increasing psychiatric and psychological understanding of the long-term effects of abuse. So, the law was able to build on that knowledge in terms of allowing these claims to go ahead.

MS HILL: In terms of the timeline, the next big thing that came up was the Lake Alice Inquiry which was managed by Grant Cameron and some other lawyers there but it was triggered, of course, much earlier and we acknowledge Hake Halo and Dr Sutherland who has given evidence at length about Lake Alice and things that happened there.

In our brief of evidence, we've gone into a bit more detail about that but I will leave that to one side, except to say that Gallen J in his report noted that most of the children in Lake Alice were placed there by State agencies and that's a really important thing to remember, that it was the State placing people in Lake Alice.

I also wanted to note that that compensation package of $10 million that Gallen J was tasked with allocating, that triggered quite a lot of media interest at the time and a lot of discussion about the role of compensation to address harm.

While we recognise that the Lake Alice process was flawed in a number of ways, sadly it also represented a high watermark for compensation for individuals for abuse in New Zealand. And it also created a significant disparity between the people who had been in the Child and Adolescent Unit in Lake Alice and people who had been in other psychiatric hospitals who had had really similar experiences and so many people felt that their experiences in other psychiatric hospitals were overlooked.

Sonja will talk to you about the psychiatric claims.

MS COOPER: It was in 2002 that our firm first started

doing psychiatric hospital work and we were obviously spurred on by what had happened for the Lake Alice claimants because most of our clients were teenagers who had been in psychiatric hospital care and had suffered very similar things to the allegations that were made and accepted by the adolescents who had been in Lake Alice Hospital.

In that year, in 2002, the Evening Post did a story saying we were doing some claims and they showed some
12.07 pictures of pretty scary stuff from Porirua Hospital, so that client group grew from 5 to 40 to 200 quite quickly. We didn't do this work on our own. Because I was still at that stage a District Inspector of Mental Health, I could not do clients who were still in care in Porirua Hospital or had been in Porirua Hospital, so our colleagues, Roger Chapman and Lisa McKewen worked alongside us at Johnston Lawrence and we split that work up. I have to say now we couldn't have done that work without Johnston Lawrence.

12.08 Not surprisingly, our client group wanted a similar Inquiry and similar settlement process to the Lake Alice group but the Crown rebuffed that and I have to say there was a lot of push back on that from Crown Law. So, we were forced into the position of having to file legal claims in the High Court and at that stage I think in a big rush we had to file about 200 legal claims.

This was our first experience of significant push back by the Crown because in 2005 the Crown applied to strike out all of the claims using the Limitation Act.
12.09 So, in other words, saying we had filed the claims out of time. And also to the immunities in the mental health legislation that were pretty draconian to say these claims couldn't go ahead.

It's relevant to talk a bit about that, just as a

kind of indication of the sort of mechanisms that the Crown used to argue these cases and other cases that we were subsequently involved in.

So, the relevant mental health legislation, and this was principally the 1969 Mental Health Act, had immunity provisions which protected staff, in other words nurses, attendants, doctors, who were acting, this is the legal words "in pursuance or intended pursuance of the Act". So, they were protected from any civil claims unless they had acted in bad faith and/or negligently.

But even in that case, a patient had only 6 months to bring a claim. Of course, we were talking about events that had happened decades earlier.

I think what shocked us, was that the Crown unswervingly and unapologetically took the view that all allegations made by our clients apart from what was classified as major serious sexual assaults, whatever that was, came within the immunity as treatment and therefore all of the claimants had to apply for leave and because they hadn't done that within 6 months of their treatment all the claims were barred.

And I can give you an example of that because these were the submissions that were made in the Court of Appeal by the Crown. For example, it was argued in the Court of Appeal that burning a teenager with a cigarette could be treatment to discourage children from smoking, for example.

It was also argued that the concrete pill was a legitimate form of restraint. So, those were the sorts of arguments that were made by the Crown, by Crown Law, unapologetically, all the way from the High Court, all the way through to the Supreme Court, over 5 years.

So, the Crown asked the Court to somehow approach all of these allegations that were made by our clients as

though they could somehow be treatment. They just asked the Court to imagine that in some way these really terrible allegations could be seen as treatment and, therefore, the immunities in the legislation applied.

So, while this was happening, the Confidential Forum was established. And Your Honour Sir Anand you were one of the chairs of that and obviously Judge Mahoney was the first Chair. And that, I think, was the Crown's response to our litigation, was to setup the Confidential Forum as
12.12 an avenue for people to talk about their experiences in psychiatric care. And we acknowledge that lots of our clients had a very positive experience with the Confidential Forum. However, we received a lot of feedback that it provided no closure, there was no formal response. In fact, the Panel was specifically not allowed to acknowledge anything that was being told to them. They were specifically not allowed to offer any apology and they certainly weren't allowed to offer any compensation.

12.13 Reports at that stage were limited to letters to the government summarising the experiences of people who approached the Confidential Forum.

In essence, all the Confidential Forum could do at that stage was assist people to get their records where they existed and made referrals to counselling.

The transcripts, none of the actual backbone of that forum was ever able to be made available publically.

In the midst of us going through this long tortuous strike out process we had two trials. One run by our
12.13 firm and one run by Johnston Lawrence. They both went ahead in 2007 which became an auspicious year for reasons we will explain.

K was allowed to go ahead because the allegations were of serious sexual assaults by nursing staff and so

they had to agree that was allowed to go ahead. And J, which was the one we argued, was allowed to go ahead because she had earlier been given leave by the High Court, so her claim was allowed to go ahead as well.

K failed. I think at that stage the Judge was just incredulous about the allegations that K made because it really was not within the experience, New Zealand's experience, and I think he just found them incredible. And he also failed on the Limitation Act which was
12.14 extremely surprising because he had an intellectual disability.

J, we got a number of successful findings, particularly that staff had physically assaulted our client and that she had been punished and that she'd had threats of punishment. But, as was starting to become a common theme at this stage, she also lost on the Limitation Act because she had been able to approach ACC some years before she brought her legal claim, apparently being able to approach ACC was the equivalent of being
12.15 able to instruct a lawyer to bring a legal claim. So, this was our first experience of the law starting to clamp down.

As I said, we were still arguing our strike out at this stage and that went all the way to the Supreme Court. It was a costly exercise, totally funded by the public purse because we of course were funded by Legal Aid and the Crown was funded by the Crown.

And the effective result was we were declared the winners overall. The Crown was only partially
12.16 successful. In the end, it got rid of literally a handful of claims and the rest were permitted by the Supreme Court to proceed.

