

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

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

On Thursday, 4 July 2013 at 10.12am
(Day 4)

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 THE COMMISSIONER: Ladies and gentlemen, before we
2 commence proceedings, may I address something in relation
3 to pseudonym lists. For those practitioners who have
4 signed undertakings to keep them confidential, may I remind
5 everyone they are to be kept very close to one's chest
6 because, obviously, the whole intention behind them will be
7 lost if the names which go with the pseudonyms find their
8 way into the public domain.

9
10 Could I ask that anyone who has such a list, not only
11 practitioners but perhaps interested parties who may not be
12 legal practitioners, also keep the confidentiality of those
13 pseudonym lists so that the whole intent of them is not
14 lost. Thank you for that.

15
16 Yes, Ms Lonergan.

17
18 MS LONERGAN: Thank you, Commissioner. With the consent
19 of my learned friend Mr Harben, I'll recall Detective Chief
20 Inspector Fox and cover a few matters with him.

21
22 THE COMMISSIONER: Thank you, Ms Lonergan.

23
24 <PETER RAYMOND FOX, sworn: [10.13am]

25
26 <EXAMINATION BY MS LONERGAN:

27
28 MS LONERGAN: Q. Detective Chief Inspector Fox, could
29 you reach out for volume 1 of the material to your right
30 and turn to tab 10. I thank my learned friend Mr Cohen for
31 drawing my attention to some other documents in the bundles
32 that may well be relevant or are relevant to put to
33 Detective Chief Inspector Fox and I should have done so
34 earlier.

35
36 Q. Do you see behind tab 10 is a letter dated 3 December
37 1959 to Bishop Toohey?

38 A. Yes.

39
40 Q. Could you turn to the second page. The typewritten
41 part of that letter on the left-hand side of the second
42 page. Do you agree with me that appears to be a letter
43 from Denis McAlinden?

44 A. It has his signature; so, yes.

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46 Q. Do you see the part on the second page on the
47 left-hand side, which starts on the page before:

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As it turned out, the Bishop explained ...

Then there is a bit I can't read.

... his priests belonged to religious Orders or Congregations ... he also said that he knew you very well, and would take it upon himself to write to you on my behalf. Remembering our conversation on September 29th, and understanding that you felt you could not recommend me for Incardination into another Diocese, owing to previous misconduct, I can see that such a request from Bishop Cavallera might place you in a somewhat unpleasant position.

Then it goes on to talk about the potential for McAlinden to work in missionary countries. Do you see that?

A. Yes, I do.

Q. Are you able to say, by looking at this letter today, whether you would have been able to use this letter, given its date, 1959, following through any investigations in 2003?

A. Of course, you know, obviously finding out Bishop Toohey - sorry, what Denis McAlinden was referring to so far as his previous misconduct, and the reason that Bishop Toohey didn't feel he was able to appoint him to any missionary work in Africa, would have been something that we would have investigated as to the reasons why.

Q. Would you expect there would be other records regarding the matters referred to in this letter of McAlinden at the diocese?

A. I would hope so. It may well turn out it may have referred back to some of the other matters that we spoke about earlier in the 1950s, but until we pursued those lines of inquiry, we couldn't be sure of that. It may be other matters they're talking about.

MS LONERGAN: I tender that letter, Commissioner.

THE COMMISSIONER: The letter of 3 December 1959 to the then Bishop of Maitland, Bishop Toohey, from Denis McAlinden, will be admitted and marked exhibit 70.

1 **EXHIBIT #70 LETTER OF 3/12/1959 TO THE THEN BISHOP OF**
2 **MAITLAND, BISHOP TOOHEY, FROM DENIS MCALINDEN (TAB 10)**
3

4 MS LONERGAN: Q. Would you turn to tab 11. Do you see
5 that's a typewritten letter, apparently, by McAlinden to
6 [AC] in August 1960.

7 A. Yes.

8
9 Q. Just read that to yourself.

10 A. Yes.

11
12 Q. Is that a letter you could have used in your
13 investigations should you have seen it in 2003?

14 A. Yes.

15
16 Q. Why is that?

17 A. The nature of the relationship of Father McAlinden as
18 conveyed in this letter to [AC], who, at the time,
19 obviously is a very young girl and a number of aspects in
20 that letter, I would have been desirous of clarifying
21 exactly what the relationship was and what he was alluding
22 to in parts of that.

23
24 Q. Assuming the letter had the name of [AC] on it, would
25 you have taken steps in relation to [AC] herself?

26 A. Obviously, to try and locate her, one would imagine
27 that she would possibly now be married with a different
28 surname but they're not obstacles we can't overcome and
29 locate her, hopefully.

30
31 MS LONERGAN: I tender that.

32
33 THE COMMISSIONER: The letter from Denis McAlinden of
34 24 August 1960 to [AC] will be admitted and marked
35 exhibit 71.

36
37 **EXHIBIT #71 LETTER FROM DENIS MCALINDEN OF 24/8/1960 TO**
38 **[AC] (TAB 11)**
39

40 MS LONERGAN: Q. Would you turn to tab 57. Before that,
41 I should ask from the answer that you have given, is it
42 fair to say that that letter is an example of grooming type
43 of behaviour on the part of McAlinden?

44 A. No doubt in my mind about that, yes.

45
46 Q. Have a look at tab 57, or the document behind tab 57.

47 A. Yes.

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Q. Do you see that's minutes of meetings of the consultors of the Maitland-Newcastle diocese?

A. Yes.

Q. You'll see there are a number of names mentioned in those minutes of those present, or apparently of those present, at the meetings in May 1976?

A. Yes.

Q. Is this a document that would have assisted you in inquiries in 2003 if had you been provided with a copy of it?

A. And we spoke about that yesterday. Minutes that were taken at meetings of that nature, of course, would have been of great interest, as would this one.

Q. In addition to being of great interest, would they have assisted your investigation?

A. Yes, they would.

Q. The names on there of various names of priests who were present at the meetings, was there anything you would have been able to do with those names?

A. I would have been desirous of interviewing each of those individuals including the author Patrick Cotter who, from memory, I think between 1974 and 1976, was the stand-in bishop following the death in office of Bishop Toohey and prior to the taking over the diocese by Bishop Clarke later in 1976.

MS LONERGAN: I tender that document, Commissioner.

THE COMMISSIONER: The minutes of the meeting of diocesan consultors of 15 May 1976, signed by the vicar capitular PD Cotter, will be admitted and marked exhibit 72.

MS LONERGAN: Commissioner, with that last exhibit, could it be noted that it covered two meetings of the diocesan consultors, one on 15 and one on 16 May 1976.

EXHIBIT #72 MINUTES OF MEETINGS OF DIOCESAN CONSULTORS OF 15/5/1976 AND 16/5/1976 SIGNED BY THE VICAR CAPITULAR PD COTTER (TAB 57)

MS LONERGAN: Q. You can put that volume away and go to volume 3 and tab 250. Do you now have the document behind

1 tab 250?
2 A. Yes, I do.
3
4 Q. Do you see it is a letter to Reverend Castillo, in San
5 Pablo, in the Philippines, dated 20 June 1995?
6 A. Yes.
7
8 Q. It is a letter that refers to there having been a
9 consultation with the then acting bishop, Michael Malone,
10 or coadjutor bishop and Monsignor Hart. Do you see that?
11 A. I do.
12
13 Q. And it notes that Monsignor Hart now wishes:
14
15 *... to advise that we do require, for the*
16 *benefit of those who have lodged their*
17 *complaints against Father Denis McAlinden,*
18 *a letter indicating that your Diocese has*
19 *removed his faculties and that he will*
20 *return to England.*
21
22 Do you see that?
23 A. Yes.
24
25 Q. It says:
26
27 *Failing this procedure those who have*
28 *lodged complaints intend to consider*
29 *instituting criminal charges and*
30 *compensation charges against the Church.*
31
32 Do you see that?
33 A. Yes, I do.
34
35 Q. In terms of that letter, are there investigative steps
36 you could have taken?
37 A. And again exactly the same. You know, I would have
38 also been desirous, if Father Castillo is still around, to
39 see if he has any further correspondence surrounding these
40 sorts of matters and what he knew firsthand, and also from
41 Denis McAlinden, concerning this. Of course, Bishop
42 Malone, I think the co-adjudicator means that was the
43 interim period, where both he and Bishop Clarke sat jointly
44 as a handover period, I think, for the diocese.
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46 Q. I think it is coadjutor as opposed to co-adjudicator.
47 A. Sorry, my error.

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MS LONERGAN: I tender that letter, Commissioner.

THE COMMISSIONER: The letter of 18 June 1995 from Monsignor Hart to Father Castillo of the Philippines will be admitted and marked exhibit 73.

EXHIBIT #73 LETTER OF 18/6/1995 FROM MONSIGNOR HART TO FATHER CASTILLO OF THE PHILIPPINES (TAB 250)

MS LONERGAN: Q. Have a look behind tab 265, please. Please read that document to yourself.

A. (Witness does as requested).

Q. Do you see it is a letter from coadjutor Bishop Malone to McAlinden dated 2 December 1995?

A. Yes.

Q. Again, it covers matters regarding McAlinden?

A. It does.

Q. In the third paragraph he talks about - "he" being Bishop Malone - one of his first duties being to continue canonical procedures against McAlinden?

A. Yes.

Q. Are there matters in that letter that would have assisted your investigation.

A. There is. I would have been desirous of speaking to Bishop Malone as to what he knew, why there were canonical procedures being initiated against Father McAlinden at that time, which appeared to be consistent with some other correspondence that the Commission has looked at, and what he knew of the reasons why those procedures were being initiated.

MS LONERGAN: I tender that, Commissioner.

THE COMMISSIONER: The letter from then coadjutor Bishop Malone to Father McAlinden, when he was apparently residing in Western Australia, dated 2 November 1995 will be admitted and marked exhibit 74.

EXHIBIT #74 LETTER FROM THEN COADJUTOR BISHOP MALONE TO FATHER MCALINDEN DATED 2/11/1995 (TAB 265)

MS LONERGAN: Q. Can you turn now to tab 271, please.

1 It is a letter from by then Bishop Malone dated 22 December
2 1995 to McAlinden at a post office box in Western
3 Australia.

4 A. Yes.

5

6 Q. Do you see the letter in the second paragraph talks
7 about the next step being a summary of the charges made in
8 accordance with the protocol and in accord with canonical
9 procedures is stated to have been included with this
10 letter?

11 A. Yes.

12

13 Q. We don't have a copy of that document; however, is
14 there anything in this letter that would have assisted in
15 your inquiries?

16 A. Yes. And again for the very same reasons: it is
17 authored by Bishop Michael Malone and those procedures were
18 obviously being initiated for a very specific purpose
19 and --

20

21 Q. Don't worry about commenting about the procedures. It
22 would have assisted your investigation?

23 A. Of course.

24

25 MS LONERGAN: I tender that Commissioner.

26

27 THE COMMISSIONER: Letter by Bishop Malone of 22 December
28 1995 to Father McAlinden, apparently residing in Western
29 Australia, will be admitted and marked exhibit 75.

30

31 **EXHIBIT #75 LETTER BY BISHOP MALONE DATED 22/12/1995 TO**
32 **FATHER MCALINDEN**

33

34 MS LONERGAN: Q. Close that volume up and have a look at
35 volume 4, behind tab 275. Do you see this is a handwritten
36 letter apparently from McAlinden to Bishop Malone dated
37 27 January 1996?

38 A. Sorry, I may have the wrong page.

39

40 Q. It is tab 275.

41 A. Yes.

42

43 Q. Turn back to the first page and do you see it is
44 referring to a letter from Bishop Malone dated 22 December
45 1995, having been received from Bishop Malone? Do you see
46 that?

47 A. Yes.

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Q. Then there is mention in the second paragraph about not knowing any canonical advisers and that his spiritual adviser, Father Attard, died on 8 December 1995. Do you see that?

A. Yes.

Q. And then it refers in the letter having spoken of "Canonical council to protect your rights", and McAlinden answered:

... as I have no-one to give this counsel, could I, please, be advised as to my "rights" in this matter.

A. Yes.

Q. Is the next bit that I want you to focus your attention on, where he said:

For my part I dispute the claim that any such relationship as mentioned "continued over a lengthy period of time" with any child. Neither I do know the names of the said accusers. I submitted to Father Lucas ...

I'd better get a copy where we can see that word. It looks like:

I submitted to Father Lucas all the cases that I was aware of. Some of --

Again it is difficult to read --

names given by him were certainly not correct. One of those was that of [AK]...

Then there's a comment about [AK], which I don't need to read, and then a comment about [AJ]:

... even though she occasionally sat on my knee on the few occasions I visited their home, I certainly did nothing to that child that was indecent.

A. Yes.

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Q. Do you see over the page there are some further comments about requesting reasons or motives behind the process of "preventing my exercise of orders" and talking about the only reasons given to him by Bishop Clarke and Father Lucas were that:

... some of the "victims" would object to the fact that I was still permitted to exercise my Priestly Functions.

Et cetera.

A. Yes.

Q. There's also a comment about his intention to practise in a remote part of the Philippines.

A. Yes.

Q. Would matters in that letter be of help in investigating in 2003?

A. Yes, and --

Q. And are they similar reasons to the ones you've already articulated?

A. They are. There are a number of things that click there for various reasons, which I won't go into because the Commission may not want me to go there, but certainly.

MS LONERGAN: I tender that.

THE COMMISSIONER: The handwritten letter by Denis McAlinden to Bishop Malone of 27 January 1996 indicating that he was residing in Western Australia, among other things, will be admitted and marked exhibit 76.

EXHIBIT #76 HANDWRITTEN LETTER BY DENIS MCALINDEN TO BISHOP MALONE DATED 27/1/1996 (TAB 275)

MS LONERGAN: Q. Close that volume up and go to tab 359 in volume 5, please.

A. Yes.

Q. Do you see that's a letter - no, I don't think that's the right reference. Bear with me. Don't worry about tab 359, Detective Chief Inspector Fox. There are two other documents I need to tender. The first is in tab 392. You were taken to that by me briefly and also by Mr Harben

1 yesterday and it is in relation to your interface with
2 Bishop Malone regarding the Fletcher matter?

3 A. Yes.

4

5 Q. It is a fax from Bishop Malone to you providing some
6 details of personnel that you may need to interview or may
7 wish to interview?

8 A. Yes.

9

10 MS LONERGAN: I tender that, Commissioner.

11

12 THE COMMISSIONER: The fax from Bishop Malone to then
13 Detective Sergeant Peter Fox on 23 May 2003 will be
14 admitted and marked exhibit 77.

15

16 **EXHIBIT #77 FAX FROM BISHOP MALONE TO THEN DETECTIVE**
17 **SERGEANT PETER FOX ON 23/5/2003 (TAB 392)**

18

19 MS LONERGAN: Q. Finally, there's a further statement
20 from Father Burston which I should have taken you to during
21 your evidence yesterday. It is in tab 409 which appears in
22 volume 5. Could I ask you a couple of short questions
23 about it. Please read it to yourself first.

24 A. Yes.

25

26 Q. Do you see, in particular, that Father Burston
27 provided further information to you regarding a meeting on
28 3 June 2002?

29 A. Yes.

30

31 Q. It includes an observation by Father Burston of a
32 conversation he had with Fletcher where he, being Burston,
33 volunteered that he didn't think certain things that
34 Fletcher said about relevant matters was true?

35 A. Yes.

36

37 Q. Is it fair to say that a statement of this nature from
38 Father Burston was of use and importance to your
39 investigation of Fletcher?

40 A. Yes.

41

42 Q. And it was provided willingly by Father Burston?

43 A. Yes.

44

45 MS LONERGAN: I tender that, Commissioner. Perhaps the
46 statement should go with the other Burston statement which
47 is exhibit 54, if that's suitable, Commissioner, or a

1 separate exhibit, whatever you prefer.

2

3 THE COMMISSIONER: The further statement of Father Burston
4 of 8 September 2003 will form part of exhibit 54.

5

6 **EXHIBIT #54 ADDITION OF STATEMENT OF FATHER BURSTON, DATED**
7 **8/9/2003 (TAB 409)**

8

9 MS LONERGAN: Thank you, Commissioner. Those are the
10 additional questions and I thank Mr Harben for consenting
11 to me attending to those.

12

13 THE COMMISSIONER: Thank you, Ms Lonergan. Mr Harben?

14

15 <EXAMINATION BY MR HARBEN CONTINUING:

16

17 MR HARBEN: Q. Detective inspector, yesterday, when
18 I asked you about June of 2002 and your initial contact
19 with [AH], you told us that he had failed to attend a
20 meeting on 3 June 2002 and came to see you on 4 June. Do
21 you remember that?

22 A. Yes.

23

24 Q. At that time, you said you took some general details
25 of an allegation and put it into what you referred to or
26 what has been referred to as the COPS report?

27 A. Yes.

28

29 Q. I suggested to you that that didn't happen on 4 June.
30 Do you remember me suggesting that to you?

31 A. I don't, but you may have, sir.

32

33 Q. You were adamant that an appointment was not kept on
34 Monday, 3 June and that he attended on 4 June.

35 A. That's my recollection, yes.

36

37 Q. Would you have a look at volume 5 - I take it you have
38 volume 5 there - tab 341. Do you have that document?

39 A. Yes.

40

41 Q. Is that the COPS report?

42 A. Yes.

43

44 Q. Does it refer to 3 June 2002?

45 A. Yes.

46

47 Q. Is that date next to an entry that says, "Date/time

1 created"?
2 A. Yes.
3
4 Q. Does that mean, looking at that document, that the
5 information underneath that date is the information you
6 included in the report on that date?
7 A. Yes.
8
9 Q. Would you agree with me then that [AH] attended to see
10 you on 3 June 2002?
11 A. My recollection is still he came in on the 4th. I do
12 take your point that this entry is made on the 3rd, but it
13 is still my recollection that he came in on 4 June.
14
15 Q. Do you see you suggested yesterday in many of
16 your answers that a cause of the delay in completing
17 the investigation was the visit by Bishop Malone to
18 Father Fletcher some time before you saw Bishop Malone on
19 20 June 2002, didn't you?
20 A. Yes.
21
22 Q. And I suggested to you that in fact the process of the
23 investigation that you were undertaking was expected by you
24 to take something like a number of months, in any event?
25 A. No, no, I --
26
27 Q. I suggested that to you.
28 A. Well - sorry, yes.
29
30 Q. Do you disagree with that proposition?
31 A. Yes.
32
33 Q. Just to recap, I think [AH] eventually embarked on the
34 process of giving you the statement in November of 2002?
35 A. Yes.
36
37 Q. So some five months after the events we're talking
38 about?
39 A. Yes.
40
41 Q. Do you remember that I spoke to you yesterday about
42 your "He said/I said" document in relation to that matter
43 and during the conversation with Bishop Malone, he made an
44 inquiry of you about how long the process of investigation
45 would take, didn't he?
46 A. Yes.
47

1 Q. And isn't this the case - that you indicated on two
2 occasions, and in particular, an answer to this effect, "As
3 I said earlier, this could be a matter of months. I cannot
4 put a time on it at this stage." That's what you told
5 Bishop Malone, or words to that effect?
6 A. Yes.
7
8 Q. In fact, that's how it turned out, isn't it?
9 A. No, it turned out much longer than that,
10 unfortunately.
11
12 Q. You see, you were in charge of the process of taking
13 the statement from [AH]?
14 A. Yes.
15
16 Q. Would you go to volume 5, tab 377.
17 A. Yes.
18
19 Q. Do you have that document?
20 A. Yes.
21
22 Q. Is that document a statement of a witness?
23 A. Yes.
24
25 Q. It is the statement of [AH] or at least a portion of
26 it?
27 A. Yes.
28
29 Q. It bears the date 25 November 2002; is that correct?
30 A. Yes.
31
32 Q. Does that accord with your recollection as to when the
33 statement was commenced?
34 A. Yes.
35
36 Q. Do you see in paragraph 3, the statement says:
37
38 *On the 3rd of June 2002 I attended the*
39 *Maitland Police Station ...*
40
41 A. Yes.
42
43 Q. That would be consistent with the COPS entry?
44 A. Yes, it would.
45
46 Q. And that would be inconsistent with your recollection?
47 A. I agree, yes.

