

**ABUSE IN CARE ROYAL COMMISSION OF INQUIRY
STATE REDRESS INQUIRY HEARING**

Under The Inquiries Act 2013

In the matter of the Royal Commission of Inquiry
into Historical Abuse in State Care
and in the Care of Faith--based
Institutions

Royal Commission: Judge Coral Shaw (Chair)
Dr Andrew Erueti
Ms Sandra Alofivae

Counsel: Mr Simon Mount, Ms Hanne Janes,
Mr Andrew Molloy, Mr Tom Powell
and Ms Danielle Kelly

Venue: Level 2
Abuse in Care Royal Commission
of Inquiry
414 Khyber Pass Road
AUCKLAND

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TRANSCRIPT OF PROCEEDINGS

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(Opening waiata and karakia)

CHAIR: Ata marie ki a koutou katoa, tena koe, Ms Janes.

MS JANES: Kia ora katou, we are moving on to our second MSD witness, Mr Garth Young, who will be led by Ms Aldred.

CHAIR: Tena koe, Ms Aldred.

MS ALDRED: Tena koutou katoa.

ERNEST GARTH YOUNG
EXAMINED BY MS ALDRED

Q. Thank you, Mr Young. Can you confirm that your full name is Earnest Garth Young?

A. Yes.

Q. Your name is Garth?

A. That's correct, yes.

Q. You have prepared a brief of evidence?

A. Yes.

Q. Dated 31 July 2020?

A. That's right.

Q. You have a copy of that brief of evidence before you this morning?

A. I do, yes.

Q. So, I'm going to lead you through parts of your brief of evidence, on the understanding that those parts that aren't read are taken as read by the Commission.

And so, as I've just been reminded, if you could speak slowly and clearly, please, for the signers and the stenographer.

1 So, just beginning at the introduction to your brief of
2 evidence, Mr Young, could you please start from
3 paragraph 1.2 and read the rest of that section?

4 A. Certainly. I am the Lead Claims Adviser with the Historic
5 Claims Team at the Ministry of Social Development. A role I
6 have held since late 2018.

7 I have been employed by the Ministry or its predecessors
8 since 1984 when appointed as a social worker first in
9 Invercargill, then in Whangarei. I carried a varied
10 caseload that included care and protection matters, youth
11 offending, adoptions and caregiver training. While in
12 Whangarei, I became a senior social worker, leading a team
13 of care and protection social workers before becoming a
14 social work trainer running courses across Tai Tokerau and
15 in Auckland.

16 In 1997, I became manager of the Parliamentary services
17 team for Child, Youth and Family in Wellington. As Child,
18 Youth and Family began a commitment to addressing historic
19 claims of abuse, I was seconded into a position that
20 ultimately became manager of the Historic Claims Team. I
21 remained manager until 2012/13 when I was appointed chief
22 analyst of historic claims until my current appointment.

23 Is that speed - just slow down a -little.

24 **CHAIR:** As I reminded people yesterday, just breathe
25 occasionally.

26 A. I hold a Postgraduate Diploma in Social Sciences from Massey
27 University (1993).

28 As Lead Claims Adviser, I am primarily responsible for
29 providing expert advice on social work practice and its
30 relationship to the assessment of claims. In doing so, I
31 support and advise claimant support and claim assessment
32 team leaders and members on a wide range of issues and may
33 be required to review and/or advise on particularly complex
34 claims. As required, I also assist the development of
35 strategy and policy in relation to historic claims.

1 Q. Now, at section 2 you just describe the scope of your
2 evidence. Can I just have you read paragraph 2.1, please,
3 Mr Young?

4 A. Certainly. My colleague Linda Hrstich-Meyer, my colleagues
5 sorry, Linda Hrstich--Meyer and Simon MacPherson, have set
6 out in their briefs of evidence the development of the
7 Historic Claims Team from 2004 through to the present day
8 and other related matters such as litigation around the
9 redress process and address matters raised by survivors in
10 their briefs of evidence.

11 I do not repeat their evidence here, except to note areas
12 of their evidence which relate to the topics set out below.

13 Q. And the topics you set out in your brief of evidence are
14 really a summary of the matters that you've been asked to
15 comment on by the Royal Commission; is that correct?

16 A. That's correct.

17 Q. Yes. And if I could take you over the page, please, to
18 section 3 of your evidence and have you start dealing with
19 the first of those topics, which relates to the composition
20 and functions of various working groups, and if you could
21 just start reading at 3.1?

22 A. Certainly. There have been a number of groups set up to
23 assist in developing and implementing policy around redress
24 which I discuss below. By way of brief introduction, the
25 groups covered by the Royal Commission's request that I will
26 describe are as follows:

27 (a) The Inter-departmental Working Group, from 2004 until
28 approximately 2009, comprised representatives from multiple
29 Crown Agencies. It was established at an early stage in the
30 Crown's consideration of historic abuse claims. Its purpose
31 was to develop high-level, Crown--wide policies principles.

32 (b) the Historic Claims Steering Group in 2006 was
33 comprised of senior Ministry officials. Its objective was
34 to provide high level direction to the Ministry's management
35 of historic claims.

1 (c) the Historic Claims Strategy Group 2008 until
2 approximately 2014 comprised senior Ministry officials and a
3 Crown Law representative. Its purpose was to provide a
4 forum for strategic discussion of the Ministry's management
5 of historic abuse claims and the associated litigation.

6 (d) the Historic Claims Completion Strategy Governance
7 Group from 2013 to 2018. It comprised senior Ministry
8 officials and representatives of Crown Law and the Ministry
9 of Education. Its objective was to identify strategies for
10 improving efficiency in the resolution of claims with a view
11 to having all pre--1993 historic claims resolved by the end
12 of 2020. This group oversaw the development of the Two Path
13 Approach.

14 In general, I note that the two cross-government- groups
15 (the Interdepartmental Working Group and the Historic Claims
16 Completion Strategy Governance Group) were established to
17 develop a whole of Crown approach to claims. The Historic
18 Claims Steering Group and Historic Claims Strategy Group
19 were specific to the Ministry's management of claims (while
20 bearing in mind all of Crown considerations).

21 Q. Thank you, Mr Young. From paragraphs 3.3, for the remainder
22 of that section, you describe for the Commission in quite
23 significant detail the functions and work of each of those
24 groups that you have described. We will ask the
25 Commissioners to take those matters as read, rather than
26 having you read it. And so, if I could get you now, please,
27 to turn right over to page 10 of your brief of evidence and
28 section 4, which you will find at the foot of page 10,
29 relates to the process for collecting information on
30 confirmed and alleged perpetrators of abuse.

31 Could you commence, please, reading from paragraph 4.1 of
32 your brief?

33 A. As noted above, the Commission has asked me to comment on
34 two somewhat overlapping issues:

1 (a) the processes and timeframes for collecting,
2 analysing and sharing information about known perpetrators
3 of abuse, both within the Ministry and with other agencies,
4 for use in claims assessment and settlement offers; and

5 (b) any processes by which information about the
6 outcomes of the Ministry's referrals to Police, such as
7 convictions, were shared between the Ministry and other
8 Crown Agencies for use in claims assessment and settlement
9 offers.

10 As these two questions both relate to sharing information
11 about alleged perpetrators, I have first set out some
12 general comments on how this type of information impacts on
13 the Ministry's approach towards settlement of claims.

14 For an allegation of abuse to be accepted for the purpose
15 of settling a claim, it is not, and never has been, a
16 requirement that the alleged perpetrator of abuse must have
17 been charged or convicted. Similarly, the Ministry has
18 never required evidence of abuse by an alleged perpetrator
19 to be documented in official records in order for that
20 allegation to be accepted for the purpose of settlement.
21 Nor did we routinely ask the Police for information on the
22 alleged abuser. However, if we believed that they may have
23 faced charges or been convicted, then we would generally
24 have sought this information.

25 This does not mean that information on convictions are
26 irrelevant to the consideration and settlement of claims.
27 Confirmation that criminal offending occurred will be
28 relevant when assessing the facts of a claim.

29 Q. Thank you. And then if you could just skip over paragraph
30 4.5 and read paragraph 4.6?

31 A. There were no set timeframes for the processing and
32 forwarding of information concerning alleged offenders
33 within the Ministry or externally. However, as much as
34 possible, when allegations are made that may concern current

1 staff or caregivers, we make efforts to confirm their
2 identities and take appropriate action as set out below.

3 Q. And if I could just have you read, please, from 4.7 of your
4 brief of evidence which relates to the gathering of
5 information?

6 A. Certainly. In 2005 a key function of the embryonic Historic
7 Claims Team was responding to requests made under the
8 Privacy Act for the records of people who had been in State
9 care. Primarily, those requests came from the solicitor
10 representing potential claimants. Other requests were made
11 under the Official Information Act for administrative
12 records of varying sorts.

13 Q. And, sorry, if you could keep reading please?

14 A. Yes.

15 Q. I think I'll get you to read up to paragraph 4.11, from 4.8?

16 A. Okay. In the process of responding to those requests we:

17 (a) Collated the names, roles and dates of employment at
18 various residences since we had not, at that stage, and
19 still have been unable to, identify a centralised record of
20 past residential staff; and

21 (b) identified any instances of abuse or maltreatment by
22 Ministry staff or caregivers recorded in Ministry documents
23 (generally records of the institution).

24 That information was collated in a variety of
25 spreadsheets. The purpose of collecting this information
26 was three-fold; to help develop a picture so far as written
27 records can of staffing across residences and across years,
28 to identify any instances of abuse and maltreatment of
29 children and young people, and to inform our assessment of
30 claims.

31 Confirmed perpetrators, or instances where allegations
32 were made and documented but not confirmed one way or the
33 other, were also identified in the course of assessing
34 individual claims. For the purpose of assessment of
35 allegations the Ministry would search personal, staff/HR and

1 administration files. Public information sources such as
2 media reports and the sensible sentencing trust database
3 would be checked, I've written cross-checked there but that
4 is an error and it should just read checked. This has
5 occurred consistently over the life of the Historic Claims
6 Team.

7 Relevant information on alleged perpetrators was filed
8 under the name of the individual concerned for reference
9 purposes.

10 Q. Thank you, Mr Young. You next turn to two documents that
11 the Royal Commission has specifically asked you to deal
12 with. Those are the document that Cooper Legal drafted
13 entitled "Culture of abuse and perpetrators of abuse at
14 Department of Social Welfare institutions" and another one
15 is a memorandum that you drafted partially in response to
16 that for the Ministry. Could you please just begin reading
17 from paragraph 4.13?

18 A. Certainly. Early in 2006 we received from Cooper Legal a
19 document titled "Culture of abuse and perpetrators of abuse
20 at Department of Social Welfare institutions". It
21 summarised the claims many of Cooper Legal's clients made by
22 the nature of the abuse they suffered while placed in a
23 number of state institutions and community-based programmes.
24 The document also identified 235 ex--residential and
25 programme staff members who allegedly abused or maltreated
26 residents.

27 Q. Thank you, Mr Young. If I could just have you pause there
28 and have that document brought up, please, it's MSC 0650.
29 Thank you.

30 This is the document from Cooper Legal?

31 A. That's correct.

32 Q. And the Commission will have its own copy of this document,
33 so I won't take you through it in detail. It contains a
34 reasonably detailed introduction and overview, and then
35 deals with each institution in turn. But I thought it would

1 be useful just to take you to a couple of pages in relation
2 to a specific institution to just give an idea of the kind
3 of allegations that are contained in the document.

4 So, if I could have, please, page 23 of that document
5 brought up on the screen? And perhaps we'll just have the
6 third paragraph called out, please, as an example.

7 **CHAIR:** Does this relate to a specific institution,
8 this particular passage?

9 **MS ALDRED:** I believe this is -

10 A. It looks like it's Kohitere.

11 Q. Yes, Kohitere. So, this is just an example and it gives a
12 reasonably - -it gives you an idea of the kind of
13 allegations, it includes physical abuse from one of the
14 forestry instructors, it describes punching and throwing
15 boys.

16 Then if you could call up, please, that longer paragraph
17 towards the end? Similarly, you will see there the
18 perpetrator is named, that has been redacted for the
19 purposes of the hearing, but a named perpetrator and
20 reasonably and some detail of what they are alleged to have
21 done at Kohitere-.

22 And then that can go and if you could turn to page 24,
23 please, it's the following page. And you will see, Mr
24 Young, there that, again, there are allegations about staff
25 members, about the top six entries are named staff members,
26 but the allegations are a little less specific in some
27 cases, describing a staff member as physically abusive in
28 several cases.

29 And then if you could go, please, to the rest of that
30 section, from "Teacher" to the end of that section, and here
31 we have a selection of unnamed staff members who are
32 described with some of the things that they are alleged to
33 have done recorded.

34 So, just to give the Commission a flavour of that
35 document and, as I said, I am sure that they will have the

1 opportunity to review it, could you just confirm that this
2 is a representative sample of the kinds of allegations or
3 the level of detail in the document?

4 A. I would say that that's reasonably representative of the
5 document as a whole. There's obviously other parts
6 contained different types of allegations, allegations of
7 sexual abuse and neglect, but, yeah, that's reasonably
8 representative.

9 Q. Yes, sorry, I didn't mean to suggest that the allegations
10 are representative of the whole document -

11 A. No.

12 Q. But rather, just the sort of level of detail?

13 A. Yes, I would agree.

14 Q. Thank you. Was information provided in the document about
15 who the survivors or claimants were?

16 A. No, there was, -it identified how many of Cooper Legal
17 clients had made allegations but not by name.

18 Q. Thank you. And I think you then go on to describe the
19 response to that memorandum by the Ministry, so if I could
20 have you, please, continue reading your brief of evidence
21 from paragraph 4.14?

22 A. In response to this paper, I drafted a memo to the Historic
23 Claims Steering Group on 28 August 2006 providing a summary
24 of the background investigation work that had been carried
25 out as a result of Cooper Legal's paper. The Ministry's
26 responses are detailed below.

27 Cooper Legal's paper was very helpful in providing us
28 with an understanding of the experiences some residents had
29 endured and of the issues that we could expect to arise in
30 forthcoming claims.

31 One of the first responses to the document was to
32 identify if any of the named alleged perpetrators were still
33 employed by the Ministry and, if so, whether they might
34 present a risk to Ministry clients.

1 Of the 235 ex-residential- staff named by Cooper Legal's
2 clients, nine were identified as current employees of the
3 Ministry and working in various capacities. A Working Group
4 representing historic claims, legal services, operations,
5 the Chief Social Worker and people and capability agreed a
6 process by which any potential risk for current clients
7 would be managed while meeting the Ministry's employment
8 obligations.

9 That process involved the General Manager Operations for
10 the then Department of Child, Youth and Family Services and
11 a Senior HR Manager meeting with the nine staff members.
12 They were advised of any allegations made against them, that
13 no determination had yet been made about any allegation,
14 that their employment was not in jeopardy at that stage and
15 of the support services available to them if needed.

16 In conjunction with the relevant managers of the staff
17 concerned, an assessment was also made of whether or not any
18 of them presented a potential risk to clients. In one case,
19 the staff member was placed on special leave because of the
20 nature of the allegations and because of his position, which
21 placed him in direct contact with children and young people.

22 To the best of my knowledge, none of those nine were
23 subsequently confirmed by independent means to be
24 perpetrators of abuse.

25 As well as the Ministry's internal process, it considered
26 referral to the Police in respect of the alleged criminal
27 offending. To that end, we met with Police Officers from
28 National Headquarters in March 2006. As a result of that
29 meeting, Police requested from Cooper Legal the names and
30 contact details of its clients to take complaints for
31 potential investigation of sexual offending and serial
32 physical abuse.

33 Of particular interest to Police were the nine current
34 Ministry staff. It had been agreed that any criminal
35 investigation needed to proceed prior to any employment

1 investigation. So, Police and the Ministry worked with
2 Cooper Legal to obtain the consent of relevant clients to
3 their details being provided to Police. Cooper Legal made
4 efforts to do so where they could, and the relevant
5 information was supplied to Police on 28 April 2006.

6 Subsequent correspondence between Police and Cooper Legal
7 confirmed that Police would not be following up any matters
8 unless a claimant wished to pursue a criminal complaint.
9 The Ministry received confirmation of that position from
10 Police on 12 May 2006.

11 On 12 and 17 May 2006, I wrote to Cooper Legal seeking
12 further details of allegations against the current staff
13 members to enable HR investigations to be carried out. By
14 reply, they acknowledged the importance of the
15 investigations but advised they did not have the resources
16 to specifically collate that information and instead
17 undertook to provide it to us as part of their normal work.
18 The Chief Social Worker confirmed by email to me of 23
19 May 2006 that in the absence of information linking staff
20 with specific allegations containing dates of offending and
21 who the allegations are made in respect of meant "CYF cannot
22 progress this matter further given lack of information or
23 substance to support the abuse claims".

24 Cooper Legal and I had contact again early in October
25 2006 about the possibility of getting further information on
26 eight current staff members. We also had a positive meeting
27 on 13 October 2006 to discuss the same issue, but Cooper
28 Legal raised the same resourcing issues discussed in May.
29 To the best of my recollection the matter went no further,
30 other than the HR process as described above.

31 Another response by the Ministry to Cooper Legal's
32 document was to commence interviewing a number of staff that
33 were still employed by the Ministry and who had previously
34 worked in residential care to obtain their perspective of
35 the practices and culture that prevailed in the past. This

1 process is covered in more detail in the brief of my
2 colleague Simon MacPherson at paragraphs 5.14 and 5.16.

3 Cooper Legal's document has been an often used reference
4 in the years since. As noted above, as we have gathered
5 information about the persons named in it and other
6 individuals named in claims, the information was
7 being- collated in an individual file for ongoing reference.

8 Q. Thank you, Mr Young. Now, the next part of your evidence
9 relates to a 21 September 2017 report that you prepared for
10 the Minister for Social Development at the time?

11 A. Yes.

12 Q. Could you please continue reading from paragraph 4.28 of
13 your brief of evidence?

14 A. On 21 September 2017 I prepared a report to Minister Tolley.
15 The report was provided, sorry, the report was to provide
16 advice on issues that were raised in a story aired by TV3's
17 the Nation concerning allegations against 18 named ex--
18 residential- staff members. The journalist in question was
19 particularly interested in whether any of those staff had
20 been transferred from one residence to another as a result
21 of allegations of abuse being made against them.

22 At the time of preparing my report, one of the persons
23 named by the journalist was not known to the Ministry. All
24 the other 17 were previously known to the Ministry's
25 Historic Claims Team, and payments had been made to
26 claimants in respect of 14 of those. Payments have
27 subsequently been made in respect of two other of the named
28 perpetrators.

29 The report also noted that contemporaneous complaints of
30 abuse had been made to the Ministry about 13 of the 17 staff
31 members and that Police were advised at the time in six
32 cases - -four of those by the Ministry and two by unknown
33 sources. Four faced charges at the time, while a further
34 seven faced charges and were convicted in later years,

1 although convictions for three of those did not relate to
2 employment at Ministry residences.

3 The report advised that three of the staff were
4 transferred to another departmental residence after
5 complaints were made. One of those transfers (in 1981)
6 followed allegations of physical assault of a boy; one (in
7 1972) followed allegations of sexual abuse of girls (the
8 Police were advised at the time, I should add, the
9 complainants interviewed but no charges were laid), and one
10 was transferred in 1979 at the direction of the State
11 Services Commission following charges of improper conduct
12 being laid and heard under the State Services Act.

13 The report also, -sorry, the report noted also that a
14 circa 1982 letter from a DSW staff member to the Human
15 Rights Commission suggested that a fourth of the 17 staff
16 members was transferred following allegations of being in a
17 female resident's bedroom for four hours.

18 Q. Thank you, Mr Young. Now, if you could just pause there.
19 You made an interpretation, I think, on the fourth line of
20 your evidence and, as I heard it, you said "the Police were
21 advised at the time"; is that correct?

22 A. Yes, sorry, because I just realised it could be read that
23 the Police were advised in 2017 when that report was
24 prepared.

25 Q. Yes, no, thank you, I just wanted to make sure that the
26 interpretation is recorded. So, your brief should read,
27 "the Police were advised at the time"?

28 A. Yes.

29 **CHAIR:** Can I just ask, at what time?

30 A. That would have been in 1972.

31 **CHAIR:** So, at the time they were transferred?

32 A. Preceding the transfer, yes.

33 **CHAIR:** Thank you.

34 **MS ALDRED:**

1 Q. So, the next section of your evidence deals with how
2 information about alleged offenders was shared within the
3 Ministry and with other agencies, and if I could have you
4 read from paragraph 4.32, please?

