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sum of NZD \$70,000, along with payment of his reasonable legal costs and an apology.

429. This offer was communicated to HD through his counsellor, along with information that there may be some “wobble room” on the offer. It was agreed between the counsellor and Cooper Legal that the counsellor would speak with HD (and HF) about the respective offers and Cooper Legal would prepare written advice.
430. On 24 July 2018, Cooper Legal sent written advice to HD about the offer from the Order. Cooper Legal observed that the offer was consistent, at that time, with offers made to other clients with St John of God claims. Having said that, our advice was to consider making a counter-offer.
431. After considering our advice, HD instructed Cooper Legal to make a counter-offer of \$80,000. That counter-offer was communicated in a letter to Carroll & O’Dea, dated 7 August 2018.
432. On 10 September 2018, Sonja Cooper and Howard Harrison had a further telephone discussion. At that stage, a number of claims were discussed, including that of HD. Howard Harrison, on behalf of the Order, communicated that the Brothers would accept the counter-offer made of NZD \$80,000 to settle the claim, along with payment of his reasonable legal costs. This was contingent on HD signing a formal Deed of Settlement.
433. This was communicated to HD by letter dated 11 September 2018. At the same time, Cooper Legal asked for HD to provide instructions about whether he wanted an apology and in what form he wanted that apology.
434. After receiving HD’s instructions to accept the revised offer of NZD \$80,000, this was communicated to Carroll & O’Dea on 24 September 2018.
435. In due course, and consistent with practice at that time, Cooper Legal received Settlement Deeds to be executed by HD, which were forwarded to him. Once HD had executed the Deeds and returned them to Cooper Legal, they were sent to Carroll & O’Dea to be signed by the Order counterparts.

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436. The settlement funds were subsequently paid into HD's nominated bank account in November 2018.
437. HD did not receive an apology letter, although we had indicated that he would likely prefer a written apology.

**HE [WITN0721]**

438. HE has provided a witness statement. Accordingly, this will be a brief summary of his evidence.
439. HE was born in Christchurch in GRO-C 1976. He is Pākehā. HE came into contact with Brother McGrath after he was taken into care and placed at Kingslea Residence. HE had admissions to Kingslea between April 1989 and August 1993. His records show that he absconded from Kingslea, reasonably frequently, between December 1989 and September 1991. He would have been between thirteen and fifteen years old. We estimate that this is when HE would have come into contact with Brother McGrath.
440. As HE has reported, during one of the times he absconded from Kingslea, he took off with an older boy. They met up with other street kids and sniffed at Linwood Park, around Cathedral Square in Christchurch and at a burger bar. The two then went to Brother McGrath's place on Havelock Street to get food and possibly money to buy solvents. Brother McGrath was known to provide both.
441. The sexual assault happened in Brother McGrath's office, while HE was under the influence of solvents. Brother McGrath slipped down HE's pants and put his hands between HE's legs. Brother McGrath digitally penetrated HE's rectum and then raped HE.
442. After the rape, HE went straight to Linwood Park. He lost his bowels and then tried to clean himself in the toilet. After that, HE started sniffing solvents more heavily, trying to forget about the rape.
443. HE has suffered multiple impacts from the abuse by Brother McGrath and from other abuse he has described while he was in State care. He describes suffering

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from anxiety and an inability to sleep well at night. He has a corroded self-esteem, sense of self-worth and a lack of confidence.

444. HE has a deep sense of grief and loss for the life he never had. He is unable to have relationships with others. He isolates himself. HE describes feelings of anger and rage. He trusts no one. He questions his sexuality. For a long time, he wanted to hurt people because of his anger.
445. After the rape by Brother McGrath, HE lost all faith in religious people and others in positions of authority. He kept the abuse hidden for some thirty years.
446. For many years, HE blamed himself for the abuse by Brother McGrath. He can still have feelings of shame and embarrassment.
447. HE contacted Cooper Legal in January 2018, primarily in relation to making a claim in respect of the abuse he suffered in State care. Soon after that contact, HE advised Cooper Legal that he had been abused by Brother McGrath when he had escaped from Kingslea.
448. On 28 February 2018, Cooper Legal wrote to Carroll & O'Dea advising of HE's intention to make a claim. HE's claim was sent to Carroll & O'Dea on 12 April 2018.
449. HE has described the negotiation process in his Witness Statement. His claim was ultimately settled by payment of the sum of NZD \$50,000, along with payment of his reasonable legal costs.
450. Of importance, HE has not had any form of apology from the Order, albeit he requested a face-to-face meeting.

*HF*

451. HF was born in GRO-C 1970. We believe that he is Māori.
452. Between about 1986 and 1987, when he was between 16 and 17, HF ended up on the streets of Christchurch where he hung out with about 25-30 street kids in central Christchurch. This is how he met Brother McGrath. Brother McGrath

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would pick up HF in his Kombi van and provide HF (and other street kids) with food and a place to sleep.

453. Brother McGrath supplied HF with glue, and occasionally cigarettes and money. The sexual abuse started about a year after HF first met Brother McGrath.
454. The first assault took place in the Kombi van. HF was raped by Brother McGrath. After that assault, HF was repeatedly and regularly sexually abused by Brother McGrath. The assaults included penile penetration, Brother McGrath performing oral sex on HF, forced digital penetration of HF by Brother McGrath. Brother McGrath would then force HF to perform the same sexual acts on Brother McGrath.
455. HF is another client who describes being gagged and restrained by Brother McGrath. In particular, Brother McGrath would put his hands around HF's mouth, tie his hands behind his back and, on some occasions, push HF's head into a pillow before raping him again. This resonates with the account of HB.
456. Brother McGrath told HF not to tell anyone about what had happened. He threatened to throw HF in the river and drown him or stab him so he would not be able to talk.
457. The sexual abuse also took place on the property of a marae in [GRO-C] Road, [GRO-C]. This was a place where the street kids were permitted to sleep by the marae administration. Brother McGrath would take street kids there at the end of the day, usually after nightfall. HF states he was abused on multiple occasions at this marae, upwards of 30-40 separate incidents.
458. HF reported that Brother McGrath started abusing him and another boy whose street name was [GRO-B-2] at the marae. Brother McGrath would force HF to have intercourse with [GRO-B-2] while Brother McGrath watched. He would then make [GRO-B-2] have intercourse with HF. Brother McGrath would make the boys perform sexual acts on each other. He would then tie up HF and make him watch while [GRO-B-2] was raped by Brother McGrath.

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459. HF was also raped by Brother McGrath at the Havelock Street property in Linwood. His recollection is this happened on about eight occasions.
460. HF is another client who was assisted by his counsellor through the settlement process. He has been diagnosed with Complex PTSD, depression, anxiety, and drug abuse issues as a direct result of the abuse he suffered at the hands of Brother McGrath.
461. HF abused drugs and alcohol, particularly alcohol, to suppress the memories of the abuse.
462. Even when engaging with us, HF still carried a great sense of shame about being a victim of sexual abuse. This was particularly troublesome for him as a long-term prison inmate.
463. HF has problems with relationships and intimacy. He has had ongoing physical health issues because of the damage to his anus.
464. As stated above, HF contacted the firm through his counsellor, along with other clients of the firm, in September 2017.
465. Cooper Legal contacted Carroll & O'Dea to notify the claim on 13 December 2017. At that time, Cooper Legal attached a document from HF's Social Welfare records referring to HF living with street kids and having contact with Brother McGrath in 1987. This shows that State social workers were also aware of Brother McGrath's involvement with HF and street kids. **[WITN0831027 and WITN0831028]**
466. HF's formal claim was sent to Carroll & O'Dea by Cooper Legal on 10 April 2018.
467. Subsequently, Cooper Legal provided Carroll & O'Dea a report from HF's counsellor dated 14 May 2018. The report highlighted the multiple impacts of the abuse on HF, including being totally out of control and having spent many years being distrustful, suspicious, and hypervigilant. HF also interpreted people as seeking to hurt and harm him. It took counselling for HF to understand the extent

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of the grooming and sexual abuse done to him by Brother McGrath.

**[WITN0831039]**

468. Following a period of negotiation, the Order offered HF the sum of NZD \$85,000, along with payment of his reasonable legal costs. After reflecting on that offer, HF gave Cooper Legal instructions to accept that offer. Given the extremely serious abuse suffered by HF, and the impact it has had on him, the settlement is lower than it should have been.
469. HF was required to sign a Deed of Settlement, which was undertaken in October 2018. The Deed was then sent to Australia, for execution by the St John of God Brothers counterparts in the usual way.
470. The settlement funds were duly paid to HF in late November 2018.
471. As part of the resolution, HF asked for a face-to-face meeting with a representative from the Brothers. That meeting has never taken place, as the Brothers have not travelled to New Zealand, to our knowledge, for some time.

*HG* **[WITN0726]**

472. HG was born in **GRO-C** 1973. HG is Pākehā.
473. HG has provided a statement, so this will be a brief summary, only.
474. HG first became known to Social Welfare at around 13 years of age. Following family difficulties, he began living with a male caregiver who he had met in the community. Initially, this was under an informal agreement between HG's parents and the caregiver but, after approximately two years, the arrangement was formalised by Social Welfare.
475. HG first came into contact with Brother McGrath in the late 1980s, on the streets of Christchurch. HG recalls that he was around 14 or 15 years old at this time.
476. HG was picked up from the streets by Brother McGrath and an older boy and taken to Brother McGrath's sleepout in Linwood, Christchurch. There, Brother

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McGrath gave HG glue to sniff and cigarettes and sexually abused him. The older boy sexually abused HG at the same time as Brother McGrath.

477. After the first incident, HG returned to Brother McGrath's sleepout on multiple occasions and was sexually abused by him. HG disclosed that he was raped at least a dozen times by Brother McGrath. On 5 or 6 occasions, Brother McGrath performed oral sex on HG, and then made HG perform oral sex on him (Brother McGrath).
478. HG states that Brother McGrath sometimes gave him small amounts of cash. He also made HG take other boys to the sleepout, one of whom was his younger brother, HN, referred to below.
479. As HG has set out in his Witness Statement, it took some time for him to be able to disclose the sexual abuse. It was only through counselling that HG realised he had been assaulted, rather than consented to the sexual assaults.
480. HG has been addicted to drugs for over thirty years. He has been diagnosed with PTSD in relation to this, and other sexual abuse he suffered as a child and teenager.
481. HG has spent much of his life in and out of prison due to offending caused by his drug addiction. He has been unable to maintain intimate relationships and for many years questioned his sexuality.
482. HG is unable to trust others, which has impacted his ability to engage in work and social relationships.
483. As HG has set out, HG settled his claim with the Order towards the end of 2019. He received NZD \$85,000, plus payment of his reasonable legal costs.
484. HG received a belated apology letter from the Order in August 2020. The apology letter is attached to his Statement. It is a templated and pro forma apology which expresses shame and sorrow that HG was betrayed as he was and abused when he should have been helped. Three other clients received identical apologies.

HI [WITN0709]

485. HI was born in [GRO-C] 1975. He was brought up in Christchurch with his parents. HI is Pākehā.
486. HI came into contact with Brother McGrath between about 1985 and 1990 through his mother, who worked as a nurse at the St John of God Hospital in Halswell. His mother brought Brother McGrath into the family home when HI was about 11 or 12, to help with an older brother who was in trouble.
487. HI's mother then arranged for Brother McGrath to speak with HI at the St John of God Hospital. In the initial meetings, Brother McGrath was soft and gentle. HI said he was 'almost fatherly'. HI was told he was special.
488. On the second or third occasion, Brother McGrath started asking HI questions of a sexual nature. He told HI that he had the devil in him, and he needed to be clean. Brother McGrath also told HI that he wanted to help him. The first episode of abuse took place in the chapel, where Brother McGrath rubbed water on HI and stroked HI's erect penis. Brother McGrath assisted HI to masturbate until he orgasmed.
489. HI was abused on a second occasion at Brother McGrath's house in Linwood. At the time of the assault, HI was drunk. As HI explains, Brother McGrath engaged HI in mutual masturbation.
490. On a third occasion, HI skateboarded to Brother McGrath's house in Linwood. Once again, he had been drinking alcohol. Brother McGrath asked HI to masturbate Brother McGrath.
491. On a fourth occasion, HI went to Brother McGrath's house in Linwood. A younger boy named [GRO-B] was there. On this occasion, Brother McGrath engaged the boys in sexual conduct with Brother McGrath and each other, something that has been referred to in other accounts above. On this occasion, Brother McGrath also physically assaulted HI, smacking him with something like a cane. He was also yelling at HI.



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492. At about this time, HI started to wet his bed. He would be punished by his father for this, including being whipped with a horse whip.
493. Unfortunately, HI was required to have further contact with Brother McGrath due to his offending, which required the undertaking of community work. His community work was undertaken at the St John of God Hospital.
494. On one occasion, at the end of community work, HI's mother took him to the chapel. Brother McGrath was there. HI's mother asked Brother McGrath to have HI stay with him at the home he ran for troubled boys. As a result, HI ended up at Hebron House.
495. At Hebron House HI drank alcohol. On the third night, Brother McGrath came into HI's room. Brother McGrath again told HI that he had the devil in him. He made HI masturbate himself and then masturbate Brother McGrath.
496. Two days later, HI accidentally broke a door window. Brother McGrath yelled at him. He made HI pull down his pants. He again smacked HI with something like a cane. Brother McGrath then pushed HI down and raped him. HI recalls there were faeces everywhere and that Brother McGrath was calling him a 'filthy boy' as the rape was happening.
497. HI was extremely traumatised after the rape. He was also bleeding and crying. When Brother McGrath saw the faeces all over HI's bed, he made HI clean it up. Brother McGrath rubbed HI's face in his own faeces.
498. HI fled from the property after that. He returned home and was not made to go back to Hebron House.
499. HI was unable to disclose what had happened to him for many years.
500. As HI describes, he has suffered profound, serious, and ongoing psychological and physical damage. This has included use of alcohol and drugs. HI has also felt a sense of loss, resentment, not belonging, and feeling worthless. HI has prostituted himself for money and become involved with Satan and Satanists. He also joined a gang.

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501. HI has been diagnosed with PTSD, anxiety, and depression. He has made multiple attempts to take his own life.
502. HI contacted Cooper Legal in January 2019. This was a very difficult process for him from the outset.
503. Cooper Legal notified Carroll & O'Dea of HI's claim on 22 May 2019.
504. HI's claim was sent to Carroll & O'Dea on behalf of the Order on 17 October 2019.
505. As HI explains, on 2 December 2019, the Order offered HI NZD \$75,000, along with payment of his reasonable legal costs.
506. HI instructed Cooper Legal to make a counter-offer of NZD \$85,000, along with payment of his reasonable legal costs. This counter-offer was made on 11 December 2019. The counter-offer was accepted on behalf of the Order on 16 December 2019.
507. HI was required to sign a Deed of Settlement, which he signed in February 2020. The Deeds was then returned to Australia for signing by the St John of God Brother counterparts. The settlement funds were duly paid into Mr HI's nominated account in March 2020.
508. As Mr HI explains, the Order overlooked providing an apology letter. Accordingly, it was necessary to chase this up in July 2020.
509. Ultimately, an apology letter was sent to HI in early September 2020. It is identical to the apology to HG. Indeed, the original apology referred to HG at one point and so had to be redone.

