

**ABUSE IN CARE ROYAL COMMISSION OF INQUIRY
FAITH-BASED 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
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Ms Sally McKechnie, Mr Alex Winsley, Mr Harrison Cunningham and Ms Fiona Thorp for the Catholic Church

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

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1 **Hearing opens with waiata and karakia tīmatanga by Ngāti Whātua Ōrākei**

2 (10.02 am)

3 **CHAIR:** Tēnā tatou katoa, nau mai haere mai ki tēnei hui. Good morning, good morning to you.
4 Ms McKechnie.

5 **MS McKECHNIE:** Good morning, Madam Chair, Commissioners. Just to begin with a small
6 piece of housekeeping.

7 **CHAIR:** Yes.

8 **MS McKECHNIE:** Unfortunately Mr Winsley has had to return home for a family matter and Ms
9 Fiona Thorp will be appearing for the rest of the day.

10 **CHAIR:** Thank you, good morning Ms Thorp. And good morning to you, Ms Glover, and
11 particularly good morning to you, Peter and Mr Hazelman, good morning.

12 **QUESTIONING BY MS GLOVER CONTINUED:** Just to, before we start, Peter, the Chair
13 usually, you would have seen, gives some information at the end of the day reminding
14 people not to discuss their evidence with anybody overnight including counsel, I don't think
15 that was done yesterday, so just to confirm that is the case and you haven't discussed your
16 evidence with anybody?

17 A. Correct.

18 **CHAIR:** Sorry, that was my omission, thank you.

19 A. I understood it because I'd seen previous end of day.

20 **Q.** That's my good luck, isn't it, and thank you for complying, that's appreciated.

21 A. Thank you, yes.

22 **QUESTIONING BY MS GLOVER CONTINUED:** Just to pick up a few things that we
23 discussed yesterday and the first of which is the psychotherapist that - is the recent- --

24 A. Yes.

25 **Q.** -- introduction into the redress process after you received the report from the Complaints
26 Assessment Committee. And one of the concerns that we keep hearing from survivors is
27 that they don't necessarily have visibility of who is provided with their personal
28 information, nor precisely which information is being shared and sometimes the
29 information shared, such as investigation reports, is information that the victims themselves
30 haven't seen. So I just wanted to check with you whether the Marist Brothers seek consent
31 from survivors to share their information with that psychotherapist?

32 A. The answer is no, this is very recent as in recent weeks and months, and that is an oversight
33 and I must apologise. Having said that, a person who is a registered psychotherapist does
34 have their professional ethics that I would assume would guarantee the confidentiality of

1 the material. But yes, that's an excellent point, an oversight, thank you.

2 **Q.** You mentioned that you were a trustee of the Marist Trust Board for 15 years. I thought it
3 would be useful for the Inquiry if you could explain perhaps where the Marist Trust Board
4 fits into the overall scheme within the Marist Brothers?

5 **A.** Yes, having been a trustee for 15 years, I am in a position to comment in a way in the
6 following remarks. I am taking off my hat of delegate of professional standards and I'm
7 commenting in a sense as somebody who's integral within the Marist Brothers' structure
8 outside of professional standards topic. So very briefly Catholic entities have, as you saw
9 yesterday and you would know, have two kind of codes that we're complying with. One is
10 the canon, the church law, and the other is the civil law within the country in which you are
11 based. So we are a congregation operating in New Zealand, we also have our operation of
12 this district extending to three countries in the Pacific Islands.

13 In the case of New Zealand we have our district operating according to the
14 guidance and the canons that apply to us as a congregation under the umbrella of the
15 church. Now if we turn to the civic side of things, in order to operate in New Zealand we
16 have a trust and it's a civil trust that was set up in, I think the year was 1926, that then
17 manages the affairs of the Marist Brothers from a civil perspective, and complies with civil
18 law in New Zealand. So trust and trust structures are in accordance with how trusts would
19 operate in New Zealand for similar charities to ourselves. So that's the Marist Brothers
20 trust board.

21 If there's something that the Brothers are dealing with that's a canonical matter,
22 take for example starting a new community, take for example in a small town in Tai
23 Tokerau, that's a canonical step then the civil trust may go looking for renting a house,
24 whatever it is, that's the civil step.

25 **Q.** You mentioned yesterday that you are only aware of three Māori claimants --

26 **A.** Correct.

27 **Q.** -- in relation to abuse. I just wanted to clarify with you whether that's your understanding
28 of the percentage of the overall data or just the claimants that you have personal knowledge
29 of?

30 **A.** It's my knowledge based on -- I do have some familiarity with our files and that's certainly
31 increased since about 12 months ago when we were really getting into all of our files in
32 order to assist Te Rōpū Tautoko with Marist and Catholic data. That enabled me to look at
33 the files that I had not had anything to do with and say a few things in my own mind, that's
34 interesting, this is the age group of the person, these are some more details about that

1 brother that I was unaware of, and ethnicity. So the three that I'm aware of in fact are the
2 three that sprung into view as I went through the files about a year ago, but I didn't know
3 that before.

4 **Q.** And that's just gleaned from the overall picture on the files, because I think you said
5 yesterday there isn't a specific recording of the ethnicity?

6 **A.** That's correct, that's correct. So in my mind on three occasions I said, obviously, just it
7 could be intuited in a sense, where it occurred and other contextual information just told me
8 that's a Māori claimant or complainant.

9 **Q.** And you said in your written statement that there would have been minimal or no records
10 kept until about 1995 and that the position improved from around 1996 when the
11 Professional Standards Committee was established and systems for recording abuse
12 complaints were gradually formalised and the complaints were tracked.

13 **A.** Correct.

14 **Q.** Can you explain to the Inquiry the systems introduced at that time to record and track
15 claims of abuse? Was there a database, for example?

16 **A.** Yes, at the level of the detail within the particular case, it's just the very best system you
17 can imagine, which is paper file. So paper file is created for each new claim as it was
18 received from 1996 onwards, and higher level summaries of all of that, plus also the
19 minutes of the Professional Standards Committee. So we still have those minutes of the
20 Committee and we have the original paper file of the claim and the process and then we
21 also have the high level summary.

22 **Q.** And when you talk about tracking complaints, what does that mean, does that mean that
23 somebody was keeping an eye on them and ensuring they were tracking through the system
24 in a timely way, or keeping an eye out for patterns such as geographical hotspots or
25 particular perpetrators?

26 **A.** The tracking that I'm talking about when I used the word "tracking" yesterday was actually
27 introduced just recently as in recent months, where it's about a complaint has begun, what
28 should happen next, weekly meetings of the Professional Standards Committee and saying
29 has that been done in the last week, and then going to the next week and then saying has
30 that been done and so on, and tracking that case. So that case has come to us, we're doing
31 something.

32 **CHAIR:** Can I just ask -- sorry to interrupt, can I just ask you both to slow down.

33 **A.** Slow down, thank you.

34 **Q.** Yes, thank you.

1 A. Good.

2 **QUESTIONING BY MS GLOVER CONTINUED:** Was somebody ensuring their old claims
3 were reopened if further information came to light about a particular perpetrator?

4 A. I would say I don't know for a start, that's the simple fact of it. I wouldn't be aware of a
5 system for doing what you've just said.

6 **Q.** You say that after schools were integrated in the early 1980s victims and survivors could
7 take complaints of abuse directly to a school's board of trustees and then any investigation
8 and redress process would be undertaken by the school. Just to clarify your understanding
9 about the respective responsibilities of the Marist Brothers and the schools, so if the abuse
10 was committed after 1981, in your view I take it the school has responsibility for
11 investigation and redress and the Marist Brothers has responsibility to cooperate with the
12 investigation to provide information to the school and to ensure safeguarding if that's
13 required. Is that your understanding?

14 A. In 2021 that's exactly how I see it and I said that yesterday. That's a personal view. In
15 terms of the church understanding that in 1981, my sense is that this -- the penny dropped,
16 but it didn't drop immediately.

17 **Q.** And then you also talked about the subsequent change in 1989 when Tomorrow's Schools
18 was introduced?

19 A. Mmm.

20 **Q.** Did the position change at all as from 1981 to 1989, or is that just a continuation?

21 A. I think it's a continuation, but I was around in the 1980s and I'm aware of how significant a
22 change in thinking was needed by everybody involved in church schools when State
23 integration occurred. Whether that change in mindset and whether that generational change
24 actually got expressed precisely and accurately from day one, I can't be sure.

25 In hindsight I think my understanding grew as I became more familiar with
26 matters of administration. I was in the classroom and it didn't seem to be different the next
27 day when you went into the class to continue your lessons from the previous day. But the
28 school had been integrated and in fact there were huge differences in responsibility,
29 management, administration and accountability. And I can see all that now in hindsight
30 from this position. Going back to your question about 1989, 1989 is the year when
31 Tomorrow's Schools formalised what we now have, hasn't changed from then until now;
32 the boards of trustees. So therefore there is the body, the body is now clear and identifiable
33 who should manage these things.

34 **CHAIR:** My question does relate to that. You said that in 1981 the penny had dropped but not

- 1 completely. I want to know what the penny was, did things change and I'm talking here in
2 terms of investigation, accountability for abuse?
- 3 A. Sure. Looking at files is how I'm going to answer. I'm reading files and I'm able to answer
4 from that basis. I'm a classroom teacher in the 1980s, these things are not in view, not front
5 of mind for me as a teacher. One of the ranks, if you might say it that way. The penny
6 dropping, I think it's also tied in a little with Tom's comments yesterday. He was saying
7 when he was asked where's the position of these Catholic schools, are they using the name
8 Catholic and therefore they're Catholic schools and they do come under the bishop or the
9 church authority. In another sense, that's a cultural statement, and the culture of
10 Catholicism is very strong, we're families and the whole Catholic community identify that's
11 our school, that's our Catholic school. So that's the penny that needed to drop, is that we're
12 actually a State school, we're a State school and there are systems and accountability that
13 go back through that network to where it originates.
- 14 Q. Do you have any memory, I appreciate it's a very long time ago --
- 15 A. Yes.
- 16 Q. -- of cases of abuse of children in the care of generally the Catholic Church?
- 17 A. Yes.
- 18 Q. Being raised since 1980 and if so whether they were dealt with -- sorry, you can only speak
19 for the Marists, so I'll just say --
- 20 A. Yes, yes, Marist Brothers.
- 21 Q. -- Marist Brothers, right -- abuse claims raised at that time and whether they, in spite of the
22 changes, were dealt with by the Marist Brothers or dealt with by the schools?
- 23 A. I can see that if you put the filter that we're applying right at this minute on our cases, the
24 146, I can see grey areas everywhere in lots of cases. That you need to stop and say
25 interestingly this was being followed by the Marist Brothers. Intuitively I can see why, but
26 it would be good to run it past the proper criteria very carefully should it have been.
- 27 Q. These are cases since 1980 --
- 28 A. Mmm.
- 29 Q. -- of abuse?
- 30 A. Mmm.
- 31 Q. Which nonetheless from your reading of the files appears to have been followed by the
32 Marist Brothers process?
- 33 A. Correct.
- 34 Q. Rather than being referred to the Board of Trustees?

1 A. Correct, that's at first reading. I'm not sure exactly what happened, but at first reading I can
2 see that in some cases.

3 Q. That's the grey area that you're talking about?

4 A. Yes, that's what I'm talking about. It could all turn out to be that the right allocation was
5 made every time, but at initial reading of the files, the question pops up.

6 Q. Thank you for that.

7 A. Okay, thank you.

8 **QUESTIONING BY MS GLOVER CONTINUED:** And sort of a linked topic is the -- so we're
9 talking about the division of responsibility between the Marist Brothers and the schools and
10 another division is as between the responsibility of the Marist Brothers and the bishop.
11 You've said in your written statement that there's no explicit requirement for the Marist
12 Brothers to inform the bishop of any complaints of abuse, but that in the present day when
13 the Marist Brothers receive a complaint against a brother who is still in active ministry, the
14 Marist Brothers will inform the bishop of the diocese in which the alleged abuse occurred.
15 But you say that even in the present day the Marist Brothers would not inform the bishop if
16 the brother concerned was deceased or retired as there's no on-going safety risk, and in that
17 case the matter, according to your written evidence, can be dealt with solely by the Marist
18 Brothers.

19 My first question is just a practical one. Do you accept that even a retired brother
20 might pose a risk to the wider community and therefore be a matter of concern to the
21 bishop.

22 A. There's quite a long question there, I just -- can I pick up on the first part, is that acceptable
23 before I answer the second part?

24 Q. By all means.

25 A. So the first part is if my witness statement says that the Marist Brothers don't have a
26 responsibility to inform the bishop currently, I just want to refine that by making the
27 following remark. That A Path to Healing is the document that we are signed up to and
28 we've always been following the principles of that document and of course we come under
29 the National Office of Professional Standards since 2016 for investigations. So let's go to
30 A Path to Healing. In A Path to Healing it's very clear that the bishop must be informed.
31 However, A Path to Healing does not say by whom. So it's either NOPS or the Brothers
32 that should inform the bishop.

33 Q. And in your view presumably from what you've written in your statement, you think it's
34 NOPS?

1 A. I'm not saying that, I'm just saying there's a little bit of a looseness in that particular
2 paragraph in a part to healing that could do with some clarification. We would accept that
3 it's our responsibility every time, and I think in a moral sense that's correct.

4 **Q.** So do you think that as a matter of practice the bishop has been informed in every case?

5 A. I would think so. I'm now talking -- I've been in the role since 2018 and I'm only just
6 saying I would think so if we're thinking about Marist Brothers historically in managing
7 these things.

8 **Q.** Sorry, so since 2018 you think that the bishop has always been informed but you're not sure
9 before that, is that what you're saying?

10 A. That's what I'm saying right now, yes, just in terms of not being able to give evidence that I
11 have firmly in front of me that that was done.

12 **Q.** So it might be on the extent of the information and knowledge that you have that the bishop
13 might have ended up with a more limited or somewhat skewed understanding of the extent
14 of abuse that had occurred within his diocese?

15 A. In a way that's a hypothetical question and I can see what the question is asking and I can
16 see that that is a possibility. I can't say that it never turned out that way, I can't say one way
17 or the other.

18 **Q.** You will recall we spoke yesterday about the witness John who gave evidence last year,
19 and he says in his written statement at 4.28 and 4.29 "We've now met with Bishop Paul
20 Martin, the Bishop of Christchurch, we did this to find out about the bishop's responsibility,
21 both for the Marist Brothers operating in the diocese and the fact that I was raped many
22 times at the Diocesan Cathedral. It was absolutely awful, he was really patronising.
23 Bishop Martin said the bishop was only responsible for diocesan priests and that bishops
24 don't have responsibility for the Marist Brothers. He said that he doesn't see that the
25 diocese has any responsibility for what happened at the Cathedral and he provided an
26 analogy. If a person came into your house and molested another person, would you expect
27 to be held responsibility for it?"

28 Do you agree with Bishop Martin that the bishop or the diocese does not have any
29 responsibility for a religious such as a Marist brother abusing a child in a Diocesan
30 Cathedral or elsewhere in the diocese?

31 A. There's a lot in that question. The first part, let me just place on record, if it's not in my file
32 for John, it should be, but I had a phone call with Bishop Martin, a brief phone call with
33 Bishop Martin before that phone call between John and Bishop Martin. So going back to
34 the previous question, was the bishop informed; yes.

1 Now in terms of the question you're asking, do I agree that the bishops and the sort
2 of hierarchy have some responsibility for the religious that are in their diocese? I think I'd
3 frame it in the way that Tom framed it yesterday. The bishop does have a concern and the
4 interest of the pastoral care of all souls, and that's in fact the canonical term I think he used
5 several times yesterday. So I'm not going to say the bishop has no responsibility and it all
6 sits with the congregation.

7 **Q.** So in practical terms, what do you think the nature of the bishop's responsibility is?

8 **A.** In practical terms I think the congregation should conduct its own investigation and in
9 New Zealand here we have taken NOPS on to lead that investigation. So that in a way
10 is -- it's a win-win in the sense that we in New Zealand have an investigation body that we
11 belong to and so do the bishops. So therefore any kind of pin pricking decision over whose
12 responsibility this is, in a way it falls away because NOPS is doing the investigation.

13 **Q.** John's partner sent an e-mail to Bishop Martin on 3 July last year saying it looks to us that
14 canon law 678 to 681 makes it clear that the bishop has ultimate responsibility. I don't
15 think I need to bring that document up, but just so that it's on the record, it's CTH0009763.
16 But we will have a look perhaps at Bishop Martin's reply dated 7 July 2020. That's
17 CTH0009762. So we can see there, if we have a closer look at the paragraph starting "Our
18 church protocol 'A Path to Healing'".

19 "Our church protocol 'A Path to Healing' agreed by all bishops and religious orders
20 provides that it is the church order to whom the offending individual belonged, in this case
21 the Marist Brothers, who is responsible for responding to John's complaint of abuse. As
22 you know I have spoken with Brother Peter and I understand from him that the Brothers are
23 still in discussions with you regarding resolution of this matter."

24 So looking at what the bishop is saying here, does that accord with your
25 understanding of how A Path to Healing does and should operate?

26 **A.** I have A Path to Healing here but I don't have it in front of me where that particular
27 reference arises in A Path to Healing. However, just wanting to acknowledge the overall
28 thrust of that paragraph, I don't have any difference in my mind with what's been said by
29 Bishop Martin in that paragraph.

30 **Q.** I'd like to turn now to ask you about a slightly different topic, namely barriers to disclosure
31 of abuse. It's striking that, for example, Frances Tagaloa and John and Ms K all came from
32 very devout Catholic families. For example, John told his father early on that he'd been
33 abused but his father didn't believe him because he said that a man of the cloth would never
34 do such a thing. Do you think that a strong Catholic family environment and a culture of

- 1 clericalism in that way can inhibit disclosures of abuse?
- 2 **A.** I think I'm being asked for a personal opinion and in a sense it's an observation from within
3 the Catholic culture about the Catholic culture. Also with the privilege of my being
4 familiar with the files as I am, I think that is just a sort of an intuitive picture, I think that
5 certainly occurred historically. These cases are in the 1970s and the 1980s in that sort of
6 period and so many of our cases are. And as I said yesterday, we even have somewhere the
7 person has now reported the abuse 50 years plus afterwards. Tragically and really
8 distressingly I think what you've just described is part of that. In the Australian Royal
9 Commission the average time that past between the incident and the reporting was 22 years.
10 In our case files it's even more than that.
- 11 **Q.** As a child, John couldn't report the abuse at school because he was fearful of the
12 repercussions from Brother Giles who was the principal and was a big man and used a
13 cane. John didn't talk to his teachers, but he wishes that they'd been concerned enough to
14 raise questions about his behaviour like why he was away with the fairies when he came
15 back from Brother Giles' office, or why he was wetting himself at school.
- 16 Presumably there are any number of possible ways to assist students to report
17 abuse, including reporting it anonymously. They might include strategies such as help lines
18 or online reporting, for example. What have the Marist Brothers done to help students to
19 report abuse that occurs in school settings?
- 20 **A.** The first part -- I'm just still with the first part of the question. In the John case, and
21 I acknowledge that for John and the others who have come forward to the Commission,
22 that's another side, there's the Catholic culture and the family environment and there is also,
23 as you said, where do I go, what is the avenue for presenting my complaint and how safe
24 would it be? I think that's a huge question. We have only gradually evolved an
25 understanding of what it takes to allow reporting and encourage reporting and to bring the
26 sense that this is the right thing to do and to encourage reporting.
- 27 **Q.** So in practical terms?
- 28 **A.** Yes.
- 29 **Q.** In the school ground have the Marist Brothers done anything in that setting that would
30 enable students to make reports of abuse more easily?
- 31 **A.** These questions fall with the board of trustees.
- 32 **Q.** At that point perhaps we could play a video clip of one of the other oral witnesses from the
33 first hearing. This is Frances Tagaloa talking about cultural barriers to disclosing abuse.
34 (Video played). Would you accept that there can be significant cultural barriers to

- 1 disclosing abuse?
- 2 A. I do accept that.
- 3 Q. Do you know whether the Marist Brothers have ever asked Pasifika or other cultural
4 communities what might be helpful to assist them to report abuse despite those cultural
5 barriers?
- 6 A. I'm not aware, say, of the things that would be obvious, which would be to go to the Pacific
7 media, I mean Brother John has spoken with Pacific media, that would be an answer
8 obviously. But for us to front-foot it into the Pacific community, there's still more that
9 needs to be done.
- 10 Q. In your written statement you say that with the Marist Brothers Professional Standards
11 Committee investigations, if the respondent denied the allegation, the Committee would
12 investigate the complaint further to decide whether on the balance of probabilities the
13 complaint would be upheld. So that's your written statement at paragraph 44.
- 14 A. Mmm-hmm.
- 15 Q. You may have heard the evidence from Murray Houston from The Salvation Army last
16 week?
- 17 A. I didn't I'm sorry.
- 18 Q. In any event he emphasised the importance to survivors of being believed and he said, and
19 I'll just recap this for you briefly seeing as you didn't watch it, is that "Within the Salvation
20 Army redress process, to the extent that there is any verification -- and he used that word
21 very cautiously -- of a claimant's report of abuse, the focus is not to look to discredit it in
22 any way." Hearing that summary of The Salvation Army process in terms of investigation,
23 what are your thoughts, immediate thoughts on it, given that that process seems quite
24 different to the process adopted by the Marist Brothers?
- 25 A. There's a phrase that you used in the question, "balance of probability". Balance of
26 probability is in a sense the threshold or the legal sense of did this complaint have what it
27 takes from our point of view for us to then say this is what occurred and go from there and
28 take it forward. Balance of probability is not the same as the legal level of criteria applied
29 to, say, "beyond reasonable doubt". A very open mind in fact, really, and it's the phrase
30 that's used three times in A Path to Healing.
- 31 Q. So you're saying an open mind --
- 32 A. Yes.
- 33 Q. -- should be brought to bear on these investigations?
- 34 A. Absolutely, yes, yes. So balance of probability, it certainly is, from our point of view,

1 justice, just to check the identity. That's one of the tricky areas, a young person as young as
2 8, 9, 10 years old, then comes to report decades later, and is using the name of a brother
3 that was as that person recalls their classroom teacher. The naming of our Brothers is a
4 rather arcane and tricky area, because there are so many factors in what a brother's name
5 was in the minds of students when they were at school.

6 **Q.** So when you are receiving a report of abuse and you're assessing it on the balance of
7 probabilities --

8 **A.** Yes.

9 **Q.** -- is what you are looking at whether on the balance of probabilities any abuse occurred, or
10 whether any abuse occurred that you can attribute to a particular perpetrator?

11 **A.** Talking for myself, I would think any abuse occurred, that's a no-brainer, I think abuse has
12 occurred. The person is motivated to come forward. I'm already in that space of believing
13 it.

14 **Q.** So it doesn't matter necessarily that they might struggle with the naming systems --

15 **A.** Yes.

16 **Q.** -- of the Marist Brothers?

17 **A.** Yes, correct.

18 **Q.** I'd like to now have a look at the experience of another witness you referred to yesterday,
19 Ms K in relation to investigation and the decisions around that. So just to give you some
20 context, I know you're familiar with this case, you mentioned it already, but just to signal
21 this is not part of the question. In around 2004, Ms K reported separate acts of abuse by
22 two former Brothers, Michael Beaumont and Peter Healey and Ms K was living in
23 Australia at the time she reported the abuse, and so her claim came to the Marist Brothers
24 via the Professional Standards Resource Group in Australia. And an investigation was
25 commenced and meanwhile Ms K was offered a series of counselling sessions.

26 Now that was plainly I think a good idea. But there were some matters that
27 weren't made clear to Ms K about that counselling. So for example, Ms K's evidence was
28 that she had no idea that the Marist Brothers were paying for the counsellor, she thought
29 that was being paid for by the diocese in Perth. And she also didn't realise that the
30 counsellor was passing back reports about her mental state to the Marist Brothers in
31 New Zealand.

32 I don't think I need to take you to the documents, but just to note the reference here
33 and this document that I'm giving the reference for, CTH0010180 is one we'll come back
34 to, it's a review by NOPS of the process undertaken by the Marist Brothers. In that

1 document it says that there was an interim report by Ms K's counsellor saying that she was
2 halfway through the allocated number of sessions, ten sessions, and that she was
3 responding well but the level of trauma was quite high.

4 Now this part is the question. Bearing in mind your training in relation to
5 counselling, do you think that some survivors might feel violated or humiliated by the fact
6 that a counsellor was reporting back to the very institution at which the abuse occurred?

