

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 Tuesday, 30 July 2013 at 10.45am
(Day 19)

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 MS LONERGAN: I recall John Francis Davoren.

2

3 MR BARAN: I seek the same order as yesterday under
4 section 23.

5

6 <JOHN FRANCIS DAVOREN, sworn: [10.43am]

7

8 <EXAMINATION BY MS LONERGAN:

9

10 MS LONERGAN: Q. Mr Davoren, just to bring you back to
11 where we were when we completed the day yesterday
12 afternoon, you will recall I showed you a statement of
13 complaint by a lady who is known as [AC]. You're nodding
14 yes. I asked you some questions as to whether you let the
15 police know about a particular wish that [AC] had
16 handwritten into her statement of complaint.

17 A. Yes.

18

19 Q. And that wish was associated with her wanting her
20 complaint to be used in corroboration of any other criminal
21 complaints that were made to the police about McAlinden.

22 A. Yes.

23

24 Q. Your evidence was to the effect that you - this is
25 page 1997, lines 27 to 35 - I asked you:

26

27 *Are you able to say now whether you let the*
28 *police know about this particular wish of*
29 *[AC]?*

30

31 You said:

32

33 *My recollection is that I notified the*
34 *police that we had received this complaint,*
35 *but I did not identify the complainant, and*
36 *I presume - and this is just a*
37 *presumption - that, had they indicated they*
38 *wanted to follow that up directly, that*
39 *I would approach the complainant and see if*
40 *I could talk her into us giving her name as*
41 *well.*

42

43 Do you see that?

44 A. Yes.

45

46 Q. What I want to suggest to you is the document I showed
47 you yesterday, the statement of complaint, had this lady's

1 name on it - it has just been redacted for our purposes.
2 That was consistent with the practice then, wasn't it, that
3 you would have the full name of the complainant?

4 A. Yes.

5
6 Q. Just to understand your evidence from yesterday
7 afternoon, is it the position that you were saying you
8 wouldn't disclose the name of the complainant to the police
9 at that stage, you would keep that name to the PSO's
10 confidential information and you would only disclose the
11 name to the police if the victim said yes, you could do so.
12 Is that the way it worked?

13 A. That's my memory but we certainly tried to talk them
14 into giving their name because otherwise the evidence isn't
15 very much help to the police.

16
17 Q. I asked you whether on occasion it happened that the
18 police would contact you and you would pass on information
19 to them in terms of someone's name so they could talk to
20 that victim. You said that in other cases that had
21 happened, but you had no specific memory of these cases.

22 A. No.

23
24 Q. When you said that, you were referring to cases
25 involving McAlinden?

26 A. Yes.

27
28 Q. Is it fair to say that you have no independent
29 recollection now about any particular conversations that
30 you had with any police about McAlinden victims; is that
31 fair to say?

32 A. My memory is that I did report both of those
33 complainants by name, but exactly what led up to that,
34 I can't recall.

35
36 Q. I'll take you to some documents shortly that indicate
37 that you probably reported those by a document.

38 A. Yes.

39
40 Q. I'll take you to that in a minute. In terms of the
41 reporting that you did to the police, were you reliant, as
42 at 2002, which is the time period we're looking at, to get
43 the okay from the bishop directly before you reported
44 complaints related to priests of a bishops' diocese to the
45 police?

46 A. I would normally talk it over with the bishop before
47 I reported it.

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Q. Was there any particular protocol that required you to talk to the bishop before you took that step of reporting a particular priest to the police?

A. The system we worked on was that the bishop was the head of the agency concerned, and so it was reasonable that he would be aware of the fact that a complaint was - the information was going to be handed on to the police.

Q. Were you able to report a matter to the police regardless of whether the bishop was agreeable to that course or not?

A. I don't recall ever being told by a bishop not to report the matter.

Q. That would be something that you would remember?

A. Yes.

Q. Because that would concern you in terms of your own job to pass on information to the police?

A. Yes.

Q. And you don't recall that ever happening?

A. I don't recall such, no. I was seen as somewhat independent of the bishop, so they were a bit reluctant to tell me not to do that, I guess.

Q. Is it the position that if a bishop had told you not to, you would have still taken your own independent steps in terms of reporting to the police if you considered it appropriate to do so?

A. It's a theoretical question, really. I didn't run into it, so --

Q. You had no reason to be faced with that decision?

A. No.

Q. I'm going to get you to reach for volume 5 of the material to your right and ask you to turn to tab 372. You'll see, Mr Davoren, that's another one of those special forms, the child abuse information dissemination form. Do you see that?

A. Yes.

Q. And do you see under "Source of information" the name. It says "Names not provided". Is that information the place where you would put the name of the victim, or is it

1 the name of the person who provided the information to your
2 office? Is that the way the form works?
3 A. Yes, the source of information --
4
5 Q. So, for example, if the source of information was a
6 relative of the victim or some unusual source, that would
7 be identified there?
8 A. Yes.
9
10 Q. But given that this particular form has got you as the
11 notifying officer for the Bishop of Maitland-Newcastle,
12 that covers the question of source of information, does it?
13 A. Yes.
14
15 Q. You've mentioned certain details regarding the
16 suspect, being Denis McAlinden and his date of birth. With
17 the address, "Not known but thought to be either in Ireland
18 or in WA", do you see that under "Suspect details" next to
19 the word "Address"?
20 A. I'm sorry, I can't find that. Where is it?
21
22 Q. Do you see the second large heading is "Suspect
23 details"?
24 A. Right. Yes. Yes, I see it.
25
26 Q. You see next to "Address" --
27 A. Yes.
28
29 Q. -- "Not known but thought to be either in Ireland or
30 in WA." Is that information you would have put in the form
31 yourself given you were the notifying officer?
32 A. Sorry, I didn't hear.
33
34 Q. Is that information you would have put in the form
35 "Not known but thought to be either in Ireland or WA"
36 because you were the notifying officer?
37 A. Yes.
38
39 Q. Do you recollect now whether that information was
40 gained by a document sent to you by the diocese around
41 about the time of this reporting, or any information as to
42 where you got that information from?
43 A. I would have got that information from the diocesan
44 office.
45
46 Q. Was it your process to report matters via this
47 particular form only after you've already spoken to the

1 bishop?
2 A. Usually, yes.
3
4 Q. Under the heading "Victim details", you see there are
5 no names mentioned there as to the victims that you're
6 reporting about - do you see that?
7 A. Yes.
8
9 Q. Are you able to say now why it is that you didn't put
10 any names there?
11 A. No. Frankly, I can't understand that.
12
13 Q. Was it your usual practice not to include names of the
14 victims?
15 A. No. The usual practice was to include the names of
16 the victims.
17
18 Q. And you see there are dates of birth. There are two
19 dates of birth - 1942 and 1949?
20 A. Yes.
21
22 Q. Under "Offence details" you are talking in terms of
23 brief narrative about two complaints having been received
24 from two women relating to McAlinden; do you see that?
25 A. Yes.
26
27 Q. You mention:
28
29 *One complaint was received in 1999 and one*
30 *in 2001. Neither complainant was prepared*
31 *to talk to the police.*
32
33 Are you able to assist with why you said "neither
34 complainant was prepared to talk to the police"?
35 A. No. Frankly, I can't, because there were other
36 indications on the record that in fact I had reported their
37 names, both, so I'm not sure what the significance of this
38 particular document is.
39
40 Q. Do you read that document, Mr Davoren, as referring to
41 the first lady in 1999, Ms [AE], and we've looked at her
42 statement of complaint yesterday?
43 A. Yes.
44
45 Q. And it was the position that she had already been to
46 the police - yes?
47 A. Yes.

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Q. And the second one, although it says 2001, are you able to assist with whether that was a reference to [AC], the lady whose complaint we looked at also yesterday, who reported via a Towards Healing complaint form in 2002?

A. Yes.

Q. That lady was prepared to talk to the police in corroboration, wasn't she?

A. She was, yes.

Q. So is it fair to say that this form doesn't correctly reflect the situation?

A. No.

Q. You go on to say:

The Church appointed two independent investigators - one for each complaint.

Do you see that, the next sentence?

A. Yes.

Q. Is that a reference to the people who took the Towards Healing complaints, or to some other kind of independent investigator?

A. That would refer to independent investigators. I'm puzzled, though, because the police were already aware of this and we generally didn't establish another investigation if there was a police one going on.

Q. Just to prompt your recollection, you recall yesterday I showed you a letter - and perhaps two letters - that mentioned that [AE] had decided to withdraw her complaint a few months after she made it because she felt she couldn't go on with it?

A. Yes.

Q. Does that assist at all in terms of how the processes worked in those days as to what your department would do or what your office would do if there was no going forward with the police?

A. My thinking would be that, once we had reported the matter to the police, they would proceed with it. What the particular victim decided to do was something between her and the police then. We certainly would not suggest that there be any - I mean, it would be totally beyond our

1 competence to suggest that the police would stop
2 investigating it.

3

4 Q. I understand. What I'm suggesting is in situations
5 where a victim of sexual abuse said to you or wrote to you,
6 "I'm not going to go ahead with the police anymore because
7 I can't cope with what's involved in that," is it the
8 position that Towards Healing would then reactivate its
9 activities in terms of meeting the investigations, or are
10 you unable to assist with that particular issue?

11 A. It would depend on what status was already achieved
12 with the police, and my memory would be that I would talk
13 to the police about this then.

14

15 Q. When you say "talk to the police" would you track down
16 the investigating officer, or would you talk to the Child
17 Protection Enforcement Agency?

18 A. No, I'd usually talk to the Child Protection
19 Enforcement Agency.

20

21 Q. Just directing your attention back to the form:

22

23 *After considerable delays both matters were*
24 *found to have been substantiated on the*
25 *balance of probabilities.*

26

27 Do you see that?

28

29 A. Yes.

30

31 Q. Are you able to assist as to what that's a reference
32 to?

33

34 A. Sorry, I didn't hear that.

35

36 Q. Could you assist with what that is a reference to,
37 having --

38

39 A. The normal standard of proof that our investigation
40 looked for was balance of probabilities.

41

42 Q. Are you able to assist the Commission with what the
43 processes were to substantiate things on the balance of
44 probabilities? Was it just an assessment of the
45 complainant's documents and veracity, or was there a
46 broader investigation carried out?

47

48 A. Well, I'm puzzled as to how we in fact had an internal
49 investigation this time once the police - of course, it was
50 a long-term case anyway, the police had been following it
51 for years, so I have no recollection of having established

1 independent investigators.

2

3 Q. If there was a finding established by independent
4 investigators, would you expect there to be some papers on
5 it in the nature of investigative documents held at the
6 Professional Standards Office?

7 A. Yes.

8

9 Q. Do you see the date of the notification is 4 March
10 2003? Was it usual to have the kind of delay - if we focus
11 on [AE]'s complaint, that was October 1999 that was
12 received by your office, was it usual to have that sort of
13 delay, a number of years, before formalising the reporting
14 on this particular type of form?

15 A. No, and my memory was that I was talking to the police
16 from 1999 about that case, so this looks to me like a
17 formal conclusion rather than an intricate part of the
18 process.

19

20 Q. That document is already tendered in the proceedings,
21 Mr Davoren. I'm now going to ask you to address two emails
22 you prepared in relation to the Fletcher matter. Because
23 the versions in the bundle which appear behind tabs 373 and
24 375 have been redacted to remove a particular personal
25 information regarding the family of [AH], I'm going to hand
26 you up a fresh copy of each of those particular tabs to
27 work with, Mr Davoren, so you can have them both in front
28 of you at the time I ask you questions.

29 A. Where do I find this document?

30

31 Q. Just leave that open as it is and I'm going to give
32 you a new version that has a particular piece of personal
33 information redacted from it. I'm going to hand up a copy
34 of that freshly redacted version for the Commissioner and
35 one will be distributed to the parties at the bar table, in
36 particular, Mr Baran.

37

38 Mr Davoren, if you can first look at the document that
39 has the yellow tab on the front saying 373, do you have
40 that one?

41 A. Yes.

42

43 Q. That's an email from you to a Michael McDonald dated
44 18 March 2003. Do you see that?

45 A. Yes.

46

47 Q. Can you outline the circumstances that led you to

1 prepare that particular email?

2 A. Yes. Michael McDonald was the person in charge of
3 CCER, which was the Catholic Commission for Employment
4 Relations, and this was handling reports to the ombudsman's
5 office. The ombudsman was not happy with some matters of
6 CCER, so Michael asked me for information about this
7 particular matter.

8

9 Q. Is it your understanding that there was some questions
10 being asked in relation to how quickly or otherwise
11 allegations about Fletcher were reported to that outside
12 organisation, the ombudsman's office?

13 A. Apparently, yes.

14

15 Q. You found this out via Mr McDonald as opposed to other
16 sources?

17 A. Yes. Of course it had nothing to do with our process,
18 which was dealing directly with the police.

19

20 Q. So you prepared this email, did you, to set out the
21 parts that you knew about and the interfaces you had with
22 matters concerning [AH] and Fletcher?

23 A. Yes.

24

25 Q. In the first paragraph you state this:

26

27 *You asked me what I know about the [AH]
28 matter. My notes have five entries under
29 that name.*

30

31 Are you able to recollect now the form of the notes that
32 you took the five entries from? Were they handwritten
33 notes by you, or computer-logged entries, or are you unable
34 to say now?

35 A. It would have been computerised, yes.

36

37 Q. Are you able to now say where those computerised
38 records would be?

39 A. They would still be in the office as far as I know.

40

41 Q. Can we take it that you personally don't have copies
42 of them that you can access immediately?

43 A. I certainly don't, no. I left office in 2003.
44 I didn't keep any records.

45

46 Q. In paragraph 1 you refer to a phone call you had with
47 [BJ] - that's the mother of [AH] - in November 2002?

1 A. Yes.

2

3 Q. You make the particular observation regarding your
4 conversation with [AH]'s mum to the effect that [AH] had a
5 number of problems and you make another observation there
6 after that. Can I ask you a question about that? Was it
7 the position that [AH]'s mum, in effect, as far as she
8 communicated it to you, was worried about her son and
9 wasn't sure what had happened to him; is that a fair
10 summary of the way [BJ] communicated her position to you?

11 A. My memory, which of course is assisted by having read
12 some of the files since, was that she was very concerned
13 about her son. She did not know specific details of what
14 form of abuse he had suffered, but she saw it as serious
15 and certainly doing great harm to him.

16

17 Q. In your experience and background as a social worker
18 and your experience in dealing with these types of matters,
19 had you seen on other occasions that sexual abuse that
20 occurred to people when they were children could have a
21 particular effect on the way they conducted themselves in
22 their adult life?

23 A. Very much so - very common.

24

25 Q. Can you outline very briefly what sorts of things you
26 had observed, and in terms of how it affected adults'
27 conduct of their adult life?

28 A. That's very much --

29

30 Q. It's a very broad subject.

31 A. -- an individual situation. I don't know that I could
32 generalise about that.

33

34 Q. Can I put some suggestions to you. It can include
35 alcohol abuse?

36 A. It certainly could, yes.

37

38 Q. Anger issues?

39 A. Yes, temper tantrums, that sort of thing, which of
40 course then redounds to make it look as if he's not a
41 reliable witness.

42

43 Q. Relationship difficulties?

44 A. To?

45

46 Q. It can also cause relationship difficulties in their
47 family life?

1 A. Oh, certainly, yes.

2

3 Q. You then mention in the next paragraph, Mr Davoren,
4 that later that day you spoke to CPEA. Are you talking
5 about a particular officer at that child protection office,
6 a particular police officer? Is that who CPEA is?

7 A. Yes, Child Protection Enforcement Agency.

8

9 Q. Do you remember now who that was that you spoke to?
10 I'm sorry to ask you that question, but just in case you
11 do?

12 A. I cannot remember the name, no.

13

14 Q. And you understand there were other conversations that
15 you refer to there.

16 A. I thought I spoke, and some record I saw made me think
17 I had spoken, to the investigating officer who had spoken
18 to [BJ], or [BJ] had spoken to her.

19

20 Q. But, in any event, you received some information to
21 the effect that:

22

23 *... [AH] was not coming to the party and*
24 *there is not much the police could do until*
25 *he makes some kind of statement.*

26

27 Can I ask you a question about that observation? When it
28 says "[AH] was not coming to the party", are you referring
29 to some difficulties that were being encountered by the
30 police, as you understood it, in [AH] completing his
31 statement?

32 A. Yes.

33

34 Q. You are not suggesting, are you, that [AH] wasn't
35 prepared to talk to the police but just that there were
36 some difficulties with the process. Is that a fair
37 summary?

38 A. I saw a note somewhere that he hadn't kept an
39 appointment so that the investigation hadn't been proceeded
40 far enough at this stage.

41

42 Q. In your experience with adults coming to terms with
43 describing what had happened to them when they were
44 sexually abused as a child, is it your experience that
45 there can be real difficulties in that process of outlining
46 and detailing the abuse suffered?

47 A. Oh, enormous problems. They have recovered memories,

1 were not able to talk about it to their parents, a long
2 time went by, they felt embarrassed, they felt that they
3 were guilty, so they kept it quiet for so long, and then,
4 when they presented making the complaint, unfortunately
5 they were not seen as reliable when they should have been,
6 and, of course, the community started to take sides.

7
8 Q. I'm going to stop you there with that. Is it your
9 experience that victims of sexual abuse often had
10 difficulty articulating what had happened to them?

11 A. Very much so, yes.

12
13 Q. Mr Davoren, paragraph 3 refers to 24 February 2003.
14 Do you see that?

15 A. Right, yes.

16
17 Q. So you are there talking about events that occurred
18 in February 2003; is that right?

19 A. Yes, there were two particular events - one
20 in November 2002 where [BJ] rang me and was concerned about
21 him not being stood down, and then in February 2003 we had
22 further conversations.

23
24 Q. In February 2003 you refer to [BJ] telling you that
25 she was aware that [AH] was now talking to the police. Do
26 you see that?

27 A. Yes.

28
29 Q. She was uncertain about what she should do in terms of
30 any complaint that she wanted to make. Do you see that at
31 the end of the paragraph?

32 A. Yes, I see that.

33
34 Q. Are you able to assist with that reference, whether
35 that is a reference to her own wish to make a complaint, or
36 was it a complaint on behalf of her son, or you're just not
37 able to say now?

38 A. I'm not able to say, I can't remember that.

39
40 Q. In the next paragraph you say that later that day, you
41 spoke to Sergeant Fox; do you see that?

42 A. Yes.

43
44 Q. And that he indicated he still lacked enough details
45 to lay a charge; do you see that?

46 A. Yes, apparently.

47

1 Q. In the next paragraph you're talking about another
2 conversation you had that day with an official of the
3 diocese of Maitland-Newcastle, with the idea of
4 recommending that the priest be stood down until the
5 investigation was complete. Do you see that?

6 A. Yes.

7

8 Q. Was that your idea, or had that idea been planted in
9 your mind by somebody else?

10 A. I would say that my memory was that Mr Fox felt
11 strongly that action should be taken to stand him down -
12 stand Fletcher down - and I then took the matter up with
13 the bishop's office. The bishop wasn't available at the
14 time I remember, so I spoke to one of his deputies.

15

16 Q. That was Father Burston?

17 A. Yes.

18

19 Q. You knew Father Burston already from other dealings,
20 did you?

21 A. I did.

22

23 Q. You knew he had a background in psychology, did you?

24 A. Yes.

25

26 Q. When you say:

27

28 *He replied that [AH] has demonstrated*
29 *significantly unusual behaviour over years*
30 *and is of doubtful credibility, while on*
31 *the other hand no concrete complaint has*
32 *yet been received against the priest that*
33 *would constitute reasonable grounds for*
34 *standing him down.*

35

36 Is that comment one that you attribute to Father Burston?

37 A. Yes.

38

39 Q. As opposed to any individual view of yours?

40 A. Well, we had received no complaint - the Professional
41 Standards Office. I knew only what I had learned from
42 conversations with [BJ] and with Mr Fox and I didn't feel
43 I had the confidence then to recommend a disciplinary
44 standing down.

45

46 Q. In making that decision, did you place any reliance
47 on what you have noted there as being something that

1 Father Burston told you?
2 A. He told me where he stood. I didn't have any further
3 information to - to recommend what was happening and,
4 really, it was my decision and I couldn't say, "I recommend
5 he be stood down."
6
7 Q. Did you speak to the bishop at Maitland-Newcastle?
8 A. No, I didn't, he wasn't available at some stage, but
9 I do think I spoke then back to Mr Fox and he received that
10 message. He didn't, and I wouldn't have expected him to
11 say what he knew, but I presume he went on and spoke to the
12 diocese about that.
13
14 Q. Don't presume what he did. Just in terms of your
15 conversation with Detective Chief Inspector Fox after this,
16 are you confident you actually had a conversation with him
17 after this and conveyed your information to him?
18 A. I can't say with absolute certainty, but I'm pretty
19 sure I did.
20
21 Q. You haven't mentioned that in this particular note -
22 I'm not being critical but --
23 A. This is a letter to - at another time, yes. It's a
24 recollection.
25
26 Q. But a recollection based on, according to paragraph 1,
27 some notes that you had at the time?
28 A. Yes.
29
30 Q. I'm going to ask you to look at the document that's
31 got the yellow tab on the front of it 375. Do you see
32 that?
33 A. Right.
34
35 Q. That's another email from you which is dated the
36 following day to the one we've just been looking at 8.35am,
37 also directed to Michael McDonald; do you see that?
38 A. Right.
39
40 Q. Are you able to assist with what it was that led you
41 to prepare this second email, which appears in very similar
42 form but has some additional details.
43 A. No, I can't for the life of me remember why that
44 happened.
45
46 Q. I'll just get you to read all of that second email to
47 yourself and I'm going to ask you a few questions about it.

1 A. Yes, there are some strange variations there.

2

3 Q. I know it's difficult asking you questions about two
4 slightly different emails ten years after they were
5 prepared, but are you able to assist with whether you had
6 access to additional material to prepare this more detailed
7 second email to Mr McDonald, or what it was that led to
8 some of the further details you've included?

9 A. No, and paragraph 1 puzzles me, because I had no -
10 I have no recollection of ever concluding that [BJ] did not
11 rate his credibility highly. I would have thought she
12 definitely did rate it highly.

13

14 Q. Can I suggest to you in line with an earlier answer
15 that you gave to me, that that is a reference to [BJ]
16 having told you that she was worried about her son, but did
17 not know what had happened to him. Is that --

18 A. That's right. She made it clear that she - well, in
19 the earlier telephone call she did not. She just used
20 "something bad has happened" and was very concerned about
21 it. Whether she had more information at this later time,
22 I don't know.

23

24 Q. You see that you make the distinction in your entry
25 regarding 11 November 2002 - you mention having gained the
26 impression that his mother did not rate his credibility
27 highly, and we've just dealt with your position on that,
28 but do you see for the entry for 24 February 2003, in
29 line 3, you make the observation that [BJ] did not this
30 time mention her doubts about [AH]'s credibility. Do you
31 see that?

32 A. Sorry, paragraph?

33

34 Q. Numbered paragraph 4, line 3.

35 A. Yes.

36

37 Q. And you see there you make the observation that [BJ]
38 didn't mention her doubts about [AH]'s credibility at this
39 point in time, that is, February 2003. Do you see you've
40 got the two distinct observations regarding that issue -
41 one in November 2002 and one in February 2003; do you see
42 that?

43 A. Right, yes.

44

45 Q. Can I suggest to you that the position may well have
46 been that [BJ] had more information by this later point
47 in February 2003?

1 A. It could well be, yes.

2

3 Q. You've expanded the matters - I suggest to you that
4 this later email is an expanded version of the earlier one.

5 A. Yes.

6

7 Q. And you have put some more detail regarding the
8 identity of the priest you spoke to at the diocese of
9 Maitland-Newcastle in paragraphs 6 and 7. Do you see that?

10 A. Yes.

11

12 Q. Do you see that you say in paragraph 7 in this further
13 document:

14

15 *In reply to my suggestion about standing*
16 *Fletcher down he said that [AH] has been*
17 *demonstrating bizarre behaviour for some*
18 *years, and he thought it likely that the*
19 *current matter was just another sign of his*
20 *psychological disturbance.*

21

22 Do you see that?

23 A. Yes.

24

25 Q. That's an additional matter that you have added there
26 that wasn't in your email of the previous afternoon. Do
27 you see that?

28 A. Yes.

29

30 Q. Are you able to assist as to whether you had access to
31 a new note or whether you had an additional recollection
32 you thought it relevant to include or what it was that led
33 to that further attribution you made there of a comment
34 from Father Burston about [AH]?

35 A. No. Of course, in preparing emails, it never occurs
36 to me that they are going to be looked at as a legal
37 document ten years later.

38

39 Q. Can I ask you this: you wouldn't have put that in
40 there if it hadn't been said to you?

41 A. That would be true.

42

43 Q. In the next sentence you make this comment:

44

45 *He stated that no other complaint of this*
46 *or any other kind had ever been received*
47 *against Fletcher, and the diocese still did*

1 *not have sufficient information about*
2 *[AH]'s complaint to justify standing*
3 *Fletcher down.*

4
5 Do you see that?

6 A. Yes.

7
8 Q. Would you agree with me that that appears to be a
9 further assertion by Father Burston about the diocesan
10 position. Is that a reasonable attribution of that
11 statement?

12 A. As far as I recall, we only had one conversation and
13 all of those things were in that conversation.

14
15 Q. So that suggests, does it not, that Father Burston is
16 telling you what the diocese's position is on the issue?

17 A. I would have thought that he was saying they had no
18 further information, and I then - my memory was I rang the
19 police back and passed that message on to them, and
20 understandably they didn't say, "We have further
21 information." I presume they took that up with the
22 diocese.

23
24 MS LONERGAN: Commissioner, I tender the document that
25 appears behind tab 373 in its newly redacted form.

26
27 THE COMMISSIONER: The email of 18 March 2003 from
28 Mr Davoren to Mr McDonald will be admitted and marked
29 exhibit 190.

30
31 **EXHIBIT #190 EMAIL DATED 18/3/2003 FROM MR DAVOREN TO**
32 **MR McDONALD (TAB 373)**

33
34 MS LONERGAN: Q. Just a broad question, Mr Davoren, if
35 you can assist with this: as at 2002, did you know
36 anything about any normal procedures or standard procedures
37 to follow for a bishop where there had been allegations of
38 child sexual abuse against one of his priests?

