

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 Thursday, 18 July 2013 at 10.15am
(Day 12)

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 KELL: Commissioner, I have two relatively minor
2 transcript corrections that have been drawn to my
3 attention. Could I deal with those first. At yesterday's
4 transcript, at page 1233, line 24, there is a merging of
5 the question and answer. After the first sentence there
6 should be the answer: "It is hard to give a clear answers
7 on that", et cetera.

8
9 THE COMMISSIONER: Yes.

10
11 MR KELL: Secondly, at page 1244, at line 29, there was a
12 question asked to Father Burston relating to putting
13 himself in a position to correspond with McAlinden
14 et cetera and in fact taking steps to look at what had been
15 the previous correspondence dealing with McAlinden "on this
16 topic", rather than "and this topic".

17
18 THE COMMISSIONER: That change can be made, thank you
19 Mr Kell.

20
21 Before we commence, Father Burston, may I apologise
22 once again that some people, who apparently didn't hear my
23 admonition, subjected you to bullying and boorish behaviour
24 outside the court, if the news was any indication,
25 I apologise for that, and for anyone who missed it, that
26 sort of behaviour won't be tolerated. There is a way to
27 have your say in this inquiry and everyone with something
28 to say is urged to come and say it or make a submission to
29 the inquiry to say so and not to take it out on individual
30 witnesses such as Father Burston.

31
32 **<WILLIAM JOHN BURSTON, sworn: [10.15am]**

33
34 **<EXAMINATION BY MR KELL CONTINUING:**

35
36 MR GYLES: Section 23, if that's necessary, Commissioner.

37
38 THE COMMISSIONER: Thank you, Mr Gyles.

39
40 MR KELL: Q. Father, I wonder if you could reach for
41 volume 4 of the tender bundle. Would you turn to tab 283.
42 You will see that this is a letter that was drawn to your
43 attention yesterday, on 16 May, where you wrote to
44 McAlinden?

45 A. Yes.

46
47 Q. Care of Reverend Hallinan?

1 A. Yes.
2
3 Q. You will see you have an address on that letter that
4 is - I won't try the Gaelic - Gort Mhuire, Ballinamult, at
5 County Tipperary in a particular style?
6 A. Yes.
7
8 Q. If you go to the next page, this is tab 284. On the
9 same day you've written to the chancellor of the diocese of
10 Dublin?
11 A. Yes.
12
13 Q. You'll see in the second paragraph there that you have
14 indicated that, as we saw yesterday, there's a priest
15 McAlinden who you're having difficulties with?
16 A. Yes.
17
18 Q. Then you indicate:
19
20 *... who has given his contact address as*
21 *[care of] Father Patrick Hallinan.*
22
23 You'll see that you've styled the address of McAlinden in
24 quite different terms there; instead of "Gort", you have
25 "Glen Mhuire"?
26 A. Yes.
27
28 Q. And then you continue on after the Ballinamult and
29 before County Tipperary, you've included Clonmel,
30 C-L-O-N-M-E-L. Could I ask you to turn back in the bundle
31 to tab 277, which for practitioners is exhibit 107. That's
32 the handwritten letter that you saw that I took you to
33 yesterday of 27 February 1996 from McAlinden to Bishop
34 Malone?
35 A. Yes.
36
37 Q. That's a letter of some three months or so before your
38 writing in May to McAlinden?
39 A. Yes.
40
41 Q. If you go halfway down there, you will see that he
42 has provided the following temporary address for Father
43 Hallinan.
44 A. Yes.
45
46 Q. You'll see it is styled as Glen Mhuire?
47 A. Yes.

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Q. And Clonmel is included as well?

A. Yes.

Q. Does that indicate to you that - if you keep your finger on the letter at tab 277 and you flick through to the letter at 284 to Reverend Stinson at the diocese of Dublin - when you were writing this letter in May 1996 to the diocese of Dublin, you had the letter from McAlinden with the particular address there, including the Glen Mhuire, necessarily before you. Does that give you a degree of confidence that you had that letter from McAlinden before you at that time?

A. No. No, it doesn't.

Q. You can see you have a different style of address for the preceding letter that I've taken you to?

A. Yes.

Q. I want to suggest to you that what it indicates as likely being the case is that, at the time you wrote your second letter of 16 May 1996, you had before you at least from the bishop's files the document, the handwritten document from McAlinden of February of that year?

A. It doesn't - when I wrote, sorry?

Q. What I'm suggesting to you is that at the time you wrote your second letter of 16 May 1996 --

A. The second one, yes.

Q. -- it is likely that you had before you the handwritten letter of 27 February from McAlinden where he had styled the address of Father Hallinan in the terms that you had used not in your first letter at tab 283, but in your second letter at 284. Do you accept that proposition?

A. No.

Q. Why do you not accept it?

A. Because Pat Hallinan's address would have been in other files in the office anyway. It wasn't the only location for it.

Q. At the time that you're suggesting that you're writing about Father Hallinan on 16 May 1996, you can see that, on the same day, you've got two different addresses. You can see that from the documents?

A. Not two different addresses.

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Q. You've styled the addresses in two different terms?

A. Yes.

Q. That suggests, doesn't it, that you've got those addresses from different sources?

A. I don't know. I cannot recall where I got them from, but they would have been in the office. They would have been available.

Q. One immediate place where it would be available would be, and the logical place it would be, the most recent correspondence from McAlinden to which you were responding by this letter?

A. That's one possibility.

Q. It is one possibility? It is more than that. It is a strong and likely possibility, isn't it, Father Burston?

A. If there's a list of addresses in the office, it could well have been taken from that list.

Q. When you say "the office", you're talking about the vicar general's office, are you.

A. No, I'm talking about the bishop's office and the typist - the secretary who wrote the note.

Q. The bishop's office is the office that we spoke about yesterday that was a couple of seconds away from your office just upstairs?

A. Yes.

Q. Are you suggesting to the Commissioner that you've gone to the bishop's office to find out information relating to your correspondence to McAlinden?

MR GYLES: I object. He didn't say that.

MR KELL: I'm putting it to him.

THE COMMISSIONER: It was available in the bishop's office whether or not Father Burston went there. Is that what you mean?

MR GYLES: That's right. He spoke of the same issue yesterday. He spoke of a list of addresses. He talked about that yesterday. He hasn't given evidence that he walked up to the bishop's office, up the stairs, to get

1 that address.

2

3 THE COMMISSIONER: Yes, Mr Kell, would you put the other
4 possibilities.

5

6 MR KELL: Yes, all right.

7

8 Q. Father, it is correct, isn't it, that, as you sit
9 there in the witness box, you do not have a recollection in
10 your mind of getting this address for Father Hallinan from
11 a particular list in the bishop's office?

12 A. No. No.

13

14 Q. I think you've accepted that one possibility is that
15 you've got this address from the bishop's files relating to
16 McAlinden, or at least you've seen that McAlinden letter of
17 February 1996 where he recounts that address?

18 A. That's a possibility, but it's only one --

19

20 Q. You accept that a possibility?

21 A. Yes.

22

23 Q. You gave some evidence yesterday to the effect that
24 you think that Father McAlinden was the first priest of the
25 diocese - you can put that to one side for the moment -
26 that you became aware of who raised concerns in relation to
27 proximity to children, about children. That was your
28 evidence yesterday, wasn't it?

29 A. I think it was, yes. I'm not perfectly sure.

30

31 MR GYLES: What's the reference to that?

32

33 MR KELL: Sorry, I'll withdraw that.

34

35 Q. Yesterday you gave evidence to the effect that,
36 in terms of your experience within the diocese, the
37 first priest that you believe you heard any concerns
38 about in relation to the risk they posed to children was
39 Father McAlinden?

40 A. That was my recollection, but I can't be any more
41 precise than that.

42

43 Q. You also gave evidence that you do not recall when you
44 first became aware of reports regarding McAlinden and risks
45 in terms of sexual abuse of children?

46 A. Yes, I think I - that's true.

47

1 Q. You also gave evidence to the effect that you do not
2 recall the source of such reports or concerns relating to
3 McAlinden?
4 A. Yes.
5
6 Q. You also gave evidence that you do not recall the
7 nature of the reports that you received regarding McAlinden
8 and the risks he posed to children?
9 A. Yes.
10
11 Q. You understand that it might be regarded as
12 inconceivable that you would not recall the circumstances
13 when you first became aware of McAlinden posing risks to
14 children?
15 A. I'm sorry?
16
17 MR GYLES: What was the question? As to whether or not
18 this witness believes something is inconceivable in the
19 mind of another person is of no probative value to you,
20 Commissioner.
21
22 MR KELL: I'll withdraw that.
23
24 THE COMMISSIONER: Thank you.
25
26 MR KELL: Q. I suggest to you, Father Burston, the first
27 time that you heard that a priest of your diocese was
28 alleged to have been involved in the sexual abuse of
29 children would be a striking and memorable occasion; do you
30 agree with that?
31 A. Probably, yes.
32
33 Q. Your evidence to this Commission is that you just
34 don't recall when that happened?
35 A. That's true.
36
37 Q. Is it the case that you perceive yourself as having
38 some problems with your memory?
39 A. Yes.
40
41 Q. To your understanding, does this problem impact on
42 your ability to accurately recall past events?
43 A. Yes.
44
45 Q. Relating to McAlinden?
46 A. Past events, full stop.
47

1 Q. It impacts on your ability to accurately recall past
2 events?
3 A. Yes.
4
5 Q. Including as relating to McAlinden?
6 A. Including that, yes.
7
8 Q. You're saying that you're doing the best you can to
9 assist this Commission, but that we should or the
10 Commissioner should take into account in assessing your
11 evidence your inability to accurately recall past events;
12 is that the case?
13 A. Yes.
14
15 Q. Taking into account the problems that you say that you
16 have with your memory, is your evidence that you think you
17 did not have access to documents from the bishop's file
18 relating to McAlinden; is that the case?
19 A. Sorry?
20
21 MR GYLES: I object to the question.
22
23 MR KELL: I will withdraw it.
24
25 MR GYLES: The question of access and what that means --
26
27 MR KELL: I'll withdraw that question.
28
29 Q. Father, is it your evidence that you do not recall
30 obtaining documents to review from Bishop Malone's file on
31 McAlinden in 1996?
32 A. I do not recall that, no.
33
34 Q. But you accept, consistent with your problems
35 identified with your memory, that that may well have
36 occurred; do you accept that possibility?
37 A. Unlikely.
38
39 Q. You also accept the possibility, don't you, that you
40 were provided with documents from the McAlinden file by the
41 bishop? You were given documents from that file to look at
42 for the purpose of your correspondence with McAlinden?
43 A. I have no memory of that at all. No recall.
44
45 Q. Can I ask, do you recall any conversations with
46 Monsignor Hart relating to McAlinden?
47 A. I cannot immediately, no.

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Q. Is it your belief that you didn't have any conversations with Monsignor Hart relating to McAlinden and the laicisation process?

A. I cannot recall whether I did or not. At the time I wrote that letter Monsignor Hart wasn't in the diocese, he was on leave, so I would not have had immediate access to him.

Q. Other than Bishop Malone, do you recall any conversations with any church officials, any other church official from the diocese, relating to McAlinden --

A. No.

Q. -- and the risks he posed?

A. No.

Q. But you believe you had conversations with Bishop Malone in 1996 regarding McAlinden?

A. Yes.

Q. They included the conversations that gave you, as it were, the riding instruction for you to correspond with McAlinden about laicisation?

A. Yes.

Q. Could you pull out volume 3 of the folders. I just want to explore with you --

A. Sorry?

Q. Volume 3 of the folders. I want to explore with you whether you're able to assist the Commissioner with some of the information, doing the best that you can with your recall, that Bishop Malone may have given you relating to McAlinden. Could I ask you to tab 265. For the practitioners, that's exhibit 74. I will give you a chance to read that. You can see that's a letter dated 2 November 1995 from coadjutor Bishop Malone to McAlinden. I'll give you an opportunity to read that quickly.

A. Yes.

Q. Sitting there in the witness box today and doing the best you can, do you recall having seen that letter before?

A. No.

Q. You will see in the third paragraph of that letter Bishop Malone writes to McAlinden and refers to the

1 "gravity of the allegations against you"?
2 A. Yes.
3
4 Q. Which was obviously a reference to allegations of
5 child sexual abuse. Do you understand that to be the case?
6 A. I presume it to be the case, yes.
7
8 Q. He refers also to the evidence supporting those
9 allegations?
10 A. Yes.
11
12 Q. Do you see that reference there?
13 A. Yes.
14
15 Q. In the discussions that you had with Bishop Malone in
16 1996, did Bishop Malone tell you - do you recall whether
17 Bishop Malone told you information about the gravity of the
18 allegations against McAlinden?
19 A. I presume he would have, but I don't recall
20 immediately the conversation, no.
21
22 Q. Similarly, did Bishop Malone speak to you about the
23 evidence supporting those allegations in his discussions
24 with you in 1996?
25 A. I don't recall that at all, no.
26
27 Q. Could I ask you to turn back to tab 262. You will see
28 that's a letter dated 19 October 1995 from Bishop Clarke to
29 McAlinden?
30 A. Yes.
31
32 MR KELL: For practitioners, that's exhibit 67.
33
34 Q. I'll give you a quick opportunity to read that,
35 please.
36 A. Yes.
37
38 Q. You've had a chance to look at that?
39 A. Yes.
40
41 Q. Can I ask you, doing the best you can today, do you
42 recall having seen this letter before?
43 A. No.
44
45 Q. You will see in the second paragraph that
46 Bishop Clarke wrote of an admission that McAlinden had made
47 to Father Lucas?

1 A. Yes.
2
3 Q. Do you recall Bishop Malone in 1996 giving you
4 information about that topic?
5 A. No.
6
7 Q. That there had been an admission made?
8 A. No, I do not recall, no.
9
10 Q. Have you heard that from any other source?
11 A. No, I don't think so.
12
13 Q. You will see on the second page of the letter, the
14 second paragraph down, that the bishop of the diocese had
15 told McAlinden that he had it on very good authority that
16 some people were threatening seriously to take this whole
17 matter to the police?
18 A. Yes.
19
20 Q. Again, was that something that Bishop Malone had told
21 you in 1996 in his discussions with you?
22 A. I don't recall that, no.
23
24 Q. Can I ask you to jump back to tab 250 and that's
25 exhibit 73. You will see there a letter dated 2 June 1995
26 from Monsignor Hart to the rector and parish priest at the
27 San Pablo diocese in the Philippines?
28 A. Yes.
29
30 Q. Could I ask you to read that, please.
31 A. Yes.
32
33 Q. You will see in the second paragraph there that
34 Monsignor Hart refers to having had consultation with
35 Bishop Malone and that he wished - he drew the attention of
36 the reverend of the San Pablo diocese that he wished to
37 advise:
38
39 *... we do require, for the benefit of those*
40 *who have lodged their complaints against*
41 *... McAlinden, a letter indicating that*
42 *your Diocese has removed his faculties and*
43 *that he will return to England.*
44
45 A. Yes.
46
47 Q. I think you've given evidence that you don't recall

1 any discussions with Monsignor Hart?
2 A. Certainly not.
3
4 Q. Relating to McAlinden?
5 A. No.
6
7 Q. In your discussions that you had with Bishop Malone
8 in 1996 relating to the McAlinden matter, do you recall
9 Bishop Malone telling you that there had been
10 correspondence with the San Pablo diocese about McAlinden?
11 A. I don't recall that, no.
12
13 Q. And that was correspondence on the benefit of persons
14 that lodged complaints about McAlinden? You don't remember
15 that?
16 A. No. No.
17
18 Q. You'll see in the third paragraph that there's
19 reference to failing this procedure - that is to say,
20 failing the obtaining of the letter from the San Pablo
21 diocese that McAlinden's faculties had been removed in the
22 Philippines, failing this procedure - those who have lodged
23 complaints intend to consider instituting criminal charges?
24 A. Yes.
25
26 Q. And compensation charges against the church?
27 A. Yes.
28
29 Q. In your discussions with Bishop Malone in 1996, do you
30 recall the bishop telling you that there were persons who
31 had made complaints about McAlinden that were threatening
32 to institute criminal charges in relation to the matter, in
33 certain circumstances?
34 A. I do not recall that, no.
35
36 Q. You can put that folder down. Do you recall having
37 conversations with Bishop Malone in 1996 on the topic of
38 reporting McAlinden to the NSW Police?
39 A. No, I do not, no.
40
41 Q. If it was suggested to you that you did have
42 conversations with Bishop Malone in 1996 on that topic -
43 that is to say, reporting McAlinden to the NSW Police - you
44 would be surprised by that, would you?
45 A. No, I don't think so.
46
47 Q. Your evidence is you don't recall having that

1 conversation, but you accept that it may well have
2 occurred?
3 A. Lots of things may well have occurred, but I simply do
4 not recall that.
5
6 Q. Perhaps you're able to assist the Commissioner in a
7 different way. By 1996 you had been incardinated to the
8 diocese for over 20 years?
9 A. Yes, 31, 32 or something.
10
11 Q. You'd held various positions in the diocese?
12 A. Yes.
13
14 Q. Including a number of years as a diocesan consultor?
15 A. Yes.
16
17 Q. To a number of bishops, or at least two bishops?
18 A. Yes.
19
20 Q. As at 1996, you held the office of vicar general?
21 A. Yes.
22
23 Q. So, effectively, subject to the qualifications you've
24 indicated, second in charge within the diocese?
25 A. Yes.
26
27 Q. You were familiar with the ethos and culture of the
28 diocese?
29 A. I'm not sure when you say "ethos and culture".
30
31 Q. You'd spent, as you indicated, over 30 years within
32 the institution of the diocese of Maitland-Newcastle?
33 A. Yes.
34
35 Q. And you've indicated that you held various positions
36 in the diocese?
37 A. Yes.
38
39 Q. You knew the workings of the diocese very well?
40 A. I wouldn't say very well.
41
42 Q. As at mid-1996, you had been in the position of vicar
43 general since January of that year?
44 A. Yes.
45
46 Q. You've seen those letters that I've just taken you to
47 which refer to there being a number of things: first,