7 A. So that's the question?

8 Q. That is the question.

9 A. Right. I'm going to be very guarded about any comment on the Ms K case. It's firstly
10 historic in the early 2000s. Secondly, there's two former Brothers that have been named
11 and I'm fine with that. Thirdly, the process involving the Professional Standards Resource
12 Group and the Marist Brothers, all that I know is what I have on file and in fact more is
13 held about that case by the lawyers but I'm not aware of that material. So there's a little bit
14 there that could fill out the picture that I haven't seen.

15 Q. All right, but just taking it as a general proposition then.

16 A. Sure.

17 Q. In general terms, do you think that a survivor might feel violated or humiliated by the fact
18 that information that they were disclosing to a counsellor is then referred back to the
19 institution where abuse occurred?

20 A. The question's kind of tangling up the matter of where the counselling was agreed to and
21 progressed may have been unclear in the mind of the person receiving the counselling.
22 From the point of view of the Resource Group in Australia and the Marist Brothers in
23 New Zealand, I wouldn't put fault in either camp that this misunderstanding occurred, but I
24 can see that it's a misunderstanding. It's not satisfactory in hindsight.

25 Q. The counsellor was also concerned that Ms K's parents did not appear to be coping in
26 respect of the guilt --

27 A. Sure.

28 Q. -- that they felt. And so the counsellor suggested an initial course of five sessions of
29 counselling for Ms K's parents and the Marist Brothers declined this request on the basis
30 that it would be like pre-judging the case. Presumably in your current role as delegate, and
31 with your training in counselling, you are aware of the trauma that can be suffered by
32 secondary victims such as family members?

33 A. Totally agree with that.

34 Q. So in your personal view, and accepting that this was not the decision that you personally

1 made, do you think that it was appropriate for the Marist Brothers to reject that request for
2 help by any secondary victims in that situation?

3 A. Just a few minutes ago I said I don't have the full picture. Asking the question in general
4 terms, and I'll answer it in general terms, I support the idea that the family or any secondary
5 victims should also receive our support. And on the face of it if that has been withdrawn or
6 not made available, that's a shortcoming.

7 Q. In addition, do you accept, again as a general proposition, that embarking on a course of
8 counselling but knowing that it's for a few short specified sessions of counselling, could be
9 problematic for a survivor?

10 A. In the world of counselling is my understanding, and I was last a practising counsellor,
11 getting on, almost 20 years ago, 2004. My sense is that the beginning period of
12 establishing the counselling sessions makes the suggestion or sets up the environment for
13 the process of counselling for those initial sessions. Quite commonly, at least back in 2004,
14 the notion was that it might be, say, six sessions and that six sessions would be spoken
15 about in those initial negotiations or establishing stages relative to what lay in store. The
16 person who has a much greater need than six sessions should never be left to feel that the
17 curtain's going to come down.

18 Q. I would like to bring up the document that I referred to earlier, that's CTH0010180 on the
19 screen. This is a document, a letter from NOPS. It's a recent letter, 17 November 2020
20 relating to a review of Ms K's case and which is a matter I'll come to. But for immediate
21 purposes, this document simply provides a helpful potted summary of the background. But
22 I will just note while we are here that paragraph 4 in relation to that wider review sets out
23 the ultimate conclusion of the NOPS review which is that the deficiencies in the Marist
24 Brothers process were sufficient and led to a conclusion that is not reliable.

25 But for present purposes moving on then to paragraph 24 on page 4, so we see
26 here that in June 2005 there was a report from Ms K's counsellor at the end of the first
27 allocated ten sessions seeking funding for further therapeutic support and there is also
28 evidence in the counsellor's report that Ms K was being treated for the consequences of
29 both instances of abuse that she had reported, and the counsellor recorded the events, the
30 consequences for Ms K, and the results of treatment and there was no reference to any other
31 intervening events being the cause of the symptoms that were being treated. I'd also like to
32 note, paragraph 25 here, shows that in July 2005 there was a further report from Ms K's
33 counsellor, it was reported that Ms K was progressing well, she had a fight on her hands,
34 but she kept pulling through.

1 And then moving further through to paragraph 33 following the chronology of
2 what happened, later in July 2005 the professional standards organisation in Australia
3 raised concerns about the Marist Brothers' process in New Zealand, in particular they noted
4 that the Australian process involved a meeting with the victim to listen to their story and it
5 appeared this was not contemplated here. And they asked whether any consideration had
6 been given to addressing the needs of Ms K's parents.

7 And then at paragraph 34 we see the Marist Brothers' response, the Marist
8 Brothers in New Zealand replied to say that the New Zealand protocol, ie A Path to
9 Healing, said that the denials and absence of any other factors meant that the claim could
10 not proceed any further and it was not appropriate, even to meet with Ms K as no purpose
11 was seen in such a meeting.

12 In your view, was the process as outlined here in accordance with A Path to
13 Healing, do you agree that the proper application of A Path to Healing meant that Ms K's
14 claim couldn't proceed any further?

15 A. I haven't got the original documents in front of me and in fact there are some that are being
16 referred to there that I think I wouldn't be familiar with anyway, because I think they're in
17 other files such as lawyers, not ours. However, I'm picking up on in paragraph 34 "The
18 Committee also said -- this the Marist Brothers Professional Standards Committee in the
19 early 2000s -- that the New Zealand protocol says that the denials and absence of other
20 factors meant it could not proceed any further."

21 So it's the denials -- in fact let's just pick that apart. I interpret that to mean that
22 the person writing this NOPS review is saying that the New Zealand protocol as against the
23 Western Australian protocol and that the New Zealand protocol in fact that the reviewer is
24 referring to just could be that in a letter of the Marist Brothers they said their protocol and
25 they just meant the Brothers' protocol, not A Path to Healing.

26 So that sentence does not say that A Path to Healing says what it says, it's just that
27 when the reviewer is looking at all the material, the reviewer has noticed that in some
28 correspondence, which may in fact be lawyer to lawyer correspondence or something from
29 our lawyer, not necessarily that I would have seen, that the Brothers' protocol is not able to
30 endorse or substantiate a claim if the respondents in this case have denied, which is true,
31 they did deny.

32 Q. The Brothers' protocol presumably would be in accordance with A Path to Healing?

33 A. Yes, I agree that it would, but I just have a feeling -- I'm just not sure, let's put it that
34 way -- that that word "protocol" sitting in that sentence is referring to A Path to Healing.

1 I'm just thinking that the Brothers or the Brothers' representative being a lawyer, whoever
2 wrote that this reviewer has reviewed, has just said Brothers have reached an end point
3 because of denials. I think that's what it's saying.

4 **Q.** Then we see, having reached that end point because of denials at paragraph 35, Ms K's
5 counsellor then identified potentially corroborating lines of inquiry about the incidents of
6 abuse and he also gave expert advice as to Ms K's credibility. Does it strike you as unusual
7 that Ms K's counsellor is stepping into the breach somewhat here and making suggestions
8 about how the investigation could perhaps be further advanced?

9 **A.** It's commendable, I'm not saying it's unusual. That's all I can say, that if I was the
10 counsellor and I was wanting to move towards advocacy I'd give myself a pat on the back.
11 I think that that is commendable on the counsellor's part saying more could have been done
12 or more needs to be done. That's all I can say about the counsellor making that remark. I
13 can't comment on the total story, it's something from before my time and I -- I'm accepting
14 the review by the NOPS, the signed review which we asked for, that's fine. I'm looking at
15 what that counsellor is doing, that's understandable. And good for them.

16 **Q.** You do not see an alternative perspective that might be taken, which is perhaps that it's not
17 so much commendable on the part of the counsellor to wade into the matters of the
18 investigation, but rather the counsellor was placed in a very difficult position and in that
19 position felt obliged to cross professional boundaries in a sense, to step outside the
20 counselling space it try and aid the investigation?

21 **A.** I call it advocacy. I accept the question in the spirit of what's in front of us, that's what it
22 looks like.

23 **Q.** And then we come to the outcome of the Marist Brothers' investigation. I'd like now to
24 bring up CTH0007025_00054. This is the Professional Standards Committee report dated
25 9 July 2005. At page 2 at paragraph 1.3, this is what you were talking about these denials,
26 we see at the end of paragraph 1.3 at the second interview Michael Beaumont provided a
27 statement to the Committee denying the allegation completely. And then at paragraph 1.4,
28 at least according to this report, Peter Healey said that as far as he knew he had never in his
29 life abused anyone in any way, but he finished by stating that if something like that had
30 indeed happened, he was very sorry and if he has been responsible in any way he
31 apologised for any harm caused to the complainant. As denials go, you must presumably
32 accept that that's not especially vehement?

33 **A.** Could I just look at what the document is please, the first page?

34 **Q.** Yes. Actually after we've done that it may be, in fairness to you, better if we go to the

- 1 actual handwritten notes that underpin this report?
- 2 A. Right.
- 3 Q. So this is --
- 4 **CHAIR:** Sorry, would it help you, Peter, to have a hard copy of this document?
- 5 A. I think so. I'm just struggling that there's a couple of paragraphs, they are a report by
- 6 somebody, looks like it's from the Marist Brothers Professional Standards Committee, as
- 7 to -- it's like their minutes perhaps or it's -- I'm just not sure what this document is.
- 8 Q. I think we can give you a copy, I think it's only fair to you --
- 9 A. Sure.
- 10 Q. -- that that happens. Our registrar I can hear flipping of papers as we go, so hopefully. But
- 11 what was the other thing you thought you would be helped by?
- 12 A. I just want to get the total context of what we're looking at and then frame my
- 13 understanding of it and then deal with the question.
- 14 Q. In that case, would a very brief adjournment be necessary to enable you to do that?
- 15 **MS GLOVER:** You've got it right there Madam Registrar? I think --
- 16 **CHAIR:** Let's have a look and see, if you need time to look at it then let me know.
- 17 A. Sure, thanks very much. **[Copy provided]**. Thank you.
- 18 **QUESTIONING BY MS GLOVER CONTINUED:** The question I was asking you was about
- 19 paragraph 1.4 of that document. We're talking about the denial by Peter Healey.
- 20 A. Yes.
- 21 Q. And I won't take you to the underlying handwritten notes of the interview with Mr Healey
- 22 that underpinned this, but I will give the document reference, which is
- 23 CTH0004228_00027. And those handwritten notes of the interview with Mr Healey say "It
- 24 may have happened, I don't know, who knows, she might be confusing me with someone
- 25 else. If it did happen I would be very apologetic, but I can't remember having hurt anyone
- 26 in my life."
- 27 So my question to you was clearly this is some way off an admission, but on the
- 28 face of it, reading this, do you think that it is an outright denial? He's not just saying "it
- 29 may have happened, I can't remember"?
- 30 A. I think it's very difficult to read between the lines and to enter the minds of Brother Henry
- 31 and Brother Brian who were the interviewers and then fed their information back to Brother
- 32 Richard who wrote this letter. There's a lot of filtering or possibly miscommunication or
- 33 possibly Chinese whispers, I don't know, but it doesn't look as the strongest denial I've
- 34 seen, that's fair.

1 **Q.** Looking at paragraph 2.3 of the document you have, which says, "There does not seem to
2 be any corroboration of the allegations that are made by Ms K, thus there would appear to
3 be no other avenues which can be explored. It would seem this Committee can proceed no
4 further with the investigation."

5 Looking back at this letter now and we know that you were not responsible for it,
6 do you find it concerning that this was the end of the line for Ms K?

7 **A.** Concerning isn't perhaps the word I'd like to use, but I've got lots of questions that are left
8 in my mind that mean it doesn't look like everything that could have been done, everything
9 that could have been initiated might necessarily have been. The obvious thing would be, if
10 we were sitting here today and we had a case like this right in front of us, unfortunately
11 we're in Covid, but why not go to West Australia and especially wherever the parents live
12 and other family members.

13 **Q.** I think that's exactly what did happen and we'll see when we come to the criminal
14 convictions of these two Brothers that in fact --

15 **A.** Ex-Brothers, sorry, they were ex-Brothers even at this time.

16 **Q.** Yes, that's correct?

17 **A.** Yes, these two men.

18 **Q.** And then we see that actually the family members did come to New Zealand and give
19 evidence in the criminal proceedings under subpoena. While we're here I'd also like to look
20 at paragraph 4.2 of this document on page 3, it's under the heading "Legal Advice". I'd just
21 like to note that at subparagraph (c) we see there a reference to Accident Compensation
22 legislation and also the statute of limitations and at (d) a reference to legal advice that the
23 New Zealand Marist Brothers were not liable because there was no vicarious liability.

24 Looking back at this 2005 report through today's eyes, are you disturbed by the
25 willingness at that time to reach for legal defences such as ACC or statute of limitations or
26 lack of vicarious liability?

27 **A.** I'm uncomfortable with the way the question is posed because reaching for legal advice
28 makes it sound as though it's dodging or it's just not the way that I'd quite see being a
29 report, maybe it's just setting out the whole situation as it stands, all factors to be put on the
30 table, nothing being held back, even if it's unpleasant for the reader.

31 **Q.** So the next step in the chronology is this somewhat discouraging report --

32 **A.** Mmm.

33 **Q.** -- with some unpleasant material?

34 **A.** Mmm-hmm.

- 1 **Q.** As you describe it being provided by the Professional Standards Committee to Ms K?
- 2 **A.** Sorry, I wasn't aware who recipient of this report was, okay.
- 3 **Q.** Actually it is somewhat unusual, the recipient of this report appears to have been, according
4 to Ms K's evidence, and I'm referring here to paragraph 4.8 and 4.10 of her evidence, that
5 actually this report went to her counsellor in Australia and the gist of the report was
6 conveyed to Ms K by the counsellor but the counsellor, whether or not he was not
7 authorised to do so or you chose not to do so, didn't actually provide a copy to Ms K at that
8 time, she didn't receive a copy of this document until I think 2016. The NOPS review
9 document that we looked at previously --
- 10 **A.** Sure.
- 11 **Q.** -- records that when the counsellor told Ms K of the contents of this report, Ms K
12 experienced pain and she walked out of the counselling and she never returned. Again,
13 putting on your counselling hat perhaps, do you think it was appropriate for the Marist
14 Brothers to ask Ms K's counsellor to convey the report to her?
- 15 **A.** There's a dilemma in there. The best intentions may in fact for the purposes of emotional
16 safety of a client may have been behind that request. I just can't say. I'm looking at this
17 through a very limited filter of not having all the information.
- 18 **Q.** Many years later, actually on two subsequent occasions, Ms K instructed lawyers to try and
19 challenge this report --
- 20 **A.** Mmm-hmm.
- 21 **Q.** -- and to seek redress from the Marist Brothers, and as you will know, neither of those
22 attempts has been successful. Ms K's evidence and the reference here is 4.11 of her
23 evidence, was that the first attempt resulted in the Marist Brothers relying on the statute of
24 limitations and that her lawyer at the time said that he was appalled that the church was
25 using the statute of limitations against her, however it was the law, and Ms K says that she
26 was devastated and took her complaint to the Police instead. And as I foreshadowed and as
27 you will know, both abusers were convicted of offences against Ms K and also in both
28 instances of offences against other victims.
- 29 Ms K poses a question in her evidence at 4.25. She says, "I would like to know if
30 in the subsequent court cases, those criminal cases, the Marist Brothers or the Catholic
31 Church contributed to the defence of these men." Do you know the answer to her question?
- 32 **A.** If I take off my professional standards hat and put on my administration hat that I've had in
33 the Marist Brothers over the years, I don't recall us supporting the defence of any
34 ex-Brothers and I'm sure that we haven't provided the support for these ex-Brothers in their

- 1 defence.
- 2 **Q.** Are you talking there financial support?
- 3 A. Yes.
- 4 **Q.** What about other support?
- 5 A. Support, no. If you take -- this would be one example, right? To say to a person you need
6 a lawyer, how do you characterise that, because one of these two people I did say that to
7 and therefore if I say we've provided no support at all, that makes it a little bit like I've
8 fudged it, but actually I did say you need a lawyer.
- 9 **Q.** Was that the extent of your support?
- 10 A. Yes.
- 11 **Q.** Then quite recently in 2018 Ms K made another approach to the Marist Brothers --
- 12 A. Mmm-hmm.
- 13 **Q.** -- via lawyers?
- 14 A. Yes.
- 15 **Q.** And at that stage the Police investigations were underway but the men had not been
16 convicted?
- 17 A. Mmm-hmm.
- 18 **Q.** I'd like to bring up a letter please from Robert Burnes, Marist Brothers' lawyer, this is
19 CTH0003348, this is a letter dated 2 May 2018. If we look at page 1, the highlighted text
20 there, "As a basic principle because there is no corroborative evidence we have advised our
21 client that it could not accept the veracity of the allegations in light of the denials."
- 22 Then at page 2, 1.6 we see a reference to the limitation period. At 3.2 also on page
23 2, we see this comment about the lack of vicarious liability on the basis that the incidents
24 concerned didn't take place in either of these gentlemen carrying out their work as members
25 of the order or as teachers at the school.
- 26 Then finally at paragraph 3.3, we see the Marist Brothers' lawyer saying, "It would
27 be inappropriate for the Marist Brothers to consider a matter such as an informal settlement
28 conference or any other aspect of the matter in the face of denials by Messrs Beaumont and
29 Healey. It's not the place of our order to reject the denials..."
- 30 Do you know who within the Marist Brothers approved that letter?
- 31 A. Let's go back, I just want to see who it's been written to. I think it's to another lawyer is it?
- 32 **Q.** That's right, this is to?
- 33 A. Sorry, yes, Artemis.
- 34 **Q.** That's right, to Ms K's lawyer.

- 1 A. I'm not prepared to comment on that, it's a lawyer to lawyer letter.
- 2 **Q.** No, no I'm saying who within the Marist Brothers approved Robert Burnes & Associates
3 sending this letter, who would have been responsible within your organisation?
- 4 A. In a general sense that's me, that's correct, it would be -- I would be aware of this in that
5 sense, but I'm very reluctant to talk about a lawyer to lawyer letter.
- 6 **Q.** What do you mean by "in a general sense"?
- 7 A. There's no-one else that I'm going to say, I'm going to say that's brother so and so or that's
8 somebody so and so; no, in that general sense yes, as the delegate for professional standards
9 this is a matter that's on foot, it's still on foot and I'm just very reluctant to go any further
10 with a comment about what is happening in this lawyer to lawyer process, that it has
11 reached or it had reached in 2018.
- 12 **CHAIR:** The question is, Peter --
- 13 A. Yes.
- 14 **Q.** -- before this letter was sent, did the lawyers take instructions from anybody about what the
15 content of the letter was going to be?
- 16 A. In that sense yes, I am aware of these ideas, yes, the ideas of vicarious liability, ACC and
17 that they come into play in correspondence when it's also important to stress that these
18 ex-Brothers, we can't represent them, we're purely representing the order, and our
19 understanding of New Zealand law is this, this and this. And that would be approved by
20 me.
- 21 **Q.** So you were advised by your lawyers this is what the law is currently?
- 22 A. Yes.
- 23 **Q.** And we're going to tell that --
- 24 A. Yes.
- 25 **Q.** -- to Ms K's lawyers?
- 26 A. And I'd say fine.
- 27 **Q.** And you'd say fine. Okay, thank you.
- 28 A. Yes, and generally that's a phone call.
- 29 **QUESTIONING BY MS GLOVER CONTINUED:** Thank you Madam Chair. Now moving on
30 to a slightly different topic, which is this watershed moment in 2016.
- 31 A. Sure.
- 32 **Q.** When the Marist Brothers joined up to the NOPS process, you say that in 2016 the Marist
33 Brothers accepted an invitation from NOPS to have all sexual abuse claims go straight to
34 them for investigation rather than it being done internally. Do you know why the Marist

- 1 Brothers accepted that invitation from NOPS?
- 2 A. I'm not sure if the word "invitation" fits. The moment was the right moment for us, for all
3 sorts of reasons. I think we saw it as solidarity in terms of the Catholic Church in
4 New Zealand, why not?
- 5 Q. Just noting the word "invitation" was from your evidence.
- 6 A. I see, sorry. As I said, I really would have liked to have gone through it one more time just
7 in case there's something that's just not exactly true, not exactly right. I can't remember
8 how the process went.
- 9 Q. So under this 2016 system, NOPS contract investigators and the investigation report's sent
10 to the Complaints Assessment Committee?
- 11 A. Correct.
- 12 Q. And then the Complaints Assessment Committee makes recommendations to the Marist
13 Brothers and certain recommendations not around quantum, and the Marist Brothers
14 contact the victim or survivor and negotiate the actual redress outcome. Is that correct?
- 15 A. Correct.
- 16 Q. And we've already heard that the NOPS process and A Path to Healing only relates to
17 sexual abuse of minors?
- 18 A. Just to clarify that, it does, but on the other hand all the principles are there that apply to the
19 management of other complaints that are not sexual abuse. So even if those other
20 complaints are led by ourselves and our professional standards office team, we have a
21 template, we have guidelines in A Path to Healing.
- 22 Q. And then at a practical level, though, so if you're a complainant and you have a complaint
23 that relates to both sexual abuse and physical abuse, that might have occurred in the same
24 context and it might have occurred with the same perpetrator, part of your abuse claim goes
25 to NOPS, that's the sexual abuse aspect and part of it goes direct to the Marist brother, the
26 physical abuse element, albeit that's the same or similar principles apply to both; is that
27 correct?
- 28 A. It goes to NOPS. It's a sexual abuse claim and to substantiate the physical abuse part of it,
29 it can all be part of the whole process I would believe. I don't think that we would divide
30 the work or divide the investigation into two parts.
- 31 Q. I might just bring up CTH0009895_00036. This is a complaint that relates to a different
32 survivor, not one we've been speaking about so far. And it's a file note of your discussion
33 with Jacinta Stopforth in August 2019 and it's discussing the situation where you've got a
34 mixture of allegations against a brother, both physical abuse and sexual abuse. And it

1 records that Jacinta has tried to explain to the survivor's solicitors that there are separate
2 pathways that should be taken when it comes to responding to mixed allegations, and
3 responding to the mixed allegation is not just a matter for NOPS, some aspects of the
4 investigation will be referred to the Brothers, i.e. to the order, i.e. the Marist Brothers. That
5 seems to be slightly at odds with your description as you've just -- the description you've
6 just given?

7 A. Yeah.

8 Q. Have you got any comments on that?

9 A. Well, as I see that I said, just seeing this now and right at this minute from my file note that
10 I wrote in 2019, I accepted that, and I saw it as fine. So it is at odds with what I said just a
11 moment ago.

12 Q. I'd like now to play another video clip from the Phase One hearing last year and this one is
13 of John and he's talking about the stage in the process when there is a hand-over from the
14 NOPS investigation to the Complaints Assessment Committee and then to the Marist
15 Brothers.

16 (Video played).

17 Can you see that from John's perspective at that stage he was waiting to hear from
18 the Complaints Assessment Committee as to whether or not his complaint was upheld, and
19 then all of a sudden, he heard from the Marist Brothers not the Complaints Assessment
20 Committee as he'd been expecting. Would you accept that the communication to John
21 about the hand-over from NOPS and the CAC to the Marist Brothers could have been
22 better?

23 A. First comment I want to make is that I would acknowledge that John is probably viewing
24 this live stream, or if he may even be here, but the point I want to acknowledge is there's a
25 lot of distress and hurt in his testimony and in what he was sharing throughout what he said
26 in the 4 December. And I am very, very sorry about all of these hurt feelings. That the
27 church process has let him down and left him with these feelings of abandonment, which I
28 have detected even in that clip I can sense that he's not getting a great sense of connection
29 and of the hand-over having worked well for him when he first hears from me and he's
30 feeling abandoned and distressed and in a painful condition relative to how this has all
31 taken place.

32 Specific to your question, the hand-over, it could be one of those things that we
33 should explain more clearly right at the beginning of the process. There will be an
34 investigation, this letter will be written to the church authority, they will get in touch with

1 you. That could be a leaflet, that could be something that is all part of explaining how the
2 system works and how it will be navigated and what might happen, and for just a sense of
3 where this is going next. And that's a general comment. More specifically to the Marist
4 Brothers, I think that's where we're missing something as well. We have not given people a
5 guideline as to where we are in the process and what happens next. And that has caused
6 huge difficulty and I can see that with John and several others in my time.

7 **Q.** Significantly John is saying here that he doesn't want to deal with the Marist Brothers at
8 all?

9 **A.** Yes.

10 **Q.** He doesn't want the Marist Brothers to be part of his redress process. Would you accept
11 that there may be some benefit in having a completely independent organisation in charge
12 of redress for victims and survivors?

