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**ABUSE IN CARE ROYAL COMMISSION OF INQUIRY
MARYLANDS SCHOOL**

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)
Ali'imuamua Sandra Alofivae

Counsel: Ms Katherine Anderson, Mr Simon Mount QC, Ms Kerry
Beaton QC, Ms Jane Glover, Ms Anne Toohey, Ms Kima
Tuiali'i, Ms Julia Spelman, Mr Winston McCarthy, Ms Echo
Haronga, Mr Michael Thomas and Ms Kathy Basire for the
Royal Commission

Ms Rachael Schmidt-McCleave, Ms Julia White and Mr Max
Clarke-Parker for the Crown

Ms Sonja Cooper, Ms Amanda Hill, Mr Sam Benton,
Ms Alana Thomas and Mr Sam Wimsett as other counsel
attending

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

Date: 14 February 2022

TRANSCRIPT OF PROCEEDINGS

Adjournment from 3.08 pm to 3.20 pm

1 **CHAIR:** Thank you. You are the only people who misbehaved and stood up.

2 **MS COOPER:** Habit.

3 **CHAIR:** Everybody else has been humbled into not standing up.

4 **MS COOPER:** Habit.

5 **CHAIR:** Anyway, welcome back, Ms Cooper, in yet another guise, and Mr Benton, thank you for
6 coming, appreciate that.

SONJA COOPER AND SAM BENTON (Affirmed)

7
8 **MS ANDERSON:** Thank you, Madam Chair. Thank you and welcome, Ms Cooper and
9 Mr Benton. And thank you for the very substantial statement of evidence you've given
10 about the experience you've had representing clients who have been abused in the care of
11 The Order of St John of God. In the time we've got available today, we of course can't go
12 through all of that, but as you'll be very familiar with, of course, the Commissioners have
13 read that and the full statement will be available on the website after this session.

14
15 So we're going to talk through some topics in a summarised way to get a sense of
16 the messages that are contained in your statement of evidence. Just beginning with a bit of
17 background and context. Can you just explain to the Commissioners and the public
18 watching on the livestream how it was that you came initially to be involved with, first it
19 was those coming forward relating to Marylands, wasn't it?

20 **MS COOPER:** Yes, so first involvement was as far back as July 2004. As has been the case
21 actually with a lot of survivors through St John of God, our first client came to us through a
22 counsellor who referred us this particular client after things had broken down in terms of
23 meetings with Brother Burke and later that year we had another client come through to us
24 who instructed us in relation to State care, and as part of that narrative we learned that he
25 had spent his time at Marylands; so this is Kerry Johnson who gave evidence in the State
26 redress hearing.

27 **MS ANDERSON:** Thanks, just to landscape this in time, the first client in I think you're saying
28 July 2004 after things with Brother Burke had broken down?

29 **MS COOPER:** Yes.

30 **MS ANDERSON:** Then we'll come on and we'll explain that this is after there's been a pause put
31 on the pastoral process. So that's the point at which you first become involved with clients?

32 **MS COOPER:** That's correct.

33 **MS ANDERSON:** You've also been involved with those who have been abused in the context of
34 Hebron House – Hebron Trust, and also St Joseph's Orphanage. Do you want just to give

1 an overview of the relationship of those settings as you understand them and the
2 relationship with the Brothers?

3 **MR BENTON:** Yes. So in total we've acted for 18 clients who were at Marylands, 15 of whom
4 allege sexual abuse by Brothers. In terms of Hebron, we have acted for 28 clients, which is
5 an update from the paper, we've had five more since October, and a few more inquiries as
6 well.

7 Finally in terms of St Joseph's Orphanage, we've acted for around about 18 clients
8 as well, but in the paper we've set out eight of those clients who we think might have a link
9 to the Brothers of the St John of God Order.

10 So St Joseph's Orphanage was essentially next door to the Marylands School, it was
11 run by a completely different order, the Sisters of Nazareth. It was largely run by nuns and
12 there was a degree of relationship it seems between the two institutions, between the nuns
13 of the Sisters of Nazareth at the orphanage and the Brothers at St John of God.

14 In terms of Hebron Trust, Hebron Trust was run by Brother Bernard McGrath. We
15 use the term "Hebron Trust" here rather loosely to talk about all of his operations at that
16 time. Hebron Trust itself was only formed a few years after he arrived in Christchurch the
17 second time. And he was essentially running a lone wolf operation under the auspices of
18 the St John of God Order while he was living on the property that made up Marylands
19 grounds.

20 **MS ANDERSON:** Thank you. So in terms of these distinct groups, boys and girls presumably
21 were at the orphanage for reasons which are obvious from the name, not because they
22 necessarily had a disability or for some other reason they were orphans. And then we've
23 got the group of students who were at Marylands School and the different group under this
24 loose term "Hebron Trust". How would you explain for the Commissioners the difference,
25 if there was any, in the level of disability across those different groups?

26 **MR BENTON:** Well, the St Joseph's Orphanage residents were not in there due to any disability,
27 they were, as you've said there, because it was an orphanage and they needed parental care.
28 Marylands was a school for children with learning disabilities and other disabilities and that
29 could range from very severe disability through to a relatively minor degree of disability.

30 In terms of Hebron, the placements at Hebron, or the involvement of people with
31 Bernard McGrath at Hebron, they were largely what would be termed street kids, so at-risk
32 youth, often in their early teens, sometimes younger, sometimes older, and they ended up
33 there, usually because they had nowhere else to go or because they needed alcohol and drug
34 treatment. Sometimes they were placed there by Social Welfare, CYFS, or they ended up

1 there through having to do community work, so there was quite a range of ways they could
2 have ended up at Hebron.

3 **MS ANDERSON:** So different pathways into Hebron relative to the school and the orphanage. I
4 think you say in your evidence that even in relation to Marylands it looks like pre-1970
5 there might have been a greater number of people who you've had dealings with who were
6 abused in that pre-1970 period that would have had a disability relative to those who were
7 at Marylands after that date.

8 **MR BENTON:** As far as we can tell that seems to be the case.

9 **MS ANDERSON:** In terms of the ethnicity, have you got some observations that you can share
10 with the inquiry in relation to the ethnicity of the different groups relative to those three
11 settings?

12 **MR BENTON:** Well, so bearing in mind we do not keep records of ethnicity, we haven't in the
13 past, our best guess of the Marylands group of the 18 clients we've had was that four of
14 them were Māori and the rest were New Zealand European. In terms of Hebron, about a
15 third were Māori and a smaller per cent were Pacific Island. We don't have information for
16 St Joseph's.

17 **MS ANDERSON:** And in terms of religious background of this client group, have you got some
18 observations to make in that regard?

19 **MR BENTON:** Well, essentially, again I wouldn't speak for St Joseph's, but for Marylands,
20 although it was a Catholic residential school, children did not have to be Catholic, or their
21 families did not have to be Catholic either for them to be placed there, and certainly Hebron
22 Trust, there was no requirement of any religious background, although there were bible
23 studies and that kind of thing going on.

24 **MS ANDERSON:** Yes, and we've heard certainly once they were at the school that was part of
25 the environment, wasn't it?

26 **MR BENTON:** Correct, yes.