1 grave allegations having been made against McAlinden?
2 A. Yes.
3
4 Q. And you saw that there was reference in correspondence
5 from Bishop Malone that there was evidence supporting those
6 allegations?
7 A. I'm sorry, I'm not - your question is not clear.
8
9 Q. Let me pause. I'm just trying to ascertain whether
10 you're able to assist the Commissioner as to the approach
11 that was taken in 1996. In the letters I've just shown
12 you, you saw that there was reference to grave allegations
13 having been made against McAlinden?
14 A. Yes.
15
16 Q. You saw there was reference in a letter from the
17 bishop that there was evidence supporting those
18 allegations?
19 A. Yes.
20
21 Q. You saw also that there was reference to an admission
22 having been made by McAlinden?
23 A. Yes.
24
25 Q. You saw similarly that there were people that were
26 threatening seriously to take the matter to the police?
27 A. Yes.
28
29 Q. You saw that reference?
30 A. Yes.
31
32 Q. You saw reference to those who had complained about
33 McAlinden considering instituting criminal charges?
34 A. Yes.
35
36 Q. That is to say, involving the police?
37 A. Yes.
38
39 Q. Having regard to those five matters, are you able to
40 assist the Commissioner as to why, to your knowledge, in
41 1996 no steps were taken to notify NSW Police about
42 McAlinden?
43
44 MR GYLES: I object this. The witness has been taken to
45 five documents that are not his documents and are not
46 documents that were received by him.
47

1 THE COMMISSIONER: Or seen at the time, necessarily.
2
3 MR GYLES: Or seen at the time by him. He has been shown
4 them now. He has been asked to give an explanation as to
5 why the diocese in general is said not to have acted and he
6 is simply not in a position to address that question.
7
8 THE COMMISSIONER: Perhaps, Mr Kell, you could ask
9 Father Burston if he knows the reason from what he knew
10 then, thank you.
11
12 MR KELL: Certainly.
13
14 Q. To your understanding, Father Burston, no report was
15 made to NSW Police regarding McAlinden in 1996?
16 A. That's my understanding, yes.
17
18 Q. Are you able to assist the Commissioner, having regard
19 to the background and context you are aware of, as to why
20 no report was made in 1996 about McAlinden?
21 A. My understanding is the victims did not wish to go to
22 the police.
23
24 Q. That's your understanding as at 1996, is it?
25 A. Yes.
26
27 Q. Is that based on something that Bishop Malone told
28 you?
29 A. I presume so, yes.
30
31 Q. Are you able to point to any particular
32 contemporaneous record or document at the time that refers
33 to victims not wanting to have the matter taken to the
34 police?
35 A. No.
36
37 Q. Is it the case that your belief or understanding is
38 based on what you believe to have been a discussion with
39 Bishop Malone in 1996?
40 A. Yes.
41
42 Q. And you're not able to assist the Commissioner as to
43 the terms of that conversation, are you?
44 A. No.
45
46 Q. You've got no recollection in the form of an
47 "I said/He said" type basis about that?

1 A. No.
2
3 Q. I'll ask you to pick up volume 4 of the tender bundle
4 again and jump to tab 281.
5 A. Tab 281, yes.
6
7 Q. Behind tab 281, if you go to page 604, you will see
8 that's a media release dated 24 April 1996?
9 A. Yes.
10
11 Q. It refers to charges of sexual abuse having been laid
12 against Father Vincent Ryan?
13 A. Yes.
14
15 Q. If you go to the bottom of that media release, you see
16 it says:
17
18 *For further information or clarification*
19 *please contact:*
20 *Father William Burston (Vicar General).*
21
22 A. Yes.
23
24 Q. Or the communications officer?
25 A. Yes.
26
27 Q. I'm going to ask you about the second paragraph.
28 Would you have a quick look at that media release.
29 A. Yes.
30
31 Q. To put this in context, it is a document, again, at
32 the time at which you were vicar general?
33 A. Yes.
34
35 Q. It refers to Ryan having been withdrawn from active
36 ministry on 11 October 1995?
37 A. Yes.
38
39 Q. Do you recall that as the date on which Ryan was
40 arrested on child sex offences?
41 A. I presume it is, yes.
42
43 Q. Are you able to recall the circumstances in 1995 when
44 you became aware of allegations relating to a police
45 investigation relating to Ryan?
46 A. Sorry?
47

1 Q. I am sorry; I asked that badly. Are you able to
2 recall whether it was before 11 October 1995 that you
3 became aware there was a police investigation relating to
4 Ryan?

5 A. I don't think I - no. I was not aware of any police
6 investigation until the day he was arrested.

7
8 Q. Do we take it from the fact that you are indicated on
9 the bottom of the document as the person to contact for
10 information or clarification, that you had some involvement
11 in the preparation of the document, the media release?

12 A. I'm not sure.

13
14 Q. You don't recall it?

15 A. I don't recall that, no.

16
17 Q. You can see in the second paragraph there, it says:

18
19 *In accordance with normal Church procedure,*
20 *Father Ryan was immediately withdrawn from*
21 *active ministry on 11 October 1995 ...*

22
23 A. Yes.

24
25 Q. And then:

26
27 *... the proper procedure of our legal*
28 *system is taking its course.*

29
30 As the person identified on the document as able to provide
31 clarification at least at 1996. Are you able to assist as
32 to what was contemplated or what you understand to be
33 contemplated by the reference "in accordance with normal
34 church procedure"? What's the normal church procedure
35 that's referred to there?

36 A. I cannot clarify that immediately, no. My presumption
37 was that if somebody has been charged with a serious
38 offence, the church law would say he is to be stood aside,
39 stood down. That's an assumption that I'm making now.

40
41 Q. You don't take that as an assumption that until
42 someone's arrested on a charge, no steps should be taken
43 beforehand?

44 A. In this situation, I don't think anyone knew until he
45 was arrested.

46
47 Q. In your time as vicar general at the diocese, did you

1 become aware that in the 1970s the Maitland Clergy Central
2 Fund had paid for a one-way ticket for McAlinden to travel
3 to New Guinea? Do you have any knowledge about that
4 matter?

5 A. No, I don't.

6

7 Q. Is that something that you've not heard about?

8 A. I had not heard about then, no.

9

10 Q. Have you also heard, at any stage at your time with
11 the diocese, of McAlinden being provided with a one-way
12 ticket to England?

13 A. No.

14

15 Q. In 1993?

16 A. No.

17

18 Q. You'd agree that it would be fairly unusual for the
19 diocese, if that were the case, to pay for a one-way
20 airline ticket for one of its parish priests?

21 A. It would be, yes.

22

23 Q. I wonder if you could pick up volume 4 again and can
24 I ask you to go to tab 304.

25 A. Yes.

26

27 MR KELL: Commissioner that's exhibit 93.

28

29 Q. You will see there is a letter that you wrote on
30 10 August 1999 to Mr John Davoren of the Professional
31 Standards Office?

32 A. Yes.

33

34 Q. Could I ask you to read that letter?

35 A. Yes.

36

37 Q. Did you know Mr Davoren at this time as at August
38 1999?

39 A. Yes.

40

41 Q. The Professional Standards body was an arm of the
42 Catholic Church based in Sydney?

43 A. Yes.

44

45 Q. Do you recall whether your letter, as at August 1999,
46 was made at the request of Bishop Malone or sent at the
47 request of Bishop Malone?

1 A. I don't recall that, no.
2
3 Q. What was your purpose in sending this letter to
4 Professional Standards in August 1999?
5 A. I can't recall what the purpose was, other than what
6 is stated there.
7
8 Q. You don't recall any discussion at all with
9 Bishop Malone in 1999 relating to the topic of reporting
10 the matter to police?
11 A. No.
12
13 Q. As at August 1999, what was your understanding, if you
14 can recall, as to the purpose of the Professional Standards
15 Office?
16 A. I think part of their procedure - part of their
17 function was to look into the ways in which these matters
18 could be handled in the best way possible and John Davoren,
19 I think, was the secretary or whatever, the convener of
20 that resource group.
21
22 Q. You can see that there's reference in that letter to
23 two persons who were identified as being victims of
24 McAlinden; that is, [AL] and [AK]?
25 A. Yes.
26
27 Q. I think you've got a pseudonym list in front of you.
28 A. Yes.
29
30 Q. Would you have a check of that.
31 A. Yes.
32
33 Q. You indicate in the second paragraph of the letter:
34
35 *This information has come to us from [AL]*
36 *and [AK] ...*
37
38 A. Yes.
39
40 Q. And that [AL] and [AK] don't wish to be involved in
41 any civil action in this regard.
42 A. Yes.
43
44 Q. What did you mean by your reference to "civil action"?
45 A. Taking the matter to the police.
46
47 Q. You didn't, yourself, interview [AL] or [AK]?

1 A. No.
2
3 Q. Are you able to assist the Commissioner as to the
4 basis on which you were able to include in that letter a
5 statement to the effect that [AL] and [AK] did not wish to
6 be involved in any civil action?
7 A. My presumption is that I would have been given that
8 information from the bishop.
9
10 Q. You're not able to identify any other potential
11 source from which that information came to you, other than
12 Bishop Malone at that time?
13 A. I can't - no, I cannot, no.
14
15 Q. In the third paragraph you make reference to.
16
17 *... this is a matter where "intelligence"*
18 *could well be given to the police.*
19
20 A. Yes.
21
22 Q. What did you mean by the expression "intelligence"?
23 A. My understanding was that the police could be informed
24 that there were issues here but that the victims did not
25 wish to come forward, so that they would have it as
26 background information.
27
28 Q. In the next paragraph, you include reference to a
29 suspicion that McAlinden would be back in Australia in
30 August of that year - that is, 1999 - and would be residing
31 somewhere in the Bunbury region of Western Australia?
32 A. Yes.
33
34 Q. Are you able to assist now as to where you got that
35 information from?
36 A. No, I cannot, I'm sorry.
37
38 Q. Also that he was presently in England celebrating his
39 golden jubilee?
40 A. Yes.
41
42 Q. You were aware from the terms of your letter that his
43 faculties had been removed since 1993?
44 A. Yes.
45
46 Q. Do you recall where you got that information from?
47 A. No, I don't recall it, no.

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Q. You must have known, as at 10 August 1999, that McAlinden was suspected of coming back to Australia in late August and residing thereafter in Bunbury or you wouldn't have included that in the letter. That's the case, isn't it, Father Burston?

A. Yes, I would have, yes.

Q. Could I ask you to jump to the next tab, which is tab 305. Before I do that, are you able to assist the Commissioner in any way as to what had changed between 1996 and 1999 which caused you, in 1999, to write to the Professional Standards Office with information relating to McAlinden?

A. I cannot recall what the change was, I'm sorry.

Q. Other than that you believe that you had a discussion with - you believe you would have had a discussion with Bishop Malone in August 1999 about the topic of writing to Professional Standards; is that the case?

A. Probably, yes.

Q. In tab 305, you will see there is a letter dated 10 August 1999 from you to the Bishop of Nottingham?

A. Yes.

MR KELL: This is exhibit 94, Commissioner.

Q. You indicate that McAlinden is presently in Skegness?

A. Yes.

Q. And, again, that his faculties have been withdrawn since February 1993?

A. Yes.

Q. And:

Denis is not an easy man to deal with.

Are you able to assist as to what you intended by that reference?

A. Just that he was not an easy man to deal with. I don't --

Q. In the sense of not an easy man to track down or were you making a reference to his personality? What were you intending by that statement?

1 A. That "You would find him hard to deal with". I can't
2 - I can't - I can't see what the purpose of the question
3 is. I'm not --
4

5 Q. You were conveying information to the Bishop of
6 Nottingham that Denis was not an easy man to deal with?

7 A. Right.
8

9 Q. Are you able to assist in what respects you were
10 intending to suggest that Denis was not an easy man to deal
11 with? What were the characteristics you were intending to
12 draw to the attention of the Bishop of Nottingham?

13 A. He would be elusive, he would be hard to get hold of,
14 you know. I think - I can't think of the reason why that
15 statement is there other than that it was a fact that -
16 well, what was behind from stating that fact, I cannot
17 recall.
18

19 THE COMMISSIONER: Q. Father, may I interrupt. We
20 didn't know Denis McAlinden in his lifetime, but was he an
21 unpleasant fellow in general, leaving aside everything we
22 now know about his paedophilia?

23 A. He could be, and the fact that already trying to get
24 him - to pin him down had proved difficult. So I'd say to
25 the bishop that this is not a - I suppose the insinuation
26 was that it won't be a matter of simply ringing him up and
27 that he would immediately cooperate.
28

29 Q. If the Bishop of Nottingham had rung you up on the
30 telephone and said, "What do you mean by this,
31 Father Burston" --

32 A. Yes, yes.
33

34 Q. -- what would you have said to him then?

35 A. I would have said, "He's somewhat elusive and he's
36 somewhat - you know, he can somewhat fly off the handle
37 easily. He can get very upset quickly", things like that.
38

39 Q. A bad-tempered man?

40 A. Yes. Yes, yes.
41

42 Q. Thank you, Father Burston.

43 A. Thank you, Commissioner.
44

45 MR KELL: Q. Your expression "not an easy man to deal
46 with" was intended to include some of those characteristics
47 that you've just described, that he was a bad-tempered man

1 and difficult to deal with?
2 A. Yes.
3
4 Q. In that same paragraph you refer to:
5
6 *My canonical adviser suggested to me that*
7 *I put in writing what I've already said on*
8 *the phone ...*
9
10 A. Yes.
11
12 Q. Who was your canonical adviser that you're referring
13 to?
14 A. I can't recall that, no. No, I can't, sorry.
15
16 Q. As at 1999, who were the persons within the
17 Maitland-Newcastle diocese who were able to provide canon
18 law advice to you?
19 A. There were a number of them, but I don't know which
20 one - you know, not only in this diocese but also in Sydney
21 there were canon lawyers whom I had known, so I can't be
22 more precise than that.
23
24 Q. You make reference to "what I have already said on the
25 phone to Monsignor Peter O'Dowd"?
26 A. Yes.
27
28 Q. Who was Monsignor O'Dowd?
29 A. The vicar general of the diocese of Nottingham.
30
31 Q. Where you make reference to McAlinden celebrating his
32 golden jubilee of priesthood, what's that a particular
33 reference to? Is a golden jubilee a reference to an active
34 expression of exercise of priesthood faculties by McAlinden
35 or is it simply an anniversary date?
36 A. It is a special anniversary date.
37
38 Q. What's incorporated by that expression? When a priest
39 obtains their golden jubilee, do certain things happen?
40 A. Not necessarily, but I think he was with family and
41 celebrating. I'm not quite --
42
43 Q. But you sort of indicate there.
44
45 *.... McAlinden is presently in Skegness*
46 *celebrating his Golden Jubilee of*
47 *Priesthood. This is despite the fact that*

1 *his faculties have been withdrawn since*
2 *February 1993.*

3
4 A. Yes.

5
6 Q. If McAlinden's faculties have been withdrawn, he
7 remains an incardinated priest?

8 A. Yes.

9
10 Q. It is simply that, at least within the diocese, he's
11 not able to publicly perform his ministry in the sense of
12 celebrating mass?

13 A. Yes.

14
15 Q. The fact that McAlinden was in Skegness in August 1999
16 celebrating an anniversary, does that entail that he was in
17 some way exercising faculties contrary to the withdrawal
18 that had happened in 1993?

19 A. It does entail that, yes.

20
21 Q. How does it entail that?

22 A. I presume he would have been celebrating mass
23 publicly. That was my presumption.

24
25 Q. That's your concern that motivated you in writing this
26 letter?

27 A. Yes.

28
29 Q. Could I ask you to go to tab 306.

30 A. Right. Yes.

31
32 Q. You will see that you've written on 10 August 1999
33 to McAlinden at a Skegness address?

34 A. Yes.

35
36 Q. You indicate:

37
38 *I am writing to let you know that*
39 *proceedings are under way in the canonical*
40 *forum about matters that you are well aware*
41 *of.*

42
43 A. Yes.

44
45 Q. What was your reference in 1999 to "the canonical
46 forum"?

47 A. That there was a procedure to have him stood down from

1 priesthood, have him defrocked.
2
3 Q. In 1996 you were writing to McAlinden about
4 laicisation?
5 A. Yes.
6
7 Q. And this is three years later?
8 A. Later, yes.
9
10 Q. Was this a continuation of something that you'd been
11 involved in in 1996 or is this a new --
12 A. This is an attempt to restart it or to keep it going,
13 yes.
14
15 Q. Is it an attempt to co-opt McAlinden into a
16 laicisation?
17 A. Yes.
18
19 Q. Or is it something different?
20 A. No, it is to get him to cooperate in the laicisation
21 process.
22
23 Q. And yet, this had been going on since at least 1996
24 according to the correspondence?
25 A. Yes.
26
27 Q. Did you form the view at any time in 1996 or later
28 that the attempt to laicise McAlinden was futile?
29 A. I don't know that I formed that view, no.
30
31 Q. In that letter of 10 August 1999 you will see that
32 you've signed it "Rev W Burston, Vicar General"?
33 A. Yes.
34
35 Q. Underneath that there is the initials in capitals
36 "WB"?
37 A. Yes.
38
39 Q. Then "/ml"?
40 A. Yes.
41
42 Q. The "WB" is obviously a reference to William Burston,
43 can we take it?
44 A. Yes.
45
46 Q. Are you able to assist as to what the letters "ml"
47 signify?

