offending. To that end, we met with Police Officers from  
28 National Headquarters in March 2006. As a result of that  
29 meeting, Police requested from Cooper Legal the names and  
30 contact details of its clients to take complaints for  
31 potential investigation of sexual offending and serial  
32 physical abuse.

33           Of particular interest to Police were the nine current  
34 Ministry staff. It had been agreed that any criminal  
35 investigation needed to proceed prior to any employment

1 investigation. So, Police and the Ministry worked with  
2 Cooper Legal to obtain the consent of relevant clients to  
3 their details being provided to Police. Cooper Legal made  
4 efforts to do so where they could, and the relevant  
5 information was supplied to Police on 28 April 2006.

6 Subsequent correspondence between Police and Cooper Legal  
7 confirmed that Police would not be following up any matters  
8 unless a claimant wished to pursue a criminal complaint.  
9 The Ministry received confirmation of that position from  
10 Police on 12 May 2006.

11 On 12 and 17 May 2006, I wrote to Cooper Legal seeking  
12 further details of allegations against the current staff  
13 members to enable HR investigations to be carried out. By  
14 reply, they acknowledged the importance of the  
15 investigations but advised they did not have the resources  
16 to specifically collate that information and instead  
17 undertook to provide it to us as part of their normal work.  
18 The Chief Social Worker confirmed by email to me of 23  
19 May 2006 that in the absence of information linking staff  
20 with specific allegations containing dates of offending and  
21 who the allegations are made in respect of meant "CYF cannot  
22 progress this matter further given lack of information or  
23 substance to support the abuse claims".

24 Cooper Legal and I had contact again early in October  
25 2006 about the possibility of getting further information on  
26 eight current staff members. We also had a positive meeting  
27 on 13 October 2006 to discuss the same issue, but Cooper  
28 Legal raised the same resourcing issues discussed in May.  
29 To the best of my recollection the matter went no further,  
30 other than the HR process as described above.

31 Another response by the Ministry to Cooper Legal's  
32 document was to commence interviewing a number of staff that  
33 were still employed by the Ministry and who had previously  
34 worked in residential care to obtain their perspective of  
35 the practices and culture that prevailed in the past. This

1 process is covered in more detail in the brief of my  
2 colleague Simon MacPherson at paragraphs 5.14 and 5.16.

3 Cooper Legal's document has been an often used reference  
4 in the years since. As noted above, as we have gathered  
5 information about the persons named in it and other  
6 individuals named in claims, the information was  
7 being- collated in an individual file for ongoing reference.

8 Q. Thank you, Mr Young. Now, the next part of your evidence  
9 relates to a 21 September 2017 report that you prepared for  
10 the Minister for Social Development at the time?

11 A. Yes.

12 Q. Could you please continue reading from paragraph 4.28 of  
13 your brief of evidence?

14 A. On 21 September 2017 I prepared a report to Minister Tolley.  
15 The report was provided, sorry, the report was to provide  
16 advice on issues that were raised in a story aired by TV3's  
17 the Nation concerning allegations against 18 named ex--  
18 residential- staff members. The journalist in question was  
19 particularly interested in whether any of those staff had  
20 been transferred from one residence to another as a result  
21 of allegations of abuse being made against them.

22 At the time of preparing my report, one of the persons  
23 named by the journalist was not known to the Ministry. All  
24 the other 17 were previously known to the Ministry's  
25 Historic Claims Team, and payments had been made to  
26 claimants in respect of 14 of those. Payments have  
27 subsequently been made in respect of two other of the named  
28 perpetrators.

29 The report also noted that contemporaneous complaints of  
30 abuse had been made to the Ministry about 13 of the 17 staff  
31 members and that Police were advised at the time in six  
32 cases - -four of those by the Ministry and two by unknown  
33 sources. Four faced charges at the time, while a further  
34 seven faced charges and were convicted in later years,

1 although convictions for three of those did not relate to  
2 employment at Ministry residences.

3 The report advised that three of the staff were  
4 transferred to another departmental residence after  
5 complaints were made. One of those transfers (in 1981)  
6 followed allegations of physical assault of a boy; one (in  
7 1972) followed allegations of sexual abuse of girls (the  
8 Police were advised at the time, I should add, the  
9 complainants interviewed but no charges were laid), and one  
10 was transferred in 1979 at the direction of the State  
11 Services Commission following charges of improper conduct  
12 being laid and heard under the State Services Act.

13 The report also, -sorry, the report noted also that a  
14 circa 1982 letter from a DSW staff member to the Human  
15 Rights Commission suggested that a fourth of the 17 staff  
16 members was transferred following allegations of being in a  
17 female resident's bedroom for four hours.

18 Q. Thank you, Mr Young. Now, if you could just pause there.  
19 You made an interpretation, I think, on the fourth line of  
20 your evidence and, as I heard it, you said "the Police were  
21 advised at the time"; is that correct?

22 A. Yes, sorry, because I just realised it could be read that  
23 the Police were advised in 2017 when that report was  
24 prepared.

25 Q. Yes, no, thank you, I just wanted to make sure that the  
26 interpretation is recorded. So, your brief should read,  
27 "the Police were advised at the time"?

28 A. Yes.

29 **CHAIR:** Can I just ask, at what time?

30 A. That would have been in 1972.

31 **CHAIR:** So, at the time they were transferred?

32 A. Preceding the transfer, yes.

33 **CHAIR:** Thank you.

34 **MS ALDRED:**

1 Q. So, the next section of your evidence deals with how  
2 information about alleged offenders was shared within the  
3 Ministry and with other agencies, and if I could have you  
4 read from paragraph 4.32, please?

5 A. As noted above, information about alleged and confirmed  
6 perpetrators was collected within the Ministry's Historic  
7 Claims Team in two main ways, a master staff list and files  
8 in the name of the individual. The purpose of doing so was  
9 to make that available to all team members involved in  
10 assessing claims.

11 The master staff list contains, where known, the date the  
12 person was appointed to a position at a particular residence  
13 or facility, what allegations have been made against that  
14 person and which claims those allegations were made in  
15 relation to. Individual files will record any known  
16 specific information about that person, including links to  
17 claims in which they have been named and, where available, a  
18 copy of any employment records for them.

19 Where necessary and relevant, for example if a claim  
20 contained an allegation of abuse against a current staff  
21 member, then that was shared with appropriate staff outside  
22 of the Historic Claims Team and, since April 2017, that  
23 information has been shared with Oranga Tamariki.

24 Q. Thank you. Now, the next section of your evidence deals  
25 with referral to other agencies and I will actually have you  
26 read that in full, Mr Young, if you could start from  
27 paragraph 4.35?

28 A. 4.35, all right. In all cases where a claimant alleges  
29 abuse against a named staff member or caregiver, a safety  
30 check is carried out to determine if that person is a  
31 current staff member or caregiver of the Ministry or of  
32 Oranga Tamariki.

33 Where it is confirmed or suspected that the alleged  
34 abuser is a current staff member or caregiver, then the  
35 matter is escalated to me in my capacity as Lead Claims

1 Adviser for review. I review the available information and  
2 decide whether or not a referral should be made to Oranga  
3 Tamariki or the relevant section of the Ministry, having  
4 regard to Court orders and privacy considerations.

5 Those Oranga Tamariki or Ministry staff with  
6 responsibility for making inquiries into that individual  
7 will decide whether a referral should be made to Police.

8 Where allegations of abuse are made against a staff  
9 member or caregiver of an operating NGO, then two processes  
10 follow within the context of any relevant Court orders and  
11 privacy considerations:

12 (a) for potential safety purposes the Ministry will  
13 advise the NGO of the allegation so it can determine if  
14 there are any current safety concerns that need to be  
15 addressed.

16 (b) in the process of assessing the claim, the Ministry  
17 will consult with the NGO to determine what information it  
18 might hold that is of relevance to the assessment of the  
19 claim.

20 Where claimants who have approached the Ministry directly  
21 allege potential criminal offending, they are advised of  
22 their ability to lay a complaint with the Police, and would  
23 be offered assistance and support to do so if that was their  
24 choice.

25 Q. Thank you. Now, the next section of your evidence, which is  
26 section 5, deals with outcomes from Police referrals and  
27 that covers several pages up to paragraph 5.15. Could I ask  
28 you, please, Mr Young, just to summarise the position in  
29 relation to that, rather than reading out that section of  
30 your evidence?

31 A. Yes, certainly. It was in 2016 when the Ministry began to  
32 make referrals to the Police where the allegation made by a  
33 claimant, on the face of it, constituted criminal offending.

34 A number, and that was done after the Ministry officials  
35 and the Police met and agreed on essentially a Memorandum of

1 Understanding and an agreed process by which that would be  
2 done. A number of referrals were made, including for a  
3 number of Cooper Legal clients, and, as the Commission may  
4 already have heard, Cooper Legal brought Court proceedings  
5 because they had an alternate view to the Ministry and the  
6 Police about whether or not such referrals should have been  
7 made. And once those Court proceedings were taken, that  
8 referral process ceased. The only referrals that were made  
9 perhaps in the interim period were where a claimant  
10 specifically sought a referral to be made to the Police.

11 Q. Thank you. So, the Commission's focus, I think, and its  
12 question for you, Mr Young, was how outcomes from Police  
13 referrals are incorporated into the assessment and  
14 settlement process, and you deal with that specific point  
15 from paragraph 5.16 of your evidence, so could I have you  
16 turn, please, to page 19 and begin reading from  
17 paragraph 5.16?

18 A. In cases where the Ministry did make a referral to Police,  
19 we did not necessarily receive any feedback from Police or  
20 claimants as to the outcome of the referrals. As I have  
21 said earlier, the assessment of a claim was not reliant on  
22 such feedback. However, where Police commenced an  
23 investigation then it was common for them to request any  
24 potentially relevant further information from us. It was my  
25 practice to ask Police to keep us informed of the outcome of  
26 any investigation and prosecution, and they did so in a  
27 number of cases. I have assisted the Court as a witness in  
28 two cases leading to the conviction of an ex-staff member  
29 and an ex---caregiver.

30 If we did receive information about a staff member,  
31 whether it was via the Police or another source, that  
32 practice was to record that in their EDRMS, which is our  
33 document management system record. When assessing an  
34 allegation against a named individual for whom the Ministry  
35 might have been responsible, various information sources

1 were drawn from to form that assessment. Those include  
2 staff and caregiver files, EDRMS records, as mentioned  
3 above, other claims that included allegations about the same  
4 person and publicly available sources, such as media  
5 reports. Any relevant information would be taken into  
6 consideration in the assessment of that allegation.

7 It is perhaps self-evident but by way of example, where a  
8 claimant alleges sexual assault by a named person, and that  
9 person has convictions for sexual offences, then those  
10 convictions are clearly relevant and would be taken into  
11 account-.

12 Q. Thank you and at section 6 of your evidence you address the  
13 next topic that the Commission identified as of interest to  
14 it, which is the roles and responsibilities between the  
15 Ministry and Crown Law for the use of and scope of use of  
16 private investigators in the White and other proceedings.  
17 And that is dealt with at section 6, could you please read  
18 from 6.1?

19 A. Through my involvement in preparing for the White claims to  
20 go to trial, I was aware that a private investigator was  
21 engaged to assist. I have no specific recall of how that  
22 decision was made or by whom, but I was aware that the  
23 Queen's Counsel representing the Crown had engaged him  
24 previously and that she believed he would be useful.

25 My understanding was that the investigator was used in  
26 locating some Crown witnesses but that primarily he assisted  
27 in briefing various Crown witnesses. Along with Crown  
28 counsel, I attended some of those briefings to provide  
29 expert advice on any practice issues that arose and to  
30 advise the witness of any supports that they may require.

31 Q. When you say "any practice issues", do you refer to social  
32 work practice, Mr Young?

33 A. Yes, that's correct.

34 Q. Just continue at 6.2.

1 A. I was aware that the private investigator contacted the  
2 mother of the plaintiffs to determine if she could be a  
3 potential witness and that she had told him that she did not  
4 want to speak with him or engage with the Crown. That was  
5 not pursued any further.

6 I do not recall at any stage there being discussion about  
7 the possibility of the private investigator carrying out  
8 surveillance activities. In the course of the Ministry  
9 identifying relevant documents for the State Services  
10 Commission investigation into the use of external security  
11 consultants, I became aware of a note from a January 2007  
12 meeting on the subject, and it's discussed in Una Jagose  
13 QC's brief of evidence. I was not present at that meeting.

14 I, myself, on a very few occasions sought the assistance  
15 of a private investigation firm to locate people relevant to  
16 the assessment of an historic claim. The two that I recall  
17 are: firstly, seeking the assistance of an investigator to  
18 confirm that an alleged offender in Keith Wiffin's claim  
19 which I will refer to below, lived at a particular address;  
20 and second, when a claimant asked for our assistance to  
21 locate her long-estranged sister, when we were unsuccessful  
22 at finding her, I sought the assistance of a private  
23 investigator.

24 Q. Thank you. And at section 7, you deal with the claim by  
25 Mr Keith Wiffin who we heard from in phase 1 of this  
26 hearing. Could I have you read section 7 of your evidence,  
27 please, Mr Young?

28 A. Certainly. First, I want to acknowledge the trauma  
29 Mr Wiffin has endured, not only in the abuse he suffered  
30 whilst in State care but also through the process of having  
31 his claim recognised. He has shown resilience, courage and  
32 fortitude at pursuing his claim, something that he should  
33 not have had to do. If there was any one claim that  
34 troubled me, it was his. For that, I once again apologise  
35 to Mr Wiffin.

1 I note at section 4 of her reply brief of evidence,  
2 Ms Hrstich-Meyer comments on a number of issues  
3 Mr Wiffin- raises in his statement, including his  
4 frustration at the settlement process. The following is my  
5 perspective and understanding of the Ministry's management  
6 of his claim.

7 I first met Mr Wiffin on 7 September 2006 along with his  
8 solicitor, Ms Cooper. The aim of the meeting, and similar  
9 meetings with a small number of other Cooper Legal clients,  
10 was to get a personal understanding of the experience he had  
11 whilst in State care and to hear his thoughts on what a  
12 claim resolution process should include. The views of  
13 Mr Wiffin and others genuinely contributed to the process  
14 that ultimately eventuated. It disturbs but does not  
15 entirely surprise me to read in Mr Wiffin's statement his  
16 perspective of that meeting.

17 Following that meeting, I wrote to Mr Wiffin on  
18 11 September enclosing for him a copy of the residential  
19 care services Code of Conduct and Puao-te-ata-tu.

20 The 8 November 2007 Official Information Act request from  
21 Cooper Legal transferred to the Ministry by Crown Law asks  
22 for staff records and any other information MSD holds about  
23 the staff members. I replied on 20 February 2008. In  
24 respect of Mr Moncreif-Wright- I stated that:

25 "The Ministry holds 1 staff file and 2 staff cards noting  
26 dates of employment for Mr Moncreif-Wright. There is  
27 nothing contained in the file that relates to (name of  
28 another client) or Mr Wiffin. Nor is there any information  
29 relating to any allegations of physical or sexual abuse  
30 against Mr Moncreif---Wright."

31 The Ministry certainly was aware of the offences  
32 committed by Mr Moncreif-Wright- prior to that date. I  
33 accept that it may appear as though I or the Ministry was  
34 not wanting to disclose that fact but that was certainly not  
35 my intention.

1 Q. Mr Young, this was a matter that Ms Cooper addressed the  
2 Royal Commission on when she was speaking or giving evidence  
3 during the first phase of this hearing. Can I ask you  
4 please to provide some further context or explanation around  
5 paragraphs 7.5 and 7.6 of your brief of evidence?

6 A. Certainly. I guess, one of the frustrations for me is that  
7 I don't have a clear recall of how we went about responding  
8 to that OIA request and there aren't any helpful file notes  
9 that might show us or remind me on how we went about that.

10 As I said, we had the information about Moncreif-Wright's  
11 convictions that had been sent to us from Crown Law some  
12 time prior to that, I don't recall the specific date or  
13 year. Whether that information had been placed in the file  
14 that we had for Mr Moncreif---Wright at the time, I just  
15 can't say.

16 So, when, you know, typically when an OIA request is  
17 made, then a search is carried out of our file databases for  
18 any records that might be relevant to that request.

19 Why that information about Moncreif-Wright wasn't picked  
20 up, I honestly can't say but, yeah, I can understand  
21 certainly Mr Wiffin- and Cooper Legal's questions about that  
22 but I can certainly say that I personally had no intent to  
23 withhold information that we had and should have released,  
24 assuming there were no legal or privacy reasons that it  
25 shouldn't have been released, and I certainly apologise for  
26 that fact.

27 Q. Thank you and if you could just please continue from  
28 paragraph 7.7 of your brief, Mr Young?

29 A. On 14 May 2008 Mr Wiffin's solicitor contacted me to say  
30 that he wanted the opportunity to meet with us to try and  
31 resolve his claim. A meeting was arranged and took place on  
32 24 July 2008. The following day I wrote to Mr Wiffin  
33 thanking him for the opportunity to meet and acknowledging  
34 that it would not have been easy. I also invited him to  
35 contact me if he wanted to take up the opportunity to visit

1 Epuni and talk with my colleagues about the current care  
2 system. I advised also that we would respond to him once  
3 his claim had been assessed. As Mr Wiffin said in his brief  
4 of evidence, he wrote to me on 4 August 2008 and I responded  
5 with a further letter on 7 August acknowledging receipt.

6 It was not until 2 February 2009 that I allocated  
7 Mr Wiffin's claim to one of the team's senior social work  
8 advisers for assessment. I noted in my allocation email  
9 that I had overlooked the need to continue investigating  
10 this claim earlier and that I was angry with myself for  
11 having done so since that was his expectation, and because  
12 it felt as though some goodwill had been built up between  
13 us.

14 It is my recollection that based on Mr Wiffin's account,  
15 our then knowledge of Mr Moncreif-Wright and other available  
16 relevant information, the senior adviser formed the view  
17 that the abuse by Mr Moncreif--Wright was likely to have  
18 occurred as described by Mr Wiffin-.

19 I recall joint discussions with Crown Law on how the  
20 claim might be resolved, culminating in the settlement offer  
21 from Crown Law to Mr Wiffin of 9 April 2009.

22 Mr Wiffin contacted me by phone on 22 April 2009. He was  
23 concerned that no progress had been made with his claim and  
24 in response to my question, said that he had not been in  
25 touch with his solicitor for two weeks but was meeting with  
26 them shortly. He also said that he still wanted to visit  
27 Epuni and have some support to work through his files but  
28 was not able to do that at present. I assured him the offer  
29 to do both remained open, whatever the outcome of his claim,  
30 and however long it may take for him to be ready to deal  
31 with that.

32 It was clear from Cooper Legal's 13 May 2009 response to  
33 the letter from Crown Law of 9 April that Mr Wiffin was  
34 deeply hurt and unhappy about the letter and for personal  
35 reasons was not able to continue his claim.

1           As has been noted in my colleague's brief, in September  
2 2009 the Crown asked Sir Rodney Gallen to review the process  
3 by which a number of claims had been managed by the  
4 Ministry, one of which was Mr Wiffin's. While he had no  
5 criticism of the approach the investigators took in  
6 endeavouring to resolve the claim he noted "it follows that  
7 I have some reservations about the outcome of this claim".  
8 As reflected in my 4 December 2009 summary of Sir Rodney's  
9 report for the Deputy Chief Executive, that gave us cause to  
10 review Mr Wiffin's claim and ultimately to offering him an  
11 ex gratia payment and letters of apology from the  
12 Chief Executive and from me.

13 Q. Thank you. Now, if you could just pause there, I would like  
14 to take the Commission, I would like to take you to first of  
15 all the letter from the Chief Executive, and the reference  
16 for that is WITN0080025. If I could just have the body of  
17 the letter called out, please. That was dated 4 August 10,  
18 and if we could have the body of the letter called out,  
19 please.

20           So, this is the letter from the Chief Executive, is that  
21 correct?

22 A. That's right.

23 Q. Yes. Could I have you read, please, the body of the letter,  
24 Mr Young?

25 A. "I have made the commitment that the Ministry of Social  
26 Development will own up to its mistakes and do the right  
27 thing. I am very sorry to say that it appears we have  
28 wronged you twice.

29           I understand that you came into the care of Child Welfare  
30 as a young boy and after the death of your father. I can  
31 only try to imagine what that must have been like for you.  
32 As I have said to other people in similar situations to  
33 yourself, you should have been assured of safe and  
34 protective care in those homes you were placed. The fact  
35 that you were not and were subject to abuse is as

1 unacceptable then as it would be today. For those failings  
2 and for the abuse you suffered, I sincerely and unreservedly  
3 apologise.

4 My second apology is for that fact that we failed to  
5 recognise and acknowledge your claim sooner. I know Mr  
6 Young has written to you separately on this matter but I  
7 want to acknowledge and apologies for that also.

8 I trust, Mr Wiffin, that despite our failures, this  
9 letter and the payment to you will be another step towards  
10 putting the past in its rightful place of not unduly  
11 impacting on the present and the future."

12 Q. Thank you, Mr Young. Now, if I could please have the next  
13 letter called up, which is a letter of the same date, I  
14 believe, and it is WITN0080027. Sorry, I think that is  
15 dated the 6th of August 2010. And if I could just have the  
16 body of that letter called up, please.

17 Now, this is a letter from you, well, it's signed by you  
18 and sent to Mr Wiffin- at the same time as the  
19 Chief Executive's letter; is that correct?

20 A. That's correct.

21 Q. And if I could just have you please read from the body of  
22 that letter?

23 A. "I am sure that after your experiences of the last four  
24 years, you may well doubt the sincerity of these words but  
25 please be assured they are genuinely meant.

26 When I met with you in 2008 to talk about your  
27 experiences in care I did so with every intent that we  
28 should settle your claim if at all possible. Our assessment  
29 of your claim led us to make the offer that you turned down.  
30 Having reviewed your case I believe that assessment was  
31 wrong and that we should have made a more significant offer,  
32 in particular acknowledging your abuse whilst at Epuni.

33 I am very sorry Keith that we did not do that and that  
34 our failure to do so has caused you additional hurt over the  
35 past 12 months.

1           The payment referred to in my letter to Sonja comes  
2 without condition and the Chief Executive's letter  
3 expresses, like mine, an unreserved apology both for what  
4 happened to you while you were in care and for our failure  
5 to acknowledge this to you sooner.

6           If at any stage you want to take up the offer to meet  
7 with senior staff of the Ministry or if you would like to  
8 visit the Epuni residence and do not feel comfortable doing  
9 so through me, then please do not hesitate to contact my  
10 senior adviser Fiona Wilson or my General Manager Bryn  
11 Gandy.

12           I wish you all the best for the future"

13 Q. Just to confirm, accompanying that letter was a letter from  
14 Cooper Legal with the details of effectively an  
15 unconditional ex gratia payment, is that correct?

16 A. That's correct, yes.

17 Q. Can you explain for the Commissioners, please, why, given  
18 the Chief Executive had written a letter of apology, why you  
19 also accompanied that with your own letter to Mr Wiffin?

20 A. Apart from the fact that an apology was due, and well  
21 overdue, I guess I had probably established more of a  
22 relationship with Mr Wiffin than other survivor claimants  
23 and he had been very gracious to us and to me in talking  
24 with us on two occasions about his experience but also about  
25 his wishes for a redress process, and I simply felt that we  
26 had let him down and that I personally had let him down and  
27 that I wanted to acknowledge that personally.

28 Q. Thank you, Mr Young. And if you could just go on reading,  
29 please, from section 7.14 of your brief of evidence?

30 A. I note at paragraph 45 of Mr Wiffin's statement his  
31 suspicion that Mr Moncreif-Wright may have abused children  
32 while working at Hamilton Boys' Home and was moved to Epuni  
33 Boys' Home in the full knowledge of his offending and  
34 without due care for potential victims. The records for  
35 Mr Moncreif---Wright confirm that he worked at Hamilton

1 Boys' Home for 18 months immediately prior to commencing at  
2 Epuni. The same records do not contain any mention of  
3 alleged offending while at Hamilton. That does not of  
4 course mean that Mr Moncreif--Wright did not offend against  
5 children at Hamilton but simply that the records do not  
6 indicate the reason that he moved.

7 I wish to add, and this should in no way be seen as a  
8 defence of our management of Mr Wiffin's claim, and I would  
9 be concerned if the Commission were of the view that  
10 Mr Wiffin's claim was representative of the way in which  
11 many claims have been resolved over subsequent years. I  
12 will further reflect on this in my closing remarks.

13 And if I might indulge again, just having watched  
14 Mr Wiffin give evidence to the hearing, yeah, it just fills  
15 me with sadness again what he's gone through, along with  
16 many other survivors, of course.

17 Q. Thank you. And Mr Wiffin stated in his evidence for the  
18 Commission in phase 1 that he might at some point,- he  
19 indicated he would perhaps wish to discuss matters further  
20 with the Ministry, do you have a response or comment to  
21 that?

22 A. Mr Wiffin has had a couple of conversations with me in the  
23 past two or three years, I think the last was probably 18  
24 months ago, and certainly in one of those conversations he  
25 indicated that that is something that he was thinking about.  
26 Since then, of course, the Commission has held the hearings.  
27 But certainly from my perspective, if there's anything that  
28 Mr Wiffin wants to raise with the Ministry, then I'm  
29 certainly open to that personally and I believe the Ministry  
30 as a whole would be.

31 Q. Thank you. And then perhaps we'll move on to section 8 of  
32 your evidence, again responding to the Royal Commission's  
33 request, which is for information relating to changes made  
34 to MSD policies or processes, if any, following the Crown  
35 Law and MSD workshop of 21 November 2007. And if you could

1 just briefly summarise perhaps paragraphs 8.1 and 8.2 of  
2 your evidence?

3 A. There was a workshop obviously held on that particular day  
4 and I've seen notes recently, fulsome notes from that  
5 meeting. Again, it's one of those occasions when my memory  
6 escapes me. I really have no clear recollection of that  
7 meeting, although obviously by the notes I was there. But,  
8 yes, it appeared to me, on looking at those documents, that  
9 it wasn't specifically as a follow up to and perhaps any  
10 learnings from the White case but really, I guess, how Crown  
11 Law and the Ministry may effectively work together in any  
12 subsequent claims that might be subject to litigation.

13 Q. Thank you. Can you read from paragraph 8.3 and actually 8.4  
14 of your brief, please?

15 A. Certainly. I always saw a positive working relationship  
16 between Crown Law and the Ministry when working collectively  
17 on such cases as the White claims. I note from a written  
18 record of the meeting that some of the workshop discussion  
19 about those claims was the significant resources that were  
20 required and the extent to which they could be optimised in  
21 future cases.

22 I was subsequently involved in a small number of other  
23 claims that were being prepared in advance of trial (but  
24 were settled beforehand) and felt that we worked  
25 collectively in a co-ordinated, planned and collegial way.

26 Q. Thank you, and then just turning over the page to section 9  
27 of your evidence which deals with support of claimants and  
28 "wellness" payments, could you please read from  
29 paragraph 9.1?

30 A. From the early days of the claims process, it has been  
31 acknowledged that many claimants may benefit from various  
32 types of support and assistance whether to enable them to  
33 cope with the process of bringing a claim, to deal with past  
34 and present issues, or both.

1 In general terms, such non-monetary supports were  
2 provided in one or both of two circumstances. The first,  
3 and most common, was the payment of a limited number of  
4 sessions for the claimant to receive professional  
5 counselling/support to assist them through the claims  
6 process. Where longer term support may be necessary to  
7 address longer standing issues, then in addition to any  
8 support the Historic Claims Team could provide - the  
9 claimant may be referred to an existing service provider.  
10 The second circumstance is the provision of counselling  
11 and/or services as part of the package to resolve a claim.

12 Non-monetary support has also been discussed by Linda  
13 Hrstich-Meyer at 3.17 and 3.18 of her brief. Any support,  
14 financial or otherwise, that the Ministry provided to a  
15 claimant did not mean that they could not access whatever  
16 supports and services might have been available to them from  
17 other agencies, including ACC. Where a claimant might have  
18 qualified for ACC and had a need for counselling beyond what  
19 the Ministry could provide, then they would be encouraged to  
20 make a sensitive claim to ACC and the Ministry would support  
21 and assist them to do so. As Linda Hrstich--Meyer's brief  
22 explains at 3.9, a claimant who has received an ACC payment  
23 in relation to sexual abuse is not precluded from  
24 registering a claim with the Ministry as the agencies have  
25 different functions and address different claimant needs.

26 We have no centralised collation of the number of  
27 claimants who have been offered these types of supports.  
28 Our financial records show that we paid \$105,686 for  
29 counselling over the 2006 to 2019 period. A greater amount  
30 will have been approved, there was \$182,109 for the 2014 to  
31 2019 period for example, but some claimants choose not to  
32 take it up or may choose to take it up at a later date. A  
33 further \$46,532 was spent to provide a range of other  
34 support services to claimants.

35 And carrying on to 9.5?

1 Q. Yes, just dealing next with wellness payments.

2 A. The concept of wellness payments was developed as part of  
3 the whole of government response to the historic claims  
4 filed in the courts. A wellness payment may have been made  
5 where there was no basis on which to make a settlement  
6 payment to a claimant, but was a means of enabling the  
7 claimant to receive some helpful services or be reimbursed  
8 for services for which they had already been paid.

9 Over January and February 2010, joint Ministers agreed to  
10 a proposal that:

11 "... the Crown make a one-off- offer to claimants who  
12 wish to discontinue their claim, without judgement of that  
13 claim, of Crown reimbursement of up to a fixed amount of a  
14 plaintiff's actual incurred costs from their efforts to  
15 restore wellbeing. For example, reimbursement for the costs  
16 of counselling, anger management, drug and alcohol related  
17 services, or tattoo removal could be included and settlement  
18 of a person's Legal Aid costs to ensure that the person  
19 faced no outstanding debt or charge to the Legal Services  
20 Agency".

21 This applied to claims where it was determined that there  
22 was no basis for the making of a settlement payment but  
23 would allow the claimant to exit the litigation process  
24 without debt and with some level of support.

25 In addition to these wellness payments, some settlement  
26 offers to claimants, both those legally represented and  
27 those who approached the Ministry directly, included the  
28 payment for some professional counselling supports or  
29 services.

30 In reality, a small number of wellness payments were made  
31 relative to the total number of claims resolved.

32 Our available records do not reveal any clear rationale  
33 for why the wellness payments were stopped. My recollection  
34 is that there were various opinions about the circumstances  
35 in which they could be made, potentially leading to

1 inconsistencies. A paper setting out the parameters for the  
2 payment of services to claimants was drafted in April 2016  
3 but there is no record that it advanced beyond a draft. To  
4 my knowledge, no wellness payments have been made in recent  
5 years. Of course, while wellness payments have not  
6 continued, settlement and ex gratia payments have, as has  
7 historic claims funding of counselling and other relevant  
8 support services for claimants.

9 Q. Thank you. Now, at section 10 of your evidence, you deal  
10 with the high tariff offenders issues which Mr MacPherson  
11 discussed in a bit of detail in his evidence yesterday for  
12 the Commission.

13 Having heard that evidence, we won't take you through the  
14 whole of this section but I would ask you, please, to read  
15 from paragraph 10.3 where you're discussing the proposed  
16 policy around whether those convicted of serious offences  
17 may receive payments in relation to abuse while in care.

18 A. It was recognised that this issue was not straightforward.  
19 In discussions that I was involved in around the development  
20 of this policy, the Ministry's perspective was that there  
21 was no principled basis on which to treat high tariff  
22 offenders differently than other claimants. It was  
23 recognised that the fact they are serious offenders could  
24 suggest that the damage caused by their experiences in care  
25 was more significant and that the basis for payment is  
26 moral, i.e. settlement payments are about what happened to  
27 the claimant while in care, not what the claimant has done  
28 on to do afterwards.

29 Q. Thank you. And we will skip over the next couple of  
30 paragraphs and if you could please read from 10.6?

31 A. As noted by Mr MacPherson, in December 2017 the government  
32 decided not to introduce legislation that would have allowed  
33 settlement payments made to this group of claimants to be  
34 managed in some way. Shortly thereafter, settlement offers  
35 began to be made to this group. At no stage was the

1 proposed policy for high tariff offenders implemented by the  
2 Ministry, although assessments for high tariff offenders  
3 were largely not processed while the policy was being  
4 developed.

5 Q. Thank you. Now, I just want to ask you a couple of  
6 supplementary questions arising from some of the matters  
7 that were discussed with Mr MacPherson yesterday.

8 The first of those is, and also actually by Ms Cooper in  
9 her evidence in phase 1, and actually the first one of these  
10 matters relates to a point made by Ms Hill and Ms Cooper in  
11 their evidence, and that was a matter that I think Ms Hill  
12 dealt with, which is a suggestion that social workers  
13 employed by the Ministry assessing these claims would have,  
14 I think Ms Hill's words were "an inherent conflict of  
15 interest".

16 Now, to be fair to Ms Hill and Ms Cooper, under  
17 questioning they clarified that they wouldn't allege any  
18 improper involvement on that point, and that was directed to  
19 your involvement as a former social worker.

20 However, they did suggest, or a social worker who had  
21 previously been employed outside the Ministry, I should just  
22 say. However, they did suggest that social workers were  
23 inherently conflicted in assessing claims for the purpose of  
24 reaching agreement with claimants on settlement of their  
25 claims against the Crown.

26 Can I ask you, please, first of all, about your personal  
27 experience, Mr Young, because this initially was raised in  
28 the context of your own career, I suppose. Can you tell me  
29 what has been your personal experience of any conflicts of  
30 interest?

31 A. Um, certainly where any claim has been made that I have had  
32 some involvement in peripherally, and I can think  
33 particularly of the claims brought by the Sammon sisters,  
34 then I have declared that conflict and had no involvement  
35 with the claim in any way.

1           A recent example also, a person connected with a family  
2 member contacted me because she knew where I worked and the  
3 nature of my work, wanting to make a claim.

4 Q. Sorry, an acquaintance of one of your family?

5 A. Yes, sorry, yes. And she wanted to know how to go about  
6 make a claim. I gave her some of the relevant details, took  
7 her details. I made it very clear to her that once I passed  
8 her information on to the relevant people in the team, that  
9 I wouldn't have anything further to do with that matter, and  
10 that was absolutely fine by her. And I made it known to my  
11 manager, we have a conflict of interest register to record  
12 those matters on, that was updated accordingly. And the  
13 file will be protected from me accessing it. So, I guess,  
14 they are two examples where I personally, I guess, have  
15 managed any perceived or actual conflict of interest.

16 Q. Just in relation to the claim by the Sammon sisters, given  
17 that it was mentioned by Cooper Legal and that you've  
18 mentioned it this morning, what was the nature of your  
19 involvement in their case?

20 A. For a period of time, and I don't recall how long that  
21 period of time was, one of the social workers that had  
22 involvement or some responsibility for the Sammon girls was  
23 in my team, so I was their supervising social worker.

24 Q. Right.

25 A. So, that was the nature of the involvement.

26 Q. And that was the basis on which you withdrew from  
27 consideration of that?

28 A. Yes, that's right, yeah.

29 Q. Thank you. And another allegation that was made, I think,  
30 was that you would be assessing on a regular basis claims  
31 made against former colleagues; is that something that  
32 you've come across?

33 A. I guess, speaking -and I'm certainly happy to address that  
34 but I can appreciate a perception from Cooper Legal and from  
35 any outsider that people who were involved in the care

1 system are now making an assessment of aspects of that care  
2 system, may have a conflict. All I can say in response to  
3 that, again based on my personal experience, is that the  
4 social workers who formed - well, who were the team up until  
5 the last couple of years, were - and I really hope that this  
6 is taken, yeah they were the most professional group of  
7 people you would find. They went into social work to  
8 protect children. They were all ex---care and protection  
9 social workers. So, the concept of them trying to cover up,  
10 I guess, as it were, or not acknowledge abuse that may have  
11 been perpetrated by other social workers, is anathema. You  
12 would not find any stronger advocates, either for  
13 professional social work practice or for protection of  
14 children, than those social workers. Two of them were  
15 involved in supporting and enabling one claimant, and  
16 thereafter two, to take their complaints to the Police about  
17 an ex-residential staff member and he was subsequently  
18 convicted for I think around 12 charges of sexual assault  
19 for, I can't remember exactly, but there were multiple  
20 victims.

21 So, I guess that is just one little example where there's  
22 just no way that they shied away from holding people to  
23 account.

24 And a couple of those social workers, I think in the very  
25 early stages of their career, had spent brief periods of  
26 time as residential social workers and I think some of their  
27 observations and experiences from that time would support  
28 survivors' experiences and stories, rather than not.

29 Q. So, what were the nature of those observations or  
30 experiences?

31 A. I can't speak to those.

32 Q. Not specifically but just generally?

33 A. I think just one of their concerns and observations about,  
34 just about the perhaps relationship between some residential  
35 social workers and some residents. I am not aware that any

1 of them observed any outright instances of assault or abuse  
2 but, yeah, they didn't particularly enjoy the residential  
3 care experience and yeah. So, I guess that's, yeah, I just  
4 can't reinforce enough the professionalism of those social  
5 workers and the fact that they took claimants' experiences  
6 very much to heart.

7 I was looking at the 2012 research evaluation that  
8 Mr MacPherson referred to yesterday recently, and one of the  
9 claimants that was interviewed said that they found it  
10 difficult when the interviewers, the senior social work  
11 advisers, cried in the interview. I would like to think  
12 that they didn't cry in response to hearing what the  
13 claimant was talking about but obviously to the claimant  
14 they showed some visible signs of emotion, and that is how  
15 they were and are, deeply affected by the stories that they  
16 hear and to suggest that they would not want to do the right  
17 thing by those people is, yeah, it's just not the case.

18 Q. Thank you. Now, the next thing I just want to discuss with  
19 you - actually, I'm wondering now whether might be a  
20 convenient time to take the adjournment?

21 **CHAIR:** Take the adjournment and then you can conclude  
22 and then we will start with the cross-examination, is  
23 that suitable?

24 **MS ALDRED:** Yes, thank you.

25  
26

27 **Hearing adjourned from 11.25 a.m. until 11.50 a.m.**

28  
29

30 **CHAIR:** Thank you, Ms Aldred.

31 **MS ALDRED:** Thank you.

32 Q. So, Mr Young, just continuing with a couple of additional  
33 matters that have arisen over the last couple of days.

34 Yesterday in questioning Ms Janes referred to an email  
35 written by Crown Law, in which the writer had made a comment

1 to the effect that the White trial had indicated the  
2 claimants might make exaggerated allegations.

3 Now, Ms Janes' proposition, as I understood it, was that  
4 whilst she had referred to an email written by another  
5 agency, this attitude or belief that claimants might tend to  
6 exaggerate allegations of abuse was a widely held view  
7 within the Ministry of Social Development and within the  
8 Historic Claims Team.

9 Would you care to comment on that proposition, Mr Young?

10 A. I can't comment obviously on the writer and what might have  
11 prompted the writer to make those comments but I certainly  
12 don't believe that within the Ministry those who were  
13 dealing with claims on a day-to---day basis held any view  
14 that the claims were being exaggerated in any way.

15 In fact, in some instances, I think it was acknowledged  
16 that some claims may be under-played, as it were, through  
17 claimants not- particularly, I guess, when it comes to  
18 allegations of sexual abuse where, you know, some people,  
19 for totally understandable reasons, aren't able to go into,  
20 you know, significant detail about the nature of their  
21 abuse.

22 So, yeah, it's certainly not my experience that either  
23 myself or those that I have worked with would take that  
24 attitude. And, again, I think that is reflected a little in  
25 what I was saying earlier about the attitude that certainly  
26 those senior social work advisers brought to the job, of  
27 being very focused and aware of the claimants and of their  
28 experiences but also, it's fair to say, to being aware that  
29 where allegations are made against anybody, then there would  
30 be a level of care in examining those allegations and being  
31 as fair as one can to everybody.

32 Q. Thank you. The next thing I want to take you to is a  
33 document that Mr MacPherson was taken to, and the reference  
34 is MSC395. So, this document is a 2010 document signed with  
35 your name on it but the questions were directed at

1 Mr MacPherson. I thought since it was your document, it  
2 might be useful to have you address it, Mr Young.

3 And you'll see that it is this statement of, I suppose,  
4 principles or guiding tenets and it's under the heading,  
5 "Care, Claims and Resolution Team" or the CCRT principles,  
6 "As agreed 3 June 2010" and it sets out those principles  
7 that Ms Janes took Mr MacPherson to yesterday.