27 **MS COOPER:** And can I just add, one of the things that strikes me in dealing with this client
28 group is whether or not they were particularly religious. One of the things that we have
29 repeatedly seen is the absolute destruction of any faith, any belief in God, and I think that
30 that is something that is something unique to faith-based claims in any event, but you see it
31 so vividly with this client group, and I mean you've heard about the sort of destructive
32 behaviour that a number of our clients have engaged in with regards churches, but even the
33 way in which they've tattooed themselves, maimed themselves to show that this complete
34 rejection of anything to do with Christianity or God, and I think that is significant.

1 **MS ANDERSON:** And from your evidence, distinct from those who might have been abused in a
2 non-faith-based setting?

3 **MS COOPER:** Absolutely, I think it's its own and distinct form of harm, that loss of spiritual
4 belief, that loss of faith, I think particularly if you are raised Catholic, and I was, that's
5 something that is ingrained into you, it's often part of your very fibre. But even those who
6 weren't, I think the way in which the abuse was perpetrated often using Christian terms,
7 particularly with Brother McGrath, he often referred to himself as the father, or in those
8 kind of fatherly terms.

9 So you've got that, yeah, it's that juxtaposition of a benign father figure in this
10 religious role carrying out these vile, cruel, and really abusive acts. And I think that has
11 distorted for all of them their views of Christianity and faith and that's unique to this client
12 group.

13 **MS ANDERSON:** And no doubt including because of the settings which sometimes involved the
14 chapel itself.

15 **MS COOPER:** Absolutely.

16 **MS ANDERSON:** And other places of that nature. You've got some observations in your
17 statement about, because a number of your clients have been wards of the State and you've
18 got some comments about the role of their social workers during the period of time that
19 they were at Marylands. Can you take us through that?

20 **MR BENTON:** So effectively there were very few visits from a home social worker, that we can
21 tell, to wards in their care at Marylands. What seems to have happened is that social
22 workers saw State wards when they returned to their home district for holidays and
23 essentially that counted as a visit to check up on how the boy was doing. There also was a
24 Christchurch residential – a social worker who was based in Christchurch who seemed to
25 have some sort of oversight of the institution as well, and they would sometimes come and
26 visit and look at all the dozens of boys on their list. Whether or not they spoke to them is a
27 little unclear from the records, but there was, yeah, so there was the home social worker
28 and there was the local Christchurch social worker.

29 But certainly the clients do not recall speaking to their social workers, either social
30 worker, certainly not individually. There are – they do remember speaking to their home
31 district social worker sometimes, but very few recollections of being spoken to by a social
32 worker at Marylands School and certainly not without a Brother being around.

33 **MS COOPER:** And if you look at Steven Long's evidence and some of the documents that we
34 attach there, you'll see there was correspondence going between the Christchurch office, so

1 obviously from the Marylands social worker designated to work at Marylands, and the
2 Auckland and Hastings offices which were his local offices, and including that the
3 Christchurch social worker has attended, for example, a case conference in relation to
4 Steven's behaviour.

5 But I think what was clear from the records there, is there's complete disconnect
6 between what's actually being recorded in Christchurch and then what the Auckland office
7 is doing with it and also what the Christchurch office is doing with the information it has.

8 **MR BENTON:** I think there's a very clear sense that for the home social worker in the home
9 district, the one who knew the boy most, who knew the family most, they took a very hands
10 off approach, as soon as the boy was sent down to Marylands or St Joseph's; we've seen a
11 case note from about 1973 in relation to a boy from St Joseph's where the home social
12 worker said he was nominally on the case load only.

13 **MS ANDERSON:** Thank you. And you faced some obstacles in your engagement with clients
14 over identifying which Brothers might have been the people that they're now in their adult
15 life saying were the person or persons who abused them. Can you just outline why is it so
16 difficult?

17 **MR BENTON:** Well, in some cases obviously there's the passage of time, in some instances
18 Brothers may have been hooded when the abuse occurred at night time. But I think another
19 aspect is that the Brothers often had three names, they might have their Christian name and
20 their surname but also a baptismal name, and so you might have William Lebler was known
21 as –

22 **MS ANDERSON:** Brother Thaddeus.

23 **MR BENTON:** Thaddeus, thank you. And so the Brothers might have been known by these
24 various names and the boys might have called them a different name at a different time.

25 **MS ANDERSON:** And even from the evidence we've heard just prior to you from Ken
26 Clearwater, when you're being put through to Brother Timothy you don't necessarily know
27 which Brother Timothy that is.

28 **MR BENTON:** Correct.

29 **MS COOPER:** And I think too, just with this client group, we know with any survivor of trauma
30 it's hard to recall and your memories get distorted. With this client group I think that's a
31 particular vulnerability and it was one that was taken advantage of, as we'll explain as the
32 process became more sort of legalised and more evidence-based in its approach. And I
33 think Kerry Johnson is a good example of that. He talks about it briefly, but obviously his
34 statement dealt with the Marylands process and you can see it identified very clearly and

1 strongly there.

2 **MS ANDERSON:** Thank you. Just in broad terms across this quite substantial group of clients
3 that you've had, how would you summarise the types of abuse that they've come forward
4 and said they experienced, in general terms?

5 **MR BENTON:** In general terms, well, I mean it's – we've tried in the paper to put it in their own
6 words as much as possible, because it is quite forensic to set it out. But we've covered off
7 psychological abuse from the Brothers, there was certainly a sense that it was a very cruel
8 place, a very strict disciplinarian place, so that could range from lots of put downs, lots of
9 punishments, sometimes excessive punishments, being made to stand outside in the rain in
10 pyjamas, Mr Steven Long talked about having his face rubbed in human faeces at the age –
11 on his 6th birthday, being locked in cupboards for hours on end.

12 Also as part of that psychological abuse there was witnessing some of the more
13 serious abuse that was going on to other boys, whether that was seeing boys being
14 physically and sexually assaulted or hearing their screams as they were abused or taken
15 away to be abused.

16 In terms of the physical abuse, there was corporal punishment going on with canes
17 and straps at the lower end of the scale. That could sometimes be taken to extremes in
18 terms of the beatings that were given out. Sometimes the straps were soaked in water, for
19 instance, to inflict more pain. But more commonly than that there was physical abuse in
20 terms of beatings from Brothers on the children that could range from an open-handed slap
21 in the face or around the head, to kickings, punchings, being assaulted with implements.
22 We've heard of baseball bats, people being pushed through glass windows. Steven Long
23 again gave evidence of being held underwater until he thought he was going to drown. And
24 these beatings were sometimes just because a boy happened to be walking past. They
25 might get a whack with a cane from a Brother, or there could have been more serious
26 beatings inflicted as punishment for misbehaviour or for disclosing sexual abuse.

27 I think in terms of the sexual abuse, again there was the whole range. Quite often it
28 would start with Brothers coming to the dormitory at night and hovering around the
29 bedroom – around the bed of a particular boy where they would cuddle the boy ostensibly
30 for comfort, but that would progress to fondling and masturbation. The more serious abuse
31 would often happen in the Brothers' bedrooms or in offices or in the classroom where there
32 was no-one else around. And that would range from the fondling, masturbation both ways,
33 oral sex both ways, and digital penetration and rape of the boys. And that was usually by
34 Brothers acting alone, although as with the physical assaults, there are occasional reports of

1 the Brothers acting together sexually.