1 A. The typist.
2
3 Q. Who was that?
4 A. I presume Maree Lawrie.
5
6 Q. Maree Lawrie?
7 A. Yes.
8
9 Q. How do you spell that, L-A-U-R-I-E?
10 A. L-A-W-R-I-E, I think. I'm open to correction on that.
11
12 Q. You will see down the bottom of the letter underneath
13 that there's in small type a file:
14
15 *Acbc - professional standards/McAlinden,*
16 *D - WB's letter.*
17
18 A. Yes.
19
20 Q. Are you able to assist as to what that refers to?
21 A. No.
22
23 Q. You will see, just jumping back on the proceeding page
24 there's a similar reference to "Acbc", et cetera, at the
25 bottom of that letter?
26 A. Yes.
27
28 Q. Does that indicate to you that that is a reference to
29 a filing system within the diocese on the computer as to
30 this correspondence?
31 A. I presume so, yes.
32
33 Q. But you don't have any other particular knowledge
34 about this?
35 A. No.
36
37 Q. The letters were typed for you, were they?
38 A. Yes.
39
40 Q. Would you hand-write them at the time or did you use a
41 dictaphone?
42 A. I don't know.
43
44 Q. You don't recall?
45 A. I don't recall, no. I certainly did not use a
46 dictaphone. I've not used the same for many years.
47

1 Q. What was your usual practice as at 1999 in terms of
2 preparing letters?
3 A. Writing them or typing them roughly and getting the
4 secretary to type them correctly.
5
6 Q. Writing them by hand and giving them to the secretary
7 was one?
8 A. That's one - yes.
9
10 Q. When you say "typing", you had your own computer at
11 the time?
12 A. Yes.
13
14 Q. You'd do a rough draft, would you, and let the
15 secretary finalise the correspondence?
16 A. Yes.
17
18 Q. As vicar general, did you have your own secretary or
19 did you share a secretary with the bishop?
20 A. No, I shared a secretary with the bishop.
21
22 Q. As at 1999, that was Maree Lawrie?
23 A. That was one of them, yes.
24
25 Q. There were a number of secretaries at that time that
26 you shared?
27 A. I think so, yes.
28
29 Q. Do you recall the names of any of the others?
30 A. The only other one was Elizabeth Doyle.
31
32 Q. Could I ask you to jump to tab 308. You will see that
33 there's a letter there that you appear to have received
34 from the Professional Standards Office?
35 A. Yes.
36
37 Q. From Mr Davoren?
38 A. Yes.
39
40 Q. Saying:
41
42 *Thank you for your letter ... regarding Rev*
43 *Denis McA Linden.*
44
45 And indicating in the second paragraph:
46
47 *We seem to have missed each other by a day*

1 *or so. I will pass the matter on to the*
2 *police and send you a copy of the formal*
3 *communication.*

4
5 A. Yes.

6
7 Q. :

8
9 *I will speak to you when you get back.*

10
11 A. Yes.

12
13 Q. Pausing there, do you recall conversations that you
14 had with Mr Davoren in about August 1999 relating to the
15 topic of McAlinden and reporting to the police?

16 A. No, I don't.

17
18 Q. If you jump to the next tab, you will see that there
19 is a document that appears to be a notification headed
20 "Dissemination to NSW Police Service Child Protection
21 Enforcement Agency"?

22 A. Yes.

23
24 Q. There's some information that's included regarding
25 McAlinden. You will see on the bottom it is dated, under
26 "Notifying person", 24 August 1999?

27 A. Yes.

28
29 Q. And the name of the notifying person is indicated to
30 be John Davoren on behalf of Bishop Michael Malone?

31 A. Yes.

32
33 Q. Do you have any recollection of receiving in 1999 this
34 notification from Mr Davoren?

35 A. No, I don't.

36
37 Q. Do you recall any discussions that you had in about
38 1999 with NSW Police relating to McAlinden?

39 A. No.

40
41 Q. Could I just ask you to jump to tab 313. You will see
42 there a letter dated 8 October 1999. This is exhibit 99,
43 Commissioner.

44 A. Yes.

45
46 Q. It is from a Detective Senior Mark Constable Watters
47 of the Lower Hunter Local Area Command addressed to the

1 bishop's chancery. Could you read that letter?
2 A. Yes.
3
4 Q. You will see that that letter records that a victim of
5 McAlinden, [AE], had reported on that date, having been
6 sexually abused by McAlinden in 1953 to 1954?
7 A. Yes.
8
9 Q. And that police were requesting a copy of a letter
10 that may have been sent to [AE]'s parents by the bishop
11 back in the 1950s?
12 A. Yes.
13
14 Q. Do you recall whether this letter was brought to your
15 attention in October 1999 as vicar general?
16 A. No, I don't think it was. I do not recall it.
17
18 Q. Are you able to assist the Commissioner as to your
19 expectation as at 1999 as to where within the chancery a
20 letter addressed to "bishop's chancery" dealing with a
21 subject matter such as this would be directed?
22 A. I presume to the bishop.
23
24 Q. To the bishop?
25 A. Yes.
26
27 Q. Do you recall discussing the subject matter of the
28 letter in any way with Bishop Malone in 1999?
29 A. No, I do not.
30
31 Q. Do you recall making any inquiries in 1999 to try and
32 locate a copy of the letter from 1953?
33 A. No.
34
35 MR GYLES: It is not "the letter"; it is "a letter". This
36 question assumes there is a letter. There is a real
37 question about that given the evidence.
38
39 THE COMMISSIONER: Yes, there is, of course, but did
40 Mr Kell's question offend that?
41
42 MR GYLES: A series of questions has proceed on the basis
43 there is a letter. My point is --
44
45 THE COMMISSIONER: Mr Kell, would you just say, "make a
46 search for a letter if it existed".
47

1 MR KELL: Yes.
2
3 Q. Do you recall being asked to take any steps in 1999 to
4 search for a letter from the 1950s, from the bishop back
5 then, relating to McAlinden?
6 A. No.
7
8 Q. That would be a particularly unusual request, I take
9 it?
10 A. It would be, yes.
11
12 Q. The letter also asks for details of the current
13 whereabouts of McAlinden. Do you recall providing any
14 information to NSW Police in 1999 regarding the whereabouts
15 or location of McAlinden?
16 A. I do not recall it, no.
17
18 Q. You don't recall being asked by anyone within the
19 diocese for your knowledge regarding where McAlinden might
20 be at that time, to provide it on?
21 A. I do not recall that, no.
22
23 Q. Do you have any recollection of any other person
24 within the diocese in 1999 being tasked with the job of
25 assisting police in relation to the whereabouts of
26 McAlinden?
27 A. No, I don't.
28
29 Q. I wonder if you would put that to one side for a
30 moment. I want to ask you some questions relating to
31 Father James Fletcher. Is it the position, Father Burston,
32 that he - that is to say, Fletcher - had been a friend of
33 yours?
34 A. Yes.
35
36 Q. You had worked together in your early times in the
37 1970s with Father Fletcher?
38 A. Briefly at Waratah, yes.
39
40 Q. You were assistant priest at Waratah?
41 A. Yes.
42
43 Q. And Fletcher was the parish priest?
44 A. No.
45
46 Q. No. What role did he have at the time that you were
47 at Waratah?

1 A. I was assistant priest. He was hospital chaplain.
2
3 Q. Did you meet him first when you were at Maitland or at
4 Waratah?
5 A. I probably met him when I was at Maitland, yes.
6
7 Q. And that was in 1971?
8 A. Yes.
9
10 Q. Are you able to assist the Commissioner with the first
11 time when it was that you heard of concerns relating to
12 Father James Fletcher and the sexual abuse of children?
13 A. No, I can't recall immediately when I first heard, no.
14
15 MR KELL: Commissioner, I wonder if it might be convenient
16 to have an early morning tea break.
17
18 THE COMMISSIONER: All right; morning tea it is. Thank
19 you.
20
21 **SHORT ADJOURNMENT**
22
23 MR KELL: Q. Father, this morning you gave some evidence
24 that you regarded yourself as having memory problems?
25 A. Yes.
26
27 Q. Are you seeing any medical doctor about those memory
28 problems?
29 A. No.
30
31 Q. Have you previously seen any medical practitioner
32 about those memory problems?
33 A. No. I presume them to be the result of
34 10 anaesthetics in the last eight years.
35
36 Q. Why do you say that you believe you've got memory
37 problems from --
38 A. That's been my experience.
39
40 Q. It is not a matter that you're seeing any medical
41 practitioner about?
42 A. No.
43
44 Q. It is not a matter about which you are able to provide
45 any medical evidence --
46
47 MR GYLES: Commissioner, is it being said this witness

1 should be obtaining medical treatment for a memory
2 condition?
3
4 THE COMMISSIONER: No, I don't think that had been said
5 yes, yet, Mr Gyles. It is a query at this stage.
6
7 MR GYLES: It seems the possible relevance of the question
8 is --
9
10 THE COMMISSIONER: No doubt it's directed towards
11 ascertaining whether there is medical evidence to support a
12 contention that there is some memory loss. If there's not,
13 well, there's not.
14
15 MR GYLES: But the anterior question was: why would he
16 obtain it? Father Burston has said he has had 10 general
17 anaesthetics in the last eight years and he feels it has
18 affected his memory. That's relevant evidence --
19
20 THE COMMISSIONER: Yes.
21
22 MR GYLES: -- whether or not he has sought medical advice
23 about that.
24
25 THE COMMISSIONER: Yes, there may have been no need to
26 seek it.
27
28 MR GYLES: What is the purpose of --
29
30 THE COMMISSIONER: No doubt Father Burston will tell us
31 about whether or not he has and, if he's asked, why not.
32
33 MR GYLES: Thank you.
34
35 MR KELL: Thank you, Commissioner.
36
37 Q. Father Burston, you indicated that you had nine
38 general anaesthetics and you --
39
40 THE COMMISSIONER: Ten, I think it was.
41
42 THE WITNESS: I said 10.
43
44 MR KELL: Q. And you suggest that, as a consequence of
45 that, you've got memory problems. Why do you say that?
46 A. Because that's my experience.
47

1 Q. That's your experience, is it, that since you've had
2 those, you've had a continual deterioration of memory? Is
3 that the position?
4 A. Yes.
5
6 Q. Your memory today has been quite precise on some
7 aspects, hasn't it, Father Burston?
8 A. Yes.
9
10 Q. You were able to remember - for example, when I asked
11 you about whether there had been any handover from
12 Monsignor Hart to you as vicar general in 1995-96, you were
13 quite precise in remembering, weren't you, that
14 Monsignor Hart was on leave at a particular point in time?
15 A. Yes.
16
17 Q. You had no difficulty in remembering, in that
18 situation, that there was no person who was able to give
19 you information on McAlinden; that is, in the form of
20 Monsignor Hart?
21 A. Yes.
22
23 Q. When you've been asked questions as to your knowledge
24 about McAlinden from documents and discussions that you've
25 had with church officials about McAlinden, you've proffered
26 an answer to the Commissioner on numerous occasions of
27 "I don't recall"?
28 A. Yes.
29
30 Q. Haven't you?
31 A. Yes.
32
33 Q. It is the position, isn't it, that you've just been
34 selective in your evidence today in terms of what you're
35 willing to recall and able to recall; that's the case,
36 isn't it?
37 A. No.
38
39 Q. In fact, you are able to recall much more about
40 McAlinden than you've indicated to the Commission; that's
41 the position, isn't it?
42 A. No.
43
44 * Q. In fact, you have a recollection, don't you, of
45 earlier reports being brought to your attention regarding
46 McAlinden than you've suggested to the Commission today?
47 You've got a recollection about those matters?

1 * A. No.
2
3 MR GYLES: I object. How can that possibly be put in that
4 way?
5
6 THE COMMISSIONER: Mr Kell is just suggesting that that
7 may be the case.
8
9 MR GYLES: If it's put that way, it is different.
10
11 MR KELL: I'm putting it as a proposition that can be
12 accepted or rejected. It was put in the form of a
13 question to this witness, given what appears to be open to
14 be a submission that his recollection about matters is
15 highly selective.
16
17 THE COMMISSIONER: Yes. Continue.
18
19 MR KELL: I don't want it to be suggested at any later
20 time that that matter hasn't been squarely put to this
21 witness.
22
23 THE COMMISSIONER: And that Father Burston has been given
24 a chance to answer such a suggestion.
25
26 Q. Father, please feel free to do so.
27 A. Thank you.
28
29 MR KELL: Thank you, Commissioner.
30
31 THE COMMISSIONER: Did you want the question read back?
32
33 MR KELL: Yes. I thought he had just got the answer to
34 the question in before the objection.
35
36 (Question and answer marked * read)
37
38 MR KELL: I understand it was put as a question in the
39 form of a proposition.
40
41 THE COMMISSIONER: Not a statement; it was a question.
42
43 MR KELL: Yes, and he has rejected that.
44
45 Q. Father, could I ask you to turn to volume 5 of the
46 bundle. I will get you to identify two documents. Would
47 you go to tab 386?

1 A. Yes.
2
3 Q. Is that a statement that you provided to NSW Police on
4 20 May 2003 relating to the Fletcher matter?
5 A. Yes.
6
7 Q. You've had an opportunity to read that in the last day
8 or so?
9 A. Yes.
10
11 Q. Are the contents of that statement accurate?
12 A. Yes.
13
14 Q. Also, if you can go to tab 409, there's a
15 supplementary statement that you provided to NSW Police,
16 dated 8 September 2003?
17 A. Yes.
18
19 MR KELL: These were both marked as exhibit 54,
20 Commissioner.
21
22 THE COMMISSIONER: Yes, thank you, Mr Kell.
23
24 MR KELL: Q. You've had the opportunity recently to read
25 that statement again?
26 A. Yes.
27
28 Q. Are the contents of that shorter supplementary
29 statement also correct?
30 A. Yes.
31
32 Q. If you go back to the first statement at tab 386, you
33 indicate in paragraph 6 of the statement you provided to
34 the police.
35
36 *... the first time I became aware of the*
37 *allegations involving Jim Fletcher from*
38 *[AH] was following a '60 Minutes' program*
39 *on 2 June 2002.*
40
41 A. Yes.
42
43 Q. Was that the first occasion - that is to say, the
44 60 Minutes program on 2 June 2002 - where anyone spoke to
45 you about concerns relating to Father Fletcher and the
46 victim known as [AH]?
47 A. I think so. I'm not sure.

1
2 Q. When you say you think so, you're searching your
3 recollection at the moment, are you?
4 A. Yes.
5
6 Q. You may have encountered that earlier than on about
7 2 June 2002?
8 A. I may have, but I - yes, it doesn't come to mind
9 immediately.
10
11 Q. What you've indicated to police in your statement then
12 was that the first time you became aware of the allegations
13 was following that program on 2 June 2002?
14 A. Yes.
15
16 Q. Putting to one side victim [AH], did you become aware
17 of any concerns relating to Father Fletcher and his
18 behaviour with boys that might be inappropriate at any time
19 in the 1990s?
20 A. I don't think so, no.
21
22 Q. Do you recall any discussion with Bishop Malone in
23 about 1996 relating to a suspicion that Fletcher had been
24 inappropriately behaving with boys?
25 A. Not an inappropriately behaving suspicion, no.
26 I don't recall that, no.
27
28 Q. Do you recall any reference to a report from
29 Patrick Roohan to the bishop in about 1996 relating to
30 Fletcher's behaviour?
31 A. I don't recall it, no.
32
33 Q. Do we take it that if that report had been made to you
34 in 1996, it is something that you would recall, or you're
35 not able to say having regard to the difficulties you --
36 A. I'm not able to say at the moment, no. It is likely
37 to be something I would recall, yes, but I can't say.
38
39 Q. You indicated that you knew Father Fletcher and were
40 friends with him in the 1970s when you were at Waratah?
41 A. Yes.
42
43 Q. And he was at Waratah as well?
44 A. Yes.
45
46 Q. Are you able to assist us as to whether you have any
47 recollection of Father Fletcher having been moved rather

1 abruptly to Gateshead in the 1970s, at very short notice,
2 from Maitland?
3 A. I can remember him being moved, but that's all, yes.
4
5 Q. Are you able to assist us as to whether you remember
6 there being any controversy in terms of that move to
7 Gateshead at the time?
8 A. I can't recall immediately, no.
9
10 Q. Do you recall any suggestion at that time of there
11 being a concern or suspicion about Fletcher having behaved
12 inappropriately with boys?
13 A. I don't recall that, no.
14
15 Q. You provided your statement to the police in May 2003?
16 A. Yes.
17
18 Q. You will recall that was shortly after Father Fletcher
19 was charged in relation to victim [AH]?
20 A. I don't know whether he was charged at that point.
21 I'm not sure.
22
23 Q. I think you indicated that you heard about the
24 allegations relating to [AH], in your statement, on about
25 2 June following the 60 Minutes program?
26 A. Yes.
27
28 Q. And you, later that day, travelled to see Fletcher
29 with Father Harrigan?
30 A. The next day.
31
32 Q. The next day. And that was to visit at Branxton?
33 A. Yes.
34
35 Q. You had a discussion with Father Fletcher?
36 A. Yes.
37
38 Q. And he'd indicated to you that, following the
39 60 Minutes program, he'd received a phone call from a young
40 person?
41 A. Yes.
42
43 Q. And he was very abusive to him?
44 A. Yes.
45
46 Q. You had asked Fletcher whether he had any idea who the
47 caller was?