39 A. I'm sorry, I don't quite understand the question.

40
41 Q. Do you know whether there were any normal procedures
42 or standard procedures that a bishop was to follow that
43 were in place in 2002 where allegations had been made of
44 child sexual abuse against one of his priests?

45 A. I was not aware of any such protocol. It hadn't come
46 past my office. My concern was my own responsibilities.

47

1 MS LONERGAN: Those are my questions.

2

3 THE COMMISSIONER: Mr Cohen? Ms Gerace?

4

5 <EXAMINATION BY MS GERACE:

6

7 MS GERACE: Q. In 1997 when you took over your position,
8 you were asked some questions --

9 A. I'm sorry, I can't hear you.

10

11 Q. That is not normally a complaint. Mr Davoren, when
12 you commenced your position in 1997 at the Professional
13 Standards Office, is it the case that there was no
14 discussion by you with any of the bishops in New South
15 Wales about whether or not consideration had to be given to
16 reporting matters that the church knew about prior to 1997.
17 Is that your evidence?

18 A. No, there was no discussion. I was seen as
19 responsible only for dealing with matters that started
20 under Towards Healing in 1997.

21

22 Q. So only new matters that came to the attention of your
23 office through the Towards Healing protocol?

24 A. I assumed that if matters that I was passing on to
25 them had previous history that that would be taken into
26 consideration and I would be notified of that. However, my
27 advice would have been, "Since this is the only complaint,
28 I recommend so and so." I would have expected the bishop
29 to say, "However, we have X number of other complaints."

30

31 Q. When you said then you expected to be notified, you
32 meant by the bishop of the diocese who had the information?

33 A. Yes.

34

35 Q. Is that the person with whom you liaised principally
36 in relation to any matter - complaint - brought to your
37 office concerning sexual abuse by clergy?

38 A. Yes.

39

40 Q. As I understand it, your evidence was that you
41 personally made the decision about whether or not
42 information that came to you ought to be reported to the
43 police?

44 A. Sorry.

45

46 Q. Was it the case that you personally made the decision
47 about whether information that came to the Professional

1 Standards Office had to be reported to the police?
2 A. The question of whether or not they would be referred
3 to the police would be my recommendation, but I would tell
4 the bishop that that's what I was intending to do.
5
6 Q. So is it the case, Mr Davoren, that you made the
7 decision - you considered the information you had and
8 formed a view about whether or not a matter needed to be
9 reported to the police?
10 A. Yes.
11
12 Q. You then advised the bishop of what your decision was?
13 A. Yes.
14
15 Q. In 1997, in your role, did you understand that the New
16 South Wales police could be consulted about whether or not
17 information should be reported to them?
18 A. Yes, and I consulted CPEA on a number of occasions.
19
20 Q. But you were aware of that from 1997?
21 A. Yes.
22
23 Q. And at no time from 1997 through to 2003, as the head
24 of that department, did discussions take place with the
25 bishops of New South Wales about whether or not there
26 should be some search or otherwise of their records to
27 ascertain what knowledge they had about complaints against
28 priests that predated 1997; is that the case?
29 A. I don't remember any such discussion, but they were
30 discussing the matters without me being present. I don't
31 know what was said there, but certainly the people who put
32 forward Towards Healing were certainly very anxious that
33 the bishops would be aware of the provisions and the
34 implications.
35
36 Q. But that wasn't your role?
37 A. No.
38
39 Q. Your role was to deal with information notified to
40 you?
41 A. Yes. I was the complaints department.
42
43 Q. I understand, but of course to operate effectively,
44 the information must be conveyed to you in the nature of a
45 complaint.
46 A. Yes.
47

1 THE COMMISSIONER: Anything, Mr Cohen?

2

3 <EXAMINATION BY MR COHEN:

4

5 MR COHEN: Q. Mr Davoren, in some of your evidence about
6 15 minutes ago in response to questions from Ms Lonergan
7 you gave a somewhat discursive answer where you said that
8 the community was taking sides. What did you mean by that?
9 A. Sorry?

10

11 Q. In an answer you gave to Ms Lonergan about 15 minutes
12 ago, in a somewhat discursive manner, you gave some
13 evidence about the community taking sides. Do you recall
14 that?

15 A. Yes.

16

17 Q. What did you mean by that?

18 A. Well, as the press coverage said in the last couple of
19 days, [BJ] had experience of people attacking her in a
20 deplorable way. I think that's a very good example, that
21 the paedophile had an ability to have a public image that
22 was most attractive and people would say, "He couldn't have
23 done anything of the kind"; whereas the victim was seen as
24 being very confused. So they unfairly, unaware really of
25 what paedophilia was, saw the poor victim as being just a
26 troublemaker attacking this beautifully innocent priest.

27

28 Q. If that perception was at large in the community what
29 was done to re-balance the scales in favour of the victim?

30 A. Sorry, I didn't hear that.

31

32 MR GYLES: I object.

33

34 MR BARAN: I object.

35

36 THE COMMISSIONER: I think we've taken it as far as we
37 can. Thank you, Mr Cohen.

38

39 MR COHEN: If the Commission pleases.

40

41 Q. You also gave some evidence at about the same time
42 about Father Burston, in a conversation with you, and your
43 words were "indicated where he stood". Do you recall that
44 evidence?

45 A. Yes.

46

47 Q. What did you mean by that? You used the phrase that

1 he indicated to you where he stood. What exactly did you
2 mean by him indicating --
3 A. That he indicated where the diocese stood.
4
5 MR GYLES: I object. This witness can say what was said
6 to him. He can't say what --
7
8 MR COHEN: I'm sorry, I put the question --
9
10 MS LONERGAN: I agree with Mr Cohen.
11
12 MR COHEN: Q. You recall the email to which you were
13 taken and you recorded in that and you commented, "he
14 indicated where he stood." What did Father Burston say to
15 you at that time to leave you with an impression that he
16 had indicated to you where he stood?
17 A. My memory is that he indicated that they still did not
18 have the details of the abuse that would be sufficient to
19 justify a disciplinary action to stand Fletcher down.
20
21 Q. Did that accord with your opinion at the time about
22 those matters?
23 A. I knew only what I had heard from [BJ], and certainly
24 she had not gone into any details with me other than
25 something very bad had happened, as it obviously had.
26
27 Q. You were asked one more question, just slightly before
28 this in time this morning by Ms Lonergan, about the date of
29 the reporting in that form dated 4 March 2003 and you were
30 asked as to the delay between the events in 1999 and 2003.
31 Could I ask you this about that disclosure: was that done
32 for insurance purposes at the time?
33 A. Sorry?
34
35 Q. Was that disclosure made at that date for insurance
36 purposes at the time?
37 A. I'm sorry, I still didn't hear that.
38
39 MR BARAN: I object to the rubric "insurance purposes."
40 I think it has to be far more specific than that.
41
42 MR COHEN: Q. Was the disclosure as at 4 March 2003 done
43 at that time to be able to indicate a point in time when a
44 disclosure had been made to an insurer?
45 A. An insurer?
46
47 Q. Yes, such as Catholic Insurance?

1
2 MS LONERGAN: I object.
3
4 THE WITNESS: I have no recollection of that connection.
5
6 THE COMMISSIONER: I think we can leave it at that.
7
8 THE WITNESS: My records indicate that I did make
9 information available to the police much earlier than that.
10
11 MR COHEN: Q. Much earlier than 2003?
12 A. Yes.
13
14 Q. Before 1999?
15 A. Which case are you talking about?
16
17 Q. I'm being driven by your evidence about disclosure.
18 What were you referring to as the disclosure, was that with
19 respect to McAlinden?
20 A. After I had spoken to [BJ] on 11 November and on
21 24 February, I spoke with the police on both occasions, but
22 I obviously knew far less than they did.
23
24 MR COHEN: If the Commission pleases.
25
26 THE COMMISSIONER: Anything arising, Mr Roser, for you?
27
28 MR ROSER: I'll ask a couple of questions, thank you,
29 Commissioner.
30
31 **<EXAMINATION BY MR ROSER:**
32
33 MR ROSER: Q. I think your evidence is in 1997 you
34 commenced your role as the director; correct?
35 A. Yes.
36
37 Q. And part of your role was to assist them to inform
38 police of allegations made to the church?
39 A. Yes.
40
41 Q. When a complainant says they didn't want the
42 information to be given to the police, was the system put
43 in place that that wasn't disclosed to the police?
44 A. Sorry, what wasn't disclosed to the police?
45
46 Q. The complaint. If a victim said, "I don't want this
47 to be disclosed to the police, this complaint," it wasn't

1 disclosed to the police, was it?
2 A. If it was a criminal matter, I believe we would
3 indicate to the police that we had received this complaint.
4 We could not, unless they agreed, give the name of the
5 person, and if the police indicated they already had other
6 information like this, we would then go back to the
7 informant and recommend to them that either they would go
8 to the police or we would help them go to the police and,
9 on occasions, we did just that.
10
11 Q. Why didn't you give the name to the police when you
12 made the complaint to them?
13 A. Because it was my understanding that there were
14 confidentiality matters there and --
15
16 Q. The system that was in place, if I understand your
17 evidence, is that a victim came along and made a complaint
18 to your body; correct?
19 A. Yes.
20
21 Q. And a statement was taken from that particular person?
22 A. Yes.
23
24 Q. Then that was independent of yourself?
25 A. Yes.
26
27 Q. Then that complaint/statement was sent to you?
28 A. Yes.
29
30 Q. Then you sent it on to the bishop?
31 A. With comments, yes.
32
33 Q. And then the bishop made a determination whether the
34 complaint would be given to the police?
35 A. It would be my recommendation whether it could be or
36 could not be.
37
38 Q. Yes, but the final decision was left to the bishop to
39 say whether a complaint would be given to the police,
40 wasn't it?
41 A. Yes, I guess technically so, yes.
42
43 Q. It's not only technically so, but it's the
44 hierarchical structure you were involved in - that was the
45 process, wasn't it?
46 A. I was not in the position where I was told by the
47 bishop not to report a matter.

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Q. I think you've given evidence a number of times that any matter that occurred prior to you taking up your position as a director was not referred - or you didn't investigate that and refer that back to the police?

A. No, I was not aware of those things.

Q. Does that apply to all complaints which were made prior to you arriving as director in 1997?

A. I'm not sure what you mean by that.

Q. When you took up your position, can you remember whether any complaint which was made prior to 1997 was referred by you to the police?

A. Well, in the McAlinden case, certainly.

Q. What I'm going to suggest to you is that in relation to [AL] and [AK] you did not refer the information to the police.

MR GYLES: I object to the question. In what capacity? His evidence is that he started this office. Is my learned friend asking in some other capacity that he obtained this information? Is he speaking of the PSO or something else?

MS LONERGAN: There is evidence before the Commission, at least from this witness's point of view, that a form was completed that was aimed at that task. If there is evidence to the contrary, in my respectful submission, in fairness to the witness, it ought to be provided to him in some appropriate form, if it can be.

THE COMMISSIONER: Yes.

MR ROSER: I'm entitled to cross-examine this witness, to put the proposition to him. A form may have been made but it was never sent to the police.

MR BARAN: I have an objection. If it's going to be put as a positive assertion, then I need to be given some material. If it's going to be suggested to the witness in order to test the evidence, that's another matter. If it's going to be put formally, that's put it in another category entirely and it shouldn't be allowed.

THE COMMISSIONER: The suggestion is, Mr Roser, that even though a form headed "Dissemination to the police",

1 et cetera, was filled out it was never sent to the police.
2
3 MR ROSER: Yes, it was never sent to the police.
4
5 MS LONERGAN: Can I have a word with Mr Roser,
6 Commissioner?
7
8 THE COMMISSIONER: Yes.
9
10 THE WITNESS: Am I permitted to make a comment at this
11 time?
12
13 THE COMMISSIONER: Not just yet, Mr Davoren. I won't
14 forget that you have one to make.
15
16 MR ROSER: I'll withdraw that question.
17
18 Q. If you can turn up tab 309 in volume 4. You've given
19 evidence in relation to the particular form?
20 A. Yes.
21
22 Q. On your evidence, did you send that to the police?
23 A. I can't really recall the significance of these forms,
24 but I did talk to the police - I think a Sergeant Watters -
25 about this matter at the time when the complaints were
26 received.
27
28 Q. I suggest to you that you are confused in relation to
29 this particular matter and another matter that you spoke to
30 Detective Watters about; what do you say about that?
31 A. I'm certainly - yes, it could be that Watters wasn't
32 the man.
33
34 Q. In relation to this particular form, what did you do
35 with it?
36 A. All I can say is I did talk to the police about these
37 matters. What I did with that particular form, I cannot
38 really be expected to remember ten years later.
39
40 Q. If you sent this particular form to the police, would
41 you send it under cover of a letter?
42 A. Under cover of a letter?
43
44 Q. With a letter from you?
45 A. Yes.
46
47 Q. And a response would be received from the Police

1 Service to you that they received the particular form?
2 A. I presume so, yes.
3
4 Q. Have you ever seen any letter in relation to this
5 particular form, [AL] and [AK], that you wrote to the
6 Police Service?
7 A. I haven't seen that recently, no.
8
9 Q. And/or one that you received back from the
10 Police Service?
11 A. The police themselves would have records of this.
12
13 Q. Yes. And I suggest to you that at no time did you
14 send this particular form to the Police Service.
15 A. I do not believe that is so.
16
17 Q. You've got a clear recollection of that, have you?
18 A. I have a clear recollection of regularly talking to
19 the police, and reporting significant matters.
20
21 Q. In relation to this particular matter, if I can just
22 take you to tab 304 --
23
24 THE COMMISSIONER: Exhibit 93.
25
26 MR ROSER: Q. That particular letter there that you
27 received from the vicar general.
28 A. Yes, right.
29
30 Q. Did you have any discussion with the vicar general why
31 he sent that particular letter to you for you to report
32 these matters, [AL] and [AK], back in 1999?
33
34 MR BARAN: I object to the form of the question, because
35 clearly the letter does not say that. The letter says that
36 it should be used as intelligence to pass on to the police,
37 not to pass on the specific complaints of [AL] and [AK].
38 The question is somewhat confusing in that form.
39
40 MR ROSER: I object to my friend. The witness can say
41 whether he's confused or not.
42
43 THE WITNESS: What is your question?
44
45 MR ROSER: Q. You received this particular letter from
46 the vicar general?
47 A. Yes.

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Q. Did you have any discussion with him prior to receiving this particular letter of this information?

A. Yes.

Q. Did he tell you why this particular complaint or information was to be given to the police in 1999?

A. He was simply agreeing with my recommendation that we hand the information on.

Q. You knew that the complainants [AL] and [AK] had made their complaints back in October 1995, didn't you?

A. I received the complaint in 1999. I wasn't in office in 1995.

Q. Who gave you the complaint in 1999 in relation to [AL] and [AK]?

A. I believe [AL] and [AK] - well, one of them submitted in 1999, the other one submitted in 2002.

Q. I suggest to you that both these persons, victims, made their complaint back in October of 1995?

MR BARAN: I object to that question. Complaint to whom?

THE COMMISSIONER: Complaint to whom, Mr Roser?

MR ROSER: Q. To (suppressed).

A. I know nothing about that.

Q. I suggest to you that there was --

MS LONERGAN: Can I have a word with Mr Roser, Commissioner?

MR ROSER: Q. I suggest to you that [AL] and [AK] in 1999 didn't make a complaint to you, or to the Catholic Church at that time.

A. I'm sorry?

Q. I suggest to you that in August of 1999 neither [AL] nor [AK] made any written complaint in relation to sexual abuse by McAlinden.

A. My records indicate that they did.

Q. And I suggest to you --

1 MS LONERGAN: I need to interrupt my learned friend for
2 non-publication order regarding a particular name that was
3 given.
4
5 THE COMMISSIONER: I make a non-publication order for the
6 name that was mentioned.
7
8 MR ROSER: Q. Did you see at this particular time any
9 records of 1995 in relation to [AL] and [AK]?
10 A. No.
11
12 Q. You wouldn't have sent any statements by them to the
13 Police Service?
14 A. I did in 1999.
15
16 Q. Did you? I suggest that you did not.
17 A. Well, I would categorically deny that.
18
19 Q. I suggest to you that you've confused [AL] and [AK]
20 with [AE].
21 A. Oh.
22
23 Q. Oh? Does that ring a bell?
24
25 MS LONERGAN: Commissioner, I object to this line of
26 questioning without assisting the witness with
27 documentation. I have taken him through a number of a
28 series of complaints and there are two different Child
29 Protection Enforcement Agency forms. In fairness to the
30 witness --
31
32 THE COMMISSIONER: It is difficult when there are
33 pseudonyms being used.
34
35 MR ROSER: Q. If you just turn up tab 310, Mr Davoren,
36 which I think is in the same volume. That is a statement
37 of complaint which was taken from [AE].
38 A. Right.
39
40 Q. Correct?
41 A. [AE], yes.
42
43 Q. My learned friend took you to the second
44 page yesterday where [AE] says that she was going to notify
45 the police. She has ticked "yes".
46 A. Yes.
47

1 Q. You've given evidence that that was an independent
2 statement taken within the professional standards body that
3 you belonged to?
4 A. Yes.
5
6 Q. Then subsequently that was sent to you?
7 A. Yes.
8
9 Q. You received that, do you have a recollection, about
10 8 October - that statement was taken on 5 October?
11 A. It would have come to me very soon after that, yes.
12
13 Q. You were taken to some documents yesterday in relation
14 to this. On the 8th, at tab 316 --
15
16 THE COMMISSIONER: Tab 316.
17
18 THE WITNESS: Sorry, which one now are you talking about?
19
20 MR ROSER: Q. Tab 316. That's a letter that you sent
21 [AE] after you received the complaint?
22 A. Yes.
23
24 Q. And you say in the first paragraph:
25
26 *Thank you for your Statement of Complaint*
27 *that arrived here today.*
28
29 Do you see that?
30 A. Yes.
31
32 Q. And then, if I can take you to the third paragraph:
33
34 *The next step will probably be the police*
35 *investigation ...*
36
37 You got that because, on the documents, she was going to
38 report that to police; correct?
39 A. Certainly because --
40
41 MR BARAN: I object again. The question is misleading.
42 Behind tab 313 there is a letter from the police which
43 makes it plain as a pikestaff that they had the material,
44 and I object to the relevance of the cross-examination.
45 It's going nowhere. They were reported to the police.
46
47 MR ROSER: They didn't report to the police. The reason

1 why the statement came from Detective Watters on the 8th
2 was because the complainant made a statement on the 8th.

3
4 THE COMMISSIONER: To the police?

5
6 MR ROSER: Yes.

7
8 Q. On 8 October 1999, you received the complaint, didn't
9 you?

10
11 MS LONERGAN: I'm having trouble hearing Mr Roser,
12 Commissioner.

13
14 MR ROSER: Q. Can you answer the question?

15 A. I'm not sure what the question is.

16
17 Q. Tab 316, have you got that?

18 A. Tab 316, yes.

19
20 Q. You wrote to [AE]?

21 A. Yes.

22
23 Q. And you said you'd just received the statement of
24 complaint?

25 A. Yes.

26
27 Q. That's when you'd just received it from the internal
28 body - your internal body?

29 A. I received it from the person who took the complaint.

30
31 Q. That's right. And then in the third paragraph you
32 say:

33
34 *The next step will probably be the police*
35 *investigation ...*

36
37 Do you see that?

38 A. Yes.

39
40 Q. You got that information because of what was in the
41 complaint, that she was going to report the matter to
42 police?

43 A. No.

44
45 Q. Where did you get that from?

46 A. Normal procedure.

47

1 Q. What's the normal procedure?
2 A. That we would report the matter to the police, and
3 I spoke to the police about the matter and discovered
4 something of the history that went back to 1953.
5
6 Q. When did you report it to police?
7 A. I would have done it by telephone to CPEA.
8
9 Q. When?
10 A. Just after I received the complaint.
11
12 Q. That's the letter - the statement of complaint.
13
14 MS LONERGAN: Commissioner, in fairness the witness should
15 be shown the document behind tab 317 which deals with this
16 very matter.
17
18 MR ROSER: I've just been advised of the time.
19
20 THE COMMISSIONER: Would it be convenient to take the
21 morning tea, Mr Roser?
22
23 MR ROSER: Thank you.
24
25 **SHORT ADJOURNMENT**
26
27 MR BARAN: Commissioner, I seek the same order.
28
29 THE COMMISSIONER: Yes.
30
31 MR ROSER: I've spoken to my learned friend counsel
32 assisting and I'll move on.
33
34 THE COMMISSIONER: I'm sure you've been put straight.
35
36 MR ROSER: As women do from time to time, particularly
37 strong women around here.
38
39 MS LONERGAN: I take that as a compliment from my learned
40 friend.
41
42 MS GERACE: As do I.
43
44 MR ROSER: Q. If I can take you to 372 in volume 5; do
45 you have that?
46 A. Yes.
47

1 Q. That's the confidential child sexual abuse
2 information. Is that the document you have in front of
3 you?

4 A. Yes.

5

6 Q. You were taken to that document earlier this morning
7 and that's dated 4 March 2003. Do you see that?

8 A. Yes.

9

10 Q. You were taken to some of these details also. In
11 relation to the offence details, do you see that?

12 A. Yes.

13

14 Q. You relate there - I think you agreed this morning -
15 that the brief narrative, if I can just take you there,
16 third line down:

17

One complaint was received in 1999 ...

18

19
20 Do you see that?

21 A. Yes.

22

23 Q. And you agreed that that's [AE]?

24 A. I'm a bit confused about the letters, but --

25

26 Q. If you can just look up the letters

27 A. [AE], yes.

28

29 Q. And one in 2001. That relates to [AC]?

30 A. [AC], yes.

31

32 Q. And then you state:

33

*Neither complainant was prepared to talk to
34 the police.*

35
36

37 Why did you get that so wrong?

38 A. I have no idea.

39

40 Q. Because you knew that [AE] had reported the matter to
41 police in 1999; correct?

42 A. Yes.

43

44 Q. Also, you knew that [AC] had written in her
45 complaint/statement that she was prepared for her
46 information to be given to police to support other people -
47 other victims?

1 A. Yes.

2

3 Q. Can you give any explanation why you would put
4 something false in that document like that?

5 A. I have no idea. I don't know the status of this
6 particular document at all.

7

8 Q. No, but it's your document, isn't it, and what you are
9 asserting there is factual correctness?

10 A. But there are indications that I have already reported
11 the matter to the police, so this is --

12

13 Q. I'm just asking you about this particular document.

14 A. As I've said, I don't know what this document is
15 about.

16

17 Q. Were you trying to tell the truth when you drafted
18 this particular document?

19 A. I always try and tell the truth.

20

21 Q. Why did you get it so wrong?

22 A. I've said I do not know. I do not know what the
23 status of this is. The fact that it's got my name on it
24 doesn't necessarily mean that was the way I presented it.

25

26 Q. So, what, someone else could have drafted this
27 document; is that what you're saying?

28 A. Well, it's not impossible.

29

30 Q. Do you remember drafting this particular document?

31 A. I do not. It was a standard sort of document I did,
32 but what this one is, I don't know.

33

34 MR ROSER: Nothing further, thank you, Commissioner.

35

36 <EXAMINATION BY MR GYLES:

37

38 MR GYLES: Q. Mr Davoren, Mr Roser was asking you some
39 questions about ultimately it being the decision of the
40 bishop as to whether a report a matter to the police; do
41 you recall that?

42 A. Yes.

43

44 Q. I think your expression about that was, you said
45 "technically that might be right" but for all intents and
46 purposes, is it the case that you would make a
47 recommendation to the bishop about reporting and, in your

1 experience, that recommendation was always followed?
2 A. Yes, I would indicate that I was going to report and
3 I was never directed not to do so.
4

5 Q. Can I please take you, Mr Davoren - you may have it in
6 front of you - to volume 4 of the tender bundle. Could
7 I take you to tab 304. You'll recognise that letter as a
8 letter of 10 August 1999 sent to you by Father Burston --
9 A. Yes.

10
11 Q. -- concerning the [AL] and the [AK] issue; do you see
12 that?
13 A. Yes. I'm puzzled by the names, though. Certainly the
14 one I'm familiar with is [AC] and whatever the other one
15 was.
16

17 THE COMMISSIONER: [AE].

18
19 THE WITNESS: [AE] and [AC].
20

21 MR ROSER: Q. Perhaps if you look at the pseudonym list
22 so you are clear in your mind as to who [AL] and [AK] were.
23 If you look at that list in the witness box, you'll see who
24 [AL] and [AK] are.
25 A. [AL] certainly rings a bell, but --
26

27 Q. There will be a list there. There should be a list
28 that you have access to in the witness box where you'll be
29 able to look up those names.
30 A. Right.
31

32 Q. Can you see [AL] and [AK] on that pseudonym list?
33 A. They're not names to me. The ones that I'm dealing
34 with were [AC] and - I can't find the other one - [AC] and
35 [AE].
36

37 Q. For the moment, if you could put [AC] and [AE] to one
38 side and this letter, it's apparent on the face of it, that
39 it is directed towards [AL] and [AK]. You'll see that?
40 A. Yes.
41

42 Q. So Father Burston is writing to you on 10 August 1999
43 making notification to you that Father McAlinden has been
44 accused by [AL] and [AK] of sexual assault; do you see
45 that?
46 A. Yes.
47

1 Q. What Father Burston tells you is that the information
2 has come from them.
3 A. Yes.
4
5 Q. Sorry, if you just excuse me for a moment. Can you
6 assume that those two people are sisters, if that jogs any
7 recollection?
8 A. I know nothing about them.
9
10 Q. This was a letter that was sent to you, and what
11 Father Burston is telling you is that information has come
12 from these sisters, who do not wish to be involved in civil
13 action - you'll see that in the second paragraph?
14 A. Yes.
15
16 Q. They do not wish to take the matter to the police, you
17 see that?
18 A. Yes.
19
20 Q. But what is said is:
21
22 *... I think this is a matter where*
23 *"intelligence" could well be given to the*
24 *police.*
25
26 Do you see that?
27 A. Yes.
28
29 Q. So that is despite the wishes of the relevant victims
30 that they do not want to go to the police, what Father
31 Burston is raising with you is the passing on of
32 information by way of intelligence to the police in respect
33 of the [AL] and [AK] complaints?
34 A. Yes.
35
36 Q. That's what you understand was being asked of you;
37 agreed?
38 A. Sorry?
39
40 Q. That is what you understand was being raised with you
41 by Father Burston?
42 A. Yes.
43
44 Q. Can we take it from the fact that you cannot now
45 independently recall who [AL] and [AK] were, that you have
46 no recollection now of when you received this letter?
47 A. No, I have no recollection of it.

