

SPECIAL COMMISSION OF INQUIRY
INTO MATTERS RELATING TO THE POLICE INVESTIGATION OF
CERTAIN CHILD SEXUAL ABUSE ALLEGATIONS IN THE CATHOLIC
DIOCESE OF MAITLAND-NEWCASTLE

At Newcastle Supreme Court
Court Room Number 1, Church Street, Newcastle NSW

On Wednesday, 17 July 2013 at 10.26am
(Day 11)

Before Commissioner: Ms Margaret Cunneen SC

Counsel Assisting: Ms Julia Lonergan SC
Mr David Kell
Mr Warwick Hunt

Crown Solicitor's Office: Ms Emma Sullivan,
Ms Jessica Wardle

1 MR HUNT: Commissioner, I apologise for the slightly late
2 start. There were some matters that properly needed to be
3 attended to amongst the practitioners.

4
5 THE COMMISSIONER: I understand. Thank you, Mr Hunt.
6

7 MR HUNT: This is a public hearing commencing with
8 evidence from Father James Joseph Saunders.

9
10 THE COMMISSIONER: Good morning, Father Saunders.

11
12 FATHER SAUNDERS: Good morning.

13
14 MR HUNT: While Father Saunders is coming up, can
15 I indicate that the witness is in his late 70s and I've
16 indicated to him that if he needs a break before the
17 scheduled morning tea break, he might indicate that and
18 you're likely to grant a short break.

19
20 THE COMMISSIONER: Of course. Father, please tell us if
21 you're discomforted in any way and you can have a break at
22 any time.

23
24 FATHER SAUNDERS: Good. That's fine, thank you.

25
26 MR GYLES: Could it be noted please, Commissioner, that
27 Father Saunders takes section 23 protection.

28
29 THE COMMISSIONER: Thank you, Mr Gyles. That is noted.

30
31 <JAMES JOSEPH SAUNDERS, sworn: [10.27am]

32
33 <EXAMINATION BY MR HUNT:

34
35 MR HUNT: Q. Is your name James Joseph Saunders?

36 A. It is.

37
38 Q. I'm going to show you two documents to consider, if
39 you would, in the witness box there, Father Saunders. One
40 is your statutory declaration made on 26 June 2013 made for
41 the purposes of this Commission. Do have a copy of that?

42 A. I have.

43
44 MR HUNT: I propose to tender it, but perhaps the witness
45 could just review it.

46
47 While that is happening, I have indicated to the

1 parties that there is a confidential exhibit in relation to
2 this witness, which relates to some subjective matters
3 only. I tender that as a confidential exhibit.
4

5 THE COMMISSIONER: Thank you, Mr Hunt. That confidential
6 document will be admitted and marked confidential exhibit
7 JJ.
8

9 MR HUNT: I ought to indicate that although the witness is
10 aware there is such a document, he hasn't seen the report
11 that I'm tendering as a confidential exhibit.
12

13 **CONFIDENTIAL EXHIBIT #JJ REPORT**
14

15 MR HUNT: Q. Father, are the contents of your statutory
16 declaration made on 26 June 2013 true and correct?

17 A. They are.
18

19 MR HUNT: I tender that.
20

21 THE COMMISSIONER: Thank you, Mr Hunt. The statement
22 by Father James Saunders will be admitted and marked
23 exhibit 111.
24

25 **EXHIBIT #111 STATUTORY DECLARATION OF JAMES JOSEPH SAUNDERS**
26 **DATED 26/6/2013**
27

28 MR HUNT: Q. Would you also have a look at this
29 document.

30 A. Yes.
31

32 MR HUNT: I propose to tender this document, which is a
33 record of the witness's appointments within the diocese,
34 Commissioner.
35

36 THE COMMISSIONER: Thank you, Mr Hunt.
37

38 MR HUNT: Q. Father, I'll take you to some particular
39 entries in that, but I have provided that to you to assist
40 you in terms of the dates that you were at various places
41 if it becomes relevant, do you understand?

42 A. Yes.
43

44 THE COMMISSIONER: Father Saunders' history of
45 appointments in the diocese of Maitland will be admitted
46 and marked exhibit 112.
47

1 **EXHIBIT #112 FATHER SAUNDERS' HISTORY OF APPOINTMENTS IN**
2 **THE DIOCESE OF MAITLAND**

3
4 MR HUNT: Q. Father, you were ordained as a Catholic
5 priest on 22 May 1963?

6 A. That's correct.

7
8 Q. You have since that date remained incardinated to the
9 Maitland-Newcastle diocese?

10 A. That is right.

11
12 Q. Currently, I think you describe yourself as
13 semi-retired and living in the Swansea parish; is that
14 right?

15 A. Swansea is part of a larger parish called East Lake
16 Macquarie parish.

17
18 Q. Could you give the Commissioner some idea of your
19 weekly duties as a semi-retired priest?

20 A. Yes. Well, I haven't got to do administration, but
21 I say masses, visit people, take calls to hospital, if
22 asked to, perform baptisms and funerals and so on.

23
24 Q. Thank you. I just want to step through some of the
25 matters on your document of appointment as to particular
26 relevant dates?

27 A. Yes.

28
29 Q. Before we come to that, I think you first came to know
30 Denis McAlinden when he was a priest at Raymond Terrace; is
31 that right?

32 A. That's right.

33
34 Q. What were the circumstances, in brief, of you knowing
35 him then?

36 A. Well, I was 13 or 14 at the time, belonged to the
37 parish of Raymond Terrace, lived on a farm just outside of
38 Raymond Terrace, so I would have known him for a bit over a
39 year, I suppose.

40
41 Q. And then did you move elsewhere?

42 A. We moved elsewhere, yes.

43
44 Q. Was your next regular involvement with McAlinden - I'm
45 going to refer to him that way --

46 A. Right.

47

1 Q. -- when you shared a parish together at Belmont?
2 A. That's right.
3
4 Q. Did you commence as the parish priest at Belmont in
5 1977?
6 A. That's right.
7
8 Q. Can you remember now what period it was that McAlinden
9 was also at Belmont?
10 A. I think it was 1981.
11
12 Q. At the time that McAlinden came to the Belmont parish,
13 did anyone within the church hierarchy give you any
14 information about there being concerns about McAlinden
15 relative to young children?
16 A. No. Bishop Clarke made a remark that I can scarcely
17 remember, like, he might be a difficult man, or something -
18 nothing that would alarm me, certainly.
19
20 Q. In terms of your dealings with McAlinden when you
21 shared that parish, what was your view about what the
22 "difficult man" suggestion related to?
23 A. Well, he did have a rather ferocious temper and - but
24 he was good enough to live with.
25
26 Q. Was there anything back in those days, apart from this
27 comment of Bishop Clarke that he could be a difficult man,
28 that put you on any kind of notice that there might be
29 problems about McAlinden and young children?
30 A. No.
31
32 Q. Is it a fair proposition that, in terms of doctrinal
33 matters, you were a little bit more modern than McAlinden
34 was?
35 A. That's true.
36
37 Q. Did you have differences in relation to matters of
38 interpretation about what the right way was to proceed in
39 certain matters of doctrine and the like?
40 A. That would be right, yes.
41
42 Q. Did you ultimately form the view that he would have
43 preferred, if he wasn't in a parish by himself, to be with
44 somebody of his vintage rather than a younger priest, as
45 you were in those days?
46 A. I couldn't say that.
47

1 Q. Is it the case that - you can have reference to your
2 list of appointments on page 2 if you need to - on 5 June
3 1979 you were appointed as one of the diocesan consultors
4 for a period of four years?
5 A. Yes, I see that.
6
7 Q. Do you see that you were appointed to the Council of
8 Priests for a five-year period on 1 January 1987?
9 A. That's right. I see that.
10
11 Q. You were again reappointed as a diocesan consultor on
12 that same date?
13 A. That's right.
14
15 Q. Would you briefly outline for the Commissioner's
16 benefit the different tasks that the consultors have as
17 opposed to the Council of Priests?
18 A. The Council of Priests assists the bishop in the
19 governance of the diocese. They would assist the bishop on
20 matters that the bishop would require assistance with. It
21 could be pastoral matters, could be administrative matters;
22 whereas the consultors are more likely to be focused on the
23 appointment of priests. Now - sorry, go on.
24
25 Q. Are the consultors or were the consultors back in,
26 say, the 1970s, 1980s and 1990s likely to be involved in at
27 least approving or agreeing with the movement of priests
28 sometimes on a regular basis from parish to parish?
29 A. Not so much approving, offering advice to the bishop,
30 receiving - hearing what the bishop had to say, but, of
31 course, the final decision would be the bishop's choice.
32
33 Q. So it is the bishop's call but sometimes informed by
34 discussion amongst the consultors?
35 A. That's right. That's right.
36
37 Q. Could you tell the Commissioner whether there's
38 another distinction between diocesan consultors, Council of
39 Priests and Council of Deans. Is Council of Deans a third
40 body?
41 A. I'm not sure whether it is the Council of Deans to be
42 technical.
43
44 Q. Or a meeting of deans?
45 A. A meeting of deans, yes. The deans have more a role
46 of being concerned with the particular area of the diocese,
47 concerned with the welfare of priests within the diocese,

1 concerned with the meetings of priests and people within
2 that particular area. It is, let's say, a pastoral role
3 and not necessarily connected with the appointment, say, of
4 clergy or advice given to the bishop by the clergy.

5
6 Q. Would the deans, when they met, sometimes consider
7 matters that related to the welfare of priests and the way
8 that the priests were discharging their own ministry in a
9 pastoral sense?

10 A. Yes, but only, of course, within that particular area.

11
12 Q. I understand, thank you. I'm hoping that you can turn
13 up - perhaps the court officer might assist. I'm wanting
14 the witness to see tab 121, which I think might be in
15 volume 2.

16
17 Would you look at the item that's behind tab 121,
18 Father Saunders. Do you see up the top highlighted in
19 yellow is a heading that indicates it is the minutes of the
20 College of Consultors of the diocese of Maitland, as it was
21 then?

22 A. Yes, that's right.

23
24 Q. Held at the bishop's office on 2 January 1986?

25 A. 1986, that's right.

26
27 Q. Do you see amongst those present are Bishop Clarke,
28 presiding, Monsignor Kennedy was, at that stage, the vicar
29 general, and that Fathers Levy, Burston and yourself were
30 present?

31 A. That's right.

32
33 Q. Moving down, do you see that there's a section
34 highlighted that says this:

35
36 *Father D McAlinden seems to be taking*
37 *things quietly at Merriwa, but has a*
38 *problem with the extreme cold; he will be*
39 *asked for a doctor's report about the*
40 *problem.*

41
42 A. I see that.

43
44 Q. Does that represent a standard kind of notation that
45 might have been made at a meeting of consultors back in
46 those days about a priest agitating for a change and the
47 consultors wanting, effectively, or the bishop wanting to

1 see some evidence as to why there needed to be a change?
2 A. Yes, that's right.
3
4 Q. Similarly, although I won't take you to it, you will
5 see around there, there is a number of similar notations
6 where there are indications about things that are happening
7 personally for a priest and how it might affect their
8 suitability for a parish and the like?
9 A. That's true, yes.
10
11 Q. Then could you turn now to tab 128, which is just a
12 few tabs --
13 A. 128. Thank you.
14
15 Q. Do you see, looking at the heading at the top, that
16 that's a meeting of the College of Consultors, or minutes
17 of the meeting of College of Consultors held at Maitland on
18 3 June 1986?
19 A. That's true.
20
21 Q. With the exception of Monsignor Kennedy, the same
22 personnel are present at that meeting by the notation?
23 A. That's right.
24
25 Q. It follows there that the business was that the vacant
26 parishes of Adamstown and Morisset were discussed and that
27 applications had been received from Reverends McAlinden,
28 Callinan, Gahan, P Malone and Haggerty. Do you see that?
29 A. That's right.
30
31 Q. Do you have any memory of this meeting yourself?
32 A. No.
33
34 Q. The minute would seem to suggest that, after a
35 discussion and several proposals being put forward, the one
36 that was finally recommended to the bishop was that
37 Reverend Gahan would go to Merriwa, McAlinden would go to
38 Adamstown and Callinan would go to Morisset; do you see
39 that?
40 A. I see that, yes.
41
42 Q. Does it prompt your memory if I suggest that
43 Father Gahan replaced McAlinden at Merriwa and McAlinden at
44 the same time went to Adamstown.
45 A. I couldn't recall.
46
47 Q. Do you have any recollection at all about the

1 circumstances that led to that change?

2 A. No.

3

4 Q. If there were question marks about a priest's
5 performance back in the 1980s or there suitability for a
6 particular parish, is that something that generally would
7 be minuted in a consultants' meeting, in your experience?

8 A. Yes, I'd say so.

9

10 MR HUNT: I tender those two tabs, Commissioner. Tab 121
11 and 128.

12

13 THE COMMISSIONER: The minutes of the College of
14 Consultants of 2 January 1986 and the minutes of the
15 consultants on 5 June 1986 will be together marked
16 exhibit 113.

17

18 **EXHIBIT #113 MINUTES OF THE COLLEGE OF CONSULTORS DATED**
19 **2/1/1986 (TAB 121); MINUTES OF THE COLLEGE OF CONSULTORS,**
20 **DATED 5/6/1986 (TAB 128)**

21

22 MR HUNT: Q. Father I want to ask you some questions
23 about another document which is behind 159. In fairness to
24 you, I want to make it clear to you that these are minutes
25 of a meeting that you'll see from the apologies you and
26 Monsignor Cotter were not present at?

27 A. Very well.

28

29 Q. I'm not expecting that you will remember this
30 particular meeting, but because of the way matters are
31 recorded, I want to ask if you have any memory of it. If
32 you go over to the second page, you will see at item 3
33 there are some details that are headed this way:

34

35 *The following details about priests were*
36 *discussed ...*

37

38 A. Very well, yes.

39

40 Q. And then under (a) there's something about Father Pat
41 Callinan that has detail about what that's about, to do
42 with a request for money to build on to his nephew's house
43 in Ireland. I presume that probably relates to some
44 retirement plan. Father Pat Flynn, in (b), there's some
45 indication about his desire for retirement at a particular
46 date and some detail about that; do you see that?

47 A. That's right. That's right.

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Q. At (c) there is some discussion about the illness of various priests mentioned there. And then (d) simply says:

Further report on Father McAlinden was given by the Bishop.

The way that's expressed suggests that reports on Father McAlinden had been an ongoing issue for the consultors?

A. Yes, it seems likely, yes. That's what it seems --

Q. Do you agree with the sense of that?

A. I agree with that, yes.

Q. I want to come to this: did you have any memory of that being a topic that was being discussed in the late 1980s, the topic of McAlinden?

A. No, I can't recall that.

Q. You understand the point that I'm seeking to draw out is: in relation to the other priests there's some detail about what the issue is for discussion; whereas it seems rather more oblique, if I could use that word, about Father McAlinden?

A. Yes.

Q. Are you able to assist the Commissioner as to why it might be that matters to do with McAlinden are recorded in an oblique fashion in that consultors' minute?

A. No, I have no recollection. Sorry, am I answering your question there?

Q. Yes.

A. Fair enough, okay.

Q. Do you generally have a sense that, by the late 1980s at least, innuendo or rumours about McAlinden being problematic were being raised?

A. Yes, but I can't recall details and I can't recall details from these particular meetings.

Q. When I'm asking you about whether by the late 1980s difficulties about McAlinden becoming known, I'm not talking, you understand, about difficulties to do with his fiery temper?

A. No, that's right.

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Q. I'm talking about difficulties in terms of his behaviour with children?

A. That's right.

Q. When you said to me that you agreed that there was some knowledge of that in the late 1980s, it was about that issue, about possible problems with the way McAlinden behaved with children.

MR GYLES: Commissioner, I object to that question. I'm not sure Father Saunders agreed there was knowledge about that matter.

MR HUNT: I'll fix it up.

Q. When I say "knowledge", I'm talking about rumour.
A. Yes.

Q. I think you agreed that you knew that there was at least rumour in the late 1980s about McAlinden and difficulties?

A. That's right, yes.

Q. What I'm just getting you to understand is that rumour was about difficulties in terms of his possible behaviour with children rather than the other kind of challenges with McAlinden?

A. That's right, yes.

Q. You understand?

A. Yes.

MR HUNT: I tender that document. It is not adopted by the witness, but given I've examined on it I think that I ought to tender it for completeness. It is tab 159, Commissioner.

THE COMMISSIONER: Thank you, Mr Hunt. The material behind tab 159, being minutes of the meeting of deans and consultors of 8 and 9 September 1988, will be admitted and marked exhibit 114.

EXHIBIT #114 MINUTES OF MEETING OF DEANS AND CONSULTORS OF 8/9/1988 AND 9/9/1988 (TAB 159)

MR HUNT: Q. Father, could you look back at your

1 appointments document. That whole folder can go away now,
2 please, and perhaps you could get out tab 256, which is in
3 the next volume. Father, could you look at your
4 appointments. You will see you were appointed dean of the
5 northern deanery for three years on 1 February 1995?

6 A. Yes. That's right.

7

8 Q. To the extent that you're able to take your memory
9 back to 1995, I wonder whether you're able to indicate when
10 in 1995 Bishop Michael was ordained as coadjutor bishop?
11 Can you remember when that was in 1995?

12 A. Yes. I was going to say June 1995, but I'm not sure
13 of that now. It might have been earlier. Let's say
14 February 1995.

15

16 Q. If you take from me that the other evidence indicates
17 it was February 1995, does that help you become more
18 confident?

19 A. Yes, it does. February, yes; February it was.

20

21 Q. Is it your recollection that by, say, November 1995
22 Bishop Leo Clarke retired?

23 A. He did, yes.

24

25 Q. And Bishop Michael Malone took over as the full bishop
26 as it were?

27 A. Yes.

28

29 Q. Are you able to help us with whether you had reason,
30 because of your different jobs and appointments on councils
31 and committees, to be around the chancery a fair bit in
32 1995?

33 A. I'm not sure of around the chancery in 1995. Probably
34 not, although - did I become a - if I became a consultant on
35 the Council of Priests from there, I would have had more to
36 do with the chancery; but, no, I can't recall offhand
37 whether I had much to do with it.

38

39 Q. I'll ask you the particular question that I want to
40 know whether you can help us with.

41 A. Sure.

42

43 Q. Can you comment on how involved Bishop Michael seemed
44 to become administratively as the coadjutor bishop in 1995?
45 Can you comment on that?

46 A. No. I recall his coming up to Bulahdelah and
47 Tea Gardens and I recall my asking him about whether we

1 should sell some land at Tea Gardens and, therefore, I knew
2 he'd be indicating - it was indicative that he was
3 interested in where we were, what we were doing. So I take
4 from that that I knew he was interested in the running of
5 the whole diocese.

6
7 Q. Was the view - and say if it wasn't - when he was
8 appointed coadjutor bishop that Leo Clarke was heading
9 towards retirement?

10 A. Yes, because it would have been unusual to appoint a
11 coadjutor.

12
13 Q. Did you know anything yourself about Leo Clarke's
14 health in 1995 when he was still the bishop?

15 A. Not particularly, no.

16
17 Q. Could you look at tab 256. For the benefit of those
18 in court, these are the minutes of a deans' meeting held at
19 the chancery office on Wednesday, 2 August 1995. Father,
20 do you see there that along with Bishop Clarke, coadjutor
21 Bishop Malone, Monsignor Hart as the vicar general, you,
22 along with the other deans, were present at that meeting
23 with the exception of Father Cahill?

24 A. I do see that, yes.

25
26 Q. Do you see, moving down, there's a section of the
27 minutes that deals with correspondence and item 1 has been
28 redacted out because it is not anything to do with this
29 Commission's interest.

30 A. Mmm-hmm.

31
32 Q. First of all, I'm just going to read out to see if you
33 agree with what's recorded there and then I'm going to make
34 a couple of suggestions to you. Do you see under the
35 heading of "Correspondence", at point 2, it says:

36
37 *From Bishop Bantigue of the Philippines*
38 *regarding Father Denis McAlinden and*
39 *enclosing a letter from Father Denis.*

40
41 A. That's right.