*HJ*

510. As will be evident from the narrative in this Witness Statement, most of the clients were brought up in Christchurch. HJ, on the other hand, was brought up in the Gisborne and Manawatu regions. HJ and his family had ongoing involvement with

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Social Welfare, due to ongoing concerns about neglect and physical abuse within the family. HJ is Māori.

511. HJ was born in **GRO-C** 1976. He was often passed between family members because he kept getting into trouble. On one occasion, HJ's mother sent HJ to his aunt in Christchurch, to get him away from the people he was mixing with. HJ believes he was about 11, so this would have been towards the end of the 1980s.
512. By the time HJ went to stay with his aunt, he was already using solvents and drinking alcohol. HJ's aunt lived in Linwood, Christchurch. HJ spent a lot of time at the park nearby with other kids, who were drinking and sniffing in the park. He also used solvents.
513. HJ became involved with Brother McGrath when Brother McGrath pulled up at the park in a van, providing food to the kids in the park. The other kids at the park already knew Brother McGrath. One of those boys was HJ's cousin, who was a bit older than HJ.
514. Initially, HJ thought Brother McGrath was a good person. He thought it was cool that he brought the boys food.
515. The abuse started when Brother McGrath asked a few of the boys to go back to his house, to learn about Jesus. HJ recalls that he, his cousin, and another boy went with Brother McGrath in his van. HJ remembers his cousin telling him that things would be fine. His cousin also said that Brother McGrath had wine and there was the possibility of getting food, or a can of gas.
516. HJ went into a garage that had been converted into a sleep-out. Brother McGrath came into the sleep-out. He started patting the top of HJ's head and then touched HJ all over his body. Brother McGrath then pushed HJ's head down and forced HJ to perform oral sex on Brother McGrath. Brother McGrath was telling HJ that everything would be alright during this.
517. After this, Brother McGrath bent HJ over the bottom of a bunk, pulled down his pants, and raped HJ.

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518. Brother McGrath left HJ in the shed for 5 or 10 minutes and then returned, asking HJ if he wanted to be dropped anywhere. HJ remembers not knowing how to respond, because he was under the influence of glue. He does remember that he was bleeding and in a lot of pain. Brother McGrath returned HJ to the park, where he ran into his cousin. HJ realised that his cousin knew exactly what had happened to HJ and distinctly recalls asking his cousin whether he had set HJ up.
519. HJ was assaulted a second time about a week later. He was down at Linwood Park, with street kids. Again, he had been sniffing glue and drinking alcohol. Brother McGrath again picked up HJ from Linwood Park. There were spray cans in the back of the van, that HJ helped himself to. Brother McGrath then drove around Christchurch, picking up other boys.
520. Brother McGrath returned to the house and asked HJ to wait in the sleep-out. HJ tried to get out of the room, but the door was locked.
521. Brother McGrath came back into the sleep-out. Again, he told HJ that everything would be alright. This time, anticipating what was happening, HJ tried to put up a bit of a fight. This was unsuccessful. Brother McGrath masturbated HJ. Again, he forced HJ to perform oral sex on Brother McGrath before he once again raped HJ.
522. Following the rape, Brother McGrath went out and asked HJ to wait. As soon as the door opened, HJ ran away. He ended up back in the park, where he stayed for the night because he was so distressed about what had happened.
523. The next day, HJ returned to his aunt and asked if he could go home. He remembers his aunt pressing him as to what had happened. HJ told his aunt to speak with his cousin and ask him.
524. HJ remained at his aunt's home for a couple more days. He hung around and sniffed but did not return to the park.
525. HJ returned to Gisborne. He was unable to tell his family what happened.

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526. HJ did speak with his cousin about the rapes a few years later. His recollection is that his cousin treated it as if it were a kind of joke. HJ believes his cousin told a couple of uncles what happened, because HJ was teased by some of those uncles, including being called a "little homo boy".
527. HJ was very much affected by the abuse. Even at the point of instructing us, he still believed somehow it was his fault.
528. At the time of coming to Cooper Legal, HJ had just started counselling through prison. Even then, he had been unable to talk about this abuse.
529. HJ GRO-C on two occasions. On multiple, other occasions, he GRO-C
530. HJ is still unable to have males touch him. This resulted in big fights while HJ has been in institutional care.
531. HJ has described finding it difficult to get close to anyone. He has had multiple sexual partners and has children to nine different mothers.
532. HJ blamed his mother, for a long time, for sending him to his aunt in Christchurch. He spent a lot of time running away from home, staying with an uncle who was a gang member in Gisborne. That uncle raised HJ, encouraging him to deal drugs and grow marijuana. HJ ended up becoming part of the gang life as well.
533. HJ abused pills and cannabis for many years. Only in more recent years has HJ been trying to manage his addictions and leave behind his use of drugs to self-medicate.
534. HJ has described having many flashbacks to the abuse by Brother McGrath, even doing something simple as holding a partner's hand. For many years, HJ had nightmares. He has ongoing problems with sleep.
535. HJ finds it very hard to trust anyone. This has been something he has been working on as a consequence of starting to address the abuse.

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536. At the time HJ instructed us, he wondered what his life would have been like had he not been sexually abused by Brother McGrath. He believed that the abuse had had a detrimental impact on all aspects of his life which he was only then able to start addressing.
537. HJ contacted Cooper Legal in October 2018, advising that he wished to make a claim in relation to abuse by Brother McGrath.
538. Cooper Legal notified Carroll & O'Dea of HJ's claim against the Order by letter, dated 15 November 2018.
539. HJ was interviewed by a lawyer from Cooper Legal while he was still in prison at the end of February 2019.
540. Once Cooper Legal had collected in relevant records, a draft statement was sent to HJ for his input at the end of May 2019. By that time, HJ had been released from prison.
541. After receiving HJ's feedback and reviewing supporting documents, his claim was sent to Carroll & O'Dea on 21 October 2019.
542. Sonja Cooper and Howard Harrison had a preliminary telephone discussion about HJ's claim, among others, on 12 November 2019.
543. On 2 December 2019, the Order offered to settle HJ's claim by paying him NZD \$75,000, along with payment of his reasonable legal costs. This offer was communicated to HJ in writing. HJ advised Cooper Legal that, after discussing the offer with his family, he had decided to accept the offer. He also advised that he did not need an apology.
544. On 18 December 2019, Cooper Legal communicated acceptance of the offer made to HJ to Carroll & O'Dea.
545. As with other clients, HJ was required to sign a formal Settlement Deed recording the agreement. Because of the intervening summer break, the Deed was not forwarded to Cooper Legal until mid-January 2020.

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546. Once the settlement documentation was signed by HJ, it was sent to Carroll & O'Dea in Australia on 19 February 2020, for the Order counterparts to sign.
547. HJ received his settlement funds on or about 18 March 2020.
548. Although he had not requested an apology letter, HJ also received an apology letter, sent in July 2020. This apology letter, signed by Brother Timothy Graham, expressed shame and sorrow that HJ was betrayed in the way he was and abused when he should have been helped. The letter also acknowledged that HJ's life had not been easy, so Brother Timothy was pleased that the reparations – civil issue had been resolved. He also hoped that life would be a bit easier for him going forward. As stated above, this letter was identical to the letter sent to HG, HI, and HK.

*HK*

549. HK was born in **GRO-C** 1980. This makes him one of our younger clients in the group. HK is Pākehā.
550. HK met Brother McGrath when his father took HK to Brother McGrath's house in Halswell Road. He believes his parents placed him with Brother McGrath because he was a bit hyperactive and "running around a bit". HK was very young, around age 10, when he was placed with Brother McGrath, although he acknowledges he may have been a little older. This puts the timeframe in the early 1990s.
551. Initially, Brother McGrath was friendly and kind. The sexual assaults started after HK got into trouble for eating biscuits the boys were not meant to eat. Brother McGrath took HK into the sleep-out area and said something to him about being naughty. Brother McGrath put his hands on HK's shoulder and then touched HK's genitals over his clothes. Following that, Brother McGrath put his own penis into HK's mouth. He was telling HK that he needed to be good.
552. HK reported that this happened on about five further occasions. After the first assault, Brother McGrath also masturbated HK, still telling him he was a good boy.

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553. The worst memory for HK was being raped by Brother McGrath. When this happened, Brother McGrath touched HK's penis. He made HK perform oral sex on him. After that, Brother McGrath turned HK around and raped him.
554. HK states that the last time he saw Brother McGrath was an occasion when Brother McGrath had collected HK in his van and had taken HK to the house in Halswell Road. HK remembers that when they got to the house, all the windows were broken, so Brother McGrath dropped HK back home again. This may have been after HD and HS smashed up the property. HK's father said that he would not be seeing Brother McGrath again, which gave HK a huge sense of relief.
555. HK had not told anyone about the abuse by Brother McGrath until he saw a priest and became angry at him. Eventually, HK told the priest what had happened to him. The priest gave him the details for Cooper Legal and told HK to contact Cooper Legal.
556. HK reports being deeply affected by the abuse. He engages in homosexual acts when he is "out of it" on drugs or alcohol, even though he is heterosexual. HK is the only person in his family who has been in trouble. He has lost his confidence and sense of self-worth.
557. Although HK had never smoked cigarettes before his contact with Brother McGrath, he started smoking and using drugs. Prior to the abuse, HK had been playing hockey, at a level which may have later qualified him to play for New Zealand. As a result of the abuse, HK eventually gave up hockey as he started hanging out with the wrong people, increasing his use of alcohol and drugs.
558. HK has multiple assault convictions, mainly as a consequence of anger issues. He is often depressed, something he still struggles with. HK sometimes has flashbacks to the abuse.
559. Although HK has been employed, because of his criminal history he has been unable to pursue a career he really wanted to pursue. He would have become a police officer, but was unable to do so because of his convictions.



560. HK describes himself as the “black sheep” of his family. On one occasion he hit his father, knocking his father’s teeth out. He remembers he was angry with his father and blamed him for the abuse.
561. HK contacted Cooper Legal in February 2019, advising us that he had been abused by Brother McGrath and wanted to bring a claim against the Church.
562. In April 2019, HK was interviewed by a lawyer from Cooper Legal. At the same time, Cooper Legal started to collect in various records to support HK’s claim.
563. On 22 May 2019, Cooper Legal notified Carroll & O’Dea that HK had reported sexual abuse by Brother McGrath and that we were instructed to bring a claim. Our letter was acknowledged on 22 May 2019.
564. At the end of May 2019, Cooper Legal prepared a draft claim document for HK to review and provide feedback on. After receiving that feedback, HK’s claim was finalised and sent to Carroll & O’Dea, by email, on 22 July 2019.
565. By 15 October 2019, Cooper Legal had received no response, at all, from Carroll & O’Dea, so sent a chase-up email. That day, Carroll & O’Dea acknowledged having received the claim for HK and HG and undertook to come back early the following week.
566. Ultimately, Sonja Cooper and Howard Harrison discussed HK’s claim, along with three other claims, on 12 November 2019. During that discussion, Mr Harrison stated that there was a potential for fraudulent claims. He referred to the lack of contemporaneous records. He acknowledged, however, that HK and the other three referred to (HG, HI and HJ), all had different ways in which they had come to meet Brother McGrath. He stated that the Order accepted, generally, that they were telling the truth and they would make offers to settle their claim.
567. On 2 December 2019, Cooper Legal received an offer from the Order to settle HK’s claim by paying him NZD \$75,000, along with payment of his reasonable legal costs.

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568. The offer was communicated to HK in writing on 4 December 2019. The advice from Cooper Legal was that the offer was consistent with offers made to other clients of the firm who had suffered similar abuse but suggested we could go back with a small counter-offer.
569. On 17 December 2019, Cooper Legal was instructed to make a counter-offer of NZD \$85,000, along with payment of HK's reasonable legal costs. HK asked Cooper Legal to stress that he had been placed with Brother McGrath by his parents, who believed that Brother McGrath could help their son with his behaviour. The ensuing sexual abuse and the breach of trust perpetrated by Brother McGrath was profound and had resonated throughout HK's life, including feeling alienated from his family.
570. For that reason, we asked that the counter-offer be accepted so that settlement could be proceeded with. That same day, we received confirmation that the Brothers had accepted the counter-offer.
571. As with other claimants, HK was required to sign a formal Settlement Deed. Because of the Royal Commission of Inquiry into Abuse in Care, Carroll & O'Dea confirmed that HK would not be required to enter into a confidentiality clause (as was the case for the previous 3 clients). Carroll & O'Dea did advise, however, that there would be a delay in receiving the settlement documentation because of the impending Christmas break.
572. Ultimately, the settlement documentation was received towards the middle of January 2020. It was then sent out to HK. Once the settlement deeds were executed, they were returned to Cooper Legal and then sent to Sydney to be signed by the Order counterparts.
573. The settlement funds were ultimately paid to HK on 17 March 2020.
574. In July 2020, Cooper Legal contacted Carroll & O'Dea, reminding Carroll & O'Dea that HK, among others, had never received an apology letter.
575. The apology letters were sent through on 14 July 2020. The apology letter for HK was identical to the apology letters received for HG, HI and HJ. As already noted,

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there was also an error in the apology letters, in that they all referred to HG, rather than the individual claimants at one point in the apology letter. Accordingly, it was necessary to ask for amended apology letters, which were sent through on 18 August 2020.

576. HK's letter was then sent to him in September 2020.

*HL*

577. HL was born in GRO-C1981, so is another of our younger cohort. His mother is Māori.

578. Like HK, HL came into contact with Brother McGrath at about age 12 through his father, who got hold of Brother McGrath to provide some oversight of HL while his father was at work. HL first met Brother McGrath at his grandmother's house, where it was agreed that HL would go and help at Brother McGrath's house doing gardening, painting, and reading the Bible.

579. On the first day HL spent with Brother McGrath, he was picked up by Brother McGrath in Brother McGrath's van. There were already a couple of boys in the van. Brother McGrath took HL and the other boys back to his house. Brother McGrath went into the house and the boys started to do their own thing in a shed at the back of the house. In particular, the boys were smoking and sniffing.

580. One of the first things HL reports is seeing Brother McGrath giving cigarettes, paint, and glue to the boys. HL had never seen anything like this in his life and was shocked. He describes having to fit in, however.