8 Are you able just to provide some comment and context  
9 around that document?

10 A. Sure. I don't have specific recall. It suggests that they  
11 arose from some kind of meeting or discussion on that date.  
12 I don't have any particular recall of that but I think they  
13 reflect probably some discussions that may have occurred  
14 over a period of time within the team that it would  
15 potentially be helpful for us and potentially those outside  
16 the team to, I guess, document some principles on which, or  
17 to guide, I suppose, the work that we were doing.

18 So, that is a kind of - to the extent I can I recall, the  
19 context to which I drafted those.

20 Q. Thank you. And then I just want to take you to another  
21 document which Ms Janes contrasted with that brief statement  
22 of principle, and that is MSC405. That's an undated note,  
23 again on Ministry letterhead, and I think the suggestion was  
24 that your team, in fact, use these principles which include  
25 at number 1, a directive not to accept anything on face  
26 value. Was this a document that was prepared by the CCR  
27 team?

28 A. No, I understand it was prepared by a member of the Legal  
29 Services team, so the legal team and the Ministry. And,  
30 judging by the title of it and the content of it also, it's  
31 likely to have been, again, some principles or suggestions  
32 or directions for how claims that were potentially going  
33 through the litigation process might be managed.

1 Q. So, just to be clear, you said that these might be  
2 principles that would be applied to claimants going through  
3 the litigation process?

4 A. As opposed to the alternative dispute resolution process,  
5 yes.

6 Q. So, is it correct that so-, are these principles, principles  
7 that would be applied by your team?

8 A. Um -

9 Q. Just looking at 1 in particular.

10 A. Well, 1, obviously that does contrast, I think, with the  
11 first principle that I had drafted, which was that claims  
12 should be, I don't know if the word was "accepted" at face  
13 value but I think that also talked about "subject to  
14 investigation" or there were some words following which I  
15 guess gave it some qualification. But, yes, it's in  
16 contrast obviously to this document.

17 **CHAIR:** Just slow down a wee bit.

18 A. Sorry.

19 **MS ALDRED:**

20 Q. Okay. Sorry, you said it's in contrast to this document?

21 A. That's correct.

22 Q. Okay, thank you. And following on from those documents but  
23 on a similar point, Ms Janes also referred yesterday to an  
24 assumption that allegations of serious abuse will never be  
25 identified in records from institutions; is that correct, in  
26 your experience?

27 A. I wouldn't say never, and the reason I say that is because  
28 there are some instances where allegations of serious abuse  
29 have been documented. Not a lot but some. But I would  
30 certainly agree that in the majority of cases there isn't  
31 any direct documentary evidence, if you like, that directly  
32 supports an allegation.

33 Q. You've referred to some rare instances, I think, where they  
34 might be documented; who would have documented them?

1 A. They would typically be a manager or a senior staff member  
2 to, through some means, became aware of an incident and,  
3 again, in some documented cases took some kind of action to  
4 address that abuse, yep.

5 Q. Thank you. And Ms Janes also went on to suggest, I think,  
6 that where a claim in the current MSD process goes to a step  
7 2 analysis, a record of alleged abuse will be needed. Is  
8 that the case? Is that true, Mr Young?

9 A. In short, no. And I guess, if I think about certainly the  
10 last 10 years or thereabouts in the team, we have accepted,  
11 if you want to use that word, allegations of physical and  
12 sexual abuse in many, many instances, and I think the data  
13 would show that the majority of allegations of such abuse  
14 are accepted for the purpose of settlement. And I suppose  
15 that's in contrast to the fact that, yeah, in very, very few  
16 situations is there documentary evidence to support that.  
17 So, what -so, yes, we're not looking for and wouldn't  
18 necessarily expect to see in the records any direct  
19 confirmation that abuse had occurred. We are looking for a  
20 variety of other types of information that enables us to  
21 make hopefully a fair and reasonable come to a reasonable  
22 conclusion about that particular allegation-.

23 Q. Perhaps if sorry, just in relation to the particular  
24 reference- to the step 2 analysis.

25 A. Sure.

26 Q. And Mr MacPherson discussed this a little in his evidence  
27 yesterday and explained that that second stage, where  
28 particularly serious allegations are made, will result in  
29 further investigations, mostly requiring further work by the  
30 Ministry in terms of records. What sort of information are  
31 you looking for?

32 A. I'll certainly come to that but it may also be helpful to  
33 understand that some allegations of serious abuse don't  
34 actually require a step 2 analysis. So, some may be taken  
35 at what we call face value but subject to some factual

1 checks. But for those where a step 2 analysis is carried  
2 out, then we are looking, I guess, at a much broader range  
3 of sources of information that assist us in making some  
4 determination about the allegation. And those sources will  
5 include obviously the claimant's account. I mean, the most  
6 significant piece of information that we have is the account  
7 that we have from the claimant, whether that's their written  
8 account that's provided to us by their counsel or whether  
9 it's their account as provided directly to us.

10 In those instances, one of the very first things that the  
11 assessor does is listens to the audiotape of the meeting  
12 with the claimant, so that they can fully understand and  
13 appreciate and hear in the claimant's words what has  
14 happened to them. So, that's the first and most vital, and  
15 that happens at the start of every claim assessment, not  
16 just for step 2.

17 But when we are carrying out that more detailed analysis,  
18 they're obviously looking at the claimant's records, any  
19 records that might also be relevant from the family or  
20 family members. We're looking at records for any staff or  
21 caregivers that be implicated in the claim. For any  
22 institutional records for those who were placed in  
23 institutions or family homes. We are looking at information  
24 about other similar types of allegations. Anything that can  
25 potentially inform us about that particular claim that we're  
26 looking at.

27 Q. Thank you, Mr Young. And finally, if I could just take you  
28 back to your brief of evidence, I think we're at section 11  
29 now which are just some concluding remarks that you make,  
30 and if I could just have you speak to those, please, for the  
31 Commissioners?

32 A. Certainly. Preparing this brief has provided an opportunity  
33 to reflect on the past 15 years and on my personal  
34 involvement with historic claims over that time.

1           The first comment I want to make is that it has been a  
2 privilege to be part of this work. The extent to which  
3 survivors have graciously and courageously opened up to us  
4 about their most private and harmful experiences has never  
5 ceased to amaze me and my colleagues. An equal privilege  
6 has been to see the difference that listening, believing,  
7 acknowledging and apologising can make to the mana and the  
8 lives of many survivors. We have been witness to many  
9 emotionally powerful moments.

10          In saying that, I am also aware that we have not always  
11 got it right and for some survivors we have fallen far short  
12 of their expectations.

13          This work has already provided an opportunity to view  
14 social work in State care practice over many decades, the  
15 good, the bad and the ugly. Many good people have worked in  
16 the field and numerous efforts have been made over the years  
17 to innovate and enhance practice. But hidden in that are  
18 the experiences of abuse survivors, those who have been let  
19 down so badly by the system. We should all be grateful that  
20 survivors and their advocates have begun to shine a light on  
21 those experiences and hold those who need to be accountable.  
22 I appreciate the opportunity to provide this evidence to the  
23 Royal Commission.

24 **MS ALDRED:** Thank you, Mr Young. And if you could  
25 just remain, please, to answer any questions that  
26 counsel assisting and the Commissioners may have.

27 A. Certainly.

28 **CHAIR:** Before you do, I hear a frog in your throat.  
29 Have you got any water there?

30 A. I have, thank you.

31 **CHAIR:** Okay. We don't want you to be uncomfortable.  
32 Ms Janes.

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**ERNEST GARTH YOUNG**  
**QUESTIONED BY MS JANES**

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Q. Good morning, Mr Young, and please feel free to take a sip of water at any time and I'll do the same.

A. Thank you, good morning.

Q. I will start where almost your counsel left off in terms of looking at the principles because they do seem to frame what happens within the historical claims framework. So, if we just look at your document which records what was agreed on the 3rd of June 2010.

Can you just go through each of those principles and just summarise that they pertain before 2010? Were they new in 2010? And do they still apply?

A. They would have yes, the 3rd of June 2010 - -I'll slow -down - wasn't a date in which these all of a sudden- appears and guided our work. I think from 2006 onwards, when we were thinking about the kind of redress process that we hoped for and envisaged, that would have encompassed many, if not all, of those principles. I think it was, as I said earlier, I think just a moment in time when we took the opportunity to document those.

And I believe they largely still underpin the work that we've been doing in recent years and currently.

Q. So, just to clarify, is there anything in any of those six points that was new at that point or that you would say had not pertained prior to this timeframe?

A. I don't think anything new. The extent obviously to which they may have applied in individual claims may have varied, and Mr Wiffin's claim perhaps is a good example where those principles or all of them didn't necessarily apply. But, no, they would have yeah-, I don't think there was anything new.

1           Again, reflecting on the first one, "driven by principles  
2 of natural justice", I think if there's anything that has  
3 changed in more recent years, it is if by natural justice  
4 you mean providing the opportunity of the alleged  
5 perpetrator to have their say, I think as has been said  
6 previously, that's not something which is routinely done.

7           **COMMISSIONER ERUETI:** Can I check something briefly  
8 please, Ms Janes?

9           In relation to these principles, were you just saying  
10 before that they evolved out of the earlier discussions that  
11 were had about the foundations of the HCT process from 2006?  
12 A. 2006 -it sounds very loud was, I suppose, the time period  
13 when we first began thinking about how best to get redress  
14 for claimants. I suppose,- that thinking evolved over the  
15 next probably 2 years or thereabouts.

16           But I think it's fair to say though that if it wasn't  
17 explicit, that the approach that we were hoping to take had  
18 within it those certainly- some if not most of those  
19 principles. They perhaps weren't well articulated, I guess  
20 is what I'm saying, at an early stage.

21           **MS JANES:**

22 Q. And if we can just go to the other document you were shown,  
23 MSC405. You've mentioned that this is likely the Legal  
24 Services formulation of principles but, as a general  
25 approach, is there anything there that you would think the  
26 Historical Claims Team did not endorse or would deviate  
27 from?

28 A. I guess number 2, practice failures, that was clearly  
29 something that was in our realm to make an assessment of.

30 Q. And would the same apply to 4?

31 A. Well, I suppose, as I indicated earlier, certainly that  
32 would go to looking at other allegations of a similar nature  
33 or allegations against the same named person. So, yeah, if  
34 you took that example, if you like, as applying to 4, it  
35 would.

1           The main difference though obviously is in the way number  
2 1 has been framed, as opposed to the principles that I  
3 drafted.

4 Q. And just in terms of training and how these clearly, your 3  
5 June 2010 principles were agreed but how were they then  
6 promulgated? How was training undertaken? How was it  
7 ensured that they were actually -cross-fertilised- across  
8 the staff and team groups?

9 A. One of the things to be aware of is, at that stage the  
10 Historic Claims Team was really rather small. There was  
11 myself as the manager, and I can't recall exactly that  
12 timeframe, but the team never got beyond 12 or 13 senior  
13 social work advisers, and so I suspect in 2010 there would  
14 have even been less than that.

15           Those principles would have come from the team, so they  
16 would have been very much involved in discussing them and  
17 coming up with them. I guess, I merely held the pen, to  
18 some extent.

19           So, they were and- I think, as I said earlier, they  
20 reflected, I think, the approach that we had been taking  
21 prior to that and so, they were very much in the, dare I say  
22 it, the DNA, I suppose, of the senior social work advisers.

23           So, there wasn't any specific training, if you like, as  
24 in terms of the, you know, courses or workshops.

25           I guess, yeah, the team at that stage was quite a small  
26 unit. We worked very closely together. I saw every  
27 assessment of a claim and so had visibility of the work  
28 across the team. I guess, that was one way of, I guess,  
29 ensuring that those principles were followed to the extent  
30 that they could be.

31 Q. Can I just clarify, at what point did the team grow so that  
32 you didn't have visibility over every claim?

33 A. I guess, there's two parts to that. Firstly, the change in  
34 my role. So, I think 2013 I moved away from managing the  
35 team. So, from that point I didn't have the same

1 responsibilities and oversight of individual claims. But it  
2 wasn't until late 2018 that the team increased in size from,  
3 yeah, around 12 or 13 senior advisers to the much larger  
4 team that it is today.

5 Q. So, would it be fair to say that you were probably the  
6 quality control or the consistency Panel in those early  
7 years?

8 A. For a period of time, yes.

9 Q. And just going to the two-step process that again your  
10 counsel has asked you about, I will just quickly round that  
11 out before we move on.

12 So, if we could look, please, at MSC ending in 363. Mr  
13 Young, just to orientate you as it comes up, it is an  
14 internal MSD email from 3 November 2017. You will see there  
15 quite a range of recipients, one of them being yourself?  
16 You are cc'd in?

17 A. Yes, I can see that.

18 Q. Okay. And if I can it's- talking about assessment involving  
19 staff members?

20 A. Mmmm-.

21 Q. So, if it we can call out the paragraphs, please?

22 A. As in you're wanting me to read the highlighted ones?

23 Sorry.

24 Q. This is setting out how you would manage allegations  
25 involving past staff members and Andrew Little, who is the  
26 author, has set out. So, yes, if you could please just read  
27 through that, that would be helpful, just the highlighted.

28 A. The highlighted sections. "Firstly, request claims  
29 resolution has previously accepted claims against a staff  
30 member this forms a key part of the rationale for except any  
31 findings. What I am looking for at this point is a summary  
32 of past allegations and findings and information clearly  
33 showing that it's reasonable to accept based on similar type  
34 of allegations and accepted behaviour.

1           If you're considering making findings against staff when  
2 we have not previously accepted then the nature to the  
3 information and analysis being presented in the case  
4 assessment is somewhat different.

5           Let's start first with allegations of physical  
6 abuse/assault. I'm interested in previous allegations (the  
7 nature and detail of these) plus the culture of the  
8 institution at that time. You'll also consider any staff  
9 files and other information that may be relevant.

10          Sexual abuse assault allegations are somewhat different  
11 in nature as this behaviour is much more hidden. Again, if  
12 we have not previously accepted against this staff member  
13 you will be considering previous allegations (the number and  
14 detailed nature of these). You will then consider the  
15 current allegations and whether they have similarities or  
16 differences. The detail is important in building your  
17 analysis. If we don't have significant supporting  
18 information (for example Police convictions, staff  
19 discipline or dismissal) then it comes down to a judgement  
20 call based on the weight of previous information we have  
21 plus the current allegations. In these situations the  
22 adviser and I will discuss, and we'll then bring together a  
23 meeting to talk through what is known and make a finding.  
24 Garth and legal will also be invited to participate. The  
25 decision-making- for any findings continues to sit with the  
26 adviser and manager in these situations.

27          If allegations are in respect of current staff then  
28 obviously we have a whole other level of process involving  
29 OT or NGOs".

30 Q. So, very consistent with your evidence about the number of  
31 resources that should be accessed, investigated, researched?

32 A. Yes.

33 Q. Would you agree with that?

34 A. Yes.

1 Q. And that there is a distinction between where there is a  
2 known previous allegation, whether or not it involved that  
3 claimant, versus where it's the first allegation against a  
4 potential abuser?

5 A. Agreed.

6 Q. Can we quickly look at MSC370 and this is a 9 April 2019  
7 internal memorandum to the leadership team. Just quickly  
8 checking, are you on the leadership team?

9 A. No, I'm not, no.

10 Q. And this is written by your colleague, Ms Hrstich-Meyer and  
11 Rupert Ablett---Hampson, who was the Chief Legal Adviser at  
12 the time.

13 If I can take you to page 5, paragraph 20, this talks  
14 about a refinement to the process that has been made. So,  
15 just to give your voice a rest, we can maybe tag team, "This  
16 refinement has led to the decision that for serious  
17 allegations of abuse we will still require information to  
18 support the allegation (rather than starting from a point of  
19 belief). This means that there is an additional level of  
20 checking the records for elements of some claims. These  
21 changes do not substantially impact on the time it takes to  
22 assess a claim."

23 Just briefly, would you agree with that?

24 A. Any particular part of it or as a whole?

25 Q. Just that extra checking is not going to impact on the time  
26 it takes to assess the claim?

27 A. I guess, if you're thinking about the overall time it takes  
28 to assess a claim, then assuming there are the claim  
29 includes allegations of a serious nature that do require a  
30 step 2 analysis, then -that yeah-, that's always going to  
31 kind of, obviously, take time. So, I'm not quite sure what  
32 that sentence "these changes do not substantially impact on  
33 the time it takes to assess a claim", I'm not entirely sure  
34 whether that's suggesting, yeah, what it's comparing it  
35 with, if you like.

1 Q. And then goes on to say, "We are also asking that all  
2 claimants sign a Settlement Deed confirming that the payment  
3 is in full and final settlement, rather than making an ex  
4 gratia payment to them meaning that claimants can no longer  
5 make multiple claims."

6 And just stopping there, can you confirm that there has  
7 been a change within MSD away from ex gratia payments to  
8 settlement debts?

9 A. That's correct, yes.

10 Q. And are you aware of the reason for that change?

11 A. It's not a decision that I was involved in discussing or  
12 making but I guess my understanding is that it provides some  
13 finality to the matter and provides some, I suppose,  
14 protection for the Crown.

15 It was interesting though, again reflecting back and it's  
16 not necessarily a contributing reason to this obviously, in  
17 the earlier days where Cooper Legal brought claims but the  
18 proceedings weren't filed, they asked that a Deed of  
19 Settlement be entered into for those matters because they  
20 said it provided that sense of finality for their clients.

21 But, yes, I guess, yeah, that would be my understanding,  
22 that it was a means of bringing finality to the matter.

23 Q. And then it goes on to say, "We are talking with claimants  
24 about these changes to ensure that they understand this and  
25 checking they have shared all their concerns before  
26 completing the assessment of their claim".

27 We've heard evidence that it can take 22 years for  
28 somebody to actually start disclosing trauma and then we've  
29 also heard evidence that it can be incremental. So, a  
30 claimant may start with a particular range of experiences or  
31 residence, and then as they become able to, to process and  
32 live with that, they move on.

33 So, what is the process MSD goes through to ensure that  
34 there is the opportunity for that full disclosure before a  
35 full and final settlement?

1 A. It can vary obviously and depending on how the claimant  
2 approaches us. For those who are represented by a lawyer,  
3 so we receive either a written Statement of Claim or another  
4 document that sets out the basis of their claim, I guess we  
5 take it as read that the client has had sufficient  
6 opportunity to talk with their lawyer over whatever period  
7 of time is necessary and helpful for them to get to the  
8 point where, I guess, they feel they have made a full  
9 disclosure and that's documented and passed on to us.

10 For people who approach us directly, I guess it's kind of  
11 a staged process really. The majority of contacts are made  
12 by telephone, so that's an opportunity for whoever they're  
13 speaking to from the team to talk with them about the  
14 process, give them an overview of it, to get a little  
15 understanding of the nature of the claim that they might be  
16 bringing to us, without going into any amount of detail.  
17 And, again, some people will be more discursive than others  
18 but it's really that first opportunity to make contact.

19 And, I guess, from that point on, and they will be  
20 invited to meet with us in person, if that's what they want  
21 to do. So, I guess, that's the first opportunity for a  
22 person to perhaps begin doing some further thinking about  
23 the reasons that they have come to us. They've obviously  
24 got to that point where they feel able to disclose  
25 something. The meeting itself, will occur at a later stage,  
26 and again there will be some contact with the person prior  
27 to that and the nature of those conversations is likely to  
28 be around the purpose of the meeting and encouraging and  
29 enabling the person to think about what it is that they want  
30 to talk about at that meeting, whether or not they want to  
31 bring any material that they may want to. The meeting  
32 itself will hopefully be conducted in a way that the person  
33 feels able to be as open as they are able to, given the  
34 circumstances.

1           And again I think, certainly in my experience, one of the  
2 concluding comments, if you like, from that meeting would be  
3 this may well have brought up or bring up in the following  
4 hours or days or weeks other memories, other issues for them  
5 and so essentially there's an open invitation for them to  
6 get in touch with us if there's a need to and if there's  
7 anything that they have remembered that they want to add to  
8 their account.

9           And I know the team that has that direct contact with  
10 claimants will also talk with the person about whether or  
11 not they want some regular contact to check in with them to  
12 see how they're doing. And if they do, then again that  
13 provides an opportunity for anything further to that- they  
14 may have recalled or remembered, to come up.

15           I guess, the final point then is at the stage where their  
16 claim is due to be assessed, then again they should be  
17 contacted to just check out that the information that we've  
18 got, the specific allegations that they've made or the  
19 specific concerns that they've expressed to us over that  
20 period of time, are a full account essentially of what they  
21 want us to consider.

22 Q. Thank you. And it is turning to that assessment process now  
23 that we'll have a look at.

24           So, at paragraph 4.5 of your brief, you recognised that  
25 records are not determinative whether abuse did or didn't  
26 occur. And you also made the acknowledgment in Keith  
27 Wiffin's section at paragraph 7.14 about the Hamilton boys'  
28 Home, just because there was nothing in the record didn't  
29 necessarily mean that it didn't occur?

30 A. That's right.

31 Q. And without taking you to the tab, just a couple of points  
32 that I think you accepted in your evidence anyway, that we  
33 would expect that other incidents occurred, that were not  
34 identified and confirmed, were not documented or where

1 records have since gone missing. You wouldn't disagree with  
2 that statement?

3 A. No, I wouldn't.

4 Q. And also in MSD2030, "records of genuinely abusive or  
5 neglectful care may not be kept" and I take it you wouldn't  
6 disagree with that comment?

7 A. Yeah, I mean, one of the challenges obviously is we don't  
8 know what may have been documented and not kept, for  
9 whatever reason but, yeah, I would - if there are documented  
10 concerns of abuse or documented incidents of abuse, then I  
11 think it's reasonable to accept that there would be others  
12 that haven't been documented or, as I said, may have been  
13 documented but have not survived the passage of time.

14 Q. And when Cooper Legal were giving their evidence, they spoke  
15 just- for reference, I'm not going to go to it, it's  
16 page 606, lines 1213 of Cooper Legal evidence- -they spoke  
17 about there being a general destruction of MSD records on  
18 two occasions that they were aware of. Are you able to just  
19 outline what periods and under what circumstances MSD  
20 records have been destroyed?

21 A. I am certainly not a records or archives expert. I know of  
22 one occasion, which I'm sure is one of the occasions that  
23 Cooper Legal will be referencing, and that was 1999 but I'm  
24 not sure of the other, I'm sorry.

25 And, in that instance in 1999, a number of human resource  
26 or staff files were destroyed and I provided some evidence I  
27 think in the White trial about that. The details or the  
28 extent to which our records experts could determine about  
29 the basis of that destruction, I simply don't recall the  
30 details of that. But, yeah, there's no doubt that there was  
31 certainly a number of records that were destroyed.

32 Q. And, as you recall, you did give evidence about that in the  
33 White trial?

34 A. (Nods).

1 Q. I don't think we need to go to that but for the transcript,  
2 it's MSC555, paragraphs 14 and 30-31.

3 Mr Young, I don't know if you saw a recent article by  
4 Aaron Smale in the Newsroom on the 16th of October?

5 A. I did, yes.

6 Q. I just wanted to put something that he had raised to you and  
7 allow you to comment. He's talking about the brief of  
8 evidence that you gave in the White trial. He quotes you as  
9 saying, "I would expect there to be a staff or personnel  
10 file for each permanent Child Welfare or Department of  
11 Social Welfare staff member that would confirm their date of  
12 appointment to various positions and whether or not they  
13 were subject to any performance or disciplinary matters.  
14 Such files for some ex-staff relevant to those proceedings",  
15 being the White proceedings "have been readily found.  
16 Whereas, there is no trace of such files for other staff  
17 members from similar time periods and locations. I  
18 understand that in October 1999 when CYF became a department  
19 in its own right, many- of the old closed records were  
20 retained in the custody and control of the parent  
21 organisation, the Ministry of Social Development. Some of  
22 these files, including old human resource personnel staff  
23 files, were subsequently destroyed. Of the 28 staff members  
24 named by the plaintiffs or by the similar fact witnesses,  
25 personnel files can be found for only 6 of them".

26 What comment would you make about, firstly, the  
27 destruction of the files, the availability of files, and  
28 then only 6 of 28 staff files being able to be located in  
29 White?

30 A. That's obviously, certainly to the best of my recollection,  
31 an accurate and verbatim account of my affidavit.

32 I don't recall whether Mr Smale, I guess what he was  
33 suggesting was that there was some deliberate destruction of  
34 records perhaps and I don't, -yeah, with perhaps the thought  
35 that they might be incriminating. And I guess the only

1 comment I have to say about that is, well, I obviously don't  
2 know. I don't know the basis on which they were destroyed.  
3 One would like to think that they were destroyed in line  
4 with the archives legislation but whether that's the case or  
5 not, I simply don't know.

6 Whether there was any other purpose or reason for them  
7 being destroyed, again I just simply don't know.

8 What I do know though, is that it presents us all with an  
9 additional challenge when there aren't records available.  
10 Whether that's staff records or records of any sort that we  
11 might expect to find.

12 Q. Given that 22 out of the 28 staff files were not available,  
13 going back to your spreadsheet where you say "against the  
14 name of each alleged perpetrator information is recorded",  
15 before destruction of files, for whatever reason, how can  
16 one be certain that that information has been captured on  
17 the MSD spreadsheet and available for use in assessing  
18 claims?

19 A. Well, we simply can't because we started collecting that  
20 information after 1999, so after those - -so, that was  
21 information that our team was collecting and so, any files  
22 obviously that had been destroyed prior to that, you know,  
23 obviously weren't accessible and available to us.

24 So, any information that might have been on them that  
25 was, you know, relevant to a claim has simply been lost.  
26 There's no finer point on it than that.

27 Q. And so, the Royal Commission has a moratorium destruction of  
28 records but between 1999 and the moratorium I think in  
29 2018/2019, Simon will know, what steps were taken to ensure  
30 that the spreadsheet on alleged perpetrators was as up  
31 to- -date as it could possibly be before any destruction or  
32 other dealing with files occurred?

33 A. I don't know if I could make a link, if you like, between  
34 the spreadsheet or the records that we were keeping and any  
35 files being destroyed. What I do know though, is that,

1 again in those early days I think we probably would have had  
2 meetings with our records staff, certainly in 2006, about  
3 the absolute need to have records available for us, whether  
4 those records were held by us or by Archives New Zealand.  
5 And we also had meetings with Archives New Zealand at  
6 various times.

7 And so, I couldn't say whether it was documented but  
8 there was certainly a very clear understanding that any  
9 records such as institutional records, staff records and the  
10 like, needed to be readily available for subsequent claims.  
11 And so, there certainly shouldn't have been any destruction  
12 of those kinds of records. Whether there was or not, I  
13 honestly can't say but I would be surprised and very  
14 disappointed if there were any - if there was any subsequent  
15 destruction, certainly after that sort of 2006 period of  
16 time-.

17 Q. Thank you. And just as my colleague is bringing up CRL  
18 ending in 23479, just to check with you, I'm not going to  
19 take you to the document but in a 2007 flowchart I saw that  
20 your name was associated with searching for relevant files;  
21 would that be correct?

22 A. That's certainly one of the things - well, I may not have  
23 done the search,- but I would have had one of my capable  
24 admin people do it.

25 Q. Yep. And I also saw your name noted against "witness  
26 briefing"?

27 A. As involved in the witness briefing?

28 Q. Yes. This was for filed claims, so it was a flowchart for  
29 filed claims.

30 A. Okay.

31 Q. And Legal and Garth and Crown Law were set down as witness  
32 briefing?

33 A. Right, that's something I was involved with at times, yes.

34 Q. And also Privacy Act requests, you and your team, not  
35 necessarily yourself?

1 A. Yes.

2 Q. And so, on the screen we have, just to orientate you, it is  
3 an email. We are now on the right page.

4 This is a draft letter. We don't have the original, so  
5 just treat it as a draft. It's dated, I note it's dated  
6 16 March but actually, in- paragraph 1 it talks about the  
7 12th of March 2007, so I suspect that's just a typographical  
8 error.

9 A. I think you're right, yes.

10 Q. So, we'll take that as a typographical error. It is a  
11 letter to Cooper Legal and it's in relation to the White v  
12 Attorney-General- matter. If we call out paragraph 1, it  
13 just talks about, "On 12 March 2007 the Crown Law historical  
14 research team located 31 additional boxes of files relating  
15 to Hokio Beach School held by New Zealand Archives as part  
16 of the ongoing discovery work being undertaken in this  
17 case".

18 And the next paragraph, paragraph 3 sorry, it talks about  
19 there having been an instruction in 2005 for archives to  
20 find the full list in relation to Hokio and Epuni.

21 And if you can just go down onto the next page, there is  
22 reference to 407 Hokio, right down the bottom, it shows a  
23 total of 407 Hokio related files, over the page of which 90  
24 may be relevant to White, and 710, it goes on to say 710  
25 Epuni files of which four may be relevant to White.

26 So, really the question is, you made a request in 2005  
27 obviously in starting to prepare and provide discovery in  
28 the White litigation. Two years later, what occasioned this  
29 research which discovered these extra 31 files and what were  
30 the circumstances that brought them to light so close to the  
31 trial?

32 A. I remember this well, if not every detail. Yeah, I  
33 certainly remember the incident.

34 You're correct. As part of preparation for that hearing,  
35 and obviously as part of our discovery obligations, we would

1 have carried out searches of two primary databases to  
2 identify any files that were potentially relevant.

3 The first is what was called the "TRIM database", which  
4 is essentially an index of all of the records held by the  
5 Ministry for many, many years past.

6 The other database would have been the Archives  
7 New Zealand database, and that will show all those records  
8 that Archives New Zealand hold on behalf of the Ministry.  
9 And for those discovery purposes, those searches obviously  
10 resulted in a number of files being located, and I can't  
11 obviously recall the number.

12 I don't know the circumstances under which Crown Law's  
13 own research unit carried out a search, whether they had  
14 carried out a number of searches or not, I don't know.

15 What I do know though, is that around that date  
16 Mr Mathieson I think phoned me, or certainly got in touch  
17 with me in some way, to let me know that those, that his  
18 office rather, had identified those files. And I recall my  
19 reaction being one of anger basically. Yeah, I was just  
20 very upset that, for whatever reason, the searches that we  
21 had conducted didn't reveal those files. And I'm pretty  
22 confident in saying that those records that the Crown did  
23 locate weren't available on either the TRIM or the Archives  
24 New Zealand databases. That's my recollection. I may be  
25 mistaken but, yeah, for whatever reason, they weren't  
26 identified. And we subsequently asked our records team to  
27 try and identify and understand why that was the case. And  
28 I'm sure that was documented in some way and I went  
29 searching for it in anticipation of this hearing but I  
30 couldn't locate it. But, yeah, I'm not sure that I can give  
31 a satisfactory explanation, other than I am confident though  
32 that the searches that our team undertook were as  
33 comprehensive as possible.

1 Q. And have there been any changes in terms of ensuring access  
2 to records so that you actually have the information that  
3 you need to be able to assess the claims as they come?

4 A. Yeah, it's my understanding that certainly that particular  
5 incident prompted our records team to do a reconciliation,  
6 if you like, of records between us and Archives New Zealand.

7 Q. Just turning to you, talk about, in your brief, information  
8 from various sources and that that gets inputted into your  
9 various databases or repositories so that you can look  
10 across all of the information held. So, by way of example,  
11 if one goes to the High Court White findings, and if you  
12 look at the findings that were made by His Honour in that  
13 decision about the physical abuse, there were certainly  
14 three people that findings were made against. I won't name  
15 them- but we'll call them Mr B, Mr W and Mr C, you'll know  
16 who I'm talking about.

17 So, just taking that by way of example, the High Court  
18 decision comes out, findings of proven abuse are made, what  
19 do you do with that information?

20 A. That information should be cross-referenced- in the records  
21 that we have for those three staff members.

22 Q. And we can name Mr Ansell, so similarly it would be  
23 recorded, if it was not already recorded, that there was a  
24 finding of sexual abuse against him?

25 A. And I think in his case it was already recorded that he'd  
26 clearly had convictions for sexual assault.

27 Q. And so, from that point on, going back to the earlier  
28 document that we looked at, which talks about taking  
29 guidance from what is known, even if it's not against the  
30 particular claimant that you're assessing, would it be fair  
31 to say that now having got this information recorded it in  
32 your database, that when somebody comes to assess a claim  
33 that names one of those four people, that information will  
34 come to the fore and it will be taken into account?

35 A. That would be my expectation, yes.

1 Q. And what quality control, now that the team is bigger, is  
2 there that that actually occurs?

3 A. I guess probably the, I was going to say best example but  
4 it's not an example, I guess, the other significant that has  
5 happened within the last couple of years, is that we now  
6 have a specific database for the Historic Claims Team that  
7 doesn't rely on just spreadsheets and files in the name of  
8 individuals. They are still kept and they are still helpful  
9 but what we do have is a database that collects a pretty  
10 vast amount of information. And that includes every  
11 allegation that is made in a claim, the name of every person  
12 who an allegation is made against and/or a physical  
13 description, the location of the allegation, the timeframe.  
14 Yeah, so, a variety of bits of information, if you like.  
15 And along with that is information about how the assessment  
16 of each of those allegations and what the conclusions of  
17 that assessment is. So, again, on record if the allegation  
18 is accepted for the purposes of settlement, then again, the  
19 nature of the abuse, the name of the alleged abuser, if  
20 they're named, that kind of information. So, that gives us  
21 much better and easier access to a wide range of  
22 information.

23 Q. And so, just going back to the White claim because it wasn't  
24 just the two plaintiffs, there were also a large number of  
25 similar fact witnesses, and you will recall that the Judge  
26 actually preferred the evidence of the similar fact  
27 witnesses to these particular three physical abusers; do you  
28 recall that?

29 A. Yes, yes, yep.

30 Q. And so, it takes us to Mr Keith Wiffin and his claim, in  
31 that two of those people, Mr W and Mr C, were also in his  
32 allegation. So, the question really is, knowing that in the  
33 White trial allegations were proven in relation to the  
34 Whites, it was accepted from a large number of other similar  
35 fact witnesses. So, when Mr Wiffin's case came across the

1 desk, why was it not immediately acknowledged and taken as  
2 guidance and at face value, the story taken at face values,  
3 as the principles outline, at the very early stage that he  
4 made his claim? Why did that not happen for Mr Wiffin?

5 A. I guess that also takes me to my unease about his claim. I  
6 simply don't have a good explanation, is the short answer.  
7 I do remember, and perhaps there was too much focus at the  
8 time on the most serious allegation that Mr Wiffin had made  
9 about the sexual assaults by Moncreif-Wright. But I do  
10 recall having very mixed feelings about the proposed  
11 settlement offer, if you could call it that, that was to be  
12 made because, yeah, I, well as I said in my brief, the  
13 senior adviser who was looking at his claim, I don't think  
14 disputed in any significant way Mr Wiffin's- account but,  
15 yeah, for whatever reason, that didn't translate into the  
16 settlement offer that should have been made.

17 Q. And you've been taken to the apology letters, we'll come  
18 back to Mr Wright because there is a lot to discuss about  
19 that case, we'll come back to that case later but just in  
20 terms of dashing out to the lunch adjournment, you were  
21 shown the apology letters that Mr Wiffin received, and it  
22 struck me that while there was a generic apology for abuse,  
23 it was unspecified, in that it did not apologise for  
24 physical abuse, it did not apologise for sexual abuse, it  
25 did not acknowledge the residence. Putting myself in the  
26 shoes of a claimant who has gone through, as you've  
27 acknowledged, an unsatisfactory process already, which has  
28 taken four years plus, can you understand how a claimant  
29 receiving a letter like that is disappointed, angry, feels  
30 unacknowledged because it doesn't actually specify what is  
31 being apologised, and it's not Mr Wiffin who is the only one  
32 that the Commission has heard that about, that the  
33 importance is that personal acknowledgment of their  
34 experience. What would MSD take on board from all of that  
35 claimant feedback about what needs to be an apology?

1 A. I guess I find myself in somewhat of a difficult position  
2 because I would like to make some comments, I guess, about  
3 apologies and apology letters but I don't want that to be  
4 seen to be dismissive of the very real concerns that some  
5 claimants will have about the apology letters that they  
6 receive.

7 I don't know how Mr Wiffin felt about either of those  
8 letters.

9 I guess an initial comment I would make, is that we have  
10 an ADR process but one of the realities is that we work  
11 within some constraints. And some things that either I  
12 personally or one of my colleagues might want to include in  
13 an apology letter may not necessarily get there.

14 I think there's a danger of us perhaps generalising, and  
15 again this is in no way not taking into account or  
16 dismissing the concerns of people who do find apology  
17 letters templated or impersonal or not addressing their most  
18 fundamental concerns. But we also know that other people  
19 have found them profoundly meaningful. And, again, it's not  
20 necessarily typical but I remember, I think it was the very  
21 first claim that I dealt with and we settled, meeting the  
22 claimant at Ms Cooper's office at his request, taking the  
23 Chief Executive's apology letter to him and he asked me to  
24 read it to him, which I did. And I don't want this to sound  
25 too emotive but I had tears in my eyes reading that letter  
26 to him, and his feedback following that meeting was that was  
27 very meaningful for him.

28 So, I guess what I'm saying is, every person will have  
29 their own needs and expectations of the entire process  
30 really, and an apology is one part of that. And I guess I  
31 just don't want that perhaps to be lost and, as I said, I  
32 certainly don't want that to be taken that a letter that  
33 might be meaningful for one person will come across as  
34 templated and impersonal and maybe even dismissive to  
35 another.

1 **MS JANES:** We will take the lunch adjournment there.

2 **CHAIR:** Very well. Thank you, Mr Young, we will  
3 resume again at 2.15.

4

5

6 **Hearing adjourned at 1.00 p.m. until 2.15 p.m.**

7

8

9 **CHAIR:** Ms Janes.

10 **MS JANES:** Good afternoon, Commissioners.

11 Q. Welcome back, Mr Young.

12 A. Thank you.

13 Q. We were talking before the break about records and how they  
14 translated into being captured on the databases and the  
15 various other repositories with information that then is, if  
16 I can call it, the body of knowledge, which is a term I have  
17 also seen in MSD documents. And so, looking at the files  
18 and what information was known at various points in time of  
19 what was being done with it, if we can look at MSD1056, and  
20 just to orientate you, that is a document from 2017 and you  
21 are named, along with Ms Hrstich-Meyer, as one of the  
22 contacts; can you see that?

23 A. Yes, I do.

24 Q. And going over the page, and this is a report to Minister  
25 Tolley?

26 A. That's right.

27 Q. And you'll see in paragraph 1, that the purpose of the  
28 report, there was a TV3 The Nation story that aired in  
29 September 2017 and it was about historic staff misconduct?

30 A. That's right.

31 Q. And, as we look at this document, just very quickly again  
32 providing a bit of context to the document, at paragraph 3  
33 it mentions that, "The Ministry is familiar with 17 of the  
34 18 staff names listed by Mr Wesley-Smith" and just for

1 information Mr Wesley-Smith was a journalist at that time  
2 and had requested information under the OIA?

3 A. He certainly had. Yes, I don't know if the information  
4 request was made specifically in relation to this report  
5 but, yes, he certainly had, correct.

6 Q. And then going over the page, if we can move through to the  
7 actual allegations. So, there's a summary. So, the  
8 appendix to this letter records what was known about each of  
9 the alleged perpetrators and the points in time of what was  
10 known?

11 A. That's correct.

12 Q. And so, we may skip some of them and just focus on a few.

13 A. Mm-Mmm.

14 Q. But just before we do that, when you compiled this  
15 information, what were the sources that you went to, to  
16 draft this document?

17 A. As I recall, it would have been, I believe, a combination of  
18 the files that we had created within our own database, as it  
19 were, about any of those individuals. And I'm also pretty  
20 well, 100 per cent, confident that I also got our admin team  
21 to carry out a file search to bring in any staff files that  
22 may have been relevant to the named individuals.

23 And I also recall, I'm pretty sure, a Head Office file.  
24 I can't remember the exact title of it but it was something  
25 to do with staff discipline. So, I also - and I'm sorry if  
26 my memory is a little vague on some of the details but  
27 recalling that specific file suggests that I also asked for  
28 a search on any files where the title suggested that there  
29 might be some information of relevance to any of those  
30 individuals or the issue of staff being transferred from one  
31 residence to another.