1 A. Yes.
2
3 Q. And he said to you that it sounded like [AH]?
4 A. Yes.
5
6 Q. You explored that with Father Fletcher by asking
7 whether he might say something like this?
8 A. Asking him why he might say something like this?
9
10 Q. Yes.
11 A. Yes.
12
13 Q. According to you Father Fletcher said, "I don't know."
14 Was it the case that Bishop Malone had asked you to attend
15 at Branxton on that day to see Fletcher; that is to say,
16 the next day following the 60 Minutes program in June 2002?
17 A. I don't think so. I don't think so.
18
19 Q. How did you become aware of the allegations? Did you
20 watch the 60 Minutes program?
21 A. No.
22
23 Q. Did you receive a call from Fletcher following the
24 program?
25 A. I'm not sure whether it was Fletcher or Harrigan, but
26 I certainly received a call, yes.
27
28 Q. What was your purpose in going to see Fletcher the
29 next day?
30 A. To see why he wanted to see me, what was it all about.
31
32 Q. The call that you received, I think you said you're
33 not sure whether it was from Father Harrigan or Fletcher?
34 A. Yes.
35
36 Q. If you look at paragraph 6 of your statement, you
37 indicate that you believed that you received a message off
38 Des Harrigan to contact him?
39 A. Oh, yes, yes, yes.
40
41 Q. What did Father Harrigan say to you when you spoke
42 with him?
43 A. I can't recall, no. Probably something to the effect
44 that Jim was upset, but I don't know what the content of
45 the conversation was.
46
47 Q. Again, is this a matter where you're having difficulty

1 with your recollection about certain events?
2 A. Well, I'm obviously having difficulty about the
3 recollection, but I --
4
5 Q. You received --
6
7 MR GYLES: Let him finish.
8
9 MR KELL: Q. I am sorry; I didn't mean to cut you off.
10 A. I don't know - I don't remember that - I don't know
11 that I would have remembered the content of the
12 conversation anyway, except that Fletcher was - would like
13 to see me.
14
15 Q. Were you told in that conversation by Father Harrigan
16 that someone had accused Fletcher of sexually abusing him?
17 A. I don't think so, but I'm not sure. I don't think so.
18
19 Q. You don't think so, but you're not sure?
20 A. Yes.
21
22 Q. That would be a fairly striking matter if it was said
23 to you, wouldn't it?
24 A. Yes, it would, yes.
25
26 Q. And that would be something would you recall?
27 A. Yes, I think so, yes.
28
29 Q. When was the first time in June 2002 that you were
30 told that Father Fletcher had been accused of sexually
31 abusing a young boy?
32 A. It would have been the next day, a day or two after
33 the program.
34
35 Q. When you say "it would have been", are you able to
36 draw upon a recollection of someone telling you that now?
37 A. No.
38
39 Q. You're not able to assist the Commissioner as
40 to whether it was Father Fletcher who told you or
41 Father Harrigan?
42 A. I'm not, no.
43
44 Q. And you travelled to Branxton and you spoke with
45 Father Fletcher?
46 A. Yes.
47

1 Q. Was part of your purpose in visiting him to provide
2 pastoral support, was it?
3 A. I would say that, yes.
4
5 Q. Did you continue with that role in the period after
6 June 2002?
7 A. I did.
8
9 Q. How often did you meet and speak with Father Fletcher?
10 A. I can't recall the frequency.
11
12 Q. I want you to assume for present purposes that the
13 matter relating to victim [AH] was reported to police on
14 4 June 2002?
15 A. Right.
16
17 Q. That is two days after the 60 Minutes program. Is
18 that something of which you have knowledge at the moment?
19 A. It's part of the statement that I made.
20
21 Q. Is it your recollection that Father Fletcher continued
22 in his position as parish priest at Branxton for a number
23 of months after that?
24 A. I presume so, but I'm not sure of that, no.
25
26 Q. Do you recall that Father Fletcher was charged in
27 about May 2003? Excuse me, Commissioner --
28
29 THE COMMISSIONER: Q. Father, would you answer Mr Kell
30 before he speaks to senior counsel?
31 A. Sorry?
32
33 Q. Do you recall Mr Kell's question?
34
35 MR KELL: Q. Do you recall Father Fletcher being charged
36 by police in about May 2003?
37 A. I don't recall that, no.
38
39 THE COMMISSIONER: Q. While Mr Kell is otherwise engaged,
40 Father Burston, may I ask you to help me with something.
41 When you spoke to Father Fletcher in this period after it
42 was known that there was a complaint of child sexual abuse
43 against him and when he was charged, did he maintain that
44 he was innocent of these allegations to you?
45 A. He maintained his innocence all along, yes,
46 Commissioner.
47

1 Q. Did he - and to you personally?
2 A. Yes. Yes.
3
4 Q. Did you discuss the details of it with him when you
5 had these pastoral visits with him?
6 A. There was very little opportunity to do that. He
7 showed me the brief of evidence from two - rather the
8 result of two interviews, and whenever I would say to him
9 "This is - this could be believed", he changed the subject.
10 So it wasn't something that I could discuss with him.
11
12 Q. He deceived you on something that you realised at the
13 time, I think, did he not?
14 A. Yes.
15
16 Q. I refer to your statement of 8 September 2003.
17 A. Oh, yes, yes.
18
19 Q. In paragraph 4, that's the last tab there?
20 A. Oh, right. Oh, yes.
21
22 Q. Do you recall that you noted in that statement that
23 James Fletcher insisted to you that [AH] never stayed
24 overnight with him at the presbytery?
25 A. Yes.
26
27 Q. And you corrected him and said, "I don't think it's
28 true, Jim. I remember that you told me". When we're
29 talking about that now, do you remember that conversation
30 with him?
31 A. I certainly - yes, I do, not in detail, but certainly
32 remember, as I've stated there, that I put it to him that
33 he had told me before that [AH] had stayed - was it [AH]?
34 Yes.
35
36 Q. Did that give you some disquiet about whether he was
37 being truthful to you in his --
38 A. Yes, it did, yes.
39
40 Q. I take it, Father Burston, that you accepted the
41 verdict of the court when ultimately James Fletcher was
42 convicted of these offences?
43 A. Yes, I did, yes.
44
45 THE COMMISSIONER: I'm sorry to interrupt, Mr Kell. Thank
46 you, Father Burston.
47

1 MR KELL: Thank you, Commissioner.
2
3 Q. Was there a time leading up to the verdict of the
4 court where you formed the view that Fletcher was likely to
5 be guilty of the offences charged?
6 A. I can't say that. My - I was still confused until
7 after the verdict.
8
9 Q. When you say you were still confused, you were
10 uncertain?
11 A. Uncertain, if you like, yes.
12
13 Q. Is it fair to say that from the time that Fletcher was
14 charged up until the verdict, there was a continuing sense
15 of unease on your part as to the innocence of Fletcher?
16
17 MR GYLES: Commissioner, I object on the grounds of
18 relevance. Where does this go, whatever his view about --
19
20 THE COMMISSIONER: It would be of assistance to me,
21 Mr Gyles.
22
23 MR GYLES: If it would, then I don't object, Commissioner.
24
25 MR KELL: And it is relevant, Commissioner, if I might say
26 so.
27
28 Q. I wonder if you could answer that question.
29 A. Yes, there was unease about whether he was guilty or
30 not, yes.
31
32 Q. And that's unease on the part of you?
33 A. Yes.
34
35 Q. Did you have an increasing acceptance from the period
36 of June 2002 up until the verdict of the jury in December
37 regarding the likely innocence or otherwise of Fletcher?
38 Was there a particular event that caused you to more
39 seriously doubt the innocence of Fletcher?
40 A. The verdict.
41
42 Q. But before the verdict, was there another event?
43 A. No, not that I can - I don't think so, yes.
44
45 THE COMMISSIONER: May I ask something arising from that,
46 Mr Kell. I do apologise.
47

1 Q. Father, this was a priest you first met in 1971?
2 A. Yes.
3
4 Q. So you'd known him quite well for 20-odd years?
5 A. Yes
6
7 Q. You were friends with him or --
8 A. Yes.
9
10 Q. -- quite good friends, anyway; is that overstating it?
11 A. Friends anyway, yes, and I suppose at times we were
12 good friends, yes.
13
14 Q. When you first heard of these allegations, they must
15 have come as a huge shock to you?
16 A. Yes.
17
18 Q. Do you remember that point, first hearing about it and
19 from whom?
20 A. Well, the first hearing about it was after the
21 program.
22
23 Q. Yes. Who was it who told you?
24 A. James Fletcher himself said, "These are - this guy's
25 making an allegation", and I don't - I don't recall when
26 I would have had any further information about that until -
27 sorry.
28
29 Q. Did you give him to believe that you accepted his
30 denial as part of your pastoral care of him?
31 A. Certainly until I saw the two - the brief of evidence
32 that he was given and then, as I said, whenever I'd say to
33 him, "This could be believed" without wishing to say, "Hey,
34 this is true", he changed the subject, so I began to wonder
35 then.
36
37 Q. And especially then when you caught him out in that
38 lie to you about the boy staying in the presbytery?
39 A. The boy staying there, yes.
40
41 Q. Just returning to McAlinden, a priest you knew as
42 well, that's the first priest you had heard of certainly
43 who had been accused of sexual abuse of children, wasn't
44 it?
45 A. Yes, I'm not sure of the chronology of that and
46 Vincent Ryan, in my hearing of him, but yes.
47

1 Q. Wouldn't such terrible news, a terrible thing, be
2 seared upon your brain forever, hearing that such an
3 allegation had been made about a priest that you knew?
4 A. I don't know that I can answer that clearly. If it
5 was somebody closer to me like McAlinden, for example -
6 sorry, like James Fletcher, yes; but McAlinden, I don't
7 know that it would have been as such a searing event, as
8 you say.
9
10 Q. Because McAlinden was not very --
11 A. A difficult customer and not very friendly - not very
12 close to me, yes.
13
14 Q. Did he have any friends - McAlinden - in the
15 priesthood in the diocese?
16 A. That I'm not sure. One certainly that he would stay
17 with in Ireland was Patrick Hallinan.
18
19 Q. But not many?
20 A. Others I don't - I don't know.
21
22 THE COMMISSIONER: Thank you, Father Burston. I'm sorry,
23 Mr Kell.
24
25 MR KELL: No, thank you, Commissioner.
26
27 Q. Was there a time when you became aware, in about April
28 2004, that there was a further Fletcher victim who had come
29 forward and had provided evidence to the police?
30 A. I'm not sure of the dating of that, but I certainly
31 saw the brief of evidence. That, I think, may be the first
32 time that I was aware.
33
34 Q. The brief of evidence to which you're referring had
35 statements, did it, from persons who or a person who
36 complained of sexual abuse by Fletcher other than [AH]?
37 A. Yes.
38
39 Q. And that was part of the reasons why, was it, that you
40 started to doubt the innocence of Fletcher?
41 A. Yes.
42
43 Q. I think you indicated to the Commissioner, when the
44 Commissioner asked you about whether events might be seared
45 on your brain because of the first time you heard
46 accusations against McAlinden, and you said that there
47 might be some issue relating to whether Ryan predated

1 McAlinden?
2 A. Yes.
3
4 Q. But the position would be different in respect of
5 Fletcher because he'd been a friend of yours?
6 A. Yes.
7
8 Q. Do we take it from those answers that the first
9 time you had any reports made to you by Fletcher or
10 Bishop Malone relating to improper conduct by Fletcher with
11 boys was when you heard that Fletcher - when Fletcher had
12 told you about the accusations in June 2002; is that the
13 case?
14 A. I think that's the case, yes.
15
16 Q. And so that's seared in your brain now because,
17 according to you, that's the first time that you became
18 aware of an accusation that Fletcher had behaved
19 inappropriately with boys, is it?
20 A. Yes.
21
22 Q. Following the 60 Minutes program in 2002, you
23 indicated that you had seen Father Fletcher?
24 A. Yes.
25
26 Q. And that there was a pastoral element to your contact
27 with him?
28 A. Yes.
29
30 Q. You continued with that contact in the coming months?
31 A. Yes.
32
33 Q. How regularly did you see him?
34 A. I can't answer that.
35
36 Q. Was it a weekly --
37 A. I can't answer it, I'm sorry.
38
39 Q. You can't answer it?
40 A. I don't know.
41
42 Q. You're answering me very quickly. Are you able to
43 just consider that, whether it was - was it a daily call?
44 A. It certainly wasn't a daily call but I cannot answer
45 how regularly it was, no.
46
47 Q. And that's because you've got no recollection about

1 the matter?
2 A. Because it would have been infrequent. It wouldn't
3 have been a scheduled once a week or once a month meeting.
4
5 Q. By "infrequent", you'd see him sometimes twice a month
6 perhaps and then weekly the next month, is that what you're
7 indicating.
8 A. It could be, yes.
9
10 Q. You gave some evidence that it wasn't as clear to you
11 as to when you first became aware of allegations relating
12 to McAlinden?
13 A. Yes.
14
15 Q. In contrast to the position with Fletcher?
16 A. Yes.
17
18 Q. But McAlinden was a priest of the diocese?
19 A. Yes.
20
21 Q. As you search your memory now, it was either, wasn't
22 it - the candidate for the first time you heard about a
23 priest of the diocese having sexually abused boys was
24 either McAlinden or Vince Ryan, wasn't it?
25 A. Yes.
26
27 Q. One or the other?
28 A. Yes.
29
30 Q. There were something like 30 priests of the diocese at
31 any particular point in time?
32 A. There would have been more.
33
34 Q. There would be more?
35 A. Yes.
36
37 Q. Something like 50?
38
39 MR GYLES: Is this question directed to the situation
40 in --
41
42 THE COMMISSIONER: It did change over the years. It
43 reduced --
44
45 MR KELL: I will withdraw that.
46
47 Q. There was a cohort of priests of the diocese in all

1 the time that you were incardinated?
2 A. Yes.
3
4 Q. In the early 1970s you had been a priest, an assistant
5 priest at various parishes?
6 A. Yes.
7
8 Q. And then at some point in time - and I think you gave
9 evidence today that you became aware of allegations about
10 Vince Ryan when he was arrested?
11 A. Yes.
12
13 Q. Was that what your evidence was?
14 A. Yes.
15
16 Q. Back in October 1995?
17 A. Yes.
18
19 Q. At some point in time you became aware that McAlinden
20 had been accused of abusing boys sexually?
21 A. No.
22
23 Q. All right. I'll withdraw that. At some point in time
24 you became aware that McAlinden was sexually abusing
25 children?
26 A. Yes.
27
28 Q. That would have been striking news to you,
29 wouldn't it, that a priest of this diocese was abusing
30 children?
31 A. Yes.
32
33 Q. It didn't matter whether he was a friend of yours or
34 not, did it? He was one of the priests of the diocese.
35 A. Yes.
36
37 Q. And you would have been shocked?
38 A. Yes.
39
40 Q. And it would have been a momentous occasion, I suggest
41 to you?
42 A. I'm sorry, I can't place when it was though.
43
44 Q. It was a striking occasion, wasn't it?
45 A. I do not recall it, I'm sorry.
46
47 Q. You're answering that very quickly.

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MR GYLES: I object. This is the second time that's been said. First of all, I challenge it, I object to that comment on the basis that it was not answered quickly, number one, and number two, what is wrong with answering a question quickly?

THE COMMISSIONER: Particularly if it has come a few times in a row.

MR GYLES: He has been asked a series of questions, including by you, Commissioner, and my learned friend has now given two different adjectives to him. There is a question of degree here, particularly when the criticism is made unfairly.

THE COMMISSIONER: Thank you, Mr Gyles. Could you ask your next question, please, Mr Kell?

MR KELL: Yes. Thank you.

Q. Father, it was a momentous occasion when you first heard that McAlinden had sexually abused children?

MR GYLES: This very question has been asked and answered and it has then been followed by a following question of the same character. I think we understand this point.

THE COMMISSIONER: Yes.

Q. It was a momentous occasion, father, but it seems to be the case that you have no recollection of it?

A. I do not have a recollection.

Q. But would you accept it would have been momentous?

A. It would, yes, but I have no recollection of when it occurred.

Q. Did you know that Father McAlinden's predilection was with little girls, when you came to know of it?

A. That's when I - yes, when I finally came to know it, yes.

Q. Who told you that?

A. That I cannot recall.

THE COMMISSIONER: All right. Yes, sorry, carry on.

1
2 MR KELL: Q. Without putting a time on it, do you
3 remember where you were when you were told that?
4 A. No.
5
6 Q. When you heard that?
7 A. No, I don't.
8
9 Q. You don't?
10 A. No.
11
12 Q. I just want to return to Father Fletcher. At a period
13 of time you were providing pastoral support to
14 Father Fletcher?
15 A. Yes.
16
17 Q. He continued to remain as the parish priest at
18 Branxton?
19 A. I'm not sure of the dating of that and when he moved
20 from there: I can't recall.
21
22 Q. Do you remember he was charged in May 2003?
23 A. Yes.
24
25 Q. Your statement indicates that the allegation that was
26 made to him from [AH] was in June 2002?
27 A. Yes.
28
29 Q. The following day, or two days later, you learned that
30 [AH] had been to the police?
31 A. Yes. Yes.
32
33 Q. From that point in time you knew that there was a
34 police investigation relating to Fletcher?
35 A. Yes.
36
37 Q. And he continued to be the parish priest at Branxton?
38 A. Yes.
39
40 Q. Did you have discussions with Bishop Malone in 2002
41 relating to Fletcher's role as a parish priest at Branxton?
42 A. I don't recall any.
43
44 Q. You don't recall there being any?
45 A. No.
46
47 Q. Do you recall Bishop Malone consulting with you as to

1 whether Fletcher should be stood down from his role at
2 Branxton?
3 A. I don't recall that, no.
4
5 Q. You've got no recollection about that?
6 A. No.
7
8 Q. You're answering again question my question very
9 quickly.
10
11 MR GYLES: I object.
12
13 MR KELL: That's a comment, not a question.
14
15 MR GYLES: I object. That is an unfair question.
16 I dispute that the question was answered quickly, in any
17 event, and it is unhelpful in your role, Commissioner. You
18 can make an assessment of this witness without comments
19 like that.
20
21 THE COMMISSIONER: Yes. It wasn't the quickest answer
22 I've ever heard, Mr Kell.
23
24 MR KELL: Thank you.
25
26 Q. You have given evidence earlier today that you know
27 who John Davoren is?
28 A. Yes.
29
30 Q. In 2003 and 2002 he was a director of the PSO?
31 A. Yes.
32
33 Q. The Professional Standards Office?
34 A. Yes.
35
36 Q. He was effectively the conduit for providing
37 information from the church to NSW Police in certain
38 circumstances, as you understood the position?
39
40 MR BARAN: I object to the width of the question,
41 Commissioner. "In certain circumstances", in the context
42 of this inquiry, is a very wide assertion.
43
44 THE COMMISSIONER: It is rather broad.
45
46 MR KELL: I withdraw that. It is not intended to be
47 controversial.