And so, that forced the Crown to start thinking about settlement of the psychiatric hospital claims from

2009 onwards for the first time, so we'd had a long run until then.

Then at the same time as we were doing this, we started the MSD claims. As I said, it was very clear to us there was a big link between teenagers who were in psychiatric hospital care and a lot of them were State wards, so they'd been dumped into psychiatric hospitals as children.

While the claims obviously had been dealt with for 12.17 those who had been lucky enough to be in the Lake Alice Adolescent Unit, the rest of the group was on the outside. And of course their experiences in Social Welfare care weren't covered by that Lake Alice settlement process either, so they felt there was a big gap between their experiences and what had actually been acknowledged.

One of the things that we note here, was again the blurred lines of responsibility because we have a number of clients, and that's still being talked about today, 12.17 who were at Holdsworth or Hokio and were taken on little day trips to Lake Alice and they are convinced they were given ECT. In fact, some actually remember they were given ECT, taken there as a day patient, given ECT as a punishment, taken back to the institutions. There are no records of that. It is not mentioned in the Social Welfare records and there is absolutely no record of that from Lake Alice either. So, those claims have never been accepted but we've heard it often enough to know that that is credible.

12.18 So, as discussion about the potential legal remedies for these claims became more known, the number of claims started to grow. Again, I was responsible for taking one of the first claims to trial in 2007, that was S v Attorney-General. At the same time, a former client of

the firm, sorry way before 2007, it was 1999 sorry, so another client of the firm, former client of the form her case went to trial also in 2009 and 2000. Both of these were foster care placements and we were arguing for the first time that the State was liable for the abuse that happened at the hands of a foster parents on the basis that they had placed the children there and they were effectively their agents. So, this was very novel, it hadn't been argued in New Zealand at that stage and the
12.19 case law even in the UK was still very much in its development stage. So, we were arguing new stuff here.

So, we won at High Court level, the High Court accepted in both cases that the Crown was liable. In the W case, the Crown also accepted that the social worker had been negligent because in that case the wee girl had tried to report that she was being sexually abused and the social worker had ignored it. And because she was a senior social worker, the Court accepted that the State was liable for that.

12.19 Both claims were lost because New Zealand has an ACC bar, so ACC covers all compensatory damages claim in New Zealand, so in both cases both clients were told at High Court level you've won but you've got no money.

So, both we and the Crown appealed. The Crown appealed on lots of things, Limitation Act. Oh because we won under the Limitation Act as well. So, they appealed, we won in the Court of Appeal, so the Limitation Act findings were upheld, and the Court of Appeal also in both cases found that both clients who had
12.20 been abused before our ACC legislation came into force were entitled to compensatory damages. That all had to be done separately and private settlements were subsequently negotiated.

So, both of those clients, I have to say, got

substantial compensation which we can probably now disclose but they again probably established a high watermark because the compensation in those two cases was substantially higher than anyone else was ever - we'd ever been able to negotiate since.

Following, we also had a lot of media interest in this work as well and so following those cases, the media work, that client group grew really rapidly. That grew from like, you know, 50 to 200 to 600 to 800 very rapidly.

12.21

I think one of the things that was distressing to us was as this happened, the climate in the Courts grew a lot harder. And I think we would say that the judiciary either could not or did not want to deal with the implications of these claims.

We tried again to negotiate with the Crown for an out of Court process and we thought we were actually getting somewhere with Crown Law. We were provided a whole lot of information on a good faith basis, we didn't file claims, but then as we had come to experience, Crown Law said, no, we're not going to do an out of Court process, so again we ended up having to file hundreds of claims to preserve our clients' legal positions.

12.22

In 2006, we did a 175 page paper for the Ministry of Social Development and Crown Law. So, at that stage it was a detailed breakdown of placement by placement setting out allegations made by our clients against staff members and the various experiences they had. So, we talked about the cultures and that covered even things like being, you know, given cigarettes and tattoos and things like that.

12.23

We gave that to the Ministry of Social Development in good faith. They then passed it on to the Police without our knowledge or consent and then we had a long

conversation with the Police about whether we were going to handover our clients' identities and information so that the Police would then embark on prosecutions, again without knowledge or consent. And that has become another conversation which I talk about later in the course of the last year or so, hopefully put at an end by a Court of Appeal decision delivered about two months ago or a month ago.

But anyway, MSD took the position that it was
12.23 entitled to breach our clients' privacy, to provide information to the Police. Whether or not the Police intended to act on it, and as I say regardless of whether or not our clients consented. And our clients had valid reasons for not consenting to that.

We then had to start filing proceedings against MSD. We couldn't manage this huge amount of litigation in the normal way, so it was agreed between Cooper Legal and MSD that we have a Judge allocated to manage our claims. We devised a protocol which is still in place today in which
12.24 some claims are actively tracked towards trial but the vast majority sit once we've filed them, so that we can try and settle the claims out of Court.

Over the years, the protocols expanded. It now covers Ministry of Education claims, it also covers claims that we now always file for younger clients to protect their legal position, if we can protect their legal position we will do that.

2007, as I've said, was an auspicious year for the firm. It was the start of a bad time, I have to say. We
12.25 had the first major Social Welfare trial about institutions, that was the White trial. So, the two plaintiffs were brothers, Paul and Earl were their names for the purpose of the public decision. The trial was in two parts. The first part was about their home life,

what Social Welfare knew about their home life and their liability for failing to act in terms of notifications of abuse at home. And then the second part was about their care in residential care, both were in Epuni in the 70s and Earl was also in Hokio.

As we've already said, the Court upheld and had to really because there were Privy Council decisions saying once a child comes to notice, there is a duty of care that arises. And we just emphasise this because it is an
12.26 important part of State care that's often overlooked and it's really, really significant, I think, now, that's what we're finding in State care now.

So, there were a number of findings.

CHAIR: Mr Mount and Ms Cooper, footnote number 29 makes a certain reference to the plaintiffs.

MS COOPER: I have just used the public names for them. That is not their real names.

CHAIR: Good, okay. I was just worried about whether the Royal Commission should make a section 15 order
12.26 but we don't need to?

MS COOPER: No, those are the public names. Their real names are different and White is not their name either.

CHAIR: Thank you.