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Q. Can I take you forward, please, to tab 309. For the record that is exhibit 164. You'll see that this is a letter of 24 August 1999, which my learned friend Ms Lonergan took you to yesterday, and it is your response to Father Burston, referring to the letter of 10 August which I've just taken you to.

THE COMMISSIONER: Mr Gyles, did you say tab 309?

MR GYLES: I'm sorry, tab 308, I apologise.

THE COMMISSIONER: Mr Davoren, it's the one before that.

MR GYLES: Q. Tab 308, Mr Davoren. I'm sorry, I might have confused you. It's entirely my fault.

A. Right.

Q. Having now looked at the response of 24 August 1999, we can be very confident, can't we, that firstly you received the letter of 10 August 1999 from Father Burston; agreed?

A. Yes.

Q. And despite the fact that you may have missed him in a communication the previous day, what you were telling him was that you would pass this matter on to the police?

A. Yes.

Q. That's what you are telling him, isn't it?

A. Yes.

Q. That is, in effect, what he has asked you to do, to pass on this information by way of intelligence. We know that from the letter of 10 August, don't we?

A. Yes.

Q. So you, in effect, have agreed to do that and you've told Father Burston in your letter of 24 August that that is what you will do. Do you see that?

A. Yes, I'm confused by the introduction of those two people I don't know anything about. My reaction would have been that I was reporting the one I received - the complaint I received in 1999, who had given permission to report the matter, and I had reported it.

Q. You may be confused about the timing, but looking at

1 this correspondence, we have the letter of 10 August 1999,
2 which I've taken you to previously.
3 A. Yes.
4
5 Q. That letter concerns [AL] and [AK], not any other
6 victims; agreed?
7 A. Yes.
8
9 Q. That is, the document which is at tab 304, the letter
10 of 10 August?
11 A. Right. 10 August, 24 August, yes.
12
13 Q. You'll see that in the 24 August response you actually
14 refer to the letter of 10 August.
15 A. Mmm-hmm.
16
17 Q. That is the letter of 10 August regarding
18 Denis McAlinden. Despite the fact that you don't have an
19 independent recollection, having looked at those two
20 documents, it is reasonably clear, isn't it, that what you
21 were telling Father Burston on 24 August was that you would
22 pass on the information that had been provided to you on
23 10 August by Father Burston on behalf of the diocese to the
24 police?
25 A. Yes.
26
27 Q. You will see if you go then to the following tab,
28 tab 309, which is a document of the same date as your
29 response to Father Burston, there is the child sexual abuse
30 information form; do you see that?
31 A. Yes.
32
33 Q. Of the same date?
34 A. Mmm-hmm
35
36 Q. You'll see that the subject matter of the information
37 contained in that form is the [AL] and [AK] complaints of
38 sexual abuse by McAlinden.
39
40 (Transcript suppressed from page 2045 line 40 to
41 page 2046 line 3)
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MR GYLES: Q. Again, appreciating that you do not now have a recollection of what you did on 24 August 1999, we know, don't we, from your correspondence that you told Father Burston that you would pass on the subject matter of his disclosure to you, namely, the [AL] and [AK] complaint, to the police?

A. Yes.

Q. Having told Father Burston that you would pass that matter on to the police, would you expect that you would have done so?

A. Yes.

Q. Having seen the document at tab 309, prepared it would seem on its face for the purpose of making of such disclosure, dated the same date as your indication to Father Burston that you would pass the matter on to the police, that this document was prepared for the purpose of providing this information to the police?

A. Yes.

Q. You would be able to say from this sequence of correspondence, wouldn't you, that there is no reason to think that you would not have passed this information on to the police?

A. No.

Q. So you agree that --

A. And I see under "Victim details" under "Name" concurs with what I had stated a little while ago.

Q. When you were answering Mr Roser's questions about being unsure as to the way in which this document was handled, is it the case now that when you have seen the sequence of correspondence and seen your state of mind as at 24 August, you can be very confident to say that --

A. Yes.

Q. -- you would have passed this information on to the police in this way?

A. Certainly.

Q. Can I take you to one further document which might

1 give you additional confidence about that, and it is in
2 volume 6, at tab 467. I don't propose to take you through
3 the detail of this email correspondence, but you can assume
4 that it postdates your time at the Professional Standards
5 Office and it concerns dealings between the office and
6 Detective Watters around August 2005.

7 A. Right.

8
9 Q. Can I direct your attention, first - you'll see on the
10 bottom there is numbering, of which the first is page 1232
11 on the bottom. Do you see that? You see the first page is
12 1232 on the bottom?

13 A. Right.

14
15 Q. Could you please go forward to page 1236. What you
16 see there is an email from the CP&SCS, Pat Brown, to
17 Mark, you can assume being Mark Watters, Detective Watters.
18 What is suggested is that it may be worth while
19 Detective Watters contacting Michael Salmon at the Catholic
20 Church Professional Standards Unit; do you see that?

21 A. Yes.

22
23 Q. And Michael Salmon came after you?

24 A. Yes.

25
26 Q. You see the comment:

27
28 *He frequently sends us info on ex*
29 *priests ...*

30
31 Do you see that?

32 A. Yes.

33
34 Q. If you go to page 1325, so coming back towards the
35 front of the tab, we see the email at the bottom is
36 Detective Watters making the communication with the PSO,
37 as had been recommended, and at the top of that page,
38 Michael Salmon gives information to Detective Watters
39 concerning the information the PSO had about McAlinden.
40 You see that? What we see here really is the system
41 working in the sense that the PSO is a recipient of
42 information about these sorts of matters and here we see
43 the New South Wales police getting in contact with them and
44 being provided with information. Do you see that?

45 A. Yes.

46
47 Q. If you could then, please, go forward to page 1233,

1 and that is an email from Rosanna Harris to
2 Detective Watters. You'll see about two-thirds or so of
3 the way down that email it says:

4
5 *A copy of the information provided by the*
6 *then PSO Director to the then CPEA on*
7 *24 August 1999 is attached.*
8

9 If you go through to page 1238, that on the face of it
10 appears to be the document that I've just taken you to of
11 24 August 1999?

12 A. Mmm-hmm.

13
14 Q. So it would suggest that the records of the PSO
15 indicate that that information was passed on on 24 August
16 1999, because that's what Rosanna Harris says in that
17 email. That's right, isn't it?

18 A. Sorry, what --

19
20 Q. Rosanna Harris is telling Detective Watters in her
21 email of 2 August that that information, namely, the
22 document that was dated 24 August, was provided by the then
23 PSO director, who I assume is you --

24 A. Mmm.

25
26 Q. -- on 24 August. That's right, isn't it?

27 A. Yes.

28
29 Q. You can put that to one side.

30
31 MS LONERGAN: I tender that particular document behind
32 tab 467.

33
34 THE COMMISSIONER: All of the documents in it?

35
36 MS LONERGAN: Yes. It does appear behind another
37 statement from a particular police officer, but it would be
38 appropriate to tender it in relation to this witness's
39 evidence, in my respectful submission.

40
41 THE COMMISSIONER: All of the material behind tab 467 will
42 be admitted and marked exhibit 191.

43
44 **EXHIBIT #191 ALL MATERIAL BEHIND TAB 467**

45
46 MR GYLES: Q. If you could please put that volume away
47 and I would like you to then go to volume 5 of 7.

1
2 MR SKINNER: On that tender, may I seek a clarification?
3
4 THE COMMISSIONER: Yes, Mr Skinner.
5
6 MR SKINNER: On page 1233, which is part of it, there has
7 been a redaction - it's just a handwriting thing, but at
8 about point 8 of the document it would assist if that was
9 clarified as being [AC], not [AL].
10
11 MS LONERGAN: [AC], Commissioner.
12
13 THE COMMISSIONER: It looks like [AC] and it is meant to
14 be [AC], Mr Skinner, but just to make sure that everyone
15 understands.
16
17 MR SKINNER: It looks a bit like [AL], but I'm grateful
18 for that.
19
20 MR GYLES: Q. Going to volume 5, Mr Davoren, if you
21 could please go to tab 372, you recognise this document as
22 a document you've been taken to, including recently by my
23 learned friend Mr Roser; do you recall that?
24 A. I'm sorry, I didn't hear you.
25
26 Q. You will recognise this document as being one that you
27 were taken to this morning including by Mr Roser and you
28 answered some questions about. You'll see that?
29 A. Yes.
30
31 Q. Particularly to what we see under the "Offence
32 details" part of the document?
33 A. Yes.
34
35 Q. In terms of context, this document is a document dated
36 4 March 2003, which is the date on the bottom of the
37 document.
38 A. Yes.
39
40 Q. What you've said in respect of the subject matter of
41 the relevant complaints, that you understand them to be
42 complaints by [AE] received in 1999 and a complaint of [AC]
43 received in 2001. That was your evidence this morning, as
44 I understand it.
45 A. Right.
46
47 Q. As I understand your evidence, the situation is, is

1 it, that where a police investigation is under way in
2 respect of an allegation of sexual abuse by a member of the
3 clergy, in the ordinary course neither your office nor the
4 relevant diocese would conduct a parallel investigation?

5 A. Definitely not.

6

7 Q. That was left to the police to do the investigation;
8 agreed?

9 A. Yes.

10

11 Q. One of the reasons for that would be that you would
12 not want to disturb or hinder what the police were doing in
13 their efforts?

14 A. Indeed.

15

16 Q. You'll see in the "Offence details" there's reference
17 to the church having appointed two independent
18 investigators.

19 A. That puzzles me, because --

20

21 Q. I'll ask you a couple of questions about it. I think
22 your evidence in connection with that sort of investigation
23 was that if that was done, and if findings were made
24 substantiating the allegations, then you would expect there
25 would be documents created as part of that process?

26 A. Yes.

27

28 Q. The position in respect of the [AE] and [AC]
29 complaints, as you understood them on 4 March 2003, was
30 that they were the subject of police investigations.
31 That's right, isn't it?

32 A. Yes.

33

34 Q. So in the ordinary course of things, you would not
35 expect either your office or the church to have
36 commissioned their own independent investigations while the
37 police were investigating; that's right, isn't it?

38 A. That's right.

39

40 Q. Assuming that there are no documents that we have in
41 connection with any other independent investigations by the
42 church, is it the case that that matter, namely, the
43 proposition that the church had conducted its own
44 independent investigations, may just be a mistake in this
45 document?

46 A. It would seem most likely to me. I had talks with the
47 police as soon as we heard of this matter and they gave me

1 a run-down on the investigation that had gone on. In 1995
2 there was a warrant out for his arrest. Certainly there
3 seemed no point whatever in us conducting it and he was out
4 of the country and his faculties had been removed so he
5 wasn't supposed to function as a priest anywhere in the
6 world.

7
8 Q. What, in effect, you're saying is that for those
9 reasons, in addition to those that I suggested, the letter
10 is likely to be a mistake in terms of --

11 A. I would have expected with this sort of document that
12 I would have signed it and none of these have my signature
13 on them.

14
15 Q. If the document was prepared by someone else, you
16 wouldn't agree with that fact --

17 A. Yes.

18
19 Q. -- in the ordinary way these things are done, which
20 would be that there would not be such investigation?

21
22 MS LONERGAN: I object.

23
24 THE WITNESS: I find it highly unlikely --

25
26 MS LONERGAN: I object.

27
28 MR GYLES: I don't need to take it further. I withdraw
29 the question. I don't need to take it any further.

30
31 Q. You were asked some questions about two emails this
32 morning, which is exhibit 190. I don't need to take you to
33 them. You gave some evidence about having a discussion
34 with Father Burston concerning James Fletcher and on the
35 topic of whether he should be stood down until the police
36 investigation was complete. Do you recall those questions
37 this morning?

38 A. Yes.

39
40 Q. I think your position ultimately was - and tell me if
41 I'm mistaken about it - that Father Burston told you, to
42 the best of your recollection, that - sorry, he told you
43 about some elements of [AH]'s behaviour which cast some
44 doubt on the validity of the allegation; correct?

45 A. That's his perspective, yes.

46
47 Q. And also made reference to the absence of other

1 complaints having been made?

2 A. Through my office, certainly. He was talking about
3 his office, yes.

4

5 Q. I think your words were Father Burston told you where
6 he stood as to what his level of information was on that
7 topic?

8 A. Yes.

9

10 Q. You did not challenge him on that, did you?

11 A. I did not have any information more than he had that
12 would allow me to challenge him.

13

14 Q. For that reason, it is the case, isn't it, and I think
15 you said this morning, that you did not make a
16 recommendation to him that Fletcher should be stood down
17 pending the investigation, at least at that point?

18 A. I did not feel I was competent so to do.

19

20 MR GYLES: Thank you, I have no further questions

21

22 MS GERACE: Commissioner, could I have a short indulgence
23 to ask about the documents? I've been asked to ask about
24 the process of sending the complaints in.

25

26 <EXAMINATION BY MR GERACE:

27

28 MR GERACE: Q. If you could open again document 309,
29 volume 4. This form was the standard form used by your
30 office to disseminate information to the Police Service; is
31 that right - just the form itself?

32 A. Yes.

33

34 Q. The document itself does not contain the address of
35 the CPEA; do you agree with that, or where it was to be
36 sent?

37

38 MS LONERGAN: Commissioner, this witness has already given
39 evidence that it would have been sent with a covering
40 letter.

41

42 MR GYLES: If the proposition being advanced by Ms Gerace
43 is that this document was not sent, there is no possible
44 basis on which she could be putting that.

45

46 MS GERACE: I'm not advancing that proposition. I just
47 want to understand how it was sent and what records and

1 where they were kept. I have not actually advanced any
2 proposition at all at this stage.

3
4 MR BARAN: Can I object to this line of questioning.
5 There has been a summons issued to produce documents to the
6 PSO and they have all been produced. If there are any
7 issues about documents and processes, as I understand it,
8 the documents have been produced and much of them are in
9 the bundle. I object to this grant of leave

10
11 MS LONERGAN: Commissioner, what Mr Baran raises is
12 correct. Those documents have been checked by those who
13 assist you and the relevant documents, to the extent that
14 they were able to be found within that material, have been
15 extracted and put in the bundles. I draw to the attention
16 of those at the bar table that some of the copies in the
17 records have come from other sources. The document we are
18 now looking at is from the Zimmerman Services folder.
19 There may well be a reason why other documents are not in
20 this material - they have not been found or made available.
21 A cross-examination along the lines that documents aren't
22 present in the bundles or before you, Commissioner, may be
23 somewhat misconceived.

24
25 This witness has already given evidence as to what the
26 usual practice was in terms of how these documents were
27 sent to the Child Protection Enforcement Agency and what
28 would be the expected documentation process, but if it is
29 to be put to the witness that because some papers are
30 missing from the bundles that somehow exhibits there has
31 been a process not followed, that would not be fair, in my
32 respectful submission.

33
34 THE COMMISSIONER: I gather that's not what --

35
36 MS GERACE: No, my questions are far more benign to that.
37 I didn't intend to make any assertion to that effect.

38
39 THE COMMISSIONER: Mr Baran has an objection to the grant
40 of leave. I rather gather, Ms Gerace, you are aiming at
41 where Mr Davoren kept his records.

42
43 MS GERACE: Precisely. Carrying on from the evidence he's
44 given of his standard procedure that the matter was sent by
45 correspondence, the witness also just gave some evidence
46 that the complaint would ordinarily be signed. I want to
47 be clear about that and where it was kept when it came back

1 or was the usual practice that he got confirmation back
2 from the police and where those matters were kept, and
3 that's all. I don't intend to make any assertion or
4 otherwise about the material, just to get some
5 fact-finding.

6
7 THE COMMISSIONER: Yes.

8
9 MS GERACE: Q. Mr Davoren, sorry about that, we were
10 having some argument about whether I should ask you some
11 questions. The document that we are seeing, the form, as
12 I understand your evidence, was sent by letter to the CPEA?
13 A. That is my understanding, my memory, yes.

14
15 Q. Did I understand you to give in answer to a question
16 by Mr Gyles the following information, that ordinarily a
17 complaint form sent on your instruction would be signed by
18 you?

19 A. Yes, to the CPEA. Yes.

20
21 MR GYLES: I maintain my objection. It doesn't matter
22 from Ms Gerace's point of view whether this form was signed
23 or not. The only possible relevance of this question is
24 whether or not it was sent. It's not open to her to have a
25 debate about this, in the interests of her client.

26
27 THE COMMISSIONER: Thank you, Mr Gyles. I think that
28 Ms Gerace is just seeking to explore with the witness where
29 he kept things, perhaps. Is that right?

30
31 MS GERACE: That's absolutely right.

32
33 THE COMMISSIONER: Are you getting to the point?

34
35 MS GERACE: I am, yes, I will get there.

36
37 Q. Mr Davoren, your usual practice would be to sign the
38 forms and they would be dispatched by letter to the CPEA -
39 yes?

40 A. I'm dealing with something that went back to 1999.
41 That would be my expectation of what I would have done, but
42 as I say, these forms puzzle me. I don't - I don't know
43 what to make of them.

44
45 Q. Mr Davoren, when a form was completed by you or on
46 your instruction, were these child sexual abuse information
47 dissemination forms filed somewhere centrally within the

1 PS0? Was there a folder of these forms or were they kept
2 on individual files?

3 A. That, I can't remember. We had our whole system
4 computerised, but precisely - I would imagine it was filed
5 under cases rather than police as a file.
6

7 Q. Can you assist and tell us was it, in your experience,
8 the case that the Police Service acknowledged and sent
9 documents back to you where they received complaints?
10

11 MR GYLES: I object. My learned friend keeps saying that
12 this is going in some manner to the collection of documents
13 which is entirely irrelevant to the issues in --
14

15 THE COMMISSIONER: I think Mr Davoren has already given an
16 answer to this question much earlier, that he expected that
17 there was an acknowledgment from the police.
18

19 MS LONERGAN: Can I reiterate my earlier comment along the
20 lines that these documents have been obtained from a number
21 of sources and it is by no means clear that the document to
22 which my learned friend Ms Gerace has just taken the
23 witness is one that was on the PS0 files. In fact, the
24 note in the top right-hand corner denotes for those present
25 at the bar table that this copy was in fact obtained from
26 Zimmerman Services and that is an important distinction.
27

28 THE COMMISSIONER: One would not expect any covering
29 letter to be annexed to it from this witness.
30

31 MS LONERGAN: Correct.
32

33 MS GERACE: I don't have a position to make. It was
34 really to establish the position being put that it was sent
35 or otherwise were not positions advanced by me, they were
36 advanced by, firstly, in relation to those documents,
37 Mr Roser, that they may not have been, and then, secondly,
38 by Mr Gyles that they were in fact. So I hadn't actually
39 advanced any proposition. It was merely to understand the
40 nature of the documents that the witness is giving evidence
41 on.
42

43 THE COMMISSIONER: Thank you, Ms Gerace.
44

45 MS GERACE: I just wanted to make that clear. I do
46 understand the position of counsel assisting. That being
47 so, I have no further questions.

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<EXAMINATION BY MR HARBEN:

MR HARBEN: Q. Mr Davoren, you were taken to two emails which are in almost identical terms --

A. Sorry, I'm having difficulty hearing you.

Q. You were taken earlier this morning and again a little while ago to two emails under your hand dated 18 and 19 March 2003 addressed to Mr McDonald. Do you remember those emails?

A. I do, yes.

Q. They are in slightly different form but they concern the same subject matter.

A. Yes.

Q. Just a short time ago you were reminded of that evidence, and in relation to the question of the consideration of standing down Father Fletcher, about which those emails were concerned, you said something to this effect, that at that time you did not feel confident to make that recommendation that he be stood down or stood aside. Do you remember saying that?

A. I do, yes.

Q. Do you have volume 5, and could you please go to tab 375.

A. Yes.

Q. That's the second of the emails that you were directed to, isn't it?

A. Apparently, yes.

Q. You will see that it's broken into two basic time periods. The first three numbered paragraphs seem to refer to a period in November 2002.

A. Yes.

Q. In paragraph 1, without reading it, you can see that it confirms a conversation that you had with [BJ] in relation to her son, [AH].

A. Yes.

Q. You understood from that conversation that there had been a complaint about Father Fletcher and his dealings with [AH]. You understood that to be the case?

1 A. Yes.
2
3 Q. Paragraph 2 then refers to further inquiries that you
4 made by speaking to the CPEA; is that correct?
5 A. Yes, I would have thought I was speaking to Maitland,
6 but obviously I've - most of my dealings were with CPEA, so
7 I must have talked to them, yes.
8
9 Q. If you accept at face value what is in paragraph 2,
10 following your conversation with [BJ], you spoke to CPEA
11 and told them of the earlier conversation and, in the
12 process, identifying Father Fletcher. That's what it says,
13 isn't it?
14 A. Yes.
15
16 Q. During that discussion you learned of the
17 identification of the person you've described as Sergeant
18 Peter Fox in Maitland?
19 A. Yes.
20
21 Q. You go on to say in paragraph 2 that you then rang
22 Sergeant Fox?
23 A. Yes. I couldn't swear to the fact that it was Mr Fox,
24 but --
25
26 Q. But nevertheless that's how you described --
27 A. Yes.
28
29 Q. -- the conduct that you engaged in on that day?
30 A. Right.
31
32 Q. Then in paragraph 3 you describe some events that you
33 were able to put in there as a consequence of your
34 discussion with Sergeant Fox?
35 A. Sorry, I don't follow that point.
36
37 Q. Paragraph 3 is a paragraph that describes thoughts
38 that you had following your discussion with Sergeant Fox?
39 A. The text reads:
40
41 *Sergeant Fox said that [AH] was not coming*
42 *to the party and there is not much the*
43 *police could do until he does.*
44
45 Q. That information had come from Sergeant Fox; is that
46 correct?
47 A. It would seem so, yes, from the record.

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Q. Just before we go to paragraph 4, they are the three paragraphs that deal with the time period November 2002. That's correct, isn't it?

A. Yes.

Q. In relation to your evidence before that you did not feel confident to make a recommendation about standing Father Fletcher down, at that point in time, following those discussions and inquiries, that's how you would have felt at that time, that you would not feel confident about recommending Fletcher be stood down, on the basis of what you knew at that point in time?

A. I would feel that it was beyond my competence to make such a recommendation from what little I knew.

Q. Because, at that stage, it was no more in your mind than an allegation; is that correct?

A. I really had just heard the discussions from [BJ], and then the police officer, if it was Mr Fox, said that he still hadn't come to the party. End of information.

Q. That's right. So at that stage you didn't feel confident to make any recommendation, had you been asked, about standing Fletcher down?

A. I didn't feel competent, yes.

Q. Competent, I'm sorry, yes. Then if you go to the next four numbered paragraphs, they begin with the date 24 February 2003; is that correct?

A. Yes.

Q. And the first numbered paragraph is 4. That refers to a further telephone discussion with [BJ]?

A. Yes.

Q. You set out in that paragraph some content of the discussion that you and she had regarding [AH]?

A. Yes.

Q. Then in the next paragraph you say that once again you rang Sergeant Fox?

A. Yes.

Q. I think you include in that paragraph these words:

He thought there was a case against

1 Fletcher.

2
3 Do you see that?

4 A. He still lacked enough detail to lay a charge and was
5 continuing his investigation.

6
7 Q. But he prefaced that by saying that he thought there
8 was a case against Fletcher?

9 A. Yes.

10
11 Q. Then the next paragraph is numbered 6. On the same
12 day you spoke to a senior priest.

13 A. Yes.

14
15 Q. The following words are "and official". I take it
16 that that is just the one person?

17 A. Yes.

18
19 Q. I think you have identified that person as Father
20 Burston?

21 A. Yes, I believe so.

22
23 Q. So in February you spoke to [BJ], then Sergeant Fox,
24 then Father Burston?

25 A. Yes.

26
27 Q. Following all of those discussions, as at 24 February
28 2003 you still did not feel competent to make a
29 recommendation that Father Fletcher be stood down, did you?

30 A. No.

31
32 Q. So at any time in either 2003 up until 24 February, or
33 any time previous to that, you wouldn't have felt competent
34 to make any recommendation that Father Fletcher be stood
35 down, would you - you weren't in that position?

36 A. No, primarily because I had at no stage received a
37 formal complaint, which is the basis on which I can give
38 advice.

39
40 Q. Did you regard that, in the absence of that formal
41 complaint as you have been giving evidence about, what the
42 material you had would have been, in your own mind, an
43 allegation that was not substantiated sufficiently for you
44 to feel competent to make such a recommendation?

45 A. I did not know whether it was substantiated or not.
46 I think I again spoke, but I'm not sure, to Sergeant Fox,
47 indicating what had happened in my conversation with the

1 diocese.
2
3 Q. But, in any event, up until and including 24 February
4 2003, it was your position that you did not feel competent
5 to make a recommendation that Fletcher be stood down?
6 A. Exactly.
7
8 Q. You had dealt with a number of bishops, I take it, in
9 your duties?
10 A. Yes.
11
12 Q. One of those bishops was Bishop Malone?
13 A. Yes.
14
15 Q. Did you deal with him by correspondence from time to
16 time?
17 A. I think that would have been my normal way of
18 corresponding with him. I did speak to him on the phone a
19 number of times.
20
21 Q. You spoke to him on the phone from time to time?
22 A. Yes.
23
24 Q. Did you see him in person from time to time?
25 A. Yes, I did.
26
27 Q. Over how many years did you do that?
28 A. During my time as director of Professional Standards.
29
30 Q. If I can recall your evidence correctly, from 1997 to
31 2003; is that right?
32 A. Yes.
33
34 Q. In that time did you build up a rapport with Bishop
35 Malone?
36 A. Yes, I would say so.
37
38 Q. You dealt with him on sensitive matters?
39 A. Yes.
40
41 Q. Confidential matters?
42 A. Yes.
43
44 Q. In your dealings with him, did he appear to you to be
45 forthright with you in what you asked of him or inquired
46 about with him?
47 A. I don't think I had any grounds for thinking he

1 wasn't.

2

3 Q. In 2002, do you now know that in June 2002 [AH]
4 went to the police and made a complaint in relation to
5 Father Fletcher?