581. Brother McGrath came into the shed when HL was holding solvent in his hand. Brother McGrath said he wanted to talk to HL and grabbed him by the scruff of his neck. He took HL inside the house and sat him down. HL reports that, before he knew it, Brother McGrath had pulled out his penis and forced it into HL's mouth. HL was forced to perform oral sex on Brother McGrath. HL remembers that he was retching and crying. He also remembers Brother McGrath was telling him that he should not be doing that kind of stuff, referring to glue-sniffing.

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582. HL remembers that Brother McGrath made threats against HL's father, who was Irish. In particular, he was threatening to have HL's father sent back to Ireland because he was an overstayer. The purpose of this threat was presumably to discourage HL from reporting the abuse and instead to co-operate with Brother McGrath's sexual assaults.
583. Later, Brother McGrath took HL and a couple of other boys back home in the van. HL was the last in the van. He remembers that Brother McGrath came into his grandmother's house and had dinner. Brother McGrath told the grandmother that HL was troubled and was telling lies.
584. The next morning, Brother McGrath picked up HL very early in the morning. They went straight back to the house. Brother McGrath took HL to Brother McGrath's room. He shut the door and told HL to take his clothes off. Brother McGrath made HL lay face-down on the bed, naked. Brother McGrath was massaging him with something like oil. Before he knew it, HL was screaming and crying because Brother McGrath was anally raping him. HL remembers trying to tell Brother McGrath to stop because it was hurting. Brother McGrath pushed HL's head into the pillow to muffle his screams. This has echoes with the narrative of HF.
585. After the rape, HL was forced to perform oral sex on Brother McGrath. He remembers that Brother McGrath's penis was covered with faeces and blood. This made HL retch and vomit again.
586. After HL was raped and violated, Brother McGrath threw him into the bathroom to clean himself up. Brother McGrath took HL's underwear. After this, HL remembers ending up in the van and he and Brother McGrath went to pick up the rest of the boys. He was told to act as if nothing was happening.
587. HL remembers that the other boys were huffing paint or glue and smoking cigarettes. One of those boys was HQ, who was a bit older than HL and is referred to below.
588. HL remembers that towards the end of the day, he was again taken by Brother McGrath back to his grandmother. He remembers that Brother McGrath said to

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HL's grandmother that he, Brother McGrath, would pick up HL for the weekend and take him for the whole weekend. HL was terrified hearing that.

589. HL recalls that on the third day Brother McGrath came to collect him, HL acted as if he was still asleep. HL says that he jumped out of the window and ran off. The other boy HQ lived in the area, so he ran down to his house.
590. HL never saw Brother McGrath after that day. He does recall ending up with the police, he thinks because he smashed a window in a vehicle. Because of that, he was sent back to Auckland.
591. HL has been profoundly affected by the abuse. HL described himself as having had "a mask on" his whole life. He states he has acted as though he is alright, like he is hard and a gangster. HL has hidden behind this tough mask in prison for 19-20 years, knowing he would be vulnerable if the abuse became known to other inmates.
592. HL has been in and out of prison. There was a period of his life where it was just drugs, to mask the memories of what had happened to him at the hands of Brother McGrath. At one point, HL tried to kill himself because of the bad thoughts he could not live with.
593. HL was summoned to a gang pad in Halswell, in about 2001. When he went to the pad, he discovered that Brother McGrath's nearby house was still intact. He had an overwhelming desire to burn the house down but instead got himself "wasted".
594. HL has committed multiple offences, mainly to feed his drug habit. Although HL has undertaken programmes to help deal with his anger, as well as his drug addiction issues, at the point of instructing us he recognised the need to confront the abuse he had suffered at the hands of Brother McGrath if he was really to move forward.
595. HL first contacted Cooper Legal at the end of April 2019. At that time, he was in prison. He had heard Cooper Legal was helping people who had been victims of

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Brother McGrath. He explained that he had been a victim himself and was wanting our assistance to make a claim.

596. After formally instructing Cooper Legal, we set about to collect in records to support HL with his claim.
597. On 22 May 2019, Cooper Legal sent a letter to Carroll & O'Dea notifying the firm that we had been instructed to act for HL in relation to the abuse by Brother McGrath. We explained that our understanding was the abuse occurred in 1990 / 1991.
598. Our letter was acknowledged by Carroll & O'Dea on behalf of the Order on 22 May 2019.
599. HL was interviewed by Amanda Hill on 5 July 2019. In September 2019, HL contacted the firm to advise us that there was additional information he needed to tell us.
600. After collecting in HL's records, a draft statement was sent to him to review in February 2020. HL met with a lawyer from Cooper Legal at the end of February 2020, at which time he provided his feedback on the draft statement.
601. HL's claim was finalised and sent to Carroll & O'Dea, with supporting documents, on 19 March 2020. Carroll & O'Dea acknowledged receiving the claim. By that time, New Zealand was preparing to move into lockdown.
602. Cooper Legal chased Carroll & O'Dea for progress on 30 May 2020. Cooper Legal was advised that we should hear something on 30 May 2020.
603. Cooper Legal chased up Carroll & O'Dea on 18 June 2020, having heard nothing. On 22 June 2020, Cooper Legal was advised that Carroll & O'Dea had instructions from the Order.
604. On 25 June 2020, Sonja Cooper and Howard Harrison had a telephone discussion about HL's claim and the claim of ME (who was at Marylands). At that stage, HL was offered NZD \$95,000 plus payment of his reasonable legal costs,

conditional on him signing a Settlement Deed. He was also offered an apology in person and / or by letter.

605. Cooper Legal communicated with HL about the offer on 26 June 2020, and by telephone on 29 June 2020. Cooper Legal was instructed to make a counter-offer of \$120,000. At that stage, Cooper Legal estimated that the claim would probably settle for between \$100,000 and \$115,000.
606. The counter-offer was communicated in writing to Carroll & O'Dea on 1 July 2020. In that counter-offer, Cooper Legal referred to the very serious nature of the abuse, as well as the profound and long-term damage HL has suffered. By that time, New South Wales was in lockdown which caused further delays.
607. Cooper Legal chased up Carroll & O'Dea on 7 July 2020. On 8 July 2020, Carroll & O'Dea advised that the Brothers were prepared to go to a final figure of NZD \$105,000, along with payment of the reasonable legal costs and an apology.
608. This settlement is the highest we have received for a Hebron client, but we cannot say why it was so high. Having reflected while preparing this Witness Statement, we query whether the level is due to the timing of the abuse of HL, which may have taken place after the Order was made aware of Brother McGrath's abuse at Hebron and Kendall Grange (see below). We can only speculate, not being privy to such information. The lack of transparency about quantum, which we comment more on below, as well as the Order's knowledge about the dates it was aware of reports of abuse, are two of the many concerns we have with a process where the Order investigates and settles claims against itself, without proper external scrutiny or equality of arms.
609. The revised offer was communicated to HL on 8 July 2020. HL communicated his acceptance of the offer. Carroll & O'Dea was formally advised of that acceptance in a letter dated 9 July 2020.
610. As with other claims, HL was required to sign a formal Settlement Deed, which was sent to him in mid-July 2020. Once the signed Deed was returned to Cooper

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Legal, it was then sent to Sydney for execution by the Order's counterparts at the end of July 2020.

611. It took some time for the settlement funds to come through, due to both countries being in various forms of lockdown. Accordingly, Cooper Legal chased up with Carroll & O'Dea on 31 August 2020 and 17 September 2020.
612. The funds were finally received into the firm's trust account in late September / early October 2020, at which time they were transmitted to HL.
613. HL is another claimant who has received a reasonably pro forma apology from the Brothers. The letter said sorry from the Brothers for what Brother McGrath had done to HL. The letter also expressed shame and sorrow that HL was betrayed in the way he was and abused when he should have been helped. As with other letters, the letter stated that Brother Timothy knew HL's life had not been easy, so he was pleased that the reparations – civil issue had been resolved. Brother Timothy also expressed the hope that life would be a bit easier for him going forward and wished him all the best for the future. That letter was sent to HL on 16 October 2020, the date Cooper Legal received it.  
**[WITN0831040]**

**HM [WITN0715]**

614. HM was born in GRO-C 1972. She spent most of her life in Christchurch. She was first taken into the care of the State in May 1985. She was finally released from care by 1988.
615. As with Joanna Oldham, referred to below, and who gave evidence in the Pacific People's Hearing, HM came into contact with Brother McGrath through other street kids, mainly when she had run away from home and foster placements. She met Brother McGrath at about age 13 or 14, as he was often around the centre of Christchurch in places where the street kids hung out.
616. In her Witness Statement, HM describes witnessing Brother McGrath sexually assault two young boys on three separate occasions. This was serious sexual abuse, comprising forced oral sex and rape. After the first sexual assault, Brother



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McGrath made HM clean up the vomit of the boy he had sexually assaulted. HM also describes Brother McGrath inappropriately touching her chest and hair.

617. HM talks about turning to glue, in a serious way, to block out the memories of what she saw Brother McGrath do. She also talks about many of her friends who were victims of Brother McGrath being dead through drug abuse GRO-C. As with others, Ms GRO-B-H  
M refers to those who died in the fire in 1992.
618. HM has made a claim against the Order. At the time of preparing this Statement, HM has received an offer to settle her claim, including a cash sum and payment of her reasonable legal costs, contingent on signing a settlement deed.

*HN*

619. HN was born in GRO-C 1975. He is the younger brother of HG, referred to above. HN is Pākehā.
620. HN came into contact with Brother McGrath in about 1988 when he was hanging out with his brother HG on the streets of Christchurch. HN would have been 13 or 14 years old. He recalls that Brother McGrath was always around town, helping out the street kids and initially he thought Brother McGrath was "cool".
621. On one weekend, HN went with his brother and his brother's friend, along with some other boys, to hang out at Brother McGrath's house, in Linwood.
622. Brother McGrath gave the boys beer, cigarettes, and let them sniff glue. The boys stayed the night.
623. Brother McGrath then invited HN to go for a ride in his van. Brother McGrath parked the van at Linwood Cemetery, where he gave HN cigarettes and told him to get into the back of the van and sniff glue if he wanted.
624. HN sniffed glue. It was then that Brother McGrath sexually assaulted HN for the first time. Brother McGrath began to masturbate HN and then started masturbating himself. Following this assault, Brother McGrath apologised and said not to tell anyone else because Brother McGrath might not be able to help the street kids anymore.

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625. Later that day, Brother McGrath took HN into the sleep-out connected to the property, where HN sniffed more glue and drank alcohol. HN fell asleep and woke up to Brother McGrath raping him.
626. After the rape, Brother McGrath told HN to stay in the sleep-out and he would be back soon. HN was crying. Brother McGrath told HN not to let the other boys see him crying, or they may give him a hard time. Brother McGrath then raped HN again. HN states he was raped by Brother McGrath twice more that weekend, also in the sleep-out.
627. HN never returned to the place after that weekend, and he never told anyone about what happened.
628. HN was only able to disclose this abuse after his brother, HG, reached out to him from prison, asking for HN's forgiveness and telling HN he knew what had happened to him. It was then that HN was able to start confronting the abuse he had suffered at the hands of Brother McGrath.
629. HN contacted Cooper Legal in June 2020, stating he wanted to make a claim against Brother McGrath.
630. HN explained that hearing that his brother was also abused by Brother McGrath gave him the courage to tell someone else about how damaging his own abuse had been in his life. HN explained to Cooper Legal that he blocked out the abuse for decades by using drugs and alcohol. He also isolated himself from his family and the rest of the world.
631. On 18 September 2020, Cooper Legal contacted Saunders Robinson Brown, lawyers, asking if the firm held any records in relation to HN. As expected, we were advised that no records are available.
632. HN's claim has been prepared entirely on the basis of written communications between Cooper Legal and HN as, to this day, HN has not been able to speak about the abuse to a lawyer from our firm. HN signed a written statement dated 28 July 2021.

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633. The written statement, along with supporting records from HN's Social Welfare file, was sent to Carroll & O'Dea on behalf of the Order on 4 August 2021.
634. To date, there has been no acknowledgment of that claim.

*HO* [WITN0734]

635. HO was born in GRO-C 1977. He is Pākehā. HO has completed a Witness Statement. Accordingly, this provides brief details about his claim.
636. As HO has explained, he started getting into trouble at about age 13 or 14, which places the timeframe in the early 1990s. HO was breaking windows, breaking into cars, and staying out late. HO recalls he was required to undertake community work for his offending through the Community Council. The community work was with Brother McGrath.
637. HO describes being sexually abused by Brother McGrath at Hebron House on Halswell Road. He recalls that Brother McGrath picked up HO and other boys from community work in his van and then took them to his property.
638. At Brother McGrath's property, HO came into contact with skinheads huffing petrol and sniffing glue. He remembers how that group seemed older to him than he was, which is consistent with HA's account.
639. The sexual abuse started when Brother McGrath called HO into his office. HO states that Brother McGrath started out being nice. Then, all of a sudden, HO was made to perform oral sex on Brother McGrath. He threatened HO with being placed at Kingslea Residential Centre if HO did not do what he was told.
640. HO had to complete the community work and returned to Hebron House to do gardening and other chores. He remembers that skinheads were there again, sniffing glue. As with the first occasion, Brother McGrath called HO into his office. On this occasion, HO was anally raped.
641. After HO was sexually violated, he remembers walking down the road. He had blood in his underwear. For reasons that are unclear, he was not required to complete his community work and did not return to Hebron House.

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642. HO describes leaving home after he was abused by Brother McGrath. He started to sniff glue and became a skinhead and a drug addict.
643. HO started to offend. He had a brief admission to Kingslea in 1992. By that stage, he was prospecting for a gang.
644. From there, HO progressed to prison. He has been in and out of trouble. He still has problems with drugs and alcohol.
645. HO describes having intimacy problems. Dealing with the abuse creates anxiety.
646. HO hates anything to do with the Church. He also hates people in authority, although he is coming to realise that not all people in authority are bad.
647. HO has described frequent nightmares and flashbacks. He has periods of anger. He is unable to hold down jobs for long because he starts getting angry at people for no reason.
648. HO is estranged from his parents because he blames them in some ways for what happened. He is overprotective of his children because he is worried about what might happen to them.
649. His claim has not yet been sent to Carroll & O'Dea.

*HP*

650. HP was born in GRO-C 1974. He was brought up in Christchurch. HP is Pākehā.
651. HP started getting into trouble at about age 13 or 14, which would be in around the late 1980s.
652. In common with other clients, HP was taken to Brother McGrath by his father, who had arranged this through a friend. HP understood he would be told about the Bible and how to do practical tasks.
653. HP was sexually assaulted by Brother McGrath on three separate occasions. Each of the assaults took place at the property at Halswell Road.