13 **A.** I do. I can see, there's a perfect example and it's very compelling, that would say the
14 survivor may feel far more at home in any other environment than working with someone
15 from the Marist Brothers.

16 **MS GLOVER:** Thank you, Madam Chair, that might be a good time to pause for the morning
17 adjournment.

18 **CHAIR:** Very well. We'll take 15 minutes, thank you. And I will remind you, even though you
19 don't need reminding just so I'm comforted I've done it properly.

20 **A.** Thank you, Madam Chair.

21 **Adjournment from 11.29 am to 11.49 pm**

22 **CHAIR:** Thank you Ms Glover.

23 **MS GLOVER:** Thank you. I'd like to start by pulling up a document on the screen please, it's
24 CTH0009899 and it's with the suffix 0001. Just to give you some context while we wait for
25 that to come up, this is an e-mail from you to Jacinta Stopforth at NOPS dated 7 January
26 this year and it's talking about insurance. It's CTH0009899 and 0001 is the suffix. I can
27 start reading out the relevant section while we wait for that to come up on the screen.

28 **CHAIR:** Just repeat again what it is Ms Glover?

29 **MS GLOVER:** It's an e-mail from Peter to Jacinta Stopforth who's an employee at NOPS and it's
30 from this year, January this year. I can just read the section which is "What you have
31 learned -- this is what you are saying Peter -- what we have learned is that insurance
32 companies' protocols are strict and consistent. For prudent reasons we are advised that
33 should we initiate any communications with other parties off our own bat, this would create
34 real difficulties and the desired outcomes could be jeopardised for everyone, including John

1 and his partner. As you can imagine that creates an awkward situation. We can't be sure of
2 the outcome of the current discernment that is still in train, and for the present moment,
3 while others are doing whatever they need to do, these matters remain in limbo and outside
4 of our control."

5 **CHAIR:** It's appeared on the screen now, if we could just call out the highlighted parts please.

6 **QUESTIONING BY MS GLOVER CONTINUED:** Do you recall this e-mail, is this familiar to
7 you?

8 A. Yes.

9 **Q.** So you've already acknowledged that there have been significant delays in the Marist
10 Brothers redress process, is one reason for those delays and lack of proactive
11 communication because you were worried about jeopardising the position with relation to
12 the Marist Brothers insurance cover?

13 A. I'll describe some contextual aspects of this before I answer. Firstly, I'm feeling thwarted,
14 exasperated and in completely new territory relative to insurance. This is our first
15 insurance claim with having been under insurance with a particular insurance company for
16 close to 20 years. On top of that we have everything that we know about with John and
17 John's situation and what he's brought to us and how we would want to go forward and
18 have something achieved for everybody.

19 So it's a particularly galling situation that we've found ourselves in. So I'm
20 explaining this in this e-mail to someone who knows a little bit about John and is likely to
21 receive communications from John, as are we at our office. And just so that the picture is
22 described, I would call myself relatively measured in what I've put here in this e-mail to
23 Jacinta. This is where we are, it's not where we want to be but it's where we are.

24 **Q.** What are you finding particularly galling and frustrating about this process?

25 A. My understanding of insurance is limited to my other experiences with vehicles or
26 buildings or healthcare. It seems it me that what one might expect is an insured
27 communicates with an insurer and says this is the situation we're in and then there is an
28 agreement of how we progress, or who will progress or what will happen. In the meantime,
29 though, we've got a different experience with this particular, and this could be typical for
30 the sorts of things that do come up when you have this type of cover, that it's complex,
31 there's a whole situation that needs to be unpacked, understood, set into context, set into
32 the context of the Marist Brothers historically, all of that, so I appreciate that. We're now
33 talking about matters that are between insured and insurer, the lawyer for the insured which
34 is our lawyer, and the lawyer for the insurance company and I just have to leave it at that,

- 1 because it's way above my pay grade.
- 2 **Q.** So you said that you didn't see The Salvation Army evidence?
- 3 A. No.
- 4 **Q.** But Colonel Walker from the Salvation Army gave evidence on Monday that The Salvation
5 Army no longer involves insurers in relation to claims of abuse?
- 6 A. Right.
- 7 **Q.** Because it resulted in an approach that was too legalistic and too punitive?
- 8 A. Yes.
- 9 **Q.** So I'm taking from what you are saying about your experience with the insurers on this case
10 that you would agree with those sentiments?
- 11 A. It looks like my experience is heading in a similar direction or I'm just in a very awkward
12 space relative to this whole thing. So I can -- if that's their experience I hear what they're
13 saying.
- 14 **Q.** And just to be clear, what's awkward about your -- the awkward space that you find
15 yourself in?
- 16 A. Well, I know that I'm very clearly in the wrong in my conducting of the redress process
17 with John between the release of the Complaints Assessment Committee recommendations
18 and the point at which we went to the insurers. I'll own that, but this is what I've just said
19 here, this is outside of my control, and that's the awkward part. So what we have is, this is
20 the simple summary of the situation, is that we have on John's behalf from John's lawyer a
21 claim, this is the first time we've ever had a claim, okay, I've spoken yesterday about
22 ex gratias, I've spoken about being party to redress in all sorts of form, we've never had a
23 claim as I call it in a classical sense, of a claim from a lawyer saying this is what we're
24 putting in front of you as the Marist Brothers. Then the Marist Brothers go to their insurer
25 which is what the insurance policy is for, indemnity insurance. So that's what our policy is
26 for.
- 27 **Q.** So is that the reason why this is the first time that it's gone to insurers?
- 28 A. For such a large amount being put in front of us as a claim, yes.
- 29 **Q.** So in this case you've got a claim from John's lawyers for a dollar figure?
- 30 A. Yes.
- 31 **Q.** That's come to the Marist Brothers and you're saying that but for that fact, but for the fact
32 that there's a specific figure, it would otherwise not have gone to the insurers?
- 33 A. Correct, in the sense that what we see the redress process as is a process of a pathway to
34 healing, which is the whole principle behind the document A Path to Healing, and

- 1 accompanied by what would be best as an outcome, and what might represent as a symbol
2 or a token our regret. And that's the pathway that we're familiar with. This is different.
- 3 **Q.** This might be something outside your knowledge, but are you aware of any other Catholic
4 religious orders or institutions that have insurance in place for claims of sexual abuse?
- 5 **A.** No, I'm not, but my hunch would say there could be.
- 6 **Q.** You've said that where recommendations include making an ex gratia payment, this token
7 acknowledgment, as you describe it, to a claimant, the quantum of the payment is ratified
8 by the Marist Trust Board on advice from the leader?
- 9 **A.** Ratified's not quite the word, but I'll accept the general principle of what you've just said.
- 10 **Q.** Again I --
- 11 **A.** Is that my word, sorry?
- 12 **Q.** That is your word.
- 13 **A.** Thank you, okay.
- 14 **Q.** And you've said that the Marist Trust Board has as an overarching consideration the aims of
15 the Marist Trust Board's charitable trust deed.
- 16 **A.** Yes.
- 17 **Q.** To your knowledge, are the aims of the Marist Trust Board charitable trust deed in any way
18 incompatible with providing financial redress to survivors?
- 19 **A.** If you put it in as negative it's not incompatible; it's not incompatible no, but the principles
20 of the trust deed are for educational purposes and what the Marist Brothers' mission is in
21 this country. They're the civil arm that enables our Marist Mission within New Zealand to
22 have the vitality that it might have.
- 23 **Q.** So there's nothing in the Trust Board that would in any way impact upon what redress
24 could be provided in financial terms to a survivor, is that what you're saying?
- 25 **A.** There's not anything that impedes it and restricts it from being a consideration, but on the
26 other hand a trust is a charity, it has its stated purposes, it's going to be audited every year,
27 and if it is -- a disproportionate part of its activity is supporting, say, redress or any other
28 one-off sort of sideline to the educational mission of the Brothers, it might come under
29 question. In a sense of scale.
- 30 **Q.** Under question from whom?
- 31 **A.** The auditors.
- 32 **Q.** The Marist Brothers --
- 33 **A.** You've got a trust deed, you've got financial records of what your activity has been in the
34 last 12 months, and then you've got the auditors to say that's all aligned to your trust deed.

- 1 That's the audit.
- 2 **Q.** We've seen from the Marist Brothers' data that's been provided to this Inquiry that the vast
3 majority of claims relate to abuse that occurred within an educational setting?
- 4 **A.** Correct.
- 5 **Q.** You do not think that providing redress in relation to abuse that occurred in an educational
6 setting is part of providing educational services or whatever?
- 7 **A.** Yes.
- 8 **Q.** The term is in the trust deed?
- 9 **A.** No, that's fine, I accept that, yes. I can see that that link can be supported and should be,
10 yes, no, that's fine.
- 11 **CHAIR:** That begs the question --
- 12 **A.** Yes.
- 13 **Q.** -- Peter, why would the amount matter. The amount of --
- 14 **A.** Redress.
- 15 **Q.** -- redress that you give, why would that matter?
- 16 **A.** Sure, I think that it's a question, I suppose, what happens with auditing is you do a year by
17 year comparison. So therefore it is, I regret, a low baseline our gratuities and our ex gratias
18 are at the lower end in what I know of Catholic data now in the last few weeks which I've
19 never known before. And that would all help to explain at the next audit, if we were to
20 increase our gratuities, there'd be no problem, I can say well look, we're out of line with the
21 rest of the church. I didn't know that. So that's one element. And I guess the other is year
22 by year if you're, you know, say your gratuities for one year are X, so last year it was
23 40,000, and the following year it's 200,000, auditors will question that. So you just
24 need -- it could be explained, that would be fine, but you just need to get your thinking cap
25 on.
- 26 **Q.** That's what I was going to suggest, it's matter not of principle but of explanation, isn't it?
- 27 **A.** Yes, it is, how to explain it.
- 28 **Q.** Yes, how to explain it.
- 29 **A.** Exactly, yeah, then have your thoughts in shape for that explanation.
- 30 **Q.** And your evidence.
- 31 **A.** And your evidence, that would be fine, yeah, okay.
- 32 **Q.** So that's a slight --
- 33 **A.** Difference from what I was saying.
- 34 **Q.** Yeah, but it's also perhaps an understanding that's come to you in the course of this

1 questioning.

2 A. Inquiry, well this Inquiry has put documents in front of me about the church and others
3 beyond our little circle of wagons and I can understand a lot better the total picture.

4 Q. Thank you.

5 A. Yes, thank you.

6 **QUESTIONING BY MS GLOVER CONTINUED:** So I take it from what you're saying it
7 never occurred to you to look beyond that circle of wagons to find out proactively what
8 other organisations were providing in terms of financial redress?

9 A. I had the baseline that goes back a long time and that's out of line, in hindsight I should
10 have thought about it and done some checking. Whether it would have come to me as
11 freely as it has just come to me now I'm not sure, but it is really helpful information, it's
12 really good big picture information.

13 Q. You say in your written evidence that in the period the mid 90s up to 2016 the Marist
14 Brothers usually offered an ex gratia payment of up to \$10,000. Then you go on to say that
15 further advice from legal advisors in the late 1990s and early 2000s reiterated that the
16 figure of \$10,000 was consistent with the amount paid by ACC. Why do you think it was
17 important that the amount paid by the Marist Brothers was consistent with the amount paid
18 by ACC?

19 A. I think that ACC was in most people's understandings the body that dealt with sensitive
20 claims, had thought through what will be a long-standing guideline, and in fact in a way we
21 wouldn't be the only organisation that would take that as a criterion of some kind. There's
22 many possibly outside church bodies and all sorts of other parts of the New Zealand
23 community would be taking ACC as its guideline, its touchstone. That's how I see it just as
24 a general thing, whether it's a church body or anybody, any group.

25 Q. The part that I'm struggling with is that the Marist Brothers encourage victims and
26 survivors to go to ACC as well as coming to the Marist Brothers. So when you say you
27 want the Marist Brothers' financial compensation to be consistent with that provided by
28 ACC, is that only in situations where the victim couldn't, for whatever reason, access ACC.
29 Are you saying it's an alternative, you can take one or the other?

30 A. So firstly let's just take a step back, that we're talking about the period before I became the
31 delegate for professional standards, so I'm just speaking in a general sense as I see that
32 historic period of the Marist Brothers, setting those guidelines and that's what I've put in my
33 witness statement. Trying to report the facts as this is what was done. Now to interpret
34 what was done and why it was done, I'm into speculation.

1 Having said that, I would think, this is just trying to answer the question, I would
2 think that there are people exactly as you've described that for one reason or another they're
3 unable to access ACC. So therefore I would think, this is speculation, why not have
4 something that's similar, equitable and so on.

5 **Q.** And as at today's date, with you running the process, if a victim or survivor did access
6 ACC, or did not access ACC, would that have any impact on the financial redress provided
7 by the Marist Brothers?

8 **A.** It certainly would be information that goes into the mix. I can't -- it's a hypothetical
9 question, it's not that often that ACC payments to victims are known to us, but from what I
10 would think it would go into the mix in terms of the discussion.

11 **Q.** So you're saying there's a possibility that if they were receiving ACC, you would take that
12 into account in the overall balancing of the redress that you would consider fair and
13 appropriate?

14 **A.** I would think that's information for sure. I mean it's just information, it's not -- I'm not
15 saying what we would do with it, I think that that's preempting what might happen in the
16 future and I wouldn't want to do that in the public domain like this.

17 **Q.** I'd like to bring up another document, CTH0001472. This document that is going to come
18 up on the screen is a memorandum from Bishop Dunn, it's dated 20 June 2003, so this is
19 presumably at the time that you were on the Professional Standards Committee but you
20 were certainly not a delegate. I'd like to call up the paragraph beginning "When we met
21 with Gail Kettle in Wellington." So this is Bishop Dunn saying, "When we met with Gail
22 Kettle in Wellington we agreed to try to use the Marist Brothers' agreed maximum payment
23 of \$12,000. In light of the publicity given to the John of God settlements -- that's the
24 Marylands issue that you refer to earlier -- that maximum no longer seems feasible. Father
25 Tim Duckworth from the Society of Mary has since informed me confidentially that the
26 Society of Mary sees \$30,000 as their maximum payment - i.e. for someone who was
27 determined to have suffered abuse at a level of 80-100%."

28 When you said previously that you were aware anecdotally back in the mists of
29 time of a baseline, is this what you were referring to, an understanding about this situation?

30 **A.** I haven't seen this memo from Bishop Dunn before and I haven't seen that figure before in
31 the context that it's there in those three lines. I'm only going to speculate and I'm not sure
32 that I'm comfortable saying too much more, it is news to me in that sense, that we had that
33 agreed maximum and that it was deemed to be no longer feasible. That's very interesting.

34 **Q.** So in 2003 Bishop Dunn's saying that that maximum payment's no longer seemed feasible?

1 A. Yes.

2 **Q.** And we've seen that the payments made by the Marist Brothers since --

3 A. Yes.

4 **Q.** -- that time have still largely been in that range?

5 A. Can I comment on that?

6 **Q.** Yes.

7 A. Okay, that's the first step is that 2003 that makes sense. From 2003 onwards, this is just by
8 my working through step-by-step what has occurred with our gratuities, I'm interested to
9 see all that. It didn't move from that sort of figure in the period around 2003. I know there
10 was a very significant time in terms of the church dealing with many complainants all at
11 once. There was almost a frenetic time relative to all of these issues.

12 But what I was aware of more recently when I have moved into administration and
13 been involved in thinking about these things at a higher level, I can see that we have settled
14 in our minds on a figure that's close to twice that, we usually would be thinking our figure
15 is more like 20 to 23. 15 to 23 for sexual abuse. That has been in play in more recent
16 times. But how it got there, I've never seen this.

17 **MS McKECHNIE:** Excuse me Chair, if we could clarify whether the Marist Brothers ever
18 received this. It's addressed to the cardinals and the other bishops. As far as I'm aware the
19 Marist Brothers didn't receive this at the time.

20 **CHAIR:** All right. I think, Peter, you've said that you've never seen it before.

21 A. That's correct.

22 **Q.** And I take it if the Marist Brothers had received it you in your present role might have seen
23 that in a bundle of correspondence somewhere?

24 A. I would have, but I think there would be reasons why as I'm getting my feet under the table
25 with this job there would be some correspondence that I have yet to read, especially from
26 2003.

27 **Q.** Yes, so it may be there and you haven't seen it --

28 A. That's correct.

29 **Q.** -- or it might not have arrived at all?

30 A. That's correct.

31 **Q.** We don't know until a search?

32 A. Yes, sure.

33 **Q.** Thank you.

34 A. Okay, thank you.

1 **QUESTIONING BY MS GLOVER CONTINUED:** And more generally, do you have any
2 insight, personally, as to why the payments by the Marist Brothers might or are often lower
3 than those of other diocese or congregations?

4 A. I just have a few prepared thoughts on that?

5 **Q.** [Nods].

6 A. Okay. As I've said several times, for the first time, just recently, I could get a sense of this
7 comparative picture. So the fact that our figures were lower is now in front of us as
8 evidence. I didn't even have a hunch let alone have the figures that this might be the case.
9 So just firstly to see what the comparison is, that there would be many Catholic
10 organisations that will be presenting their material through Tautoko to this Commission
11 where they're more likely to have \$20,000 as say their average across their ex gratias. The
12 Marist Brothers across all of our ex gratias that I'm aware and that we've submitted through
13 Tautoko as to our track record look more in the realm of \$8,500. That encompasses, as
14 I said yesterday, physical abuse, psychological abuse, other matters that have come up in a
15 complaint that doesn't even, or put it in that limiting way, but doesn't fit categories that are
16 far more serious.

17 So we've had some figures given to us for an ex gratia by an external process;
18 example, mediation. The mediated figure, and I'm aware of a number of instances of a
19 mediated figure that would be in the kind of average that I've just spoken about. Another is
20 court order. Again, court orders I've seen almost exactly 8,500 is the court order.

21 So, there's a range, when you have an average and the average is 8,500, of course
22 there are some at the higher level, which I just mentioned a few moments ago. And then
23 there are incidents that are reported of physical abuse, physical harm, they're less likely to
24 be anything above 8,000, they're more likely to be below that figure. So it all evens out,
25 okay?

26 So I'm just reiterating that in the Marist Brothers, yes sexual abuse, but also
27 physical and psychological offending and episodes and settlements are all in that mix. I
28 can't have in front of me whether that makes us different from the other congregations, but
29 it could be a factor, it just could be. I'm not sure, okay?

30 Another point is that we've recorded our ex gratia as the payment, the payment, the
31 amount passed to the recipient. Our redress process has had separate matters and separate
32 amounts that we've captured differently in our bookkeeping, and we've had records of most
33 of these but not necessarily all. I'll give you examples. One is funeral expenses. Another
34 is a complainant had court fines to pay. We paid those fines. Another is purchasing a

1 laptop for the complainant. Another is paying the children's school fees for that
2 complainant. Another is the headstone for the family of that complainant. Others are
3 donations to designated recipients that the complainant wished us to make the donation to.
4 Others are in the line of a taonga, something that would be a symbol and valuable to that
5 complainant. Those are all separate from the ex gratia dollar amounts, and there are others.

6 **Q.** So those are not captured in the data?

7 **A.** Not captured in the data.

8 **Q.** None of those, is that what you're saying? Or some of them might be?

9 **A.** We could supply the figures but they're not in the figures that we supply to the Catholic
10 Church collective collation of data.

11 **Q.** The final question or issue that I wanted to explore with you is something that you've
12 mentioned quite a few times as we've gone through and that's the nature of this ex gratia
13 payment and what its purpose is, and you've described it as a token, you've described it as a
14 symbol and you've described it as an acknowledgment, and you've said very clearly that
15 you wanted to step away from any characterisation of that as compensatory or meeting an
16 obligation?

17 **A.** Yes.

18 **Q.** You say that the reason for this, this part is taken from paragraph 51 of your written
19 statement, that the Brothers recognise that no monetary amount could compensate a person
20 for the harm and trauma of being abused. I wanted to explore that idea with you. How do
21 you know that no monetary amount could compensate, or even partially compensate
22 perhaps?

23 **A.** I don't. I accept that I don't know.

24 **Q.** You haven't obviously then asked survivors about that?

25 **A.** Survivors at different stages of this process can have a number of ideas that they present to
26 us. Those ideas we may be able to match with or we may not. It's possibly part of the
27 process of the Path to Healing, the Path to Healing for the person is actually where our
28 philosophy is based and the Path to Healing is what I refer back to if we're thinking in these
29 terms. Once we start talking about quantum amounts and that conversation is starting
30 to be had, it's very hard to have the Path to Healing conversation run concurrently with the
31 dollar conversation. That's my experience of the recent times, but also anecdotally before
32 that.

33 So just going back to the question, it's true that our philosophy has been
34 established over a long period of time, and I haven't seen fit yet to review it or change it or

1 make it go in a different direction. That we've said to ourselves, trying to say what is the
2 compensation to a person for the harm done is very awkward territory to start venturing
3 into.

4 I'm still thinking about it. I certainly found it enlightening to think about how over
5 the last generation we've seen similar jurisdictions to New Zealand start to talk this way and
6 have redress schemes. So we've got the UK, we've got the Republic of Ireland, we've got
7 Canada, we've got Australia, you would know all that. 20 years ago, none of those redress
8 schemes and none of this thinking was around, so compensation was really in the model of
9 what Tom talked about yesterday, which is lawyers and that whole kind of North American
10 litigation-style, and we just wanted no part of that. Now we're in a different place and we
11 could rethink perhaps. But I can't preempt what would come from that thinking process.

12 **Q.** So as you've seen it so far, the Path to Healing process is really quite divorced from ideas of
13 compensation and obligation to a survivor?

14 **A.** There are some paragraphs, I can't recall them, I haven't got them in front of me right now,
15 but there are some perhaps in A Path to Healing that do speak about the ex gratia but look
16 at the total document and the spirit of it, it isn't focusing on that.

17 **Q.** Thank you.

18 **MS GLOVER:** Thank you Madam Chair, that's all the questions that I have for Peter.

19 **CHAIR:** Thank you. I'll just ask my fellow Commissioners if they wish to ask any questions.

20 **COMMISSIONER ERUETI:** Tēnā koe Peter.

21 **A.** Tēnā koe.

22 **Q.** My name's Anaru Erueti I'm one of the Commissioners. I wanted to explore, I've got a few
23 questions related to the Treaty. At the beginning of your evidence you talked about how
24 when looking at your records you could see only three claims that have been made by
25 someone who were Māori?

26 **A.** Correct.

27 **Q.** It seems a really low number.

28 **A.** Mmm.

29 **Q.** And I'm just wondering why do you think that might be the case?

30 **A.** I think we haven't been as proactive as we might be to reach into communities outside of
31 what we might call the limited community in our three schools that we own in Auckland in
32 terms of Māori, but even they deserve us to approach them and to activate much more open
33 dialogue about all of this. Hato Petera, it possibly goes back to my comments that I've been
34 making about division, shall we say, or clarification between proprietorship and also the

- 1 post integration phase where the Board of Trustees may in fact, I would suspect, have led
2 those inquiries. Those are some factors, but it's a very good question, yeah.
- 3 **Q.** So the claims could have gone somewhere else, to the Board of Trustees?
- 4 **A.** They could have gone somewhere else, yes, Board of Trustees particularly, yes.
- 5 **Q.** But overall the numbers are low?
- 6 **A.** Correct.
- 7 **Q.** So you're going to endeavour to, a strategy or communication strategy, to reach out to these
8 communities?
- 9 **A.** Correct. I mean I think I just need to mention the Marist Brothers as teachers have taught
10 in other schools, including State schools, so I sort of nominated our three schools that we
11 still -- that we are the proprietor of and they would be the obvious first place, so let's start
12 from there.
- 13 **Q.** Yes.
- 14 **A.** Yes.
- 15 **Q.** If you put yourself into the shoes of a Māori boy or girl who went to one of these kura, for
16 example.
- 17 **A.** Yes.
- 18 **Q.** Looking at whether they would come to you for redress, there would seem to be significant
19 questions raised it seems, given the discussion we've been having, particularly on what
20 you've just told us about, how you perceive redress as being only token, and there being no
21 real obligation, if you like. Would you also, in looking forward, explore what, say, a
22 Treaty-informed approach to redress might be?
- 23 **A.** I would. I think that that's quite an energising question. I would also say we've actually
24 established a little bit of a platform for this, if you just think about what I said a few
25 minutes ago, obviously our Professional Standards Committee has been thinking and has
26 been quite active in engaging with the redress process. Those instances like a funeral or a
27 headstone or a taonga, that they're not sitting on their hands and there's a platform there that
28 we should perhaps make it far more cultural but we already have started to think that way
29 and let's take it forward, yes.
- 30 **Q.** That seems to be a reactive case-by-case --
- 31 **A.** Yes.
- 32 **Q.** -- approach to specific survivor wants?
- 33 **A.** Absolutely, yes.
- 34 **Q.** Rather than a methodical engagement with survivor communities and Māori?