6 A. Yes.

7

8 Q. I want to suggest to you that at some stage in 2002
9 Bishop Malone spoke to you on the phone about Father
10 Fletcher.

11 A. My recollection is that Bishop Malone spoke to me
12 about Fletcher once, and that was after the first
13 conversation we had in November 2002.

14

15 Q. When you say "after the first conversation we had", do
16 you mean --

17 A. With [BJ].

18

19 Q. With [BJ]?

20 A. Yes.

21

22 Q. Are you able to identify, in terms of your
23 recollection, when that was?

24 A. Sorry?

25

26 Q. Are you able to identify, in terms of your
27 recollection, when it was after 11 November 2002 that you
28 spoke to Bishop Malone?

29

30 MR BARAN: I object to that. It's an unfair question.
31 There is a document. The document is on the records. It
32 can't be relevant for another recollection to be before
33 you. The witness has given evidence as to exactly how the
34 matters were dealt with in terms of the chronological
35 order. Other recollections, in my respectful submission,
36 are irrelevant.

37

38 MR HARBEN: I can't hear my learned friend's objection.

39

40 THE COMMISSIONER: You can't?

41

42 MR HARBEN: I didn't.

43

44 THE COMMISSIONER: The thrust of the objection is that
45 there are records and other recollections are irrelevant.
46 There are written records. Did I put it fairly?

47

1 MR HARBEN: That may be so, but I'm not cross-examining
2 about other written records. I'm asking this witness about
3 his recollection of speaking with Bishop Malone and I'm
4 trying to ascertain --

5
6 THE COMMISSIONER: On one occasion about Fletcher I think,
7 is that --

8
9 MR HARBEN: If that ultimately is his evidence, that will
10 ultimately be where his evidence falls, but at the moment
11 I'm examining what that evidence is and I submit I'm
12 entitled to do that.

13
14 THE COMMISSIONER: Do you have a recollection of when that
15 conversation took place, Mr Davoren?

16
17 THE WITNESS: No, but I did look at the records and I see,
18 if I may, that the media quoted Bishop Malone here as
19 saying that I had advised him not to stand him down, and my
20 response to that would be that in the telephone
21 conversation I had with Bishop Malone on the subject I said
22 to him I could not, from the information I had, recommend
23 that he take disciplinary action against the man at that
24 time.

25
26 THE COMMISSIONER: Mr Harben, I think given the time, I'll
27 adjourn until 10 past 2.

28
29 **LUNCHEON ADJOURNMENT**

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1 **UPON RESUMPTION:**

2
3 MR HARBEN: Q. Mr Davoren, before lunch I was asking you
4 some questions about the opinion you expressed following
5 the receipt of information by you about Father Fletcher
6 that you did not, at the stage you received that
7 information, feel competent to make a recommendation that
8 Father Fletcher be stood down. Do you remember I asked you
9 those questions?

10 A. Yes.

11
12 Q. You would have, I take it over the years, considered
13 that precise question on other occasions?

14 A. Yes.

15
16 Q. Would it be fair to say that before feeling competent
17 to make such a recommendation you would require some
18 substantial detail?

19 A. Yes.

20
21 Q. So that, for example, a bare allegation would not fit
22 into that definition of "substantial detail" for that
23 purpose, would it?

24 A. Generally not, no.

25
26 Q. Is that because you were of the view that if a bare
27 allegation were made, unsupported by any detail, you would
28 have been of the view in 2002 or 2003 that a person would
29 be entitled to the presumption of innocence?

30 A. Yes.

31
32 Q. That opinion would only change for you once greater
33 detail and persuasive detail was known to you.

34 A. Yes.

35
36 Q. You said earlier that you had, amongst other things, a
37 number of telephone discussions with Bishop Malone about
38 various things.

39 A. Yes, with his office anyway - not always him.

40
41 Q. I'm sorry?

42 A. With his office, not always with him.

43
44 Q. No, but with Bishop Malone himself from time to time.

45 A. Yes, I don't remember many of those calls, but --

46
47 Q. But at least some time --

1 A. Yes.
2
3 Q. -- you spoke to Bishop Malone?
4 A. Yes.
5
6 Q. I want to suggest to you that in one such call,
7 Bishop Malone informed you that an allegation had been made
8 against Father Fletcher, but there was no detail of it. Do
9 you remember that discussion?
10 A. Yes.
11
12 Q. During that discussion and providing that information
13 to you Bishop Malone asked your opinion as to whether you
14 thought Father Fletcher should be stood down?
15 A. Yes.
16
17 Q. And you replied words to this effect, that as it was
18 just an allegation, meaning without any other detail,
19 Father Fletcher was entitled to the presumption of
20 innocence at that point, or words to that effect?
21 A. Yes.
22
23 Q. And that as it was an allegation only, it was not
24 necessary that he be stood down at that point?
25 A. That there were not sufficient grounds for stepping
26 him down.
27
28 Q. I want to suggest to you that that conversation took
29 place in June 2002.
30 A. I'd have thought November 2002, but I don't have a
31 clear recollection of dates.
32
33 Q. So it's possible that it was earlier than November
34 2002?
35 A. I'd be surprised. I think my first introduction to
36 this was the calls from [BJ].
37
38 Q. But nevertheless you would concede that it's at least
39 a possibility that it occurred before November 2002.
40 A. A possibility but not likely.
41
42 Q. Mr Davoren, could you go to volume 5, tab 384: do you
43 have that?
44 A. I have, yes.
45
46 Q. So that we are hopefully looking at the same document,
47 is that an email addressed to "Dear Angela"? First of all,

1 is the first page an email?
2 A. Yes, it's Angela Kyriazopoulos from Stephanie Thomas,
3 PS0.
4
5 Q. Monday, 19 May 2003?
6 A. Yes.
7
8 Q. It's addressed to "Dear Angela" and refers to a number
9 of attachments; is that correct?
10 A. Yes.
11
12 Q. If you turn over to the second page, do you see
13 that is a pastoral message to the diocesan community from
14 Bishop Michael Malone?
15 A. Yes.
16
17 Q. Is that a document you've seen before?
18 A. Not that I recall, no.
19
20 Q. Not for the purpose of this case?
21 A. I would still be in office, but I don't recall it.
22
23 Q. When was it in 2003?
24 A. I'm not quite sure. I think it was September/October,
25 so I was certainly in office still then.
26
27 Q. In the course of your duties as they were, did you
28 from time to time receive documents from various dioceses
29 such as the Maitland-Newcastle diocese?
30 A. Not regularly, no.
31
32 Q. Did you ever receive such documents?
33 A. Well, yes, obviously I have. This one clearly
34 I received. I just don't recall it.
35
36 Q. No. Do you see over the front page it's addressed to
37 the PS0?
38 A. Yes.
39
40 Q. That's where you were?
41 A. That's right.
42
43 Q. Was it the case that important material was brought to
44 your attention that involved priests and allegations of
45 sexual abuse?
46 A. Yes.
47

1 Q. So that it would stand to reason, wouldn't it, that
2 the email and the attachments would have been brought to
3 your attention --
4 A. Yes.
5
6 Q. -- at around about that time?
7 A. Yes.
8
9 Q. If you look at the first page of that pastoral message
10 you'll see in the second-last paragraph a paragraph
11 beginning, "I sought advice"?
12 A. Yes.
13
14 Q. Do you see:
15
16 *I sought advice from the NSW Professional*
17 *Standards Office ... and others.*
18
19 Do you see that?
20 A. Yes.
21
22 Q. First of all, do you remember reading that?
23 A. Well, I'm sure I would have, but I don't recall.
24
25 Q. If you had read that and it had been incorrect, would
26 it have been your usual practice to take issue with it,
27 with the author?
28
29 MS LONERGAN: Commissioner, there is some ambiguity in
30 terms of the timing at which the allegation in relation to
31 having taken advice is identified within that document.
32 Although it does mention "I've been criticised about
33 something that happened in June 2002", it doesn't in the
34 following paragraph spell out at what points in time those
35 particular conversations occurred.
36
37 MR HARBEN: I'm not suggesting that this establishes that
38 it was said in 2002.
39
40 MS LONERGAN: I apologise. I withdraw my objection.
41
42 MR HARBEN: My question was directed to the generic
43 explanation that advice was sought.
44
45 THE COMMISSIONER: Very well, Mr Harben.
46
47 MR HARBEN: Q. That sentence says:

1
2 *I sought advice from the NSW Professional*
3 *Standards Office (Towards Healing process)*
4 *and others.*

5
6 Firstly, would you understand from that description that
7 that would involve you?

8 A. Yes, I understand that.

9
10 Q. If this had come to your attention in the normal
11 course of your duties, and you had read that and thought
12 that it was incorrect, was it your usual practice to take
13 issue with the author of such a document?

14 A. I would say that it was not precise, but I had not
15 advised the bishop to take action to step Fletcher down, as
16 we have discussed earlier.

17
18 Q. When you say you had not advised, you'd been asked
19 about it and you agreed that you had expressed certain
20 things about that prospect, hadn't you?

21 A. All I would say was that I - from the information that
22 I had, I did not judge that I was competent to advise him
23 to take disciplinary action against Fletcher at the time in
24 question.

25
26 Q. But you agreed with me before that whenever it was
27 that you had the discussion with Bishop Malone, you would
28 have said words to the effect that there was a presumption
29 of innocence to be applied, because there was a bare
30 allegation with no detail - you agreed with that earlier?

31 A. Well, that's associated logically with saying that I'm
32 not in a position to step him down.

33
34 Q. Thank you. I think we can take one thing as agreed,
35 you certainly didn't advise him to step Father Fletcher
36 down, did you?

37 A. No.

38
39 Q. You didn't give that advice; that's agreed, isn't it?

40 A. I did not feel that I was competent so to advise him.

41
42 Q. Would it be fair to say that that sentence is a
43 correct description; meaning when Bishop Malone says in his
44 pastoral message, "I sought advice from the New South Wales
45 Professional Standards Office (Towards Healing process) and
46 others", that would be an accurate representation?

47 A. Yes.

1
2 Q. Just to be fair to you, you maintain that there is
3 some dispute about precisely when that was?
4 A. I'm sure it was related to the first conversation
5 I had with [BJ], which was in November 2002.
6
7 Q. You only ever had the one discussion with
8 Bishop Malone about that prospect?
9 A. Yes, following the conversation I had with [BJ].
10
11 Q. You understand that I'm putting to you that that
12 conversation took place in June 2002? You understand I was
13 putting that to you as a proposition, and I think you were
14 reluctant to agree to it; is that correct?
15 A. Yes, my records have the conversation was November
16 2002.
17
18 Q. Just on that, when you say your "records", what
19 records are you referring to?
20 A. The records I've seen among the thousands of pages
21 that are around.
22
23 Q. Are you able to, from your memory now, identify which
24 document or documents you say constitute the term "records"
25 that you relied on for your recollection as to the timing
26 of the discussion with Bishop Malone?
27 A. I really don't follow that question.
28
29 Q. You used the word "records"; is that right?
30 A. Yes.
31
32 Q. And you relied on "records" for your evidence to say
33 that it was not June 2002 that you spoke to Bishop Malone;
34 is that your evidence?
35 A. My point of reference was I believe the letter which
36 has already been discussed addressed to Michael McDonald of
37 CCER in which I recapitulated the events relating to
38 Fletcher.
39
40 Q. But that document does not identify any time that you
41 spoke to Bishop Malone, does it?
42 A. No.
43
44 Q. If there's a record other than that document, can you
45 identify it, or is this the only document that you can rely
46 on to enable you to have the recollection that it was
47 not June 2002 that you spoke to Bishop Malone? Is this the

1 only document?

2 A. It's the only one I recall, yes.

3

4 MR HARBEN: Thank you, Commissioner

5

6 <EXAMINATION BY MR BARAN:

7

8 MR BARAN: Q. My learned friend Mr Harben asked you some
9 questions a moment ago about this issue with Bishop Malone
10 and the conversation regarding whether or not Fletcher
11 should be stood down. I'm going to read out to you what
12 the bishop has said in his statement, which is exhibit 85
13 at page 5, paragraph 6.2(v), in respect of a conversation
14 that the bishop asserts he had with you on 20 June 2002.
15 He says that a discussion was had on that day where the
16 bishop sought your advice as to whether or not to stand
17 Fletcher down and he then imputes to you words to this
18 effect:

19

20 *Father Fletcher does not have to be stood*
21 *down at this point as there is a*
22 *presumption of innocence in these matters.*
23 *This is an allegation only. You don't have*
24 *to stand him down at this time.*

25

26 Having read what the bishop has said in his statement,
27 firstly, do you say that those are words that you would
28 have used as at 2002?

29 A. Not impossible, but it doesn't sound what I would
30 normally say to the bishop, I would say.

31

32 Q. Having regard to your role, firstly, you required a
33 complaint - that's right?

34 A. If I'm to act in my official capacity, yes, I do.

35

36 Q. Following the complaint, being oral or written, there
37 would have to be obviously an extensive document created,
38 being a formal written complaint?

39 A. Yes.

40

41 Q. It would be with the benefit of that information that
42 you could then provide advice to third parties such as the
43 bishop as to whether or not someone should or should not be
44 the subject of disciplinary action or standing down?

45 A. Yes.

46

47 Q. It's your evidence, isn't it, that as best you can

1 recall it, you had no knowledge whatsoever as at June 2002
2 about the Fletcher issue; that that arose as at November
3 2002?

4 A. That is my memory, yes.

5

6 Q. If a conversation had taken place with the bishop
7 after you had spoken to [BJ] in November 2002, that would
8 have been at a point of time where you would have received
9 the complaint to which you make reference in paragraph 1 of
10 both the first and second emails, namely, that a mother had
11 spoken about her son with very brief detail about an issue;
12 is that so?

13 A. (Witness nods head).

14

15 Q. By February 2003 the position was the complaint had
16 gone further to the police?

17 A. Yes.

18

19 Q. You had nothing to the best of your recollection in
20 terms of a formal written complaint, being a complaint form
21 in writing?

22 A. No.

23

24 Q. From an administrative point of view, your position
25 was, I take it, as at those particular dates, namely 2002
26 in November and February 2003, all you could do was
27 basically say: well, I simply have what the mother has
28 told me and that's it; is that right?

29 A. Yes.

30

31 Q. I'll come back then, if I may, to volume 4 just for
32 a moment, tab 304. I just want to ask you some questions
33 again about this letter that had been sent to you by Father
34 Burston on 10 August 1999 regarding [AL] and [AK]. If you
35 can just have one finger at that particular letter and then
36 another finger over at 309, which is the complaint form.

37 A. Yes.

38

39 Q. Do you see those two documents?

40 A. Yes.

41

42 Q. Going back to tab 304 and the letter of 10 August
43 1999, you see there that Father Burston has said in the
44 third paragraph:

45

46 *However, I think this is a matter where*
47 *"intelligence" could well be given to the*

1 *police. We do not have an address for him*
2 *in this country. At present he is in*
3 *England celebrating his Golden Jubilee*
4 *despite the fact that his facilities have*
5 *been removed since 1993. We suspect that*
6 *he will come back to Australia late*
7 *in August and reside somewhere in the*
8 *Bunbury Region of Western Australia.*
9 *Family are unable to give an exact address.*

10
11 You see those words there?

12 A. Yes.

13
14 Q. If you go to tab 309 and under the fourth heading
15 "Offence details", do you see the wording that has been
16 used about halfway through that paragraph:

17
18 *At present he is in England celebrating his*
19 *Golden Jubilee ...*

20
21 A. Yes.

22
23 Q. Would that have been something taken from the letter
24 of 10 August?

25 A. I would imagine so, yes.

26
27 Q. Going on:

28
29 *Despite the fact that his faculties as a*
30 *priest were withdrawn in 1993.*

31
32 A. Yes.

33
34 Q. That would have been taken from the letter too?

35 A. Yes.

36
37 Q.

38 *Suspect that he will come back to Australia*
39 *and reside somewhere in the Bunbury Region*
40 *of Western Australia.*

41
42 A. Yes.

43
44 Q. Is it fair to say those rather unique factual matters
45 would have come from the 10 August letter behind tab 304?

46 A. I think it's highly likely, yes.

47

1 Q. Was it your practice in those days, given this
2 particular type of reporting, it would be forwarded on
3 without nominating the name of the victims, to the police?
4 A. Yes.

5
6 Q. Is it fair to say that when you wrote at tab 308 to
7 Father Burston, which is exhibit 164, when you say:

8
9 *I will pass the matter on to the police and*
10 *send you a copy of the formal*
11 *communication.*

12
13 Does it look to you as if the "matter" to which Father
14 Burston had made reference, namely, this particular piece
15 of intelligence, had in fact been passed on by you via the
16 complaint form to the Child Protection Enforcement Agency?

17 A. It would certainly appear so.

18
19 Q. You were taken yesterday by my learned friend
20 Ms Lonergan to the complaint of [AE] behind tab 310. Do
21 you recall that when [AE] made the complaint, that shortly
22 thereafter, if you go to tab 311, the police had taken up
23 the [AE] complaint? You'll see there there is a police
24 record that was made, reported 8 October 1999. Does that
25 accord with your memory?

26 A. Which document are you referring to now?

27
28 Q. I'm behind tab 311. Do you see at the top there, date
29 and time reported, 8 October 1999, and it's a COPS report?

30 A. Right.

31
32 Q. Does it accord with your recollection that [AE] and
33 [AE]'s issues, by 8 October 1999, were formally raised with
34 the police at that point?

35 A. Yes, that would be so.

36
37 Q. You made reference yesterday in your evidence to a
38 warrant for the arrest of McAlinden. Could you go, please,
39 to tab 322.

40 A. Right.

41
42 Q. You see there is a warrant for the arrest of
43 Denis McAlinden issued on 1 December 1999, and you gave a
44 number of answers yesterday referring to a warrant. Was
45 this the warrant in terms of time to which you were making
46 reference, namely, the one issued against McAlinden on
47 1 December 1999?

1 A. No. The warrant I was talking about was one issued
2 in - what's the date of this? No, it was in 1995. That
3 was the information I got when I spoke to the police about
4 it. I think that was in Western Australia and he was
5 charged there. I'm not sure that I was aware of this one.
6

7 Q. But either way you did become aware that [AE] had
8 certainly gone to the police?

9 A. Yes.

10
11 Q. Could you go then, please, to tab 318 and you were
12 asked some questions about particular counselling that had
13 been undertaken by Evelyn Woodward. Would you go, please,
14 to the first page behind tab 318. You'll see in the first
15 paragraph that "[AE] was referred to me" - this is the
16 psychologist speaking - "by Father Ron Pickin." I'm not
17 sure if that name is to be published.
18

19 THE COMMISSIONER: That's all right.
20

21 MR BARAN: Q.

22 *... Catholic parish priest of Beresfield,*
23 *after it was reported to him by [BD] that*
24 *[AE] had been ...*
25

26 And there's reference to an unfortunate incident there.
27 Given that that is the way that the report appears to be
28 introduced, does that refresh your memory as to the fact
29 that it wasn't your office who had referred [AE] to this
30 particular counsellor, and it had come via an independent
31 Catholic priest, Father Ron Pickin?

32 A. Yes, when it comes to referral for psychological
33 assistance, I of course did not have a detailed knowledge
34 of who would be best to carry out that function, so the
35 bishop probably got advice from within the diocese and
36 that's what happened. That's why I didn't recognise Evelyn
37 Woodward as a nun - apparently she was one, but I didn't
38 work that out.
39

40 Q. The referral of a victim to a person who was
41 classified as religious or a person who was otherwise a
42 member of the church in terms of counselling, that was not
43 a practice that you would have otherwise followed certainly
44 as at 1999; is that right?

45 A. Confusion about hindsight there. I'm not sure that
46 I was as clear as that. I would have recommended that
47 clearly she was in a state and could do with some

1 assistance and recommended that she - that there would be
2 payment made for her to get counselling.

3
4 Q. I want to ask you some questions about the general
5 practice regarding the Professional Standards Office.
6 Assuming that the police had not become involved, your
7 office would receive a complaint and then a written
8 complaint?

9 A. Yes, the same thing, we would get it in written form.

10
11 Q. Thereafter you would appoint certain members of staff
12 to investigate the complaint and to gather factual
13 information?

14 A. I would send a copy of the complaint to the head of
15 the church concerned - in this case the bishop -
16 recommending that there would be - if there were some
17 complex issues in it and it wasn't straightforward, that
18 there would be an assessor or assessors' appointment to
19 look at the situation.

20
21 Q. What was the role or the function of these assessors?
22 What did they do?

23 A. They interviewed the complainant, identified features
24 of where and when and what, and then they might well - if
25 they felt if there was something peculiar about it, they
26 would come back to recommend that they interview the
27 accused, especially if, as we did occasionally have it, the
28 event took place in a spot where the accused was not at the
29 time.

30
31 Q. Were some of these assessors trained investigators?

32 A. Yes.

33
34 Q. Indeed in the more complex cases would you use
35 assessors who were former police officers?

36 A. Yes, frequently.

37
38 Q. That was because, do we take it, those persons were
39 experts in terms of obtaining facts and asking correct
40 questions?

41 A. Yes.

42
43 Q. In addition, at that time, whilst the assessors were
44 undertaking their work, the Professional Standards Office
45 would also offer comfort and support to the victim?

46 A. Recommended that that be offered in the diocese where
47 it was - where they were living and where they had suffered

1 the abuse.

2

3 Q. And most usually that would take the form of paid
4 counselling or, in the more extreme cases, assisting for
5 payment for a psychiatrist?

6 A. Yes, and also, if they wished it, a meeting with the
7 bishop.

8

9 Q. Indeed, was it the practice, certainly between 1999
10 and 2003, that you would ensure that in cases of sexual
11 abuse that a letter would issue from the bishop just so
12 that the person knew that it had gone to the very top and
13 was being dealt with seriously?

14 A. That was standard procedure that after the bishop
15 received the complaint, I would give him a pro forma letter
16 to write, which he usually edited, and sent off to the
17 accused - the complainant, the victim.

18

19 Q. At all times between 1997 and 2003 did you comply with
20 any request ever made of you by the police for information?

21 A. I believe so, yes.

22

23 Q. From 1997 to 2003 was it your common practice to
24 persuade, as best you could, without being offensive to the
25 victim, to go to police?

26 A. Yes. On occasions I actually accompanied them to the
27 police station to make their complaint.

28

29 Q. When you confronted a victim about the possibility of
30 going to the police, in many cases did you obtain, or did
31 you at least perceive a great deal of resistance by the
32 victim?

33 A. It was common practice for them to not want to go to
34 the police.

35

36 Q. Again, you tell us that in those circumstances you
37 would do your best to persuade them to go and you would
38 accompany them?

39 A. Yes, if they wanted to be accompanied, yes.

40

41 Q. Did you also make it clear to victims that if at a
42 particular point they did not want to go to the police,
43 that was not set in stone and they always had the right to
44 change their mind if they wanted?

45 A. That's right. It was a declaration of the way they
46 felt at the time of signing the document.

47

1 Q. Was it also the case that even though, as in the case
2 of [AL] and [AK], the names were not to be provided to the
3 police, you would do as much as you could to identify to
4 the police the name of the offender?

5 A. Yes.

6

7 Q. With as much information as you could without
8 revealing the names because you wanted to respect the
9 request of the victim?

10 A. Yes.

11

12 MR BARAN: Thank you.

13

14 MS LONERGAN: No re-examination, Commissioner. Could
15 Mr Davoren be excused.

16

17 THE COMMISSIONER: Yes. Mr Davoren, thank you very much
18 for your evidence and you are now excused.

19

20 <THE WITNESS WITHDREW

21

22 MS LONERGAN: Commissioner, I've been asked to raise with
23 you by a member of the media the release of exhibits 172 to
24 190 inclusive. If those at the bar table let me and those
25 who assist you by 4.15 today whether they have any
26 objection.

27

28 THE COMMISSIONER: Of course. There is still the
29 outstanding matter of the statutory declaration of
30 Mr Michael Salmon. I think you were going to --

31

32 MS LONERGAN: Mr Kell is dealing with that. My
33 understanding is that it's postponed for the moment pending
34 some further clarification.

35

36 THE COMMISSIONER: I understand. Thank you. Mr Hunt?

37

38 MR HUNT: I call Michael Bowman.

39

40 <MICHAEL BOWMAN, sworn: [2.45pm]

41

42 MR GYLES: The witness would like to take section 23.

43

44 THE COMMISSIONER: Yes, that is noted, Mr Gyles.

45

46 <EXAMINATION BY MR HUNT:

47

1 MR HUNT: Q. Is your name Michael Bowman?
2 A. It is.
3
4 Q. Are you a former director of schools for the diocese
5 of Maitland-Newcastle?
6 A. I was.
7
8 Q. Did you do that task between January 1996 and January
9 2004?
10 A. That's correct.
11
12 Q. I'll just show you a statutory declaration, and one
13 for you, Commissioner. Is the document that's before you a
14 statutory declaration that you declared on 18 July 2013?
15 A. It is.
16
17 Q. When you prepared the contents of that declaration,
18 were you doing your best to review your memory and tell the
19 truth?
20 A. I was.
21
22 Q. Was the format of the statutory declaration that you
23 answered a number of questions posed to you by those
24 assisting the Commissioner?
25 A. That's correct.
26
27 Q. Thereafter there was a catch-all inquiry, that is, any
28 other information that may assist the inquiry, and you
29 provided two paragraphs in answer to that section?
30 A. That's correct.
31
32 Q. It's possible that some of the material that you put
33 out in paragraphs 9 and 10 may relate, or may not relate,
34 to some of the other questions that you've answered; is
35 that the position?
36 A. Yes.
37
38 Q. In paragraph 5 you answered a question that asked you
39 to indicate whether you had a memory and, if so, how that
40 related to a possible discussion with former bishop Michael
41 Malone in relation to various topics, and you've indicated
42 there that you don't recall having a discussion with Bishop
43 Malone some time prior to March 2003, specifically in
44 relation to any concerns he had regarding Fletcher and
45 inappropriate behaviour with boys?
46 A. That's correct.
47

1 Q. The position is you're not denying that such a
2 conversation took place, but you cannot recall it given the
3 period of time that's elapsed since?

4 A. I cannot recall any such conversation, no.

5

6 Q. The question posed the names of a number of personnel,
7 that is, Patrick Roohan, Jim Callinan, Jim Finucane and/or
8 Colleen Timoshenko, in relation to that conversation and
9 none of that material evoked any recollection of a
10 conversation; correct?