42
43 Q. I'm going to go through it for the sense of it first
44 and then I'm going to ask you some particular questions, if
45 I might, Father Saunders. The second paragraph - do you
46 want to stop to or yourself some water?

47 A. That's fine. Keep going.

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Q. Pour yourself some water and then we'll go on.
Minutes are never that stimulating that we can't stop. Do
you agree that second paragraph says:

*Discussion took place, the Bishop indicated
that Father Denis would arrive back in
Australia on 5th August.*

In other words, within a number of days of this meeting?

A. I see that, yes.

Q. And then:

It was resolved that we move towards a --

And then there's a word crossed out --

*procedure, since Father Denis would not
confirm to the restriction placed upon him
by Bishop Leo.*

Do you see that there?

A. I do, yes.

Q. I discussed this minute with you very briefly this
morning in a conference before court, didn't I?

A. That's right.

Q. You told me at that time that you didn't have your own
memory of this meeting?

A. That's true.

Q. I think you agreed with me that in context, that last
sentence should read.

*... since Father Denis would not conform to
the restriction placed upon him by Bishop
Leo.*

A. That's right.

Q. Do you now know what restriction it was that
Father McAlinden was operating under that had been placed
on him by Bishop Leo in 1995?

A. No, I can't recall that.

1 Q. Is it fair to say that you cannot now say what the
2 word should have been that's in that sentence where the
3 word "legislation" has been struck out?

4 A. Yes.

5

6 Q. Is it a fair proposition that that would likely refer
7 to some kind of canonical procedure in the context of the
8 minute?

9 A. That is true.

10

11 Q. I asked you to react this morning to a suggestion
12 that that in context might have related to a laicisation
13 procedure?

14 A. Yes.

15

16 Q. Is this fair: first of all, you don't remember from
17 your own knowledge whether there was talk of a laicisation
18 procedure?

19 A. No, I can't recall.

20

21 Q. I think the position is that, if it were the case that
22 McAlinden had had his faculties removed and was not
23 conforming to that, the idea of laicisation would make some
24 sense to you as an alternative, first of all, in the
25 context of the sentence or the context of the minute I'm
26 first asking you about?

27 A. Yes. I'd say it would be more likely to refer to
28 removal of faculties rather than laicisation. Laicisation
29 is a far more - certainly a more radical procedure than
30 removal of faculties, which is significant enough, but
31 laicisation is another step, so that could well refer to
32 removal of faculties rather than laicisation.

33

34 Q. Your position is you don't put yourself out as being
35 an expert in canon law; correct?

36 A. That's true. That's right.

37

38 Q. Would you briefly in a couple of sentences describe to
39 the Commissioner your view about the difference between
40 removal of faculties and laicisation?

41 A. Yes. Removal of faculties means that a priest cannot
42 exercise his ministry; for example, he wouldn't be able to
43 hear confessions. He wouldn't be able to administer
44 sacraments, but he would still be a priest. Now,
45 laicisation is no longer deemed to be a priest and that's
46 more serious than having your faculties removed. Faculties
47 can be removed and then restored for a particular period.

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Q. If, by August 1995, Bishop Clarke had removed McAlinden's faculties and McAlinden was failing to honour that removal, in other words, failing to conform to the restriction placed on him, do you remember there being talk of other things that might be done to McAlinden to limit him or control him?

A. No, I can't recall that.

Q. Do you remember from your own memory whether McAlinden in fact re-presented to the diocese having come back from overseas in 1995?

A. I can't recall that.

MR HUNT: I think that tab is already an exhibit.

THE COMMISSIONER: Yes, it is exhibit 105, Mr Hunt.

MR HUNT: Thank you, Commissioner.

Q. I think at some stage Sister Patricia McCarthy said something to you or you heard something about McAlinden from her?

A. Yes, that's right.

Q. First, was that nun a principal of a primary school?

A. She had been a principal of our - of some of our primary schools, as I recall. When she made the remark I think to which you were referring, she might not have been a principal then, I'm not sure of that.

Q. When you heard this remark, before we go to what it was --

A. Yes.

Q. -- can you now work out where in the time frame you heard that remark?

A. No, no.

Q. Is it fair to say you can't work out now whether it was a remark of her knowledge or concerns about McAlinden at the time of those concerns or looking back historically; is that right? It could be one or the other?

A. That's what - I think I understand your question. You see, she could have been acting on her own observation. She could have been repeating hearsay. I don't know.

1 Q. What was it that she said or you heard her say about
2 McAlinden?
3 A. That you had to be careful with him around children,
4 and that's as close as I can get to it.
5
6 Q. Did you understand it to be in the school context that
7 it was an observation about him around --
8 A. Yes. Yes.
9
10 Q. Is it a fair proposition that generally the position
11 is that parish priests, at least back in the 1980s and so
12 on, were welcome in parish schools?
13 A. That's true.
14
15 Q. So it would have been something memorable that a
16 principal was saying that a priest should be watched around
17 primary school children?
18 A. Yes. Yes.
19
20 Q. I want to move to ask you some questions about
21 Father Fletcher. First of all, before various allegations
22 became known about Father Fletcher and then ultimately his
23 charge and conviction, before any of those things happened,
24 how would you describe your relationship with Father James
25 Fletcher? Were you a close friend of his, a colleague, an
26 acquaintance? How would you characterise your dealings
27 with him?
28 A. Not a close friend. There's no implication that there
29 was a distance between us, I mean, unfriendliness, but we
30 worked in different parts of the diocese. I knew him.
31 I would have met him at meetings, for example, but I didn't
32 have a lot to do with him in the early years.
33
34 Q. You were the parish priest at Branxton/Lochinvar from
35 January 1989 until January 1995 when you moved to
36 Bulahdelah?
37 A. Yes. I'm not sure whether I was parish priest of
38 Lochinvar all that period, but certainly Branxton for those
39 six years and Lochinvar at least part of the six years.
40
41 Q. So it is likely that the "Lochinvar" after Branxton
42 has been added to your appointment at some stage?
43 A. It could well have been, but I wouldn't be sure of
44 that.
45
46 Q. Fletcher followed you at Branxton/Lochinvar after you
47 moved to Bulahdelah in 1995?

1 A. That's right.
2
3 Q. Did that mean you knew more about him because he
4 succeeded you in a parish?
5 A. I would have known him a bit - got to know him more.
6
7 Q. On 1 January 2001, you were appointed vicar general by
8 Bishop Michael Malone?
9 A. That's right.
10
11 Q. That was an appointment that was for five years?
12 A. Yes.
13
14 Q. Was that an appointment that was served out, in the
15 sense you were his vicar general for those five years?
16 A. That's right.
17
18 Q. The general position is, isn't it, that generally a
19 priest would be appointed vicar general once, serve that
20 term, and generally wouldn't be reappointed as vicar
21 general?
22 A. That varies with the bishop. Bishop Malone's idea was
23 to have an appointment, say, for five years, but other
24 bishops could well appoint a vicar general for a longer
25 period.
26
27 Q. In any event, not really related to the facts that are
28 concerning this Commission's inquiry, you were appointed
29 again by Bishop Malone acting vicar general --
30 A. That's right.
31
32 Q. -- between August-September 2008 and June 2009?
33 A. That's right.
34
35 Q. And that was in circumstances where Brennan had been
36 stood aside from that role for various reasons?
37 A. That's right.
38
39 Q. I want you to focus your attention on the period that
40 you were vicar general to Bishop Michael Malone from
41 January 2001.
42 A. Very well.
43
44 Q. Would you describe for the Commissioner the division
45 of tasks broadly; that is, what sort of things would you do
46 for the bishop or in the diocese as part of your function
47 as vicar general?

1 A. Well, a vicar general can do as much as or as little
2 as the bishop asks him to do. Do you want me to proceed
3 with that? I'm not sure.
4
5 Q. I do.
6 A. Right, okay.
7
8 Q. What I want to you to do is proceed in terms of your
9 experience of being Bishop Michael Malone's vicar general,
10 how much were you allowed to do and how much did you do -
11 not exhaustively, but the broad way in which you were asked
12 to perform the role of vicar general?
13 A. All right. Well, I'd come into the diocesan office
14 and do the administrative work as required, as indicated by
15 the bishop or the secretary. I would see people whom the
16 bishop might not be in a position to see. I would do
17 confirmations when the bishop wasn't able to do
18 confirmations, go with the bishop to see priests from time
19 to time, be with the bishop for various diocesan meetings.
20
21 Q. I'll get you to pause there for a minute. In terms of
22 going to see priests with the bishop, would that be for a
23 range of different reasons?
24 A. That's right.
25
26 Q. Would that include pastoral visits?
27 A. That's right.
28
29 Q. Disciplinary visits?
30 A. Yes.
31
32 Q. Sometimes a disciplinary visit dressed up as a
33 pastoral visit?
34 A. Yes.
35
36 Q. In terms of your working relationship with
37 Bishop Michael Malone, did he delegate slabs of
38 responsibility to you or was he more a bishop who kept his
39 hands on the reins and then delegated tasks to you rather
40 than areas of responsibility?
41 A. Yes, that would be a better way of putting it.
42
43 Q. Ultimately, decisions about big issues were his alone;
44 is that how it worked during his --
45 A. Yes, that's right.
46
47 MR HARBEN: I object to the descriptive term. I

1 understand we have an answer, but I take objection as to
2 the descriptive term, whatever "big" means. I don't know
3 what that means.

4
5 MR HUNT: It was rather meant as a preparatory question.
6 Not a lot was going to fall on the question or answer, but
7 I'm happy to --

8
9 THE COMMISSIONER: Thank you, Mr Hunt.

10
11 MR GYLES: With the last question, I'm not sure. There
12 were two propositions put and the witness said, "That's a
13 better way of saying it." I wasn't sure whether he was
14 addressing himself to the first or second option. It is
15 probably the second, but it might be unclear.

16
17 MR HUNT: Q. Father Saunders, I understood you to be
18 saying that Bishop Michael was more likely to keep control
19 and delegate you particular tasks --

20 A. Yes.

21
22 Q. -- as opposed to you disagreed that he would delegate
23 whole areas to you to look after yourself?

24 A. That is true.

25
26 Q. Can you remember whether, when you commenced to be
27 vicar general, Bishop Malone provided you with any kind of
28 briefing about issues about the behaviour of particular
29 priests?

30 A. There's reference in the statement about Fletcher.
31 Other priests I can't just, at the moment - maybe, but
32 I can't recall off the top of my head.

33
34 Q. I mainly do want to ask you about Fletcher, but I want
35 to ask you one thing about McAlinden. I accept it is more
36 challenging now to remember the actual detail, but is it
37 fair to say that, back in 2001, when you became vicar
38 general you would have had some knowledge about McAlinden
39 from those meetings of consultants and so on?

40 A. If I did, I can't recall that knowledge now.

41
42 Q. But do you accept as a general propositions it's
43 likely that you had your own knowledge?

44 A. Yes.

45
46 Q. At that time?

47 A. Yes, that's right, yes.

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Q. We'll come to Fletcher in a minute.

A. Right.

Q. Do you remember whether Bishop Michael Malone gave you any briefing as to where the McAlinden issue was up to when you started being VG?

A. No, I can't recall that, and I'd say that would be unlikely that he did.

Q. We'll finish dealing with McAlinden and then we'll come back to Fletcher.

A. Righto.

Q. When you were VG, were there continuing actions taken, to your knowledge, by people in the chancery trying to work out where McAlinden was at that stage?

A. No. I have to think about that one. Off the top of my head, certainly not. Okay, that's as - no, I can't recall.

Q. Can you remember whether Bishop Michael Malone ever asked you, while you were the VG, up until when McAlinden was known to be in Western Australia in 2005, to make inquiries as to where he was?

A. No, I can't recall.

Q. Isn't that likely be something you would recall if it was one of your jobs as vicar general?

A. Yes. That would --

MR HARBEN: I object. He has been asked if he can recall. He said he can't recall. The question is a purely hypothetical question.

THE COMMISSIONER: Perhaps not, Mr Harben. For Father Saunders' own reasons, he said he thought it would be likely that he would recall and he has given the answer.

MR HARBEN: But there's no basis for that.

THE COMMISSIONER: Well, there may be.

MR HARBEN: I'm talking about the question, the first question, which was "Do you recall?" "No, I don't." Then the hypothetical was posed, which invited a simple "Yes" or "No" response. There was no basis for it put in the

1 question.

2

3 MR HUNT: I can make a basis. It is answered, but I can
4 make a basis.

5

6 THE COMMISSIONER: Thank you, Mr Hunt. Mr Gyles has a
7 problem too.

8

9 MR GYLES: The witness has a tendency to use the words,
10 "That's right" and I'm not certain that he's answering
11 "Yes" to the question by using that expression.

12

13 THE COMMISSIONER: On this occasion he simply said, "Yes."

14

15 MR GYLES: Did he? All right.

16

17 MR HUNT: I don't really want to take it a lot further,
18 but if Mr Harben is wanting the remedy of my exploring why
19 it might be so --

20

21 THE COMMISSIONER: Yes, I invite you to do so, Mr Hunt.

22

23 MR HUNT: Q. Father Saunders, you've just indicated
24 these things to me I think: you don't have a memory of
25 being asked by Bishop Michael Malone to make inquiries
26 about the whereabouts of McAlinden?

27

28 A. That's true.

29

30 Q. Then I've asked you do you think it is likely, had you
31 been asked, that that's the kind of thing you would
32 remember and you agreed with that?

33

34 A. That - I agree with that, yes.

35

36 Q. What is it about the task of being asked to try and
37 find a priest incardinated to the diocese, but not in
38 contact within the diocese that makes you think it's
39 something that you would be likely to remember?

40

41 MR GYLES: To be fair to the witness, is the question
42 whether he remembers that now in 2013? Is that the
43 question?

44

45 THE COMMISSIONER: No, it is about the likelihood of
46 remembering such inquiries.

47

48 MR GYLES: I appreciate that, but remembering when -
49 remembering now or remembering at an earlier time?

1
2 THE COMMISSIONER: Now; that must be so.
3
4 MR HUNT: It must be now.
5
6 Q. Do you understand that I'm asking you about your
7 memory now, Father Saunders?
8 A. That's right, yes. Yes.
9
10 Q. Are you able to answer the question?
11 A. Perhaps we'd better start the question again.
12
13 Q. By way of history, you've agreed that you don't
14 remember being asked by Bishop Michael Malone to make
15 inquiries about McAlinden's whereabouts?
16 A. Yes.
17
18 Q. You've agreed that you think it is likely that that is
19 something that you would remember?
20 A. That's right, yes.
21
22 Q. Can you tell us why you think it is likely that that
23 is something that you would remember?
24 A. Well, it'd be a bit out of ordinary, wouldn't it, if
25 there was a priest, as you say, incardinated in the diocese
26 but living somewhere else and I was asked to look him up or
27 find out something about him? I think that's the kind of
28 thing I think I would recall.
29
30 THE COMMISSIONER: Thank you, Father Saunders.
31
32 MR HUNT: Q. Were you ever asked to find any other
33 priest while you were vicar general? When I say "find",
34 I mean work out the whereabouts of any other priest?
35 A. Not that I can recall.
36
37 Q. I think there was a time when you came to know where
38 McAlinden was living and his state of health?
39 A. Yes, that's about the time he died.
40
41 Q. Did you come by that knowledge at a time that the
42 bishop was on holidays and you were taking his
43 responsibilities?
44 A. That would be right.
45
46 Q. Because of that?
47 A. Yes.

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Q. Can you now remember how you came to know that McAlinden was unwell and living in Western Australia?

A. No, I can't recall that.

Q. You can recall that you did something with that information, though?

A. Yes, that's right.

Q. What did you do with that information?

A. As far as I can recall, I reported the matter to police authorities.

Q. Did you know that the police had an interest in him, that's McAlinden?

A. Yes, I would have, otherwise - well, that's why I reported it.

Q. Do you remember whether you ever knew that McAlinden had been charged with a criminal offence in Western Australia?

A. No, I was confused about that when I was in the other hearing.

Q. You are referring to a private hearing before the Commission?

A. That's right, yes.

Q. There's nothing since that's refreshed your memory in any way about that?

A. No, that is true.

Q. Coming to Fletcher, I think one of your answers suggested that you might have received some kind of briefing from Bishop Michael Malone about concerns about Fletcher when you did start as VG?

A. That's right.

Q. Can you remember in general the kinds of things that you were told about those concerns about Fletcher?

A. May I report what I - the statement I made?

Q. You rely on what you've put in your statement?

A. Yes, that's right, to Detective Fox:

After I took up the position as vicar general in 2001 Bishop Malone appraised me

1 *that there had been some vague assertions*
2 *in relation to Father Jim Fletcher.*
3 *I understood that these assertions were*
4 *examined but did not amount to anything*
5 *significant that required further*
6 *investigation at the time, but he was*
7 *making me aware of the assertions should*
8 *anything further ever come to notice.*
9

10 Q. All right. You adopt that bit of your statement given
11 to then Detective Sergeant Fox?

12 A. That's right.

13
14 Q. We'll do a bit of housekeeping, but first of all, you
15 have in front of you a copy of your statement made to then
16 Detective Sergeant Fox on 21 May 2003?

17 A. Right.

18
19 Q. Have you had cause to read it fairly recently or
20 review it fairly recently?

21 A. I have.

22
23 Q. Were you doing your best to tell the truth when you
24 gave that statement to Detective Fox?

25 A. Yes.

26
27 Q. Do you adopt the contents of that statement as true
28 and correct for the purposes of your evidence before the
29 Commissioner today?

30 A. That is true.

31
32 MR HUNT: I tender that, unless it has already been
33 tendered, it has a tab number. Tab 391, volume 5, it is.

34
35 Q. I won't get you to turn it up in the volume because
36 you've got your own copy there, Father Saunders, in the
37 witness box.

38
39 THE COMMISSIONER: In fact it is already an exhibit.

40
41 MR HUNT: Exhibit 52? I don't tender it then. Ms Needham
42 is asserting it has another exhibit number as well.

43
44 THE COMMISSIONER: Exhibit 53, I thought.

45
46 MR HUNT: And possibly 111. We're nothing if not thorough
47 at this Commission.

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THE COMMISSIONER: 111 is the current affidavit.

MR HUNT: Q. I just want to ask you a couple of questions, Father Saunders, about the paragraph that you've just adopted.

A. Yes.

Q. Is it the case that your understanding was that it was Bishop Malone who had examined the assertions that had been made about Fletcher?

A. Yes. Maybe he got information from Bishop Clarke, so - I wouldn't be sure where he got his information from. That would be a better answer, I think, yes.