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654. On the first occasion, Brother McGrath played with HP's genitals and then raped HP. After the rape, Brother McGrath forced HP to perform oral sex on him. Brother McGrath belittled HP, telling him that he was overweight and needed to go on a diet.
655. On two subsequent occasions, HP was forced to return to the property by his father. He was collected by Brother McGrath in the van along with other kids and taken to the property, where he was again raped by Brother McGrath in the same way as had occurred on the first occasion.
656. HP recalls rapidly deteriorating as a consequence of the rapes. His use of methamphetamine, cannabis and pills escalated. He resorted to drinking alcohol daily. HP suffered from nightmares frequently and resorted to violence, frequently assaulting those he came across. HP stills suffers from nightmares.
657. HP has served prison sentences for offending, which occurred under the influence of drugs. HP was later diagnosed with depression and anxiety.
658. HP has significant trust issues. He struggles with intimacy. He cannot have relationships. HP states that he cannot work and hates his life. Most of the time, he wants to die.
659. His claim has not yet been forwarded to the Order but should have been sent by the time of the public Hearing.

HQ

660. HQ was born in **GRO-C** 1977. He is Māori. HQ often roamed the streets and hung out with the street kids because his home life was not great. He is referred to above, by HL.
661. HQ states that everyone on the streets knew Brother McGrath, including that he was known to abuse street kids. HQ first met Brother McGrath when Brother McGrath was driving his van around. He would have been about 14, we understand. When Brother McGrath pulled up in the van next to HQ, there were three other children in the van. One was a couple of years older than HQ. The

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other two were younger than him. One of the younger ones, who HQ thought was about five years younger than him, was HL, who HQ believes was sexually abused by Brother McGrath between five and seven separate occasions.

662. HQ reports that Brother McGrath later lured him into the van with a promise of money and food. While they were in the van, Brother McGrath forced HQ to masturbate Brother McGrath and Brother McGrath masturbated HQ. Brother McGrath ejaculated on HQ. In exchange for this, Brother McGrath gave HQ a little bit of money and some fish and chips.
663. The second assault also occurred in the van. HQ recalls that Brother McGrath grabbed him and touched his face. Once again, mutual masturbation took place.
664. On the third occasion, in addition to forced masturbation, HQ has described Brother McGrath forcing HQ to give him oral sex.
665. The assaults progressed and became more serious. Between three and five separate occasions, Brother McGrath took HQ in his van and drove him to a park near the rugby club rooms. This was usually at around twilight. On these occasions, HQ was raped by Brother McGrath. HQ states that this happened on a minimum of three occasions, but more likely four or five.
666. HQ has also described a house that was on Halswell Road. Across the road was a house for naughty boys. HQ believes this was Hogben, a state-run Special Residential School. HQ says that boys would go to the house on Halswell Road to get a cup of tea and biscuits. It was also a warm place where he could get away from family and the violence that was going on at home. HQ remembers there were always kids at the house. Generally, those kids were associated with White Power. HQ remembers there were other people at the house doing community service.
667. HQ recalls being at this property to work in the gardens, so presumably he was required to do community work at some point. Brother McGrath called him inside the house. HQ recalls that Brother McGrath was being really nice to him, and

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then all of a sudden Brother McGrath was raping him. This is something that is a repeated theme in the accounts from our clients.

668. HQ remembers that Brother McGrath was teasing him about what HQ would do about being raped. Brother McGrath was saying that if he told HQ's father or his uncles, they would think he was a 'little homo'. HQ did not know what to do, as he had no one to turn to.
669. He does remember that not long after this, a couple of skinheads (presumably HD and HS) went to Brother McGrath's house to shoot him.
670. HQ was raped by Brother McGrath on at least a couple of further occasions at the house. After that, HQ stopped going there. HQ recalls that this may have been because things got a bit better at home because his father had gone to prison, so he was not so scared of going home.
671. HQ reports that he has been greatly affected by the abuse. He is very paranoid and trusts no one. He firmly believes that Brother McGrath ruined his life. He could have been a sportsman or had other worthwhile jobs, but he could not commit to anything because of the abuse.
672. HQ has been in prison numerous times. He is addicted to drugs and alcohol. He has committed violent offences. He has had no meaningful relationships or friendships. He says that all his relationships have been built on a common addiction to drugs and pills.
673. HQ will not have children. He says this is because he had strong parents and a strong family who should have protected him, but they were unable to do so because HQ did not know how to ask them for help.
674. HQ has done some counselling over the years, on and off, but has found this difficult because he is reclusive.
675. The abuse by Brother McGrath has made HQ hate Catholics, hate the Church, and hate all Christians.

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676. What particularly affects HQ to this day is the blackmail perpetrated by Brother McGrath. In particular, the threats to tell his uncles and that he would be seen as scum and disowned still haunts HQ. He also has vivid memories of the blood and faeces after the abuse.
677. HQ contacted Cooper Legal in 2020. It took some time for him to return the necessary paperwork for us to commence work for him.
678. HQ was interviewed by a lawyer from Cooper Legal over the phone. HQ found it very difficult to disclose what had happened to him.
679. Cooper Legal has been collecting in records to support HQ's claim and has only recently received records from the Ministry of Social Development.
680. His claim is yet to be submitted to Carroll & O'Dea.

*HR*

681. HR was born in GRO-C 1973. He identifies as Māori. His iwi is Ngati Porou.
682. The records available to Cooper Legal suggest that HR came to notice at a reasonably young age due to behavioural problems at school and at home.
683. Between at least October 1985 and approximately February 1987, HR was placed at Stanmore Road Boys' Home in Christchurch. This makes him between 12 and 13 years old. HR states that he started to abscond from the Boys' Home, which is confirmed in his records. During the periods he absconded from the Boys' Home, HR stayed on the streets, around Christchurch City, with other boys who were living on the streets.
684. HR describes going to a house on Halswell Road a couple of times. There were always other street kids in the house. HR states that he was sexually assaulted by Brother McGrath at least three or four times at the house. To date, he has been unable to provide Cooper Legal with the details of that abuse.
685. In addition to those assaults, HR states that the street kids often hung out at a building towards the back of a bar. Street kids would often congregate there for



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cigarettes and to catch up with one another. This appears to have been what we have seen called the '6A' drop-in centre on Madras Street, although we do not have any further information about this other than that it was reportedly run by a male social worker known as 'Cooper'.

686. On one or two occasions, Brother McGrath sexually assaulted him with another boy, whose street name was **GRO-B**. Again, HR has been unable to provide the details of these assaults.
687. HR has disclosed that Brother McGrath would give the boys cigarettes. He also gave HR food and pyjamas. The other boys gave him glue, which he continued to use after the abuse, to block out the memories of what had happened.
688. HR has lost trust in people as a result of this abuse (and other abuse he suffered in State care). He spent years abusing alcohol and drugs, particularly to block out the memories of his abuse.
689. HR states he has been treated for anxiety. He has nightmares and flashbacks to the abuse he suffered and often finds it hard to sleep.
690. HR has described difficulties with intimate relationships. He has problems with anger.
691. HR is engaging in counselling, which he finds difficult because it forces him to confront what happened to him.
692. In common with many clients, HR has spent a lot of time in prison.
693. HR contacted Cooper Legal in June 2020, mainly in relation to what happened to him in care of the State and other entities. At his first interview in early December 2020, HR was not able to speak, at all, about his abuse by Brother McGrath. Even in his second interview, later in December 2020, HR was still unable to disclose what had occurred.
694. HR's claim against the Order is yet to be progressed, as we are still collecting in relevant supporting records and further details from HR.

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*HS [WITN0731]*

695. HS has provided a Witness Statement so this discussion will be brief.
696. HS was born in **GRO-C** 1977. He came into contact with Brother McGrath in about the mid to late 1980s, when he was about 9 years old. HS is another client who hung out with the street kids and petrol sniffers at Linwood Park.
697. HS saw Brother McGrath at Linwood Park, as Brother McGrath spoke with one of HS's friends.
698. As HS explains in his Witness Statement, Brother McGrath first sexually assaulted him at the Havelock Street property. HS went to this place with his friend. While there, Brother McGrath tried to masturbate HS and his friend, and also performed oral sex on them both. This happened on two separate occasions. The first time this happened, Brother McGrath gave the friend money and drugs. Brother McGrath also gave HS money and drugs after the second assault.
699. Subsequently, HS came into contact with Brother McGrath through offending. He believes this would have been in the late 1980s to early 1990s.
700. As a result of the offending, HS was required to do community work. He was sent to Hebron Trust to undertake that community work.
701. While Mr HS was at Hebron Trust to do community work, Brother McGrath took him into the house. On three or four separate occasions, Brother McGrath forced HS to perform oral sex on Brother McGrath.
702. HS was also raped by Brother McGrath on two of these occasions.
703. Following this, HS and two friends, one of whom was the older brother of HT, and HD (referred to below and above), **GRO-C**, **GRO-C**, **GRO-C** The boys had the intention of shooting Brother McGrath, but he was not at the property. This evidence is consistent with the accounts of HD and HQ, above.

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704. HS has disclosed ongoing consequences of the abuse by Brother McGrath, one being that he is unable to maintain friendships due to trust issues. His relationship with his family is strained. He has an ongoing feeling of loss.
705. HS has struggled with jobs. This is largely because he has continued to abuse drugs to block out the memories of the abuse.
706. HS often feels angst. He also has feelings of anger, for which he has been treated. HS feels that he is unable to fit in. He still feels shame that he was abused.
707. HS contacted Cooper Legal on 26 January 2021. At that stage, he gave no details about his claim. It was not until HS provided us with information about his claim, that Cooper Legal learned he had been sexually abused by Brother McGrath.
708. HS was interviewed by a lawyer from Cooper Legal on 9 April 2021.
709. Since that time, we have been collecting in records for HS. His claim is yet to be progressed.

**HT [WITN0727]**

710. HT was born in **GRO-C** 1984 and is the youngest of our Hebron client group, to date. His mother is Pākehā and his father is Tongan. HT came into contact with Brother McGrath between approximately 1989 and 1992, when he was aged between 5-8.
711. HT's older brother, referred to by HS above, was known to Brother McGrath. When HT was between 5 and 7, Brother McGrath drove past HT and his brother when they were going to the swimming pool. Brother McGrath picked them up and took them back to Hebron House. HT went into the living room area with Brother McGrath and his brother. There were other teenagers outside, but no one else was in the living room. HT was forced to perform oral sex on Brother McGrath while his brother was in the room.
712. Approximately a year or so later, HT's brother again took HT to Hebron House. The abuse again took place in the living room. Initially, the brother was in the

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room, but then left his brother alone with Brother McGrath. Brother McGrath rubbed his penis against HT's buttocks and then raped HT. HT found his brother waiting outside. The two left together. HT believes his brother knew what had happened to him.

713. Subsequently, HT was involved with the police and the Youth Court. He attended Family Group Conferences and was required to undertake community work. He had no residential placements.
714. HT has been profoundly affected by the abuse perpetrated by Brother McGrath. He suffers from mental health issues, including anxiety. These issues are still current.
715. HT had time in prison for some years. He was released from prison in 2012. He changed his name and since doing so has felt like half of a new person. He has not returned to prison since then.
716. Between 2015 and 2016, HT studied as he was unable to find a job. He is a qualified technician in computer networking. HT stopped working before COVID. He has not worked since that time. Instead, he has spent more time with his children.
717. Intermittently, HT has abused methamphetamine. Recently he has used alcohol. When he was younger, he sniffed petrol with his brother.
718. HT has described long-term issues with sleeping. He states he sleeps better in prison. He worries having other people around his children and is over-protective of them. He does not trust people, even his own mother, even though she has done nothing to him.
719. HT hated those in authority growing up, but since then has matured.
720. HT has damaged family relations. He sometimes wonders if his family knows about the abuse by Brother McGrath. In particular, he wonders if his brother ever told them, although his brother is one of the likely victims of Brother McGrath.

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721. We note that we acted for HT's brother in relation to a social welfare claim many years ago. Before we had to close his claim due to legal aid funding difficulties, HT's brother, now deceased, did not disclose any involvement with Brother McGrath to this firm. It would not surprise us if he had been a victim as well, particularly given his involvement GRO-C with two other victims.
722. HT wants his life back. He believes he could have been something else. He feels frustrated that he is unable to provide for his children what he should have been able to provide. He feels great violence and anger towards Brother McGrath.
723. HT instructed Cooper Legal in September 2020. He said that he had been abused by Brother McGrath and wanted to bring a claim.
724. HT was interviewed by a lawyer from this firm in May 2021. Since that time, we have been collecting in records for HT so that we can formally present his claim to the Order.

*HU*

725. HU was born in GRO-C 1979. HU is Pākehā.
726. HU came into contact with Brother McGrath at about age eleven or twelve, while he was at Manning Intermediate. This would have been the early 1990s. While he was with two older boys, mountain biking, they took him to a house on Halswell Road in Christchurch. He states that there were maybe seven or eight kids there and that this was a place for kids to hang out.
727. HV returned to the house on his own, perhaps a week later. He no longer recalls how this came about. Brother McGrath took him to a shed or sleep-out at the back of the property. There, Brother McGrath forced HU to perform oral sex on Brother McGrath. There was also forced masturbation. After the assault, HU left the property and never returned.
728. HV reports that he left home about 2½ years after the sexual assault, as he did not get along with his father. He moved to live with a gang-affiliated family and

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became involved in criminal activity. Drugs and alcohol abuse were also a problem for a long time. As a consequence, HU served several terms of imprisonment.

729. HV found disclosing the abuse extremely distressing and struggled to disclose the details. He had never been able to speak about the abuse before and has not engaged in counselling. He has been encouraged to do so.
730. It was only reasonably recently that HU discovered his abuser was likely to be Bernard McGrath. He did this by undertaking some research online. Just prior to lockdown in 2020, HU was at a Church in Papanui, talking to the priest or Minister there. HU was able to disclose that he had been abused by Brother McGrath. The priest or Minister gave HU the contact details for Cooper Legal.
731. HV contacted Cooper Legal on 25 February 2021, disclosing that he wanted to take a claim against Brother McGrath. He was interviewed by Amanda Hill of Cooper Legal on 18 May 2021. As stated, HU found this interview very difficult.
732. We are presently collecting in records to support HU's claim before we formally present it to the Order.

*HV*

733. HV was born in GRO-C 1980 and is one of our younger clients. We have been unable to interview him to date, which appears to be in part because he is finding it too hard to disclose the abuse in any detail. However, he has disclosed that he was abused by Brother McGrath at Hebron.

*JOANNA CATHERINE HELEN OLDHAM [WITN0582]*

734. Joanna Oldham gave evidence in the Pacific People's Hearing. At the Hearing and in her written Statement, Ms Oldham referred to her contact with Brother McGrath, who she was not permitted to name publicly in that Hearing.
735. Throughout the years that Ms Oldham lived on the streets, which was between about 1986-1989, she described a man named Brother McGrath, who was a

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figure who was a constant presence. He would come around the streets with his van, collecting male street kids to take back to his hostel.