1
2 Q. It continues.
3
4 *... and made a report to Detective Sergeant*
5 *Fox [about the matter in hand].*
6
7 A. Yes.
8
9 Q. I'm paraphrasing. He then says in sentence 2:
10
11 *Although I made an initial report at that*
12 *time I didn't feel up to making a full*
13 *statement and commence proceedings.*
14
15 A. Yes.
16
17 Q. That was the situation when you spoke to him on
18 Monday, 3 June 2002, wasn't it?
19 A. Yes.
20
21 Q. That was at a time before Bishop Malone had visited
22 Father Fletcher?
23 A. Yes.
24
25 Q. So, at the first opportunity to speak to [AH], he made
26 it clear to you that he was not up to making that full
27 statement for the purpose of commencing proceedings.
28 That's what's in that statement, isn't it?
29 A. Yes.
30
31 Q. He then goes on to say that it has taken him quite
32 some time to come to terms with what happened?
33 A. Yes.
34
35 Q. Down the bottom of page 1, he says:
36
37 *I now feel that I am ready to give a full*
38 *statement to police about what occurred to*
39 *myself.*
40
41 A. Yes.
42
43 Q. That's what's been recorded and that's what he told
44 you?
45 A. Yes.
46
47 Q. In other words, whatever process he worked through in

1 that time, at the point he saw you on 25 November 2002, he
2 was ready to engage in the process, the investigative
3 process which included the making of a complete statement
4 for the purpose of that matter?
5 A. Yes.
6
7 Q. It is the case, isn't it, that even though he was
8 ready to do that, as at 25 November 2002, it still took
9 some time to complete, didn't it?
10 A. Yes.
11
12 Q. In fact, it took until 31 March in the following year?
13 A. Yes.
14
15 Q. So another four months elapsed after [AH] was ready to
16 give a full statement to police?
17 A. He was ready earlier, but four months had elapsed
18 before it was completed, yes.
19
20 Q. The process once he was ready to give a full statement
21 took four months?
22 A. Yes.
23
24 Q. That's often the case, isn't it, that a period like
25 that elapses?
26 A. Often? Yes, I don't want to debate "often" too much,
27 but it is not unheard of, but it is not - it's the
28 exception rather than the rule.
29
30 Q. The point is that despite anything you allege Bishop
31 Malone did, your process of investigation involving [AH]
32 and the statement given would have taken many, many months
33 in any event?
34 A. No.
35
36 Q. You disagree with that?
37 A. Yes.
38
39 Q. Even though from the moment he was ready to give a
40 full statement to police, four months elapsed --
41 A. Yes.
42
43 Q. -- you would concede, wouldn't you, that that probably
44 would have happened, in any event?
45 A. No.
46
47 Q. You disagree with that?

1 A. Yes.
2
3 Q. Do you have any medical qualifications?
4 A. No.
5
6 Q. In terms of time that you expected, in terms of the
7 investigation, Bishop Malone asked you:
8
9 *Do you know when that might be?*
10
11 You answered words to this effect, according to your
12 document:
13
14 *We have a - lots to do first. I would not*
15 *expect that to happen for some weeks or*
16 *even months.*
17
18 Then you go on to say that you would make contact with them
19 at the appropriate time. And then you say to Bishop
20 Malone:
21
22 *Had you approached the Police Service or*
23 *myself before speaking to Father Fletcher,*
24 *this would have been explained to you.*
25
26 A. Yes.
27
28 Q. What you meant by "this would have been explained to
29 you" is the previous answer; that is, that you had lots to
30 do first, that you would not expect that to happen for some
31 weeks or even months. That's what you would have explained
32 to him?
33 A. No.
34
35 Q. "This would have been explained to you", those words
36 immediately followed that answer to Bishop Malone? Do you
37 want to have a look at the document?
38 A. Yes, sir. It does make it easier to follow it.
39
40 MR HARBEN: Could the witness be shown exhibit 49, please,
41 Commissioner.
42
43 THE COMMISSIONER: Yes, Mr Harben.
44
45 Q. I don't know whether you have it there. It is not
46 still with you, sir?
47 A. No.

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MR HARBEN: Q. Exhibit 49. It is page 2 when you get it.

A. Yes, thank you.

Q. Have a look at page 2 of the document.

A. Yes.

Q. About two-thirds of the way down, Bishop Malone said:

Do you know when that might be?

You gave an answer, including the words:

We have a - lots to do first.

A. Yes.

Q. Then you said:

I would not expect that to happen for some weeks or even months.

And you then gave him an assurance, do you see that, according to your record?

A. Yes. Yes.

Q. He thanked you for that?

A. Yes.

Q. You then took the trouble to say:

Had you approached the Police Service or myself before speaking to Fletcher this --

That is, it what you just explained to him --

would have been explained to you.

That's right, isn't it?

A. It probably also needs to be read in conjunction with some questions and answers further up the page as to what I was referring to exactly there.

Q. That may well be so, detective inspector, but, clearly, the word "this" means that matter that immediately preceded it; it included that?

1 A. Well, one of the matters that immediately preceded it
2 is another matter also.
3
4 Q. I'm not excluding matters, you understand that, don't
5 you?
6 A. You are, if you don't read that earlier question and
7 answer into it.
8
9 Q. No, no, I'm suggesting to you that, among other
10 things, it included your description of the time you
11 expected the process to take, among other things?
12 A. Amongst other things, but I think you're reading too
13 much into those two questions put together.
14
15 Q. I'm just asking you about that matter that's included,
16 amongst other things. Do you have some difficulty with
17 that?
18 A. No, I'm --
19
20 Q. Thank you.
21 A. I'm trying to explain exactly what it refers to.
22
23 Q. Perhaps you could answer my question. Do you
24 disagree - do you find it funny, detective inspector?
25 A. Sir, no, I'm just a little bit frustrated that I can't
26 explain fully what it is. I appreciate that that is the
27 process and I don't find your question funny, sir, no.
28
29 Q. Thank you. Your words "this would have been
30 explained", amongst other things, included the materials
31 that you said immediately before that. I'm not saying it
32 excluded anything, but it included?
33 A. I don't believe so.
34
35 Q. Did your answer which you recorded - you say that you
36 recorded yourself - anywhere suggest the exclusion of that
37 time period?
38 A. No.
39
40 Q. Thank you. And then Bishop Malone said to you:
41
42 *We were just trying to act in the best*
43 *interest for all concerned.*
44
45 A. Yes.
46
47 Q. That's what you recorded, or he said words to that

1 effect. You understood that was the case, didn't you?
2 A. That what was the case?
3
4 Q. That he was just trying to act in the best interests
5 of all concerned? You understood that was the case?
6 A. I understood that's what he said. I don't know
7 whether I understood that's what was the case.
8
9 Q. Had you met Bishop Malone before?
10 A. No.
11
12 Q. Had you ever spoken to him before?
13 A. No.
14
15 Q. So you had no reason to doubt what he said?
16 A. Yes.
17
18 Q. You had a reason?
19 A. Yes.
20
21 Q. Based on something about Bishop Malone?
22 A. Yes.
23
24 Q. I see; so you knew something about him?
25 A. Yes.
26
27 Q. Where in this conversation did you take issue with
28 what he said to you about him trying to act in the best
29 interests of all concerned? Did you take issue with him
30 about that?
31 A. Yes.
32
33 Q. Did you take issue immediately he said that to you?
34 A. Yes.
35
36 Q. What was your next question immediately after he said:
37
38 *We were just trying to act in the best*
39 *interests of all concerned.*
40
41 What was your very next question?
42 A. I said:
43
44 *In your conversation was Father Fletcher*
45 *aware of a Police Investigation before you*
46 *raised the subject with him?*
47

1 Q. Did that take issue what he'd said?
2 A. No.
3
4 Q. And his answer to your question was:
5
6 *No, I don't believe so.*
7
8 In other words, he was explaining - he was saying to you
9 openly, wasn't he, that he had told Father Fletcher
10 something that he didn't know? He was explaining that to
11 you openly and honestly, wasn't he?
12 A. Yes.
13
14 Q. Following that, you then suggested to him that a wiser
15 course might have been not to mention the investigation?
16 A. Yes.
17
18 Q. Is that how you took issue with his approach?
19 A. Yes.
20
21 Q. And his response, which you've recorded, was the word
22 "Sorry", wasn't it?
23 A. "Sorry" then a question mark.
24
25 Q. Yes. It wasn't, "Sorry, I did that"; it was, "I'm
26 sorry, I don't understand." That's how you interpreted it,
27 wasn't it?
28 A. Yes.
29
30 Q. You had no reason to think he was fabricating or
31 acting about that, did you?
32 A. Yes.
33
34 Q. So you also had a reason?
35 A. Yes.
36
37 Q. Is that because you just have this overriding need to
38 find everything that doesn't suit you untruthful?
39 A. No.
40
41 MR COHEN: I object. That's hardly a fair question,
42 Commissioner. It is very theatrical. It is hardly fair.
43
44 THE COMMISSIONER: Well, the witness has answered it,
45 Mr Cohen.
46
47 MR HARBEN: Q. You then went on to explain what you

1 meant by "the wiser course":

2

3 *If you had not told him there was a Police*
4 *Investigation he may not have been upset or*
5 *distressed and therefore negate any need*
6 *for concern over his welfare in the first*
7 *place.*

8

9 That's what you said to him?

10 A. Yes.

11

12 Q. He said:

13

14 *I see what you mean. I did not mean for*
15 *that to occur, our concern was for his*
16 *welfare.*

17

18 A. Yes.

19

20 Q. You knew, at the point that Bishop Malone went to see
21 Fletcher, [AH]'s own father had come and spoken to Bishop
22 Malone about it?

23 A. Yes.

24

25 Q. And you knew that [AH]'s own father had told Bishop
26 Malone that [AH] had been or was going to see the police -
27 you knew that?

28 A. Yes.

29

30 Q. And you knew that [AH] had been upset by the show on
31 60 Minutes on the Sunday night?

32 A. Yes.

33

34 Q. So it was clear that something was going on and the
35 odds were, in your mind, that this news would all travel
36 quickly to Father Fletcher?

37 A. No.

38

39 Q. You thought all of that just might have escaped his
40 attention?

41 A. If he had not been told by Bishop Malone of the issues
42 concerning [AH]'s father and what revolved around that, and
43 the fact is - and I still believe, as Father Fletcher had
44 told me - he had no idea whatsoever who the caller was, it
45 negates those propositions, sir.

46

47 Q. He had no idea who the caller was except that he was

1 being accused of sexual abuse; is that right?
2 A. Yes.
3
4 Q. So that would be enough to generate some upset and
5 distress?
6 A. Yes.
7
8 Q. And that might have been a matter of concern to his
9 bishop?
10 A. In the statement, if I recall --
11
12 Q. That might have been a matter of concern to his
13 bishop?
14 A. The bishop told me he didn't know about that call at
15 that --
16
17 Q. No, no, in the general structure?
18 A. Oh, if he had been told, yes.
19
20 Q. That's all in the background of the prior poor health
21 of Father Fletcher?
22 A. Yes.
23
24 Q. In any event, Bishop Malone told you that he did not
25 mean for that to occur. Once again his concern was for his
26 welfare; that's what he said?
27 A. That's what he said, sir, yes.
28
29 Q. He told you that openly?
30 A. He did indeed.
31
32 Q. Then you went on to say this - you noted that what
33 Bishop Malone had done had the effect of telling Father
34 Fletcher that there was a police investigation. We've
35 already discussed that.
36 A. Yes.
37
38 Q. Then you said this:
39
40 *If someone like Richard Carleton was to*
41 *interview you, I doubt that he would be as*
42 *accepting of that explanation.*
43
44 A. Yes, I did.
45
46 Q. By that you were drawing a distinction between
47 Richard Carleton's proposed or hypothetical acceptance of

1 the explanation and yours, weren't you?
2 A. There was a parallel, yes.
3
4 Q. It wasn't parallel; it was a distinction?
5 A. I think that what I was saying to him, sir, in light
6 of the fact that the program revolved around much of what
7 occurred was Richard Carleton's program on 60 Minutes on
8 2 June that the victim had seen, and I was drawing an
9 analogy, if you like, in relation to the interviewer from
10 that program, Richard Carleton and --
11
12 Q. Yes, you were, but you were drawing a distinction
13 between the degree of acceptance of the explanation by
14 Richard Carleton and the degree of acceptance that you had
15 about it on 20 June 2002, that's what you were doing?
16 A. I don't think I was drawing a difference between it.
17 What I was trying to make him aware of was that I think
18 that most people reading his explanation, which didn't add
19 up to a lot of logic at the end, in my belief - I was
20 trying to convey to him that I think other people also
21 would have also been drawn to that inconsistency in his
22 response.
23
24 Q. I see; so you didn't accept he was concerned about
25 Father Fletcher's welfare?
26 A. In some respects he didn't - that doesn't seem to be
27 the case either, no.
28
29 Q. So he wasn't concerned about a priest under his charge
30 knowing that he had ill health before - you don't accept
31 that as a reasonable proposition?
32 A. I'm aware that he knew he had ill health.
33
34 Q. You just don't accept that Bishop Malone was concerned
35 about him?
36 A. Not to that degree, sir, no.
37
38 Q. Do you have some knowledge about Bishop Malone in
39 terms of what he thought about Father Fletcher and his
40 health, other than what he told you?
41 A. Yes.
42
43 Q. Did you have it before 20 June 2002, did you?
44 A. Well, six weeks later, he doubled the size of Father
45 Fletcher's parish to include Lochinvar and gave him a hell
46 of a lot more responsibility. He was saying to me, "This
47 man is not well"; yet, he doubles his parish and gives him

1 a couple more schools to visit, and I'm thinking, "Jeez,
2 that's a hell of a lot more work for a man who is not
3 well."
4
5 Q. We will come to that in due course. I'm asking you
6 about what your state of knowledge was on 20 June 2002.
7 All of that is in the future.
8 A. But it was just answering your question as to what my
9 thoughts were of what Bishop Malone was --
10
11 Q. No, at the time?
12 A. Sorry, at the time.
13
14 Q. You didn't understand that?
15 A. Sorry, at the time on 20 June? No, but it still
16 didn't add to what he was saying to me.
17
18 Q. What about it didn't add up?
19 A. He said that he went out, effectively, to console
20 and --
21
22 Q. Did he use the word "console"?
23 A. No, he didn't. I said, "Effectively". I can read the
24 exact words if you like, sir, to --
25
26 Q. The exact word you've written on the "I said/he said"
27 document?
28 A. Yes. Would you --
29
30 Q. Go on.
31 A. Okay. When he explained to me that he went out there
32 to --
33
34 Q. Where are you reading from?
35 A. I'm not as yet.
36
37 Q. Okay.
38 A. I'll let you know, sir, when I do.
39
40 Q. Thank you.
41 A. When he told me that he'd gone out there for the
42 purpose of --
43
44 Q. I am asking you to read from the document.
45 A. Okay. It effectively starts from the last line of
46 page 1 where I said --
47

1 Q. Page 1?

2 A. Yes:

3

4 *Did you tell him that the matter had been*
5 *reported to the police and there was an*
6 *investigation?*

7

8 Q. Yes.

9 A. :

10

11 *He said, "Yes. This was only done because*
12 *of our concern for his welfare."*

13 *I said, "That may be so, but you have by*
14 *your actions alerted Father Fletcher to*
15 *what is going on. The element of surprise*
16 *is a legitimate investigative tool and your*
17 *visit has effectively negated any advantage*
18 *we had in that regard."*

19 *He said: "I am sorry but that was not our*
20 *intention."*

21

22 Then there's a conversation from Saunders.

23

24 Q. Saunders?

25 A. Father Saunders, which I'll continue to read, sir:

26

27 *We were concerned about the police arriving*
28 *on --*

29

30 Q. No, that's Father Saunders?

31 A. Yes, in the presence --

32

33 Q. I'm asking you about Bishop Malone?

34 A. In the presence of Bishop Malone and myself, yes.

35

36 Q. I see.

37 A. :

38

39 *We were concerned about the police arriving*
40 *on his doorstep and taking him without*
41 *anyone knowing. He is not very well and*
42 *this would have very bad effect on his*
43 *health. You have to understand he has been*
44 *a very ill man.*

45 *I said, "We are not like the Gestapo*
46 *arriving in the middle of the night and*
47 *dragging him off to a cell somewhere. That*

1 is not how we do things. I am aware of his
2 poor health and something like that would
3 not have occurred. It was and remains my
4 intention to contact this office or someone
5 within the church when it is time to speak
6 with Father Fletcher to arrange support for
7 him. I would welcome someone being present
8 when I speak to him and that is a mandatory
9 option open to him. However, this may not
10 occur for some time yet."
11 Bishop Malone said, "So you will let us
12 know when you go to speak to
13 Father Fletcher?"
14 I said, "Yes."
15 Father Saunders [then stood up] placed his
16 hands together [above his head in a praying
17 motion].
18 Bishop Malone [then] said, "Do you know
19 when that might be?"
20 I said, "We have a - lots to do first.
21 I would not expect that to happen for some
22 weeks or even months. I assure you that we
23 will make some contact with the church
24 around that time so that we can deal with
25 Father Fletcher in as compassionate a
26 manner as possible."
27 He said, "I thank you for that."
28 I said, "Had you approached the Police
29 Service or myself before speaking to
30 Father Fletcher this would have been
31 explained to you. Unfortunately you didn't
32 give us that opportunity. I would have
33 preferred you speak to me before you did
34 anything and I could have explained all
35 this."
36 He said, "We were just trying to act in the
37 best interests for all concerned."
38 I said, "In your conversation was
39 Father Fletcher aware of a Police
40 Investigation before you raised the subject
41 with him?"
42 He said, "No. I don't believe so."
43 I said, "In view of that would it not have
44 been wiser to not mention the investigation
45 to him?"
46 He said, "Sorry?"
47 I said, "If you had not told him there was

1 *a Police Investigation he may not have been*
2 *upset or distressed and therefore negate*
3 *any need for concern over his welfare in*
4 *the first place."*
5 *He said, "I see what you mean. I did not*
6 *mean for that to occur. Our concern was*
7 *for his welfare."*

8
9 Q. Yes.

10 A. Yes. So that's what I'm saying, sir, is that --

11
12 Q. Which part of that did you have a reason to take issue
13 with?

14 A. I didn't believe - Bishop Malone is not a fool. He's
15 an intelligent man that is in a fairly high --

16
17 Q. Which part of it did you have reason to take issue
18 with?

19 A. I'm explaining, sir, if I may.

20
21 Q. No, which part of it? Not your rationale, not your
22 philosophy, not your grandstanding - which part of it?

23 A. I'm not grandstanding, sir.

24
25 Q. You've read out a page and a half?

26 A. Yes.

27
28 Q. And what he spoke about was concern for the welfare of
29 a priest?

30 A. Yes.

31
32 Q. And others?

33 A. Yes.

34
35 Q. Which part of that did you have a reason to take issue
36 on 20 June 2002?

37 A. The part where he had no knowledge, according to him,
38 as of 4 June 2002, of the phone call. He knew of the
39 police investigation. He knew the name of the alleged
40 victim. He then goes out on the explanation that he felt
41 that Father Fletcher's welfare needed attending to with
42 some compassion from himself, but his reasoning for that is
43 because Father Fletcher would be upset about a police
44 investigation and the allegations. The fact is that, to
45 his knowledge, Father Fletcher didn't know, so why would he
46 go out there to let - to consult him for something that he
47 didn't know?

1
2 Q. You didn't think that he might be concerned that he'd
3 learn about the police investigation that Bishop Malone was
4 told about?
5 A. I would have hoped not.
6
7 Q. You would have hoped he would not have been concerned?
8
9 MR COHEN: I object. That's not a fair question.
10
11 THE WITNESS: No.
12
13 THE COMMISSIONER: The witness has answered it, I think,
14 Mr Cohen.
15
16 MR HARBEN: Q. He wouldn't have been concerned?
17 A. He would have been concerned, sir, but not - it was a
18 double question, if I can put it that way.
19
20 Q. Let me put it again --
21 A. That wasn't the part that I was answering.
22
23 Q. Do you say Bishop Malone would not have been concerned
24 about Father Fletcher learning about the police
25 investigation?
26 A. No.
27
28 Q. I want to suggest to you there's absolutely no basis
29 for you to have formed that view about Bishop Malone prior
30 to 20 June - about Bishop Malone himself on 20 June 2002,
31 about his character?
32
33 MR COHEN: I object to that question. That question
34 asserts a position about character. The questioning and
35 the whole line of questioning is about what this witness
36 did or did not do, what impressions he did or did not form,
37 having regard to the conversation. In my respectful
38 submission, that's not a fair basis for the question that's
39 now put.
40
41 MR HARBEN: I'm exploring the basis for the view he took
42 at the time, Commissioner.
43
44 THE COMMISSIONER: That Bishop Malone may not have cared
45 about James Fletcher finding out --
46
47 MR HARBEN: Yes, in circumstances where he knew of a

1 police investigation - that is, Bishop Malone was told
2 about it by [AH]'s father - inevitably, Father Fletcher
3 would find this out, because inevitably the process would
4 continue. What I'm asking this witness is on what basis
5 could he have formed an adverse view of the response given
6 to him by Bishop Malone as at 20 June 2002.

7
8 THE COMMISSIONER: Yes. I will permit you to explore
9 that, Mr Harben.

10
11 THE WITNESS: The --

12
13 MR HARBEN: Q. There was no basis, was there?

14 A. Yes, there was.

15
16 Q. About Bishop Malone himself?

17 A. Yes.

18
19 Q. Not just some overall view of how these things work in
20 the world; it was about Bishop Malone?

21 A. Well, it was Bishop Malone's actions --

22
23 Q. You knew about his character, did you?

24 A. I didn't know about his overall character, but what
25 I was --

26
27 Q. Did you know what sort of person he was?

28 A. But what I was making --

29
30 Q. Did you know what sort of person he was?