- 1 A. Absolutely, that's the leap, yes.
- 2 Q. The other matter I think is independent, and you've conceded yourself that you could deal
3 with more independence in your process, that with this survivor coming forward would be
4 the perception that it is coming back to the institution that harmed he or she.
- 5 A. [Nods].
- 6 Q. So but I don't think we need to take that into further --
- 7 A. No, yeah, sure.
- 8 Q. -- I think you've recognised that this is an issue that needs to be sorted.
- 9 A. That is an issue, yes.
- 10 Q. Yeah. Finally, it's just a puzzle to me that with your engagement with Māori with the
11 Marist Brothers, right from the early 19th century, then a bit of a gap but then the post-war
12 years, particularly at a time when Māori communities were under tremendous stress, the
13 Marist Brothers are there in the schools, I took it that when you talked about the
14 commitment by the Brothers to Te Tiriti, you expressed it as been in a general way?
- 15 A. Yes.
- 16 Q. I'm not quite sure what you meant by that?
- 17 A. Well, I think there's more work to be done and our thinking is still unfortunately a little bit
18 up in that kind of level of theory, I suppose you could almost call it, as against flax roots.
19 But I do want to just go back to right at the beginning, just to comment, if I may, for a
20 second. I wanted to say a bit about that history in order to acknowledge our own mana that
21 we have to be here and to have these conversations, and to not just assume that we have the
22 entitlement to speak about these things. We were making quite deliberate decisions in the
23 1970s and 80s to take a brother from the classroom and to say we really think where the
24 need is is Moerewa or Kawakawa; there's a loss of income, there's the person who's on the
25 ground. He doesn't go into the school, he does social work. I think we have the mindset,
26 the Marist Brothers have put their -- have kind of backed up what they have claimed they
27 do. We need to now take that forward. We're a different generation, and we did that then,
28 what do we do now.
- 29 Q. Again, I wonder whether it's -- you've got these responses in different instances over time.
- 30 A. Yes.
- 31 Q. But what I don't see is a normative sort of framework --
- 32 A. Correct.
- 33 Q. -- to guide it.
- 34 A. Correct.

- 1 **Q.** And reduce to writing with prescriptions and so forth.
- 2 **A.** Yes.
- 3 **Q.** Compared to, say, with the churches that we've spoken to within the last couple of weeks.
- 4 **A.** Yes.
- 5 **Q.** Was it The Salvation Army has rolled out Treaty policies on an ongoing basis.
- 6 **A.** Yes.
- 7 **Q.** Today we don't have anything of that nature with the Marist Brothers, but possible in the
8 future?
- 9 **A.** Absolutely, I think that sums it up, absolutely.
- 10 **Q.** Okay, kia ora, thank you for your time.
- 11 **A.** Yeah.
- 12 **COMMISSIONER ALOFIVAE:** Talofa Peter.
- 13 **A.** Talofa.
- 14 **Q.** The Marist Brothers are an international --
- 15 **A.** Correct.
- 16 **Q.** -- brotherhood, and I see that the trust --
- 17 **A.** Yes.
- 18 **Q.** -- covers a couple of the Pacific Islands.
- 19 **A.** Indeed.
- 20 **Q.** Would that be correct?
- 21 **A.** Indeed.
- 22 **Q.** That's Fiji, Kiribati and the two Samoas?
- 23 **A.** Correct, so we've just moved out, we've just had to unfortunately withdraw from American
24 Samoa due to lack of numbers, that's of just recently.
- 25 **Q.** Okay, so what you do here in New Zealand, if you were to draw up a redress policy, would
26 that then flow into your other -- into your Pacific nations, is that the intention?
- 27 **A.** There's a slightly nuanced way of looking at this discussion. In spirit yes, in detail, we just
28 acknowledge that each of those Pacific Island countries is its own sovereign territory.
29 Secondly, the mana, if we use our local language here from New Zealand, the mana of the
30 local bishop needs to be acknowledged.
- 31 I've just finished my presentation and I was concerned that I might be asked about
32 a particular piece of correspondence between a brother in New Zealand and the Area
33 Coordinator for Fiji. And where my hesitation lay is that that brother in Fiji is under the
34 mana or the authority of the Bishop of Fiji, the Archbishop. And acknowledging all of

1 those elements, my answer is, yes, we would be thinking along those lines, that the redress,
2 the discussion, the way in which an acknowledgment could be extended into any incidents
3 that have occurred off-shore, especially if the perpetrator is an expatriate New Zealand
4 brother or anyone who's a number of our community, Brother John has the authority over
5 the Brothers in the Pacific. So yes, I'd say in spirit we acknowledge exactly that principle,
6 but the devil would be in how might it all be worked out.

7 **Q.** As one would expect.

8 **A.** Yes, yes.

9 **Q.** As long there's a deliberate intent --

10 **A.** Intent, correct, yes, yes.

11 **Q.** -- to pull that together, it could certainly --

12 **A.** Sure. So just to be clear, while we're talking about the Pacific Islands, this I know is the
13 New Zealand inquiry, but if an inquiry like this were to be launched in some way in the
14 countries that are within our district, we would engage actively there in that inquiry. I am
15 the district delegate for professional standards, so therefore if a complaint is going up
16 through the steps in the Pacific, it ultimately does come to me if the brother who
17 perpetrated was a brother of our district. Thank you.

18 **Q.** Thank you for making that clear, that those pathways actually are in existence.

19 **A.** Yes.

20 **Q.** And they're open, obviously, to the survivors, and thank you to John for the call that was
21 put out in both the Samoan language but also again in English.

22 **A.** Sure, thank you.

23 **Q.** Your schools and you refer to the board of trustees.

24 **A.** Yes.

25 **Q.** So the assumption is that they would be Catholic parents on the board?

26 **A.** Are we talking Pacific or New Zealand?

27 **Q.** Here in New Zealand.

28 **A.** Here in New Zealand, yes. Yes.

29 **Q.** So the phrase -- so it was used in the Anglican context, a cradle Anglican, so if you're a
30 cradle Catholic, it's quite, you know, it's a fair assumption to say actually this is the
31 Catholic way, this is the way it's done.

32 **A.** Mmm-hmm.

33 **Q.** And you're very fortunate here in New Zealand you've got very big Pacific Catholic
34 communities.

- 1 A. Mmm-hmm.
- 2 **Q.** So the deference that's paid to the priest, to the bishop, I think some might use the phrase
3 "next level", even in your own faith.
- 4 A. Mmm-hmm.
- 5 **Q.** So you've got a non-Catholic looking at that time it really looks even bigger.
- 6 A. Right.
- 7 **Q.** Is that your experience as well, though, actually as a Catholic brother?
- 8 A. In some ways the brotherhood, when it is lived well, and when the brother is able to call
9 upon the vocation that he's trying to embody, he actually accompanies and walks alongside
10 rather than sits on top of the community that he is serving. So those parent communities I
11 would like to think have the experience of the Brothers being more accessible, user
12 friendly, nice to know, than -- at just an intuitive level, relative to what they might do.
13 We're talking about the Pacific communities.
- 14 **Q.** Yes.
- 15 A. Relative to the likes of pastors and priests and so on.
- 16 **Q.** So we know that abuse happened.
- 17 A. Yes.
- 18 **Q.** And you've reported it in your figures.
- 19 A. Sure.
- 20 **Q.** So my question is really forward thinking, because you've referred to the educational
21 context, which is very much a part of the Marist Brothers mission.
- 22 A. Mmm-hmm.
- 23 **Q.** And now that there is some real enlightenment in terms of actually the trauma and the
24 ongoing impacts of what survivors essentially have to live with --
- 25 A. Mmm-hmm.
- 26 **Q.** -- their entire lives. Do you see the role of the Marist Brothers Trust actually playing a
27 stronger role, or the Brothers themselves, in actually being able to start asking some of
28 those, or start broaching those conversations that Frances referred to as tapu?
- 29 A. Yes, it is an awkward one. In the Pacific Islands where the Pacific peoples have come
30 from, I think it's my observation, John would be the better person to speak in some ways,
31 but it's my observation to see that the Brothers are elevated and have enjoyed a certain
32 privilege just by their title and there's no denying that. Now the immigrants who are in
33 New Zealand who have come from that experience, either first generation or the next may
34 have, by osmosis, that might be still be around, you don't speak about the brother other than

- 1 with great deference and all of that. And what Frances said in the clip, I totally accept.
- 2 **Q.** So in knowing that that's a real concrete barrier?
- 3 A. Correct. We need to do something about it.
- 4 **Q.** The balance would actually lie in the hands of the church, in this case the Marist Brothers
5 institution --
- 6 A. Sure.
- 7 **Q.** -- to actually start unpacking some of that to make it safe --
- 8 A. Yes.
- 9 **Q.** -- for congregations to actually start visiting --
- 10 A. Yes.
- 11 **Q.** -- some of these tapu topics.
- 12 A. Correct, I think the responsibility sits with the Brothers who, in a sense, have power by the
13 power of everything that we've just said, it's ascribed power, didn't choose it necessarily,
14 but because we have that power it is for us to take the first step to -- for the relationship to
15 become different, yes, I agree with that.
- 16 **Q.** Thank you, thank you very much.
- 17 A. Okay, sure.
- 18 **COMMISSIONER STEENSON:** Tēnā koe.
- 19 A. Tēnā koe.
- 20 **Q.** I just have a couple of questions of clarification. Just given the abuse and impacts being
21 quite lifelong on survivors, I just want to understand the thinking or the rationale behind the
22 Marist Brothers not wanting to give an impression of obligation to those survivors for a
23 redress claim?
- 24 A. Sure. I think we thought that way and we were probably in tune with the church generally
25 a generation ago. That's how we saw it that we didn't want to create the sense that we had
26 an obligation, we were giving freely. The notion, though, of doing less than we should
27 have and now as the figures have shown doing less than others, that's embarrassing and that
28 needs to be set right. So there's an obligation.
- 29 But to think into that new space is where we find ourselves now and there's some
30 work ahead. That doesn't your answer entirely. Obligation just -- and compensation were
31 just sort of set aside, set to one side and we did what we thought by our own lights was this
32 is the way to go. That could be revisited but that is just telling you what the history is. And
33 that's where we find ourselves now. It hasn't been reviewed, so therefore those assumptions
34 are still around.

- 1 **Q.** But do you think in the future those attitudes may be adjusted around that?
- 2 **A.** I think so, I think so. It's a real eye opener to see, say, the likes of the Australian Royal
3 Commission and all the other information that's just coming in and saying there is an
4 obligation. I mean that's really one of the key findings that it strikes me has come to the
5 Marist Brothers or any other congregation in Australia. There is an obligation.
- 6 **Q.** Okay, thank you.
- 7 **A.** Sure.
- 8 **Q.** Just one thing, it's related to you talked with my fellow Commissioner Erueti around being
9 more Treaty focused.
- 10 **A.** Sure.
- 11 **Q.** I guess the other aspect to that is it strikes that the process to date hasn't been
12 survivor-focused. So do you think there'll be more going forward to adapt it to be more
13 survivor- focused?
- 14 **A.** Yes, I do. Picking up a phrase that is in the witness statement, you know, as I said it was
15 something that we would have liked to just do one more careful edit. I know that I've said
16 we're now survivor-focused, well, you know, that's not where we're at. We are relatively
17 speaking from where we were we have moved to be relatively more survivor- focused but
18 we're nowhere near being as survivor-focused as should be the case.
- 19 **Q.** Thank you for your answers, ngā mihi.
- 20 **CHAIR:** For me I just have one tiny detailed question.
- 21 **A.** Sure.
- 22 **Q.** In your list of matters that you had considered about why the Marist Brothers payments
23 would be lower --
- 24 **A.** Yes.
- 25 **Q.** -- you obviously prepared that and thank you for doing that.
- 26 **A.** Yes.
- 27 **Q.** You referred to mediated figures and court orders.
- 28 **A.** Yes.
- 29 **Q.** What court orders are you referring to there, what sort of court orders?
- 30 **A.** As a conviction, my understanding is the conviction is, and you were to pay, so here's --
- 31 **Q.** Reparation payments --
- 32 **A.** Reparation payments, so --
- 33 **Q.** -- made following a criminal trial?
- 34 **A.** Correct, so that reparation payment has gone through our process, say our finance people,

1 or whatever, because the brother does not have an income and the brother is not a
2 financially independent person in the normal sense. So therefore the order takes up that
3 reparation payment, and therefore that can get captured as one of our ex gratia.

4 **Q.** That has happened has it?

5 **A.** That has happened.

6 **Q.** Did that happen in the case of the Brothers who are no longer Brothers?

7 **A.** No.

8 **Q.** It didn't happen in that case?

9 **A.** No. No, it has happened, we have a person who's convicted and at the time of the
10 conviction he is a Brother, and that's the court order, the Brothers have paid for that
11 Brother.

12 **Q.** Recognising that it's an obligation on the Marist Brothers as much as the individual do you
13 think?

14 **A.** I don't in the sense, but I mean it's the individual -- the whole spirit of what has been
15 awarded in the court case is that there should be some sense that that person as an
16 autonomous individual has something to pay, that's what the court order is really about.
17 But the actual practicality when you go back through the whole process of a brother living
18 within community and he has forfeited his sort of financial independence, and he's a
19 community member, he doesn't have a bank account, his income, if he has some income, is
20 treated in the collective way, that's part of our common life, we end up paying his bills, and
21 that's one of them.

22 **Q.** Thank you. So it remains for me to thank you on behalf of the Commissioners for coming,
23 being very frank.

24 **A.** Thank you.

25 **Q.** And accepting of some past failures and particularly of your acceptance of the ways in
26 which your processes could be improved, that is heartening to hear. So we thank you for
27 that and your candour in doing that.

28 **A.** Thank you.

29 **Q.** And thank you again to you, for being a loyal supporter, Brother John.

30 **A.** Kia ora.

31 **MS McKECHNIE:** The next witness is Ms Noonan. Given the time would you like to take an
32 early adjournment and we return early?

33 **CHAIR:** Absolutely, I think if that suits everybody else, yes, we'll do that and we'll return at, shall
34 we say 10 to 2? Thank you we'll take the adjournment.

1 **Luncheon adjournment from 12.49 pm to 1.54 pm**

2 **CHAIR:** Yes Ms McKechnie.

3 **MS McKECHNIE:** The next witness on behalf of Te Tautoko and the Catholic Church is
4 Virginia Noonan.

5 **CHAIR:** Hello Ms Noonan.

6 A. Hello.

7 **Q.** How would you like to be addressed, Ms Noonan?

8 A. Yes, that's fine thank you.

9 **Q.** I'll ask you to take the affirmation please.

10 **VIRGINIA MAREE NOONAN (Affirmed)**

11 **QUESTIONING BY MS McKECHNIE:** Thank you Madam Chair. Virginia, you were asked to
12 give evidence to the Royal Commission and have prepared a witness statement answering
13 some particular questions, do you have that in front of you?

14 A. Yes.

15 **Q.** It's dated 29 January 2021, and to begin I'll ask you to confirm that the contents of that
16 remains true and correct to the best of your knowledge?

17 A. Yes, I confirm that.

18 **CHAIR:** Just an eye on speed please.

19 **QUESTIONING BY MS McKECHNIE CONTINUED:** What Madam Chair is referring to is
20 that we have signers and stenographers and I should know better so I will try and slow
21 down. If you could begin, please Virginia, by introducing yourself briefly to the
22 Commissioners in terms of your professional background and what brought you to be the
23 Director of NOPS?

24 A. Thank you. Tēnā koutou katoa, Ko Tawera te maunga, ko Waimakariri te awa, ko Ōtautahi
25 ahau. Ko Virginia Noonan tōku ingoa. No reira, tēnā koutou katoa.

26 **CHAIR:** Kia ora.

27 **COMMISSIONER ERUETI:** Tēnā koe.

28 A. Good afternoon, thank you very much for having me here this afternoon. My name is
29 Virginia Noonan and I'm current Director for the National Office of Professional Standards
30 for the Catholic Church Aotearoa New Zealand. My background is in law, I was in private
31 practice for eight years before taking a break from that world to raise our two young
32 children. During that time I pursued my love of governance and was appointed to a number
33 of local and national boards. I then moved into the world of intervention and was
34 appointed by the Ministry of Education as statutory manager to support school boards and

1 school wider school communities.

2 In 2017 I was then appointed as the national -- sorry, as the Safeguarding
3 Coordinator for the Christchurch Catholic Diocese, then in 2018 I was very privileged to be
4 appointed to this current role. Perhaps should I explain a little bit --

5 **QUESTIONING BY MS McKECHNIE CONTINUED: [Nods].**

6 A. So I took up the opportunity to take on the role of the Safeguarding Coordinator for the
7 Christchurch Diocese because as a practising Catholic and a mum I could really -- I really
8 felt that I could add value to help strengthen the safeguarding practises within my church.
9 I wanted to ensure a safe church for my kids, for my Godchildren, for my nieces and
10 nephews. During that year, 2017, I connected with other people in the other five dioceses
11 who were doing similar work to myself and we engaged, throughout the year, we met
12 regularly, and to simply share practice, to share resources, and to talk about framework for
13 safeguarding. It became very clear to myself and my colleagues the value of having
14 consistent safeguarding practice throughout our country, throughout all five dioceses.

15 Then in 2018 I applied for the role of National Director upon the retirement of the
16 then Director from the role, and I was very privileged to be appointed to this role. I began
17 in February 2018. In this role I still steadfastly am committed to ensuring that we have
18 consistent safeguarding practises around the country in every faith, Catholic faith
19 community.

20 I'm also equally committed to ensuring that we have within our church a safe
21 environment for survivors to come forward to make disclosures of harm, an environment
22 where their harm will be acknowledged, where those responsible for that harm will be held
23 to account, and where their survivor experiences can inform our current and future
24 safeguarding practises.

25 Q. Thank you Virginia. Now we have a little bit less than an hour, I've just been speaking to
26 Ms Anderson, we're a little bit behind overall so I'm going to cut it down a little bit less
27 than an hour. We're going to cover very briefly the creation and the role of NOPS. That's
28 mostly covered, Commissioners, in Mr Hamlin's evidence which you have. And then we'll
29 talk about the current Path to Healing processes, a bit more about safeguarding which you
30 have just introduced, and then talk about some of the reflections on the evidence that you've
31 had. In terms of the creation and role of NOPS, there's a chronology has been set out by
32 Tautoko in relation to this. So that, Commissioners, will give you the detail. It's the
33 document I handed up on Monday and for the record it's CTH0010532.

34 So given that information is with the Commission, just very briefly, from 2004,

1 what NOPS was doing then through to the changes of what NOPS is doing now?

2 A. Certainly. So overview and taken -- some of this information is taken from material that I
3 have also read. So in 2004 the National Office for Professional Standards was established.
4 At that point its role was to support congregations and dioceses on how to manage the
5 receipt and management of complaints of sexual abuse. At that time congregations and
6 dioceses had their own sexual abuse protocol committees.

7 The role of the then Director was also to review any complaint where parties to
8 that complaint were not satisfied with the process that had been undertaken.

9 Q. Virginia, who was the first Director?

10 A. Mr John Jamieson.

11 Q. What was his background?

12 A. I understand he had been a Police Commissioner.

13 Q. Was he Catholic?

14 A. No. Then in, I understand, in 2009 there was a directive that while the office would
15 continue to support congregations and dioceses in their management of complaints and to
16 help develop processes to do that NOPS was to take an oversight position, so they were to
17 receive a copy of all the complaint information in order to be able to better support
18 congregations and dioceses in that work. The role of reviewer of any complaint continued
19 to be maintained by the Director.

20 Then in 2014 I think from memory there was a decision made that the individual
21 diocesan or congregational sexual abuse protocol committees would be combined into two,
22 a northern and a southern protocol committee. The northern committee was Auckland,
23 made up of the Auckland and Hamilton dioceses, and the southern committee was made up
24 of Dunedin, Christchurch, Wellington and Palmerston North.

25 Then in 2016 there was a discussion among the congregational leaders and the
26 bishops around having a more, a one centralised Complaints Committee. That was agreed
27 upon by the Catholic leaders, the congregational leaders and bishops, and that began its
28 work in early 2017. So that is the Committee we currently have and it is called the
29 Complaints Assessment Committee.

30 Q. Thank you. And that brings us through to the current process and so I'd like to ask you
31 some questions about that and to guide that discussion if we could bring up please
32 CTH0004902. It's going to come up on the screen in front of you. What is this document,
33 Virginia?

34 A. This is a document that our office created to try and help explain in a simplified way our

- 1 Path to Healing protocol investigation process. So the first page has all the contact details
2 and details of what we would like to be able to ascertain from that first initial contact with
3 the survivor and it then goes further into more detail.
- 4 **Q.** It's a three-page document and we're going to work through it systematically. But before
5 we do that, how does somebody who wants to approach NOPS or a church entity find this
6 document?
- 7 **A.** There are copies available on our website. We also, as soon as we have received contact
8 from a survivor or a survivor's family member or friend, making any form of inquiry, this is
9 one of the key documents that we immediately provide to give an outline in the first
10 instance of our protocol process.
- 11 **Q.** And when was this developed, Virginia?
- 12 **A.** It was initially developed in 2018, however, the version we're looking at now is probably
13 various versions, it is constantly being reviewed and revised to ensure it is providing clear
14 information. We do take feedback from survivors and survivor advocates around perhaps
15 some wording. So it's a constantly evolving document.
- 16 **Q.** If we could call out the lower half of that page under the box please. The Commissioners
17 can see there that you set out the information that will be required. I'd just like you to
18 explain please, that second to last paragraph beginning "Telling your whole story", why is
19 that included in that document?
- 20 **A.** We are very conscious that as part of our protocol we invite a survivor to meet with an
21 independent investigator to share their full experience. We are, therefore, very conscious of
22 not asking the survivor to share their story more than once. So we invite the survivor to
23 provide us with really just minimal information at this very early stage, simply to check that
24 it fits within the scope of our office, because if it doesn't then we will make the appropriate
25 referrals. So we want to be able to have enough information to know yes, we are the
26 appropriate place to work and journey with that survivor and that's -- we then go into more
27 detail later about what process needs to be followed from there. But it is very deliberately
28 to provide, to be very clear, that we don't want that survivor having to share their
29 experience over and over.
- 30 **Q.** In the next paragraph, Virginia, there's a reference to Police. Can you explain the approach
31 NOPS takes to Police involvement?
- 32 **A.** Any contact from a survivor, a survivor's whanau or support person, we encourage that
33 person to take their complaint to the Police. We will tell them that over the phone, via
34 e-mail, in written form. We do believe that they, the Police, are the best place to take

1 complaints of this nature. If, however, that complainant does not -- the survivor does not
2 wish to do that, then we offer this alternative investigation process. We do have
3 mandatory -- what effectively we take as mandatory reporting. If the complaint is from, or
4 the disclosure is from a survivor who is currently under the age of 18 and they do not wish
5 to take the matter to the Police, then we will discuss with them that our obligation to refer
6 the matter to the Police.

7 **CHAIR:** Sorry, just as a matter of clarification, you said if the person -- the Police is the best
8 place to investigate.

9 A. Yes.

10 **Q.** But if the person doesn't choose to do so, then it comes to this process. Am I right in
11 inferring from that that if it goes to the Police, NOPS doesn't carry on, is that what you're
12 saying?

13 A. We will suspend our process until the Police have finished with their -- finished prosecution
14 or finished with their inquiries for the sole reason we don't interview or any way
15 contaminate what could be a criminal prosecution. We will then absolutely pick that
16 disclosure back up and journey with the survivor through our investigation process.

17 **Q.** That could be some years or sometime?

18 A. Potentially, yes. We try and keep in contact with the survivor, and we try and have links
19 with the Police in situations like that, so we can have feedback around how that process is
20 tracking.

21 **Q.** Thank you.

22 **QUESTIONING BY MS McKECHNIE CONTINUED:** Since you've been in the role, in your
23 experience do many people go, choose to go to the Police?

24 A. It would be a minimal number of survivors do go to the Police, I'm sorry I can't give you an
25 exact figure at the moment. And we encourage survivors to contact the Police at any stage.
26 It may be at the beginning, they may change their mind and want to contact the Police
27 during our investigation process, so that's open to them at any stage, but it would be a small
28 number.