1
2 Q. You knew in 2003 that John Davoren worked within an arm
3 of the Catholic Church?
4 A. Yes.
5
6 Q. And that he had contacts with the NSW Police Force?
7 A. As far as I knew, yes.
8
9 Q. You understood that he could be in a position to
10 provide information to NSW Police?
11 A. Yes.
12
13 Q. And you'd utilised that back in 1999?
14 A. Yes.
15
16 Q. In February 2004 did you have a conversation with
17 Mr Davoren in relation to Fletcher?
18 A. I don't recall a conversation.
19
20 Q. You don't recall?
21 A. No.
22
23 Q. In February 2003, I want to suggest to you, you had a
24 conversation --
25
26 MR BARAN: I am sorry, 2003 or 2004? You just said 2004.
27
28 MR KELL: Q. I am sorry, if I said 2004 it should be
29 2003. On 24 February 2003 you had a conversation with
30 Mr Davoren of the PS0?
31 A. Right.
32
33 Q. And he had made a suggestion to you that Fletcher
34 should be stood down from his position as a parish priest
35 at Branxton?
36 A. I don't recall that conversation but that could well
37 have taken place.
38
39 Q. You said to Mr Davoren that [AH] had been
40 demonstrating bizarre behaviour for some years and that you
41 thought it was likely that the current matter was just
42 another sign of his psychological disturbance. Do you
43 recall saying that?
44 A. I don't recall that, no; I do not, no.
45
46 Q. Do you deny saying that?
47 A. I would deny some of the implications there, yes.

1
2 Q. Do you deny holding that view as at February 2003?
3 A. I would not have used the words "psychological
4 disturbance".
5
6 Q. You're not answering my question. Do you deny holding
7 the view at February 2003 that [AH] had been demonstrating
8 behaviour, bizarre behaviour for some years?
9 A. I don't know that I used the word "bizarre".
10
11 Q. No, I'm asking you a different question. Did you hold
12 the view --
13
14 MR GYLES: With all due respect, he answered the question.
15 He was asked whether he had a recollection of those matters
16 and his response was, "I don't know whether I would use the
17 word 'bizarre' to describe his state of mind." That was an
18 answer to the question.
19
20 THE COMMISSIONER: I recall you asking about a
21 psychological disturbance, Mr Kell.
22
23 MR KELL: Yes.
24
25 Q. Father, what I have asked you is do you recall holding
26 the view in 2003 that [AH] had been demonstrating bizarre
27 behaviours for some years?
28 A. I can't recall putting it that way to anybody but --
29
30 Q. That's a different question. I'm asking you whether
31 you held that view at February 2003?
32 A. I don't know. I cannot answer that one.
33
34 Q. You can't answer whether you held that view?
35 A. Yes, I can't answer that clearly, no.
36
37 Q. You wouldn't have suggested that to Mr Davoren unless
38 you had held that view, would you?
39 A. Probably, yes, that's true, yes.
40
41 Q. You're agreeing with me that you wouldn't have said
42 that to Mr Davoren unless you held that view?
43 A. No, I may not have used the phraseology that's quoted
44 there.
45
46 Q. No, I'm asking you a different question. You wouldn't
47 have said to Mr Davoren that [AH] had been demonstrating

1 bizarre behaviour for some years unless you held that view,
2 would you?
3 A. Yes, that's - yes.
4
5 Q. Similarly, you thought it was likely that the current
6 matter involving Fletcher and [AH] was just another sign of
7 his psychological disturbance; that's what you said to
8 Mr Davoren?
9 A. Yes, okay, I said it, yes.
10
11 Q. And you're agreeing that you did say that?
12
13 MR GYLES: These questions are all proceeding on an
14 assumption that Mr Davoren has recorded these things.
15
16 THE COMMISSIONER: Correctly.
17
18 MR GYLES: To be fair to the witness, as I apprehend his
19 evidence, it is that he cannot recall the conversation and
20 he is being asked whether he would, assuming those things
21 are correct, have held that view if they had been said --
22
23 THE COMMISSIONER: Yes.
24
25 MR GYLES: -- and accepting it.
26
27 MR KELL: I will withdraw the question in that form.
28
29 THE COMMISSIONER: Thank you, Mr Kell. You know how to
30 meet Mr Gyles's objection.
31
32 MR KELL: Yes.
33
34 Q. In February 2003 you did hold the view, didn't you,
35 that the current matter involving [AH] was just another
36 sign of [AH]'s psychological disturbance? You held that
37 view, didn't you?
38 A. Yes.
39
40 Q. You told Mr Davoren that you told him that?
41 A. I presume I did, yes.
42
43 Q. You also said to Mr Davoren that there was no other
44 complaint of this or any other kind that had ever been
45 received against Fletcher?
46 A. Yes.
47

1 Q. You're agreeing with me that you said that to --
2 A. I presume I did. You're reporting a conversation that
3 I can't recall.
4
5 Q. Do you remember saying that to Mr Davoren?
6 A. No, I don't.
7
8 Q. Do you remember that being the view that you held in
9 February 2003?
10 A. Yes.
11
12 Q. You do?
13 A. Yes.
14
15 Q. That you held the view that there had been no other
16 complaint of this or any other kind against Fletcher?
17 A. Yes.
18
19 Q. And you wouldn't have said that to Mr Davoren unless
20 you held that view, would you?
21 A. Yes.
22
23 Q. Did you hold the view in February 2003 that the
24 diocese still did not have sufficient information about
25 [AH]'s complaint to justify standing Fletcher down?
26 A. Yes.
27
28 Q. You did hold that view in February 2003?
29 A. I think so, yes.
30
31 Q. You said that to Mr Davoren in a conversation on
32 24 February 2003?
33 A. Yes.
34
35 Q. And you're agreeing with me that you did say that?
36 A. I'm agreeing with you that that is a recording of a
37 conversation that I do not recall easily.
38
39 Q. But it was the view that you held as at February 2003,
40 wasn't it?
41 A. Yes.
42
43 MR KELL: Is that a convenient time, Commissioner?
44
45 THE COMMISSIONER: Yes. It's 1 o'clock already.
46
47 **LUNCHEON ADJOURNMENT**

1 **UPON RESUMPTION**

2

3 MR KELL: Q. Father, you'd worked for many years as a
4 director of Centacare?

5 A. Yes.

6

7 Q. During that time you'd provided psychological
8 services?

9 A. Yes.

10

11 Q. Part of that work that you did involved dealing with
12 families who had been affected by sexual abuse?

13 A. I don't recall working with families who were affected
14 by it, no.

15

16 Q. In your time at Centacare, were some of the persons
17 that you consulted with victims of sexual abuse, not by
18 priests but victims of sexual abuse?

19 A. Yes.

20

21 Q. They were?

22 A. Yes.

23

24 Q. You provided counselling services to those persons?

25 A. Yes.

26

27 Q. And helped to arrange services on a long-term basis
28 for those victims?

29 A. If appropriate, yes.

30

31 Q. Part of your experience with victims of sexual abuse
32 has been that the abuse itself can have consequences on
33 their behaviour?

34 A. Yes.

35

36 Q. It can lead to, in some cases, what might be regarded
37 as antisocial behaviour?

38 A. Yes.

39

40 Q. I might turn to another topic. In 2012, you were
41 interviewed by police in relation to the Strike Force
42 Lantle investigation?

43 A. Yes.

44

45 Q. After some administrative arrangements, there was a
46 time set in place where you attended for an interview?

47 A. Yes.

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Q. That was a voluntary interview?

A. Yes.

Q. You endeavoured, did you, to provide accurate and complete answers to the questions that were asked of you in that interview?

A. Yes.

Q. Is there any respect in which you believe that you may not have cooperated in any way with the Lantle investigation?

A. No respect, no. I cooperated completely.

MR KELL: Thank you. Commissioner, those are the questions that I had for Father Burston in chief in the public part of the examination. There are a couple of matters that need to be dealt with in camera for reasons that are extraneous to Father Burston.

It is a matter for you, but one manner which we propose to deal with this is that we do the public cross-examination now of Father Burston and then, at the end of the day, we perhaps do the short in-camera hearings that need to be done, if that is convenient.

THE COMMISSIONER: Very well. May I ask a question, and I'm sorry, Mr Kell, and, Father Burston, for butting in probably unwelcomingly at all times.

Q. When Mr Kell asked you that question about your experience for many years at Centacare and its predecessor and your experience with victims of sexual assault - leaving aside clergy, of course, but just generally victims of sexual assault - and realising that often the effects are manifested in, I think you said, antisocial behaviour, or agreed with Mr Kell antisocial behaviour, but there could be other psychological disturbances; would that be correct?

A. Yes. Yes.

Q. When you heard about the allegations by [AH] and some of the acting out that he had been apparently doing, did that, for you as a social worker, psychologist, raise any alarm bells, indeed especially as you knew his loving parents and so on, that there may have been some sexual assault of that boy?

1 A. Certainly some trauma. I don't know that
2 I immediately jumped to the conclusion it was sexual abuse,
3 but certainly some trauma, yes.

4
5 Q. Yes. Did that sway you a little when you were
6 considering James Fletcher's denials to you of having
7 abused the boy?

8 A. It didn't change my view that certainly there had been
9 some trauma. I was puzzled as to whether it was Fletcher.

10
11 Q. As far as you were concerned, would it be true to say
12 that whatever behavioural - or misbehaviours he was
13 performing and doing may have been consistent with someone
14 who had been sexually abused?

15 A. Oh, yes, yes.

16
17 THE COMMISSIONER: Thank you, Father Burston. Mr Kell,
18 have you completed what you wanted to cover with
19 Father Burston in public?

20
21 MR KELL: I have, Commissioner.

22
23 THE COMMISSIONER: Is it appropriate to move on to other
24 counsel?

25
26 MR KELL: Yes.

27
28 **<EXAMINATION BY MR BARAN:**

29
30 MR BARAN: Q. Very briefly, sir, you were asked some
31 questions by my learned friend assisting the Commission
32 regarding the letter that you had sent to the Professional
33 Standards Office, which I'll just turn up, which is behind
34 tab 304. That is in volume 4.

35 A. Yes.

36
37 Q. Firstly, the document appears to be addressed to the
38 Professional Standards Resource Group?

39 A. Yes.

40
41 Q. As far as you were aware at the time, was either that
42 body or a body known as the Professional Standards Office
43 the relevant body that was dealing with complaints in
44 respects of matters such as child sexual assault?

45 A. Yes.

46
47 Q. Just move over then, please, to a few more pages,

1 which is over at tab 308. You were taken to this
2 particular document, which is a letter written by
3 Mr Davoren from the Professional Standards Office,
4 appearing to respond to your letter which had been
5 addressed to the Professional Standards Group?

6 A. The Resource Group. Yes.

7

8 Q. In between that time, did you learn that another
9 person, who is under the pseudonym of [AE], had made
10 certain complaints of child sexual assault? Have a look at
11 the pseudonym list if you want to.

12 A. [AE]. I don't think I was. I'm not sure.

13

14 Q. If you go behind tab 310, you will see statement of
15 complaint by [AE].

16 A. Yes.

17

18 Q. Then behind tab 311, you will see there appears to be,
19 by at least 8 October 1999, a police report that appears to
20 be accepted and created regarding --

21 A. Sorry?

22

23 Q. Tab 311. Do you see at the top there it is a police
24 report and a summary, if you go to the next page, at
25 page 771 involving [AE]?

26 A. Oh, right, yes.

27

28 Q. Do you recall, sir, having any discussions with either
29 Mr Davoren or anyone on behalf of the Professional
30 Standards Office that another victim had come forward and
31 the police were, as it were, on the case?

32 A. I don't have any recollection of that, no.

33

34 Q. Do you recall as well by 1 December 1999, or shortly
35 thereafter, being informed by the Professional Standards
36 Office that a warrant for the arrest of McAlinden had been
37 issued?

38 A. I don't recall that, no. No.

39

40 Q. It appears that the communications between yourself
41 and Mr Davoren appear to go cold at that particular time.

42 A. Right.

43

44 Q. I'm wondering if you could tell the Commission what
45 your recollection is as to why it appears that there's no
46 more contact?

47 A. No, I can't, and I don't recall any reason why.

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Q. Is it a possibility - and it is a possibility only - that you became aware of another victim coming forward and making complaints to police and police taking action, hence, suspending any further inquiries regarding the Professional Standards Office?

A. I don't recall that, but that would have been the procedure.

MR BARAN: Thank you.

THE COMMISSIONER: Thank you. Mr Cohen?

MR COHEN: I think, having regard to my experience yesterday, I have no questions, Commissioner.

THE COMMISSIONER: Thank you, Mr Cohen. Mr Harben.

<EXAMINATION BY MR HARBEN:

MR HARBEN: Q. Father, you were appointed vicar general for five years from 1 January 1996; is that correct?

A. Yes.

Q. Is it also the case that you were appointed as an assistant vicar general on 1 August 2001 until 31 December 2005?

A. Yes.

Q. In that latter period, there were in fact two vicars general in the diocese?

A. Yes.

Q. We've heard evidence from you and others about the position of vicar general and what assistance they were asked for and were able to give the bishop, so can I take it that in the second period there was a doubling of efforts in that regard to give assistance to the bishop?

A. Not necessarily.

Q. There were two of you to go to for discussion and advice on certain matters?

A. Yes.

Q. Did you know whether that type of arrangement existed in any other diocese?

A. It is common in many dioceses.

1
2 Q. It wasn't common in Newcastle-Maitland prior to that
3 time?
4 A. Yes, it was. I can't give you the dates, but it had
5 been, yes.
6
7 Q. Was that the situation when you were appointed in
8 January of 1996?
9 A. No.
10
11 Q. Prior to your appointment, there was only one vicar
12 general?
13 A. Yes.
14
15 Q. Following your appointment in January 1996, there was
16 only one vicar general?
17 A. Yes.
18
19 Q. I think you also said in evidence that the Council of
20 Priests under Bishop Malone were automatically members of
21 the consultors?
22 A. Yes.
23
24 Q. That was a different arrangement that had existed
25 previously; is that right?
26 A. Yes.
27
28 Q. Did that, in effect, widen the circle of advice that
29 was available to the bishop?
30 A. Possibly, not necessarily.
31
32 Q. The priests who were members of the Council of Priests
33 had previously not always been consultors?
34 A. But the previous consultors had been members of the
35 Council of Priests.
36
37 Q. What was the difference then under Bishop Malone
38 making it automatic that the Council of Priests became
39 consultors, as you said in your evidence?
40 A. Meaning that he only had one body to refer to. It was
41 more an administrative - well, he saw it. I think, as an
42 administrative - making it more administratively easy.
43
44 Q. By that do you mean in terms of the administration, it
45 is not just administration, is it; it affects all of the
46 operations of the diocese in terms of advice?
47 A. In terms of the advice which the bishop seeks?

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Q. Yes. His ability to seek advice from a wider group of people?

A. If all the members of the Council of Priests - all the consultors are also members of the Council of Priests, but there are other priests on it.

Q. And that would be the case?

A. That was the case under Bishop Malone. Under Bishop Malone they became that one group. Previously they were two separate groups, but mainly the same people except for the extras on the Council of Priests.

Q. Thank you. That was something that Bishop Malone instituted during his time as bishop?

A. Yes.

Q. By the way, this diocese, you would agree that it was a busy diocese?

A. Well, I presume so, yes.

Q. You were busy in your role as vicar general?

A. At times, yes.

Q. Those around you, you could see were busy?

A. Yes.

Q. You were asked to recall on a number of occasions whether you had spoken to anybody about anything to do with [AH] prior to June of 2002, and I think not only in your police statement but on a number of occasions, you said you couldn't recall that?

A. Yes.

Q. I want to suggest to you that, in December of 2000, Bishop Malone spoke to you about something that had been told to him by [BI].

MR KELL: Commissioner, I don't want to interrupt my friend, but I might just talk to Mr Harben across for a minute.

(Mr Kell and Mr Harben confer)

MR KELL: Thank you, Commissioner.

MR HARBEN: Q. In 2002, following the 60 Minutes

1 program, you learnt of a phone call that had been made to
2 Father Fletcher?
3 A. Yes.
4
5 Q. Some days later?
6 A. Sorry?
7
8 Q. Some days later or a day or so later?
9 A. A day or so later, yes.
10
11 Q. You think that that knowledge possibly came to you via
12 Father Fletcher or Father Harrigan?
13 A. Yes.
14
15 Q. You went up to see Father Fletcher?
16 A. Yes.
17
18 Q. I think in your second statement to the police, you
19 give a version of speaking to [BI] after you had spoken to
20 Fletcher?
21 A. I may have. I can't recall the statement.
22
23 Q. In any event, you have said in your statement that you
24 understood that Bishop Malone and Vicar General Saunders
25 had been up to see Father Fletcher?
26 A. Right.
27
28 Q. You knew that - sorry, do you recall that now?
29 A. Yes. Yes.
30
31 Q. You didn't go with them on that journey, did you?
32 A. No.
33
34 Q. It would be untrue to say that when you returned from
35 such a journey with those two people, it was at that time
36 you saw [BI] to report what had been said. That would be
37 untrue, wouldn't it?
38 A. Yes.
39
40 MR HARBEN: Thank you, Commissioner.
41
42 MR BARAN: Commissioner, could I raise one issue? It is a
43 matter that I did not put to this particular witness
44 because I didn't get instructions. I've just received
45 those instructions via the miracle of technology. Can I
46 raise one issue with the witness, if I may?
47

1 THE COMMISSIONER: Of course.

2

3 <EXAMINATION BY MR BARAN:

4

5 MR BARAN: Q. Sir, could you please go to volume 5 of
6 the bundle. It is tab 375.

7 A. Yes.

8

9 Q. Do you see, sir, that appears to be an email from
10 Mr Davoren to certain other persons?

11 A. Yes.

12

13 Q. There is a series of events which are summarised there
14 in the email?

15 A. Yes.

16

17 Q. Can I bring you down, if I may, to the last two
18 paragraphs, namely, paragraphs 6 and 7?

19 A. Yes.

20

21 Q. You will see there that there is a summary and it
22 refers to "a senior priest"?

23 A. Yes.

24

25 Q. Can I walk you through it, if I may:

26

27 *Later again on 24 February --*

28

29 This is 2003 --

30

31 *... I spoke to a senior priest and official*
32 *of the Diocese of Maitland Newcastle with*
33 *the idea of recommending that Fletcher be*
34 *stood down at least until the investigation*
35 *was completed.*

36

37 You were asked some questions about that particular
38 conversation by our learned friend assisting the
39 Commission. Do you remember that?

40 A. Yes.

41

42 Q. I want to put to you that the senior priest referred
43 to in that document was you?

44 A. I should imagine so, yes.

45

46 Q. You will see it goes on there:

47

1 *The man I contacted has a long experience*
2 *in working with people with problems --*

3
4 You?