31 A. As of 2 June?

32
33 Q. As of 20 June?

34 A. 20 June, sorry. I had some ideas, yes.

35
36 Q. You'd spoken to him?

37 A. Only via telephone to make the arrangements for the
38 meeting.

39
40 Q. Was that your sole personal contact with him?

41 A. Yes.

42
43 Q. Anything else you knew about him must have been told
44 to you by somebody else?

45 A. Yes.

46
47 Q. You had no firsthand knowledge of Bishop Malone as at

1 20 June 2002?
2 A. No.
3
4 Q. You didn't know whether he was the most caring person
5 in the world or the least caring?
6 A. That would be fair to say, yes.
7
8 Q. I want to suggest to you, in the absence of that
9 knowledge, you could not make an assessment of his honesty
10 about the answers that he gave you in that interview?
11 A. I disagree, sir.
12
13 Q. Let's just travel a bit further into the document.
14 You then broached the subject of what might happen with
15 Father Fletcher while the investigations continued. You
16 broached that subject yourself?
17 A. Yes.
18
19 Q. And he immediately responded to you, didn't he?
20 A. Yes.
21
22 Q. And his response was that he was going to ask him to
23 take a period of leave. Was that his response, or words to
24 that effect?
25 A. Yes.
26
27 Q. That would have given you some indication of the
28 manner that Bishop Malone thought and how he approached
29 things?
30 A. Yes.
31
32 Q. And then you continued that after that answer. You
33 said this:
34
35 *I would ask that the church give*
36 *consideration to removing Father*
37 *Fletcher ...*
38
39 A. Yes.
40
41 Q. So you asked him to consider it?
42 A. Yes.
43
44 Q. You didn't request him to do so?
45 A. I think you're splitting hairs there, sir, but what
46 I was --
47

1 Q. I'm reading your words.
2 A. Yes, you are. I think it makes it clear that I was
3 asking him to give consideration to standing him down, yes.
4
5 Q. Those are the words you say you used?
6 A. Yes.
7
8 Q. Please tell me if I'm misquoting you.
9 A. You're not misquoting, sir.
10
11 Q. Thank you.
12 A. But I think on the meaning of what was said, asking
13 him to give consideration or requesting him, yes, they are
14 different words, but I don't think that the interpretation
15 would have been far too different.
16
17 Q. "Ask" and "request" might mean the same thing, but it
18 is the consideration, that's the qualifying factor, or
19 isn't it?
20 A. I don't want to split hairs over it, sir, but --
21
22 Q. Thank you.
23 A. -- yes, they are different words, but I think it was
24 fairly clear to the bishop what I was asking.
25
26 Q. You're now putting yourself in his head?
27 A. I was - I'm not putting myself in his head. What I'm
28 saying is my assessment of speaking to Bishop Malone, his
29 tone, his body language and the conversation we had,
30 I think most of us are able to make an assessment as to
31 whether they comprehended what was being asked.
32
33 Q. He then said to you:
34
35 *How long would you expect that to take?*
36
37 Didn't he?
38 A. Yes.
39
40 Q. And you said:
41
42 *As I said earlier, this could be a matter*
43 *of months ...*
44
45 A. Yes.
46
47 Q. "I cannot put a time on it at this stage."

1 A. Yes.
2
3 Q. Can I just stop you there for a moment. Did you say
4 those words or words to that effect?
5 A. Yes.
6
7 Q. What you meant by that was that, firstly, you had no
8 idea how long this investigation would take; that's what
9 you meant?
10 A. Yes.
11
12 Q. The best you could do was that it might be a matter of
13 months?
14 A. Yes.
15
16 Q. Had you given any specific details of the allegations
17 against Fletcher?
18 A. No.
19
20 Q. So what Bishop Malone knew was very general, to your
21 knowledge?
22 A. I don't know whether I'd use the term "general". The
23 fact that he knew that there was allegations of child
24 sexual abuse against one of his priests, I think is a
25 little bit more than, you know, just passing it off as
26 something general. You know, that --
27
28 Q. I didn't say it was passing anything off in general;
29 I said it was a general description?
30 A. A general description, sorry, I would agree with you
31 there, sir.
32
33 Q. Bishop Malone then said to you, I want to suggest to
34 you quite reasonably:
35
36 *Do you --*
37
38 That is do you, Detective Chief Inspector Fox --
39
40 *have concerns for other persons?*
41
42 A. Yes, sorry, just to clarify that from what I have
43 here, he didn't, of course, use the term "Detective Fox".
44 I understand what you mean --
45
46 Q. No, no.
47 A. -- but he said, "Do you have concerns for other

1 persons", referring to me.
2
3 Q. He was talking to you, wasn't he?
4 A. Yes, he was.
5
6 Q. You are Detective Fox?
7 A. Sorry, I wasn't being smart, sir. All I was trying to
8 do was get it right for the transcription as to what that
9 was referring to.
10
11 Q. Thank you. He asked you:
12
13 *Do you have concerns for other persons?*
14
15 That was a reasonable question?
16 A. Yes, it was.
17
18 Q. It was an important question?
19 A. Oh, yes.
20
21 Q. It was important because, two questions before, you
22 said to him:
23
24 *I would ask that the church give*
25 *consideration.*
26
27 A. Yes.
28
29 Q. You had asked that. So one of the things that he
30 might reasonably have used in that consideration is whether
31 you had concerns for any other persons?
32 A. Yes.
33
34 Q. And that's the very question he asked?
35 A. Yes.
36
37 Q. Then you answered:
38
39 *I don't have any information that he is*
40 *committing any offences at the present*
41 *time.*
42
43 That's what you replied?
44 A. Yes.
45
46 Q. That's the first thing.
47 A. Yes.

1
2 Q. Specifically in relation to Father Fletcher?
3 A. Yes.
4
5 Q. You had no reason to suggest there was anything else
6 going on adverse at the time?
7 A. That's the truth, yes.
8
9 Q. Because if there was, you would have done something
10 about it immediately, wouldn't you?
11 A. Yes.
12
13 Q. You certainly wouldn't have done something that
14 enabled Father Fletcher to stay in his parish unchecked,
15 unsupervised for a number of months while the investigation
16 took on, if you had any immediate concerns, would you?
17 A. No.
18
19 Q. Thank you. You then gave a description, on a general
20 basis, about these sorts of matters as part of your
21 concern, didn't you? You spoke about Vince Ryan and the
22 like, in general terms. That's what you did?
23 A. In general terms, what I did is I clarified, I believe
24 more deeply, that comment:
25
26 *I don't have any information that he is*
27 *committing offences at the present time.*
28
29 Q. No. You spoke about those things generally?
30 A. I then said, and I think that that needs to --
31
32 Q. Just before you get on to what you said, I'm
33 suggesting to you that you spoke about those matters
34 generally; in other words, these types of offences
35 generally?
36 A. Yes. Yes.
37
38 MR COHEN: I object.
39
40 THE COMMISSIONER: Yes, Mr Cohen?
41
42 MR COHEN: The witness has answered.
43
44 THE WITNESS: Sorry.
45
46 MR HARBEN: Q. Then you said this at the end of that
47 general questioning:

1
2 *I would feel better if he was removed from*
3 *the Parish and placed in an office role*
4 *here at the diocese or somewhere else where*
5 *he would have a minimum [not a total lack*
6 *of but a minimum] of contact with children.*
7

8 In other words, you were saying to Bishop Malone you would
9 feel better about it.

10
11 MR COHEN: I object. Excising the middle, and an
12 important part of that paragraph, to prop together two
13 questions isolated from them and then asserting that that's
14 the meaning is unfair.

15
16 THE COMMISSIONER: Mr Cohen, Mr Harben can put that
17 abbreviated form to the witness and see if he agrees.

18
19 MR COHEN: In my submission, it is not a fair basis.

20
21 THE COMMISSIONER: If the witness doesn't agree that it
22 states the proposition fairly or accurately, then he can
23 say so.

24
25 MR COHEN: I've made my position clear.

26
27 THE COMMISSIONER: Thank you, Mr Cohen.

28
29 MR HARBEN: Q. You said:

30
31 *I would feel better if he was removed from*
32 *the Parish and placed into an office role*
33 *here at the diocese or somewhere else where*
34 *he would have a minimum of contact with*
35 *children.*
36

37 That's what you said to him?

38 A. Yes.

39
40 Q. You said, "I would feel better about it." That's what
41 you were saying?

42 A. I'm using "I "in the context, as I think he and most
43 other people listening to the conversation would
44 understand, that, overall, it would be much wiser, I think,
45 to remove him from contact. So far as minimum of contact,
46 he obviously would have been working under supervision at
47 the office if he had been removed to the diocese. The

1 information I had had to date, as in most cases of child
2 sexual abuse, is I can't remember too many occurring in the
3 company of other people. So if he's down there working at
4 the diocese office, confined to the building where there
5 are numerous other people coming and going, I don't think
6 that there would have been the opportunity for him to be
7 isolated with young children and the potential to --

8

9 Q. Thank you. I'm just examining your discussion with
10 Bishop Malone following your request that he give
11 consideration to these matters and you said those words to
12 him, "I would feel better if he was removed." That's what
13 you were saying?

14 A. That's the way I put it, sir, yes.

15

16 Q. What you were saying was, "Look, in my experience,
17 I would feel better if he was removed, but, please, you and
18 the church give it consideration." That's what you were
19 saying?

20 A. I don't think --

21

22 Q. You disagree with that?

23 A. Yes, I do.

24

25 Q. Did you demand that he be removed?

26 A. I didn't have the power to.

27

28 Q. Did you demand it?

29 A. I didn't have the power to, so I did not.

30

31 Q. Then Bishop Malone says to you this:

32

33 *You're saying you feel --*

34

35 That is, you feel --

36

37 *he should be relieved of his position?*

38

39 In other words, this is the third time Bishop Malone has
40 sought assistance from you for his consideration; would
41 that be a fair summation?

42 A. That could be one interpretation, yes.

43

44 Q. And you said in the first sentence, "I would". In
45 other words, you would feel that he should be relieved of
46 his position; that's what you would feel?

47 A. My word, yes.

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Q. Yes. Then you said:

I cannot force you to do that. I don't have that power, but I would strongly suggest it to you.

A. Yes.

Q. So you'd feel better about it, you'd strongly suggest it, and you asked him to give consideration to it. Those are the terms used, aren't they, according to your document?

A. Yes.

Q. Then he talks about there being a presumption of innocence, which you agreed with, and you then said that you would hate for something adverse to occur while the matter was still being examined; that's what you said?

A. Yes.

Q. And then you ended your very last sentence, according to this document, by saying:

I can only ask you to consider doing the same.

Could I qualify that by saying that, immediately before that, you'd given examples of circumstances where people in different occupations had been stood down whilst investigated; is that correct?

A. Sir, if I can - I think it's fair to read that on and into that and I'd like to make that part of my answer, where I said:

... I can tell you that I have charged a Police Officer for a sexual offences and he was removed from general policing duties in the community and confined to a station until the matter was resolved at court. I have also charged school teachers with sexual offences and the Department of Education in each case removed them to the District Head Office to perform administrative duties away from children until it was resolved. These are standard practices for most government departments.

1 *On each of those occasions there was a*
2 *presumption of innocence but the safety and*
3 *welfare of the community had to take*
4 *precedence. I can only ask you to consider*
5 *doing the same.*
6

7 Now, I felt by saying it to him in that way that I was
8 emphasising that as strongly as I could, me being in a
9 position where I don't have any power to force him to stand
10 Father Fletcher down, considering the nature of the
11 allegations, but to point out to him that government
12 policies are that, with that person, where the allegations
13 are in existence and the decision as to their guilt or not
14 is yet undecided until a court decides, that they still err
15 in favour of protecting the community and children by
16 removing that person accused away from the potential of
17 committing further offences whilst the matter was still to
18 be determined.
19

20 Q. But you understood that you were saying all of that
21 which you've just read out in the context where you asked
22 him to give consideration to it; you understood that?

23 A. Yes.
24

25 Q. I suppose the word "consideration "was used
26 deliberately by you, was it?

27 A. It was the word I used at the time.
28

29 Q. You know what "consideration" means, don't you?

30 A. To give some serious thought to doing it, yes.
31

32 Q. You weigh up the options?

33 A. Yes.
34

35 Q. You then take a course of action in accordance with
36 what is known and what is under consideration; is that
37 right?

38 A. Yes.
39

40 Q. When you left the presbytery, or the office, I assume
41 that that's what you thought the bishop would do, that
42 he --

43 A. I had told --
44

45 Q. Would you let me finish.

46 A. I'm sorry, I apologise.
47

1 Q. You assumed that what he would do, in giving the
2 consideration that you asked him to give, was to weigh up
3 the information he had and to make a decision. That's what
4 you assumed he would do?
5 A. I assumed that he would weigh up the information that
6 allegations had been made that Father Fletcher had sexually
7 abused a child, who was a student at a --
8
9 Q. I'm not asking you to describe it. I'm asking you
10 whether you expected --
11 A. Sir, I'm explaining. It's --
12
13 Q. No, no, I'm asking you whether you expected him to
14 weigh up the information and give it consideration?
15 A. I'm explaining my --
16
17 Q. Did you expect him to do that or not? It is an easy
18 question to answer.
19
20 MR COHEN: I object.
21
22 THE WITNESS: I'm explaining that, sir, if I'm allowed.
23
24 MR HARBEN: Q. I'm not asking you to explain it. I'm
25 asking to you answer it.
26
27 MR COHEN: I object. There was a request for an
28 explanation and there have been a number of occasions where
29 the responses have been cut across this. This an occasion
30 the cross-examiner should just accept the answer, in my
31 respectful submission.
32
33 MR HARBEN: Commissioner, the question doesn't call for an
34 explanation. I asked him whether his expectation was
35 whether the bishop would give consideration. That's a very
36 simple question. It requires a one-word answer.
37
38 THE COMMISSIONER: Weighing up the extra information that
39 the witness had given him on the --
40
41 MR HARBEN: As part of the process of consideration.
42 That's all.
43
44 THE COMMISSIONER: Very well.
45
46 THE COMMISSIONER: Q. Can you answer that in a one-word
47 fashion?

1
2 MR HARBEN: Q. That's right, isn't it? You expected him
3 to weigh up whatever information he had in the process of
4 giving that consideration. That's what you expected him to
5 do?
6 A. Yes.
7
8 Q. You expected him, having done that, to come to a
9 conclusion or a decision one way or the other; that's what
10 you expected him to do?
11 A. That wasn't - no, that wasn't my expectation.
12
13 Q. Do you understand that when you invite someone to give
14 consideration to something, that there can only be one
15 answer?
16 A. Sir, I think --
17
18 Q. Is that what you're saying?
19 A. No.
20
21 Q. So there could be more than one answer?
22 A. I didn't believe so on this occasion with the
23 information that I had conveyed to him.
24
25 Q. But, detective, that's your opinion, isn't it?
26 A. I thought that's what I was being asked, sir.
27
28 Q. No, no, I'm asking you about what your expectation of
29 Bishop Malone was?
30 A. Yes, that's what I understood.
31
32 Q. As at 20 June, you had had very little contact with
33 [AH], had you?
34 A. I hadn't had a - I certainly had more than those first
35 couple of days, but I had had a degree of contact. It was
36 certainly nowhere near the degree of contact I've had
37 today, but I don't think it was minimal.
38
39 Q. Tell me this - any of those contacts that you had
40 after 3 June, I assume you recorded them in the COPS entry,
41 did you?
42 A. No, I wouldn't have done that.
43
44 Q. Anything important would have been put into the COPS
45 entry?
46 A. No.
47

1 Q. So you would have left important material out of the
2 COPS entry?
3 A. Well, no, I would have - if something was relevant to
4 be placed in the COPS entry I would have placed it in the
5 COPS entry. It doesn't say that I didn't have further
6 conversations with [AH] or that I may have --
7
8 Q. The specifics about the allegation would be important
9 and relevant?
10 A. If that's what I discussed --
11
12 Q. Yes?
13 A. -- it may well be that I would have added things
14 there. But I may have also discussed with [AH] many other
15 things, which I would suggest, sir, that I did, and the
16 nature of those conversations wasn't necessarily material
17 that would be included in the body of a COPS entry. It
18 would have amounted to many other things - how he was
19 travelling, so far as his mental state was at the time, and
20 various other aspects, but it doesn't mean that those
21 things would have been included in the body of the COPS
22 report.
23
24 Q. Tell me this - when someone is referred off to
25 counselling, you as, part of the investigation process,
26 allow that counselling process to run its course, don't
27 you?
28 A. I don't obstruct it, no.
29
30 Q. No; you let it run its course and you are guided by
31 the counsellor as to when a person might be ready to embark
32 upon the next stage of the investigation; that's the
33 process, isn't it?
34 A. I leave it up - it is the victim's decision. The
35 counsellor is there to advise them and give them guidance
36 and assistance through it all, but ultimately it has
37 always - it always has to be victim's decision, no-one
38 else's.
39
40 Q. In this case, when you spoke to [AH] on 3 June, you
41 referred him off to a counsellor?
42 A. Yes.
43
44 Q. You did that because he was nowhere near being in a
45 position to make a full statement to you?
46 A. No.
47

1 Q. You disagree with that?

2 A. Yes.

3

4 Q. That's what he says in his statement:

5

6 *Although I made an initial report at the*
7 *time, I didn't feel up to making a full*
8 *statement.*

9

10 A. That day, yes, exactly.

11

12 Q. He says in November:

13

14 *I now feel that I'm ready.*

15

16 A. Yes. Sir, you are leaving a lot out. I can explain
17 the reason for that, if I'm allowed, and it is a very
18 simple explanation, but just reading those two lines in
19 isolation does not do any justice to what he's saying.

20

21 Q. You prepared this document which has become an exhibit
22 dated 25 November 2010, a provisional exhibit, I think, and
23 I asked you some questions about it yesterday.

24

25 Commissioner, I'm about to embark on a different
26 subject. Would that be a convenient time?

27

28 THE COMMISSIONER: Yes, certainly.

29

30 MS LONERGAN: Commissioner, just before you rise, there
31 has been a request from members of the media for copies of
32 exhibits numbered 70 to 77. Could those at the Bar table
33 indicate to your staff by the end of the morning tea
34 adjournment whether they object to their release or,
35 alternatively, advise whether they require more time to
36 consider that, Commissioner.

37

38 THE COMMISSIONER: Thank you, Ms Lonergan.

39

40 **SHORT ADJOURNMENT**

41

42 MR HARBEN: Q. Detective inspector, I was asking you
43 about a document dated 25 November 2010 which you wrote in
44 relation to the matters the subject of this inquiry.

45

46 A. Yes.

47

47 Q. Are you familiar with the document?

1 A. Oh, obviously it helps to refresh my memory reading it
2 again, but I do know the document to which you refer.
3
4 Q. I don't have the exhibit number. Do you have it
5 there?
6 A. No, I don't, sorry.
7
8 Q. Tab 498, exhibit 69, detective?
9 A. Thank you.
10
11 Q. Do you have it?
12 A. Yes.
13
14 Q. Do you remember yesterday I suggested to you that, in
15 this document, you took the opportunity to advocate a
16 particular position?
17 A. Yes, I do.
18
19 Q. I want to suggest to you, as a consequence of
20 approaching the matter in that way, you coloured your
21 language to support your position?
22 A. Yes, I do remember, yes.
23
24 Q. Do you agree with that?
25 A. It depends on what you mean by the term "coloured".
26 I suppose there are a lot of connotations to that.
27
28 Q. Exaggerated?
29 A. No, I don't believe that, no. To suggest it was
30 exaggeration by using terms like "defiance", et cetera, and
31 "undoubtedly", I don't agree with that.
32
33 Q. Thank you. In the middle of the page you say this:
34
35 *Bishop Malone then refused a request by me*
36 *to remove Fletcher ...*
37
38 A. Yes, I do.
39
40 Q. First of all, what you asked him to do was give the
41 matter some consideration; that's right, isn't it?
42 A. That is the exact term I used, yes.
43
44 Q. Having asked him to give the matter consideration,
45 wouldn't it be more accurate to say, if it was indeed the
46 case, that he refused to give the matter consideration?
47 A. If I'd used inverted commas and quoted the exact

1 language, but I think that you're drawing obviously to one
2 specific sentence. Now, there was a lot of conversation,
3 I think --
4
5 Q. I think I've taken you all to it.
6 A. Yes. There was a lot of conversation. It wasn't just
7 to that single word "consideration". I went through a
8 fairly lengthy process to try and convey to him as strongly
9 as I could, without having the power to remove him, to
10 consider doing so. Now --
11
12 Q. That's the point, isn't it, detective? You wanted to
13 convey to him in strong terms that you wanted him to
14 consider it?
15 A. Yes, but you're --
16
17 Q. In other words, if he considered it, he would have
18 done what you asked him to do; that's right, isn't it?
19 A. I don't quite understand what you're --
20
21 Q. You asked him to consider it?
22 A. Yes. Yes, I agree with that.
23
24 Q. If he had considered it, he would have done what you
25 asked him to do?
26 A. I don't know whether that - whether I can answer that
27 fairly.
28
29 Q. It is either he considered it or he didn't?
30 A. Well, Bishop Malone would have to say if he considered
31 it or not. I'm not Bishop Malone.
32
33 Q. But you see your document says:
34
35 *Bishop Malone then refused a request by me*
36 *to remove Fletcher.*
37
38 A. Yes.
39
40 Q. That was coloured language, wasn't it?
41 A. No, not at all.
42
43 Q. It was an exaggeration?
44 A. It's not an exaggeration. I think, sir, that
45
46 Q. It was a misrepresentation?
47 A. No.