29 **Q.** If we could go to the second page of that document please, which is headed "A more
30 detailed description of the process" and just call out the top half of the page please so we
31 can see it more clearly. You mentioned before the initial assessment process and the scope
32 of A Path to Healing. Can you just briefly explain to the Commission what is within the
33 scope of the Path to Healing and the office and what is outside?

34 A. So the Path to Healing specifically provides that we will manage and oversee complaints of

1 sexual abuse or sexual misconduct by clergy or religious. So we're talking priests, clerics
2 and members of religious congregations both male and female.

3 **Q.** What happens, Virginia, if a complaint does fall outside the scope of your office's mandate?

4 **A.** That does happen. So what we will do is with the survivor's permission we will make -- we
5 will refer that complaint to the appropriate diocese or congregation. We have asked and
6 expect that each congregation and diocese has a contact person that we then will refer that
7 person to, so we try and have it as a hand-over process, so they don't have to try and get
8 those contact details, we will try very carefully to hand that over to the diocese or
9 congregation to then be able to respond and manage that disclosure and/or complaint.

10 **Q.** Virginia, what happens in processes where there might be a sexual allegation against an
11 individual and a physical allegation made against the same individual?

12 **A.** So what we have done is adapted our process to ensure that, or try to have a survivor not
13 having to tell their story to our investigator regarding the disclosure of sexual abuse and
14 then perhaps a diocesan investigator regarding perhaps a disclosure of physical abuse. This
15 process has evolved and where we are now is that we will have one of our independent
16 investigators meet with a survivor and take their statement which will include all aspects of
17 the abuse. The Complaints Assessment Committee for NOPS will then respond and make a
18 recommendation regarding the complaint of sexual abuse. The balance of that statement
19 will then be provided to the diocese or the congregation to be able to respond to the other
20 further complaints or allegations of other harm. This is on the proviso that that is what a
21 survivor would like to do, if they would like to do it differently, if they would like to
22 separate out both aspects of their harm and abuse, that's fine, we'll be guided by them. But
23 that is something we have evolved and we have found that survivors tend to prefer to
24 engage in that manner.

25 **COMMISSIONER ERUETI:** That makes sense to me, can I just ask please, for how long, when
26 was this new policy initiated?

27 **A.** New policy, pardon?

28 **Q.** This new approach that you say has evolved of including merging physical and sexual
29 abuse into one claim?

30 **A.** Gosh, it would probably be over the last 12, 18 months. With myself and my team we're
31 very reflective in our practice, so hearing feedback from survivor and particularly survivor
32 advocates around the distress they may have been feeling about having to separate or speak
33 to two different entities, how can we make this better, how can we make this easier for a
34 survivor. So it's an evolving, and I think probably at least 12 to 18 months. I could check

1 that, though, to see where our process changed.

2 **Q.** Okay, thank you.

3 **QUESTIONING BY MS McKECHNIE CONTINUED:** Moving to the investigation process, as
4 you've said a number of times, it's undertaken by an independent person. It says here with
5 investigative experience. Why is that approach adopted?

6 **A.** This is an inquiry process protocol. We have -- it is about trying to have someone with the
7 correct training to elicit and ask the right questions to encourage the survivor to tell their
8 story and to share their experience of harm. We then need that independent investigator to
9 undertake investigative work. They need to research church records, they may need to
10 contact other witnesses who a survivor has nominated who may be able to help share more
11 information. They may need to meet with a respondent. So there is sometimes a lot of
12 research that needs to go into this work. Was that responding to your question?

13 **Q.** Who chooses the investigators for a particular investigation?

14 **A.** So we now have what we term as independent investigators. So they are engaged by our
15 office, however they're not direct employees of our office. They are selected for their -- the
16 background that they have and their experience. So most of our investigators have
17 extensive investigative experience and we have been moving towards selecting
18 investigators who have backgrounds in adult sexual abuse trauma, particularly those who've
19 worked within such trauma teams within the Police and have extensive experience in
20 working with survivors of sexual abuse.

21 **Q.** As part of the evidence and questioning this morning, I know you were listening to some of
22 that but not all of it, Peter Horide was asked about what happens if there is a denial. So in
23 the current process set out here, if an investigator interviews a respondent and there is a
24 denial, what is the process now?

25 **A.** We would ask our investigator to go back to the survivor and explain that the respondent in
26 this case has denied the harm. We would then ask the investigator to invite that survivor to
27 share any further information or anything else that, any other information that may help to
28 corroborate their experience, their disclosure. That is then another line of inquiry that our
29 investigator can follow-up.

30 **Q.** When the investigation is concluded, moves on to the next stage, if we're able to call up the
31 bottom half of the document please. In terms of the report, number 3 and number 4. If we
32 could call those out that would be helpful thank you. If you could briefly explain what this
33 process is and who undertakes it?

34 **A.** Certainly. Once the investigator has completed their investigation, they are asked to put

1 together a, what we provided for there, a written factual report. That is then provided to the
2 Complaints Assessment Committee. With that report are all the supporting documents.
3 That would be the survivor statement which the survivor has approved, and sometimes that
4 can take time between investigator and survivor to get that statement into a form that the
5 survivor is comfortable with. So that report will have included all the supporting
6 information. That is then provided to the Complaints Assessment Committee. That report
7 is really important and does need to be very thorough, because that is the full information
8 that the Complaints Assessment Committee will make their recommendation on. The
9 Committee members do not meet with the survivor or respondent. So that report is then
10 relied upon and considered by the Complaints Assessment Committee. Sometimes the
11 Committee will not be satisfied with the information provided, will identify perhaps
12 another line of inquiry that they would like to be looked into, and that will absolutely be
13 referred through our office back to the investigator to look into. The Committee members
14 will then discern and discuss the material provided and make a recommendation on whether
15 the balance of probabilities, so more likely than not, that that complaint should be upheld.

16 **Q.** And then where does that recommendation go to, if we could call out 5 and 6 please in the
17 document?

18 **A.** So that letter of recommendation together with the report and supporting information is
19 then provided to the bishop or congregational leader. Just to clarify, that is the bishop or
20 congregational leader of the respondent, of the respondent person. The Committee may
21 also include in that letter of recommendations not just whether they believe the complaint
22 should be upheld, but other recommendations perhaps about outcomes, or any sanctions
23 possibly of a respondent. And outcomes is an important question that our investigators ask
24 survivors when they meet with them is what do you want to have as an outcome from this
25 process. So that's a very key question, and it is asked more than once, generally asked
26 more than once during an investigation. At the beginning, perhaps during because a
27 survivor's -- what a survivor would like out of the investigation process or A Path to
28 Healing may change as they journey through the protocol. So the letter of recommendation
29 will then be provided to the bishop or congregational leader with the report and all
30 supporting information.

31 **Q.** And then what happens?

32 **A.** The bishop or congregational leader will then consider the recommendation from the
33 Complaints Assessment Committee, the material provided, and will then decide whether
34 the complaint is to be upheld or not. And then they would make contact with the survivor

1 directly. We have prefaced that contact by usually contacting the survivor and to let them
2 know that the letter of recommendation has now gone to the bishop or congregational
3 leader so they should expect to receive direct contact from that bishop or congregational
4 leader. We do that so they're not surprised, we also ask how they would perhaps like that
5 contact to be made, is it e-mail, is it phone, so perhaps in case they want a support person
6 available when that call or contact is first made. And we then -- that matter is then left with
7 the congregational leader or bishop to make contact and to then move to the next phase of
8 A Path to Healing protocol which is about resolution.

9 **Q.** What role does the NOPS office have in the resolution phase?

10 **A.** We have a limited role in that. Our role has actually effectively come to an end, however,
11 because of the relationship we've often formed with a survivor, we may become the conduit
12 for contact with a bishop or congregational leader. If perhaps there's been concerns around
13 time that perhaps they haven't heard or perhaps they're not understanding of something, we
14 are often the first port of call to help work through that process. If we do receive advice
15 from a survivor that they haven't heard from or are struggling to make contact with a bishop
16 or congregational leader, we will immediately go to that bishop or congregational leader
17 and find out what's happening and to help facilitate that connection.

18 **Q.** Moving to the resolution phase and if we could call out 7 please. We've just discussed the
19 engagement with the complainant. The other important aspect of this process where the
20 accused person is alive is the impact that it has on them. So if you could briefly explain the
21 role that this investigation has where the respondent is a living member of the church?

22 **A.** So if the respondent person is still in ministry, so they're alive and still in active ministry,
23 we will do what we refer to as a risk assessment. So we will look at the nature of the
24 complaint or the disclosure of abuse, we will look at whether there have been other similar
25 or other complaints, we will then make recommendations to the bishop or congregational
26 leader about safeguards around that person. We have recently introduced safety plans or
27 safeguarding plans which are a template document which we have key points which we
28 need to be considered, which we believe need to be considered, such as what sort of
29 safeguards are around that person, what contact there should be and also who's going to
30 monitor that safety plan. And then it is actually assigned by a respondent person, bishop
31 and they would expect to receive a copy of that to be kept in the loop. And we are certainly
32 encouraging the use of that safety plan, so it's written and very clear about what safeguards
33 are regarding that person during the investigation process. Once a decision has been made
34 by the bishop or congregational leader we may be invited or asked to help support that

1 congregational leader to create a different plan moving forward. And we will support the
2 congregational leader or diocese in doing that.

3 **Q.** And the last stage at number 8, if we could call it out, is a review. If you could briefly
4 explain what that is?

5 **A.** So A Path to Healing provide that if a person is not satisfied with the investigation or
6 decision, they can request a review. That review is about looking at whether the process
7 has followed the principles and procedures as set out in A Path to Healing. Previously it
8 has been when NOPS wasn't overseeing the complaints processes ourselves, it was my role,
9 the National Director role who would undertake those reviews. However, as the scope of
10 our office has changed it's not appropriate that I as Director investigate or do a review of
11 disclosures which I have been directly involved in. Therefore we have worked towards
12 putting together a panel of experienced people who are able to take those files and to take
13 and to consider the grounds of review that a survivor has raised, and to consider whether
14 the Path to Healing protocols and procedures have been followed, if they haven't, and the
15 reviewer will make recommendations about what they believe should happen moving
16 forward. That report is then provided to the survivor or the party requesting that review
17 report.

18 **Q.** Virginia, in your written evidence at paragraph 27 you talk about the privilege and
19 responsibility that you feel in engaging with survivors in this process. Yesterday when
20 Tom Doyle gave evidence he talked about from his experience helping people through this
21 process can be difficult. He used the phrase "punching bag", he talked about transference.
22 What is your experience in the process assisting survivors?

23 **A.** It is a challenging and demanding role. But as I said in my brief, it is just the most
24 enormous privilege to be potentially at the end of a phone when someone who has held this
25 secret for decades has the confidence to call us and to want to share their experience with
26 us. With it comes huge responsibility, because we need to make sure and we're constantly
27 working to provide an environment where that survivor is safe, where they are able to
28 disclose safely and with confidence. I am aware too of, through my professional
29 development that I'm undertaking around being trauma-informed and how we can move our
30 protocol to be more trauma responsive, that myself and my team have to be aware of
31 second-hand or vicarious trauma because of the engagement we have with survivors.

32 **Q.** We've briefly touched on safeguarding, Virginia, and having said I'll be less than hour we
33 probably don't have time to discuss that in detail. But Commissioners and those watching
34 on the live stream, this evidence is set out in Virginia's brief and the policies for

1 safeguarding nationally within the church and in the particular dioceses are all available
2 online. So both for you, Commissioners, and for people who want to know what the
3 safeguarding policies are for the church, I would encourage them to look at those.

4 So I'd like to move, Virginia, through to some of the reflections in your brief from
5 the evidence that you heard in December and you have deliberately chosen not to comment
6 on specific cases and can I ask why you don't want to make specific observations on the
7 evidence?

8 A. My belief is that it's not my story to tell, and so I am also very conscious of privacy
9 concerns, and so I would certainly prefer to refrain from referring to specifics regarding any
10 disclosure or complaint file we've managed.

11 Q. You do respond to some of the specific criticisms and I'm just going to ask you to reflect on
12 some of those now. So at 32 in your brief you acknowledge the concerns some survivors
13 have about confidentiality and privacy. If you could share your reflections on some of that
14 evidence that you heard about those concerns that in the investigation process privacy is not
15 looked after enough for some survivors?

16 A. And I acknowledge that feedback, and we have worked very hard and we continue to work
17 hard to ensure that we provide survivors with the confidence that their information they
18 share with us is incredibly precious. So we have created and developed new consents that
19 we ask witnesses to complete and to sign as an acknowledgment that we are sharing with
20 them very sensitive information and that we expect them not to share that information
21 further than perhaps their own support person, or legal advisor if that's appropriate. We've
22 also developed a new process where we have a church authority such as a bishop or
23 congregational leader also sign an acknowledgment that that information will not be shared
24 any further, once they receive that.

25 We also have instituted a new process where a survivor's statement is not provided
26 to a respondent in a physical or electronic form. It is read-only basis. We will give the
27 respondent absolutely as much time as they need to review and read that survivor
28 statement, but they will not be left with a copy, unless we have an undertaking from
29 perhaps their legal advisor that they will not be provided with a copy to take away. And
30 that's about trying to ensure that we protect that precious information.

31 Q. One of the other criticisms that a number of the survivors made, Virginia, was concerns that
32 they weren't given a full copy of the investigator's report to the Complaints Assessment
33 Committee. If you could reflect on some of that evidence please?

34 A. That is a tension for us, because we do want the survivor as part of their journey with us to

1 have information that is about the investigation process, they've started this process with us.
2 However, we are very mindful of the Privacy Act and the restrictions that that places on us.
3 We do try and err on the side of disclosure, and if the Commission or the Commissioners or
4 this Inquiry were able to give any recommendations about or any -- about this work to help
5 us work through that tension, we would very much appreciate it. But at the moment we do
6 get advice if necessary about what we can share, but we are very mindful of those
7 restrictions.

8 **Q.** What sort of information would be withheld from a report?

9 **A.** A respondent's personal information, personal information provided by perhaps a witness
10 that the respondent has nominated for our investigator to talk to. That report may include
11 other information perhaps of -- there may be other complaint information in that and there
12 may be some personal information included in that report regarding that. And it may be
13 necessary to have that information redacted or withheld.

14 **Q.** You mean in relation to other individuals?

15 **A.** Sorry, yes, sorry, regarding other individuals, yes.

16 **Q.** The final point I'd like you to reflect on, Virginia, is there's also a concern heard in a lot of
17 the evidence from survivors about wanting to know what happened or is going to happen to
18 their perpetrator. Often they're not necessarily given that information. Do you have any
19 reflections on that evidence?

20 **A.** If a safety plan is to be put in place during the investigation process, we share that
21 information at a high level with the survivor. So the survivor is perhaps aware that there
22 will be no contact made with them, or that perhaps they have been removed from the area
23 in which the survivor lives. We think that's important. Moving forward, if there is to be
24 sanctions placed on the respondent at the end of our investigation process, that is a matter
25 for the bishop or congregational leader to work through with the survivor as to what
26 information can be shared with them.

27 **Q.** Thank you. And finally, as the director of NOPS, what's your role in making any changes
28 to A Path to Healing or a change in process?

29 **A.** We are constantly taking in feedback, we value feedback, and what my role is to make
30 recommendations to the National Safeguarding Professional Standards Committee who are
31 the policy group, whether changes or amendments should be made. They will then -- it is
32 likely that if significant changes are to be made then they will refer the matter to the Mixed
33 Commission, which is the partnership of all congregational leaders and bishops of
34 New Zealand, who will then agree or perhaps ask questions around any recommendations.

1 So they'll flow through our office to the Committee to the group called the Mixed
2 Commission.

3 **CHAIR:** Did you say the Mixed Commission?

4 A. The Mixed Commission, sorry.

5 **MS McKECHNIE:** Thank you Virginia, I know Ms Anderson has some questions for you.

6 **CHAIR:** Thank you Ms McKechnie. Ms Anderson.

7 **QUESTIONING BY MS ANDERSON:** Thank you Ms Noonan. You'll be familiar with the
8 format here, I'll move through a series of questions on different themes. Before I move into
9 the matters that I'd anticipated asking you about, I had a couple of questions arising out of
10 your evidence that you've just given. You refer to your background coming into the role
11 and including that you had experience in governance, which is what you've been doing after
12 your time in the legal profession.

13 A. Yes.

14 **Q.** In that governance role, am I right that you'll have a very clear understanding of the
15 importance of setting of the tone from the top?

16 A. Yes.

17 **Q.** And the impact that can have on the culture of an organisation?

18 A. Yes.

19 **Q.** Taking on this role as director, where in the landscape across the church does that sit in
20 terms of setting the tone from the top?

21 A. I think in all leadership roles. Our leadership role, committee leadership role,
22 congregational leaders and bishop's leadership roles.

23 **Q.** And in terms of that contribution, am I right you make a contribution as a leader in the
24 safeguarding space?

25 A. **[Nods].**

26 **Q.** When you refer to safeguarding, are you including a response to a complaint within that as
27 an overall umbrella, or do you see it as a separate element?

28 A. When I talk about safeguarding, there are two arms to that. One is responding to
29 complaints, the other is the preventative work. And one very much informs the other.

30 **Q.** So when you're using the term "safeguarding", that's applying across both those
31 components sitting underneath that umbrella, which is the prevention and the response?

32 A. Yes.

33 **Q.** In terms of coming into the role which you've clearly described a passion for and a
34 privilege to take up the role, given most of us when we're looking for a change in

- 1 employment and we're looking to progress, we're often looking for roles where there might
2 be an element that we think we can do very well, it's our bread and butter and there's a part
3 that's a stretch, a stretch element of the role. When you were looking at the applying for
4 this role and as you're coming into the role, what did you think your stretch areas would be?
- 5 A. Understanding and being able to respond to complaints of sexual abuse in an operational
6 manner.
- 7 Q. And am I right that in your background you hadn't had experience dealing directly with
8 people who were in trauma before you came into this role?
- 9 A. No, I had had experience with dealing with people who had experienced trauma in my legal
10 work, I undertook a lot of family law, and so was able to engage in a number of various
11 ways in that profession.
- 12 Q. So when you were coming into the NOPS role with that background that you've explained,
13 did you think that there would be on-going training needs that you would need for yourself
14 coming into this, what I imagine is quite an intense space?
- 15 A. Yes, and I undertook that myself, so a lot of reading of other jurisdictions and what
16 they -- their own complaints process. Understanding and talking to Committee members
17 and seeking their guidance on the current process, and just listening and talking to
18 survivors, to survivor advocates about what had been working, what hadn't been working as
19 well, and bringing all that together.
- 20 Q. So that's a focus on understanding the processes both here and off-shore. But in terms of
21 the core, because I assume at the heart of your offices you have to be ready at all times to
22 be dealing with people who are approaching you in quite a distressed state?
- 23 A. Yes.
- 24 Q. So in terms of preparation for yourself moving into that what was going to be sort of a daily
25 occurrence, did you think at the entry point to the role that you needed training to assist you
26 in that capacity?
- 27 A. I -- we engaged with a supervisor to ensure that we were properly supported in this role.
28 I also drew on experience of working in statutory management where communities are
29 often in a state of distress, and how to work and engage with people in those states of
30 distress in a calm way. And recently have, through the work of the Commission, and
31 listening, have begun some more professional development particularly in the area of
32 trauma-informed pedagogy.
- 33 Q. Is that something that's developed over the last year or so?
- 34 A. Yes, yes.

- 1 **Q.** When you've come into the office as Director in February 2018, what was the skill set that
2 you had in the office available to you? Because I think in your brief you've referred to,
3 you've currently got four staff but they're not all full-time, are they?
- 4 **A.** That's right, yes.
- 5 **Q.** I think from ex-Police Commissioner Jamieson's day when he was in the role, he was the
6 Director and they had one FTE?
- 7 **A.** Yes.
- 8 **Q.** And now we're forward to 2021 we've got a director, and how many FTEs do you have
9 adding up the staff that you've got available to you?
- 10 **A.** So we have myself, we have four part-times which would probably be the equivalent of
11 maybe two, three people, I'm sorry, I'm not quite sure --
- 12 **Q.** Somewhere in there?
- 13 **A.** Yes, yes.
- 14 **Q.** And I think you've talked, as Ms McKechnie led you through your evidence, that the roles
15 and function of the office have actually increased pretty significantly over time, haven't
16 they?
- 17 **A.** Yes.
- 18 **Q.** So when you've come in, no doubt you would have been turning your mind to do I have the
19 capability and capacity in the office for the size of the job?
- 20 **A.** [Nods].
- 21 **Q.** So the people that you had -- the four people that you've got now that make up the two to
22 three FTEs, were they in the office when you came on board or were they different people?
- 23 **A.** They're different people now, yes.
- 24 **Q.** Has that been a change of skill set over time?
- 25 **A.** Change of region, the office was originally based in Auckland but when I was appointed to
26 the role there was working remotely at one point, however when the then Professional
27 Standards Officer resigned from her role we shifted the whole office down to Christchurch
28 with the approval of the National Safeguarding Professional Standards Committee.
- 29 **Q.** And so that would have given you an opportunity to pick the staff, expertise that you
30 thought was needed --
- 31 **A.** Yes.
- 32 **Q.** -- to be able to --
- 33 **A.** Yes.
- 34 **Q.** What are the skill sets of the people in the office?

- 1 A. Our Professional Standards Officer has a background in medical as well as chaplaincy and
2 has spent considerable time working with youth in need. Our --
- 3 Q. Just to pause you there before we go on to the next person, when you say medical and
4 chaplaincy, is that in a religious way or is that some other skill set?
- 5 A. Sorry, no chaplaincy is working in a religious sense, not a religious person, sorry, and
6 medical is working in an administrative executive role working in the medical area.
- 7 Q. So administrative expertise and some, would it be right to say kind of chaplaincy pastoral
8 kind of activity?
- 9 A. Yes, absolutely, and for this role I needed someone who, and I think the role demands
10 someone who has a very pastoral approach.
- 11 Q. So moving on to the other staff members that you've got?
- 12 A. National Safeguarding Lead, her background is in education, she was a former principal.
- 13 Q. Before we move on to the next people, that safeguarding the --
- 14 A. Our National Safeguarding Lead is there to support me in working with all dioceses and
15 congregations and Catholic entries around consistent safeguarding preventative practices
16 around the country.
- 17 Q. So when we use safeguarding as the umbrella term with two components underneath it,
18 previously this is really working on the preventative side?
- 19 A. Preventative, yes.
- 20 Q. And the first person you've identified is really working on the response to complaints?
- 21 A. Complaints and disclosures, yes.
- 22 Q. And then you've got two other staff members?
- 23 A. We have one person who is there to help support in an administrative capacity, and we're
24 just recently looking to bring on another person to help in the -- to support our Professional
25 Standards Officer.
- 26 Q. And is one of the two people that you've identified so far the Professional Standards
27 Officer, not the Executive Assistant Officer?
- 28 **CHAIR:** Sorry, we're starting to race. Just ask that question again, Ms Anderson.
- 29 **QUESTIONING BY MS ANDERSON CONTINUED:** You've just referred to the Professional
30 Standards Officer, that's not the person that's helping you on the prevention education side?
- 31 A. No, sorry, two different roles.
- 32 Q. So the first person you referred to as having the medical chaplaincy, is that the professional
33 standards --
- 34 A. Professional Standards Officer, yes, sorry, yes.