2 One thing that is actually not in the statement but that I was thinking about, was that
3 compared to Social Welfare residents, the proportion of abuse we hear reported from other
4 boys was a lot lower at Marylands, whether that was because the boys were protective of
5 each other, and you've certainly heard some of the sympathy from the witnesses who have
6 given evidence to date, or whether they were too scared of discipline, there just – it did
7 happen, there has been reports of abuse from other boys, but certainly far fewer.

8 **MS COOPER:** If you compare it, for example, with Campbell Park where there was probably as
9 much sexual abuse by other boys on boys, whereas here, as there was staff abuse, but here
10 it's right, far less.

11 **MS ANDERSON:** You've got a comment in your statement that you think it's inconceivable that
12 the abuse that was going on, including by Brother McGrath, would have gone unnoticed
13 before he was transferred in 1977. And that's the point in time, Commissioners, just to
14 remind you; so Brother Bernard McGrath was transferred in late 1979 from Christchurch to
15 Australia to Kendall Grange. And he had no further involvement directly as a member of
16 the staff appointed to Marylands after that date.

17 **MR BENTON:** Yes, so the primary reason I made that comment was the sheer scale of the abuse
18 by Brother McGrath who was officially at Marylands for I think three or four years,
19 although there's some evidence he might have been there earlier as well. The sheer number
20 of boys he has been accused of sexually abusing and found guilty of sexually abusing at
21 Marylands is breathtaking and some of those sexual abuse incidents were quite audacious.
22 He was certainly not afraid of doing it in front of other boys, although most of the time it
23 would happen one-on-one. So that was the primary reason I made that comment.

24 Secondly, there were reports of abuse to – prior Moloney, to Brother Garchow, to at
25 least one other Brother I can think of, you know, prior to 1977 that Brother McGrath was
26 abusive, there was certainly complaints to parents of at least physical abuse where Brother
27 McGrath was named.

28 And I suppose the other reason for my conclusion was the fact that the other
29 Brothers who were at Marylands at the same time as Brother McGrath are also accused of
30 serious sexual abuse and when you've got a situation where that's going on, then there must
31 be some degree of awareness. It can't be a coincidence that you've got 50, 60, 70 per cent
32 at least of the school sexually abusing boys at the same time.

33 **MS ANDERSON:** Thank you. And at this point we're just going to move to a document, it's not
34 directly – it's an Australian document. It's WITN0831002. I know you've got some

1 comments you want to make that you think are relevant in the New Zealand context from
2 this document. But just to orientate the Commissioners and those listening, this is a letter
3 in July 2003 from the mother of an Australian boy, so the mother's name is Janice van Dyk,
4 and her son Jason attended a St John of God facility in New Zealand. She's writing to a
5 Community Affairs Committee which is inquiring into children in institutional care.

6 If I could just get you to call out that last paragraph, beginning "Quite apart." We
7 see a reference there to the parents having come forward in the Australian context making a
8 complaint to Brother Joseph Smith of the abuse in about 1992 and this being brushed off
9 with a statement that another boy had already come forward in Jason's school six months
10 earlier, and this mother coming forward and The Order had taken steps to deal with Brother
11 Bernard's rehabilitation.

12 So that's a reference and we'll come in the timeline to a later complaint and steps
13 taken to remove Bernard McGrath from the, at that time Hebron facility in New Zealand,
14 transferred back to Australia and then on to treatment in New Mexico.

15 **CHAIR:** Ms Anderson, before you move away, and sorry to do this, but just to revert back to
16 awareness, the awareness of what was going on. We've heard some evidence about nuns
17 being involved or perhaps even being there or taking boys' home. Are you aware of that?

18 **MR BENTON:** Yes, there's some discussion of that in our paper.

19 **CHAIR:** Yes, that's right, I think that's where I read it. I just thought in this context that might be
20 relevant as well.

21 **MR BENTON:** It's a bit of a tricky one. There isn't clear evidence in terms of the relationship
22 between the nuns and the Brothers that we can work out, but there certainly seems to have
23 been a relatively close relationship and there have been a number of allegations where the
24 nuns were alleged to have committed sexual offences with the Brothers at the same time on
25 the Marylands grounds and there's also more commonly reports that the nuns would
26 sometimes take St Joseph's Orphanage boys to Marylands to be punished usually by the
27 prior.

28 **MS COOPER:** There are also allegations too that there would be religious males coming into the
29 orphanage at night time and that then the children would be abused in the orphanage at
30 night time. So we've got those allegations. But because it's dark, and – so it's been difficult
31 for us to clearly identify who those perpetrators are.

32 **CHAIR:** I don't want to push it any further than it needs or can be reasonably on the evidence
33 we've got, but there's a question of just in terms of general awareness, do you think you're
34 able reasonably and fairly to draw any conclusions about what the awareness of the nuns

1 might have been generally, I'm not talking about specific incidents. Are you able to make
2 that? If you can't please say so.

3 **MR BENTON:** I think it's a possibility is as far as I could take it.

4 **CHAIR:** You put it no higher than that, okay, thank you.

5 **MS ANDERSON:** Thank you Madam Chair. Just turning to the next page third paragraph up
6 from the bottom. So what this mother is telling this Committee in 2003 is, there's a
7 reference there where she says to transfer abusers from one institution to another was
8 common practice. "Jason's abuser, Brother McGrath, was transferred within weeks from
9 the New Zealand school to the New South Wales school after a complaint was made about
10 his sexual misconduct."

11 And so certainly there seems to be some awareness, certainly by this woman at this
12 date, of the suggestion that there'd been an allegation that had resulted in the transfer to
13 Australia. But there are other aspects that you're interested in for your purposes in this
14 document, including in relation to the reference to the amount of the payment received in
15 respect of her son, so shall I hand over to you in terms of which paragraphs you would like
16 to highlight in this document?

17 **MS COOPER:** Perhaps the second paragraph on that, well, it's the first full paragraph starting
18 "Instead of getting his day in court." Just up to "had already been paid."

19 So I think what's interesting there are a couple of things. First of all that The
20 Order's lawyers, there was the sense that The Order's lawyers, through the lawyers acting
21 for this abuse victim, were pressured into settling. And I think, you know, that is a tactic I
22 think that is common, you know, there is that use of, well, you wouldn't win in court. And
23 I think that that's something that those of us who act for abuse victims generally, but
24 particularly this vulnerable group, are very strongly aware of and it is a point that is made,
25 more in the past I would say, probably at the time of this correspondence.

26 I think the other thing that struck us, of course, is the level of compensation which is
27 \$310,000. That is \$200,000 more than any of our clients have ever had. In fact more than
28 that. So there is a very significant disparity between what New Zealand abuse victims from
29 St John of God have been paid and what Australians have been paid, and it would be
30 interesting to see what those from Papua New Guinea have been paid, because I suspect
31 that would be less again.

32 So I think it's a real question to be put to The Order why the difference, how do they
33 justify the difference in the level of compensation. I mean I do see there that \$90,000 of
34 that had to be returned to the Victims' Compensation Tribunal, but that still leaves that

1 young man with considerably more than any New Zealand – any one of our clients has ever
2 received.