5 A. As noted above, information about alleged and confirmed
6 perpetrators was collected within the Ministry's Historic
7 Claims Team in two main ways, a master staff list and files
8 in the name of the individual. The purpose of doing so was
9 to make that available to all team members involved in
10 assessing claims.

11 The master staff list contains, where known, the date the
12 person was appointed to a position at a particular residence
13 or facility, what allegations have been made against that
14 person and which claims those allegations were made in
15 relation to. Individual files will record any known
16 specific information about that person, including links to
17 claims in which they have been named and, where available, a
18 copy of any employment records for them.

19 Where necessary and relevant, for example if a claim
20 contained an allegation of abuse against a current staff
21 member, then that was shared with appropriate staff outside
22 of the Historic Claims Team and, since April 2017, that
23 information has been shared with Oranga Tamariki.

24 Q. Thank you. Now, the next section of your evidence deals
25 with referral to other agencies and I will actually have you
26 read that in full, Mr Young, if you could start from
27 paragraph 4.35?

28 A. 4.35, all right. In all cases where a claimant alleges
29 abuse against a named staff member or caregiver, a safety
30 check is carried out to determine if that person is a
31 current staff member or caregiver of the Ministry or of
32 Oranga Tamariki.

33 Where it is confirmed or suspected that the alleged
34 abuser is a current staff member or caregiver, then the
35 matter is escalated to me in my capacity as Lead Claims

1 Adviser for review. I review the available information and
2 decide whether or not a referral should be made to Oranga
3 Tamariki or the relevant section of the Ministry, having
4 regard to Court orders and privacy considerations.

5 Those Oranga Tamariki or Ministry staff with
6 responsibility for making inquiries into that individual
7 will decide whether a referral should be made to Police.

8 Where allegations of abuse are made against a staff
9 member or caregiver of an operating NGO, then two processes
10 follow within the context of any relevant Court orders and
11 privacy considerations:

12 (a) for potential safety purposes the Ministry will
13 advise the NGO of the allegation so it can determine if
14 there are any current safety concerns that need to be
15 addressed.

16 (b) in the process of assessing the claim, the Ministry
17 will consult with the NGO to determine what information it
18 might hold that is of relevance to the assessment of the
19 claim.

20 Where claimants who have approached the Ministry directly
21 allege potential criminal offending, they are advised of
22 their ability to lay a complaint with the Police, and would
23 be offered assistance and support to do so if that was their
24 choice.

25 Q. Thank you. Now, the next section of your evidence, which is
26 section 5, deals with outcomes from Police referrals and
27 that covers several pages up to paragraph 5.15. Could I ask
28 you, please, Mr Young, just to summarise the position in
29 relation to that, rather than reading out that section of
30 your evidence?

31 A. Yes, certainly. It was in 2016 when the Ministry began to
32 make referrals to the Police where the allegation made by a
33 claimant, on the face of it, constituted criminal offending.

34 A number, and that was done after the Ministry officials
35 and the Police met and agreed on essentially a Memorandum of

1 Understanding and an agreed process by which that would be
2 done. A number of referrals were made, including for a
3 number of Cooper Legal clients, and, as the Commission may
4 already have heard, Cooper Legal brought Court proceedings
5 because they had an alternate view to the Ministry and the
6 Police about whether or not such referrals should have been
7 made. And once those Court proceedings were taken, that
8 referral process ceased. The only referrals that were made
9 perhaps in the interim period were where a claimant
10 specifically sought a referral to be made to the Police.

11 Q. Thank you. So, the Commission's focus, I think, and its
12 question for you, Mr Young, was how outcomes from Police
13 referrals are incorporated into the assessment and
14 settlement process, and you deal with that specific point
15 from paragraph 5.16 of your evidence, so could I have you
16 turn, please, to page 19 and begin reading from
17 paragraph 5.16?

18 A. In cases where the Ministry did make a referral to Police,
19 we did not necessarily receive any feedback from Police or
20 claimants as to the outcome of the referrals. As I have
21 said earlier, the assessment of a claim was not reliant on
22 such feedback. However, where Police commenced an
23 investigation then it was common for them to request any
24 potentially relevant further information from us. It was my
25 practice to ask Police to keep us informed of the outcome of
26 any investigation and prosecution, and they did so in a
27 number of cases. I have assisted the Court as a witness in
28 two cases leading to the conviction of an ex-staff member
29 and an ex---caregiver.

30 If we did receive information about a staff member,
31 whether it was via the Police or another source, that
32 practice was to record that in their EDRMS, which is our
33 document management system record. When assessing an
34 allegation against a named individual for whom the Ministry
35 might have been responsible, various information sources

1 were drawn from to form that assessment. Those include
2 staff and caregiver files, EDRMS records, as mentioned
3 above, other claims that included allegations about the same
4 person and publicly available sources, such as media
5 reports. Any relevant information would be taken into
6 consideration in the assessment of that allegation.

7 It is perhaps self-evident but by way of example, where a
8 claimant alleges sexual assault by a named person, and that
9 person has convictions for sexual offences, then those
10 convictions are clearly relevant and would be taken into
11 account-.

12 Q. Thank you and at section 6 of your evidence you address the
13 next topic that the Commission identified as of interest to
14 it, which is the roles and responsibilities between the
15 Ministry and Crown Law for the use of and scope of use of
16 private investigators in the White and other proceedings.
17 And that is dealt with at section 6, could you please read
18 from 6.1?

19 A. Through my involvement in preparing for the White claims to
20 go to trial, I was aware that a private investigator was
21 engaged to assist. I have no specific recall of how that
22 decision was made or by whom, but I was aware that the
23 Queen's Counsel representing the Crown had engaged him
24 previously and that she believed he would be useful.

25 My understanding was that the investigator was used in
26 locating some Crown witnesses but that primarily he assisted
27 in briefing various Crown witnesses. Along with Crown
28 counsel, I attended some of those briefings to provide
29 expert advice on any practice issues that arose and to
30 advise the witness of any supports that they may require.

31 Q. When you say "any practice issues", do you refer to social
32 work practice, Mr Young?

33 A. Yes, that's correct.

34 Q. Just continue at 6.2.

1 A. I was aware that the private investigator contacted the
2 mother of the plaintiffs to determine if she could be a
3 potential witness and that she had told him that she did not
4 want to speak with him or engage with the Crown. That was
5 not pursued any further.

6 I do not recall at any stage there being discussion about
7 the possibility of the private investigator carrying out
8 surveillance activities. In the course of the Ministry
9 identifying relevant documents for the State Services
10 Commission investigation into the use of external security
11 consultants, I became aware of a note from a January 2007
12 meeting on the subject, and it's discussed in Una Jagose
13 QC's brief of evidence. I was not present at that meeting.

14 I, myself, on a very few occasions sought the assistance
15 of a private investigation firm to locate people relevant to
16 the assessment of an historic claim. The two that I recall
17 are: firstly, seeking the assistance of an investigator to
18 confirm that an alleged offender in Keith Wiffin's claim
19 which I will refer to below, lived at a particular address;
20 and second, when a claimant asked for our assistance to
21 locate her long-estranged sister, when we were unsuccessful
22 at finding her, I sought the assistance of a private
23 investigator.

24 Q. Thank you. And at section 7, you deal with the claim by
25 Mr Keith Wiffin who we heard from in phase 1 of this
26 hearing. Could I have you read section 7 of your evidence,
27 please, Mr Young?

28 A. Certainly. First, I want to acknowledge the trauma
29 Mr Wiffin has endured, not only in the abuse he suffered
30 whilst in State care but also through the process of having
31 his claim recognised. He has shown resilience, courage and
32 fortitude at pursuing his claim, something that he should
33 not have had to do. If there was any one claim that
34 troubled me, it was his. For that, I once again apologise
35 to Mr Wiffin.

1 I note at section 4 of her reply brief of evidence,
2 Ms Hrstich-Meyer comments on a number of issues
3 Mr Wiffin- raises in his statement, including his
4 frustration at the settlement process. The following is my
5 perspective and understanding of the Ministry's management
6 of his claim.

7 I first met Mr Wiffin on 7 September 2006 along with his
8 solicitor, Ms Cooper. The aim of the meeting, and similar
9 meetings with a small number of other Cooper Legal clients,
10 was to get a personal understanding of the experience he had
11 whilst in State care and to hear his thoughts on what a
12 claim resolution process should include. The views of
13 Mr Wiffin and others genuinely contributed to the process
14 that ultimately eventuated. It disturbs but does not
15 entirely surprise me to read in Mr Wiffin's statement his
16 perspective of that meeting.

17 Following that meeting, I wrote to Mr Wiffin on
18 11 September enclosing for him a copy of the residential
19 care services Code of Conduct and Puao-te-ata-tu.

20 The 8 November 2007 Official Information Act request from
21 Cooper Legal transferred to the Ministry by Crown Law asks
22 for staff records and any other information MSD holds about
23 the staff members. I replied on 20 February 2008. In
24 respect of Mr Moncreif-Wright- I stated that:

25 "The Ministry holds 1 staff file and 2 staff cards noting
26 dates of employment for Mr Moncreif-Wright. There is
27 nothing contained in the file that relates to (name of
28 another client) or Mr Wiffin. Nor is there any information
29 relating to any allegations of physical or sexual abuse
30 against Mr Moncreif---Wright."

31 The Ministry certainly was aware of the offences
32 committed by Mr Moncreif-Wright- prior to that date. I
33 accept that it may appear as though I or the Ministry was
34 not wanting to disclose that fact but that was certainly not
35 my intention.

1 Q. Mr Young, this was a matter that Ms Cooper addressed the
2 Royal Commission on when she was speaking or giving evidence
3 during the first phase of this hearing. Can I ask you
4 please to provide some further context or explanation around
5 paragraphs 7.5 and 7.6 of your brief of evidence?

6 A. Certainly. I guess, one of the frustrations for me is that
7 I don't have a clear recall of how we went about responding
8 to that OIA request and there aren't any helpful file notes
9 that might show us or remind me on how we went about that.

10 As I said, we had the information about Moncreif-Wright's
11 convictions that had been sent to us from Crown Law some
12 time prior to that, I don't recall the specific date or
13 year. Whether that information had been placed in the file
14 that we had for Mr Moncreif---Wright at the time, I just
15 can't say.

16 So, when, you know, typically when an OIA request is
17 made, then a search is carried out of our file databases for
18 any records that might be relevant to that request.

19 Why that information about Moncreif-Wright wasn't picked
20 up, I honestly can't say but, yeah, I can understand
21 certainly Mr Wiffin- and Cooper Legal's questions about that
22 but I can certainly say that I personally had no intent to
23 withhold information that we had and should have released,
24 assuming there were no legal or privacy reasons that it
25 shouldn't have been released, and I certainly apologise for
26 that fact.

27 Q. Thank you and if you could just please continue from
28 paragraph 7.7 of your brief, Mr Young?

29 A. On 14 May 2008 Mr Wiffin's solicitor contacted me to say
30 that he wanted the opportunity to meet with us to try and
31 resolve his claim. A meeting was arranged and took place on
32 24 July 2008. The following day I wrote to Mr Wiffin
33 thanking him for the opportunity to meet and acknowledging
34 that it would not have been easy. I also invited him to
35 contact me if he wanted to take up the opportunity to visit

1 Epuni and talk with my colleagues about the current care
2 system. I advised also that we would respond to him once
3 his claim had been assessed. As Mr Wiffin said in his brief
4 of evidence, he wrote to me on 4 August 2008 and I responded
5 with a further letter on 7 August acknowledging receipt.

6 It was not until 2 February 2009 that I allocated
7 Mr Wiffin's claim to one of the team's senior social work
8 advisers for assessment. I noted in my allocation email
9 that I had overlooked the need to continue investigating
10 this claim earlier and that I was angry with myself for
11 having done so since that was his expectation, and because
12 it felt as though some goodwill had been built up between
13 us.

14 It is my recollection that based on Mr Wiffin's account,
15 our then knowledge of Mr Moncreif-Wright and other available
16 relevant information, the senior adviser formed the view
17 that the abuse by Mr Moncreif--Wright was likely to have
18 occurred as described by Mr Wiffin-.

19 I recall joint discussions with Crown Law on how the
20 claim might be resolved, culminating in the settlement offer
21 from Crown Law to Mr Wiffin of 9 April 2009.

22 Mr Wiffin contacted me by phone on 22 April 2009. He was
23 concerned that no progress had been made with his claim and
24 in response to my question, said that he had not been in
25 touch with his solicitor for two weeks but was meeting with
26 them shortly. He also said that he still wanted to visit
27 Epuni and have some support to work through his files but
28 was not able to do that at present. I assured him the offer
29 to do both remained open, whatever the outcome of his claim,
30 and however long it may take for him to be ready to deal
31 with that.

32 It was clear from Cooper Legal's 13 May 2009 response to
33 the letter from Crown Law of 9 April that Mr Wiffin was
34 deeply hurt and unhappy about the letter and for personal
35 reasons was not able to continue his claim.

1 As has been noted in my colleague's brief, in September
2 2009 the Crown asked Sir Rodney Gallen to review the process
3 by which a number of claims had been managed by the
4 Ministry, one of which was Mr Wiffin's. While he had no
5 criticism of the approach the investigators took in
6 endeavouring to resolve the claim he noted "it follows that
7 I have some reservations about the outcome of this claim".
8 As reflected in my 4 December 2009 summary of Sir Rodney's
9 report for the Deputy Chief Executive, that gave us cause to
10 review Mr Wiffin's claim and ultimately to offering him an
11 ex gratia payment and letters of apology from the
12 Chief Executive and from me.

13 Q. Thank you. Now, if you could just pause there, I would like
14 to take the Commission, I would like to take you to first of
15 all the letter from the Chief Executive, and the reference
16 for that is WITN0080025. If I could just have the body of
17 the letter called out, please. That was dated 4 August 10,
18 and if we could have the body of the letter called out,
19 please.

20 So, this is the letter from the Chief Executive, is that
21 correct?

22 A. That's right.

23 Q. Yes. Could I have you read, please, the body of the letter,
24 Mr Young?

25 A. "I have made the commitment that the Ministry of Social
26 Development will own up to its mistakes and do the right
27 thing. I am very sorry to say that it appears we have
28 wronged you twice.

29 I understand that you came into the care of Child Welfare
30 as a young boy and after the death of your father. I can
31 only try to imagine what that must have been like for you.
32 As I have said to other people in similar situations to
33 yourself, you should have been assured of safe and
34 protective care in those homes you were placed. The fact
35 that you were not and were subject to abuse is as

1 unacceptable then as it would be today. For those failings
2 and for the abuse you suffered, I sincerely and unreservedly
3 apologise.

4 My second apology is for that fact that we failed to
5 recognise and acknowledge your claim sooner. I know Mr
6 Young has written to you separately on this matter but I
7 want to acknowledge and apologies for that also.

8 I trust, Mr Wiffin, that despite our failures, this
9 letter and the payment to you will be another step towards
10 putting the past in its rightful place of not unduly
11 impacting on the present and the future."

12 Q. Thank you, Mr Young. Now, if I could please have the next
13 letter called up, which is a letter of the same date, I
14 believe, and it is WITN0080027. Sorry, I think that is
15 dated the 6th of August 2010. And if I could just have the
16 body of that letter called up, please.

17 Now, this is a letter from you, well, it's signed by you
18 and sent to Mr Wiffin- at the same time as the
19 Chief Executive's letter; is that correct?

20 A. That's correct.

21 Q. And if I could just have you please read from the body of
22 that letter?

23 A. "I am sure that after your experiences of the last four
24 years, you may well doubt the sincerity of these words but
25 please be assured they are genuinely meant.

26 When I met with you in 2008 to talk about your
27 experiences in care I did so with every intent that we
28 should settle your claim if at all possible. Our assessment
29 of your claim led us to make the offer that you turned down.
30 Having reviewed your case I believe that assessment was
31 wrong and that we should have made a more significant offer,
32 in particular acknowledging your abuse whilst at Epuni.

33 I am very sorry Keith that we did not do that and that
34 our failure to do so has caused you additional hurt over the
35 past 12 months.

1 The payment referred to in my letter to Sonja comes
2 without condition and the Chief Executive's letter
3 expresses, like mine, an unreserved apology both for what
4 happened to you while you were in care and for our failure
5 to acknowledge this to you sooner.

6 If at any stage you want to take up the offer to meet
7 with senior staff of the Ministry or if you would like to
8 visit the Epuni residence and do not feel comfortable doing
9 so through me, then please do not hesitate to contact my
10 senior adviser Fiona Wilson or my General Manager Bryn
11 Gandy.

12 I wish you all the best for the future"

13 Q. Just to confirm, accompanying that letter was a letter from
14 Cooper Legal with the details of effectively an
15 unconditional ex gratia payment, is that correct?

16 A. That's correct, yes.

17 Q. Can you explain for the Commissioners, please, why, given
18 the Chief Executive had written a letter of apology, why you
19 also accompanied that with your own letter to Mr Wiffin?

20 A. Apart from the fact that an apology was due, and well
21 overdue, I guess I had probably established more of a
22 relationship with Mr Wiffin than other survivor claimants
23 and he had been very gracious to us and to me in talking
24 with us on two occasions about his experience but also about
25 his wishes for a redress process, and I simply felt that we
26 had let him down and that I personally had let him down and
27 that I wanted to acknowledge that personally.

28 Q. Thank you, Mr Young. And if you could just go on reading,
29 please, from section 7.14 of your brief of evidence?

30 A. I note at paragraph 45 of Mr Wiffin's statement his
31 suspicion that Mr Moncreif-Wright may have abused children
32 while working at Hamilton Boys' Home and was moved to Epuni
33 Boys' Home in the full knowledge of his offending and
34 without due care for potential victims. The records for
35 Mr Moncreif---Wright confirm that he worked at Hamilton

1 Boys' Home for 18 months immediately prior to commencing at
2 Epuni. The same records do not contain any mention of
3 alleged offending while at Hamilton. That does not of
4 course mean that Mr Moncreif--Wright did not offend against
5 children at Hamilton but simply that the records do not
6 indicate the reason that he moved.

7 I wish to add, and this should in no way be seen as a
8 defence of our management of Mr Wiffin's claim, and I would
9 be concerned if the Commission were of the view that
10 Mr Wiffin's claim was representative of the way in which
11 many claims have been resolved over subsequent years. I
12 will further reflect on this in my closing remarks.

13 And if I might indulge again, just having watched
14 Mr Wiffin give evidence to the hearing, yeah, it just fills
15 me with sadness again what he's gone through, along with
16 many other survivors, of course.

17 Q. Thank you. And Mr Wiffin stated in his evidence for the
18 Commission in phase 1 that he might at some point,- he
19 indicated he would perhaps wish to discuss matters further
20 with the Ministry, do you have a response or comment to
21 that?

22 A. Mr Wiffin has had a couple of conversations with me in the
23 past two or three years, I think the last was probably 18
24 months ago, and certainly in one of those conversations he
25 indicated that that is something that he was thinking about.
26 Since then, of course, the Commission has held the hearings.
27 But certainly from my perspective, if there's anything that
28 Mr Wiffin wants to raise with the Ministry, then I'm
29 certainly open to that personally and I believe the Ministry
30 as a whole would be.

31 Q. Thank you. And then perhaps we'll move on to section 8 of
32 your evidence, again responding to the Royal Commission's
33 request, which is for information relating to changes made
34 to MSD policies or processes, if any, following the Crown
35 Law and MSD workshop of 21 November 2007. And if you could

1 just briefly summarise perhaps paragraphs 8.1 and 8.2 of
2 your evidence?

3 A. There was a workshop obviously held on that particular day
4 and I've seen notes recently, fulsome notes from that
5 meeting. Again, it's one of those occasions when my memory
6 escapes me. I really have no clear recollection of that
7 meeting, although obviously by the notes I was there. But,
8 yes, it appeared to me, on looking at those documents, that
9 it wasn't specifically as a follow up to and perhaps any
10 learnings from the White case but really, I guess, how Crown
11 Law and the Ministry may effectively work together in any
12 subsequent claims that might be subject to litigation.

13 Q. Thank you. Can you read from paragraph 8.3 and actually 8.4
14 of your brief, please?

15 A. Certainly. I always saw a positive working relationship
16 between Crown Law and the Ministry when working collectively
17 on such cases as the White claims. I note from a written
18 record of the meeting that some of the workshop discussion
19 about those claims was the significant resources that were
20 required and the extent to which they could be optimised in
21 future cases.

22 I was subsequently involved in a small number of other
23 claims that were being prepared in advance of trial (but
24 were settled beforehand) and felt that we worked
25 collectively in a co-ordinated, planned and collegial way.