11 A. No, none of it - Jim Finucane I don't know.

12

13 Q. I was going to come to that. Apart from Jim Finucane
14 the other names are known to you?

15 A. Yes.

16

17 Q. I want to show you a document - I'm not suggesting
18 it's your document - I'll just see if it provides any
19 prompt to memory. Could you open volume 4, which is one of
20 those volumes there.

21

22 I am grateful to the transcription personnel.

23

24 Would you turn early on in that volume to the document
25 that's behind tab 273. You'll need to turn the folder
26 sideways. Would you read the handwritten note that is
27 there. You'll see that that is a note that either relates
28 to 1996 or was made in 1996. You'll see that the broad
29 topic seems to relate to a conversation of the kind that
30 I've indicated that you were asked to answer questions
31 about. The last line on that note says:

32

33 *Spoke to Michael Bowman.*

34

35 Could you accept from me that the evidence shows that
36 that's a note of Bishop Michael Malone. Having seen that
37 note, does that elicit any memory or ring any bells for
38 you?

39 A. No, it does not.

40

41 Q. If you turn your statutory declaration over, you'll
42 see that paragraph 8 relates to an answer that you gave to
43 a question about whether you'd seen a particular pastoral
44 message that was published in the diocese in May 2003.

45 A. Yes.

46

47 Q. Would you discard that volume and could you, perhaps

1 with the assistance again of the transcription personnel,
2 find volume 5, if that is possible. Before you open that,
3 in the context of your answer in paragraph 8, you became
4 aware that you had been on leave at a time that the
5 pastoral message that I want to ask you more questions
6 about was published. Did you become aware of its existence
7 or context after you returned from leave in or around
8 7 July 2003?

9 A. Yes, I was told about it by a person who - I cannot
10 honestly remember who that person was. I subsequently
11 received a copy of it, and I also received a copy from the
12 Commission.

13
14 Q. Could you look behind tab 382. I'm not suggesting
15 that the item that you saw back in 2003 was in exactly the
16 same form as this. You'll see that this item is an item
17 that's in the form of a media release, but I'm asking you
18 to give your attention to the heading that starts "Pastoral
19 message to" and then finishes "Bishop of
20 Maitland-Newcastle" on the second page. Does that seem to
21 be the text of the pastoral message that came to your
22 attention back in 2003 when you returned from leave?

23 A. Yes.

24
25 Q. Even though you can't identify the person who
26 discussed the pastoral message with you, can you exclude
27 from the list of people who discussed it with you Bishop
28 Michael Malone --

29 A. Yes.

30
31 Q. -- as being that person?

32 A. No, the bishop never discussed it with me.

33
34 Q. Are you able to indicate whether your memory extends
35 to being able to divine whether it was a school-type person
36 rather than a clergy-type person who took up with you
37 something about the pastoral message?

38 A. The pastoral message came to my attention when the
39 person who mentioned it to me said that I had been quoted
40 in it as providing the bishop with certain advice, and
41 since I had not provided him with that advice, I acquired a
42 copy of the document just to satisfy myself that what was
43 said in it was what this person had told me.

44
45 Q. When you direct your attention to the third-last
46 paragraph on the first page of tab 382 where it says:

47

1 *I also consulted the Director of Catholic*
2 *Schools and the local School Principal at*
3 *the time and informed them of the*
4 *situation.*

5
6 You took the "Director of Catholic Schools" to be a
7 reference to you?

8 A. Yes.

9
10 Q. Did you ever take up that information having been
11 published with the bishop?

12 A. No, I didn't.

13
14 Q. Why not?

15 A. He was my employer and I did not address it with him.
16 I wasn't, I guess, that upset about it.

17
18 Q. In paragraph 9 you indicate a discussion that you do
19 recall having with Bishop Michael Malone during one of your
20 regular monthly meetings in 2002?

21 A. That's correct.

22
23 Q. Have access to your stat dec while I ask you this, if
24 you need it. You say in the third sentence of that
25 paragraph:

26
27 *I can recall that at the end of one such*
28 *meeting, Bishop Malone informed me that a*
29 *sexual abuse allegation had been made*
30 *against a priest of the Diocese. Bishop*
31 *Malone did not name the priest nor did he*
32 *provide me with any details about the*
33 *nature of the allegations. I was not told*
34 *whether the allegations were current or*
35 *historical, related to a child or an adult,*
36 *or whether the priest was currently in a*
37 *parish or not.*

38
39 A. That's correct.

40
41 Q. You have not attributed actual conversation there, but
42 you've endeavoured to give the sense of the information
43 that you received; is that right?

44 A. That's correct.

45
46 Q. In the context of your memory about that discussion in
47 2002 with Bishop Malone, are you able to indicate whether

1 you perceived that to be advice that you were being given,
2 whether advice was being sought from you, or how you would
3 characterise the communication that you had with the bishop
4 on that topic?

5 A. I took it that the bishop was informing me - he did
6 not ask me for any advice in relation to it.

7
8 Q. In the context of the way the material was
9 communicated to you, is it a fair proposition that there
10 was nothing that you were able to be alert to in terms of
11 the behaviour or the possible behaviour of a particular
12 individual, given the lack of identifying material about
13 parish, name of priest and the like?

14 A. No.

15
16 Q. Can you remember whether you asked the bishop for more
17 material?

18 A. No, I did not.

19
20 MR HUNT: That's the evidence-in-chief.

21
22 THE COMMISSIONER: Thank you, Mr Hunt.

23
24 MR HUNT: I'm sorry, I tender the statutory declaration.

25
26 THE COMMISSIONER: The statutory declaration of Mr Bowman
27 will be admitted and marked exhibit 192.

28
29 **EXHIBIT #192 STATUTORY DECLARATION OF MICHAEL BOWMAN,**
30 **DATED 18/07/2003**

31
32 THE COMMISSIONER: Mr Roser, Ms Gerace, Mr Cohen?

33
34 MR ROSER: No, thank you.

35
36 THE COMMISSIONER: Mr Harben?

37
38 **<EXAMINATION BY MR HARBEN:**

39
40 MR HARBEN: Q. Mr Bowman, was 18 July the first time you
41 had been asked to do a statement about the events with
42 which your statutory declaration is concerned?

43 A. That's correct.

44
45 Q. So you were bringing to bear to this statutory
46 declaration your 2013 memory to something that had occurred
47 ten or 11 years before?

1 A. Yes.

2

3 Q. Do you have it there in front of you?

4 A. I do.

5

6 Q. Is that why, for example, in paragraph 5 on the third
7 line you use the words:

8

9 *I am not denying that such a conversation*
10 *took place but simply that I cannot recall*
11 *it so many years later.*

12

13 A. Yes.

14

15 Q. In other words, can I suggest this to you, that you
16 are recognising it is possible that such a conversation did
17 take place, but it is just that you have no memory of it
18 today?

19 A. I have no memory of it, no.

20

21 Q. But that's the reason you used the words, "I am not
22 denying that such a conversation took place", because
23 that's recognition of the proposition that such a
24 conversation could have taken place?

25 A. I don't have any memory of such a conversation, but
26 I could not categorically rule out that it took place, but
27 I have no recollection of it whatsoever.

28

29 Q. It's the case, isn't it, that a number of times in
30 this document you use similar words in terms of your lack
31 of recollection, but each time you did that you would
32 concede at least the possibility that the conversations you
33 cannot recollect did take place?

34 A. That's one way of looking at it, yes.

35

36 Q. In paragraph 9 of your statement you refer to regular
37 monthly meetings that you had with Bishop Malone. What was
38 the purpose of those meetings?

39 A. The bishop met on a regular basis with the heads of
40 all of the instrumentalities in the diocese. The purpose
41 of those was to update the bishop in relation to, in the
42 case of the school system, what was going on in the school
43 system, what the issues were, financial information, policy
44 information. It was also an opportunity for the bishop to
45 relay to me any concerns he had about anything in relation
46 to the school system or any complaints he had received from
47 parents or staff or the general community in relation to

1 any of the schools in the diocese.

2

3 Q. I take it that if there was a discussion in one of
4 those meetings, considering the parameters of the matters
5 that you've just described, and that there was a discussion
6 about a sexual abuse allegation being made against a priest
7 of the diocese, that would have been a matter of discussion
8 because it would have affected one of the schools relevant
9 to your work?

10 A. As I've indicated in my statement, the bishop didn't
11 mention or give me any details in relation to it.

12

13 Q. But "a priest of the diocese", you would understand
14 that that would refer to somebody engaged in areas that
15 your work involved; would that be correct?

16 A. It may not have been a priest who was directly
17 involved in a school. There were other priests who
18 weren't.

19

20 Q. But having understood that it was raised, that would
21 have been one of the things you might have been curious
22 about to see whether it was a priest related to one of the
23 schools that you presided over as part of your work.

24 A. It was obvious to me at the time that the bishop was
25 not going to provide any other information, and the meeting
26 finished and I left.

27

28 Q. Well, it may have been obvious to you, but you held an
29 important post in terms of education in the area, didn't
30 you?

31 A. I did.

32

33 Q. One of the things that would have been of concern to
34 you would have been if allegations had been made involving
35 a priest that had any contact with a school under your area
36 of control; that's right, isn't it?

37 A. That's correct. I assumed that the bishop, if he had
38 concerns about whoever it was, would have informed me if
39 there was any likelihood or danger that that priest was
40 still in contact with any children in any of the schools.

41

42 Q. How long had you held this post for when the
43 conversation that you say took place in 2002 occurred?

44 A. I'd been director since 1996.

45

46 Q. As a director you would have had a particularly
47 important and responsible position in terms of the schools

1 that you had authority over; is that correct?
2 A. That's correct.
3
4 Q. One of the things that you knew you would have been
5 entitled to is information that may have affected those
6 schools.
7 A. That's correct.
8
9 Q. If there was a priest against whom there was a sexual
10 abuse allegation had been involved in any of your schools,
11 you would want to know that?
12 A. I would have, but I wasn't told.
13
14 Q. You wouldn't have just left it up to somebody else's
15 devices to decide whether they would tell you or not, would
16 you?
17 A. If it was the bishop, I would.
18
19 Q. Is that because you trust what the bishop says?
20 A. I did.
21
22 Q. Is that the reason that you were not prepared to deny
23 the conversation that the bishop says he had with you, but
24 you simply say you have no recollection of it, because you
25 trust what he says?
26
27 MR GYLES: I object. My learned friend has put that
28 there's been a denial - a specific denial of a particular
29 conversation, and that's not as I read his evidence. It is
30 a general position which is "I can't recall, therefore I'm
31 not in a position to deny."
32
33 THE COMMISSIONER: Yes, but this question is more directed
34 is it not, Mr Gyles, to Mr Bowman's possibly accepting that
35 it could have happened because the bishop says it did?
36
37 MR GYLES: I think my learned friend is directing
38 questions to what is contained in this media release and I
39 don't think that's something that has been addressed
40 specifically in his stat dec.
41
42 MR HARBEN: It's raised squarely in paragraph 5 of the
43 statutory declaration. He refers to it as "the
44 conversation" or "a conversation" or "a discussion". The
45 witness has identified it.
46
47 THE COMMISSIONER: You are confining yourself --

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MR HARBEN: We are confining ourselves to that evidence.

THE COMMISSIONER: Not what was relayed in a press release.

MR HARBEN: No - well, it may well be.

THE COMMISSIONER: It may be, but that's not the point of your question.

MR HARBEN: The heading says "Recollection of conversations concerning Father James Fletcher." That's the heading.

THE COMMISSIONER: Please proceed.

MR HUNT: I've handed a document to my learned friend's junior. It may be convenient at this point if I just show it to the witness and I will then tender the letter of request which makes it clear what the declarant was asked to address in his statutory declaration. I'm wanting the witness to see it and then I'm tendering it.

Q. Do you agree that, subject to some personal details being redacted out, that's the letter you received from the Crown Solicitor's Office that guided your mind or directed your mind to certain things that you dealt with in your statutory declaration?

A. Yes.

MR HUNT: Perhaps the witness can retain a copy. I hope this is of assistance to my friend and I'll tender a copy.

THE COMMISSIONER: Thank you, Mr Hunt. The letter from the Crown Solicitor's Office to the witness, Mr Bowman, of 15 July 2013 will be admitted and marked exhibit 193.

EXHIBIT #193 LETTER FROM THE CROWN SOLICITOR'S OFFICE TO MR BOWMAN DATED 15/7/2013

THE COMMISSIONER: Carry on, Mr Harben.

MR HARBEN: Perhaps that instructing letter could be given to the witness.

THE COMMISSIONER: Mr Bowman has a copy of it in front of

1 him.

2

3 MR HARBEN: Q. Mr Bowman, if you look at the letter of
4 15 July 2013 written to you - do you have that?

5 A. I do.

6

7 Q. If you go to the numbered paragraph 4, just read that
8 to yourself. Having read that now and looking at your
9 statutory declaration, is it the case that your
10 paragraph numbered 5 in the statutory declaration and, in
11 particular, the first two sentences are a response to
12 question 4 in the letter of 15 July 2013? Perhaps if you
13 could ignore that question. Have a look at number 2. Have
14 you read that?

15 A. Yes, I have.

16

17 Q. Is the whole of your number 5 in your statutory
18 declaration a response to question number 2 in the letter
19 of 15 July 2013?

20 A. It is.

21

22 Q. To paraphrase, question number 2 that was asked of
23 you, firstly, was whether you had been contacted by Bishop
24 Malone regarding any concerns you had in relation to Father
25 James Fletcher and inappropriate behaviour with boys. You
26 understood that was being asked of you?

27 A. It was, yes.

28

29 Q. The second part referred to the people named therein,
30 Patrick Roohan, Jim Callinan, Jim Finucane, and Colleen
31 Timoshenko, similarly that was dealt with in your answer
32 numbered 5?

33 A. Yes.

34

35 Q. What you've said is, in sentence 2 of paragraph 5:

36

37 *I am not denying that such a conversation*
38 *took place but simply that I cannot recall*
39 *it so many years later.*

40

41 A. That's correct, I cannot recall that conversation.

42

43 Q. But you didn't just say, "I can't recall"; you
44 qualified it by saying you're not denying it took place.
45 That's right, isn't it?

46 A. That's correct.

47

1 Q. In other words, you're conceding that it possibly
2 could have - there could have been some discussion, but
3 with the effluxion of time you can't remember it?
4 A. I can't remember the conversation, yes.
5
6 Q. In relation to question number 4, do you see that in
7 the instructing letter of 15 July?
8 A. Yes.
9
10 Q. If you go to your statutory declaration numbered 7,
11 firstly, do you understand that your number 7 is a response
12 to question number 4?
13 A. Yes.
14
15 Q. Firstly you commence by saying you do not recall any
16 conversation as described. That's your first sentence in
17 answer number 7 - that's right?
18 A. That's correct.
19
20 Q. But, again, you qualify it by saying these words:
21
22 *I do not deny that such a conversation may*
23 *have taken place, but simply cannot recall*
24 *it some 10 years later.*
25
26 A. Yes, I do not recall any conversation with the bishop
27 in relation to whether James Fletcher should continue as a
28 priest or not, but as you pointed out, it was a long time
29 ago and I do not recall it. I don't remember.
30
31 Q. But you concede by those words, "I do not deny that
32 such a conversation may have taken place" at least the
33 possibility that it did, and you've just forgotten?
34 A. There's a possibility that it may have taken place,
35 but I do not recall it now.
36
37 Q. Getting back to paragraph 9, did you ask for the
38 identity of the priest that you refer to in your answer
39 numbered 9?
40 A. No, I did not.
41
42 Q. Did you ask whether it was a priest engaged at any of
43 the schools under your care?
44 A. No, I did not.
45
46 Q. Did you make an inquiry as to whether it was an
47 historical matter or a current matter?

1 A. No, I did not.
2
3 Q. Those are all matters that you would have felt able to
4 ask the bishop about?
5 A. Yes.
6
7 Q. And you just decided not to make that inquiry?
8 A. As I said before, the impression I got was that the
9 bishop was not going to give me that other information and
10 I did not press him for it.
11
12 Q. But you'd had a working relationship with him, at that
13 stage, for six or seven years?
14 A. Yes, that's correct.
15
16 Q. You'd always found him to be forthcoming in material
17 that you needed from him?
18 A. Yes.
19
20 Q. In relation to the meeting itself, you describe it as
21 occurring in 2002. Can you put a better time frame on it
22 than that?
23 A. No, I can't.
24
25 Q. So it could have been at any time in 2002?
26 A. Yes, it could have been. I cannot --
27
28 Q. You can't exclude that it was at the end of June or
29 the start of July - it could have been?
30 A. It could have been.
31
32 Q. And the priest that it could have been a reference to,
33 Father Fletcher?
34 A. It could have been.
35
36 MR HARBEN: Thank you.
37
38 THE COMMISSIONER: Thank you, Mr Harben. Mr Gyles?
39
40 MR GYLES: I have no questions, thank you.
41
42 MR HUNT: I'm not sure whether Mr Potter? No.
43
44 <EXAMINATION BY MR HUNT:
45
46 MR HUNT: Q. I'm just trying to understand the effect of
47 paragraph 7 of your statement about not recalling, although

1 not denying, the possibility of a conversation between you
2 and Bishop Michael Malone regarding whether Father James
3 Fletcher should be stood down or remain working as a
4 priest with --

5
6 MR HARBEN: Could I object at this stage. I know my
7 learned friend has not finished the question, but he has
8 incorporated the words, "I do not deny the possibility" by
9 reference to paragraph 7. That's not what paragraph 7 -
10 that was my construction on it that I asked him to accept
11 and adopt.

12
13 THE COMMISSIONER: Quite so, Mr Harben.

14
15 MR HUNT: Yes. I was rather trying to take the witness to
16 the way that he had answered Mr Harben's question to
17 another piece of evidence that I elicited from him and then
18 have him clarify the connection between those two pieces of
19 evidence.

20
21 THE COMMISSIONER: Proceed, please, Mr Hunt.

22
23 MR HUNT: Q. If you just have a look at paragraph 7,
24 bear in mind the answers that you gave to Mr Harben, bear
25 in mind the evidence that you gave when I was asking you
26 questions about your reaction to the pastoral message when
27 you became aware of it after your return from holidays
28 in July 2003, it would seem that in July 2003 you had a
29 view about that which had been published about you in the
30 pastoral message; is that right?

31 A. That's correct.

32
33 Q. I understood you to be saying that at that time you
34 were of the view that you hadn't given the bishop advice on
35 the issue of Father Fletcher remaining in ministry as
36 expressed in the pastoral message; is that right?

37 A. That's correct.

38
39 MR HUNT: That's the further matter.

40
41 MR GYLES: If I can just explore something that has fallen
42 from that question.

43
44 THE COMMISSIONER: Yes, Mr Gyles.

45
46 <EXAMINATION BY MR GYLES:
47

1 MR GYLES: Q. You say that you took issue with the
2 proposition that was being put forward that you had been
3 consulted on this question; right?

4 A. Yes.

5

6 Q. Can we take it that you took issue with that because
7 you, to the best of your recollection, did not believe that
8 you had been consulted on that question?

9 A. That's correct.

10

11 Q. Is that consistent with your belief today?

12 A. Yes.

13

14 Q. So is the position that you have no specific
15 recollection now of having a conversation with Bishop
16 Malone in connection with the issue of whether or not
17 Fletcher should be stood down?

18 A. Yes, that's correct, to the best of my ability, yes,
19 I don't remember any such discussion.

20

21 Q. Although you do not deny that such a conversation may
22 have taken place, you are able to challenge the proposition
23 that any conversation that did take place did not, to your
24 mind and to your best memory today, constitute what you
25 would regard as a consultation concerning whether Fletcher
26 should be stood down; is that the position?

27 A. Yes, to the best of my recollection there was no
28 consultation, in the sense that I would define
29 "consultation", that took place.

30

31 Q. That's why your interest was piqued - is it the case
32 that was why your interest was piqued when you were told
33 that you had been quoted as having consulted on that topic?

34 A. Yes.

35

36 Q. Is that why you then went and got the media release?

37 A. I did.

38

39 Q. You got the media release at some time when you came
40 back from holidays but in a reasonably short period after
41 it had been released; is that your best recollection?

42 A. To the best of my recollection I think I received it
43 while I was on holidays.

44

45 Q. When you received it, was your state of mind - being
46 your state of mind in 2003 - that you did take issue with
47 the attribution to you of consultation by Bishop Malone?

1 A. I was concerned about it, yes.
2
3 Q. Sorry, what was the answer that you just said - you
4 took issue with it?
5
6 THE COMMISSIONER: He was concerned about it.
7
8 THE WITNESS: I was concerned about it, yes.
9
10 MR GYLES: Q. Thank you. You were concerned about it
11 because you didn't think that it was a fair
12 characterisation to say you had been consulted on that
13 topic?
14 A. Yes, that's correct.
15
16 Q. That remains your position today, despite the fact
17 that you accept that your memory does not permit you to
18 draw upon a specific recollection of any conversation that
19 you may have had at the time; is that the position?
20 A. To the best of my recollection, there wasn't a
21 conversation, but I guess, like anybody, I could be wrong,
22 but I do not recollect any conversation with the bishop in
23 relation to standing down Father Fletcher.
24
25 Q. You're taking a conservative approach in the
26 qualification you give in the affidavit as to your memory?
27 A. I guess I am, yes.
28
29 Q. But what you can say is that in 2003, which was
30 shortly after the relevant events, you did have concerns
31 about this?
32 A. Yes.
33
34 Q. About the attribution to you of a role in that
35 decision?
36 A. Yes.
37
38 Q. So we can take it in 2003 your memory was such to
39 permit you to not to accept that as a fair characterisation
40 of your role?
41 A. Yes.
42
43 Q. You said that you did not take that up with the
44 bishop.
45 A. I did not.
46
47 Q. Is that because you didn't see any point in doing that

1 at that time?
2 A. Yes, that would be the case. I was planning to
3 retire, and I couldn't see any point in addressing the
4 matter at that stage.

5
6 MR GYLES: Those are my additional questions.

7
8 MR HUNT: Commissioner, there just one matter arising.

9
10 <EXAMINATION BY MR HUNT:

11
12 MR HUNT: Q. Was there anything about the institutional
13 relationships between the bishop's position and your
14 position that affected your decision to take up with him
15 what you seem to indicate was an inaccurate reporting of
16 your view in the pastoral letter or your involvement in the
17 pastoral letter?

18 A. Would you explain to me what you mean by
19 "institutional".

20
21 Q. He was the bishop of the diocese, you were a the
22 director of Catholic schools in the diocese. In terms of
23 the lines of report, I'm a foreigner to these matters, but
24 I'm just wondering whether those things impacted you
25 determining to not take the matter up with the bishop?

26 A. Yes, it wasn't normal practice in Catholic education
27 to question the bishop in relation to any matters.

28
29 Q. It wasn't?

30 A. It wasn't, no.

31
32 MR HUNT: Could the witness be excused. That concludes my
33 second re-examination.

34
35 THE COMMISSIONER: Thank you very much, Mr Bowman. You
36 are excused.

37
38 <THE WITNESS WITHDREW

39
40 MR HUNT: I call William Callinan, but there's a matter
41 I need to quickly discuss with Mr Harben while he's coming
42 up.

43
44 <WILLIAM JAMES CALLINAN, sworn: [3.24pm]

45
46 MR HUNT: We're attending to one last-minute
47 administrative matter. I will provide a copy for you,

1 Commissioner. There is just one last-minute redaction that
2 is being dealt with in a more rudimentary fashion.

3

4 THE COMMISSIONER: Thank you, Mr Hunt.

5

6 MR HUNT: Perhaps a copy could go to Mr Potter so he
7 understands it.

8

9 <EXAMINATION BY MR HUNT:

10

11 MR HUNT: Perhaps the witness could be shown this
12 document.

13

14 Q. Just ignore the item on page 4, which is in pink,
15 overlined in pink. Is your name William James Callinan?

16

17

18 Q. Subject to some redactions, do you have before you a
19 statement that you gave to then Detective Sergeant Peter
20 Fox on 12 June 2003?

21

22

23 Q. When you gave Detective Sergeant Fox that statement,
24 were you doing your best to tell the truth?

25

26

27 Q. Have you reviewed the statement recently?

28

29

30 Q. Subject to one matter that I'm going to come to in
31 paragraph 13, is the statement true and correct?

32

33

34 Q. Do you ask that the Commissioner take it into account
35 as part of your evidence before the Commission today?

36

37

38 Q. Paragraph 13 describes something that you say in the
39 statement happened at 9am on Wednesday, 18 March 2003.
40 You're nodding, does that mean "yes"?

41

42

43 Q. You had regard to diary entries of yours from your
44 school diary kept at that time?

45

46

47 Q. Have you satisfied yourself that that should say

1 Wednesday, 19 March 2003?

2 A. It should.

3

4 Q. I want to ask you some general questions about your
5 diary-keeping practices in 2002 and 2003. First of all, is
6 it the position that at the time that you gave your
7 statement, you had been working at St Mary's infant school
8 and ultimately becoming the principal of that school at
9 Greta since May 1991?

10 A. That's correct.

11

12 Q. And that since about 1999 you had also worked as the
13 principal at St Brigid's primary school at Branxton?

14 A. That's correct, I was principal of St Mary's at Greta
15 and St Brigid's at Branxton.

16

17 Q. Were you based in one of those schools principally?

18 A. No.

19

20 MR HUNT: That was an accidental pun, I'm sad to say,
21 Commissioner.

22

23 Q. How did it work in terms of where you were day-to-day
24 back in 2002/2003?

25 A. The majority of time I broke myself between the two
26 schools, to be fair to the teachers, to the community, to
27 the children. On a Monday I was usually at Branxton all
28 day, Tuesday I was at Greta, Wednesday my AP from Branxton,
29 who was --

30

31 Q. AP stands for assistant principal?

32 A. Assistant principal, she went to Greta and then on a -
33 sorry, yes, she went to Greta and I was at Branxton, on the
34 Thursday I was usually at Greta and then on the Friday
35 I split between Greta and Branxton.

36

37 Q. In terms of your appointments and things that you
38 wanted to note in your diary, were there some things,
39 probably a majority of things, that you had advance notice
40 of in terms of appointments and things you wanted to deal
41 with in a working day?