3 The other thing that I think this highlights is the way in which it damaged the
4 family, and again, that's something I think you've heard a lot about. And again I think that's
5 often particularly so in faith-based claims, because, you know, you often have that coming
6 up against the faith where the parent might still be quite entrenched in the faith and the
7 impact of the abuse alienates the victim, and that just drives a massive wedge.

8 **CHAIR:** Michelle Mulvihill this morning referred to it in a new way, to me anyway, as calling it
9 the "second injury". I don't know if you heard that evidence?

10 **MS COOPER:** No, that's right.

11 **CHAIR:** A very powerful way of describing it and saying that it was an abuse of trust and
12 re-abandonment. So it's a secondary injury on top of the original one. So I think that's
13 what you're talking about too, isn't it?

14 **MS COOPER:** It is, it is. And as I say, that's just one that's often impossible to fix.

15 **MS ANDERSON:** Is there anything else before we come off that document that you wish to
16 highlight?

17 **MR BENTON:** I think I'd just like to point out that those amounts are in Australian dollars.

18 **MS COOPER:** That's another point too.

19 **MS ANDERSON:** Yes. Just before we move off that topic, have you, in your dealings with the
20 Australian lawyers who currently manage the process of resolving claims that you've been
21 involved with, have you attempted to get an explanation from them as to why there is this
22 gulf between figures paid in New Zealand and figures paid in Australia?

23 **MS COOPER:** Yes, Howard Harrison and I have had many good-natured discussions about this,
24 it is a topic I regularly raise with him. I don't really think there is a real justification. What
25 I get told is ACC, and I get told that there are more litigation barriers in New Zealand.
26 Which I think actually when I – because I'm studying at the moment obviously all of this
27 case law, I'm not actually convinced that that's a reality. But those are the reasons that are
28 given, particularly ACC.

29 And it is – you know, I think if we're in a pastoral process, which this is, I mean this
30 is supposed to be, as I understand it, a non-legal process, although I don't think we're ever
31 divorced from the law that backs it, then why is there a disparity and why is there such a
32 significant disparity between New Zealand survivors and Australian survivors? I mean at
33 the end of the day –

34 **MS ANDERSON:** It goes to the purpose of the payment, doesn't it?

1 **MS COOPER:** Quite.

2 **MR WATSON:** What purpose is it serving.

3 **MS COOPER:** Quite.

4 **MS ANDERSON:** Is it to meet what might be attainable in a court civil litigation context, or is it
5 something else.

6 **MS COOPER:** And I mean, of course, if we are looking in a court litigation context, I mean

7 we've never really explored in a New Zealand court what economic loss looks like.

8 Because if we were actually looking at what economic loss looked like for these survivors,

9 and I mean often I think they would actually get through the Limitation Act, and I think

10 often, you know, the abuse occurred prior to ACC, so some of them would not have an

11 ACC bar as well. You know, we're looking at that 800, \$900,000 level that was discussed

12 in the reports that the Commission got last year. So you're right, what is the purpose of

13 this; what's the process meant to be doing.

14 **MS ANDERSON:** I'm going to move on now to talk about the pastoral process and you've got

15 some observations in your statement and we won't, I think in the interests of time, to go

16 through those. But just to – you came into the position after the process had been paused.

17 But I think based on what you know about the process and including your clients

18 had given you copies of various newsletters, and we won't go to those, but in terms of

19 summarising, there was a clear mode of not proximate, but regular communication through

20 the mechanism of a newsletter and an attempt to keep survivors who had made contact with

21 The Order up-to-date about where The Order was at in its process. And your clients will

22 have told you, including those who have come along after the process is breaking down,

23 what it was that they'd first experienced.

24 So what I'm asking you is to outline your perspective of what were the positive

25 attributes of that early phase of the pastoral process that began after June 2002?

26 **MR BENTON:** Well, I think if we're looking at that timeframe, it's certainly clear that Brother

27 Peter acted relatively promptly from July 2002 to provide some sort of positive outcome for

28 those survivors, he set up an 0800 number, he met with survivors, sometimes repeatedly, he

29 made huge promises as to the support that he was going to offer, and in many cases he

30 started to implement those, such as counselling support, therapeutic treatment.

31 The initial payments were made in February or March 2003, they were significantly

32 higher than any other church order payments that we're aware of, let alone any State

33 payments that we're aware of, they were still significantly lower than the Australian

34 settlements, but that's another question. And he was engaged in regular communication

1 with the survivors, the 0800 number was at least in theory open any time of the day for
2 someone to speak with survivors.

3 So I think, yeah, he moved promptly and he had high hopes for what he could offer
4 and what he promised to the survivors.

5 **MS ANDERSON:** And those pastoral payments that were paid out before the pause was put on
6 the system, there was no documentation settlement agreement that the survivor needed to
7 sign?

8 **MR BENTON:** That's correct.

9 **MS ANDERSON:** So no confidentiality or other issues. And no indication that a survivor
10 couldn't come back in the future if they had ongoing needs?

11 **MR BENTON:** It was the start of an ongoing relationship is how he put it, yes.

12 **MS COOPER:** And I mean Steven Long talked about that when he gave his evidence, that that's
13 how he understood it.

14 **MS ANDERSON:** And there's a point – so we've got the pause and we probably don't have time
15 to go through the documentation relating to that in detail, but to summarise, and to speak to
16 it without necessarily going to the documents, the explanation you received was that it was
17 connected with the fact that there were criminal matters in train. So can you just explain,
18 you know, what your understanding was of the reason it was paused and when you thought
19 the pause would come off based on what you were first told and then what actually
20 happened?

21 **MS COOPER:** So we were initially told that it would be paused for the trials that were coming
22 up, and that was problematic for us in relation to clients whose claims had nothing to do
23 with those people and so I'll deal with that a bit later, but then it extended to all the criminal
24 trial process being completed. And as I say, that was then –

25 **MS ANDERSON:** Can I just interpose there, we know, don't we, that the McGrath trial was in
26 2006 and the Moloney trial was in 2008?

27 **MS COOPER:** That's right, so I mean, for example, we had some clients who had been abused by
28 McGrath and we reasonably said okay, that trial's done now, can we move on their claims.
29 No, and the reason was, it was a very tortuous reason given to us that it was something
30 along the lines that Michelle Mulvihill might be cross-examined and if it was put to her
31 something about favouritism that might then jeopardise the outcome of the criminal trials.
32 Can you remember? It was a very distorted reasoning based on cross-examination of
33 Michelle Mulvihill and, you know, preference for settlements and favouring survivors.

34 **MR BENTON:** I think the suggestion was that she had presumed them guilty already and that

1 was why the settlement process was underway.

2 **MS COOPER:** Which is difficult to understand when you're not – when you're talking about
3 different Brothers, not the ones who are on trial. It didn't make any sense at all. But our
4 pushing back was met with stonewalling, essentially.

5 **MS ANDERSON:** Yes, and it was some years before you were able to make progress on that,
6 wasn't it?