26 Q. Thank you, and then just turning over the page to section 9
27 of your evidence which deals with support of claimants and
28 "wellness" payments, could you please read from
29 paragraph 9.1?

30 A. From the early days of the claims process, it has been
31 acknowledged that many claimants may benefit from various
32 types of support and assistance whether to enable them to
33 cope with the process of bringing a claim, to deal with past
34 and present issues, or both.

1 In general terms, such non-monetary supports were
2 provided in one or both of two circumstances. The first,
3 and most common, was the payment of a limited number of
4 sessions for the claimant to receive professional
5 counselling/support to assist them through the claims
6 process. Where longer term support may be necessary to
7 address longer standing issues, then in addition to any
8 support the Historic Claims Team could provide - the
9 claimant may be referred to an existing service provider.
10 The second circumstance is the provision of counselling
11 and/or services as part of the package to resolve a claim.

12 Non-monetary support has also been discussed by Linda
13 Hrstich-Meyer at 3.17 and 3.18 of her brief. Any support,
14 financial or otherwise, that the Ministry provided to a
15 claimant did not mean that they could not access whatever
16 supports and services might have been available to them from
17 other agencies, including ACC. Where a claimant might have
18 qualified for ACC and had a need for counselling beyond what
19 the Ministry could provide, then they would be encouraged to
20 make a sensitive claim to ACC and the Ministry would support
21 and assist them to do so. As Linda Hrstich--Meyer's brief
22 explains at 3.9, a claimant who has received an ACC payment
23 in relation to sexual abuse is not precluded from
24 registering a claim with the Ministry as the agencies have
25 different functions and address different claimant needs.

26 We have no centralised collation of the number of
27 claimants who have been offered these types of supports.
28 Our financial records show that we paid \$105,686 for
29 counselling over the 2006 to 2019 period. A greater amount
30 will have been approved, there was \$182,109 for the 2014 to
31 2019 period for example, but some claimants choose not to
32 take it up or may choose to take it up at a later date. A
33 further \$46,532 was spent to provide a range of other
34 support services to claimants.

35 And carrying on to 9.5?

1 Q. Yes, just dealing next with wellness payments.

2 A. The concept of wellness payments was developed as part of
3 the whole of government response to the historic claims
4 filed in the courts. A wellness payment may have been made
5 where there was no basis on which to make a settlement
6 payment to a claimant, but was a means of enabling the
7 claimant to receive some helpful services or be reimbursed
8 for services for which they had already been paid.

9 Over January and February 2010, joint Ministers agreed to
10 a proposal that:

11 "... the Crown make a one-off- offer to claimants who
12 wish to discontinue their claim, without judgement of that
13 claim, of Crown reimbursement of up to a fixed amount of a
14 plaintiff's actual incurred costs from their efforts to
15 restore wellbeing. For example, reimbursement for the costs
16 of counselling, anger management, drug and alcohol related
17 services, or tattoo removal could be included and settlement
18 of a person's Legal Aid costs to ensure that the person
19 faced no outstanding debt or charge to the Legal Services
20 Agency".

21 This applied to claims where it was determined that there
22 was no basis for the making of a settlement payment but
23 would allow the claimant to exit the litigation process
24 without debt and with some level of support.

25 In addition to these wellness payments, some settlement
26 offers to claimants, both those legally represented and
27 those who approached the Ministry directly, included the
28 payment for some professional counselling supports or
29 services.

30 In reality, a small number of wellness payments were made
31 relative to the total number of claims resolved.

32 Our available records do not reveal any clear rationale
33 for why the wellness payments were stopped. My recollection
34 is that there were various opinions about the circumstances
35 in which they could be made, potentially leading to

1 inconsistencies. A paper setting out the parameters for the
2 payment of services to claimants was drafted in April 2016
3 but there is no record that it advanced beyond a draft. To
4 my knowledge, no wellness payments have been made in recent
5 years. Of course, while wellness payments have not
6 continued, settlement and ex gratia payments have, as has
7 historic claims funding of counselling and other relevant
8 support services for claimants.

9 Q. Thank you. Now, at section 10 of your evidence, you deal
10 with the high tariff offenders issues which Mr MacPherson
11 discussed in a bit of detail in his evidence yesterday for
12 the Commission.

13 Having heard that evidence, we won't take you through the
14 whole of this section but I would ask you, please, to read
15 from paragraph 10.3 where you're discussing the proposed
16 policy around whether those convicted of serious offences
17 may receive payments in relation to abuse while in care.

18 A. It was recognised that this issue was not straightforward.
19 In discussions that I was involved in around the development
20 of this policy, the Ministry's perspective was that there
21 was no principled basis on which to treat high tariff
22 offenders differently than other claimants. It was
23 recognised that the fact they are serious offenders could
24 suggest that the damage caused by their experiences in care
25 was more significant and that the basis for payment is
26 moral, i.e. settlement payments are about what happened to
27 the claimant while in care, not what the claimant has done
28 on to do afterwards.

29 Q. Thank you. And we will skip over the next couple of
30 paragraphs and if you could please read from 10.6?

31 A. As noted by Mr MacPherson, in December 2017 the government
32 decided not to introduce legislation that would have allowed
33 settlement payments made to this group of claimants to be
34 managed in some way. Shortly thereafter, settlement offers
35 began to be made to this group. At no stage was the

1 proposed policy for high tariff offenders implemented by the
2 Ministry, although assessments for high tariff offenders
3 were largely not processed while the policy was being
4 developed.

5 Q. Thank you. Now, I just want to ask you a couple of
6 supplementary questions arising from some of the matters
7 that were discussed with Mr MacPherson yesterday.

8 The first of those is, and also actually by Ms Cooper in
9 her evidence in phase 1, and actually the first one of these
10 matters relates to a point made by Ms Hill and Ms Cooper in
11 their evidence, and that was a matter that I think Ms Hill
12 dealt with, which is a suggestion that social workers
13 employed by the Ministry assessing these claims would have,
14 I think Ms Hill's words were "an inherent conflict of
15 interest".

16 Now, to be fair to Ms Hill and Ms Cooper, under
17 questioning they clarified that they wouldn't allege any
18 improper involvement on that point, and that was directed to
19 your involvement as a former social worker.

20 However, they did suggest, or a social worker who had
21 previously been employed outside the Ministry, I should just
22 say. However, they did suggest that social workers were
23 inherently conflicted in assessing claims for the purpose of
24 reaching agreement with claimants on settlement of their
25 claims against the Crown.

26 Can I ask you, please, first of all, about your personal
27 experience, Mr Young, because this initially was raised in
28 the context of your own career, I suppose. Can you tell me
29 what has been your personal experience of any conflicts of
30 interest?

31 A. Um, certainly where any claim has been made that I have had
32 some involvement in peripherally, and I can think
33 particularly of the claims brought by the Sammon sisters,
34 then I have declared that conflict and had no involvement
35 with the claim in any way.

1 A recent example also, a person connected with a family
2 member contacted me because she knew where I worked and the
3 nature of my work, wanting to make a claim.

4 Q. Sorry, an acquaintance of one of your family?

5 A. Yes, sorry, yes. And she wanted to know how to go about
6 make a claim. I gave her some of the relevant details, took
7 her details. I made it very clear to her that once I passed
8 her information on to the relevant people in the team, that
9 I wouldn't have anything further to do with that matter, and
10 that was absolutely fine by her. And I made it known to my
11 manager, we have a conflict of interest register to record
12 those matters on, that was updated accordingly. And the
13 file will be protected from me accessing it. So, I guess,
14 they are two examples where I personally, I guess, have
15 managed any perceived or actual conflict of interest.

16 Q. Just in relation to the claim by the Sammon sisters, given
17 that it was mentioned by Cooper Legal and that you've
18 mentioned it this morning, what was the nature of your
19 involvement in their case?

20 A. For a period of time, and I don't recall how long that
21 period of time was, one of the social workers that had
22 involvement or some responsibility for the Sammon girls was
23 in my team, so I was their supervising social worker.

24 Q. Right.

25 A. So, that was the nature of the involvement.

26 Q. And that was the basis on which you withdrew from
27 consideration of that?

28 A. Yes, that's right, yeah.

29 Q. Thank you. And another allegation that was made, I think,
30 was that you would be assessing on a regular basis claims
31 made against former colleagues; is that something that
32 you've come across?

33 A. I guess, speaking -and I'm certainly happy to address that
34 but I can appreciate a perception from Cooper Legal and from
35 any outsider that people who were involved in the care

1 system are now making an assessment of aspects of that care
2 system, may have a conflict. All I can say in response to
3 that, again based on my personal experience, is that the
4 social workers who formed - well, who were the team up until
5 the last couple of years, were - and I really hope that this
6 is taken, yeah they were the most professional group of
7 people you would find. They went into social work to
8 protect children. They were all ex---care and protection
9 social workers. So, the concept of them trying to cover up,
10 I guess, as it were, or not acknowledge abuse that may have
11 been perpetrated by other social workers, is anathema. You
12 would not find any stronger advocates, either for
13 professional social work practice or for protection of
14 children, than those social workers. Two of them were
15 involved in supporting and enabling one claimant, and
16 thereafter two, to take their complaints to the Police about
17 an ex-residential staff member and he was subsequently
18 convicted for I think around 12 charges of sexual assault
19 for, I can't remember exactly, but there were multiple
20 victims.

21 So, I guess that is just one little example where there's
22 just no way that they shied away from holding people to
23 account.

24 And a couple of those social workers, I think in the very
25 early stages of their career, had spent brief periods of
26 time as residential social workers and I think some of their
27 observations and experiences from that time would support
28 survivors' experiences and stories, rather than not.

29 Q. So, what were the nature of those observations or
30 experiences?

31 A. I can't speak to those.

32 Q. Not specifically but just generally?

33 A. I think just one of their concerns and observations about,
34 just about the perhaps relationship between some residential
35 social workers and some residents. I am not aware that any

1 of them observed any outright instances of assault or abuse
2 but, yeah, they didn't particularly enjoy the residential
3 care experience and yeah. So, I guess that's, yeah, I just
4 can't reinforce enough the professionalism of those social
5 workers and the fact that they took claimants' experiences
6 very much to heart.

7 I was looking at the 2012 research evaluation that
8 Mr MacPherson referred to yesterday recently, and one of the
9 claimants that was interviewed said that they found it
10 difficult when the interviewers, the senior social work
11 advisers, cried in the interview. I would like to think
12 that they didn't cry in response to hearing what the
13 claimant was talking about but obviously to the claimant
14 they showed some visible signs of emotion, and that is how
15 they were and are, deeply affected by the stories that they
16 hear and to suggest that they would not want to do the right
17 thing by those people is, yeah, it's just not the case.

18 Q. Thank you. Now, the next thing I just want to discuss with
19 you - actually, I'm wondering now whether might be a
20 convenient time to take the adjournment?

21 **CHAIR:** Take the adjournment and then you can conclude
22 and then we will start with the cross-examination, is
23 that suitable?

24 **MS ALDRED:** Yes, thank you.

25

26

27 **Hearing adjourned from 11.25 a.m. until 11.50 a.m.**

28

29

30 **CHAIR:** Thank you, Ms Aldred.

31 **MS ALDRED:** Thank you.

32 Q. So, Mr Young, just continuing with a couple of additional
33 matters that have arisen over the last couple of days.

34 Yesterday in questioning Ms Janes referred to an email
35 written by Crown Law, in which the writer had made a comment

1 to the effect that the White trial had indicated the
2 claimants might make exaggerated allegations.

3 Now, Ms Janes' proposition, as I understood it, was that
4 whilst she had referred to an email written by another
5 agency, this attitude or belief that claimants might tend to
6 exaggerate allegations of abuse was a widely held view
7 within the Ministry of Social Development and within the
8 Historic Claims Team.

9 Would you care to comment on that proposition, Mr Young?

10 A. I can't comment obviously on the writer and what might have
11 prompted the writer to make those comments but I certainly
12 don't believe that within the Ministry those who were
13 dealing with claims on a day-to---day basis held any view
14 that the claims were being exaggerated in any way.

15 In fact, in some instances, I think it was acknowledged
16 that some claims may be under-played, as it were, through
17 claimants not- particularly, I guess, when it comes to
18 allegations of sexual abuse where, you know, some people,
19 for totally understandable reasons, aren't able to go into,
20 you know, significant detail about the nature of their
21 abuse.

22 So, yeah, it's certainly not my experience that either
23 myself or those that I have worked with would take that
24 attitude. And, again, I think that is reflected a little in
25 what I was saying earlier about the attitude that certainly
26 those senior social work advisers brought to the job, of
27 being very focused and aware of the claimants and of their
28 experiences but also, it's fair to say, to being aware that
29 where allegations are made against anybody, then there would
30 be a level of care in examining those allegations and being
31 as fair as one can to everybody.

32 Q. Thank you. The next thing I want to take you to is a
33 document that Mr MacPherson was taken to, and the reference
34 is MSC395. So, this document is a 2010 document signed with
35 your name on it but the questions were directed at

1 Mr MacPherson. I thought since it was your document, it
2 might be useful to have you address it, Mr Young.

3 And you'll see that it is this statement of, I suppose,
4 principles or guiding tenets and it's under the heading,
5 "Care, Claims and Resolution Team" or the CCRT principles,
6 "As agreed 3 June 2010" and it sets out those principles
7 that Ms Janes took Mr MacPherson to yesterday.

8 Are you able just to provide some comment and context
9 around that document?

10 A. Sure. I don't have specific recall. It suggests that they
11 arose from some kind of meeting or discussion on that date.
12 I don't have any particular recall of that but I think they
13 reflect probably some discussions that may have occurred
14 over a period of time within the team that it would
15 potentially be helpful for us and potentially those outside
16 the team to, I guess, document some principles on which, or
17 to guide, I suppose, the work that we were doing.

18 So, that is a kind of - to the extent I can I recall, the
19 context to which I drafted those.

20 Q. Thank you. And then I just want to take you to another
21 document which Ms Janes contrasted with that brief statement
22 of principle, and that is MSC405. That's an undated note,
23 again on Ministry letterhead, and I think the suggestion was
24 that your team, in fact, use these principles which include
25 at number 1, a directive not to accept anything on face
26 value. Was this a document that was prepared by the CCR
27 team?

28 A. No, I understand it was prepared by a member of the Legal
29 Services team, so the legal team and the Ministry. And,
30 judging by the title of it and the content of it also, it's
31 likely to have been, again, some principles or suggestions
32 or directions for how claims that were potentially going
33 through the litigation process might be managed.

1 Q. So, just to be clear, you said that these might be
2 principles that would be applied to claimants going through
3 the litigation process?

4 A. As opposed to the alternative dispute resolution process,
5 yes.

6 Q. So, is it correct that so-, are these principles, principles
7 that would be applied by your team?

8 A. Um -

9 Q. Just looking at 1 in particular.

10 A. Well, 1, obviously that does contrast, I think, with the
11 first principle that I had drafted, which was that claims
12 should be, I don't know if the word was "accepted" at face
13 value but I think that also talked about "subject to
14 investigation" or there were some words following which I
15 guess gave it some qualification. But, yes, it's in
16 contrast obviously to this document.

17 **CHAIR:** Just slow down a wee bit.

18 A. Sorry.

19 **MS ALDRED:**

20 Q. Okay. Sorry, you said it's in contrast to this document?

21 A. That's correct.

22 Q. Okay, thank you. And following on from those documents but
23 on a similar point, Ms Janes also referred yesterday to an
24 assumption that allegations of serious abuse will never be
25 identified in records from institutions; is that correct, in
26 your experience?

27 A. I wouldn't say never, and the reason I say that is because
28 there are some instances where allegations of serious abuse
29 have been documented. Not a lot but some. But I would
30 certainly agree that in the majority of cases there isn't
31 any direct documentary evidence, if you like, that directly
32 supports an allegation.

33 Q. You've referred to some rare instances, I think, where they
34 might be documented; who would have documented them?

1 A. They would typically be a manager or a senior staff member
2 to, through some means, became aware of an incident and,
3 again, in some documented cases took some kind of action to
4 address that abuse, yep.

5 Q. Thank you. And Ms Janes also went on to suggest, I think,
6 that where a claim in the current MSD process goes to a step
7 2 analysis, a record of alleged abuse will be needed. Is
8 that the case? Is that true, Mr Young?

9 A. In short, no. And I guess, if I think about certainly the
10 last 10 years or thereabouts in the team, we have accepted,
11 if you want to use that word, allegations of physical and
12 sexual abuse in many, many instances, and I think the data
13 would show that the majority of allegations of such abuse
14 are accepted for the purpose of settlement. And I suppose
15 that's in contrast to the fact that, yeah, in very, very few
16 situations is there documentary evidence to support that.
17 So, what -so, yes, we're not looking for and wouldn't
18 necessarily expect to see in the records any direct
19 confirmation that abuse had occurred. We are looking for a
20 variety of other types of information that enables us to
21 make hopefully a fair and reasonable come to a reasonable
22 conclusion about that particular allegation-.

23 Q. Perhaps if sorry, just in relation to the particular
24 reference- to the step 2 analysis.

25 A. Sure.

26 Q. And Mr MacPherson discussed this a little in his evidence
27 yesterday and explained that that second stage, where
28 particularly serious allegations are made, will result in
29 further investigations, mostly requiring further work by the
30 Ministry in terms of records. What sort of information are
31 you looking for?

32 A. I'll certainly come to that but it may also be helpful to
33 understand that some allegations of serious abuse don't
34 actually require a step 2 analysis. So, some may be taken
35 at what we call face value but subject to some factual

1 checks. But for those where a step 2 analysis is carried
2 out, then we are looking, I guess, at a much broader range
3 of sources of information that assist us in making some
4 determination about the allegation. And those sources will
5 include obviously the claimant's account. I mean, the most
6 significant piece of information that we have is the account
7 that we have from the claimant, whether that's their written
8 account that's provided to us by their counsel or whether
9 it's their account as provided directly to us.

10 In those instances, one of the very first things that the
11 assessor does is listens to the audiotape of the meeting
12 with the claimant, so that they can fully understand and
13 appreciate and hear in the claimant's words what has
14 happened to them. So, that's the first and most vital, and
15 that happens at the start of every claim assessment, not
16 just for step 2.

17 But when we are carrying out that more detailed analysis,
18 they're obviously looking at the claimant's records, any
19 records that might also be relevant from the family or
20 family members. We're looking at records for any staff or
21 caregivers that be implicated in the claim. For any
22 institutional records for those who were placed in
23 institutions or family homes. We are looking at information
24 about other similar types of allegations. Anything that can
25 potentially inform us about that particular claim that we're
26 looking at.

27 Q. Thank you, Mr Young. And finally, if I could just take you
28 back to your brief of evidence, I think we're at section 11
29 now which are just some concluding remarks that you make,
30 and if I could just have you speak to those, please, for the
31 Commissioners?

32 A. Certainly. Preparing this brief has provided an opportunity
33 to reflect on the past 15 years and on my personal
34 involvement with historic claims over that time.

1 The first comment I want to make is that it has been a
2 privilege to be part of this work. The extent to which
3 survivors have graciously and courageously opened up to us
4 about their most private and harmful experiences has never
5 ceased to amaze me and my colleagues. An equal privilege
6 has been to see the difference that listening, believing,
7 acknowledging and apologising can make to the mana and the
8 lives of many survivors. We have been witness to many
9 emotionally powerful moments.

10 In saying that, I am also aware that we have not always
11 got it right and for some survivors we have fallen far short
12 of their expectations.

13 This work has already provided an opportunity to view
14 social work in State care practice over many decades, the
15 good, the bad and the ugly. Many good people have worked in
16 the field and numerous efforts have been made over the years
17 to innovate and enhance practice. But hidden in that are
18 the experiences of abuse survivors, those who have been let
19 down so badly by the system. We should all be grateful that
20 survivors and their advocates have begun to shine a light on
21 those experiences and hold those who need to be accountable.
22 I appreciate the opportunity to provide this evidence to the
23 Royal Commission.

24 **MS ALDRED:** Thank you, Mr Young. And if you could
25 just remain, please, to answer any questions that
26 counsel assisting and the Commissioners may have.

27 A. Certainly.

28 **CHAIR:** Before you do, I hear a frog in your throat.
29 Have you got any water there?

30 A. I have, thank you.

31 **CHAIR:** Okay. We don't want you to be uncomfortable.
32 Ms Janes.

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35

1 **ERNEST GARTH YOUNG**
2 **CROSS-EXAMINED BY MS JANES**

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Q. Good morning, Mr Young, and please feel free to take a sip of water at any time and I'll do the same.