42 A. That is correct.

43

44 Q. Would there sometimes come up trivial things in the
45 course of the day that you elected not to record in your
46 diary?

47 A. That would be correct.

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Q. What about things that had more significance for you or that you wanted to take a record of that were unscheduled, what was your practice in that regard?

A. My practice was to write down notes from that particular day about whatever events.

Q. Where would you take those notes?

A. I would take - I would put them in my diary.

Q. You understand that a question has come up about what contact you either had or did not have with Bishop Michael Malone on 20 June 2002?

A. I'm aware of it.

Q. Have you had resort to a copy of your diary and more recently the original of your diary for 2002?

A. I have.

MR HUNT: I hand up a copy for the witness and a copy for the Commissioner. I tender a copy of the police statement as identified.

THE COMMISSIONER: A copy of the police statement of 12 June 2003 will be admitted and marked exhibit 194.

EXHIBIT #194 COPY OF POLICE STATEMENT DATED 12/6/2003

MR HUNT: Q. You understand that there is a suggestion that you had a conversation with Bishop Michael Malone on 20 June 2002?

A. Yes.

Q. When you first heard about that being a suggestion, what was your first understanding of the suggestion about that in terms of how the contact had occurred?

A. When it was first brought to my attention, I just - I was in disbelief. I --

Q. Let's not go into your reaction at the time. What I'm really asking you is what kind of contact did you understand it was suggested that the bishop had had with you on that day?

A. My understanding was that the bishop, when he first made contact on 19 March, that it was a phone call he made and had some form of phone conversation with me in regards to the Fletcher situation.

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Q. On a contact between you and the bishop that you agree happened on 19 March 2003 --

A. Yes.

Q. -- you understood from the content of that that there had been telephone contact between you and the bishop on 20 June 2002?

A. That's what I thought.

Q. With that understanding in mind, and keeping your feelings about it to yourself, did you undertake some actions to access records about that date?

A. No, because I didn't know it was 20 June then.

Q. At some stage did you come to understand a particular date was alleged to have been the date of contact?

A. That's correct.

Q. What did you do then in terms of inquiring?

A. I checked my diary to see if I had an entry in there because I could not recall any conversation.

Q. Knowing your usual diary practices, and having regard to the likelihood or rarity of you being in unscheduled contact with the bishop, what do you say the likelihood is of there being a notation in your diary about, say, a telephone call from the bishop?

A. I would have noted it down, because it's very, very unusual for a bishop to come and visit a school principal off the street about something so important.

Q. First of all, I asked you about the prospect of an unscheduled phone call. Is that, in your expectation, something that back in June 2002 you would note in your diary if it was an unexpected call from the bishop?

A. I would.

Q. I think you've answered my next question, which is if it was an unexpected or unscheduled physical visit from the bishop, that is something you anticipate you would write in your diary?

A. I would write down a visit.

MR HUNT: I tender the diary entry for 20 June.

THE COMMISSIONER: Mr Callinan's diary entry for Thursday

1 20 June 2002 will be admitted and marked exhibit 195.

2

3 **EXHIBIT #195 MR CALLINAN'S DIARY ENTRY FOR THURSDAY,**
4 **20/06/2002**

5

6 MR HUNT: Q. You've indicated that there were some
7 scheduled visits by the bishop. Was that to each of the
8 schools, both your schools?

9

A. Yes.

10

11 Q. What was the regime in terms of scheduled visits of
12 the bishop to the school?

13

14 A. Bishops, in my experience as principal, would have
15 what we call parish visits, and then they would come to the
16 parish and visit the schools usually on a Friday, and then
17 visit the parish on the Saturday and Sunday.

17

18 Q. In the time that you were serving at your two schools
19 and Bishop Michael Malone was the bishop of the diocese,
20 did he ever visit you without it being previously
21 scheduled?

22

A. No.

23

24 Q. Putting to one side the visits that were part of the
25 parish visit on a Friday and then visits to the parish over
26 the weekend, did you ever have the bishop come to you on a
27 scheduled fashion to discuss issues - that is Bishop
28 Michael Malone - in a scheduled fashion at either of the
29 schools?

30

A. No.

31

32 Q. Could you look at paragraph 13 of your police
33 statement. Accepting that this is a statement that was
34 made on 12 June 2003 in relation to events of 19 March
35 2003, is it the position that you can be confident that
36 the material that you had in quotes as being words that
37 Bishop Malone said to you are accurate or they are to the
38 effect of?

39

A. I agree.

40

41 Q. Can I just pick you up as an example of that. There
42 is some section higher in paragraph 13 where you quote a
43 conversation that is to the effect of it, but you're
44 broadly confident as to the subject matter; is that right?

45

A. That's correct.

46

47 Q. Lower in paragraph 13 you indicate:

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I am a bit reluctant to use exact conversation at this point, as I am not certain as to the exact words that were used, but he said to me something like ...

And then you go on to paraphrase; is that right?

A. That's correct.

Q. Does that mean that in terms of the later part of the conversation, you are less confident of the actual words used than the earlier part of paragraph 13? Is that a fair proposition?

A. That's a fair proposition.

Q. In relation to the telephone call that you received from Bishop Malone on 19 March 2003, you've checked your diary entries and you made an entry in relation to that telephone call?

A. I did.

Q. Is that a telephone call that was a scheduled arrangement, or was that a call that happened and then you made a note around your scheduled activities and notations for that day?

A. It wasn't a scheduled call. It just came out of the blue.

Q. I'll show you a copy of your diary for that day. Ignore the notations on the back. There is double-sided copying, but I'm not tendering what's on the back, it's just the front page.

Is that a copy of your diary entry for Wednesday, 19 March?

A. It is.

Q. 2003?

A. It is.

MR HUNT: I tender it, Commissioner.

THE COMMISSIONER: The diary entry by Mr Callinan of Wednesday, 19 March 2003 will be admitted and marked exhibit 196.

EXHIBIT #196 MR CALLINAN'S DIARY ENTRY, DATED WEDNESDAY,

1 **19/03/2003**

2

3 MR HUNT: Q. Mr Callinan, I don't want to be rude about
4 your writing because it's better than mine, but starting
5 with the words "Bishop rang" and ignoring the entry where
6 you've noted a password down there in your diary, would you
7 read out what those words say?

8

A.

9 *Bishop rang re: Father Fletcher. Tell*
10 *people he is sick. Told me he had been*
11 *stood down pending charges. Ombudsman*
12 *indicated he should ...*

13

14 I can't read my writing.

15

16 Q. Does that say "should have been"?

17

A.

18 *... should have been stood down earlier.*
19 *Indicated we had a conversation about the*
20 *situation then and we thought he would not*
21 *be a harm to the children. I could not*
22 *recall this conversation.*

23

24 Q. Then there seems to be your initials and the date.

25

A. That's my signature in short.

26

27 Q. Is it your practice generally to initialise or sign in
28 short and date entries in your diary?

29

A. Sometimes I do and sometimes I don't.

30

31 Q. Generally, what's the relevance of something that you
32 sign and date?

33

A. I thought it was a very, very important conversation,
34 so I signed it and dated it.

35

36 Q. Accepting that you expressed in your police statement
37 the reluctance about the exact form of words, the way you
38 have it extracted about that part of the conversation with
39 Bishop Malone is this:

40

41 *We have spoken about the matter when it*
42 *first surfaced in a conversation through a*
43 *phone call I made to you at that time. We*
44 *spoke about Father continuing in his role -*
45 *in his capacity as Parish Priest within the*
46 *two schools.*

47

1 Is that the effect of the conversation that you had with
2 Bishop Malone at the end of this conversation?
3 A. I don't understand.
4
5 Q. I'm reading words that you've summarised as being the
6 effect of the conversation.
7 A. Yes.
8
9 Q. There is the use of the plural, so are you saying that
10 the bishop used words to the effect of a conversation that
11 incorporated, if you like, a report about what "we" - you
12 and he - had done, as you understood the conversation?
13 A. Yes, that's correct.
14
15 Q. You say in your police statement that you did not
16 respond?
17 A. I didn't.
18
19 Q. In your police statement, it says:
20
21 *I was taken back by this ...*
22
23 A. I was.
24
25 Q. Why?
26 A. Because I couldn't - I could not recall any
27 conversation that we had had previously about the Fletcher
28 situation.
29
30 Q. What do you think is the likelihood of you having a
31 conversation like that and remembering it?
32 A. I think I would have remembered it, because it's not
33 very often that a bishop calls you, and especially about
34 something that was so important.
35
36 Q. What do you say about the likelihood of the
37 conversation if it incorporated an unexpected physical
38 visit to the school?
39 A. I would say that I would remember it and I would have
40 noted it in my diary, because it was something of
41 significance in regards to the parish priest at the parish
42 schools.
43
44 Q. In the last sentence of paragraph 13, you say this:
45
46 *I had independently made a decision between*
47 *Father Fletcher and myself to allow his*

1 *role within the school to continue, but*
2 *I had never discussed this with the Bishop.*

3
4 A. That is correct.

5
6 Q. Do we gather by that statement that in terms of your
7 own conversations with Fletcher that are extracted
8 elsewhere in the statement that you accept responsibility
9 for your own decision about that?

10 A. That is correct.

11
12 Q. Did you change any practices that had been in place in
13 terms of Fletcher's involvement in the schools upon making
14 that decision that he was still welcome to be around the
15 schools notwithstanding what you had come to know about
16 him?

17 A. No, his role continued as normal.

18
19 Q. You made some other observations within the body of
20 the statement that children would not be alone with
21 Fletcher and that they would either be in groups or that a
22 staff member would be present. Is that the way it had
23 always been when priests had come to visit as your schools?

24 A. Yes. Father Fletcher did do reading groups at school,
25 but he was never alone with any child and he did - any
26 reading groups he always did in groups of children where
27 people could see him.

28
29 Q. In terms of your inability to recall speaking with the
30 bishop about Fletcher and rejecting the idea that it's
31 likely to be something that you would not remember and
32 recall, did you ever have any discussion with the bishop
33 where he asked you whether you knew about allegations
34 against Father Jim Fletcher, and I'm talking about 2002 at
35 this stage?

36 A. No.

37
38 Q. Did you ever tell him - that's the bishop - that
39 Fletcher had told you about allegations and that you didn't
40 believe it?

41 A. No.

42
43 Q. Did you ever say to the bishop words to the effect of,
44 "He wouldn't be capable of such things. Somebody is out to
45 get him"?

46 A. No.

47

1 Q. Did the bishop, once again limiting it to 2002, advise
2 you words to the effect that, "The police are launching an
3 investigation."
4 A. No.
5
6 Q. Did the bishop ever tell you that he'd asked Jim -
7 referring to Fletcher - to consider standing down but that
8 Fletcher would rather stay where he has the support of
9 parishioners?
10 A. No.
11
12 Q. Is that the kind of thing that rings any kind of bell
13 with you, that detail?
14 A. Not at all.
15
16 Q. And that Fletcher had indicated he wanted the support
17 of parishioners until the investigation was completed?
18 A. No.
19
20 Q. Did the bishop ever say to you that you - that's as
21 principal, I presume - will need to be careful while this
22 is going on, he shouldn't be alone with kids and should
23 stay away from the school?
24 A. No.
25
26 Q. Between around June 2002 until the conversation on
27 19 March 2003, did you ever keep Fletcher away from the
28 school?
29 A. No.
30
31 Q. Is it the position that, really, you took the view,
32 knowing what you knew directly from Fletcher, that there
33 was no need to be more vigilant than had already been the
34 case, or do you think you in fact were a bit more vigilant
35 in terms of keeping track of him?
36 A. I don't think I was any more vigilant.
37
38 Q. Would you look, please, at volume 5 and could you turn
39 to tab 382. Don't take it personally if that folder
40 rebels, Mr Callinan, it has done it before. Perhaps we'll
41 deal with it this way to make it easy. Abandon hope with
42 that for the moment, Mr Callinan, and just look at this, if
43 you would, but before you do, I want to ask you a couple of
44 questions. Are you and your wife, or were you and your
45 wife in 2003 regular parishioners at a particular parish
46 and church within the diocese?
47 A. We were.

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Q. Where was that?

A. Largs, part of Maitland parish.

Q. Have a look at the document I've shown you, which is the document, had you got to it, behind tab 382 of volume 5. I'm not suggesting it was in that form, so ignore the part at the top that says about it being a media release and direct your attention to the part that says "pastoral message" and that ends with the bishop's sign-off and so on. Do you see that there?

A. I do.

Q. Can you say the circumstances in which you first became aware of the pastoral message in those terms, if you did?

A. It was on the Sunday, 18 May. My wife had been to church. I didn't attend church with her on that morning. I was with one of my sons at sport and I was presented with that letter by my wife when I got home that afternoon - that evening.

Q. In context, without going into the conversation that you had with your wife, did you understand that she had received the message in a written or a typewritten form when she attended the service at Largs that day?

A. That is correct.

Q. And she said something to you that drew your attention to a particular bit of it; is that right?

A. That's correct.

Q. Are you able to read out the particular bit of it that your wife directed your attention to?

A.

I sought advice from the NSW Professional Standards Office (Towards Healing process) and others. I also consulted the Director of Catholic Schools and the local School Principal at the time and informed them of the situation.

Q. I'm sorry, I'm going to have to make you jump around, Mr Callinan. There is something I forgot to ask you about. 19 March, after you had your conversation with the bishop, you've indicated that he said these things about what "we" had talked about some time earlier.

1 A. Yes.
2
3 Q. Your police statement indicates that you made no
4 response to the bishop in relation to that part of the
5 conversation.
6 A. That is correct.
7
8 Q. Why not?
9 A. As I said, I was taken aback by it. I was trying -
10 wrestling with myself trying to work out when this
11 conversation took place - the conversation between the
12 bishop and myself where we decided that Fletcher would be
13 okay to stay in the schools because I just could not
14 recollect any conversation before 19 March that I had with
15 the bishop in relation to the Fletcher situation.
16
17 Q. After that point, is it some time later that you came
18 to review your diaries and make some further inquiries to
19 satisfy yourself about what the position was; is that
20 right?
21 A. That's correct.
22
23 Q. You then formed, as I understand your evidence, a more
24 solid view that rather than not recalling your
25 conversation, you hadn't had the conversation with Bishop
26 Michael Malone; is that the position?
27 A. That's correct, before --
28
29 Q. When you got to that point in your mind, did you
30 contact the bishop then and say, "Well, we didn't have that
31 conversation"?
32 A. No.
33
34 Q. Why not?
35 A. Well, I was concerned for myself and my position as
36 principal, with his authority, and I suppose for a long
37 time I still wrestled with the fact that I couldn't recall
38 any conversation that we had had in relation to that prior
39 to 19 March 2003.
40
41 Q. Could you now look at these three documents. I'm
42 showing the witness what's behind tab 383 of volume 5,
43 Commissioner.
44
45 Is what I am showing you a letter forwarded by you, or
46 a letter at least signed by you, that encloses a
47 two-page statement?

1 A. That's correct.
2
3 Q. Is the text of the statement, with the exception of
4 the material about media release and so on, the same text
5 as the text that I showed you that was behind tab 382 that
6 you've already given some evidence about?
7 A. Yes.
8
9 Q. In the form - just ignore the letter that you've
10 signed at the front for a moment - that it's seen there, is
11 that a similar layout to the way the message was that your
12 wife showed you on the afternoon of Sunday, 18 May 2003?
13 A. That's correct.
14
15 Q. You'll agree that the letter that you signed is a
16 covering letter from you as the principal of schools
17 enclosing the pastoral message, presumably to be forwarded
18 on to some people; is that right?
19 A. I was directed to forward it on to the parents of the
20 school.
21
22 Q. Did you annex the hard copy of the pastoral message
23 that your wife had given you after mass on the Sunday, or
24 how did you get a copy of what it was that was to be
25 disseminated with your letter?
26 A. It was sent by email.
27
28 Q. How do you know that?
29 A. I spoke to my secretary about it.
30
31 Q. Do you know where it had come from, the email?
32 A. It came from the CSO, the acting director at the time,
33 Gary Muirhead, because I made a note in my diary at the
34 time that he had rung me to direct me to send it out to the
35 parents of the school only.
36
37 Q. What did the CSO stand for in those days?
38 A. Catholic Schools Office.
39
40 Q. You said that it was to be forwarded out to parents
41 only. First of all, I presume that meant not to students?
42 A. Not to students.
43
44 Q. Was it not to be disseminated to anyone else other
45 than parents?
46 A. That's correct, that's what I was directed to do.
47

1 Q. Just breaking that down, you understood that you
2 didn't have any obligation to disseminate it more widely to
3 parishioners, just parents at the school; is that right?
4 A. That's correct.

5
6 Q. How was it delivered?
7 A. It was put in an envelope and it was sent to each
8 family.

9
10 Q. Once again, effectively ignore the overleaf. I'm
11 showing you two entries, one of Saturday, 17 May and one of
12 Monday, 19 May 2003. Is the note on 17 May a note just
13 indicating that you had had some communication from a
14 parent raising some concerns about Fletcher?
15 A. Not Fletcher, but disappointed with the way the school
16 had handled the situation.

17
18 Q. Can you remember now any more context about that phone
19 call?
20 A. The night before he was - the night before Fletcher
21 was arrested I got a phone call before a P&F meeting -
22 Parents and Friends Association meeting - and I did not
23 tell the parents that night that Father Fletcher was - he
24 was going to be arrested and, also, the fact that I didn't
25 relay to parents ways that they could speak to their
26 children and the fact that the parish priest was being
27 arrested.

28
29 Q. It's with that in mind that you received the phone
30 call you understand on Saturday, the 17th?
31 A. That's correct.

32
33 Q. Moving to Monday, the 19th, there's a note at the
34 bottom there. Could you read out that note - I think that
35 relates to this issue, doesn't it?
36 A. It does:

37
38 *Sent letter from Bishop given out at Mass*
39 *on Sunday to the parents with a covering*
40 *letter. Each family letter put in an*
41 *envelope and sent to the eldest at both*
42 *schools. Was told by Gary Muirhead from*
43 *CSO to only put this out to the parents.*

44
45 MR HUNT: I tender both those entries.

46
47 Q. That's an entry that you've signed and dated?

1 A. I have.

2

3 Q. Does that suggest to you that you saw that as being a
4 significant entry as well?

5 A. I did - I do.

6

7 Q. Although you had been directed by Mr Muirhead to
8 disseminate the material in the way that you've discussed
9 in your evidence, was some of the content of the letter
10 that covered the pastoral message put in material to try
11 and address some of the concerns that the parent had raised
12 with you on the Saturday?

13 A. I would say so from the fact that I put down different
14 agencies or different people that the parents could contact
15 if the children were having difficulty and I suppose even
16 the parents having difficulty dealing with that situation.

17

18 MR HUNT: I tender the two diary entries.

19

20 THE COMMISSIONER: As one exhibit?

21

22 MR HUNT: Yes, please.

23

24 THE COMMISSIONER: The two diary entries from
25 Mr Callinan's diary of May 2003 will be admitted together
26 as exhibit 197.

27

28 **EXHIBIT #197 MR CALLINAN'S DIARY ENTRIES FOR 17/05/2003**
29 **AND 19/05/2003**

30

31 MR HUNT: Q. When you got the pastoral message from your
32 wife, did you contemplate contacting the bishop in some way
33 in relation to what was set out in the pastoral letter?

34 A. No.

35

36 Q. Why not?

37 A. One, the pastoral letter had already gone out to over
38 50 parishes within our diocese. I don't think the bishop
39 was going to retract anything that he had already put in
40 there. There were some untruths in that letter and
41 I thought if he was going to do that, I was concerned about
42 my position as principal of the school.

43

44 Q. When you forwarded the letter out under cover of your
45 letter as principal on 19 May 2003, you did that knowing
46 that the pastoral letter had some matters that you
47 considered were not accurate in it?

1 A. That's correct.
2
3 Q. Why did you do that?
4 A. Sorry?
5
6 Q. Why did you do that? Why did you disseminate the
7 pastoral message with your covering letter on it? Even
8 though it had at least the one inaccuracy that you've
9 identified in it, why did you send it out?
10 A. Because I was directed to do so by the acting CSO.
11
12 Q. And that was Gary Muirhead?
13 A. That was Gary Muirhead.
14
15 Q. Is it a fair proposition that until you came to
16 understand things about him that may have changed your
17 opinion, you had worked fairly closely with James Fletcher
18 when he was attached to the parish?
19 A. Yes.
20
21 Q. Until you came to know certain things about him, you
22 held him in high regard?
23 A. He was a good support for me while he was a parish
24 priest and I was a principal of schools.
25
26 Q. Did you have an initial scepticism about the charges
27 brought against him?
28 A. Yes.
29
30 MR HUNT: Can I just check my instructions? Can I say for
31 the benefit of the witness, those who represent him and
32 other people at the bar table, and others in court, it is
33 proposed, given that this is one of the rare occasions when
34 the Commission doesn't have extra commitments after hours,
35 to press on. What I would like is a five-minute break so
36 that people can organise themselves and consider that, but
37 I think I have it pre-authorized by you, Commissioner, that
38 you are prepared to sit on and finish Mr Callinan's
39 evidence..
40
41 THE COMMISSIONER: Yes, in order to conclude Mr Callinan.
42
43 MR HUNT: I can indicate that I have finished my
44 evidence-in-chief.
45
46 THE COMMISSIONER: I'll adjourn for five minutes.
47

1 **SHORT ADJOURNMENT**

2
3 MR HUNT: Commissioner, before you call on other
4 representatives to cross-examine Mr Callinan, I'm advised
5 that members of the press seek access to exhibits 191 to
6 197 inclusive. Could parties who have difficulty with
7 those being released speak to me fairly shortly after you
8 adjourn, whenever that might be, so that we can attend to
9 the release of those, if possible.

10
11 THE COMMISSIONER: Thank you, Mr Hunt. Mr Harben?

12
13 **<EXAMINATION BY MR HARBEN:**

14
15 MR HARBEN: Q. Mr Callinan, how long had you known
16 Father Fletcher for as at June 2002?

17 A. Probably six years from the time he was appointed as
18 parish priest at the parish school.

19
20 Q. Had you worked with and alongside him for most of that
21 time?

22 A. Yes.

23
24 Q. In that time, had you formed a friendship with him?

25 A. I had.

26
27 Q. So much so that you had begun to trust him?

28 A. Yes.

29
30 Q. The events that you have said you encountered in June
31 2002 were out of the ordinary, weren't they?

32 A. Oh, very much so.

33
34 Q. And you've told us that as well as those events,
35 incidents like a bishop telephoning you or visiting you
36 were out of the ordinary.

37 A. That's correct.

38
39 Q. Did you have a lot of contact with the director of
40 Catholic schools during your time as principal at Branxton?

41 A. We had various contact.

42
43 Q. Was he an important person in your work sphere?

44 A. He was.

45
46 Q. Was contact with him not something that happened every
47 day?

1 A. That is correct.
2
3 Q. In the context of something unusual happening,
4 I suppose contact with him would be something even more
5 remarkable.
6 A. I wouldn't say "remarkable"; I'd say "unusual".
7
8 Q. Would it be noteworthy?
9 A. It depends on the circumstances.
10
11 Q. In circumstances where the director contacted you
12 about a priest of the diocese being stood down or the like,
13 that would be noteworthy?
14 A. That would.
15
16 Q. So noteworthy that that's the sort of thing you might
17 record in the manner that you have described to this
18 Commission?
19 A. If he spoke to me about a priest being stood down,
20 yes, I would have noted it.
21
22 Q. Did you do that when the director of Catholic schools
23 communicated with you on 19 March 2003?
24 A. No, I did not note that in my diary.
25
26 Q. That was a noteworthy event about an unusual matter
27 that you didn't note in your diary.
28 A. He contacted me to see how I was, how the staff was,
29 how we were going in relation to the standing down of
30 Father Fletcher.
31
32 Q. It was an unusual and noteworthy event, him contacting
33 you?
34 A. It was.
35
36 Q. And you didn't note it in your diary, did you?
37 A. That's correct.
38
39 Q. Your statement was given to the police on 12 June
40 2003; is that correct?
41 A. That's correct.
42
43 Q. Had you resigned your position --
44 A. No.
45
46 Q. -- at that time?
47 A. My position as principal?

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Q. Yes.

A. No.

Q. Were you still employed in the same position you had been in for the five or six years prior?

A. I was.

Q. Did you remain in that capacity after 12 June 2003?

A. Yes, I did.

Q. When you were asked earlier about the reason for not contacting Bishop Malone and disputing what was in the pastoral message, you proffered the view that you were concerned for your position, didn't you?

A. I did.

Q. So does that mean that by the time you spoke to the police very shortly after that you had no such concern?

MR HUNT: I object to that.

THE COMMISSIONER: What's the objection?

MR HUNT: The question proceeds because of the preceding question on an assumption that the continuing employment after 12 June 2003 is somehow linked arguably to the bishop's knowledge about what's in the statement.

THE COMMISSIONER: But the witness has given some evidence about his concern for the future of his position. I'll allow it, Mr Hunt.

MR HARBEN: Q. You gave the answers earlier, in explanation for failing to challenge the bishop about the pastoral message, as including your concern for your position as principal at Branxton. That's what you did, isn't it?

A. That's correct.

Q. That was a concern, I suppose, that you would lose your job?

A. That's correct.

Q. What you were saying, really, was that the bishop would exercise his influence to take away your position of employment.

1 A. That's correct.
2
3 Q. Did that happen after 12 June 2003?
4 A. No.
5
6 Q. Did it happen in 2004?
7 A. No.
8
9 Q. Did it happen in 2005?
10 A. No.
11
12 Q. Has it ever happened?
13 A. No.
14
15 Q. So that on a date in May, which was a little less than
16 four weeks when you distributed the pastoral message, you
17 had transformed yourself from having a concern about your
18 position of employment to abandoning that concern and
19 making an allegation about matters you say you were in
20 dispute with with Bishop Malone. Is that the situation?
21
22 MR POTTER: I object to that. Those propositions don't
23 follow, Commissioner, that he had abandoned his concern
24 when he made the police statement.
25
26 MR HARBEN: I'm sure he can answer it.
27
28 THE COMMISSIONER: I'll permit the question to be put.
29
30 MR HARBEN: Q. Had you abandoned those concerns, had
31 you?
32 A. No.
33
34 Q. Did you still have those concerns?
35 A. I did.
36
37 Q. So when you still had those concerns, you were quite
38 happy to tell the police officers what you say was the
39 truth?
40 A. That's correct.
41
42 Q. Having come to that view, knowing that you were doing
43 so to somebody else, did you then go and seek out Bishop
44 Malone and tell him this is what you've told the police?
45 A. No.
46
47 Q. Knowing that it would inevitably come out whilst you

1 were still employed in the same capacity, did you at any
2 time go and say to Bishop Malone, "I disagree with what you
3 said in the pastoral message"?