7 **MS COOPER:** And that was because the process itself then started to go through a number of
8 morphs. So for some time Saunders Robinson was very involved, the Christchurch law
9 firm, and once the trials had been completed, they were proposing a very complex
10 resolution process that was based on a process they had implemented for the Sisters of
11 Nazareth, which we had had major issues with, both in terms of its cost, its added trauma
12 for survivors, and its timeframe. So that would have required each of the survivors to be
13 independently assessed in terms of causation and to check, you know, their story out in a
14 sense.

15 Then if necessary, if there were concerns about credibility, there was a suggestion
16 there would be a further assessment by like a retired police officer to assess credibility, and
17 then after that there would be a mediation process which, as I say, the process we had with
18 our Sisters of Nazareth clients. And that was going to be led, we had two options at that
19 stage, Christine Grice who – now Justice Grice – who had done the Sisters of Nazareth
20 ones, or Michael Salmon who was part of the equivalent of NOPS [National Office for
21 Professional Standards] in Australia.

22 So that was put to us, we were not happy with that because we hadn't really liked
23 the Sisters of Nazareth process. And then it's quite interesting, we were talking about this
24 before, because we are communicating with Saunders Robinson up until like 21 January
25 2008, and on 19 February 2008 we are suddenly meeting with Michael Salmon telling us
26 that Australia has taken over. So Saunders Robinson has been sidelined, Australia is now
27 taking over, it's going to be run along a Towards Healing pathway, so the Australian
28 equivalent of our A Path to Healing, and he would be facilitating that process.

29 So we're then on a completely different path, and I mean I think whatever we think
30 about it, so we then – that path, which is our clients, they had to be assessed, didn't they,
31 yes, so we had to get –

32 **MS ANDERSON:** We'll come to that. So just to round that point off, Bernard McGrath's been
33 convicted?

34 **MS COOPER:** Yes.

1 **MS ANDERSON:** You're asking why can't we get on with resolving claims in relation to him.
2 But you're still facing some barriers?

3 **MS COOPER:** Absolutely.

4 **MS ANDERSON:** And then before the Moloney trial in 2008, we've got this change between
5 Provincials. So Brother Burke steps down and Brother Timothy Graham comes into the
6 role. And in terms of the Sisters of Nazareth process that you're talking about, I'm going to
7 take you to a document that we've discussed which is in August 2007, which is
8 CTH0015940.

9 Just to orientate you, Commissioners, this is correspondence between Saunders
10 Robinson and Brother Timothy Graham and it's about ongoing abuse claims. So it looks
11 like a bit of a summary reporting status quo matter. So providing a schedule of ongoing
12 complaints, you see there in the first sentence. And then in the second sentence, no need to
13 call it out yet but I'll just read it into the record:

14 "We believe that to settle the remaining claims in accordance with payments already
15 made to various claimants, an amount of at least 1.8 million is likely to be required" and
16 with some exceptions that can't be taken into account there.

17 And just calling up from the third paragraph beginning "A significant issue." So we
18 see there a significant issue is being identified by the lawyer for The Order about the
19 process to date and this is the fact that there's been no independent assessment of the claims
20 themselves, the level of damage suffered as a result of the actions complained of, or the
21 level of compensation offered, save for Sir Rodney Gallen's very general advice in this
22 regard. So that's been identified as problematic.

23 And then what follows in the letter is a description of the Sisters of Nazareth
24 process, which I think you've very helpfully summarised for Commissioners, it involves a
25 full statement or brief of evidence, a careful credibility interview, an independent
26 psychiatric assessment and a type of mediation process.

27 **MS COOPER:** I think the other interesting – that might be another letter that we got, which of
28 course was about counselling, but yes, the other interesting thing was the schedule attached
29 to this.

30 **MS ANDERSON:** I'll just come to that in a minute, Sonja, I'm just going to go to one other
31 paragraph in the body of the letter. So just on page 2 of the letter, paragraph number 2, just
32 up from the bottom of the page, so it's talking about the fact that there's nothing in A Path
33 to Healing that prevents The Order continuing to apply the general principles of that
34 document, but the process itself suggested within that document is considered to not be

1 appropriate in this particular case, given the personalities involved in Christchurch and we
2 don't know what that's a reference to. But the advice was:

3 "In our view there is nothing to stop us continuing to undertake a fair and objective
4 process within the parameters of the principles of A Path to Healing, without necessarily
5 adhering to the strict process as set out within that document."

6 So just before we move on to the schedule, Sonja, does that give some background
7 to the change that you're identifying, that there's a different process being proposed?

8 **MS COOPER:** Yes.

9 **MS ANDERSON:** It looks like it's A Path to Healing, but then you're being told it's the actually
10 under the Australian process?

11 **MS COOPER:** Well no, because what this is saying, is that the Sisters of Nazareth process sat
12 outside of A Path to Healing and that's what he was proposing. So lots of Orders in
13 New Zealand, as we know, including the Brothers of St John of God, are kind of loosely
14 linked to A Path to Healing, but actually have their own resolution processes.

15 So I think what they were proposing is that they run this process as they had for the
16 Sisters of Nazareth outside of the NOPS process to give it that independence. And I know
17 when we met with him that was something he was wanting to emphasise, you know that, it
18 needed to be independent from The Order itself. And also too, that there needed to be
19 closure, so that was another significant issue, and again I think one you see coming through
20 this letter, is that not this – under Peter Burke there had been the assumption that the
21 relationship would continue, but it was clear here that the proposal was that there be a
22 closure to the relationship so that it stop and that then obviously then led on to the
23 communications with us about stopping payments for counselling. So there had a link.

24 **MS ANDERSON:** Thank you, that's very helpful clarification. Just turning to the schedule that
25 was attached to this letter, so it's giving effectively a status report and we can see the
26 columns across the top, case name, a summary of a complaint, and then on the far right,
27 possible settlement figure as per Grant Cameron payments. And I know that you've got
28 some comments to make about this document in relation to Alan Nixon, who's referred to
29 on the next page of the schedule, case number 83. We'll just call that out.

30 **MR BENTON:** I might start by suggesting that the Grant Cameron reference might be the
31 personalities in Christchurch that was referred to earlier in the letter.

32 **MS ANDERSON:** So we see here in relation to case number 83, second from the top, Alan
33 Nixon, and we've got a reference there that there've been formal statements to Police and a
34 psych assessment completed at that point. And the suggested settlement range is 140K.

1 Now you've got some comments to make about that.

2 **MR BENTON:** Well, firstly under the Grant Cameron process, that was separate from legal costs
3 and at the end of the day Alan Nixon walked away with \$70,000 after legal costs and that
4 was after some considerable negotiating on our part. So that's 50 per cent of the amount
5 that you see here. And by that time he had been a witness against both Brothers McGrath
6 and Moloney and had secured convictions in relation to them both.

7 **MS COOPER:** And I think we'll just note, and we'll provide you with that information, there are
8 three other, I think three or four other clients of our firm who are on this schedule and each
9 of the amounts suggested is at least double, and in one case probably four times more than
10 what they were ultimately offered.

11 So that signals a very considerable change in approach from what Saunders
12 Robinson was proposing and, you know, you then link that with the Australians taking over
13 the process in February 2008. So it gets removed, in a sense, from Saunders Robinson in
14 New Zealand, they've got that visibility over the settlements in New Zealand, and then it
15 goes to Australia and suddenly we have a very different approach being taken, which of
16 course we didn't have that visibility of.