A. Thank you, good morning.

Q. I will start where almost your counsel left off in terms of looking at the principles because they do seem to frame what happens within the historical claims framework. So, if we just look at your document which records what was agreed on the 3rd of June 2010.

Can you just go through each of those principles and just summarise that they pertain before 2010? Were they new in 2010? And do they still apply?

A. They would have yes, the 3rd of June 2010 - -I'll slow -down - wasn't a date in which these all of a sudden- appears and guided our work. I think from 2006 onwards, when we were thinking about the kind of redress process that we hoped for and envisaged, that would have encompassed many, if not all, of those principles. I think it was, as I said earlier, I think just a moment in time when we took the opportunity to document those.

And I believe they largely still underpin the work that we've been doing in recent years and currently.

Q. So, just to clarify, is there anything in any of those six points that was new at that point or that you would say had not pertained prior to this timeframe?

A. I don't think anything new. The extent obviously to which they may have applied in individual claims may have varied, and Mr Wiffin's claim perhaps is a good example where those principles or all of them didn't necessarily apply. But, no, they would have yeah-, I don't think there was anything new.

1 Again, reflecting on the first one, "driven by principles
2 of natural justice", I think if there's anything that has
3 changed in more recent years, it is if by natural justice
4 you mean providing the opportunity of the alleged
5 perpetrator to have their say, I think as has been said
6 previously, that's not something which is routinely done.

7 **COMMISSIONER ERUETI:** Can I check something briefly
8 please, Ms Janes?

9 In relation to these principles, were you just saying
10 before that they evolved out of the earlier discussions that
11 were had about the foundations of the HCT process from 2006?

12 A. 2006 -it sounds very loud was, I suppose, the time period
13 when we first began thinking about how best to get redress
14 for claimants. I suppose,- that thinking evolved over the
15 next probably 2 years or thereabouts.

16 But I think it's fair to say though that if it wasn't
17 explicit, that the approach that we were hoping to take had
18 within it those certainly- some if not most of those
19 principles. They perhaps weren't well articulated, I guess
20 is what I'm saying, at an early stage.

21 **MS JANES:**

22 Q. And if we can just go to the other document you were shown,
23 MSC405. You've mentioned that this is likely the Legal
24 Services formulation of principles but, as a general
25 approach, is there anything there that you would think the
26 Historical Claims Team did not endorse or would deviate
27 from?

28 A. I guess number 2, practice failures, that was clearly
29 something that was in our realm to make an assessment of.

30 Q. And would the same apply to 4?

31 A. Well, I suppose, as I indicated earlier, certainly that
32 would go to looking at other allegations of a similar nature
33 or allegations against the same named person. So, yeah, if
34 you took that example, if you like, as applying to 4, it
35 would.

1 The main difference though obviously is in the way number
2 1 has been framed, as opposed to the principles that I
3 drafted.

4 Q. And just in terms of training and how these clearly, your 3
5 June 2010 principles were agreed but how were they then
6 promulgated? How was training undertaken? How was it
7 ensured that they were actually -cross-fertilised- across
8 the staff and team groups?

9 A. One of the things to be aware of is, at that stage the
10 Historic Claims Team was really rather small. There was
11 myself as the manager, and I can't recall exactly that
12 timeframe, but the team never got beyond 12 or 13 senior
13 social work advisers, and so I suspect in 2010 there would
14 have even been less than that.

15 Those principles would have come from the team, so they
16 would have been very much involved in discussing them and
17 coming up with them. I guess, I merely held the pen, to
18 some extent.

19 So, they were and- I think, as I said earlier, they
20 reflected, I think, the approach that we had been taking
21 prior to that and so, they were very much in the, dare I say
22 it, the DNA, I suppose, of the senior social work advisers.

23 So, there wasn't any specific training, if you like, as
24 in terms of the, you know, courses or workshops.

25 I guess, yeah, the team at that stage was quite a small
26 unit. We worked very closely together. I saw every
27 assessment of a claim and so had visibility of the work
28 across the team. I guess, that was one way of, I guess,
29 ensuring that those principles were followed to the extent
30 that they could be.

31 Q. Can I just clarify, at what point did the team grow so that
32 you didn't have visibility over every claim?

33 A. I guess, there's two parts to that. Firstly, the change in
34 my role. So, I think 2013 I moved away from managing the
35 team. So, from that point I didn't have the same

1 responsibilities and oversight of individual claims. But it
2 wasn't until late 2018 that the team increased in size from,
3 yeah, around 12 or 13 senior advisers to the much larger
4 team that it is today.

5 Q. So, would it be fair to say that you were probably the
6 quality control or the consistency Panel in those early
7 years?

8 A. For a period of time, yes.

9 Q. And just going to the two-step process that again your
10 counsel has asked you about, I will just quickly round that
11 out before we move on.

12 So, if we could look, please, at MSC ending in 363. Mr
13 Young, just to orientate you as it comes up, it is an
14 internal MSD email from 3 November 2017. You will see there
15 quite a range of recipients, one of them being yourself?
16 You are cc'd in?

17 A. Yes, I can see that.

18 Q. Okay. And if I can it's- talking about assessment involving
19 staff members?

20 A. Mmmm-.

21 Q. So, if it we can call out the paragraphs, please?

22 A. As in you're wanting me to read the highlighted ones?

23 Sorry.

24 Q. This is setting out how you would manage allegations
25 involving past staff members and Andrew Little, who is the
26 author, has set out. So, yes, if you could please just read
27 through that, that would be helpful, just the highlighted.

28 A. The highlighted sections. "Firstly, request claims
29 resolution has previously accepted claims against a staff
30 member this forms a key part of the rationale for except any
31 findings. What I am looking for at this point is a summary
32 of past allegations and findings and information clearly
33 showing that it's reasonable to accept based on similar type
34 of allegations and accepted behaviour.

1 If you're considering making findings against staff when
2 we have not previously accepted then the nature to the
3 information and analysis being presented in the case
4 assessment is somewhat different.

5 Let's start first with allegations of physical
6 abuse/assault. I'm interested in previous allegations (the
7 nature and detail of these) plus the culture of the
8 institution at that time. You'll also consider any staff
9 files and other information that may be relevant.

10 Sexual abuse assault allegations are somewhat different
11 in nature as this behaviour is much more hidden. Again, if
12 we have not previously accepted against this staff member
13 you will be considering previous allegations (the number and
14 detailed nature of these). You will then consider the
15 current allegations and whether they have similarities or
16 differences. The detail is important in building your
17 analysis. If we don't have significant supporting
18 information (for example Police convictions, staff
19 discipline or dismissal) then it comes down to a judgement
20 call based on the weight of previous information we have
21 plus the current allegations. In these situations the
22 adviser and I will discuss, and we'll then bring together a
23 meeting to talk through what is known and make a finding.
24 Garth and legal will also be invited to participate. The
25 decision-making- for any findings continues to sit with the
26 adviser and manager in these situations.

27 If allegations are in respect of current staff then
28 obviously we have a whole other level of process involving
29 OT or NGOs".

30 Q. So, very consistent with your evidence about the number of
31 resources that should be accessed, investigated, researched?

32 A. Yes.

33 Q. Would you agree with that?

34 A. Yes.

1 Q. And that there is a distinction between where there is a
2 known previous allegation, whether or not it involved that
3 claimant, versus where it's the first allegation against a
4 potential abuser?

5 A. Agreed.

6 Q. Can we quickly look at MSC370 and this is a 9 April 2019
7 internal memorandum to the leadership team. Just quickly
8 checking, are you on the leadership team?

9 A. No, I'm not, no.

10 Q. And this is written by your colleague, Ms Hrstich-Meyer and
11 Rupert Ablett---Hampson, who was the Chief Legal Adviser at
12 the time.

13 If I can take you to page 5, paragraph 20, this talks
14 about a refinement to the process that has been made. So,
15 just to give your voice a rest, we can maybe tag team, "This
16 refinement has led to the decision that for serious
17 allegations of abuse we will still require information to
18 support the allegation (rather than starting from a point of
19 belief). This means that there is an additional level of
20 checking the records for elements of some claims. These
21 changes do not substantially impact on the time it takes to
22 assess a claim."

23 Just briefly, would you agree with that?

24 A. Any particular part of it or as a whole?

25 Q. Just that extra checking is not going to impact on the time
26 it takes to assess the claim?

27 A. I guess, if you're thinking about the overall time it takes
28 to assess a claim, then assuming there are the claim
29 includes allegations of a serious nature that do require a
30 step 2 analysis, then -that yeah-, that's always going to
31 kind of, obviously, take time. So, I'm not quite sure what
32 that sentence "these changes do not substantially impact on
33 the time it takes to assess a claim", I'm not entirely sure
34 whether that's suggesting, yeah, what it's comparing it
35 with, if you like.

1 Q. And then goes on to say, "We are also asking that all
2 claimants sign a Settlement Deed confirming that the payment
3 is in full and final settlement, rather than making an ex
4 gratia payment to them meaning that claimants can no longer
5 make multiple claims."

6 And just stopping there, can you confirm that there has
7 been a change within MSD away from ex gratia payments to
8 settlement debts?

9 A. That's correct, yes.

10 Q. And are you aware of the reason for that change?

11 A. It's not a decision that I was involved in discussing or
12 making but I guess my understanding is that it provides some
13 finality to the matter and provides some, I suppose,
14 protection for the Crown.

15 It was interesting though, again reflecting back and it's
16 not necessarily a contributing reason to this obviously, in
17 the earlier days where Cooper Legal brought claims but the
18 proceedings weren't filed, they asked that a Deed of
19 Settlement be entered into for those matters because they
20 said it provided that sense of finality for their clients.

21 But, yes, I guess, yeah, that would be my understanding,
22 that it was a means of bringing finality to the matter.

23 Q. And then it goes on to say, "We are talking with claimants
24 about these changes to ensure that they understand this and
25 checking they have shared all their concerns before
26 completing the assessment of their claim".

27 We've heard evidence that it can take 22 years for
28 somebody to actually start disclosing trauma and then we've
29 also heard evidence that it can be incremental. So, a
30 claimant may start with a particular range of experiences or
31 residence, and then as they become able to, to process and
32 live with that, they move on.

33 So, what is the process MSD goes through to ensure that
34 there is the opportunity for that full disclosure before a
35 full and final settlement?

1 A. It can vary obviously and depending on how the claimant
2 approaches us. For those who are represented by a lawyer,
3 so we receive either a written Statement of Claim or another
4 document that sets out the basis of their claim, I guess we
5 take it as read that the client has had sufficient
6 opportunity to talk with their lawyer over whatever period
7 of time is necessary and helpful for them to get to the
8 point where, I guess, they feel they have made a full
9 disclosure and that's documented and passed on to us.

10 For people who approach us directly, I guess it's kind of
11 a staged process really. The majority of contacts are made
12 by telephone, so that's an opportunity for whoever they're
13 speaking to from the team to talk with them about the
14 process, give them an overview of it, to get a little
15 understanding of the nature of the claim that they might be
16 bringing to us, without going into any amount of detail.
17 And, again, some people will be more discursive than others
18 but it's really that first opportunity to make contact.

19 And, I guess, from that point on, and they will be
20 invited to meet with us in person, if that's what they want
21 to do. So, I guess, that's the first opportunity for a
22 person to perhaps begin doing some further thinking about
23 the reasons that they have come to us. They've obviously
24 got to that point where they feel able to disclose
25 something. The meeting itself, will occur at a later stage,
26 and again there will be some contact with the person prior
27 to that and the nature of those conversations is likely to
28 be around the purpose of the meeting and encouraging and
29 enabling the person to think about what it is that they want
30 to talk about at that meeting, whether or not they want to
31 bring any material that they may want to. The meeting
32 itself will hopefully be conducted in a way that the person
33 feels able to be as open as they are able to, given the
34 circumstances.

1 And again I think, certainly in my experience, one of the
2 concluding comments, if you like, from that meeting would be
3 this may well have brought up or bring up in the following
4 hours or days or weeks other memories, other issues for them
5 and so essentially there's an open invitation for them to
6 get in touch with us if there's a need to and if there's
7 anything that they have remembered that they want to add to
8 their account.

9 And I know the team that has that direct contact with
10 claimants will also talk with the person about whether or
11 not they want some regular contact to check in with them to
12 see how they're doing. And if they do, then again that
13 provides an opportunity for anything further to that- they
14 may have recalled or remembered, to come up.

15 I guess, the final point then is at the stage where their
16 claim is due to be assessed, then again they should be
17 contacted to just check out that the information that we've
18 got, the specific allegations that they've made or the
19 specific concerns that they've expressed to us over that
20 period of time, are a full account essentially of what they
21 want us to consider.

22 Q. Thank you. And it is turning to that assessment process now
23 that we'll have a look at.

24 So, at paragraph 4.5 of your brief, you recognised that
25 records are not determinative whether abuse did or didn't
26 occur. And you also made the acknowledgment in Keith
27 Wiffin's section at paragraph 7.14 about the Hamilton boys'
28 Home, just because there was nothing in the record didn't
29 necessarily mean that it didn't occur?

30 A. That's right.

31 Q. And without taking you to the tab, just a couple of points
32 that I think you accepted in your evidence anyway, that we
33 would expect that other incidents occurred, that were not
34 identified and confirmed, were not documented or where

1 records have since gone missing. You wouldn't disagree with
2 that statement?

3 A. No, I wouldn't.

4 Q. And also in MSD2030, "records of genuinely abusive or
5 neglectful care may not be kept" and I take it you wouldn't
6 disagree with that comment?

7 A. Yeah, I mean, one of the challenges obviously is we don't
8 know what may have been documented and not kept, for
9 whatever reason but, yeah, I would - if there are documented
10 concerns of abuse or documented incidents of abuse, then I
11 think it's reasonable to accept that there would be others
12 that haven't been documented or, as I said, may have been
13 documented but have not survived the passage of time.

14 Q. And when Cooper Legal were giving their evidence, they spoke
15 just- for reference, I'm not going to go to it, it's
16 page 606, lines 1213 of Cooper Legal evidence- -they spoke
17 about there being a general destruction of MSD records on
18 two occasions that they were aware of. Are you able to just
19 outline what periods and under what circumstances MSD
20 records have been destroyed?

21 A. I am certainly not a records or archives expert. I know of
22 one occasion, which I'm sure is one of the occasions that
23 Cooper Legal will be referencing, and that was 1999 but I'm
24 not sure of the other, I'm sorry.

25 And, in that instance in 1999, a number of human resource
26 or staff files were destroyed and I provided some evidence I
27 think in the White trial about that. The details or the
28 extent to which our records experts could determine about
29 the basis of that destruction, I simply don't recall the
30 details of that. But, yeah, there's no doubt that there was
31 certainly a number of records that were destroyed.

32 Q. And, as you recall, you did give evidence about that in the
33 White trial?

34 A. (Nods).

1 Q. I don't think we need to go to that but for the transcript,
2 it's MSC555, paragraphs 14 and 30-31.

3 Mr Young, I don't know if you saw a recent article by
4 Aaron Smale in the Newsroom on the 16th of October?

5 A. I did, yes.

6 Q. I just wanted to put something that he had raised to you and
7 allow you to comment. He's talking about the brief of
8 evidence that you gave in the White trial. He quotes you as
9 saying, "I would expect there to be a staff or personnel
10 file for each permanent Child Welfare or Department of
11 Social Welfare staff member that would confirm their date of
12 appointment to various positions and whether or not they
13 were subject to any performance or disciplinary matters.
14 Such files for some ex-staff relevant to those proceedings",
15 being the White proceedings "have been readily found.
16 Whereas, there is no trace of such files for other staff
17 members from similar time periods and locations. I
18 understand that in October 1999 when CYF became a department
19 in its own right, many- of the old closed records were
20 retained in the custody and control of the parent
21 organisation, the Ministry of Social Development. Some of
22 these files, including old human resource personnel staff
23 files, were subsequently destroyed. Of the 28 staff members
24 named by the plaintiffs or by the similar fact witnesses,
25 personnel files can be found for only 6 of them".

26 What comment would you make about, firstly, the
27 destruction of the files, the availability of files, and
28 then only 6 of 28 staff files being able to be located in
29 White?

30 A. That's obviously, certainly to the best of my recollection,
31 an accurate and verbatim account of my affidavit.

32 I don't recall whether Mr Smale, I guess what he was
33 suggesting was that there was some deliberate destruction of
34 records perhaps and I don't, -yeah, with perhaps the thought
35 that they might be incriminating. And I guess the only

1 comment I have to say about that is, well, I obviously don't
2 know. I don't know the basis on which they were destroyed.
3 One would like to think that they were destroyed in line
4 with the archives legislation but whether that's the case or
5 not, I simply don't know.

6 Whether there was any other purpose or reason for them
7 being destroyed, again I just simply don't know.

8 What I do know though, is that it presents us all with an
9 additional challenge when there aren't records available.
10 Whether that's staff records or records of any sort that we
11 might expect to find.

12 Q. Given that 22 out of the 28 staff files were not available,
13 going back to your spreadsheet where you say "against the
14 name of each alleged perpetrator information is recorded",
15 before destruction of files, for whatever reason, how can
16 one be certain that that information has been captured on
17 the MSD spreadsheet and available for use in assessing
18 claims?

19 A. Well, we simply can't because we started collecting that
20 information after 1999, so after those - -so, that was
21 information that our team was collecting and so, any files
22 obviously that had been destroyed prior to that, you know,
23 obviously weren't accessible and available to us.

24 So, any information that might have been on them that
25 was, you know, relevant to a claim has simply been lost.
26 There's no finer point on it than that.

27 Q. And so, the Royal Commission has a moratorium destruction of
28 records but between 1999 and the moratorium I think in
29 2018/2019, Simon will know, what steps were taken to ensure
30 that the spreadsheet on alleged perpetrators was as up
31 to- -date as it could possibly be before any destruction or
32 other dealing with files occurred?

33 A. I don't know if I could make a link, if you like, between
34 the spreadsheet or the records that we were keeping and any
35 files being destroyed. What I do know though, is that,

1 again in those early days I think we probably would have had
2 meetings with our records staff, certainly in 2006, about
3 the absolute need to have records available for us, whether
4 those records were held by us or by Archives New Zealand.
5 And we also had meetings with Archives New Zealand at
6 various times.

7 And so, I couldn't say whether it was documented but
8 there was certainly a very clear understanding that any
9 records such as institutional records, staff records and the
10 like, needed to be readily available for subsequent claims.
11 And so, there certainly shouldn't have been any destruction
12 of those kinds of records. Whether there was or not, I
13 honestly can't say but I would be surprised and very
14 disappointed if there were any - if there was any subsequent
15 destruction, certainly after that sort of 2006 period of
16 time-.

17 Q. Thank you. And just as my colleague is bringing up CRL
18 ending in 23479, just to check with you, I'm not going to
19 take you to the document but in a 2007 flowchart I saw that
20 your name was associated with searching for relevant files;
21 would that be correct?

22 A. That's certainly one of the things - well, I may not have
23 done the search,- but I would have had one of my capable
24 admin people do it.

25 Q. Yep. And I also saw your name noted against "witness
26 briefing"?

27 A. As involved in the witness briefing?

28 Q. Yes. This was for filed claims, so it was a flowchart for
29 filed claims.

30 A. Okay.

31 Q. And Legal and Garth and Crown Law were set down as witness
32 briefing?

33 A. Right, that's something I was involved with at times, yes.

34 Q. And also Privacy Act requests, you and your team, not
35 necessarily yourself?

1 A. Yes.

2 Q. And so, on the screen we have, just to orientate you, it is
3 an email. We are now on the right page.

4 This is a draft letter. We don't have the original, so
5 just treat it as a draft. It's dated, I note it's dated
6 16 March but actually, in- paragraph 1 it talks about the
7 12th of March 2007, so I suspect that's just a typographical
8 error.

9 A. I think you're right, yes.

10 Q. So, we'll take that as a typographical error. It is a
11 letter to Cooper Legal and it's in relation to the White v
12 Attorney-General- matter. If we call out paragraph 1, it
13 just talks about, "On 12 March 2007 the Crown Law historical
14 research team located 31 additional boxes of files relating
15 to Hokio Beach School held by New Zealand Archives as part
16 of the ongoing discovery work being undertaken in this
17 case".

18 And the next paragraph, paragraph 3 sorry, it talks about
19 there having been an instruction in 2005 for archives to
20 find the full list in relation to Hokio and Epuni.

21 And if you can just go down onto the next page, there is
22 reference to 407 Hokio, right down the bottom, it shows a
23 total of 407 Hokio related files, over the page of which 90
24 may be relevant to White, and 710, it goes on to say 710
25 Epuni files of which four may be relevant to White.