Q. The fact that you're not sure and it might even have included information from Bishop Clarke, does that --

A. Could have.

Q. Does that mean you didn't know how recent those suggestions were about Fletcher?

A. That's right, I didn't know how recent they were.

Q. In paragraph 5 of your statement to Detective Fox, you indicate that, at the time you made the statement, you remember seeing a program on the 60 Minutes --

A. Strictly speaking, I didn't see the program. I knew the program was on, but I didn't see it.

Q. You didn't sit down and watch it?

A. No.

Q. But you knew of it?

A. I knew of it, yes.

Q. Some time after that, Father Harrigan reported something that he'd been told by Fletcher?

A. Yes, shortly after that.

Q. And it wasn't too long after that that you had a meeting with Bishop Malone on the issue of Fletcher?

A. That's right.

Q. Because you express yourself in this way as "soon after that" and "that" was something that happened a day or two after 2 June 2002, is it a fair proposition that, even when you made this statement in 2003, you couldn't be clear

1 of the exact day that you went up - that you first of all
2 met with Bishop Michael Malone?
3 A. That's right.
4
5 Q. And then went up with him to see Fletcher?
6 A. Mmm-hmm
7
8 Q. Is it the situation that you knew - you understand
9 about the use of pseudonyms? I've had a discussion with
10 you?
11 A. That's right. Yes.
12
13 Q. I think you know the person who has the pseudonym
14 [BI]?
15 A. That's right.
16
17 Q. You knew from Bishop Malone that he and [BI] had had a
18 discussion with each other?
19 A. That's right.
20
21 Q. Do we you understand that you weren't there for that
22 discussion?
23 A. I wasn't there at the discussion.
24
25 Q. But did Bishop Malone give you the effect of that
26 discussion, when you met with him, about Fletcher?
27 A. Yes, that's in here, yes.
28
29 Q. In paragraph 8 of your statement - that is your
30 statutory declaration, I'm sorry, Father Saunders, rather
31 than your police statement - you say this:
32
33 *Shortly after that Bishop Malone told me he*
34 *was going to speak to Fletcher and*
35 *requested I accompany him.*
36
37 A. Yes.
38
39 Q. You've already given evidence that one of your roles
40 as vicar general was to go on visits to priest, whether
41 they were pastoral, whether they were disciplinary or
42 whether they were a mixture of both?
43 A. That's right.
44
45 Q. Did you know yourself the purpose of the visit to
46 Fletcher when Bishop Malone asked you to go?
47 A. Yes. He was going up to raise the matters that were

1 raised just a couple of days before.
2
3 Q. Did he tell you in broad what he was wanting to
4 achieve by going to see Fletcher?
5 A. No. I said there that - no, in broad, no, I can't -
6 would you like to ask another question about that? I'm not
7 sure I'm answering you correctly.
8
9 Q. I'll ask you this question.
10 A. Yes.
11
12 Q. In paragraph 9 of your statement you say something
13 that, although it is in quotes, it conditioned in this way,
14 that "Bishop Malone said to me words to the effect of" --
15 A. Yes, that's right.
16
17 Q. -- the thing that's in quotes?
18 A. That's right, I said that, yes.
19
20 Q. The words that are said there are these:
21
22 *If I was under investigation, I would like*
23 *to know.*
24
25 A. That's right.
26
27 Q. Can you say whether those were words that were said by
28 Bishop Malone to you when it was just the two of you?
29 A. Yes, that'd be my recollection.
30
31 Q. Are you able to say whether those words were said
32 en route to Lochinvar?
33 A. Branxton.
34
35 Q. To Branxton, I'm sorry?
36 A. That's my recollection, that it was said en route, but
37 I wouldn't go to the barricades on that, but that's my
38 recollection.
39
40 Q. In paragraph 10 - I just want to read out to you and
41 then ask you a couple more questions about it - you say,
42 and this in the context, I assume, first of all, of having
43 arrived to Branxton presbytery; is that right?
44 A. That's right.
45
46 Q. Can you remember, when you arrived with Bishop Malone
47 at Branxton presbytery, whether Fletcher was alone there or

1 accompanied at that stage?

2 A. I'm not sure. I'd say there were two meetings up at
3 Branxton. My recollection would be that, at the first
4 meeting, it was Fletcher, Bishop Malone and myself. In the
5 second meeting, I think Father Des Harrigan was around.
6 That's as close as I can get to it.

7

8 Q. I just want to read out what you say at paragraph 10:

9

10 *I do not now recall the specifics of the*
11 *conversation when we met with Fletcher ...*

12

13 This is the first time?

14 A. Yes.

15

16 Q. :

17

18 *... but I do recall the Bishop put to*
19 *Fletcher the [AH] allegations, which were*
20 *strongly denied ...*

21

22 A. Yes, right.

23

24 Q. Then you go on to make some observations about
25 Fletcher's reaction and health, et cetera. Are you able to
26 help us at all any more with what else might have been said
27 in that part that you summarise as:

28

29 *... I do recall the Bishop put to Fletcher*
30 *the [AH] allegations, which were strongly*
31 *denied ...*

32

33 A. No. Maybe some specific question could draw more out,
34 but I just - globally, no, I couldn't.

35

36 Q. Can you remember whether the bishop put details as to
37 what the bishop understood [AH] was alleging?

38 A. Yes.

39

40 Q. Did those details include material about the acts that
41 were alleged against Fletcher?

42 A. Yes, there was sexual assault, yes. That's right.

43

44 Q. Did it seem to you that Bishop Malone was trying to
45 evoke an admission out of Fletcher had one been
46 forthcoming?

47 A. Yes, that could be a - yes, a good interpretation of

1 it.

2

3 Q. Is that something - help us with this, and I don't
4 know whether you can or not in terms of your memory - you
5 now see as being a reasonable proposition, or back then you
6 thought that was something that the bishop was trying to
7 do, was have Fletcher confess to it if - I don't mean that
8 in the religious sense?

9 A. No, that's right. That's right. That's right. I can
10 see that now as a plausible explanation, a plausible
11 approach. Whether I thought it at the time whether he was
12 trying to evoke - is that the word? - a confession, maybe,
13 maybe, yes.

14

15 MR HUNT: Is that a convenient time, Commissioner? I've
16 taken a little longer than I thought with the witness.

17

18 THE COMMISSIONER: Thank you, Mr Hunt. I will adjourn.

19

20 **SHORT ADJOURNMENT**

21

22 MR HUNT: Q. Father, could you look at your statutory
23 declaration, paragraph 12.

24 A. Yes.

25

26 Q. In summary, you say there that you were told by
27 Bishop Malone some time after that first visit that you and
28 he had up to Fletcher at Branxton --

29 A. That's right.

30

31 Q. -- that a meeting had been arranged with the police?

32 A. That's right.

33

34 Q. You have a recollection of being at the meeting?

35 A. That's right.

36

37 Q. That was the meeting that included Detective Chief
38 Inspector Fox?

39 A. That's right.

40

41 Q. Can you remember whether there was another police
42 officer in attendance?

43 A. Yes, there was. It's in the statement. Where was
44 that? In the police - yes, Detective Ann Joy.

45

46 Q. You remember there being a woman police officer there?

47 A. There was, yes.

1
2 Q. The way you summarise that episode is that you don't
3 remember the details of the conversation, but you expect it
4 was Bishop Malone that did the talking?
5 A. That's right.
6
7 Q. Were you ever, back then, asked to acknowledge in
8 writing in some way a summary of the conversation that had
9 happened by either of the police officers?
10 A. No.
11
12 Q. I just want to show you a document to try and put a
13 time. I think you agree that you went to see Fletcher
14 again - paragraph 13 of your statutory declaration?
15 A. That's right.
16
17 Q. There's not a date there. I assume that means you
18 were not able, at the time you prepared your statutory
19 declaration, to fix a date on it?
20 A. But we can compare that with the statement I made to
21 Detective Fox.
22
23 Q. Yes, and at paragraph 9 of that statement you say it
24 was 20 June or the following day?
25 A. That's right, yes.
26
27 Q. Given that that statement was made in 2003, we're
28 safer to prefer that detail as being correct?
29 A. Yes, that's true.
30
31 Q. I'll show you another document to give you some
32 confidence that that is right. I have opened for you
33 volume 5 and it is open at tab 351.
34 A. Yes, 24 June.
35
36 Q. Is that what looks like a fax letter that's come from
37 Branxton presbytery? It looks like it was sent on 25 June
38 although the letter was written on 24 June 2002? Do you
39 see that?
40 A. Yes.
41
42 Q. It is marked at the bottom, "Attention: Reverend
43 James Saunders Vicar General"?
44 A. That's right, yes.
45
46 Q. And in a familiar fashion it is signed "Jim Fletcher"
47 and addressed to "Dear Jim"?

1 A. That's right.
2
3 Q. It says:
4
5 *Just a line to say thank you for your visit*
6 *with Bishop Michael last Friday.*
7
8 A. Yes.
9
10 Q. That would seem to be in context some date before
11 24 June that you went up there in 2002?
12 A. Yes.
13
14 Q. Do you see that Fletcher goes on to say this:
15
16 *I have given thought to the suggestion you*
17 *made to me regarding residence at the*
18 *Cathedral for a time.*
19
20 A. That's right.
21
22 Q. Then he says:
23
24 *I have decided that I would feel much*
25 *better and I would prefer to remain here at*
26 *Branxton.*
27
28 A. That's right.
29
30 Q. Does that detail, recorded by Fletcher after the visit
31 in a note of thanks to you, evoke memories of the kinds of
32 things that were discussed when you and the bishop went up
33 there around 20 June 2002?
34 A. Yes, and --
35
36 Q. Do you want to look at paragraph 9 of your Fox
37 statement as well?
38 A. Yes. Yes, paragraph 9 of the statement I made to
39 Detective Fox:
40
41 *It was either the 20th of June or the*
42 *following day ... the Bishop discussed with*
43 *Jim that there was a police investigation*
44 *and asked if he would like to be relieved*
45 *while this was occurring.*
46
47 That's right.

1
2 Q. Is it fair that it was an invitation to be relieved
3 rather than some direction that he ought to take leave?
4 A. My recollection would be that the bishop wanted to
5 remove him, but Jim wanted to stay and the bishop, as it
6 were, say relented. That's my - as close as I can get to
7 it.
8
9 Q. I want to ask you, can you remember of your own memory
10 who the principal was of the infants school at Greta and
11 the primary school at Branxton back in 2002?
12 A. It probably was Will Callinan, yes. Yes, that's --
13
14 Q. Thinking about Will Callinan --
15 A. Yes, go on.
16
17 Q. -- and that visit of the bishop and yourself to
18 Fletcher around 20 June 2002, do you have any memory
19 of either you going to see Will Callinan or the bishop
20 going to see Will Callinan or both of you going to see
21 Will Callinan on that trip?
22 A. I can't recall going, my going or the bishop's going,
23 but that's not denying it had happened, but I can't recall
24 immediately.
25
26 Q. Do you now remember or are you able to summon up any
27 discussions or memories of discussions about whether
28 Fletcher ought to stay serving as a priest at that time?
29 A. Discussions with Bishop Malone, do you mean?
30
31 Q. Yes.
32 A. I can't recall; no, I can't recall discussions. We
33 could well have discussed it, of course, but I can't
34 recall.
35
36 Q. Did you ever come to you understand that Peter Gogarty
37 had come forward as a victim of Father Fletcher?
38 A. I certainly know it now. When I was first aware of
39 it, I wouldn't know.
40
41 Q. Another victim came forward in 2004, who goes in this
42 Commission by the pseudonym [AB]. Do you know who I'm
43 talking about?
44 A. No, I don't think so.
45
46 Q. Just have a look at this document and have a look at
47 number 1 on the list.

1 A. Okay. Thank you.
2
3 Q. Do you see that?
4 A. Yes.
5
6 Q. Do you know who I'm talking about?
7 A. Oh, I don't know the person.
8
9 Q. No, but you --
10 A. The name, I --
11
12 Q. While you were the vicar general you came to know that
13 a person with that person's actual name had come forward
14 complaining that he'd been abused by Fletcher?
15 A. I couldn't - I can't recall that now, no.
16
17 Q. Okay. It doesn't ring a bell at all?
18 A. No. The name rings a bell, but where that comes from,
19 I don't know.
20
21 Q. The fact of somebody, apart from the original victim
22 [AH], and apart from Mr Gogarty, the fact of somebody else
23 coming forward in 2004 is something you remember?
24 A. No, I can't remember - well, whether I could remember
25 it in - do I remember it now going back to 2004? No.
26 Could I - could I have been aware of it then; is that --
27
28 Q. Perhaps we could do it this way: you remember going
29 to Fletcher's committal hearing; is that right?
30 A. Yes.
31
32 Q. You didn't go to his trial?
33 A. I didn't go to the trial, yes.
34
35 Q. You now know that you didn't go to his trial, though,
36 I gather?
37 A. Yes, I definitely didn't go to the trial. Yes, that's
38 right, I didn't go to the trial.
39
40 Q. You remember the fact of him being convicted?
41 A. Oh, yes, I remember he was convicted, yes.
42
43 Q. What I'm exploring with you is: there was a time when
44 there was one known victim?
45 A. That's right.
46
47 Q. And Fletcher was defending the charges?

1 A. That's right.
2
3 Q. Did you have a view back then about whether it was
4 likely, probable, definite, questionable, whether he was
5 guilty when there was one victim?
6 A. My original view was that he wasn't guilty.
7
8 Q. I think the position is you absolutely accept the
9 genuineness of the verdict that was entered against him; is
10 that fair?
11 A. I certainly accept - "absolute" is a very high and a
12 very --
13
14 Q. I might be overstating it. I don't want to overstate
15 it.
16 A. Yes.
17
18 Q. What is your position in terms of your acceptance as
19 to whether Fletcher was guilty or not?
20 A. I think as you people would say, beyond reasonable
21 doubt.
22
23 Q. What I'm examining with you is that, as vicar general,
24 was there a time when it started to look like there was
25 more evidence against Fletcher than had been first thought?
26 A. That's right.
27
28 Q. Suggesting to you that it would have been pretty
29 remarkable that another victim came forward in relation to
30 Fletcher, and are you saying you don't have a recollection
31 of that being an event that happened while you were vicar
32 general?
33 A. Oh, yes. You were mentioning a name. I couldn't -
34 and that name rings a bell. Whether that was the person
35 concerned we're talking about, that I don't know.
36
37 Q. We might be as cross-purposes. You have a challenge
38 about being able to identify --
39 A. A person.
40
41 Q. -- a person?
42 A. Yes, that's right, but I was aware later on that there
43 were further allegations, yes.
44
45 Q. That's the thing I thought you didn't have a
46 recollection of.
47 A. No, no, no, that's right. Oh, yes, I was aware of

1 that.
2
3 Q. Do you remember as part of your duties as vicar
4 general being obliged to contact the CCER organisation in
5 relation to that new victim coming forward?
6 A. I don't remember that.
7
8 Q. What I want to do, in fairness to you, is have you -
9 you remember I went through an exercise where I had you
10 read some minutes even though you weren't at the meeting?
11 A. Yes.
12
13 Q. I want you to read something that is somebody else's
14 record about a communication with you?
15 A. Yes.
16
17 MR HUNT: You're going to have to forgive me,
18 Commissioner, I've lost my tag number. It is tab 415 of --
19
20 MR GYLES: Volume 6.
21
22 MR HUNT: -- volume 6. I thank my learned friend
23 Mr Gyles for his mastery of the brief and, of course, the
24 diocesan records.
25
26 THE COMMISSIONER: Well done, Mr Gyles.
27
28 MR HUNT: Q. Father, in fairness, I haven't shown you
29 this document this morning, so would you just take your
30 time. You will see that the subject is Father Jim
31 Fletcher?
32 A. Yes.
33
34 Q. It's an email from somebody in the CCER to personnel
35 at, at least the Professional Standards Office?
36 A. Yes.
37
38 Q. Take your time and read the material, if you would?
39 A. I think it's okay.
40
41 Q. You have read that?
42 A. I have glanced at it, yes.
43
44 Q. I don't want you to glance at it. I want you to read
45 it, if you could. Take your time. There have been people
46 who have been in that witness box for half an hour reading,
47 so take your time to read it.

1 A. (Witness does as requested). Okay. See how we go.
2
3 Q. First, I'll go through a number of propositions
4 ad seriatim with you, if I might, father. The first is
5 whether reading that email excites memory about the things
6 that are described in it?
7 A. No.
8
9 Q. Was it within your responsibilities, as you remember
10 them, that a call of the nature that's described would have
11 fallen within your responsibilities; that is, to put THE
12 CCER on notice about a further allegation about a priest?
13 A. I couldn't imagine my doing that off my own bat, on my
14 own initiative.
15
16 Q. It is something that would have been done at the
17 delegation of your bishop?
18 A. Yes, I'd say so, yes.
19
20 Q. Is that because of the seriousness of the step that
21 that's an important notification to make? Is that why you
22 think that?
23 A. Yes, that's plausible, yes.
24
25 Q. The writer of the email reports to the people that
26 he's communicating with:
27
28 *Father Saunders wishes to contain the*
29 *matter insofar as is possible and prefers*
30 *not to provide even a dot-point report at*
31 *this time.*
32
33 A. Yes.
34
35 Q. Does that particular sentence remind you of either
36 your attitude to this further disclosure or anything that
37 the bishop might have instructed you about containing the
38 matter?
39 A. No, it doesn't evoke any more memory.
40
41 Q. What about the reference to Father Glen Walsh in
42 paragraph 2 as being in some way connected in terms of
43 progressing the matter with Peter Fox? That's in relation
44 to this new allegation or another allegation; does that
45 refresh any memory? Do you have any --
46 A. I'm afraid not.
47

1 Q. Not even of Glen Walsh's involvement at all?
2 A. No. No. No.
3
4 Q. I've finished the questions I want to ask you about
5 Fletcher.
6 A. Yes.
7
8 Q. I want to go back and ask you about that minute of the
9 meeting of deans on 2 August 1995. You will remember that
10 you gave some evidence that you thought that an application
11 to remove faculties --
12 A. Faculties, yes.
13
14 Q. -- would be a preferable procedure to laicisation for
15 a priest that was being delinquent in some aspect?
16 A. Yes. Well, yes, or a prior procedure, a first step.
17
18 Q. What I want you to accept for the moment is if you
19 accept that in 1993 Father McAlinden's faculties had been
20 removed by Bishop Clarke --
21 A. Righto.
22
23 Q. -- and that there was some suggestion that he was
24 failing to conform to that restriction by undertaking
25 priestly activities --
26 A. Yes.
27
28 Q. -- would laicisation then be another step that might
29 be considered?
30 A. Yes. Yes, it would.
31
32 Q. Can you remember at all any suggestion at any time in
33 the 1990s of McAlinden having had his faculties removed?
34 A. No, I can't recall that now.
35
36 Q. I think it follows from that, you can't recall now
37 whether there were suggestions about laicisation
38 procedures?
39 A. I can't - I can't recall.
40
41 Q. Or other canonical procedures against him?
42 A. I can't recall.
43
44 MR HUNT: That's the evidence-in-chief, Commissioner.
45
46 THE COMMISSIONER: Thank you very much, Mr Hunt.
47

1 MS NEEDHAM: No questions.
2
3 THE COMMISSIONER: Nothing along the front row? Mr Cohen?
4
5 <EXAMINATION BY MR COHEN.
6
7 MR COHEN: Q. Father, I would be grateful if I could
8 take your memory back, to the extent that you have a
9 current memory, to the events of 20 June 2002?
10 A. 20 June 2002, okay.
11
12 Q. Particularly the date that Detective Chief Inspector
13 Fox, Detective Sergeant Fox as he then was, attended upon
14 yourself and Bishop Malone at the offices of, I think, the
15 chancery at Newcastle. Do you recall that day?
16 A. I do.
17
18 Q. Do you have a recollection of any particularity of the
19 conversation that ensued? Please, if you don't, tell the
20 Commission?
21 A. That's right, yes. My recollection would be, at that
22 meeting, Detective Fox asked the bishop or suggested to the
23 bishop that Fletcher should be removed. Now, I think it
24 occurred at that meeting.
25
26 Q. Would it assist your recollection to see a document
27 that is a record of the discussion of that day?
28 A. Very well, yes.
29
30 MR COHEN: Might Father Saunders be shown what is now
31 exhibit 49, please, Commissioner. If that's of assistance.
32 I'm sorry, what I don't have is an immediate
33 cross-reference to the position in the bundle.
34
35 THE COMMISSIONER: I don't know if it is even in it.
36
37 MR COHEN: I'm not so sure myself. I must confess,
38 Commissioner, I don't recall that it's in there.
39
40 THE COMMISSIONER: No, I don't think so.
41
42 MR COHEN: For the assistance of those at the Bar table,
43 if they haven't already caught up, it is exhibit 49.
44
45 Q. Father Saunders, would it assist you to read that
46 first? If you might do that, thank you.
47 A. Yes.

1
2 Q. Father, just before you embark on the detail?
3 A. Who are the "Hes" and the "Is" --
4
5 Q. I was about to indicate to assist you. This is a
6 record of the day where there's a meeting involving
7 yourself and Bishop Michael Malone, Detective Chief
8 Inspector Fox --
9 A. Yes.
10
11 Q. -- and another detective senior constable, by the name
12 of Ann Joy. Do you remember it involving those four
13 people?
14 A. Yes, I do.
15
16 Q. The "I said" and "He said" are, respectively,
17 Detective Chief Inspector Fox, "I said" --
18 A. Yes.
19
20 Q. -- and Bishop Michael Malone?
21 A. Oh, Bishop Michael is the "He said".
22
23 Q. Yes, save for one occasion where there's a
24 cross-reference to you. On the second page, the short
25 cross-reference is identified by "Saunders said" to assist
26 you?
27 A. Right, okay.
28
29 Q. If I could ask you to read the entirety of the
30 document and let the Commissioner know when you've had an
31 opportunity to do that, and if you might read it --
32 A. Sorry, quietly.
33
34 Q. That is simply because, if you speak, the words will
35 be captured on the transcript.
36 A. Okay, thanks.
37
38 MR HUNT: Commissioner, could I, not to interrupt what is
39 happening, but to fill in a little time, indicate that
40 there has been a request from the media for exhibits 111
41 through to 114 inclusive. Could those at the Bar table let
42 me know of any difficulty when we break at 1 o'clock;
43 otherwise they will be released very shortly thereafter.
44 They're fairly unproblematic documents, I would have
45 thought.
46
47 THE COMMISSIONER: Thank you, Mr Hunt.