- 1 **Q.** So just trying to understand, because obviously people will telephone, or e-mail initially to
2 make contact. Is that broadly how people come forward?
- 3 **A.** Mostly by e-mail more recently, yes.
- 4 **Q.** But in the past sort of a couple of years ago would there have been a difference between
5 what was coming in by phone and what was coming in by e-mail?
- 6 **A.** There are, no, there has definitely been more contact through correspondence, either
7 through directly from a survivor or a survivor support person or by their perhaps legal
8 support person.
- 9 **Q.** And then just rounding off, you know, what's in the -- so those are the people available to
10 you on a day-to-day basis and am I right that the office is staffed 9 to 3 each day so that if
11 somebody rings during those hours they can talk to someone but from what you're saying
12 most of the traffic is coming in via e-mail?
- 13 **A.** Yes.
- 14 **Q.** And you outsource the investigative functions and the review functions?
- 15 **A.** Yes.
- 16 **Q.** And the costs of those are passed back to the relevant church authority?
- 17 **A.** Yes.
- 18 **Q.** Did you when you first started, or do you know, it may have changed over time, have a
19 panel of counsellors or navigators or communication assistants that you have at the ready to
20 call on to assist when somebody makes that initial contact?
- 21 **A.** So we are very mindful in our office that we are not the counsellors, we are not the
22 psychotherapists experts, so what we do is offer referrals for the survivor. So we will
23 suggest and invite the survivor, if they wish, to contact a support person of their choice and
24 that cost of that will be met by the congregation or the diocese. So we are mindful that our
25 role is to receive that disclosure of harm, to ensure that it does fit within the scope of our
26 office, and then to ensure that that person is able to connect with a professional counsellor,
27 psychotherapist of their choosing to be able to support them in the investigation process.
- 28 **Q.** So that's in relation to counselling. Am I right that at times what might come back on the
29 e-mail to the person who's made that initial contact is a referral to the ACC sensitive claims
30 process and counselling via that route?
- 31 **A.** Yes.
- 32 **Q.** And in terms of needs other than counselling, so for example if I mentioned the sort of
33 navigator or communication assistant, if somebody needs that available to them to actually
34 be able to engage in the dialogue with the office and take the next steps, do you have a

- 1 panel of those people available that you can call on?
- 2 A. We would be at this stage guided by the survivor if they are specifically for that support, we
3 will do our very best to help facilitate access to that. Through the work that
4 I'm -- professional development I'm undertaking, I understand and acknowledge the
5 importance now of actually having options available for a survivor to be able to make an
6 informed decision around perhaps the type of support that may be helpful, rather than
7 leaving it to the survivor to come up with, but actually having options available so they can
8 then make an informed choice themselves, I now understand the importance of that.
- 9 Q. Because it's, you know, a system that relies on somebody saying "I want this" when you're
10 dealing with people in trauma is not really --
- 11 A. It's not appropriate, so we very much will be moving forwards being more trauma-informed
12 responsive and having, and I understand and acknowledge the importance of having that
13 choice for people and having the options available, so we'll certainly be moving towards
14 that, and also ensuring that we screen or filter our referrals. I'm now understanding too the
15 importance of counsellors and/or psychotherapists having that trauma-informed background
16 which I now understand not everybody may have. So being able to do that initial filter to
17 have -- to be able to refer survivors to people with that background and expertise.
- 18 Q. And when you say you now understand that, how recent is that understanding?
- 19 A. That's only in the last few months. Each time a survivor has come to us and talked about
20 support they might need or we've gauged from them perhaps something may be helpful, we
21 try and engage with them and have a conversation around that. But I'm now understanding
22 the importance of having that first up, to be preventative and proactive in having that
23 available to be able for, as I said, survivors can make informed choices about the care and
24 support that they would like.
- 25 Q. And I think you referred in the evidence that Ms McKechnie led you from you the point
26 that you've just made that when a survivor perhaps gives frank feedback at a certain point
27 about what hasn't worked for them, you are then looking at what you might need to
28 calibrate in the process?
- 29 A. Yes, we certainly try to do that.
- 30 Q. Can you see the point that if there was actually survivor involvement in the development of
31 the process from the outset, that you wouldn't need to be doing that recalibration after the
32 fact?
- 33 A. Absolutely. And the current A Path to Healing process is due for review towards the end of
34 this year and a key factor will be gathering information and feedback from survivors and

1 survivor advocates around what is working and what hasn't been working. We have
2 initiated that through recent correspondence we send, when we send correspondence, sorry,
3 to survivors that initial, perhaps initial information and then another two or three key points
4 in the investigation process we do add a little note at the bottom of our correspondence to
5 say "We would value your feedback, here's an e-mail, please do respond." But we will be
6 able to, later in the year, be able to more actively gather that information. It's important
7 information.

8 **Q.** Yes, but it does need a system as to how you collect it, isn't it, as opposed to ad hoc
9 somebody might be coming to you because of the relation they've built up with you and
10 putting that into the mix?

11 **A.** And having a planned approach is what we'll be working towards, yes, agree.

12 **Q.** And am I right that you're expressing a clear commitment this is going to happen?

13 **A.** Yes.

14 **Q.** What will that new process look like in terms of building from the ground up a revision to
15 the next, A Path to Healing including involvement and collaboration with survivors and
16 survivor networks?

17 **A.** I can give a commitment that it will be a planned approach, I haven't yet got that plan, but it
18 certainly will be a planned approach.

19 **Q.** And to take that even one step further backwards, because it's often the case, isn't it, that
20 when you have a planned approach and then you're attempting to engage on that, the
21 dialogue moves to well we should have been involved in planning the approach?

22 **A.** At the table for -- absolutely, yes agreed. It is important to have those voices at the table.

23 **Q.** Given that the current version of A Path to Healing, which was issued last year, 2020, is
24 there any reason why that approach wasn't able to be accommodated in the development of
25 that latest version?

26 **A.** Constantly learning and evolving myself and my team and through the questioning and the
27 information we've learned through this Inquiry.

28 **Q.** You referred in your evidence-in-chief to what might happen when somebody comes
29 forward with a disclosure of abuse that involves not only sexual abuse but other forms of
30 abuse that are outside the Path to Healing?

31 **A.** [Nods].

32 **Q.** Am I right that that's a very recent development that you are identifying where the
33 investigator might be going once and taking a full statement, just in terms of the timeline,
34 when might that have become a practise?

- 1 A. As I mentioned earlier, it feels it's been in practise actually for quite some time because we
2 recognised -- I couldn't give an exact timeframe, we could go back through the complaint
3 files, disclosure files and have a look, I'm sorry I can't give you an exact date but it
4 certainly has --
- 5 **Q.** That's fine, so what you're saying it's pretty much standard, embedded practice currently?
- 6 A. Yes, subject to what a survivor's wishes might be, yes.
- 7 **Q.** And so when somebody contacts the office, whether by phone or by e-mail relating to a
8 different form of abuse that doesn't include sexual abuse, at that point that initial discussion
9 you've explained taking us through the summary document that there's a triage process, isn't
10 there?
- 11 A. Yes.
- 12 **Q.** And that triage process then involves referring that other complaint that might have no
13 sexual abuse element by clergy or religious to another part of the church?
- 14 A. Yes.
- 15 **Q.** In your experience, when people are coming forward disclosing perhaps quite significant
16 psychological or spiritual abuse, do you think that they're coming into that first initial
17 contact wanting to be listened to and you're engaging with that interaction for the purpose
18 of working out which track it needs to go on?
- 19 A. Yes.
- 20 **Q.** You said there might be a mismatch of expectations of that interaction at that point?
- 21 A. Yes.
- 22 **Q.** What do you think would be best practice to manage that difference of expectations in that
23 initial discussion?
- 24 A. It very clearly explained to the survivor or the caller or correspondent what our scope is for
25 the office.
- 26 **Q.** So clarity as the response?
- 27 A. Yes.
- 28 **Q.** I can imagine that for some people who have taken up the courage to step forward and
29 articulate what happened to them, even if it's in a small sense not necessarily in an
30 expanded dialogue or narrative, that that might be quite a little bit abrupt to get that
31 message actually you've come to the wrong door?
- 32 A. We do try in a pastoral way to clarify that and, as I explained earlier, we do try and, as
33 gently as possible, hand over that person to the correct referral. The scope of our office is
34 set and clear, and therefore it's important that we are able to, as you said, triage those callers

1 to the appropriate place.

2 **Q.** I think you say in your evidence, don't you, that in terms of the resourcing for your job, it's
3 not really practicable with the current resourcing to contemplate a single process that might
4 be a response to all forms of abuse?

5 **A.** Yes.

6 **Q.** In terms of that resourcing dialogue within the church, aside from resourcing issues, do you
7 sense an appetite for change so that there is a single process that people can come into with
8 all complaints of all forms of abuse, irrespective of whether it's a clergy or religious a lay or
9 a volunteer?

10 **A.** There could be, yes, there is perhaps an appetite. I would need to gather more feedback
11 about that.

12 **Q.** And putting your leadership role into the mix, has that been a priority for you in terms of
13 leadership to lead a conversation in the church around a single process for all forms of
14 abuse?

15 **A.** Not at this point it hasn't, no.

16 **Q.** In terms of the documentation that a person who is in the right -- has come to the right door,
17 what do you require from them at that initial point it's not simply an e-mail describing what
18 happened to them is it, do you require some -- I think there's a reference in the document to
19 previously having required somebody to have a witness signature, or to provide proof of
20 identity. Does that no longer exist?

21 **A.** Sorry, when they -- sorry, could you just ask that question again please?

22 **Q.** There's a reference in the documents, I might call it up in a moment, but it sounds like this
23 is not current practice. There's a reference in the documents that when a person was
24 making a complaint they were required to have their signature witnessed and then that was
25 shifted to consideration of requiring them to provide photographic identification?

26 **MS McKECHNIE:** Could Ms Noonan see the document please.

27 **CHAIR:** Yes, I think so, particularly if it's one that's not current.

28 **QUESTIONING BY MS ANDERSON CONTINUED:** This is a Complaints Assessment
29 Committee meeting which is prior to the time that you joined.

30 **A.** Okay.

31 **Q.** On 24 May 2017. It's CTH0009039. There's a reference on the second page of the
32 document in the middle of the page under paragraph (h) on page 2 of the document.
33 I haven't taken you to the first page, Ms Noonan, but just to orientate you, this is the
34 National Professional Standards Response Committee which existed before the Complaints

- 1 Assessment Committee came into effect.
- 2 A. Okay, yes.
- 3 **Q.** And there's a reference there, you'll see, to there was also discussion on the need for
4 complainants' signatures to be witnessed on the NOPS consent to proceed forms and a
5 suggestion was made that --
- 6 **MS McKECHNIE:** Ma'am could we go back to the first page.
- 7 **MS ANDERSON:** I have explained the date, it's 24 May 2017 before Ms Noonan joined NOPS
8 but we can easily flip --
- 9 **WITNESS:** No, that's fine.
- 10 **CHAIR:** In fact at the top it says "Auckland complainant 13/2017", it's about that date is it?
- 11 **MS ANDERSON:** Yes, 24 May 17, well before Ms Noonan has come into the organisation, so
12 I'm simply trying to establish current practice relative to what might have happened
13 historically.
- 14 **CHAIR:** Yes, okay.
- 15 **QUESTIONING BY MS ANDERSON CONTINUED:** So am I right, judging from your face,
16 that is no longer current practice?
- 17 A. No, it's not current practice.
- 18 **Q.** So it's simply an e-mail comes in and there's a response from the relevant person in the
19 office?
- 20 A. There is a consent form that we ask people to sign, and a copy of that is attached, is
21 available at the back of A Path to Healing. That may be sent at that initial contact phase. It
22 really -- we are guided by the survivor as to where they are in that initial contact. They
23 may be ready to receive consent forms, privacy policy, the three-page summary, a link to
24 our website, they may be ready for all that information or they may just want to receive a
25 copy of the summary, or they may not want anything at that stage, they just want an initial
26 contact. So not -- we need to treat every single contact differently, but at the end of the day
27 we do require to have a consent form signed by a survivor.
- 28 **Q.** So that's tracking over time, it looks like an attempt to minimalise the administrative
29 responsibility on the survivor as to what they need to do to engage?
- 30 A. Yes.
- 31 **CHAIR:** Not minimalise, I think minimise.
- 32 **MS ANDERSON:** Minimise, a reduction of.
- 33 **CHAIR:** Yes, ease the burden for the survivor of providing too much information at that stage.
- 34 A. Yes, yes, thank you.

- 1 **QUESTIONING BY MS ANDERSON CONTINUED:** At this initial point of contact, whether
2 it's come in by e-mail or by phone, we've heard, and I'm sure you're very aware of the
3 well-established proposition that the most important thing is to be believed?
- 4 A. [Nods].
- 5 **Q.** In terms of standing back now and looking at the process that you've described, at what
6 point do you think it's possible for a survivor to have that sense, is that at the point of initial
7 contact or is it much later in the process?
- 8 A. I couldn't really speculate as to the mind of a survivor regarding that. We do our very best
9 to explain the process, that it is an inquiry process, and they will be invited to meet with an
10 investigator to share their experience and then that's turned into a statement which they will
11 approve and then there is a report provided to the Complaints Assessment Committee.
- 12 **Q.** So it might be that it's only at the point where they're notified of the outcome that their
13 complaint has been upheld, that a survivor might have that sense of being believed at that
14 point in time?
- 15 A. At that point in the protocol process that is when a decision is made by a bishop or
16 congregational leader whether on the balance of probabilities that complaint should be
17 upheld.
- 18 **Q.** And you will have heard Tom Doyle's evidence on Monday, where one of the comments he
19 made was what's the first thing or the best thing you can do and he said listen, you can
20 listen.
- 21 A. [Nods].
- 22 **Q.** You've made reference in your witness statement at two points that you're not a listening
23 service. Again, do you think there might be a mismatch of what a survivor might be
24 looking for in that initial engagement and during the process and what you're in fact
25 offering?
- 26 A. I think I need to clarify what I meant by a listening service. Our process is an inquiry, an
27 investigation. Someone has made an allegation of significant and serious harm. It's
28 important that we look into that. So if someone comes to us and shares and discloses
29 sexual abuse or sexual misconduct, we're not going to just leave it, it's important to us and
30 for the church that that matter is properly looked into and investigated.
- 31 **Q.** There's a very strong focus in the principles in the Path to Healing, isn't there, there's
32 reference to finding the truth?
- 33 A. Yes.
- 34 **Q.** And it might be at this point I'll call up just the principles so I can orientate the

- 1 Commissioners to that.
- 2 A. Certainly.
- 3 Q. It's document CTH0001487. Just moving through to page 3 of that document. Again, just
4 to orientate the Commissioners to this document, the first part here is the -- sets out the
5 principles, and the second part sets out procedures. Am I right, Ms Noonan, this is actually
6 quite a slimmed down version relative to previous editions of the Path to Healing?
- 7 A. Yes.
- 8 Q. There's been attempt to make it accessible through not having it?
- 9 A. An attempt to, yes.
- 10 Q. And we see that first principle there is looking after people on page 1?
- 11 A. Yes.
- 12 Q. And then we see the next principle is the sanctity of pastoral relationships?
- 13 A. Yes.
- 14 Q. We see the principle 3 is fairness and natural justice?
- 15 A. Yes.
- 16 Q. Under that heading it says, in any inquiry the quest for the truth will be paramount, and
17 then we see principle 4, responsibility?
- 18 A. [Nods].
- 19 Q. So those are when you're referring to somebody coming seeking a review to see whether it's
20 been undertaken in accordance with the principles and the policy, those are the principles
21 underpinning the approach?
- 22 A. Yes.
- 23 Q. And there's been a slight revision to those principles from earlier iterations of A Path to
24 Healing?
- 25 A. Yes, the spirit, I would say the spirit of each of those principles remains, some of the
26 wording we've attempted to try and clarify those principles, but the spirit of each of them I
27 would say, I would propose has remained.
- 28 Q. And in previous iterations what we don't see in these principles, which is in the earlier
29 versions, is the reference to the potential for mistaken or unfounded accusations?
- 30 A. Yes.
- 31 Q. That's dropped out?
- 32 A. Yes.
- 33 Q. It's not a guiding principle here. Are you able to share any reflections on why that principle
34 no longer features?

- 1 A. I'm not sure if it would have been a principle, it may perhaps have been an indicator or a
2 fleshing out of an overarching principle. It is a case, a matter that sometimes there are
3 incorrect disclosures made, perhaps incorrect identification or someone is simply mistaken.
4 Is there a need to have it included in the principles as an indicator? No.
- 5 Q. So in terms of the -- just looking at two of the principles, the first being looking after
6 people with the reference there to providing a compassionate response to a complainant,
7 treating people with compassion, respect and fairness, and then with principle 3 as a
8 counterpoint, that in any inquiry the quest for the truth will be paramount. So I'm just
9 interested in the paramountcy of that principle of truth?
- 10 A. You're concerned about the wording.
- 11 Q. Yes, over -- well, the emphasis on finding the truth in both the principle and the practice?
- 12 A. It is an inquiry process and I would -- I'm making an assumption here, that a survivor
13 would want to know that the person who they have identified is the respondent that hurt
14 them and harmed them, and sometimes we have survivors come to us and they're not sure,
15 they can't identify a person that's harmed them. So it's our job to do the work to try and
16 identify who they may be referring to. So it is our job to try and get to the truth of the
17 matter, to ensure that they're appropriate and the right person is held to account.
- 18 Q. So that quest for truth is not in the sense of a quest to confirm that the person was abused,
19 it's a focus on the truth that a particular person did something to another person, would that
20 be a way to characterise what you're saying?
- 21 A. I probably prefer to have it as the truth, getting to the truth or getting to the bottom of the
22 matter is more holistic. We do want to ensure that the right person is held to account.
- 23 Q. And again, referring back to the evidence of Tom Doyle where he's drawn this distinction
24 of it's not necessarily a matter even of an individual saying "I did this wrong", it's the
25 collective "we did this wrong to you".
- 26 A. [Nods].
- 27 Q. Are you able to apply that concept and interpret this principle in light of that reflection from
28 Tom Doyle that the truth is about what the church has done to the individual as opposed to
29 necessarily what a member of the clergy or religious has done to the individual?
- 30 A. I don't think I would -- I don't interpret it that way. I think we do look when we're talking
31 about truth it is the holistic, we're listening to the survivor, hearing their story, trying to find
32 information that can help support that disclosure of abuse, and again, being able to hold the
33 right person accountable for harm that's been caused.
- 34 Q. So that accountability of the individual becomes quite important?

- 1 A. Yes, and that includes if someone in leadership has failed to act, that accountability is also
2 important.
- 3 **Q.** And am I fair to characterise that some of the feedback that you've had from survivors is
4 that the Inquiry process in fact feels a little bit like an inquisition?
- 5 A. Anywhere that that -- a survivor has been left with that impression I apologise for. That is
6 certainly not our intention. It is an inquiry process, there is an investigation undertaken.
7 That needs to be undertaken sensitively and with care. And times where we have failed to
8 meet that standard, then I apologise for. We certainly -- and we also have -- we have a
9 complaints and concerns policy on our website and we do ask and invite all parties to an
10 investigation process to share their feedback to us particularly if there's a concern around
11 their treatment or how the investigation process was conducted, including the work of our
12 office.
- 13 **Q.** Do you think perhaps there might have been an undue focus on this aspect of principle 3
14 that's perhaps affected the way survivors have experienced the process that's administered
15 through your office?
- 16 A. If that's the feedback that you've received from survivors, I absolutely take that on board.
17 The four principles sit together.
- 18 **Q.** I'm going to turn now and move through some documents with you. The purpose of doing
19 this is to draw out some different threads that we'll just have topic by topic as they emerge
20 in the documents a discussion about. The first one is the terms of reference in relation to
21 the Complaints Assessment Committee, it's document EXT0000229. So again, these terms
22 of reference were set shortly before you came on board at the very -- the top of the left page
23 on the second page there's a date of 11 September 2017?
- 24 A. Yes.
- 25 **Q.** So this is the result of the discussion that you referenced as starting in 2016 leading through
26 to the change in the NOPS role for investigations and the establishment of this new
27 Committee.
- 28 A. That's my understanding, yes.
- 29 **Q.** And you're familiar with the terms of reference?
- 30 A. Yes.
- 31 **Q.** So we see just on the top of page 1 if we can call out the purpose. To ensure the complaints
32 of abuse received by NOPS are dealt with in a compassionate, sensitive, equitable and
33 timely manner in accordance with the principles. Going down to calling out the next part
34 clause 2, remit of the Committee. So we see that the Committee is to receive all complaints

- 1 of abuse and it's the Committee to appoint the appropriate trained persons as investigators.
2 Is that the process currently, that the Committee appoints the investigators?
- 3 A. That has effectively been delegated to our office.
- 4 Q. And the role of assessing the report and determining whether or not a complaint should be
5 upheld and that's all straightforward?
- 6 A. That remains with the committees.
- 7 Q. And again to make any recommendations, and at 2.5 to analyse complaints to identify any
8 systemic issues and advise the National Professional Standards Committee of these?
- 9 A. Yes.
- 10 Q. So clearly systemic issues are well and truly within the remit of this Committee?
- 11 A. To identify, yes.
- 12 Q. And am I right that NOPS effectively access the secretariat and provides the agendas, the
13 material for the meetings and records the discussions of this Committee?
- 14 A. Yes.
- 15 Q. And you in your director role attend these committee meetings?
- 16 A. I do attend, not always though.
- 17 Q. But when you're not able to somebody would attend in your place?
- 18 A. The Professional Standards Officer always attends, I may or may not attend.
- 19 Q. And then just coming down to the membership of it, six members appointed by the
20 New Zealand Catholic Bishops Council following consultation with the Director. A
21 mixture to be lay people with proven expertise in a field related to the mandate. There's a
22 reference there at 3.6 and 3.7 to a priest advisor and a religious advisor being nominated.
23 What's the purpose of the person attending in that capacity in the Committee meeting?
- 24 A. My understanding is that they are able to give advice to the Committee members around
25 perhaps church process or church protocols.
- 26 Q. Processes and protocols relating to what sort of -- are you able to give me an example?
- 27 A. Perhaps canon law or some institutional knowledge about a diocese perhaps.
- 28 Q. So we turn over to section 4 on the next page, we see there's a requirement for a minimum
29 of four meetings held at quarterly intervals. In fact there are generally speaking more than
30 four meetings a year, aren't there, of this Committee?
- 31 A. I understand, yes.
- 32 Q. So they tend almost to meet bimonthly?
- 33 A. Perhaps on average, yes.
- 34 Q. Sometimes with quite a gap between meetings with the maximum gap I think of four

- 1 months?
- 2 A. Yes.
- 3 Q. So that meeting schedule can impact on the pace at which a matter is resolved, isn't it, in
4 terms of a decision?
- 5 A. Yes, it can, yes.
- 6 Q. And especially if somebody gets caught over that end of November into January/February
7 where I think we often see the gaps in the meeting times?
- 8 A. Yes.
- 9 Q. So if something's gone to a November meeting and the Committee decides another aspect
10 needs to be investigated it might be quite a while before it can come back?
- 11 A. We have now -- the Committee have identified that issue of delay and they have been able
12 to bring together meetings via Zoom, so not having to meet in person which is able to help
13 facilitate meetings more regularly if necessary.
- 14 Q. Just moving down to section 5, "Method of Working", you see it spells out the role of the
15 Professional Standards Officer in your office, so to be a link between the Committee and
16 the NOPS functions?
- 17 A. Yes.
- 18 Q. Ensuring all complaints within the agreed criteria are referred to the Police. So is that the
19 role of the PSO to undertake that activity?
- 20 A. Sorry, which -- I'm just trying to speed read, oh 5.2.
- 21 Q. Yes.
- 22 A. With discussion with myself usually in that situation.
- 23 Q. So ultimately is it your call as to whether something is referred to the Police?
- 24 A. It would be a discussion between the PSO, the Professional Standards Officer and myself,
25 we work very collaboratively.
- 26 Q. And one of you will contact the Police. I don't think anything turns on who contacts the
27 Police?
- 28 A. Sure, yes.
- 29 Q. And then we see that at 5.3 the PSO will notify the Chair when a complaint is received that
30 it's to be dealt with under A Path to Healing and then draft terms of reference and appoint
31 an investigator and if required an assistant investigator. So that reference to who then
32 drafts terms of reference, it's a little unclear from the language whether that's the Chair or
33 the PSO that drafts those terms of reference?
- 34 A. It had been the Chair, however the Chair has since delegated that to our office to be able to

1 undertake the -- to be able to have the statements of work and the terms of reference
2 provided in a timely manner.

3 **Q.** Do you run a register, a delegated authority?

4 **A.** No, but that's something that we will do.

5 **Q.** Coming down to 5.10, it's the PSO's role to analyse complaints to identify any systemic
6 issues and advise the NPSC of these?

7 **A.** [Nods].

8 **Q.** So is that a core function of the Professional Standards Officer in your office?

9 **A.** Again, that would be if we received correspondence from the Complaints Assessment
10 Committee regarding a systemic issue we would discuss that and then see whether or not
11 that is a matter for us to manage or is there something that needs to be referred to the
12 National Professional Standards Committee, perhaps with a recommendation or perhaps a
13 piece of -- a paper or something of that nature.

14 **Q.** So just standing back from that, the Complaints Assessment Committee, those are people
15 who volunteered their time?

16 **A.** Yes.

17 **Q.** And the NOPS office is effectively the secretariat and that you provide the schedule of the
18 meetings, the place of the meetings, and the information packs to the members to be
19 discussed at the meetings?

20 **A.** Yes.