26 So, really the question is, you made a request in 2005
27 obviously in starting to prepare and provide discovery in
28 the White litigation. Two years later, what occasioned this
29 research which discovered these extra 31 files and what were
30 the circumstances that brought them to light so close to the
31 trial?

32 A. I remember this well, if not every detail. Yeah, I
33 certainly remember the incident.

34 You're correct. As part of preparation for that hearing,
35 and obviously as part of our discovery obligations, we would

1 have carried out searches of two primary databases to
2 identify any files that were potentially relevant.

3 The first is what was called the "TRIM database", which
4 is essentially an index of all of the records held by the
5 Ministry for many, many years past.

6 The other database would have been the Archives
7 New Zealand database, and that will show all those records
8 that Archives New Zealand hold on behalf of the Ministry.
9 And for those discovery purposes, those searches obviously
10 resulted in a number of files being located, and I can't
11 obviously recall the number.

12 I don't know the circumstances under which Crown Law's
13 own research unit carried out a search, whether they had
14 carried out a number of searches or not, I don't know.

15 What I do know though, is that around that date
16 Mr Mathieson I think phoned me, or certainly got in touch
17 with me in some way, to let me know that those, that his
18 office rather, had identified those files. And I recall my
19 reaction being one of anger basically. Yeah, I was just
20 very upset that, for whatever reason, the searches that we
21 had conducted didn't reveal those files. And I'm pretty
22 confident in saying that those records that the Crown did
23 locate weren't available on either the TRIM or the Archives
24 New Zealand databases. That's my recollection. I may be
25 mistaken but, yeah, for whatever reason, they weren't
26 identified. And we subsequently asked our records team to
27 try and identify and understand why that was the case. And
28 I'm sure that was documented in some way and I went
29 searching for it in anticipation of this hearing but I
30 couldn't locate it. But, yeah, I'm not sure that I can give
31 a satisfactory explanation, other than I am confident though
32 that the searches that our team undertook were as
33 comprehensive as possible.

1 Q. And have there been any changes in terms of ensuring access
2 to records so that you actually have the information that
3 you need to be able to assess the claims as they come?

4 A. Yeah, it's my understanding that certainly that particular
5 incident prompted our records team to do a reconciliation,
6 if you like, of records between us and Archives New Zealand.

7 Q. Just turning to you, talk about, in your brief, information
8 from various sources and that that gets inputted into your
9 various databases or repositories so that you can look
10 across all of the information held. So, by way of example,
11 if one goes to the High Court White findings, and if you
12 look at the findings that were made by His Honour in that
13 decision about the physical abuse, there were certainly
14 three people that findings were made against. I won't name
15 them- but we'll call them Mr B, Mr W and Mr C, you'll know
16 who I'm talking about.

17 So, just taking that by way of example, the High Court
18 decision comes out, findings of proven abuse are made, what
19 do you do with that information?

20 A. That information should be cross-referenced- in the records
21 that we have for those three staff members.

22 Q. And we can name Mr Ansell, so similarly it would be
23 recorded, if it was not already recorded, that there was a
24 finding of sexual abuse against him?

25 A. And I think in his case it was already recorded that he'd
26 clearly had convictions for sexual assault.

27 Q. And so, from that point on, going back to the earlier
28 document that we looked at, which talks about taking
29 guidance from what is known, even if it's not against the
30 particular claimant that you're assessing, would it be fair
31 to say that now having got this information recorded it in
32 your database, that when somebody comes to assess a claim
33 that names one of those four people, that information will
34 come to the fore and it will be taken into account?

35 A. That would be my expectation, yes.

1 Q. And what quality control, now that the team is bigger, is
2 there that that actually occurs?

3 A. I guess probably the, I was going to say best example but
4 it's not an example, I guess, the other significant that has
5 happened within the last couple of years, is that we now
6 have a specific database for the Historic Claims Team that
7 doesn't rely on just spreadsheets and files in the name of
8 individuals. They are still kept and they are still helpful
9 but what we do have is a database that collects a pretty
10 vast amount of information. And that includes every
11 allegation that is made in a claim, the name of every person
12 who an allegation is made against and/or a physical
13 description, the location of the allegation, the timeframe.
14 Yeah, so, a variety of bits of information, if you like.
15 And along with that is information about how the assessment
16 of each of those allegations and what the conclusions of
17 that assessment is. So, again, on record if the allegation
18 is accepted for the purposes of settlement, then again, the
19 nature of the abuse, the name of the alleged abuser, if
20 they're named, that kind of information. So, that gives us
21 much better and easier access to a wide range of
22 information.

23 Q. And so, just going back to the White claim because it wasn't
24 just the two plaintiffs, there were also a large number of
25 similar fact witnesses, and you will recall that the Judge
26 actually preferred the evidence of the similar fact
27 witnesses to these particular three physical abusers; do you
28 recall that?

29 A. Yes, yes, yep.

30 Q. And so, it takes us to Mr Keith Wiffin and his claim, in
31 that two of those people, Mr W and Mr C, were also in his
32 allegation. So, the question really is, knowing that in the
33 White trial allegations were proven in relation to the
34 Whites, it was accepted from a large number of other similar
35 fact witnesses. So, when Mr Wiffin's case came across the

1 desk, why was it not immediately acknowledged and taken as
2 guidance and at face value, the story taken at face values,
3 as the principles outline, at the very early stage that he
4 made his claim? Why did that not happen for Mr Wiffin?

5 A. I guess that also takes me to my unease about his claim. I
6 simply don't have a good explanation, is the short answer.
7 I do remember, and perhaps there was too much focus at the
8 time on the most serious allegation that Mr Wiffin had made
9 about the sexual assaults by Moncreif-Wright. But I do
10 recall having very mixed feelings about the proposed
11 settlement offer, if you could call it that, that was to be
12 made because, yeah, I, well as I said in my brief, the
13 senior adviser who was looking at his claim, I don't think
14 disputed in any significant way Mr Wiffin's- account but,
15 yeah, for whatever reason, that didn't translate into the
16 settlement offer that should have been made.

17 Q. And you've been taken to the apology letters, we'll come
18 back to Mr Wright because there is a lot to discuss about
19 that case, we'll come back to that case later but just in
20 terms of dashing out to the lunch adjournment, you were
21 shown the apology letters that Mr Wiffin received, and it
22 struck me that while there was a generic apology for abuse,
23 it was unspecified, in that it did not apologise for
24 physical abuse, it did not apologise for sexual abuse, it
25 did not acknowledge the residence. Putting myself in the
26 shoes of a claimant who has gone through, as you've
27 acknowledged, an unsatisfactory process already, which has
28 taken four years plus, can you understand how a claimant
29 receiving a letter like that is disappointed, angry, feels
30 unacknowledged because it doesn't actually specify what is
31 being apologised, and it's not Mr Wiffin who is the only one
32 that the Commission has heard that about, that the
33 importance is that personal acknowledgment of their
34 experience. What would MSD take on board from all of that
35 claimant feedback about what needs to be an apology?

1 A. I guess I find myself in somewhat of a difficult position
2 because I would like to make some comments, I guess, about
3 apologies and apology letters but I don't want that to be
4 seen to be dismissive of the very real concerns that some
5 claimants will have about the apology letters that they
6 receive.

7 I don't know how Mr Wiffin felt about either of those
8 letters.

9 I guess an initial comment I would make, is that we have
10 an ADR process but one of the realities is that we work
11 within some constraints. And some things that either I
12 personally or one of my colleagues might want to include in
13 an apology letter may not necessarily get there.

14 I think there's a danger of us perhaps generalising, and
15 again this is in no way not taking into account or
16 dismissing the concerns of people who do find apology
17 letters templated or impersonal or not addressing their most
18 fundamental concerns. But we also know that other people
19 have found them profoundly meaningful. And, again, it's not
20 necessarily typical but I remember, I think it was the very
21 first claim that I dealt with and we settled, meeting the
22 claimant at Ms Cooper's office at his request, taking the
23 Chief Executive's apology letter to him and he asked me to
24 read it to him, which I did. And I don't want this to sound
25 too emotive but I had tears in my eyes reading that letter
26 to him, and his feedback following that meeting was that was
27 very meaningful for him.

28 So, I guess what I'm saying is, every person will have
29 their own needs and expectations of the entire process
30 really, and an apology is one part of that. And I guess I
31 just don't want that perhaps to be lost and, as I said, I
32 certainly don't want that to be taken that a letter that
33 might be meaningful for one person will come across as
34 templated and impersonal and maybe even dismissive to
35 another.

1 **MS JANES:** We will take the lunch adjournment there.

2 **CHAIR:** Very well. Thank you, Mr Young, we will
3 resume again at 2.15.

4
5

6 **Hearing adjourned at 1.00 p.m. until 2.15 p.m.**

7
8

9 **CHAIR:** Ms Janes.

10 **MS JANES:** Good afternoon, Commissioners.

11 Q. Welcome back, Mr Young.

12 A. Thank you.

13 Q. We were talking before the break about records and how they
14 translated into being captured on the databases and the
15 various other repositories with information that then is, if
16 I can call it, the body of knowledge, which is a term I have
17 also seen in MSD documents. And so, looking at the files
18 and what information was known at various points in time of
19 what was being done with it, if we can look at MSD1056, and
20 just to orientate you, that is a document from 2017 and you
21 are named, along with Ms Hrstich-Meyer, as one of the
22 contacts; can you see that?

23 A. Yes, I do.

24 Q. And going over the page, and this is a report to Minister
25 Tolley?

26 A. That's right.

27 Q. And you'll see in paragraph 1, that the purpose of the
28 report, there was a TV3 The Nation story that aired in
29 September 2017 and it was about historic staff misconduct?

30 A. That's right.

31 Q. And, as we look at this document, just very quickly again
32 providing a bit of context to the document, at paragraph 3
33 it mentions that, "The Ministry is familiar with 17 of the
34 18 staff names listed by Mr Wesley-Smith" and just for

1 information Mr Wesley-Smith was a journalist at that time
2 and had requested information under the OIA?

3 A. He certainly had. Yes, I don't know if the information
4 request was made specifically in relation to this report
5 but, yes, he certainly had, correct.

6 Q. And then going over the page, if we can move through to the
7 actual allegations. So, there's a summary. So, the
8 appendix to this letter records what was known about each of
9 the alleged perpetrators and the points in time of what was
10 known?

11 A. That's correct.

12 Q. And so, we may skip some of them and just focus on a few.

13 A. Mm-Mmm.

14 Q. But just before we do that, when you compiled this
15 information, what were the sources that you went to, to
16 draft this document?

17 A. As I recall, it would have been, I believe, a combination of
18 the files that we had created within our own database, as it
19 were, about any of those individuals. And I'm also pretty
20 well, 100 per cent, confident that I also got our admin team
21 to carry out a file search to bring in any staff files that
22 may have been relevant to the named individuals.

23 And I also recall, I'm pretty sure, a Head Office file.
24 I can't remember the exact title of it but it was something
25 to do with staff discipline. So, I also - and I'm sorry if
26 my memory is a little vague on some of the details but
27 recalling that specific file suggests that I also asked for
28 a search on any files where the title suggested that there
29 might be some information of relevance to any of those
30 individuals or the issue of staff being transferred from one
31 residence to another.

32 Q. Because, in fact, in this particular document, there are
33 references to four alleged perpetrators who had been
34 transferred between residences?

1 A. Certainly three, the details of three confirmed that they
2 were transferred and there was certainly the suggestion of a
3 fourth, yes.

4 Q. And under each heading, you have outlined the residence, the
5 timeframe in which complaints were received, whether there
6 were any Police investigations and convictions and how many
7 claimants, if you've known how many claimants have been
8 settled with.

9 So, for present purposes because we've really got Mr Earl
10 White and Mr Keith Wiffin as exemplars or illustrators if
11 you like, we'll focus on those most pertinent to them.

12 If we look at Michael Ansell at the bottom of that page,
13 we note that on the first occasion, October 1976, three boys
14 were placed at Hokio, they disclosed to the staff that
15 Mr Ansell had sexually abused them. He was interviewed by
16 the Acting Principal on 19 October and his resignation
17 accepted as of that date.

18 So, taking the information there, what would MSD have
19 known at that time and would it have been recorded so it was
20 available for future claims?

21 A. That information, as far as I recall, was documented on his
22 because there was, again I'm pretty sure, a staff file in
23 his name and that information, as I said, I'm pretty
24 confident, was recorded on that particular file.

25 Q. So, in 1976?

26 A. Yes.

27 Q. And then over the page, it carries on about Mr Ansell and it
28 talks again about the six charges in Hokio. And then it
29 talks about the transfers from residence to residence. If I
30 can have you read that out, please?

31 A. "Hokio Beach school was the only Ministry residence where
32 Mr Ansell was employed".

33 Q. And we know that he resigned in 1976 and was not employed
34 again, is that correct?

35 A. To the best of my knowledge, yes.

1 Q. And you have made six payments to six claimants in relation
2 to sexual assaults by Mr Ansell?

3 A. That's correct.

4 Q. I assume the 2017 one of those would include Mr Earl White?

5 A. Yes, it did.

6 Q. Are you able to tell us when the other settlements were made
7 in relation to Mr Ansell?

8 A. No, I can't, I'm afraid, off-hand, no. I would need to -
9 yeah, look at that information to find the answer to that.

10 Q. Could we presume that with the three complaints in 1976,
11 that potentially three of them related to that incident?

12 A. As I recall, I think only one of those victims from that
13 time has made a claim.

14 Q. So, in terms of Mr White and Mr Ansell, in 1976 it was known
15 that there were allegations of abuse and then there was also
16 the conviction in December of that year?

17 A. Yes.

18 Q. So, when Mr White made his allegations in 1999, why was that
19 information not taken into account on the principles of face
20 value, guidance from other cases and application to resolve
21 meritorious claims?

22 A. At the time Mr White made his claim or subsequent to, at
23 some time after that?

24 Q. But if you're saying it was recorded in 1976, in 1999 you
25 would have been able to refer to your database, see that
26 there was at least one conviction for three people?

27 A. Right.

28 Q. Why was that not given some standing and weighed?

29 A. I can't answer why that might not have been done in 1999
30 because I wasn't involved in managing or dealing with claims
31 at that time. So, yeah, I just simply don't know whether
32 that information was sought out or not.

33 When - well, it was even before I became involved with
34 the White case, settlement offers had been made to both
35 Mr Earl White and Mr Paul White and certainly it's my

1 understanding that the settlement offer for Mr Earl White
2 included the fact that he had been assaulted or sexually
3 assaulted by Mr Ansell. So, as far as I'm aware, there was
4 never any question from the Ministry's perspective that that
5 was the case.

6 Q. And, again, as with Mr Wiffin, we will examine in closer
7 detail Mr White's case as well.

8 So, moving down the page, if you could just - you have
9 redacted everything, so I now can't - that's not helpful.

10 So, the next one is also an Epuni Boys' Home document,
11 alleged perpetrator, and there are two complaints of this
12 particular person physically assaulting boys?

13 A. So, this is on page 4?

14 Q. On the same page that we were just on.

15 A. Right, yes, yes, lower in the page.

16 Q. Yes. And, in fact, looking at the information, this is Mr B
17 that we talked about earlier?

18 A. You are correct, I think, yes.

19 Q. Because if we go down to "transfers from residence to
20 residence", it talks about a move from Beck House to Epuni
21 Boys?

22 A. Yes.

23 Q. So you would accept that's Mr B?

24 A. Yes.

25 Q. Do you recall that in 1992, now you weren't there but in
26 1992 a Mr Cutforth wrote a letter to the Human Rights
27 Commission and copied it to Brian Manchester at the then
28 department for Social Welfare?

29 A. Yes, I do, and I think that's the letter that I refer to
30 later in this report.

31 Q. You do absolutely. And in that letter, we can go to it if
32 needed, Mr Cutforth talks about several people that he has
33 concerns about, in terms of conduct within residences and
34 he's bringing to the attention of both the Human Rights
35 Commission and DSW that where allegations are raised, they

1 get transferred, and he's asking that something be done to
2 look like that.

3 And one of the people that he mentioned is Mr B and he's
4 very specific about the concerns about what happened at Beck
5 House and the move to Epuni?

6 A. Mm-Mmm.

7 Q. And we know from the White trial that Mr B was there at the
8 time Mr White was there?

9 A. Yes.

10 Q. So, looking at this, we've got a letter in 1992 from
11 Mr Cutforth which raises concerns about this particular
12 person. We have under "Steps taken in response to
13 complaints", there's a complaint in '78, the Principal
14 interviewed the boy, recommended to the National Office no
15 further action be taken, but would that have been recorded
16 in 1978 that there had been an allegation and that was the
17 recommendation?

18 A. Again, my recollection is that that information was either
19 available in the file for Mr B or in some associated file,
20 yes.

21 Q. And then again in 1979, there's another physical assault
22 recorded, charged with improper conduct under the State
23 Services Act but clear that he remained at Beck House for a
24 further 12 months?

25 A. That's correct.

26 Q. So, again, two things arise out of that. That there are at
27 least two occasions of concern that should be documented on
28 your database against Mr B?

29 A. (Nods).

30 Q. Should have been available to whoever was assessing
31 Mr White's case?

32 A. (Nods).

33 Q. You probably need to say yes?

34 A. Sorry, yes.

- 1 Q. Thank you. And then of additional concern is that there is
2 the transfer and ability to remain in place, somewhere where
3 Mr Cutforth at least thought he was able to perpetuate even
4 more abuse than he had been concerned about; is that also
5 your recollection?
- 6 A. I don't recall the specific details in Mr Cutforth's letter
7 but, clearly, he was concerned about the possibility that
8 staff move from one residence to another, where they had
9 faced complaints, it was obviously a genuine concern for
10 him, absolutely.
- 11 Q. So, when information comes to the MSD organisation, what
12 steps would be in place to communicate that back to the
13 people who may have the ability to check whether Mr B is
14 still employed, had been terminated? How can he remain in
15 place for 12 months to abuse other children?
- 16 A. So, you're talking about what steps might have been taken
17 back then at the time? I don't think I'm qualified to
18 answer that, primarily because I clearly wasn't there at the
19 time, nor involved in National Office. But one would expect
20 that if a complaint of that nature had arisen, I mean
21 clearly in the 1979 instance he had be charged but, for
22 whatever reason, somebody somewhere appears to have made a
23 decision that that didn't warrant him being dismissed, and
24 clearly I can't speak to why that decision may have been
25 made.
- 26 Q. And so, moving on, and payments have been made to a number
27 of claimants but unnamed. Are you aware of how many claims
28 had been received from Epuni at that point?
- 29 A. From Epuni or specifically to do with Mr B?
- 30 Q. Mr B.
- 31 A. No, I'm afraid I couldn't say how many.
- 32 Q. And then if we jump over the page.
- 33 A. Mm-Mmm.
- 34 Q. We're looking at Epuni and Hokio, so at the bottom of that
35 page, in this one under "Details of contemporaneous

1 complaints" there are no formal records available for this
2 particular person but there was a 2009 affidavit sworn in
3 relation to sexual misconduct in 1972. So, because we're
4 having trouble with this document, in that it's redacted and
5 it's therefore not overly easy for us to go through in the
6 way that we had intended, taking that there are 18 alleged
7 perpetrators and each one it refers to a number of
8 allegations and they go back to the very early 70's. The
9 query really is, if that information is captured as it is
10 received at the time that the complaints are made, how and
11 why does that body of knowledge not get used in the
12 assessments balanced against those principles of taking it
13 at face value, guidance from previous cases, and the fact
14 that particularly where it's sexual abuse, it's unlikely to
15 be recorded and, therefore, more difficult for the claimant
16 to prove or disprove?

17 A. Any of the information that I've collected for the purposes
18 of this report should be available to anybody who's
19 assessing a claim in respect of one of these individuals.
20 Now, I can't say that in every single instance because I
21 certainly haven't been over every single claim, but one
22 would expect that, as I said, the information that I have
23 obtained for this report would be and should be available
24 and should be accessed for an assessment of any claim.

25 Q. And if I may be indulged, and people will take me at my
26 word, if we can jump to page 9 and it's obviously for the
27 Crown and the witness to provide the full document, but we -
28 this is unredacted so we don't need to take anyone at their
29 word. Thank you, excellent.

30 So, again, for Mr Wiffin's case we have what was recorded
31 for Mr Moncreif-Wright and we have him at Hamilton Boys'
32 Home from May 1969 to 1970, Epuni Boys' Home 1970 to 1972.
33 If you could just read through that particular entry for us,
34 thank you?

35 A. The details of contemporaneous complaints?

1 Q. The whole document.

2 A. The whole thing, sorry, okay. "Alan Moncreif-Wright,
3 residences employed at, attendant Hamilton Boys' Home May
4 1969 to November 1970. House Master, Epuni Boys' Home
5 November 1970 to 22 January 1972.