17 **MR BENTON:** I'll also quickly add that with Alan Nixon, he was in touch with Brother Peter in, I
18 believe, 2003 and he would have been part of the final group of settlements before the
19 pause, if not for the fact that he had been sent to the Ashburn Clinic and a decision was
20 made to put off resolving his claim until after that time. So for the sake of funding his
21 treatment at Ashburn Clinic, he was significantly less –

22 **MS COOPER:** He was disadvantaged.

23 **MS ANDERSON:** It added years to –

24 **MR BENTON:** Yes, five years, yeah.

25 **MS ANDERSON:** - on to the receipt of payment.

26 **MS COOPER:** And half of what he should have.

27 **MS ANDERSON:** And just before, a couple months before the letter which we're just looking
28 at – which can come down from the screen now than you – you saw a media report that you
29 refer to in your witness statement at paragraph 826 and you had some concerns coming out
30 of that media statement. Can you clarify and just explain what happened at that time for the
31 Commissioners?

32 **MR BENTON:** So those were two newspaper articles in relation to Michelle Mulvihill's
33 whistleblowing effectively upon her resignation, which I imagine you would have heard a
34 lot about this morning. Some of the comments in there caused us considerable concern

1 about the solvency of the Order and whether or not it financially was considering shutting
2 down or transferring liability somehow. And obviously at that time the processes had been
3 paused for three or three and a half years, and we were already concerned that they weren't
4 going anywhere.

5 So our response was to make contact with Saunders Robinson and raise these
6 concerns. We were assured that there was nothing in them, that The Order would remain
7 solvent and that at that point money had been set aside for resolving claims, which does
8 seem a little at odds with the letter from August 2007 which was proposing that money
9 would be set aside.

10 **MS ANDERSON:** Although both potentially consistent with the idea of a sort of fiscal envelope
11 approach to the settlement monies.

12 **MR BENTON:** True.

13 **CHAIR:** Just briefly, just to be quite clear about this; the word "pause" is giving me some pause
14 for thought, because a pause to me says we've got a process, the Brother Burke process and
15 it's paused, it's just held up until something happens and then it starts again. But am I right
16 in thinking that what happened was when it did eventually, years later, start up it wasn't that
17 process at all.

18 **MS COOPER:** No, it was completely different.

19 **CHAIR:** It wasn't paused at all, was it.

20 **MS COOPER:** No, it was dissolved.

21 **CHAIR:** It was abandoned.

22 **MS COOPER:** And something completely different –

23 **CHAIR:** Different started, yeah.

24 **MS COOPER:** - put in its place.

25 **CHAIR:** So pausing is a rather kind word in this context I think.

26 **MR BENTON:** I think that was due to Brother Peter's suggestions at the time of the pause that he
27 would re-engage as soon as the criminal trials were over. So he certainly saw it as a pause,
28 but then –

29 **MS ANDERSON:** I think that was the language used in communication publicly around that
30 time. So it was definitely –

31 **CHAIR:** A pause in his mind, but it didn't eventuate, it ended up –

32 **MS COOPER:** No, and we were asking if he was going to be coming back. But of course I mean
33 we were fobbed off for a while and then we were told that his health had deteriorated, so he
34 wouldn't be.

1 **CHAIR:** I don't want to make too much of that.

2 **MS COOPER:** Yeah.

3 **MS ANDERSON:** So moving forward to the point in time where Brother Rodger is convicted in
4 2008, that's when a bit more momentum is – another gear engaged and some things start to
5 happen. What was your experience in that period of getting everything that had been on
6 hold back up and running?

7 **MS COOPER:** Well, I think it's also important to say that of course the Provincial then changed
8 to Brother Timothy, so that was another significant difference to us, I think, in terms of the
9 leadership of the Brothers. So we're writing at the end of 2007, as I said to Saunders
10 Robinson, even in January 2008, and then suddenly in February 2008 we're meeting with
11 Michael Salmon from Australia with Howard Harrison from Carroll & O'Dea and so it's
12 clear that it's now been Australian run. And although we were told it was going to be
13 modelled on the Towards Healing pathway, I think really when you sort of burrow down
14 into that it's never been that either, it's been its own process. So what we then had to do
15 with the initial group was we had to get them all assessed by a psychologist, they were
16 interviewed by that stage by John Jamieson who was part of NOPS, so – and that was
17 something we were not –

18 **MS ANDERSON:** By that point in time he was not – no longer part of NOPS but he had
19 previously been director?

20 **MS COOPER:** That's right, he had previously been the director and we were unhappy with that,
21 because we were very clear at that stage that our client group, and particularly this client
22 group, would feel quite threatened being interviewed by a former police detective who was
23 very austere and, you know, those interviews on the whole did not go well. One client I
24 think left within a few minutes.

25 And then when we got the reports, they were extraordinary because they gave as
26 much credibility to everything that Brother McGrath said, for example, placed as much
27 weight on what he said, so his denials, as was given to our survivors, because, you know,
28 they had some criminal convictions. So it was very non-survivor-focused, it was a very
29 evidence-based process, and in fact Michael Salmon said that repeatedly, that it was going
30 to be an evidence-based process.

31 And I think at that stage it was clear that there had been quite a significant change in
32 response, because by that stage we knew of one fraudulent claim that had been settled, and
33 that clearly muddied the waters at that stage in terms of every other survivor. And so that
34 was – we were repeatedly told that, and I think I still am to this day referred to that.

1 And so it became quite a gruelling process really that was incredibly traumatising,
2 and difficult particularly for this survivor group, because we were dealing with people with
3 severe intellectual disability at the front of this process.

4 **MS ANDERSON:** And in terms of those disabilities, what additional difficulties would you say
5 this process starting in 2008 had for their successful engagement in the process?

6 **MR BENTON:** Well, I think some of the clients with more severely learning difficulties were
7 particularly disadvantaged through this process because essentially their evidence was
8 being assessed by the Commissioner of Police on a relatively high threshold evidentially, it
9 was supposedly the balance of probabilities, but it was taken on the basis of what would
10 this survivor, what would their evidence sound like if this went to court. Would they be
11 able to present a coherent narrative, despite the fact that we had been able to, with the
12 assistance of their counsellors and their family and Police statements, construct a narrative
13 with them.

14 And in fact some of the – I remember one of the reports of John Jamieson actually
15 spoke to, I believe it was Brother Raymond Garchow, about a particular survivor who had
16 made a lengthy statement of allegations, and two of the things from that report stands out.
17 One is Brother Garchow saying "I remember this boy, he would have had assistance to
18 write this complaint", and the suggestion there is that therefore there was a credibility issue.

19 The other comment I remember from that report was simply that this individual had
20 made allegations against too many Brothers in terms of their credibility, and this was
21 individual MD who ultimately received, I believe, \$17,000 settlement, although in that
22 schedule he should have got \$140,000 under the Grant Cameron process.

23 **MS ANDERSON:** Thank you.

24 **MR BENTON:** Sorry, can I also just jump in and make two quick comments. One is just to
25 correct Ms Cooper, I don't actually think that psychological assessments were required at
26 that point. Alan Nixon had had one earlier from the Ashburn Clinic.

27 **MS COOPER:** That's right, yes.

28 **CHAIR:** It wasn't a mandated part of the process.