5 A. Yes.

6
7 Q. :

8
9 *... and was for many years director of*
10 *Centacare Newcastle.*

11
12 Again, no question it was you?

13 A. Yes.

14
15 MR BARAN: Thank you.

16
17 MR CAVANAGH: Nothing arising.

18
19 THE COMMISSIONER: Mr Skinner?

20
21 MR SKINNER: No questions.

22
23 MS McLAUGHLIN: No questions.

24
25 THE COMMISSIONER: Mr Gyles? I'm sorry, Ms Gerace?

26
27 MR GERACE: I have some questions, if that's appropriate.
28 Could I proceed before Mr Gyles?

29
30 THE COMMISSIONER: Yes.

31
32 <EXAMINATION BY MS GERACE:

33
34 MR GERACE: Q. Father, you have a degree involving
35 psychology. That was study involving how many years?

36 A. Five.

37
38 Q. And then an additional masters?

39 A. Sorry, the masters was at the end of the five years.

40
41 Q. So it was three years plus the two to get both?

42 A. Yes.

43
44 Q. As part of your obtaining your masters, both your
45 undergraduate degree and your masters, did your study
46 include the study of the nature of trauma?

47 A. I should think so, yes.

1
2 Q. As part of your studies in obtaining your masters, did
3 it involve a study of aberrations of the mind or mental
4 illness?
5 A. Yes, there were some aspects of it, yes.
6
7 Q. Would that also have included some study or looking at
8 the nature of aberrant sexual behaviour?
9 A. Yes, very little is my recollection, yes.
10
11 Q. But some?
12 A. Yes.
13
14 Q. In your work as the director of the - was it called
15 Centacare at the time?
16 A. Yes, most of the time.
17
18 Q. Most of the time - that was for 20 years,
19 approximately; is that right?
20 A. Yes.
21
22 Q. As a director, were you one of the directors or were
23 there many?
24 A. No, I was the boss, the director.
25
26 Q. You were the boss?
27 A. Yes.
28
29 Q. When you were asked yesterday about whether you did
30 administrative or counselling work, you did both?
31 A. Yes.
32
33 Q. You were responsible for running the centre?
34 A. Yes.
35
36 Q. As well as providing direct one-on-one counselling?
37 A. Yes.
38
39 Q. What was the split relatively between your role as the
40 administrator and counselling?
41 A. It's hard to quantify.
42
43 MR GYLES: Commissioner, I have an objection to this. My
44 learned friend has asked some questions. We're here
45 dealing with four police investigations. True it is that
46 Father Burston has this experience. The question is what
47 assistance can it be in respect of the matters that you are

1 considering?

2

3 THE COMMISSIONER: Thank you, Mr Gyles. I expect that we
4 are about to have that revealed by Ms Gerace.

5

6 MS GERACE: Thank you.

7

8 Q. As part of your role in running that centre, there
9 were a number of persons involved in providing counselling
10 services?

11 A. Yes.

12

13 Q. You oversaw the provision of those services?

14 A. Yes.

15

16 Q. And whether it was you or others, the issue of
17 providing counselling to victims of abuse was one of the
18 services provided by Centacare?

19 A. Yes.

20

21 Q. It also provided services in the nature of counselling
22 in relation to marriage difficulties or relationship
23 difficulties; is that right?

24 A. Yes.

25

26 Q. Did it also deal with fostering services?

27 A. Yes.

28

29 Q. So that it was involved in the assessment of
30 applicants for fostering children who may have been
31 removed from homes where there was abuse?

32 A. Yes.

33

34 Q. Or given up for adoption, or is that run separately?

35 A. That was run - that was separately, yes.

36

37 Q. In your role as the director of Centacare, were you
38 involved in the formulation of policies that guided your
39 service in how it responded to issues of abuse of children
40 within a home?

41

42 MR GYLES: I maintain my objection. My learned friend has
43 been given more latitude and again we don't seem to be
44 anywhere near the matters that you are appropriately
45 considering, Commissioner,

46

47 THE COMMISSIONER: Thank you, Mr Gyles. I think we're

1 getting closer.

2

3 MS GERACE: Yes. Sometimes we need to go broader to come
4 down to the specifics.

5

6 Q. One of the things that you needed to do as the
7 director of Centacare was ensure that there were policies
8 in place to guide those providing the services to guide
9 them in how they responded to issues of abuse within a home
10 where it involved children?

11 A. Yes.

12

13 Q. One of the things that you gave consideration to in
14 that role as the director was where, if at all, it obliged
15 your counsellors and other persons providing those
16 services, to take the matters further where they became
17 aware of abuse of children within a home?

18 A. That was rare because the first port of call for
19 children in difficulties within the home was the
20 department.

21

22 Q. Yes?

23 A. And they would usually refer the children into our
24 care. But we didn't have the direct involvement in the
25 first instance.

26

27 Q. Yes, I understand that, but it was one of the things,
28 as a director of Centacare, that you needed to consider
29 when formulating your policies for what your counsellors
30 did when it did come to their attention?

31 A. Yes.

32

33 Q. By the time you became a consultant, both in 1981 and
34 also in the period 1992-1995, you were aware of the issue
35 of child abuse as a general concern within the community?

36 A. Yes.

37

38 Q. And also the need to consider an appropriate response
39 where you in a professional capacity or where one in a
40 professional capacity becomes aware of child abuse?

41 A. Yes.

42

43 Q. Also in your role as the director of Centacare, you
44 were involved in formulating policies which guided the
45 counsellors in how they responded to information that came
46 to them about abuse of children?

47 A. Yes.

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Q. In 1988 the church set up the Special Issues Committee; do you recall that?

A. Yes.

Q. The Special Issues Committee was set up to deal specifically with providing guidance to bishops about how they responded to special issues that affected the clergy and the bishops in the formulation of their role, in carrying out of their functions. You were also aware at the time when that Special Issues Committee was set up, that one of the main issues that that body was set up to address was the problem of abuse of children by clergy?

A. I don't know recall that being as one of the main issues, but I'm not perfectly sure at this point.

Q. Were you aware of it being one of the issues that the Special Issues Committee was set up to examine?

A. Yes.

Q. And that it was set up to provide guidance to bishops in their responses to those issues as they arose?

A. Yes.

Q. Was it the case that the Professional Standards Group was a group set up under the auspices of the Special Issues Committee?

MR KELL: Commissioner, I wonder if I could have a word with my learned friend.

THE COMMISSIONER: Yes, Mr Kell.

(Mr Kell and Ms Gerace confer)

MS GERACE: Q. By 1988, you were aware, at least after the establishment of this committee, that sexual abuse by clergy was an issue for the church?

A. Yes.

Q. You were also aware in 1988 that one of the issues for the church was how it responded to information given to it about a member of the clergy having abused a child?

A. Yes.

Q. In addition to that, how it interacted with the police about that information?

1 A. Yes.
2
3 Q. How it dealt with complainants about that information?
4 A. Yes, them too, yes.
5
6 Q. You were asked some questions yesterday about the
7 nature of a consultor, being a consultor. Is it fair to
8 say that the role of being a consultor was to provide a
9 general advisory service to the bishop?
10 A. Yes.
11
12 Q. Meetings were convened from time to time to deal with
13 matters as they affected the parish, the meeting of
14 consultors?
15 A. As they affected the diocese.
16
17 Q. As they affected the diocese?
18 A. Yes.
19
20 Q. They included, did they not, the allocation of priests
21 or otherwise to various parishes?
22 A. Yes.
23
24 Q. Matters of leave or other things that concerned the
25 various parishes?
26 A. Yes.
27
28 Q. The disciplining of priests?
29 A. I think that more rarely.
30
31 Q. But from time to time?
32 A. Could have been, yes. Yes.
33
34 Q. And also problems that may have arisen in relation to
35 various priests?
36 A. Yes.
37
38 Q. So that insofar as you were a consultor, part of your
39 role was to meet with the bishop and the other consultors
40 to decide a course of action in relation to problems that
41 were brought to those meetings; do you agree with that?
42 A. Yes.
43
44 Q. Are you able to assist us in terms of your role as a
45 consultor? Was it a paid role or is it an honorary role?
46 A. It's certainly not a paid role.
47

1 Q. Not a paid role?
2 A. No.
3
4 Q. As a consultant, did you keep notes of meetings of the
5 consultants?
6 A. I did not, no.
7
8 Q. Was there someone assigned to take the minutes of
9 meetings of the consultants?
10 A. At times yes and at times no. Under Bishop Malone,
11 I don't remember anyone necessarily taking notes of the
12 meetings, no.
13
14 Q. Was it the practice that minutes of the one meeting
15 would be adopted at a subsequent meeting of consultants?
16 A. I can't recall exactly now, but only - obviously only
17 those minutes that had been written up, yes.
18
19 Q. May I just ask quickly - you didn't keep notes of
20 meetings of consultants?
21 A. I didn't keep personal notes, no.
22
23 Q. You didn't keep personal notes?. Can I ask you about
24 that point: when you were the vicar general, you had an
25 office; yes?
26 A. Yes.
27
28 Q. Did you maintain a diary?
29 A. No, not - only an appointments diary.
30
31 Q. An appointments diary?
32 A. Yes.
33
34 Q. Did you keep notes, as the vicar general, of meetings?
35 A. No.
36
37 Q. May I ask you further, going back - I am sorry,
38 I should have asked this earlier - when you were a
39 consultant between 1992 and 1995, were you involved in
40 regular correspondence, regular communication might be a
41 better word, with Monsignor Hart about matters that had
42 been brought to the consultants' meetings?
43 A. We would talk about it, but not a formal
44 communication, as far as I recall.
45
46 Q. But you would talk to him about --
47 A. It may be, yes.

1
2 Q. May I ask you briefly - you gave some evidence earlier
3 today about having had 10 general anaesthetics. Would you
4 mind indicating what period, over what years?
5 A. From 2004 to 2012.
6
7 Q. 2004 to 2012.
8 A. Yes.
9
10 Q. When, in your view, do you say that your memory
11 started to be affected?
12 A. Certainly after the second one, because it was a
13 longer anaesthetic.
14
15 Q. So, even on your own evidence, your memory was not
16 affected as of the period prior to 2004?
17 A. Apart from ageing, no, it wasn't.
18
19 Q. You were asked yesterday about how long you were a
20 consultant when you were first appointed in 1981. I think
21 your answer was that without checking records, you couldn't
22 be sure. What records were you referring to that
23 would need to be checked?
24 A. Well, the appointment - the list, you know, I saw, and
25 maybe the - I don't know. There are - I'd have to - yes,
26 I'm not sure of that. There would be some, I'm sure, in
27 the bishop's office that would have the meetings and who
28 was there, but that's - but I can't recall immediately.
29
30 Q. There weren't any specific records that you were
31 referring to?
32 A. There may be even in my own appointments diary,
33 you know, sort of the time when they petered out, but
34 I can't give the actual dates.
35
36 Q. But you don't have any issue with the dates as
37 they are recorded on the documents that you were shown
38 yesterday --
39 A. No.
40
41 Q. -- about what you did at various times in your
42 appointments?
43 A. No, I don't have an issue.
44
45 Q. Are you also aware that, in or about 1992-1993, let's
46 say 1993, that a Royal Commission was underway looking at
47 the issue of paedophilia?

1 A. Yes.
2
3 Q. Were you also aware that it was a very big issue for
4 the Catholic Church as a number of its clergy were having
5 to give evidence before that Royal Commission?
6 A. Yes.
7
8 Q. As at 1993, you were aware then that one of the issues
9 that was being examined was the church's response to
10 information that came to it about abuse by members of the
11 clergy?
12 A. Yes.
13
14 Q. Were you also aware, as at 1993, that one of the
15 issues was what the church should do when it got
16 information about a clergy member having abused a child and
17 whether or not it should go to the police?
18 A. Yes.
19
20 Q. Were you also aware in 1993 that quite often the view
21 that was taken was that if the victims didn't wish to go to
22 the police, the church did not go to the police?
23
24 MR GYLES: I object. A view taken by whom?
25
26 MS GERACE: I'll withdraw it.
27
28 MR SAIDI: I don't want to interrupt my friend, but
29 I think the Royal Commission was later than 1992-93.
30 I think it was more 1995, 1996, 1997.
31
32 THE COMMISSIONER: That's my recollection also, Mr Saidi.
33
34 MS GERACE: Q. You gave some evidence earlier today that
35 in relation to --
36
37 MR GYLES: Before my learned friend moves on, in
38 connection with those questions that have just been put,
39 I'm grateful to Mr Saidi for raising this issue. What we
40 have had is a series of questions which have been dated by
41 reference to the Royal Commission on the premise that it
42 was --
43
44 THE COMMISSIONER: It wasn't very many. It was the last
45 two or maybe three.
46
47 MR GYLES: I appreciate that. All I'm saying --

1
2 MS GERACE: I'm happy to correct the record. I understand
3 that. I did not intend to mislead --
4

5 MR GYLES: I'm not for a moment criticising my learned
6 friend, but just so the record shows that there have been
7 affirmative answers given and, as to the timing of the
8 knowledge, it was not as to the date, but to the Royal
9 Commission.

10
11 THE COMMISSIONER: Thank you, that's on the record.
12

13 MS GERACE: Q. Father, I'm sorry about those dates. Can
14 I say this: as at 1996, at least, evidence was being given
15 before the Royal Commission by some of the clergy. Were
16 you aware of that?

17 A. I wasn't specifically aware of that, no.
18

19 Q. Were you aware that Father Lucas gave evidence before
20 the Royal Commission?

21 A. I may well have known, but I don't --
22

23 MR GYLES: I object. The question is what is the
24 probative value in terms of the issues you are dealing
25 with, Commissioner, in this wide-ranging cross-examination
26 which, at the moment, with all due respect to my learned
27 friend, hasn't been brought to any point? As far as
28 Father Lucas is concerned, Father Lucas is on the witness
29 list. To the extent there's relevant evidence to be given,
30 you'll hear from him.
31

32 THE COMMISSIONER: Thank you, Mr Gyles.
33

34 MS GERACE: Can I indicate that the point of the
35 cross-examination may not be immediately apparent, but one
36 of the questions that's being looked at it is the extent to
37 wit church did various things, whether it hindered or
38 obstructed or otherwise. One of the things that has been
39 examined in great detail is the responses of the various
40 church officials to the information that came before it,
41 both in respect of McAlinden and Fletcher.
42

43 Establishing what this witness knew about the issues
44 of abuse, the questions about when it was necessary to go
45 to the police or not, is very relevant to assessing both
46 the response of the church and the credibility of the
47 witness in terms of what any witness says they either did

1 or didn't think about or did or didn't know. So the
2 cross-examination that's been undertaken today is very
3 relevant to those issues.

4

5 THE COMMISSIONER: Yes, Ms Gerace, and I've been with you
6 until Father Lucas has been brought in and --

7

8 MS GERACE: I'll move on and put it more generally.

9

10 THE COMMISSIONER: I don't know that anybody could hold
11 Father Burston responsible or even --

12

13 MS GERACE: I had not intended to, but the point was that
14 the Royal Commission looked at various issues and made
15 findings. The issue was a very big one for the church.
16 I'll go more directly rather than to the specifics of
17 Father Lucas.

18

19 Q. In terms of the Royal Commission, Father Burston, you
20 are aware that one of the issues that the Royal Commission
21 was looking at - this is by way of backtracking just to
22 bring us back to the topic - was the issue of church
23 response to information about sexual abuse by clergy to the
24 police?

25

A. Yes.

26

27 Q. The particular question of whether a matter should be
28 taken to the police once the church knew about allegations
29 of abuse was something that would you have been alive to
30 from at least the second year or so into your period as
31 vicar general of the diocese?

32

A. I should think so, yes.

33

34 Q. Can we take it that, from 1997 onwards, you were alive
35 to having to turn your mind to whether or not information
36 that came to you as the vicar general should be recorded to
37 the police when it concerned child sexual abuse? Do you
38 agree with that?

39

A. Yes.

40

41 Q. You were taken to a document earlier today. Father,
42 could I ask you, please. To have a look at document
43 tab 304, which is in volume 4.

44

A. Yes.

45

46 Q. This is your document to John Davoren. We've already
47 established that?

1 A. Yes.
2
3 Q. We're talking in the third paragraph:
4
5 *However, I think this is a matter where*
6 *"intelligence" could well be given to the*
7 *police.*
8
9 A. Yes.
10
11 Q. I want to ask you about that paragraph. Where you
12 refer there to "intelligence" being given to the police, is
13 it in fact the case you were suggesting that general
14 information could be provided to the police about McAlinden
15 and his risks of offending?
16 A. I'm not sure. My recollection is that the
17 information, the intelligence there, would be about the two
18 victims who themselves, at this point, in my understanding,
19 did not wish to be involved.
20
21 Q. The point being there that, notwithstanding at this
22 stage your understanding was that the victims did not wish
23 to go to the police, you were advocating to John Davoren
24 that intelligence be given to the police?
25 A. Yes.
26
27 Q. The reason being, I'm suggesting to you, that a view
28 had been formed that McAlinden was a risk to children?
29 A. I'm not - it could well have been, but I don't see
30 that as involved there.
31
32 Q. Then going on to this point, the position you're
33 advocating here was that information of whatever nature
34 could be provided to the police, first, notwithstanding
35 that the victims did not wish the matter to go to the
36 police - yes?
37 A. Yes.
38
39 Q. Secondly, because you, in your role as vicar general,
40 had formed a view that information should be provided to
41 the police?
42 A. Yes.
43
44 Q. And, third, I'm suggesting because you had formed
45 a view, either on your own or in consultation, that
46 Father McAlinden was a risk in terms of further offending
47 against children?

1 A. That could well have been, yes. I don't recall that as
2 behind me at the time, yes.

3

4 Q. The point I wish to put to you now, Father Burston, is
5 this: if at any time the church had formed a view that
6 Father McAlinden, after having his faculties stripped,
7 continued to pose a risk in terms of reoffending,
8 intelligence could have been given to the police
9 notwithstanding the victims did not wish to make complaints
10 to the police. Do you agree with that?