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Q. You then say:

In defiance of my request Malone extended Fletcher's parish to include both the Catholic High School and Catholic Primary School in Lochinvar.

Do you see that?

A. Yes.

Q. So he defied your request?

A. That's the way I interpreted it. Six weeks later after I asked him to give consideration --

Q. Consideration?

A. -- to removing Father Fletcher from contact with children, he, in fact, did the opposite and doubled the size of his parish and gave him two more schools.

Q. When you say that he did the opposite, you mean he did the opposite of giving the matter consideration; is that what you're saying?

A. Sir, we're debating over the word "consideration".

Q. No, this is your document that you prepared for a specific important purpose advocating a position?

A. Yes.

Q. I'm suggesting to you that you were misrepresenting the situation by the language you used?

A. No.

Q. When you learnt this about the parish, I assume the first thing you did is you went and saw Bishop Malone and said, "What are you doing?"; did you do that?

A. I had indirect communication.

Q. I'm sorry, do you understand my question?

A. I understood. Did I go down to Bishop Malone's office and say to him "What are you doing?" No, I did not.

Q. Bearing in mind that you had this view that he was defying you, did you go and ask him why?

A. I think that I made my position very clear and I didn't see the need to - I didn't feel that going down there and rehashing what I had already put to him in what

1 I felt was the strongest of terms would have altered what
2 had already occurred.

3

4 Q. I see. So you are a couple of months more into the
5 investigation, you hadn't given him any details and you
6 didn't think, "Well, perhaps he doesn't understand what
7 I understand about the case. I'll go and find out why he
8 did this"? That didn't occur to you?

9 A. I wouldn't have done that, sir. You know --

10

11 Q. Well, you didn't do it?

12

13 A. No, I never did it, no.

14

15 Q. No. Did you make any inquiry as to the protocols that
16 were in place for the establishment and re-establishment of
17 various parishes in the diocese? Did you understand that
18 process?

19

20 A. I understood - I read some correspondence that came
21 out of the diocese office in relation to those changes.

22

23 Q. You understood why that was done?

24

25 A. I probably understood most of what he was arguing why
26 that was done.

27

28 Q. Can you tell us what you understood?

29

30 A. I think that most people are aware there's --

31

32 Q. No, what did you understand?

33

34 A. Okay, sorry, what I understood --

35

36 Q. Yes, that was the question.
37 A. -- was that there was a very considerable shortage of
38 priests within the diocese and that there were changes
39 being put in place to try and redistribute the number of
40 priests so that he could cover the diocese as best he
41 could. I understood from that that Bishop Malone was
42 giving greater priority to leaving a priest in a position
43 of power within what was formerly two parishes and with
44 contact with children at even more schools, as opposed to
45 placing the concerns of those children above a resource
46 shortage.

47

48 Q. When you found that out and formed that view, had your
49 position changed from when you answered in this way to
50 Bishop Malone's question:

51

52

Do you have concerns for other persons?

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Your answer was:

I don't have any information that he is committing any offences at the present time.

Had your position changed?

A. Sir, I think it is unfair just to read that one sentence without reading what flows from that.

Q. My question is a simple one. Had your position changed in that respect?

A. My position was that Father Fletcher should not have been in control and, no, my position was that he should not have been in contact with children, and it never altered.

Q. I'll ask the question again, detective inspector, and if you don't understand it, please tell me. In your earlier discussion with Bishop Malone, you say words to this effect, that Bishop Malone said to you in this discussion about giving consideration to Father Fletcher's position, this question:

Do you have concerns for other persons?

You knew that that question related specifically to Father Fletcher, didn't you?

A. Yes. Yes.

Q. Your answer was:

I don't have any information that he is committing any offences at the present time.

A. That is only part of my answer, sir.

Q. I understand that. Just bear with me. In terms of your information that you had at that time on 20 June 2002 to when you, at some stage, understood something about the Branxton and Lochinvar parishes, did you have any further information about Father Fletcher in terms of his committing any offences at the present time?

A. I did not receive any further reports between those dates of he committing sexual abuse of any more children in that time frame, no.

1
2 Q. But your concern was that he was still in the parish?
3 A. My concern was not that he was still in the parish.
4 My concern was that he was still going into schools, still
5 having contact with children and even taking young children
6 for reading classes by himself with the full knowledge of
7 Bishop Malone and others within the church.
8
9 Q. The first time you spoke to Bishop Malone again,
10 I want to suggest to you, was in May of 2003, almost a year
11 later? Do you deny that?
12 A. I don't know. I spoke to him on that date, yes, but
13 was that the next occasion? I don't know.
14
15 Q. Do you recall speaking to him on any other occasion?
16 A. I don't know whether I spoke to him. I do remember a
17 lot of correspondence bouncing back and forth between
18 myself and the diocese. I spoke to numerous persons and
19 I don't want to discount the possibility that I would have
20 spoken to Bishop Malone again during that period.
21
22 Q. Anyway, can I just approach it this way --
23 A. Yes.
24
25 Q. -- you certainly didn't specifically go and see
26 Bishop Malone about any further concerns you might have had
27 after you discovered this extension of the parish, did you?
28 A. No.
29
30 Q. In May of 2003, when you took a statement from Bishop
31 Malone, he said this in relation to that specific matter:
32
33 *I had spoken to Monsignor Allan Hart at the*
34 *Hamilton Cathedral to provide accommodation*
35 *for Father Jim and [I] told him of this.*
36
37 He told you that, didn't he?
38 A. Yes, it's in his statement.
39
40 Q. So that was something that you appreciated he did,
41 that he made that inquiry?
42 A. Yes. Yes.
43
44 Q. Because that would be part of giving the consideration
45 that you asked him to do?
46 A. Yes, that's a fair comment, yes, sir.
47

1 Q. Bishop Malone says:

2

3 *I gave him this option and he thought it*
4 *over for a time. He then told us that he*
5 *would prefer to remain in the parish at*
6 *Branxton where he had a support network for*
7 *the difficult time ahead.*

8

9 That's what Bishop Malone told you?

10 A. That's what he said, yes, and that's in his statement,
11 sir, yes.

12

13 Q. Assuming that's the first time that you spoke to
14 Bishop Malone about that particular matter after 20 June
15 2002, did you raise with him your concerns when he told you
16 that?

17 A. I believe I did.

18

19 Q. Did you ask him questions about it so that it could be
20 incorporated into his statement?

21 A. No, I didn't do that.

22

23 Q. That would have been an important part of the process,
24 wouldn't it?

25 A. I don't know whether it would have, considering - what
26 the process was that you're talking about that his
27 statement was prepared for was criminal charges against
28 Father Fletcher in respect to child sexual abuse and the
29 relevancy - I think we all agree that it ultimately would
30 have been a decision for the court and the judge, but the
31 relevancy of that in respect to the charges and, therefore,
32 their inclusion, as you're suggesting in that statement, in
33 my view, did not necessarily mean the same thing.

34

35 Q. You see, you regarded him as being defiant of you, and
36 here he is telling you what he has done about that
37 consideration. That's the situation, isn't it?

38 A. I agree that's the situation. That's what he's doing
39 in his statement, yes.

40

41 Q. What I'm suggesting to you is that, in 2003, none of
42 this suggestion of defiance or refusal impacted you in the
43 way you would have everyone believe it impacted you in your
44 letter of 25 November 2010?

45 A. I think, sir, in my report of 25 November 2010, we are
46 aware of many other situations. I certainly am and I can
47 assist if you would like me to elaborate.

1
2 Q. No, just concentrate on my question.
3 A. I understand why you don't want me to talk about
4 that --
5
6 Q. Well, sorry --
7 A. -- but that's why I made that comment. That's why
8 I made that comment. It isn't just on the scenarios that
9 you're presenting. It was in conjunction with other
10 information that I was aware of that I have made that
11 comment. I can elaborate, but I won't.
12
13 Q. The comment that you made relates specifically to
14 Bishop Malone?
15 A. Yes.
16
17 Q. And in 2003 you were interviewing Bishop Malone;
18 that's right, isn't it?
19 A. I got - I took Bishop Malone's statement, yes, that's
20 correct.
21
22 Q. You were taking a statement of him. He was there
23 willingly.
24 A. He was.
25
26 Q. He was cooperating?
27 A. Absolutely.
28
29 Q. He answered all your questions?
30 A. Yes, he did.
31
32 Q. He didn't balk at anything?
33 A. No, he did not.
34
35 Q. He didn't hide anything?
36 A. He was absolutely cooperative, sir.
37
38 Q. And would offer you, as far as you knew, any
39 assistance you wanted?
40 A. I don't know about that.
41
42 Q. Did he ever not offer you assistance?
43 A. Yes.
44
45 Q. Oh, did he?
46 A. Yes.
47

1 Q. In relation to this interview in 2003?
2 A. Not in relation to the interview, no.
3
4 Q. There have been a number of people who have
5 investigated this matter, haven't there, along with you,
6 other people involved in the investigation?
7 A. Some have assisted. I --
8
9 Q. You regard it as being your investigation?
10 A. Yes, I do.
11
12 Q. If you go further down that page, you refer to
13 statements taken from Malone, I'm reading out and quoting
14 here, so I'm --
15 A. Yes.
16
17 Q. You refer to Malone, Saunders, Harrigan and the priest
18 William Burston?
19 A. Yes.
20
21 Q. Then you make this statement:
22
23 *All those statements were remarkable for*
24 *their author's poor recollection of*
25 *critical conversations and smacked*
26 *strongly of collusion and concealment.*
27
28 A. Yes, I did.
29
30 Q. Now, that's a very strong statement from you?
31 A. Yes, it is.
32
33 Q. That was a statement that you made about statements
34 that were taken by you 12 months after a particular event,
35 or nearly 12 months?
36 A. Yes.
37
38 Q. I take it that when you said, "All those statements",
39 you included Bishop Malone in that?
40 A. Yes.
41
42 Q. What you were, amongst other things, criticising
43 Bishop Malone for was that his statement was remarkable for
44 his poor recollection of critical conversation; is that
45 right?
46 A. Yes.
47

1 Q. What was the critical conversation that you
2 specifically were referring to with respect to Bishop
3 Malone?
4 A. Could I be assisted, sir, with his statement
5 to respond to that.
6
7 Q. Certainly? It is tab 390.
8 A. Volume?
9
10 Q. Volume 5.
11 A. Thank you, sir.
12
13 Q. While you're doing that, can I ask this question:
14 I take it that this concern you had about his poor
15 recollection in May of 2003 was something you thought at
16 the time and that's not a view you've come to later on?
17 A. I don't know. I don't recall at what point of time --
18
19 Q. Because it stands to reason that if you had such a
20 concern at the time, the first thing you might have done is
21 pull out the "I said/he said" document and shown it to him?
22 A. No, I disagree with that. The issues didn't
23 necessarily revolving around the "I said/he said".
24
25 Q. Let's look at the critical conversation that you are
26 being critical about Bishop Malone about.
27 A. Yes. (Witness reads document). One of the issues --
28
29 Q. What's the critical conversation do you mean, when you
30 say:
31
32 *Bishop Malone had a poor recollection of*
33 *it.*
34
35 A. Well, the difficulty in answering that, sir, is the
36 recollection is so poor that the conversation doesn't
37 appear in his statement.
38
39 Q. The recollection of what?
40 A. Well, Bishop Malone told me that he drove to the
41 Branxton presbytery on 4 June 2002 with his vicar general,
42 Monsignor Jim Saunders.
43
44 Q. He didn't actually tell you that.
45 A. It is not in his statement, but he did tell me that,
46 sir, yes.
47

1 Q. I thought you recorded:
2
3 *I cannot now be certain as to the exact*
4 *date.*
5
6 Isn't that what's in his statement?
7 A. Yes, that's what he has in his statement. If we're
8 splitting hairs over --
9
10 Q. You said Bishop Malone told you he went on 4 June.
11 That was wrong, wasn't it?
12 A. I think it was accepted he travelled there on 4 June.
13
14 Q. I'm sorry, do you have some confusion about the terms?
15 You've just told this inquiry that Bishop Malone told you
16 that he travelled to see Father Fletcher on 4 June. That
17 wasn't true, was it?
18 A. No, he was - he was not able to assist me with the
19 date that he travelled to Branxton.
20
21 Q. Thank you.
22 A. But he said, in his interview, that it was in the
23 week following the 60 Minutes program centred around
24 George Pell.
25
26 Q. That's right.
27 A. That's correct.
28
29 Q. That's correct?
30 A. And I do apologise, sir. He didn't say the date, sir,
31 you're right, absolutely, and I do apologise to you. What
32 he doesn't say in his statement is that there was any
33 conversation between him and Jim Saunders. Now, it is not
34 in his statement, but Father Saunders told me --
35
36 Q. I'm sorry, you say he doesn't say anything about
37 speaking to Jim Saunders?
38 A. No. What I'm saying is this conversation that I'm - I
39 was about to convey, he --
40
41 Q. Perhaps we'll make it easy. Could you just point to
42 me where in his statement he says, "I have no recollection
43 of a thing" or "I have a poor recollection of it"? Where
44 does he say that?
45 A. He doesn't say that, sir.
46
47 Q. This is something you've made up, isn't it?

1 A. No.
2
3 Q. You see, you as an experienced investigator, if
4 someone says, "I can't recollect the precise conversation",
5 or, "I had the conversation but I can't recollect it at
6 all", that's the very thing you put in the statement, isn't
7 it?
8 A. I put down what they tell me. If they omit something
9 that is fairly important and don't include it in their
10 statement and I later have reason to sort of ask, well, why
11 would something so important not be there --
12
13 Q. Sorry, you're talking about omitting something now?
14 A. Yes.
15
16 Q. I thought the words in your document of 25 November
17 2010 were, "a poor recollection of critical conversations"?
18 A. Yes.
19
20 Q. That's very different to omitting something, isn't it?
21 A. Sir, if I can read it through that page, I may be able
22 to assist you further.
23
24 Q. You've got it there, detective. Read away.
25 A. Thank you. (Witness reads document). I think if it's
26 read in conjunction with Father Saunders, I - what I was
27 saying in that report is that he has no recollection of a
28 critical conversation. Now, I --
29
30 Q. No, you said "poor recollection; not "no
31 recollection", "poor recollection" are the words you used?
32 A. And perhaps I should have been stronger and said he
33 told me that he did not recall Father Saunders telling him
34 on the drive to Branxton on the date after the 60 Minutes
35 program, somewhere in that week, that he wasn't able to
36 recall the exact date. Although his purpose was to go up
37 and speak to Father Fletcher about his health and the fact
38 that there was a police investigation underway for him
39 allegedly sexually abusing a young boy and knowing the name
40 of the young boy and wanting to tell Father Fletcher that,
41 he told me --
42
43 Q. When you say "he", you mean Bishop Malone?
44 A. Bishop Malone told me that he did not recall Father
45 Saunders telling him of the phone call that Father Fletcher
46 had received on the night of 2 June from a person alleging
47 that Father Fletcher had sexually abused them.

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Q. I'm sorry, where is that question and answer in the statement that you prepared in the interview on 21 May 2003?

A. It is a statement, sir. It is not a question and answer. I've never typed a statement really - well, I have, but it's very, very rare that a police officer would type up questions and answers in a statement form.

Q. Did you just pick some of the conversation that you wanted to pick for this statement; is that right?

A. No, what it was --

Q. You see, if you'd asked that question and gotten that answer, you would have put it in this document, wouldn't you?

A. He was saying that Father Saunders didn't tell him about that. He couldn't recall it. He doesn't have any knowledge of it. Father Saunders, in his statement, says the opposite. Father Saunders said that, "During the drive to Branxton that day I told him of the phone call that Father Fletcher had received" - from, at that stage, an unnamed person.

Q. Are you saying that Saunders said that?

A. I believe so.

[Transcript suppressed, per provisional non-publication order, from page 394, line 28 to page 402, line 23]

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Q. On the next page, in the fourth paragraph on that page, this is where you discuss your meeting with "Leo Clarke, retired"; do you remember that?

A. Sorry, page --

Q. The second page?

A. Sorry, that's where my error is. Paragraph?

Q. Paragraph 4.

A. Yes.

Q. You went to see Bishop Clarke for a particular purpose?

A. Yes.

Q. And you were interested in finding out material about Denis McAlinden?

A. Yes.

Q. And you had some information that you wanted to explore with him?

A. Yes.

1 Q. As part of the investigative process?

2 A. Yes.

3

4 Q. You have told this inquiry, when shown documents, that
5 if you had seen those documents, that would have led you to
6 undertake - and been important to your investigation?

7 A. Yes.

8

9 Q. I suppose as an investigator, that was a critical part
10 of the process, was it?

11 A. Yes.

12

13 Q. You see, Bishop Clarke told you that he didn't know?

14 A. Yes.

15

16 Q. But the one thing he did tell you was to go and ask
17 Bishop Malone, didn't he?

18 A. Yes, one thing. No, he told us many things, but that
19 was amongst them, yes.

20

21 Q. He said:

22

23 *No. You would have to ask Michael Malone*
24 *about that?*

25

26 A. Yes.

27

28 Q. Here was a perfect opportunity for an investigator of
29 your experience to pursue a line of inquiry, wasn't it?

30 A. Yes.

31

32 Q. You could have gone and seen Bishop Malone and made
33 the same inquiry of him?

34 A. Yes.

35

36 Q. Do you know Detective Faber?

37 A. Yes.

38

39 Q. I want to read you something from her evidence on
40 28 June 2013. I'm told this is part of the public
41 transcript, so I'm hoping I'm not transgressing. Counsel
42 assisting asked you this question:

43

44 *Q. You were about to outline your*
45 *experience of the interface you had with*
46 *Bishop Malone?*

47 *A. Yes. Obviously, investigating these*

1 *matters is very difficult, when we're*
2 *approaching the church and we went to*
3 *Zimmerman Services and they readily came to*
4 *us. I'm aware through Zimmerman Services*
5 *that Bishop Malone told them they were to*
6 *exchange all information with us and they*
7 *did so.*

8
9 This is on page 1639:

10
11 *Bishop Malone also gave us permission,*
12 *written permission, to search any church or*
13 *records or anything that we needed.*

14
15 Had you, as an investigator, followed the suggestion of
16 Bishop Clarke and gone and seen Bishop Malone on the
17 assumption that that is a correct assessment of
18 Bishop Malone's approach, the information that you have
19 told us would have been important to your investigation
20 would have been available to you?

21
22 MR COHEN: I object. The assumption is, in my respectful
23 submission, too speculative to have a proper basis that any
24 response in relation to this can have much or any probative
25 value. In my submission, by reason of that, it becomes
26 unfair under section 135.

27
28 THE COMMISSIONER: What assumption, Mr Cohen, that the
29 records were available from Zimmerman Services?

30
31 MR COHEN: No, that an approach to Bishop Malone, it is
32 assumed, would receive exactly the same response. It can't
33 be known, unless we have evidence from Bishop Malone to
34 that effect. The speculation is about what Bishop Malone
35 might have done.

36
37 THE COMMISSIONER: No doubt that will come in due course,
38 Mr Cohen. It is a fair question at this stage.

39
40 MR COHEN: If the Commissioner, please.

41
42 MR HARBEN: Q. On the assumption that Bishop Malone
43 behaved in the way that Detective Faber has described, had
44 you, as an experienced investigator, followed the direction
45 given to you by Bishop Clarke, you would have had access to
46 all of the documents that have been shown to you in the
47 witness box that you have said would have been important?

1 A. No.
2
3 Q. You disagree with that?
4 A. Yes.
5
6 Q. You think you wouldn't have had access to them?
7 A. Yes.
8
9 Q. Did you accept the assumption that I gave to you?
10 A. No.
11
12 Q. Please accept the assumption that was the preface to
13 the question. I'm sorry?
14 A. Sir, why I'm smiling, sir, is it is too problematic.
15 So many things occurred in that 11-year period that makes
16 me - that's the reason I smile.
17
18 Q. We're talking about 2002, detective.
19 A. 2002, and then you're putting to me the premise that
20 in 2012 - 2012, sorry, was it? - that this other
21 conversation occurs. So, in the course of a decade, an
22 enormous amount of things changed.
23
24 Q. On the assumption that --
25 A. The assumption is Zimmerman Services didn't even exist
26 in 2002.
27
28 Q. No, on the assumption that Bishop Malone would have
29 given you permission, written permission, to search any
30 church or records or anything you needed, on that
31 assumption you would have had access to the material that
32 you have in this inquiry identified as being useful for
33 your investigation, on that assumption?
34 A. That would have to be something that Bishop
35 Malone could answer.
36
37 Q. But if he said he did, you would have to accept that
38 as a proposition, wouldn't you?
39 A. Sir, at the risk of being stopped, there were many
40 things that occurred in the course of that 10-year period.
41
42 Q. I'm talking about 2002.
43 A. I don't accept that assumption because I --
44
45 Q. Is your answer you don't accept the assumption?
46 A. I don't believe in 2002 anything --
47

1 Q. You don't accept the assumption? You cannot, as a
2 witness who has taken an oath in this inquiry, accept an
3 assumption?