32 Q. Because, in fact, in this particular document, there are  
33 references to four alleged perpetrators who had been  
34 transferred between residences?

1 A. Certainly three, the details of three confirmed that they  
2 were transferred and there was certainly the suggestion of a  
3 fourth, yes.

4 Q. And under each heading, you have outlined the residence, the  
5 timeframe in which complaints were received, whether there  
6 were any Police investigations and convictions and how many  
7 claimants, if you've known how many claimants have been  
8 settled with.

9 So, for present purposes because we've really got Mr Earl  
10 White and Mr Keith Wiffin as exemplars or illustrators if  
11 you like, we'll focus on those most pertinent to them.

12 If we look at Michael Ansell at the bottom of that page,  
13 we note that on the first occasion, October 1976, three boys  
14 were placed at Hokio, they disclosed to the staff that  
15 Mr Ansell had sexually abused them. He was interviewed by  
16 the Acting Principal on 19 October and his resignation  
17 accepted as of that date.

18 So, taking the information there, what would MSD have  
19 known at that time and would it have been recorded so it was  
20 available for future claims?

21 A. That information, as far as I recall, was documented on his  
22 because there was, again I'm pretty sure, a staff file in  
23 his name and that information, as I said, I'm pretty  
24 confident, was recorded on that particular file.

25 Q. So, in 1976?

26 A. Yes.

27 Q. And then over the page, it carries on about Mr Ansell and it  
28 talks again about the six charges in Hokio. And then it  
29 talks about the transfers from residence to residence. If I  
30 can have you read that out, please?

31 A. "Hokio Beach school was the only Ministry residence where  
32 Mr Ansell was employed".

33 Q. And we know that he resigned in 1976 and was not employed  
34 again, is that correct?

35 A. To the best of my knowledge, yes.

1 Q. And you have made six payments to six claimants in relation  
2 to sexual assaults by Mr Ansell?

3 A. That's correct.

4 Q. I assume the 2017 one of those would include Mr Earl White?

5 A. Yes, it did.

6 Q. Are you able to tell us when the other settlements were made  
7 in relation to Mr Ansell?

8 A. No, I can't, I'm afraid, off-hand, no. I would need to -  
9 yeah, look at that information to find the answer to that.

10 Q. Could we presume that with the three complaints in 1976,  
11 that potentially three of them related to that incident?

12 A. As I recall, I think only one of those victims from that  
13 time has made a claim.

14 Q. So, in terms of Mr White and Mr Ansell, in 1976 it was known  
15 that there were allegations of abuse and then there was also  
16 the conviction in December of that year?

17 A. Yes.

18 Q. So, when Mr White made his allegations in 1999, why was that  
19 information not taken into account on the principles of face  
20 value, guidance from other cases and application to resolve  
21 meritorious claims?

22 A. At the time Mr White made his claim or subsequent to, at  
23 some time after that?

24 Q. But if you're saying it was recorded in 1976, in 1999 you  
25 would have been able to refer to your database, see that  
26 there was at least one conviction for three people?

27 A. Right.

28 Q. Why was that not given some standing and weighed?

29 A. I can't answer why that might not have been done in 1999  
30 because I wasn't involved in managing or dealing with claims  
31 at that time. So, yeah, I just simply don't know whether  
32 that information was sought out or not.

33 When - well, it was even before I became involved with  
34 the White case, settlement offers had been made to both  
35 Mr Earl White and Mr Paul White and certainly it's my

1 understanding that the settlement offer for Mr Earl White  
2 included the fact that he had been assaulted or sexually  
3 assaulted by Mr Ansell. So, as far as I'm aware, there was  
4 never any question from the Ministry's perspective that that  
5 was the case.

6 Q. And, again, as with Mr Wiffin, we will examine in closer  
7 detail Mr White's case as well.

8 So, moving down the page, if you could just - you have  
9 redacted everything, so I now can't - that's not helpful.

10 So, the next one is also an Epuni Boys' Home document,  
11 alleged perpetrator, and there are two complaints of this  
12 particular person physically assaulting boys?

13 A. So, this is on page 4?

14 Q. On the same page that we were just on.

15 A. Right, yes, yes, lower in the page.

16 Q. Yes. And, in fact, looking at the information, this is Mr B  
17 that we talked about earlier?

18 A. You are correct, I think, yes.

19 Q. Because if we go down to "transfers from residence to  
20 residence", it talks about a move from Beck House to Epuni  
21 Boys?

22 A. Yes.

23 Q. So you would accept that's Mr B?

24 A. Yes.

25 Q. Do you recall that in 1992, now you weren't there but in  
26 1992 a Mr Cutforth wrote a letter to the Human Rights  
27 Commission and copied it to Brian Manchester at the then  
28 department for Social Welfare?

29 A. Yes, I do, and I think that's the letter that I refer to  
30 later in this report.

31 Q. You do absolutely. And in that letter, we can go to it if  
32 needed, Mr Cutforth talks about several people that he has  
33 concerns about, in terms of conduct within residences and  
34 he's bringing to the attention of both the Human Rights  
35 Commission and DSW that where allegations are raised, they

1 get transferred, and he's asking that something be done to  
2 look like that.

3 And one of the people that he mentioned is Mr B and he's  
4 very specific about the concerns about what happened at Beck  
5 House and the move to Epuni?

6 A. Mm-Mmm.

7 Q. And we know from the White trial that Mr B was there at the  
8 time Mr White was there?

9 A. Yes.

10 Q. So, looking at this, we've got a letter in 1992 from  
11 Mr Cutforth which raises concerns about this particular  
12 person. We have under "Steps taken in response to  
13 complaints", there's a complaint in '78, the Principal  
14 interviewed the boy, recommended to the National Office no  
15 further action be taken, but would that have been recorded  
16 in 1978 that there had been an allegation and that was the  
17 recommendation?

18 A. Again, my recollection is that that information was either  
19 available in the file for Mr B or in some associated file,  
20 yes.

21 Q. And then again in 1979, there's another physical assault  
22 recorded, charged with improper conduct under the State  
23 Services Act but clear that he remained at Beck House for a  
24 further 12 months?

25 A. That's correct.

26 Q. So, again, two things arise out of that. That there are at  
27 least two occasions of concern that should be documented on  
28 your database against Mr B?

29 A. (Nods).

30 Q. Should have been available to whoever was assessing  
31 Mr White's case?

32 A. (Nods).

33 Q. You probably need to say yes?

34 A. Sorry, yes.

- 1 Q. Thank you. And then of additional concern is that there is  
2 the transfer and ability to remain in place, somewhere where  
3 Mr Cutforth at least thought he was able to perpetuate even  
4 more abuse than he had been concerned about; is that also  
5 your recollection?
- 6 A. I don't recall the specific details in Mr Cutforth's letter  
7 but, clearly, he was concerned about the possibility that  
8 staff move from one residence to another, where they had  
9 faced complaints, it was obviously a genuine concern for  
10 him, absolutely.
- 11 Q. So, when information comes to the MSD organisation, what  
12 steps would be in place to communicate that back to the  
13 people who may have the ability to check whether Mr B is  
14 still employed, had been terminated? How can he remain in  
15 place for 12 months to abuse other children?
- 16 A. So, you're talking about what steps might have been taken  
17 back then at the time? I don't think I'm qualified to  
18 answer that, primarily because I clearly wasn't there at the  
19 time, nor involved in National Office. But one would expect  
20 that if a complaint of that nature had arisen, I mean  
21 clearly in the 1979 instance he had be charged but, for  
22 whatever reason, somebody somewhere appears to have made a  
23 decision that that didn't warrant him being dismissed, and  
24 clearly I can't speak to why that decision may have been  
25 made.
- 26 Q. And so, moving on, and payments have been made to a number  
27 of claimants but unnamed. Are you aware of how many claims  
28 had been received from Epuni at that point?
- 29 A. From Epuni or specifically to do with Mr B?
- 30 Q. Mr B.
- 31 A. No, I'm afraid I couldn't say how many.
- 32 Q. And then if we jump over the page.
- 33 A. Mm-Mmm.
- 34 Q. We're looking at Epuni and Hokio, so at the bottom of that  
35 page, in this one under "Details of contemporaneous

1 complaints" there are no formal records available for this  
2 particular person but there was a 2009 affidavit sworn in  
3 relation to sexual misconduct in 1972. So, because we're  
4 having trouble with this document, in that it's redacted and  
5 it's therefore not overly easy for us to go through in the  
6 way that we had intended, taking that there are 18 alleged  
7 perpetrators and each one it refers to a number of  
8 allegations and they go back to the very early 70's. The  
9 query really is, if that information is captured as it is  
10 received at the time that the complaints are made, how and  
11 why does that body of knowledge not get used in the  
12 assessments balanced against those principles of taking it  
13 at face value, guidance from previous cases, and the fact  
14 that particularly where it's sexual abuse, it's unlikely to  
15 be recorded and, therefore, more difficult for the claimant  
16 to prove or disprove?

17 A. Any of the information that I've collected for the purposes  
18 of this report should be available to anybody who's  
19 assessing a claim in respect of one of these individuals.  
20 Now, I can't say that in every single instance because I  
21 certainly haven't been over every single claim, but one  
22 would expect that, as I said, the information that I have  
23 obtained for this report would be and should be available  
24 and should be accessed for an assessment of any claim.

25 Q. And if I may be indulged, and people will take me at my  
26 word, if we can jump to page 9 and it's obviously for the  
27 Crown and the witness to provide the full document, but we -  
28 this is unredacted so we don't need to take anyone at their  
29 word. Thank you, excellent.

30 So, again, for Mr Wiffin's case we have what was recorded  
31 for Mr Moncreif-Wright and we have him at Hamilton Boys'  
32 Home from May 1969 to 1970, Epuni Boys' Home 1970 to 1972.  
33 If you could just read through that particular entry for us,  
34 thank you?

35 A. The details of contemporaneous complaints?

1 Q. The whole document.

2 A. The whole thing, sorry, okay. "Alan Moncreif-Wright,  
3 residences employed at, attendant Hamilton Boys' Home May  
4 1969 to November 1970. House Master, Epuni Boys' Home  
5 November 1970 to 22 January 1972.

6 Details of contemporaneous complaints and steps taken in  
7 response to complaints.

8 A staff file exists for Mr Moncreif-Wright. There is no  
9 information on it that suggests any allegations were made  
10 about him while at Hamilton Boys' Home or Epuni.

11 At some point early in 1972 he was interviewed by the  
12 Police in relation to alleged sexual assault of boys at  
13 Epuni. There is no record of this on his file, although an  
14 ex-Assistant Manager of Epuni recalls that Moncreif-Wright  
15 did not return to Epuni following that interview. He was  
16 not employed by the Ministry again.

17 In February 1972 he was convicted on two charges of  
18 attempted indecent assault on a boy and three charges of  
19 indecently assaulting a boy under 16 years.

20 In July 2011 he was convicted on further charges in  
21 relation to three other victims from his employment at  
22 Epuni.

23 Transfers from residence to residence.

24 The records provide no confirmation of this one way or  
25 the other".

26 Q. And so, again in 1972, there would have been conviction  
27 entered on the MSD database?

28 A. Two points. I don't know that there was such a database in  
29 1972. And I guess the second point is that, given that a  
30 staff file did exist for him and there was nothing on it  
31 either about the allegations that were made on his  
32 conviction, would suggest that, for some reason again which  
33 I can't comment on, that information either didn't make its  
34 way to the National Office or to whoever was managing that  
35 file, or if it did, it obviously wasn't recorded.

1 Q. And so just in this particular entry, it talks about a staff  
2 file exists for Mr Moncreif-Wright. When Crown Law wrote to  
3 Cooper Legal about Keith Wiffin's case in 2009, would they  
4 have checked with you whether a staff file existed or not?

5 A. Look, I honestly don't recall but I would have assumed that  
6 in any of the preparations for his claim up to that point,  
7 that they would have asked us if we did have such a file  
8 but, again, I would need to check the records to see if that  
9 was in fact the case.

10 Q. Because in this document, you've clearly recorded a staff  
11 file exists but in a letter from Crown Law to Cooper Legal  
12 on the 1st of April 2009, and Madam Registrar if you can  
13 work your magic. This is just to orientate you to the  
14 document, it is a Crown Law letter, 1 April 2009, it's MSC  
15 ending in 634. It's attaching Alan Moncreif-Wright's  
16 conviction records. If we can go to the second page and at  
17 paragraph 8 you will see there, you will see in paragraph 8  
18 that "At this stage the Ministry has been unable to locate  
19 any relevant staff records for Mr Wright" and for three  
20 other people "although further searching of archives is  
21 continuing". So, clearly there appears to be a breakdown of  
22 location of records on fairly significant cases,  
23 particularly those in filed cases. Are you able to explain  
24 where that staff file might have been in the interim and why  
25 it was not available in 2009?

26 A. I can't give any absolute answer or explanation. Our TRIM,  
27 the database that indexes all our records would show the  
28 time and date at which that entry had been recorded on TRIM.  
29 It's always possible that files that have been - physical  
30 files that have been lurking around in an office may not  
31 have been entered on TRIM and when they are located, they  
32 are. So, the entry on TRIM may well post-date the creation  
33 of that record.

34 **CHAIR:** Can you just remind us, sorry to interrupt,  
35 just remind us when the TRIM system was setup?

1 A. Oh, golly, I have seen it mentioned in documents somewhere  
2 but -

3 **CHAIR:** Did you set it up?

4 A. No, no.

5 **CHAIR:** It was there before you came?

6 A. Yes, it's been setup by the records people in the Ministry.  
7 I would be tempted to say maybe the '80s or early '90s but  
8 I'm guessing.

9 **CHAIR:** Thank you but it certainly predated your  
10 arrival?

11 A. Certainly my arrival in historic claims, yes.

12 **CHAIR:** Thank you.

13 A. Sorry, so a possible but I don't think a likely explanation  
14 is a physical file may have existed but hadn't been entered  
15 on TRIM. Again, my suspicion though is that the entry had  
16 been on TRIM all along.

17 Another possible reason is that there was an error in the  
18 search and that the search wasn't done well. But, beyond  
19 that, yeah, I can't explain, I'm sorry.

20 **MS JANES:**

21 Q. And without going back to the document which was causing us  
22 some problems, on my account of those alleged perpetrators,  
23 there were seven of the 18 that involved Epuni?

24 A. I would need to count but I'll take your word for it.

25 Q. We can go back and count if you like but, yes dash?

26 A. Yes.

27 Q. I've counted seven, if you'll take my word for it for the  
28 moment?

29 A. I will.

30 Q. And Hokio there were four?

31 A. Again, I'll take your word for it.

32 Q. And, in terms of the number of payments, really what  
33 I'm - the point I'm propositioning to put to you is payments  
34 for Epuni, there had been at least 26 because there were  
35 some of those seven that were not quantified and for Hokio

1 there had been at least 16. So, again, in terms of the body  
2 of knowledge of what was known to MSD, the number of claims  
3 that you had assessed as being meritorious and settled, what  
4 comment would you make about those numbers from those  
5 institutions? So, 26 at least from Epuni and 16 at least  
6 from Hokio.

7 A. Well, I guess an obvious comment is that, one is too many,  
8 as in one instance of abuse is too many. But I guess we  
9 knew from a reasonably early stage that there were three  
10 institutions that stood out, if you like, certainly in the  
11 number of claims that were being lodged in relation to them.  
12 Two of those were Hokio and Epuni and the other being  
13 Kohitere Boys' Training Centre.

14 So, it's not an unpleasant surprise that there were that  
15 many, and there will of course be more in relation to, well,  
16 both since this report was written but also likely in  
17 relation to other matters in relation to both of those  
18 places.

19 Q. You gave evidence this morning when we looked at the  
20 document that your counsel took you to in August 2006 and  
21 you talked about MSD undertaking an investigation of those  
22 who might be current employees. But when you actually look  
23 at the allegations in the Cooper Legal DSW Culture and Abuse  
24 Paper, there were 200 allegations against 235, and albeit  
25 you didn't know who the claimants were, it did set out the  
26 residences?

27 A. Yes, it did.

28 Q. It did set out the number of alleged perpetrators in each  
29 residence?

30 A. It did.

31 Q. And it set out the nature of the claims?

32 A. That's right.

33 Q. And it set out the time periods?

34 A. Yes.

1 Q. So, if you were able to investigate because you are a  
2 Historical Claims Unit, you looked at who might be the  
3 current perpetrators but what did MSD do to take that body  
4 of knowledge and investigate the timeframes for those  
5 particularly problematic residences, the common perpetrators  
6 and the common timeframes? Did you see that as an  
7 obligation that you had to actively seek out victims of  
8 abuse and provide redress or was it very much let's wait and  
9 see if they come forward?

10 A. We'd already obviously had, by that stage, a number of  
11 people coming forward and indications that many more would.  
12 I can't say it is directly in response to that document, but  
13 I recall perhaps on a couple of occasions over time talking  
14 about whether we should, whether that was an obligation or  
15 not, approach potential victims and potential claimants.  
16 And I think that was - one of those discussions, as I  
17 recall, was in relation to the named victims in Mr Ansell's  
18 convictions.

19 And my general recall of those discussions included  
20 considerations around what I guess on the one hand  
21 obligation we may have had, and I am not sure whether any  
22 definite obligation was ever established, balanced again  
23 knocking on somebody's door, so to speak, 30 or 40 years  
24 after the fact and raising the issue again of them being a  
25 victim or a potential victim and the issue of whether or  
26 not, you know, that should be acknowledged in some way.

27 So, no, I don't, beyond those considerations, we didn't  
28 take, I suppose what could be said a proactive approach to  
29 searching out claimants or potential claimants.

30 Q. Would you agree, without going and knocking on doors, which  
31 is fraught, but there are other ways that one could reach  
32 out? So, if you take your three - just for clarity, which  
33 are the three you've called your problem residences?

1 A. Well, they certainly were at that stage, I'm not sure  
2 whether they still are the three stand outs, but they were  
3 Kohitere, Hokio Beach School and Epuni Boys' Home.

4 Q. And so, given what you knew about those way back then, could  
5 proactive but short of knocking on doors, so something on  
6 the website calling for people who may have experiences of  
7 those residences that they wish to share with the Ministry,  
8 was there ever any thought to being proactive about trying  
9 to at least invite engagement from those victims?

10 A. Again, I think there were occasional conversations of that  
11 nature and I guess there are a number of things that either  
12 I personally or as a Ministry we can look back on with  
13 hindsight and think we could have done or should have done,  
14 and that is a reasonable suggestion, to be fair.

15 I think, and again it's no excuse but I think in the  
16 context certainly in those early days of a very small team,  
17 still a somewhat unclear mandate of what our respective role  
18 might be, and the constraints of an unknown budget, I'm sure  
19 they factored into, you know, could we, should we, take  
20 those proactive steps?

21 But, in any event, we haven't. I mean, in subsequent  
22 years there was obviously some media attention and focus on  
23 claims. So, there was, I guess, a slight raising of public  
24 awareness but beyond that, yeah, I guess that's the extent  
25 of public awareness programmes, if you like.

26 Q. And just quickly going to MSD2374, or is that the one we  
27 just had? Is that the same one? Thank you.

28 You also wrote another report in relation to that TV3 The  
29 Nation and I just want to have a quick look at, again, Alan  
30 Moncreif-Wright. So, just again to orient, if we went to  
31 the very end we would see your name as the author, so we  
32 will get to the very end shortly but we'll stay on page 1  
33 with Alan Moncreif-Wright. And this really just provides  
34 some further information but it does say that he was

1 subsequently charged, if you carry on down. That's the one,  
2 yep.

3 A. "In July 2011 he was convicted and sentenced on further  
4 charges in relation to 3 other victims from his employment  
5 at Epuni."

6 Q. And just to clarify, one of those was Mr Wiffin?

7 A. That's correct. "In a 2007 interview of Maurice Howe, the  
8 manager of Epuni at the time of Moncreif-Wright's  
9 employment, he said that, "I seem to suspect there may have  
10 been something happen there so he was transferred to us at  
11 Epuni". He could recall no other details.

12 An historic claimant who met with CLAS in March 2013  
13 disclosed that he was sexually assaulted by a Mr Ian Wright  
14 while at Hamilton Boys' Home. Although the name is slightly  
15 different, the claimant was in the home at the time  
16 Moncreif-Wright was employed there, so it is almost certain  
17 he was the offender and for the purpose of the claim that  
18 was accepted".

19 Q. Two points arise out of that, Mr Young. One is in 2007,  
20 which was contemporaneous with Keith Wiffin's claim, there  
21 was this interview with Mr Howe, the manager of Epuni and  
22 the suspicion aspect.

23 So, again, why was that not taken into account for  
24 Mr Wiffin because you now have 1979 and 2007?

25 A. I think as - sorry, I think as I talked about before lunch,  
26 if it had been wholly my decision, that would have been  
27 taken into account for Mr Wiffin.

28 Q. And just going to the CLAS, the next section, clearly there  
29 is another claimant who has made similar allegations but  
30 this time at Hamilton Boys' Home?

31 A. Yes.

32 Q. Abuse by Moncreif-Wright and the claim was accepted. So,  
33 why was that similar meritorious category not extended to  
34 Mr Wiffin because you've got contemporaneous -

1 A. I guess, for the reason - well, that claim obviously came  
2 some years after Mr Wiffin's claim and obviously, by that  
3 stage we knew more about Moncreif-Wright than we did a few  
4 years earlier and we'd obviously also made a payment,  
5 somewhat belatedly, to Mr Wiffin and possibly others, I  
6 can't recall.

7 Q. I was going to say when we talk about Mr Wiffin's case, but  
8 it seems more appropriate now. You said this morning in  
9 your evidence that in 2009 the senior social worker had  
10 recommended that he was of the view that the allegations  
11 Mr Wiffin made were to be accepted?

12 A. I don't know that she made that recommendation as such, but  
13 I certainly recall that her view was that the abuse was  
14 likely to - yeah, likely occurred as Mr Wiffin described,  
15 yes.

16 Q. And, at that stage in 2009, were you still effectively the  
17 quality assessor manager?

18 A. Yes, I was the manager of the team, yes.

19 Q. So, you say if the case had come to you, you would have  
20 approved it immediately, so what went wrong?

21 A. By that stage, if my recollection is correct, Mr Wiffin's  
22 claim because it was a filed proceeding and I think to some  
23 extent was proceeding down the trial track, I may be  
24 incorrect but there was certainly some involvement in the  
25 claim by our legal team and by Crown Law. And one of those,  
26 you know, one of the, I suppose, final discussions about his  
27 claim is reflected in the Crown Law letter to Mr Wiffin.  
28 And I think if I'm brutally honest, the legal impediments  
29 got in the way of my or our team's moral judgement and  
30 acceptance of Mr Wiffin's claim. And, yeah, I think that's  
31 - and I hold myself certainly partly responsible for not  
32 being perhaps more assertive about, yeah, taking a different  
33 approach and settling the claim on the basis that he was  
34 assaulted.

1 Q. Can you tease out for me because it is an interesting point,  
2 about how assertive MSD believes it could or should be in  
3 these claims? You've talked about the expertise of social  
4 workers and that they are the ones that assess and made  
5 recommendations but what happens then? Where is the level  
6 of authority or responsibility or ability to be assertive?

7 A. It's perhaps helpful to think about, and again this is no  
8 justification, but helpful to think about the context.  
9 Mr Wiffin's claim, like the claims of the White brothers,  
10 occurred in the earlier stages of the Historic Claims Team  
11 and the earlier stages of the ADR process and they were  
12 still being managed, to some extent, within that litigation  
13 framework. And so, there was, to some degree, greater or  
14 lesser, a legal lens placed over those claims and that was  
15 quite, I suppose, separate to any assessment that we, as the  
16 social work advisers, might have made about practice issues  
17 or information that may go to the facts of a claim.

18 And, in some respects, I guess in those earlier days, my  
19 team, particularly for those filed proceedings, were  
20 something of advisers to the legal team and, yeah, in  
21 providing social work advice I guess essentially and making  
22 some inquiries/investigations about factual matters to do  
23 with the claim.

24 Having said that, my social workers were not backwards in  
25 coming forward and they would very clearly express, I guess,  
26 their views about certainly any practice issues or issues  
27 around allegations of abuse.

28 But I think certainly in more recent years though, as our  
29 ADR process became much better embedded, then, if you like,  
30 the legal team became advisers to us and we, I guess, were  
31 more separated from our litigation focus. And, in those  
32 instances, I was going to say what we said went but I don't  
33 quite mean it as absolute as that but, yeah, we were the  
34 primary inquirers/assessors of a claim in those. And for  
35 claims that came to us directly, didn't necessarily have any

1 involvement with our legal team at all. For those  
2 proceedings that were filed, then we had an obligation to  
3 get some advice from our legal colleagues. So, there might,  
4 on occasion, be discussions and debates between the social  
5 workers and the lawyers about particular issues or  
6 potentially about quantum but ultimately, yeah, I'm just  
7 trying to think if there were any examples where we just  
8 couldn't agree and it had to be escalated, and I can't off  
9 the top of my head.

10 I think answering your question about how assertive  
11 social workers were, I would say quite assertive.

12 Q. So, if I just take three examples. I take it, sexual abuse  
13 is absolutely never a practice of any day?

14 A. No, absolutely not, no, no.

15 Q. And I take it that physical assault that results in injury  
16 is not - never a practice of the day?

17 A. No.

18 Q. And in terms of social workers, what would your advice be  
19 about the no narking culture?

20 A. I am not sure what our advice would be, other than  
21 understanding that that was a feature, I guess, of many  
22 institutions and hierarchies really.

23 Q. But was it acceptable, in terms of what the practice of the  
24 day was?

25 A. I don't think you can say that no narking was - it's just  
26 something that was.

27 Q. It's a culture?

28 A. Yes, it's a culture, not a practice. Yeah, it's something  
29 you can't make a practice decision, if you like, about. It  
30 was just something, as you say, a culture.

31 Q. And then if we look at secure, which we saw yesterday right  
32 from the 1957 Field Manual, automatic. So, we're not saying  
33 the use of secure is never permitted but automatic is  
34 certainly contrary to the Field Manual, and that would be  
35 social work advice to the legal team?

1 A. That's right.

2 Q. And then if we can go to MSD2007, and again as that's coming  
3 up, this is March 2006 CYF report to the Associate Minister  
4 of Social Development. And if we can move over the page,  
5 please, he might see whoever wrote this got a gold star from  
6 the Minister.

7 A. It clearly wasn't me.

8 Q. Had it been you, you would have got a gold star. So,  
9 orientating ourselves on page 3, it talks about you had the  
10 Cooper Legal Culture of Abuse paper, it sets out the  
11 allegations, 235 alleged perpetrators, you've confirmed that  
12 eight and possibly 12 of those staff are still employed.  
13 And if we can go to the next one, it talks about you  
14 interviewing the staff, it was the one we skipped over.

15 So, on this particular page, in this report 1b, details  
16 approximately 500 potential claims?

17 A. That's correct.

18 Q. Do you see that?

19 A. Yes.

20 Q. And so, there was quite a number of claims that the  
21 Department was aware were coming their way and likely more  
22 expected?

23 A. That's correct.

24 Q. And if we go down to the "Current Claim", paragraph 7, it  
25 talks about the fact that it's the White trial, complexities  
26 but significant expense, along with legal and media risk; do  
27 you see that?

28 A. I do, yes.

29 Q. Was that something, were there discussions with MSD and  
30 Crown Law about the risks involved in terms of cost,  
31 publicity, likely greater number of claims depending on the  
32 outcome?

33 A. Yeah, at that stage I'm pretty sure I wasn't involved in any  
34 of those - assuming there were such discussions, I wasn't

1 involved in any. But one would imagine there would have  
2 been some kind of discussions between Crown Law and us, yes.

3 Q. And if we go to page 3, paragraphs 2-3, that's all right.

4 Paragraph 3, paragraph 5, so if you go back a page. No,  
5 we're in the wrong document. That's okay.

6 There is another document. Do you remember, it may have  
7 even been the one that you talked about this morning where  
8 in the report to the Minister it talked about a confession,  
9 somebody had been interviewed and had confessed, I thought  
10 it was this document but it might be the previous one, and  
11 that the Minister has actually underlined the confession of  
12 sexual assaults on over 200 claimants; do you recall that  
13 information?

14 A. Yes. I don't recall what report or paper it may have  
15 appeared in but I do recall that particular offender and  
16 that issue, if you like, yes.

17 **COMMISSIONER ALOFIVAE:** Para 12, Ms Janes.

18 **MS JANES:** Thank you so much, Commissioner.

19 A. Oh, yes.

20 Q. That's the one, thanks. And, yes, as I recall, there were  
21 some pen marks.

22 So, in terms of those 235, there had been interviews of  
23 some staff members?

24 A. By us?

25 Q. Yes.

26 A. Yes, we had spoken to a number of ex-residential staff, yes.  
27 Not necessarily any of that 235, yep.

28 Q. And, as I recall, out of those interviews with ex-staff, a  
29 number corroborated the Cooper Legal allegations in the  
30 Culture of Abuse paper?

31 A. By and large, yes, that kind of, some of those incidents,  
32 some of those types of behaviour, yes.

33 Q. And so, when information comes to you, such as in paragraph  
34 12, one staff member alleged to have sexually assaulted and  
35 confessed to over 200 residents, what action does MSD take?

1 A. In that particular instance, and I don't want it to sound  
2 like splitting hairs, but my recollection is the 200 people  
3 may have included - weren't solely residents of Hokio - he  
4 was at Hokio Beach School but also included his own family  
5 members.

6 But some time after we became aware of that, we spoke  
7 with and wrote to Cooper Legal, as we understood it Cooper  
8 Legal had that list and we asked if we could get that list  
9 so that it could be used to essentially inform any claims  
10 that we might receive either from those particular  
11 individuals or anybody else who named that particular  
12 individual.

13 Q. And are you aware that Lake Alice, I don't know if you heard  
14 Mr Knight's evidence, but Lake Alice was a total of 200  
15 claimants for the global settlement; are you aware of that  
16 information?

17 A. No, I wasn't aware of the number.

18 Q. Because, at this stage, the Ministry has determined that  
19 there is no systemic or endemic failure; do you recall that  
20 in your report?

21 A. I recall that being written, yes.

22 Q. And this is having interviewed/investigated all of the files  
23 that you had available at that time? I think the paper  
24 talks about all historical files have been referred?

25 A. Yes, all that would have been available and appeared  
26 relevant, yeah.

27 Q. What would have determined relevance at that point in time?

28 A. Going back to that TRIM database, one of the challenges is  
29 the way in which a file is titled or the title that a file  
30 is given. And the title of the file doesn't always give a  
31 really clear indication of the content of the record. So,  
32 there might be - a file title may appear has though at first  
33 glance it isn't particularly relevant to a particular  
34 individual or a particular issue but if you look at the  
35 content of that file it may prove otherwise. And similarly,

1 the dates that the file covers weren't always accurate, so  
2 it was sometimes difficult to pin down what files might be  
3 relevant to a particular timeframe.

4 Q. So, just lining up what information you had at the time,  
5 you've got the 235 in the Cooper Legal paper, correct?

6 A. Yes.

7 Q. You've got 500 claims that you know are - I don't know how  
8 many you had at that stage but you knew 500 were coming?

9 A. Prospective, yes.

10 Q. You have this information about one perpetrator confessing  
11 to 200 sexual abuse events and you have the information that  
12 you've advised us you've collected on your databases looking  
13 at the retrospective TV3 The Nation information. I suppose  
14 the question is, and before I ask that question, you also  
15 have filed claims. So, just quickly looking at, when a  
16 claim is filed, I assume it's served on Crown Law?

17 A. Yes.

18 Q. And then you get a copy?

19 A. That's right, yes.

20 Q. And what do you do with the information in those Statements  
21 of Claim?

22 A. Well, the Ministry then begins to make some kind of  
23 inquiry/assessment of that particular claim. And sorry -

24 Q. Carry on.

25 A. With the aim of trying to bring it to some kind of  
26 resolution.

27 Q. And so, allegations are recorded at that stage to update  
28 your database, in terms of perpetrators, residences,  
29 timeframes, proven or not at that stage but just to keep a  
30 running information base about what at least allegations  
31 are?

32 A. Yes, they should have been and are, given the limitations of  
33 the technology we had available up until more recently, yes.

34 Q. And did you have anybody analysing that data or just was it  
35 being captured and not analysed?

1 A. There was no-one whose specific role it was to analyse that  
2 data, no.

3 Q. Because I do have a document where I did a little bit of  
4 analysis on the Crown Law filed claims. If we may take a  
5 slightly early adjournment, I will, rather than turn my back  
6 on the witness, set that up.

7 **CHAIR:** Yes, find that document and we'll come back in  
8 15 minutes.

9 **MS JANES:** Thank you very much.

10

11 **Hearing adjourned from 3.21 p.m. until 3.40 p.m.**

12

13 **CHAIR:** Thank you, Ms Janes.

14 **MS JANES:** Thank you, Commissioners. So, just a  
15 little explanation about the document that you're  
16 going to see, and it has been given in the break to  
17 the witness so he has a little bit of familiarity  
18 about it.

19 **CHAIR:** Yes.

20 **MS JANES:** Under the section 20 information that the  
21 Royal Commission requested, the Crown filed a  
22 spreadsheet of all filed claims relaying to MSD  
23 claims. It is a very large document and unable to be  
24 reproduced in a way that can be presented here, so I  
25 have done an analysis. So, the document is being  
26 presented as my analysis. The witness doesn't have to  
27 accept the veracity of the actual numbers, it will be  
28 a proposition that is put to him. My learned friends  
29 are comfortable with that. They will review the  
30 numbers and, if I'm wrong, they will come back and  
31 tell me.

32 **CHAIR:** Yes, I was going to say, they can always come  
33 back with suggestions, if I can call them that  
34 politely, having reviewed it.

35 **MS JANES:** Absolutely.

1     **CHAIR:** On the basis that it's proposition only,  
2     that's fine.

3     **MS JANES:** It is.

4     Q. So, with that explanation, Mr Young, in the document in  
5     front of you, what it is in front of you, just to reframe  
6     for everyone looking at it, the year, then a number next to  
7     it, those are the number of claims that were filed in that  
8     particular year. They're not cumulative. Where there is a  
9     residence such as Epuni or Hokio noted, '95, obviously those  
10    are the only two but for the others I have only picked  
11    particular ones that we have been talking about like Epuni  
12    or Hokio or Kohitere.

13    **CHAIR:** Can I just, it says filed claims, does that  
14    include matters in the High Court?

15    **MS JANES:** Just the High Court filed claims.

16    **CHAIR:** Just the High Court?

17    **MS JANES:** Just the High Court filed claims.

18    Q. So, looking at that document, if we take it up to the end of  
19    2006, which is really prior to the White trial in 2007, we  
20    see there is 74, if one does one's maths very quickly, that  
21    relate to Epuni. Of the 61 in 2006, 26 of those are from  
22    Epuni, 20 are from Hokio, Kohitere 20. And just confirming  
23    your earlier evidence of those three being your problematic  
24    residences, that bears that out?

25    A. It does, yes.

26    Q. And so, the general proposition is going back to the numbers  
27    that we were looking at before, is that you've got your 235  
28    from the Cooper Legal paper, you've got the 200 confessed,  
29    whether that's all victims of abuse or familial abuse as  
30    well. You have 74 claims filed already, you know there's  
31    500 more coming; correct?

32    A. Yes.

33    Q. And this doesn't include unfiled claims, are you able to  
34    give us any sense at all about what that might have looked  
35    like at that time?

1 A. By 2006, there would have been, in fact I think it was 2006  
2 we received our first direct claim, if you want to call it  
3 that, and it was later in the year, as I recall.

4 Q. So, not filed claims, if I can call it that?

5 A. No.

6 Q. And so, given that Lake Alice was considered sufficiently  
7 serious at 200 victims of abuse, and we're at around 1,000  
8 at this point, at what point would MSD have said this is so  
9 serious that we need to look at something like a Lake Alice  
10 global settlement, even if only for specified settings such  
11 as Epuni, Hokio and Kohitere?

12 A. In hindsight, it's very easy, I guess, to come to the  
13 conclusion that that would have seemed like a reasonable  
14 proposition. Whether any specific consideration was given  
15 to a global-type settlement arrangement, I was going to say  
16 I can't recall but as I was saying that I think now there  
17 were references to that possibility. And again, without  
18 making any judgement of whether it was the right course to  
19 pursue, I recall one of the considerations was that Lake  
20 Alice was, and I'm not an expert obviously on Lake Alice  
21 but, as I understood, it was constrained obviously to that  
22 one hospital and certainly some of the events particular to  
23 the Child and Adolescent Unit and the treatment of a  
24 particular doctor.

25 Whereas, the MSD, or as they were then Child, Youth and  
26 Family claims covered a much wider range in number of  
27 institutions and potential other types of care placements as  
28 well.

29 I acknowledge that that doesn't preclude, as you perhaps  
30 suggested, that such an arrangement couldn't have been or  
31 could potentially have been targeted at some specific  
32 institutions.

33 And I'm also aware that some consideration was given and  
34 the Minister at the time considered whether there should be  
35 some kind of inquiry and, again, for whatever reason, a

1 decision was made obviously not to go ahead with that  
2 inquiry.

3 Again, in hindsight, I suspect it would have been helpful  
4 if this Commission had been held 14 years ago and that may  
5 have given us or the Crown perhaps a clearer and more  
6 certain direction to take.

7 I don't know if I've gone off beam with my response to  
8 your question but, yeah, I guess history tells us that for  
9 whatever reason or reasons, neither the Ministry nor the  
10 Crown as a whole took the view at that time that there  
11 should be a Lake Alice type approach to these particular  
12 claims.

13 Q. So, I suppose it's a matter of what information gets  
14 escalated in terms of what the belief about the nature of  
15 the problem you're dealing with is?

16 A. That's certain the case and whether the right information  
17 was escalated to the right people at the right time is, I  
18 guess, an open question.

19 Q. So, I suppose in terms of thinking it through, if you've  
20 analysed some files but they're probably not all of the  
21 residential files and you come to a conclusion that there's  
22 no systemic or - not you necessarily but MSD -

23 A. Yep.

24 Q. - come to a conclusion that there is no systemic or systemic  
25 abuse or endemic failure within the organisation, and that  
26 is the information that goes up the policy chain, if you  
27 like, to the decision-makers, would you accept that the  
28 nature, not in any way saying it was deliberately minimised  
29 but if that was the view that was formed and it was that  
30 there was nothing to look at here in terms of systemic  
31 abuse, it's not surprising that an Inquiry was rejected in  
32 2005? Whereas, if different information, pulling together  
33 the strands of numbers that we've got now, which is 1,000,  
34 would you accept that a very different decision might or  
35 could have been made at that time?

1 A. Clearly, it's speculative but yes, it's always possible that  
2 had different information or a different emphasis been known  
3 at an earlier stage, that might have prompted a different  
4 response. I certainly don't think there was ever any denial  
5 of the fact that abuse had occurred, and quite clearly there  
6 had been many instances of abuse. If there was an error,  
7 for want of a better word, yeah, it's perhaps in the scale  
8 of that and what that potential scale might be and how then  
9 best to address it, yep.

10 Q. And, I suppose, where the Commission finds itself now, is  
11 that MSD has 4,177 claims, 40 new ones each month. Who  
12 within the Ministry is actually assessing the size and  
13 nature of the problem and determining what is the right  
14 approach to addressing that?

15 A. As I understand it, the leadership team has overall  
16 governance responsibility for all aspects of the Ministry's  
17 business, and that includes historic claims. I am not  
18 intimately involved in - I am certainly not a member of  
19 that team, nor involved in the, I guess, advice that might  
20 go to that team but I imagine that the people, and certainly  
21 through the relevant Deputy Chief Executive, is aware of the  
22 numbers, the scale. I know he is aware of the task that is  
23 ahead of us still and will continue to be ahead of us unless  
24 landscape changes.

25 So, yeah, that is my understanding of, I guess, who has  
26 oversight, if you like, of the current scale.

27 Q. From my perspective, as I stand back and look at the  
28 information and you look at Lake Alice where there was one  
29 person and 200 victims; you look at the MSD information, one  
30 person, 200 victims, if you take the broad reach; you've got  
31 a large number of other perpetrators who are known about.  
32 So, Mr Wiffin actually put it very eloquently and I can't  
33 really say it better than him, so I will actually read what  
34 he said. At page 56 of his transcript he was asked whether  
35 Alan Moncreif-Wright was a lone bad apple, he said, one of

1 the things, he talked about having a restorative justice  
2 meeting with Mr Moncreif-Wright, one of the things he would  
3 testify to is the fact that there wasn't just one or two bad  
4 apples. "Certainly in the institution I was in, there might  
5 have been one or two good apples but basically the tree was  
6 rotten". So, at what point does that message come through  
7 loud and clear that the size and nature of the problem is  
8 you're dealing with a rotten tree, not the odd bad apple?