6 Details of contemporaneous complaints and steps taken in
7 response to complaints.

8 A staff file exists for Mr Moncreif-Wright. There is no
9 information on it that suggests any allegations were made
10 about him while at Hamilton Boys' Home or Epuni.

11 At some point early in 1972 he was interviewed by the
12 Police in relation to alleged sexual assault of boys at
13 Epuni. There is no record of this on his file, although an
14 ex-Assistant Manager of Epuni recalls that Moncreif-Wright
15 did not return to Epuni following that interview. He was
16 not employed by the Ministry again.

17 In February 1972 he was convicted on two charges of
18 attempted indecent assault on a boy and three charges of
19 indecently assaulting a boy under 16 years.

20 In July 2011 he was convicted on further charges in
21 relation to three other victims from his employment at
22 Epuni.

23 Transfers from residence to residence.

24 The records provide no confirmation of this one way or
25 the other".

26 Q. And so, again in 1972, there would have been conviction
27 entered on the MSD database?

28 A. Two points. I don't know that there was such a database in
29 1972. And I guess the second point is that, given that a
30 staff file did exist for him and there was nothing on it
31 either about the allegations that were made on his
32 conviction, would suggest that, for some reason again which
33 I can't comment on, that information either didn't make its
34 way to the National Office or to whoever was managing that
35 file, or if it did, it obviously wasn't recorded.

1 Q. And so just in this particular entry, it talks about a staff
2 file exists for Mr Moncreif-Wright. When Crown Law wrote to
3 Cooper Legal about Keith Wiffin's case in 2009, would they
4 have checked with you whether a staff file existed or not?

5 A. Look, I honestly don't recall but I would have assumed that
6 in any of the preparations for his claim up to that point,
7 that they would have asked us if we did have such a file
8 but, again, I would need to check the records to see if that
9 was in fact the case.

10 Q. Because in this document, you've clearly recorded a staff
11 file exists but in a letter from Crown Law to Cooper Legal
12 on the 1st of April 2009, and Madam Registrar if you can
13 work your magic. This is just to orientate you to the
14 document, it is a Crown Law letter, 1 April 2009, it's MSC
15 ending in 634. It's attaching Alan Moncreif-Wright's
16 conviction records. If we can go to the second page and at
17 paragraph 8 you will see there, you will see in paragraph 8
18 that "At this stage the Ministry has been unable to locate
19 any relevant staff records for Mr Wright" and for three
20 other people "although further searching of archives is
21 continuing". So, clearly there appears to be a breakdown of
22 location of records on fairly significant cases,
23 particularly those in filed cases. Are you able to explain
24 where that staff file might have been in the interim and why
25 it was not available in 2009?

26 A. I can't give any absolute answer or explanation. Our TRIM,
27 the database that indexes all our records would show the
28 time and date at which that entry had been recorded on TRIM.
29 It's always possible that files that have been - physical
30 files that have been lurking around in an office may not
31 have been entered on TRIM and when they are located, they
32 are. So, the entry on TRIM may well post-date the creation
33 of that record.

34 **CHAIR:** Can you just remind us, sorry to interrupt,
35 just remind us when the TRIM system was setup?

1 A. Oh, golly, I have seen it mentioned in documents somewhere
2 but -

3 **CHAIR:** Did you set it up?

4 A. No, no.

5 **CHAIR:** It was there before you came?

6 A. Yes, it's been setup by the records people in the Ministry.
7 I would be tempted to say maybe the '80s or early '90s but
8 I'm guessing.

9 **CHAIR:** Thank you but it certainly predated your
10 arrival?

11 A. Certainly my arrival in historic claims, yes.

12 **CHAIR:** Thank you.

13 A. Sorry, so a possible but I don't think a likely explanation
14 is a physical file may have existed but hadn't been entered
15 on TRIM. Again, my suspicion though is that the entry had
16 been on TRIM all along.

17 Another possible reason is that there was an error in the
18 search and that the search wasn't done well. But, beyond
19 that, yeah, I can't explain, I'm sorry.

20 **MS JANES:**

21 Q. And without going back to the document which was causing us
22 some problems, on my account of those alleged perpetrators,
23 there were seven of the 18 that involved Epuni?

24 A. I would need to count but I'll take your word for it.

25 Q. We can go back and count if you like but, yes dash?

26 A. Yes.

27 Q. I've counted seven, if you'll take my word for it for the
28 moment?

29 A. I will.

30 Q. And Hokio there were four?

31 A. Again, I'll take your word for it.

32 Q. And, in terms of the number of payments, really what
33 I'm - the point I'm propositioning to put to you is payments
34 for Epuni, there had been at least 26 because there were
35 some of those seven that were not quantified and for Hokio

1 there had been at least 16. So, again, in terms of the body
2 of knowledge of what was known to MSD, the number of claims
3 that you had assessed as being meritorious and settled, what
4 comment would you make about those numbers from those
5 institutions? So, 26 at least from Epuni and 16 at least
6 from Hokio.

7 A. Well, I guess an obvious comment is that, one is too many,
8 as in one instance of abuse is too many. But I guess we
9 knew from a reasonably early stage that there were three
10 institutions that stood out, if you like, certainly in the
11 number of claims that were being lodged in relation to them.
12 Two of those were Hokio and Epuni and the other being
13 Kohitere Boys' Training Centre.

14 So, it's not an unpleasant surprise that there were that
15 many, and there will of course be more in relation to, well,
16 both since this report was written but also likely in
17 relation to other matters in relation to both of those
18 places.

19 Q. You gave evidence this morning when we looked at the
20 document that your counsel took you to in August 2006 and
21 you talked about MSD undertaking an investigation of those
22 who might be current employees. But when you actually look
23 at the allegations in the Cooper Legal DSW Culture and Abuse
24 Paper, there were 200 allegations against 235, and albeit
25 you didn't know who the claimants were, it did set out the
26 residences?

27 A. Yes, it did.

28 Q. It did set out the number of alleged perpetrators in each
29 residence?

30 A. It did.

31 Q. And it set out the nature of the claims?

32 A. That's right.

33 Q. And it set out the time periods?

34 A. Yes.

1 Q. So, if you were able to investigate because you are a
2 Historical Claims Unit, you looked at who might be the
3 current perpetrators but what did MSD do to take that body
4 of knowledge and investigate the timeframes for those
5 particularly problematic residences, the common perpetrators
6 and the common timeframes? Did you see that as an
7 obligation that you had to actively seek out victims of
8 abuse and provide redress or was it very much let's wait and
9 see if they come forward?

10 A. We'd already obviously had, by that stage, a number of
11 people coming forward and indications that many more would.
12 I can't say it is directly in response to that document, but
13 I recall perhaps on a couple of occasions over time talking
14 about whether we should, whether that was an obligation or
15 not, approach potential victims and potential claimants.
16 And I think that was - one of those discussions, as I
17 recall, was in relation to the named victims in Mr Ansell's
18 convictions.

19 And my general recall of those discussions included
20 considerations around what I guess on the one hand
21 obligation we may have had, and I am not sure whether any
22 definite obligation was ever established, balanced again
23 knocking on somebody's door, so to speak, 30 or 40 years
24 after the fact and raising the issue again of them being a
25 victim or a potential victim and the issue of whether or
26 not, you know, that should be acknowledged in some way.

27 So, no, I don't, beyond those considerations, we didn't
28 take, I suppose what could be said a proactive approach to
29 searching out claimants or potential claimants.

30 Q. Would you agree, without going and knocking on doors, which
31 is fraught, but there are other ways that one could reach
32 out? So, if you take your three - just for clarity, which
33 are the three you've called your problem residences?

1 A. Well, they certainly were at that stage, I'm not sure
2 whether they still are the three stand outs, but they were
3 Kohitere, Hokio Beach School and Epuni Boys' Home.

4 Q. And so, given what you knew about those way back then, could
5 proactive but short of knocking on doors, so something on
6 the website calling for people who may have experiences of
7 those residences that they wish to share with the Ministry,
8 was there ever any thought to being proactive about trying
9 to at least invite engagement from those victims?

10 A. Again, I think there were occasional conversations of that
11 nature and I guess there are a number of things that either
12 I personally or as a Ministry we can look back on with
13 hindsight and think we could have done or should have done,
14 and that is a reasonable suggestion, to be fair.

15 I think, and again it's no excuse but I think in the
16 context certainly in those early days of a very small team,
17 still a somewhat unclear mandate of what our respective role
18 might be, and the constraints of an unknown budget, I'm sure
19 they factored into, you know, could we, should we, take
20 those proactive steps?

21 But, in any event, we haven't. I mean, in subsequent
22 years there was obviously some media attention and focus on
23 claims. So, there was, I guess, a slight raising of public
24 awareness but beyond that, yeah, I guess that's the extent
25 of public awareness programmes, if you like.

26 Q. And just quickly going to MSD2374, or is that the one we
27 just had? Is that the same one? Thank you.

28 You also wrote another report in relation to that TV3 The
29 Nation and I just want to have a quick look at, again, Alan
30 Moncreif-Wright. So, just again to orient, if we went to
31 the very end we would see your name as the author, so we
32 will get to the very end shortly but we'll stay on page 1
33 with Alan Moncreif-Wright. And this really just provides
34 some further information but it does say that he was

1 subsequently charged, if you carry on down. That's the one,
2 yep.

3 A. "In July 2011 he was convicted and sentenced on further
4 charges in relation to 3 other victims from his employment
5 at Epuni."

6 Q. And just to clarify, one of those was Mr Wiffin?

7 A. That's correct. "In a 2007 interview of Maurice Howe, the
8 manager of Epuni at the time of Moncreif-Wright's
9 employment, he said that, "I seem to suspect there may have
10 been something happen there so he was transferred to us at
11 Epuni". He could recall no other details.

12 An historic claimant who met with CLAS in March 2013
13 disclosed that he was sexually assaulted by a Mr Ian Wright
14 while at Hamilton Boys' Home. Although the name is slightly
15 different, the claimant was in the home at the time
16 Moncreif-Wright was employed there, so it is almost certain
17 he was the offender and for the purpose of the claim that
18 was accepted".

19 Q. Two points arise out of that, Mr Young. One is in 2007,
20 which was contemporaneous with Keith Wiffin's claim, there
21 was this interview with Mr Howe, the manager of Epuni and
22 the suspicion aspect.

23 So, again, why was that not taken into account for
24 Mr Wiffin because you now have 1979 and 2007?

25 A. I think as - sorry, I think as I talked about before lunch,
26 if it had been wholly my decision, that would have been
27 taken into account for Mr Wiffin.

28 Q. And just going to the CLAS, the next section, clearly there
29 is another claimant who has made similar allegations but
30 this time at Hamilton Boys' Home?

31 A. Yes.

32 Q. Abuse by Moncreif-Wright and the claim was accepted. So,
33 why was that similar meritorious category not extended to
34 Mr Wiffin because you've got contemporaneous -

1 A. I guess, for the reason - well, that claim obviously came
2 some years after Mr Wiffin's claim and obviously, by that
3 stage we knew more about Moncreif-Wright than we did a few
4 years earlier and we'd obviously also made a payment,
5 somewhat belatedly, to Mr Wiffin and possibly others, I
6 can't recall.

7 Q. I was going to say when we talk about Mr Wiffin's case, but
8 it seems more appropriate now. You said this morning in
9 your evidence that in 2009 the senior social worker had
10 recommended that he was of the view that the allegations
11 Mr Wiffin made were to be accepted?

12 A. I don't know that she made that recommendation as such, but
13 I certainly recall that her view was that the abuse was
14 likely to - yeah, likely occurred as Mr Wiffin described,
15 yes.

16 Q. And, at that stage in 2009, were you still effectively the
17 quality assessor manager?

18 A. Yes, I was the manager of the team, yes.

19 Q. So, you say if the case had come to you, you would have
20 approved it immediately, so what went wrong?

21 A. By that stage, if my recollection is correct, Mr Wiffin's
22 claim because it was a filed proceeding and I think to some
23 extent was proceeding down the trial track, I may be
24 incorrect but there was certainly some involvement in the
25 claim by our legal team and by Crown Law. And one of those,
26 you know, one of the, I suppose, final discussions about his
27 claim is reflected in the Crown Law letter to Mr Wiffin.
28 And I think if I'm brutally honest, the legal impediments
29 got in the way of my or our team's moral judgement and
30 acceptance of Mr Wiffin's claim. And, yeah, I think that's
31 - and I hold myself certainly partly responsible for not
32 being perhaps more assertive about, yeah, taking a different
33 approach and settling the claim on the basis that he was
34 assaulted.

1 Q. Can you tease out for me because it is an interesting point,
2 about how assertive MSD believes it could or should be in
3 these claims? You've talked about the expertise of social
4 workers and that they are the ones that assess and made
5 recommendations but what happens then? Where is the level
6 of authority or responsibility or ability to be assertive?

7 A. It's perhaps helpful to think about, and again this is no
8 justification, but helpful to think about the context.
9 Mr Wiffin's claim, like the claims of the White brothers,
10 occurred in the earlier stages of the Historic Claims Team
11 and the earlier stages of the ADR process and they were
12 still being managed, to some extent, within that litigation
13 framework. And so, there was, to some degree, greater or
14 lesser, a legal lens placed over those claims and that was
15 quite, I suppose, separate to any assessment that we, as the
16 social work advisers, might have made about practice issues
17 or information that may go to the facts of a claim.

18 And, in some respects, I guess in those earlier days, my
19 team, particularly for those filed proceedings, were
20 something of advisers to the legal team and, yeah, in
21 providing social work advice I guess essentially and making
22 some inquiries/investigations about factual matters to do
23 with the claim.

24 Having said that, my social workers were not backwards in
25 coming forward and they would very clearly express, I guess,
26 their views about certainly any practice issues or issues
27 around allegations of abuse.

28 But I think certainly in more recent years though, as our
29 ADR process became much better embedded, then, if you like,
30 the legal team became advisers to us and we, I guess, were
31 more separated from our litigation focus. And, in those
32 instances, I was going to say what we said went but I don't
33 quite mean it as absolute as that but, yeah, we were the
34 primary inquirers/assessors of a claim in those. And for
35 claims that came to us directly, didn't necessarily have any

1 involvement with our legal team at all. For those
2 proceedings that were filed, then we had an obligation to
3 get some advice from our legal colleagues. So, there might,
4 on occasion, be discussions and debates between the social
5 workers and the lawyers about particular issues or
6 potentially about quantum but ultimately, yeah, I'm just
7 trying to think if there were any examples where we just
8 couldn't agree and it had to be escalated, and I can't off
9 the top of my head.

10 I think answering your question about how assertive
11 social workers were, I would say quite assertive.

12 Q. So, if I just take three examples. I take it, sexual abuse
13 is absolutely never a practice of any day?

14 A. No, absolutely not, no, no.

15 Q. And I take it that physical assault that results in injury
16 is not - never a practice of the day?

17 A. No.

18 Q. And in terms of social workers, what would your advice be
19 about the no narking culture?

20 A. I am not sure what our advice would be, other than
21 understanding that that was a feature, I guess, of many
22 institutions and hierarchies really.

23 Q. But was it acceptable, in terms of what the practice of the
24 day was?

25 A. I don't think you can say that no narking was - it's just
26 something that was.

27 Q. It's a culture?

28 A. Yes, it's a culture, not a practice. Yeah, it's something
29 you can't make a practice decision, if you like, about. It
30 was just something, as you say, a culture.

31 Q. And then if we look at secure, which we saw yesterday right
32 from the 1957 Field Manual, automatic. So, we're not saying
33 the use of secure is never permitted but automatic is
34 certainly contrary to the Field Manual, and that would be
35 social work advice to the legal team?

1 A. That's right.

2 Q. And then if we can go to MSD2007, and again as that's coming
3 up, this is March 2006 CYF report to the Associate Minister
4 of Social Development. And if we can move over the page,
5 please, he might see whoever wrote this got a gold star from
6 the Minister.

7 A. It clearly wasn't me.

8 Q. Had it been you, you would have got a gold star. So,
9 orientating ourselves on page 3, it talks about you had the
10 Cooper Legal Culture of Abuse paper, it sets out the
11 allegations, 235 alleged perpetrators, you've confirmed that
12 eight and possibly 12 of those staff are still employed.
13 And if we can go to the next one, it talks about you
14 interviewing the staff, it was the one we skipped over.

15 So, on this particular page, in this report 1b, details
16 approximately 500 potential claims?

17 A. That's correct.

18 Q. Do you see that?

19 A. Yes.

20 Q. And so, there was quite a number of claims that the
21 Department was aware were coming their way and likely more
22 expected?

23 A. That's correct.

24 Q. And if we go down to the "Current Claim", paragraph 7, it
25 talks about the fact that it's the White trial, complexities
26 but significant expense, along with legal and media risk; do
27 you see that?

28 A. I do, yes.

29 Q. Was that something, were there discussions with MSD and
30 Crown Law about the risks involved in terms of cost,
31 publicity, likely greater number of claims depending on the
32 outcome?

33 A. Yeah, at that stage I'm pretty sure I wasn't involved in any
34 of those - assuming there were such discussions, I wasn't

1 involved in any. But one would imagine there would have
2 been some kind of discussions between Crown Law and us, yes.

3 Q. And if we go to page 3, paragraphs 2-3, that's all right.
4 Paragraph 3, paragraph 5, so if you go back a page. No,
5 we're in the wrong document. That's okay.

6 There is another document. Do you remember, it may have
7 even been the one that you talked about this morning where
8 in the report to the Minister it talked about a confession,
9 somebody had been interviewed and had confessed, I thought
10 it was this document but it might be the previous one, and
11 that the Minister has actually underlined the confession of
12 sexual assaults on over 200 claimants; do you recall that
13 information?

14 A. Yes. I don't recall what report or paper it may have
15 appeared in but I do recall that particular offender and
16 that issue, if you like, yes.

17 **COMMISSIONER ALOFIVAE:** Para 12, Ms Janes.

18 **MS JANES:** Thank you so much, Commissioner.

19 A. Oh, yes.

20 Q. That's the one, thanks. And, yes, as I recall, there were
21 some pen marks.

22 So, in terms of those 235, there had been interviews of
23 some staff members?

24 A. By us?

25 Q. Yes.

26 A. Yes, we had spoken to a number of ex-residential staff, yes.
27 Not necessarily any of that 235, yep.

28 Q. And, as I recall, out of those interviews with ex-staff, a
29 number corroborated the Cooper Legal allegations in the
30 Culture of Abuse paper?

31 A. By and large, yes, that kind of, some of those incidents,
32 some of those types of behaviour, yes.

33 Q. And so, when information comes to you, such as in paragraph
34 12, one staff member alleged to have sexually assaulted and
35 confessed to over 200 residents, what action does MSD take?

1 A. In that particular instance, and I don't want it to sound
2 like splitting hairs, but my recollection is the 200 people
3 may have included - weren't solely residents of Hokio - he
4 was at Hokio Beach School but also included his own family
5 members.

6 But some time after we became aware of that, we spoke
7 with and wrote to Cooper Legal, as we understood it Cooper
8 Legal had that list and we asked if we could get that list
9 so that it could be used to essentially inform any claims
10 that we might receive either from those particular
11 individuals or anybody else who named that particular
12 individual.

13 Q. And are you aware that Lake Alice, I don't know if you heard
14 Mr Knight's evidence, but Lake Alice was a total of 200
15 claimants for the global settlement; are you aware of that
16 information?

17 A. No, I wasn't aware of the number.

18 Q. Because, at this stage, the Ministry has determined that
19 there is no systemic or endemic failure; do you recall that
20 in your report?

21 A. I recall that being written, yes.

22 Q. And this is having interviewed/investigated all of the files
23 that you had available at that time? I think the paper
24 talks about all historical files have been referred?

25 A. Yes, all that would have been available and appeared
26 relevant, yeah.

27 Q. What would have determined relevance at that point in time?

28 A. Going back to that TRIM database, one of the challenges is
29 the way in which a file is titled or the title that a file
30 is given. And the title of the file doesn't always give a
31 really clear indication of the content of the record. So,
32 there might be - a file title may appear has though at first
33 glance it isn't particularly relevant to a particular
34 individual or a particular issue but if you look at the
35 content of that file it may prove otherwise. And similarly,

1 the dates that the file covers weren't always accurate, so
2 it was sometimes difficult to pin down what files might be
3 relevant to a particular timeframe.

4 Q. So, just lining up what information you had at the time,
5 you've got the 235 in the Cooper Legal paper, correct?

6 A. Yes.

7 Q. You've got 500 claims that you know are - I don't know how
8 many you had at that stage but you knew 500 were coming?