21 **Q.** And the Complaints Assessment Committee receives, when they're looking at a particular
22 individual complaint that they're required to make a decision on, they've got a copy of the
23 investigator's report?

24 **A.** Yes.

25 **Q.** And then they've got a copy of all of the other material sitting underneath that statement?

26 **A.** Yes.

27 **Q.** It doesn't appear to us that there's an advice paper that goes to those Committee members
28 about what they might do in relation to that material, they've just got the pack?

29 **A.** Yes.

30 **Q.** And so in terms of their decision-making role, is the outcome dependent on their own
31 individual assessments of what they're reading and then the collective decision-making
32 about whether to uphold a complaint or not?

33 **A.** Yes.

34 **Q.** And in terms of the discussion point that you've just raised about well, if the Complaints

1 Assessment Committee asked us to think about a systemic issue, is that something that on
2 your understanding there to identify through their process of looking at all of these files and
3 feed that back to NOPS, or is that something that under these terms of reference the
4 Professional Standards Officer should be feeding up to the Committee?

5 A. Potentially both. I think if either NOPS or the Complaints Assessment Committee are
6 recognising trends or issues or concerns through the complaints reports and supporting
7 information, then that information needs to be brought to attention.

8 **MS ANDERSON:** I think, Madam Chair, that might be a point to pause and take the afternoon
9 adjournment.

10 **CHAIR:** Yes, we'll do that. Ms Noonan, it's our process that once you're being questioned by
11 counsel assist that you don't speak to anybody about your evidence during the breaks, do
12 you understand that?

13 A. Yes, I do.

14 **Q.** There's a small exception, that is, if you think of something that you think should be raised
15 or if you want to ask a question speak to your counsel and she will liaise with counsel
16 assist.

17 A. Okay, thank you.

18 **Q.** Thank you.

19 **Adjournment from 3.31 pm to 3.49 pm**

20 **CHAIR:** Thank you all.

21 **QUESTIONING BY MS ANDERSON CONTINUED:** Just returning to the same document we
22 were in just before the break which is the Complaints Assessment Committee terms of
23 reference. Just while we're waiting for that come up, an appointment will come out in the
24 other documents that we'll take you to, but the members of this Committee, their names are
25 not in the public domain are they?

26 A. No.

27 **Q.** Do you want to comment on the reasons for that before we go through the other aspects of
28 this document?

29 A. That was a policy decision of the National Safeguarding Professional Standards Committee.

30 **Q.** We'll come to some documents that will comment on the reasons for that a little bit later.
31 So we see at 8, if we can just call up just that last part of that page there. So we can see that
32 it's part of your role as Director under these terms of reference to carry out an annual audit
33 of the work of the Complaints Assessment Committee. We can see the purpose of that
34 audit set out at 8.2, ensuring that all complaints are dealt with in accordance with the

1 relevant principles and procedures, that they're dealt with in a timely and sensitive manner,
2 that there's consistency of approach and that complete records are maintained. And that
3 you're required to produce a written report with the matters identified there, we don't need
4 to read those out. And that you're to provide the Chair of the Committee at 8.5 with a draft
5 report and invite a response, so that's in relation to the reporting requirements specified
6 above. And that you produce a written report, including the observations of the Complaints
7 Assessment Committee to the National Professional Standards Committee. So that's the
8 Committee that Phil Hamlin Chairs, isn't it?

9 A. Yes.

10 **Q.** In terms of the conducting of those audits, can you explain the approach to that activity?

11 A. So in my role I haven't undertaken an audit of the work of the Complaints Assessment
12 Committee, given the level of involvement of myself in the oversight and management of
13 the complaints process, there's perhaps a conflict there and therefore I have not undertaken
14 annual audits. But I absolutely take your point about these terms of reference therefore
15 needing to be updated to reflect that.

16 **Q.** So, I think you've put your finger on the button in terms of a potential oddity perhaps of
17 you auditing the work of the Committee that you're providing all of the information to?

18 A. Yes.

19 **Q.** But there is, of course, the Committee's function which is a decision-maker?

20 A. Yes.

21 **Q.** And in terms of auditing that for consistency so you're not undertaking that audit, is that an
22 activity that you've outsourced?

23 A. I haven't outsourced that, no. What we have outsourced are individual reviews if a survivor
24 requests such a review to be undertaken.

25 **Q.** But again, that's an example of a proactive, somebody's reaching in and you're responding
26 as opposed to how is the system actually functioning?

27 A. Absolutely, and I take your point, and I think it is something that we do need to have a
28 planned approach about, absolutely agree.

29 **Q.** But it hasn't been happening to date?

30 A. It has not been happening to date, no.

31 **Q.** I'm going to move from this document to a procedures manual. It's document
32 CTH0002773. This is, when it comes up on the screen, you'll see the front page that it's a
33 procedures manual dated December 2017 in draft. We haven't seen a final version and we
34 don't know whether this procedure is in effect or being applied. Are you able to clarify that

- 1 for us?
- 2 A. That isn't in effect. That was a redraft effectively of the A Path to Healing protocol. The
3 finalised version is the one that you have in your papers which is the 2020 version.
- 4 Q. Which has a slimmed down version of the procedures component relative to previous
5 versions --
- 6 A. Yes.
- 7 Q. -- of that?
- 8 A. Yes.
- 9 Q. You wouldn't have been involved in preparing this draft because it's before your time?
- 10 A. Yes, that's right.
- 11 Q. Is it a document that you are familiar with?
- 12 A. I did review it as part of my work in gathering feedback around the 2010 Path to Healing
13 document.
- 14 Q. There's just one matter I'll touch on briefly from it given it's not operational policy, but
15 there's a concept in here I'd just like to ask you about.
- 16 A. Yes.
- 17 Q. It's at clause 2.7.2 on page 7 of the document. If we just call that out please. See the
18 procedures specifying for the complainant to bring a person whom they trust. This is in
19 reference to an interview, and/or the complainant might ask the pastoral companion to
20 attend. Can you explain to us what the reference to "pastoral companion" there is?
- 21 A. That is a new initiative that has flowed through into the 2020 A Path to Healing version.
22 That is still a work in progress. The concept is to have someone who is able to liaise with a
23 survivor and the National Office for Professional Standards. So we have drafted a role
24 description of that role and have sent that out to each bishop to consider who might be an
25 appropriate person. They are not a support person or an advocate for that person in the
26 sense that's referred to in that paragraph. What effectively they will be is a liaison person,
27 someone on the ground in the diocese within which the survivor lives who is very familiar
28 with A Path to Healing process and procedures. So they can help to navigate what's
29 happening next, what will be expected of them next. So having that person there, if
30 necessary, for some survivors may not want to have that engagement. It's really to help
31 support our office engage with survivors at that operational level. As I said earlier, that is
32 still a work in progress, I am aware of one diocese who has appointed someone to that role.
33 We will undertake training of those pastoral companions and the name may change as well,
34 whether or not the term "pastoral companion" is a true reflection of what that role needs to

- 1 be. And so that training will be undertaken by our office.
- 2 **Q.** So which diocese is it that has appointed somebody to that role?
- 3 **A.** I understand it's the Auckland Diocese.
- 4 **Q.** And I think this draft procedures manual indicated that those persons would be volunteers,
5 is that the current approach?
- 6 **A.** It would be entirely up to that diocese, it may be a paid position or may be a voluntary
7 position.
- 8 **Q.** And in your leadership role to influence outcomes, what would you be recommending to
9 them as to whether it would be preferable to have a volunteer or a paid professional person
10 in that role?
- 11 **A.** My recommendation would be that it would be a paid role.
- 12 **Q.** And your reasons for that?
- 13 **A.** I believe it brings a certain level of accountability to that role. It will be a very important
14 role. It will be, as I've said, in some cases a link between our office and the survivor on the
15 ground. So with that comes responsibility and so my recommendation would be that that
16 responsibility is remunerated.
- 17 **Q.** Because with that remunerated role becomes reliability as to availability?
- 18 **A.** Absolutely, yes.
- 19 **Q.** Is there any sense that there's resistance in the diocese or congregations to the idea of this
20 being a paid position?
- 21 **A.** I haven't encountered resistance at all. It's been clearly explained in a covering letter to the
22 bishops that it is up to them how they wish to progress this matter. But I'm sure they
23 probably heard here now that the recommendation is that it is a paid role, and perhaps
24 talking with you now it might be appropriate for me to reinforce that with them.
- 25 **Q.** And I don't think, probably because the Commission hasn't asked for it in terms of our
26 section 20 notices, but we probably haven't seen that communication. Will you be -- would
27 the bishops, will you be happy provide a copy to us?
- 28 **A.** Absolutely, we can provide the draft role description that's been provided. Because when
29 we first put this proposal to the bishops there we receive feedback saying could you please
30 provide a little more detail. So there was an absolute enthusiasm for these roles to take
31 place, and to occur they wanted more guidance from our office about what the role would
32 look like.
- 33 **Q.** So when was that first introduction of the concept to the bishops?
- 34 **A.** It would have been 2020, or 19.

- 1 **Q.** We see the reference to this here, don't we, in the 2019 document?
- 2 **A.** Yes, and it did come through into the 2020 version. Either 2019 or 2020, I'm sorry I would
3 need to check my files to see when that correspondence was provided to the bishops.
- 4 **Q.** In terms of operationalising this, would that timeframe that you've expressed where it might
5 be a reference in the 2017 document referenced in the 2020 A Path to Healing but not yet
6 operationalised, is that the normal kind of timeframe you would be thinking about for a
7 change such as this that might require financial resourcing from the diocese or the
8 congregation?
- 9 **A.** I can't really speculate on the financial --
- 10 **Q.** Taking that side out of it, we're just trying to get an indication of, you know, when you're
11 driving change, and having the leadership conversations that you're having with others in
12 the church --
- 13 **A.** Yes.
- 14 **Q.** -- is that the normal kind of timeframe that you would think for a process from discussion
15 through to being at the point which, I think what you're saying is that you're at the early
16 stage of operationalising this?
- 17 **A.** Actually I'd say it's further along than the early stage. I think the early stage I would
18 describe as when I first communicated this, it has been in the draft documents that have
19 been circulated to bishops, so there was certainly an awareness that this was a concept and
20 a role that we felt was important to bring to life. Then I undertook that it was my role to
21 explain what that needed to look like on the ground, and the bishops are taking that advice
22 as to how we see it working to support the work of our office.
- 23 **Q.** Thank you. I think that clarifies that aspect.
- 24 **A.** Okay, thank you.
- 25 **Q.** There's one other aspect in this document, before I move off it, which I don't think I need to
26 take you to. The proposition in the procedures manual is that the Chair will decide whether
27 a matter is within the scope of A Path to Healing. Is that what happens in fact at the
28 moment?
- 29 **A.** No, at the moment a matter will come to our office and our office will make that
30 assessment if it fits within our scope. If we are not sure or we're uncertain, we are able to,
31 and we would, refer the matter to the Committee for their -- with very few details, just an
32 outline of the complaint to check if they were comfortable that it did fit within the scope of
33 the office.
- 34 **Q.** So that's the procedure that largely sits with you but in areas of doubt there might be an

1 interaction with the Committee?

2 A. In areas of more significant doubt we would err on the side of it fits within the scope.

3 Q. I'm going to take you to an e-mail series in May 2018, the document reference number is
4 CTH0008802. The e-mail chain actually begins at the bottom of the second page just to
5 orientate you to that, if we just call out. So you can see that that's an e-mail from you, I
6 think are you happy to accept this is an e-mail you had an exchange with someone on the
7 Committee?

8 A. Yes.

9 Q. Where you're attaching a report following receipt of a complaint from the seminarian on
10 placement?

11 A. Yes.

12 Q. And because there's a reference to because of certain persons being overseas there have
13 been unavoidable delays due to time differences. Do you have a recollection of what that
14 delay might be? Do you recall this exchange of e-mails?

15 A. I absolutely recall the subject matter of the complaint. The material not -- sorry.

16 Q. Not the substance?

17 A. Not that exact line about --

18 Q. You see that it refers in that last paragraph, perhaps if we could just call that out. So it
19 refers to a discussion at the most recent CAC meeting which was in May 2018 about who
20 makes decisions regarding complaints. So you're indicating you think it's appropriate that
21 the Committee be advised of the complaint and your recommendation?

22 A. [Nods].

23 Q. You're asking for them to review the report and advise. If we just return to the top of
24 page 1, you can see a response coming back a couple of days later. Shall we just expand
25 the front part of that half of the document, do you just want to take a moment to read that.

26 A. Mmm-hmm.

27 Q. So you can see clearly you've made a recommendation it doesn't need to proceed under A
28 Path to Healing. But you've got quite a bit of pushback here, haven't you?

29 A. Yes.

30 Q. In terms of it falling within the work of NOPS?

31 A. From one of the Committee members, yes. And just to clarify, this was because -- I took
32 this matter to the Committee because it wasn't clear if it should, and that is what had been
33 agreed that if there was uncertainty about whether something did fall within the scope of
34 NOPS, the Committee wanted to be able to make that final judgment on that.

- 1 **Q.** Yes, and I think that dialogue that you've just referred to, so you've got quite a clear
2 recollection of the discussion?
- 3 **A.** That was referred to in that previous --
- 4 **Q.** Yes?
- 5 **A.** Yes, that was the, yes, flow-on from that.
- 6 **Q.** That discussion's not actually reflected in the minutes but that's not essential for the current
7 points. You see the second -- just moving down the page slightly, so it refers to -- sorry,
8 just moving up slightly. There we go. What has happened is that you, as acting as the
9 Professional Standards Officer, have carried out a preliminary assessment to establish
10 whether the complaint has substance such that further steps should be taken. That's an
11 unusual expression given the thresholds and triaging we've been talking about. What's your
12 understanding of that assessment about whether a complaint's got substance there, how do
13 you interpret that?
- 14 **A.** In that situation I wasn't deciding if the complaint had substance. What I was looking at is
15 whether the complaint fell within the scope. It is the role of the CAC to decide if a
16 complaint has substance and whether it should be upheld or not.
- 17 **Q.** And just moving down to the couple of reservations and suggestions that are identified
18 there in the document?
- 19 **A.** Yes.
- 20 **Q.** So this is a reference to an interview of the complainant by phone that you've undertaken?
- 21 **A.** An interview in order to flesh out some of the material that had initially been provided for
22 the sole purpose of establishing if it fitted within the scope of A Path to Healing.
- 23 **Q.** But in doing so, that might require going into requiring detail to be provided?
- 24 **A.** A little more detail, yes, than had initially been provided.
- 25 **Q.** And you're getting a bit of pushback here about the methodology of phone conversations
26 for those purposes?
- 27 **A.** **[Nods]**.
- 28 **Q.** Have you changed the office's practises as a result of this in relation to contact by phone for
29 the purpose of obtaining further information from a survivor?
- 30 **A.** No, we will contact them by phone or e-mail or letter, if necessary, if we do need to try and
31 ascertain more information.
- 32 **Q.** But there's a strong reference here is that face-to-face meetings invariably provide more
33 information and a fuller expectation of the complaint?
- 34 **A.** Yes, however, what we were looking for was the initial information to know if it fell within

1 a scope of A Path to Healing, and this, as I recall, was -- this e-mail was provided to all
2 Complaints Assessment Committee members and from my recollection there was then
3 some discussion via e-mail between the members regarding this particular Committee
4 members' thoughts.

5 **Q.** Do you recall, now that you've looked at this in more detail, why you thought this matter
6 was not within the scope of matters your office deals with? You may not have that detail at
7 your fingertips?

8 **A.** If I made that recommendation it would have been that in my view the matter did not fall
9 within the definition of sexual abuse or sexual misconduct, which is set out in A Path to
10 Healing. Remembering, though, that it is a final decision of the CAC which is why
11 I referred it to them.

12 **Q.** Understanding that process, absolutely. But the pushback you're getting in relation to scope
13 is up there in, if we just scroll up the page, just at that beginning, sentence beginning "Put
14 in another way this is not a matter that falls outside the work of NOPS. It's pretty clear in
15 the circumstances described that the complainant believed that the contact was sexual and
16 unwanted and as a result he felt unsafe."

17 Having had that feedback from the Committee, has that caused you to recalibrate
18 your approach to assessment of whether a matter is within or outside the scope of matters
19 your office deals with?

20 **A.** We had tried to clearly explain and define in 2020 version of A Path to Healing what we
21 understand to be -- what the expectation is of sexual abuse and sexual misconduct. But just
22 to clarify too in relation to this matter, it was referred to the diocese or congregation in
23 particular to respond to. So the complaint wasn't lost, it was simply decided that it didn't
24 fall within the scope of the NOPS process, however, it is a complaint, it is important that
25 it's responded to, and in that case it was referred to the diocese or congregation who then
26 was responsible for responding, investigating and managing that complaint.

27 **Q.** Thank you, and just a final point in relation to this document, it's on page 2 with the
28 numeral 4 in the margin. So looking at this, it looks clear that you have, and for the
29 purposes of your report, looked at whether there were previous complaints?

30 **CHAIR:** Just to clarify, is this part of the e-mail your part of the e-mail?

31 **MS ANDERSON:** This is part of the e-mail from the Committee member.

32 **CHAIR:** I just wanted to clarify that thank you.

33 **MS ANDERSON:** On page 1 he's identified a number of matters and this is the fourth matter.

34 **CHAIR:** Yes.

1 **QUESTIONING BY MS ANDERSON CONTINUED:** So there's a reference here to somebody
2 having -- that Monsignor Burnes, understanding there had been, in quote marks,
3 "something about 15 years ago but it had not amounted to anything (or words to that
4 effect)." So the Committee member was surprised to read in your report that no other
5 complaints had been received and was asking you to recheck.

6 So my question in relation to that is, what is your process that you go through when
7 you're trying to identify whether there are other complaints in relation to the same
8 individual?

9 A. If a complaint is accepted or agreed that it's within the scope of A Path to Healing, so the
10 behaviour complained of is sexual abuse or sexual misconduct, then as part of the
11 investigation process a key element is our independent investigator looking into a
12 respondent's file or complaint files of a diocese or congregation to ascertain if there have
13 been other complaints made.

14 **Q.** And this reference here to something about 15 years ago but not amounted to anything,
15 might that be a reference to something being known but not recorded necessarily in a
16 document?

17 A. I'm not really able to speculate on that, I'm sorry.

18 **Q.** But what you're saying is the investigators are really relying on content and accuracy of the
19 records that they're receiving from the relevant church authority in order to answer the
20 question are there other complaints relating to this person.

21 A. Relying on written material, yes, there may also be discussions with people, but generally
22 we would expect the investigator to peruse and review all material held, relevant material
23 held.

24 **CHAIR:** Could I just ask a couple of questions, Ms Anderson. Just to be really clear about your
25 view of your role. It seems to me that your evidence is that you are the gate-keeper, if you
26 like, and that's a horrible expression, I'm sorry I don't mean -- you use the word triage, that's
27 a better phrase, I withdraw gate-keeper. The triaging process you've got in front of you
28 somebody who's given you some information and may have made a complaint, and they
29 have said "This happened to me".

30 A. Yes.

31 **Q.** Or somebody else has said this has happened to somebody else.

32 A. [Nods].

33 **Q.** To what extent do you see it as your role to go beyond that simple allegation?

34 A. We do.

- 1 **Q.** You do?
- 2 **A.** We do if we think -- if we consider that we need to. We would do that as part of what we
3 would term our initial assessment.
- 4 **Q.** And is it in the course of that that you would look to see if there were other complaints, for
5 example?
- 6 **A.** Possibly, it would be a case-by-case basis, yes.
- 7 **Q.** So where does your role as the triager stop and the investigator's role start?
- 8 **A.** So if it's not particularly clear, if perhaps someone has -- a survivor has contacted us and
9 made a disclosure about abuse and has perhaps identified someone, we would do perhaps
10 an initial look to see is the respondent alive, dead, were they around in that particular time.
11 It is very much a case-by-case basis. We do try very hard not to step into that investigation
12 role, it is about us doing that initial assessment so we can have confidence as much as
13 possible that it does fit within our scope. If we think yes, it does and it is taken through A
14 Path to Healing and it transpires actually it's not, that's okay, because that information can
15 still be captured with the complaint with the survivor's consent and referred to the diocese
16 or congregation to be able to manage that process. So our role is, as you talked about, is to
17 triage, to receive the complaint and ask enough questions to be able to confirm that it fits
18 within our scope.
- 19 **Q.** So if somebody says "I was raped by a priest in 1980 at a seminary"?
- 20 **A.** Yes.
- 21 **Q.** Is that enough for you to proceed to send it on, or do you make further inquiries?
- 22 **A.** That would be enough for us to engage an investigator to meet with that person.
23 Sometimes, depends on how fragile the survivor is. If the survivor was able to give us a
24 little more detail, perhaps about time, place, we would invite that information. If we gauge
25 that that survivor is not in a good place to talk to us over the phone or via e-mail to give us
26 that information, we will instruct her, we will engage an investigator to go and have that
27 face-to-face meeting.
- 28 **Q.** So it's really a bit of this and a bit of that, isn't it?
- 29 **A.** I think we do have a process, we do want an outcome, we want to be able to support the
30 survivor, they've come to us with information, we want to make sure that that disclosure is
31 dealt with in the most appropriate and sensitive way.
- 32 **Q.** I think where I'm probably leading is this: If I'm the person who said "I was raped by a
33 priest at the seminary", as a survivor I would want you to believe that first up.
- 34 **A.** Yes.

- 1 **Q.** And then pass it on for investigation as promptly as possible.
- 2 **A.** Yes.
- 3 **Q.** So I'm just wondering how these other inquiries that you are making are helping me to feel
4 that you're accepting my version at face value?
- 5 **A.** I understand. A seminary, are they able to explain the seminary, we also need to check that
6 it's within a Catholic scope. We want to make -- we just need to ensure it isn't perhaps
7 another religious as well, religious denomination, so we just want to make sure that we, if
8 we bring the complaint in and follow this through the Path to Healing, that we will have an
9 outcome for that survivor. So it is important to us that we do have enough information to
10 show yes, it is within our scope. And as I said earlier, we will err on the side of yes, let's
11 get this investigation underway, let's -- and if we're wrong and perhaps it's physical, it
12 wasn't actually sexual, that's okay, we will deal with that and manage that through. So it is
13 about trying to wrap around and do the best we can for that survivor with the information
14 that we do have. And not to traumatise or distress them by giving us information when we
15 are going to ask them or invite them to meet with an investigator. Does that answer your
16 question?
- 17 **Q.** Yes, it does, thank you very much for that clarification.
- 18 **A.** Okay, thank you.
- 19 **QUESTIONING BY MS ANDERSON CONTINUED:** Just in reference to the discussion that
20 the Chair has had with you about the person making contact and wanting to be believed,
21 this is an aspect that we touched on previously.
- 22 **A.** Yes.
- 23 **Q.** And you weren't able to indicate where in the process that your office is operating, where
24 that person might actually arrive at that, with that feeling of being believed. My question to
25 you is, when you're in this process of that initial interaction, what is the intention of the
26 person from your office or you in that exchange? Are you intending at that point to convey
27 that you believe them?
- 28 **A.** Yes, it's not our role to believe or disbelieve. Our role is to engage with that survivor and
29 gain their confidence so they will share their experience with us.
- 30 **Q.** So not your role to believe or disbelieve?
- 31 **A.** It's my role to take the information that we provided from a survivor at face value and to
32 then put it -- to wrap around them and provide the support they need so they can continue to
33 share their experience and to then support them through our Path to Healing process.
- 34 **Q.** Because in terms of outcome, that comes ultimately from the relevant church authority?