736. Ms Oldham stated that Brother McGrath seemed to hate her and most of the other girls on the streets. Ms Oldham did not then know of the abuse Brother McGrath was perpetrating on the boys but learned of it since.
737. Ms Oldham and the other girls would often go to the hostel that Brother McGrath ran, late at night, after Brother McGrath was asleep. The boys would sneak the girls in, and they would use it as a warm place to sleep for the night. Ms Oldham remembers Brother McGrath catching her in the hostel more than once and getting extremely angry and dragging her by her hair out of the hostel.
738. Ms Oldham's social welfare records described her as being 'rescued' from the street kid scene by Brother McGrath, who cared for her at Waipuna for 2 and a half weeks in about 1988. Later in 1988, Brother McGrath was reported to have discussed Ms Oldham's future placements with her social worker, and he attended a Family Group Conference in relation to Ms Oldham in 1989. Other records described Ms Oldham as carrying out community work with Brother McGrath at Hebron House in 1991.
739. Ms Oldham is not making a claim against the Order as his assaults on her were 'only' physical.

*Hebron summary*

740. As will be evident from this narrative, the clients who have so far contacted Cooper Legal are profoundly affected by the abuse they suffered at the hands of Brother McGrath. Even now, clients struggle to disclose what happened to them. Many have only been able to come to us after having engaged in counselling.
741. We suspect that there is a large cohort of former street kids from Christchurch who have not yet been able to confront this abuse and make a claim. We agree with HD that many are likely to be in New Zealand prisons, if they are not already dead or otherwise too damaged to make a complaint.

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742. We have read in online articles that in 1991, two social workers had reported concerns about Brother McGrath's indecent touching of four teenage boys at Hebron in 1991. These reports were apparently made to the Provincial of the Order, Brother Joseph Smith, and then to the police when the Order failed to take any action. Two men also disclosed abuse by Brother McGrath while they were residents at Marylands to the police shortly afterwards. We do not know if this information is correct, but it fits with what we know about Brother McGrath's 1993 convictions, mentioned below.
743. As noted in HB's case, Brother McGrath continued to work with Hebron until at least July 1992. We do not know when his involvement with Hebron ceased, but it must have been within months of this date.
744. In August 1992, further allegations were made by a mother of a Kendell Grange resident about Brother McGrath to Brother Joseph Smith. Brother Joseph observed that he had received a previous complaint about Brother McGrath six months earlier and that the Order had taken steps to deal with Brother McGrath's rehabilitation. Again, these allegations were considered internally rather than being reported to the police. **[WITN0831041]**
745. We understand that the Order sent Brother McGrath to attend a course in the United States for sexual offenders. He returned to New Zealand late in 1993 to face criminal charges.
746. On 23 December 1993, Brother McGrath was sentenced to three years' imprisonment after pleading guilty to sexual assaults against the two residents at Marylands and four who lived at Hebron Trust in 1991.
747. In 1997, Brother McGrath was sentenced to 9 months' imprisonment in Australia, after pleading guilty to the abuse of a boy at Kendall Grange in 1982-1983, while he was the Prior.



**Responding to allegations of abuse – the Order, the Police and MSD**

748. The information in this 1999 to 2004 section has been gleaned from documents provided to our firm by clients, and from the occasional newspaper article. As noted above, Cooper Legal was not involved in any claims against the Order until July 2004.

*The legal mediation process*

749. The earliest Marylands settlement that we are aware of, from newspaper reports, took place in 1999 and resulted in a \$30,000 payment to an unnamed Christchurch man, who was forced to fondle the genitals of Brothers and perform oral sex on them in the late 1950s and early 1960s. Other newspaper reports suggested that this man was expecting a further payment when the March 2003 offers were made.
750. In 2000, MF, later a client of this firm, received a \$50,000 ex gratia payment, together with his reasonable solicitor's costs and a brief letter of apology from Brother Peter, relating to sexual abuse at Marylands.
751. We are not clear who represented the Order during these two legal mediation processes, but we do know that at the time, the Order was represented by Christchurch firm Saunders Robinson (now Saunders Robinson Brown), a specialist insurance law firm, at around this time in relation to New Zealand matters. We understand that the Order was also represented by Carroll & O'Dea Lawyers in Sydney, primarily litigation partner Howard Harrison, in relation to Australian matters (although this line appears blurred at times). Both firms still represent the Order.
752. We are aware from the GRO-B-3 case, discussed below, of a third legal mediation settlement in 2001. GRO-B-3 was sexually and physically abused by Brother McGrath for a long period at Marylands in the 1970s, as well as sexually abused once by Prior Moloney. He spoke to Brother Burke and a "Ms Mulvaney" (possibly Michelle Mulvihill, see below) about his allegations in 2000. After instructing an Australian firm to represent him, he was offered \$82,500, "take it or leave it", by

the Order's Australian lawyers, Carroll & O'Dea. This appears to have been in Australian dollars. **[WITN0831042]**

753. We do not know the details of these settlements other than the above, except that they have all been described as having been reached through a "legal mediation process".

*Brother Peter Burke – the pastoral process*

754. Several key events seem to have started picking up momentum in 2002, although they may have underway for some time prior to that. By 2002, Brother Peter and the Chairwoman of the Order's Australian Professional Standards Committee, Michelle Mulvihill, were investigating reports of abuse by a number of Brothers at Marylands.
755. We have read online<sup>10</sup> that, at some point in 2002, Brother Peter and Ms Mulvihill spoke to Brother McGrath about allegations that had been made against him. Brother McGrath reported that Brother Moloney had made sexual overtures towards trainee Brothers in Sydney, and he disclosed later being forced by the then-Prior Moloney to participate in sexual assaults at Marylands, and that he had witnessed Prior Moloney sexually assaulting boys as well. Brother McGrath reported that this was backed by threats that Brother Moloney would prevent Brother McGrath from making his vows if he reported the abuse. Brother McGrath also alleged that Prior Moloney put sexual pressure on at least two other 'scholastics', including Brother Ray Garchow whom Prior Moloney had moved on to another diocese. Brother Moloney denied Brother McGrath's allegations, but he was stood down from active ministry later that year.
756. In 2002 and 2003, Brother Peter and Ms Mulvihill met with dozens of former Marylands students throughout New Zealand, including in prisons and at the offices of Saunders Robinson Lawyers. This was part of what became known as 'the pastoral process' and was a significantly different approach from the previous 'legal mediation process'. Ms Mulvihill later described the original intention of

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<sup>10</sup> <https://www.smh.com.au/national/nsw/spreading-the-rot-of-child-sexual-abuse-20121201-2anl0.html>

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these pastoral meetings as being to meet with every Marylands survivor of abuse, assess their needs and then drip-feed the funding required to meet them, although this was later replaced by lump sum payments.

757. While the process was pastoral rather than legal, it was set up on the basis of legal advice, and independent legal advice was also given to the Order when considering offers, as discussed below. Lee Robinson, a partner at Saunders Robinson Lawyers, seems to have had involvement with this process as well.
758. These 2002 meetings were promoted through publicity in newspapers and on the radio, as well as a website and a 24-hour 0800 number set up by the Order for former students to call Brother Peter's office to disclose their experiences.
759. By 2002, Ken Clearwater of the Male Survivors of Sexual Abuse Trust was providing regular support to a group of about 37 Marylands survivors in Christchurch.
760. At least seven men who would later become our clients individually met with Brother Peter and Ms Mulvihill in the second half of 2002, often more than once, and often with support persons or counsellors, including Ken Clearwater. It is clear from the personalised letters our clients received shortly after their meetings **[WITN0831043]**, as well as their recollection and the recognition they would later receive, that their allegations were fully believed and acknowledged.
761. Brother Peter made extensive promises in his letters and at the meetings, including about paying for access to counselling for as long as claimants needed it, whether independently or in addition to ACC-funded counselling. **[WITN0831044]** Other personalised promises were made too, such as paying for hearing tests and hearing aids. **[WITN0831045]**
762. One client, **WITN0716**, was funded by the Order to attend the private Ashburn Clinic for addiction treatment, the cost of which – along with his counselling and other support over several years – came to nearly \$30,000. In the case of this client, Brother Burke also offered to write letters to the Parole Board

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**[WITN0831046]** and to assist with treatment programmes, accommodation and a variety of other needs. **[WITN0831047 and WITN0831048]**

763. As noted above in the case of MB, in some cases counselling support was also provided for short periods to family members of claimants who required it in order to help them understand and process their own feelings about the allegations being made by the claimants.
764. In his letters and at his meetings, Brother Peter encouraged the survivors of abuse at Marylands to speak to the police and make a statement. Many did, particularly in 2002 and 2003. The police in turn encouraged survivors who contacted them first to contact Brother Peter (or, at least after 2003, to contact Sonja Cooper), if they had not already done so.
765. These disclosures to the police became part of the extensive 'Operation Authority'. Some survivors who made complaints could not name their abusers or recognise their names or faces from numerous photographs of the Brothers that the police had collected. Some were told that their abusers were dead, so no criminal proceedings could take place, although in these cases the police sometimes acknowledged to the survivors that the named Brothers were known to them as abusers.
766. In September 2002, Brother Peter sent all those survivors involved in the pastoral process a newsletter. This was his second newsletter – it appears that the first was sent in August 2002, but we have not seen a copy. In his September newsletter, Brother Peter wrote about the importance of him meeting everyone personally throughout New Zealand and providing what immediate assistance he could. He repeated the encouragement that any survivors should make a police statement. **[WITN0831049]**
767. Brother Peter sent a further newsletter in October 2002, reporting on his upcoming visits, including with a group of survivors in Christchurch. Brother Peter noted that 70 ex-students had made complaints about Marylands via the 0800 number and that there were, now, only three names left on his list to visit. Brother Peter noted that that week, he had "been seeking advice – totally independent

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and professional advice from experts who have no previous connection with us – on how we, the religious Order that ran Marylands, ***can in some appropriate way come up with a satisfactory solution to your complaint***". (emphasis in original). Brother Peter hoped to be able to inform the survivors of the result of this advice within the next month. [WITN0831050]

768. In late November 2002, Brother Peter sent each survivor on his list a letter explaining that there had been some delay to resolving matters. He attached a \$1,500 one-off good faith payment for each survivor, which he described as a small expression of the Brothers' sorrow and shame, to help them until he was able to make a final offer to resolve their claims in February-March 2003. Brother Peter described the process that was now being used as "the fairest and the most out-in-the-open process available to each of us". He noted that over the next three months, Sir Rodney Gallen would "look over and review everything that we have been doing to make doubly sure that what we do offer you next February-March is in fact in your best interests". Brother Peter also advised that he had his own health problems to attend to. [WITN0831051]
769. The precise role Sir Rodney Gallen played in the pastoral process is unclear to us. Some documents, like the above letter, refer to his role as being an oversight of the pastoral process as a whole, whereas others mentioned that he assessed each individual case before an offer was made, including reviewing any psychiatric assessments. [WITN0831052] It is not clear whether Sir Rodney Gallen had any involvement in considering quantum, or any counter-offers. As noted above, how the Order reached quantum was and remains a mystery.
770. Brother Peter's fourth group newsletter was sent in February 2003, confirming his hope that he would be able to make his offers to resolve "**YOUR** complaint" (emphasis in original) very soon. [WITN0831053]
771. In March 2003, the first batch of pastoral offers – that we are aware of – were made. The letters we have seen are written in nearly identical terms [WITN0831054], although we understand Brother Peter also met with some of the complainants in person to talk them through his letter to them. In the letters,

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Brother Peter noted that he had met with “most of you” and taken steps like “arranging counselling and access to much needed services – medical, dental, welfare, etc”. Brother Peter said he was offering settlement payments in order to heal the hurt and bring closure, and after seeking advice on the process from Sir Rodney Gallen and the Wellington office of KMPG Legal. He added that people we not obliged to accept the offer he made, but that he would send a cheque to them if they agreed to accept the money. The payments were made without any signed deed of release or other formal agreement, and were noted by Brother Peter to be a part of “our continued association”. **[WITN0831055]**

772. Of the seven clients of this firm that we are aware of receiving settlement offers from the Order in 2003, their final payments ranged from \$65,000 to \$140,000, not including the \$1,500 November 2002 payments, counselling or other support costs, or legal fees.
773. An eighth client (MF) accepted \$30,000 in 2003 on top of the \$50,000 he received in 2000, after disclosing additional abuse he experienced from another Brother. At the time, Brother Peter explained to MF’s support person that the differences between the two payments were due to the different processes involved, rather than the nature of the abuse – the 2000 legal mediation process was in full and final settlement, but the 2003 pastoral process did not have a final settlement or termination date. Brother Peter stated that the 2003 payment was made taking into consideration the assistance and ongoing support this client would need in the future. **[WITN0831056]**
774. It was on this basis that MF would receive a third settlement payment from the Order in 2019, in contrast to other claimants who sought further support from the Order on the same basis and were denied this, inconsistently – see below.
775. At around the same time as the March 2003 offers were made, a former Marylands student wrote to the Prime Minister, Rt Hon Helen Clark, about his experiences. While we have not seen this letter, we have seen the reply that Minister of Social Services and Employment Steve Maharey sent in April 2003. Mr Maharey said that he was sorry to hear of the man’s experiences at Marylands

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and was glad to hear that the Church was offering some compensation. Mr Maharey concluded his brief letter by writing that, if the man believed the State bore any responsibility for his experiences, he should contact his solicitor about filing a statement of claim with Child, Youth and Family. [WITN0831057] As noted below, to our knowledge, and in contrast to other placements, the State has refused to accept responsibility for any abuse suffered at Marylands, in any circumstances.

776. In each of Brother Peter's March 2003 offer letters, he said: "If you feel uncertain about accepting it, you should feel free to take separate legal advice." A number of those involved in the pastoral process, including those for whom we would later act in relation to other claims, instructed lawyers, particularly Grant Cameron and GCA Lawyers. We are aware that GCA Lawyers had a number of meetings with Brother Peter and lawyers from Saunders Robinson, and that the Order agreed to pay their "reasonable legal costs" when settling claims, so that the claimants would not have to pay these out of the payments.
777. The *Christchurch Press* later reported, in June 2007, that the average New Zealand settlement made by the Order by that time was \$67,850. We assume that this average did not count those cases – if there were any – where no settlement payment was made. We also assume that this average figure did not include legal fees, counselling or other support, or the November 2002 payments.
778. There were also later reports that the prosecution in the 2018 trial of Brother Moloney revealed that one of the witnesses in that trial had been paid \$317,000 by the Order. The defence claimed, also, that one of the pastoral payments to a witness included a Harley-Davidson motorcycle.<sup>11</sup> However, the \$317,000 payment at least is almost certainly a reference to a payment made by the Order to a survivor of abuse in Australia – the June 2007 *Christchurch Press* article reported that Australian payments averaged \$NZ125,000, and that some were as high as \$NZ388,000 including costs. We understand that the significant difference between Australian and New Zealand payments is due, at least in part,

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<sup>11</sup> <https://www.newshub.co.nz/nznews/court-told-of-irregularities-in-spending-by-orders-head-2008060919>

to the bar to compensation for personal injury under the accident compensation legislation.