4 A. Sir, you're --

5
6 Q. Is that right?

7
8 MR COHEN: I object.

9
10 THE WITNESS: I don't understand where you are heading.

11
12 MR COHEN: I object. That's not a fair question to put in
13 these circumstances. Whether or not the witness accepts an
14 assumption is a matter for the witness. There's no
15 possible basis that can be asserted somehow to qualify the
16 evidence or the appropriate basis for a censorious comment
17 like that. That's why I object.

18
19 THE COMMISSIONER: Yes. You may put, Mr Harben, whether
20 or not the witness can accept the assumption or agree with
21 the assumption. There may be a reason why Mr Fox cannot
22 accept the assumption.

23
24 MR HARBEN: But that's a hypothetical, Commissioner.
25 That's the whole point of an assumption. He may not
26 believe or he may have reason not to believe and it may not
27 in fact be proven to be correct. We ask witnesses in court
28 every day to assume something. He either can, as the
29 intellectual process continues, accept the assumption or
30 say he cannot accept the assumption, which was the question
31 I put to him.

32
33 MS LONERGAN: It appears to me there may be a genuine
34 misunderstanding about the terminology, "accept the
35 assumption" and it may be that misunderstanding is causing
36 the problem.

37
38 MR HARBEN: Perhaps I'll rephrase it.

39
40 Q. Detective, I want you to assume that you followed
41 Bishop Clarke's advice at the end of June 2002 and went to
42 see Bishop Malone because Bishop Clarke had said to you,
43 "You'll have to ask Michael Malone about that." I want you
44 to further assume that when you did that, he gave you
45 permission, written permission, to search any church or
46 records or anything you needed. You would agree with me,
47 assuming those things, that you would have had access to

1 the material that you have been shown in this inquiry?
2 A. I apologise, sir. I now understand what you're
3 getting at. Yes.
4
5 Q. You would agree with that?
6 A. Yes.
7
8 Q. As an experienced investigator, here you were, you
9 went to Bishop Clarke, that was a dead end because you
10 weren't told something, but lo and behold you were given
11 the name of another line of inquiry, namely Bishop Malone,
12 and you didn't pursue it?
13 A. There was a very good reason for that, sir.
14
15 Q. You spoke to him in May of 2003?
16 A. Yes.
17
18 Q. Did you ask him about it then?
19 A. Sorry, Bishop Malone?
20
21 Q. Yes.
22 A. No.
23
24 Q. So you spoke to Clarke at the end of 2002. You didn't
25 immediately go and see him?
26 A. Immediately following what?
27
28 Q. Following your conversation with Bishop Clarke where
29 he said, "No, I can't help you, but you would have to ask
30 Michael Malone about it", you didn't go off to see
31 Bishop Malone then, did you?
32 A. I didn't go off to see him, no.
33
34 Q. You didn't go in January or February or March or
35 April?
36 A. No.
37
38 Q. But you spoke to him in May?
39 A. Yes.
40
41 Q. And he came in willingly?
42 A. Yes.
43
44 Q. Cooperatively?
45 A. Yes.
46
47 Q. He sat there and he answered the questions you asked?

1 A. He was excellent, sir. I've got no complaints about
2 his conduct at all.

3
4 Q. At any time you could have said to him, "By the way,
5 Bishop Clarke says you might be able to help me with this
6 line of inquiry about Father McAlinden." You didn't say
7 that, did you?

8
9 MS LONERGAN: I object. That's not a fair representation
10 of the evidence that this witness has given as to what he
11 was told by Bishop Clarke. What Bishop Clarke said, in
12 response to a question about whether he knew about any
13 other victims of McAlinden is, "No. You'll have to ask
14 Michael Malone." It wouldn't be a situation where this
15 witness would be able to go to Bishop Malone and say
16 "Bishop Clarke told me you might have some information
17 about McAlinden", because, on the contrary, the suggestion
18 was, "No. You will have to ask Michael Malone about that."
19 It's not quite what my learned friend has put to this
20 witness.

21
22 MR GYLES: I take a different position. I think it is an
23 entirely proper question.

24
25 THE COMMISSIONER: Ms Lonergan, I --

26
27 MS LONERGAN: No-one else sees the distinction but me,
28 clearly, Commissioner, so --

29
30 MR COHEN: Might I rise and adopt, with great respect,
31 what my learned friend Ms Lonergan says. I've been
32 endeavouring to make that objection for some time.

33
34 THE COMMISSIONER: Thank you, Mr Cohen. First of all
35 Bishop Clarke says to this witness, "No", but in the same
36 context says, "You'll have to go and see Bishop Malone",
37 with the suggestion there, I expect you would say Mr Harben
38 and Mr Gyles, that "He may be able to answer your question
39 when I can't."

40
41 MR GYLES: Yes. Bishop Clarke may have had some
42 difficulty with his recollection. He was an 80-year-old
43 man.

44
45 MR HARBEN: Yes.

46
47 MS LONERGAN: Bishop Clarke may have also been

1 deliberately attempting to mislead a police officer.
2 That's as likely as the alternative Mr Gyles has put
3 forward.

4
5 THE COMMISSIONER: Or he may have considered that, as he
6 was no longer the bishop, he ought to pass it all on to the
7 bishop.

8
9 MS LONERGAN: He may have, but he still said the word,
10 "No", before he said, "You'll have to ask Michael Malone."
11 That is very different, in my respectful submission from
12 saying, "Yes, you'll have to ask Michael Malone."

13
14 THE COMMISSIONER: But having said "No", Ms Lonergan, then
15 there is nothing more that this witness can do with him.
16 However, there is in the same answer a suggestion that
17 Bishop Malone be approached.

18
19 MS LONERGAN: Absolutely, and I have no problem with that
20 line of questioning. That is why I have not objected to
21 any of the previous questions. However, the last question
22 was put in a way where the "No" part of the answer was
23 completely put to one side. There was an implication in
24 the question put by my learned friend Mr Harben that the
25 information that was conveyed to Detective Chief Inspector
26 Fox was really in simple terms, "Michael Malone will know
27 about this." There was a different implication and a
28 different inference in the question put by my learned
29 friend that led me to stand. I have no problem with the
30 broader propositions he has been putting; it was the form
31 of the last --

32
33 THE COMMISSIONER: Perhaps Mr Harben can say, having been
34 to see --

35
36 MR HARBEN: Perhaps we should revisit the question,
37 meaning the question from the witness. The question was:

38
39 *"An alleged victim of Denis McAlinden has*
40 *told us that she believes the church is*
41 *aware --*

42
43 That is, the church is aware --

44
45 *of at least two other alleged sexual*
46 *assault victims of this priest. Do you*
47 *have any knowledge of that?"*

1 He said, "No. You would have to ask
2 Michael Malone about that."
3

4 The "that" must qualify the belief that the church was
5 aware of at least two others. That is the line of inquiry
6 about which I'm asking this witness.
7

8 THE COMMISSIONER: Yes, I think that you must be
9 permitted, Mr Harben, to ask this witness why he did not
10 pursue that with Bishop Malone.
11

12 MR HARBEN: Yes.
13

14 Q. Firstly, you had every opportunity available to you to
15 ask Bishop Malone about that, didn't you?
16 A. Yes.
17

18 Q. It was important enough for you at the end of 2002 to
19 ask former Bishop Clarke about it, wasn't it?
20 A. There was a reason why I asked former Bishop Clarke.
21

22 Q. Was the reason that you were trying to find out
23 whether the church was aware of at least two other alleged
24 sexual assault victims; is that the reason?
25 A. Sir, the reason was I didn't approach the church,
26 which would have been far easier than to track down a
27 retired bishop to ask him a question, except the nature of
28 the information that was conveyed to me was such that it
29 was specifically related to Bishop Clarke and made no
30 mention of Bishop Malone. Hence, the reason why, when
31 Bishop Clarke told me "No", I felt that that was a dead end
32 to that inquiry, or, if you like, an inquiry based on the
33 original rumour. But had it simply just been that the
34 church has records or the church knows something, I would
35 have approached the diocese. I think quite clearly that
36 would have been logical. I approached Bishop Clarke for a
37 very specific reason and when he said, "No", I didn't feel
38 that that could be taken further.
39

40 Q. Detective, this whole document of 25 November 2010 is
41 prefaced by your heading:
42

43 *Issue: Allegations of child sexual abuse*
44 *and cover up within the Maitland Newcastle*
45 *diocese of the Catholic Church.*
46

47 That's the introductory words of your document?

1 A. Yes.
2
3 Q. The words "cover up" were deliberately used?
4 A. Yes.
5
6 Q. This example that you gave of trying to find out what
7 was happening with McAlinden was because you had been told
8 that the church was aware. Those are the words you used?
9 A. Those were the words I used to Bishop Clarke, yes.
10
11 Q. Are you saying that it was only important to you if
12 Bishop Clarke knew, not the church?
13 A. No.
14
15 Q. So you would have been interested to know what the
16 church knew because the cover-up that you allege came from
17 within the diocese of the Catholic Church?
18 A. That's the way I put the question to Bishop Clarke,
19 but --
20
21 Q. Did you just lose interest in it?
22 A. No, sir, not at all. That was the question I put to
23 Bishop Clarke on the basis of the information that had been
24 conveyed to me by [AE]. I specifically wanted to speak to
25 Bishop Clarke because of the nature of what I was told. It
26 did not relate to Bishop Malone or any other clergy. The
27 nature of it only related to him; hence, the reason why
28 I sought out a retired bishop rather than going to the
29 diocese or Bishop Malone or anybody else in the first
30 place.
31
32 Q. Detective, you were trying to find out whether the
33 church was aware of these other two people. That's what
34 you were trying to find out?
35 A. I was trying to find out if Bishop Clarke, as part of
36 the church, and relative to the information that I'd had
37 passed on to me, knew of two other victims.
38
39 Q. You were interested whether the church knew?
40 A. Specifically, Bishop Clarke.
41
42 Q. You weren't interested whether anybody else in the
43 church knew about this?
44
45 MR COHEN: I object to that question. It is not a fair
46 question, in my respectful submission. It just does not
47 follow and it is no fair. There's no foundation for it.

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THE COMMISSIONER: The witness says he was interested in whether Bishop Clarke knew and Mr Harben is entitled to ask whether he was interested in whether the church knew, the church proper.

MR COHEN: That wasn't the question. He said, "You had no interest", not, ""Were you not interested".

MR HARBEN: I note the time, Commissioner.

THE COMMISSIONER: All right, Mr Harben. We'll come back to your question at 10 past 2.

LUNCHEON ADJOURNMENT

1 **UPON RESUMPTION**

2
3 MS LONERGAN: Commissioner, a matter needs to be noted for
4 the record. A number of parties at the Bar table have,
5 very properly, approached me and raised a particular issue
6 and that relates to the document that is exhibit 69 that is
7 currently being examined in some detail by Mr Harben with
8 this witness.

9
10 It has been noted that that particular exhibit went
11 out to the press in the form of annexures to various
12 statements that were tendered in term of reference 1.
13 Parties who attended in term of reference 2 most of them
14 did not appear in term of reference 1 but did not object to
15 its release to the media at that time.

16
17 What has been requested, with the agreement of those
18 who assist you, Commissioner, is that a non-publication
19 order be now made, on a provisional basis but effective
20 from now and retrospective, to the release of these
21 particular versions of what is now exhibit 69, which is the
22 report of Detective Chief Inspector Fox of 25 November
23 2010.

24
25 The documents appended to it when it went out
26 previously are as follows: the statement by Inspector
27 Matthews dated 13 May 2013, which is exhibit 8, and it was
28 annexure A to that document. The second is a statement of
29 Inspector Townsend dated 16 May. That was exhibit 19 and
30 it was annexure G to that exhibit. The third was the
31 statement of Superintendent York dated 14 May 2013, which
32 was exhibit 10 and it was annexure C to this exhibit.

33
34 It has just been drawn to my attention I used the word
35 "retrospective", that was inappropriate and incorrect. The
36 order should be in the form of: There should be no
37 publication or further publication of the content of that
38 document.

39
40 THE COMMISSIONER: Thank you, Ms Lonergan. I make that
41 order now. It is subject to revisiting later in
42 proceedings, but there will be no publication of the
43 document which has become exhibit 69, which is an annexure
44 to the statements previously tendered in term of reference
45 1 of the statements of Inspector Matthews, Inspector
46 Townsend, and Assistant Commissioner York.

1 There will be no publication or further publication
2 of that document - that is, the report of Detective
3 Chief Inspector Fox of 25 November 2010, which is now
4 exhibit 69 - until further order. Does that cover it?

5
6 MS LONERGAN: Yes, and it should be noted for the record
7 that document will be revisited when the parties present at
8 the Bar table have had further opportunity to consider
9 their position in relation to the contents of that
10 document.

11
12 THE COMMISSIONER: Thank you, Ms Lonergan.

13
14 MS LONERGAN: The second matter I need to note on the
15 record, Commissioner, is that Detective Sergeant Little was
16 timetabled to give evidence today. It has been determined
17 that he will be giving evidence later in the proceedings
18 and that evidence will be taken in camera due to its
19 relationship with current or recently completed
20 investigations.

21
22 THE COMMISSIONER: Thank you, Ms Lonergan. Thank you,
23 Mr Harben.

24
25 MR HARBEN: Thank you, Commissioner.

26
27 Q. Detective inspector, before lunch I was asking you
28 about that portion of your document dated 25 November 2010
29 that dealt with your visit to former Bishop Clarke. Do you
30 recall those questions?

31 A. I do, sir.

32
33 Q. The purpose of you putting in that information in this
34 document was to substantiate the issue that you described
35 on page 1 about a cover-up within the Maitland-Newcastle
36 diocese of the Catholic Church. That was its purpose,
37 wasn't it?

38 A. Partly, yes.

39
40 Q. On page 4 of that document, you revisited that
41 material and if you could just have a look at page 4. Do
42 you have page 4?

43 A. Yes, I do.

44
45 Q. The third last paragraph says this:

46 *Documents in possession of [AK] and the*
47

1 *statement of [AJ] confirm without a doubt*
2 *that retired Bishop Leo Clarke knew of a*
3 *number of McAlinden's victims.*

4
5 You were saying that, I take it, with the benefit of
6 material that you had come into possession of during the
7 course of your investigation up to the date of that
8 statement; is that right?

9 A. Yes, sir.

10
11 Q. And you then go on to say:

12 *He knew of the serious nature of the abuse.*

13
14
15 Is that right?

16 A. Yes.

17
18 Q. You then describe certain other things and refers to
19 various victims having complained of their suffering to
20 various clergy under his direct supervision.

21 A. Yes.

22
23 Q. Then you set out the portion of the conversation which
24 I took you to before lunch and I'll repeat it:

25
26 *I said: "An alleged victim of Denis*
27 *McAlinden has told us that she believes the*
28 *church is aware of at least two other*
29 *alleged sexual assault victims of this*
30 *priest."*

31
32 Firstly, that was a question directed towards knowledge of
33 the church?

34 A. Yes.

35
36 Q. And then you asked the bishop or the retired bishop:

37 *Do you have any knowledge of that?*

38
39
40 Is that correct?

41 A. Yes.

42
43 Q. And he replied in two parts. His first part was,
44 "No." You understood that to be an answer to the question,
45 "Do you have any knowledge of that"?

46 A. Yes.

47

1 Q. And the second part, "You would have to ask Michael
2 Malone about that", you understood that was in relation to
3 whether the church was aware of the other alleged sexual
4 assault victims of that priest?
5 A. No, not at that time, no.
6
7 Q. Did you think he was referring to Bishop Malone to you
8 for some other reason?
9 A. Yes.
10
11 Q. Nothing to do with the discussion you were having then
12 and there?
13 A. No.
14
15 Q. You were having a discussion with him about a very
16 particular thing which you have quoted in this document,
17 and he said, "You would have to ask Michael Malone about
18 that."
19 A. Yes.
20
21 Q. You understood what the word "that" meant, didn't you?
22 A. Oh, yes.
23
24 Q. It was about the church's knowledge?
25 A. Well, when --
26
27 Q. That's right, isn't it?
28 A. When I asked about the church, I was referring, as
29 I said before the lunch break, very specifically to retired
30 Bishop Clarke.
31
32 Q. Are you suggesting that in your mind only he would
33 know?
34 A. In respect to the information that was provided to me
35 by [AE], that is a correct statement, sir, yes.
36
37 Q. When he suggested to you that you would have to ask
38 Michael Malone about that, you knew that that was about the
39 subject matter that you were questioning him about?
40 A. I don't know exactly what he meant by that. I have
41 some suspicions of what he may have meant by that, but I
42 had no reason to believe from how the information was
43 originally relayed to me by [AE] that anyone, other than
44 retired Bishop Clarke, had knowledge or would be able to
45 assist me.
46
47 Q. Detective inspector, when you follow a line of

1 investigation and you find out something that is
2 inconsistent with what you know, you don't just stop, do
3 you?
4 A. I explained to the Commission earlier that the
5 information --
6
7 Q. Could you answer my question?
8 A. Yes, in doing that, sir, I think it will unfold, if
9 you would allow me, please.
10
11 Q. If you can listen, I'll ask the question again. When
12 you're following a line of investigation and you learn
13 something inconsistent with what you know, you don't just
14 stop at that point, do you?
15 A. I don't know. It depends on what it is.
16
17 Q. For example, you have been shown a number of documents
18 here today and you were asked a very specific question
19 about whether that document might have been helpful to you
20 in your investigation of the matters?
21 A. Yes.
22
23 Q. Do you remember being asked those questions?
24 A. Yes, I do.
25
26 Q. And you answered each time, "Yes, they would have
27 been"?
28 A. Yes, I did.
29
30 Q. You were then asked questions like, "Can you tell us
31 how they would be helpful to you in your investigation"?
32 A. Yes, I was.
33
34 Q. On a number of times the information you selected from
35 the document was a name; is that right?
36 A. Yes, yes.
37
38 Q. Because, on learning a name, that opens up an avenue
39 of an inquiry?
40 A. Yes.
41
42 Q. When you spoke to Bishop Clarke, that opened up an
43 avenue of an inquiry, didn't it?
44 A. No.
45
46 Q. Learning from Clarke that Michael Malone might be
47 asked about that didn't, to you, as an experienced

1 investigator, open up an avenue of an inquiry?
2 A. No, not on the basis of the information that was
3 originally relayed, no.
4
5 Q. This was new information?
6 A. Well, no, it wasn't really. I didn't look at that as
7 new information.
8
9 Q. Did you know that Michael Malone was the bishop?
10 A. Yes.
11
12 Q. So you knew he was in a position in the church?
13 A. Yes.
14
15 Q. You knew that he would be somebody that you could go
16 to for information?
17 A. Yes.
18
19 Q. You knew that if there was information available to
20 you in document form, for example, that you would have to
21 ask the bishop?
22 A. No.
23
24 Q. You didn't know that?
25 A. No.
26
27 Q. Was there some other way you could get it?
28 A. I didn't know that, sir, at that time. I didn't know
29 how I went about getting that information.
30
31 Q. Well, did you go and ask him?
32 A. Sir, I wasn't aware - none of the information that was
33 conveyed to me by [AE] related in any way whatsoever to a
34 document. That was not what I was seeking. I had no
35 knowledge at the time that I spoke to him of the existence
36 of that document.
37
38 Q. Your question was centred around the information you'd
39 put to Bishop Clarke that the church was aware. That's
40 what your question said?
41 A. That's what my question was, sir, and it related
42 specifically to Bishop Clarke - retired Bishop Clarke.
43 That's the way I put the question to him. I suppose, you
44 know, I could have been more assertive and sort of said
45 very much him specifically, but I wanted to put the
46 question that way and I don't back way from it. I'm quite
47 happy the way I asked the question.