1
2 MR GYLES: While the document is being read, Commissioner,
3 as to what the witness might take from the document, it may
4 be appropriate that, in terms of context, he is told what
5 the document is and who prepared it.
6
7 MR COHEN: I already have. I've already done that.
8
9 THE COMMISSIONER: I thought you did that, Mr Cohen
10
11 MR COHEN: I did.
12
13 THE COMMISSIONER: I believe, because Father Saunders,
14 most perspicaciously said, "Who are the 'Is' and the
15 'Hes'?", Mr Cohen has told him those people and even
16 indicated what is said to be what Father Saunders said as
17 being on the next page. I think Father Saunders is aware
18 of that.
19
20 MR GYLES: The question was, "Who prepared the document?"
21
22 THE COMMISSIONER: "Who prepared the document?" I'm
23 sorry, from Gyles.
24
25 MR GYLES: I have said that in case there's some issue
26 that's thought about that. I appreciate what you've just
27 said to me about the individuals having been identified.
28
29 THE COMMISSIONER: Q. Excuse me, Father Saunders, if
30 I could interrupt you, Mr Gyles has suggested that it be
31 made to you that this document was prepared by Detective
32 Chief Inspector Fox.
33 A. Thank you.
34
35 THE COMMISSIONER: Thank you.
36
37 THE WITNESS: Yes.
38
39 MR COHEN: Q. Thank you, Father Saunders. This is
40 certainly not a memory test, and memory is a fragile thing.
41 Indeed, I have difficulty recalling what I had for
42 breakfast this morning and perhaps --
43
44 MR HARBEN: I can't hear Mr Cohen.
45
46 MR COHEN: I beg your pardon.
47

1 Q. Father Saunders, do you object to any of the
2 statements, the recordings, that are recorded within that
3 document as unlikely or unattributed to persons, or do you
4 have no recollection? What is your position, having read
5 the document?

6 A. Substantially I would accept that. I would quibble
7 with a couple of points, but substantially.

8
9 Q. The points with which you would quibble, are they of
10 any moment or substance to you?

11 A. No, I don't think so. I thought it was I, for
12 example, who asked Detective Fox whether we were legally
13 obliged to remove Fletcher. I think the detective put that
14 slightly differently; but, no, substantially not.

15
16 Q. Notwithstanding the emphasis of whether it was either
17 yourself or Bishop Malone --

18 A. Yes.

19
20 Q. -- conceptually you don't object to the propositions
21 that are contained within the document?

22 A. That's true.

23
24 Q. That's a fair statement to you?

25 A. It's a fair statement, yes.

26
27 Q. Can I ask you, in respect of your statement to the
28 police - this is, for the purposes of those at the Bar
29 table and the Commissioner, exhibit 52 - I believe you have
30 that in the witness box with you; that is to say, your
31 statement of 21 May 2003 given in police format to then
32 Detective Sergeant Fox?

33 A. That's right, yes.

34
35 Q. Do you still have it with you in the witness box?

36 A. I have, yes.

37
38 Q. Could I direct your attention to it, particularly
39 paragraph 4 in that statement. Do you see that in the
40 third sentence of that statement in paragraph 4, you say:

41
42 *After I took up the position as vicar*
43 *general in 2001 Bishop Malone appraised me*
44 *that there had been some vague assertions*
45 *in relation to Father Jim Fletcher.*

46
47 A. That's right.

1
2 Q. Is it possible that that was around about January of
3 that year; that is, January 2001?
4 A. That's possible.
5
6 Q. Is it likely or is that a memory you don't have?
7 A. I took up the position on 1 January 2001, so, yes,
8 that's possible, that's --
9
10 Q. It is likely?
11 A. That's likely; yes, likely, that's the word.
12
13 Q. Is that the first occasion, therefore, that you became
14 aware of, if I can use, hopefully, a neutral term, concerns
15 about Father Fletcher?
16 A. That is the first occasion.
17
18 Q. Can I ask you if you would look - again, this is still
19 in paragraph 4, as I read your statement - at the top of
20 the second page. For transcript purposes in exhibit 52, is
21 the top of the page is marked page 2 and has, at the foot
22 of the page, a reference 1038?
23 A. Yes.
24
25 Q. Just to help you identify it, do you have that page?
26 Do you see at the very top it says page 2?
27 A. "I understand that these assertions were examined"?
28
29 Q. That's it.
30 A. That's fine, good.
31
32 Q. When you make the statement there your understanding
33 was the assertions were examined but did not amount to
34 anything significant, what exactly were you referring to as
35 not amounting to significant?
36 A. I don't think I could improve about that - improve on
37 that.
38
39 Q. That is to say, your recollection now is no better
40 than it was at the time; is that what you mean?
41 A. That is true. That is true.
42
43 Q. So for the Commissioner's purposes now, those words
44 convey whatever meaning can be divined from them now?
45 A. Yes.
46
47 Q. Can I ask you this question, please: having regard to

1 the position in what was June 2002, when you had this
2 discussion with Detective Chief Inspector Fox - I'm sorry,
3 I keep saying that, but then Detective Sergeant Fox?

4 A. That's right.

5
6 Q. At that time, June 2002, did you have an appreciation
7 of the relevant child protection obligations that were
8 imposed upon the diocese by the appropriate legislation?

9 A. I would - from - I wouldn't - I couldn't say now what
10 I was aware of then, no. My instinct would be I wouldn't
11 have been very au fait with them, but that's - that's as
12 close as I can get to it.

13
14 Q. Is it fair to say a passing understanding, but nothing
15 of substance or particular detail; is that what you mean?

16 A. That's what I mean, thank you.

17
18 Q. But you were aware that there were obligations that
19 may be or were applicable and operative at the time?

20 A. Yes, but I would be hazy on the details.

21
22 Q. You've indicated that Bishop Malone was minded to
23 stand Father Fletcher down?

24 A. Yes.

25
26 Q. I regret I don't recall the exact term you used, but
27 the gist of it, I think, was he was talked out of it; is
28 that the way you put it?

29 A. Not quite, no.

30
31 Q. He relented?

32 A. Relented is closer, yes.

33
34 Q. Was that relenting because of views that were brought
35 to bear on Bishop Malone at the time, in your
36 understanding?

37 A. No, I think he was - he accepted Fletcher's strong
38 wish to stay at the parish.

39
40 Q. Is it your understanding that that was the predominant
41 factor against all other factors at the time, that were
42 being weighed in the balance, so to speak?

43 A. Well, yes, but we're trying to surmise what
44 Bishop Malone was thinking, but that's my - yes, my -
45 what's the word I want? That's my assessment of it.

46
47 Q. Your assessment having regard to what you knew and

1 what you saw and what you heard at the time; is that right?

2 A. That's right.

3

4 Q. So it wasn't mere idle wondering by you; you had a
5 positive process of thinking about these things and coming
6 to that conclusion you just expressed now?

7 A. Yes.

8

9 Q. At the time in 2002?

10 A. Yes, as close as I can get to it now.

11

12 Q. You were taken to a document a little while ago by my
13 learned friend Mr Hunt when he was taking you, through your
14 evidence-in-chief, to use the phrase we employ. You were
15 asked about a document that attributed to you a wish to
16 contain matters and not even to reduce it to writing by way
17 of dot points. Do you recall that document?

18 A. That's right.

19

20 MR GYLES: I object to this topic. This is not a topic
21 that my learned friend, in the interests of Detective Chief
22 Inspector Fox, should be able to embark on this. It has
23 been dealt with by counsel assisting.

24

25 MR COHEN: With respect, it goes directly to it. The very
26 document identified then Sergeant Fox. This is the
27 document that's at tab 415. It is an email that was sent,
28 apparently from the CCER to people involved in the CCER
29 with the subject of Father Jim Fletcher. It identifies,
30 amongst other things, allegations the subject of
31 investigation by Peter Fox.

32

33 MR HUNT: I support Mr Gyles's position. The fact that
34 the email mentions Mr Cohen's client doesn't, of itself,
35 excite an interest that relates to his client. The reason
36 it has some potential relevance to your determinations,
37 Commissioner, is the witness's possible attitudes at that
38 time to containing information about [AB]'s allegation to
39 child protection notification agencies rather than matters
40 that directly devolve in relation to Detective Chief
41 Inspector Fox's then investigation. I can't see how --

42

43 THE COMMISSIONER: But, Mr Hunt, isn't it a matter that,
44 putting aside whether Mr Cohen explores it, is relevant to
45 my ultimate determinations; that is, what Father Saunders's
46 attitude was at the time to containing matters?

47

1 MR HUNT: It is clearly relevant and that's why I asked
2 Father Saunders some questions. The question is whether it
3 is relevant to Mr Cohen's client's interests. My
4 contention is, unless he can submit further as to why that
5 is so, the fact that his client is mentioned as being in
6 the text of the email doesn't do it. I think I cut across
7 Mr Gyles, who I was agreeing with, but he might be saying
8 some other things, but I --

9
10 MR GYLES: No, I don't say it is not relevant. It is a
11 question of Mr Cohen standing to deal with it when it's
12 already been dealt with.

13
14 THE COMMISSIONER: Mr Cohen, would you permit me to ask a
15 question of Father Saunders?

16
17 MR COHEN: Certainly, Commissioner.

18
19 THE COMMISSIONER: Q. Father, would you be so kind as to
20 tell me whether it was true that you conveyed to these
21 people at the CCER that you wished to contain the matter
22 insofar as is possible and you preferred not even to
23 provide a dot point report at the time? Do you have it
24 there? Perhaps you don't.

25 A. It's here somewhere.

26
27 MR COHEN: It is document 415, Commissioner, if that
28 assists, behind tab 415.

29
30 THE COMMISSIONER: Q. Father, the lady next to you will
31 pass you the document.

32 A. Thank you. Yes. Thank you. Your question please,
33 Commissioner?

34
35 Q. If I may refer you to the fourth paragraph in the body
36 of that communication.

37 A. Yes. Very well.

38
39 Q. Father, are you able to tell us now whether it is true
40 that you said to someone you wished to contain the matter
41 insofar as is possible?

42 A. I can't recall the conversation I had. Therefore,
43 I can't comment on my - what my thought processes were some
44 nine years ago.

45
46 Q. Of course, but do you recall having a wish to contain
47 the matter insofar as is possible at the time?

1 A. No. All I can go on is what's written there. I have
2 no - I think you said - independent memory now of the
3 conversation.

4
5 Q. Thank you, Father Saunders?

6 A. Thank you.

7
8 THE COMMISSIONER: I think that's about all we can do with
9 it, Mr Cohen.

10

11 MR COHEN: Other than perhaps you might permit me this
12 question, although I think I can hear the objections
13 forming already.

14

15 THE COMMISSIONER: They can't hear you, so that might
16 avoid it.

17

18 MR COHEN: Q. Father Saunders, does this attribution to
19 you of a position, if I can put it as neutrally as that, in
20 2004 reflect a cultural disposition in the diocese with
21 regard to such matters?

22 A. About the --

23

24 Q. About the idea of disclosure of sexual offences by
25 priests?

26 A. Oh, I see. It refers to "provide even a dot point
27 report at this time." Well, it seems to me that I was
28 reluctant to provide additional information to the CCER
29 over and above what was already given to them, namely, that
30 there was a further allegation. So "contain" - actually,
31 these are not my words, they're someone else's words,
32 I take it that I wanted to disclose as little as possible
33 and let the police get on with their investigations and not
34 for us to provide a blow-by-blow report of what was
35 happening. That's my sense, just reading that there.

36

37 Q. But does that portray a view that you harboured at the
38 time that it was better not to let the police know about
39 these things?

40

41 MR GYLES: I object to that. This very communication is a
42 communication to the authorities in respect of this new
43 victim.

44

45 THE COMMISSIONER: In fact, the last answers from
46 Father Saunders, Mr Cohen, indicate that precisely the
47 opposite was true.

1
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MR COHEN: Very well. I'll come back to my question of a few questions ago.

Q. Was there a cultural disinclination within the diocese that, in your understanding, prevented or retarded communication of these things where it involved sexual offences committed by priests?

A. I couldn't say there was. No, that's - I'd have to reflect on that answer - reflect on that position.

Q. Reflecting, if you can, in the witness box now --

A. Well, I might not be answering your question, but there was trouble when the bishop and myself went to see Fletcher and then the information was disclosed and there was trouble about that. So I suppose the attitude was if you're going to err on the side of giving information, less is better than more, and it was ourselves, vis-a-vis the CCER, so why would we be, as it were, obliged to supply a dot-by-dot report as to what was happening with the allegation.

Q. The trouble to which you referred in your last answer, I take it, was the controversy that arose out of Bishop Malone informing Father Fletcher of the identity of the complainant; is that what you meant?

A. That's right, yes, and I might be reading too much into that, but - okay.

Q. As to either of Father Fletcher or Father McAlinden, do you have any recollection of whether or not either of those priests were moved between parishes or to other locations?

MR GYLES: I object to the question. This has nothing to do with any dealings between Detective Chief Inspector Fox and Father Saunders.

THE COMMISSIONER: That's true, isn't it, Mr Cohen? Are you perhaps restricting your inquiry to once your client was involved in --

MR COHEN: It was a lead-up question to that proposition, but I confess that I'm - perhaps this is the most neutral term - sensitive ground in this respect. I'm alive to the objections that are taken to me, as it were, poking my nose in. I don't propose it is anything other than to establish

1 a basis for asking a particular question, but I'm alive to
2 the difficulty.
3
4 THE COMMISSIONER: It is about McAlinden and Fletcher and
5 I expect you're asking Father Saunders about his time as
6 vicar general.
7
8 MR COHEN: Yes, that's so.
9
10 THE COMMISSIONER: All right. I'll permit you to ask it.
11
12 MR COHEN: Let me set it up that way, Commissioner.
13
14 Q. Father Saunders, apart from a further period that
15 you've identified when you were, as it were, relieving in
16 the position, the standing role you occupied as vicar
17 general was from 2001 to 2006; that's so, isn't it?
18 A. To the end of 2005.
19
20 Q. Thank you very much. A five-year period essentially?
21 A. Yes.
22
23 Q. In that period, was it your perception that there was
24 an accommodation of priests, particularly McAlinden and/or
25 Fletcher, that they were moved around between parishes or
26 perhaps to other locations to keep them out of sight?
27
28 MR GYLES: I object. This is not within my learned
29 friend's leave; to the extent he has leave to appear in
30 this part of the inquiry, this is not within that leave.
31 He is not a general interrogator. This has been done to
32 death, this point, with all due respect.
33
34 THE COMMISSIONER: I don't think that it was "necessarily
35 keep priests out of sight"; that's not what you mean
36 Mr Cohen, but to keep them away from current allegations.
37
38 MR COHEN: Q. The Commissioner, of course, is where she
39 is because she puts things so elegantly. You understood
40 the question, didn't you, Father Saunders? Did you catch
41 what was --
42 A. Yes, I understood the question.
43
44 Q. Do you have an answer to the proposition in those
45 terms?
46 A. That there was a culture of movement from one place to
47 the other, I'm not aware --

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Q. To avoid --

A. To avoid.

Q. -- the publicity that attended these things?

A. No. I can't comment about McAlinden, but Fletcher I wouldn't be aware of his being moved from one parish to another because of sexual difficulties, putting him to another place. I'm not aware that that was a modus operandi. May I refer back to this document for a moment?

Q. Exhibit 49?

A. That's right. So there was nothing I objected to, or something like that. I'm not asserting that that is accurate because I wouldn't - because of my memory with it. I'm not asserting either that it is inaccurate. There was nothing in it that I substantially objected to. How accurate the report was, I wouldn't be prepared to say, but there's nothing per se about that that I would object to.

Q. Is there anything in it that excites you to want to take issue with it, if I can put it hopefully on that neutral basis?

MR HUNT: I object to that. The difficulty with "take issue "is it is hard to know what it means, whether it means accuracy of transcription, accuracy of memory, accuracy of --

THE COMMISSIONER: I think Father Saunders has already mentioned the area with which he would quibble.

Q. But I don't think you could take it any further, could you, father?

A. That's right. I'm not asserting its accuracy or inaccuracy, but as such, I wouldn't quibble with it.

MR COHEN: Q. You would not assert, in the scale of these things, that it is outrageously wrong, I take it?

A. Okay. I would say that, yes.

Q. Therefore, am I right to conclude, the next step is, is it substantially correct?

A. Whether it was substantially correct reporting, I don't know, but just simply reading it for the first time, there's nothing I would jump up about.

1 Q. In fairness to you, so it is very clear to all, I take
2 it as a record of the events of the day of that meeting
3 involving yourself, Bishop Malone, then Detective Sergeant
4 Fox and Detective Senior Constable Joy, that is, for your
5 purposes, a satisfactory account, is it?

6 A. Well --

7

8 MR HUNT: I object to that.

9

10 THE WITNESS: I can - yes, go on.

11

12 MR HUNT: Don't answer. The problem with "satisfactory"
13 is, once again, it is hard to tell whether that's a
14 satisfactory transcription. It sounds like a satisfactory
15 way a conversation could have happened, notwithstanding
16 that I don't remember the conversation. I don't think it
17 adds to the evidence, frankly.

18

19 THE COMMISSIONER: I agree, Mr Hunt.

20

21 MR COHEN: I have no further questions.

22

23 THE COMMISSIONER: Thank you, Mr Cohen. Ms McLaughlin, do
24 you have any questions?

25

26 MS McLAUGHLIN: I have no questions.

27

28 MR BARAN: I have some questions, but I do notice the
29 time.

30

31 THE COMMISSIONER: We will adjourn for an hour for lunch.

32

33 **LUNCHEON ADJOURNMENT**

34

35 **UPON RESUMPTION**

36

37 **<EXAMINATION BY MR BARAN:**

38

39 MR BARAN: Q. Father, I want to ask you some questions
40 about your general duties as the vicar general during your
41 term. You told us today that part of the duties involved
42 the disciplining of priests; is that right?

43

44 A. Well, in the end, that's after the bishop, of course,
45 but if he was going to correct a priest, sometimes he might
46 bring me along.