9 A. At what stage does that become clear? Well, I mean, it's  
10 clear by the sheer fact that we have almost 4,200 claims and  
11 more coming in every week that there were certainly a lot of  
12 bad apples and it would appear not to be the systems and  
13 processes in place to keep that or keep them in check.

14 I guess all I can speak to is that, and it's not  
15 necessarily specifically answering your question, all I can  
16 speak to is that within the environment and the constraints  
17 that we've been working in, we have been making efforts to  
18 address each individual person's claim as well as we can  
19 within those constraints. And I'm the first to acknowledge  
20 that that hasn't always worked at all well for some people,  
21 Mr Wiffin and Mr White included.

22 And, I mean, I guess in one respect, you know, the fact  
23 that the Ministry, or up until now the Crown, hasn't taken a  
24 different approach is the reason we're here today and, you  
25 know, it's, I guess, the Commission's burden now to make an  
26 assessment of what has gone on in past years to too many  
27 people and to make some decisions and recommendations about  
28 how that might now be best dealt with. And, yeah, I think  
29 that's all I can say honestly to your question.

30 Q. So, we're here to talk about redress.

31 A. Yes.

32 Q. And the concern is that the Commission will be sitting for a  
33 lengthy period.

34 A. (Nods).

1 Q. These claimants are getting elderly. The longer the delays  
2 go on, the more traumatic and revictimised they are; you'd  
3 accept that?

4 A. Yes, certainly for many, yes.

5 Q. What is the impediment to then taking a step back because  
6 otherwise in 10 years' time we all look back and say, "If  
7 only in 2010 we had done something different", what are the  
8 impediments to looking at residential global settlements or  
9 something other than individual by individual claimants  
10 which we have seen are flawed, inconsistent, long delays  
11 in-between them, even from the evidence that we heard from  
12 the few survivors that we had in phase 1, what could or  
13 should be done differently so that we don't sit here in  
14 10 years' time?

15 A. It's a good question that you put to Mr MacPherson yesterday  
16 also and it's interesting to reflect, yeah, on a number of  
17 issues.

18 And one of them is that some years ago we took perhaps  
19 baby steps to doing exactly that in regard to three  
20 institutions where we clearly had a number of - a  
21 congregation of claims, if you like, around those places and  
22 so looked, to the extent to which we could, global isn't the  
23 wrong approach but we looked to and did settle small groups  
24 of claims that came from the same residence that had similar  
25 elements to them and effectively, settled them as a group.

26 Should we have made attempts to do that on a larger  
27 scale? Perhaps so. But coming to now -

28 **COMMISSIONER ERUETI:** I just want to clarify that.  
29 You're talking about smaller scale, high global  
30 settlements, if you like?

31 A. Yes.

32 **COMMISSIONER ERUETI:** What point of time was this?  
33 Did you say 10 years ago?

34 A. You're testing me a little now, but I would have thought  
35 maybe between 2010-2012 but I could be corrected on that.

1 **COMMISSIONER ERUETI:** And they related to Kohitere?

2 A. Dunedin Boys' Home, Kohitere and Epuni, possibly Hokio as  
3 well, yeah.

4 **COMMISSIONER ERUETI:** Thank you, thank you.

5 **MS JANES:**

6 Q. And just by way of another example because there's a 104  
7 page document on the chronology of Whakapakari from '89 to  
8 '99 I believe and there were a number of allegations and a  
9 number of reviews and a couple of times the recommendation  
10 to not refer claimants there. So, when you get cohorts like  
11 the ones you've just described or you get the Whakapakari  
12 cohort where there is a known 10 year period of abuse,  
13 unacceptable behaviour, and then you look at the very  
14 disparate, I don't know if you heard the Cooper Legal  
15 evidence but they went through very disparate settlement  
16 amounts from \$5,000 ranging up to \$85,000 for the Court  
17 settlements, can you see how for claimants to have to  
18 individually through a number of different processes, a  
19 number of different outcomes, it just exacerbates that sense  
20 of unfairness, inequality, lack of transparency?

21 A. Again, without wanting to seem like I'm disagreeing with  
22 you, I think we again need to avoid generalising, and  
23 certainly I have no doubt that some claimants will find that  
24 lack of transparency or, you know, unfairness traumatic, for  
25 want of a better word. But I think it's also fair to say  
26 that some claimants do want their claim to be looked at  
27 individually and understood, their specific experience  
28 understood. And I think if there was, you know, a comment  
29 on the fast track approach, it was that although many  
30 claimants, you know, settled their claims through that, some  
31 of the feedback we received was that they were disappointed  
32 that they didn't have that opportunity to engage with us in  
33 a way that the other, the normal process would have allowed.

34 And I guess thinking about any future redress process, I  
35 think one of the things that I would suggest, and I'm sure

1 is obvious to all, is that one size doesn't fit all. And in  
2 the same way, it's delays. The delays in resolving claims  
3 are patently unacceptable in terms of the three or four  
4 years or more in some instances and that needs to be managed  
5 far, far better. But I also know that some claimants have  
6 said to us, "Actually, I'm pleased that I had some time to  
7 process, to understand", to do whatever they needed to do.

8 So, I think whatever redress process we might have,  
9 whether that remains with the Ministry or whether that sits  
10 outside, as much as possible it needs to fit each person and  
11 I know that is a huge challenge having a process that is  
12 customised to each individual person but I really believe  
13 that that is one of the key considerations and key  
14 challenges. You know, within that there may also be the  
15 possibility and the benefits of some type of global  
16 settlements for particular places or particular groups or  
17 whatever. But, again, I would have thought that survivors  
18 should have some choice, I guess, in how their claim might  
19 be managed.

20 And, yeah, I guess, I think again I've gone off track, I  
21 can't even remember what your original question was now but,  
22 yes, I guess, it was we don't want in 10 years' time to be  
23 looking back on what we have done now and what are the  
24 impediments.

25 I guess there are a number of impediments. Again, if I  
26 can speak frankly and no disrespect to my legal colleagues,  
27 I think the best thing we could do is take the resolution  
28 process totally out of the litigation context and we still  
29 need to preserve people's right to go to Court if that is  
30 their wish or if that's necessary, and I think the legal  
31 people acknowledge that themselves, some people need that  
32 access to justice. But issues, Bill of Rights allegations,  
33 dealing with those in an ADR process is fraught and  
34 difficult and challenging and it makes achieving resolution  
35 for a person, yeah, somewhat problematic for us.

1           And so, I think if it can just be moved entirely I think  
2 litigation framework, there would need to be some Crown  
3 principles or framework upon which how you do acknowledge  
4 BORA breaches and false imprisonment and all of those other  
5 issues that keep lawyers or some lawyers maybe awake at  
6 night, that I think is you know when we will perhaps truly  
7 get towards a process that will be more claimant focused and  
8 hopefully, yeah, get the kind of resolution that people  
9 might want.

10          Another huge challenge is quantum. If people are to  
11 receive a financial payment, what's that for? Is it for  
12 compensation? And if it is, that raises other issues and  
13 questions. Is it just as an acknowledgment in some way of  
14 what a person has been through? And whatever the answer is  
15 to that question, how do you determine what is an  
16 appropriate financial acknowledgment for what a person has  
17 gone through? I'm certainly not suggesting that we've  
18 cracked that by any stretch of the imagination. But, again,  
19 that will be a real challenge, as I said, whether the  
20 redress process remains within agencies or outside. How do  
21 you test a claim? Do you test a claim? Do you expose it to  
22 any kind of tests and checks? And, if so, what is the level  
23 of those?

24          So, I guess there, I guess some of my top of mind  
25 thoughts about some of the potential impediments and some of  
26 the challenges that are going to face us one way or the  
27 other, yep.

28 Q. There's a very rich vein of conversation arising out of  
29 that, so let me work my way through some of those issues.

30          Picking up on the BORA aspect, I know from documents that  
31 I've seen, that that is something that has exercised your  
32 mind over a period and that your recommendation has been  
33 that, again it's where does that moral divide lie? In that,  
34 a lot of claimants won't know that they have a BORA breach,  
35 particularly if they are a direct claimant?

1 A. That's right.

2 Q. So, without the benefit of legal advice, what is the  
3 Ministry's obligation to ensure that they are not  
4 disadvantaged by lack of knowledge about those rights?

5 A. I believe our obligation is to identify any potential breach  
6 of the Bill of Rights Act and if that is the case, then that  
7 should be acknowledged in the same way as somebody who has  
8 legal advice and is clearly aware of that potential breach.

9 Q. And so, in your ideal scenario, how does that happen without  
10 access to lawyers?

11 A. Firstly, the people assessing the claims have a general  
12 understanding of the kind of allegation post-1990 that may  
13 constitute a BORA breach. They have access to senior staff,  
14 including myself, if they need any advice or guidance around  
15 that question.

16 But ultimately, we would take each of those issues to our  
17 legal team and seek advice from them on whether or not the  
18 facts of the case do constitute a breach or not.

19 So, in that case, whether the claim is represented or  
20 whether it's from somebody who comes to us directly, that's  
21 something we would rely on our legal colleagues to advise  
22 on.

23 Q. And then in terms of because there are a lot of complex  
24 legal issues underpinning a lot of these claims, vicarious  
25 liability for example, what would you say is the current  
26 status of the MSD's approach to vicarious liability,  
27 particularly in respect to section 396 of providers?

28 **MS ALDRED:** Sorry, I am just a little bit, I just have  
29 to identify really, that's a legal proposition, I  
30 think, that you are asking this witness.

31 **CHAIR:** I don't think your microphone is on. Just  
32 restate that, please?

33 **MS ALDRED:** Yes. It just seems like Ms Janes is  
34 asking Mr Young to express a view about a legal  
35 proposition which, I mean, it is not really something

1 that Mr Young is in a position to address. That's  
2 probably all I need to say. It just seems a little  
3 unfair.

4 **CHAIR:** I will just ask Ms Janes -

5 **MS JANES:** There is actually a document where Mr Young  
6 has expressed his view on vicarious liability and so,  
7 within the MSD process, that is fed into the thinking.

8 Q. So, Mr Young, I can take you to that document.

9 **CHAIR:** I think you should, if you're able to find it,  
10 that's only fair.

11 **MS JANES:**

12 Q. I just need to find the right document. We've jumped to  
13 another topic. So, the document is MSC349. This is from  
14 November 2013, Mr Young, just to orient you. It is an  
15 internal MSD email. If you go to the bottom because you've  
16 got the only version, if you go to the bottom it says, "Hi  
17 Garth" on the 6th of November, I am not sure who Anna Hunn  
18 is.

19 A. Anna I think at that stage was Acting Manager of the  
20 Historic Claims Team.

21 Q. If you can just read the advice that you were asked to  
22 provide?

23 A. Sorry, yep. "Hi Garth. Jennifer has asked about the  
24 liability of MSD for the Youth Horizon Trust". Jennifer  
25 being one of the Senior Social Work Advisers. "We could put  
26 this on the agenda for the next meeting as there are a  
27 number of places we had for young people more recently -  
28 Whakapakari, Moerangi Treks etc. Are we liable for what  
29 happened at all of these or is there some distinction. Do  
30 we need more clarity? We will be seeing more and more of  
31 these coming in and it would be good to have some idea when  
32 we are emailing people."

33 Q. Can you read your response?

34 A. "Thanks. I wish there was a simple answer", golly. "Some  
35 thoughts/opinions are:

1 1. If our only role was in approving the organisation and  
2 the CYP" child, youth or young person "was placed there by  
3 their parents or someone other than MSD then our liability  
4 is likely to be limited if any. We got an opinion on  
5 something similar re Salvation Army Homes many years ago  
6 but, as is often the case, it was ambiguous. I would  
7 certainly think that our liability would increase if there  
8 was any evidence that the approval and/or monitoring process  
9 was faulty or if concerns about the provider were brought to  
10 the attention of MSD and they were not adequately addressed.

11 2. If we did place the CYP with the organisation, and  
12 particularly where we had legal responsibility for the CYP,  
13 then it is pretty well established now that we are  
14 vicariously liable for actions committed by staff of the  
15 organisation and we can't abrogate our duty of care. That  
16 might be further compounded if there were also issues with  
17 approval and monitoring, as was the case with Moerangi Treks  
18 and the same looks to be the case with Whakapakari. In  
19 essence then, it depends on the facts of the particular  
20 case. I will write this up into some guidance for the  
21 Practice Manual that is very slowly taking place but also  
22 very happy to discuss and take other advice/thoughts on the  
23 matter".

24 Q. Do you recall, did you write up the guidance for the  
25 practice manual?

26 A. I drafted a practice manual. I can't recall, I'm sorry,  
27 whether there was guidance covering this, but I think there  
28 probably was, yeah, but I honestly can't remember, I would  
29 need to refer to that to be sure.

30 Q. So, going back to your earlier conversation, and not in any  
31 way wishes to protect the legal profession, but there are a  
32 range of issues, would you accept that a claimant might wish  
33 to seek advice in terms of what their rights were or whether  
34 to give them up for a short, a quick settlement or a longer  
35 settlement? And there may not be the level of trust that

1 the Department would give them the advice that was in their  
2 best interests?

3 A. You're correct, some of these issues are legally complex and  
4 I for one don't always understand all of them. So, yes, one  
5 would expect then that some claimants would also either  
6 struggle to or not be aware of their potential rights around  
7 some of those issues.

8 Q. You will be aware of a view expressed by a number of  
9 survivors and victims, including both Mr White and  
10 Mr Wiffin, that it's very difficult to trust the  
11 organisation that put you in care, you then suffered abuse  
12 and effectively, it's deny[ing] and defend[ing] the  
13 reputation and protect[ing] the employees of the  
14 organisations? So, that's a perception, not stating it as a  
15 reality but for a lot of claimants, going to the very  
16 organisation that they feel is responsible, accountable, to  
17 then have them tell them what their rights are, there may be  
18 a level of trust that would be hard to sustain for them?

19 A. I understand that perception and that suspicion, if you  
20 like. And I guess that's one of the reasons why, as you  
21 mentioned earlier, settlements now are by way of a  
22 settlement agreement. And, where a person isn't legally  
23 represented, one of the things that we do our best to ensure  
24 [is] that the claimant does get some legal advice before  
25 entering into that agreement, so independent advice and  
26 they're given some funds to do that if they wish to. You  
27 know, that's acknowledging that, you know, that is a big  
28 deal, signing that agreement. And we don't want people  
29 doing that without, yeah, without being fully aware of the  
30 implications of doing so.

31 Q. And we heard yesterday that where there's an allegation  
32 about a staff member, MSD funds \$2,000 of independent legal  
33 advice. Is a similar ability awarded to a claimant who  
34 wants to seek legal advice if they come direct to MSD to

1 determine what they should or shouldn't be doing with their  
2 claim?

3 A. I'm not sure. There is certainly funding available.

4 Whether it's capped at a particular amount or reasonable  
5 costs, I'm honestly not sure.

6 Q. Do they have to go through Legal Aid or is there something  
7 provided by MSD?

8 A. No, no, they can go to a solicitor of their choosing and  
9 then that solicitor merely needs to invoice the Ministry.

10 Q. But you're not sure if there's a capped amount?

11 A. No, I'm not. Ms Hrstich-Meyer might know but, yeah, it's  
12 not, you know, I don't want to be unhelpful but it's not  
13 something that I'm involved in directly, so hence my lack of  
14 certainty.

15 Q. That's fine. And then going back to un-tease a little of  
16 the earlier conversation, you've identified that one size  
17 does not fit all, if I can summarise it that way. Some want  
18 shorter processes, some want that full investigation, full  
19 acknowledgment. Would you agree then that it is about a  
20 redress process that has options?

21 A. I certainly would, yes.

22 Q. And if there is a redress process that has options, it is  
23 then about full information, full understanding about, using  
24 a legal term, fully informed consent, so that you actually  
25 know what you're opting in or out of and what you're  
26 agreeing to and what you're giving up or the consequences of  
27 your choices?

28 A. Yes, a person ideally needs to know what the process  
29 involves, what they're getting into and certainly if it  
30 comes to any kind of - signing any kind of agreement, then  
31 absolutely they should know and understand what the  
32 consequences of that are.

33 Q. So, just going to the whole ex gratia versus settlement  
34 agreement, because my understanding from the information  
35 that the Inquiry has received, is that ex gratia was

1 effectively given where there was a sense of a moral  
2 liability, if we go back to the Crown Litigation Strategy, a  
3 moral liability rather than a legal liability. So, an ex  
4 gratia payment was made in circumstances where perhaps the  
5 Limitation Act or the ACC bar would undermine a legal  
6 liability but there was still that sense of a moral  
7 liability.

8 And in one of the claim strategy meetings you sat on, on  
9 that Committee, and I think you were an attendee there, if  
10 need be I can find the document but it talked about really  
11 going back to what are you paying for, is it acknowledgment,  
12 is it compensation, but also ex gratia or settlement, are  
13 you taking something away from the claimant because  
14 effectively they could bring no further claims, whereas ex  
15 gratia they could.

16 So, are you able to describe why the Ministry has moved  
17 away from ex gratia payments to settlement payments where,  
18 as we saw in the earlier document this morning, it's to stop  
19 them making multiple claims? So, it's full and final, end  
20 of story. Why has there been that shift?

21 A. I don't know whether it's helpful or not but just commenting  
22 on your initial, I suppose, distinction between settlement  
23 payments and ex gratia payments.

24 You're absolutely correct that ex gratia payments, I  
25 think by definition, are an acknowledgment of a moral wrong.

26 Q. As Mr White said, he looked it up and it was a gift.

27 A. A gift. The payments that we also made to claimants that  
28 were termed settlement payments were, in my view, also done  
29 on a moral basis. They were, I suppose, termed settlement  
30 payments because they were payments that were made in  
31 respect of proceedings that had been filed. So, the legal  
32 impediments, if you like, were still set aside in those  
33 instances, so the payment was still made on a moral basis,  
34 if that makes any sense.

1 But to answer your question about why the change, I think  
2 I mentioned that earlier today. Again, it's not something  
3 that I was involved in, the discussions about or the  
4 decision-making but, yeah, my understanding is that it is to  
5 provide some finality to the claim. It doesn't prevent  
6 somebody subsequently coming back to make another claim but  
7 that is something that, if someone did do that, then it's up  
8 to a senior manager to exercise some discretion about  
9 whether that subsequent claim would be accepted or not.

10 But, yes, I guess my understanding, and my colleague  
11 Linda might correct me or the hearing on it, that it is to  
12 provide some finality both for the claimant and also for the  
13 Crown that that claim has been settled and put to rest.

14 Q. We can finish that topic with Ms Hrstich-Meyer tomorrow but  
15 thank you for that. I note we've got half an hour, I'm  
16 going to just, I think there's a discrete topic, I'm going  
17 to change my order, there's a discrete topic I think I can  
18 get through before 5.00.

19 So, if we change gears not totally but we'll go to  
20 wellness payments because that seems to flow from where  
21 we're at, at the moment.

22 So, you've mentioned - it's actually in  
23 Ms Hrstich-Meyer's brief of evidence at paragraphs  
24 3.17-3.18, that MSD will pay for counselling costs and not  
25 rely on the claim having been assessed and that it will  
26 enhance support options; does that accord with your  
27 understanding?

28 A. Yes.

29 Q. Of what's available?

30 A. Yes, it does.

31 Q. And I recall reading documents from very early in the  
32 settlement processes, and I think you were involved in  
33 drafting the documents but correct me if I'm wrong, that  
34 there was intended to be wraparound support? So, not just

1 counselling but also education, those sort of more holistic  
2 options of support. Can you confirm that was the intention?

3 A. It certainly was and, yes, from quite an early stage, and  
4 that was I guess borne out by the conversations we had with  
5 some claimants, that one of the things that they were  
6 looking to was potentially getting access to a range of  
7 services for themselves or their families. And we did, you  
8 know, I remember a number of instances where our senior  
9 advisers would work with somebody who had made a claim but,  
10 you know, their claim hadn't yet been assessed, to access a  
11 variety of services. We would assist them with getting in  
12 contact with Housing New Zealand or whoever they were,  
13 supporting them through Work and Income. We provided  
14 literacy education for one gentleman.

15 And, I guess, going back to my comment about constraints,  
16 again, you know, one of my, yeah, one of my disappointments,  
17 I guess, is the extent to which we were able to provide  
18 those kinds of more wraparound services in those early days  
19 was really constrained. And again, without making any  
20 excuses, I think the sheer volume of claims and the size of  
21 the team meant that that was one of the first things to go  
22 by the wayside. We would still do whatever we could to  
23 provide some level of pastoral care, if you like, to  
24 claimants but it was something that we all would love to  
25 have been able to do more of. They were social workers,  
26 after all. I mean, they weren't employed to be social  
27 workers, but I think some of them found it difficult not to  
28 have that response and to support people in a more, yeah,  
29 with their actual day-to-day needs.

30 So, yeah, that was certainly something that we initially  
31 hoped to do and did do to some extent. And it's obviously  
32 something that we are now, the Ministry is now picking up  
33 again, in a way that will hopefully give claimants some  
34 choices, as you say, about how they engage with the Ministry  
35 or whether they engage with us at all or whether that is

1 done through someone who they feel much more comfortable  
2 with and trusting of.

3 Q. And so, if somebody came to the Ministry and said, "As part  
4 of my redress, I would like access to counselling, either at  
5 the beginning or during or after", what would the response  
6 have been?

7 A. Now or in the past?

8 Q. In the past?

9 A. In the past. Well, certainly, if someone wanted  
10 counselling, and I use counselling in a kind of broad, you  
11 know in quite broad terms, to support them now and through  
12 the process, then that was - that would be very, very rare  
13 if that was turned down for any reason. I can't think of  
14 why it would be. And I don't know whether anecdotes are  
15 helpful but, you know, one man didn't want counselling, the  
16 last thing he wanted to do was talk to anybody. He managed  
17 his depression and his addictions through walking in the  
18 bush every day. So, we bought him some, at his request,  
19 some really good quality walking tramping boots because he  
20 didn't have any and we bought him two or three pairs, as I  
21 recall. So, I guess even in some small ways we try to, you  
22 know, address some people's needs.

23 But, yeah, certainly if someone wanted counselling or  
24 support of some sort, to get them - during the claims  
25 process, then funding for that was provided. And also, the  
26 redress package, if you like, for a number of claimants also  
27 might have included revision of some kind of services.

28 And I think I said in my brief, I think, that no recent  
29 wellness payments had been made but I'm actually not sure  
30 that that's entirely correct. Again, it comes down to  
31 timeframes but certainly, a couple of settlements for Cooper  
32 Legal clients perhaps might be going back a couple of years  
33 did include a wellness payment or an additional payment that  
34 they could put towards some kind of services that they  
35 specifically wanted.

1 Q. So, if we go to 2002 when Earl White, there was a settlement  
2 offer made to MSD, and at that point included in the  
3 monetary sum was counselling, access to counselling, and  
4 Mr White's evidence was that he was never given any  
5 counselling, even though the Ministry had been advised that  
6 that was a need that he had. What would have gone wrong and  
7 why was he not able to access?

8 A. In 2002, I can't speak to that specifically because I wasn't  
9 involved. And, yeah, it wouldn't have been until those  
10 early years of the Historic Claims Team, so you know around  
11 2006, 2007, 2008, that the provision of those kinds of  
12 services were something that we, you know, were thinking  
13 about and doing.

14 So, in 2002, whoever saw that offer and that request, I  
15 suppose, well, I guess I might have made some assumptions.

16 Q. Would you not have been consulted at that stage?

17 A. No.

18 Q. You were overlooking -

19 A. Not in 2002, no, no.

20 Q. Not in 2002?

21 A. No, I was in another role outside of historic claims at that  
22 time.

23 Q. So, who would have been overlooking those types of -

24 A. At that time, it would have been dealt with entirely within  
25 the legal team, both between Crown Law and the Child, Youth  
26 and Family legal team.

27 Q. And your team would not, given that you were the social  
28 workers and would have a better understanding than the  
29 lawyers about counselling and efficacy or requirement for  
30 claimants, no consultation went across the legal team and  
31 your team?

32 A. Well, we weren't a team until later, some years after that.  
33 So, there wasn't an Historic Claims Team in 2002 and at that  
34 time I was managing, yes, still managing the Ministerial  
35 team, for want of a better name, yep.

1 Q. If we can call up a document MSC491. This is May 2016. It  
2 is a draft policy, it clearly says "draft" on it, it's the  
3 19th of May 2016. I'm not sure Elizabeth Brunt's position  
4 who wrote this?

5 A. She was acting, I'm not sure what the title was, but Acting  
6 General Manager of the group that included the Historic  
7 Claims Team.

8 Q. And it's a draft policy for additional support available to  
9 people who have made claims of historic abuse. And  
10 paragraph 4 talks about the opportunity practice. If we can  
11 call out the bottom part, I'm just conscious of the time, so  
12 if I may shorthand but correct me if there's anything that  
13 you think I'm getting wrong.

14 So, currently counselling may be provided to claimants on  
15 an ad hoc basis, where a senior Social Work Adviser has  
16 advised a need by a claimant for additional support, so the  
17 process at that time was if someone like yourself saw a  
18 need, a need was expressed by a claimant, you were able to  
19 escalate that on an ad hoc basis, correct, that's correct.

20 Q. And then, as you've said, it could also be part of a package  
21 to resolve a claim, which is what we were talking about  
22 where you thought there might have been a recent case?

23 A. That's correct.

24 Q. Moving on to the next page. And just as that states, it's  
25 also additional to counselling that may be available through  
26 ACC.

27 And then it goes to the wellness payments. So, if we can  
28 call that out. And just again, you had summarised in your  
29 evidence that it was based on the Minister's agreed January  
30 2010, so we probably don't need to repeat that. That was in  
31 your evidence?

32 A. That's correct.

33 Q. Paragraph 6, page 2, it just talks about that it's part of  
34 the Ministry's Claims Strategy Group. That's the group you  
35 were involved in, were you involved in 2011?

1 A. Yes, I would have been.

2 Q. If you could just read out what was agreed in those two  
3 paragraphs?

4 A. "The Ministry's Claims Strategy Group of 19 April 2011  
5 agreed:

6 "That wellness payments would only be used as per the  
7 wording in the Minister's report, i.e. only to enable filed  
8 claimants to exit the litigation stream with dignity in line  
9 with the original mandate by Ministers. We will not use  
10 wellness payments for unfiled claims, or for filed claims  
11 where we consider some compensation for harm should be  
12 paid."

13 Q. And if we can move to paragraph 7, please.

14 A. "In practice 9 wellness payments ranging between \$5,000 and  
15 \$7,000 have been made between 2010 and 2015 across both  
16 filed and unfiled claims. All payments were made in cases  
17 where it was determined that there was no basis for an ex  
18 gratia or settlement payment. The payments were made to  
19 acknowledge the claimants distress and hurt arising from  
20 their care experience and to reimburse or enable them to  
21 access supportive services. No evidence was required to  
22 justify the payment".

23 Q. So, just two points if I can quickly ask you about those.

24 Looking back, nine wellness payments in a period of five  
25 years seems very small, particularly given the number of  
26 claims that the Ministry was dealing with.

27 So, are you able to explain why so few payments had been  
28 made over that period?

29 A. That number needs to be seen in the context though of the  
30 claims that did receive settlement or ex gratia payments.

31 So, there was, you know, a smaller percentage of claims  
32 that, for a variety of reasons, a payment for settlement or  
33 ex gratia payment wasn't made but obviously in nine specific  
34 instances there was a determination made that, despite that,  
35 a wellness payment should be made. Beyond that, I

1 can't - you know, it would be interesting to know, I guess,  
2 in that period of time the number of claims that didn't  
3 receive a settlement and ex gratia payment, and whether nine  
4 was a very small or a slightly larger proportion of that  
5 number.

6 Q. And if we go to the next paragraph, so nine wellness  
7 payments were actually made, and the next paragraph talks  
8 about only 18 were offered and not all were taken up?  
9 Sorry, if you can pull that up, it's much easier to see.

10 So, paragraph 10, "Such payments have been offered in 18  
11 claims between 2010 and 2015. The total amount of services  
12 offered (but not necessarily taken up) is \$110 - 225" which,  
13 again, that number was in your evidence.

14 A very quick question. Yesterday Mr MacPherson provided  
15 a very helpful graph as Appendix 1 about a breakdown of  
16 costs. And in his counselling [costs] it only showed  
17 \$79,000 between 2006 and 2019. Are you able to just clarify  
18 for us why the difference of his number and your number?

19 A. In short, no, I can't. I certainly know the number that was  
20 included in my brief was obtained from our finance team for  
21 the specific purpose of that brief, so I relied on them to  
22 get that information. Why that might differ from the number  
23 in Mr MacPherson's evidence, I really can't say.

24 Q. So, I suppose for the Commission trying to make a decision  
25 about which number, it's a hard question for you but where  
26 did you get your number from? And we should have asked  
27 Mr MacPherson yesterday where he got his number from.

28 A. Well, as I said, I got my number from our finance team. As  
29 I recall, I asked them to look at the financial records.  
30 For most, as in a bureaucracy, most expenditure has a line  
31 item by some kind of title and, as I understand it, there's  
32 a line item called "counselling" or something similar. I  
33 would assume that Mr MacPherson got his information from the  
34 finance team as well but, beyond that, yep, I can't say.

1 Q. That's something for us to resolve, thank you. If you're  
2 not able to help, that's fine. It sounds like it may have  
3 been different questions asked which provided different  
4 numbers.

5 A. Yep. I guess, one of the things that we also know is that,  
6 and you know I still approve requests for counselling in  
7 principle, I don't have the budget for it, but you know we  
8 are still approving the funding of counselling for claimants  
9 on a very regular basis.

10 Sometimes, and perhaps in many instances, claimants don't  
11 take that up or don't take it up for some time. So, the  
12 numbers appear for those periods of time, I agree, very low.  
13 But, again, I think I would suggest that the important fact,  
14 not just now but going forward, is that there is provision  
15 for and access for claimants to get whatever type of support  
16 or assistance or counselling that they might think that they  
17 want. Whether that is taken up or not and how much is spent  
18 on it, I was going to say is kind of irrelevant. That's  
19 again giving people the option, the choice, that something  
20 is available for them.

21 Q. And this draft policy then goes on to tease out what, so  
22 we've looked at current and it then looks at what was  
23 proposed in terms of the wellness policy. So, if you can go  
24 over the page, "Proposed support". Very quickly, it talks  
25 about counselling. And if we go to paragraph 14, up to 6  
26 counselling sessions available to each individual paid upon  
27 invoice from counsellor, as you've already said. But it  
28 says it is not to exceed \$2,000 excluding GST, can you see  
29 that?

30 A. I can, yes.

31 Q. And then if we go down again, in addition to counselling  
32 there was also other support costs. And if we go to c,  
33 remove visible tattoos, literacy, numeracy, education  
34 services, requisite education. So, it was those other

1 things outside of counselling that you've already talked  
2 about?

3 A. Yes.

4 Q. And there was also, moving down the document, there was also  
5 a monetary limit on that which, when it comes up, you'll see  
6 it's \$5,000. So, yes, we're at paragraph 22?

7 A. 22.

8 Q. Absolutely. I should have gone there because that's a  
9 summary, so 19 is \$2,000 for counselling and \$5,000 is for  
10 other support costs.

11 And then it's very clear at the bottom, paragraph 24,  
12 "For the avoidance of doubt, cash wellness payments will not  
13 be made".

14 But then, Mr Young, if I can take you to MSC447, so this  
15 is in February 2017. You're not on this email exchange, so  
16 let's look at what it says but by all means you tell me if  
17 you have any awareness of it or not, although it does say in  
18 the first paragraph that "Carolyn Risk, Linda, Garth, Leith,  
19 Celia, Andrew and I met on the 13th of February to discuss  
20 the high level policy for the new process changes to the  
21 Historic Claims Process".

22 Do you recall at that meeting whether this draft policy  
23 was discussed? Are you seen it before?

24 A. The draft policy?

25 Q. The draft policy.

26 A. Yes, I can't recall the first time I saw it, but I've seen  
27 it again in preparation for the hearing.

28 Can I recall if it was specifically discussed at that  
29 13th of February meeting? Unfortunately, not.

30 Q. In the second paragraph it says, "We discussed situations  
31 where we had previously made wellness payments" and it looks  
32 at for trial litigation cases "in effect a way to augment  
33 the settlement offer but put rehabilitative restrictions on  
34 the use of the funds. We agreed that a wellness policy

1 wouldn't apply for this group as they were outside the  
2 regular ADR process".

3 So, can you just describe very quickly, was there a  
4 separate process for litigation cases and a separate process  
5 to accessing counselling and support services for ADR  
6 processes?

7 A. I wouldn't say there w[ere] separate processes but it's true  
8 to say that counselling that was provided initially, so when  
9 a claimant first approached us or through the assessment  
10 process, was primarily accessed by direct claimants, as  
11 opposed to claimants who were legally represented.

12 So, that didn't mean that legally represented claimants  
13 couldn't get access to that kind of counselling but it was  
14 certainly less common.

15 When it comes to, I suppose, what was termed a "wellness  
16 payment", then given that earlier Minister's direction, one  
17 of the purposes obviously was to acknowledge a claimant  
18 where there wasn't the basis for a settlement but I guess  
19 this was looking also at, if you like, increasing the scope  
20 of such a payment. So that, where a settlement was  
21 warranted, then there may also be a wellness payment made on  
22 top of that, in addition to that, for whatever purpose.

23 And was there a similar process for claims that went  
24 through the ADR process? Yes, as I recall, some wellness  
25 payments would have been paid to some of those claimants.  
26 Did any receive a wellness payment on top of an ex gratia  
27 payment? I honestly can't recall.

28 Q. And just going to the last paragraph it says, "Flowing on  
29 from this, we didn't see a need for a wellness policy". So,  
30 the policy that we've just looked at, this particular group  
31 of people who met on the 13th of February decided that "that  
32 policy was not necessary in a rare situation where we felt  
33 we should be paying for safe tattoo removal (the tattoos  
34 would need to be linked to a failure over and above the

1 settlement payment) we could always approve an ex gratia  
2 payment".

3 I suppose the question looking back again for that  
4 consistency and transparency, would it not have been useful,  
5 not only internally but externally, to have a policy that  
6 was very clear about what was available and in what  
7 circumstances?

8 A. It would, and it would have been helpful internally. And I  
9 think, as I was reflecting on the issue of these payments in  
10 preparing my brief, and I know it doesn't always seem like a  
11 particularly satisfactory answer but, yeah, there were no  
12 documents to rely on and I didn't - I don't recall coming  
13 across this when I was preparing that brief but I think one  
14 of the issues that I think the team struggled with was,  
15 yeah, understanding themselves what the boundaries were for  
16 a wellness payment to be made. Because conceptually, it  
17 seems like an entirely reasonable thing to do, if not making  
18 cash payments, providing funding for some kinds of services.

19 So, yes, a policy would have been helpful. Why it  
20 ultimately wasn't agreed upon, I can't explain further than,  
21 at the moment anyway, this email.

22 Q. Is there a possibility that it was fiscally driven, in that  
23 if you have a policy and it is known to claimants to be  
24 available, they may actually ask for it and would have to  
25 receive it?

26 A. I hope this is taken genuinely but I have never been of the  
27 view that we have been fiscally constrained in the way we  
28 can get redress for claimants. Now, I know clearly, you  
29 know, every government agency doesn't have an endless  
30 budget, but my experience is that there have never been any  
31 overt constraints placed on us, whether that's in relation  
32 to a settlement or ex gratia payment or a wellness payment.

33 So, certainly from my perspective, and I obviously can't  
34 speak for other officials in the Ministry, the way we  
35 approached claimants and how we might deal with them and the

1 redress we might be able to get for them is never fiscally  
2 driven.

3 **MS JANES:** Commissioners, that ends my wellness  
4 section.

5 **CHAIR:** And we have hit 5.00 and gone beyond, so it  
6 means that I think Mr Young will be required to come  
7 back in the morning, is that correct?

8 **MS JANES:** Yes.

9 **CHAIR:** Mr Young, that probably isn't the best  
10 prospect for you but it would be very helpful for us -  
11 A. An expected one.

12 **CHAIR:** Thank you for your co-operation. So, we will  
13 end the day and ask for our kaumatua kuia.

14

15 (Closing waiata and karakia)

16

17 **Hearing adjourned at 5.05 p.m.**

18

**ABUSE IN CARE ROYAL COMMISSION OF INQUIRY  
STATE REDRESS INQUIRY HEARING**

**Under** The Inquiries Act 2013

**In the matter of the Royal Commission of  
Inquiry into Historical Abuse in  
State Care and in the Care of  
Faith-based Institutions**

**Royal Commission:** Judge Coral Shaw (Chair)  
Dr Andrew Erueti  
Ms Sandra Alofivae

**Counsel:** Mr Simon Mount, Ms Hanne Janes,  
Mr Andrew Molloy, Mr Tom Powell  
and Ms Danielle Kelly

**Venue:** Level 2  
Abuse in Care Royal Commission  
of Inquiry  
414 Khyber Pass Road  
AUCKLAND

**Date:** 22 October 2020

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**TRANSCRIPT OF PROCEEDINGS**

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1 **CHAIR:** Mōrena, tēnā koutou katoa, Ms Janes.

2 **MS JANES:** Kia ora, Commissioners, and good morning,  
3 Mr Young.

4 A. Good morning.

5 **MS JANES:** And similar oath?

6 **CHAIR:** Good morning, Mr Young.

7 A. Good morning.

8 **CHAIR:** You remain on the affirmation you took  
9 yesterday.

10 A. Certainly, thank you.

11

12

13

**ERNEST GARTH YOUNG**

14

**QUESTIONED BY MS JANES**

15

16

17 **MS JANES:**

18 Q. Mr Young, yesterday you agreed, and Mr MacPherson had also  
19 said on Tuesday, that both of you believed that litigation  
20 was not the best way to resolve historic claims for abuse;  
21 correct?

22 A. That's certainly my view, yes.

23 Q. And if we can look at CRL ending in 16545, and while that's  
24 coming up, it's a memorandum to Cabinet Policy Committee.  
25 So, it's from the Attorney-General who at that stage was  
26 Michael McCullen. It's undated but if we look at  
27 paragraph 1, it says, "On 21 February 2005", so we can  
28 assume for these purposes it is after that date?

29 A. (Nods).

30 Q. Thank you. And it refers to the Cabinet decision of 2005,  
31 as we've seen, and then it talks about consistency of  
32 approach. That's not highlighted, let me just quickly have  
33 a look through this.

34 Can you go to the second page, please? I'm looking for -  
35 it looks for consistency of approach.

1     **CHAIR:** Does your magic machine have a search  
2 function, Ms Janes?

3     **MS JANES:** No, it doesn't unfortunately.

4     **CHAIR:** All well, we are all busily looking.

5     **MS JANES:**

6 Q. Perhaps while the trial director looks for a paragraph that  
7 talks about consistency of approach, the cases are to be  
8 considered on the merits and on the same terms. I think I  
9 can just put the proposition -

10    **CHAIR:** It's found.

11    **MS JANES:** Perfect, thank you.

12 Q. Paragraph 27, if you can just read that through?

13 A. "Consistency of approach (though not necessarily of outcome)  
14 is important to ensure that all cases are considered on  
15 their merits and in the same terms. It would be undesirable  
16 to have some cases settled on one basis while other cases  
17 are put to the test of a trial, unless there are clear  
18 parameters that distinguish one from the other".

19 Q. So, that very much goes to the principle of treating like  
20 cases like, correct? So, not treating them dissimilarly?

21 A. With, it would appear with the proviso, if you like, that  
22 there are some issues or the word that's used there  
23 "parameters" that distinguish some, I guess, as being  
24 different to the norm.

25 Q. And so, if it's undesirable to put some to the test of a  
26 trial unless there are clear parameters that distinguish  
27 them, what would that entail?