4 A. No.

5

6 MR HUNT: I object to that. For that to be properly
7 answered, the witness ought to be asked whether he saw it
8 as inevitable that the bishop would come to know about the
9 contents of his statement to the police.

10

11 MR HARBEN: I thought I framed it "having told the police
12 officer".

13

14 MR HUNT: Yes. The question invited the proposition that
15 it was inevitable that the bishop would come to know that
16 he had told the police and I don't think that has been
17 established.

18

19 THE COMMISSIONER: That clause of the question hasn't been
20 established, I suspect.

21

22 MR HARBEN: I didn't realise I framed it in those terms.
23 If I did, I'll withdraw that question and approach it this
24 way.

25

26 THE COMMISSIONER: Thank you.

27

28 MR HARBEN: Q. You've told this Commission that on
29 18 May, your wife brought you home a pastoral message from
30 the church?

31 A. That's correct.

32

33 Q. You've also told us that you were given an instruction
34 by Mr Muirhead about sending it out?

35 A. That's correct.

36

37 Q. Who was Mr Muirhead?

38 A. He was acting director of the CSO at that stage while
39 Mr Bowman was overseas.

40

41 Q. Did you know him?

42 A. Yes.

43

44 Q. How long had you known him for?

45 A. For as long as he had been employed at the CSO.

46

47 Q. I take it that you had, with the concerns you had

1 about the content of the pastoral message, taken that up in
2 discussion with Mr Muirhead, did you?
3 A. No.
4
5 Q. He was a person who you could have spoken to about
6 your concerns; that's right, isn't it?
7 A. That is correct, yes, I could have.
8
9 Q. You were being asked to send a document out that you
10 now tell this Commission contained untruths. That was the
11 word you used.
12 A. I did.
13
14 Q. And here was a man who was asking you to do that, and
15 you didn't even raise it with him?
16 A. I didn't.
17
18 Q. You could have raised it with him and put some caveat
19 on the letter, couldn't you?
20 A. Possibly.
21
22 Q. Did you think to do that?
23 A. No, I didn't.
24
25 Q. You've been led through your diary and various diary
26 entries. For 19 May, dealing with the letter from the
27 bishop, you've recorded an entry about sending that letter
28 out, haven't you?
29 A. I have.
30
31 Q. That was your personal diary?
32 A. It was.
33
34 Q. For the purpose of this Commission, did you produce
35 that diary?
36 A. When?
37
38 Q. Well, did you produce it at some time?
39 A. I found it last Friday when we were summonsed - the
40 CSO was summonsed to seek documents of staff minutes from
41 2001 to 2003 and, also, P&F minutes from 2001 to 2003.
42 I didn't realise that it was actually at Greta.
43
44 Q. So this was a book, a diary, that you kept for your
45 own purposes?
46 A. And for the day-to-day running of the school during
47 2003.

1
2 Q. You owned the diary?
3 A. I do.
4
5 Q. It has been in your possession since that time?
6
7 MR HUNT: I object to that.
8
9 MR HARBEN: Q. Has it been in your possession since that
10 time?
11 A. It hasn't actually been in my possession. It has been
12 in one of the schools at which I used to be principal.
13
14 Q. In any event, it was a diary personal to you and for
15 your use?
16 A. That is correct.
17
18 Q. If you wanted to record notes in here, you could have
19 done so at your own discretion?
20 A. Yes.
21
22 Q. If you wanted to include notes that concerned you,
23 such as the note about the conversation you say took place
24 with Bishop Malone, for your own purposes, you could have
25 done so?
26 A. I could have, but I didn't.
27
28 Q. I'm sorry?
29 A. I said I could have, but I didn't.
30
31 Q. What didn't you do?
32 A. I didn't make up any of those entries I put in there.
33
34 Q. I'm sorry?
35 A. That's --
36
37 Q. That's not what I'm suggesting to you.
38 A. Sorry.
39
40 Q. You could have made entries in this book, whatever
41 entries you liked, because it was your book for your
42 purposes; is that correct?
43 A. That's correct.
44
45 Q. The date of 19 May is the date that you've been taken
46 to as recording the entry in relation to sending out the
47 pastoral message from the bishop?

1 A. That's correct.
2
3 Q. This was a note you made for your own purposes?
4 A. That's correct.
5
6 Q. Because it was important?
7 A. Yes.
8
9 Q. Because you wanted to record from your mind what the
10 important matters were?
11 A. That's correct.
12
13 Q. One of the important matters would have been, in your
14 mind, that there were untruths in the letter?
15 A. There were.
16
17 Q. That would have been an important matter in your mind?
18 A. Yes.
19
20 Q. That would be the very sort of thing you would record
21 in your personal diary, recorded by yourself for your own
22 use, wouldn't it?
23 A. Yes.
24
25 Q. Did you do that?
26 A. No.
27
28 Q. The very thing - the very caveat you could have added
29 for your own purposes about sending out this letter in a
30 book that remained with you could have been put in this
31 entry of 19 May 2003. That's right, isn't it?
32 A. That's right.
33
34 Q. It's the case, isn't it, that if you really had some
35 problem with this pastoral message, there would have been a
36 note in this book, kept by you for your own purposes.
37 That's the case, isn't it?
38 A. Not necessarily.
39
40 Q. That's very necessarily the case, isn't it, because it
41 wouldn't have been a matter that this book would have gone
42 to the bishop and your job would have been under threat,
43 would it?
44 A. No.
45
46 Q. This would have been kept by you away from anybody
47 else for your own purposes?

1 A. That's correct.

2

3 * Q. To give you the measure of protection you now seek
4 by asserting at this time that you then took issue with
5 this pastoral message?
6

7 MR HUNT: I object to that. The framing of the question
8 is pejorative. It suggests that this witness who is giving
9 sworn evidence before you is taking some protective
10 position. That's not the way that I understand his
11 evidence and it's not fair to put it that way.
12

13 MR HARBEN: I'm sorry, is taking some?
14

15 MR HUNT: You've put that the witness is taking some
16 position of protection. He's giving sworn evidence to the
17 Commission. He's compelled to be here. I don't think it's
18 a fair assertion to characterise his evidence as taking a
19 protective position.
20

21 MR HARBEN: I think I put it to him that he could have
22 taken a protective position, by making the note.
23

24 THE COMMISSIONER: Yes.
25

26 MR HUNT: I agree with that part - there is nothing
27 impermissible about that - but it was then linked, "the
28 protective protection you now seek" or "you now take", and
29 it's that part that I submit is a comment; it is a
30 submission, and it's not a fair characterisation of this
31 witness's position before the Commission.
32

33 THE COMMISSIONER: I will have a look at the question.
34

35 (Question marked * read)
36

37 MR HUNT: It's not the previous question, which I didn't
38 object to, it's that one.
39

40 MR HARBEN: Perhaps if I could revisit it.
41

42 THE COMMISSIONER: Yes, can you revisit it, Mr Harben.
43

44 MR HARBEN: Q. This was your book for your personal
45 purposes.
46

47 A. That's correct.

1 Q. The letter that you wrote at the direction of
2 Mr Muirhead on 19 May you knew was going out to all the
3 parents of the children under your control?
4 A. That's correct.
5
6 Q. You knew that that was containing a document that
7 asserted in its terms that you had been consulted by the
8 bishop?
9 A. That's correct.
10
11 Q. What was it about what was in the pastoral message
12 that you took exception to?
13 A. That he never actually - he never actually had a
14 conversation with me and never sought advice as to if
15 Father Fletcher was okay to stay in the parish, to stay as
16 parish priest.
17
18 Q. We'll come back to that in a moment. Can I take you
19 to your statement. Do you have that in front of you?
20 A. I'm just trying to find it. Yes.
21
22 Q. You were informed, according to paragraph 5 of your
23 statement, very soon after it occurred that Father Fletcher
24 had received a telephone call following the 60 Minutes
25 story.
26 A. That's correct.
27
28 Q. Can we take it that you were privy to that information
29 because you had a close working relationship with Father
30 Fletcher?
31 A. I would say that's probably correct, yes.
32
33 Q. This statement was taken on 12 June 2003?
34 A. That's correct.
35
36 Q. About a year after that conversation; or about a year
37 after?
38 A. Yes, that's correct.
39
40 Q. Paragraph 7 says this:
41
42 *I remember later that week I was informed*
43 *by someone, I cannot now remember whom,*
44 *that the allegation subject of the Sunday*
45 *night phone call had now been officially*
46 *made ... and there was a formal*
47 *investigation.*

1
2 Do you see that?
3 A. Yes.
4
5 Q. Do we take it from the terms of that paragraph that
6 one of the things that you considered in terms of Father
7 Fletcher continuing at the school was that allegation?
8 A. I don't understand what you're saying.
9
10 Q. You used the word in paragraph 7 "allegation".
11 A. Yes.
12
13 Q. Did you mean by that it was alleged that Father
14 Fletcher had sexually abused somebody; is that what you
15 meant?
16 A. I was under the impression that an allegation had been
17 made by a youth, a 17 or 18-year-old youth and that there
18 was a formal investigation.
19
20 Q. Just tell me this: where did the information come
21 from --
22 A. As I said in that statement --
23
24 Q. Just bear with me.
25 A. Sorry.
26
27 Q. Where did the information come from that the
28 allegation had been made by a 17 or 18-year-old youth?
29 A. I am not sure.
30
31 Q. Getting on to the allegation in paragraph 7, what did
32 you understand by your words in the statement "the
33 allegation"?
34 A. Whoever informed me said that there had been an
35 allegation made.
36
37 Q. What was the allegation about?
38 A. An allegation of an assault by Father Fletcher on a
39 17 to 18-year-old youth.
40
41 Q. What sort of assault?
42 A. Well, I presume sexual assault.
43
44 Q. When you say "presume", I take it that as Father
45 Fletcher was in your ambit, you made an inquiry about the
46 allegation?
47 A. I'm not sure.

1
2 Q. He was a priest that was coming to your school, wasn't
3 he?
4 A. He was.
5
6 Q. The first thing you would have done is ask what the
7 allegation was, wouldn't you?
8 A. I'm not really sure what you're saying.
9
10 Q. Did you make an inquiry as to what the allegation was?
11
12 MR HUNT: In fairness, the witness should be taken to
13 paragraph 8.
14
15 THE COMMISSIONER: I rather gather, Mr Harben, you meant
16 ask someone other than Fletcher himself?
17
18 MR HARBEN: Yes.
19
20 MR HUNT: I'm sorry, we're at cross-purposes. I thought a
21 couple of questions ago the question was asking whether he
22 had taken it up with Fletcher.
23
24 MR HARBEN: No.
25
26 MR HUNT: Sorry. In that case, I withdraw the objection.
27
28 THE COMMISSIONER: Thank you, Mr Hunt.
29
30 MR HARBEN: Q. Did you make an inquiry with someone
31 other than Father Fletcher as to what the allegation was
32 when you were deciding whether he should continue to come
33 to your school?
34 A. No.
35
36 Q. When you say in paragraph 7, "I remember later that
37 week", firstly, do you mean in the week following the
38 60 Minutes story?
39 A. I would say so.
40
41 Q. You say:
42
43 *I was informed by someone. I cannot now*
44 *remember whom.*
45
46 A. That's correct.
47

1 Q. Do you have any idea as to who that might have been?
2 A. No, I don't.
3
4 Q. This was a very, very noteworthy matter, wasn't it?
5 A. Yes, I suppose so.
6
7 Q. This was the very sort of thing you might record as a
8 noteworthy matter in the diary which you've given evidence
9 about in chief, being the place you recorded such
10 noteworthy matters?
11 A. Yes, but at that stage I really didn't know much about
12 it at all.
13
14 Q. Isn't that the point, you were in a position where you
15 perhaps could have asked?
16 A. I could have.
17
18 Q. Did you make any note about the sexual abuse
19 allegation in the terms that you refer to in paragraph 7 of
20 your statement to the police?
21 A. No.
22
23 Q. Did you make any inquiry as to what the terms of the
24 formal investigation were that you refer to in paragraph 7?
25 A. No.
26
27 Q. Is it the case that the person, the "someone" that you
28 refer to in paragraph 7 was Bishop Malone?
29 A. No.
30
31 Q. That's not possible?
32 A. No, I would remember - remember talking to a bishop
33 about that.
34
35 Q. I see. You say:
36
37 *I much later became aware that the Bishop*
38 *had been up to see Father Jim regarding*
39 *this but I was not personally aware of that*
40 *at the time.*
41
42 A. That is correct.
43
44 Q. Do you see that?
45 A. Yes.
46
47 Q. Are they your words?

1 A. What paragraph is that?
2
3 Q. Paragraph 7.
4 A. Yes.
5
6 Q. When you used the words "much later", what did you
7 mean by that?
8 A. "Much later" I meant by the first time the bishop
9 actually called me up to talk to me about it on 19 March
10 2003.
11
12 Q. So in almost 12 months are you suggesting that
13 the first time you had any knowledge of the trip that
14 Bishop Malone made to see Father Fletcher - the first time
15 you heard about that was nine months later?
16 A. I would have - no, I - I remember the bishop had come
17 up, but he never contacted me personally.
18
19 Q. You remember the bishop had come up.
20 A. Someone had told me.
21
22 Q. Someone had told you. Do you remember who that was?
23 A. No, I don't.
24
25 Q. Do you remember when you were told that?
26 A. I think it was early June.
27
28 Q. Early June?
29 A. 2002.
30
31 Q. When you used the words "I much later became aware",
32 is that a fair description, do you think, of early June?
33 A. No, probably not.
34
35 Q. Isn't it the case that you were aware on 20 June 2002
36 that Bishop Malone had been up to see Father Fletcher?
37 A. I was.
38
39 Q. That's because, do you say now, you can recall how you
40 became aware on 20 June 2002 that Bishop Malone had been up
41 to see Father Fletcher?
42 A. On that particular day, no.
43
44 Q. But you knew at that time, did you?
45 A. Yes. As I said, someone had told me that he had been
46 up earlier in June.
47

1 Q. You gained that knowledge in June of 2002, didn't you?
2 A. I did.
3
4 Q. Did you record that in your diary?
5 A. No.
6
7 Q. In the context of a priest involved in a school in
8 which you were the principal being the subject of a formal
9 investigation into sexual abuse and the bishop travelling
10 up to see him, that would be a noteworthy event, wouldn't
11 it?
12 A. Well, at the time obviously I didn't put it in my
13 diary, so I would have to say no.
14
15 Q. Having made whatever investigation it was you made, as
16 you have previously described, you were then content to
17 allow Father Fletcher to remain at the school?
18 A. I was.
19
20 Q. I take it that that was a view that you formed because
21 of your relationship with Father Fletcher?
22 A. And the fact that I really - I officially hadn't
23 been - I officially hadn't been told there was any police
24 investigation going on until the bishop rang me on 19 March
25 2003.
26
27 Q. Could I take you back to paragraph 7 where you talk
28 about:
29
30 *I remember later that week I was informed*
31 *by someone, I cannot now remember whom,*
32 *that the allegation subject of the Sunday*
33 *night phone call had now been officially*
34 *made to the police and there was a formal*
35 *investigation.*
36
37 That's not 19 March 2003, is it?
38 A. No, but all I'm saying is that I officially had not
39 heard - I officially did not hear from the church about any
40 formal investigation until then. All I knew --
41
42 Q. You knew there was a formal police investigation as
43 early as the first week of June, didn't you?
44 A. Somebody told me, but the official - the church didn't
45 tell me that at all. I was going on --
46
47 Q. You knew that - you had knowledge of that?

1 A. I did.
2
3 Q. And you had knowledge of that at the time you took the
4 steps to leave Father Fletcher at the school?
5 A. I didn't take those steps. I thought it was the
6 authority of the church who knew more than what I did.
7 I only knew rumours - rumours and someone had told me - but
8 officially I had not been told by the church that there was
9 any formal investigation. They knew more than I did and
10 they had the authority to stand him down.
11
12 Q. You were happy for that to continue, weren't you?
13 A. I was, in the fact that the church - if the church
14 were concerned that Father Fletcher posed a risk to the
15 children, in their wisdom I'm sure that they would have -
16 they would have stepped him down.
17
18 Q. But you yourself were able to form the view that you
19 were happy for that situation to continue.
20 A. That's correct, because I officially did not know
21 there was any formal investigation. I had not been told by
22 the church.
23
24 Q. It's the case, isn't it, that Father Fletcher told you
25 about the allegation?
26 A. That's correct.
27
28 Q. It's the case, isn't it, that you didn't believe,
29 in June 2002, that allegation?
30 A. That's correct.
31
32 Q. It's the case, isn't it, that you did not think him
33 capable of such things?
34 A. At the time, that is correct.
35
36 Q. And it's the case, isn't it, that you thought to
37 yourself that probably someone was out to get him?
38 A. No.
39
40 Q. You didn't think that?
41 A. No.
42
43 Q. I want to suggest to you that on 20 June 2002. You
44 said this, in answer to Bishop Malone's question, "Did
45 you know that allegations have been made against Jim
46 Fletcher?" - I want you to assume that he asked you that,
47 and I want to suggest to you that you told him this:

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Yes, he told me.

A. There was no conversation on 20 June between me and the bishop.

Q. That's the case, though, isn't it, that Father Fletcher told you about the allegations?

A. That's right.

Q. I then want to suggest you said to Bishop Malone, "I don't believe it"?

A. That's incorrect because I never spoke to the bishop on 20 June.

Q. But that was the truth - you didn't believe it?

A. I didn't believe it.

Q. I want to suggest you then said to him, "He wouldn't be capable of such things"?

A. No, I never said that to the bishop because --

Q. But that's what you believed, isn't it?

A. I believed at the time that he was innocent, yes.

Q. If somebody had asked you about that, you would have said all those three things, because that's what you believed, isn't it?

A. I just believed he was innocent - at that stage.

Q. But those three specific things I just put to you, if somebody had posed the question, you would have said all those three things?

A. I would have said he was innocent.

Q. You would have said he wouldn't be capable of such things?

A. No, I would have said he was innocent.

Q. You agreed with me a short time ago that's what you believed, that he wasn't capable of such things, didn't you?

A. That's correct.

Q. I want to put to you further that you said, "Someone's out to get him"?

A. No.

1
2 Q. When Father Fletcher spoke to you, he asked you
3 whether he was still welcome in the school?
4 A. He did.
5
6 Q. You didn't say anything about, "Well, I'll have to
7 check with the authorities," did you?
8 A. No.
9
10 Q. You said straight out that they were only allegations?
11 A. That's correct.
12
13 Q. And that was a view that you formed, absent of
14 anything else?
15 A. That's correct.
16
17 Q. And that continued to the point where you recognised
18 that Father Fletcher was at the school taking part in
19 various activities?
20 A. That's correct.
21
22 Q. On 20 June 2002 I want to suggest to you that Bishop
23 Malone said to you, "The police are launching an
24 investigation" ?
25 A. That is incorrect. We never had a conversation on
26 20 June.
27
28 Q. That would be consistent, wouldn't it, with
29 paragraph 7 of your statement when you say:
30
31 *I remember later that week I was informed*
32 *by someone, I cannot now remember whom,*
33 *that the allegation subject of the Sunday*
34 *night phone call had now been made*
35 *officially to the police and there was a*
36 *formal investigation.*
37
38 A. No, it wasn't Bishop Malone.
39
40 Q. But that would be consistent with paragraph 7,
41 wouldn't it?
42 A. No.
43
44 Q. You deny that?
45 A. Yes, I --
46
47 Q. You deny that? If Bishop Malone had said to you, "The

1 police are launching an investigation", you deny that's
2 inconsistent with what you have written in paragraph 7.
3 A. Bishop Malone never spoke to me about that.
4
5 Q. When you were asked to look at your diary, you were
6 taken to 19 March.
7
8 MR HUNT: I don't want to be finickity, but lest it be
9 taken at some other time the witness had his diary in the
10 witness box when I was asking him questions, I took him to
11 particular extracts of the diary.
12
13 MR HARBEN: Q. You were taken to the page of your diary
14 for 19 March?
15 A. That's correct.
16
17 Q. Which you would agree is an accurate representation of
18 your original diary.
19 A. Yes.
20
21 Q. You've written there words that you say reflect a
22 conversation with Bishop Malone.
23 A. That's correct.
24
25 Q. You've written these words:.
26
27 *Indicated we had a conversation about the*
28 *situation then and we thought he would not*
29 *be a harm to the children.*
30
31 A. Yes, I wrote that.
32
33 Q. You wrote that? Then you've added these words:
34
35 *I could not recall this conversation.*
36
37 A. That's correct.
38
39 Q. This is your diary, kept for your purposes only, isn't
40 it?
41 A. Yes.
42
43 Q. No denial in your own diary that the conversation took
44 place?
45 A. No, just - no.
46
47 * Q. You would be incensed by such a matter were it

1 untrue, wouldn't you?

2 * A. At that particular time I was trying to come to
3 terms with the fact what conversation, because I could not
4 recall any previous conversation we had had. If we then
5 had a conversation on 20 June 2002 and he told me to stand
6 the bishop [sic] down, I would have defied the bishop then
7 for nine months and I should have been sacked.

8

9 Q. So is what you're saying that you understand it's
10 being alleged that Bishop Malone told you to stand Father
11 Fletcher down; is that what you're saying?

12 A. That's what I'm saying.

13

14 Q. Is that the conversation that you say did not occur?

15 A. No, the conversation I'm saying did not occur is a
16 conversation where the bishop indicated that we had spoken
17 about the Fletcher situation previously and that it was
18 okay for him to continue within the school.

19

20 Q. Just a moment ago you said you took issue with Bishop
21 Malone telling you to stand Fletcher down, and that's what
22 you couldn't recall. That's what you said.

23 A. I don't think I said that.

24

25 Q. Could the witness have that re-read, about two answers
26 ago.

27

28 MR HUNT: Could the witness go outside for a minute.
29 There is something I want to say to my friend and the
30 Commissioner that might explicate this, but I don't want to
31 say it in front of the witness.

32

33 THE COMMISSIONER: Would you go outside, Mr Callinan. I'm
34 sorry.

35

36 (The witness left the courtroom)

37

38 THE COMMISSIONER: These are the three last questions and
39 answers:

40

41 (Question and answer marked * read)

42

43 MR HARBEN: I then followed that up by suggesting to him
44 that that's the conversation he took exception to.

45

46 THE COMMISSIONER: What did you wish to say, Mr Hunt?

47

1 MR HUNT: I asked the witness to respond to a number of
2 portions of conversation, including - this is asserted by
3 the bishop on 20 June - he shouldn't be alone with kids and
4 should stay away from the school. The witness denied that
5 conversation. I suspect, but I didn't want to say this
6 with the witness in the witness box, that the witness is
7 saying in that answer that has been read back: if I'd had
8 the conversation with the bishop and I hadn't stood him
9 down from being at the school, I would have been defying
10 the bishop for nine months.

11
12 THE COMMISSIONER: And should have been sacked.

13
14 MR HUNT: And should have been sacked. But I didn't want
15 to make that submission with the witness in the witness
16 box.

17
18 MR HARBEN: I'm asking him about the note in the diary of
19 19 March 2003.

20
21 MR HUNT: I understand that.

22
23 THE COMMISSIONER: Was there a problem with the last
24 question, Mr Hunt? Can we have the witness back?

25
26 MR HUNT: I think we can have the witness back. I could
27 see things descending into a difficult mire. My friend is
28 still entitled to his forensic dealing with witness, but
29 I just wanted to put on the record what I think the answers
30 are responsive to.

31
32 MR POTTER: Perhaps the witness should be asked to clarify
33 his answer to the question that has given rise to the
34 uncertainty before we go on down the path --

35
36 THE COMMISSIONER: If it suits you to do that, Mr Harben,
37 it may be of greater utility if we all understand what
38 we're talking about.

39
40 (The witness returned to the courtroom)

41
42 MR HARBEN: Commissioner, I think the easiest way would be
43 to read that question and answer to the witness in
44 fairness.

45
46 *(Question and answer marked * read)*
47

1 THE WITNESS: That's correct.
2
3 MR HARBEN: Q. You used the words in that answer "at
4 that particular time".
5 A. Yes.
6
7 Q. By those words you meant when you made your diary
8 entry on 19 March 2003, didn't you?
9 A. Yes.
10
11 Q. And you were concerned, if that answer is correct,
12 with the conversation as you understood it, that if you
13 allowed Fletcher to continue in the school that would have
14 been seen as you defying the bishop for nine months.
15 A. If the bishop had told me to stand Father Fletcher
16 down and I defied him for nine months, yes, it would have
17 been me defying the bishop's directive.
18
19 Q. Is that what you understood by the conversation you
20 had with the bishop on 19 March, that that is what he was
21 saying?
22 A. No.
23
24 Q. What did you understand the bishop to be saying to you
25 on 19 March?
26 A. I was understanding him to be saying to me that there
27 was - that he indicated we had some form of conversation
28 previous to that date about Father Fletcher being suitable
29 to stay within the school.
30
31 Q. Being suitable to stay?
32 A. Yes.
33
34 Q. Are you suggesting that it was Bishop Malone who was
35 saying that he told you that Father Fletcher was suitable
36 to stay in the school? Is that what you're saying?
37 A. I'm saying that's the conversation he said we had, but
38 I - but we did not have.
39
40 Q. What I want to suggest to you is that if that did not
41 happen, if that conversation with Bishop Malone had not
42 happened, what you would have recorded for your own
43 purposes in your diary is a denial of the conversation.
44 A. I just noted down what I did at the time, what
45 I thought was relevant.
46
47 Q. It's very different, isn't it, to say, "I could not

1 recall this conversation" to saying, "It just didn't
2 happen"?

3 A. Well, as I said, at that particular time I was trying
4 to recall the conversation. After the --

5

6 Q. I suppose --

7 A. After the phone was put down, I wrestled with that
8 trying to work out what conversation and when.

9

10 Q. I suppose, if you gave the question - the
11 consideration that much credence, it occurred to you that
12 the conversation could have taken place.