46

47 Q. So there have been these visitations from time to

1 time, where there could be some counselling or there would
2 be some other issues discussed to correct something that
3 had been done by a priest?
4 A. Yes.
5
6 Q. In answer to a question you were asked today about the
7 attitude that you had about the conviction of Fletcher, you
8 used the term "beyond a reasonable doubt"?
9 A. Yes.
10
11 Q. Do you remember saying that?
12 A. That I do.
13
14 Q. As at 20 June 2002, do I take it that, in addition to
15 the term "beyond a reasonable doubt", you were also
16 familiar with the term "the presumption of innocence"?
17 A. Yes.
18
19 Q. As a layperson, as at 20 June 2002, the presumption of
20 innocence to you, I take it, meant that a person was
21 assumed to be innocent unless they were proven guilty
22 beyond a reasonable doubt?
23 A. That's right.
24
25 Q. Something to that effect?
26 A. Yes, that's right.
27
28 Q. When you had the discussions with Father Fletcher on
29 20 June 2002 with the bishop, do you remember that this
30 issue about the presumption of innocence was raised?
31 A. No, I can't recall that.
32
33 Q. It was your view at the time, doing the best you can,
34 was it not, that certainly, as at 20 June 2002, there had
35 been no charges laid against Fletcher at that time?
36 A. 20 June? I don't think so. They were pending.
37
38 Q. Yes.
39 A. Yes. Oh, no, certainly no charges. They didn't come
40 along until months later.
41
42 Q. That's right.
43 A. That's right. That's right.
44
45 Q. Given that that was the position, did you form the
46 view, doing the best you can, as at that time, that in
47 terms of Fletcher, he was entitled to the presumption of

1 innocence?
2 A. Yes.
3
4 Q. Is it something that you may have discussed with the
5 bishop?
6 A. We could have. I - no, sorry, go on.
7
8 Q. Can I take it to the next point?
9 A. Go on, yes.
10
11 Q. Certainly the police, via Detective Fox, had made
12 reference to whether or not Fletcher should be stood down?
13 A. That's right.
14
15 Q. Did you have some discussions with the bishop about
16 that particular issue?
17 A. No. I was at the meeting, of course, but I don't
18 recall discussing the matter with Bishop Malone.
19
20 Q. Just so I'm clear, I'm not asking you to give me
21 precise words or precise conversations?
22 A. No, that's right.
23
24 Q. Is it possible that the issue may have been raised,
25 doing the best you can?
26 A. It's possible, but I'd say unlikely that we discussed
27 that in any - we discussed it, leave it like that.
28
29 Q. Is this a fair comment, that as at 20 June 2002, the
30 issues that had been raised by the police were issues that
31 were discussed between yourself and the bishop?
32 A. Yes.
33
34 Q. And yourself in the company of the bishop and
35 Fletcher?
36 A. Yes.
37
38 Q. Putting aside the police, was there any other external
39 organisation at that time which was involved, to your
40 knowledge?
41 A. To my knowledge, no.
42
43 MR BARAN: Thank you.
44
45 THE COMMISSIONER: Thank you, Mr Baran. Mr Harben?
46
47

1 <EXAMINATION BY MR HARBEN:

2

3 MR HARBEN: Q. Father, you were asked some questions
4 about a document that was identified to you as being
5 prepared by Detective Chief Inspector Fox?

6 A. Yes.

7

8 Q. Described as the "I said/He said" document?

9 A. That's right.

10

11 Q. I think you answered variously but I think - is this
12 fair to say? - that you couldn't vouch for the accuracy of
13 any of the specific words in the document but conceptually
14 you couldn't disagree with most of its contents?

15 A. Well, I have very little recall of the contents of the
16 meeting now and, therefore, to make a comment on its - the
17 accuracy of that would be beyond my capacity. When I say -
18 I'm not questioning the accuracy, but I just haven't
19 sufficient memory to comment a lot - comment on it.

20

21 * Q. Does that mean that your comment about the document
22 goes no further than to say that you have no recollection
23 of the meeting, therefore, you cannot say whether any of
24 those matters was discussed?

25

26 MR COHEN: I object. The evidence that fell from the
27 witness earlier was not to that effect, and indeed, the
28 line of questioning, I submit - I concede immediately
29 I don't have the transcript - was to the contrary and that
30 that proposition conceptually was adopted by the witness.
31 This is an endeavour to undermine that and should not be
32 permitted, having regard to the evidence that's already
33 been received.

34

35 THE COMMISSIONER: Thank you, Mr Cohen. Mr Harben, I will
36 allow you to ask the question. It is important we have the
37 best possible appraisal from Father Saunders of the
38 material.

39

40 MR HARBEN: Thank you, Commissioner.

41

42 Q. Do you remember my question, Father Saunders?

43 A. No. You'd better repeat it, please.

44

45 Q. Perhaps I'll re-put it, probably not in precise terms.

46 A. Righto.

47

1 THE COMMISSIONER: Would you like it read back, Mr Harben?
2
3 MR HARBEN: Perhaps that would be easier, Commissioner,
4 yes.
5
6 Q. Do you actually have exhibit 49, that document?
7 A. I haven't it with me. That's the one we're referring
8 to at the moment.
9
10 Q. Yes?
11 A. No, I haven't.
12
13 MR HARBEN: Could the witness be given the document,
14 please.
15
16 (Question marked * read)
17
18 THE WITNESS: I have a recollection, of course, of the
19 meeting, but my recall of chapter and verse from that
20 meeting would be pretty poor.
21
22 MR HARBEN: Q. When Mr Cohen asked - that's the gentleman
23 in the front row - some questions before lunch, he used the
24 word "conceptually" as to the contents of the document
25 referring to your acceptance of it? Do you remember that?
26 A. Go on, sorry.
27
28 Q. What I'm asking you is, for example - firstly, you
29 understood the "I said" part of the document is referring
30 to something being asked by Detective Chief Inspector Fox?
31 A. That's right.
32
33 Q. And the "He said"?
34 A. By Bishop Malone.
35
36 Q. By Bishop Malone unless otherwise stated?
37 A. That's right.
38
39 Q. One of the concepts, I want to suggest to you, that
40 was discussed was the concept of Bishop Malone offering
41 support to the family of [AH]. Do you remember that being
42 discussed in a general way in that conversation?
43 A. At the meeting, no, I don't recall that.
44
45 Q. You don't remember that?
46 A. No, I don't recall that.
47

1 Q. Do you remember as a concept that Bishop Malone
2 suggested to Detective Chief Inspector Fox that he must get
3 on and do his job, of course; do you remember that?
4 A. No. It's plausible, plausible; but can I recall that?
5 No.
6
7 Q. When you say it's plausible, is that because it is
8 your recollection at the time that Bishop Malone and
9 yourself were being cooperative with Detective Chief
10 Inspector Fox?
11
12 MR COHEN: I object.
13
14 THE COMMISSIONER: Perhaps you could just ask why is it
15 plausible, Mr Harben and whether Father Saunders was being
16 cooperative with --
17
18 MR HARBEN: I was going to come to that.
19
20 THE COMMISSIONER: Thank you.
21
22 MR HARBEN: Q. You, of course, for yourself, so far as
23 you had any part to play in this conversation, were being
24 cooperative with the detective chief inspector?
25 A. Yes.
26
27 Q. Is this the case: in terms of you travelling with
28 Bishop Malone to see Father Fletcher earlier on, you were
29 not attempting to hinder any investigation or the like?
30 A. Definitely not.
31
32 Q. From your discussions, I want to suggest to you, with
33 Bishop Malone, whenever they took place, before that
34 meeting with Father Fletcher, there was no suggestion that
35 Bishop Malone was trying to hinder any police
36 investigation?
37 A. No suggestion of that either.
38
39 Q. Would it be fair to say that Bishop Malone expressed
40 to you at that time his concern for both Father Fletcher
41 and the family of [AH]?
42 A. Could you repeat that question, please?
43
44 Q. Would it be fair to say that at that time
45 Bishop Malone expressed to you concern for both Father
46 Fletcher and the family of [AH]?
47 A. Yes.

1
2 Q. Would it also be correct to say that one of the
3 motivating concerns was the health of Father Fletcher, as
4 known to you?
5 A. That's right.
6
7 Q. That health had been a concern for some time in your
8 mind?
9 A. Yes, he had a serious - well, he had a stroke some
10 years before.
11
12 Q. Would it be fair to say that that was a matter that
13 you were aware from your conversations with Bishop Malone
14 was something that exercised his mind?
15 A. Yes. I couldn't, once again, quote chapter and verse
16 about that, but I say it would be highly likely.
17
18 Q. You were asked some questions about what was put to
19 Father Fletcher about the allegation and you were
20 specifically asked whether the detail of the allegation was
21 put to Father Fletcher. Do you remember that question?
22 A. I do, yes.
23
24 Q. I think you answered in two ways, but the second
25 answer you gave was something to the effect that it was
26 about sexual abuse?
27 A. Yes.
28
29 Q. I want to suggest to you that there was no further
30 detail than that; in other words, no detail of the precise
31 acts that constituted the offence?
32 A. That is true. That is true.
33
34 Q. Do you have the document there? Would you turn to
35 page 2. Do you see there are some words attributed to you?
36 A. That's right.
37
38 Q. Do you have a recollection, firstly, of you saying
39 anything in the conversation with Detective Chief Inspector
40 Fox?
41 A. Yes. My recollection is that I asked Detective Fox
42 whether the bishop was required legally to stand down
43 Fletcher.
44
45 Q. I see. You remember that being part of your inquiry?
46 A. Yes.
47

1 * Q. I take it you asked that question as part of the
2 process of the determination as to whether Father Fletcher
3 needed to stand down?
4

5 MR COHEN: I object. The evidence earlier received is
6 that that was not a question for this gentleman. It was a
7 question for Bishop Malone alone. That question elides and
8 conflates a series of propositions suggestive of this
9 gentleman, this priest, having --

10
11 THE COMMISSIONER: Having the final decision.

12
13 MR COHEN: Yes.

14
15 THE COMMISSIONER: I don't think that's necessarily the
16 case. I'll permit the question.

17
18 MR HARBEN: Thank you, Commissioner. Could the question
19 be read, Commissioner.

20
21 THE COMMISSIONER: Yes, Mr Harben. It takes just a minute
22 to bring it up.

23
24 (Question marked * read)

25
26 MR HARBEN: Q. Is that correct, Father Saunders?
27 A. I'm sorry, I missed that question.

28
29 Q. The Commissioner is going to read my question.
30 A. Oh, yes, please.

31
32 (Question marked * read)

33
34 THE WITNESS: Yes, yes, that's right.

35
36 MR HARBEN: Q. That was some positive input you had into
37 the conversation that you remember?
38 A. That's right, yes, that's right.

39
40 Q. I think you said earlier that your position was that
41 the bishop would speak to you about various things
42 including disciplining of the police --
43 A. Disciplining of --

44
45 Q. Disciplining of the priests?
46 A. Of priests, yes.
47

1 Q. Is this the case: the final decision on those matters
2 rested with the bishop?
3 A. That's true.
4
5 Q. But you were from time to time called on for input in
6 terms of advice to assist with that decision-making
7 process?
8 A. That's right.
9
10 Q. When the trip was made to see Father Fletcher, I think
11 you said your understanding was that Bishop Malone was
12 going to ask Father Fletcher to stand down - that is the
13 second trip?
14 A. That's the second trip. That's true.
15
16 Q. Indeed, in effect, that's what he did, isn't it?
17 A. Yes.
18
19 Q. After a discussion with Father Fletcher, there was
20 some change to that?
21 A. Yes.
22
23 Q. That Bishop Malone made?
24 A. Yes.
25
26 Q. This second discussion took place at Branxton, didn't
27 it?
28 A. That's right.
29
30 Q. It is the case, isn't it, that after that discussion
31 with Father Fletcher where he indicated he didn't want to
32 stand down, Bishop Malone went over to the school to see
33 the school principal? Do you remember that now?
34 A. No. It's - I think Bishop Malone said he went over.
35 I can't recall that. I'm not denying that he went over,
36 but I can't recall his going over.
37
38 Q. In any event, the second trip to see Father Fletcher
39 was undertaken by you and Bishop Malone; that's right,
40 isn't it?
41 A. That's right.
42
43 Q. Is that right?
44 A. Yes, that's right, sorry.
45
46 Q. It was not undertaken by you and Bishop Malone and
47 Father Burston?

1 A. I don't recall Father Burston being there.
2
3 Q. When you were shown the document, the "I said/He said"
4 document, which is exhibit 49, other than evoking a memory
5 of the concepts, did it jog your memory as to the precise
6 words that were used in the conversation or not?
7 A. Having read this document?
8
9 Q. Yes.
10 A. No.
11
12 Q. You have been taken to your statutory declaration?
13 A. Yes.
14
15 Q. Which is the second of the documents that you
16 completed. I'm sorry, do you have that there?
17 A. I do.
18
19 Q. Down the bottom, as part of paragraph 9, you include
20 some words in quotation marks.
21 A. Yes.
22
23 Q. Defining them as words being said "to the effect of"?
24 A. That's right.
25
26 Q. Can I take it, then, that those weren't the - first of
27 all, you're not saying that they were the exact words?
28 A. No, but as close as I can get.
29
30 Q. Something to the --
31 A. To the effect, yes.
32
33 Q. Similar to that effect?
34 A. As close as I can get as a summary, yes.
35
36 Q. You're not suggesting, are you, that that's the only
37 thing that was said in your trip to Branxton?
38 A. Oh, no, no.
39
40 Q. The trip to the Branxton is about 40 minutes or so?
41 A. Yes, that's - well more than that really.
42
43 Q. When were you first asked to recall any words that
44 were spoken on that trip to Branxton?
45 A. When I was interviewed by Detective Fox on the 20th -
46 where is it? On 21 March - May, 2003.
47

1 Q. I see. When you refer to those "words to the effect
2 of", are you saying that those words, to your observation
3 at least, were said as part of Bishop Malone's concern for
4 Father Fletcher?
5 A. That's right.
6
7 Q. So that we have it clear, which car trip are you
8 talking about that those words or words to that effect were
9 used?
10 A. I'd say the first trip.
11
12 Q. You were asked some questions about 2005, coming into
13 possession of some information about Father McAlinden in
14 your capacity or whatever capacity you had in the diocese
15 at the time?
16 A. That's right.
17
18 Q. Just looking at your CV, as it were, firstly, is it
19 the case that once you were ordained a priest, from then on
20 you have been part of the Maitland-Newcastle diocese?
21 A. That's right.
22
23 Q. And stationed in various places in the diocese?
24 A. That's it, yes, that's right.
25
26 Q. So you've had a long association with the diocese?
27 A. I have.
28
29 Q. From the time you were parish priest, did you then
30 advance through the ranks, as it were?
31 A. Well, I wouldn't quite put it that way.
32
33 Q. Is a parish priest different from a vicar general?
34 A. Well, a vicar general may be a parish priest. A vicar
35 general is to assist the bishop in the governance of the
36 diocese. A parish priest governs, if I can use that word,
37 his own parish; whereas vicar general has a more general
38 role for the diocese.
39
40 Q. And that role, correct me if I am wrong, enabled you
41 to liaise with the bishop on a regular basis?
42 A. That's right.
43
44 Q. Indeed, that's what you did it in the years you were
45 vicar general?
46 A. That's right.
47

1 Q. Before you became vicar general did you have another
2 title? Was it dean or --
3 A. I think I was a dean for a short time when I was up at
4 Bulahdelah parish. Before that I was parish priest.
5
6 Q. You were dean of the --
7 A. Myall deanery, I think it is.
8
9 Q. Myall deanery?
10 A. That's right.
11
12 Q. What about the Northern deanery?
13 A. Northern, yes, the same - yes, the same area.
14
15 Q. What geographical area is the Northern deanery?
16 A. Bulahdelah, Taree, Forster, Gloucester.
17
18 Q. Is a dean different from a parish priest?
19 A. A dean has a supervisory role over various parishes
20 and various - and within the deanery there would be perhaps
21 seven or eight priests most of whom would be technically
22 parish priests, but they are different roles. The dean has
23 a - would be usually a parish priest, but he has a
24 supervisory role over his particular area.
25
26 Q. Because of that supervisory role, is that why the
27 deans met together with the bishop from time to time?
28 A. That's right.
29
30 Q. To discuss the business of the diocese?
31 A. That's right.
32
33 Q. That discussion would include many things including
34 matters of discipline relating to priests?
35 A. It could.
36
37 Q. And matters of conduct relating to priests?
38 A. Yes. That's more, however, the role of the diocesan
39 consultors rather than the dean. The dean is more in the
40 capacity of a pastoral person.
41
42 Q. Do you remember you were shown some minutes of a
43 deans' meeting this morning?
44 A. I was.
45
46 Q. You were at that meeting?
47 A. Yes.

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Q. That's a meeting that you could see from the minutes where particular priests were discussed?

A. Yes.

Q. That's the sort of thing that you had been doing from time to time in your capacity as a dean?

A. Yes.

Q. In relation to McAlinden, you said that, having come to that information about his whereabouts, you reported it to the police?

A. As I recall, yes.

Q. I take it that you did that because you had some knowledge of an inquiry by them or a need for that to be done?

A. Yes, and the bishop was absent then.

Q. But regardless of whether the bishop was absent, you must have had some knowledge about the need to pass that information on to someone?

A. That's right, yes.

Q. You would have had that knowledge because of your position in the diocese?

A. That's right.

Q. I take it that, having had that knowledge and becoming aware of that information, you passed it on as soon as you could?

A. That's right.

Q. You weren't aware of any efforts to hide that sort of information from anybody?

A. No.

MR HARBEN: Yes. Thank you.

THE COMMISSIONER: Thank you, Mr Harben. Mr Gyles?

<EXAMINATION BY MR GYLES:

MR GYLES: Q. Father Saunders, with respect to a number of the answers that you've given, you have not been able to recall certain events?

A. That's right.

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Q. Including events of the 1990s and back through the 1980s and 1970s?

A. That's right.

Q. Is a lack of memory something that you've suffered from?

A. Yes, memory can be a very strange thing. Some part of the memory is good enough I think, but recalling events that happened in the past, often a poor recall.

(Transcript suppressed from page 1212, line 12 to page 1213, line 20)

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MR GYLES: Q. You were asked some questions about this document at tab 451, Father Saunders; do you recall that?

A. I do.

Q. As I recall your evidence, particularly when the Commissioner asked you about the fourth paragraph, you were not able to recall by way of independent recollection what was in your mind at the time that you wrote that?

A. That is true.

Q. Then you were asked some additional questions about it by Mr Cohen; do you recall that?

A. Yes.

Q. You were asked essentially as to what you might have been intending by the use of those words?

A. Yes.

Q. To be fair to you, Father Saunders, can I please try to put this document in its context and can I take you back to the previous document in the bundle. Would you go back to 414. This may allow you to have a better understanding of what you might have been thinking at the time. The document at 415 is not your document?