1
2 Q. You did put it to him. You said, "Do you have any
3 knowledge of that"?
4 A. Yes, and it related directly to retired Bishop Clarke.
5 It did not relate to any other clergy. The information
6 I received, the nature of it did not --
7
8 Q. Perhaps I'll ask you to look at the document again.
9 A. Yes.
10
11 Q. Would you go to page 4. Would you go to the portion
12 in inverted commas, the third last from the bottom.
13 A. Yes.
14
15 Q. It says:
16
17 *"An alleged victim of Denis McAinden has*
18 *told us that she believes the church is*
19 *aware of at least two other alleged sexual*
20 *assault victims of this priest."*
21
22 A. Yes.
23
24 Q. Your question was:
25
26 *Do you have any knowledge of that?*
27
28 A. Yes.
29
30 Q. That means that the church was aware of those things -
31 the church?
32 A. Yes, via Bishop Leo Clarke.
33
34 Q. The question was the church?
35 A. It is my question, sir, and I know --
36
37 Q. That was the subject?
38 A. It is my question, and I know full well what I was
39 asking him. It related specifically to Leo Clarke.
40
41 Q. We can all read it.
42 A. You're putting a different interpretation on it, sir.
43 I can understand that, but I'm the asker of the question
44 and I'm explaining to you as much as I can what my intent
45 was. I knew what I had been told by [AE], which was that
46 the church had - in as much as retired Bishop Leo Clarke
47 was a person that she heard the rumour that had that

1 knowledge. No-one else, no-one else's name in the clergy
2 was mentioned. I asked him that question as a member of
3 the church. I think most accept, even though bishops
4 retire - and as was the case, that I saw that day with
5 retired Bishop Clarke - they still, more often than not,
6 continue to work for the church. That is the way I asked
7 that question. But my intention was, when I asked that
8 question, it was specifically addressing it in respect to
9 Bishop Leo Clarke.

10
11 Q. I see. So you weren't interested whether anyone else
12 knew?

13
14 MR COHEN: I object. That's not a fair question to follow
15 on. There is no hint of lack of interest about other
16 things, as has been explained now three times.

17
18 THE COMMISSIONER: Perhaps you could ask whether Detective
19 Chief Inspector Fox was interested in whether anyone else
20 knew, Mr Harben.

21
22 MR HARBEN: Q. It is a fair interpretation of those
23 events that you were not interested in whether anyone else
24 had that knowledge?

25 A. That's not a fair interpretation, sir, no.

26
27 Q. So you were interested whether anyone else had the
28 knowledge?

29 A. And if I'd have received --

30
31 Q. Were you interested whether anybody else had that
32 knowledge?

33 A. Yes, sir.

34
35 Q. So the easiest thing for you to do would have been to
36 follow the line of inquiry from Clarke to Malone to where
37 you had been directed?

38 A. Sir, the way the information was relayed to me,
39 Bishop Malone would not have been able to have the
40 information that I was seeking in the terms that it was
41 relayed to me by [AE]. The only person in the date period
42 and the individual concerned that had the possibility of
43 having that knowledge was retired Bishop Leo Clarke. I'm
44 aware of the relationship between retired Bishop Clarke and
45 Bishop Malone, and I was aware of that at that time through
46 another means, and if I can quote somebody else, I took
47 that as a brush-off. I did not take his comment as having

1 any genuine knowledge about anything other than "Go ask
2 someone else. My answer is no. End of story."

3
4 Q. Is that what you do generally in the process of your
5 investigations; if someone says to you, "I don't know
6 anything, but you can go and ask somebody else", you say,
7 "Well, I won't pursue that line of inquiry"?

8 A. It depends on what the information is. Balancing what
9 the information was that was originally relayed to me and
10 the response I got from retired Bishop Clarke, it didn't
11 necessitate what you're suggesting. Had the information
12 been of a different nature, had I been told, you know,
13 as you put it earlier, a hypothesis along the line, "Oh,
14 listen, the church has documents that document all these
15 things and I think some other in the church might know
16 about it too", yes, I would have pursued that with Bishop
17 Malone and others.

18
19 But, at the end of the day, I remember making a phone
20 call after I spoke to retired Bishop Clarke to the diocese,
21 I do apologise. I did ask for Bishop Malone. He wasn't
22 there. Whoever it was was a person who had some degree of
23 authority there and I just said, "Does anyone, to your
24 knowledge, have any knowledge about any other victims of
25 McAlinden?" The response was - sorry.

26
27 MR GYLES: Commissioner, this a new piece of unspecified
28 information. It has never been spoken of before.

29
30 THE COMMISSIONER: Yes, Mr Gyles, that may be something
31 that you'll be able to cross-examine about very soon.

32
33 MR HARBEN: Q. Are you seriously suggesting that -
34 firstly, you said no, you didn't go to Malone because it
35 was specific to Clarke, "so that's why I didn't take it any
36 further", and now you tell this inquiry that what you did
37 do was ring up, make a telephone call and ask a very
38 important question such as, "Oh, is the church aware of any
39 other sexual assault victims" - over the phone? Is that
40 what you're seriously suggesting?

41 A. Sir, that was my evidence earlier. I haven't just
42 given that --

43
44 Q. Is that what you're suggesting. Is that your
45 evidence?

46 A. No, not in the terms you put it, sir.

47

1 MR COHEN: I object and for this reason: there is
2 evidence that arose in the first term of reference on these
3 questions. Cross-examiners - indeed the objection was
4 taken before - do need to tread carefully about the
5 assertion that there could not be any evidence. It is a
6 difficulty I know for them but they are stuck with it, in
7 my respectful submission.

8

9 MR HARBEN: Is this an objection to my question or someone
10 else's question?

11

12 MR COHEN: It is taking objection to the proposition that
13 it seems to be implicit in the questions and the previous
14 objection that there is no evidence. That cannot be right.

15

16 MR HARBEN: With respect, Commissioner, I asked this
17 witness about the election he made to ring the diocese, as
18 he has just said, where his previous evidence a moment ago
19 was that once Clarke said "No", that was the end of the
20 inquiry. That's the line of this questioning.

21

22 THE COMMISSIONER: Yes. The witness has indicated he made
23 a phone call to the diocese. You can explore what the
24 subject matter was.

25

26 MR HARBEN: Thank you.

27

28 Q. I take it that you rang the diocese following your
29 discussion with retired Bishop Clarke to pursue the
30 information you'd asked Clarke about?

31

32 A. Yes, just to put that to bed and no greater weight
33 than that. As I said, I think you will find it is already
34 in evidence where I made that call.

34

35 Q. So a telephone call out of the blue to some
36 unidentified person without going there and speaking to the
37 very person it has been directed to. Is that what you
38 would have this inquiry believe?

39

40 A. No, sir. What I was saying was I actually rang there
41 to speak to Bishop Malone. I spoke to one of the other
42 clergy. I do apologise. It wasn't just somebody who
43 randomly walked in off the street and picked the phone up.
44 By chance. It was one of the other clergy, who was there
45 and I felt was in a position of authority, and I just asked
46 the general question. No, I didn't speak --

46

47 Q. How did you know they were in position of authority?

1 A. I do recall it was a clergy member. I would expect
2 that they would have some degree of authority if they were
3 working at the diocese office.

4
5 Q. Sorry, did you make a note of this?

6 A. I may have. I don't recall.

7
8 Q. So an important piece of information that you were
9 seeking, the only line of inquiry is a supposed telephone
10 call to some unidentified person that you make some oblique
11 inquiry and get no result and you don't pursue it further;
12 is that what happened?

13 A. At the time, sir, when I made that inquiry, I've
14 explained that it amounted to nothing more than a rumour
15 that even [AE] herself did not place a great deal of
16 reliance upon. I did make the inquiries with retired
17 Bishop Clarke, and I did make a phone call to a clergy
18 member at the diocese. On the basis of the way the
19 information was originally relayed to me and the fact that
20 it had no known source, I was content to leave it at that.

21
22 It wasn't - I think that it would be fair to say that
23 the importance of it did not manifest until I'd seen some
24 articles by Joanne McCarthy nearly a decade later.

25
26 MS LONERGAN: Could I have a short five-minute adjournment
27 just to raise something with my learned friend Mr Harben? .

28
29 THE COMMISSIONER: Yes, Ms Lonergan.

30
31 **SHORT ADJOURNMENT**

32
33 MR HARBEN: Thank you, Commissioner.

34
35 Q. Detective inspector, could I return to that question.
36 What you said to retired Bishop Clarke was "an alleged
37 victim of Denis McAlinden" - so you had that information --

38 A. Yes.

39
40 Q. -- "has told us", that included you --

41 A. Me specifically, yes.

42
43 Q. -- "that she believes"?

44 A. Yes.

45
46 Q. That was very specific?

47 A. Yes.

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Q. It wasn't just a rumour; it was a belief?
A. No. I didn't want him to know it was just a rumour. I wanted to put in his mind it was a belief, yes.

Q. Were you being misleading?
A. One might suggest it that way, but I was hoping that if he did have some information, I felt that it would be advantageous if I put it that little bit more strongly to try to elicit a response.

Q. You used these words, "The church is aware"
A. Yes.

Q. You used those words deliberately?
A. Yes.

Q. Because your understanding was that it was the church that was in possession of the information?
A. Through retired Bishop Clarke, yes.

Q. And you have been shown a number of documents in this court that you had said would have helped you in your investigation, haven't you?
A. Yes.

Q. If you had followed the line of inquiry to Bishop Malone and obtained access to those documents, that would have assisted you in your inquiry?
A. Yes.

Q. But you didn't do that?
A. No.

Q. On the bottom of page 2 you refer to Anne Barwick and the Ombudsman's office. Do you see that?
A. Yes.

Q. You say this:

In 2003-4 I also forwarded a series of reports and complaints to Anne Barwick of the [New South Wales] Ombudsman's Office which conducted an investigation.

Is that right?
A. Yes.

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Q. In your letter to your superiors under the title of "An issue involving a cover up", you were indicating that you'd done that task - past tense?

A. Yes.

Q. And you say:

I have been told their report was critical of the church but the findings cannot be made public.

A. Yes.

Q. You then conclude by saying:

Nevertheless this process finally saw Fletcher stood down by the church and prevented from accessing schools.

Is that right?

A. I believe so, yes.

Q. You believe that the process of the Ombudsman's investigation was what led to Fletcher being stood down?

A. Yes.

Q. That's just not right, is it?

A. Yes, it is right, that's my belief, sir.

Q. Didn't Bishop Malone tell you on 21 May that he had had a phone call from the Assistant Ombudsman, who had told him that the police investigation into Fletcher was nearing completion and that charges might soon be laid?

A. I don't know if someone from the Ombudsman rang him, no, I don't sir. At some stage, I would imagine there would have been communication, but I don't know specifically.

Q. Detective, my question was: didn't Bishop Malone tell you in the interview on 21 May 2003 that he had received a call informing him that the police investigation into Jim Fletcher was nearing completion?

A. That may be the case, sir. I don't dispute that that may have occurred, yes. I just don't recall it specifically off the top of my head at the moment, but --

1 Q. And that charges might soon be laid?
2 A. Yes.
3
4 Q. Bishop Malone then said to you that immediately
5 following learning of that information, he visited Fletcher
6 at his family home in Mayfield and told him that the
7 charges might soon be laid against him and in view of this,
8 he should stand down from the active ministry immediately?
9 A. He told me that, you're suggesting?
10
11 Q. I'm sorry?
12 A. You're - sorry, what you're asking me --
13
14 Q. Is whether he told you that?
15 A. Quite likely, yes.
16
17 Q. So, on 21 May 2003, you knew from the person who was
18 in charge of these things what had occurred with the
19 standing down of Fletcher?
20 A. I'm agreeing with you, sir, that that's what
21 Bishop Malone had said.
22
23 Q. That's the fact; that's what happened, isn't it?
24 A. That's what he said, sir, yes.
25
26 Q. You don't have any reason to doubt that?
27 A. Yes.
28
29 Q. Oh, I see. Do you say that you have reason to doubt
30 that the charges might soon be laid as of March 2003?
31 A. I have no reason to doubt, sorry, sir, the
32 conversation - it was the way you put the question. If
33 you're asking me do I have any reason to doubt that that
34 conversation occurred, no, sir.
35
36 Q. The Ombudsman's process was only in its infancy in May
37 2003, wasn't it?
38 A. I've never seen their report. They have never told me
39 in greater detail of their investigation, and I know that
40 they were extremely alarmed by the fact that --
41
42 Q. Could you answer the question?
43 A. I'm trying to, sir, if you'll allow me to finish.
44
45 Q. No, the question was: the Ombudsman process was in
46 its infancy in May 2003 - that was the question.
47 A. What I know about the Ombudsman's investigation is

1 that they were quite concerned --
2
3 Q. No, no. We're talking about --
4 A. Sir, I'm trying to tell you the stage of the
5 investigation where I know it was up to. You're suggesting
6 it was in infancy. I can tell you --
7
8 Q. Yes. Do you agree with that or disagree?
9 A. I can tell what stage it was up to.
10
11 Q. What stage was it up to?
12 A. They told me that the church had breached --
13
14 Q. No, where was it up to?
15 A. That's what I'm trying to say, sir, if you'll allow
16 me.
17
18 Q. No, no.
19 A. You don't like my answer, sir.
20
21 Q. No, I would like your answer to be responsive to my
22 question.
23
24 MR COHEN: I object. Why is that not responsive to the
25 question?
26
27 MR HARBEN: I'm asking him, Commissioner, what was his
28 understanding of where, in a temporal sense, the Ombudsman
29 investigation was up to as at May 2003, not what the
30 Ombudsman's said or didn't say in criticism or otherwise
31 about anybody, but where the process was up to.
32
33 Q. You understand that, don't you?
34 A. And I think part of that is explained - to explain to
35 you - because I don't know, as I've said time and again,
36 I have never seen the Ombudsman's full investigation.
37 Therefore, I think it is unfair to ask me to give a
38 consideration as to whether or not their investigation was
39 in its infancy. What I can tell you --
40
41 Q. Well, then you don't know. If the answer is you don't
42 know, please say so. You don't know?
43 A. I can relay it to you, sir, but obviously I understand
44 you don't wish me to explain that. Sir, if that's the
45 situation, I may be able to assist you further if you would
46 like me to explain it; if you don't wish, sir, I won't.
47

1 Q. If you don't know what stage it was up to in May 2003
2 please say so.
3 A. I'm not agreeing with that, sir. I do know some
4 things about the Ombudsman's investigation at that stage
5 that I am prepared to tell this Commission if you so elect
6 for me to tell them.
7
8 Q. Is it an answer to my question or anything else?
9 A. I believe it is, sir. It will assist you.
10
11 Q. I'll ask the question again. In May of 2003, do you
12 know at what stage the process that the Ombudsman
13 investigation was up to?
14 A. Yes.
15
16 Q. Was it completed?
17 A. No.
18
19 Q. Was it a long way from being completed?
20 A. I don't know.
21
22 Q. But it wasn't completed?
23 A. Yes.
24
25 Q. You're agreeing with me?
26 A. Yes.
27
28 Q. If you look carefully at that paragraph I've taken you
29 to, you say, "In 2003-2004 I also forwarded a series of
30 reports." I want to suggest you wrote that in that form
31 for a particular reason? Do you follow?
32 A. Yes.
33
34 Q. I want to suggest that you wrote that in that form to
35 give you the impression that, from your instigation, the
36 Ombudsman was alerted, it conducted a process, and. As a
37 consequence of that process, Fletcher was finally stood
38 down. That was the purpose and the reason you wrote that
39 paragraph in that way?
40 A. That is my belief, sir, yes.
41
42 Q. What I want to suggest to you is that Fletcher was
43 stood down a long time before the process of the Ombudsman
44 was completed and was stood down for the very reason
45 Bishop Malone told you in May of 2003, namely, that charges
46 were about to be laid by the police?
47 A. I don't - sorry, there were a number of propositions

1 there, sir.

2

3 Q. All right. Would you like me to put them to you
4 individually?

5 [Transcript suppressed, page 429, line 5 to line 39]

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41 MR HARBEN: Q. Could I just ask this, detective. It is
42 true, isn't it, that [AH]'s statement was completed in
43 March of 2003?

44 A. I think there was a supplementary one, in fairness to
45 you, sir, but --

46

47 Q. I'm talking about statement I showed you.

1 A. But the initial major statement was completed then.
2 I'm sorry, I am just trying to give you a full answer so
3 that there's nothing omitted.
4
5 Q. When I ask about two statements, that will be all
6 right, but I'm asking you about the statement that I showed
7 you today?
8 A. Yes.
9
10 Q. So it stands to reason, doesn't it, that in March of
11 2003, you would have been in a position to prefer charges
12 against Father Fletcher?
13 A. Yes.
14
15 Q. And that would be consistent with Bishop Malone
16 telling you that he had received information that the
17 police investigation was nearing completion and that
18 charges might soon be laid?
19 A. Sorry, sir, I don't dispute that. I conveyed that to
20 the Ombudsman's office, who no doubt conveyed it to him.
21
22 Q. Could you answer my question?
23 A. Yes, that's correct.
24
25 Q. That would be consistent with Bishop Malone telling
26 you that his information was that the police investigation
27 was nearing completion and that charges might soon be laid?
28 A. That's what he told me, sir, yes.
29
30 Q. Well, that's consistent with that?
31 A. Yes, it is.
32
33 Q. In fact, that was the truth, that the investigation
34 was nearing completion and the charges might soon be laid?
35 A. Yes, that's true, yes.
36
37 Q. And he then told you, as a consequence of learning
38 that, Fletcher was stood down?
39 A. That's what he told me, sir, yes.
40
41 Q. That chain of events follows to that conclusion,
42 doesn't it?
43 A. Not necessarily. I agree that that's what he told me.
44 I don't agree with what you're suggesting, that that chain
45 of events led to what ultimately happened. I think
46 there --
47

1 Q. Your basis for asserting that is your understanding of
2 what someone else has told you other than Bishop Malone; is
3 that right?

4 A. That is correct.

5

6 MR HARBEN: Those are my questions, Commissioner.

7

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

9

10 MR GYLES: Thank you, Commissioner. Given the thorough
11 manner in which my learned friends Ms Lonergan and
12 Mr Harben have dealt with a lot of the evidence given by
13 Detective Chief Inspector Fox, I can be reasonably limited,
14 hopefully, in the matters I need to deal with.

15

16 <EXAMINATION BY MR GYLES:

17

18 MR GYLES: Q. There is one matter, if you could clarify
19 it for me, you have a document in front of you which is
20 your report in relation to allegations of child sexual
21 abuse and cover up within in the diocese?

22

A. Yes.

23

24 Q. Could you go to the fourth page of that document,
25 please, and the second last paragraph.

26

A. Yes.

27

28 Q. And the second sentence of that paragraph. In that
29 sentence, you say the following:

30

31 *Worse still is the fact that Clarke knew*
32 *McAlinden was still at large and had*
33 *returned to Australia ...*

34

35 Are you saying that was Clarke's knowledge as at 2003 when
36 you went to see him?

37

38 MR HARBEN: 2002.

39

40 MR GYLES: Q. Whether it was either 2002 or 2003 --

41

A. Sorry, I think you're correct in the first statement.
42 I believe it was 2003. Sorry, that is my belief, yes.

43

44 Q. I'm sorry, the question was, sir: was the time that
45 you were directing that sentence to his state of knowledge
46 when you went to see him in 2003?

47

A. Yes.

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Q. Are you able to enlighten us with the basis upon which you were able to say that, in 2003, Clarke knew that McAlinden had returned to Australia?

A. I had information from a person that - I don't want to tread somewhere where I shouldn't. There may be an objection. But I had information from a person that, on 1 July 2002, the current bishop, Michael Malone, had knowledge, and there is a document that I haven't seen yet before this Commission in existence, to confirm that Bishop Malone and, in all likelihood, Clarke and others were aware that he was back in Australia.

Q. Sir, Clarke at this point had been retired from the diocese for about six or seven years, hadn't he?

A. Yes.

Q. You had no basis whatsoever, had you, to make an assertion in this document as to his knowledge of the whereabouts of McAlinden in 2003?

A. I don't agree with that, sir. In support of that, my evidence earlier was - and I think most people are aware - that clergy, although officially retired, in most cases still maintain and continue to do a lot of work for the church. On my visit to Bishop Clarke's residence in 2003 I saw exactly that, where his room was covered in documents and piles of paper, and I did notice a lot of those papers, probably the majority, bore the Newcastle-Maitland diocese logo. I didn't pay a great deal of attention, but it was quite evident that he was still very actively involved in many of the roles going on within the diocese.

Q. You saw him once, didn't you, between the time of his retirement and the time of his death?

A. Yes, that's correct.

Q. You are seriously saying to the Commissioner that you think that's a proper basis, in your role as a police investigator, to be in a report prepared for a serious purpose asserting that Clarke knew McAlinden's whereabouts as at 2003?