11 A. Yes. Yes.

12

13 Q. Whilst it was done in 1999, it could have been done
14 the year before, in 1998; do you agree with that?

15 A. Yes.

16

17 Q. And it could have been done as early as 1995, couldn't
18 it?

19 A. Yes.

20

21 Q. To suggest that the reason why the church did not go
22 to the police was because the victims did not wish to make
23 complaints to the police is not the full story, is it?

24

25 MR BARAN: I object to the question on this basis: the
26 question is based on a premise that's inconsistent with the
27 Towards Healing document, and I think it is clause 37 of
28 Towards Healing. That's behind tab 328, page 819. The
29 particular clause is 37.1 and 37.2. Based on the fact that
30 that would appear to be the protocol or a protocol, the
31 question is unfair.

32

33 THE COMMISSIONER: There is a difference, isn't there,
34 Mr Baran, between informing police in a general even
35 anonymised way and dragging the victim down to the police
36 and saying "You must tell the police what you have told
37 us"?

38

39 MR BARAN: Quite so. But the question proceeds upon the
40 basis that this particular witness could have disclosed
41 matters to the police notwithstanding the complainants did
42 not wish to do so. That would be inconsistent with this
43 particular protocol.

44

45 THE COMMISSIONER: Not if it was done in a general
46 intelligence-giving fashion.

47

1 MR BARAN: I think that need to be clarified.
2
3 THE COMMISSIONER: Thank you, Mr Baran.
4
5 MR HARBEN: Commissioner, could I add to the objection?
6
7 THE COMMISSIONER: Yes, Mr Harben.
8
9 MR HARBEN: The questions should only be framed on the
10 basis of an acceptance of an assumption that the witness
11 answers could have been to. It was put to him the reason
12 the intelligence report was made was because - I'm
13 paraphrasing - a view had been formed that Father McAlinden
14 was a risk of further offending against children and that
15 that was the reason that that report was made at that time.
16 This follow-up question can only be put on the basis that
17 it is on that assumption or on the basis of that
18 proposition. If there's another reason --
19
20 THE COMMISSIONER: I rather took it from Ms Gerace's
21 questions that the same conditions applied to each --
22
23 MS GERACE: Yes.
24
25 MR HARBEN: If that's clear.
26
27 MS GERACE: That is the basis on which the questions were
28 put. I put that proposition in relation to 1999 and then
29 took it back --
30
31 THE COMMISSIONER: All else being equal, except for the
32 year.
33
34 MS GERACE: Precisely. I've lost my train of thought, not
35 intentionally.
36
37 THE COMMISSIONER: It may not be your intention.
38
39 MS GERACE: No, it was not my intention, certainly.
40
41 Q. You're clear that was the basis upon which I put the
42 question - once a view had been formed of further offending
43 by McAlinden and general intelligence, that was the basis
44 upon which it was put to you, Father Burston. May I take
45 you then to the correspondence. I wish to go to the
46 correspondence when you became involved in the laicisation
47 procedure against Father McAlinden. I think your evidence

1 was this morning you became involved in 1996 once you
2 became vicar general; is that correct?
3 A. Yes.
4
5 Q. In the years prior to becoming vicar general, however,
6 you were a consultant?
7 A. Yes.
8
9 Q. You met with the other consultants when they met,
10 through those years?
11 A. Yes.
12
13 Q. And you ceased being a consultant when you became the
14 vicar general; is that correct?
15 A. No.
16
17 Q. No?
18 A. You're automatically a consultant if you are the vicar
19 general.
20
21 Q. You're automatically; I see. So you continued to be a
22 consultant?
23 A. Yes.
24
25 Q. In the period 1992 to the end of 1995, just prior to
26 your appointment as vicar general, is it fair to say, even
27 though you can't remember when precisely, you did become
28 aware that Bishop Clarke had stripped Father McAlinden of
29 his faculties?
30 A. I'm not sure. I don't - I certainly don't recall his
31 telling us that, but I would have - if that was the case,
32 I would have become aware then, but nothing stands out in
33 my mind.
34
35 Q. Is it the case today the only thing you can recall is
36 that you were aware of those matters once you became vicar
37 general in 1996?
38 A. I think certainly, yes.
39
40 Q. But you don't dispute you may have been aware of those
41 matters from your role as a consultant?
42 A. Yes.
43
44 Q. I want to take you to your correspondence in 1996.
45 Would you have a look, firstly, at document 306. That is
46 in, I think, volume 4. No, tab 305 we'll start with, if
47 you don't mind, father.

1 A. Bundle?
2
3 Q. Bundle 4, and tab 283, I'm sorry.
4 A. Same bundle?
5
6 Q. I have difficulty with numbers. Yes, it is the same
7 bundle. Tab 283? It is your letter to Father McAlinden?
8 A. Yes.
9
10 Q. Father, can I suggest that at the time you wrote this
11 letter in May of 1996, you were aware of the following
12 matters, so you're - I want to be clear about the period.
13 You're now a vicar general. You have accepted that you
14 were aware at this stage that Father McAlinden had been
15 stripped of his faculties, yes?
16 A. Yes.
17
18 Q. That the reason he had his faculties removed was
19 because of concern of having abused children - yes?
20 A. Yes.
21
22 Q. And that that abuse concerned sexual abuse of
23 children?
24 A. Yes.
25
26 * Q. And that it had been necessary for Bishop Clarke to
27 proceed to laicisation because previous attempts to pull
28 Father McAlinden into line had failed?
29
30 MR GYLES: I object. We know that the reason for this
31 process was consistent with the wishes of [AL] and [AK].
32 The presumption in the question is not made out on the
33 evidence.
34
35 MS GERACE: That's not true.
36
37 MR GYLES: It is said that the laicisation process is
38 because of a failure in a previous process.
39
40 THE COMMISSIONER: A failure to pull him into line, I
41 think was the expression.
42
43 MR GYLES: But we know that the genesis of this process
44 was, at least in part, to accord with the wishes of [AL]
45 and [AK], who did not want to go to the police.
46
47 THE COMMISSIONER: Yes, but they wanted it to be a

1 successful shutting down of McAlinden.

2

3 MR GYLES: Quite. That is what gave rise to this process,
4 or at least in part gave rise to this process.

5

6 THE COMMISSIONER: Yes. Ms Gerace is putting to --

7

8 MS GERACE: It is not in doubt, on the evidence, that
9 Bishop Clarke had - without wishing to give evidence in
10 front of Father Burston, the proposition I put was
11 unobjectionable and Father Burston could have rejected it
12 or otherwise had he not agreed with it, but it was only in
13 part.

14

15 The other part that was quite clearly established in
16 the material is this: Bishop Clarke had imposed a
17 restriction on Father McAlinden which he was not adhering
18 to. There is no doubt on the material that that was in
19 fact the case. He had left the country and, instead of
20 retiring, had moved to Manila and had been operating as a
21 priest in breach of the restrictions placed upon him by his
22 bishop.

23

24 THE COMMISSIONER: For whatever reason.

25

26 MS GERACE: Yes, for whatever reason.

27

28 THE COMMISSIONER: Continue, Ms Gerace.

29

30 MS GERACE: Could the question be read back, please.

31

32 (Question marked * on page 1336 lines 30-32 read)

33

34 MS GERACE: Q. Father, did you understand that question?
35 Would you like me to repeat it?

36

37

38 Q. I'm putting to you that, at the time you wrote this
39 correspondence, you were aware that it had been necessary
40 for Bishop Clarke to proceed to attempt to laicise
41 Father McAlinden because his previous attempts to place
42 restrictions on what Father McAlinden had done had failed?

43

44

45 Q. It became apparent to you in 1996, whether information
46 was either provided to you by the bishop or as a result of
47 your inquiries in Ireland through this correspondence and

1 the subsequent correspondence, that Father McAlinden was
2 being a bit evasive in that process?
3 A. Yes.
4
5 Q. I think you gave some evidence earlier today that when
6 you wrote that he could be a difficult man to deal with,
7 part of what you were referring to was the fact that it was
8 unlikely he was going to participate willingly in this
9 process?
10 A. Yes.
11
12 Q. And that was an opinion you held in 1996?
13 A. Yes.
14
15 Q. Might I suggest it was also something that may have
16 been discussed between you and your bishop in 1996?
17 A. Yes, I should think so, yes.
18
19 Q. And that in fact your correspondence to Ireland in
20 1996 further confirmed the view, didn't it, that you held,
21 that Father McAlinden did not intend to participate
22 willingly in this laicisation procedure?
23 A. Yes.
24
25 Q. Father, it is fair to say, isn't it, that in terms of
26 what your knowledge was in 1996, you were aware then that
27 there had been complaints made against Father McAlinden; is
28 that accurate?
29 A. Yes.
30
31 Q. You've already said that. Were you aware in 1996 that
32 admissions had been obtained by Father Lucas about that
33 conduct?
34
35 MR SKINNER: I object to that.
36
37 THE COMMISSIONER: Can we put it this way, Mr Skinner:
38 that, records existed that suggested that admissions had
39 been obtained.
40
41 MS GERACE: I'm happy with that.
42
43 MR SKINNER: Yes.
44
45 MS GERACE: Q. Did you understand the reframing of that?
46 It's a treacherous path.
47 A. I was not aware that there were records of that, no.

1
2 Q. In 1996, you were aware of two complainants on your
3 own evidence; is that right?
4 A. Yes.
5
6 Q. You were not aware of any other complainants?
7 A. No.
8
9 Q. Were you ever made aware of a complaint by [AJ] about
10 having been abused?
11 A. I don't think so, no.
12
13 Q. Father, were you ever asked to make inquiries of
14 the complainants that you were aware of in terms of
15 their continuing attitude about what they should do about
16 Father McAlinden?
17 A. No, I'm not.
18
19 Q. Were you ever asked by the bishop to look at Father
20 McAlinden's records?
21 A. I don't think so, no.
22
23 Q. Or to make inquiries about what else or other
24 information may have existed about Father McAlinden and his
25 offending against children?
26 A. No.
27
28 Q. The proposition I wish to put to you, father, is this:
29 as at 1996, you had an opinion that Father McAlinden was
30 unlikely to cooperate in the laicisation procedure?
31 A. Yes.
32
33 Q. You've already accepted that. You also said that most
34 likely that was a view that was discussed with your bishop?
35 A. Yes.
36
37 Q. I don't know if you're able to assist now and whether,
38 you know whether you discussed that with Monsignor Hart at
39 any stage in 1996?
40 A. I would doubt that because, at this time in 1996,
41 Monsignor Hart was on leave, on long service leave.
42
43 Q. Do you know whether you discussed that view with
44 Father Lucas?
45 A. No, I'm pretty sure I didn't.
46
47 * Q. In 1996, having that view that Father McAlinden was

1 unlikely to willingly cooperate in laicisation, and having
2 evidence of his attempt to distance himself or avoid
3 correspondence, a genuine concern must have been held by
4 you that there was a risk of Father McAlinden continuing to
5 offend?
6

7 MR GYLES: I object. The premise of this question is
8 that, in 1996, Father McAlinden at that point was not
9 corresponding. My learned friend has put to this witness
10 that in 1996 - Commissioner, you will recall at 305, in
11 1999, there was a reference to McAlinden not being an easy
12 man to deal with and some evidence was given about that
13 as being a matter that occurred in 1996. The position in
14 996 was - and what is indicated by the document of 16 May
15 1996 - that this was Father Burston's first involvement in
16 the McAlinden matter. It is not an accurate premise to put
17 the question that, at this point, he had been avoiding
18 correspondence in relation to the laicisation, when in fact
19 there had been correspondence from him.
20

21 MS GERACE: Could I stop my friend there, and I don't
22 like to ordinarily interject in the submissions, but the
23 witness has given his own evidence of the views of Father
24 McAlinden's response to correspondence. If some other view
25 of that correspondence wishes to be put by the church, it
26 can be put at another time. I'm talking about this witness
27 and his view of Father McAlinden's response to this matter.
28 He has given very clear evidence of the opinion that he
29 formed. It is appropriate that I --
30

31 THE COMMISSIONER: That he had the opinion in 1996 that
32 laicisation was unlikely to be successful.
33

34 MR GYLES: I appreciate that. I apologise if my
35 understanding of the question is wrong, but I had
36 understood the question was put on the basis of a factual
37 premise, not his understanding, that, as at May 1996, there
38 had been a lack of cooperation in terms of responding to
39 correspondence on the part of McAlinden which is not made
40 out on the evidence.
41

42 THE COMMISSIONER: For some reason, Mr Gyles,
43 Father Burston did form the view in 1996 that he thought
44 laicisation was unlikely to be successful and it may have
45 been because of the considered and long-held view that
46 McAlinden was not an easy man to deal with.
47

1 MR GYLES: I don't take issue with that possibility. I'm
2 objecting to a question which is put on the basis of a
3 factual premise which I say is not made out on the evidence
4 and therefore is not an admissible question. It is an
5 objectionable question.

6
7 THE COMMISSIONER: I will have another look at the
8 question, Mr Gyles, if I may.

9
10 (Question marked * on page read)

11
12 THE COMMISSIONER: I see your point, Mr Gyles.

13
14 MS GERACE: I'll rephrase the question.

15
16 Q. In 1996, having formed a view that Father McAlinden
17 was unlikely to participate in the process of laicisation -
18 you've already given that evidence - you've also said
19 that, in your opinion, you had formed a view that
20 Father McAlinden was both difficult and distancing himself
21 from the process - yes?

22 A. Yes.

23
24 Q. Am I correct in understanding that you gave evidence
25 that you formed the view that he was seeking to avoid or
26 not engage in this process of laicisation - yes?

27 A. Yes.

28
29 Q. You had some information in 1996 that Father McAlinden
30 was not going to - that the process of laicisation was
31 being undertaken because he was not adhering to
32 restrictions placed upon him by his bishop, Bishop Clarke.

33 A. Yes.

34
35 Q. At that stage - Yes? I think you're saying "Yes" as
36 I ask these questions.

37 A. Yes.

38
39 Q. The transcription may not be picking that up. At that
40 stage, you must have had some concern that Father McAlinden
41 was at risk of reoffending and I mean specifically in terms
42 of further offending by way of sexual abuse?

43 A. I don't know. He was miles away in Western Australia
44 at some point, so, you know, I hadn't formed the clear view
45 that people were at risk, I must say, yes, but that's
46 possible.

47

1 Q. But it's possible, isn't it?
2 A. Yes.
3
4 Q. And had the matter been given consideration, it would
5 have been a view, at least a potential that he was indeed
6 at risk of further reoffending?
7 A. Yes.
8
9 Q. That is a matter, is it not, father, that you should
10 have turned your mind to in 1996 in your role as
11 vicar general?
12 A. I was not carrying the case. I was simply carrying
13 out various parts of it. I don't see it necessarily as
14 something I would have had to turn my mind to.
15
16 Q. Yes. You weren't carrying the case but you did
17 understand that your responsibility to report offending is
18 an individual one, is it not?
19 A. This is in 1996?
20
21 Q. Yes. Insofar as there is an obligation or concern, it
22 is individual as well, isn't it?
23
24 MR GYLES: What obligation is my learned friend talking
25 about, to be fair to this witness?
26
27 MS GERACE: I'll change it and rephrase it.
28
29 Q. Father, you may not have been carrying the case but
30 you were involved in the case?
31 A. Yes.
32
33 Q. You were involved in working with the bishop in
34 undertaking this process - yes?
35 A. Yes.
36
37 Q. The role of the vicar general is to stand in the mind
38 of the bishop as well, isn't it? Does that accurately
39 describe the vicar general as --
40 A. "Standing in the mind of the bishop" wouldn't be a
41 description I would give it.
42
43 Q. How do you describe the role of the vicar general?
44 A. To do what the bishop asks - mostly to do what the
45 bishop asks him to do and to stand in his place if need be.
46
47 Q. If need be when he's not present?

1 A. Yes.
2
3 Q. To that extent you have, do you not, the same powers
4 as the bishop when the bishop is not present in the
5 diocese?
6 A. Not completely but mostly, yes.
7
8 Q. For the most part you are able to continue a process
9 started by the bishop where he is not in the diocese; is
10 that accurate?
11 A. If he wishes it to be proceeded, yes.
12
13 Q. Yes, and at this stage, the bishop did wish for this
14 to be proceeded, didn't he?
15 A. As far as I know, yes.
16
17 Q. So that you were working with the bishop in this
18 process?
19 A. Yes.
20
21 Q. It is distinct from the delegation of writing a letter
22 to your secretary or someone else within the diocese, isn't
23 it?
24 A. Not completely.
25
26 Q. You weren't just the bishop's scribe in this process,
27 were you?
28 A. I was the bishop's agent in some part of it.
29
30 Q. You were acting as the bishop's agent in the process
31 as he directed you to be?
32 A. Yes.
33
34 Q. And in the tasks that you undertook?
35 A. Yes.
36
37 Q. You could stand in his position where he was not in
38 the diocese?
39 A. If he wished that.
40
41 Q. Yes - yes?
42 A. If he wished that.
43
44 Q. Would you have done all that your bishop asked you to
45 do?
46 A. I presume so. I'm not aware of not doing it.
47

1 Q. Were you aware of any discussion with your bishop in
2 1996 about whether or not an approach should be made to the
3 police about the problem of Father McAlinden?
4 A. I'm not aware and have no memory of that discussion,
5 if it took place.
6
7 Q. Are you able to say that no discussion took place
8 about that matter in 1996?
9 A. I think that might be a bit much to say. Certainly,
10 I don't - it did not take place, but I don't recall
11 anything happening, no.
12
13 Q. I don't know that I really you understand the answer,
14 so if you could just explain it to me?
15 A. The answer is I could not definitely say it did not
16 happen because I have no recollection of its happening.
17
18 Q. When you say "no recollection", you're saying, "I can
19 recall discussions about McAlinden in 1996 and I do not
20 believe we had a discussion about going to the police, but
21 I couldn't be sure"?
22 A. Yes.
23
24 Q. May I ask you about in 1996 and through to the end of
25 your period as vicar general whether you formed a view or
26 otherwise that in your discussions did - I'm sorry, I'll
27 withdraw that. I'll set it up in a slightly different way.
28 Father, just prior to your appointment as vicar general,
29 Father Vincent Ryan was arrested on charges of sexually
30 abusing boys?
31 A. Yes.
32
33 Q. In early 1996, you were dealing with this issue of
34 Father McAlinden in terms of his abuse of girls?
35 A. Yes.
36
37 Q. At least at the beginning of your period as vicar
38 general, there were two separate incidents involving sexual
39 abuse by clergy as far as we know, within your diocese?
40 A. Yes.
41
42 Q. May I suggest the following: first, as a general
43 proposition, this issue of sexual abuse by clergy was a
44 topic of general discussion between yourself and the bishop
45 in 1996?
46 A. Well --
47

1 MR GYLES: How can my friend put that?
2
3 MR HARBEN: Is that confined to these two clergy who have
4 been named? My learned friend has put a proposition.
5 I assume the proposition is for the purpose of the
6 question, so when the question then uses the term
7 discussion about the clergy, in fairness to the witness,
8 I assume that the question means about those clergy.
9
10 THE COMMISSIONER: Yes, I would have assumed that too.
11
12 MS GERACE: Yes.
13
14 THE COMMISSIONER: Thank you, Ms Gerace.
15
16 MS GERACE: Q. That the issue of responding to and
17 dealing with the problems of Vincent Ryan and McAlinden
18 were matters of discussion between you and your bishop?
19 A. I presume they were, but I have no immediate memory of
20 that.
21
22 Q. Are you able to assist us in understanding in relation
23 to Father McAlinden was it the view in 1996 that if the
24 problem could be dealt with within the church, without
25 involving the police, that would be a preferable course so
26 as to avoid scandal on the church?
27
28 MR GYLES: I object. The view of whom?
29
30 THE COMMISSIONER: The view of whom?
31
32 MS GERACE: Well the view of either yourself or the
33 bishop.
34
35 MR GYLES: How can the witness give evidence of the view
36 of --
37
38 THE COMMISSIONER: The bishop may have conveyed it to him.
39
40 MR GYLES: Well, that would be an unobjectionable
41 question.
42
43 THE COMMISSIONER: Yes. Thank you. Ms Gerace.
44
45 MS GERACE: Q. Was it your view, Father Burston, if the
46 matter could be dealt with within in the church without
47 involving the police, that would be preferable so as to

1 avoid scandal on the church?
2 A. I don't see that as being part of my thought. My
3 thought was that the victims would not go to the police and
4 this was the best way to deal with the situation. I didn't
5 see it as a matter of scandal. That didn't - I don't think
6 that entered my mind.