9 A. Prospective, yes.

10 Q. You have this information about one perpetrator confessing
11 to 200 sexual abuse events and you have the information that
12 you've advised us you've collected on your databases looking
13 at the retrospective TV3 The Nation information. I suppose
14 the question is, and before I ask that question, you also
15 have filed claims. So, just quickly looking at, when a
16 claim is filed, I assume it's served on Crown Law?

17 A. Yes.

18 Q. And then you get a copy?

19 A. That's right, yes.

20 Q. And what do you do with the information in those Statements
21 of Claim?

22 A. Well, the Ministry then begins to make some kind of
23 inquiry/assessment of that particular claim. And sorry -

24 Q. Carry on.

25 A. With the aim of trying to bring it to some kind of
26 resolution.

27 Q. And so, allegations are recorded at that stage to update
28 your database, in terms of perpetrators, residences,
29 timeframes, proven or not at that stage but just to keep a
30 running information base about what at least allegations
31 are?

32 A. Yes, they should have been and are, given the limitations of
33 the technology we had available up until more recently, yes.

34 Q. And did you have anybody analysing that data or just was it
35 being captured and not analysed?

1 A. There was no-one whose specific role it was to analyse that
2 data, no.

3 Q. Because I do have a document where I did a little bit of
4 analysis on the Crown Law filed claims. If we may take a
5 slightly early adjournment, I will, rather than turn my back
6 on the witness, set that up.

7 **CHAIR:** Yes, find that document and we'll come back in
8 15 minutes.

9 **MS JANES:** Thank you very much.

10

11 **Hearing adjourned from 3.21 p.m. until 3.40 p.m.**

12

13 **CHAIR:** Thank you, Ms Janes.

14 **MS JANES:** Thank you, Commissioners. So, just a
15 little explanation about the document that you're
16 going to see, and it has been given in the break to
17 the witness so he has a little bit of familiarity
18 about it.

19 **CHAIR:** Yes.

20 **MS JANES:** Under the section 20 information that the
21 Royal Commission requested, the Crown filed a
22 spreadsheet of all filed claims relaying to MSD
23 claims. It is a very large document and unable to be
24 reproduced in a way that can be presented here, so I
25 have done an analysis. So, the document is being
26 presented as my analysis. The witness doesn't have to
27 accept the veracity of the actual numbers, it will be
28 a proposition that is put to him. My learned friends
29 are comfortable with that. They will review the
30 numbers and, if I'm wrong, they will come back and
31 tell me.

32 **CHAIR:** Yes, I was going to say, they can always come
33 back with suggestions, if I can call them that
34 politely, having reviewed it.

35 **MS JANES:** Absolutely.

1 **CHAIR:** On the basis that it's proposition only,
2 that's fine.

3 **MS JANES:** It is.

4 Q. So, with that explanation, Mr Young, in the document in
5 front of you, what it is in front of you, just to reframe
6 for everyone looking at it, the year, then a number next to
7 it, those are the number of claims that were filed in that
8 particular year. They're not cumulative. Where there is a
9 residence such as Epuni or Hokio noted, '95, obviously those
10 are the only two but for the others I have only picked
11 particular ones that we have been talking about like Epuni
12 or Hokio or Kohitere.

13 **CHAIR:** Can I just, it says filed claims, does that
14 include matters in the High Court?

15 **MS JANES:** Just the High Court filed claims.

16 **CHAIR:** Just the High Court?

17 **MS JANES:** Just the High Court filed claims.

18 Q. So, looking at that document, if we take it up to the end of
19 2006, which is really prior to the White trial in 2007, we
20 see there is 74, if one does one's maths very quickly, that
21 relate to Epuni. Of the 61 in 2006, 26 of those are from
22 Epuni, 20 are from Hokio, Kohitere 20. And just confirming
23 your earlier evidence of those three being your problematic
24 residences, that bears that out?

25 A. It does, yes.

26 Q. And so, the general proposition is going back to the numbers
27 that we were looking at before, is that you've got your 235
28 from the Cooper Legal paper, you've got the 200 confessed,
29 whether that's all victims of abuse or familial abuse as
30 well. You have 74 claims filed already, you know there's
31 500 more coming; correct?

32 A. Yes.

33 Q. And this doesn't include unfiled claims, are you able to
34 give us any sense at all about what that might have looked
35 like at that time?

1 A. By 2006, there would have been, in fact I think it was 2006
2 we received our first direct claim, if you want to call it
3 that, and it was later in the year, as I recall.

4 Q. So, not filed claims, if I can call it that?

5 A. No.

6 Q. And so, given that Lake Alice was considered sufficiently
7 serious at 200 victims of abuse, and we're at around 1,000
8 at this point, at what point would MSD have said this is so
9 serious that we need to look at something like a Lake Alice
10 global settlement, even if only for specified settings such
11 as Epuni, Hokio and Kohitere?

12 A. In hindsight, it's very easy, I guess, to come to the
13 conclusion that that would have seemed like a reasonable
14 proposition. Whether any specific consideration was given
15 to a global-type settlement arrangement, I was going to say
16 I can't recall but as I was saying that I think now there
17 were references to that possibility. And again, without
18 making any judgement of whether it was the right course to
19 pursue, I recall one of the considerations was that Lake
20 Alice was, and I'm not an expert obviously on Lake Alice
21 but, as I understood, it was constrained obviously to that
22 one hospital and certainly some of the events particular to
23 the Child and Adolescent Unit and the treatment of a
24 particular doctor.

25 Whereas, the MSD, or as they were then Child, Youth and
26 Family claims covered a much wider range in number of
27 institutions and potential other types of care placements as
28 well.

29 I acknowledge that that doesn't preclude, as you perhaps
30 suggested, that such an arrangement couldn't have been or
31 could potentially have been targeted at some specific
32 institutions.

33 And I'm also aware that some consideration was given and
34 the Minister at the time considered whether there should be
35 some kind of inquiry and, again, for whatever reason, a

1 decision was made obviously not to go ahead with that
2 inquiry.

3 Again, in hindsight, I suspect it would have been helpful
4 if this Commission had been held 14 years ago and that may
5 have given us or the Crown perhaps a clearer and more
6 certain direction to take.

7 I don't know if I've gone off beam with my response to
8 your question but, yeah, I guess history tells us that for
9 whatever reason or reasons, neither the Ministry nor the
10 Crown as a whole took the view at that time that there
11 should be a Lake Alice type approach to these particular
12 claims.

13 Q. So, I suppose it's a matter of what information gets
14 escalated in terms of what the belief about the nature of
15 the problem you're dealing with is?

16 A. That's certain the case and whether the right information
17 was escalated to the right people at the right time is, I
18 guess, an open question.

19 Q. So, I suppose in terms of thinking it through, if you've
20 analysed some files but they're probably not all of the
21 residential files and you come to a conclusion that there's
22 no systemic or - not you necessarily but MSD -

23 A. Yep.

24 Q. - come to a conclusion that there is no systemic or systemic
25 abuse or endemic failure within the organisation, and that
26 is the information that goes up the policy chain, if you
27 like, to the decision-makers, would you accept that the
28 nature, not in any way saying it was deliberately minimised
29 but if that was the view that was formed and it was that
30 there was nothing to look at here in terms of systemic
31 abuse, it's not surprising that an Inquiry was rejected in
32 2005? Whereas, if different information, pulling together
33 the strands of numbers that we've got now, which is 1,000,
34 would you accept that a very different decision might or
35 could have been made at that time?

1 A. Clearly, it's speculative but yes, it's always possible that
2 had different information or a different emphasis been known
3 at an earlier stage, that might have prompted a different
4 response. I certainly don't think there was ever any denial
5 of the fact that abuse had occurred, and quite clearly there
6 had been many instances of abuse. If there was an error,
7 for want of a better word, yeah, it's perhaps in the scale
8 of that and what that potential scale might be and how then
9 best to address it, yep.

10 Q. And, I suppose, where the Commission finds itself now, is
11 that MSD has 4,177 claims, 40 new ones each month. Who
12 within the Ministry is actually assessing the size and
13 nature of the problem and determining what is the right
14 approach to addressing that?

15 A. As I understand it, the leadership team has overall
16 governance responsibility for all aspects of the Ministry's
17 business, and that includes historic claims. I am not
18 intimately involved in - I am certainly not a member of
19 that team, nor involved in the, I guess, advice that might
20 go to that team but I imagine that the people, and certainly
21 through the relevant Deputy Chief Executive, is aware of the
22 numbers, the scale. I know he is aware of the task that is
23 ahead of us still and will continue to be ahead of us unless
24 landscape changes.

25 So, yeah, that is my understanding of, I guess, who has
26 oversight, if you like, of the current scale.

27 Q. From my perspective, as I stand back and look at the
28 information and you look at Lake Alice where there was one
29 person and 200 victims; you look at the MSD information, one
30 person, 200 victims, if you take the broad reach; you've got
31 a large number of other perpetrators who are known about.
32 So, Mr Wiffin actually put it very eloquently and I can't
33 really say it better than him, so I will actually read what
34 he said. At page 56 of his transcript he was asked whether
35 Alan Moncreif-Wright was a lone bad apple, he said, one of

1 the things, he talked about having a restorative justice
2 meeting with Mr Moncreif-Wright, one of the things he would
3 testify to is the fact that there wasn't just one or two bad
4 apples. "Certainly in the institution I was in, there might
5 have been one or two good apples but basically the tree was
6 rotten". So, at what point does that message come through
7 loud and clear that the size and nature of the problem is
8 you're dealing with a rotten tree, not the odd bad apple?

9 A. At what stage does that become clear? Well, I mean, it's
10 clear by the sheer fact that we have almost 4,200 claims and
11 more coming in every week that there were certainly a lot of
12 bad apples and it would appear not to be the systems and
13 processes in place to keep that or keep them in check.

14 I guess all I can speak to is that, and it's not
15 necessarily specifically answering your question, all I can
16 speak to is that within the environment and the constraints
17 that we've been working in, we have been making efforts to
18 address each individual person's claim as well as we can
19 within those constraints. And I'm the first to acknowledge
20 that that hasn't always worked at all well for some people,
21 Mr Wiffin and Mr White included.

22 And, I mean, I guess in one respect, you know, the fact
23 that the Ministry, or up until now the Crown, hasn't taken a
24 different approach is the reason we're here today and, you
25 know, it's, I guess, the Commission's burden now to make an
26 assessment of what has gone on in past years to too many
27 people and to make some decisions and recommendations about
28 how that might now be best dealt with. And, yeah, I think
29 that's all I can say honestly to your question.

30 Q. So, we're here to talk about redress.

31 A. Yes.

32 Q. And the concern is that the Commission will be sitting for a
33 lengthy period.

34 A. (Nods).

1 Q. These claimants are getting elderly. The longer the delays
2 go on, the more traumatic and revictimised they are; you'd
3 accept that?

4 A. Yes, certainly for many, yes.

5 Q. What is the impediment to then taking a step back because
6 otherwise in 10 years' time we all look back and say, "If
7 only in 2010 we had done something different", what are the
8 impediments to looking at residential global settlements or
9 something other than individual by individual claimants
10 which we have seen are flawed, inconsistent, long delays
11 in-between them, even from the evidence that we heard from
12 the few survivors that we had in phase 1, what could or
13 should be done differently so that we don't sit here in
14 10 years' time?

15 A. It's a good question that you put to Mr MacPherson yesterday
16 also and it's interesting to reflect, yeah, on a number of
17 issues.

18 And one of them is that some years ago we took perhaps
19 baby steps to doing exactly that in regard to three
20 institutions where we clearly had a number of - a
21 congregation of claims, if you like, around those places and
22 so looked, to the extent to which we could, global isn't the
23 wrong approach but we looked to and did settle small groups
24 of claims that came from the same residence that had similar
25 elements to them and effectively, settled them as a group.

26 Should we have made attempts to do that on a larger
27 scale? Perhaps so. But coming to now -

28 **COMMISSIONER ERUETI:** I just want to clarify that.
29 You're talking about smaller scale, high global
30 settlements, if you like?

31 A. Yes.

32 **COMMISSIONER ERUETI:** What point of time was this?
33 Did you say 10 years ago?

34 A. You're testing me a little now, but I would have thought
35 maybe between 2010-2012 but I could be corrected on that.

1 **COMMISSIONER ERUETI:** And they related to Kohitere?

2 A. Dunedin Boys' Home, Kohitere and Epuni, possibly Hokio as
3 well, yeah.

4 **COMMISSIONER ERUETI:** Thank you, thank you.

5 **MS JANES:**

6 Q. And just by way of another example because there's a 104
7 page document on the chronology of Whakapakari from '89 to
8 '99 I believe and there were a number of allegations and a
9 number of reviews and a couple of times the recommendation
10 to not refer claimants there. So, when you get cohorts like
11 the ones you've just described or you get the Whakapakari
12 cohort where there is a known 10 year period of abuse,
13 unacceptable behaviour, and then you look at the very
14 disparate, I don't know if you heard the Cooper Legal
15 evidence but they went through very disparate settlement
16 amounts from \$5,000 ranging up to \$85,000 for the Court
17 settlements, can you see how for claimants to have to
18 individually through a number of different processes, a
19 number of different outcomes, it just exacerbates that sense
20 of unfairness, inequality, lack of transparency?

21 A. Again, without wanting to seem like I'm disagreeing with
22 you, I think we again need to avoid generalising, and
23 certainly I have no doubt that some claimants will find that
24 lack of transparency or, you know, unfairness traumatic, for
25 want of a better word. But I think it's also fair to say
26 that some claimants do want their claim to be looked at
27 individually and understood, their specific experience
28 understood. And I think if there was, you know, a comment
29 on the fast track approach, it was that although many
30 claimants, you know, settled their claims through that, some
31 of the feedback we received was that they were disappointed
32 that they didn't have that opportunity to engage with us in
33 a way that the other, the normal process would have allowed.

34 And I guess thinking about any future redress process, I
35 think one of the things that I would suggest, and I'm sure

1 is obvious to all, is that one size doesn't fit all. And in
2 the same way, it's delays. The delays in resolving claims
3 are patently unacceptable in terms of the three or four
4 years or more in some instances and that needs to be managed
5 far, far better. But I also know that some claimants have
6 said to us, "Actually, I'm pleased that I had some time to
7 process, to understand", to do whatever they needed to do.

8 So, I think whatever redress process we might have,
9 whether that remains with the Ministry or whether that sits
10 outside, as much as possible it needs to fit each person and
11 I know that is a huge challenge having a process that is
12 customised to each individual person but I really believe
13 that that is one of the key considerations and key
14 challenges. You know, within that there may also be the
15 possibility and the benefits of some type of global
16 settlements for particular places or particular groups or
17 whatever. But, again, I would have thought that survivors
18 should have some choice, I guess, in how their claim might
19 be managed.

20 And, yeah, I guess, I think again I've gone off track, I
21 can't even remember what your original question was now but,
22 yes, I guess, it was we don't want in 10 years' time to be
23 looking back on what we have done now and what are the
24 impediments.

25 I guess there are a number of impediments. Again, if I
26 can speak frankly and no disrespect to my legal colleagues,
27 I think the best thing we could do is take the resolution
28 process totally out of the litigation context and we still
29 need to preserve people's right to go to Court if that is
30 their wish or if that's necessary, and I think the legal
31 people acknowledge that themselves, some people need that
32 access to justice. But issues, Bill of Rights allegations,
33 dealing with those in an ADR process is fraught and
34 difficult and challenging and it makes achieving resolution
35 for a person, yeah, somewhat problematic for us.

1 And so, I think if it can just be moved entirely I think
2 litigation framework, there would need to be some Crown
3 principles or framework upon which how you do acknowledge
4 BORA breaches and false imprisonment and all of those other
5 issues that keep lawyers or some lawyers maybe awake at
6 night, that I think is you know when we will perhaps truly
7 get towards a process that will be more claimant focused and
8 hopefully, yeah, get the kind of resolution that people
9 might want.

10 Another huge challenge is quantum. If people are to
11 receive a financial payment, what's that for? Is it for
12 compensation? And if it is, that raises other issues and
13 questions. Is it just as an acknowledgment in some way of
14 what a person has been through? And whatever the answer is
15 to that question, how do you determine what is an
16 appropriate financial acknowledgment for what a person has
17 gone through? I'm certainly not suggesting that we've
18 cracked that by any stretch of the imagination. But, again,
19 that will be a real challenge, as I said, whether the
20 redress process remains within agencies or outside. How do
21 you test a claim? Do you test a claim? Do you expose it to
22 any kind of tests and checks? And, if so, what is the level
23 of those?

24 So, I guess there, I guess some of my top of mind
25 thoughts about some of the potential impediments and some of
26 the challenges that are going to face us one way or the
27 other, yep.

28 Q. There's a very rich vein of conversation arising out of
29 that, so let me work my way through some of those issues.

30 Picking up on the BORA aspect, I know from documents that
31 I've seen, that that is something that has exercised your
32 mind over a period and that your recommendation has been
33 that, again it's where does that moral divide lie? In that,
34 a lot of claimants won't know that they have a BORA breach,
35 particularly if they are a direct claimant?

1 A. That's right.

2 Q. So, without the benefit of legal advice, what is the
3 Ministry's obligation to ensure that they are not
4 disadvantaged by lack of knowledge about those rights?

5 A. I believe our obligation is to identify any potential breach
6 of the Bill of Rights Act and if that is the case, then that
7 should be acknowledged in the same way as somebody who has
8 legal advice and is clearly aware of that potential breach.

9 Q. And so, in your ideal scenario, how does that happen without
10 access to lawyers?

11 A. Firstly, the people assessing the claims have a general
12 understanding of the kind of allegation post-1990 that may
13 constitute a BORA breach. They have access to senior staff,
14 including myself, if they need any advice or guidance around
15 that question.

16 But ultimately, we would take each of those issues to our
17 legal team and seek advice from them on whether or not the
18 facts of the case do constitute a breach or not.

19 So, in that case, whether the claim is represented or
20 whether it's from somebody who comes to us directly, that's
21 something we would rely on our legal colleagues to advise
22 on.

23 Q. And then in terms of because there are a lot of complex
24 legal issues underpinning a lot of these claims, vicarious
25 liability for example, what would you say is the current
26 status of the MSD's approach to vicarious liability,
27 particularly in respect to section 396 of providers?

28 **MS ALDRED:** Sorry, I am just a little bit, I just have
29 to identify really, that's a legal proposition, I
30 think, that you are asking this witness.

31 **CHAIR:** I don't think your microphone is on. Just
32 restate that, please?

33 **MS ALDRED:** Yes. It just seems like Ms Janes is
34 asking Mr Young to express a view about a legal
35 proposition which, I mean, it is not really something

1 that Mr Young is in a position to address. That's
2 probably all I need to say. It just seems a little
3 unfair.

4 **CHAIR:** I will just ask Ms Janes -

5 **MS JANES:** There is actually a document where Mr Young
6 has expressed his view on vicarious liability and so,
7 within the MSD process, that is fed into the thinking.

8 Q. So, Mr Young, I can take you to that document.

9 **CHAIR:** I think you should, if you're able to find it,
10 that's only fair.

11 **MS JANES:**

12 Q. I just need to find the right document. We've jumped to
13 another topic. So, the document is MSC349. This is from
14 November 2013, Mr Young, just to orient you. It is an
15 internal MSD email. If you go to the bottom because you've
16 got the only version, if you go to the bottom it says, "Hi
17 Garth" on the 6th of November, I am not sure who Anna Hunn
18 is.

19 A. Anna I think at that stage was Acting Manager of the
20 Historic Claims Team.

21 Q. If you can just read the advice that you were asked to
22 provide?

23 A. Sorry, yep. "Hi Garth. Jennifer has asked about the
24 liability of MSD for the Youth Horizon Trust". Jennifer
25 being one of the Senior Social Work Advisers. "We could put
26 this on the agenda for the next meeting as there are a
27 number of places we had for young people more recently -
28 Whakapakari, Moerangi Treks etc. Are we liable for what
29 happened at all of these or is there some distinction. Do
30 we need more clarity? We will be seeing more and more of
31 these coming in and it would be good to have some idea when
32 we are emailing people."

33 Q. Can you read your response?

34 A. "Thanks. I wish there was a simple answer", golly. "Some
35 thoughts/opinions are:

1 1. If our only role was in approving the organisation and
2 the CYP" child, youth or young person "was placed there by
3 their parents or someone other than MSD then our liability
4 is likely to be limited if any. We got an opinion on
5 something similar re Salvation Army Homes many years ago
6 but, as is often the case, it was ambiguous. I would
7 certainly think that our liability would increase if there
8 was any evidence that the approval and/or monitoring process
9 was faulty or if concerns about the provider were brought to
10 the attention of MSD and they were not adequately addressed.