779. As with all settlement payments made by the Order, we have not been able to ascertain any cohesive rhyme or reason to the figures offered, which often seem to be plucked out of the air. The process is opaque and therefore difficult to challenge, although there has been some improvement in transparency over the past five years, as indicated below. The only thing that is clear over the 23 years of settlements we cover in this statement is that the financial outcome for claimants has been, consistently, significantly better when they have independent legal representation. This should not be the case.
780. Although more generous than the Order's later settlements would be, the pastoral process was not without its flaws. In 2003, a man who would later become one of our clients (MB) was sent a cheque for \$80,000 by the Order. MB, who was living in a hospice due to his severe disability, hid the cheque from his family. He then tried to cash it, but the family found out and their lawyer managed to dissuade the bank from accepting it. MB's family was unhappy with the Order sending the cheque directly to MB, as MB did not have capacity to accept the Order's offer. The family instructed GCA Lawyers, who negotiated an increased offer for MB of \$140,000. This was reported in the *Dominion Post* in November 2003. **[WITN0831058]**
781. Although Brother Peter initially predicted the list of Marylands survivors as reaching its end in late 2002, the Order continued to receive complaints, and Brother Peter continued to visit these survivors throughout 2003 as part of the pastoral process. We are not aware of any newsletters being sent to this second group, but Sir Rodney Gallen continued to be involved in assessing the claims.
782. In some cases, at least with the later 2003 tranche of claimants, the Order paid for psychological or psychiatric reports of the claimants. This was both to inform the level of quantum that might be paid, as well as the appropriate level and type of therapeutic treatment that would best meet that individual claimant's needs. These also served as a method to check the credibility of the new claimants'



allegations, following the publicity of the first tranche of payments and also following the apparent settlement by the Order of one or two fraudulent claims – one of which resulted in some form of prosecution.

783. On 22 November 2003, the *Dominion Post* reported that the St John of God Order had paid more than \$4 million to 56 men for abuse suffered at Marylands, and that a further 17 had received offers.
784. In late November 2003, the New Zealand Police, as part of Operation Authority, laid charges against five Brothers, relating to assaults at Marylands dating back to 1955: Brother McGrath, who had given a lengthy recorded police interview in May 2003; Raymond Garchow, Rodger Moloney, William Lebler and Brother GRO-B-1 Brothers Garchow, Moloney and Lebler were living in New South Wales, so the police applied to extradite them to New Zealand.
785. However, claimants who first met with, or contacted, Brother Peter in 2003 or 2004 were less fortunate than those from the 2002 group: the pastoral process was to stall in early 2004, despite assurances from Brother Peter throughout 2003 that the same procedure would be followed for the new tranche of claimants. While some of these claimants would be left with interim payments that the Order later decided, unilaterally, would become final and non-negotiable, most were left without any payments for over five years, aside from the \$1,500 November 2002 payment for some.
786. For example, in mid-January 2004, MJ accepted a \$65,000 offer made by the Order in December 2003 through his lawyers, but only on the strict basis that this would be “an interim pastoral payment subject to the further negotiations scheduled to take place with the Order next month”. As noted below, inconsistently, this interim payment ended up being the only payment he would receive from the Order, after it unilaterally cancelled the negotiation meeting.
787. The last payments and offers we are aware of in this pastoral process period were made in January 2004. It would be five years before any more payments were made, to our knowledge.

*The pastoral process paused – February 2004*

788. In February 2004, without warning, Brother Peter cancelled all meetings he had promised or planned to hold with Marylands claimants, on the advice of Carroll & O'Dea and/or of Detective Sergeant Earle Borrell, who was in charge of Operation Authority.
789. Information from the Order given to our firm and to other individuals and bodies over the years has not clarified whether this advice came from the police and Carroll & O'Dea. It seems that both gave similar advice to Brother Peter. It is also not clear what the advice was – whether it was for Brother Peter to stop meeting with claimants, to stop settling their claims in relation to Brother McGrath (and/or the other four Brothers, and/or any Brothers), or to stop supporting claimants through counselling and other means. The length of the 'pause' is also reported differently in multiple letters – it was initially treated as lasting until the depositions hearings had been completed, then the extraditions hearings, then Brother McGrath's trial, then finally once all five criminal matters had been resolved. Our best guess is that the advice to pause came from both Carroll & O'Dea and the police, but that the nature of the pause that was advised was changed over time. Ultimately, the 'pause' benefitted the Order and the criminal justice process, while significantly prejudicing the claimants – retraumatising them and wearing them down to the point where they would take any offer the Order ultimately made.
790. By way of largely identical letters dated 3 February 2004, Brother Peter wrote to the claimants explaining that due to the criminal charges against the five Brothers, he had been advised that he must stop meeting with any ex-students of Marylands, or with their families, because it could be seen to be interfering in the criminal justice process. He indicated that the criminal proceedings meant that "there may be a major court case taking place in New Zealand over the next few months". Brother Peter said that having to cease meeting with ex-students or their families was "regrettable and I know it will be hard for you and for me. Once these criminal charges had been dealt with fully, then I will be able to recommence my ongoing commitment to you in person." [WITN0831059]

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791. In February 2004, at the depositions hearing of Brother McGrath, Brother Peter was questioned extensively by the Queen's Counsel that the Order had funded to represent Brother McGrath, in relation to the negotiations and settlements that he had made to survivors. It was suggested that some witnesses may have been motivated by claims of compensation in giving their police statements. During this cross-examination, Brother Peter confirmed to the Court that no further action would be taken with the pastoral process pending the completion of the criminal trials.
792. For some claimants, their counselling and treatment was also abruptly cut off in early 2004. We do not know how they were told of this. For example, the treatment at the Ashburn Clinic that the Order was funding for **WITN0716**, noted at paragraph 762, abruptly came to an end at this time. This claimant had met with Brother Peter in August 2003, but the Order did not resolve his claim before the February 2004 pastoral pause. Without funding, this claimant had to leave the treatment centre, and he ended up back in prison within months.
793. This situation with the Ashburn Clinic treatment may have been the been linked to the high cost of the treatment involved. We know some claimants continued to receive counselling during this pastoral pause, either partially or fully funded by the Order. The Order also offered to consider arranging counselling for certain other clients who had been unable to meet with Brother Peter. **[WITN0831060]** Once again, the Order's approach to different claimants is inconsistent.
794. This pastoral pause continued for many years.

#### *Cooper Legal involvement*

795. In July 2004, our firm received our first instructions from a survivor, MC, to act in relation to the abuse he suffered at Marylands. MC was referred to us by his counsellor, Terry Featherstone, after he had been advised that Brother Peter would no longer be meeting survivors at that stage. As with most of our non-recent abuse claimants that were eligible for public funding, we agreed to represent MC on a legal aid basis, as we would do for nearly all of the other Marylands clients we represented over the next ten years. This funding decision

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was made was in spite of the considerably lower Legal Aid hourly rates than we could bill on a private basis, but at that stage there was no certainty of our legal costs being paid by the Order even if we were able to settle MC's claim.

796. In August 2004, we wrote to Brother Peter setting out MC's experiences in detail. In our letter, we sought compensation for MC, as well as an apology and counselling.
797. As noted above, MC made allegations against two Brothers who were both deceased and therefore not part of the criminal proceedings being brought against the other five Brothers. Despite this, the Order responded through Lee Robinson of Saunders Robinson, stating that the Order would not progress MC's claim until the criminal proceedings had run their course, although counselling support was offered. **[WITN0831061]**
798. From this time onwards, we contacted Saunders Robinson on a regular basis, expressing concern at the mounting delays and the impact it was having on MC and, later, other Marylands clients we acted for.
799. At some point, probably in 2004, the application to extradite William Lebler from Australia was refused due to his poor health and age, as well as the age of the allegations against him. We understand that his defence was funded by the Order. He was later filmed by a Sydney newspaper in 2013, attending an Alcoholics Anonymous meeting unaided and unsupervised.<sup>12</sup>
800. Also in around 2004, Brother GRO-B-1 received a permanent stay of the charges laid against him. We understand that his defence was funded by the Order.
801. In November 2004, we first received instructions from a second Marylands claimant, Kerry Johnson, who has already given evidence to the Royal Commission. **[WITN0084001]** Mr Johnson originally contacted our office to pursue a claim against the Department of Social Welfare and the psychiatric hospitals, but we did not discover that he had a potential claim in relation to

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<sup>12</sup> <https://www.smh.com.au/national/brother-accused-of-child-abuse-left-unsupervised-20130213-2edc4.html>

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Marylands until we were able to review his Social Welfare records in detail, several years later.

802. A third Marylands client (**WITN0716**) contacted us in November 2004, and a fourth (MI) in February 2005, both of whom were State Wards while they were at Marylands. The Marylands group continued to grow from this point, despite the Order refusing to progress the claims. Some of these clients had met Brother Peter in 2003 and had been affected by the pastoral process being paused. Many of these clients also made allegations about abuse in Social Welfare or hospital placements and had heard about our firm through the media or word of mouth.
803. In February 2005, the extradition of Brothers Garchow and Moloney was ordered; however, they lodged an appeal, arguing that the charges were too historic and that there was a possibility of collusion. We understand that their defence was funded by the Order. The appeal was heard in April 2005 and the decision was reserved.
804. In June 2005, Lee Robinson wrote to us again confirming that no negotiations could be entered into in relation to MC while the extraditions and any subsequent trials were in train, however the Order was happy to continue funding counselling for MC. [**WITN0831062**]
805. On 1 August 2005, Brother Peter wrote to MC care of this firm, advising that the Order "simply cannot continue to pay for counselling on an indefinite basis. Therefore the Order has reluctantly decided that these payments will not continue after 30 September 2005." [**WITN0831063**]
806. Brother Peter wrote letters like this to at least two other Marylands claimants that we have seen. Later in August 2005, we were contacted by the mother of another Marylands claimant, MD, who was upset that his counselling was about to be stopped and asked us to represent him in relation to a claim against the Order.
807. It was very distressing and retraumatising for claimants to find out that their counselling was being cut off completely, and that at the same time the Order would not be progressing their claims until all the remaining criminal trials were

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over – which could, and ultimately would, be years away. Fortunately, the Order changed its mind and resumed funding counselling – at least in relation to some clients of this firm – after being sent strongly worded letters from claimants, their counsellors, support persons and family members, as well as from this firm.

808. Brother Peter concluded his 1 August 2005 letter: “Once the Police have finished all of their enquiries and the court cases are finished, I will again write to you and make an appointment to meet with you with a view to bringing closure to your complaint. [MC], as soon as I am able to meet with you, once the criminal matter is finished I will do so.” MC, who had severe intellectual disabilities, took these letters to mean that he would be meeting Brother Peter and then getting compensation in the very near future, and started purchasing items on credit.
809. In November 2005, Brother Peter wrote to AD via Brent Cherry, again promising to meet AD as soon as possible after Brother McGrath’s trial had ended. **[WITN0831064]** As noted below, Brother Peter’s New Zealand lawyers would later say that this promise made to AD and other clients had been based on the erroneous assumption that all trials would be heard together. **[WITN0831065]** This explanation is disingenuous: by November 2005 Brother Peter knew that Brother McGrath’s trial (set down for March 2006) would be held before any trials relating to Brothers Garchow and Moloney, who had outstanding extradition appeals at the time.
810. Brother McGrath’s trial took place in March 2006, and several of our clients gave evidence and prepared victim impact statements. A lengthy video interview with Brother McGrath was played during this hearing, in which he admitted that boys at Marylands were ruled by fear, bribed, and threatened with what would happen if they were to disclose the offending against them. He agreed that senior Brothers punished boys who complained of abuse, noting that he himself had taken no action when a boy complained to him of being abused by another Brother.
811. Brother McGrath pleaded guilty to one charge against him and not guilty on the rest. He was found guilty on 21 of those charges, relating to victims aged 7-15 at

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the time. The abuse included a number of representative charges, two of which covered the entire time he was officially working at Marylands. The sexual assaults included touching, fondling, masturbation, and oral sex, but he was found not guilty of charges of sodomy. We understand that his defence was funded by the Order.

812. On 17 March 2006, the day after the McGrath verdict, Cooper Legal wrote to Saunders Robinson asking them to arrange for Brother Peter to meet with the firm's five Marylands clients in order to progress their claims as quickly as possible. We received a reply stating that the resolution process could not continue until **all** outstanding criminal proceedings, including the extradition appeals, had been concluded.
813. We responded to Saunders Robinson later in March 2006, providing copies of letters from Brother Peter to three of our clients assuring them that the claims could be continued after Brother McGrath's trial ended. However, the Order would not budge.
814. In April 2006, Brother McGrath was sentenced to five years' imprisonment. In his sentencing notes, Chisolm J noted that "the victim impact reports make distressing reading. They refer to anger, fear, anxiety, nightmares, low self-esteem, posttraumatic stress disorder and, in many cases, gross problems in later life."
815. In April 2006, extradition was refused for Brothers Garchow and Maloney, but the police appealed. The decision was reserved.
816. In August 2006, Saunders Robinson advised that one of our clients, **WITN0744**, had already received a pastoral payment in 2003, and that the Order would not be revisiting this. **WITN0744** had understood from Brother Peter that that payment was interim only, and that it would be revisited after he gave evidence in relation to Brother McGrath, who was convicted of charges relating to this client. He had not had legal representation in 2003 and had not signed any deed of settlement when accepting what he understood was an interim payment. It appears from Saunders Robinson that the Order considered the involvement of

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Sir Rodney Gallen had provided sufficient legal protection for claimants. We had no choice but to close **WITN0744**'s Marylands file. **[WITN0831066]**

817. Throughout 2006, we exchanged a number of communications with Saunders Robinson as we attempted to progress our clients' claims. We noted our concern that our clients had decided not to file claims in court against the Order in good faith, on the understanding that the Order would continue to resolve them as they had before 2004. We advised that in light of the delays caused by the criminal proceedings, we were now considering filing our clients' claims in court to protect their legal position in terms of the Limitation Act 1950.
818. In light of the previous settlements through the pastoral process, which did not take into account technical legal defences like the Limitation Act and the bar to pursuing compensatory damages imposed by the ACC legislation, we had been reluctant to file proceedings against the Order. In addition, we represented the Marylands claimants on a legal aid basis, and we would have had difficulty obtaining funding to pursue litigation in court while there was a likelihood that, eventually, out-of-court settlement could be obtained.
819. However, due to the Order's considerable delays, failure to keep its promises and its refusals to agree to our suggestion that it provide an irrevocable undertaking as to limitation, which would protect our clients should the pastoral process not resume, we reluctantly prepared draft proceedings for two of our Marylands clients and sent them to Saunders Robinson in September 2006 to try and force the Order's hand. We started to prepare proceedings in relation to a third client as well, however the Order subsequently agreed to our proposal of a limitation undertaking.
820. In October 2006, extradition was finally ordered in relation to Brothers Garchow and Maloney. On arrival in New Zealand, they were granted bail.
821. On 23 January 2007, we received a letter from Brother Peter in relation to the five clients we had with Marylands claims. Brother Peter gave an irrevocable undertaking on behalf of the Order that time was effectively put on hold for the purposes of the Limitation Act, dating from the time the Order or its lawyers was



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notified of each claim, until such time as the pastoral process recommenced. Brother Peter assured us that this suspension would not affect any counselling the Order was currently funding for these clients, and that he was committed to meeting with Cooper Legal and/or our clients as soon as he was able, to try and resolve their claims. **[WITN0831067]**

*Brother Timothy Graham – the ‘pause’ continues*

822. In early 2007, as a result of health issues, Brother Peter was replaced by Brother Timothy Graham as Australasian Head of the Order. We understand that Brother Peter intended to maintain some oversight of the pastoral process notwithstanding his stepping down, and that he passed away in 2010.
823. As Brother Timothy continued Brother Peter’s policy of not taking any steps to progress matters until the criminal trials were completed, the differences between the approaches of the two Heads would not become evident for over a year. However, his settlements would be considerably less generous than Brother Peter’s, with limited or no room to negotiate, and without the significant pastoral support that Brother Peter promised and, in some cases, provided.
824. As far as we can recall, Brother Timothy and the Order’s representatives also did not continue Brother Peter’s approach of encouraging survivors to make police complaints. This may have been intentional.
825. A number of other changes took place in the Order’s managing committee in the first half of 2007, including the election of five new leadership team members.
826. On 16 June 2007, articles were published in the *Dominion Post* and *Christchurch Press* reporting the resignation and whistleblowing of former nun and former chairwoman of the Order’s Professional Standards Committee, Michelle Muvihill. Ms Mulvihill was reported as saying that there was a culture of sexual abuse and collusion within the Order, and that the Order had received allegations of sexual abuse against four of these five new leadership team members.
827. Other newspaper articles from around this time noted that the Order had settled 80 claims for a total of \$5.1 million, before it stopped keeping track of payments.