- 1 A. That's right, yes.
- 2 **Q.** And so the process you're running, you're kind of in the middle of the person coming in the
3 door wanting to be believed and the outcome that they receive from another participant in
4 the process?
- 5 A. Yes.
- 6 **Q.** About whether -- but the process that you run and their experience along that way including
7 delays can affect how a survivor receives that ultimate outcome?
- 8 A. Yes.
- 9 **Q.** And we've had the John example that's been talked about today.
- 10 A. Yes, yes.
- 11 **Q.** Turning now to some of the Complaints Assessment Committee minutes.
- 12 A. Yes.
- 13 **Q.** The first one I'm going to is in November 2017, the number is CTH0009043. Again, this is
14 a meeting that you wouldn't have attended because you've not yet joined the office?
- 15 A. Okay.
- 16 **Q.** So just to orientate you to page 1 of that document -- sorry, just because of the sensitivity
17 around some of the material it is headed up the minutes of the meeting on 28th of 2017(sic).
18 Over on page 2 calling up section 5, this is a record of a discussion about systemic issues
19 that the Committee's had. You might just want to take a moment to read through those
20 bullet points. So we can see there's reference there to problems that have been caused by
21 repeat offenders, so there's a systemic issue, identifying the need that there should be a
22 clear and rapid dealing with the issue.
- 23 Looking at that second bullet point, am I right to say what it's recording is that this
24 moment in time in November 2018 it's indicating that there's not necessarily a clear and
25 rapid dealing with the issue? Because what the Committee's identifying is that that's an
26 issue, a point?
- 27 A. Which is something I referred to earlier where we have introduced the use of safeguarding,
28 safety plans to be able to help address that issue I think.
- 29 **Q.** I think that's a very recent development that you've identified the safety plans?
- 30 A. Yes.
- 31 **Q.** So it wouldn't have been in place at this time?
- 32 A. A congregational diocese may have had their own system of putting safeguards in place,
33 and I wouldn't be able to comment on those without seeing material regarding them. What
34 our office has done is trying to introduce a consistent method of doing this, which is why

1 we've introduced the safety or safeguarding plan to be used in situations where a complaint
2 is made and there's a respondent and active ministry.

3 **Q.** When you first mentioned that in your evidence-in-chief, you refer to that coming into
4 consideration after the conclusion, is the complaint upheld or not, but then you
5 subsequently went on to clarify that that can be activated earlier in the process?

6 **A.** Absolutely, once the complaint has been made and respondent identified, if they are in
7 active ministry, our recommendation -- we would put a recommendation to the church
8 authority about the use of a safety, or safeguarding plan.

9 **Q.** And is your recommendation about the use of it as opposed to the content of what the
10 church authority --

11 **A.** Both.

12 **Q.** Both?

13 **A.** Yes.

14 **Q.** The third bullet point identified there is failure of bishops to treat seriously the issue of
15 sexual abuse. Does it surprise you to see this comment in a November 2018 document as
16 being identified as a systemic issue at this point in our history?

17 **A.** Yes, it does surprise me to see that there.

18 **Q.** You've come on board to the NOPS role probably about four months or so after this
19 meeting. What comment do you have to make about your experience of interacting with
20 bishops, this is not a reference to congregational leaders, it's simply a reference to bishops.

21 **A.** [Nods].

22 **Q.** In terms of treating seriously the issue of sexual abuse. The question is effectively do you
23 think what's reflected here is what you encountered when you came into the role and then
24 the follow-on, would you say it's the same or different today?

25 **A.** I would disagree with that statement. In my view in my dealings with each of the bishops
26 they treat very seriously the issue of sexual abuse. They're very supportive of our office
27 and the work we do. They're very responsive when we engage with them around needing
28 to obtain information about a respondent. So yes, I would disagree with that statement.

29 **Q.** But plainly a view of the Committee at the time?

30 **A.** Yes.

31 **Q.** The next bullet point deals with delays after the decisions, the recommendation's been
32 passed to the church authority with recommendations, noting the opportunities for the
33 complainant to find healing may be compromised through those delays?

34 **A.** [Nods].

- 1 **Q.** Am I right that there are still delays in that process where the recommendation goes from
2 the Complaints Assessment Committee to the church authority to the point at which the
3 church authority's made its decision and advised the survivor of that?
- 4 **A.** I think this morning when you spoke about that, that survivor who had experienced
5 frustration, it's a work in progress, us working directly with a church authority to make sure
6 that there is timely contact between the church authority and the survivor once it's got to
7 that point in the process.
- 8 **Q.** Why do you think there are delays at that point in the process, is that something you've got
9 a view on or you simply can't comment on?
- 10 **A.** I can't comment on that, sorry.
- 11 **Q.** But it must be frustrating for you because no doubt survivors are coming to you saying
12 what's happening?
- 13 **A.** It can be challenging. But the church authorities are generally very open to us taking that
14 feedback from a survivor to them, so we do have -- and to develop that relationship with
15 church authorities to be able to feedback those frustrations or challenges that are being
16 expressed by a survivor regarding lack of contact.
- 17 **Q.** So part of your role there is that you're attempting to manage up to the church authorities?
- 18 **A.** If there's been feedback from a survivor around any time delays, yes.
- 19 **Q.** We see down, just above "support needs to be available", there's a reference to the new role
20 of pastoral companion and how this will work. So again, indicating this concept, it was
21 being discussed at this time?
- 22 **A.** It was, and that's where we talked earlier about us trying to define what that is and where
23 would be the best -- define that role and how that will work in practise.
- 24 **Q.** And then we have the reference there to support needs to be available for the accused
25 person, ongoing support, and monitoring which needs to be documented.
- 26 **A.** [Nods].
- 27 **Q.** What's your understanding of what support and monitoring would be standard to be
28 available to an accused person through your inquiry process?
- 29 **A.** We make it clear to a bishop or congregational leader, or developing one, that it's their
30 responsibility to ensure and we expect that they will have support in place for the
31 respondent. We recognise and acknowledge that an investigation can be stressful and cause
32 distress to a respondent. So it is important that they are supported, well supported. That
33 may include mentoring, it may include some counselling. We rely on the bishop or
34 congregational leader to provide that or to facilitate that.

- 1 **Q.** But do you make recommendations about what should be made available, or is that at the
2 discretion of the relevant church authority?
- 3 **A.** We may make a recommendation, if we have had contact with the respondent and the
4 respondent is particularly stressed or distressed we will feed that back to the bishop or
5 congregational leader and ask that they make contact or arrange to have someone give that
6 respondent appropriate support.
- 7 **CHAIR:** Can I just, sorry to interrupt again. So in your office you don't just have contact with the
8 survivors?
- 9 **A.** No.
- 10 **Q.** Also have contact with the respondents?
- 11 **A.** Yes, we may, yes. So we will notify -- when a complaint comes to us and we will notify
12 the bishop or congregational leader and we will have a -- we will notify the respondent.
13 We provide a letter of notification to their bishop or congregational leader and ask them to
14 provide that letter which sets out some details of the complaint to the respondent. We ask
15 them to do that in a pastoral way so it's not an e-mail, a cold e-mail coming from us to
16 them. So we rely on the congregational leader or bishop or someone else if they've
17 delegated that role to provide our letter of notification directly to the respondent.
- 18 **Q.** And after that, is it common, regular practise for respondents then to get in touch with your
19 office and to have, and/or have correspondence with you?
- 20 **A.** They may, they may get in contact, they may seek an update of what's happening. We will
21 then also endeavour to provide them with information about the process. A Path to Healing
22 2020 provides -- we've developed a respondent's information sheet which sets out -- for
23 them to have which sets out the process and what they can expect. We appreciate that
24 receiving a notification letter about a complaint can be distressing, so we have this written
25 material which they can then later refer to, which will set out the process. They may
26 contact us to seek clarification, and if necessary we will refer them to the investigator or
27 provide process information if that's appropriate.
- 28 **Q.** Is it likely that the respondent would be talking to you or communicating with your office
29 at the time that you're making a decision as to whether it's within scope or not?
- 30 **A.** No.
- 31 **Q.** Not at all?
- 32 **A.** No, they won't be notified at that point.
- 33 **Q.** So they don't get the letter of referral once you've decided it's in scope?
- 34 **A.** Yes.

- 1 **Q.** Thank you.
- 2 **QUESTIONING BY MS ANDERSON CONTINUED:** Turning to an agenda for a meeting in
3 September 2018, so this is after you're in your role.
- 4 **A.** Yes.
- 5 **Q.** Reference CTH0009027. I can see just the agenda item there. Clearly there's an intention
6 for a discussion around an investigator's professional development?
- 7 **A.** [Nods].
- 8 **Q.** And an invitation for Committee members potentially to attend training that's being
9 arranged?
- 10 **A.** [Nods].
- 11 **Q.** This would be training that you and your office were pulling together for investigators, is
12 that right?
- 13 **A.** Yes.
- 14 **Q.** And what would have been the training need that you would have had in your mind at that
15 point? You may not be able to answer that, I don't have the minute here.
- 16 **A.** I think from memory in November 18 it was about bringing those investigators together and
17 explaining our expectations, hearing from them also around any queries or questions they
18 had around our process, remembering that we'd only had probably 18 months of
19 independent investigators and we were wanting to build up our panel of investigators, so
20 inviting them to meet with us and to share experiences, share good best practice, and just to
21 re-affirm with them as a group our expectations of their work.
- 22 **Q.** So at this point you've had about 18 months under your belt of the process and at this
23 point --
- 24 **A.** Six months, I started in February --
- 25 **Q.** Sorry, NOPS office, NOPS has begun an investigation in 2017, hasn't it, having an
26 investigative role?
- 27 **A.** Sorry, yes, yes, sorry.
- 28 **Q.** So you wouldn't have been there all that time?
- 29 **A.** No, no.
- 30 **Q.** Absolutely not. And so then at this point in time as a leader you think we need to get the
31 investigators together at this point and have some training for them?
- 32 **A.** Professional development, meeting them, getting them together so they could share,
33 develop good best practice and talk to, if I recall correctly, it was talking to them about
34 reports and what was really helpful to have in the reports. From there we have developed

1 some criteria of what the Committee have felt really helpful to have in the report. So this
2 was probably start of a discussion with our investigators around how we can support them
3 in their role as well. I do recall at that gathering they fed back to us what they needed, if
4 they were having challenges, accessing material from archives, how we could help, at
5 NOPS, help facilitate them in their role to make sure they were getting all the information,
6 all the access to material that they needed.

7 **Q.** And the reference there to the Committee professional development, so you're turning your
8 mind to does there need to be a structured programme for Committee members to maintain
9 or develop expertise that will help them in their role?

10 **A.** Yes.

11 **Q.** Is that something, that professional development programme for the Committee members,
12 is that up and running, or is it ad hoc, how does that work?

13 **A.** It has been ad hoc, there hasn't been a planned approach, there have been some professional
14 development to date. I think a planned approach would be appropriate moving forward.

15 **Q.** And then at paragraph item 7 is for discussion about whether the Committee should or can
16 provide recommendations on quantum for ex gratia. And am I right that currently it's not
17 the practice of the Committee to make any recommendation to the church authority in
18 relation to quantum of any ex gratia?

19 **A.** That's right.

20 **Q.** But it does sometimes make recommendations that ex gratia be considered?

21 **A.** Yes.

22 **Q.** You will have heard some discussion and language used by others about the purpose of a
23 payment that's characterised as ex gratia in the redress process or response to a survivor.

24 **A.** Yes.

25 **Q.** When you're thinking about ex gratia payments to survivors, how would you characterise
26 the purpose of those payments?

27 **A.** My understanding is that those payments are to try and help a survivor rebuild their life.

28 **Q.** It's a separate point I probably can't take any further as to what value might be put on that
29 sum?

30 **A.** [Nods].

31 **Q.** But would it be fair to say that in your knowledge because NOPS receives back, doesn't it,
32 information from the church authority about the outcome?

33 **A.** We have now specifically put in place that process where we expect to receive back from
34 the church authority an outline of the resolution reached. It may refer to an ex gratia

1 payment, we don't expect to be told the amount, but we believe we need to have a complete
2 file from beginning to end held at our NOPS office and that includes an outline of the
3 resolution reached between the survivor and the church authority.

4 **Q.** If you're not requiring the information on quantum to come back to your office, where in
5 the church entities would there be that collection of information that could provide a basis
6 to do an analysis of is there a quality of outcome for similar sorts of offending, where that
7 would sit in the churches?

8 **A.** There isn't a place that that currently sits other than being pulled together for supporting
9 information for this Inquiry.

10 **Q.** Do you agree that that is an important piece of information for any analysis of the equality
11 of the system that's being administered. By equality I mean equal outcomes for people in
12 similar circumstances irrespective of whether the measure is by harm or by some other
13 component?

14 **A.** I think church authorities having that information will strengthen their response to
15 survivors.

16 **Q.** Churches having that information about what's the collective picture?

17 **A.** Yes.

18 **Q.** Is that perhaps something you might be taking away from today?

19 **A.** Taking a few things away, I think that will be one, absolutely, thank you.

20 **Q.** The process that you've referred to of requiring that information to come forward so that
21 you've got the bookend of what was the outcome, leaving aside the quantum, that's
22 relatively new as well, isn't it?

23 **A.** Yes.

24 **Q.** Turning to November 2018 Complaints Assessment Committee minutes, CTH0009047.
25 Just waiting for that to come up on the screen. So we can see this is one of the matters
26 discussed which is about a complaint that had been considered by the Committee but
27 established through the investigation that the complaint falls outside of the scope of the
28 Path to Healing?

29 **A.** Sorry, could you tell me the date again?

30 **Q.** 27 November 2018 and you have attended this meeting?

31 **A.** Yes, thank you.

32 **Q.** So we can see there, can't we, that even though -- so the matter's come into the system, it
33 has been dealt with under the protocols your office runs, but now determined at this point
34 that it falls outside the scope, because of the person being a lay worker or volunteer. I don't

1 know, you won't know either, whether that fact emerged late in the piece because obviously
2 that's a bright-line distinction, isn't it, as to whether something's in A Path to Healing or
3 not?

4 A. Yes.

5 **Q.** But what the Committee agreed there was to write advising, though, that although it has
6 been established that the complaint falls outside the scope of A Path to Healing, the
7 Committee had had the benefit of reviewing the investigation report and recommended that
8 the complaint be upheld on the balance of probabilities?

9 A. **[Nods]**.

10 **Q.** The reason for bringing this up is to show that there are non-A Path to Healing matters
11 coming through the Committee. I presume that doesn't happen very often?

12 A. No.

13 **Q.** And just over to the top of the very next page so we see -- Jacinta's a person in your office
14 isn't she?

15 A. Yes.

16 **Q.** Had advised that the complainant had asked to review the draft report before it came to the
17 Committee. So that would be a reference to -- what draft report, a draft investigator's
18 report?

19 A. Yes, yes.

20 **Q.** And is that the process that a draft investigator's report will be reviewed by one or two of
21 the Committee members and/or the Committee? Is it standard practice that a draft report
22 would go to the Committee or to one or two of the Committee members before it formally
23 comes up for decision-making?

24 A. The current process is that a draft report goes to the Chair of the Committee who will
25 review it looking for any additional lines of inquiry that haven't yet been followed up.

26 **Q.** And the Chair identifies those and those are followed up?

27 A. Yes.

28 **Q.** Leaving aside the point on the screen here just so the Commissioners have got the process,
29 it can then come back up to the Committee?

30 A. Yes.

31 **Q.** And if the Committee as a whole still thinks there are other lines of investigation, it might
32 be referred back so we might see that --

33 A. Yes.

34 **Q.** -- happen in some complaints?

- 1 A. Some cases. Ideally the point of taking it to the Chair in the first instance is to try and
2 minimise that back and forth, ideally.
- 3 **Q.** So we see here that the Committee's agreed that the complainant is going to be given an
4 opportunity to look at the draft report and then the complaint would be considered?
- 5 A. **[Nods]**.
- 6 **Q.** And my question to you is, this seems to me to reflect what you would expect to see in a
7 process embedded with natural justice considerations and that in this particular instance, for
8 reasons that we don't know, the Committee has said well yes, this complainant can see the
9 draft investigator's report before it comes back up?
- 10 A. **[Nods]**.
- 11 **Q.** And am I right that that would give the complainant an opportunity to comment on the
12 context of it including whether what the survivor had said had been accurately captured?
- 13 A. **[Nods]**.
- 14 **Q.** Whether there were other avenues of inquiry that should be followed, whether the scope
15 that had defined the investigation had been correctly set?
- 16 A. Yes.
- 17 **Q.** That looks like quite a good process to me.
- 18 A. It is, and while it's not -- I have to say it isn't standard practice, what we have done is
19 outlined to investigators that we want them to give an outline to a survivor of what has been
20 done in order to draft that report, so it isn't usual for a complainant to receive a copy of the
21 draft report currently. However, what we do ask is investigators to outline to a survivor
22 who they've spoken to, what steps they've taken in trying to ascertain if in a survivor's
23 perspective something's been missed.
- 24 **Q.** But that's focused on process, isn't it, as opposed to content?
- 25 A. Yes, no, I accept that, yes.
- 26 **Q.** Given one of the fundamental principles in A Path to Healing is natural justice, do you
27 think there's potentially a gap in the process in according natural justice to the survivor not
28 having an opportunity to comment on what is actually going to the decision-maker?
- 29 A. Definitely going to consider that and the feedback that you've just provided, yes.
- 30 **CHAIR:** Is there a reason why the draft report has not been systematically given to complainants?
31 Is that a considered decision or is it just something that hasn't happened?
- 32 A. I think it's something that hasn't happened. I would perhaps get the view of the Complaints
33 Assessment Committee, I'm very -- I think I can definitely take that to the Committee and
34 to get their feedback about that question, and I'm sorry I can't answer that now but I can

1 certainly get their feedback about this point that's been raised.

2 **Q.** Thank you.

3 **QUESTIONING BY MS ANDERSON CONTINUED:** But we know, don't we, that often at the
4 other end of the process after the decision-making a lot of people have asked for a copy of
5 the report after the decision is made and they've never been given a copy, or more recent
6 practice is that they might get a heavily redacted version for the reasons that you addressed
7 in your evidence-in-chief.

8 **A.** Yes, yes. So even a draft report would need to comply with restrictions under the Privacy
9 Act.

10 **Q.** Those are all sorts of considerations that are able to be managed in an employment
11 investigation, for example, where it would be standard practice for the person who's
12 brought the complaint to have an opportunity to comment on aspects of a report before it's
13 finalised?

14 **A.** Absolutely, and I will take that point to the Complaints Assessment Committee and also to
15 the National Safeguarding Professional Standards Committee who are the group that create
16 policy, and to get their feedback about that.

17 **Q.** And just turning over to page 3 of that document, items 4 and 5, we see a reference there to
18 systemic issues discussion and I think I'm right that in your time as Director this might be
19 the one time that there's a reference to systemic issues in the Committee discussion
20 reflecting what's happened?

21 **A.** [Nods].

22 **Q.** So the Committee's asking NOPS to complete an inventory of information held about
23 offending within orders and dioceses and to include a review of the number and type of
24 complaints about each order and diocese. Could you explain what happened as a result of
25 that request?

26 **A.** That request was overtaken by the work undertaken by Tautoko to support the inquiry
27 about gathering all that information, so that information there is collated and held by
28 Tautoko.

29 **Q.** But not by NOPS?

30 **A.** No.

31 **Q.** Presumably the reason the Committee thought NOPS might want that information itself is
32 so you could be helping and assisting with conversations the Committee might want to have
33 about the systemic issues?

34 **A.** Yes, and I would submit that that task in itself was actually quite complex and the

1 Committee may not, as I wouldn't have thought about how complex that would be to
2 actually be able to gather up all that information from the dozens of orders and diocese. It
3 has now been completed or in train due to the work of this Commission through to --

4 **Q.** A big project would be a way to correctly characterise it?

5 **A.** A very big project, yes, yes.

6 **Q.** But essential in terms of, as I said, being able to identify systemic issues?

7 **A.** Yes, yes.

8 **Q.** And we see at point 5 just a reference to the date being confirmed for the investigator's
9 professional training that we saw a reference to in the agenda previously, and then
10 following issues to be canvassed with the investigators. So the investigators are not asked
11 to give a recommendation but rather to give an assessment of the evidence and the
12 information they're relying on?

13 **A.** Yes.

14 **Q.** Previously in A Path to Healing it was a requirement that the investigator draw to a
15 conclusion whether the complaint was proven?

16 **A.** Mmm-hmm.

17 **Q.** And we've got a shift here, haven't he?

18 **A.** Yes.

19 **Q.** Can you explain to us why that shift is occurring?

20 **A.** My understanding is that the Complaints Assessment Committee members understood it
21 was their role to make that assessment.

22 **Q.** So they simply wanted to receive the bundle of information --

23 **A.** Factual information, yes.

24 **Q.** Absent a recommendation and then each Committee member will review that bundle of
25 information and form their own view?

26 **A.** Yes.

27 **Q.** And then they'll have a combined discussion?

28 **A.** Yes.

29 **Q.** At this point in time, adopting this practice of not having the investigator make a
30 recommendation, would that have been inconsistent with the published A Path to Healing?

31 **A.** The 2010 version?

32 **Q.** This is in 2018, yes.

33 **A.** Right, yes.

34 **Q.** And we see the reference there to the need for lines of inquiry to be triangulated and the

1 need for a factual report with no emotive words to be used. In terms of that triangulation of
2 lines of inquiry, can you shed any light on why that's been expressed at that time?

3 A. My understanding is that it was around looking to, if the information can be corroborated.

4 Q. It's an interesting concept that we might, given the lateness in the day, I don't think we'll
5 start on the topic of corroboration, but there is a theme of that, isn't there, through the
6 information that that is an aspect that the investigators are looking for as they undertake
7 their investigation/inquiry?

8 A. Yes.

9 Q. Just briefly, just as an example for the Commissioners to see an example of a
10 recommendation, I'll bring up document CTH0009048. An alternative version to bring the
11 same point out CTH999049(sic) we see as an example of a recommendation. This is when
12 the Committee's moving into beginning to make recommendations, including in relation to
13 an ex gratia payment being considered.

14 So for the Commissioners you can see that that's fundamentally the decision
15 coming out of the Complaints Assessment Committee in relation to a particular matter, that
16 it be upheld, that there be a letter of apology for the physical and sexual abuse, noting that
17 not everything that was alleged was found proven. In the letter of apology, offer to meet
18 with the complainant to apologise in person, offer to fund counselling and to consider
19 making an ex gratia payment, noting the payments in Australia are far greater than those
20 made in New Zealand and the payment should be commensurate with those made in
21 New Zealand. How would that understanding of what was commensurate with those made
22 in New Zealand be known given that there isn't this connection of information about
23 quantum of ex gratia across New Zealand?

24 A. It's a very good question.

25 Q. You're not able to assist us with that?

26 A. I'm not able to assist you with that, sorry, no.

27 Q. But from this point on we see the tracking, don't we, that on occasion, not in every decision,
28 the Committee will be adding in perhaps a recommendation that a financial payment be
29 considered?

30 A. Yes, based on the information provided by the survivor through their statement about what
31 outcomes they would like to see from the Path to Healing process.

32 Q. Perhaps just to end on the point, given it's 5 o'clock, it's been a long day for everyone.
33 Have you ever seen a survivor come forward and say "I'd like a very small ex gratia
34 payment"?

1 A. No, I haven't.

2 **COMMISSIONER ALOFIVAE:** Can I just a question before you finish, Ms Noonan. Is this
3 typical of most decisions that come from the Committee if it's upheld that it's just an
4 ex gratia payment, a letter of apology and counselling, that it's usually just those three
5 elements?

6 A. No, not at all, no, there may be a variety of outcomes that have been sought by a survivor.

7 **Q.** We might see that in others, thank you.

8 **CHAIR:** Given it's 2 minutes past 5, Ms Anderson, I think it's time we took a break. Ms Noonan,
9 can I just repeat my advice not to speak to anybody about your evidence overnight because
10 you'll be required -- are you able to come back tomorrow is the issue?

11 **MS McKECHNIE:** Madam Chair, my friend Ms Anderson and I did have a discussion about this.

12 **CHAIR:** Yes.

13 **MS McKECHNIE:** As you may know, Ms Noonan has a family commitment this evening. I'm
14 not sure how much longer my friend has with Ms Noonan. We were wondering whether, if
15 it was a short period, it could be accommodated this evening to enable her to travel home.
16 If it can't be accommodated this evening Virginia has agreed to -- she can stay until
17 tomorrow morning, she's made some arrangements in Christchurch to allow that to happen.

18 **CHAIR:** That's much appreciated. How long do you expect to expect to continue Ms Anderson?

19 **MS ANDERSON:** Madam Chair, I think it probably is best to pause, I've probably got another 45
20 minutes or so of questioning.

21 **CHAIR:** I think that would extend us all just a little bit too much. Ms Noonan, I'm grateful to you
22 for accommodating us like this, I appreciate that's putting you out, but let me tell me that
23 that is much appreciated. Thank you so much.

24 A. Thank you.

25 **Q.** We will adjourn then until, let's get this right tonight, I think it's 9.30 in the morning?

26 **MS ANDERSON:** That is my understanding, Madam Chair.

27 **CHAIR:** Nobody's going to disagree? We'll adjourn then to 9.30.

28 **Hearing closes with waiata and karakia mutunga by Ngāti Whātua Ōrākei**

29 **Hearing adjourned at 5.05 pm to Thursday, 25 March 2021 at 9.30 am**

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