A. Yes.

Q. You are an investigator, aren't you, of many years experience?

A. Yes.

1 Q. You would understand, wouldn't you, that it is
2 important for an investigator in undertaking fact finding
3 to approach matters objectively?
4 A. Yes.
5
6 Q. In a way that is clear thinking and with emotional
7 detachment; that's right, isn't it?
8 A. That's an ideal, sir, but, yes.
9
10 Q. And certainly without prejudgment as to any particular
11 outcome?
12 A. I don't know whether we always do that, sir, but you
13 know I think most police, when we lay charges, we've got a
14 pretty good idea of potential outcomes; otherwise we
15 wouldn't head down that course, but --
16
17 Q. In terms of your fact finding, it is important, isn't
18 it, to consider all available alternatives?
19 A. As far as possible, yes.
20
21 Q. You would agree, wouldn't you, that it is easy, in
22 dealing with cases of child sexual abuse, to become
23 emotionally involved in such matters?
24 A. I've seen that, sir, from many sides, from lawyers as
25 well as - and people with legal qualifications and police,
26 yes, I do agree.
27
28 Q. Indeed, you would need to have superhuman powers
29 wouldn't you, really, not to have some emotional investment
30 in such cases?
31 A. I agree with that, yes.
32
33 Q. By at least 2002, you had formed the view, hadn't you,
34 that the question of a possible cover-up by the church of
35 sexual abuse within its ranks was a matter that should be
36 investigated?
37 A. Yes.
38
39 Q. That was the very reason that you prepared the
40 document that my learned friend Mr Harben has been taking
41 you to?
42 A. Yes. The reason I prepared that document was for a
43 larger - much larger scale than what ultimately occurred -
44 investigation into allegations of cover up within the
45 Newcastle-Maitland diocese of the Catholic Church.
46
47 Q. The reason you prepared that report was because that

1 was something that you considered ought to be investigated;
2 that's right, isn't it?
3 A. Yes.
4
5 Q. It is something that you felt strongly about yourself?
6 A. Yes.
7
8 Q. And had a personal stake in, you would accept,
9 wouldn't you?
10 A. Personal as in what respect, sir?
11
12 Q. You felt personally that it was an important issue
13 that ought to be dealt with?
14 A. Personally, professionally and in many other ways,
15 sir, yes. I think that - yes. Yes.
16
17 Q. Thereafter, you have done what you could to seek to
18 bring about that outcome, haven't you?
19 A. Yes.
20
21 Q. For example, by calling for a Royal Commission or a
22 Special Commission of the type that we're all here today
23 hearing?
24 A. Specifically a Royal Commission. I think
25 I expressed my - no disrespect to this Commission, but I am
26 on record as saying that I didn't feel the Special
27 Commission would go far enough to look at the issues that
28 I wanted addressed. But, yes, of course, it is helpful and
29 I mean no disrespect by saying that.
30
31 Q. In order to achieve your objective, it was necessary
32 and important for you to raise public awareness about the
33 issues, wasn't it?
34 A. I don't believe it would have happened otherwise, sir,
35 yes.
36
37 Q. So the answer to the question is "Yes"?
38 A. Yes.
39
40 Q. It is obvious from the documents that we saw during
41 the first stage of this Commission dealing with terms of
42 reference 1, that you worked closely with Ms McCarthy and
43 others to seek to raise such awareness, didn't you?
44 A. Yes, that is true, yes.
45
46 Q. You would agree that that has involved, hasn't it,
47 making public some very serious allegations about

1 individuals?

2 A. In what respect?

3

4 Q. If you're not prepared to accept that, I'll move on.
5 You would accept that where your objective is to capture
6 public attention, the more newsworthy the material, the
7 more likely it is to receive public attention. That's
8 right, isn't it?

9 A. Sir, I don't argue with the fact that I realised and
10 I sought a public support in calling for a Royal
11 Commission. I didn't feel, in view of history, that such
12 would have occurred without that sort of thing having been
13 initiated and I make no apologies, sir, that that was part
14 of what I set out to do.

15

16 Q. The more sensational the allegation that is brought
17 forward into the public, the more chance there is that the
18 public might catch - or that it might catch public
19 attention; you would agree with that, wouldn't you?

20 A. Sir, I disagree with that. I think the scenarios that
21 I relayed, I didn't tell them on the basis that they were
22 sensational. The stories that I relayed are stories that
23 I have been involved in, that I've seen the ramifications,
24 and I realised the vast majority of the public were not
25 aware of how ugly this really was, and it wasn't a case of
26 being sensational --

27

28 THE COMMISSIONER: Could I ask the witness to please stop.
29 He's being unresponsive to my question and I'll move on to
30 the next question.

31

32 MR COHEN: I object. That was such an open-ended
33 question --

34

35 MR GYLES: I'll ask the question again. The question was:
36 "You would agree, wouldn't you, that where public attention
37 is sought, the more sensational the news, the more likely
38 it is to capture public attention?" It is a question that
39 can be answered "Yes" or "No" and it does not call upon
40 Detective Chief Inspector Fox to describe in any detail
41 whatsoever the reason that he has brought matters to public
42 attention.

43

44 MR COHEN: Then I object on that basis. That's a question
45 for you, Commissioner.

46

47 MR GYLES: I'll move on, thank you, Mr Cohen. There isn't

1 really any dispute about that.

2

3 Q. Obviously, I think you would agree, from 2010 onwards
4 the subject matter of the report that you did in 2010 is an
5 issue that you have felt strongly about?

6 A. Yes.

7

8 Q. And without any criticism, it is something that, in a
9 way, has become something of a crusade for you, hasn't it,
10 to seek to bring about a proper investigation of this
11 matter?

12 A. It's something that I've been passionate about, yes.

13

14 Q. There are four investigations that are the subject of
15 the terms of reference of this inquiry?

16 A. Yes.

17

18 Q. Leaving aside Strike Force Lantle, which you were not
19 a part of, there were two investigations concerning the
20 conduct of McAlinden and one concerning the conduct of
21 Fletcher. Obviously, with respect to the Fletcher
22 investigation, that was an investigation that you were
23 running?

24 A. Yes.

25

26 Q. And, to your credit, it was an investigation where
27 Fletcher was charged, convicted and went to gaol?

28 A. I'd much rather think of it to the credit of the
29 victims and the families. I think they had much greater
30 input than me

31

32 Q. You are familiar, aren't you, with the [AC] complaint,
33 which was an investigation commenced by your subordinate,
34 Detective Watters, in October 1999 - I'm sorry, [AE]?

35 A. [AE]? Sorry, [AE] I'm aware of. There are so many
36 acronyms, I just want to be correct. I do recall [AE].

37

38 Q. It was in connection with the investigation in respect
39 of the [AE] matter that you went to see, or at least you
40 asked two questions while you were seeing former Bishop
41 Clarke. That's the case, isn't it?

42 A. Yes.

43

44 Q. We know of another investigation that was going on
45 over that period in relation to [AF], an investigation
46 under the control of Detective Senior Constable Flipo. Is
47 that an investigation you have any familiarity with?

1 A. Sorry, do you have --

2

3 THE COMMISSIONER: Excuse me, Mr Gyles, and Chief
4 Inspector Fox, there is a bit of trouble with the
5 transcript.

6

7 (Brief adjournment)

8

9 THE COMMISSIONER: I am sorry, Mr Gyles, please continue.

10

11 MR GYLES; Q. I'm not suggesting that you should know
12 about this investigation, but do you have any personal
13 knowledge of what Detective Senior Constable Flipo was
14 doing within the Lake Macquarie Area Command in 2001 and
15 2002 in a McAlinden investigation concerning AF?

16 A. I'm aware in later years, but at the time I don't
17 believe I was aware. I wasn't aware of anything, and even
18 today I'm only aware of very, very little of that matter.

19

20 Q. So your personal involvement in the investigations
21 that are within these terms of reference are the [AE]
22 McAlinden investigation, being your visit to the former
23 Bishop Clarke - agreed?

24

25 MS LONERGAN: I object, Commissioner. There is actually
26 evidence a little broader than just the visit to
27 Bishop Clarke about [AE] in 2002.

28

29 MR GYLES: Q. The two matters which you've had personal
30 involvement in are (a) the investigation of [AE], who was a
31 McAlinden victim, the investigation which was commenced by
32 your subordinate, Detective Watters, in October 1999?

33

34

35 Q. And the second was the Fletcher investigation in
36 respect of [AH], which you've already spoken about?

37

38

39 Q. Could we deal, first, sir, with the Fletcher
40 investigation. It is a fair comment, isn't it, that
41 central to your theory or concerns about hindrance by
42 church officials in respect of that investigation concerned
43 the visit by Bishop Malone and Father Saunders to Fletcher
44 on 3 June 2002?

45

46

47

A. I think, was the evidence not 4 June, sir?

Q. I am sorry, 4 June; thank you very much.

1 A. Yes. Yes.
2
3 Q. Primarily, the importance of that proceeds on the
4 basis that that was the means by which Fletcher became
5 aware that [AH] was the victim?
6 A. Yes.
7
8 Q. And that was the first he knew of the police
9 investigation?
10 A. I believe so, yes.
11
12 Q. You say, or you've said on a number of occasions, that
13 the forensic element or advantage of surprise was lost to
14 you by reason of that?
15 A. That was one of the consequences, yes.
16
17 Q. Fletcher and [AH], by the end of May 2002, were
18 obviously well known to each other?
19 A. Fletcher and his victim [AH]?
20
21 Q. Yes.
22 A. Yes.
23
24 Q. And you would expect, in the ordinary course, would
25 have spoken on the phone many times over the course of the
26 years that they'd known each other?
27 A. I don't have any information to that effect. I don't
28 know, I - yes, I don't know, is the best I can do.
29
30 Q. Fletcher, obviously enough, knew that [AH] was a
31 victim of his abuse, didn't he?
32 A. You'd obviously have to ask him. I know he denied it
33 to the end, but I have no reason to disagree with your
34 proposition. I agree.
35
36 Q. You knew, didn't you, that [AH] was living in the
37 Dungog area around the time of some of the alleged crimes
38 being committed?
39 A. I wouldn't classify it as the Dungog area. I'd
40 suggest the Clarence Town area, I think, would be a
41 fairer - although not in Clarence Town itself, but in that
42 general area as opposed to Dungog.
43
44 Q. You had interviewed and taken a statement in
45 connection with the investigation from Kay Ingold, hadn't
46 you?
47 A. Yes.

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Q. She was a registered nurse who, on 2 June 2002, was treating Fletcher?

A. Sir, without reading her statement, and it has been a long while since I have read her statement - I understand that she was - I don't know whether she was doing that in an official capacity or simply the fact that she is a resident of the Brantford area and - but I don't fully understand that scenario whether she was or wasn't treating him.

Q. Let's not worry about the capacity in which she was there?

A. Yes, but I understood that she was a nurse and they had a friendship. One would imagine that, in that scenario, she had been lending some assistance.

Q. You don't take issue with the evidence that she was there - the evidence you took from her was she was there on the night of 2 June?

A. I don't take issue.

Q. And that she told you the following --

A. Sorry, Mr Gyles to interrupt. Am I able to follow it with her statement?

Q. Yes. It is volume 5, tab 397.

A. Yes, I have that.

Q. You'll see in paragraph 6 of the statement, about halfway down, there is the sentence:

He then said, "He told me that it all happened so many kilometres from here as the crow flies."

Do you see that?

A. Yes.

Q. What Kay Ingold is telling you is that Fletcher said that to her - said to her that the person on the other end of the phone had told him - "told him" being Fletcher - that it all happened so many kilometres from here as the crow flies?

A. Yes.

Q. Could you then please turn to tab 378. You will see

1 this was another statement taken in the matter. Can we
2 assume that that's your signature and that you took this
3 statement?

4 A. Yes.

5

6 Q. You will see that, in paragraph 7 of the statement
7 Joanne Hancock reported to you, in the third sentence, that
8 Fletcher.

9

10 *... did mention to me that the caller had*
11 *said something about being 70 kilometres as*
12 *the crow flies from Branxton.*

13

14 A. Yes.

15

16 Q. It may not have been that the caller was that far
17 away, but that is the distance away where this crime or the
18 crimes were supposed to have occurred?

19 A. Yes.

20

21 Q. It says.

22

23 *Because of this he thought it might have*
24 *been someone from Dungog, which was about*
25 *that distance away.*

26

27 A. It may have been the case, yes.

28

29 Q. The point is, detective chief inspector, that is what
30 Joanne Hancock told you Fletcher had said to her on the
31 morning after the call?

32 A. Yes.

33

34 Q. The information that Kay Ingold and Joanne Hancock had
35 told you in this respect was highly relevant, wasn't it, to
36 the question as to whether Fletcher did have knowledge, or
37 at least a level of probability, about who the person on
38 the other end of the phone had been?

39 A. I don't agree with that, sir, no.

40

41 Q. Not only was it a means by which Fletcher may have
42 been able to identify the caller - firstly, you would agree
43 with that, wouldn't you?

44 A. It was a means by which Fletcher may have been able to
45 identify the caller.

46

47 Q. But further than that --

1 A. No, I don't --
2
3 Q. Please, I'll ask the questions.
4 A. Sorry, I thought you were asking the question.
5 I don't want that to be perceived as a response of "Yes" to
6 that question. No, I disagree with that.
7
8 Q. Not only that, what Joanne Hancock was telling you
9 wast that it had in fact caused Fletcher to say to her that
10 he thought it might have been someone from Dungog; that's
11 right, isn't it?
12 A. In all likelihood, sir. I've met a number of other
13 victims of Fletcher's since and there may still be more in
14 Dungog that I'm unaware of, yes.
15
16 Q. Do you still tell the Commissioner that the evidence
17 I've taken you to of Kay Ingold and Joanne Hancock was not
18 potentially relevant to the question as to whether Fletcher
19 knew who the person on the end of the phone might have
20 been?
21 A. What I now know, sir --
22
23 Q. Just answer the question, please.
24 A. Yes, I'm trying to, sir. From what I now know,
25 I don't believe that would have been --
26
27 Q. Would you answer the question, please. The question
28 is: are you still saying to the Commissioner that that
29 evidence is not potentially relevant to the question as to
30 whether or not Fletcher knew or had some suspicion as to
31 the person who was on the end of the phone?
32 A. From what I know, it wouldn't have assisted him.
33
34 Q. Will you please answer the question.
35
36 MR COHEN: I object. That was a personally responsive
37 answer.
38
39 THE COMMISSIONER: Yes, I think it was, Mr Gyles.
40
41 MR GYLES: Q. The position was, wasn't it, when you
42 spoke to Father Burston, he told you that Fletcher had told
43 him that he thought it was probably [AH] who had rung -
44 that's the case, isn't it?
45 A. Yes.
46
47 Q. You, as judge, jury and executioner, have rejected

1 that evidence.
2
3 MR COHEN: I object.
4
5 MR GYLES: Q. You didn't believe that evidence, did
6 you?
7
8 MR COHEN: I object. The question is entirely unfair.
9
10 MR GYLES: I'll withdraw the first question.
11
12 THE COMMISSIONER: Thank you.
13
14 MR GYLES: Q. You didn't believe that, did you,
15 detective chief inspector?
16 A. No.
17
18 Q. One of the reasons you told us you didn't believe that
19 was that you told us that when you asked Fletcher whether
20 he knew the person on the end of the phone, he told you
21 that he didn't?
22 A. One of the reasons, yes.
23
24 Q. You took the word of a convicted paedophile, did you,
25 over the word of Father Burston?
26
27 MR COHEN: I object.
28
29 THE COMMISSIONER: He was not convicted, Mr Gyles. Well,
30 "You took the word of Fletcher over Burston?"
31
32 MR GYLES: Q. But the time that you spoke to Fletcher
33 was the time that he was being charged, wasn't it?
34 A. Yes.
35
36 Q. You wouldn't, at that point, would you, have been
37 seeing him as the most credible witness you had in the
38 case?
39 A. I think that varied. When you're conducting an
40 interview with a suspected person, I don't think I can
41 apply an overall judgment to all of the interview and all
42 of his responses. My consideration of what he was saying
43 in that interview would vary depending on what aspects we
44 were discussing - but only my opinion.
45
46 Q. There were a number of reasons, weren't there, why one
47 might come to the view that Fletcher probably did know or

1 have a pretty good idea of who was on the end of the phone?
2 A. I don't believe so.

3

4 Q. I will put them to you: one was that he was
5 obviously - as it has turned out, [AH] was found to be a
6 Fletcher victim? Assuming that to be correct, then
7 Fletcher would have known of what went on?

8

9 MR COHEN: I object.

10

11 MR GYLES: Q. Do you agree?

12

13 MR COHEN: It is precisely the same objection I took last
14 week. Post hoc, ergo propter hoc. It follows, therefore
15 it is caused by - it can't follow.

16

17 THE COMMISSIONER: As I understand it, the question is, is
18 it not, in reality that Fletcher know that [AH] was one of
19 his victims, after he had been a victim?

20

21 MR GYLES: I don't imagine it being very controversial.

22

23 MR COHEN: But the suggestion was that that caused it at
24 the time, which can't possibly be right.

25

26 THE COMMISSIONER: I will permit you to put the question,
27 Mr Gyles.

28

29 MR GYLES: Q. Getting into the mind of Fletcher, which
30 is what you need to do, to make an assessment of this
31 question, that was a pretty good start, wasn't it, that
32 there had been a handful of Fletcher victims and at least,
33 in his mind, he could have narrowed it down to those,
34 couldn't he?

35 A. Sir, I don't think any of us really know the scale of
36 the number of victims. I do know that - at the time
37 I charged him, three. I have since met with two more, and
38 I have very good reason to believe that there are a number
39 of others.

40

41 Q. You would agree with me that's a relevant piece of
42 information in Fletcher's mind that there would be a
43 limited group of people who would be likely to be ringing
44 him up and accusing him of the things that [AH] was
45 accusing him of?

46 A. I would imagine that Fletcher would have had to
47 contemplate - if you're asking me to step into his mind,

1 which I would imagine would be a very scary place. But the
2 fact is that we don't know, even to this day, how many
3 victims there were, but your proposition is that [AH] was
4 one of those, I don't dispute, and that he would have known
5 that.

6
7 Q. You agree that he knew [AH] over a long period?

8 A. Yes.

9
10 Q. And may well have spoken to him on the phone over the
11 course of that period on a regular basis?

12 A. I don't have information to that effect. It was - the
13 vast majority, if not all of the contact - I don't know
14 how many - if there were phone calls, but my understanding
15 was it was personal communication between them, bearing in
16 mind he was a schoolboy through most of those offences and
17 when the contact was occurring, and, as a result, most of
18 the contact was in person. I'm not trying to --

19
20 Q. Do you feel as though you are approaching my questions
21 on this topic objectively?

22 A. Yes.

23
24 Q. That is, being open to all possible --

25 A. Sir, I'm trying to answer them as honestly and as
26 fairly as I can.

27
28 Q. It is the case, isn't it, Detective Chief Inspector
29 Fox, with all due respect, that the level of emotion you
30 bring to these sorts of questions of fact make it very
31 difficult for you to face up to the alternative possibility
32 which doesn't fit in with your overall theory. That's the
33 position, isn't it?

34
35 MR COHEN: I object.

36
37 THE WITNESS: No.

38
39 MR COHEN: That question flows on from a simple
40 proposition about a disagreement about whether there was or
41 was not the possibility of telephone calls. To load up
42 that question then thereafter is, in my respectful
43 submission, the quintessence of the unfair question.

44
45 THE COMMISSIONER: Do you press that question?

46
47 MR GYLES: No, I don't, Commissioner.

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Q. There is also the information, which, objectively, one might think is very relevant to the question, which is that he was able to identify from what was said to him the likely location of where the abuse had taken place?

A. No.

Q. And that was in fact what he told an entirely independent witness, being Joanne Hancock, that he believed?

A. Sir, you're --

Q. Contemporaneously?

A. Sir, please correct me if I've got this wrong. You're suggesting that [AH] resided in Dungog. He never, to my knowledge, ever resided in Dungog. He resided not only towards the --

Q. Let's not --

A. Clarence Town is a long way from Dungog. If you drive it, sir, you will see what I mean. It's a fair hike. It is not like adjoining suburbs in Sydney. The fact is he was much further south of Clarence Town, which is even further again away from Dungog. The distance of 70 kilometres, from what I was aware of later, is that there were numerous offences, not only against this victim, but against other victims that could all fall within that category and in numerous directions of the compass. To suggest that that allowed him to, therefore, pinpoint as to the individual making the phone call, I can't go along with it on that basis, sir. It doesn't fit in with the logic.

Q. Do you feel as though you are open to an alternative view other than the one you've come to about this?

A. Sir, if you can suggest to me when the victim lived at Dungog or if you tell me that he did live at Dungog, I'll take that into consideration. I'm simply telling you what the facts are that I knew. I know that some offences were committed against another victim north of Branxton, which would have roughly fitted into the 70-kilometre area. I'm aware of another victim that was taken on camping trips, many, many years before [AH], that was up in the Dungog area, so he may have thought it was that earlier victim. And the offences against [AH] occurred in an enormous area. It wasn't just one location, it was numerous locations including suburbs down here in Newcastle where the offences occurred.

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It is not that I'm not trying to agree with you, I simply can't agree with you on the basis of the facts that are known to me because it doesn't fit in with that information.

Q. Joanne Hancock told you, didn't she, that she know [AH]'s family had grown up in the Dungog area and she knew them from that?

A. Sir, I can only say - I've typed her statement, of course, as she has relayed that information to me. The reality is, unless someone is able to show me evidence of the fact, I would still argue against that he ever resided at Dungog.

Q. This is the point, isn't it, Detective Chief Inspector Fox? we are talking here about a fact which doesn't fit with your theory and you've said to me that you would like to argue about it.

MR COHEN: I object.

MR GYLES: Q. Argue against it, I'm sorry.

MR COHEN: No, the objection is it is not a question of the theory; it is a question of the understanding this witness has of the facts. If they don't fit the cross-examiner's approach then that's regrettable. In any submission, it is not a fair question.