MS COOPER: Just in terms of the finding, there were some really significant findings about Epuni, for example, and Hokio. The Court specifically held that many of the witnesses, and these were our witnesses, 11 in relation to Epuni and 14 in
12.27 relation to Hokio, hadn't known one another at all, or seen one another, hadn't seen one another for years, but they said, Miller J who was the Trial Judge found their evidence compelling, even though the Crown vigorously cross-examined them on whether

they'd got together or whether they'd concocted their evidence, whether they'd talked about their evidence with other witnesses. I have to say, we still see that issue today. There is still the view that the starting position, I think, that the Ministry of Social Development or all of the government agencies start from is the clients are liars, rather than accepting that their - it is more the burden is put on them of proving their
12.28 story, rather than accepting, starting from a position of we accept that you are telling the truth. So, there is a starting position of disbelief.

In relation to Epuni, the Court held most boys had been admitted there were held in secure for 3 days, 23 hours a day, apart from showering and this period of PT that Amanda has talked about. Almost all had got the blanketing, the initiation beating on arrival. All talked about the hierarchy and kingpin. Several talked
12.28 about the staff using the kingpins to keep order. It was noted that one of the staff members, Mr Moncreif-Wright, who one of the witnesses has already spoken about, had been convicted of several offences against children in 1972 and another staff member, Mr Tjeerd handled the boys roughly.

The Court overwhelmingly accepted the evidence of the witnesses, our witnesses. So, there were findings made that the House Masters were aware of the initiations, that they turned a blind eye to the kingpins
12.29 and that a number of staff members were violent towards our plaintiffs and other clients.

Hokio, the Trial Judge found that Earl had been sexually assaulted by the cook who we have referred to before, who was notorious among the boys. Also found

that a number of the staff members were unreliable, that they had assaulted the boys, that kingpins again were a feature, that Pakeha boys had a harder time of it at Hokio because they were definitely the minority, and that staff members encouraged the use of violence.

So, these were important findings but we lost on the Limitation Act. So, the Court found that the claims were barred and even though these clients both had quite significant psychological and psychiatric diagnoses, the
12.30 Courts found that they should have been able to bring their claims earlier.

And I mean one of the things I think that's really valid to question is, were they different from the two plaintiffs who succeeded only a few years earlier from W and S? No. And, in fact, probably, at least with respect to S, they were less highly functioning.

But by that stage, our view is that the Court was faced with literally hundreds of claims potentially coming through the system. And that wasn't the case when
12.31 we'd started out with this work in the late 1990s, there were just a handful of cases. So, you know, that timing is interesting and the fact that the Wellington High Court particularly knew we had already filed literally hundreds of claims.

So, what happened was that the Courts started to really modify the applicable legal tests for the Limitation Act and what we saw is it got harder and harder for claimants to even get through the Limitation Act, so lots of claims were being struck out. We will
12.31 talk that a bit more because the Crown used that as a weapon.

I think one of the financial that it's really important to point out here, is that it's a choice. It's a choice for a defendant about whether they rely on the

Limitation Act. They do not have to. And at that stage, the Crown had an obligation to be a model litigant. In other words, not take technical defences, not take advantage of the mucinous plaintiffs.

Both the Crown and the churches during this period and still, rely on the Limitation Act as a weapon to bar what we say are completely legitimate claims. There is no doubt in my mind, well we know in the psychiatric hospital claim at client would have got damages because 12.32 the Judge said so. The Judge said "but for the Limitation Act". And in this case, you know, to lose on the Limitation Act was really hard.

We will talk a bit more because this sparked a really negative response from Legal Aid who, on the 17th of January the next year, 2008, told us to stop work and then implemented a withdrawal of aid process and we'll talk a bit more about that, for 800 legally aided clients.

And they would not fund us to appeal the White 12.33 decision, so we did it without any funding. We appealed the White decision to the Court of Appeal and again, although we had good findings in terms of the legal and factual findings, they upheld the findings in relation to the Limitation Act, even though they said the Judge had made errors and upheld the other legal findings. And we applied for leave to appeal to the Supreme Court and didn't get leave. So, yeah, we weren't able to take that any further.

MS HILL: I just want to touch briefly on some of the 12.34 legal barriers faced by claims and Sonja has touched on a couple of these briefly, there's two I want to spend a bit more time on. The effect of the ACC, Accident Compensation legislation, and the withdrawal of Legal Aid.

For those who weren't too familiar with the Accident Compensation legislation, the whole idea behind it, of course, was that it would replace personal injury litigation, instead of US style suing people for harm, and the model was intended to be that ACC would provide you with what litigation would provide you. That was quite an idealistic situation, I think.

So, the ACC legislation says that you are not entitled to receive compensatory damages, you cannot sue 12.35 for those, for personal injury. The ACC legislation has changed so many times since its inception, that working out whether it applied and the extent of cover really is an exercise in and of itself.

And that legislation has been altered in response to historic abuse litigation as well.

So, where the law stands now, is that claims for general or compensatory damages for physical allows can only be brought if that abuse occurred before 1 April 1974. And in the case of sexual abuse, such claims can 12.35 generally only be brought if the abuse occurred before 1 April 1974 and the claimant had not had treatment for the mental injury arising from that abuse by a certain date.

So, it's all rather complicated, it's fair to say.

There are things that sit outside the ACC legislation, psychological abuse without a physical element attached and false imprisonment.

Q. This of course is one of the topics we will come back to in more detail in March?

12.36 **MS HILL:** Yes. I guess the last thing I wanted to say is that when ACC does provide cover, we would say that cover is insufficient. It's something for Parliament perhaps to deal with, it's something for the Royal Commission to think about, that if you

are a victim of sexual abuse you're entitled to counselling, not necessarily any financial compensation. And people who experience a lifetime of physical and psychological abuse don't get any counselling under ACC. So, it's something that we need to think about, that if you are going to have a scheme that is designed to replace this sort of litigation, then that scheme needs to operate properly.

12.37 I want to touch, Sonja has touched briefly on Legal Aid and of course the effect of the decision in the High Court was for Legal Aid to stop work or say to us to stop work, except for work that was urgent or Court timetabled. In April 2008, Legal Aid commenced the formal withdrawal of Legal Aid to about 800 survivors. And we were forced to provide submissions to Legal Aid for each and every client about whether they could get through the Limitation Act or not effectively, showing what's called prospects of success. And we were only 12.37 allowed to do that work for them, and so we did that for 800 people, and we went through a review process and an appeal process to what was then known as the Legal Aid Review Panel or LAR, and there were more appeals to the High Court brought by Legal Aid and subsequently our clients as well.

Through all of that, we were expected to do the bare minimum of work on the individual claims. It was a massive block on being able to do substantive work to progress the civil claims.

12.38 **MS COOPER:** I am going to talk a bit more about that. I have to say, it was an incredibly difficult time for the firm. Not surprisingly, our clients were distressed at the thought that their funding would be removed and also their claims might have to come

to an end. We had to try as best as possible to reassure clients that we were continuing to do all that we could to protect each client's Legal Aid but we also had to say to them there were limits on the work that we could do because we, at that stage, had little to no funding and certainly no funding to progress substantive claims.