29 **MR BENTON:** It was not. The other comment I wanted to make is that I find it curious that a far
30 more stringent assessment process was considered necessary after two detailed criminal
31 trials had already found two brothers guilty.

32 **MS ANDERSON:** Thank you. Just turning now to – you've been engaged in a process, haven't
33 you, for some of those people who received a pastoral offer non-binding, not a full and final
34 settlement. In those early days in that first wave where they got that before everything was

1 paused, using that word lightly, talk to us about the experience and the difficulties or ease
2 of engaging with The Order about getting further payments for those individuals.

3 **MS COOPER:** Well, essentially we were told to go away. So we had two claimants, and again
4 this strangely went back to Saunders Robinson, so there were two claimants, one of them
5 was Steven Long who gave evidence about that on Wednesday last week, where we went
6 back and said "Well look, it was expressly, you know, a term of the settlement that this was
7 not full and final", and we said, you know, "This is actually in direct breach of the
8 assurances and promises given by Brother Peter", but just wouldn't budge. And so we had
9 to close off that client's file and we had to advise Steven that we wouldn't be able to pursue
10 it.

11 And a third client, whose allegations were physical assaults, and again he's on that
12 schedule with a recommendation that he get a settlement payment, they said "We're not
13 engaging with his claim because he's not made any allegations of sexual abuse." Which is
14 interesting, because that, you know, that then kind of is that juxtaposition between the
15 Towards Healing process, which actually includes all forms of abuse, and the New Zealand
16 process which actually only covers sexual abuse by clerical people.

17 So you know, it advantaged the Order to use the New Zealand kind of guidelines in
18 terms of limiting its liability, because if it was really following the Towards Healing
19 pathway, it would have considered all abuse, not just compartmentalised sexual abuse.
20 And, you know, it's kind of really interesting thinking that we've been doing around that
21 and perhaps it's linked to, you know, Towards Healing being funded underwritten by
22 Catholic insurers, and the role of insurance in that both in terms of influencing what The
23 Order would look at and how do we minimise our risk, and then saying okay, well we've
24 got a way we can minimise our risk in New Zealand because there's ACC, and we've got
25 the A Path to Healing process which will only look at sexual assaults by clerics, so –

26 **MS ANDERSON:** Clerics and religious.

27 **MS COOPER:** Exactly, so you know, thinking now, looking back, I mean none of that was
28 transparent, of course, we had no idea. But when you now think back on that you have to
29 query about what that advice was and was that because it's all being underwritten by
30 insurers, Catholic insurers back in Australia who are looking at ways of minimising liability
31 in New Zealand. So here are two planks you can go on, sexual abuse is covered in
32 New Zealand by ACC, so that limits what we can pay New Zealand survivors, and A Path
33 to Healing doesn't cover anything but sexual abuse, so that's another way we can limit
34 New Zealand survivors. It's a bit cynical really, totally cynical.

1 **MS ANDERSON:** Just in the interests of time I'm going to turn to perhaps some sort of more blue
2 skies kind of question, because I know that you both have been thinking about how both the
3 criminal justice system and the civil justice system might be able to be adapted to be more
4 responsive to the needs of particularly disabled persons or persons who are suffering the
5 level of trauma that you've clearly outlined in your witness statement, people harmed by the
6 St John of God Order have suffered.

7 **MS COOPER:** It's something actually, you know, that – I practice as a youth advocate, so you
8 know, we know that those with – those in the Youth Court 80 to 90 per cent will have some
9 form of neuro-disability. And more and more were using the Youth Court communication
10 assistance, and obviously in the adult court.

11 I don't know if they've ever been used for witnesses who are actually, you know,
12 complainants. But it seems to me there is no reason why not, and certainly when we were
13 looking at taking our civil trials, there were a couple of our plaintiffs and witnesses that we
14 were going to be asking for communication assistance to be appointed, so that at least that
15 makes – that gives the help both to the witness and to the court and to the lawyers to make
16 sure that the message is getting across that the person understands and that they can
17 communicate back in a way that they will be understood. Whether that's pictorially or, you
18 know, however.

19 The other thing I think actually, having been through this Royal Commission
20 process, I highly, highly recommend this as a way of enabling survivors to give evidence.
21 So there is no, or barely no cross-examination, or if it is it's controlled. You let them tell
22 their story, and as I say, you control, you manage any questioning. Pre-recording might do
23 that, but what I think this work has shown to all of us is that all of us who work with
24 survivors of trauma, and particularly those with disability, and let's face it, that's going to be
25 90 per cent probably of the client group that we are dealing with, we must all have training,
26 we must all have trauma training and we must all have communication training. And that's
27 everybody. That's defence lawyers, prosecution lawyers, civil lawyers, judges, those who
28 are assisting. I think this shows more and more about the necessity for there to be
29 specialised training.

30 Communication assistance is some way we can help under the current structure, but
31 I suspect what we will come up against there is complaints about how that is pushing out
32 trial time, because it will add to time in an already very pressurised system. So I really like
33 this process. I think this is a really good way for a survivor of trauma to be able to speak
34 their story.

1 I can give you an example just quickly. I mean Danny who gave his evidence on
2 Friday was exhilarated after he had finished this. It was a safe place for him to vent his
3 anger and let it go, and he did let it go, but also too, it was a safe place for him to tell
4 everybody about what had happened to him and get rid of some of his own shame. And
5 I hope that exhilaration lasts. But most of our clients have never had that opportunity, will
6 not have that opportunity.

7 So if we can strengthen the justice system to enable survivors to tell their stories in a
8 way that actually gives them mana, gives them dignity, lets them tell it without the minutiae
9 of their stories being pulled apart, was it a grey room, was it pink, were they wearing a
10 brown suit, did they have a belt on, you know, which is the sort of stuff I have experienced
11 in the civil trials. I never ever want witnesses who are survivors of abuse to have to go
12 through that ever again, and I never want to be sitting there as the lawyer at the end of that
13 watching that.

14 So I think there are a lot of lessons for us to learn here, and this has been a very
15 empowering way for witnesses to give their evidence in a way that I think they can speak
16 their truth, if there are aspects that need to be questioned I think that can be managed and
17 I know as a defence lawyer, you know, you have to be able to question things that are
18 particularly, and put your client's case. But I think that can be managed too and we've seen
19 that through this process as well.

20 **MS ANDERSON:** Thank you Sonja, that's quite a powerful point to end this particular phase of
21 your engagement with the inquiry. I did want to offer Mr Benton an opportunity if he
22 wished to add anything to that before we invite the Commissioners to ask any questions of
23 you.

24 **MR BENTON:** I don't feel like there's too much more I can valuably add, except I think the
25 importance of having one point of contact to assist someone, particularly with learning
26 disability, right from the beginning through to any hearing and subsequently is vital to have
27 that continuity of relationship. It's the only thing I'd add.

28 **MS COOPER:** Katherine, there is just one thing I did want to cover and that's the State's role in
29 all of this, because we've only briefly touched on it. And how the State has responded to
30 liability in this issue, because again, I think it is important.