A. Right.

Q. But you can assume that it is a file note prepared by Bishop Malone? Do you see that?

1 A. I see that, yes.
2
3 Q. What it says is that, the first sentence:
4
5 *Father Jim Saunders phoned on a mobile at*
6 *approximately 9.00am today.*
7
8 Do you see that?
9 A. That's right, I do, yes.
10
11 Q. Bishop Malone was on his way to a funeral in Sydney
12 and you were saying to him that Father Glen Walsh wanted to
13 speak with Bishop Malone. Do you see?
14 A. Yes.
15
16 Q. Is it the case now you don't have an independent
17 recollection of that conversation?
18 A. That is true.
19
20 Q. For the purpose of the contextual background to what's
21 reported as to what you said to Mr Batty, can you assume
22 that that happened?
23 A. Yes.
24
25 Q. Can you assume that the position was that
26 Bishop Malone then spoke to Father Walsh?
27 A. That's right. He's got it here.
28
29 Q. It was reported to him that "Glen", ie, Father Walsh,
30 was able to persuade "him", that is, the victim, to allow
31 Father Walsh to go to the police on his behalf?
32 A. Yes.
33
34 Q. And that Father Walsh was to do that after the
35 conversation and at the urging of Bishop Malone, do you
36 see?
37 A. Very well, yes.
38
39 Q. You can assume that that was the position as well --
40 A. Righto.
41
42 Q. -- that this matter, the matter that had come to the
43 attention of Father Walsh and had been passed on through
44 you to the bishop, was something that was being passed on
45 to the police on 27 April 2004?
46 A. That's right.
47

1 Q. If you go to the bottom of the file note, you will see
2 that Bishop Malone recalls that he phoned you and asked you
3 to report the allegations to the CCER?
4 A. I see that, yes.
5
6 Q. Again, I'm not calling upon your independent
7 recollection. Could you assume that that happened and you
8 were asked to get in contact with the CCER?
9 A. Yes.
10
11 Q. If you go forward to tab 416, which is the document
12 after the email, we can see that, on that very day,
13 27 April 2004, Bishop Malone sent to the CCER, attention
14 Mr McDonald, a child protection information detail
15 Ombudsman Act 1974 form. You see that?
16 A. That's right.
17
18 Q. And that's a document which you see is about an
19 eight-page document which is attached to the facsimile of
20 Bishop Malone; do you see that?
21 A. I see that.
22
23 Q. That is a document, do you see, that Bishop Malone, on
24 27 April 2004, sent on to Mr McDonald; right?
25 A. Yes.
26
27 Q. You see that the document itself, being the
28 attachment, the eight-page standard form notification, was
29 in fact prepared by Bishop Malone. Do you see that?
30 A. Yes, I see that.
31
32 Q. You see in it there are various references to the
33 matter, ie, the complaint by this victim having been
34 reported to the police?
35 A. Yes.
36
37 Q. And reference being made, for example, on page 1122
38 and 1123 at the bottom, to Detective Sergeant Fox of
39 Maitland police being the name of the police officer that
40 was handling the matter?
41 A. Yes.
42
43 Q. Can I suggest to you this sequence of events was that,
44 you, having been asked by Bishop Malone to make contact
45 with the CCER to report this new complaint --
46 A. Yes.
47

1 Q. -- obviously on that day Bishop Malone was able to
2 have access to the relevant piece of paper, the relevant
3 disclosure form, to provide to the CCER?
4 A. That's right.
5
6 Q. We see from the email from Mr Batty of the CCER that
7 you had made contact with him?
8 A. That's right.
9
10 Q. Would it be consistent with your understanding with
11 the way things would have worked in terms of reporting that
12 it is likely, as a consequence of your telephone call, the
13 form which Bishop Malone filled in was provided to you?
14
15 MR COHEN: I object. We haven't yet got to the level of
16 understanding. If a serious proposition is being put, my
17 friend should start with an assumption and work through a
18 series of documents.
19
20 MR GYLES: I'm happy to do it on the basis of assumption.
21
22 MR COHEN: But I maintain my objection: there is still no
23 basis for any understanding.
24
25 MR GYLES: This is outrageous. My learned friend has put
26 to this witness, with no context at all, what he thought
27 when he wrote this letter. When one sees the context of
28 it, it is not only beyond criticism, it is entirely helpful
29 in terms of what was being provided. It is a matter of
30 fairness to this witness, who cannot recall what was in his
31 mind, and we should put this in context, to be fair to him.
32 My learned friend has opened up this question and at the
33 moment --
34
35 THE COMMISSIONER: Continue, Mr Gyles.
36
37 MR GYLES: Thank you.
38
39 Q. First of all, you can assume that obviously this form
40 was in Bishop Malone's hands on 27 April 2004?
41 A. That's right.
42
43 Q. And it was provided to the relevant authorities on
44 that day?
45 A. Yes.
46
47 Q. If one accepts the email from Mr Batty as being

1 accurate, you rang Mr Batty?
2 A. That's right.
3
4 Q. On that day?
5 A. Yes.
6
7 Q. And reported that there was another allegation
8 relating to Fletcher?
9 A. That's right.
10
11 Q. The CCER requested to be kept informed of the progress
12 about that?
13 A. That's right.
14
15 Q. The means by which the CCER was to be provided with
16 the initial information was the form that Bishop Malone
17 filled in?
18 A. Righto.
19
20 Q. That's correct, isn't it?
21 A. Well, yes.
22
23 Q. Could you assume, please, that the sequence of events
24 was that, as a consequence of your telephone call to
25 Mr Batty, this form arrived on 27 April to be filled in?
26 A. Righto. Very well.
27
28 Q. Can you also assume that the position was, as at the
29 time you telephoned Mr Batty, the first assumption you can
30 make is that you had not yourself spoken to Father Walsh
31 about this new victim?
32 A. No, I can't recall speaking to Father Walsh.
33
34 Q. You can assume that you didn't; all right?
35 A. Yes.
36
37 Q. Secondly, you can assume that you yourself hadn't
38 spoken to the victim at this stage?
39 A. That's true.
40
41 Q. Can you assume the extent of your knowledge of this
42 matter was that you had received a message that Glen Walsh
43 wanted to talk to the bishop about something?
44 A. That's right.
45
46 Q. And that that discussion had taken place without you
47 but you were then asked by the bishop to get in contact

1 with the CCER to enable the relevant notification to be
2 made?

3 A. Very well.
4

5 Q. On those facts, the position was, wasn't it, at the
6 time that you had your conversation with Mr Batty, that you
7 simply were not in any position to provide any detail about
8 the circumstances of this victim?
9

10 MR HUNT: I object to that. It is clear that what is
11 being put in this form to the witness is something that's
12 available to my friend in submissions, but asking him to
13 accept a whole lot of propositions from the documents and
14 then asking him to draw a conclusion as to what would have
15 been his actual state of knowledge, I think is one bridge
16 too far. Clearly the submission is available, but I would
17 object to the utility of dealing with it in this way given
18 the witness's professed lack of memory about the whole
19 thing.
20

21 MR GYLES: In my respectful submission, I am perfectly
22 entitled to do this because he was asked what his state of
23 mind may have been by Mr Cohen and he has given an answer
24 and it wasn't in context. If it turns out that the context
25 I'm putting is not - I accept that, in submissions, this
26 context will need to be made good or at least made good as
27 a possible or even probable scenario.
28

29 MR COHEN: Might I be heard on that? It is being asserted
30 that I didn't put anything in context. With great respect,
31 that's exactly what I did when I took the witness to the
32 document that's behind tab 415. I took him to the
33 paragraph in the document and then asked him what his
34 understanding at the time was. This reconstruction that's
35 going on is simply not a proper basis to assert that I put
36 something that wasn't justified.
37

38 THE COMMISSIONER: Very well, Mr Cohen, you put it in
39 some context. Mr Gyles is putting it in greater context;
40 is that right?
41

42 MR GYLES: That's correct. I'm just trying to be fair to
43 the witness.
44

45 THE COMMISSIONER: Do you apologise to Mr Cohen for saying
46 he put it in no context?
47

1 MR GYLES: Yes, I apologise for that.
2
3 MR COHEN: I'm indebted to my friend.
4
5 MR GYLES: I'm trying to be fair to the witness,
6 Commissioner.
7
8 THE COMMISSIONER: Mr Gyles, I will permit you to ask the
9 question and I take your point that all of the assumptions
10 would have to be made good ultimately.
11
12 MR GYLES: Yes.
13
14 Q. If that was the extent of your knowledge, whatever was
15 said to you, my question was that you were in no position
16 to provide any detailed information to the CCER about this
17 particular victim, were you?
18 A. No, I wasn't in a position.
19
20 Q. When it came to fill out the form, you weren't the one
21 who did so?
22 A. No, I didn't fill out the form.
23
24 Q. In terms of another context, this was April 2004?
25 A. Yes.
26
27 Q. You will recall that, in June of 2002, you and Bishop
28 Malone had gone to the Branxton presbytery and had the
29 conversation or the meeting with Jim Fletcher?
30 A. That's right, yes.
31
32 Q. It was apparent, wasn't it, by 20 June 2002 that
33 Detective Chief Inspector Fox was very critical of you and
34 Bishop Malone for having done that?
35 A. That's right.
36
37 Q. Because he was telling you that that may have impeded
38 the work that he was doing with respect to the
39 investigation that he was undertaking?
40 A. That's right.
41
42 Q. And not only did Detective Chief Inspector Fox make
43 that clear to you in terms of the criticism he was making,
44 but in fact that matter had been the subject of a
45 complaint, hadn't it?
46 A. Yes.
47

1 Q. Doing the best you can, is it likely in that context
2 that would you have been very concerned at this time not to
3 trample across what Detective Chief Inspector Fox was doing
4 on this very investigation?

5 A. That's true.

6

7 Q. Because that was the thing you had been criticised for
8 in respect of the first Fletcher investigation?

9 A. That's right.

10

11 Q. In that context, can I suggest to you that the
12 containment of the matter that you refer to could possibly
13 have been referring to you wanting to leave the matters of
14 investigation of this matter to Detective Chief Inspector
15 Fox?

16 A. Yes.

17

18 MR COHEN: I object. Commissioner, that's uniquely a
19 question for you.

20

21 THE COMMISSIONER: Mr Cohen, in fact, Father Saunders had
22 adverted to that very response earlier in his evidence, so
23 I will permit Mr Gyles to pursue that.

24

25 MR GYLES: Thank you.

26

27 Q. What I was putting to you was that it was entirely
28 possible that your use of the word "containment of the
29 matter" may have been containing it in a way to ensure it
30 didn't impede upon what Detective Chief Inspector Fox was
31 doing?

32 A. May I just make an observation there? "Containment"
33 is not necessarily my word either.

34

35 Q. That's a very good point. Thank you.

36 A. I didn't write the report.

37

38 Q. What I'm putting to you or suggesting to you is that
39 given the criticism that had been made in respect of the
40 previous investigation, you would have been very sensitive
41 to doing anything with respect to this victim --

42 A. That's right.

43

44 Q. -- and you making your own investigations because you
45 wouldn't have wanted to expose yourself to the same
46 criticism you'd been exposed to previously?

47 A. That is true. That is true.

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Q. In effect, what you might have been doing here --

MR HUNT: I object at this point. The proposition has been put four times. The witness has accepted it four times. I think point has been made.

THE COMMISSIONER: I think so, Mr Gyles, thank you.

MR GYLES: Q. You spent two periods of time as vicar general, one in the role on your own and at another short period --

A. Not exactly on my own. Father Bill Burston was also a vicar general when I was vicar general in the first instance; in other words, there were two of us.

Q. Whether there was one or two of you, practically speaking, you would understand that role to essentially involve from time to time attending meetings with the bishop --

A. That's right.

Q. -- as I think you've told us. You may also from time to time be a confidant of the bishop and be there to discuss and provide input into matters the bishop wanted to discuss with you?

A. That's right, yes, sorry, yes.

Q. From time to time you would become aware of information which was relevant which you would pass on to the bishop as part of the role?

A. That's right.

Q. For example, you said sometimes you saw people yourself and if there was something relevant, you would then pass it on to the bishop?

A. That's right.

Q. Where the bishop made a decision that something had to be done or would delegate a task to you, then you would action that task?

A. Mmm, that's right.

Q. Did you agree with that?

A. Yes, sorry, I did.

Q. Matters such as the decision that was made which

1 you've spoken about to where Fletcher was left in his role
2 during the course of the police investigations, that was
3 typical of a matter in which you may have provided some
4 input in terms of that decision, but ultimately that was a
5 matter for Bishop Malone?

6 A. That's right.

7

8 Q. Indeed, it wasn't your idea to go to the Branxton
9 presbytery when you went there. You went to accompany
10 Bishop Malone?

11 A. That's it.

12

13 MR GYLES: I have no further questions, thank you
14 Commissioner.

15

16 THE COMMISSIONER: Thank you, Mr Gyles.

17

18 MR HUNT: Nothing arising, thank you, Commissioner. Could
19 the witness be excused?

20

21 THE COMMISSIONER: Father Saunders, thank you so much for
22 coming here to give your evidence. You are excused, thank
23 you.

24

25 THE WITNESS: Thank you, Commissioner.

26

27 <THE WITNESS WITHDREW

28

29 THE COMMISSIONER: Yes, Mr Kell?

30

31 MR KELL: Commissioner, I call Father Bill Burston.

32

33 <WILLIAM JOHN BURSTON, sworn: [2.54pm]

34

35 MR GYLES: Commissioner, could it be noted the witness
36 takes the section 23 protection.

37

38 THE COMMISSIONER: Thank you, Mr Gyles.

39

40 <EXAMINATION BY MR KELL:

41

42 MR KELL: Q. Father, your full name is William John
43 Burston?

44 A. Yes.

45

46 Q. You are a Catholic priest incardinated to the
47 Maitland-Newcastle diocese?

1 A. Yes.
2
3 Q. You presently hold the position of parish priest at
4 Mayfield?
5 A. Yes.
6
7 Q. You have been a priest of the diocese for over
8 40 years?
9 A. Yes.
10
11 Q. Father, can I hand to you a history of appointments
12 document and a copy to the Commissioner. I'm going to
13 start with some matters of background and your appointments
14 and then we'll fill some of the picture in. You began
15 training as a Catholic priest in about 1958; is that
16 correct?
17 A. Correct, yes.
18
19 Q. In December 1963 you were ordained as a priest?
20 A. Yes.
21
22 Q. That happened in Rome, did it?
23 A. Yes.
24
25 Q. But you were ordained and incardinated to the
26 Maitland-Newcastle diocese from that time?
27 A. Yes.
28
29 Q. And then undertook studies in Rome?
30 A. Yes.
31
32 Q. You have a degree in psychology?
33 A. Yes.
34
35 Q. From University College Dublin?
36 A. Yes.
37
38 Q. And also a masters of psychology?
39 A. Yes.
40
41 Q. From the same institution?
42 A. Yes.
43
44 Q. That was completed in about 1970?
45 A. Yes.
46
47 Q. As part of your skill-set, as it were, for the

1 diocese, you have provided psychological services from time
2 to time?
3 A. Yes.
4
5 Q. We'll come back to that in a moment. Could I just
6 ask, in terms of your studies and training in psychology,
7 did any of that involve or touch upon issues relating to
8 awareness issues relating to the sexual abuse of children?
9 A. No, I didn't, no.
10
11 Q. Not back in the 1960s?
12 A. Not back in the 1960s.
13
14 Q. Do you continue to be a qualified psychologist?
15 A. No, I've let the registration lapse for the last 15,
16 16 years.
17
18 Q. So when did you cease being a qualified psychologist?
19 A. 1995.
20
21 Q. 1995, thank you. In October 1970 you arrived in the
22 diocese?
23 A. Yes.
24
25 Q. Was your first role as parish priest at Maitland?
26 A. No, assistant at Maitland.
27
28 Q. Assistant parish priest at Maitland, and that was
29 in December 1970?
30 A. Yes.
31
32 Q. Then was it subsequently you were positioned at
33 Waratah?
34 A. Yes.
35
36 Q. Was that also as an assistant parish priest?
37 A. Yes.
38
39 Q. Then Hamilton from October 1974?
40 A. Yes.
41
42 Q. Again was that assistant parish priest?
43 A. Yes.
44
45 Q. Then in 1975, you were appointed as a director of the
46 Catholic Welfare Bureau?
47 A. Yes.

1
2 Q. That is the predecessor to Centacare?
3 A. Yes.
4
5 Q. You held that position, did you, for something like 21
6 years?
7 A. Until December 1995, yes.
8
9 Q. Could you tell the Commissioner whether that was a
10 full-time position or a part-time position?
11 A. A full-time position.
12
13 Q. In that position with the Catholic Welfare Bureau did
14 you provide psychological services or managerial type
15 services?
16 A. A bit of both, yes.
17
18 Q. What was the nature of the psychological services you
19 provided?
20 A. Usually individual counselling, yes.
21
22 Q. Who were the patients, as it were?
23 A. Whoever wished to come in, yes, there were no --
24
25 Q. Did that extend to including providing psychological
26 services to priests of the diocese?
27 A. In theory, yes; in practice, no.
28
29 Q. Why no, in practice, if you're able to say?
30 A. I think it raises issues of being in the same diocese
31 as the client, if you like. It makes it difficult, so --
32
33 Q. Thank you. At the same time as being a director of
34 the Welfare Bureau, you remained incardinated as a priest
35 of the diocese?
36 A. Oh, yes.
37
38 Q. You held particular positions, which we'll come to,
39 with the diocese at the same time?
40 A. Yes.
41
42 Q. Looking at the appointments document, as an example
43 from June 1981, you held the position as one of the
44 diocesan consultants?
45 A. Yes.
46
47 Q. That is on the second page there. It appears to have

1 a start date of 1 June 1981?
2 A. Yes.
3
4 Q. Are you able to tell the Commissioner how long for
5 that period of time - that is the period starting June
6 1981 - you were a diocesan consultor?
7 A. Offhand, no. I'd have to look up or see records.
8 I can't recall.
9
10 Q. Do you see immediately under it, it shows a further
11 record of diocesan consultor commencing, it seems, on
12 1 January 1992?
13 A. Yes.
14
15 Q. And for a period of five years?
16 A. Yes.
17
18 Q. Looking at that second period, did you hold that
19 position for about five years?
20 A. Yes. Yes.
21
22 Q. From 1992 through to 1997?
23 A. Well, until the end of 1995 and the beginning of 1996,
24 when I was appointed vicar general and automatically a
25 consultor, yes.
26
27 Q. So that period of time you were a diocesan consultor
28 under Bishop Clarke?
29 A. Yes.
30
31 Q. And then continued under Bishop Malone for a period of
32 time until you became vicar general, which we'll come to?
33 A. Yes.
34
35 Q. Doing the best you can, that earlier period of time
36 where you were a consultor in 1981, did that extend for a
37 period of some years or was it a short appointment?
38 A. Without checking records, I'd say five or six years,
39 but I'm not perfectly sure.
40
41 Q. Thank you. And then immediately under it there's an
42 entry for "PP". Do we take that to be "parish priest"?
43 A. Yes.
44
45 Q. From December 1992?
46 A. Yes.
47

1 Q. Is that Mayfield West?

2 A. Mayfield West, yes.

3

4 Q. Mayfield West. So that was an appointment as a parish
5 priest at the same time as you were the director of
6 Centacare and at the same time as you were a diocesan
7 consultant?

8 A. Yes.

9

10 Q. Then continuing through the appointments, is it the
11 case that you were appointed vicar general for five years
12 from 1 January 1996?

13 A. Yes.

14

15 Q. So that extends up until just the very beginning of
16 2001?

17 A. Yes.

18

19 Q. And that was all under the bishop-ship of
20 Bishop Michael Malone at that point in time?

21 A. Yes.

22

23 Q. Immediately under it, it indicates you were a member
24 of the Council of Priests for five years?

25 A. Yes.

26

27 Q. That commenced, did it, on January 2001?

28 A. Yes.

29

30 Q. Similarly, you were a dean of the Newcastle deanery
31 for three years?

32 A. Yes.

33

34 Q. From January 2001?

35 A. Yes.

36

37 I'll come back to some of those terms shortly, and,
38 Commissioner, I tender that document, the appointments.

39

40 THE COMMISSIONER: The appointments of Father Burston in
41 the diocese of Maitland document will be admitted and
42 marked exhibit 115.

43

44 **EXHIBIT #115 DOCUMENT RELATING TO THE APPOINTMENTS OF**
45 **FATHER BURSTON IN THE DIOCESE OF MAITLAND**

46

47 MR KELL: Q. Father Burston, in your capacity as a

1 psychologist, we've come to understand that you've provided
2 some psychological assessments for students for the
3 priesthood; is that correct?
4 A. Yes.
5
6 Q. When did you do that?
7 A. 1971 until I think around about the mid-90s.
8
9 Q. The mid-90s?
10 A. Yes.
11
12 Q. So a period of over 20 years?
13 A. Twenty years, yes.
14
15 Q. Was that on a statewide basis or was that simply for
16 this diocese?
17 A. For this diocese and on request from other parts of
18 the country, yes.
19
20 Q. Was that directed at assessing the suitability of
21 potential candidates for priesthood in the sense of a
22 vetting process?
23 A. An assessment rather than a vetting, but, yes. Yes.
24
25 Q. To whom did you provide your assessments of various
26 candidates?
27 A. To the bishop.
28
29 Q. The bishop of the particular diocese?
30 A. Of the particular diocese, yes.
31
32 Q. Were you involved in addition to that assessment in
33 providing any teaching or training of new priests in terms
34 of awareness issues in relation to the sexual abuse of
35 children?
36 A. No, not that I can recall, no.
37
38 Q. Touching on one other matter that I think relates to
39 your psychological skill-sets, could I ask you to go to
40 volume 3 of the materials. On your right there, you'll see
41 an ominous looking collection of seven folders. There
42 should be one that's got volume 3 marked on it.
43 A. Right.
44
45 (Transcript suppressed from page 1228, line 45 to
46 page 1230, line 19)
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Q. You mentioned that you were a member of the diocesan consultors --

A. Yes.

Q. -- for two periods of time - June 1981 and also for five years from January 1992?

A. Yes.

Q. Is it the case that the consultors were a body of priests that provided advice to the bishop of the diocese?

A. Yes.

Q. I wonder if you could expand on that for the Commissioner as to the role of the consultors in 1981 and 1992, the types of matters that were dealt with?

A. Basically, they're matters that the bishop refers to the group, perhaps appointments of priests, it may be other appointments within the diocese. Maybe - that seems to be the - at immediate recall, that's the most that I can come up with immediately, and basically what the bishop wants advice about.