In the face of that, we continued to file as many people's claims as we could, whether or not we had
12.39 funding. And we continued to do what we could to protect people's legal positions, given that the Crown was using the Limitation Act as a very big weapon.

There were financial consequences for me as the Principal of the firm. I couldn't guarantee ongoing employment to our staff and so we lost half of the legal staff over the next few months which was a relief in some ways because it meant I didn't have to make people redundant which I was very much dreading.

We also had to lose an office assistant position and
12.40 we had four years really I think of considerable financial uncertainty, as well as other pressures being brought to bear on us which I think are more properly the place of the redress hearing.

During this time, we did a huge amount of work and we have estimated it, nearly $1 million worth of work, without any funding and we did this to protect our clients' positions, as I've said. We continued to file claims, we continued to do as much work as we could to protect our clients.

12.40 As I've said, one of those things was taking the White claims through to the Court of Appeal and Supreme Court without any funding at all.

Matters were made more difficult for us during this period because Crown Law, particularly acting for the

Ministry of Social Development, in the full knowledge that we were going through Legal Aid funding difficulties, chose to insist that some cases go ahead in terms of testing the Limitation Act. So, these were effectively strike out applications and they also insisted on some trials going ahead.

That wasn't just the Ministry of Social Development, there were other ministries we were dealing with as well.

But on at least two occasions the Ministry of Social
12.41 Development, through Crown Law, pushed for a limitation hearing on particular claims where Legal Aid had been withdrawn before the hearing. The first time that happened, thankfully the Judge allowed the case to be adjourned because when the case was originally supposed to have gone ahead, we were ready to go and the Crown wasn't because it didn't have an expert witness brief ready, and so the Court agreed because we'd been ready to go ahead on the first hearing and we'd had Legal Aid at that stage, it would be unfair to force us to go ahead.

12.42 But on the second occasion, the Court knew that we were waiting for a decision from the Legal Aid Review Panel about whether funding was to be reinstated. The Crown, so MSD and I think the Salvation Army was also involved in that case as well, pushed the hearing on, knowing that Legal Aid was withdrawn and that we were waiting for a decision, and the Court said "Too bad, Cooper Legal, you've got to go ahead with that hearing. Not only that, we are not allowing you to withdraw either".

12.43 I have to say, that was an extremely difficult position for our firm to be put in. The client wasn't expecting us to go ahead without any funding. While we could have done a few limitation hearings without funding, we had 800 clients, pretty much all of whom were

Legally Aided. And/or each of these clients we needed to obtain expert reports from a psychologist or psychiatrist to address why they couldn't take their claims earlier. These reports cost upwards of $10,000. It just wasn't feasible for us to do that.

What happened with that second case, is ultimately Legal Aid was reinstated by the Legal Aid Review Panel a few days before the hearing, so we were able to be there, but by that stage the client had suffered a massive
12.43 disadvantage, we hadn't been able to prepare properly, we hadn't been able to get reply evidence and not surprisingly, the outcome was not good for that client.

I think the reason why we've given these examples, is these just show the inequality of arms that our clients face.

One of the things I noticed during that period of time, it would have been an easier option for me and the firm to have just walked away from this work. And there was a lot of discussion from other people saying perhaps
12.44 that's what you should do because we had to make some really unpalatable decisions, we had to reduce work, we had to deal with the distress about clients, but ultimately I didn't want to be yet another person who let these people down. I didn't want to be another person who decided this was too hard. And so, we kept going.

I think it's important to say that our relationship with Legal Aid now is a very positive one and we are really grateful for the ongoing support of Legal Aid and we are constantly mindful that we use public funds, so we
12.45 try to do so wisely.

One of the things that we do do, is every time we settle a claim against the State, there are arrangements in place so that Legal Aid receives a substantial contribution to the costs, so our work is, you know, is

reimbursed back, largely reimbursed back to Legal Aid.

I also want to talk about the Crown litigation strategy because that also changed during this critical period. Prior to 2012, Crown Law and the government agencies were supposed to act as litigants, as I've said. And so they're supposed to avoid, prevent and limit the scope of legal proceedings wherever possible, not contest liability if the real dispute is about quantum, not take advantage of a client who doesn't have money and not rely
12.46 on technical defences, unless the Crown's interests would be prejudiced by the failure to comply with particular requirement.

What was really interesting is without any substantive public consultation in 2012, the Cabinet directions for the conduct of Crown legal business removed the model litigant obligation and replaced it with an obligation to act in a manner which satisfies the Crown's objectives.

So, I think this legitimated what we'd already seen
12.47 as the response to our claims.

What that meant, and I think really we've continued to see that up until the Royal Commission which has produced some positive effects for us in Crown litigation. But what we've seen is it meant the Crown pursued vigorously setting down hearings and for a long time, in the knowledge we had no funding, the Crown asked for punitive directions and orders if we weren't able to comply and it continued to raise the Limitation Act as a barrier to the claims, even for clients whose claims were
12.47 filed technically within the timeframe but where leave had to be given, and that was even within the last few years. And this was supported by the Courts.

Q. Ms Hill, the next topic the CLAS, the Confidential Listening and Assistance Service. Because we had Judge

Henwood here last week, you may be able to just summarise some of the key points under this heading.

MS HILL: Yes, and I won't go into that, except to acknowledge Judge Henwood and her comments and the extraordinary work her team did.

And just to pick up on one comment. During her evidence she read out her personal note from the final report of CLAS. And she wrote that a picture was painted of a careless and neglectful system. I wanted to
12.48 emphasise that because defendants often fall into what I call bad apple syndrome. There's one or two bad apples or a few unfortunate people and our position has always been that the system it he have is broken. And so, for Judge Henwood to say that back then, I think was courageous but it's also correct. And that's all I need to touch on in terms of CLAS.

Q. This a similar light our next heading is human rights perspective. We are scheduled to have Rosslyn Noonan here a little later in the week, so again you may be able
12.49 to summarise your key points.

MS HILL: I can. In short, from about 2012, we started to change the conversation and we started to shift from a tort's focus to a human rights focus, both in terms of our domestic legislation and the international covenants that New Zealand had signed up to. And here we acknowledge the advice and support of our colleague, Dr Tony Ellis, who has been invaluable over the years. We have talked about so many of the things today that meet the
12.49 definition of torture and cruel and unusual punishment or treatment.