31 I mean we've seen a number of that, examples of that in the cases that you've
32 already dealt with, and I think what I can say is that the State's response again has always
33 been about minimising its own liability. It doesn't seem to grasp a concept of a joint
34 tortfeasor, in other words joint responsibility for wrongs, that's regardless of whether a

1 child was placed there as a State ward or in the State's custody, or under its guardianship.
2 There seems to be a pushing away of liability, and I just again wanted to say – ask you to
3 look at the two letters for Danny Akula who gave evidence, because there you see an
4 interesting shift. So in the first time around with Marylands, the first offer that he gets
5 which is \$14,000, they say –

6 **MS ANDERSON:** From the State?

7 **MS COOPER:** From the State, yes, they say no liability because there were no practice failures
8 and he had no status. And then we go back with a lengthy response saying well you're
9 generally excusing yourself from liability because you actually should have taken steps to
10 give him status and you didn't, and that's a breach of duty and a practise failure in and of
11 itself which then led to him suffering all this abuse down the track.

12 And then we get a response a year later in April 2014, and I can give you the
13 witness numbers, where they accept that there was actually a breach of duty and a practise
14 failure in the sense of not actually giving him any status, and they then accept that because
15 of that that that was a breach of a duty of care and as a result of that Danny suffered further
16 neglect, physical abuse and emotional abuse, they don't accept the sexual abuse, although
17 they accept that Marylands has accepted – sorry, the brothers of St John of God have
18 accepted he was sexually abused there and compensated him for that.

19 So the State's response, Steven Long got a \$5,000 Fast Track offer, he was a State
20 ward through all of his abuse.

21 **MS ANDERSON:** Yes.

22 **MS COOPER:** So just, you know, I think the State's response to this is something that I hope the
23 Commission examines because I'm very concerned about it.

24 **MS ANDERSON:** I can assure you that it is an area of focus. Thank you for that.

25 **MR BENTON:** Can I add that should also apply to Hebron given that was funded certainly from
26 1989 if not 1990 by the Department of Social Welfare, and to date there's been no
27 responsibility accepted by the state for any allegations in relation to that period of time.

28 **MS COOPER:** So it was a Child and Family support service, so it's actually a 396 provider which
29 you will recall we spoke about at length when we gave evidence in the redress hearing, the
30 same as the Whakapakari programme, Moerangi Treks, so you know, it needs to be looked
31 at because it should have been monitored, it was contracted, they had an opportunity to
32 remove people, and we know that there were complaints circulating before Brother
33 McGrath actually disappeared. So, well, we know Steven Long complained and its
34 documented on his file in 1970 –

1 **MR BENTON:** 1981.

2 **MS COOPER:** 1981. So that's again another area to look at.

3 **MS ANDERSON:** Yes, thank you. Now Commissioners, before we play the final survivor video
4 for the day, do you have some – I'm sure that you've – I know you've got some questions
5 for Sonja and Sam.

6 **CHAIR:** Well, yes and no.

7 **COMMISSIONER ALOFIVAE:** Ms Cooper, Mr Benton, the questions I wanted to ask you've
8 actually – you actually anticipated them right at the very end which was actually around
9 that lovely statement you gave around how do you strengthen the criminal justice system,
10 because that really talks to ableism and everything that we understand in this particular
11 very, very vulnerable cohort, but sector in particular. And then of course the issue around
12 the State responsibility, so I just wanted to say thank you for your very, very
13 comprehensive evidence, I'll hand it now to the Chair.

14 **CHAIR:** And just quickly, please know that we have read this, it took a while, my goodness, I lost
15 track of the number, but it was fascinating, and it pulled together so many threads into such
16 a coherent way, so I'm very grateful for whoever authored it.

17 **MS COOPER:** Both of us.

18 **CHAIR:** Thank you to both of you. Just in terms of the process and we accept any compliments
19 that come our way, and there aren't a lot, but I think there is a glimmer of hope in the way
20 we've tried to encourage survivors to come through and to be dealt with in a sensitive and
21 supported way. We have received some criticism from what people see as requiring people
22 to come and do this publicly. And I think some people are concerned at the level of pain
23 that they see being exhibited etc.

24 From your point of view as the lawyers and advocates for some of the witnesses
25 who have given their evidence and seen the pain that they have suffered through, or appear
26 to have suffered through giving it, do you want to comment on the fact of it being given
27 publicly?

28 **MS COOPER:** Look I – it's something that they know will happen, and I think for actually most
29 of the people that we have taken through as witnesses, that's actually been one of the things
30 that they've wanted to do, they've wanted to tell their story publicly, and that's been part of,
31 as I say, part of losing their own burden, their own shame, and actually gaining that mana
32 of standing up and saying this is what happened to me.

33 I think I've seen one client I can think particularly who I thought suffered trauma as
34 he gave his evidence and I was concerned afterwards, and there I think it's really important

1 that there is support from well-being that doesn't just leave the witness once they've
2 finished their evidence and goes, I think it's really important from a well-being perspective
3 that actually that continues in the days and weeks after they've given their evidence because
4 that's often the time that they are reflecting on what they've said, the publicity that may
5 have resulted from that, and the traumatic memories that it makes them, you know, bring
6 up. So I think well-being support is really exactly.

7 I think there are lots of options for witnesses, so I don't think you could say that any
8 witness is forced to give their evidence publicly. I mean I've sat with a witness in the back
9 room there and his voice and his face was distorted because there were safety concerns.
10 You know, there's been evidence that's been pre-recorded. The room's been cleared to give
11 people comfort. So I hear the criticisms, I think that's around the briefing of the witness,
12 making sure that they understand and they're comfortable with what that means.

13 Because, as I say, I think our experience has been that they've actually found it I
14 think Danny is the first one who's found it exhilarating but I was really happy that that's
15 how he felt, but I think most witnesses have actually found that experience of being able to
16 sit here in a public forum and say what's happened to them has actually been deeply
17 fulfilling and in some ways passing their own sense of shame, which, as you know, most of
18 them carry, on to the people and the organisations who should be carrying the shame. And
19 that's really powerful too.

20 **CHAIR:** Good to hear, I think that idea of different ways for different people, different ways that
21 suit them is probably good, and I endorse the well-being approach. We can't just leave our
22 witnesses just to flounder off unsupported and I think that's an important part of the process
23 that we have here.

24 **MS COOPER:** Yeah, and that's one of the criticisms I think we've had particularly last year
25 where they had no well-being after they finished and that's the time they actually – they
26 need it in the lead-up and they need it afterwards, because that's, as I say, often the
27 traumatic memories, and, you know, if they've been in the media quite a bit, you know, that
28 can have an impact as well and just how to deal with that. And I mean the well-being
29 people here I think have done amazing job, so it's important that they be able to continue
30 that once the witness has given evidence publicly.

31 **CHAIR:** Thank you, that's very helpful. I'm not going to ask you anymore questions. I seem to
32 spend my whole time here thanking you and your firm, but it's well placed thanks. You've
33 been a tower of strength to the Commission since its inception and this is just yet another
34 example. I dare say we won't go far without hearing from you again, but thank you –

1 **MS COOPER:** In the Māori hearing next.

2 **CHAIR:** Exactly, and also thank you for braving Covid and flying up, that's appreciated, we know
3 that's a bit of a traumatic event at this time. So go well, go safely and return home without
4 catching any nasty viruses.

5 **MS COOPER:** Thank you.