7
8 Q. Did Bishop Malone ever convey that view to you?

9 A. I don't recall his doing so.

10

11 Q. In terms of this being the best way forward, when did
12 you come to the view that the laicisation procedure was no
13 longer the best way forward, or if you came to that view?

14 A. I don't know.

15

16 MR KELL: Commissioner, I think there were two questions
17 in a sense put to the witness and he said, "I don't know."
18 I think my friend should indicate which one he was
19 answering and make clear whether it was --

20

21 THE COMMISSIONER: I thought it was just one question;
22 when did Father Burston come to view that laicisation was
23 not the --

24

25 MR KELL: And if he formed a view. I'm not sure if the
26 witness was answering he did not know when he formed a view
27 or if he did not know if he did form a view. Could that be
28 made clear.

29

30 THE COMMISSIONER: Thank you, Mr Kell.

31

32 MS GERACE: Q. Did you at some stage form the view that
33 laicisation was not the best way to proceed?

34 A. I'm not sure. I don't think so.

35

36 Q. You don't know that either. Can I suggest the
37 following additional matter that I've not put to you,
38 Father Burston: in 1996 one of the victims had, either at
39 that stage or some time prior, come forward with concerns
40 about Father McAlinden continuing to be a priest and
41 indicating that they may go to the police if the church did
42 not act further to restrain Father McAlinden. Did you hear
43 that?

44 A. I don't think so, but I'm not sure.

45

46 Q. But you're not sure, so you're just not sure now
47 whether you'd ever heard that?

1 A. I don't think I had. But, as I say,, I cannot be
2 perfectly sure.

3

4 Q. You were asked earlier today about what changed
5 between 1996 and 1999 that caused you to write to the
6 Professional Standards Office and you indicated an answer
7 along the lines that you couldn't recall, but you probably
8 had had some discussion or otherwise. Can I suggest that
9 part of the reason that prompted the report to the police
10 in 1999 was that the Royal Commission had released its
11 report in May 1997 and the issue of reporting information
12 held by the church to the police had become a very live
13 issue for the church?

14 A. I'm sorry, but I don't recall that, no.

15

16 Q. Father, as the vicar general, if you had a concern
17 about any matter affecting the diocese, would you be able
18 to take your concern to Bishop Malone?

19 A. Yes.

20

21 Q. Had you had concern about what to do in any particular
22 situation, would Bishop Malone have put at your service
23 resources in order to assist you to come to a decision, say
24 obtaining legal advice?

25 A. I presume so, yes.

26

27 Q. At no time did Bishop Malone direct you or otherwise
28 to not investigate a matter of concern to you?

29 A. I don't think so. No, I don't - no.

30

31 Q. You were asked some questions yesterday about the
32 filing of your correspondence with Father McAlinden. Do
33 you recall that being asked yesterday about what you did
34 with correspondence after it was drafted?

35 A. Yes.

36

37 Q. I will take you to it. Would you excuse me for one
38 moment while I find the reference. In 1996, can you tell
39 us, please, whether you had access to the personal file of
40 Father McAlinden, should you wish to have accessed it?

41 A. Sorry, that's a hypothetical question?

42

43 Q. Yes.

44 A. Well, I probably would have, but - yes.

45

46 Q. There was no restriction placed upon you as far as you
47 are aware in terms of accessing Father McAlinden's personal

1 file?

2 A. I wouldn't put it as open as that. I think I would
3 need to make a case why I would need to see it.

4
5 Q. Would you need to go to Bishop Malone?

6 A. Yes.

7
8 MR GYLES: This topic has already been covered in some
9 detail by Mr Kell. The day is moving on.

10
11 MS GERACE: Sorry, I didn't understand the objection. Is
12 that because the day is moving on, I should not ask the
13 question?

14
15 MR GYLES: The objection is that this topic has already
16 been covered and we don't need it to be covered again.

17
18 THE COMMISSIONER: And we've got an answer, thank you
19 Mr Gyles.

20
21 MR KELL: While my friend is pausing, can I take the
22 opportunity to tender one document that the witness was
23 taken to earlier, which is at tab 375. My friend Mr Baran
24 asked some questions and took the witness to the email of
25 John Davoren on Wednesday, 19 March 2003. I will tender
26 that document, please.

27
28 THE COMMISSIONER: Thank you, Mr Kell. The document
29 at tab 375, which is an email from John Davoren to Michael
30 McDonald of the CCER of 19 March 2003 will be admitted and
31 marked exhibit 118.

32
33 **EXHIBIT #118 EMAIL FROM JOHN DAVOREN TO MICHAEL McDONALD OF**
34 **THE CCER DATED 19/3/2003 (TAB 375)**

35
36 MR KELL: Thank you. I might also indicate there has been
37 a request by the media for copies of certain exhibits,
38 which are exhibits 115, the appointments history document
39 of Father Burston, and exhibit 116 and exhibit 117. Could
40 practitioners let those assisting know later today if
41 there's any objection to the release of any of those
42 documents.

43
44 THE COMMISSIONER: Yes, thank you, Mr Kell.

45
46 MS GERACE: Q. Father, in 1996, were you aware of any
47 policy within the church that guided you in the way in

1 which you responded to information that came to you about
2 sexual abuse by clergy?

3 A. I can't think of a general policy then, no.

4

5 Q. In your time, between 1996 and 2001, were you aware of
6 any policy that you used to guide you in terms of your
7 response to information that came to you about sexual abuse
8 by clergy?

9 A. There was a document generated - gradually developed
10 which became known, I think, as the Towards Healing
11 document in which the policy was set out.

12

13 Q. That was the only document that you used?

14 A. Yes.

15

16 Q. Did you have recourse to that? Are you telling us
17 that you did use that yourself in terms of guiding you?

18 A. Yes.

19

20 Q. In the decisions that you made?

21 A. Yes.

22

23 MS GERACE: No further questions, Commissioner.

24

25 THE COMMISSIONER: Thank you. Mr Gyles?

26

27 **<EXAMINATION BY MR GYLES:**

28

29 MR GYLES: Q. You were asked a number of questions about
30 the laicisation process. My learned friend Ms Gerace was
31 asking you about your role in it and you described it in
32 various ways to the effect that you would do what you were
33 asked to do in respect of that process. Do you recall
34 those answers?

35 A. Yes.

36

37 Q. At one stage you described yourself as the agent of
38 the bishop in respect of that process in some respects?

39 A. Yes.

40

41 Q. You were asked some questions generally as to the role
42 of the vicar general being able to step into the shoes of
43 the bishop if he left the diocese; do you recall that?

44 A. Yes.

45

46 Q. I think what you told the Commissioner was that where
47 the bishop left the diocese and where he requested you to

1 act in a particular way on his behalf, the vicar general
2 was authorised, in effect, to do that?

3 A. Yes.

4

5 Q. So far as the laicisation process is concerned, do you
6 have any recollection of the bishop ever asking you to take
7 over that process in a way which would involve you stepping
8 into his shoes and having responsibility for it?

9 A. No, I don't.

10

11 Q. Do you ever recall in respect of the laicisation
12 process the bishop leaving the diocese in a way in which
13 you would consider you became responsible for this process?

14 A. Sorry?

15

16 Q. Do you understand the question?

17 A. Could I have the question again?

18

19 Q. I don't want to confuse you. In terms of the
20 circumstances in which the vicar general could, where
21 authorised or where asked to, deal with matters when the
22 bishop left the diocese - you recall that?

23 A. Yes.

24

25 Q. In respect of the laicisation process, did you ever
26 consider that the bishop relevantly left the diocese in a
27 way in which that process was - that the responsibility for
28 that process was passed across to you?

29 A. No, I didn't.

30

31 Q. You were asked some questions about whether there had
32 been a discussion in 1996 between you and Bishop Malone as
33 to whether or not matters relating to McAlinden, ie, [AL]
34 and [AK], should have been reported to the police. Do you
35 recall that?

36 A. I recall the question.

37

38 Q. Do you recall the question?

39 A. Yes.

40

41 Q. Your answer was you had no recollection of there
42 having been that discussion?

43 A. Yes.

44

45 Q. In the ordinary course of events, if that discussion
46 had taken place, can we take it you would have provided
47 input, if requested by the bishop, with respect to that

1 issue?
2 A. Yes.
3
4 Q. And again it would have been a matter for him to make
5 a decision as to what to do in that respect?
6 A. Yes.
7
8 Q. You have referred, both in respect of questions by my
9 learned friend Mr Kell and Ms Gerace, to the difficulties
10 that you feel you've experienced with your memory?
11 A. Yes.
12
13 Q. I think you told Ms Gerace that the first of the
14 general anaesthetics which you attribute to, at least in a
15 temporal sense, your loss of memory is being in about
16 1984 - sorry, 1994? In the timeline, that is - I'm sorry
17 2004?
18 A. 2004.
19
20 Q. I'm very grateful to my learned junior for that. In
21 terms of the sequence, in 2003, you had provided a
22 statement to the police in respect of the Fletcher
23 prosecution, hadn't you?
24 A. Yes.
25
26 Q. You said that you had your first general anaesthetic
27 shortly after that, in 2004?
28 A. 2004, yes.
29
30 Q. You then distinguished between that and the second
31 operation that you had?
32 A. Yes.
33
34 Q. I think your words were that with the second operation
35 you were under a general anaesthetic for a longer period;
36 is that right?
37 A. Yes.
38
39 Q. After that second operation, did you feel that on a
40 day-to-day basis your memory wasn't as good as it had been
41 before that operation?
42 A. Yes.
43
44 Q. You gave evidence that you've had a number of
45 operations after that?
46 A. Yes.
47

1 Q. When was the last of those operations?
2 A. Last year. 2012.
3
4 Q. Is it the fact that between 2004 and 2012 you have
5 you've had something in the order of 10 operations?
6 A. Ten, yes.
7
8 Q. And you've attributed, in respect of the early
9 operations, the second operation as being one which, to
10 your mind, had a significant effect on your capacity to
11 recall events prior to that?
12 A. Yes.
13
14 Q. Can you tell us in terms of the subsequent operations
15 that you've had and the general anaesthetics which have
16 been necessary as part of those operations, have you felt
17 that each time you've had those operations and woken up and
18 recovered, it has also affected your memory?
19 A. It has, yes.
20
21 Q. Is it the case that that is something that is a
22 characteristic of your mind, that you are accepting of;
23 that is not something you've gone and sought treatment
24 about?
25 A. I've seen it as a natural part of what's happened,
26 yes. I haven't sought treatment, no.
27
28 Q. You haven't seen a need on a day-to-day basis to seek
29 specific treatment about it; is that the case?
30 A. No, that's the case, yes.
31
32 Q. But despite that, despite you not having treatment, by
33 way your way of thinking or to your mind, it has had a
34 significant and substantial effect on your capacity to
35 recall events going back --
36
37 MR KELL: Commissioner. I object.
38
39 THE COMMISSIONER: What's the objection, Mr Kell?
40
41 MR KELL: I think my friend has taken the issue of
42 Father Burston's memory and the operations as far as it can
43 be taken. The inferences that can be drawn from the
44 evidence are a matter ultimately for you, Commissioner
45 having regard to the totality of Father Burston's evidence
46 including --
47

1 THE COMMISSIONER: Mr Kell, even if Father Burston went to
2 a doctor and the doctor finally came to a view that he had
3 diminished memory, it would probably be mainly based on
4 father's self report, in any event. It is relevant for me
5 to know what he believes has been his memory diminution
6 since the operations and I'll permit Mr Gyles to continue.
7 I'm sure you're nearly finished.

8

9 MR GYLES: It is my last question.

10

11 Q. To your mind, that has had a substantial effect on
12 your capacity to recall events going back obviously over
13 the period over which you've been asked questions today.
14 Yes.

15

16 Q. In any event, you're a 77 or 78-year-old man at the
17 moment?

18

A. Yes.

19

20 Q. I think your qualifications about your memory even in
21 2003 was that that was obviously subject to general ageing?

22

A. Yes.

23

24 Q. Do you have volume 4 there?

25

A. Yes.

26

27 Q. Could you go, please, to the document at tab 283.

28

A. Yes.

29

30 Q. Fatherm do you feel as though you're able to continue
31 at the moment?

32

A. Yes.

33

34 Q. Thank you. You've been taken to this document. It is
35 the document of 16 May 1996. Do you see that?

36

A. Yes.

37

38 Q. It is the letter that you wrote to McAlinden care of
39 Pat Hallinan?

40

A. Yes.

41

42 Q. As I recall your evidence given yesterday, I thought
43 you said, and correct me if I am wrong, that there
44 was probably an address list around which would have had
45 Pat Hallinan's address on it?

46

A. Yes.

47

1 Q. Why would the diocese, independent of McAlinden, have
2 Pat Hallinan's address?
3 A. He is a former priest of the diocese who had retired
4 and lived in Ireland. He'd gone back home.
5
6 Q. I see. If one, whether it was you or whether it was
7 a person typing this letter, wanted to send a letter to
8 Pat Hallinan, there may well be, independent of
9 Denis McAlinden's file, a list of addresses of former
10 priests which was kept as a convenient way in which to be
11 able to locate their addresses where the diocese needed to
12 make contact with them; is that the case?
13 A. Yes.
14
15 Q. Pat Hallinan was one of those who would have fallen
16 into that category?
17 A. Yes.
18
19 Q. We see a letter here that's typed and which is signed
20 by you?
21 A. Yes.
22
23 Q. Was it your practice to type letters like this
24 yourself or would it be done for you, or did it depend - or
25 can't you say?
26 A. Both would have happened. I sometimes typed them
27 myself, sometimes got someone else to do it.
28
29 Q. Let's say it was you typing this letter and the letter
30 which follows on from it, you'll see, which is the letter -
31 I'm sorry. There is the letter at 283 and then another
32 letter that you wrote to Monsignor Stinson in Dublin on the
33 same day?
34 A. Yes.
35
36 Q. So it is possible that you typed both of those letters
37 or it is possible they were typed for you?
38 A. Both are possible.
39
40 Q. Let's just say it was you typing those letters?
41 A. Yes.
42
43 Q. You would agree with me, would you, in the light of
44 the answer you've just given, it is entirely possible that,
45 to the extent that you were the one who went and located
46 the address for Pat Hallinan, that might have been on a
47 piece of paper and you wouldn't have had to have resource

1 to the bishop's file concerning McAlinden to be able to
2 produce that letter; that's the case, isn't it?

3 A. That's the case, yes.

4

5 Q. Indeed, if it was a letter which was prepared or typed
6 by someone else and they had gone to find Pat Hallinan's
7 address, they may have been able to access a similar sort
8 of document?

9 A. Yes.

10

11 Q. Without having recourse to the McAlinden file in the
12 bishop's office?

13 A. Yes.

14

15 MR GYLES: The position with my cross-examination is that
16 I expect it might take me another 15 minutes to go through
17 the matters I want to deal with. I'm happy to deal with
18 that now if it is convenient, or I can deal with it
19 tomorrow if it is convenient. It is a matter for counsel
20 assisting and you, Commissioner.

21

22 THE COMMISSIONER: Mr Kell, what do you suggest?

23

24 MR KELL: There are some commitments that we have,
25 Commissioner. I wonder whether Father Burston could be
26 asked to come back tomorrow. At this stage, the
27 continuation of the public cross-examination and
28 re-examination would commence at 11 o'clock in the morning.

29

30 THE COMMISSIONER: Because of other commitments?

31

32 MR KELL: Because of certain commitments we have in the
33 morning. I'll speak to practitioners about certain matters
34 we can deal with perhaps before then.

35

36 THE COMMISSIONER: Yes. It is appropriate to rise now
37 until the resumption of public hearings at 11 o'clock
38 tomorrow.

39

40 **AT 4PM THE COMMISSION WAS ADJOURNED**
41 **TO FRIDAY, 19 JULY 2013 AT 11AM**

42

43

44

45

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