New Zealand ratified the United Nations Convention Against Torture in 1989 and that Convention provides States have to provide a remedy when acts of torture are

found. In our New Zealand legislation, the UNCAT, as it's called, is found in the Crimes of Torture Act 1989.

It is important to know a couple of things about this. New Zealand has entered a reservation to UNCAT that says that compensation will be paid only at the discretion of the Attorney-General. And then, in the Crimes of Torture Act, it is a requirement that the attorney consent to any prosecution under the Crimes of Torture Act. The defendant in these civil claims is the 12.50 Attorney-General. So, in short, it's the government's lawyer who decides what torture is, who should be prosecuted for it and who should be compensated for it, and that to us is really problematic.

In our written brief, I've talked about the number of shadow reports we've made to different United Nations committees over the years and we've continuously tried to bring an international spotlight onto the experiences of survivors in care. And we think that slowly the snowball effect of adverse comments because there have been 12.51 ongoing adverse comments from the United Nations has started a very slow turn towards the Crown agreeing to come to a better position and a let confrontational position but it has been very slow but we did start to see that turn there.

Q. Our next heading is the Bill of Rights Act 1990 which I take it provided another avenue of claim against the Crown?

MS COOPER: Yes, that's right. I think we referred to that right at the beginning. We've always said 12.52 that people who were in care after the 25th of September 1990 have additional claims for breaches of their rights under the New Zealand Bill of Rights Act and some of these include the right not to be subjected to unreasonable search or seizure.

So, we are looking at a number of programmes Whakapakari was one where people were strip searched without authority. The arbitrary to be free without detention, so being detained on an island like Alcatraz for example. Being locked in Time Out in inadequate and inhumane circumstances. In seclusion rooms without legal authority. The right, an important one is the right for anyone who's detained to be treated with humanity and with
12.53 respect for the inherent dignity of the person. And the right, obviously the critical right, not to be subjected to torture or cruel, degrading or disproportionately severe treatment or punishment.

We've never actually got a trial yet to Court because they've settled. We've been trying I think for about the last 10 years to get one of these trials actually to Court. Because there are really lots of questions. So, for example, a child who's in the custody of CYPS now or who was in a psychiatric hospital, we
12.53 would argue that they are clearly detained for the purposes of the Bill of Rights Act but that needs to be tested. And we say too that the use of third party providers doesn't change the Crown's obligations under the Bill of Rights Act or lessen its liability for what happened in the care of third party providers. But that all needs to be tested.

We don't know yet what the Courts will make of our clients who suffered sexual abuse or physical abuse because at present the only cases that have been dealt
12.54 with have been adults in prisons and Police cells, so we don't know yet what the Courts will make of children being sexually abused and physically abused and locked up in inhumane circumstances, we don't know.

We've got three plaintiffs who are currently on a

trial track and their claims are at this stage scheduled to be heard in a very long trial starting in August next year, assuming they don't settle.

Q. The next section from page 38 deals with the various different settlement processes and again this is obviously a topic that we will come back to next year in the Royal Commission. I realise it's almost impossible for you to summarise all of the complexity of this work but if you're able to highlight for the Commissioners the
12.55 key points of the next section, I am sure they will appreciate that.

MS COOPER: Okay. One of our big bugbears, it's been a theme throughout the time of working in this area, has been access to information and records. As I say, it is an extremely vexed issue. Claimants are entitled to receive a copy of their records under the Privacy Act but the issue with that is that those records are routinely heavily redacted and so they are difficult to make sense of. And also too,
12.56 they only contain the client's personal information or their family information. So, there is a lot of important information held on other records, institutional records, like the secure register or the punishment register or the day books or the time out register or the seclusion register. And a client accessing their own records will not get a information at all.

Redactions is a major issue because it's used as a means of denying what happened. I can give you a crazy
12.57 example of redactions that we've seen. I mean, for several years the Ministry of Social Development refused to give us any Court documents because it decided that the Family Court rules applied which has some quite strict rules around access to Family Court documents, it

decided that applied to all Court documents. And we had an ongoing battle with MSD, saying it doesn't apply to all Court documents, it only applies to specified Family Court documents. They've only just started to give us the other Court documents this year. So, we've had 4 or 5 years where those records were not provided to us at all, completely redacted, so they're now having to redo 4 or 5 years worth of disclosure to provide us with those records now. And they contain absolutely vital
12.57 information. They often help you to piece together where a client was, why they were placed in care, what was happening with their family, what the State knew about their family. It's absolutely vital information to understand where, why, what. As I say, we had about 4 years where we didn't get any of that information. Well, we couldn't explain reasons why we couldn't. Just crazy things like we had one client, this is just an example, where the word "abuse", the first two letters of that
12.58 word were redacted so it was "use" all the way through the records. So, the letters "ab" were redacted every time there was the word "abuse". Of course, you could figure it out but that was to protect the privacy of the parents who were abusing the children. So, it's these kind of - often that information will be completely blacked out on the basis that that's to protect the third party. And so, this just creates enormous obstacles to being able to, one, work out what the State knew, which is relevant to its obligations, but also to put the client's claim together and that is an ongoing issue to
12.59 this day. And, in fact, we would say that has got worse. We had a period where MSD accepted that it should be open with us and we had an agreement about what categories of documents we would receive, then I think lawyers stepped in at MSD and said, no, we should not give all that

information, the Privacy Act applies and the Official Information Act, so we stopped getting a whole lot of information that we'd previously been entitled to.

We act for siblings, so we'd get one sibling's records where some information would be disclosed and then we'd get the other sibling's records where other information would be disclosed, so you would be able to see that information about sibling A had been redacted from sibling A's records, so it was about sibling A but 13.00 redacted, but it would be in sibling B's records, so we'd know they'd redacted it improperly. So, we decided to take that to the High Court and that's one of the advantages of being lawyers, we have a lot of the claims filed in Court, we can ask the High Court to look at this and make orders that fix it. Claimants on their own can't. So, we said to the High Court, look at these examples. Here are records where we've got this page that's been redacted and here's the sibling's records 13.01 which show that this was actually about this sibling, it hasn't been redacted in the sibling's records.

The High Court then made a ruling that we get two versions of the records. So, we get a "Privacy Act" version of the records which the claimant is allowed to see, the claimant is allowed to see, and we get an unredacted version of the records. So, we get a complete unedited version of the records and that makes our job so much easier. But claimants still have all this blacking out. And for the many clients now, we don't file all claims, we don't have the capacity to do that, we still 13.01 get the same versions as the claimants, the survivors, with these multiple redactions that make it impossible to piece together what happened, why it happened, when it happened and, most importantly, what the State knew and did or did not do about what it knew.