Q. Regular meetings were held, were they, of the consultors?

A. At times irregularly - when the bishop called them.

Q. The bishop was always present to receive the advice

1 that was given?
2 A. As far as I recall, yes.
3
4 Q. Were matters of pastoral care relating to priests
5 dealt with from time to time at the meeting of consultors?
6 A. They could have been, yes.
7
8 Q. Similarly, from time to time, issues relating to
9 potential discipline of priests, was that the sort of thing
10 that might arise or did arise from time to time at meetings
11 of the consultors?
12 A. I can't recall it arising directly, no.
13 ^ Maybe to here end redaction
14 Q. Can I take you to a couple of minutes in volume 2 of
15 the bundle. Could I ask you to turn to tab 121.
16 A. Yes.
17
18 MR KELL: Commissioner, I'm taking the witness to
19 exhibit 31.
20
21 THE COMMISSIONER: Thank you, Mr Kell.
22
23 MR KELL: Q. You will see there that's minutes of
24 the meeting of consultors held at the bishop's office on
25 2 January 1986?
26 A. Yes.
27
28 Q. You are indicated as being one of the five persons
29 present?
30 A. Yes.
31
32 Q. You'll see, if you quickly scan down the business of
33 those minutes, that there are references to particular
34 issues touching upon particular priests?
35 A. Yes.
36
37 Q. You will see, at about three-quarters of the way down
38 the page, there's a reference to Father Denis McAlinden?
39 A. Yes.
40
41 Q. Seeming to be taking things quietly at Merriwa?
42 A. Yes.
43
44 Q. But having a problem with extreme cold?
45 A. Yes.
46
47 Q. If I ask you to jump to tab 128, you will see that

1 there are further minutes of 5 June 1986?
2 A. Yes.
3
4 Q. Again, you're indicated as being one of the persons
5 present?
6 A. Yes.
7
8 Q. Along with Bishop Clarke on each occasion?
9 A. Yes.
10
11 Q. There's reference there, you'll see, to discussion
12 following and proposals being put forward in relation to
13 what seems to be the location of particular priests at
14 particular parishes?
15 A. Yes.
16
17 Q. Reverend Gahan at Merriwa and, at that stage,
18 Reverend McAlinden at Adamstown?
19 A. Yes.
20
21 Q. Without wanting you to try to put your mind back to
22 those meetings at this stage, is that indicative of the
23 sorts of things that came up from time to time at the
24 diocesan consultors' meetings?
25 A. Yes.
26
27 Q. In those situations, would the bishop be looking to
28 advice from the consultors as to where particular priests
29 might be moved or was it more a notification process?
30 A. Sometimes one, sometimes the other.
31
32 Q. If it were the case from time to time that priests
33 were the subject of disciplinary action by the bishop,
34 would that sometimes be, to your recollection, recorded in
35 diocesan minutes - of consultors?
36 A. My recollection is not very clear on that. Sorry,
37 I cannot answer directly on that. My guess is that the
38 bishop - bishops didn't always bring those matters to
39 consultors' meetings, they dealt with them separately, but
40 I can't recall any occasion when that did come up, sorry
41
42 Q. You were a member of the Council of Priests for five
43 years from January 2001?
44 A. Yes.
45
46 Q. Were you a member of that body at any earlier point in
47 time, or not, that you can recall?

1 A. I was, but I can't recall the timings, no.
2
3 Q. Perhaps if you could explain for the Commissioner in
4 summary terms the distinction between the diocesan
5 consultors and the Council of Priests?
6 A. Probably the basic distinction is that the Council of
7 Priests was an elected body. The consultors were very
8 often chosen directly by the bishop. Sometimes there was
9 an overlap in personnel. Bishop Malone made the Council of
10 Priests automatically his consultors, so there was total
11 overlap. Bishop Clarke, I think, had a separate
12 arrangement.
13
14 Q. Apart from the basis on which they were drawn, that is
15 to say, one being appointments by the bishop and one being
16 popularly elected, was it, by the priests of the diocese?
17 A. By the priests, yes.
18
19 Q. Were both bodies there to provide advice to the
20 bishop?
21 A. Yes.
22
23 Q. And did they cover the same sorts of areas or was one
24 related more to spiritual matters. It is hard to give a
25 clear answer on that. It depends again what the bishop was
26 asking for from each particular group.
27
28 Q. I want to ask you in general terms, and then we'll
29 come to the specifics, about whether you're able to
30 indicate for the Commissioner when it was that you first,
31 as best you can, recall there being any concerns in
32 relation to Father McAlinden and proximity to children?
33 A. Sorry, I cannot recall when I first heard that, no.
34
35 Q. We'll come to some documents shortly that deal with
36 your role as vicar general.
37 A. Right.
38
39 Q. You're aware, I take it, from seeing some of
40 those documents in more recent times, that you had a role
41 in relation to action that was being taken against
42 Denis McAlinden in 1996 onwards?
43 A. Yes.
44
45 Q. Putting that to one side, are you able to say.
46 Working back from 1996 when you had that role, whether it
47 was many years before that time when you first began to

1 hear of concerns relating to Father McAlinden? Are you
2 able to assist us on that aspect?
3 A. I'm sorry, I can't. I cannot - I simply cannot
4 remember.
5
6 Q. Do you think, doing the best you can, it was some
7 period of time before then?
8 A. It could be, but, as I say, I can't recall.
9
10 Q. Are you able to assist as to the context in which that
11 came up, where - the source when you first heard that?
12 A. No, I can't.
13
14 Q. Are you able to assist, if not the source, then
15 the nature of the complaint that you first heard about
16 Father McAlinden at that particular time?
17 A. I'm sorry but none of that - none of that comes back
18 to mind, no.
19
20 Q. Father, doing the best you can, was it the case that
21 Denis McAlinden was the first priest of the diocese that
22 you became aware of as having presented a danger in terms
23 of sexual abuse of children?
24 A. Sorry, would you mind rephrasing --
25
26 Q. Yes. At some point in time you became aware that
27 there were concerns relating to - and I'll just refer to
28 him as McAlinden for ease of reference - McAlinden and the
29 specific dangers that he posed for children?
30 A. Sorry, the question is whether that was the first -
31 sorry.
32
33 Q. I'm leading up to that. At some point in time, you
34 became aware that McAlinden posed or was considered to pose
35 potential dangers for children?
36 A. Right.
37
38 Q. You agree with that?
39 A. Yes.
40
41 Q. Without fixing that at a particular point in time, was
42 McAlinden the first priest from the diocese that you had
43 heard raise such potential concerns?
44 A. I think so, but I'm not perfectly sure. I think so.
45
46 Q. This is before the arrest of Vincent Ryan in 1995?
47 A. Sorry, I can't be perfectly precise about that.

1 I can't recall.
2
3 Q. But doing the best you can, you think that McAlinden
4 was the first of the priests of the diocese of which you
5 became aware there were concerns raised?
6 A. All I can say is I think so, yes.
7
8 Q. Isn't the situation that if you think that is the
9 case, that is more likely to be a date that might remain in
10 your memory as to when that occurred?
11 A. I don't know. I'm sorry, I can't recall it, no.
12
13 Q. Just so it is clear for the Commissioner, you're doing
14 the best you can to assist, are you, with your knowledge of
15 McAlinden and the timing of knowledge of his potential
16 dangers?
17 A. Yes.
18
19 Q. And you're not trying to distance yourself in any way
20 from any knowledge or association relating to McAlinden?
21 A. No, I'm not.
22
23 Q. In 1996 you were appointed as the vicar general?
24 A. Yes.
25
26 Q. That was from 1 January?
27 A. Yes.
28
29 Q. You'd never been vicar general in the time of
30 Bishop Clarke?
31 A. No.
32
33 Q. Is it correct that the control of vicar general is
34 that, essentially, in some senses, you're the second in
35 charge of the diocese; would that be a fair description?
36 A. In one sense, yes, but it depends on what - you know,
37 depending on the particular bishop what the role is or the
38 extent of the role.
39
40 Q. And sometimes described as being the alter ego of the
41 bishop?
42 A. Well, that description is used, but I wouldn't always
43 apply it.
44
45 Q. Can we narrow in, in terms of the role as it was
46 applied in yours case with Bishop Malone. We will come to
47 the specifics relating to McAlinden, but in terms of your

1 role as vicar general for Bishop Malone, what were some of
2 the things that you did on a day-to-day basis as vicar
3 general?

4 A. There were not a lot of specific things. We were
5 together on a number of committees. I can't - honestly,
6 I can't immediately think of any specific role, you know.

7
8 Q. Was it part of your role to provide day-to-day advice
9 to the bishop about matters that could come up?

10 A. If he asked for it.

11
12 Q. Was Bishop Malone the type of bishop who did, in fact,
13 ask for advice on a regular basis when you were vicar
14 general?

15 A. We had regular meetings, yes; but whether you would
16 call that asking for particular advice may be putting it a
17 bit too strongly, to put it that way.

18
19 Q. Did you regard yourself as having a good working
20 relationship with Bishop Malone when you were vicar
21 general?

22 A. A reasonable working relationship, yes.

23
24 Q. As vicar general do you have physically have your own
25 office in the chancery building?

26 A. Yes.

27
28 Q. Positioned somewhere close to the bishop?
29 A. Yes.

30
31 Q. When you came and started in January 1996,
32 Monsignor Hart had been the previous vicar general?

33 A. He had, yes.

34
35 Q. Was there any handover from Monsignor Hart to you in
36 terms of you stepping in and taking up the role?

37 A. No. Not that I recall, no.

38
39 Q. Was there any gap between vicars general or did you
40 start immediately on the expiration of his term?

41 A. Yes, as far as I recall, yes, he finished on
42 31 December, I started on 1 January.

43
44 Q. When you say you don't recall whether there was any
45 handover, you don't recall any particular discussions that
46 you might have had with Monsignor Hart?

47 A. No.

1
2 Q. Putting to one side the text of any of those
3 discussions, are you able to assist and tell us whether
4 there was in fact some process where Monsignor Hart told
5 you, "These are the matters that need attention" and "These
6 are the files", for example, "that you need to take
7 forward"?
8 A. No. No.
9
10 Q. You're confident that didn't happen?
11 A. I'm pretty confident that didn't happen, yes.
12
13 Q. So on your first day as vicar general, you come into
14 the office and does the vicar general's office have files
15 of particular matters that aren't under the carriage of the
16 vicar general?
17 A. I don't think so. There was a filing cabinet there,
18 but how much was in it I - I don't think there was very
19 much in it at all. I think the files were generally kept
20 elsewhere.
21
22 Q. Did you receive a briefing from Bishop Malone, then,
23 in terms of the matters when you first arrived as vicar
24 general?
25 A. "Briefing" is probably too strong a word. We
26 certainly had discussion about it, but there was no - he
27 did not provide me with a clear, precise, "This is what
28 I want you to do."
29
30 Q. I might ask you to turn to volume 4, of the tender
31 bundle, tab 283. I will ask you to quickly have a look at
32 that, which is a letter from you to Denis McAlinden on
33 16 May 1996?
34 A. Yes.
35
36 Q. Father, was it the case that one of the matters that
37 you were involved in from an early time as vicar general
38 for Bishop Malone was corresponding with Denis McAlinden in
39 relation to the potential laicisation of McAlinden?
40 A. Yes.
41
42 Q. If we just look at that letter there, you'll see that
43 you've addressed it to McAlinden in an address in
44 Tipperary, in Ireland?
45 A. Yes.
46
47 Q. You have addressed it "Dear Denis"?

1 A. Yes.
2
3 Q. Do we take it that McAlinden was a friend of yours?
4 A. Not by that address, no.
5
6 Q. No?
7 A. That would be a normal form of address for another
8 priest in the same diocese.
9
10 Q. Can I ask this: had you known McAlinden from your
11 time as a parish priest in the 1970s?
12 A. Not very well, no.
13
14 Q. Had you ever worked together at the same parish?
15 A. No.
16
17 Q. But you'd met him from time to time at diocesan
18 functions?
19 A. Yes.
20
21 Q. Would you describe him, as at 1996, as being a friend
22 of yours?
23 A. No.
24
25 Q. You say that with some force. You're nodding?
26 A. Well, he was not a friend. I would not have called
27 him a friend, no.
28
29 Q. Just exploring that a little, was there any instance
30 that occurred that you're able to assist the Commissioner
31 with that gave you an insight into the personality of
32 McAlinden prior to 1996?
33 A. An incident that occurs to me is, in a sense, a
34 trifling one, but it was of some physical carpentry that he
35 did in a certain church.
36
37 Q. When was that?
38 A. Oh, golly, late 1950s, I should think.
39
40 Q. Late 1950s?
41 A. Yes. I think it was late 1950s. When he asked a
42 professional builder what he thought of the work and the
43 professional builder reminded him that he didn't do a
44 certain thing the proper way, McAlinden didn't speak to him
45 after that. So he wasn't a - he was a difficult customer,
46 I suppose.
47

1 Q. That was an incident where you were present, was it?
2 A. I think I was - either that or heard it immediately
3 afterwards from the builder. I can't remember being - yes.
4
5 Q. The impression created was that he was a rude and
6 overbearing man, was it, from that tale?
7 A. Well, he wasn't very happy being corrected.
8
9 Q. I think you referred to the late 1950s.
10 A. Yes.
11
12 Q. I think you told us that you came to the diocese in
13 1970?
14 A. No, hang on, I didn't. I returned to the diocese from
15 studying overseas in 1970, yes, but I was born in the
16 diocese.
17
18 Q. So this was at a time before you became a --
19 A. My recollection is, yes, yes. It was, yes, it was.
20
21 Q. Thank you. In the letter, if we just look at the
22 letter of 16 May 1996, which is exhibit 108 --
23 A. Sorry? Exhibit?
24
25 Q. Tab 283?
26 A. Tab 283, but exhibit --
27
28 Q. Just tab 283.
29 A. Right. Got it.
30
31 Q. You indicate there:
32
33 *Dear Denis,*
34
35 *As you know, with Bishop Michael's*
36 *succession to the diocese a new*
37 *Vicar General has been appointed, namely*
38 *yours truly.*
39
40 *The bishop has also decided to continue*
41 *with the case begun by Bishop Leo for your*
42 *laicisation, and he has asked me to get in*
43 *touch with some canon law advisers for you.*
44
45 You indicate your understanding that he's still in Ireland
46 using a particular address. You refer to a particular
47 gentleman that's agreed to put him in touch with a canon

1 lawyer. You indicate at the end there:

2

3 *I am sorry that our first contact after so*
4 *many years has to be about so sad a matter.*

5

6 A. Yes.

7

8 Q. Are you able to assist us as to what the reference to
9 "so sad a matter" is in that letter?

10 A. Well, that the bishop was seeking his laicisation
11 would probably be the view that I came to.

12

13 Q. Rather than the reasons underpinning the laicisation?

14 A. Well, it could be. I don't know. The whole thing was
15 a sad matter, you know, both of them: I'm not
16 distinguishing.

17

18 Q. And it was a sad matter because of the reasons
19 underlying the move to laicisation included, as you
20 understood, allegations that McAlinden had sexually abused
21 children?

22 A. Yes.

23

24 Q. To be fair to you, if you turn to the next page,
25 you'll see a note, I think, in your handwriting at the
26 bottom - is it?

27 A. Yes.

28

29 Q. It says the original was returned unopened by
30 Pat Hallinan, in an address unknown, and you've initialled
31 that 22 July 1996?

32 A. Yes.

33

34 Q. Could I ask you to turn to tab 284, which is another
35 letter from you of the same day.

36 A. Yes.

37

38 Q. Look at some of the correspondence that you've written
39 at the time to see if it assists in jogging your memory as
40 to the events at that time and the process that was being
41 undertaken. You will see there that's a letter to the
42 chancellor of the diocese of Dublin, addressed to, "Dear
43 Alex" and in the first paragraph you refer to a telephone
44 conversation you've had with him?

45 A. Yes.

46

47 Q. You thank him for so freely sharing his expertise and

1 experience in the matter?
2 A. Yes.
3
4 Q. Then you indicate:
5
6 *The priest who we are having difficulties*
7 *with is Father Denis McAlinden ...*
8
9 A. Yes.
10
11 Q. And that he's now about 70 years old and you give
12 reference to a particular contact address in Tipperary.
13 Again, appreciating that it is some correspondence from a
14 number of years ago, are you able to indicate what the
15 reference to "having difficulties" with is in your letter?
16 And just read the rest of it for context if you need to?
17 A. I think one of the difficulties was in fact in
18 contacting him, yes.
19
20 Q. Yes.
21 A. And the need for, you know - and getting him to
22 cooperate with the process of laicisation.
23
24 Q. Is it your recollection that that became a continuing
25 difficulty that you were facing in terms of the laicisation
26 process with McAlinden?
27 A. Yes.
28
29 Q. That in a sense, in large part, it depended upon his
30 cooperation?
31 A. Yes.
32
33 Q. And as correspondence eventuated, he wasn't willing to
34 in fact cooperate with the process?
35 A. That's my understanding, yes.
36
37 Q. You will see in the next paragraph you indicate:
38
39 *We are applying to have Denis dispensed*
40 *from priesthood ...*
41
42 A. Yes.
43
44 Q. Is that a reference to laicisation, as you understood
45 it?
46 A. Yes.
47

1 Q. I think we will come to some correspondence that
2 refers to withdrawal of the faculties for a priest?
3 A. Yes.
4
5 Q. Are you able to indicate to us the difference, if any,
6 between the withdrawal of faculties and laicisation, as you
7 understand it?
8 A. The withdrawal of faculties is a decision which the
9 bishop can make to prevent a priest from functioning as a
10 priest in his area because that's the - laicisation is
11 simply applying to have the person returned to the lay
12 state so that he's no longer a priest anywhere, any place.
13
14 Q. Is one difference that the removal of faculties can be
15 reinstated by the will of the particular bishop at any
16 point in time?
17 A. Yes.
18
19 Q. And also that it is directed at the public
20 manifestations of being a priest?
21 A. Yes.
22
23 Q. Withdrawal of faculties doesn't prevent a priest from
24 performing a private mass, for example?
25 A. It would depend on the way in which - on the
26 particular decision or the way the bishop has applied it,
27 but that can sometimes be the case, yes.
28
29 Q. Laicisation is a much more permanent state of affairs?
30 A. Certainly, yes.
31
32 Q. You indicate there that:
33
34 *... I gather that the previous bishop ...*
35
36 And that's a reference to Bishop Clarke?
37 A. Clarke, yes.
38
39 Q. "And VG"
40 A. Yes.
41
42 Q. And again, that's your reference, is it, to
43 Monsignor Hart?
44 A. Yes.
45
46 Q. Continuing:
47

1 ... were made aware that it is not the best
2 way to go ...

3

4 A. Yes.

5

6 Q. Is that you referring to laicisation as being not the
7 best way to go?

8 A. My recollection is that would be referring to bishop
9 applying to have him laicised rather than the person
10 applying for laicisation himself. It would be much
11 harder - in those days within the church it was much harder
12 for a bishop to have a priest laicised than it would be if
13 the priest himself had applied for laicisation.

14

15 Q. Is your reference to a bishop applying for laicisation
16 a reference to a bishop progressing or instigating a
17 canonical process involving the priest?

18 A. Yes.

19

20 Q. Can I just ask whether you have any background in
21 canon law?

22 A. No.

23

24 Q. Just the working knowledge of a priest working in a
25 diocese?

26 A. It's a working knowledge, yes.

27

28 Q. Is your reference there that:

29

30 ... the previous bishop and VG were made
31 aware that it is not the best way to go,
32 but in the circumstances thought it wiser
33 to go down that path.

34

35 Do we take it that that's a reference that a decision had
36 been made by Bishop Clarke that progressing a canonical
37 forced process might be in some way problematic?

38 A. That's my understanding, yes, but I'm speaking for
39 somebody else.

40

41 Q. And that it was better to see if McAlinden could be
42 co-opted into voluntarily agreeing to leaving the
43 priesthood by the process of laicisation?

44 A. Yes.

45

46 Q. And then you indicate:

47

1 I'll let you know how we get on.

2
3 A. Yes.

4
5 Q. And there you're recording what you gathered to have
6 been the view from the previous bishop and the
7 vicar general. Sitting there now, do you have any
8 recollection as to whether you shared the view that you've
9 expressed in the letter, or whether it was simply that you
10 were recounting what you understood to have been a decision
11 that had been made?