28 A. What might - shows parameters mean, do you mean?

29 Q. What would those clear parameters be?

30 A. I'm not sure that I'm entirely qualified to make a comment  
31 on that, although I guess one might be if a plaintiff, for  
32 whatever reason, chose to go to trial. And again I guess,  
33 subsequent to this, if efforts to settle a claim couldn't  
34 be - don't achieve settlement and so any other avenues of  
35 achieving the settlement, such as a judicial settlement

1 conference, aren't successful, so ultimately the case may go  
2 to trial. But, beyond that, I am not sure that I can offer  
3 any distinguishing features.

4 Q. And so when we're looking, you've made the distinction  
5 between those that, for whatever reason, go on the trial  
6 track and those that are not on the trial track because  
7 there wasn't an ADR process necessarily for a period, was  
8 there?

9 A. No, not in kind of formal terms, if you like.

10 Q. Correct. And so, we've looked at the duty of care issue,  
11 and that's obviously something that is looked at when going  
12 to trial, the duty of care, but I'd like to just explore  
13 that a little further. For the Historical Claims Team,  
14 whether you take it as sort of a formal legal principle,  
15 what would you say the Department's duty of care is when a  
16 claimant comes forward for a redress process?

17 A. Whether there's a general duty of care or not, I'm not sure.  
18 All I could speak to, I guess, is, has that duty changed in  
19 some regard depending on the timeframe and approach?

20 And, again, I'm not a lawyer. As I understand it, duty  
21 of care is a legal concept but if I think about the ADR  
22 process, which is I guess the process that I'm most familiar  
23 with and have primarily worked in, then our duty of care is  
24 about, I guess, some of those principles that we talked  
25 about yesterday, treating - and that, I guess, starts with  
26 treating a claimant with respect and integrity, right  
27 through to dealing with their claim in as fair a way as  
28 possible and with the aim of achieving some kind of  
29 resolution or redress for that person in a fair and  
30 reasonable way. But most of all, I guess, dealing with that  
31 person respectfully.

32 For claims that are being dealt with in the litigation  
33 realm, then again, I guess I'm making some assumptions that  
34 duty of care is to, I guess, act as a model litigant and  
35 deal with the litigation in a way that the Court would

1 expect. So, I guess that's my best answer, I suppose, as to  
2 what that duty might entail.

3 Q. And would it be fair to say that at the heart of it as well,  
4 I assume like Mr MacPherson you would accept that these  
5 really are some of the most vulnerable citizens that  
6 New Zealand has?

7 A. Again, without wanting to sound dismissive, I think again we  
8 can make some generalisations. It's without doubt that many  
9 of our claimants, many of our survivors, are incredibly  
10 vulnerable, incredibly traumatised from their experiences.  
11 But some claimants that we have met are also amongst  
12 probably the most resilient, strongest and most courageous  
13 people that we've ever met. So, I think it doesn't benefit  
14 any of us to think of claimants as one homogenous group. I  
15 absolutely agree that many are very vulnerable, yeah, and  
16 have been very traumatised and still living with the  
17 legacies of their experiences.

18 Q. And it's important to acknowledge that there are a large  
19 number of very resilient victims and survivors?

20 A. Absolutely.

21 Q. So, if it one looks at the redress process and you take your  
22 claimant as they are, would you agree that one of the  
23 principles to apply is to do no further harm as they go  
24 through the redress process?

25 A. Every effort should be made exactly to do that, in the same  
26 way as when a child or young person comes into care, the  
27 bottom line principle should be to do no more harm,  
28 absolutely.

29 Q. And part of that do no further harm, would you accept that  
30 that is not to put a claimant to an unreasonably high burden  
31 of proof when all the information and power lies with MSD?

32 A. That is, on the face of it, a reasonable proposition but I  
33 would have thought it needs to be seen within the context of  
34 the claim as a whole. I assume we're talking about the  
35 White case?

1 Q. We're heading towards the White case.

2 A. I guess, yes, we shouldn't be putting people to an  
3 unreasonable test, but I guess if you find yourself, for  
4 whatever reason, in the litigation framework, then by  
5 definition that suggests that there's going to be a level of  
6 testing and, clearly, a level of testing that doesn't  
7 necessarily apply in an ADR process.

8 Q. Because the reason I'm talking about this before the White  
9 case, is that we've heard, not just from Mr White, but we've  
10 also heard from Georgina and Tanya Sammons and on behalf of  
11 their sister Alva Sammons. We've also heard from Mr Wiffin.  
12 We've also heard from a range of other survivors who would  
13 all say, and have said to the Commission, that the burden of  
14 proof that they were put to was unreasonable and the  
15 evidential sufficiency, on the one hand MSD says we take it  
16 at face value, we don't expect it to be recorded in the  
17 records and so that doesn't disqualify it if it's not in the  
18 records.

19 But if you take the Sammons sisters, for example, there  
20 were three of them. There was information in the records,  
21 there was individual corroborating evidence that could have  
22 been obtained in relation to the step siblings, and that's  
23 just one illustration and it was, again, an 8 year period  
24 certainly for Georgina Sammons. And there are lots of other  
25 examples, you know, that we have seen and heard. So, it  
26 really is that issue that they have all said evidential  
27 threshold very high, it takes a very long time, we don't  
28 have the information or the ability to alter that timeframe.  
29 And so, there is that and at what point do you say how can  
30 we change a system that is doing harm?

31 **MS ALDRED:** Excuse me, sorry, I'd just like to - that  
32 kind of question does face the witness with some  
33 significant difficulties, I think, because it was an  
34 extremely long - I am not sure it was a question. It  
35 asked him to accept or assumes that he accepts a

1 number of propositions in a number of cases where he  
2 hasn't been taken to the references in the evidence  
3 supporting those assumptions.

4 I just wonder if that question can be put in a simpler  
5 way that the witness - or if the question could be divorced  
6 from the material that came before it, so that the question  
7 can be put to the witness in a way that he can answer the  
8 question without being assumed to have accepted a large  
9 amount of preparatory material which seems a bit unfair.

10 **CHAIR:** Yes, I did note, Ms Janes, that Mr Young was  
11 asked to assume that all of the foregoing had caused  
12 harm without having an opportunity to agree or  
13 disagree with that. Maybe you should rephrase it.

14 **MS JANES:** I can put the Sammons evidence to you and  
15 use that as an illustration in terms of what they have  
16 told the Commission.

17 Q. At paragraphs 6 and 7 of their brief of evidence, Georgina  
18 Sammons says, "I still don't understand how MSD can say  
19 there was insufficient evidence of psychological and  
20 physical abuse. They didn't even talk to anyone who might  
21 be able to corroborate what I was saying" and it then talks  
22 about not talking to Tanya, the foster sisters or any other  
23 people. She goes on to say, "Just like my Police complaint,  
24 I felt like I was being treated like a liar, even though  
25 no-one actually took the step of talking to anyone who might  
26 know".

27 At paragraph 111 of her brief of evidence she goes on to  
28 say, "When you look at our case, all three of us had been  
29 telling people about the abuse we suffered in that household  
30 in different ways, different times, totally independent of  
31 each other."

32 And then she goes on to say at the end of that paragraph,  
33 "And yet MSD still didn't believe me and said there was  
34 insufficient evidence of physical and psychological abuse".

1           So, just as an example of somebody going through an 8-  
2   year process and still feeling unheard, disbelieved, treated  
3   like a liar. We also have Mr Wiffin's evidence, and I can  
4   take you to that transcript part if you would like me to.

5   **CHAIR:** Did you follow Mr Wiffin's evidence?

6   A. Yes.

7   **CHAIR:** You are very familiar with his claim, aren't  
8   you?

9   A. Yes, so that's not necessary, no.

10   **MS JANES:**

11 Q. So, even if we take, and you will be aware of the White case  
12   and similar expression?

13 A. Yes.

14 Q. So, if we just take those three cases as illustrative of  
15   that proposition, if you look at the process that is built  
16   in a way that as Mr Wiffin says starts from a position of  
17   disbelief and Georgina Sammons similarly felt that way and  
18   Earl White similarly felt that way, what could be done  
19   differently and in a more timely way to not do the harm that  
20   each of those three individuals has clearly expressed?

21 A. Just an initial comment, and I know you're not necessarily  
22   asking me to comment on those cases, but so far as the  
23   Sammons cases are concerned, they are claims that I have  
24   recused myself from because of my past involvement, so I  
25   don't know the details and haven't had any involvement.

26           But I guess the answer is to deal with people and their  
27   claims in a way that we have been making our best, but not  
28   always the best efforts in more recent years. The time  
29   delays I'm certainly not going to try and defend or justify,  
30   and we all acknowledge that time delays of much less than 8  
31   years are not acceptable to anybody.

32           But, yeah, the principles that our ADR process attempts  
33   to follow is, I think, a much better approach than, as you  
34   say, putting people to any unreasonable test.

1           And I was reflecting last night on, you referred then to  
2 Mr White and Mr Wiffin and the Sammons sisters all feeling  
3 that they were disbelieved, and I'm the last person to  
4 question how they feel then or now but I really challenge  
5 that assumption that we, and not the Ministry but myself and  
6 the team that I have worked with at still work with, take  
7 that position. We listened to people's accounts of their  
8 experiences, I believe, without judgement, and I suspect, in  
9 the same way as Ms Cooper or Ms Hill or any of their  
10 colleagues will listen to their clients as they come into  
11 their office and will listen to their story without  
12 judgement. But then they'll also access their records to, I  
13 guess, determine if a client says "I was in Hokio", then  
14 they will want to see the records to confirm that that's the  
15 case to be able to give advice to their client as to the  
16 best approach or, "If you said you're in Hokio, the records  
17 don't reflect that, could you be confused? Was it somewhere  
18 else?"

19           So, they are, I would have thought, in a very similar  
20 situation to us. They are listening non-judgementally and  
21 then carrying out - I don't think any person wouldn't accept  
22 they are reasonable checks to provide their client with the  
23 best possible advice, and I think in the same way as we  
24 would carry out some checks out of fairness to the claimant  
25 and to other claimants.

26           So, I accept I may have diverted somewhat from the  
27 original question but, yeah, my answer, I guess again, is a  
28 process that is certainly similar to the ADR process that we  
29 work in now and that's not to say, of course, that that  
30 can't be improved in perhaps any number of ways but perhaps  
31 the fundamentals are there.

32 Q. Just if I can clarify very quickly because we have tended to  
33 merge unrepresented claims and the filed claims and unfiled  
34 claims, so if I can use that as the shorthand.

1           So, yesterday we did clarify that there was a two-step  
2 process particularly when there were serious allegations  
3 such as sexual abuse.

4           If you take an unrepresented, unfiled, claim can you just  
5 talk us through what accepting that at face value looks like  
6 and what are the basic checks or process that that goes  
7 through before we turn to the filed claims?

8 A. Well, they're both dealt with the same, so there's no  
9 distinction in the way we deal with a claim or assess a  
10 claim. There is no distinction between one that is filed in  
11 court or that is legally represented but not filed and those  
12 that come to us correctly. So, there is no distinction in  
13 the way they're dealt with, now anyway, and in recent years.

14 Q. So, when would that have changed because we're looking over  
15 a very long time period.

16 A. Sure. Well, the way in which, I guess, the facts, if you  
17 like, of a claim have been assessed has always been pretty  
18 much the same, despite the way the claim got to us. I  
19 think, as I said yesterday, in the first few years of the  
20 Historic Claims Team life claims were managed because many  
21 of them were filed and represented within Legal Services  
22 with input and advice and some factual and practice  
23 assessments from my team. But probably around 2013-2014,  
24 that situation reversed, and I guess we took the lead more,  
25 as there was a better embedded ADR process.

26           But the level of checks, of testing, didn't fundamentally  
27 change. What has changed more recently is the process that  
28 was introduced in late 2018 and which my colleague, I'm  
29 sure, will talk about later. And that did introduce a  
30 different type of assessment but, again, that type, that  
31 form of assessment applies to all claims, regardless of how  
32 that claim reaches us.

33 Q. So, if we just look at the unfiled claims, they can come to  
34 you either represented or unrepresented?

35 A. That's right.

1 Q. And you're advising that both of those, irrespective in the  
2 unfiled claims, are assessed, evaluated, dealt with in the  
3 same way?

4 A. That's right.

5 Q. And then in the filed claims area, I assume because of the  
6 court aspect there is more involvement, discussion, with  
7 legal and Crown Law?

8 A. Now, under the new process, there's, as far as I'm aware,  
9 and again I might - Ms Hrstich-Meyer might be able to  
10 correct me, but there is negligible, if any, involvement  
11 from Crown Law.

12 And just recently I've been involved in overseeing a  
13 number of settlement offers for claims that are filed. Once  
14 the assessment has been completed and settlement payments  
15 approved, then those offers go out directly from the  
16 Ministry, rather than via Crown Law as would have been the  
17 case some years back.

18 The involvement of our in-house legal team is restricted  
19 only to considering issues such as BORA breaches, false  
20 imprisonment, those kinds of, as we discussed yesterday,  
21 slightly more head scratching legal issues. But, if you  
22 like, if there is any such thing as an average claim, and  
23 there isn't, then that wouldn't necessarily involve any  
24 input from the Legal Team.

25 Q. And is part of that because effectively there is that cohort  
26 of cases called the DSW Protocol Group that are parked in  
27 the Court while the ADR process, sort of, works?

28 A. I'm not even sure if that cohort still sits in the court, to  
29 be honest.

30 Q. The answer is, yes, it does. So, turning then to the  
31 litigated cases, the filed cases. You mentioned yesterday  
32 you had read the Aaron Smale article and I just want to read  
33 an excerpt prior to discussing the White trial because this  
34 is a perception from an individual who has done a lot of

1 research. You will accept it or not, but it is a perception  
2 that I think we need to put to you.

3 A. Mm-Mmm.

4 Q. So, he has said, "The legal strategy that Crown Law deployed  
5 in the White trial was directly related to the allegations  
6 that surfaced in the Lake Alice claims. One of the options  
7 laid out by officials during the Lake Alice litigation was  
8 to use all available technical legal defences, i.e. never  
9 mind morality, just win however you can. That option was  
10 likely chosen as a tactic in the White trial because a loss  
11 in that case would mean the courts would independently  
12 decide the penalty, something the Crown was desperate to  
13 avoid. Another option was listed, that the Crown goes to  
14 litigation but waives the right to use technical defences.  
15 This option was not taken."

16 Now, I know that you have said, as did Mr MacPherson,  
17 that MSD's preference was not to go to trial and there were  
18 attempts to settle with the White plaintiffs beforehand, and  
19 I think you confirmed that you had read Mr Earl White's  
20 brief of evidence?

21 A. I have and heard his evidence at this hearing, yes.

22 Q. Because he goes very carefully through the process and the  
23 steps that both parties took in terms of settlement and  
24 rather than reading a lot of paragraphs to you, if I may be  
25 permitted to just read a couple first and then go through  
26 the actual timeframes of those settlement offers and some of  
27 the communications, just to put it in context, in fairness  
28 to you.

29 So, at paragraph 72 of the brief he talks about his  
30 lawyer Cooper Legal on the 12th of July 2001 followed up a  
31 third time by letter dated 23 August 2001 again requesting  
32 alternative dispute resolution.

33 So, is it your - I know you weren't there in 2001, so are  
34 you aware that there were several requests by the White

1 plaintiffs through their lawyer to try and go through the  
2 ADR process at that time, rather than litigate?

3 A. The only awareness I have of those attempts are from  
4 Mr White's evidence and I'm sure I will have seen other  
5 documents over the years that perhaps paint a similar  
6 picture. But, yes, not being there I can't comment one way  
7 or the other. I have no reason to question Mr White's  
8 account.

9 Q. And so, you may not also be aware of the actual details of  
10 what occurred in terms of the letters. Have you had an  
11 opportunity to look at the correspondence subsequently?

12 A. Between the parties?

13 Q. Between the parties.

14 A. I will have looked at some of it, but I certainly wouldn't  
15 say that I have a detailed knowledge at all, yep.

16 Q. Would you have an awareness that in 2002, November, there  
17 was an offer made by the White brothers to the Crown through  
18 their lawyer to settle for \$35,000 plus legal costs, which  
19 at that stage was \$10,000? So, that was the initial offer  
20 to settle in 2002?

21 A. I know that there were various offers made both by Mr White  
22 and offers made by the Ministry. That sounds familiar but,  
23 again, I don't have the dates and amounts of the various  
24 offers that were made in my head.

25 Q. And you were involved, in 2011, when the actual settlement  
26 was made, and you will be aware that it settled at \$35,000?  
27 So, 12 years later it settled for almost the same amount as  
28 offered in 2002?

29 A. Well, I don't know that you can fairly use the word  
30 "settled" because -

31 Q. Ex gratia payment?

32 A. Yeah. And, just a slight correction, I think it was said on  
33 Tuesday that Mr White, and I don't mean to be pedantic but  
34 just as a matter of record, Mr White received \$25,000 and  
35 \$25,000 towards Legal Aid, not \$10,000. Mr Paul White

1 received \$10,000 ex gratia payment and a \$10,000  
2 contribution to his Legal Aid debt.

3 Q. Certainly at paragraph 28, Mr White records that he got  
4 \$25,000 and he thought \$10,000 went to his lawyer?

5 A. I accept that, it's just a small point.

6 Q. So, given that there was \$5,000 effectively difference  
7 between 2001 and 2011, and Mr White has described those  
8 12 years as being brutal and a nightmare. If one is looking  
9 at that duty of care and morality and doing no further harm,  
10 if it were your brother, somebody that you cared about and  
11 you stood back and said, "Look at this process, \$5,000 to go  
12 through all of that over that very long period", what, in  
13 terms of human compassion, would you say about that?

14 A. I think any reasonable person, whether they had any level of  
15 compassion or not, would think in hindsight that that is  
16 ridiculous, and I don't think any of us would disagree.

17 Q. And you said in your evidence that Mr Wiffin's case is one  
18 that particularly has disquieted you over the years. Would  
19 you say the same about the White case, particularly Mr Earl  
20 White's case?

21 A. I'm not sure that there's much of a distinction between Earl  
22 or Paul because they went through obviously very similar  
23 circumstances and delays. But, yes, yes, I - and there  
24 seemed to me to be some differences between the cases but,  
25 yes, in hindsight, any other reasonable option would seem  
26 reasonable.

27 I guess what I'm saying in general terms is that, I  
28 personally am not trying to justify or defend the approach  
29 that was taken in White.

30 Q. And if we look at paragraph 90, you were involved in 2006?

31 A. Sorry?

32 Q. You were involved in the White case in 2006?

33 A. That would have been the year probably later in 2006 that I  
34 became involved, yes.

1 Q. Paragraph 90 talks about the 27th of October, so I don't  
2 know whether you would have been there at that stage but  
3 it's talking about the possibility of the government looking  
4 at other options for historical claims and the letter says,  
5 "Within that context, it is difficult to understand what is  
6 hoped to be achieved by forcing Earl and Paul White to  
7 litigate their cases. If government is intending on  
8 embarking on an out of court process for resolving claims of  
9 this claimant group the relevance of establishing some legal  
10 precedent appears to be fairly limited".

11 So, are you aware of why at that stage because the trial  
12 was not until 2007, MSD and Crown Law didn't stand back and  
13 say we're actually just about to implement an alternative  
14 out of Court process which I think was due, the decision was  
15 due in April 2007? Was any regard paid to at that point  
16 saying, "Let's stop this process, allow these plaintiffs to  
17 join all of the other claimants in this process that we're  
18 just about to rollout"?

19 A. I simply don't know whether any regard or what regard might  
20 have been given to that. And if it was, I guess a possible  
21 scenario is that the ADR process, as I suppose it was taking  
22 shape, the details of which weren't necessarily known at  
23 that stage and so, how that might have impacted on or  
24 benefitted the Whites, I guess perhaps was unknown.

25 It may have also been considered that, given presumably  
26 the attempts to settle by that stage hadn't been successful,  
27 then I guess a question may have been, well, if that - if  
28 those efforts weren't successful, would any ADR process, the  
29 details of which haven't been agreed, would that be any more  
30 successful? They are assumptions and speculations on my  
31 part.

32 Q. If we look at MSD ending in 2007, and this is a March 2006  
33 report to the Associate Minister. We're going to look at  
34 paper bundles of this.

1           Mr Young, if I can have you turn to page 4, paragraph 7.  
2           If we just call that out. This just talks about the length  
3           and complexity that a trial like the White carries,  
4           significant expense, legal and media risk. And then if we  
5           go to the next page, carrying on with that paragraph, it  
6           talks about both the Crown and Cooper Legal will be treating  
7           these cases as a test case to argue legal and factual points  
8           that will be relevant to many of the other CYF historic  
9           residential claims, and working closely with Crown Law to  
10          progress this claim; that's correct? There was a very close  
11          working relationship between MSD and Crown Law in relation  
12          to this litigation?

13        A. Yes, that's certainly my understanding.

14        Q. So, if we go down to page 7, paragraph 23. I don't know if  
15          you were involved in it but there was quite a lot of  
16          international research done by MSD around the same time, in  
17          terms of what was happening with other jurisdictions?

18        A. That's right.

19        Q. And the short point in this particular paragraph is halfway  
20          down, "In Victoria the State Attorney-General has issued  
21          model litigant rules which inform the Department of Human  
22          Services response to claims - to avoid litigation where  
23          possible"?

24          And there is another paper around the same time that the  
25          Scottish Inquiry had made similar recommendations.

26          So, looking at what was happening internationally and  
27          model litigant rules and recognition that litigation really  
28          was not the best way to progress these cases, was again  
29          there any consideration by MSD, particularly as you were  
30          embarking on a new process to say halt, this is not  
31          actually, it's not good for the plaintiff, we have a real  
32          human being who is the face of this test case, do we even  
33          adjourn the litigation until we see what happens with the  
34          ADR process to give them an opportunity to have choices?

1 A. I'm really not sure that I can add much more to my previous  
2 answer. I just don't know if those kinds of considerations  
3 were taken. And if they were, by whom. Again, it seems a  
4 reasonable proposition but it would appear that at some  
5 point, given that the attempts to settle had been  
6 unsuccessful, that there was some kind of decision that  
7 litigation was the next step but the detailed reasons and  
8 rationale for that is something that I just can't speak to.

9 Similarly, whether or not, as you say, the prospect of an  
10 ADR process possibly being more successful for the Whites,  
11 whether that was something that was actively considered.

12 Q. And in the same document, just before we leave it, at  
13 page 8, paragraph 28, again the short proposition is it  
14 says, "MSD is not in a position to litigate 500 individual  
15 claims. There will be significant fiscal and resource costs  
16 arising from such litigation. Added to this, the potential  
17 compensatory and exemplary damages that may be awarded, it  
18 could be considerable. Those plaintiffs are legally aided  
19 and even if the Department were to be successful in  
20 defending some or all of the claims, it is unlikely that any  
21 award for costs would be made against the plaintiffs,  
22 therefore even a claim that is successfully defended by the  
23 Crown will incur significant costs".

24 So, just going back to our conversation yesterday, you've  
25 got 500 potential claims looking at MSD having to both  
26 manage and the Crown fund. So, there really be major fiscal  
27 resource considerations at this point in time leading up to  
28 the White trial?

29 A. That's clear in that statement. I think I said yesterday,  
30 one would expect that those kinds of considerations, yeah,  
31 would and should have been considered in some way, so that  
32 there was some realisation of potential costs.

33 Q. Because we took Mr MacPherson through several documents and  
34 I don't want to repeat the exercise but he, just for the  
35 record, looked at CRL22719 and MSD ending in 2030, and again

1 they talked about the importance of the White trial setting  
2 a benchmark in terms of all of the other cases that were  
3 going to come through and recorded that Crown Law  
4 instructions, based on Crown Law advice, are to pursue the  
5 case to trial, even though there is a risk the plaintiffs  
6 will succeed in some of their claims. "Going to trial is  
7 essential to ensure that the allegations are properly tested  
8 and the result in White will assist the government in making  
9 decisions on how to deal with those other claims as it  
10 should set parameters for dealing with both liability and  
11 quantum in future cases".

12 So, from your involvement, can you confirm that these  
13 were the drivers in relation to the White case, in terms of  
14 setting legal precedent; would you agree with that? Testing  
15 parameters, legal principles?

16 A. No, I can't confirm that beyond what is in the documents  
17 because they are, I guess, considerations and decisions that  
18 weren't mine.

19 Q. Whose would they have been within MSD?

20 A. I guess, they would have been a combination of the Legal  
21 Services team, the relevant Deputy Chief Executive and I'm  
22 reasonably confident, I think, that ultimately the  
23 Chief Executive was involved in, if not being aware of and  
24 understanding the applications, if you like, of the White  
25 case going to trial, whether or not he actively approved  
26 that approach or not, I just simply don't know but it would  
27 have been in that tier, if you like, of people that were  
28 involved in that decision-making.

29 And, yeah, so that's, as I said, not something that I was  
30 part of decision-making around, certainly around the legal  
31 basis on which to pursue litigation.

32 Q. And if we look at MSC ending in 320, and this might help  
33 orient us to when you became involved. It is a document  
34 dated 30 August 2006, it's a Historical Claims Steering  
35 Group meeting, minutes of 30 August, and you will see that

1 you are one of the attendees third from the bottom. I will  
2 wait for you to get the document. It is on the screen if  
3 that's helpful. Page 1, paragraph 3, clearly there is a  
4 discussion at this point, and this confirms that alternative  
5 approaches would not be ready before the Court dates have  
6 been set; and again, we're talking about the White case  
7 here. And it talks about two questions need to be answered,  
8 if you could read those out, please?

9 A. Just the bullet points?

10 Q. Just the bullet points.

11 A. "Should we settle at any cost rather than litigate? If we  
12 litigate, how strong should our approach be, i.e. how hard  
13 should we push legal points?".

14 Q. And if we go to page 1, paragraph 5, and then if you can  
15 read that and then we'll go over the page because it  
16 continues there.

17 A. "Three key keys would underpin any principles:

18 - are the claims valid?

19 - if valid is the settlement a fair amount?

20 - would the settlement establish an adverse precedent?".

21 Q. So, from that meeting, there was a clear discussion about  
22 what the approach to White could or should be and what the  
23 options were. Do you recall what the decisions were made in  
24 relation to these questions and principles that were raised?

25 **MS ALDRED:** I'm sorry, Madam Chair, the point I would  
26 just like to make is, firstly, if it could be noted  
27 for the record that these are drafts minutes. That's  
28 clear from the form.

29 But, more significantly, my friend, Ms Janes, has  
30 suggested that these are clearly about the White case, but  
31 it seems to me that it's fairly clear that, in fact, the  
32 minutes relate to approximately 100 lodged claims and it  
33 seems to be a more general discussion than that. So, I'm  
34 simply -

1     **CHAIR:** You want the factual basis clearly  
2 established?

3     **MS ALDRED:** Yes. I just don't think that we can  
4 assume there's anything, on the face of this, that  
5 invites an assumption that this is specifically about  
6 the approach to White.

7     **CHAIR:** Thank you.

8     **MS JANES:** I am happy to rephrase.

9     **CHAIR:** Thank you, Ms Janes.

10    **MS JANES:**

11 Q. It's talking about 100 filed claims, one assumes White is  
12 one of those 100 filed claims and with the date being August  
13 2006 and White being scheduled for 2007, would you accept  
14 that White would be one of the claims that was being  
15 considered in this particular discussion?

16 A. It could have been. It could have been one of those 100,  
17 it's likely it probably was. Whether that specific claim or  
18 claims were discussed in the context of this meeting, I  
19 simply - well, firstly, I regrettably don't have a memory  
20 going back that far and the minutes, so far as I can see,  
21 don't specifically reference White. So, yeah, it's  
22 difficult to know whether, yep, that -

23 Q. It is the general proposition actually. MSD asked itself  
24 these questions about filed claims. So, irrespective of  
25 which filed claim, it was making philosophical, strategic  
26 decisions, moral decisions, about how it was going to  
27 conduct these filed claims.

28       So, if we take -

29    **CHAIR:** Just let Mr Young answer that question.

30 A. I'm not sure that it was a question.

31    **CHAIR:** Do you accept that statement?

32 A. Yes. I mean, clearly, we were giving consideration to a  
33 range of issues relating to how those claims might be  
34 managed.

35    **MS JANES:**

1 Q. And you were asking yourselves, sort of, fairly fundamental  
2 questions about do you settle at any cost, rather than  
3 litigate. Do you recall what the decision on that was?

4 A. No, I certainly don't. As I said, unfortunately my memory  
5 doesn't go back quite that far. And it's possible, I  
6 suspect, that those questions were never answered  
7 specifically, that a specific decision didn't arise from  
8 each of those questions, that they were merely - by saying  
9 that, I'm not minimising them but they were considerations,  
10 thoughts, principles that needed to be considered but  
11 whether they got to any clear decision about, yes, we will  
12 litigate at any cost or not, yeah, I don't know and don't  
13 recall. I suspect, I suspect not.

14 Q. Given that you had 100 filed claims at that point, you were  
15 looking at 500 filed claims, would you accept it actually  
16 was pretty fundamental to make decisions at this point in  
17 time on those particular questions? For example, if we  
18 litigate, how strong should our approach be?

19 A. Well, I think what some of - not necessarily this document  
20 but what some of this demonstrates is, and the other work  
21 that was beginning to take place around this time, is that  
22 we had a very clear understanding that litigation,  
23 notwithstanding the White claims, that litigation wasn't  
24 tenable for a whole variety of reasons. And that's the  
25 exact reason why we embarked on a process of thinking about  
26 and developing an alternative process because we clearly  
27 acknowledged, whether that's documented or not, that  
28 litigation wasn't suitable, not just because it was going to  
29 be traumatic for clients, costly and take an inordinate  
30 amount of time, so there needed to be an alternative, and  
31 that's exactly what we were thinking about and working at  
32 doing and subsequently did.

33 So, I think some of those questions are answered, as I  
34 said, not necessarily by documented decisions but by the

1 fact that we did develop and implement an alternative  
2 resolution process.

3 In the meantime though, White, for better or worse, was  
4 proceeding and that, I guess, reflects that to some extent,  
5 I suppose certainly at that stage there were also parallel  
6 processes. And, as we know, the White case was a perfect  
7 example of the fact that litigation doesn't work and doesn't  
8 achieve the outcomes that you would hope for, for the  
9 claimant.

10 Q. And if it - one were taking three principles, the  
11 underpinning principles that are outlined in this particular  
12 document, and we've just - accepting that it was a broader  
13 question across the 100 claims. But if we take each of  
14 those questions, are the claims valid? So, would your  
15 evidence be that if there was consideration that one of  
16 these 100 claims was valid, that would be a consideration  
17 for not proceeding with litigation and settling  
18 alternatively, if possible

19 A. Yes, and I guess that goes to does a claim have merit? So,  
20 yes, that's - and, again, I guess even just using the White  
21 example, they were considered to have merit, presumably  
22 otherwise a settlement offer wouldn't have been made. So,  
23 yeah, that was one of the fundamental basis of how we have  
24 dealt with claims that if they are valid, if they have  
25 merit, then we would do what we could to try and resolve  
26 them.

27 Q. And the second question, is the settlement a fair amount?  
28 And we've seen that the settlement was very close from what  
29 was offered with the ex gratia payment. So, it would seem  
30 to establish a tick on that particular principle as well?

31 A. Well, it doesn't necessarily answer the question, is it a  
32 fair amount because that's a whole other -

33 Q. But in terms of what quantum that was being offered by MSD?

34 A. Yes, I guess, again in the - yes.

1 Q. And on the third one, would it establish an adverse  
2 precedent? I take it, that was not outside the realms of  
3 payments for sexual and physical abuse?

4 A. I'm sorry, I'm not sure that I follow that.

5 Q. The White, eventually when it went to trial, it was proven  
6 that there were 13 incidents of sexual abuse and the  
7 physical abuse was also substantiated against three of the  
8 perpetrators. So, would \$25,000 have been within the realms  
9 of the category that type of abuse would fall within?

10 A. Yes.

11 Q. So, no adverse precedent?

12 A. Yes, that was our determination at the time, yes.

13 Q. Just a question that I wanted to ask you. In a different  
14 document which we don't need to go to unless it would be  
15 helpful. Alex, perhaps if you could find MSD 2030. It's a  
16 very long document and it has a large number of points in  
17 it, so what I am looking at really, is page 10, bullet point  
18 3.

19 If you've got it, that would be good. So, as part of  
20 preparing for White, there was evidence - so White and the  
21 other filed claims but this one is specific to the White  
22 case. So, this is the document that talks about there was  
23 no evidence of systemic or endemic failure. So, I can take  
24 you to that if you want but that's not the topic of the  
25 conversation.

26 But if that's of use for the record, it's page 2, under  
27 "Findings", paragraph 1, and also page 10, just for the  
28 transcript.

29 It talks about witness briefings, collecting - "evidence  
30 being collected on individual claims, witness briefings and  
31 research are being undertaken as part of preparation for the  
32 W case. Witnesses have provided extensive recollections of  
33 their work in state facilities and programmes, and these  
34 bear out the conclusions that are suggested by the above".  
35 The above meaning there's no evidence of systemic or endemic

1 failure which is the paragraph under - we can also see that  
2 above, but you can't quite see?

3 A. I have the document, thank you.

4 Q. Excellent, thank you. As you will recall from the White  
5 trial, there was a belief that the White plaintiffs and the  
6 similar fact witnesses were colluding; do you recall that  
7 being part of the findings by the Judge?

8 A. He found that they weren't colluding, I think is -

9 Q. They weren't colluding?

10 A. Yes.

11 Q. So, there was a very firm finding that he believed the  
12 evidence of the similar fact witnesses and, in fact,  
13 preferred it to that of the people, the caregivers, the  
14 staff?

15 A. That's correct.

16 Q. So, I guess the broader question in terms of claims, whether  
17 they be filed or unfiled claims, is that this sounds very  
18 reassuring, in that as you go around your witness briefing  
19 you're hearing that the practices of the day were fine,  
20 these particular perpetrators were not known to have been  
21 abusing residents. Given that the claimants have this sense  
22 of starting from a position of disbelief, would you comment  
23 about whether there may, on the other side, be an  
24 unconscious propensity to accept the evidence of staff and  
25 caregivers when they give you reassuring evidence and to  
26 prefer that over the claimants' evidence?

27 A. Firstly, I'm not sure that the statement there in that third  
28 bullet point does entirely reassure us that the  
29 recollections of ex-staff are contrary to the experiences of  
30 claimants because I'm sure elsewhere it suggests that in  
31 fact some of those recollections support claimants.

32 Again, I guess all I can say is, and I talked about it  
33 yesterday perhaps a little, is that the team that I work  
34 with I think take a very objective approach and view to the  
35 work of assessing a claim. And that begins with the account

1 that they hear, in many instances personally, from the  
2 claimant.

3 The other reality also is that, with some notable  
4 exceptions, for those claims that were heading towards trial  
5 and where witness briefings were being carried out, the  
6 extent to which other staff members, caregivers and the like  
7 were spoken to or their accounts taken were very, very  
8 minimal.

9 So, in reality, we're hearing the voice of the claimants  
10 much more so than the voice of staff or caregivers.

11 Q. And just before we leave this document, a very quick point  
12 on page 24, paragraph 3, the highlighted one. Paragraph 2  
13 says, we are looking at cost implications both for MSD and  
14 cross-government of a change to the Crown's current approach  
15 in managing historical claims. At present, this is a cost  
16 in several areas, including the more than \$2 million that  
17 has been paid in Legal Aid to claimants' lawyers."

18 But the paragraph we pulled out:

19 "It is likely that the Historical Claims Unit and budgets  
20 for spending will continue to be required. Currently costed  
21 at \$3 million". It talks about funding for this expiring at  
22 the end of 2006/07. "A bid to continue has been lodged in  
23 the budget process".

24 I really wanted to touch on that because it just raised a  
25 question about whether there was any budgetary imperative?  
26 That there was this \$3 million in historical litigation  
27 budget that was about to expire. Would that have played any  
28 part in a decision to proceed with the White trial?

29 A. I simply don't know. As we know, the legal costs in that  
30 were huge. So, I guess, in budgetary terms, it simply would  
31 have been cheaper to have settled almost at any cost than to  
32 proceed to trial.

33 But, yes, I simply don't know what consideration, if any,  
34 what financial consideration, if any, was given to whether  
35 that played any part in any decisions about the White trial.

1 Q. Because there was definitely a sense, and I can take you to  
2 the documents if necessary, that if the Crown ended up in a  
3 situation where a number of claims were successfully  
4 litigated, there would be increased expectations from  
5 claimants? There would be a larger number of files claimed  
6 and, therefore, there would be major fiscal consequences?  
7 As a proposition, I take it, you would -

8 A. Yes, and in many ways, I mean, again, this goes, I suppose,  
9 to my personal view, to the extent that I can express that,  
10 as opposed to perhaps a Ministry view. But, in many case,  
11 it would have been beneficial, not just obviously to the  
12 Whites, if the Court had made an award of damages because,  
13 you know, I for one am not concerned about Ministry or  
14 government budgets but if the Court had been able to do  
15 that, then it would have given us all some kind of baseline,  
16 some kind of precedent, upon which, you know, subsequent  
17 claims could be settled.

18 And, yeah, I think it is unfortunate in many ways. I  
19 know that might sound a bit averse, perhaps, but - and,  
20 again, whether that was one of the considerations in  
21 continuing the litigation, I just don't know. But quite  
22 apart from any legal tests or legal precedents that might  
23 have come from it, I believe it would have been helpful to  
24 have had the Court make a determination about an award.

25 Q. And are you aware of any discussions that you either were  
26 involved in or heard about where consideration was given to  
27 letting it proceed on the merits and not using the  
28 Limitation Act, so that it could be fairly tested and the  
29 Court be allowed to at least determine some quantum?

30 A. I honestly don't. Look, I would, again making some  
31 assumptions, imagine that, and I am sure I will have been  
32 part of some discussions where Limitation Act or ACC bars  
33 were discussed or at least raised in some way, but the  
34 extent to which they, yeah, active consideration was given  
35 to not relying on those defences. Although does the Crown

1 not have an option, as I understood it, again I'm not a  
2 lawyer, there's discretion not to rely on one but the other  
3 has to be pleaded?

4 Q. They have an option to rely on the Limitation Act, but the  
5 ACC bar -

6 A. And, again I don't mean anything dismissive by this, and  
7 it's one of the other reasons why litigation doesn't work,  
8 is that even if the limitation bar and the ACC bar were put  
9 aside for the Whites, the Courts also grappled with that  
10 causation issue and failed, to put it bluntly, on that.  
11 And, again, my understanding of the law, is that to succeed  
12 in damages, the person needs to be able to create that link  
13 between the abuse they suffered and the harm that they have  
14 suffered, and are still suffering, as a result of that. And  
15 if you can't do that, then you may not get damages.

16 I think that's inherently unfair and, you know, clearly  
17 that is in addition obviously to those other legal bars. As  
18 I understand it, it's certainly one of the reasons  
19 unfortunately that White failed. So, yeah, I guess that's  
20 just, yeah, some context.

21 Q. And if we could look at CRL16524 because, just in this sort  
22 of budget discussion and what was being thought of in the  
23 Crown Agencies at the time, if we can go to page 3, please.  
24 It talks about potential liability but it's actually  
25 paragraph 16. So, the face value of the claims is  
26 \$29 million for 61 plaintiffs. But the question I want to  
27 ask, as we read the paragraph if you can have a think about  
28 the numbers. It says, "However, even if we assume  
29 relatively modest damages awards across the board of, say,  
30 \$50,000 to \$80,000 per plaintiff (and in reality, some will  
31 be much higher and some less, or nothing)" and it talks  
32 about \$25-40 million.

33 Just to give you a bit of context because you weren't  
34 there at the time and so it may not be totally on your radar  
35 but prior to White, the two previous cases were something

1 called W v Attorney-General and S v Attorney-General. And  
2 the damages in those were around the \$140,000-150,000 plus  
3 costs of at least that amount or slightly more,

4 So, in the context of what the Court had previously  
5 awarded in these cases.

6 But, I guess the question, where would this modest  
7 damages figure of \$50,000-\$80,000 per plaintiff have come  
8 from? Would that have come from MSD? Who would have  
9 inputted that into the thinking process?

10 A. I simply don't know but given that this is Crown Law  
11 advisers because it's a Crown Law document, the number could  
12 have come from Crown Law's thinking.

13 Whether there had been any previous discussions between  
14 Crown Law and Jacinda or anybody else in the Legal Team, I  
15 don't know but - yeah, I don't know is the short answer.