MR MOUNT: I think that's a good moment to pause. I am noticing the time, Mr Chair. I am wondering, in light of all of the important evidence we're hearing today, whether a slightly shorter lunchtime might be helpful?

CHAIR: Yes, it would be helpful. Would you like to nominate a time?

MR MOUNT: Could we get away with 45 minutes?

CHAIR: Yes.

13.02 **MR MOUNT:** Thank you, Mr Chair.

Hearing adjourned from 1.03 p.m. until 1.50 p.m.

MR MOUNT:

Q. Ms Hill, I think you are going to begin by talking about at a high level, in summary form, the process adopted by MSD?

A. Yes, recognising we will have time in March to deal with settlement and redress in quite a lot of detail, what I

13.47 am about to summarise is fairly broad.

Settlement processes with MSD have had a large number of iterations, they've changed almost constantly over the years. But there's some things that are consistent and the first is a lack of consistency. The assessors are not consistent in how they treat staff members, in what information they look at, whether they look at just the personal file or the broader information. And they are not consistent in terms of the quantum of compensation offered to claimants.

13.48 Q. That is the amount of money?

MS HILL: Yes. When I talk about quantum, I talk about amount.

They are also universally lacking in transparency. Nobody ever knows really how things are assessed against

what standard or how information is treated. They are not accountable because MSD is investigating its own staff, some of whom are still employed by MSD or Oranga Tamariki. So, MSD has said very clearly it has a duty to its staff members, so it cannot possibly independently investigate claims.

And delay, so much delay. So, in 2016 it was taking the Ministry 4 years to address claims that came to it. So, the Fast Track Process was introduced. This is what
13.49 I would call a quick and dirty approach to a backlog of claims. It was flawed, it was underfunded and while some people did feel that they had meaningful settlements as a result of it, a large number of people didn't.

And after that, people who rejected their fast track offers got stuck in a mire because the full investigation process was incredibly slow and it was almost stopped while MSD started a new process, which is the current iteration. There's about 40 claims which don't appear to be progressing at the expense of more recent claims. And
13.50 by more recent, I mean claims that were taken to the Ministry in 2015, so we're still looking at a 4 year delay.

The current iteration has got the same problems. We've asked for the rules of assessment and we received a completely redacted copy. We complained to the Ombudsman, we got a slightly less redacted copy, and I believe that's the copy the Royal Commission has received as well. So, nobody knows how claims are assessed and we have to do educated guesses to advise our clients.

13.50 What we can say is that, the two or three offers that we have seen under MSD's new process appear to be worse than offers settled previously. We are seeing a steady decline in the way claims are assessed and the amount of compensation offered.

Q. Ms Cooper, I think you're going to pick up from the Ministry of Health and Ministry of Education?

MS COOPER: That's right. After the chain of litigation all the way up to the Supreme Court for the Ministry of Health claims or at that stage the defendant was the Crown Health Financing Agency, we were approached to engage in settlement discussions and in December 2011 a settlement process was approved which involved settlement offers being
13.51 made to 320 claimants then.

Offers were made to all of the clients who had made claims at that stage, even those who had had to discontinue their claims as a result of the Limitation Act hurdles or other Mental Health Act hurdles. As I say, 320 claims were settled in 2012 and we settled the vast majority of those claims.

After that, the Ministry of Health took back the management of the Ministry of Health claims. That was approved by the Minister of Health in 2012. So, I've
13.52 already said they'll consider any claims relating to abuse in psychiatric hospitals. Now they've recently included that to include State hospitals prior to 1993.

After 2012, the top payments available to claimants halved. So, under the process we negotiated settlements in 2012 the highest payment was $18,000 and even that's modest compared with other settlements, as you will have heard. That's now $9,000 and the lowest payment I think is $2,000 or $2,500. So, I have to say the Ministry of Health payments are at the bottom of the rank. While
13.53 there are some pluses about that process, pretty low level burden of proof, it doesn't rely necessarily on records, although you have to show somehow that you were in a psychiatric hospital but this can be even if you've made a claim to ACC and referred to the fact that you

were in psychiatric care because often the records don't exist anymore, that's the reality.

It's relatively fast. Typically, the claims are resolved within about 6 months at the outset. We had one slow period while the Waitangi Tribunal was potentially going to hear the claims.

But there are some flaws. It wasn't hear claims for those who died. So, even if you've made a claim, we've notified and asked for records but before that's been
13.54 considered, too bad. Also too, I think there's actually nothing about the Ministry of Health process in the public space. You cannot look on the Ministry of Health website and find out anything about the Ministry of Health settlement process.

As I've said, the cap on quantum is really poor. It's definitely the lowest, it's at the bottom ranking of all of the government State settlements. Given there is supposed to be parity, that's inexplicable.

An example with the disparity with the Lake Alice
13.54 settlements, we had one client who was a child in the Lake Alice Adolescent Unit, so he was entitled to a payment under that process, and then he was also entitled to a payment because he'd been abused in hospitals. In the Lake Alice hospital he got $81,500 for his other hospital experiences he got $6,000. And his experience this is psychiatric care were not markedly different. The only difference was at Lake Alice he had suffered sexual abuse on top of the other abuse he'd suffered but otherwise his experiences were pretty much identical. To
13.55 try to explain to him the reason between one being $6,000 and one being $81,500, impossible.

Q. The Ministry of Education?

MS COOPER: Ministry of Education, what can I say? It's very ad hoc. It's I think probably of all the

processes the most flawed. There is again absolutely no transparency about how the Ministry of Health assesses claims. They do have an independent assessor who will meet with claimants but that person has worked within some of the Ministry of Education schools, so there's a question mark about independence there.

It takes literally years for any MOE claim to be determined and the settlement payments that we've had so
13.56 far have been in a reasonably low range, between $5,000 I think and $35,000 is the top we've seen so far. So, again, add a lower level.

We know that the Ministry of Education does not take into account propensity or what we call similar fact evidence which Courts would take into account. So, say for example if we're able to say we've got eight other clients who make the same allegations, the Ministry of Education will completely ignore that or put that to one side, it does not take that into account at all. So,
13.57 that means it's able to say unless there is documentary evidence, it will not accept allegations.

So, I think the burden of proof for people in the Ministry of Education process, I would say for some claimants is beyond a criminal standard, certainly higher than a civil standard. And that's the point, there is no transparency about what standard that it's adopting, so we don't know.

That is also beset with major delays, years and years.