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828. Having seen these articles, this office contacted Andrew Marsh of Saunders Robinson raising several concerns, especially regarding the suggestion we had seen that the Order might be shut down completely. We noted that we were once again considering filing proceedings in order to protect our clients' positions. Mr Marsh assured us that there was no truth to any suggestion of the Order being wound down and that the Order had put aside a lump sum to deal with outstanding claims against it.
829. We later received a letter from Lee Robinson from Saunders Robinson, asking to meet to discuss a possible resolution process for this firm' clients after the two remaining criminal proceedings were complete. In what would be the first indication to our firm of Brother Timothy's less generous approach, Mr Robinson noted in his letter that the Order was concerned at the extent of counselling currently being provided to certain claimants, pending the final resolution of their claims. **[WITN0831068]**
830. On 25 September 2007, Sonja Cooper met with Lee Robinson. Mr Robinson advised that the Order's managing committee had changed and that from now on, a mediated process based on *Te Houhanga Rongo – A Path to Healing* ("APTH") would be used for those claimants who did not want to take their claim through court. When Sonja Cooper raised concerns about the Order's approach to counselling for clients, Mr Robinson advised that the Order wanted everyone to have up-to-date counselling reports as to whether ongoing counselling in each case was recommended. When Sonja Cooper asked why the Order was unwilling to progress the complaints of clients who made no allegations against the Brothers facing criminal charges – such as MC, whose abusers were both dead – Mr Robinson said that the concern was that in their upcoming trials, Brother Moloney and/or Brother Garchow might allege that Michelle Mulvihill was prejudiced against them, because she just believed the complainants, and had treated them both as if they were already guilty before any trial, and any further settlements would give that argument force.
831. Following this meeting, we received a letter from Lee Robinson expanding on some of the matters that had been discussed. **[WITN0831069]** Mr Robinson

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estimated that the process to deal with the firm's clients' complaints could commence in around mid- to late-2008, following the conclusion of the criminal prosecutions. The proposed mediated procedure was based around one used by the Sisters of Nazareth in relation to claims against that Order. Mr Robinson enclosed a report from clinical psychologist Dr Freda Walker, commissioned by the Order to provide her opinion as to what constituted a reasonable level and/or amount of counselling for a person who had been sexually abused. Mr Robinson noted that, due to concerns that counselling may make matters worse for claimants, the Order had taken the view that the appropriateness of counselling should be reviewed every five or so counselling sessions. Mr Robinson also advised that the Order was insisting on psychiatric or psychological reports being carried out in relation to every claimant, because of concerns over fraudulent claims and to help identify the needs of each claimant. Finally, Mr Robinson wrote to query whether any Cooper Legal clients only alleged abuse against Brother McGrath, as their claims might now be able to be progressed following his convictions. While we had no claimants in this position at that time, this position is difficult to reconcile with Mr Robinson's earlier comments in relation to resolving MB's claim, or other claims for people whose abusers were not before the court, such as MA or Kerry Johnson.

832. In terms of our views of the approach used by the Sisters of Nazareth, we refer to the previous Witness Statement of Sonja Cooper dated 1 March 2021 **[WITN0094001]** relating to APTH as well as the conduct of the New Zealand National Office for Professional Standards ("NOPS"). With the exception of the St John of God claims, we understand that APTH remains the current redress process of the Catholic Church in New Zealand.
833. On 16 October 2007, we wrote back to Lee Robinson, discussing our concerns with the proposed process and querying why the Order had chosen not to utilise the existing APTH process. We advised that the Order's requirement that all claimants have psychiatric/psychological reports carried out before they could engage in the new process was an issue that could only be surmounted if the Order funded the reports, which it later agreed to do. We also raised concerns that the ongoing counselling in question had been provided to clients with

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intellectual disabilities and had since become a mechanism of support for them.

**[WITN0831070]**

834. No substantive response to our letter or the concerns we had raised was received until February 2008, when Sonja Cooper was asked to attend a meeting with Michael Salmon, the Director of the Professional Standards Office for the Australian Catholic Church. Mr Salmon confirmed that all Marylands complainants would now be dealt with under Australia's '*Towards Healing*' protocol, rather than the previous pastoral process or the existing APTH process.
835. In March 2008 and April 2008 there were a number of communications exchanged between Mr Salmon and this firm, where we sought clarification on aspects of the new pastoral process, in order to protect our clients. **[WITN0831071, WITN0831072 and WITN0831073]** We were advised that Saunders Robinson Brown would no longer be involved in resolving the claims, and that the first step for clients would be to send the Order a statement of complaint. Each client would then meet with John Jamieson, the former Commissioner for Police in New Zealand, who the Order (and other Catholic Orders) had instructed to investigate and then assess the allegations. We were concerned that our clients would have difficulty meeting, and disclosing abuse to, a former police commissioner, particularly in light of their trust issues and their own past offending. However, we were also concerned about the ongoing delays in the claims being resolved and the lack of other options available to our clients with claims against the Order, so we advised our clients to attend the meetings and we would review any issues afterwards.
836. In June 2008, Rodger William Moloney (aged 73) was convicted on seven charges (indecent assault and inducing an indecent act). He was acquitted on a number of more serious charges, including sodomy. Some charges relating to joint offending with another Brother, who had been acquitted of these charges, were stayed. The allegations ranged from 1971-1977, relating to 11 former Marylands students, five of whom had also given evidence against Brother McGrath. Again, several of our clients gave evidence. We understand that his

defence was funded by the Order. He was sentenced to two years and nine months in prison.

*Towards Healing – the new pastoral process*

837. After the Brother Moloney trial had concluded, the wheels finally began turning. We sent the Order detailed statements of complaint from our clients, who met with Mr Jamieson, along with a lawyer from our office and any family members or other support persons they wished to bring. The meetings were mostly focused on clarifying matters, rather than testing the allegations in an evidential way. These clients were subsequently given the opportunity to comment on Mr Jamieson's draft meeting notes, or to sign them if they agreed they were accurate, similarly to how a police statement might be confirmed.
838. All of our clients found the meetings with Mr Jamieson retraumatising, as did many of their support persons, who reported that the mental health of some clients deteriorated quickly after the meetings. This was even worse for those clients who had been waiting, in good faith, for years for the Order to consider their claims. Kerry Johnson left minutes into his meeting, damaging a door on the way out when he slammed it with force. Another client, RB, was too afraid of 'narking' to talk about the abuse in any detail. He collapsed shortly after the meeting and died a month later, of vasculitis, although we cannot say whether this was linked to the stress of the interview.
839. In July 2008, the New Zealand prosecutors entered a permanent stay of proceedings in relation to Raymond Garchow because he was too ill, as was one of the two complainants against him. We understand that his defence was funded by the Order. We are aware that he died in March 2011.
840. After the trials ended, there were renewed calls for a state inquiry into the abuse that took place in Marylands – in particular from the Male Survivors of Sexual Abuse Trust and also from a Community Care Leader at Wesleycare, who we understand wrote to MP Annette King to seek an inquiry in August 2008, with a particular focus on MA, who he was supporting. It would be a number of years before these calls were finally heard.

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841. We understand that following the hearings, GCA Lawyers also began progressing their claims against the Order. We do not know if these were new claims, or whether they only progressed those affected by the 2004 'pastoral pause'.
842. In August 2008, Saunders Robinson advised us that no 'top-ups' would be paid for any individuals who had accepted payments in 2003-2004, even if they were expressly on an interim basis. While we considered this to be a direct breach of the promises and assurances made by Brother Peter, we had to inform MJ that our hands were tied and his claim had to be closed, particularly as this coincided with significant issues with obtaining legal aid for non-recent abuse clients. There had been good grounds for assuming that his claim would be in a different position to the claim of the client we similarly had to close in August 2006, **WITN0744**.
843. These two claimants – neither of whom had signed a deed of full and final settlement or any similar document and who had expressly accepted the money on an interim basis, and one of whom had not had independent legal advice at the time – had been waiting for a final outcome since they had last met with Brother Peter in 2003. **WITN0744** was a witness against both Brother McGrath and Brother Moloney, at the urging of Brother Peter, and they were both convicted in relation to his evidence. He had expected that a further settlement offer would be made after his involvement in those trials.
844. As noted above, MJ had his Social Welfare claim closed at the same time as his Marylands claim, as a result of the 2008 legal aid difficulties we have addressed in other evidence. This was because his Social Welfare claim was largely about the total failure of the Department of Social Welfare to adequately supervise him as a State Ward in Marylands, during which time he suffered the abuse. This was not something that MSD considered sufficient grounds for compensation at that time.
845. For whatever reason, it appears that the Order took a different approach with claimants represented by GCA Lawyers - we are aware that it offered a 'top up'

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to a claimant, later a client of this firm, in 2010 when GCA Lawyers were acting for him. The Order also offered exceptional 'top up' payments to two other clients of this firm in 2018 (**WITN0084**) and in 2019. We cannot identify any valid reason for this disparity of approach, which appears inconsistent and unfair.

846. We also had to close the file of a third client in 2008, MI, as he only made allegations of physical abuse against staff and Brothers (including one in 1976 who matched the description of Brother McGrath), as we were advised that *Towards Healing* would only consider allegations of sexual abuse. To our knowledge, this restriction still remains. It is incongruent with the position taken by other organisations to settling claims for non-sexual abuse, such as the Ministry of Social Development.
847. All three clients (MJ and MI, and a third client whose evidence is already before the Royal Commission) were left with a legal aid debt.

*Towards Healing – investigation reports and settlements*

848. Another client whose evidence is already before the Royal Commission started decompensating in mid-2008 after giving evidence in the two trials. He was reluctant to meet with John Jamieson to disclose the abuse yet again. We agreed with the Order that this meeting would not be necessary in his case, in light of the outcome of the criminal proceedings, and we sent a detailed report of his allegations instead along with a further copy of the detailed psychiatric assessment of this client that the Order had requested and funded in 2003 as part of the original pastoral process.
849. In December 2008, we met with Howard Harrison of Carroll & O'Dea, Brother Timothy, and Michael Salmon to discuss resolving the claims. The impact of the ACC bar on quantum, and our view that exemplary damages would be available in most cases, was one of the topics discussed. We also discussed counselling, and Brother Timothy advised that the Order was concerned that claimants might become overly dependent on counsellors.

850. Later that day, we all met with MA and then, separately, with MD and his family and support persons.
851. Shortly after this meeting, Howard Harrison forwarded us the then recent decision of the NSW Supreme Court in **GRO-B-3** v *The Trustees of the Hospitaller Order of St John of God Brothers* [2008] NSWSC 1354. **GRO-B-3** had reported serious sexual, physical and psychological abuse by Brother McGrath and Brother Moloney at Marylands and now wanted to sue the Order and sue his 2001 solicitor for giving him negligent advice. The Order, represented by Carroll & O'Dea, successfully struck out Mr Uttinger's attempt to set aside the ex gratia payment the Order had made through the legal mediation process in May 2001, which had resulted in a signed deed. It appeared that the Order was emboldened by the judgment, and in particular the NSW Supreme Court's (brief) consideration of the ACC bar acting to prevent compensatory damages.
852. We received John Jamieson's reports after the meetings with the Order's representatives. The report for Kerry Johnson is already in evidence. **[WITN0084018]** These reports took a far more legal and evidential approach than we had anticipated. In hindsight, this might have been expected from someone with his police background and with the particular terms of reference the Order had given him, but we did not see those terms of reference in advance. Far from being survivor-centred or starting from a position of belief, as Brother Peter had done and as *Towards Heading* implied, the reports referred to the 'strict legal test' of the balance of probabilities and noted the difficulties any of the clients with intellectual disabilities would have in meeting this threshold.
853. Considerable weight was given in the report to the denials of named Brothers, or of other Brothers who were at Marylands at the same time as the complainant. **[WITN0831006]** Their recollections were considered in the reports to be more reliable than the complainants because of the complainants' ages at the time – even in circumstances where the Brothers had been named by the complainant and/or other complainants as alleged abusers themselves. The reports placed limited evidential weight on the damage demonstrated by the clients, and they



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also referred to other adverse life experiences as being a 'complicating factor' to being able to prove any complaints relating to Marylands.