16 Q. I can find it over the break if I need to, but do you  
17 remember writing a paper at some point, and I can't  
18 immediately recollect the date but it might have been  
19 slightly after or around this time, on comparator damages?  
20 It looks at Lake Alice, Hepatitis B and different sectors.

21 A. I recall writing a memo to my then manager of that sort some  
22 years later. If I had done something similar around this  
23 period of time, I'm not saying I didn't, but I don't recall  
24 but I certainly recall one possibly 2014 or thereabouts but,  
25 yeah, somewhat later.

26 Q. My recollection is it was later, but I wondered if you were  
27 aware of a similar exercise done around this time that might  
28 have led to those figures?

29 A. Not that I recall but, as I said, I can't say there wasn't  
30 but I don't recall one.

31 **MS JANES:** Madam Chair, should we take the break now?

32 **CHAIR:** Yes, I think that's appropriate. We will take  
33 15 minutes.

34

35

1           **Hearing adjourned from 11.25 a.m. until 12.00 p.m.**

2

3

4           **MS JANES:**

5 Q. If we can go back to the document we were looking at just  
6 prior to the break which is CRL16524 and if we can call out  
7 paragraph 6. Mr Young, could I please have you read through  
8 the highlighted passages slowly because I was told that I  
9 was reading too fast. Thank you.

10 A. Hopefully I haven't been. "As a preliminary point, it is  
11 unlikely that all the claims filed will go through all the  
12 litigation stages, and to trial. It is much more realistic  
13 that either:

14           6.1 Some will settle, within the litigation process, if  
15 investigations reveal that it is likely a Court would find  
16 the government liable.

17           6.2 Some plaintiffs may be refused leave to proceed under  
18 the Limitation Act or because their claim is barred by the  
19 Accident Compensation legislation (these matters considered  
20 in more detail below).

21           6.3 Some plaintiffs may give up along the way the process  
22 from filing to any hearing (even interlocutory) may take  
23 some years and some plaintiffs may be put off continuing if  
24 they see another plaintiff having to go through the  
25 litigation process, face cross-examination etc.

26           6.4 A small number of cases being progressed to hearings  
27 will provide a framework may assist in others being settled  
28 or discontinued.

29           6.4.1 Factual findings of unacceptable physical violence  
30 or of sexual abuse in a particular institution or against a  
31 named perpetrator would likely mean that other similar (time  
32 period, institution and/or contact with perpetrator) cases  
33 can be settled.

34           6.4.2 Findings to the contrary (a number of plaintiffs  
35 lose) may mean that future plaintiffs discontinue."

1 Q. Just a few things that arise out of those particular  
2 paragraphs. It was clearly understood by both Crown by MSD  
3 that the trial process can be so tortuous, if I can use that  
4 word, that some plaintiffs will give up along the way?

5 A. It contemplated, presumably for a variety of reasons, that  
6 people may give up, yes.

7 Q. And contemplated also that watching plaintiffs be subjected  
8 to cross-examination and the whole litigation process could  
9 dissuade them from continuing and they may be persuaded to  
10 discontinue their claims?

11 A. That's -

12 Q. Understood at that time?

13 A. That's as Crown Law stated there, yes.

14 Q. And we've heard the evidence of Mr Keith Wiffin, it's at  
15 page 26 of his transcript, where he says, "The White  
16 decision in November 2007 seen the Crown approach had  
17 brought an end to the White case may equally apply to his  
18 case and many others which in all possibility was why the  
19 Crown spent so much time and so much money on the case".

20 At page 27 he went on to say the White outcome weighed  
21 heavily on him, he did not want his case thrown out on the  
22 Limitation Act. He was worried about facing trial,  
23 particularly if the Crown would not be held accountable  
24 because of the Limitation Act. And it looked like the most  
25 likely reason he would lose and that would have  
26 ramifications for others.

27 And we do know that he did discontinue his claim. So,  
28 very much the knowledge of what the trial process could  
29 likely do to a plaintiff we have seen borne out in a real  
30 live human case as being the outcome; you'd accept that?

31 A. Certainly, I would accept what Mr Wiffin has said, yes.

32 Q. And in a slightly later timeframe but in document MSC490,  
33 that is an Official Information Act request from Mr Mike  
34 Wesley-Smith and he's asked questions about how many claims  
35 are filed, but how many have been discontinued.

1           And at page 4, paragraph 9, so this is MSD's response  
2 to - we've lost the document.

3     **CHAIR:** It is important to note the date, I think, of  
4 this letter.

5     **MS JANES:** Yes, 21 July 2015 but it talks about claims  
6 all the way up to that point.

7 Q. So, if we call out, it should be paragraph 9, "Between 1  
8 January 2004 and 31 December 2014, 518 claims have been  
9 filed, 184 finalised, 134 were settled out of Court", but  
10 the information relating to this discussion is that 45 were  
11 discontinued "as the claimant decided not to progress claim  
12 through the Court". So, a chilling effect on 45 claimants  
13 arising from the White decision for a number of reasons  
14 obviously?

15 A. Yes, yes, and I wouldn't want to speculate on what those  
16 reasons were for those 45 people.

17 Q. So, that's just really setting the framework for what is  
18 understood. And we saw a document about how emotionally  
19 distressing it is for claimants, and if needed I could take  
20 you to that document, but I would assume that you accept  
21 that it is emotionally distressing for a claimant to go  
22 through the court process?

23 A. It's emotionally distressing to be here, so yes for a  
24 claimant in a litigation process, absolutely.

25 Q. Thank you, we can skip that. So, just actually turning to  
26 the strategy and the mechanics of the White case, having  
27 sort of set that scene, if you like, leading up to it. Just  
28 going back to our discussion yesterday about the records  
29 particularly relating to Mr Ansell and his conviction.

30           In the Cooper Legal evidence at page 502, lines 13-14,  
31 they said, "If I can just point to that again in the White  
32 trial, Mr Ansell who sexually abused Earl, the Crown claimed  
33 legal privilege over his conviction information history".

34           Can you just outline why MSD or the Crown, Crown Law,  
35 whoever made that decision, determined it was appropriate to

1 claim privilege over conviction history which was clearly  
2 relevant to the case?

3 A. I simply have no idea, unless that conviction information  
4 was subject to any suppression order at the time, and I  
5 don't believe it was, then I would have thought that's  
6 publicly available information. But, no, I have no idea.

7 Q. So, in terms of Privacy Act requests which we also  
8 understood you and your team were responsible for, can you  
9 now say why that information was not provided and privilege  
10 was claimed instead?

11 A. I can't - as I said, I can't say why privilege was claimed.  
12 So far as privacy is concerned, that would depend on whether  
13 or not a request was made under the Act for information  
14 about Mr Ansell.

15 **CHAIR:** Can I just ask you, Mr Young, were you  
16 responsible for Privacy Act requests or, if not, who  
17 was?

18 A. I was, or my very small team was, not for Privacy Act  
19 requests across Child, Youth and Family but those that  
20 related to -

21 **CHAIR:** To historic claims?

22 A. Yes.

23 **CHAIR:** So, you were responsible?

24 A. Yes.

25 **CHAIR:** Thank you.

26 A. So, yeah, I don't recall that a specific Privacy Act request  
27 was made for the records of Mr Ansell. That's my  
28 recollection. Whether or not one was, I can't say at the  
29 moment.

30 **MS JANES:**

31 Q. Thank you. And if we turn to CRL ending in 26754, again  
32 this is a draft, 2 December 2002. It is a letter to Child,  
33 Youth and Family and it's from Crown Law. So, I'll let you  
34 actually look at the whole document.

1           At page 2 of paragraph 3, call that out, thanks. So,  
2 this goes back to yesterday, the knowledge in 1976 of the  
3 complaints about sexual abuse at Epuni at the time that  
4 Mr White was a resident there. Can you take that down,  
5 please?

6           If we look at paragraph 5, if I can have you read that?

7 A. "There is no direct or documentary evidence of which we are  
8 aware, save for the plaintiff's allegations, that tend to  
9 prove the plaintiff was sexually abused by Mr Ansell. Be  
10 that as it may, the circumstances are relatively compelling:  
11 the plaintiff attended the school at the same time as  
12 Mr Ansell who all but admitted to sexually abusing other  
13 boys in circumstances similar to those alleged by the  
14 plaintiff. In my opinion, it is likely that the plaintiff  
15 would be able to prove on the balance of probabilities that  
16 he did suffer the abuse that he alleges".

17 Q. So, as early as 2002, the opinion of Crown Law was that the  
18 allegations were likely to hold ground?

19 A. That's absolutely true, yes, based on that document, yes.

20 Q. If we go to page 2, paragraph 6, it says, "The school's  
21 investigation of the abuse seems unacceptable. While its  
22 staff acted on rumours of serious and criminal misconduct to  
23 the point of removing a child abuser from vulnerable  
24 children, its failure to inform the Police is inexcusable.  
25 The comment made by [       ] the of Kohitere that Mr Ansell  
26 seems to be getting away with it, is particularly  
27 concerning".

28           Just before we leave that document and quickly jump to  
29 another one, no let's go there, MSD 2374. So, just keeping  
30 in mind that Crown Law believes that how the school behaved  
31 was inexcusable, and further in the document it talks about  
32 the fact they didn't make further inquiry about other boys  
33 at the same time, which is what Earl White said, nobody ever  
34 contacted him. So, conduct in terms of lack of

1 investigation, unacceptable, not reporting to the Police,  
2 inexcusable.

3 If we can jump in this particular document to page 4  
4 under "Other relevant contextual information". This is a  
5 document, Mr Young, just orientating you, that you provided,  
6 the summary in relation to the TV3 The Nation?

7 A. Mm-Mmm.

8 Q. So, you've just provided a little bit of overview of  
9 response to historic claims. "Evidence that in some cases  
10 where disclosures of abuse were made the correct action was  
11 taken, staff were dismissed and referred to the Police for  
12 criminal investigation. Equally, it is without doubt that  
13 some disclosures of abuse will have been overlooked, not  
14 heard or acted on as they should have been".

15 If we move over the page and I'll have you read the next  
16 paragraph. Pull that paragraph out, thank you.

17 A. "The cases of Ansell and Tukupua at Hokio Beach School and  
18 McDonald at Holdsworth are examples of cases where when  
19 disclosures were made, the Police were advised, charges were  
20 laid and convictions were entered. Some of the examples  
21 above show that this was not always the case and practice  
22 was at best inconsistent".

23 So, just contrasting those documents, you've used the  
24 Ansell case as an example where disclosures were made and  
25 Police were advised. That doesn't seem to be correct  
26 according to Crown Law's understanding of the occurrence at  
27 the time?

28 A. That contrasts with that Crown Law 2002 document, yes. I  
29 would have relied on the records that we had at the time of  
30 me drafting this and, clearly, it was my understanding that  
31 the Police were advised of Ansell's offending. Whether that  
32 was by the Hokio School staff or not, I don't recall, but  
33 somehow the Police were advised, clearly since he was  
34 charged and convicted.

1 Q. I suppose, the general point is that government is reliant  
2 on the information that is being funnelled through agencies  
3 and up to them in terms of making policy decisions or  
4 government decisions; would you accept that?

5 A. Yes, Ministers can't make decisions - I suppose they can  
6 make decisions in isolation but, typically, they would rely  
7 on information and advice from officials.

8 Q. And it's important -

9 **MS ALDRED:** Excuse me, Madam Chair, just in that  
10 regard I think there's a point that needs to be  
11 appreciated in relation to this line of questioning,  
12 which is that, as Ms Janes did acknowledge at the  
13 outset, the letter from Crown Law that you were taken  
14 to was a draft. Now, if you look at that document  
15 carefully, you will see it appears to be a somewhat  
16 early draft. It appears to have contained information  
17 or given advice that, as Mr Young acknowledged, wasn't  
18 the same as his understanding. I don't know because I  
19 don't have the final copy of the letter but of course  
20 it's quite possible that there were some later  
21 revision of the information of the Crown Law advice.

22 So, I simply want to make that point and have the  
23 Commissioners appreciate that it's not entirely fair to have  
24 Mr Young assume that Crown Law's understanding, as it was  
25 finally encapsulated in whatever went out, is necessarily at  
26 odds with his own.

27 **CHAIR:** All right.

28 **MS JANES:** I take the point and Mr Young can, as he  
29 has given evidence to the best of his knowledge when  
30 he wrote this, that was the information.

31 **CHAIR:** Can I just ask Mr Young a question? Mr Young,  
32 were you aware at any time, whether through that draft  
33 document or any others, that Crown Law had provided  
34 advice to the Ministry of the matters referred to in

1 that draft, including whether or not Mr Ansell's  
2 convictions were reported to the Police?

3 A. Certainly, when I drafted this document in 2017, I wasn't  
4 aware of that earlier Crown Law letter and any advice that  
5 they may have provided to the Ministry about Mr Ansell.

6 **CHAIR:** Did you make any checks with legal when - when  
7 did you get your information for this?

8 A. I would have got it from the records that we had collected  
9 over the years about Mr Ansell, including his staff file  
10 which, as I recall, held information about the fact that  
11 disclosures had been made about him abusing boys and the  
12 fact that he was subsequently convicted, charged and  
13 convicted.

14 **MS JANES:** If I may ask a follow-up question?

15 **CHAIR:** Yes, please.

16 **MS JANES:**

17 Q. When Crown Law drafts a letter like this knowing that it's  
18 important to be accurate, and this is a draft, but I am  
19 assuming MSD as the repository of the information, you've  
20 got your TRIM and your EDRMS databases, would it be standard  
21 practice that they would check with you what information you  
22 held about particular named alleged perpetrators?

23 A. Would Crown Law check with us?

24 Q. Yes.

25 A. They might but they might not. Yeah, I - and if they did,  
26 any query or question would go through our Legal Team who  
27 may carry out a search on their own or they may also refer  
28 that to me or somebody in the Historic Claims Team or the  
29 administration team who would actually carry out a document  
30 search.

31 Q. I suppose, what we're trying to clarify is, what is the  
32 interface between the organisations to ensure that accurate  
33 information is both captured internally but then escalated  
34 to your reports to a Minister. So, this information went to  
35 the Minister, would have been reassuring. So, whether it's

1 correct or not we may not be able to determine here but  
2 there is clearly a disparity between what Crown Law believed  
3 the case to be and what you believed the case to be. In  
4 terms of advice to Ministers, what internal checks are  
5 undertaken to ensure consistency of information and accurate  
6 information?

7 A. I can't say what - in every instance what kind of internal  
8 checks might be made to ensure information is accurate. But  
9 without wanting to minimise the importance of this  
10 particular 2017 report, it wasn't a report seeking advice  
11 from or seeking decision of the Minister. It was, I was  
12 going to say merely, that sounds like it's diminishing the  
13 importance of it, but its purpose was to provide the  
14 Minister with some information in relation to some media  
15 events. So, I guess the important point is that those  
16 particular individuals are examples where subsequent to  
17 disclosures of abuse being made, they were charged and  
18 convicted. It clearly doesn't go into the detail of how  
19 that process evolved and the steps that were taken in that.  
20 It's, by nature, a reasonably brief commentary, if you like,  
21 on what happened. And the Police were advised in those  
22 instances; by whom it doesn't say. So, yeah, I don't think  
23 it proposes to be a detailed account of the specifics of  
24 each individual case.

25 And, I guess, I'm distinguishing the nature of that kind  
26 of report from a more policy driven report to a Minister  
27 that might seek approval or decisions to be made.

28 Q. I suppose, the point is because in another document, which  
29 we can go to, on a similar matter, it talks about the boys  
30 who the Department knew had been abused appear to have  
31 received the appropriate help and support afterwards. And  
32 we've certainly heard, and it was upheld by the High Court,  
33 that the boys at the time in the school were not approached,  
34 did not receive the support.

1           So, it's a matter of where the information is coming from  
2           and whether it is falsely reassuring that things are  
3           happening to support victims of abuse or not?

4   A. I'm not sure of the question, sorry.

5   Q. So, you probably can't resolve it but there's clearly a view  
6           that appropriate steps were taken to support, investigate  
7           and support the boys at the residence?

8   A. At the time those disclosures were made?

9   Q. At the time the disclosures were made. We certainly know  
10           from Earl White that did not occur and the Court found that  
11           to be credible, that it did not occur. But then internal  
12           agency documents say the opposite, which is reassuring,  
13           people think that the process is working?

14   A. What support the boys did or didn't receive at the time  
15           disclosures were made isn't something that I don't think  
16           I've given opinion on or could. And it would be,  
17           presumably, assessed within the context of the day. And I  
18           seem to recall Mr Mike Doolan talking about that, if not in  
19           his evidence in relation to White, in some other matter.  
20           And if - yeah, so, how that might contrast with someone's  
21           more subsequent view of what happened and what should or  
22           shouldn't have - what support should or shouldn't have been  
23           given to the boys, I don't know. I'm not familiar, I have  
24           to say, with the Court's finding specifically around that  
25           matter of support that was or wasn't given to Mr White.

26   Q. No, it found there was no investigation.

27   A. Into?

28   Q. So, if I reframe it in terms of our discussion yesterday  
29           about is there a proactive duty of care, so that you've got  
30           these three boys who have made a complaint. Mr Ansell  
31           leaves his position but is there a proactive obligation at  
32           that stage to find out if they were the only victims of  
33           abuse or whether there was wider abuse and there was a  
34           responsibility to take action and provide support and  
35           investigate it?

1 A. I think that's the issue that, as I recall, Mr Doolan  
2 canvassed. And I guess, yeah, those were considerations  
3 that the staff at the time had to think about and consider  
4 but I don't know that I can offer an opinion 20 years later  
5 about whether those actions were or weren't appropriate,  
6 given the time.

7 **CHAIR:** Ms Janes, I missed it but you said that some  
8 assurance was given to the Minister that appropriate  
9 support was given at the time; is that -

10 **MS JANES:** Yes, an internal document. That didn't go  
11 to the Minister but internally, that was the belief  
12 between Crown Law and MSD.

13 **CHAIR:** Right.

14 **MS ALDRED:** Could we have a reference for the  
15 document?

16 **CHAIR:** I would be reassured by that too.

17 **MS JANES:** We are just going to the actual document.

18 **CHAIR:** Thank you.

19 **MS JANES:** So, you will see that document.

20 Q. So, this is CRL40575, and if we go to page 34. The numbers  
21 are up the top for those who have the bundles. And perhaps  
22 just to orientate you, it's the 30th of April 2004, it's a  
23 file note.

24 **CHAIR:** Do we know by whom?

25 **MS JANES:** It's by Alison Mills, who is an assistant  
26 Crown counsel.

27 Q. So, the relevant paragraph is 18 at the bottom of page 2.  
28 It says, "When the abuse was discovered, the Department's  
29 response was very quick and effective".

30 **CHAIR:** We haven't got that.

31 **MS JANES:**

32 Q. No, page 35, page 2 of that. It's paragraph 18 at the  
33 bottom. "However, it is highly likely that," that is White,  
34 "claim will be believed. The boys who the Department knew

1 had been abused appear to have received the appropriate help  
2 and support afterwards."

3 So, that is likely correct, that they did but others, it  
4 was not investigated, which is what the High Court found, so  
5 just putting those two pieces of information together.

6 **CHAIR:** This is a Crown Law document?

7 **MS JANES:** This is a Crown Law document.

8 A. Which interestingly, seems to contradict the earlier Crown  
9 Law document.

10 Q. Yes. This is a particular document, we're going to look at  
11 the Crown Litigation Strategy and the MSD meetings that were  
12 held in terms of the run up to the White trial, again just  
13 to orientate you to what the document is. It is about the  
14 use of private investigators but for present purposes, we  
15 will skip a lot of the initial documents. It's there to  
16 show that from as early as 2003, when you weren't there, MSD  
17 had been using a private investigator, at that stage a  
18 Mr Trevor Morley. So, the first 35 pages or so relate to -

19 **CHAIR:** Of this document?

20 **MS JANES:** Of this document.

21 Q. If we go to page 37, and again this is just to orientate in  
22 time, this is an email dated 27 November 2006, and if we  
23 look at the third paragraph, it talks about a meeting  
24 tomorrow "Jacinda Lean and Garth Young will be present from  
25 MSD and Sally McKechnie and I", the writer Chris Mathieson,  
26 "will be present from CLO".

27 From 27 November 2006, it would appear that you were a  
28 member or attendee at meetings relating to discussions about  
29 the White trial?

30 A. Yes, I certainly attended some meetings.

31 Q. And then if we jump to page 44, the date is the 28th of  
32 November 2006. And you will see in terms of the attendees,  
33 again we've got Chris Mathieson, Sally McKechnie, we have  
34 Kristy McDonald and yourself. Just to note on this

1 particular page, at the bottom is the first reference to  
2 investigator, the very last bullet point.

3 Jumping over to page 46, which is the second page of this  
4 particular meeting, it talks about similar fact witnesses  
5 objecting to the admissibility of it, forcing her to apply  
6 for similar fact. I assume by "her" that relates to Sonja  
7 Cooper; could you confirm?

8 A. I would imagine so. I can't absolutely confirm but I would  
9 imagine so.

10 Q. And then the note that it's going to be opposed. So, if one  
11 looks at that in the round, it's obviously notes but there's  
12 an awareness that Cooper Legal is going to be looking at  
13 providing similar fact witnesses and there is going to be an  
14 objection to that.

15 When those decisions are being made about tactics and  
16 strategy for trial, and you are in attendance, how much  
17 ability do you, on behalf of MSD, have in shaping or  
18 inputting into those strategic decisions?

19 A. I would probably characterise my position as a passenger.

20 Q. Is it a bit like yesterday where one wished one were more  
21 assertive?

22 A. Perhaps, I would make distinctions, I think, of my  
23 involvement between Mr Wiffin's case and Mr White's. I  
24 would like to think I have been a little perhaps wiser and  
25 well informed by the time Mr Wiffin's claim came around but,  
26 yeah, and it's not necessarily something I look back on with  
27 a great deal of - admiration is the wrong word but, yeah, I  
28 had, I think, little decision-making ability when certainly  
29 the legal strategy for White was determined.

30 Q. In terms of attending these meetings, were there any rider  
31 instructions, if I can call it that, that you were given up  
32 by anyone higher up or in different departments with MSD as  
33 to what you should be saying or agreeing to?

34 A. I certainly don't recall being given any instructions. And  
35 I think if you think, I guess, of a client/solicitor

1 relationship, then the internal client in the White matter  
2 was either the Chief Social Worker and/or the relevant  
3 Deputy Chief Executive. Certainly, some of the earlier  
4 claims preceding White, the Chief Social Worker, my  
5 understanding is he or she was essentially the instructing  
6 client for White. Again, I may not be 100% accurate but I  
7 suspect the Deputy Chief Executive at the time was the  
8 client, probably more so than the Chief Social Worker, and  
9 their instructions would have been to the Legal Team, as  
10 opposed to me.

11 I guess, without wanting to under-sell my role, and I'm  
12 certainly not suggesting that I'm abrogating any  
13 responsibility, but I was still a reasonably small fish in  
14 the historic claims pond at that time.

15 Q. And so, just on that, why were you the one attending these  
16 meetings on behalf of MSD?

17 A. Well, I wasn't the only MSD attendee there. Jacinda Lean  
18 was the key person probably. I guess, my role, and at that  
19 stage the Historic Claims Team, other than some privacy,  
20 people doing Privacy Act response, the team was me, that was  
21 it, a team of one. My apologies, by that stage there were  
22 two. Our role was essentially providing that social work  
23 aspect. So, we - and that's really the reason both myself  
24 and the senior adviser at the time became involved, to  
25 assist the Legal Team in anything from locating ex-staff  
26 members who we may have wanted to speak to, to giving advice  
27 on any social work practice matters that the Legal Team  
28 might have sought. So, it was, I guess, bringing that  
29 social work perspective to the case, as opposed to any  
30 strategy about how it might be litigated.

31 Q. Because that takes us to the next point, if we can call out  
32 that second "striking similar" paragraph. It's the bottom  
33 bullet point, it says, "Approach it like a criminal trial".  
34 And I really want to explore with you because you were at  
35 this particular meeting on behalf of MSD, you're dealing

1 with a claimant who is a victim of abuse, they are seeking  
2 redress and yet here the strategic decision is made that  
3 instead of approaching it on a merits based strategy, in  
4 other words leave the facts to fall where they may, it's  
5 going to be approached like a criminal trial.

6 So, the questions for you are, do you recall that  
7 discussion? That's the first question.

8 A. No, I don't recall the discussion. I guess I would comment  
9 that these are, I'm pretty confident, Jacinda Lean's  
10 handwritten notes. The extent to which that indicates an  
11 agreed strategy or approach to the trial, I simply don't  
12 know. What I do know though is that despite the shape that  
13 the approach to the hearing took, Jacinda and I sat with the  
14 QC some time before the trial out of concern that the Whites  
15 and similar fact witnesses might be harshly cross-examined  
16 and were concerned that that wasn't the case.

17 Q. Can you expand -

18 A. So, despite, I guess, that particular bullet point, we were  
19 concerned that those people weren't exposed to harsh  
20 cross-examination.

21 Q. And was that clearly articulated?

22 A. I believe so, yes.

23 **CHAIR:** The QC you are referring to here?

24 A. Ms Kristy McDonald.

25 **CHAIR:** The QC representing the Crown?

26 A. The QC representing the Crown, yes.

27 **MS JANES:**

28 Q. And do you recall a timeframe where those instructions were  
29 clearly given to Crown Law?

30 A. Well, as I said, it was to Ms McDonald, as opposed to Crown  
31 Law itself. I don't recall a specific date, but it wouldn't  
32 have been long before trial, I wouldn't have thought.

33 Q. And just lastly on this particular - just taking a step  
34 back. What would you, because you can't speak for  
35 Ms Jacinda Lean unless there was a discussion, but what did

1 you and MSD generally think a criminal trial would look like  
2 and whether that was an appropriate approach to a victim of  
3 abuse seeking redress?

4 A. Well, I suppose, one similarity, and to my mind again not  
5 being a lawyer or an expert on either kind of criminal or  
6 civil trial, but one similarity is that witnesses will be  
7 cross-examined. And whether there are any rules around that  
8 that differ between civil and criminal courts, I don't know,  
9 but I guess the very nature of cross-examination can be  
10 difficult and testing. I guess that's the purpose of it.  
11 And the difference is, again as I understand it, the  
12 different evidential threshold, criminal court is obviously  
13 beyond reasonable doubt, whereas the civil court is lower  
14 than that. So, the Court will be looking for a lesser level  
15 of evidence, if you like.

16 But, beyond those observations, what that comment  
17 "approaching it like a criminal trial" might have meant, I  
18 simply don't know. And, at the risk of seeming unhelpful  
19 because I'm not wanting to be unhelpful, whether we had any  
20 further discussions prior to that meeting at the meeting or  
21 subsequent to it about the approach, I simply don't recall.

22 Q. Apart from the issue about the cross-examination that you  
23 raised?

24 A. Yes, and I think that's because that's just, you know, there  
25 are some things that, for various reasons, stick out in your  
26 mind and that's one of them. I recall even the cafe where  
27 we sat and had that discussion.

28 Q. Just finally on this particular document, again just for  
29 completeness at the very bottom, it again talks about the  
30 private investigator.

31 If we then turn the page, I think this is either the 9th  
32 or the 7th of December 2006.

33 **CHAIR:** This is another meeting, I take it?

1 **MS JANES:** This is another meeting. The date, I am  
2 not sure if somebody can see better than I can, but I  
3 think it's the 7th.

4 A. It looks to me like the 7th.

5 Q. When it comes up it's the 7th and again you're at attendance  
6 at that meeting. And the first record of business is the  
7 private investigator. And it talks about "Kristy is going  
8 to come up with some names", a legal shorthand, the first  
9 one is the plaintiff. I know you won't be able to confirm  
10 that but as a lawyer, that's the shorthand that we use for  
11 plaintiff.

12 A. Okay.

13 Q. So, the private investigator is going to be looking at the  
14 plaintiff and the witnesses "hers and ours". So, just  
15 orientating everyone to the context of the document. A  
16 little bit further down, I think 3, call that out. It looks  
17 like you were charged with sending through and drafting the  
18 communications statement. Do you recall being involved in  
19 communications about the White trial?

20 A. As in media communications?

21 Q. Yes. There is another document where it is about media  
22 communications.

23 A. I don't recall drafting anything but that's what Jacinda has  
24 written.

25 Q. And then if we look at number 5, it looks like on the  
26 similar facts matter, a decision is being made to not  
27 challenge it now and it won't negatively "to not challenge  
28 it now, would negatively impact upon the trial". Do you  
29 recall any discussions about the strategy of timing of  
30 oppositions or such matters or were they much more within  
31 the Crown Law -

32 A. No, I don't recall, I am not even entirely sure that I  
33 understand that particular point.

34 Q. No, that's fine, I just wanted to check it with you as you  
35 were at the meeting.

1 Moving on to number 6, your answer may well be the same  
2 because this is, again, a strategy discussion but do you  
3 remember discussions about abuse of process?

4 A. I remember the term certainly but, I don't want to sound  
5 stupid but, yes, I am not sure I understand the, if you  
6 like, what that means in practice.

7 Q. Okay, we'll leave that. Just for the record, it just  
8 records "not sure that it would be appropriate here, perhaps  
9 adds an affirmative defence"?

10 A. Right.

11 Q. Do you recall any discussions about topics for this private  
12 investigator, areas that they were being tasked to look at?

13 A. I don't recall specific conversations but, I mean, some of  
14 these notes suggest obviously that that was a discussion  
15 point.

16 Q. If I can turn you to page 49. You are not involved in this  
17 document, so really it is just checking whether you had a  
18 recollection of these as potential topics. So, again, just  
19 to orientate, this is a draft "topic/areas to be the subject  
20 of investigation by private investigator". So, do you  
21 recall whether there was discussion that the private  
22 investigation would look at the complete life history of  
23 each plaintiff, including personal associations, work, life  
24 experiences, medical history?

25 A. Was aware of discussions?

26 Q. About the brief to be discussed?

27 A. Again, at the risk of sounding unhelpful because I want to  
28 be as helpful as I can, I don't recall - I mean, clearly I  
29 was aware that a private investigator was being used for the  
30 White matter. I don't recall any specific conversations  
31 about the breadth of the inquiries that he might undertake.

32 As I talked about in my brief, I had a particular  
33 understanding of at least one of the key roles that they  
34 were to undertake but, beyond that, yeah, I'm reasonably  
35 confident, perhaps there might be other documents that

1 suggest otherwise but that was certainly my understanding of  
2 their brief.

3 Q. And in the next one, a focus in this document and other  
4 documents where that might be more familiar to you, but it  
5 is about the collusion. So, one of the - in briefing the  
6 witnesses, there was a particular focus in a strategy about  
7 any indications of possible collusion between the plaintiffs  
8 and other witnesses. I take it that wasn't new information?  
9 That collusion was a focus for both the Crown Litigation  
10 Strategy and the private investigator?

11 A. How much of a focus it was, I don't know, but it was clearly  
12 one of the issues that was considered at trial anyway.

13 Q. And there are other documents where there are discussions  
14 but because we're on this one but I can take you to other  
15 ones if necessary, paragraph 4, it appears through the  
16 documents in this particular compendium that one of the  
17 strategies to counter the allegations that were being made  
18 by the White brothers was to find people who had different  
19 experiences at Epuni, they call it reverse similar fact. In  
20 fact, these people were short-handers for either "happy  
21 boys" or "good boys". Do you recall those discussions about  
22 finding that evidence as a counterbalance to plaintiffs?

23 A. I do recall some discussions and I think some efforts were  
24 made to find other, as it says, other boys that were in the  
25 same institutions.

26 **MS JANES:** Madam Chair, we're going to spend a little  
27 bit more time on this particular document. I wonder  
28 if we take -

29 **CHAIR:** Time for a break. Thank you, Mr Young, we  
30 will resume again at 2.15.

31

32

33 **Hearing adjourned from 1.00 p.m. until 2.15 p.m.**

34

35

1     **CHAIR:** Thank you, Ms Janes.

2     **MS JANES:**

3 Q. I'll just go back to the document that we were at before  
4 lunch which was CRL40575. In fairness to Mr Young, in the  
5 break I had a look back and the document I was asking him  
6 about he actually had received. If we look at this on the  
7 8th of December, it's sent from Chris Mathieson and we'll  
8 see that -

9     **CHAIR:** For some reason, it's not showing on our  
10 screen. If a technical person can wave their magic  
11 wand. Yes, there you are, thank you so much, Madam  
12 Registrar.

13     **MS JANES:** Excellent.

14     **CHAIR:** Sorry, would you say again, please, Ms Janes.

15     **MS JANES:**

16 Q. Yes, the document that we were on before lunch was the  
17 topic -

18     **CHAIR:** Of the investigator's brief?

19     **MS JANES:** Exactly.

20 Q. And the page before that, which is page 48, shows that Mr  
21 Young did actually receive that document. It says, "As  
22 agreed, I attach a note for areas of possible investigation.  
23 Please let me have any comments/additional areas."

24         We don't really need to look at the possible  
25 investigator, it didn't involve Mr Young.

26         So, Mr Young, your evidence was that while you didn't  
27 totally recall that document, certainly the areas for the  
28 private investigator were not unknown to you?

29 A. And I assume the following pages was the attachment to that  
30 email?

31 Q. That's correct, yes.

32 A. Yes.

33 Q. So, just again emphasising that point, it was an agreed  
34 investigation topic that the complete life history of each

1 plaintiff with personal associations, work, life experiences  
2 and medical history would be looked into?

3 A. Whether it was agreed or not, I mean I don't mean to be  
4 pedantic but whether it was agreed or not or whether there  
5 were any comments from any of the recipients or not, whether  
6 any other documents show that that's the case, I don't know.  
7 But, on the face of it, that would seem the areas that that  
8 were at least considered for the fuller examination.

9 Q. Is your understanding that the reason for looking into all  
10 of those areas was to inform the Crown approach to how they  
11 would conduct the litigation and what would be asked of the  
12 witnesses at trial?

13 A. That, I don't have recollection of that but certainly,  
14 again, this document would suggest that that was the purpose  
15 of it.

16 Q. And Jacinda Lean, as I understand it, was in the legal side  
17 of MSD?

18 A. Yes, she was a solicitor in the Legal Team, yes.

19 Q. And would it be routine or expected or your recollection  
20 that she would share information that came to her about this  
21 with you?

22 A. Um, it would really depend on the nature of the information  
23 and whether she, for any reason she wanted my or our input  
24 or advice or, yeah, or comment.

25 Q. The reason for asking, I won't put the document to you  
26 because you are not a recipient but Jacinda Lean was a  
27 recipient of the document, just for the transcript,  
28 CRL0025588, and talks about similar fact witnesses, "Please  
29 investigate the similar fact witnesses for anything in their  
30 adult lives for cross-examination using all the above-board  
31 legal means".

32 Does that ring any bells in terms of something that may  
33 have been communicated to you or just to Jacinda Lean?

1 A. It doesn't ring any specific bells but, again, I can't with  
2 absolute certainty say that it wasn't something that crossed  
3 my eyes for some reason but, yes, I don't recall it.

4 Q. And if we then move to page 51 of the composite document,  
5 and just to orientate everybody, this is a memorandum. It  
6 lists, it's from Deborah Harris. Can you just confirm who  
7 Deborah Harris, Crown counsel, looking at the end?

8 A. Yes, she was, from memory, either a Crown Counsel or  
9 Assistant Crown Counsel, yes, Assistant Crown Counsel.

10 Q. And in terms of the recipients, I can see your name and also  
11 Jacinda Lean. Is there anyone else there that might have  
12 been from MSD?

13 A. Jacinda, Michael Timmins was also a solicitor in the  
14 Ministry's legal team, Leanne Pearson was a graduate  
15 solicitor I think at that stage also in the Legal Team and  
16 Jennifer Pomeroy was the senior legal adviser in the  
17 Historic Claims Team, myself, Jennifer and one administrator  
18 person.

19 Q. And if we can call out paragraphs 4 and 5 of this document.  
20 And if I can just have you read those too, please.

21 A. "Kristy McDonald commented to Chris that while MSD has any  
22 remaining policy confusion concerning this litigation, it  
23 will be difficult to progress the litigation satisfactorily.  
24 The Ministry will need to confirm its strategy for the  
25 progression of cases. Crown Law needs to be clear that MSD  
26 is ready and willing to progress the cases. There is no  
27 cheap option. A Commission of Inquiry would have its own  
28 equivalent expense. Garth Young commented that it would be  
29 beneficial for MSD to have an analysis of the projected cost  
30 of the litigation.

31 Jacinda Lean commented that if MSD proceeds to run  
32 limitation defences, strong cases should be picked to begin  
33 with. Otherwise, Jacinda and her team may run into  
34 opposition from the chief executive at MSD. Chris is to put  
35 together a process document around these issues. The

1 proposal is that Crown Law is to progress all claims that  
2 can be reasonably and rationally dropped away."

3 Q. A number of points arise from those two paragraphs which I'm  
4 hoping you are able to assist the Commission.

5 So, the policy confusion concerning the litigation that  
6 is referred to, what was MSD, what was the confusion within  
7 MSD?

8 A. I note given that I was one of the recipients of this  
9 suggests I should be better informed, but I don't have any  
10 recollection from the time. But the comments suggest to me  
11 that perhaps the Ministry was in two minds about the need to  
12 or the usefulness of litigation. And it seems to me, I  
13 guess, a question, if you like, or an unanswered question  
14 between Crown Law and the Ministry as to, yeah, I suppose,  
15 the benefits or the pros and cons of litigating a particular  
16 claim.

17 Q. And would it be fair to read into that paragraph, and tell  
18 me if it's not, but that there seems to be concern about  
19 whether MSD wants to progress the cases and attendant on  
20 that, it doesn't say about merits but that may be an issue  
21 as well, but certainly the cost of the litigation was a  
22 factor exercising MSD's mind?

23 A. That comment absolutely, clearly suggests that cost was on  
24 people's minds, yes, yeah, there's no cheap option, I guess  
25 is reasonably clear.

26 Q. And so, who would make the final decision? So, if there's  
27 policy confusion, there were two minds about whether one  
28 even runs this litigation and there's attendant cost. At  
29 what point could MSD say, "We don't want to run it"?

30 A. I presume at any point really, and that comes down to a  
31 decision-maker, whoever that might be, making that call. In  
32 the White case, I'm not sure when or who made that  
33 particular decision, if it is clearly documented as a  
34 specific decision.

1 My, I guess, understanding or assumption would be that, I  
2 think as I mentioned earlier, it is likely to have been the  
3 instructing client, if you like, that may well at that time  
4 have been the Deputy Chief Executive, if not the  
5 Chief Executive. But, as I said, without seeing any  
6 documents that confirm that one way or the other, that would  
7 be my assumption and I think accord with what memories I  
8 have from the time.

9 Q. And I don't know if paragraph 5 gives us any guidance, and  
10 you can comment on this, but it looks like the - and we have  
11 heard that Peter Hughes looked at documents where he had  
12 concerns about using the Limitation Act as a shield which  
13 avoided settling moral and meritorious cases.

14 So, can you help us understand what might be behind  
15 paragraph 5 where Jacinda Lean comments that "if MSD  
16 proceeds to run limitation defences, strong cases should be  
17 picked. Otherwise, there would be opposition from the  
18 Chief Executive"; what would that be all about?

19 A. It suggests to me that if a case is to go to trial, then  
20 that should be one perhaps where the limitation defence had  
21 a greater chance of success than not. As it says, to do  
22 otherwise, I guess that reflects perhaps what you mentioned  
23 earlier, the Chief Executive's view that perhaps limitation,  
24 what he said I don't know but, yeah, he had concerns about,  
25 I guess, that defence being used.

26 Q. And in terms of the proposal for Crown Law to progress all  
27 claims that could reasonably and rationally drop away, do  
28 you recall what that meant and what happened as a  
29 consequence?

30 A. Again, I don't. I guess, my guesstimate or assumption about  
31 what it might mean, is that other claims that may either be  
32 settled or discontinued for some reason.

33 Q. And turning over to paragraph 7 on the next page, if we call  
34 out paragraph 7, please, we've returned to the matter of the  
35 private investigator, in this case the suggestion is

1 preferably a former Police investigate issues at arms-length  
2 for the Crown. As we've seen, the intention was to  
3 investigate both the plaintiffs' witnesses and the Crown's  
4 witnesses. "It is important to find out as much as  
5 possible" and again we return to that topic of "any  
6 suggested collusion should be investigated as a matter of  
7 importance. Jacinda confirmed that MSD don't need prior  
8 approval for this". I assume, I shouldn't assume, were you  
9 involved in any discussion on behalf of MSD or approval on  
10 behalf of MSD for the use of a private investigator?