12 A. I would say simply recounting a decision that had been
13 made, yes.

14
15 Q. I will turn shortly to some correspondence that's
16 later in time. Can we take it that when you became
17 vicar general, Bishop Malone, do we understand, had given
18 you the task of corresponding and dealing with McAlinden in
19 relation to the laicisation? I think you've indicated that
20 was the case.

21 A. Simply to get in touch with him and try to, yes, find
22 out where he is and get him to - get himself a lawyer and
23 get back to us, yes.

24
25 Q. Do we take it that to put yourself in a position to
26 correspond with McAlinden and take charge of that matter,
27 that you would have taken and did in fact take steps to
28 look at what had been the previous correspondence dealing
29 with McAlinden and this topic?

30 A. I would not describe myself as taking charge of the
31 matter. I was simply trying to get in touch with him and
32 find out where he was. I wasn't managing the matter.

33
34 Q. By that you're indicating, are you, that you were
35 assisting the bishop with a particular task that he'd given
36 to you?

37 A. Yes.

38
39 Q. In a delegated fashion?

40 A. Yes.

41
42 Q. As you understood it, the bishop remained involved in
43 the process?

44 A. In the process, yes.

45
46 Q. Do you have any recollection now - and if you don't
47 tell us - that the communications that I've just shown to

1 you were matters that you would have or did in fact show
2 Bishop Malone at the time before they were sent?
3 A. I have no - I have no recollection one way or the
4 other, no.
5
6 Q. Did you have a usual practice, in your time as
7 vicar general, in sending out correspondence under the
8 title "Vicar General", that you would, in a sense, clear
9 those in a fashion with the bishop?
10 A. Not necessarily, no.
11
12 Q. What makes you resist the notion that you had taken
13 charge of the McAlinden laicisation process? You're
14 entitled to resist that but I'm just seeking to explore
15 that.
16 A. Yes, because I didn't see that as the task I'd been
17 given. The task I'd been given was simply to try to get in
18 touch with him and get him to correspond, you know, to
19 cooperate.
20
21 Q. And that's a task that had been given to you by
22 Bishop Malone?
23 A. Yes.
24
25 Q. Do you recall now having particular discussions with
26 Bishop Malone on that topic; not the exact words but the
27 substance?
28 A. No, I can't recall, no. I don't say that that did not
29 happen, but I can't recall.
30
31 Q. If you weren't the person who was taking charge, there
32 was someone, was there, who had overall management of the
33 steps being taken to laicise McAlinden?
34 A. I would presume that was the bishop, yes.
35
36 Q. It wouldn't be anyone other than the bishop?
37 A. I doubt it. It could have been but I doubt it.
38
39 Q. In the letter that's at tab 383, you address that
40 letter to McAlinden at an address in Tipperary?
41 A. Yes.
42
43 Q. Could I just ask you to flick back in time to tab 277
44 of the bundle. I will give you a chance to read it. You
45 will see there's a handwritten letter from McAlinden to
46 Bishop Malone dated 27 February 1996?
47 A. Yes.

1
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Q. You will see that there is some commentary from McAlinden and then there's a reference to:

[That he] ... would like to advise that any correspondence could be sent there [to him] to the following temporary address.

A. Yes.

Q. And there is an address given there that is the address at Tipperary?

A. Yes.

Q. You will see that that's the same address that you've used in your letter of 16 May 1996?

A. Yes.

Q. And McAlinden answered the letter by saying:

I have already arranged with Father Pat to collect any mail.

A. Yes.

Q. Does looking at that letter now give you any degree of confidence that you would have had to look at this letter at least for the purpose of knowing the particular address to send mail to McAlinden?

A. Not necessarily. The address may well have been in the office.

Q. When you say "in the office", it would be in a file relating to McAlinden matters?

A. It could be. It could simply be in a list of addresses, contacts points, yes.

Q. You can see there that, as at February 1996, he's indicating that this is a temporary address to be used for the moment?

A. Yes.

Q. So it wasn't seemingly part of any permanent list of addresses of priests that might be --

A. No.

Q. -- applying at that time. Doing the best for the

1 Commissioner now, do you think it's likely that you would
2 have looked at this letter at least for the purpose of
3 getting this address prior to communicating with McAlinden
4 in your letter of May?
5 A. Not necessarily so because Pat Hallinan's address was
6 known to us and if it was known that McAlinden was with
7 Pat Hallinan, we'd simply pick up his address.
8
9 Q. But for you to know that McAlinden was with
10 Pat Hallinan, one immediate way of knowing that would be to
11 have looked at the correspondence relating to McAlinden in
12 this letter?
13 A. That's one way, yes.
14
15 Q. There are only two ways, aren't there, that you could
16 have looked at the letter, or someone has told you?
17 A. Or?
18
19 Q. Or - three ways, yes.
20 A. McAlinden - whenever McAlinden visited Ireland, he
21 used Pat Hallinan's address.
22
23 Q. Do you have any recollection of that being the case at
24 all or are you just surmising that as a potential third
25 possibility?
26 A. I think it's more than a potential third possibility
27 because I think - if I recall, he was known to use that
28 address. It could well have been that, that that's the
29 address he used when he was in Ireland; that's how you'd
30 get in touch with him.
31
32 Q. When you refer to that being a potential address for
33 McAlinden in Ireland, is that something that you recall
34 McAlinden telling you?
35 A. No. No.
36
37 Q. If that's not the case, are you able to say who might
38 have told you that?
39 A. No.
40
41 Q. Or who in fact told you that?
42 A. No, I don't - I can't, no.
43
44 Q. Doing the best you can, you have no recollection of
45 that in fact being the case?
46 A. What being the case, I'm sorry?
47

1 Q. Of you being told by anyone that McAlinden had a
2 temporary address at Tipperary in Ireland?
3 A. I can't recall, no.
4
5 Q. When you created the letter of 16 May 1996 to
6 McAlinden and you'd sent it and you can see from what
7 you're looking at here that we've got what appears to be a
8 photocopy that includes your signature?
9 A. Yes.
10
11 Q. That's a document that has been obtained from the
12 records of the diocese?
13 A. Yes.
14
15 Q. Similarly, if you look at the next page, there's
16 another copy of a letter at least --
17 A. Yes.
18
19 Q. -- which has been obtained from the records of the
20 diocese here?
21 A. Yes.
22
23 Q. When you were vicar general was it your practice to
24 have a file relating to particular topics so that you could
25 put copies of correspondence relating to McAlinden into
26 that file, are you able to say?
27 A. No, a copy of the correspondence would go in
28 McAlinden's file.
29
30 Q. And McAlinden's file would be a file that was one of
31 the bishop's files?
32 A. Yes.
33
34 Q. Do we take it that as vicar general, for the
35 particular purposes you needed to, that you had access to
36 the bishop's files in this case relating to McAlinden?
37 A. No, not necessarily. I certainly don't recall any
38 sort of access to the file generally. If there was any
39 access - this is a guess - it would have been given to me
40 by the bishop, but I don't have any immediate recall of
41 that, no.
42
43 Q. When you say it would have been given to you by the
44 bishop, it was files relating to a particular priest, that
45 is to say, McAlinden?
46 A. The bishop would have had the files on the priests.
47

1 Q. Yes.
2 A. I have no recollection of ever referring to those
3 directly. I would have asked him to put in a letter that
4 I'd written, but I do not recall ever seeing the file
5 myself.
6
7 Q. This is at the time of the early years of
8 Bishop Malone?
9 A. Yes.
10
11 Q. Do you recall Bishop Malone having files on particular
12 priests in the bishop's office?
13 A. I presume so, yes.
14
15 Q. When you say you "presume so", have you got a
16 recollection of having seen those?
17 A. I have seen the filing cabinet there with - simply
18 with priest's written name on it - with the name "priest"
19 on the drawer, but I don't - you know, that's as close as
20 it's got.
21
22 Q. From time to time, as vicar general, when you had to
23 deal with matters relating to particular priests, was it
24 the case that Bishop Malone would give you access to a
25 particular file on a priest to deal with that matter?
26 A. I have no recall of that ever happening.
27
28 Q. When you say you have no recall of that ever
29 happening, do you say that it never happened?
30 A. I think I would say it never happened, yes.
31
32 Q. For you to be in a position to send this communication
33 of 16 May 1996, may we take it that you had to have some
34 background knowledge as to what was happening, where you
35 entered the process of the correspondence with McAlinden?
36 A. Right. Yes.
37
38 Q. You're indicating "yes"?
39 A. Yes.
40
41 Q. Do we take it that you would have taken steps to
42 ensure that you were informed as to what the position was
43 when you wrote to McAlinden?
44 A. In a general sense, yes; yes.
45
46 Q. Because you wanted to make sure that when you were
47 writing to McAlinden, particularly on a matter as serious

1 as laicisation, that you were accurately setting out the
2 position of the diocese up until that point in time?
3 A. Not necessarily. This process had been started before
4 I came - got involved.
5
6 Q. Accepting that, on 16 May 1996 you're sending out a
7 letter under the title "Vicar General of the Diocese"?
8 A. Yes.
9
10 Q. It is addressed to a very, very serious topic of
11 laicisation?
12 A. Yes.
13
14 Q. You knew the context, the background to that process
15 of laicisation was that this gentleman, McAlinden, had been
16 accused of sexually abusing children?
17 A. Yes.
18
19 Q. The combination of those two matters meant that it was
20 clearly a most serious topic that you were addressing?
21 A. Yes.
22
23 Q. Surely it was the case that you would have taken steps
24 to make sure that the correspondence that you were
25 dispatching accurately recorded the position at that point
26 in time of the diocese?
27 A. Insofar as I'm simply asking him to provide us with a
28 canon lawyer so that we can proceed with the case.
29
30 Q. You're doing a little bit more than that, aren't you?
31 You're indicating that, "The Bishop has also decided to
32 continue with the case begun by Bishop Leo for your
33 laicisation"?
34 A. Yes.
35
36 Q. In that letter you're making clear, aren't you, as you
37 understood the position, which was accurate, that a process
38 against McAlinden had been started in the days of
39 Bishop Clarke?
40 A. Yes.
41
42 Q. Also, if you turn to the document at tab 284, which is
43 written on the same day, in the third paragraph down there
44 you're indicating to the Chancellor of the Diocese of
45 Dublin the position of the diocese that, "We are applying
46 to have Denis dispensed from priesthood..."?
47 A. Yes.

1
2 Q. And you're relaying the position taken by the previous
3 bishop?
4 A. Yes.
5
6 Q. And the previous vicar general?
7 A. Yes.
8
9 Q. And I think you've indicated to the Commissioner that
10 from Monsignor Hart you didn't receive any handover of any
11 sort?
12 A. No.
13
14 Q. You didn't have any communications with him in
15 relation to the McAlinden process?
16 A. No.
17
18 Q. As far as you can recall?
19 A. As far as I can recall, no.
20
21 Q. Isn't it likely, highly likely to have been the case
22 that to put yourself in a position to make the statements
23 that you do in those letters and to make sure that they're
24 accurate, that you would have had to look at the file
25 relating to McAlinden that was in the bishop's office --
26 A. No.
27
28 Q. -- that dealt with these very matters?
29 A. Not necessary to look at the file, no.
30
31 Q. It is inconceivable that you would have sent this
32 correspondence out without having taken that careful step,
33 isn't it? I'm putting that to you as a proposition.
34 A. If the bishop had asked me to get in touch with him
35 because the process of laicisation was being pursued, that
36 would be sufficient for me to get in touch.
37
38 Q. All right.
39 A. I don't see it as I would have to demand proof that
40 this has to happen.
41
42 Q. No, I'm not saying that you have to demand proof.
43 A. Right.
44
45 Q. This letter here of 16 May to the Diocese of Dublin is
46 clearly indicating, isn't it, in quite proper fashion,
47 quite an understanding of the process up until that point

1 in time?

2 A. Right. Yes.

3

4 * Q. For you to have been able to put together a letter
5 in that fashion, you had to have had an understanding
6 yourself as to what the position was?

7 * A. Yes.

8

9 MR GYLES: I object. What the letter says is that the
10 bishop had asked him to do something. There has been a
11 series of questions about that and there is a premise in
12 the question that this letter contains information which
13 could not have been made available in a direct instruction.

14

15 THE COMMISSIONER: Yes, Mr Kell?

16

17 MR KELL: Commissioner, I am clearly entitled to explore
18 with this witness the sources of information that he had to
19 enter into a process where there were communications
20 between the diocese and McAlinden relating to the abuse of
21 children and to see where his source of knowledge came from
22 and to explore that in terms of the documents that were
23 available.

24

25 THE COMMISSIONER: Yes, very well. In tab 284 it
26 certainly looks as though the address and the way the
27 address is formulated and repeated comes from the letter by
28 McAlinden himself.

29

30 MR KELL: Yes.

31

32 THE COMMISSIONER: Unlike the other letter which has it in
33 a slightly different formula, but anyway, yes, I'll permit
34 you to ask that question, Mr Kell.

35

36 MR KELL: Thank you. Father, again, I'm not being
37 critical, we're just seeking to explore and then putting
38 the proposition to you that you would have taken the steps
39 to carefully inform yourself - I'm sorry, could the
40 question be read back, Commissioner, before I ask any more?

41

42 THE COMMISSIONER: Yes, Mr Kell.

43

44 (Question and answer marked * at page 1252
45 lines 16 to 19 read)

46

47 MR KELL: Q. Again, father, I'm not intending to be

1 critical, what's being suggested to you is that you would
2 have taken the quite proper and careful steps of making
3 sure that you were informed as to the position of this very
4 serious process that was being undertaken against
5 McAlinden?
6 A. Yes.
7
8 Q. And to do so it is likely, in fact, highly likely that
9 you would have looked at the McAlinden file that included
10 the correspondence relating to this very process?
11 A. Not necessarily.
12
13 Q. You seem to be resisting that proposition?
14 A. Because I did not see the file.
15
16 Q. You've got a recollection now, do you, as to the
17 sources of information that you had resort to for the
18 purpose of preparing this letter?
19 A. The source of information was the bishop.
20
21 Q. By referring to the bishop you're referring to an oral
22 conversation, are you, with Bishop Malone?
23 A. More than likely, yes.
24
25 Q. When you say "more than likely" --
26 A. I don't have a copy of any letter that he wrote to me
27 saying, "Please do this".
28
29 Q. You're sitting there in the vicar general's office in
30 the chancery building; correct?
31 A. Yes.
32
33 Q. And Bishop Malone is just down the hallway, is he?
34 A. Upstairs.
35
36 Q. Upstairs?
37 A. Yes.
38
39 Q. It is a matter of a few seconds walk to get to his
40 office?
41 A. Yes.
42
43 Q. In his office you're aware, aren't you, that he has
44 got files that relate to particular priests?
45 A. Yes.
46
47 Q. You were given the task of assisting Bishop Malone in

1 corresponding in relation to this very important matter
2 dealing with McAlinden?

3 A. Yes.

4

5 Q. As vicar general you were in some respects the second
6 in charge of the diocese, subject to the qualifications
7 that you've indicated previously?

8 A. Yes.

9

10 Q. For the purpose of your task you needed to get
11 information, didn't you, one way or another, from
12 Bishop Malone as to where the process of laicisation was up
13 to?

14 A. Yes.

15

16 Q. The most easily accessible means by which you could do
17 that was to walk up the stairs to Bishop Malone's office
18 and ask for the files relating to McAlinden?

19 A. That's one way of doing it, yes.

20

21 Q. Sitting here, as you are now, you can't tell the
22 Commissioner, can you, that you didn't in fact take that
23 step, in the sense that your memory of these matters is not
24 sufficiently detailed that you have an actual recollection
25 of preparing this letter without taking that particular
26 step?

27

28 MR GYLES: He has given this evidence twice and he said
29 that he did not access the bishop's files. He has already
30 given that evidence twice, Commissioner.

31

32 THE COMMISSIONER: Yes.

33

34 Q. Do you maintain that evidence, Father Burston, that
35 you didn't look at the bishop's files?

36 A. I have no recollection ever of looking at the bishop's
37 files, no.

38

39 MR KELL: I see the time, Commissioner, so would that be a
40 convenient time?

41

42 THE COMMISSIONER: Thank you. I will adjourn the public
43 hearings until 10 o'clock tomorrow.

44

45 MR HUNT: Subject to this, that I intended at the
46 conclusion of Father Saunders' evidence to tender the
47 documents behind tab 414 and 416, which were the documents

1 that my learned friend Mr Gyles SC asked Father Saunders
2 about.

3
4 THE COMMISSIONER: Separate exhibits, Mr Hunt?

5
6 MR HUNT: Yes, please.

7
8 THE COMMISSIONER: The material behind tab 414, which is
9 the - in fact, that is already marked as a public exhibit.

10
11 MR HUNT: Yes, it is. It is already marked in a different
12 fashion, but I now seek that it be tendered publicly in
13 addition to its other marking.

14
15 THE COMMISSIONER: I understand, Mr Hunt. Thank you. The
16 file note by Bishop Malone of 27 April 2004 will be
17 admitted and marked exhibit 116.

18
19 **EXHIBIT #116 FILE NOTE BY BISHOP MALONE DATED 27/4/2004**
20 **(TAB 414)**

21
22 THE COMMISSIONER: The faxed message from Bishop Malone to
23 Mr Michael McDonald, together with the form headed "Child
24 Protection Information Details. Ombudsman Act 1974", will
25 be admitted and marked exhibit 117.

26
27 **EXHIBIT #117 FAXED MESSAGE FROM BISHOP MALONE TO MR MICHAEL**
28 **MCDONALD, TOGETHER WITH FORM HEADED "CHILD PROTECTION**
29 **INFORMATION DETAILS. OMBUDSMAN ACT 1974" (TAB 416)**

30
31 (Transcript suppressed from page 1255, line 31 to
32 page 1256, line 23)

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MS LONERGAN: Commissioner, I rise to raise one important matter that has been notified to me by Mr Gyles. It has been observed by counsel at the Bar table that this particular witness was subjected to verbal harassment in the precincts of the court outside the courtroom. It is of huge concern to those that assist you that any witness would be treated that way by members of the public. Commissioner, it appears to me a matter that would be appropriate for you to raise as a matter of general conduct, that witnesses who take the trouble to appear before this Commission ought not be subjected to that kind of treatment.

THE COMMISSIONER: Thank you, Ms Lonergan, and thank you, Mr Gyles, for raising it.

Q. Father Burston, I apologise that you have been subjected to rudeness and disrespect in the confines of this courthouse.

A. Thank you, Commissioner.

THE COMMISSIONER: Ladies and gentlemen, it is unacceptable for any witness who attends this inquiry to be

1 subject to disrespectful comments or any other unfortunate
2 behaviour and it will not be tolerated and if I'm able to
3 find out who is responsible, further action might be
4 expected to ensue. It is not the first time I've had to
5 raise this matter, but it is most inappropriate that any
6 witness, in particular, a priest who has given his life to
7 the service of the Catholic Church, should be treated like
8 this in these types of proceedings.
9

10 No findings have yet been made by this inquiry and it
11 is unhelpful in the extreme for people to prejudge. As
12 I think I've said before, when members of juries are sworn
13 in they are specifically warned not to prejudge because
14 prejudgment is a part of prejudice. It is essential that
15 everyone is not intimidated from coming in and giving their
16 evidence without any form of harassment and it is essential
17 that we all keep an open mind about matters that concern
18 this inquiry.
19

20 There are always two sides to stories and few very
21 things in this life are black and white. I would ask
22 everyone to observe respectful conduct towards everyone who
23 come to give evidence, particularly people who have to go
24 through the very difficult, very confronting, very
25 intimidating thing of giving evidence. It is a difficult
26 thing to give evidence. That is why victims of crime often
27 are permitted to give evidence in closed courts.
28

29 Father Burston doesn't have that advantage. It is a
30 difficult thing to do and everyone should be assisting him,
31 and all of the other witnesses who come to give their
32 evidence, to do so fully and frankly and without fear of
33 any of that type of conduct.
34

35 I will adjourn until tomorrow at 10 o'clock.
36

37 **AT 4.10PM THE COMMISSION WAS ADJOURNED TO**
38 **THURSDAY, 18 JULY 2013 AT 10AM**
39
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