854. The reports also did not recognise that the complainants did not have the same resources that the Order had in terms of being able to accurately name Brothers and staff. Indeed, it is not clear whether John Jamieson himself was provided with this information, as he relied on the vague recollections of the Brothers from that period that he was able to interview as to the names and descriptions of Brothers and staff, which were given too much weight in comparison to the recollections of the complainants. In any event, we have already noted above that the 'official' records the Order held about Brothers and staff appear to have been incomplete or inaccurate, at least on occasion.
855. It is not clear what access John Jamieson had, if any, to the trial records and witness statements, or to the information contained in the numerous reports of abuse made to the Order over the years. This is particularly problematic, given his reports referred to there being 'no corroborating evidence' on the basis of an absence of documentary evidence (which appears to have been in part because the records from Marylands had been destroyed) and of the denials from the Brothers.
856. It is helpful to look at some these issues in some detail, and a good example can be seen in the two reports relating to MD. **[WITN0831074]** and **[WITN0831075]** In the initial report, John Jamieson briefly summarised MD's allegations in an introduction, along with his specific terms of reference and the documents that Mr Jamieson was provided. Mr Jamieson reported that he "interviewed as many Brothers as he could locate", noting his view that accused Brothers "should have an opportunity to respond" to any allegation in which they are named. Those he spoke to included Brother McGrath, Brother Garchow (whose emphasis of the fact that someone must have helped MD make his written report appears to have been an attempt to discredit MD's allegations) and, in an addendum report, Prior Moloney.

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857. Unsurprisingly, they all strenuously denied the allegations against them and any other Brothers, and they also disputed that Marylands was a physically abusive place. We have not seen any investigative reports where an accused Brother of the Order admits allegations against them. The report notes: "The denials of sexual abuse by Brothers Damian Kean and Ray Gashou (sic) appear to be sincere. It is very hard to make an assessment of the accuracy of MD's allegations due to his speech impediment and the fact that he is easily distracted when answering a question."
858. This comment also shows the difficulty of utilising a neurotypical investigative evidential process to cases like this. Eliciting a cohesive narrative from some individuals with intellectual disabilities often takes a very long time, requiring close understanding of that individual and their methods of communicating. This usually requires specific training and a close and longitudinal relationship with that person. Their inability to communicate in a certain manner, without significant support, should not be taken as any indication of the veracity of what they are reporting. The report makes no reference to the fact that MD was able to correctly name a large number of different Brothers from their photographs in his police interview, which should have added to his credibility and also demonstrated his ability to answer questions or provide information when appropriately assisted to do so.
859. John Jamieson's report noted that other allegations of sexual abuse were made by other pupils in relation to the same timeframe as when MD was a resident, and that Brother Moloney had recently been convicted of a number of charges that he denied. Apart from this, the report does not note that allegations had been made to the Order about the same Brothers that GRO  
C named. Even then, it is difficult to recognise the Marylands environment in the Brothers' rose-tinted descriptions when compared with even what was revealed in the 2006 sentencing notes of Brother McGrath of a culture ruled by fear.
860. The report emphasised some potential inconsistencies between MD's statement and what the Brothers reported, including one accused Brother having officially left Marylands before MD arrived. MD was not asked to address these

inconsistencies, other than Mr Jamieson suggesting that our firm attempt to obtain medical records in relation to one incident (which unfortunately had been destroyed by that time).

861. As noted above, there appears to have been inconsistency at Marylands as to whether a Brother was known by their Christian name, surname or religious name. It appears that this may have confused MD, who made distinct allegations against headmasters named "Brother Flannagan" and a "Brother Delaney", when there in fact appears to have been only a single Brother Flannan Delaney. This may instead have been an error made by the police officer taking MD's statement, in light of MD's intellectual disability and speech impediment. In that regard, we note that MD was able to identify Brother Delaney and ten other Brothers he could name in photographs, but he never (mistakenly) identified any Brother in the photographs as being "Brother Flannagan". When MD's counsellor set out his allegations in a letter to Brother Peter in February 2004, he only referred to allegations against a "Brother Flannagan" and not a "Brother Delaney". The most likely conclusion is that MD's allegations against Brother Flannan Delaney has somehow been misconstrued along the way as being allegations against two separate Brothers, but John Jamieson's report construed this error – which we repeat, may not have been MD's error – as negatively impacting MD's credibility.
862. A survivor-focused process would allow for any evidential issues to be worked through in a sensitive, unrushed way. It would also not focus overly on apparent evidential consistencies, especially if there might be a plausible alternative explanation that could be teased out with sufficient understanding. The report concluded that MD's complaints "do not reach the evidential standard but do leave some residual concern in that it cannot be said with absolute certainty that all of his complaints are without foundation".
863. On receiving John Jamieson's report, MD's family was angry with the unexpected approach of testing the veracity of MD's evidence in such a direct manner, and on the high evidential burden his report had placed on MD, which had not been made clear to them before the report was received. They wanted to approach the

media to expose the ongoing mistreatment of MD and his family by the Order in resolving his complaints.

864. Instead, we asked John Jamieson to meet with MD's counsellor. After this, Mr Jamieson prepared an addendum report noting MD's counsellor's comments that MD's disabilities meant that his narrative would not have everything in sequence, but that he had never doubted that MD had been sexually abused in Maryland and that his mixed-up sexualised behaviour was consistent with this. In the addendum report, Mr Jamieson wrote that the counsellor's "opinions should be considered when determining the outcome of this complaint".
865. While this was a small improvement, all investigative interviews should have been conducted with this understanding of the difficulties that some individuals with intellectual disabilities have in disclosing a narrative in a direct and cohesive way, rather than focusing on whether their allegations could be proved to the civil standard. Under *Towards Healing*, the investigations were required to have been carried out by someone with specialised experience with interviewing persons with intellectual or psychiatric disabilities. We had asked whether John Jamieson had such experience before agreeing to having our clients meet with him, but did not receive a clear answer.
866. In December 2008, we received our first offers of settlement from the Order. While our clients and their support persons were retraumatised by the John Jamieson meetings and angry about the approach taken in his reports, they were just as unhappy with the level of offers finally made by the Order. However, they were also worn down by the considerable length of time it had taken to get anything, and many were in dire financial straits. In addition, we had to advise them that we would not be able to get legal aid funding to pursue their claims through court, in light of the offers that had been made and the legal difficulties their claims would face, particularly given the significant restrictions on legal aid from early 2008 onwards which we have spoken about in other evidence.
867. While the Order was careful to state that in making its offers, it did not want to take advantage of the disability of our clients, particularly MA and MD, as well as

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of MC's death, it is clear that it took the likely inability of these clients to give coherent unassisted evidence in standard civil court proceedings into account when determining quantum – notwithstanding the detailed police statements they had each made. As noted above, these three clients settled for considerably lower than any other claims we have settled, or than we have seen.

868. In MD's case, one of the reasons given for why his offer was low was because he had apparently made allegations against too many named Brothers to be credible.
869. In addition to not matching the quantum of Brother Peter's 2003 offers, the length of time these clients had been waiting for an outcome, and the significant impact of this delay on each of them, was not reflected in the amounts or apologies they were offered.
870. In the case of **WITN0716**, the settlement offer expressly took into account the fact that the Order had paid nearly \$30,000 in treatment costs and counselling, as well as the fact that Brother McGrath was found not guilty on some charges relating to this client. Similarly, in the case of MC, his counselling costs (nearly \$16,000) were taken into consideration, and the cost of his funeral was included in the final offer payment.
871. In contrast to the offers made prior to the pastoral pause, the offers were all initially inclusive of legal costs. This was despite our suggestion to the Order's lawyers that not paying legal costs was unusual in such cases, and that the legal costs could probably be reclaimed as a taxable expense. We are now aware that the Order was paying legal costs for other lawyers at around this time. Each of our client's legal costs were significantly higher than they would have been if not for the lengthy pastoral pause and the Order's changes of position. We were ultimately able to negotiate small increases for all the offers to account, at least partially, for the legal aid debt that each client would need to repay.
872. Each client was made to sign a lengthy and complicated deed of settlement, which included a clause gagging the client from disclosing the terms of

settlement. These settlements concluded in 2009 and, as with later settlements, each client also received a letter of apology from Brother Timothy.

*2010 onwards*

873. Following these settlements, Carroll & O’Dea referred a client to us in August 2010 directly. As detailed above, this client, HA, had been a victim of Brother McGrath at Hebron House, and had attempted to resolve his claim directly with the Order without legal representation, but he was not satisfied with the recommendation made by John Jamieson. This was our first Hebron client, and the last of our St John of God clients with a (problematic) report by John Jamieson. As noted above, HA’s claim settled in 2011 for \$56,000, including legal costs.
874. In 2012, Brother McGrath was convicted on a number of charges in relation to abuse carried out throughout his time at Kendall Grange, New South Wales, and he was again sentenced to imprisonment.
875. In 2013, the Australian Royal Commission into Institutional Responses to Child Sexual Abuse (“the Australian Royal Commission”) was established. As we understand it, the Order was originally included in that Inquiry in relation to its Australian activities, but this had to be abandoned when Brother McGrath was arrested on further charges relating to Kendall Grange (along with an Australian Brother of the Order, **GRO-B**). Nonetheless, we understand that both the actual and the anticipated scrutiny of the Order over this period created considerable pressure to ensure that any settlements and settlement processes were seen to be independent and fair. We certainly saw an increase in settlement levels from this time.
876. This improved approach was first seen in the case of MG, a severely intellectually disabled Marylands claimant who approached the New Zealand Catholic Church in 2014. He met with a representative of NOPS in September 2014 then disclosed his experiences a second time to a NOPS investigator – not John Jamieson, who had retired by this time – in November 2014, which was turned into a written statement for him to sign. It seems that neither the Head of NOPS nor the

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Investigator understood that Marylands claims were handled under the Australian *Towards Healing* process, as MG then had to meet with Brother Timothy and Michael Salmon in April 2015 to disclose his experiences a third time. We pause to note how distressing and confusing it was for this man to have to disclose his abusive experiences to three groups of strangers.

877. MG contacted us through his advocate in May 2015 after the Order told him that it would pay reasonable legal fees for any independent legal representation that he needed in relation to his allegations. The Order subsequently confirmed this to us, so we did not need to seek public funding. We understand that the Order's new and refreshing approach of encouraging and funding this independent legal advice was a direct result of the scrutiny of the Australian Royal Commission.
878. Although the Order originally offered to settle MG's claim for a sum that included our legal costs, we finally reached a negotiated settlement of \$80,000 with the payment of MG's reasonable legal fees on top of this amount, along with a small additional fee for MG's advocate.
879. When discussing the level of settlement, which was less than we had proposed, the Order's lawyers noted the difficulties MG would have in giving evidence in court if he had to, as well as the limitation hurdles that he would face. These difficulties, as well as causation, the ACC bar, and concerns at the late disclosure of abuse, are consistently referenced when the Order makes offers, as a sort of 'expectation management'. While we understand this approach from a legal perspective, making repeated reference to legal difficulties and technical defences sits uneasily within a pastoral process. As we previously indicated, we cannot say whether, or to what extent, these legal issues are taken into account by the Order when determining quantum. **[WITN0831076]**
880. For our firm's clients from 2015 onwards, the Order has continued to agree, in advance, to pay our reasonable legal costs. We consider this to be a degree of recognition of the value our firm adds to their pastoral process, and respect for the role that our firm plays in advocating better outcomes for clients with legitimate claims and, where appropriate, in managing client expectations.

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881. In a similar vein, our clients are now no longer required to meet with representatives of the Order in every case, or provide signed statements, before settlement will be considered. The option remains for them to meet with the Order as part of the pastoral process, before or after settlement of their claim, but it is no longer an evidential requirement mandated in each case. The Order doesn't require investigators to meet our clients and prepare reports – settlement offers are made on the basis of the allegations our firm puts forward to the Order, along with records or other information we can provide that support the claim.
882. We have had difficulties in obtaining records for numbers of our clients from the Order, as many have been lost or destroyed – either intentionally, for instance through scheduled data destruction after a certain period, or accidentally, through being destroyed in the Christchurch earthquakes. In one instance, we were advised that a client's records had been destroyed, but they were later sent to us after we had already settled that client's claim against the Order.
883. In many of the Hebron cases, Brother McGrath's involvement was informal, so in some cases involving voluntary family placements or his abuse of 'street kids', there were simply no records kept. The lack of records has not prevented us from settling claims in relation to Hebron, but we have had to find other sources that will corroborate a client's involvement – most commonly through Social Welfare records, but sometimes Corrections records or counselling records referring to a client's involvement with Hebron, or their disclosure of abuse that occurred there, or a clearly documented and unexplained change in behaviour from a date that matches their involvement with Brother McGrath.
884. In September 2016, we were instructed by our second client alleging abuse from Brother McGrath at Hebron, HB. Since then, we have continued to receive instructions from clients alleging abuse at Hebron, as well as several further Marylands clients. We have detailed the settlement process and outcomes for these clients individually, above.
885. In November 2017, having been extradited to New South Wales, Brother McGrath was found guilty of a number of additional sexual assaults against 12



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boys at Kendall Grange. These charges included anal rape, including one incident when Brother McGrath rubbed a boy's face in his own vomit after Brother McGrath had forced him to perform oral sex on him. This offence is reminiscent of some of the Hebron offending described above. In February 2018, Brother McGrath was sentenced to 33 years' imprisonment.

886. As noted in Kerry Johnson's evidence, in 2018 we managed to negotiate an additional \$25,000 payment with the Order for him, as a top-up to the \$28,500 settlement that we had negotiated for him in 2009. This was partly on the basis of a report from his counsellor setting out the current impact of the abuse, but also because we had identified that the 2009 settlements were considerably out of step with other settlements made by the Order. Unlike the first payment, our legal costs were paid separately from this second payment.
887. As noted above, in 2019, we also managed to negotiate an additional \$35,000 payment with the Order for MF, who had already received \$81,500 from previous settlements.
888. In December 2019, Brother McGrath faced even more charges in relation to Kendall Grange, and was again convicted and sentenced to a lengthy period of imprisonment.
889. In December 2019, the Order's lawyers finally agreed to remove the confidentiality clause from its settlement deeds.
890. In 2020, we settled a Marylands claim for ME, who received \$80,000 and a letter of apology. Legal costs were paid separately.
891. In comparison with other organisations our firm litigates against, we have a good relationship with the lawyers for the Order, particularly Howard Harrison. We trust them not to rely unduly on barriers to settlement, and they trust us to carry out due diligence into our clients' allegations and to advise our clients appropriately as to settlements. Claims are resolved promptly, and payments are now, mostly, relatively consistent. We hope that this can continue to be the case after the scrutiny of the Australian and New Zealand Royal Commissions has been lifted.

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892. We hope that the Order will review this statement and, in particular, our discussion of its different treatment of some of our clients set out above. We invite the Order to contact us to discuss whether it would be willing to revisit the claims of any of the Cooper Legal clients it agrees were treated unfairly in comparison with others, particularly those claims that were settled or closed before 2019, and to provide some clarity over the principles and process it uses to determine settlement levels.
893. We are grateful for the opportunity to provide this information to the Royal Commission, and we are happy to answer any queries.

### Statement of Truth

This Statement is true to the best of our knowledge and belief and was made by me knowing that it may be used as evidence by the Royal Commission of Inquiry into Abuse in Care.

Signed



**GRO-C**

Sonja Cooper

Dated: 08.10.2021

Signed



**GRO-C**

Sam Benton

Dated: 8 October 2021


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