11 A. No, that's not something that I would have had the authority  
12 to approve one way or the other. And whether that means  
13 financial approval or approval in principle, I don't know  
14 but neither of those would have been my call to make.

15 Q. And would you have any understanding of the internal  
16 processes where something like use of a private  
17 investigator, in terms of the Code of Conduct in case it may  
18 involve surveillance, where would that lie?

19 A. Well, I guess it would depend on what - approval for what  
20 was being sought. And I simply have no idea what kind of  
21 approvals might be required to engage a private  
22 investigator. But one would have thought that if it was  
23 questionable, that it didn't fit within the Code of Conduct,  
24 then firstly, one would have thought that pretty serious  
25 consideration would be given to not doing that, if it  
26 conflicted with the Code of Conduct. But if it didn't and  
27 for some reason Jacinda or anyone else thought it was useful  
28 or necessary to get approval, then that could have been  
29 anybody from presumably either the Chief Legal Adviser or  
30 someone more senior.

31 Again, if it wasn't a matter of whether it was  
32 appropriate or not and it was a financial issue because  
33 obviously that would have - there would have been some cost  
34 to that, then that would have depended on who had budget  
35 authority.

1           Whether Jacinda did as sort of one of the lead  
2 solicitors, I don't know. But, again, if she didn't, then  
3 it perhaps would be her manager or possibly even again, the  
4 Chief Legal Adviser.

5 Q. And if we call out paragraph 8, and this may be more  
6 familiar to you because it's about standards of the day and,  
7 therefore, a little bit more within the realms of social  
8 work practices, rather than the legal framing. And we look  
9 at this and there has been a recommendation to engage  
10 someone independent of the department to give evidence on  
11 the standards of the day.

12           Towards the end it says, "We will probably need a  
13 multiple expert view. Brian Manchester cover a useful  
14 input". We have heard the name Brian Manchester in the  
15 letter we didn't look at but spoke about yesterday. Can you  
16 just give a very brief synopsis of Brian Manchester and his  
17 role within DSW?

18 A. I'm not sure that, from memory, I can recount all of the  
19 positions that he held over the years, but I will as well as  
20 I can. I'm pretty confident he was what was then called a  
21 Boys' Welfare Officer, so the historic equivalent to a  
22 social worker. And then he rose through the ranks, as it  
23 were, again specific positions I can't recall but at one  
24 point he went to National Office and I think, at the time  
25 when the Cutforth letter was sent, as I recall, he was a  
26 senior manager I think with responsibility for care, which  
27 may have included residential care. And then he became  
28 Deputy Director-General, if I recall correctly, I think that  
29 was the last position he held before retiring.

30 Q. So, in terms of that independent respected external  
31 evidence, he appears to fit the qualifications, in terms of  
32 his background of talking about standards of the day?

33 A. He would have, he certainly would have. Arguably, he  
34 himself wouldn't have been independent because of his  
35 background but he certainly would have had, I would have

1 thought, a very good perspective on standards. I think he  
2 began working in the 1950s, so his experience would have  
3 spanned a good number of years.

4 Q. Thank you. And looking at paragraph 9, so referring back to  
5 the paragraphs 4 and 5 we looked at earlier, it talks about  
6 "the policy direction for this litigation needs to be  
7 clearly determined. This extends to communications  
8 strategy. The communications people at MSD and Crown Law  
9 should be briefed on communications."

10 Just confirming, you didn't recall earlier being involved  
11 in that communication process. Do you recall who might have  
12 dealt with that within MSD?

13 A. I don't. I mean, it's possible that I may have provided  
14 information to anybody in the communications area who was  
15 drafting material. I don't recall the name of the  
16 communications or even how big the communications team was  
17 at that stage, to be honest. So, yes, I just simply can't  
18 remember what individual was in place or individuals were in  
19 the comms team at that time.

20 Q. That's fine, thank you. Paragraph 10, we have similar fact  
21 evidence. "This is shaping as a major issue. The  
22 evidential findings for similar fact witnesses could well  
23 influence settlement of their future claims".

24 I take it from that, that the thought in the strategy was  
25 that depending on what occurred in the White trial, you had  
26 a number of similar fact witnesses who had claims of their  
27 own with MSD and so findings, such as the physical abuse of  
28 Mr W, Mr C and Mr B, might well translate into findings in  
29 their cases or sexual abuse by Mr Ansell?

30 A. That is certainly, yeah, my reading of that paragraph.

31 Q. And just moving slightly off topic there, I don't know if  
32 you recall the Cooper Legal evidence bespoke concern that  
33 even after the findings in the White trial, and it's really  
34 more in Ms Hrstich-Meyer's evidence, but after the findings  
35 in the White trial they were not consistently or immediately

1 applied to, for example, the similar fact witnesses. Are  
2 you able to comment on, if you're taking those principles of  
3 face value, settling meritorious claims, moral versus legal,  
4 why were they not dealt with immediately, including  
5 Mr Wiffin's case, although he pulled out of being a witness?

6 A. Again, at the risk of sounding unhelpful, I can't say and I  
7 would need to look at each of those cases, you know, to make  
8 an honest opinion. But one would reasonably have expected  
9 that any findings from White that apply to any of those  
10 cases or claims would have been applied.

11 Whether, and one would assume that they may have or some  
12 of them, some of those claims may also have contained  
13 allegations outside the findings of White that may have  
14 required additional assessment, if you like. So, whether  
15 that is one of the contributing factors or not, I don't  
16 know. But I certainly acknowledge that any unreasonable  
17 time delays, if there were unreasonable time delays in  
18 managing any of those or any other claims, is certainly not  
19 something that we want to countenance.

20 Q. So, just for a process perspective, if there are allegations  
21 that similar fact witnesses have made about physical  
22 assault, for example, but they did contain other  
23 allegations, would MSD's approach be to offer an ex gratia  
24 payment on the physical assaults of any of these  
25 perpetrators and then resolve the other parts of the claim  
26 or do you leave them even though they're known to be proven  
27 until the very end?

28 A. That's not an approach that was taken, to my knowledge. The  
29 claim would have been dealt with as a whole and if an offer  
30 was to be made, there would be one offer, rather than  
31 potentially two offers; one that might have, as you say,  
32 addressed the outcomes from the White trial; and one that  
33 might have come from looking at other allegations within the  
34 claim.

1 Q. Would you accept that taking a step back and putting  
2 yourself in the claimants' shoes, not having an  
3 acknowledgment immediately it is a known fact, but having to  
4 wait for many number of years to receive acknowledgment, may  
5 not actually be a healing approach to a redress process?  
6 Early acknowledgment of a known fact would be more  
7 beneficial?

8 A. I would not disagree with that.

9 Q. And if we move on to paragraph 11 very quickly, it's really  
10 just "All witnesses should be cross-examined as to whether  
11 there has been any collusion with other witnesses".

12 Earlier you gave evidence about a general disquiet or  
13 communication about cross-examination. Do you recall  
14 whether it was in relation to collusion or just generally  
15 about how you wanted, as an organisation, the claimants to  
16 be treated at trial?

17 A. It was just a general comment/request. It didn't focus on  
18 any particular issue at all or part of their evidence.

19 Q. And if we go to paragraph 13, in this particular paragraph  
20 it says, "Crown Law advice has not changed. The White  
21 defence case is weak in parts but the precedent that a  
22 settlement would establish is not an option for the Crown.  
23 The alternative settlement options to be considered by  
24 government will likely as not be too late to affect this  
25 trial".

26 And that just reconfirms the earlier information that ADL  
27 was on its way, but it would not be in effect prior to the  
28 White trial? If by all means you -

29 A. I'm sorry, what paragraph was it because it's disappeared?

30 Q. Paragraph 13.

31 A. I'm just intrigued by that comment "the precedent that a  
32 settlement would establish is not an option for the Crown".  
33 That to me just seems at odds with the fact that settlement  
34 offers and negotiations were made. So, yeah, I'm just  
35 bemused by that, I guess.

1 Q. It is a topic that we'll look at a bit more closely shortly.

2 And then if we can turn to page 60. It is not a page  
3 that you are noted on but I just wanted to get your  
4 thoughts, particularly on the first point where it talks  
5 about "credibility, lack of honesty, opportunistic  
6 behaviour".

7 Are you able to comment on what the concern about the  
8 opportunistic behaviour might embody?

9 A. I really have no idea.

10 Q. That's fine.

11 A. Sorry.

12 Q. And, again, you weren't party to the communications but  
13 there are documents in this composite bundle that talk about  
14 the private investigator looking at investigating a range of  
15 the plaintiffs' files, the plaintiffs' ACC files, their  
16 banking records, their medical records, their Court records,  
17 their employment records, their Baycorp records. So,  
18 generally looking into every aspect of the plaintiffs'  
19 lives. Do you recall that as being something that the  
20 investigator was tasked to do?

21 A. Again, I don't have any specific recall of those areas but,  
22 again, I couldn't with absolute certainty say that some of  
23 those didn't cross my radar at some point. So, yeah, I  
24 don't have recall, but I don't want to say that I was never  
25 aware because I just simply can't.

26 Q. And if I can turn to page 71. We're now February 2007.  
27 We'll go to the bottom email first. And just to confirm  
28 that you are in the "cc" - no, actually, in the "To" list?

29 A. Yes, I am.

30 Q. So, "Garth and my teams" being Jacinda Lean "have had a  
31 meeting to discuss some White issues" and it talks about  
32 discussing the current round of witness interviews. It goes  
33 on to record that "Garth will be accompanying Chris  
34 Mathieson and Steve van der Splinter", the prior  
35 investigator?

1 A. That's correct.

2 Q. "... tomorrow to interview" and that's Mr B, is it,  
3 interview somebody?

4 A. Yeah, I don't think I was involved in interviewing him, but  
5 it would have been one of the Crown witnesses, yes.

6 Q. A couple of pages earlier there had been a suggestion of you  
7 interviewing Mr B?

8 A. Yes, he was interviewed but I don't recall that by me but,  
9 again, that might be my memory failing.

10 Q. Could I please have you read the third paragraph?

11 A. The largest paragraph?

12 Q. Yes, thank you.

13 A. "I understand that Steve had given his ICIL business card to  
14 previous witnesses. I am not that comfortable with this and  
15 would ask that witnesses continue to have direct contact  
16 with representatives from either Crown Law or MSD, rather  
17 than contacting Steve direct. Whilst I recognise that  
18 having a person with Steve's experience present at the  
19 interview will assist Kristy on issues of reliability and  
20 credibility, it may raise issues for our staff about why a  
21 private investigator is interviewing them. This has the  
22 potential to raise wider risks for the Ministry from our  
23 current staff, the unions and ex-staff who may be aggrieved  
24 if they think they are being investigated. I want to try to  
25 manage this risk as best we are able and I think that it is  
26 better that Steve is presented as part of the litigation  
27 team responding to the claims, rather than a PI in his own  
28 capacity. I am happy to discuss this further with you, if  
29 you have any queries".

30 Q. I suppose, just the question really is, was there any  
31 disquiet about presenting a private investigator as part of  
32 the litigation team, rather than being transparent about his  
33 role in these interviews?

34 A. Well, I guess, that is essentially, I think, what Jacinda is  
35 saying. She doesn't use the word "disquiet", but she has

1 clearly some issues or concerns about that. Yeah, that's  
2 apparent.

3 Q. My understanding from that is her concern is that he  
4 shouldn't be identified as a private investigator because it  
5 raises concerns for staff and she's wanting him to be  
6 presented as part of the litigation team?

7 A. That's correct.

8 Q. Moving on to page 72, this is dated I think it's either - it  
9 looks like the 20th or the 26th. It's a bit hard to tell,  
10 maybe the 26th of February 07?

11 A. Yes, 26th February I think so.

12 Q. But certainly February 2007. Just looking at the last  
13 section and I'll actually take you to a much more readable  
14 document but this is just to note that within the Litigation  
15 Strategy meetings, there was an issue raised about "Steve's  
16 role - scope creep, what is his role?" We will go straight  
17 to the other document because that will be more helpful,  
18 CRL27998. This is a document that's a couple of months  
19 later. And it's a file note of minutes of the meeting with  
20 MSD. And to orientate you, it appears that you were at this  
21 meeting, you're mentioned at paragraph 5, "Mike and Garth  
22 agreed that they would go back to Paul". So, would it be  
23 fair to indicate that you were at the meeting before I take  
24 you to other matters?

25 A. Again, I don't recall this specific meeting on that date but  
26 that would suggest that I was there, yes.

27 Q. We'll then go to paragraph 2. And if I can have you read  
28 that, thank you.

29 A. "Role of Steve van der splinter and the PIs. Jacinda  
30 expressed a concern that Steve had moved beyond the tasks  
31 that he originally had been assigned and we needed to  
32 reframe his brief for the hearing. Agreed that it was  
33 something that CM would develop in conjunction with Kristy.  
34 In the meantime, we would press ahead with the work that

1 Paul was doing. Paul will be meeting with [ ] in  
2 Auckland shortly".

3 Q. Either from this particular document or your recollection at  
4 the time, what was the concern by Jacinda about the private  
5 investigator having moved beyond the tasks originally  
6 assigned?

7 A. Once again, I can't answer that. I guess, to fully  
8 understand it we would need to know what was the agreed  
9 original brief and what he had done that fell outside of  
10 that. And, again, whether there's any documentation of  
11 that, I don't know, but that's - but the specific areas that  
12 Jacinda was concerned about, I can't answer, I'm afraid.

13 Q. And, as we look at, if you could take down that paragraph,  
14 at paragraph 6, it just briefly talks about the possibility  
15 of locating the White's mother. Do you recall that there  
16 was a discussion about reaching out to the mother to see  
17 what she may be able to tell the Crown?

18 A. I don't recall that being discussed before the fact, but I  
19 did become aware sometime after the fact that he had done  
20 so.

21 Q. And you will have read in Mr Earl White's evidence that  
22 there was an approach to his eldest, the White brothers'  
23 elder sister?

24 A. I did, yes.

25 Q. Were you aware of that at the time or was that information  
26 that came later?

27 A. No, and I - well, it would appear from Mr White's account  
28 and from this, well it was always - sorry, I'm backtracking  
29 a wee bit. Are we assuming from this paragraph that the  
30 "Mrs" is Mr White's mother or a married older sister?

31 Q. I am seeing the redacted version.

32 A. And it was his mother?

33 Q. Yes, I'm positive it was the mother.

34 A. As I said, I always understood that she had been spoken to.  
35 I don't have any recollection that Mr White's sister was,

1 but Mr White clearly says that that is what happened, in  
2 addition to the mother, is what he says, yes.

3 Q. And Mr White also says that the private investigators  
4 attempted to speak to his daughter and had been watching the  
5 property; do you have any knowledge of that at all?

6 A. Mr White's daughter?

7 Q. Mr Earl White's daughter.

8 A. No, I don't have any recollection of that.

9 Q. And if we can go over the page, and over the next page, I am  
10 looking for Mr Manchester's name. Yes, paragraph 20, so  
11 just really reinforcing what you had said, "The comment was  
12 made that Manchester is meticulous about standards, very  
13 formal, does not take any shortcuts and the discussion was  
14 to consider topics for Manchester."

15 A decision was then made, if we go to CRL ending 26158,  
16 and this was 24 April 2007. Again, just looking at the top,  
17 it's an email from Michael Hodge to yourself, Jacinda,  
18 Kristy McDonald and Michael Simmons and Sally McKechnie and  
19 it talks about Brian Manchester's statement in particular.  
20 I wanted to take you to the bottom paragraph, "Others should  
21 read", if you could read that paragraph for us, please.

22 A. "Others should read his draft brief and form their own views  
23 but I agree that he should not be called. Bearing in mind  
24 that Manchester didn't hold a relevant position of authority  
25 during the early/mid 1970s anyway, and that those who did  
26 are dead, we are better just relying on Doolan for the  
27 systems that applied from the perspective of the  
28 institutions. There is too much scope for the plaintiffs to  
29 use Manchester as a vehicle for highlighting systems that  
30 could have been put in place but weren't and to demonstrate  
31 the fallibility of the systems that were in place (e.g. the  
32 issues around Mauri Howe that it appears were not  
33 satisfactorily resolved)".

34 Q. Are you able to help us what the issues around Mauri Howe  
35 were that could be referred to there?

1 A. The only issue that I recall, Mr Howe was manager of Epuni  
2 Boys' Home for many years and in the early 1970s, I think, I  
3 am not sure if he was relieved from his role for a period of  
4 time but certainly there were some questions about his  
5 effectiveness as a manager at that time. But, for whatever  
6 reason, he stayed in that position until he left. I think  
7 that was when he retired. Whether that's the issue that  
8 this specifically refers to, I'm not sure, but that's the  
9 one that I do have recollection about.

10 Q. And if we go a little bit further up the page to the numbers  
11 1, 2, 3, in fact if you include the next paragraph as well,  
12 thank you, this talks about you being one of the  
13 interviewers in paragraph 4 but these are three of the areas  
14 that have been included in the draft, which was training,  
15 and we know that he was a trainer at Head Office, so he  
16 would have been well -

17 A. Who was, sorry?

18 Q. Mr Manchester, in the Cutforth letter he talks about -

19 A. That may be the case, yes. I don't recall specifically but  
20 that may have been, yes.

21 Q. And inspections was another of the areas and National Office  
22 oversight. Again, we have the suggestion of a problematic  
23 assertion, given the documents stating National Office's  
24 lack of faith in Mauri Howe's abilities.

25 And if you could just read the final sentence or two?

26 A. "I have drafted the statement as carefully as I can around  
27 these issues, but Manchester would quickly say some of the  
28 unhelpful things just mentioned under even the gentlest  
29 cross-examination".

30 Q. You may or may not be able to answer this question, but a  
31 decision was made that he would be an unhelpful witness  
32 because he would respond straightforwardly and not take any  
33 shortcuts. Was that something, were those decisions made  
34 with the input of MSD or were those decisions about who  
35 would be called as witnesses made elsewhere?

1 A. Again, I can't answer with any certainty but, clearly, well  
2 I certainly would have thought that Kristy McDonald as the  
3 QC, Crown Law, would clearly be involved in making decisions  
4 about who was called, and I'm sure also that the Ministry's  
5 Legal Team would have been involved, one would assume, in  
6 those discussions. The extent to which they may have had  
7 any decision-making input or ability, I really don't know.

8 But it would have been amongst those three cohorts of  
9 people, if you like.

10 Q. So, those are all the events, we won't go through it, we're  
11 time constrained, but Cooper Legal gave a range of evidence  
12 about what they considered were strategies or tactics that  
13 were an uneven playing field, I think was the term, in terms  
14 of a lot of decisions about how the case would be run,  
15 taking from the evidence that you've given, those really  
16 were in the legal realm and not so much decisions you would  
17 have been involved in. So, we'll skip to the trial has  
18 occurred, the findings have been made. And if we go to  
19 CRL25722, there was a point, Mr Young, wasn't there, where  
20 MSD actually wanted to settle the White case following the  
21 High Court proceedings?

22 A. That's correct. I can't recall the exact time-frame, but it  
23 was our view that the abuse that they suffered should be  
24 recognised.

25 Q. Is there a second page to that? That's actually not the  
26 document, I suspect. Yes, this is the page I'm after.

27 So, this is a 4 June 2009 email from Crown Law, Una  
28 Jagose QC to MSD. You were included in the email  
29 recipients?

30 A. Mm-Mmm.

31 Q. But if we call out paragraph 1, "Today we discussed whether  
32 the Ministry could provide the White brothers with an  
33 apology/acknowledgment and an ex gratia payment in respect  
34 of those factual findings the Judge made. Those findings  
35 were that Paul White suffered some physical assaults, Earl

1 White sexually assaulted by Mr Ansell (not contested by MSD  
2 in the trial)".

3 We will just have to take it a couple of paragraphs at  
4 the time, so you can actually read that.

5 So, "The reason for thinking about this now, is a concern  
6 that if the Whites were not in the litigation process, the  
7 MSD settlement process would have delivered them something,  
8 based on what we now accept as facts."

9 So, can you just explain my understanding of that is had  
10 they not been on the litigation track, the ADR process would  
11 have come in and there would have been a settlement on the  
12 basis, if nothing else, of a sexual assault for Earl White  
13 and the physical assaults for both of them?

14 A. Putting it simply, that's the case, yes.

15 Q. And then it goes on to say, "The meeting reached the view  
16 that there are significant problems with such an approach at  
17 this stage - both for the Crown's broader Litigation  
18 Strategy and because what happens on appeal is an unknown  
19 factor. Once the litigation is finally determined MSD will  
20 be in the best position to decide what to do".

21 The document then goes into the pros and cons of  
22 settling, and we'll have a very quick look at those.

23 If you just quickly read those to yourself and then I'll  
24 just - I'll let you read those to yourself. (Short pause).

25 And then if we move on to the next page, the last page,  
26 it's the second paragraph. So, the recommendation from  
27 Crown Law is, "In my view it is prudent to await the outcome  
28 of the litigation and then consider the pros and cons of  
29 making any such approaches".

30 Do you recall how MSD responded, there's clearly a  
31 divergence of view about whether settlement should occur at  
32 this point in time or not. You've read the pros and cons  
33 which refreshed your memory because it has been a while.  
34 What would you say about the opportunity MSD wished to take  
35 at that time, the advice that was given, and we know

1 settlement didn't occur until 2011, some 2 years later. So,  
2 because of the interests of time, I'm sort of wrapping it up  
3 in that way, if I can.

4 A. Yep. I mean, I certainly recall, in general terms, the fact  
5 that Crown Law weren't happy, even in 2011 - "happy" is  
6 perhaps emotive - had a different view than the Ministry did  
7 on whether a payment should be made to the White brothers or  
8 not.

9 Again, I don't recall specific discussions following this  
10 advice and the nature of those, but it's self-evident by the  
11 fact that those payments weren't made for another 2 years,  
12 that, for whatever reason, the Ministry, and I don't divest  
13 myself from that, the Ministry was persuaded to wait until  
14 the Appeal Court had heard the matter further.

15 But, yeah, the specific reasons or rationale as to why we  
16 or that decision was made, I can't say.

17 Q. There seems to be a clue in that document about the Crown's  
18 wider Litigation Strategy. So, what would you say to the  
19 proposition that, once again standing back, it looks like  
20 the Whites have been sacrificed to the wider Litigation  
21 Strategy to the Crown as a whole?

22 A. Well, again, I would have thought that they're not  
23 necessarily - the Crown Litigation Strategy was to settle  
24 claims that had merit early and directly where possible, and  
25 that obviously didn't happen with the Whites for reasons I  
26 guess now that we appreciate. But, I agree, should  
27 settlement or payment, if you like, have occurred early, as  
28 in 2009, ideally, yes, but I can't resile from the fact that  
29 the Crown Law advice was essentially taken in that instance,  
30 for whatever reason.

31 Q. And I take it, were you involved in those decisions or were  
32 they taken elsewhere?

33 A. I don't - I'm sorry, I really don't mean to be evasive,  
34 Commissioners, I don't recall specific discussions about  
35 that and who made the decision that those payments would

1 have been made at that stage. Yeah, I just simply don't  
2 know who and how and under what circumstances that decision  
3 was made.

4 Q. And then there's that concern about those White findings not  
5 being used for other claimants, and you've talked about your  
6 concern about Mr Wiffin's case being not representative, but  
7 we heard from Cooper Legal that there were a range of other  
8 claimants who similarly, there was merit in their cases,  
9 there was knowledge about proven events of either physical  
10 or sexual assault and they gave examples of the victims of  
11 Mr Ngatai, the victims of Mr Ansell, Mr Moncreif-Wright,  
12 Mr Tukapua and Mr Drake. We've seen in the media about  
13 Tyrone Marks and that's been a 13-year journey for Mr Marks.  
14 How could the Commission be satisfied that where there is a  
15 body of knowledge, known facts, a moral and meritorious  
16 claim, that there will be a different system that does not  
17 treat them as these particular cohort of claimants have been  
18 treated?

19 A. I guess, well I'm not trying to convince the Commission of  
20 anything in particular, and I respect the Commission's role  
21 to examine each and every issue in the whole abuse in care  
22 and redress system. And I'm certainly not going to deny the  
23 fact that not just Mr Wiffin's claim or the White's claims  
24 could have been handled better, there are others as well.  
25 And when I said that Mr Wiffin's claim wasn't representative  
26 of all claims, I mean that. That's not to say that his is  
27 the only claim that wasn't managed satisfactorily or could  
28 have been managed in a more timely way. And I'm certainly  
29 not suggesting that as a Ministry we can cover ourselves in  
30 glory at all. I guess what I'm saying is that those claims,  
31 without diminishing the importance of them and the impact  
32 that they've had on the individuals, also need to be seen in  
33 the context of all of the claims that have been made and  
34 brought to some kind of resolution.

1           Could we have done better in those instances and in some  
2 others? Absolutely. And I believe we have been making  
3 efforts to do so since then. And I'm sure no matter how  
4 well we try to manage claims and resolve claims, whether the  
5 Ministry continues to do that or in some other kind of  
6 redress forum, without being a fatalist I suspect that not  
7 every case will be managed ideally or perfectly because, as  
8 I think everybody knows, this is an incredibly challenging,  
9 very challenging thing to be involved in, a very human  
10 thing, and with that comes all sorts of possibilities for  
11 oversights and errors and, yeah, views to impact on perhaps  
12 how things might be done. So, yeah, as I said, I'm not  
13 discounting the fact that some people have been let down.  
14 As I said, I would hope that can be seen in the context of,  
15 yeah, those claims where people have fortunately felt a  
16 greater degree of satisfaction.

17 Q. Thank you. Turning to Mr Wiffin's case, if we go to  
18 CRL27711, as it's coming up, this is a document from the  
19 27th of November 2006. It's an email from yourself to Crown  
20 Law and it talks, the subjected line is "Howe transcript".  
21 If you could call out the body of the email, please? If I  
22 can have you read the second paragraph?

23 A. The second paragraph?

24 Q. Second paragraph.

25 A. "We did not get it on tape, but at the end of the interview,  
26 Mr Howe confirmed that an Epuni House Master Mr Wright had  
27 "slipped up" and sexually abused some boys. You may want to  
28 check with Chris, but I think it will be useful to get that  
29 recorded so at least some reference to it can go in Mr  
30 Howe's draft brief of evidence".

31 Q. So, in November 2006, even if for some reason the earlier  
32 convictions in 1976, I think it was, had -

33 A. Yes, yes.

1 Q. - had not made it onto the MSD database, certainly at  
2 November 2006 it was known, I assume you would agree that  
3 this is Mr Moncreif-Wright, there's not another Mr Wright?

4 A. Yes.

5 Q. Certainly at November 2006, it was known that  
6 Mr Moncreif-Wright from Epuni had sexually abused boys at  
7 Epuni; correct?

8 A. Well, that's - and that's not absolute confirmation but  
9 certainly it suggests that's the case, yes.

10 Q. And that was the confirmation of what Mr Howe understood?

11 A. Yes, that was clearly his recollection.

12 Q. And we had seen the earlier document, so we won't go to that  
13 again in the interests of time, but it's MSD2374 in a 2007  
14 interview, this was the document you had authored on the TV3  
15 The Nation?

16 A. Of 2017, did you say?

17 Q. Sorry, this was 2007, so maybe you better bring it up. Yes,  
18 so it's a 2017 document but it talks about a 2007 interview.  
19 If you could go to Moncreif-Wright? There we are. In the  
20 second paragraph, "An ex-assistant manager of Epuni", no it  
21 must be over the page. There we are, second paragraph down.  
22 Mr Howe also said in an interview a year later "I seem to  
23 suspect there may have been something happen so he was  
24 transferred to us at Epuni", meaning something happened at  
25 Hamilton Boys' Home where he was previously?

26 A. Sorry, yes, that is a reasonable interpretation of that,  
27 yes.

28 Q. So, at the time that Mr Wiffin files his claim, which I  
29 recall is late 2006, it was known that Alan Moncreif-Wright  
30 was a sexual abuser of boys in residences, at least Epuni?

31 A. Well, certainly based on Mr Howe's comment and the time  
32 period which we had confirmation of his conviction history,  
33 I don't recall but certainly we had some information at that  
34 stage, yes.

1 Q. And just checking that at that point was there any  
2 suggestion of looking at both Epuni and/or Hamilton Boys' to  
3 see whether there were a wider cohort of victims who had  
4 also been abused by him or would you wait to see who might  
5 come forward?

6 A. In response to Mr Wiffin's claim, you mean?

7 Q. In response to this information in 2006 and 2007 and  
8 Mr Wiffin's claim.

9 A. I think, as I talked about yesterday, we didn't, as a matter  
10 of course - if we received information that a particular  
11 person may have abused a number of children in a particular  
12 home, that we would have proactively sought out potential  
13 victims of that person. But, in the case of receiving  
14 Mr Wiffin's claim, again, it was received, you said in late  
15 2006? And the way, I guess, claims were generally managed,  
16 was that they would have been dealt with in the order in  
17 which they were received.

18 I can't say, apart from the involvement that I and my  
19 team had with Mr Wiffin's claim, what, if anything, either  
20 Crown Law - well, they wouldn't have done anything but what  
21 our own Legal Team may have done when they first received  
22 Mr Wiffin's claim and the extent to which they may or may  
23 not have actively started reviewing it.

24 Because, I guess, it's only until somebody sits down to  
25 work through a claim and begin to make some assessment of  
26 it, would they then be looking to see what information we  
27 had that would inform that claim.

28 So, I guess, that is a reason, I'm not saying it's the  
29 reason but it's a reason why Mr Wiffin's claim and what  
30 information we did have about Moncreif-Wright at that time  
31 weren't necessarily connected.

32 Q. So then, if we put investigation of further victims to one  
33 side, but in November 2006 you have information from Mr Howe  
34 that Mr Moncreif-Wright has "slipped up" and sexually abused  
35 boys. We've heard your evidence that MSD will investigate,

1 interview staff against whom allegations are made. Were  
2 attempts made in 2006 or 2007 to locate and interview  
3 Mr Moncreif-Wright about those allegations?

4 A. No, they weren't.

5 Q. Is there a reason they weren't?

6 A. I think when I talk about staff being interviewed and  
7 allegations put to them, I was talking about current staff.  
8 And in the context of whether they may have presented a  
9 potential risk to the Ministry or Child, Youth and Family  
10 clients, alleged perpetrators who were not current staff  
11 members may have been interviewed when a particular claim,  
12 if the claim that they were named in was being assessed.  
13 And that wasn't always the case but in some instances they  
14 were. But I think, as I also talked about, that's not the  
15 case now. The reason Mr Moncreif-Wright wasn't interviewed  
16 in late 2006 or 2007 would again I guess go to my previous  
17 answer, that unless least Mr Wiffin's claim was being  
18 actively assessed, then no investigative or inquiry steps  
19 would have been taken at that stage.

20 Q. Given that Mr Wiffin was told that effectively his claim was  
21 the next one-off the rank after the White trial in that 2000  
22 year, would it not have been incumbent with that trial  
23 coming up to interview Mr Moncreif-Wright at that point?

24 A. That would have been a decision for whoever was involved in  
25 managing that claim. And certainly, at a later date, as I  
26 recall, there was consideration given to interviewing  
27 Mr Moncreif-Wright but he wasn't but that was, yeah,  
28 certainly somewhat later than certainly 2006-2007.

29 Q. And we heard Mr Wiffin's evidence that effectively Crown Law  
30 told him the reason they were not talking to  
31 Mr Moncreif-Wright was because he had a Police  
32 investigation, he had made a complaint to the Police and he  
33 then talked about the fact that he cleared the obstacles  
34 because what he wanted most was for MSD to talk to  
35 Moncreif-Wright. So, what happened and why did

1 Mr Moncreif-Wright not get spoken to once Mr Wiffin had  
2 withdrawn his Police complaint specifically so that  
3 interview could take place?

4 A. I am not - I know that Mr Wiffin has said that that was his  
5 understanding or that's why he withdrew his complaint. I'm  
6 not aware, and don't recall from the time, that, if you  
7 like, Crown Law or the Ministry took that as a condition or  
8 understood that if he withdrew or didn't pursue his  
9 complaint with the Police, that Mr Moncreif-Wright would be  
10 interviewed.

11 But, again, I simply don't know if there was any specific  
12 reason why Moncreif-Wright wasn't interviewed. As I said,  
13 my recollection is that consideration was given to that.  
14 There may be some speculation about why it wasn't done, and  
15 I think I saw somewhere that it perhaps was because a  
16 settlement offer was in the near future. But, beyond that,  
17 I'm sorry, I just can't say.

18 Q. So, in terms of separate processes, you've got Crown Law who  
19 is pursuing the litigation and they may or may not interview  
20 a witness. Is there any impediment that would, in that  
21 process, have meant MSD couldn't itself locate and speak to  
22 Mr Moncreif-Wright in terms of assessing the wider cohort of  
23 claims that would have related to Mr Moncreif-Wright outside  
24 of the litigation?

25 A. No, I wouldn't have thought there was any impediment, other  
26 than perhaps if there was some kind of Police investigation  
27 imminent. But, beyond that, there's no impediment that I  
28 can think of.

29 **MS JANES:** Time to take the break.

30 **CHAIR:** I think it is time to take the break, we will  
31 take 15 minutes, thank you.

32

33 **Hearing adjourned from 3.30 p.m. until 3.45 p.m.**

34 **CHAIR:** Yes, Ms Janes.

35 **MS JANES:**

1 Q. Where still with Mr Wiffin and his case and it being a  
2 litigation trial case, would it be correct that MSD, you and  
3 your team, discovery requests, you would assemble documents  
4 available and provide them to Crown Law or direct to Cooper  
5 Legal?

6 A. At that stage, discovery would have been carried out by the  
7 Legal Team, rather than anybody in my team. Our  
8 administrator may have helped with searching for files but  
9 the process of going through and discovering those documents  
10 were relevant would have been done by the Legal Team and  
11 possibly in conjunction with Crown Law.

12 Q. And so, assembling the information such as the '72 and '88  
13 conviction information relating to Alan Moncreif-Wright,  
14 where would responsible for extracting that information from  
15 the database and moving it to legal or Crown Law lie?

16 A. I'm not sure if there's one answer but let's say the Legal  
17 Team did ask the historic claims administrator to carry out  
18 a search, then assuming at the time that the information  
19 about Mr Moncreif-Wright's convictions was suitably recorded  
20 and stored in our files, then it should have been located in  
21 such a search.

22 Yes, as I said, without knowing who might have requested  
23 a search and who might have carried that out, I can't say  
24 definitively how it might have been or whether it was  
25 discovered, identified and discovered.

26 Q. You may or may not be able to help me with this particular  
27 point, it may lay elsewhere, but in early 2007 Crown Law  
28 requested the conviction records from the Ministry of  
29 Justice. They received them on the 10th of July 2007 and  
30 then you will recall that in the response to Cooper Legal  
31 they were told that there was no information relating to  
32 Alan Moncreif-Wright or abuse. So, trying to untangle  
33 knowing at that point in 2007 the information is known at  
34 the very latest, if not earlier, a specific question is  
35 asked by Cooper Legal on behalf of Mr Wiffin about staff

1 files and any other information relating to Alan  
2 Moncreif-Wright but the answer comes back there is nothing;  
3 how could that happen?

4 A. I tried to give some explanation yesterday and I am not sure  
5 that I can add any more to it. But you're quite correct,  
6 Crown Law received the information about - the conviction  
7 information about Moncreif-Wright in 2007. We have a copy  
8 of that on file. The date that we received that, I don't  
9 know if that's ever been identified, I can't recall it.  
10 And, yes, it was early 2008, wasn't it, that the Official  
11 Information Act request was made and responded to.

12 But assuming we did have a copy of that conviction  
13 information at that time, I simply can't give a good  
14 explanation of why it wasn't identified and provided in  
15 response to that. A couple of reasons might be the way in  
16 which or the location that that information was filed, and  
17 that wasn't picked up during the search or any searches for  
18 the OIA request. Yeah, that I suppose is the best  
19 explanation that I can give. But, beyond that, I simply  
20 can't give an explanation that I would like to be able to  
21 give, both for myself and, also, for Mr Wiffin and for the  
22 Commission.

23 Q. In hindsight, how comfortable do you feel about your  
24 response, given that you had been the interviewer of Mr Howe  
25 in 2006, there was the information in 2007, there was the  
26 conviction summary in 2007? How comfortable with you about  
27 the lack of accuracy that was provided to Cooper Legal and  
28 Mr Wiffin?

29 A. Not comfortable.

30 Q. What processes are in place now that could reassure the  
31 Commission that similar oversights on multiple occasions is  
32 not likely to be happening to other claimants?

33 A. I think, as I alluded to yesterday, we have certainly a  
34 vastly better data management system than we did then. And  
35 I don't say this in any way as excusing those oversights and

1 inaccuracies, but I recall in 2006 being aware that we  
2 didn't have any specific type of data or information  
3 management system, specifically asking for one to be  
4 developed in some way for us. That didn't happen and at  
5 least two subsequent attempts over the years to do something  
6 similar progressed a certain distance but nothing ever  
7 eventuated. And, again, I stress that I'm not using or  
8 saying this as a defence, but we didn't exactly have the  
9 best tools.

10 And I was reflecting again last night that if the Crown  
11 had put the resources that have gone into this Commission,  
12 we're very, very grateful that that has been done and that  
13 Inquiry is underway, but if anything like that resource had  
14 been put in place to address claims by the Crown 15 years  
15 ago, then I suspect we would be in a very different place to  
16 where we are now.

17 Q. Because it seems inexplicable that two years go by, from  
18 Crown Law having the advice about the convictions, assuming  
19 they would have passed it on relatively proximately to MSD,  
20 if you didn't already have it, because Mr Wiffin is very  
21 clear in his evidence and he says at page 34 of his  
22 transcript, "I would not have accepted this offer at all had  
23 I known what I have since heard about the extent of Alan  
24 Moncreif-Wright's offending".

25 So, specific to Mr Wiffin, in that he feels he was  
26 deprived of highly relevant information material to his  
27 claim; and I don't take you to not agree that that is  
28 unacceptable?

29 A. And I would repeat, I think, what I've already said, that we  
30 did not manage Mr Wiffin's claim or expectations at all  
31 well, and I have apologised for that and I am very happy to  
32 do so again.

33 Q. But the bigger concern, Mr Young, is that whole issue of  
34 informed consent, particularly where you've got a process  
35 that wraps all the allegations up in one, it's full and

1 final settlement, can't really come back from that, and then  
2 you find that material, highly relevant information has been  
3 withheld from you.

4 So, if we take it away from Mr Wiffin briefly, if you  
5 look at, say, the Ngatai claimants where they were settled  
6 for a number of years on the basis of no acceptance of  
7 sexual abuse. There have been three cases that I am aware  
8 of that have been accepted on the basis of sexual abuse.  
9 All of those previous claimants are likely to feel very much  
10 like Mr Wiffin should they find out. What would you say to  
11 them?

12 A. What would I say to them in respect of why the abuse by  
13 Mr Ngatai wasn't acknowledged?

14 Q. And what can be done about it now that relevant information  
15 has within uncovered or accepted?

16 A. Well, I guess a couple of comments. One is that, yes,  
17 settlements have been made for people who have made  
18 allegations against Mr Ngatai, and I hasten to add I'm not  
19 suggesting that he wasn't abuser. But I guess one  
20 difference is that we, to my knowledge, have never received  
21 any confirmation in the same way as we have about  
22 Moncreif-Wright or Ansell and others, that he was abuser.  
23 To my knowledge, he wasn't charged on convicted. As I said,  
24 auto I'm not suggesting he wasn't but at the time of those  
25 initial allegations against Mr Ngatai, then we were  
26 operating, I guess, in a vacuum of information about him and  
27 the extent of which he was a confirmed perpetrator.

28 So, yes, I can understand those earlier claimants where  
29 their claim didn't acknowledge an abuse by him to feel in a  
30 similar way perhaps to Mr White or Mr Wiffin who, I think  
31 someone used the term first cab off the rank.

32 Whether there is any scope to go back to those people or  
33 not, is a decision I suspect that's beyond me. But, again,  
34 my personal view is that that would be a good thing to do if  
35 it were possible.