13.57 There is no agreement with the Ministry of Education in respect of the Limitation Act. At the moment we are forced to file all Ministry of Education claims. We've been promised one limitation to rule them all. In other words, that will cover all of the government agencies but

so far that has not appeared and we've been trying to work on one with the Ministry of Education since I think at least 2016 and here we are nearly at the end of 2019, yeah nothing yet.

As I say, we have to file.

Ministry of Education, very harsh, if there's no documentary evidence it typically denies things. As we know, most abuse wasn't recorded. As I say, it is an almost impossible bar.

13.58 Q. Ms Hill, still at this high level, the churches?

MS HILL: Touching very briefly on settlement processes with churches, there's a myriad of responses and processes. Even within a church that people would see as a whole, like the Catholic Church, there are a range of orders, so different areas of the country.

The Catholic Church has The Path to Healing. While it's a good process on paper, it is an opt out process. So, a number of Catholic Orders opt out of The Path to

13.59 Healing and instead either defend claims aggressively or opt for another process.

We understand there is no common process with the Anglican Church and that may be being written at the moment.

The St John of God order, Sonja talked about Marylands. It's interesting with them, they are an Australian order and they pay a higher level of compensation for abuse at Marylands but in their it's still far less than they would have to pay if that had

14.00 occurred in Australia. There is a myriad of structures and processes, some better than others, and that's a whole other hearing on its own, I suspect.

Q. Speaking of which, we have another topic which would justify a hearing on its own, and that is the interface

with Maori.

MS HILL: Yes. If our technical people could jump to the very last photo which I think is really poignant and one that I wanted to have today. We've always been aware that Maori were disproportionately affected by the systems and practices of child welfare and its successor agencies since its earliest conception and there's better people than us to talk about it. What we
14.00 can tell you is that over the lifetime of the claims, our clients have been disproportionately Maori. We see in the individual claims, Maori children were more likely to be uplifted from their homes or more likely to be separated from their siblings and more likely to be charged with offences.

We saw that Maori tane, Maori men, were more likely to be placed into institutions, rather than foster homes or whanau. And we see on a distressing regular basis the
14.01 either unconscious or blatant racism expressed in records. And we are aware that welfare impact is intergenerational. We act for up to three generations of one whanau at any given time. We see their children and we see their grandchildren and that is a really distressing thing.

Q. You've talked about the various redress processes with different ministries, do you know, again I'm asking at a very general level, whether in designing those processes any of the ministries have engaged directly with Maori to
14.02 take into account their particular position?

MS HILL: The only instances we are aware of occurred last year when MSD had some hui with selected people to talk about how its processes could be improved for Maori but we've seen no tangible

changes or outcomes that have come out of those hui.

Q. Was there a comment you wanted to make about the slide that we saw a moment ago?

MS HILL: I think it just reflects the fact that there's a group of young Maori men on a couch in their pyjamas and they're all Maori, they're all Maori, and there's only one other thing that I wanted to say here and it's come up a couple of times, is that in institutions, they're not all Maori my apologies.

Q. Three out of four?

MS HILL: Three out of four. The Pakeha boys in those homes were often smaller and weeker and they became targets. So, the flipside of a disproportionate response to Maori, was that there was a small number of Pakeha kids in some of these institutions and just in the same way as the gangs started in the homes, some of the most well-known White Supremacists in our country were those small Pakeha boys.

Q. Can we turn to the final section of your brief with the heading, "Where we are today?".

MS COOPER: Yes. As we said at the start, we represent about 1250 people, most of whom are asking for redress from the State or faith-based institutions for harm. Sadly for us, the number is not declining. Some months we receive a new instruction or a new client every day, in fact one month we had about 1.5 clients every day. We interview each client face-to-face and we work as quickly as we can to put together their claim documents but it's fair to say that because of our workload we are behind.

We are continually hampered by delays and changes to the processes. We've talked about the MSD delays and the Ministry of Education in responding to the claims. And so, we spend or our PAs spend a lot of time explaining why this is happening to survivors and we spend a lot of time following up with MSD and the Ministry of Education to find out what's happening and why nothing has come to us.

And look, understandably, our clients' survivors are 14.05 distressed, angry and bitter about how long the process is taking or about how the relevant defendant responds and we cannot blame them for this.

A lot of our clients say they wish they'd never started their claims because of the delays. Because they feel that having been made by us and our process, because we do have a rigorous process, being made to dredge up these childhood memories has caused them harm, particularly when it takes such a long time for there to be an outcome and often that outcome is not a very 14.05 meaningful acknowledgment or there is little to no redress provided.

I think one of the things that we can say is because of our large client group and because of the number of years, the long number of years we've been doing this work, we have a huge amount of visibility over the way in which whole families and whanau have been affected and continue to be affected by decades of involvement with Social Welfare and its success or agencies in particular. And I think one of the things we still see is that 14.06 generations have all been taken into care with the resulting loss of their culture, loss of language and disconnection.

So, the role of social workers is often described as a tool of colonisation by Maori. We've heard that during

the course of this hearing. We certainly agree with that. We think it will take several generations to undo this harm.

We wanted to talk again, as we flagged at the beginning, about the discretion of the Commission to hear from people who are in care after 1999. And we are pleased about this because, as I said at the beginning, we see home young people who come to us who are still experiencing abuse in care today. And I was talking to you, Simon, I had to do a special sitting at the District Court less than two weeks ago for a young client who is in Oranga Tamariki's custody and the proposal was that this young person in Oranga Tamariki's custody after Court was to be dropped with their suitcase out on the street without a placement. That's less than two weeks ago. So, I put this before the District Court Judge who obviously said not on my watch, placed the young person in a motel overnight and by the next day when we were required to go back to Court, the placement had materialised.

But if there had not been strong advocacy and if there had not been a strong Judge, that young person would be on the streets now, even though they are in Oranga Tamariki's custody, so that's less than two weeks ago.

One of the challenges we note, and I just finish that really by saying a lot of the challenges for our younger clients is that their caregivers or those staff members who were in residences are still employed, still contracted or are still employed by Oranga Tamariki.

Our experience of this is that MSD and Oranga Tamariki dealt with this issue extremely poorly. At one point, both or either/or agency provided a huge amount of information to the Police and to the perpetrators without

consent or knowledge of the claimants.

The position taken was that there was a duty to provide this information and that the State agency Oranga Tamariki and/or MSD was protected by this, by an exception in the Privacy Act and in the Oranga Tamariki legislation.

We took issue with that because we know that our clients have safety concerns, valid safety concerns. So, we were only able to protect the clients who had claims
14.09 in Court and thankfully for our younger clients, we do file our claims in Court. The High Court said to MSD and Oranga Tamariki, you are not allowed to provide that information to the Police unless you've made an application and the client either consents or the Court approves it.