13 A. No, it did not take place.

14

15 Q. But it must have occurred to you if you gave it that
16 much consideration, if you wrestled with it in the way
17 you've described, you must have at some stage given
18 consideration to the proposition that it did take place.

19 A. That would probably be a fair assumption, yes.

20

21 Q. There is nothing, is there, in any document that
22 you've seen since that time that would change that
23 possibility, is there?

24 A. No.

25

26 Q. Indeed, to the contrary, you've seen the pastoral
27 message which indicates that the bishop spoke to you.

28 A. That's what the bishop said.

29

30 Q. That's a document that was obviously an assertion by
31 the bishop that a conversation did take place with you.

32 A. That was his assertion.

33

34 Q. That would be a document that might have been utilised
35 by you in terms of your recollection about the events.

36 A. Not necessarily, because I didn't have any
37 conversation and he did not - he did not get any advice
38 from me or ask me any advice about Fletcher continuing in
39 the schools.

40

41 Q. I want to suggest to you, and it was put to you, but
42 in fairness I will put it to you again, that I've put to
43 you some conversation that I've said happened on 20 June
44 and that Bishop Malone further said, "The police are
45 launching an investigation." He said those words to you or
46 words to that effect.

47 A. Not on 20 June.

1
2 Q. But in any event you concede, don't you, that someone
3 told you that?
4 A. I did.
5
6 Q. I want to suggest to you that Bishop Malone said,
7 "I have asked Jim to consider standing down, but he would
8 rather stay here where he has the support of parishioners
9 until after the investigation is completed."
10 A. He never said that to me.
11
12 Q. You knew that to be the case, didn't you, that Father
13 Fletcher wanted to stay at the parish?
14 A. No.
15
16 Q. You didn't know that from your contact with him as a
17 friend?
18 A. No.
19
20 Q. You didn't know that in all the conversations you had
21 with him about the allegation that he preferred to stay
22 there?
23 A. He never indicated that to me.
24
25 Q. Nevertheless, he asked you, "Am I still welcome at the
26 school?"
27 A. He did.
28
29 Q. You responded that they were only allegations.
30 A. That's all I knew at that stage.
31
32 Q. You never made any further inquiry that year, that is,
33 2002; is that the situation?
34 A. That's correct.
35
36 Q. Just getting back to Bishop Malone, I want to suggest
37 to you further that he continued the conversation -
38 I accept you say it didn't happen - he said:
39
40 *You will need to be careful while this is*
41 *going on. He shouldn't be alone with kids*
42 *and should stay away from the school.*
43
44 A. He never said that to me.
45
46 Q. You deny that?
47 A. I do.

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Q. If the situation was that you wrestled with your recollection as to whether a conversation took place, what evidence did you have to enable you to eventually come to the conclusion that it didn't take place?

A. Because if a bishop had contacted me off-the-cuff, one off, which very, very rarely happened, it was a very significant event and I am fairly sure that I would have remembered it.

Q. How long did you wrestle with that consideration before you came to the view that you would have recollected it, if it happened?

A. I'm not sure.

Q. Was it the same night that you wrote the note in your diary?

A. It was probably from the time he rang me up on 19 March.

Q. If that's the case, you certainly wouldn't say, "I could not recall this conversation." You would have said something like, "I deny this took place."

A. At that particular time with the phone call, I just could not recall that conversation taking place.

Q. But you say that you probably came to that realisation on the night of the phone call from him.

A. That's correct.

Q. So you didn't wrestle with it for very long.

A. I didn't wrestle with it - well, I suppose I did, but at that particular time I could not recall any conversation.

Q. So in the intervening minutes or hour, or whatever it was, what was it that changed your mind from, "I can't recall" to "I can positively assert"? What information did you get that enabled you to bridge that gap?

A. Probably in my own head.

Q. In your own head you came to this view? So at one minute you cannot recollect, you're not sure; in the next instance --

MR HUNT: I object to that, not a fair characterisation of the evidence. Mr Harben has been asking about a

1 conversation, realisations at night after a 9am phone call.
2 Now he's conflating that idea to it being a second between
3 the two. It's not fair.

4
5 THE COMMISSIONER: The objection is to "at one minute"
6 I think, Mr Harben.

7
8 MR HARBEN: I must have missed the "9am" bit. If I did,
9 I apologise to the witness.

10
11 Q. I'll return to the question I asked you that commenced
12 that. How long did you wrestle with this proposition about
13 whether the conversation or whether you could recollect the
14 conversation - how long did you do that for?

15 A. I can't recall.

16
17 Q. You gave an answer a little while ago that it occurred
18 probably on the same night - I think was your word - of the
19 conversation you had with Bishop Malone on the phone.

20 A. If I said that, yes, I came to that conclusion that
21 I just could not remember that conversation.

22
23 Q. Did you do that on the same day that you had the
24 conversation?

25 A. I'd say yes.

26
27 Q. When did you have the conversation with Bishop Malone?

28 A. Previously.

29
30 Q. Yes, but when in the day - what time?

31 A. He rang me at 9 o'clock in the morning.

32
33 Q. Is that what you've recorded in your diary, because --

34 A. No.

35
36 Q. An important call, a noteworthy event when the bishop
37 rang you, you didn't recall the time of the call?

38 A. No.

39
40 Q. And you can't really say how long transpired between
41 call and coming to the view that there was no such
42 conversation, can you? You can't say that.

43 A. There was no conversation. I - as I said, I wrestled
44 with it and I just couldn't recall any conversation
45 previously.

46
47 Q. What additional information did you obtain between not

1 being able to recall it and being certain that it didn't
2 happen?

3
4 MR POTTER: I object to that. It's been answered.

5
6 MR HARBEN: I'm not sure it was. It was objected to by my
7 learned friend.

8
9 MR HUNT: It was asked and answered by the witness.

10
11 THE COMMISSIONER: Did you want the question and answer
12 read back again?

13
14 MR HARBEN: If the witness said that there was no other
15 information, which I think is what he probably said --

16
17 THE COMMISSIONER: I think that's right.

18
19 MR HUNT: That's what he said.

20
21 MR HARBEN: Is that what he said? Then I don't need to
22 revisit it.

23
24 Q. When you spoke to the police on 12 June 2003 you
25 recorded your version of what happened in that telephone
26 conversation on 19 March 2003 in paragraph 13, didn't you?
27 A. Yes.

28
29 Q. Do you have your diary page for 19 March and your
30 statement?
31 A. I do.

32
33 Q. At the bottom of paragraph 13, given that you say:

34
35 *I am a bit reluctant to use exact*
36 *conversation at this point, as I am not*
37 *certain as to the exact words that were*
38 *used, but he said something to me like ...*

39
40 Given that caveat, you attribute these words to Bishop
41 Malone:

42
43 *"We have spoken about the matter when it*
44 *first surfaced in a conversation through a*
45 *phone call I made to you at that time."*

46
47 Do you see that?

1 A. Yes.
2
3 Q. Where do we find that in your diary note?
4 A. It's not noted.
5
6 Q. You then say:
7
8 *We spoke about Father continuing in his*
9 *role in his capacity as Parish Priest*
10 *within the two schools.*
11
12 A. That's what's in the statement.
13
14 Q. Where do you find that in your diary note?
15 A. I suppose where it's indicated we had a conversation
16 about the situation and we thought it would be - he would
17 not be a harm to the children.
18
19 Q. So you say that sentence I read out is a paraphrase of
20 what you've indicated in your diary?
21 A. That's correct.
22
23 Q. You then add:
24
25 *I was taken back by this & did not*
26 *respond ...*
27
28 Do you see that?
29 A. Yes.
30
31 Q. That's the case, is it, that you didn't say anything
32 to Bishop Malone about what you say he said.
33 A. I didn't - I was taken back by the fact that he said
34 we had a conversation.
35
36 Q. You didn't say, "Well, I can't remember that"?
37 A. No.
38
39 Q. That wouldn't have been a threat to your work.
40 A. It wouldn't have been a threat, but I still couldn't
41 remember the conversation when he actually rang me up.
42
43 Q. Not remembering something and asserting something as
44 an untruth, they are entirely different things, aren't
45 they?
46 A. Yes, I suppose so.
47

1 Q. When you are having a conversation with somebody who
2 says, "Look, we had this conversation," had you no
3 recollection of it, the first thing you would have said is,
4 "Look, I can't remember that." That's right, isn't it?

5 A. I didn't at the time because - and I was just, as
6 I said, taken aback and I was trying to remember whether we
7 did have a conversation or not.

8

9 Q. That's the point, isn't it, to help your recollection
10 you might have said to the bishop, "Well, I can't remember
11 that. When did that happen?"

12 A. Well, I didn't.

13

14 Q. You then go on at the bottom of paragraph 13 - I'll
15 read the sentence in its entirety:

16

17 *I was taken back by this & did not respond,*
18 *as I had not had such a conversation.*

19

20 What you were telling the police officer is, in your
21 statement which you declared to be the truth, that the
22 reason you did not respond was because you had not had such
23 a conversation.

24 A. That's what I said in the statement.

25

26 Q. That just wasn't true, was it?

27 A. It was.

28

29 Q. But, you see, you've already told us that at the time
30 you had the conversation you couldn't recollect it and you
31 had to wrestle with the idea of whether the conversation
32 had taken place at all.

33 A. At that particular time when he rang me, yes, I did
34 wrestle with it.

35

36 Q. But what you're telling the police officer, and
37 excusing your lack of response, by the words "as I had not
38 had such a conversation". That's what you were saying.

39 A. I did.

40

41 Q. That was the excuse you were giving for not
42 challenging what Bishop Malone was saying to you.

43

44 MR HUNT: I object to the "excuse" part.

45

46 THE COMMISSIONER: Reasons?

47

1 MR HARBEN: Q. That was the reason you asserted to the
2 police officer that you had not challenged Bishop Malone
3 about his conversation; that was the reason?
4 A. No, it wasn't. I didn't challenge - as I said,
5 I didn't at the time when the bishop rang me up on
6 19 March, I didn't challenge, because I could not remember
7 any conversation I had with him previously in regards to
8 the Fletcher situation.
9
10 Q. What did you mean by the words "I was taken back by
11 this & did not respond, as I had not had such a
12 conversation"? What did you mean by those words?
13 A. I was taken back, because I was surprised that the
14 bishop had brought it up because we --
15
16 Q. What did you mean by the --
17
18 MR HUNT: I object. The witness is trying to answer the
19 question carefully.
20
21 THE COMMISSIONER: Had you finished your answer?
22
23 THE WITNESS: Because we just didn't have that
24 conversation.
25
26 MR HARBEN: Q. What did you mean by the words "as I had
27 not had such a conversation"?
28 A. Exactly what I meant. There was no conversation
29 previously between the bishop and I before 19 March about
30 the Fletcher situation.
31
32 Q. You were saying that to the police officer --
33 A. I was.
34
35 Q. -- as a reason you didn't respond to him, by asserting
36 that the conversation had not taken place.
37 A. No.
38
39 Q. If that's what the truth was, the very thing you would
40 have recorded in your diary was, "This conversation did not
41 take place."
42 A. I wrote down at the time - I wrote down at the time
43 the facts as I knew them and that I could not recall that
44 conversation.
45
46 Q. You've told us that you were content for the pastoral
47 message to be sent out under your hand to all the people it

1 was going to.
2 A. That's correct.
3
4 Q. I want to suggest to you that if there had been an
5 inaccuracy in that pastoral message, you would have raised
6 that with Mr Muirhead?
7 A. I didn't.
8
9 Q. But that's what you would have done had there been an
10 inaccuracy in it, wouldn't you?
11 A. Not necessarily.
12
13 Q. You are principal of a school. You are familiar with
14 the process of distributing information, aren't you?
15 A. I am.
16
17 Q. You're a person who is careful about the accuracy of
18 material that goes out to the parents that come within your
19 ambit?
20 A. Best I can.
21
22 Q. One of the things as best you could do is to ensure
23 the accuracy of material that goes out under your hand.
24
25 MR HUNT: I object to that. The challenge with that -
26 while it went out, he's not the author of the attachment,
27 so I just don't think it's fair.
28
29 MR HARBEN: Can I ask this question.
30
31 THE COMMISSIONER: The accuracy of the material which
32 pertains to the witness.
33
34 MR HARBEN: Yes.
35
36 Q. You could have written a covering letter and said,
37 "I have no recollection of being consulted by Bishop Malone
38 as is asserted in his pastoral message." You could have
39 added that to your letter.
40 A. I wasn't going to do that. As I said previously, at
41 the time I - at the time it had already gone out to 50
42 parishes and the bishop - at the time I'm sure the bishop
43 wasn't going to retract anything that I challenged and
44 I hadn't penned my signature to the bottom of the letter
45 and, as I said earlier, I was concerned because of the fact
46 that, although there was an inaccuracy in there, he did
47 have the authority in regards to my position.

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Q. What did you say about not penning your signature to the bottom of the letter?

THE COMMISSIONER: I think the answer was that it didn't have your signature at the bottom of the letter.

THE WITNESS: That's right, the actual official pastoral letter to the diocesan community, I did not actually sign that. Bishop Michael did.

MR HARBEN: Q. But you signed the letters to the parents?
A. I did.

Q. You signed it enclosing a copy of the pastoral message which you had read?
A. I did.

Q. I take it that normally when you send things out, you are happy that that is an assertion of their accuracy?
A. That's correct.

Q. Is this, you say, the only time in the history of sending things out for you that you've sent something out that's inaccurate?
A. I probably sent things out previously that were inaccurate, but it was always a mistake.

Q. Are you saying this is the first time you have deliberately sent something out that you knew to be inaccurate?
A. As far as I can remember.

Q. A person of your experience and stature within the community, you wouldn't stand by and send something out that you knew to be inaccurate, would you?

MR HUNT: I object. The area has been explored. We have to remember this is a commission of inquiry rather than a jury trial. I think the proposition has been put carefully a number of ways. It's just really a question of utility now.

THE COMMISSIONER: I think Mr Callinan has certainly conceded that he did send that out with the inaccuracy, Mr Harben.

1 MR HARBEN: Yes.

2

3 Q. Again, I'm sure I covered this and I'm sure my learned
4 friend will leap at me, but I did put to you that there was
5 no caveat or qualification in your diary about the letter
6 that you sent out indicating that, at least in your mind,
7 there was an inaccuracy - you didn't take the trouble to do
8 that in your own personal diary, did you?

9 A. No.

10

11 Q. I want to suggest to you the reason you didn't do that
12 is because there was no such inaccuracy, or untruth as
13 you've called it?

14 A. There was an inaccuracy as far as I was concerned.

15

16 MR HARBEN: Thank you.

17

18 MR GYLES: I have no questions.

19

20 <EXAMINATION BY MR POTTER:

21

22 MR POTTER: Q. Mr Callinan, I think you said that
23 you've been a school principal since 1991; is that correct?

24 A. That's correct.

25

26 Q. During that time do you know how many unscheduled,
27 unannounced phone calls you've had from a bishop?

28 A. Two.

29

30 Q. Is one of them the one that's recorded in your diary
31 of 19 March 2003?

32 A. That's correct.

33

34 Q. Do you know when the other one?

35 A. 23 May the same year.

36

37 Q. 2003?

38 A. Yes.

39

40 Q. Do you have a copy with you of your diary of 23 May
41 2003?

42 A. No, not here.

43

44 Q. I hand you a document. Is that document a copy of the
45 page of your diary from 23 May 2003?

46 A. It is.

47

1 Q. Is there any note on that page of a telephone call
2 from Bishop Malone?

3 A. There is.
4

5 Q. Would you read out the note you've made there, please

6 A. Yes:
7

8 *Bishop Michael rang to see how I was going*
9 *[and I told him] I was feeling the pinch.*
10 *He told me that if I needed time off or*
11 *whatever to contact him and we could work*
12 *something out.*
13

14 MR POTTER: Does that need to be tendered?

15
16 MR HUNT: I'll tender it.
17

18 THE COMMISSIONER: The extract from Mr Callinan's diary of
19 23 May 2003 will be admitted and marked exhibit 198.
20

21 **EXHIBIT #198 EXTRACT FROM MR CALLINAN'S DIARY OF 23/05/2003**
22

23 MR POTTER: Q. Mr Callinan, just one note about that
24 exhibit. You see that the passage we have referred to, the
25 phone call from Bishop Malone, has some circling around it?

26 A. That's correct.
27

28 Q. Did that circling appear in your diary at the time?

29 A. No, not in the original diary.
30

31 Q. When was that circling added?

32 A. I think I added it when it was requested by the
33 Jackson inquiry by the lawyers for the - acting for
34 Cardinal Pell and the Jackson inquiry, and I just - I think
35 I circled that just to make them aware that that was part
36 of the conversation.
37

38 Q. Out of abundance of clarity or seeking an abundance of
39 clarity, did you ever get a direction from anyone in
40 authority in the Catholic Church prior to 19 March 2003 as
41 regards Father Fletcher being kept away from schools at
42 which you were principal?

43 A. No.
44

45 Q. If you had been given such a direction, would you have
46 complied with it?

47 A. I would have.

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Q. Have you ever faced any sanction professionally for not complying with such a direction?

A. No.

Q. You've been asked the reasons why you didn't, on 19 March 2003, challenge Bishop Malone when he said to you on the phone that you had had a previous conversation on 20 June 2002.

A. Correct.

Q. And you referred to your struggle to recall that conversation. You also referred to your concerns for your job if you challenged the bishop?

A. That's correct.

Q. Were there other reasons why you didn't challenge the bishop when he put that to you?

A. On 19 March?

Q. That's right.

A. As I said, I just struggled with the fact, when it came out, that we had a conversation and I just could not remember having a conversation previously with the bishop about Fletcher staying in the parish or being a harm to children.

Q. Was it common practice in your role as principal of two Catholic schools to question a bishop when a bishop said something to you?

A. No.

Q. Had you ever questioned a bishop?

A. No.

Q. You were asked about whether you made any change to the practices in your schools regarding Father Fletcher when you first became aware of the allegations in June 2002 and you said that, no, his role did not change?

A. That's correct.

Q. Did you consider that it was your role to alter the responsibilities of a parish priest?

A. No.

Q. Did you consider that you had any power to direct a parish priest to do or not to do certain things?

1 A. I suppose if there was any impropriety within the
2 school and I had concerns about the priest, I would
3 probably take that up with him.
4
5 Q. Did you, in June 2002, have any concerns about
6 impropriety within your schools?
7 A. No.
8
9 Q. You were asked about your decision not to challenge
10 Bishop Malone about the pastoral message in May 2002.
11 A. That's correct.
12
13 Q. You were asked about your decision not to challenge
14 the bishop about the pastoral message in May 2003 and how
15 that sat with your statements to police in June 2003.
16 A. Yes.
17
18 Q. When you spoke to police in June 2003, did you regard
19 yourself as under any compulsion to tell them the truth?
20 A. Yes, because it was a witness statement.
21
22 Q. Did you regard yourself as compelled to tell them
23 everything that happened?
24 A. As far as I could remember, yes.
25
26 Q. Did you regard yourself as being compelled to tell
27 them that regardless of what the personal consequences to
28 you might be?
29 A. Yes.
30
31 Q. You've been asked about your diaries. Is it the case
32 that you received a summons from this Commission to produce
33 your diaries?
34 A. I did.
35
36 Q. When did you become aware that such a summons had been
37 served on your solicitors?
38 A. Last Friday.
39
40 Q. Would it right to say that it was --
41 A. It was the day that we had the teleconference with
42 yourself. I think that was last Thursday.
43
44 Q. Is it correct that prior to recent times, the last
45 week or so, you were never aware of any request from this
46 Commission to produce your diaries to it?
47 A. That's correct.

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Q. You were asked about your diary note on 19 May 2003 when you sent out the pastoral message?

A. Yes.

Q. And the fact that you did not put there in your diary anything to the effect that you thought the pastoral message contained an inaccuracy?

A. That's correct.

Q. Is it the case that there was anything already in your diary about whether you believed it was true that there had been a conversation with the bishop in June 2002?

A. No.

Q. What about on 19 March?

A. Yes.

MR POTTER: Those are all my questions.

THE COMMISSIONER: Thank you, Mr Potter. Yes, Mr Hunt?

MR HUNT: No, I don't have any re-examination, thank you. I am assuming that you might excuse the witness and we might conclude the public hearing.

MR GYLES: Commissioner, if you could excuse the witness and if I might raise one matter with you before you rise.

THE COMMISSIONER: Mr Callinan, thank you very much for your evidence and you are now excused.

<THE WITNESS WITHDREW

MR HUNT: Just to assist those still here, the order for witnesses commencing at 10am tomorrow is Helen Keevers, then Sean Tynan, and then Dr Rodger Austin. It is anticipated that will conclude the witnesses to be called tomorrow and, on current indications, subject to some other matters that remain in the either, it's proposed that Maureen O'Hearn and Bishop William Wright will give either evidence or resumed evidence on Thursday, 1 August.

MR GYLES: Commissioner, at the risk of not getting out of here alive, there is one matter in the interests of Mr Bowman I would like to ask him two questions about while he's still here. It's a matter which I don't think is

1 controversial. You will recall that his evidence was that
2 when he saw the media release, he expressed his
3 dissatisfaction with, in substance, what it was saying.
4 One matter I should have asked him about and I didn't - you
5 will appreciate the ombudsman's report has been tendered in
6 a very reduced form.

7
8 THE COMMISSIONER: Very reduced.

9
10 MR GYLES: One thing that is apparent, which I don't
11 think is disputed, is that he told the ombudsman that
12 Bishop Malone had not asked him for advice. That is a
13 contemporaneous record of his state of mind as at 2003,
14 which is relevant to the considerations as to whether or
15 not that happened and that's simply all I would like to ask
16 him about. If my learned friend Mr Harben accepts that he
17 did tell the ombudsman, I'm content with that. Otherwise
18 we can put him back in the witness box and he can give
19 evidence to that effect.

20
21 MR HARBEN: I have a problem with that, Commissioner. If
22 the witness gets in the box and says, "I told the ombudsman
23 this", that can't be tested by me. I've not seen the
24 statement that my learned friend refers to. There may well
25 be reference to it or extracts from it or something in the
26 report. Maybe we can resolve it in a way by agreement
27 about it if the primary document is available.

28
29 MR GYLES: I'm entitled to ask that question anyway, in my
30 respectful submission, and he can give evidence that he
31 told the ombudsman that and my learned friend can
32 cross-examine about it if there is a challenge to it.
33 I can give my learned friend a copy of the ombudsman's
34 report.

35
36 MR HARBEN: I've got it, but what I don't --

37
38 MR GYLES: It's something that in his interests I would
39 like to ask him. He's here now and I don't expect he'll be
40 here tomorrow and it's only going to take a very short
41 period of time.

42
43 THE COMMISSIONER: Thank you, Mr Gyles. Mr Bowman, would
44 you come forward, please.

45
46 MR HUNT: I don't object to the course proposed.

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<MICHAEL BOWMAN, sworn

[5.37pm]

<EXAMINATION BY MR HUNT:

MR HUNT: Q. Is your name Michael Bowman?

A. Yes, it is.

Q. Mr Gyles is going to further cross-examine you.

A. Thank you.

<EXAMINATION BY MR GYLES:

MR GYLES: Q. Is it the case that in September 2003 you were interviewed by the ombudsman including in relation to the issue as to whether or not Bishop Malone had sought advice from you as to whether or not Father Fletcher be stood down from his parish duties?

A. Yes. I was interviewed by two people from the ombudsman's office, yes.

Q. Did you tell them that Bishop Malone did not seek any advice from you about whether or not to remove Father Fletcher from his parish duties?

A. I did.

Q. When you gave that answer to them, were you doing the best to be accurate in the answers you gave to them on that issue as at 1 September 2003?

A. Yes.

MR GYLES: I have no further questions. I'm grateful for the indulgence, Commissioner, of being allowed to do that.

MR HUNT: Can I have just a moment with my friend? Thank you, Commissioner.

MR HARBEN: Commissioner, it's impossible for me to cross-examine about this, because the cross-examination is based on something that appears in the report, which is two paragraphs, in particular one paragraph, going to this evidence, but it's footnoted by reference to something, which I think was referred to in the question - a transcript of an interview. I am not in possession of instructions to challenge it, so therefore can't, and I'm not in a position to cross-examine about it, because I don't have anything --

1 THE COMMISSIONER: You don't have the interview?

2

3 MR HARBEN: The evidence is hearsay in those terms, so I'm
4 not in a position to cross-examine about it at the moment.

5

6 MR GYLES: We can deal with this in terms of weight. This
7 is not hearsay evidence. This is evidence of what this
8 witness told --

9

10 THE COMMISSIONER: And when he took the position that he
11 did.

12

13 MR GYLES: I can appreciate my learned friend may say the
14 weight of that evidence may need to be considered in the
15 light that he hasn't got the transcript evidence, but
16 ultimately I will be submitting that to the extent that his
17 recollection of that matter - to the extent that he was
18 called upon to deal with that matter with the ombudsman's
19 people in September 2003, that was his position. This
20 really arises from what may be a very overly cautious way
21 in which he has recognised in his stat dec that memories
22 are open to failure, but --

23

24 THE COMMISSIONER: Yes, I understand why you wish to put
25 that material on the record. Thank you, Mr Gyles.

26

27 I also understand your position, Mr Harben, but there
28 it is.

29

30 MR HUNT: Can I put on the record, and I've sort of
31 informally given the nub of this to Mr Harben, that we
32 don't have that material, but beyond that, because of the
33 way the ombudsman's legislation interacts with the scope of
34 this Commission's acquisitive compulsory processes, certain
35 matters have properly been able to be brought within an
36 exemption which has meant the ombudsman has taken the view
37 that certain material can properly be provided, but the
38 document we've been talking about is one of a tranche of
39 material we will not be able to access.

40

41 There is nothing that those assisting the Commissioner
42 can do to address it. My submission would be that it will
43 have to be a matter of weight.

44

45 THE COMMISSIONER: Thank you very much, Mr Bowman. You
46 are now excused again.

47

1 THE WITNESS: Thank you.

2

3 <THE WITNESS WITHDREW

4

5 THE COMMISSIONER: I will adjourn until 10 o'clock
6 tomorrow morning.

7

8 AT 5.45PM THE COMMISSION WAS ADJOURNED TO

9 WEDNESDAY, 31 JULY 2013 AT 10.00AM

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