MR GYLES: Q. Can I put to you, Detective Chief Inspector Fox, that it is entirely possible that, on the night of 2 June, when Fletcher told Father Burston that he thought it was [AH] who was on the end of the phone, that he was telling the truth; you'd accept that's possible, wouldn't you?

A. It's possible.

Q. You would accept that Father Burston was telling the truth when he gives that evidence because, at the time that Fletcher had the conversation, Fletcher knew that it probably was?

MR COHEN: I object. We go from the possible to the certain.

MR GYLES: No, that is not the question.

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MR COHEN: Q. Would you accept that it is at least possible that not only that Fletcher had told Father Burston that he thought it was [AH], but it is at least possible that that was Fletcher's state of mind at that time, that's right, isn't it? That's at least possible, isn't it?

A. If you're putting to me possibilities, sir, I can only continue to agree with you. Anything is possible.

Q. Can I suggest to you that - I'm not quite sure how you described it, the mind of Fletcher - if you were in Fletcher's mind, having told Father Burston that you thought that it was [AH], the penny may have dropped shortly after that that the facts most consistent with innocence would be that he did not know who it was and that he changed his story?

A. You're putting that to me as a possibility?

Q. Yes.

A. Anything is possible. Sir, I can only agree with all your possibles because anything is possible. If you're going to ask me about possibles, I can only answer in the affirmative to all of them.

Q. You would accept it is possible, then, wouldn't you, that when the witnesses that you have identified who give evidence to say that Fletcher told them that he did not know who it was - perhaps I'll start again. You told us that your belief is that Fletcher did not know who [AH] was because there are various witnesses who say that's what he said to them. That's your position, isn't it?

A. And I've spoken to more since; yes, that's exactly right.

Q. It is entirely possible, isn't it, that that's the truth, that Fletcher did tell all of those persons that he didn't know who was on the end of the phone?

A. It is entirely possible.

Q. Right?

A. Yes.

Q. You would agree - obviously not being able to be certain of it because we can't get into the mind of Fletcher - that he may well have told Father Burston that he did think it was [AH] on the end of the phone and then

1 told the other persons, once appreciating that that may not
2 have been the best set of circumstances for him, as a
3 potential defendant, that he did not know who was on the
4 end of the phone?

5 A. If you are not asking me if that's possible, I would
6 have to disagree with that proposition because it goes
7 against so many other things, not only versions of other
8 clergy, versions of civilians and, as I said, I can add
9 more names to those now from other people I've spoken to --

10

11 Q. Detective Chief Inspector Fox, what you are relying
12 upon is evidence of Fletcher himself, what he has told
13 people.

14 A. Yes. I was going to add to that last answer, if
15 I may. I would have thought if Fletcher had said it to one
16 member of the clergy, one would imagine that it would be
17 likely that Father Burston would have relayed that
18 information to numerous others and said, "Listen,
19 Father Jim has told me that the person who phoned him was
20 [AH]" and told the bishop and numerous others. At the time
21 I interviewed Fletcher, I would imagine if he knew that he
22 had told Father Burston, I'm sure that he would have come
23 up with an excuse and simply said, "Listen, I recognised
24 his voice. That's why I said who it was." The reason
25 I maintain the view that it is - the evidence that he gave
26 is just so inconsistent with not just one thing, but with
27 so many other things.

28

29 Q. But everything it is inconsistent with depends upon
30 the proposition that Fletcher was telling those people the
31 truth?

32 A. I suppose we can make an assumption that he told a lie
33 to nine and told the truth to one - that's a possibility.

34

35 Q. Particularly when, in the mind of a person who was
36 potentially going to be charged with child sexual abuse, it
37 would be an entirely likely scenario, wouldn't it, to put
38 the best version of events for him once he had an
39 appreciation of that?

40 A. The best version being - I don't understand.

41

42 Q. "I have no idea who was on the end of the phone
43 because I've never been engaged in any child sexual abuse"?

44 A. The best version for him would have been to say to me
45 in his interview, "Listen, I did tell Father Burston, but
46 I wasn't really sure and I was just having a guess", but
47 I never got that response from him.

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Q. You have been in this game for years and years. That would be highly incriminating evidence, wouldn't it, that he understood or recognised who the person, the victim was on the phone? You would be desperate for that evidence if you were the prosecutor, wouldn't you?

A. It would have been probative value each way. It would have been something that would have been for consideration at a trial. I think all of us could agree that he could explain that in other ways in view of his contact with [AH] over the years and simply saying, "Listen, it's got nothing to do with anything he's alleging. I just recognised his voice. I knew who it was", but I had no doubt. I think, that over my years - and I think most police would agree, that we interview hundreds and hundreds of people. We get a pretty good gut feeling when someone is being honest with you and when they are not. When Fletcher said he didn't know who it was, I have never had a reason to question that aspect of what he said to me and I believe that --

Q. Of all the things that he said to you, that was the one thing that was the truth, was it?

A. No.

MR COHEN: I object.

MR GYLES: Q. Given the questions I've just put to you, do you think it was entirely fair in your report to describe those who gave you statements on this issue as smacking strongly of collusion and concealment?

A. Yes.

* Q. Detective Chief Inspector Fox, there is a very probable version of events that the reason that the statement of Father Burston was different from the statements of the other clergy witnesses was that they were all telling the truth as to what Father Fletcher had told them?

A. Sir, that's not the only basis on which I made that statement in my report. That's not the sole aspect. It relates to a much wider aspect than just simply that one inconsistency.

THE COMMISSIONER: Q. Would you answer the question of, Mr Gyles.

A. Sorry, could that be repeated?

1 (Question marked * read)

2
3 THE WITNESS: That's a possibility.

4
5 MR GYLES: Q. The forensic advantage that you say you
6 lost in terms of the perpetrator not knowing about the
7 investigation, you would agree, wouldn't you, that it is
8 perhaps a little weaker than it might be in a situation
9 where Fletcher had not been confronted in the phone call by
10 a victim - that's right, isn't it?

11 A. Sorry, can you just explain that?

12
13 Q. In terms of the forensic advantage that you say you
14 lost because of the perpetrator being made aware of the
15 police investigation, can I suggest to you it is a little
16 weaker where the victim has, as happened in this case,
17 confronted the perpetrator?

18
19 MR COHEN: I object. That presupposes the very
20 proposition that is not yet in agreement between the
21 cross-examiner and the witness; that is, to say there was
22 an understanding of Fletcher who it was that was making the
23 phone call. It is not a fair basis.

24
25 MR GYLES: All right.

26
27 Q. Assuming against my proposition at the moment that
28 Fletcher did not know who it was --

29 A. Yes.

30
31 Q. -- who was on the end of the phone?

32 A. Yes.

33
34 Q. What I'm seeking to contrast is the forensic advantage
35 that an investigator might have in a case where there had
36 been no confrontation even by an unidentified person as
37 compared to a situation where there had been a
38 confrontation by an unidentified person?

39 A. So, as an investigator, what you're suggesting, if
40 I can just sum it up is that it would have been more
41 desirous for me if the phone call by [AH] had never been
42 made to Father Fletcher?

43
44 Q. What I'm suggesting to you is - again, getting into
45 the mind of Fletcher - in circumstances where, for the
46 first time in many years since the conduct had occurred,
47 he had been challenged and verbally abused and allegations

1 made against him, that it would not have been a great leap
2 of faith for him to think that that person may take that
3 complaint to the police and may become the subject of a
4 police investigation and, therefore, if there was any
5 evidence which might be unhelpful in terms of that
6 investigation, that any criminal work it solved would have
7 got rid of it at that point. Would you agree that that's
8 at least a possibility?

9 A. Sir, if you're putting it to me as a possibility
10 again, as I said earlier, I can only agree with every
11 "possible": anything's possible.
12

13 Q. With all due respect, Detective Chief Inspector, we
14 can't deal with certainty when we're attempting to make a
15 prediction as to what in this case Fletcher would have
16 done, upon receipt of the phone call, in terms of his
17 dealing with any incriminating evidence that might have
18 been available to an investigator had the phone call not
19 been made?

20 A. Sir, there are so many "possibles" from that. I'm
21 applying it - and I don't mean any disrespect, but if
22 someone was to say to me, "A horse is about to walk through
23 the back door of the courtroom into this courtroom," if
24 you're saying to me, "It that possible?" , it is highly
25 unlikely as it is. I've got to agree it's possible, it
26 could happen, but are you asking me is it likely? I don't
27 think so, unless it's the Silverton Hotel near Broken Hill.
28 I don't think it is going to happen here. For those
29 possibilities, as I said, if you're asking me is anything
30 possible, anything is possible, but it doesn't mean that
31 I agree or that the weight of evidence in my mind was in
32 support of it.
33

34 Q. Would you agree with me that you find it very
35 difficult to agree with any proposition, or even give due
36 consideration to any proposition, that doesn't fit in with
37 your theories or concerns about this alleged cover-up?

38 A. My response to that is the propositions that are being
39 put to me are in my mind logically not - not because of any
40 bias or - you know, bearing in mind these things were all
41 happening back in 2002, well before I drafted any report
42 eight years later. To sort of suggest that I was
43 manipulating and adjusting facts of what occurred all those
44 years before to try and contrive something all those years
45 later, doesn't fit in with me. You keep putting to me
46 scenarios that I can only keep saying I don't agree with
47 because, in my mind, not because I don't want to agree with

1 you, give me something that I can agree with and I will,
2 but I don't agree with you on the basis of the way you're
3 putting them to me.
4

5 Q. I don't for a moment consider that you were doing
6 anything improper at the time, absolutely not. The
7 particular point I'm putting to you is that it is at least
8 possible that Fletcher, had he had some incriminating
9 evidence, that upon receipt of a phone call where
10 allegations are made against him of child abuse, that he
11 may well have thought that it would be in his interests to,
12 at that point, get rid of any incriminating evidence which
13 might be unhelpful to him if the person on the end of the
14 phone, who had at least taken it to a point of
15 confrontation on the phone, might have gone to the police.
16 That is at least something that you accept could have
17 happened?

18 A. It could have. I don't think it likely but it could
19 have. I don't know whether this assists you or doesn't
20 assist you, but --
21

22 Q. You don't need to. You can leave it there. I don't
23 require any further answer to the question. I'm content
24 with what you've said, thank you, detective inspector.
25 Could we move to the McAlinden investigation. The extent
26 of your relevant involvement at the time of seeing the
27 former Bishop Clarke in I think you've said 2003 was two
28 questions that you put to him in the course of being there
29 for another reason?

30 A. On that day, yes, that was - obviously, the phone call
31 from [AE], that proposition I put to retired Bishop Clarke
32 and of course - and as the evidence that's already on
33 record, I did phone the diocese and I did phone back,
34 of course, [AE] with the results thereof, but I don't
35 purport that that is an enormous amount of work. It was a
36 very small --
37

38 Q. I'm not saying that. All I'm saying is --

39 A. I think that's all inclusive of what occurred at that
40 time.
41

42 Q. It was essentially you putting the question, "I've
43 been told a rumour that the church" - this is the evidence
44 you gave at transcript 240 at line 22. My learned friend
45 Ms Lonergan asked you specifically how you put the
46 question:
47

1 *How I put that was along the lines of*
2 *saying to him, "I've been told a rumour*
3 *that the church had or you may have had*
4 *knowledge of two other victims of*
5 *Father McAlinden", and, "Do you have any -*
6 *do you know anything about that?"*

7
8 And the response was:

9
10 *No. You would have to ask Michael Malone*
11 *about that.*

12
13 That's your evidence, isn't it?

14 A. Yes.

15
16 Q. You have described that answer in a number of
17 different documents in various ways, such as a deliberate
18 lie. You've said that, haven't you? You've described it
19 as a deliberate lie.

20 A. I still believe it's a deliberate lie, yes, from the
21 documentation that's been produced since, yes.

22
23 Q. The question is you've described that as a deliberate
24 lie, haven't you?

25 A. Yes, I have.

26
27 Q. You've described it as a blatant lie, haven't you?

28 A. Yes.

29
30 Q. You've described it as a concealment of the name of a
31 victim, haven't you?

32 A. Yes.

33
34 Q. You've described it in this way:

35
36 *Boiling it down to just simple words, he*
37 *lied. I was standing there with a*
38 *colleague and he just straight-out lied to*
39 *me about his knowledge of other victims.*

40
41 This was in the Lateline interview:

42
43 *Hence the reason I say that some in the*
44 *Church have no reservation about lying when*
45 *it comes to it to conceal the fact that*
46 *they had knowledge of these crimes.*

47

1 That's right, isn't it?
2 A. Yes.
3
4 Q. Implicit in all of those descriptions is an
5 assumption, isn't it, first, that Clarke in 2003 had at
6 some prior point in time been made aware of the existence
7 of two other McAlinden victims; that's right, isn't it?
8 A. Yes. Yes, it is.
9
10 Q. Can we take it that your belief as to that would be
11 that he would have knowledge of [AL] and [AK]?
12 A. My belief years later? Yes, amongst others, but
13 predominantly then they were probably two of the foremost
14 but --
15
16 Q. Also, a necessary part of your logic is that at the
17 time you went to see the former bishop in 2003, he was able
18 to recall that information which he had been made aware of
19 previously; that's right, isn't it?
20 A. Yes.
21
22 Q. Did you ask him when he had retired as bishop?
23 A. I knew when he retired. He retired in 1996.
24
25 Q. So that was, what, about seven years before?
26 A. Yes.
27
28 Q. Did you ask him the reason why he had retired?
29 A. No.
30
31 Q. Did you ask him whether he had retired on medical
32 grounds?
33 A. No.
34
35 Q. Did you ask him what his recollection was like as to
36 matters going back to the time that he was bishop?
37 A. From his responses to the other questions --
38
39 Q. Did you ask him --
40 A. Did I ask him that specific question?
41
42 Q. That specific question.
43 A. No, sir, but --
44
45 Q. No, no, that's enough, I just want you to answer my
46 questions. We'll go a lot more quickly. Did you ask him
47 about other events or other information that he may have

1 acquired in 1995 so as to test whether or not his
2 recollection going back to that period was good or
3 otherwise?
4 A. I didn't ask him to just address 1995. When I spoke
5 to him about Father Ryan and Father Fletcher, we had quite
6 a lengthy discussion about what they had done over many
7 years and where they had moved to. He seemed to have
8 fairly cognitive ability in being able to address so many
9 aspects of what I wanted to ask him about those two
10 individuals and --
11
12 Q. You said he was of no help at all on those matters,
13 didn't you? He said he didn't recall matters concerning
14 those individuals.
15 A. I don't think I ever said that, sir, no. I don't know
16 where you've got that from. We spoke quite at length.
17 They were the predominant matters I went down to speak to
18 him about and his recollection and his memory of events and
19 those individuals was quite extensive.
20
21 Q. He's obviously not here to tell his side of the story,
22 is he? He was never challenged --
23 A. I can't dispute that, sir, no, I agree.
24
25 Q. You didn't take a statement from him, did you, at the
26 time?
27 A. No.
28
29 Q. You didn't even keep a record of this conversation,
30 did you?
31 A. I think my answer to that - and it still is - is
32 I don't know.
33
34 Q. Are you aware that he was being treated in April 2006
35 for emerging senile dementia of the Alzheimer's type?
36
37 MS LONERGAN: I object. How is this relevant to his state
38 in 2003? It is three years later. Anything could have
39 happened in that intervening three years.
40
41 THE COMMISSIONER: For someone of that age group.
42
43 MS LONERGAN: Yes. It is evidence about a certificate
44 three years later, Commissioner.
45
46 THE COMMISSIONER: Yes.
47

1 MR GYLES: It is a simple question: he either knows or he
2 doesn't.

3

4 MR COHEN: I object to it on the same footing.

5

6 THE COMMISSIONER: It is possibly out of the relevant
7 area, Mr Gyles.

8

9 MS LONERGAN: If Mr Gyles has evidence that he wants to
10 take into consideration in terms relevant to the matters
11 we're examining for this Commission, it would be
12 appropriate that it be provided to counsel assisting and we
13 can assess whether it is helpful or helpful, relevant or
14 irrelevant. In my respectful submission, it is not helpful
15 to put to this witness some secondhand information about a
16 certificate three years after he was interviewed by this
17 witness.

18

19 THE COMMISSIONER: Yes. It would be a different position
20 if it was in the same --

21

22 MR GYLES: I will do that, although I would hope, in the
23 interests of the now deceased former bishop, that people
24 would be approaching with an open mind the question as to
25 whether or not his recollection in 2003 was good.

26

27 THE COMMISSIONER: Yes, of course, Mr Gyles.

28

29 MS LONERGAN: My learned friend is introducing a totally
30 different concept and that is the suggestion that this
31 person wasn't competent to give a truthful answer in 2003,
32 as I apprehend what Mr Gyles is putting. This is not the
33 appropriate way to do it.

34

35 MR GYLES: Q. You would accept, Detective Chief
36 Inspector, that going beyond the impression given to you by
37 the answers that he gave to certain questions, you took no
38 steps, did you, to ascertain in any proper way what the
39 former bishop's level of recollection of events going back
40 seven years was in 2003?

41

42 MR COHEN: I object to that question. The evidence has
43 already fallen from this witness to the effect that in
44 respect of the topics dealing with, as I apprehend it, Ryan
45 and Fletcher, that the evidence of loss of cognitive
46 ability did not bear examination. That's the beginning and
47 the end of this topic.

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MR GYLES: With all due respect to my learned friend, that is exactly what I was attempting to say.

Q. Apart from that, apart from the evidence you have given as to what you were told in that conversation on that day, you took no steps, did you, to ascertain in any proper way, ie, dealing with an 81 or 82-year-old man, as to getting a medical opinion as to whether or not his recollection of matters going back seven years was good or otherwise?

MR COHEN: I object. The introduction then was of any lack of propriety. There is just no footing for that proposition.

MR GYLES: Q. You did not seek to obtain a medical opinion, did you, as to former Bishop Clarke's state of mind and capacity to remember matters going back seven years in 2003, did you?

MS LONERGAN: I object. How is this relevant? There was no formal statement taken from this man. We are now revisiting it 10 years later and trying to put some other overarching type of requirement of events that happened in 2003. This witness has been direct in terms of his answers that he didn't take a note at the time but he remembered the evidence. He has been direct that he wasn't taking a formal statement. Now to try and imply that there needs to be some sort of medical assessment of Bishop Clarke to determine whether he was capable of telling the truth is not appropriate.

THE COMMISSIONER: Particularly when the witness has said that Bishop Clarke and he spoke at length and Bishop Clarke's recollections and memory of the other priests was quite extensive.

MR GYLES: It is this witness, with all due respect, Commissioner, that has described the answer given to him in extremely strong terms, in circumstances where Bishop Clarke is not here to deal with the matters he knew of in 1995 that he was still aware of in 2003.

THE COMMISSIONER: Yes.

MR GYLES: It is an extremely live issue.

1
2 THE COMMISSIONER: Yes, it is.
3
4 MR GYLES: I am very concerned that it is not being looked
5 at in a way that is fair and open minded as to that
6 question.
7
8 MR COHEN: Might I be heard on that?
9
10 THE COMMISSIONER: Yes, Mr Cohen.
11
12 MR COHEN: In the last day or so of his examination by my
13 learned friend Ms Lonergan, this witness has been taken to
14 a series of documents about which he was asked would this
15 be of use or assistance for the purposes of investigations.
16 That put this question beyond doubt. I am not sure
17 I understand how any question of this type can ever be fair
18 in the context of contemporaneous documents that proved the
19 exact opposite of what these questions seek to assert.
20 I object.
21
22 MR GYLES: If there are contemporaneous documents which
23 prove that in 2003 former Bishop Clarke was of entirely
24 sound mind and of good memory, then I would like to see
25 them.
26
27 THE COMMISSIONER: Yes, Mr Gyles, I understand your point.
28
29 MR GYLES: I am happy to move on.
30
31 THE COMMISSIONER: The witness has said he didn't make
32 those inquiries about the precise state of the mental
33 health of Bishop Clarke at that time, but he has made his
34 own observations which are of some use, but your point
35 though is that the words were very strong, the description
36 of the disavowal of knowledge was very emphatic and you're
37 seeking and are entitled to pursue further questions about
38 that.
39
40 MR GYLES: I am trying to be fair. This Commission needs
41 to be fair to people alive and dead.
42
43 THE COMMISSIONER: Yes.
44
45 MR GYLES: That is the reason that I'm asking the
46 questions.
47

1 THE COMMISSIONER: Yes, I understand that, Mr Gyles.

2

3 MR GYLES: I won't finish in the next five minutes but I'm
4 not going to be all that much longer. I am probably not
5 going to finish today anyway, so maybe it is an appropriate
6 time, Commissioner.

7

8 MS LONERGAN: Yes, that would be an appropriate time.

9

10 THE COMMISSIONER: Thank you, Ms Lonergan. Thank you,
11 sir.

12

13 **AT 3.57PM THE COMMISSION WAS ADJOURNED TO**
14 **FRIDAY, 5 JULY 2013 AT 10AM**

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