Oranga Tamariki and MSD appealed that to the Court of Appeal. They weren't happy with that decision, wanted to be able to still pass on information to the Police and perpetrators. And so, that was heard in April this year,
14.09 we got the decision a few weeks ago and thankfully the Court of Appeal has upheld the High Court.

So, as at today, MSD and Oranga Tamariki still need to apply to the Court and the Court still has supervision over what information can be provided to the Police and to perpetrators. But I note again that only applies to clients whose claims are filed in the Court and the vast majority of people, their claims will not be filed in any Court.

We've taken steps and continue to take steps to
14.10 protect our clients. I just wanted to say that we do this work as lawyers. We have limited tools to try and bring about some sort of truth and reconciliation process because we think it's important to try and break the cycle of harm in New Zealand.

The civil claims are only one part of the challenge. We're really clear that there needs to be a hearing and a reckoning with the truth of this history of Aotearoa and a commitment both to healing the past, which unfortunately is still the present, and changing our future, and that's going to take far more than legal action and we really support the work of the Royal Commission in unveiling that truth and helping us to move forward in a way that will protect those Tamariki young
14.11 people who are now and in the future will come into the system.

MR MOUNT: Thank you very much, Ms Cooper and Ms Hill. There are dozens if not hundreds of questions that I am sure we all have and we are not going to ask all of those now but as you know, the Royal Commission is coming back in just a few months time to look in detail at redress as a topic.

In the couple of minutes that we've got now, do you have a headline in terms of what the ideal redress world
14.12 would look like or is it best to hold that off until next year?

MS COOPER: Our big request is that there be an independent process. I think it may be all right for preliminary processes to be dealt with by the individual agencies but there needs to be an independent process to go to when the claims are stuck. All we hear is a difference about the law or a difference about the facts and we're really clear about that, we've always been really clear
14.12 about that.

I was at a meeting at the Human Rights Commission I think it was last year and the way that the current processes work, I think Ronald Young J described it, at the moment the government agencies and the faith-based

institutions as the abusers put themselves in the place of the saviours because they get to make the apologies and pay the compensation. And there is something just morally bankrupt about that.

There needs to be independence and I think that will provide some more integrity and transparency about the processes.

MR MOUNT: Ms Hill, do you have anything to add?

MS HILL: I would add, accountability and transparency. That everyone knows what the rules are, the guidelines are, and that they're the same across particularly the State agencies because if you don't know how a claim is being assessed, you are immediately at a disadvantage.

MR MOUNT: Thank you very much. Mr Chair, some of our colleagues have indicated that they may have some questions but I must say there is a general mood that there is so much detail and so much important material to cover, that I think in many cases people will elect to come back at the next hearing.

CHAIR: I know that that is certainly a feeling that's shared by some of my colleagues on the Commission as well but there is a right to ask questions and this will be the time to air those, even if in a preliminary fashion.

MR MOUNT: The right with permission, of course.

CHAIR: Can I then place the matter in the hands of counsel to exercise at this point, should they wish, a right to address questions to Ms Cooper and to Ms Hill? And it may be helpful to the witnesses, if it is confirmed in an early question, for whom which counsel acts. Ms Aldred, can I start with you?

MS ALDRED: I don't have any questions.

CHAIR: Ms Sykes, can I ask you next?

MS SYKES: Can I make a statement rather than a question. (Speaks in Te Reo Maori). I am here today with my friend Ms Davis who were assisted by your affidavit in the Waitangi Tribunal and we can't express our gratitude enough. I'm also here in the capacity representing a number of survivors who I have referred to you over the last 20 years and I wish to convey their respect to you for
14.16 listening when others didn't. We have questions but in the interests of perhaps making a more opportune time for those, I just wanted to convey those two matters personally to you. We will be asking questions in March. One issue that we would like explored is that the Ministry of Maori Affairs seems to be absent in your discussion and those matters certainly arise for the 1950s and 1960s and 1970s, so those will be the matters we may ask questions on in March. So, thank you, kia ora.

14.16 **MS COOPER:** Kia ora.

MS HILL: Kia ora.

CHAIR: Ms McCartney?

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SONJA COOPER AND AMANDA HILL
QUESTIONED BY MS MCCARTNEY

Q. May it please the Commissioners and good afternoon, my name is Jan McCartney, I haven't met with you before. I am acting in this Royal Commission together with
14.17 Ms Lawton for the National Collective of Independent Women's Refuges.

You will have seen from the Terms of Reference that one of the terms, this is what I am asking the question about just for context at the moment, is the impact on whanau, iwi, hapu and communities.

And in that regard, and in asking these questions, can I say that we and Women's Refuge acknowledge the work that you've done, the obstacles that were put in your way and the results that you have achieved which, from what I
14.18 have heard, have been frankly remarkable, given all that has happened.

Can I again just in terms of context ask a number of questions. The first is this, Judge Henwood listened to 1103 abuse survivors and in her report, and this members of the Commission is at paragraphs 107-108, she spoke about or recorded what happened when her report was received by the government at the time. And the response was that of those in care only 3.5% had been the subject of abuse. Her evidence is that that percentage was drawn
14.19 from the number of people who made claims and that it seemed, according to the response, that for others in care their response was positive or maybe neutral.

And this is my first question: From all the work that you have done, have you acted for or interviewed

anyone who described their response as positive? Ms Cooper?

MS COOPER: No. Having said that, people have had some parts of their care that they have experienced positively. So, as we said, people have been in foster placements that they've loved but then have been removed from them. They were in family homes that they loved and were removed. They had a safe and happy time with their own families before they
14.20 were removed. But the purpose for coming to us is because they have suffered abuse in care, so we are not expecting to hear the happy stories. We are expecting to hear about the harm that people have suffered. And I want to support Judge Henwood on that 3.5%. When that report was written, I mean it was at least, I would have thought, 12 years ago now. It was a report that MSD commissioned, we got to see a copy of it, and it was based on the numbers who had then come forward to the Ministry
14.21 of Social Development. At that stage the numbers were quite low. The numbers have drastically multiplied since then. I would have thought that figure is already quite wrong. I would have thought it's at least double potentially.

MS HILL: I'd certainly agree with that. Another thing that Judge Henwood said is there's no evidence to support the number of people who have had positive experiences in care. The 3.5% really is a number that doesn't have a lot of evidence to it and
14.21 there's not a lot of base to it. And I have to say, the expression "only 3.5" is really difficult for me because that's still too many.

Q. May I ask, going on from that answer, going forward from that answer, have you seen any evidential basis for a