1 Q. And where would the decision-making for that type of  
2 revisiting settlement lie?

3 A. Without putting my colleague Linda in the hot seat, I  
4 imagine it would be at Linda's level or above. And I  
5 suspect, dare I say it, Crown Law may also have a view.

6 Q. And just very briefly because we heard from Cooper Legal  
7 that MSD has declined to give a reason for its change in  
8 position in relation to Mr Ngatai, relying on the fact that  
9 the Royal Commission was in place and there needed to be a  
10 joint response, are you able to help us at all as to what  
11 the change of position is?

12 A. It's not something that I was intimately involved in, but my  
13 understanding is that it is that we haven't received any  
14 smoking gun, as it were. There's no new information that,  
15 you know, confirms in some way that Mr Ngatai was abuser.  
16 My understanding is that simply the number of allegations  
17 and the nature and, presumably, the similarity of those  
18 allegations that have been made against him, that it's got  
19 to that point where it's difficult, if not impossible, to  
20 deny.

21 Q. And just quickly looking at a topic that we looked at yet in  
22 terms of the transfers, and particularly in relation to the  
23 Wiffin case. There was the interview from Mr Howe  
24 suspecting abuse at Hamilton Boys', transfer to Epuni. What  
25 could or should MSD do when that type of information comes  
26 to it because, as I understand, there were nine claimants  
27 settled at Epuni. Do we know how many allegations there had  
28 been made against Mr Moncreif-Wright at Hamilton Boys'?

29 A. I certainly can't tell you off-hand. There was obviously  
30 one that was referred to in some of the documents yesterday  
31 but, yes, we would need to look or someone would need to  
32 look to see whether he's been named by anybody that was at  
33 Hamilton Boys'.

1 Q. And, as an internal process, when that information comes to  
2 light, should it be, if it wasn't, standard practice to join  
3 the dots at the time of the information receipt?

4 A. Information about?

5 Q. So, you've got the suspicion about Mr Moncreif-Wright at  
6 Hamilton Boys', you've got the information that he "slipped  
7 up" at Epuni, we know that he has worked across those two  
8 organisations. At what point does MSD undertake appropriate  
9 analysis of the information it has available to it to  
10 proactively make sure that risk and victims and claims are  
11 assessed as fully as possible?

12 A. Well, I think using that example of that claim that was  
13 settled I think 2013, was it, I think from the documents  
14 yesterday, suggests that those dots were joined up. That  
15 the claimant alleged he was abused by a Mr Wright at  
16 Hamilton Boys' Home. The assessment of his claim clearly  
17 identified that Mr Moncreif-Wright worked there at the time.  
18 We knew about Mr Moncreif-Wright. So, for the purposes of  
19 that claim, those dots were joined.

20 Q. So, without naming another claimant, there were the three  
21 victims relating to the 2011 conviction and one of them was,  
22 I won't use - one of them was interviewed and found to be a  
23 very credible witness, very similar allegations.

24 So, looking at those principles but the claim was not  
25 settled, so looking at your principles, you've got all of  
26 the knowledge about Alan Moncreif-Wright, you've got  
27 information about the residences, you've had a claimant who  
28 has been interviewed, found to be very credible, details are  
29 very accurate; and I can get a document number if that's  
30 helpful so it can be later reviewed. That's MSD2353, it's  
31 July 2007, so exactly in the same timeframe. It's an  
32 interview of somebody else, Mr Peter Scarhill, who also  
33 gives similar information.

34 So, really exploring the proposition that you're  
35 assessing claims, it would be efficient and expeditious, I

1 put it to you, when you get a claim, look at the time  
2 periods, seek out what other claims relate to those  
3 residences' time periods perpetrators, and deal with them  
4 using all of the information you have to resolve them as  
5 quickly as possible.

6 So, why does that not happen?

7 A. Well, I think it does but not necessarily - I guess, the  
8 reality is that we have always, and unfortunately, been  
9 working with a backlog. So, if a claim arrives on our desk  
10 today and includes some of the features you've summarised,  
11 yes, you're right, it would seem expeditious to identify any  
12 of those elements of the claim that we have information and  
13 confirmed facts about but, to be fair to the perhaps 500  
14 claimants that came before that person and are still yet to  
15 be assessed, is it fair to them for that person to jump the  
16 queue? As I mentioned earlier, there may well be elements  
17 of the claim that we can effectively tick off but there may  
18 be other elements that are unique and novel to that claim  
19 that need to be assessed as well.

20 So, I guess it's about how any agency best manages some  
21 of those competing interests, I guess. But, yes, and, you  
22 know, I guess one of the purposes of this Commission is to  
23 think about and identify the kinds of processes that can  
24 bring about the most efficient resolution of claims that is  
25 done in an effective and timely way.

26 We have made some efforts to do that, to improve that  
27 over the years, with mixed success but, yeah, I think one of  
28 the issues certainly is that there are constraints within  
29 which we work. Going back to your proposition, I would  
30 agree, it would be expeditious to do some things in a  
31 different way. But is it always possible, is I guess an  
32 open question.

33 Q. So, it's that competition between the timely resolution and  
34 your prioritisation policy which makes the mandate order,  
35 with some exceptions?

1 A. Yes, and, yes, it is, there are - Mr MacPherson talked about  
2 it in perhaps a slightly different context but there are  
3 inherently, I think, some compromises and trade-offs in  
4 these kinds of processes that don't necessarily always  
5 meet - best meet the needs of an individual claimant.

6 Q. And just looking at the circumstances in which Mr Wiffin's  
7 claim came to be reassessed. The evidence has been that  
8 that arose out of the Gallen report. I am just trying to  
9 find the reference. There was actually a meeting, there was  
10 a claims resolution meeting in 2000 - I'll just find this,  
11 where in the same meeting minutes it talks about the Gallen  
12 review but it also refers to the CLAS Judge Henwood report  
13 and it talks about UN matters. Here we go. It's MSC340,  
14 it's Claim Strategy Group minutes for the 18th of January  
15 2010. At item 4 you will see it says "Wiffin to be  
16 re-reviewed in light of Gallen's comments in his report".

17 But if we can then go to the next page, and down to the  
18 next page. I'll quickly find it, I haven't got the item  
19 number. Item 7, thank you.

20 So, if we call out item 7, it talks about Carolyn  
21 Henwood's report in the second bullet point. And we know at  
22 around the same time there is the Vaughan documentary that  
23 screened in late 2009, August I believe. And we've got the  
24 UNCAT recommendations also referred to.

25 So, Mr Wiffin's view or suspicion was that there was a  
26 congestion of factors that actually precipitated the review  
27 and it does seem that in this particular meeting, certainly  
28 the Gallen review was a material element but there were  
29 perhaps also these other influences because Judge Henwood,  
30 as we heard from Mr Wiffin, had advocated strongly on his  
31 behalf as well.

32 Can you recollect whether it was just a factor or  
33 influenced by these other factors that may have converged to  
34 say this is a case that we need to have a closer look at?

1 A. As to Judge Henwood's advocacy, I can't say that she didn't,  
2 but I don't have any recollection that she advocated to us  
3 or to the Ministry on behalf of Mr Wiffin. That's not my  
4 recollection of it and I know Mr Wiffin, I've seen obviously  
5 and heard his evidence about his feeling that there were, as  
6 you say, that convergence of other issues that he thought  
7 may have influenced.

8 I can't - I don't see the connection, I should say, with  
9 UNCAT and Mr Wiffin's claim or a review of his claim.

10 I can't say that the 60 Minutes programme wasn't swirling  
11 around in my mind or the minds of other people, whether that  
12 may or may not have influenced. But, I think as I said  
13 yesterday, from the outset I felt some unease about the way  
14 his claim was dealt with and the settlement offer, if you  
15 can call it that, that was made.

16 Certainly, the interview that I had with 60 Minutes  
17 reinforced, if you like, some of the questions that I had  
18 about that. And I just can't remember the exact timing of  
19 it but I also suspect that was probably one of the reasons  
20 that Mr Wiffin's claim was one of those that was included in  
21 the claims that Justice Gallen was asked to review.

22 Q. As I understand it from Mr Wiffin's evidence, you had said  
23 to Mr Vaughan that you would reopen the case and that was  
24 August and then the Gallen report was -

25 A. I was looking at some notes of the transcript of that  
26 interview and, again I don't mean to split hairs or be  
27 pedantic, I don't think I said reopen but I said on maybe  
28 one or two occasions that we would be happy to review it.  
29 So, I think, as I said, that or the fact that I was  
30 questioned and challenged on that issue, and that Justice  
31 Gallen obviously also had some concerns about his claim,  
32 that, yeah, I would still say that was the primary reason,  
33 Justice Gallen's comments that is, were the primary reason  
34 that we undertook that review.

1 Q. Just going to the first offer that Mr Wiffin received, it  
2 was \$4,000 for services. And, as I understand your evidence  
3 at paragraphs 7.9-7.10, that type of offer is given  
4 effectively where there's a moral claim but no real  
5 acceptance of the allegations as such. How could that  
6 possibly apply to Mr Wiffin, given at that stage there was  
7 the acceptance of the physical abuse in the Moncreif-Wright,  
8 there was the acceptance and knowledge of the sexual abuse  
9 of Mr Moncreif-Wright, how could he be offered \$4,000 for  
10 services for the first offer?

11 A. I can't qualify my discomfort and unease with this claim.

12 Q. And when you then went back, and you allocated to a senior  
13 social worker, just out of interest, who was the person who  
14 dealt with Mr Wiffin's claim in 2009?

15 A. Fiona Wilson.

16 Q. And given that Ms Wilson had identified that she believed  
17 the allegations as described, and we spoke about the apology  
18 letter yesterday, was there any particular reason that MSD  
19 felt unable to specifically acknowledge the physical assault  
20 and the sexual abuse in his letter which would have, we've  
21 heard from Mr Wiffin, been meaningful?

22 A. In her subsequent apology letter?

23 Q. Yes, in the final letter.

24 A. I think I said yesterday, I'm not sure whether it was to  
25 you, Ms Janes, or Ms Aldred, that some of the things I  
26 personally, and I'm sure people like Ms Wilson might want to  
27 see in an apology letter, aren't always the same as others  
28 and the advice that we might get, and I think that, yeah,  
29 comes down to, dare I say, managing risk.

30 **CHAIR:** Risk to whom, Mr Young?

31 A. To the Crown.

32 **CHAIR:** By acknowledging specifically wrongs to  
33 survivors?

34 A. Yes, I think, look I might be taking it a bit far but, yes,  
35 I think there was some sense that we shouldn't be admitting

1 specific liability for specific abusers by specific  
2 perpetrators.

3 **CHAIR:** Do you want to follow-up on that, Ms Janes?

4 **MS JANES:** I'm happy for you to do that, Madam Chair.

5 **CHAIR:** Yes, right. Why not?

6 A. Um -

7 **CHAIR:** If wrong has been done to a human being by a  
8 named human being, isn't it the just and right thing  
9 to acknowledge that?

10 A. Absolutely.

11 **CHAIR:** To the person who has been wronged?

12 A. Absolutely, I absolutely agree. And then I guess, you know,  
13 perhaps I'm - yeah, if it was up to me personally, I would  
14 do that.

15 **CHAIR:** But you are, in fact, surrounded by the weight  
16 of the Crown machine -

17 A. We are and I guess also, you know, another consideration,  
18 and again not defence, is that it's one thing obviously to  
19 acknowledge a specific perpetrator by name where there is  
20 confirmed evidence that that abuse took place. Where there  
21 isn't that same level of confirmation, then obviously there  
22 are some risks about -

23 **CHAIR:** That is obviously true. There's a natural  
24 justice provision in there, which you have  
25 acknowledged is one of your principles.

26 A. Yes.

27 **CHAIR:** But absent the name of the perpetrator?

28 A. Yeah, likewise, it's my personal view that there is much  
29 more good than harm in acknowledging specific abuse and I  
30 think there have been probably some instances where we have  
31 done that, but that has perhaps changed at times.

32 **CHAIR:** Thank you for the acknowledgment and I do note  
33 that you're doing that in a personal capacity.

34 A. Thank you.

1     **CHAIR:** I appreciate you're under some constraints in  
2 terms of being a public servant, so I appreciate your  
3 frankness.

4 A. Thank you.

5     **CHAIR:** Yes, Ms Janes.

6     **MS JANES:**

7 Q. And just really rounding out that topic though, is there any  
8 impediment not naming the person but to acknowledge that it  
9 is representative and acknowledging both sexual and physical  
10 abuse, so that the claimant has a genuine sense of having  
11 been listened to, acknowledged the breadth of the  
12 experience, rather than just abuse which is not terribly  
13 meaningful in terms of a reflection of what they had  
14 actually experienced and suffered?

15 A. Again, my view is that there shouldn't be an impediment to  
16 doing that.

17 Q. Just quickly rounding out, because I'm conscious I want to  
18 leave time for the Commissioners and also your own counsel,  
19 but you may or may not be able to assist on this but  
20 Ms Hrstich-Meyer, her reply brief at paragraph 4.7 notes  
21 that attempts were made by MSD to locate Mr Moncreif-Wright.  
22 Were you aware of or involved in those attempts and why that  
23 did not happen?

24 A. You're talking about subsequent to 2009, as I recall? I  
25 think I referred earlier to some discussions about that.  
26 And, yes, again timeframes escape me but, yes, I was  
27 involved because that was one of those occasions I used a  
28 private investigator to try and confirm where  
29 Moncreif-Wright lived. So, yes, attempts were made. I even  
30 remember phoning who I thought - a man who I thought was  
31 him, and I suspect was him, but he was evasive - was your  
32 question also why it wasn't pursued?

33 Q. Yes, but it sounds like it was pursued, so can you just  
34 clarify the use of the private investigator to try and find  
35 him and when that occurred?

1 A. It's in my brief, I think.

2 Q. You talked about looking for a witness, yes, looking for a  
3 witness in the Wiffin trial, you didn't -

4 A. Yes, sorry. I think it was in 2010, I could be corrected on  
5 that.

6 Q. So, just confirming the reference in your brief is  
7 actually -

8 A. Yes, yes, sorry, yes, I forgot that it wasn't named, if you  
9 like, or it didn't identify that person.

10 Q. Was the private investigator not able to - but you spoke to  
11 somebody, you weren't able to ascertain if that actually was  
12 Mr Moncreif-Wright?

13 A. I think the sequence of events was that we found a telephone  
14 number for a person of that name. I attempted to speak with  
15 him and then I think it was after that, that because I or we  
16 weren't certain that that was Moncreif-Wright, and I think  
17 it was after that that we asked the private investigator if  
18 they were able to confirm whether that was the right person  
19 at that particular address.

20 Q. And without in any way making this very quick segue  
21 diminishing the importance of the topic, because it is a  
22 hugely important topic, and I will take it up with  
23 Ms Hrstich-Meyer, but I thought I'd better ask you in case  
24 you are the right person to ask. In terms of the Treaty of  
25 Waitangi, which has obviously been in existence for the  
26 entire period of the Historical Claims Unit, in the time  
27 that you were involved in that unit, what reference to the  
28 Treaty and tikanga Māori was given in terms of internal  
29 training, utilising those principles or applying those  
30 principles to claims that you were assessing?

31 A. It sometimes feels like just making a succession of  
32 apologies but, yeah, the lodging of those claims, the  
33 Waitangi Tribunal claims in 2017?

34 Q. 2017.

1 A. Was a challenge, and an absolutely rightful challenge to us.  
2 And it's always a bit sobering when one looks back and  
3 thinks about how you should have done something different.

4 Having said that, you know, as you know and as I've  
5 talked about, the senior social work advisers who formed  
6 part of the team, and in an increasing way, were all  
7 registered social workers with many years of experience.  
8 So, one of the expectations - not expectations, one of the  
9 conditions, if you like, of registration and competence, is  
10 being able to work cross-culturally. So, inherent I guess  
11 in the work that they were doing in particular because they  
12 were front facing with our claimants, then there was the  
13 expectation that they would work with people from different  
14 cultures, and particularly Māori, in a way that was  
15 respectful and acknowledged their culture. But I accept  
16 that that is somewhat different to having any kind of overt  
17 acknowledgment of the Treaty or of te ao Māori in any of the  
18 policy material that we might have had.

19 I would like to think that we did work in a way that was  
20 culturally appropriate and responsive to people's needs,  
21 while accepting that it was an area that we could certainly  
22 have given much greater specific consideration to.

23 Q. So, in 2006 when it was reflected that the claimant cohort  
24 consisted of probably 64, I think it was 64-75% Maori, was  
25 there any reflection at that point about the particular  
26 needs that may underpin their experience, loss of language,  
27 loss of culture, disconnection from whanau, or were they all  
28 treated as claimants based purely on the allegations they  
29 were making?

30 A. I think, to be fair, that we did look at claimants as a  
31 diverse group of people who would have - some, many of whom,  
32 would have a variety of needs that we were, at that stage,  
33 hopeful of supporting in some way. But, no, I don't think  
34 we did give the kind of specific thought to those specific  
35 cultural needs.

1 I know certainly, and again I can't timeframe it but I  
2 think at various times over the years, and again coming from  
3 a social worker's perspective, was that awareness of, and  
4 again coming from claimants who we were meeting with and  
5 talking with, they might not necessarily have specified it  
6 in their claim as such, but who certainly talked about that  
7 disconnection that they had from their culture, from their  
8 language.

9 And that was something that the senior advisers, I know,  
10 were conscious of, you know, how - is there a way that that  
11 can be addressed? And including, I guess, in the claims  
12 context, is that something, was that something that should  
13 be acknowledged in a similar way as an abuse, as an assault  
14 should be acknowledged. I don't think we ever got to an  
15 answer.

16 Q. That was the next question, what conclusion did you reach?

17 A. Yeah, and I think it's one that is still a very open  
18 question, and one that needs to be really given some serious  
19 consideration, because certainly, that dislocation is  
20 certainly a very real issue for many people. You know, and  
21 one of the things I think that a piloted wraparound process  
22 will aim to do, is to address some of those disconnections  
23 and hopefully work with people to reconnect. So, it's  
24 perhaps a very small step in the right direction but there's  
25 clearly still a lot that can be done.

26 **MS JANES:** And I was going to ask about records and  
27 redactions, but I suspect that I need to concede time  
28 to the Commissioners and to Ms Aldred.

29 **CHAIR:** If we could give you, say, 10 minutes on that?

30 **MS JANES:** Yes. How are you - that's fine?

31 **MS ALDRED:** Yes.

32 **CHAIR:** We agree that records and redactions are  
33 really important, but we do have some questions, so if  
34 you could get that out, we would be very pleased if  
35 you can do that.

1 **MS JANES:** And likewise, without diminishing the  
2 importance of that because they are big topics in  
3 their own rights and be assured that the Commission is  
4 looking at them.

5 A. Sure.

6 Q. I will just put some very short propositions, if I can, to  
7 you. Without traversing the N v Attorney-General case but  
8 it was very clear at that stage that there should be minimum  
9 redactions? All relevant information should be provided to  
10 claimants, not just because they needed to be able to  
11 formulate and understand their lives but to reconnect with  
12 wider family, if it that's possible? And you'd accept that  
13 there are a large number of reasons it's important to get  
14 the fullest possible records if you're a claimant?

15 **MS ALDRED:** Excuse me, before Mr Young answers that,  
16 could Ms Janes please just clarify with Mr Young that  
17 the decision that she's talking about is a decision of  
18 the High Court relating to redactions made in  
19 discovery material and not in relation to the  
20 alternative dispute resolution process or Privacy Act  
21 records.

22 **MS JANES:**

23 Q. Let's very quickly cover filed claims which is a different  
24 process, because it's the High Court discovery process and  
25 the N v Attorney-General relayed to that.

26 So, we've heard from Georgina Sammons, that she was in  
27 the litigation path. And irrespective of that, she got 45  
28 out of the 90 pages of records that she got were redacted,  
29 and that was difficult for her to understand and very  
30 distressing because one doesn't know what those 45 pages  
31 relate to.

32 And I understand that there are guidelines about  
33 redactions. Can you just briefly describe, both for the  
34 filed and unfiled claims, what the approach, in terms of

1 provision of records to claimants specifically, rather than  
2 the Cooper Legal discovery?

3 A. So, essentially, provision of records under the Privacy Act?  
4 That's your question, is it, how that's - yeah. Just an  
5 initial comment, as I think I said earlier, I had  
6 responsibility for overseeing Privacy Act requests in the  
7 early years of the Historic Claims Team but, again, I'm  
8 having difficulty time framing it, but haven't for a good  
9 number of years now, so that's outside my realm, so I can't  
10 speak to how they are managed currently.

11 But I have absolutely no issue in agreeing with your  
12 proposition that, firstly, the law entitles any person,  
13 including claimants, to a copy of their records, subject to  
14 the provisions of the Privacy Act. I mean, that's the short  
15 and the long of it.

16 And they are entitled to that as of right or as according  
17 to that legislation, and clearly for some of the reasons you  
18 outlined.

19 Certainly, when I had some responsibility for managing  
20 and overseeing Privacy Act requests, whether they were  
21 for - and it made no difference whether it was Cooper Legal  
22 or another lawyer requesting the files on behalf of their  
23 client, or if it was somebody who requested those directly  
24 to us, it made no difference. And, to the best of our  
25 ability and to the best of our understanding and  
26 interpretation of the Privacy Act, we released the records  
27 accordingly.

28 Q. I'm just going to pull up a document because I think that  
29 may assist us.

30 A. Yes.

31 Q. So, this is MSC ending in 549. It's a document, I have a  
32 date of 14th of September 2007. I'm not quite sure where I  
33 got that date from, but can you just have a look at this  
34 guidance. Does that look familiar to you?

1 A. Yes. Again, I saw it in preparation for the hearing. The  
2 date sounds about correct. I couldn't be more specific than  
3 that. And it's a document that I think was largely drafted  
4 by one of the lawyers from the Child, Youth and Family Legal  
5 Team who was, at that stage, doing some part-time work and  
6 assisting my team. And one of the things that she was doing  
7 was giving us some advice and guidance on how to manage  
8 privacy requests.

9 Q. So, it's not something that was drafted by you and your  
10 team, but did it inform how you and your team approached the  
11 release of information to claimants under Privacy Act  
12 requests?

13 A. Yes, yes, that was the purpose of it.

14 Q. And if we can just move, you will need to actually go  
15 through the pages and I will tell you when to stop. There  
16 is a particular - because we're doing this shorthand, when  
17 we look at this document - this is the one, thank you.

18 So, if I can call out the first two paragraphs up to the  
19 bullet point, it says, "Bear in mind whilst we prefer to  
20 provide requestors with a good level of information about  
21 the reasons for them coming into care, what happened during  
22 their time in our care and why the care ended; we need to be  
23 aware of the legal basis for that release to ensure that all  
24 interests are protected, including ours ..." and then it  
25 says:

26 "If in doubt, leave it out" - it is safer to withhold  
27 too much". It also at the bottom says, "Also, there could  
28 be a finding that we have breached the provisions of the  
29 Act - best avoided!!".

30 Reflecting on, you can't talk for other people who are,  
31 apart from a general policy perspective, but was this  
32 something that you are aware of within MSD that this "if in  
33 doubt, leave it out" and ask the claimant to come back for  
34 more if they are minded to?

1 A. As you say, I can't speak to anything beyond my experience  
2 but - yes, "if in doubt, leave it out" could be viewed in a  
3 number of ways, couldn't it? But I think what it is saying  
4 is that, and again, I'm not trying to minimise or justify  
5 this, that if there is some doubt, and despite advice about  
6 whether some things should be released or redacted, then I  
7 think the basis of that comment is that if it is redacted,  
8 then, yes, potentially, and it shouldn't have been, then,  
9 yes, it can potentially be released later. But I accept  
10 that that also means that the claimant or their solicitor or  
11 whoever would need to request that.

12 If it is something that should have been redacted and is  
13 released, then clearly I guess that is when a breach  
14 potentially occurs.

15 You can't undo a breach, whereas it is perhaps somewhat  
16 easier to release more information.

17 I don't know whether it is any assurance or provides any  
18 assurance, but regardless of the content of this guidance,  
19 there were two, I guess, overriding messages that I gave to  
20 all of those who were managing or actually doing the  
21 requests, and that was, one, the absolute right that people  
22 had to their information, and they needed to have that so  
23 that they could have a full understanding of their  
24 experience in care, from the perspective of the records of  
25 course.

26 And secondly, that if there was anything even approaching  
27 suggestions of harm, ill-treatment, abuse, regardless of how  
28 that may have made the Ministry look, then there was to be  
29 absolutely no question that that is information that should  
30 be released.

31 So, again, I guess what I'm trying to say is that I have,  
32 and I would like to think those that I had responsibility  
33 for who were managing it, always appreciated the importance  
34 of people having access to their records. And it concerned  
35 me to hear Mr White in his evidence to this hearing talk

1 about the fact that he, when he received his records, and I  
2 think he received them through one of the Child, Youth and  
3 Family Officers, as opposed to us, but they were difficult  
4 to work through, difficult to understand, seemed to be out  
5 of order, and he even suspected that that had been  
6 deliberately done to perhaps confuse him.

7 I can absolutely understand his frustration. I would  
8 like to think that there would be absolutely no way that  
9 they would have been deliberately put out of order but I,  
10 myself, who have looked at goodness knows how many records  
11 and have a very good understanding of the nature of those  
12 records, can still find some of them very confusing to  
13 follow. They are not necessarily always in chronological  
14 order.

15 And I know at times, well, at a time we even talked about  
16 whether we could actually take the records apart and try and  
17 put them in some kind of better chronological order so that  
18 they would make better sense to the reader.

19 Our advice was that they had to be released in the form  
20 in which they were held.

21 Similarly, we were conscious that, you know, if there  
22 were large amounts of redactions being made, and sometimes  
23 that might be a whole page, you know and assuming those  
24 redactions were proper, we were conscious that, you know, a  
25 person like Ms Sammons might get 50 pages that are just  
26 blank, and that raises a lot of questions, if not  
27 suspicions.

28 So, a consideration around that was, should we not  
29 provide those blanked out pages, so at least the person is  
30 not confronted with however many pages. But, again, the  
31 advice was, and I think it's probably the correct advice,  
32 no, they had to be provided because that shows that, you  
33 know, X pages were redacted.

34 So, I guess, we've always been aware of how, yeah, I  
35 guess of the consequences of redactions, you know, when

1 they're done according to the law, that that is not always  
2 easy for people to understand and, as I said, can raise  
3 questions and suspicions.

4 And I would like to think that when people are provided  
5 with their records, that there is a decent and  
6 understandable explanation given to them as to why  
7 redactions are made, so that perhaps to allay them of some  
8 of those concerns.

9 Having said that, that also doesn't say that at times  
10 errors will undoubtedly be made and information that should  
11 have been redacted may be released and the reverse may also  
12 happen.

13 Q. Just a very quick final question, would you understand that  
14 somebody who's not legally represented receiving the  
15 redacted documents may not understand that they have a right  
16 to challenge or come back and request more information?

17 A. They may do but, again, I think in every instance where  
18 someone who isn't legally represented is given a copy of  
19 their records, it's made very clear in the covering letter  
20 that they have that right to either come back to us and/or  
21 to go to the Privacy Commissioner.

22 **MS JANES:** Thank you very much.

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1  
2 **ERNEST GARTH YOUNG**  
3 **QUESTIONED BY COMMISSIONERS**  
4  
5

6 **COMMISSIONER ALOFIVAE:** Mr Young, thank you for your  
7 evidence today and really in light of the comments  
8 that you made to our Chair, just a follow-up.

9 You were shown a document yesterday, it was actually,  
10 Ms Janes, it was an analysis that you'd done, but of the  
11 figures that had been provided in terms of some Crown  
12 documents, and you commented that actually, in your own  
13 assessment there were three organisations that kind of  
14 really rose to the top. There was Epuni, Hokio Beach and  
15 Kohitere?

16 A. Yes.

17 **COMMISSIONER ALOFIVAE:** And, in light of your comments  
18 around risk to the Crown about admitting to certain  
19 things, would you say now that you see a pattern of  
20 endemic abuse or systemic abuse, in light of  
21 everything that you know today, reflecting back?

22 A. Across the care system?

23 **COMMISSIONER ALOFIVAE:** Yes.

24 A. Well, um, I don't want to admit to stupidity, but I'm not  
25 entirely sure what is meant by "systemic". I mean, it's  
26 without doubt that many, many children and young people in  
27 care, whether it was in residences or in foster care or in  
28 family homes, wherever, were harmed in all sorts of ways.  
29 Many children who didn't come into care were harmed in their  
30 own homes and we failed to protect them from that.

31 I would certainly like to think that not every child who  
32 came into care suffered some kind of harm. That would be  
33 unconscionable.

34 But I guess the fact that many obviously were suggests  
35 that at least there perhaps wasn't, at various times anyway,

1 the right checks and balances that might have ameliorated  
2 that somewhat.

3 But, as I understand the Commission's Terms of Reference,  
4 you know, one of the things you'll be trying to, I guess,  
5 get a much better sense of, is the extent of abuse within  
6 the care system over the years and I truly hope that you are  
7 able to come to some better understanding of that because  
8 I'm not sure that we have been able to do that as yet.

9 But, yeah, clearly, many were abused in all sorts of ways  
10 and that suggests that not enough was done to clearly keep  
11 children safe.

12 **COMMISSIONER ALOFIVAE:** That as far back as 2007 there  
13 were these emerging patterns, numbers are on the  
14 increase, systems that didn't talk to each other.

15 It's not a criticism, just a reflection of the reality  
16 of the system you were working with at the time, that  
17 there were endemic and systemic issues that were  
18 rising that should have put you on high alert?

19 A. Yes, I think it's - perhaps, I think probably what we were  
20 focused on was the changes before us and in trying to  
21 address those and deal with those and the people who were  
22 bringing them to us, rather than giving any attention to  
23 necessarily how widespread that past abuse was or indeed  
24 current abuse. And, yeah, I suspect that wasn't just the  
25 Ministry, but the Crown as a whole, and accepting that, you  
26 know, the Ministry certainly would have been relying on  
27 advice, but advice from agencies. But, yes, I think it is  
28 the case that we - that our focus was in one place and not  
29 necessarily another.

30 **COMMISSIONER ALOFIVAE:** Thank you. No further  
31 questions.

32 **COMMISSIONER ERUETI:** Tēnā koe, Mr Young. Could I ask  
33 a follow-up question in a way, it's about the  
34 independence of the MSD ADR process. So, this  
35 question of whether there's systemic, evidence of

1 systemic or endemic abuse across the system seems to  
2 be connected to this question about whether or not  
3 there should have been a global settlement like the  
4 settlement that they had at Lake Alice, right, which  
5 could or could not have involved - which likely would  
6 have involved an independent or a third party  
7 adjudicator and assessment of the evidence and so  
8 forth. There could have actually been, as you say, an  
9 Inquiry such as this 16 years or so ago, but that  
10 didn't happen because of, you know, the lack of  
11 evidence of a systemic abuse across the care system.

12 So, instead, what we see has developed is the ADR process  
13 and it seems from listening to you over the last two days,  
14 that there's, I think you said something like the  
15 fundamentals are in place or that you have - it's a much  
16 better, more robust process than it's ever been, it seems.  
17 You have the staff there. You know, there's changes, it's  
18 not perfect, there are things that can be done to it. But  
19 the question for me, you talked about whether or not it was  
20 in or outside the agency but the question for me is, this  
21 question of independence that survivors keep bringing up.  
22 Irrespective of this question of whether there's evidence of  
23 systemic abuse or not, we have an ADR process which is  
24 processing thousands of claims. It's, as you say, fairly  
25 robust but it's not independent. And so, you know, my  
26 question essentially is, to your mind, should it be - what's  
27 your response to survivors saying that it should be an  
28 independent process?

29 A. Well, firstly, I totally get survivors' view that it isn't  
30 independent and should be, and that's not a new criticism  
31 either from survivors or from counsel.

32 I guess, we have thought though that our process, while  
33 not being independent, is impartial. But, again, I also  
34 acknowledge and understand that survivors, in particular,  
35 might not see that to be the case.

1 But, again, a personal opinion is that, notwithstanding  
2 some of the practical issues that Mr MacPherson spoke of,  
3 personally if claims are to be managed independently, then  
4 that's not something that I have any difficulty with.

5 Mr MacPherson obviously raised the question or the issue  
6 that presumably nothing can be entirely independent of the  
7 Crown if it's relying on Crown funds but certainly, and I  
8 guess the Confidential Listening and Assistance Service is  
9 an example of something that was not independent of the  
10 Crown but obviously independent of the agencies who had care  
11 responsibilities.

12 So, hopefully that answers your question. Yes, I can  
13 certainly understand the wish and the desire for an  
14 independent body.

15 **COMMISSIONER ERUETI:** Yes. And when you say it's at  
16 least impartial, what do you mean by that?

17 A. I guess, what I mean by that, is that there was a couple of  
18 things. Some separation, structurally if you like, between,  
19 you know, in the earlier days, and it was less separated but  
20 while Child, Youth and Family who was a part of MSD, at  
21 least the historic claims function, sort of sat outside the  
22 Child, Youth and Family Service line. Since, gosh, yes,  
23 since 2006, sorry timeframes, MSD and Child, Youth and  
24 Family, what am I talking about, anyway, there has been,  
25 yes, greater separation, sorry, of the two organisations.  
26 So, there is more of a split, if you like, between those of  
27 us who are dealing with historic claims and those who are  
28 providing care services.

29 I guess the other aspect of impartiality is that those of  
30 us who have been working in the Historic Claims Team, I  
31 think it goes to some of my comments about hopefully being  
32 non-judgmental, bring an impartial mind to the claims.

33 **COMMISSIONER ERUETI:** Yep.

34 A. But, again, I acknowledge that that doesn't necessarily fit  
35 or would be seen in that way by survivors.

1 **COMMISSIONER ERUETI:** I understand. Just a quick  
2 question on the Treaty.

3 So, 2006, you're starting, you're all getting together  
4 and you're thinking about what you're going to build, what  
5 the waka is going to look like. The puzzle for me is why  
6 there's no active engagement with Māori. It's not just this  
7 point about ensuring that there's a response that recognises  
8 a kind of cultural disconnect. It's more about the fact  
9 that in 2006 Treaty principles are well established,  
10 partnership, engagement with iwi who have an interest, it's  
11 clear the numbers are high, 65-70%, and your formulating  
12 principles in 2010 which have these source you're ruminating  
13 about this since 2006 and so forth but no evidence of  
14 thinking about the Treaty, despite the number of Māori who  
15 were in the claims process. It's a real puzzle for me and I  
16 don't know why it took so long for this to come up and it  
17 seems to have been prompted by the Tribunal claims 10 years  
18 later, so can you help me with that?

19 A. I don't know that I can satisfactorily help you, I'm sorry.  
20 And if I think back to early 2007 when there was a workshop  
21 that involved, you know, a huge number of agencies, and that  
22 I guess sort of come up with that, the principle or the  
23 suggestions, the recommendations of CLAS and of the  
24 Litigation Strategy, firstly that didn't include  
25 representatives from Te Puni Kōkiri. Why? I simply don't  
26 know. Were Treaty principles considered at that workshop?  
27 I certainly don't have any memory of them and I don't have a  
28 satisfactory answer for why. That's clearly something that  
29 should have crossed our threshold but didn't.

30 **COMMISSIONER ERUETI:** How many Māori were on staff at  
31 that time? In 2006 the team were very small, at what  
32 stage did you see more Māori representation?

33 A. In the Historic Claims Team?

34 **COMMISSIONER ERUETI:** Yes.

1 A. Our team administrator was Māori and in the period of time,  
2 up until relatively more recently, I'm sorry to say we only  
3 had one senior social work adviser who was Māori.

4 **COMMISSIONER ERUETI:** No more questions. Thank you  
5 for your time, kia ora.

6 **CHAIR:** I just have one area, but I want to check  
7 first that by going past 5.00 are we putting anybody  
8 to any particular inconvenience, I am thinking  
9 especially of our stenographer and interpreters. This  
10 should only take another 5 minutes or so. Are you  
11 happy to proceed?

12 Mr Young, your colleague, Mr MacPherson, yesterday spoke  
13 about building a system by getting feedback from survivors,  
14 changing it and various iterations to try and build a  
15 process by which their claims could be dealt with outside  
16 the Court system. So, there is a sense in which this has  
17 been an iterative process, building up the ADR system to  
18 what it is today.

19 An example that you particularly refer to, was the  
20 question of wellness payments, and it's just one example of  
21 how policy and the practice changed over the years.

22 So, you talked about the wellness payments early and  
23 tended to be the wraparound and then at various stages it  
24 went by the wayside and then it came back.

25 So, just taking that as one example of many, I think,  
26 where things have changed, that have affected the  
27 entitlement of survivors. It obviously leaves a discrepancy  
28 and a lack of consistency between what survivor A might get  
29 in one year compared with survivor B when the policy changes  
30 a few years later.

31 My question for you, given all of that, is, do you have  
32 any ideas or thoughts or have you given thought to how these  
33 inconsistencies can be ameliorated, can be somehow made up?  
34 Is there a way in which survivors can come back to you and

1 say, "Hey, they got wellness programmes before, I didn't get  
2 it"? Do you have anything to say about that?

3 A. We're talking about people who have had their claims settled  
4 in the past?

5 **CHAIR:** Yes, that's right.

6 A. I think I maybe briefly alluded to that earlier but, again,  
7 speaking for myself in principle, that's not something that  
8 I see as unreasonable, if you like. I guess, how it might  
9 be done in a practical way, would obviously need to be  
10 thought through and identifying - I suppose one task would  
11 be to identify, and how you identify those that may have  
12 missed out on something that they otherwise might have been  
13 entitled to.

14 But - sorry, I was just giving some thought, I suppose,  
15 to what some survivors may have missed out on and, yeah,  
16 sorry.

17 **CHAIR:** Yes, it also comes about, doesn't it, I mean I  
18 think there was reference to the nah tie or the claims  
19 about Mr Ngatai where information has come to light  
20 since settlements have happened?

21 A. It's a similar.

22 **CHAIR:** It is another example, isn't it?

23 A. It is a similar conundrum, yes.

24 **CHAIR:** I think it's one of the challenges, and I am  
25 really just putting it out there that one of the  
26 challenges of the Commission to grapple with is this,  
27 to give survivors of abuse a sense that they have been  
28 dealt with in an even-handed way?

29 A. And I think more than anything and, you know, again it's a  
30 really interesting process to go through to reflect back on  
31 the past years and, you know, hopefully we learn from  
32 experience, but I think the one thing that could have been  
33 done, and which I suspect that the Commission will be doing,  
34 is, it's actually setting up that framework from the  
35 beginning, so that the basis on which claims are going to be

1 assessed, the basis on which payments are going to be made,  
2 the basis on which other services, how survivors are going  
3 to be supported, is well understood and well-known, so that  
4 you are able to ensure that there's consistency over time.

5 We have, I think, tried our best to ensure that there's  
6 been consistency of payment, but I acknowledge that is only  
7 one part of the redress process and the extent to which we  
8 have been successful in that, again I would like to think we  
9 have been okay but, yes, I think the best possible scenario  
10 is having a very clear process. Process isn't always the  
11 best word but from the beginning, yeah, yeah.

12 **CHAIR:** A clean start maybe?

13 A. Tabula rasa, a clean slate, yes.

14 **CHAIR:** Thank you, Mr Young. Are there any questions  
15 arising from any of the Commissioners' questions?

16 **MS ALDRED:** No.

17 **MS JANES:** Just to rectify an oversight, could I  
18 produce that document, Commissioner Alofivae reminded  
19 me, if I could produce my statistical analysis as  
20 Exhibit 5.

21 **CHAIR:** Yes, we will note that as Exhibit 5.

22

23 **Ms Jane's statistical analysis was produced as Exhibit 5**

24 **MS JANES:** Otherwise that concludes the evidence for  
25 today.

26 **CHAIR:** Mr Young, you have had a gruelling couple of  
27 days and we very much appreciate your contribution to  
28 the work of the Commission. It's been important to  
29 have the insight of somebody who's been working for so  
30 long, so thank you very much on behalf of the  
31 Commission.

32 A. It hasn't been too gruelling and thank you, Ms Janes, for  
33 being very pleasant. I truly hope it has been helpful to  
34 the Commissioners and I thank you for the opportunity and  
35 commend you for your future work.

1     **CHAIR:** Thank you very much, Mr Young.

2

3                     (Closing waiata and karakia)

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5

6

**Hearing adjourned at 5.15 p.m.**