11 2. If we did place the CYP with the organisation, and
12 particularly where we had legal responsibility for the CYP,
13 then it is pretty well established now that we are
14 vicariously liable for actions committed by staff of the
15 organisation and we can't abrogate our duty of care. That
16 might be further compounded if there were also issues with
17 approval and monitoring, as was the case with Moerangi Treks
18 and the same looks to be the case with Whakapakari. In
19 essence then, it depends on the facts of the particular
20 case. I will write this up into some guidance for the
21 Practice Manual that is very slowly taking place but also
22 very happy to discuss and take other advice/thoughts on the
23 matter".

24 Q. Do you recall, did you write up the guidance for the
25 practice manual?

26 A. I drafted a practice manual. I can't recall, I'm sorry,
27 whether there was guidance covering this, but I think there
28 probably was, yeah, but I honestly can't remember, I would
29 need to refer to that to be sure.

30 Q. So, going back to your earlier conversation, and not in any
31 way wishes to protect the legal profession, but there are a
32 range of issues, would you accept that a claimant might wish
33 to seek advice in terms of what their rights were or whether
34 to give them up for a short, a quick settlement or a longer
35 settlement? And there may not be the level of trust that

1 the Department would give them the advice that was in their
2 best interests?

3 A. You're correct, some of these issues are legally complex and
4 I for one don't always understand all of them. So, yes, one
5 would expect then that some claimants would also either
6 struggle to or not be aware of their potential rights around
7 some of those issues.

8 Q. You will be aware of a view expressed by a number of
9 survivors and victims, including both Mr White and
10 Mr Wiffin, that it's very difficult to trust the
11 organisation that put you in care, you then suffered abuse
12 and effectively, it's deny[ing] and defend[ing] the
13 reputation and protect[ing] the employees of the
14 organisations? So, that's a perception, not stating it as a
15 reality but for a lot of claimants, going to the very
16 organisation that they feel is responsible, accountable, to
17 then have them tell them what their rights are, there may be
18 a level of trust that would be hard to sustain for them?

19 A. I understand that perception and that suspicion, if you
20 like. And I guess that's one of the reasons why, as you
21 mentioned earlier, settlements now are by way of a
22 settlement agreement. And, where a person isn't legally
23 represented, one of the things that we do our best to ensure
24 [is] that the claimant does get some legal advice before
25 entering into that agreement, so independent advice and
26 they're given some funds to do that if they wish to. You
27 know, that's acknowledging that, you know, that is a big
28 deal, signing that agreement. And we don't want people
29 doing that without, yeah, without being fully aware of the
30 implications of doing so.

31 Q. And we heard yesterday that where there's an allegation
32 about a staff member, MSD funds \$2,000 of independent legal
33 advice. Is a similar ability awarded to a claimant who
34 wants to seek legal advice if they come direct to MSD to

1 determine what they should or shouldn't be doing with their
2 claim?

3 A. I'm not sure. There is certainly funding available.

4 Whether it's capped at a particular amount or reasonable
5 costs, I'm honestly not sure.

6 Q. Do they have to go through Legal Aid or is there something
7 provided by MSD?

8 A. No, no, they can go to a solicitor of their choosing and
9 then that solicitor merely needs to invoice the Ministry.

10 Q. But you're not sure if there's a capped amount?

11 A. No, I'm not. Ms Hrstich-Meyer might know but, yeah, it's
12 not, you know, I don't want to be unhelpful but it's not
13 something that I'm involved in directly, so hence my lack of
14 certainty.

15 Q. That's fine. And then going back to un-tease a little of
16 the earlier conversation, you've identified that one size
17 does not fit all, if I can summarise it that way. Some want
18 shorter processes, some want that full investigation, full
19 acknowledgment. Would you agree then that it is about a
20 redress process that has options?

21 A. I certainly would, yes.

22 Q. And if there is a redress process that has options, it is
23 then about full information, full understanding about, using
24 a legal term, fully informed consent, so that you actually
25 know what you're opting in or out of and what you're
26 agreeing to and what you're giving up or the consequences of
27 your choices?

28 A. Yes, a person ideally needs to know what the process
29 involves, what they're getting into and certainly if it
30 comes to any kind of - signing any kind of agreement, then
31 absolutely they should know and understand what the
32 consequences of that are.

33 Q. So, just going to the whole ex gratia versus settlement
34 agreement, because my understanding from the information
35 that the Inquiry has received, is that ex gratia was

1 effectively given where there was a sense of a moral
2 liability, if we go back to the Crown Litigation Strategy, a
3 moral liability rather than a legal liability. So, an ex
4 gratia payment was made in circumstances where perhaps the
5 Limitation Act or the ACC bar would undermine a legal
6 liability but there was still that sense of a moral
7 liability.

8 And in one of the claim strategy meetings you sat on, on
9 that Committee, and I think you were an attendee there, if
10 need be I can find the document but it talked about really
11 going back to what are you paying for, is it acknowledgment,
12 is it compensation, but also ex gratia or settlement, are
13 you taking something away from the claimant because
14 effectively they could bring no further claims, whereas ex
15 gratia they could.

16 So, are you able to describe why the Ministry has moved
17 away from ex gratia payments to settlement payments where,
18 as we saw in the earlier document this morning, it's to stop
19 them making multiple claims? So, it's full and final, end
20 of story. Why has there been that shift?

21 A. I don't know whether it's helpful or not but just commenting
22 on your initial, I suppose, distinction between settlement
23 payments and ex gratia payments.

24 You're absolutely correct that ex gratia payments, I
25 think by definition, are an acknowledgment of a moral wrong.

26 Q. As Mr White said, he looked it up and it was a gift.

27 A. A gift. The payments that we also made to claimants that
28 were termed settlement payments were, in my view, also done
29 on a moral basis. They were, I suppose, termed settlement
30 payments because they were payments that were made in
31 respect of proceedings that had been filed. So, the legal
32 impediments, if you like, were still set aside in those
33 instances, so the payment was still made on a moral basis,
34 if that makes any sense.

1 But to answer your question about why the change, I think
2 I mentioned that earlier today. Again, it's not something
3 that I was involved in, the discussions about or the
4 decision-making but, yeah, my understanding is that it is to
5 provide some finality to the claim. It doesn't prevent
6 somebody subsequently coming back to make another claim but
7 that is something that, if someone did do that, then it's up
8 to a senior manager to exercise some discretion about
9 whether that subsequent claim would be accepted or not.

10 But, yes, I guess my understanding, and my colleague
11 Linda might correct me or the hearing on it, that it is to
12 provide some finality both for the claimant and also for the
13 Crown that that claim has been settled and put to rest.

14 Q. We can finish that topic with Ms Hrstich-Meyer tomorrow but
15 thank you for that. I note we've got half an hour, I'm
16 going to just, I think there's a discrete topic, I'm going
17 to change my order, there's a discrete topic I think I can
18 get through before 5.00.

19 So, if we change gears not totally but we'll go to
20 wellness payments because that seems to flow from where
21 we're at, at the moment.

22 So, you've mentioned - it's actually in
23 Ms Hrstich-Meyer's brief of evidence at paragraphs
24 3.17-3.18, that MSD will pay for counselling costs and not
25 rely on the claim having been assessed and that it will
26 enhance support options; does that accord with your
27 understanding?

28 A. Yes.

29 Q. Of what's available?

30 A. Yes, it does.

31 Q. And I recall reading documents from very early in the
32 settlement processes, and I think you were involved in
33 drafting the documents but correct me if I'm wrong, that
34 there was intended to be wraparound support? So, not just

1 counselling but also education, those sort of more holistic
2 options of support. Can you confirm that was the intention?

3 A. It certainly was and, yes, from quite an early stage, and
4 that was I guess borne out by the conversations we had with
5 some claimants, that one of the things that they were
6 looking to was potentially getting access to a range of
7 services for themselves or their families. And we did, you
8 know, I remember a number of instances where our senior
9 advisers would work with somebody who had made a claim but,
10 you know, their claim hadn't yet been assessed, to access a
11 variety of services. We would assist them with getting in
12 contact with Housing New Zealand or whoever they were,
13 supporting them through Work and Income. We provided
14 literacy education for one gentleman.

15 And, I guess, going back to my comment about constraints,
16 again, you know, one of my, yeah, one of my disappointments,
17 I guess, is the extent to which we were able to provide
18 those kinds of more wraparound services in those early days
19 was really constrained. And again, without making any
20 excuses, I think the sheer volume of claims and the size of
21 the team meant that that was one of the first things to go
22 by the wayside. We would still do whatever we could to
23 provide some level of pastoral care, if you like, to
24 claimants but it was something that we all would love to
25 have been able to do more of. They were social workers,
26 after all. I mean, they weren't employed to be social
27 workers, but I think some of them found it difficult not to
28 have that response and to support people in a more, yeah,
29 with their actual day-to-day needs.

30 So, yeah, that was certainly something that we initially
31 hoped to do and did do to some extent. And it's obviously
32 something that we are now, the Ministry is now picking up
33 again, in a way that will hopefully give claimants some
34 choices, as you say, about how they engage with the Ministry
35 or whether they engage with us at all or whether that is

1 done through someone who they feel much more comfortable
2 with and trusting of.

3 Q. And so, if somebody came to the Ministry and said, "As part
4 of my redress, I would like access to counselling, either at
5 the beginning or during or after", what would the response
6 have been?

7 A. Now or in the past?

8 Q. In the past?

9 A. In the past. Well, certainly, if someone wanted
10 counselling, and I use counselling in a kind of broad, you
11 know in quite broad terms, to support them now and through
12 the process, then that was - that would be very, very rare
13 if that was turned down for any reason. I can't think of
14 why it would be. And I don't know whether anecdotes are
15 helpful but, you know, one man didn't want counselling, the
16 last thing he wanted to do was talk to anybody. He managed
17 his depression and his addictions through walking in the
18 bush every day. So, we bought him some, at his request,
19 some really good quality walking tramping boots because he
20 didn't have any and we bought him two or three pairs, as I
21 recall. So, I guess even in some small ways we try to, you
22 know, address some people's needs.

23 But, yeah, certainly if someone wanted counselling or
24 support of some sort, to get them - during the claims
25 process, then funding for that was provided. And also, the
26 redress package, if you like, for a number of claimants also
27 might have included revision of some kind of services.

28 And I think I said in my brief, I think, that no recent
29 wellness payments had been made but I'm actually not sure
30 that that's entirely correct. Again, it comes down to
31 timeframes but certainly, a couple of settlements for Cooper
32 Legal clients perhaps might be going back a couple of years
33 did include a wellness payment or an additional payment that
34 they could put towards some kind of services that they
35 specifically wanted.

1 Q. So, if we go to 2002 when Earl White, there was a settlement
2 offer made to MSD, and at that point included in the
3 monetary sum was counselling, access to counselling, and
4 Mr White's evidence was that he was never given any
5 counselling, even though the Ministry had been advised that
6 that was a need that he had. What would have gone wrong and
7 why was he not able to access?

8 A. In 2002, I can't speak to that specifically because I wasn't
9 involved. And, yeah, it wouldn't have been until those
10 early years of the Historic Claims Team, so you know around
11 2006, 2007, 2008, that the provision of those kinds of
12 services were something that we, you know, were thinking
13 about and doing.

14 So, in 2002, whoever saw that offer and that request, I
15 suppose, well, I guess I might have made some assumptions.

16 Q. Would you not have been consulted at that stage?

17 A. No.

18 Q. You were oversighting -

19 A. Not in 2002, no, no.

20 Q. Not in 2002?

21 A. No, I was in another role outside of historic claims at that
22 time.

23 Q. So, who would have been oversighting those types of -

24 A. At that time, it would have been dealt with entirely within
25 the legal team, both between Crown Law and the Child, Youth
26 and Family legal team.

27 Q. And your team would not, given that you were the social
28 workers and would have a better understanding than the
29 lawyers about counselling and efficacy or requirement for
30 claimants, no consultation went across the legal team and
31 your team?

32 A. Well, we weren't a team until later, some years after that.
33 So, there wasn't an Historic Claims Team in 2002 and at that
34 time I was managing, yes, still managing the Ministerial
35 team, for want of a better name, yep.

1 Q. If we can call up a document MSC491. This is May 2016. It
2 is a draft policy, it clearly says "draft" on it, it's the
3 19th of May 2016. I'm not sure Elizabeth Brunt's position
4 who wrote this?

5 A. She was acting, I'm not sure what the title was, but Acting
6 General Manager of the group that included the Historic
7 Claims Team.

8 Q. And it's a draft policy for additional support available to
9 people who have made claims of historic abuse. And
10 paragraph 4 talks about the opportunity practice. If we can
11 call out the bottom part, I'm just conscious of the time, so
12 if I may shorthand but correct me if there's anything that
13 you think I'm getting wrong.

14 So, currently counselling may be provided to claimants on
15 an ad hoc basis, where a senior Social Work Adviser has
16 advised a need by a claimant for additional support, so the
17 process at that time was if someone like yourself saw a
18 need, a need was expressed by a claimant, you were able to
19 escalate that on an ad hoc basis, correct, that's correct.

20 Q. And then, as you've said, it could also be part of a package
21 to resolve a claim, which is what we were talking about
22 where you thought there might have been a recent case?

23 A. That's correct.

24 Q. Moving on to the next page. And just as that states, it's
25 also additional to counselling that may be available through
26 ACC.

27 And then it goes to the wellness payments. So, if we can
28 call that out. And just again, you had summarised in your
29 evidence that it was based on the Minister's agreed January
30 2010, so we probably don't need to repeat that. That was in
31 your evidence?

32 A. That's correct.

33 Q. Paragraph 6, page 2, it just talks about that it's part of
34 the Ministry's Claims Strategy Group. That's the group you
35 were involved in, were you involved in 2011?

1 A. Yes, I would have been.

2 Q. If you could just read out what was agreed in those two
3 paragraphs?

4 A. "The Ministry's Claims Strategy Group of 19 April 2011
5 agreed:

6 "That wellness payments would only be used as per the
7 wording in the Minister's report, i.e. only to enable filed
8 claimants to exit the litigation stream with dignity in line
9 with the original mandate by Ministers. We will not use
10 wellness payments for unfiled claims, or for filed claims
11 where we consider some compensation for harm should be
12 paid."

13 Q. And if we can move to paragraph 7, please.

14 A. "In practice 9 wellness payments ranging between \$5,000 and
15 \$7,000 have been made between 2010 and 2015 across both
16 filed and unfiled claims. All payments were made in cases
17 where it was determined that there was no basis for an ex
18 gratia or settlement payment. The payments were made to
19 acknowledge the claimants distress and hurt arising from
20 their care experience and to reimburse or enable them to
21 access supportive services. No evidence was required to
22 justify the payment".

23 Q. So, just two points if I can quickly ask you about those.

24 Looking back, nine wellness payments in a period of five
25 years seems very small, particularly given the number of
26 claims that the Ministry was dealing with.

27 So, are you able to explain why so few payments had been
28 made over that period?

29 A. That number needs to be seen in the context though of the
30 claims that did receive settlement or ex gratia payments.

31 So, there was, you know, a smaller percentage of claims
32 that, for a variety of reasons, a payment for settlement or
33 ex gratia payment wasn't made but obviously in nine specific
34 instances there was a determination made that, despite that,
35 a wellness payment should be made. Beyond that, I

1 can't - you know, it would be interesting to know, I guess,
2 in that period of time the number of claims that didn't
3 receive a settlement and ex gratia payment, and whether nine
4 was a very small or a slightly larger proportion of that
5 number.

6 Q. And if we go to the next paragraph, so nine wellness
7 payments were actually made, and the next paragraph talks
8 about only 18 were offered and not all were taken up?
9 Sorry, if you can pull that up, it's much easier to see.

10 So, paragraph 10, "Such payments have been offered in 18
11 claims between 2010 and 2015. The total amount of services
12 offered (but not necessarily taken up) is \$110 - 225" which,
13 again, that number was in your evidence.

14 A very quick question. Yesterday Mr MacPherson provided
15 a very helpful graph as Appendix 1 about a breakdown of
16 costs. And in his counselling [costs] it only showed
17 \$79,000 between 2006 and 2019. Are you able to just clarify
18 for us why the difference of his number and your number?

19 A. In short, no, I can't. I certainly know the number that was
20 included in my brief was obtained from our finance team for
21 the specific purpose of that brief, so I relied on them to
22 get that information. Why that might differ from the number
23 in Mr MacPherson's evidence, I really can't say.

24 Q. So, I suppose for the Commission trying to make a decision
25 about which number, it's a hard question for you but where
26 did you get your number from? And we should have asked
27 Mr MacPherson yesterday where he got his number from.

28 A. Well, as I said, I got my number from our finance team. As
29 I recall, I asked them to look at the financial records.
30 For most, as in a bureaucracy, most expenditure has a line
31 item by some kind of title and, as I understand it, there's
32 a line item called "counselling" or something similar. I
33 would assume that Mr MacPherson got his information from the
34 finance team as well but, beyond that, yep, I can't say.

1 Q. That's something for us to resolve, thank you. If you're
2 not able to help, that's fine. It sounds like it may have
3 been different questions asked which provided different
4 numbers.

5 A. Yep. I guess, one of the things that we also know is that,
6 and you know I still approve requests for counselling in
7 principle, I don't have the budget for it, but you know we
8 are still approving the funding of counselling for claimants
9 on a very regular basis.

10 Sometimes, and perhaps in many instances, claimants don't
11 take that up or don't take it up for some time. So, the
12 numbers appear for those periods of time, I agree, very low.
13 But, again, I think I would suggest that the important fact,
14 not just now but going forward, is that there is provision
15 for and access for claimants to get whatever type of support
16 or assistance or counselling that they might think that they
17 want. Whether that is taken up or not and how much is spent
18 on it, I was going to say is kind of irrelevant. That's
19 again giving people the option, the choice, that something
20 is available for them.

21 Q. And this draft policy then goes on to tease out what, so
22 we've looked at current and it then looks at what was
23 proposed in terms of the wellness policy. So, if you can go
24 over the page, "Proposed support". Very quickly, it talks
25 about counselling. And if we go to paragraph 14, up to 6
26 counselling sessions available to each individual paid upon
27 invoice from counsellor, as you've already said. But it
28 says it is not to exceed \$2,000 excluding GST, can you see
29 that?

30 A. I can, yes.

31 Q. And then if we go down again, in addition to counselling
32 there was also other support costs. And if we go to c,
33 remove visible tattoos, literacy, numeracy, education
34 services, requisite education. So, it was those other

1 things outside of counselling that you've already talked
2 about?

3 A. Yes.

4 Q. And there was also, moving down the document, there was also
5 a monetary limit on that which, when it comes up, you'll see
6 it's \$5,000. So, yes, we're at paragraph 22?

7 A. 22.

8 Q. Absolutely. I should have gone there because that's a
9 summary, so 19 is \$2,000 for counselling and \$5,000 is for
10 other support costs.

11 And then it's very clear at the bottom, paragraph 24,
12 "For the avoidance of doubt, cash wellness payments will not
13 be made".

14 But then, Mr Young, if I can take you to MSC447, so this
15 is in February 2017. You're not on this email exchange, so
16 let's look at what it says but by all means you tell me if
17 you have any awareness of it or not, although it does say in
18 the first paragraph that "Carolyn Risk, Linda, Garth, Leith,
19 Celia, Andrew and I met on the 13th of February to discuss
20 the high level policy for the new process changes to the
21 Historic Claims Process".

22 Do you recall at that meeting whether this draft policy
23 was discussed? Are you seen it before?

24 A. The draft policy?

25 Q. The draft policy.

26 A. Yes, I can't recall the first time I saw it, but I've seen
27 it again in preparation for the hearing.

28 Can I recall if it was specifically discussed at that
29 13th of February meeting? Unfortunately, not.

30 Q. In the second paragraph it says, "We discussed situations
31 where we had previously made wellness payments" and it looks
32 at for trial litigation cases "in effect a way to augment
33 the settlement offer but put rehabilitative restrictions on
34 the use of the funds. We agreed that a wellness policy

1 wouldn't apply for this group as they were outside the
2 regular ADR process".

3 So, can you just describe very quickly, was there a
4 separate process for litigation cases and a separate process
5 to accessing counselling and support services for ADR
6 processes?

7 A. I wouldn't say there w[ere] separate processes but it's true
8 to say that counselling that was provided initially, so when
9 a claimant first approached us or through the assessment
10 process, was primarily accessed by direct claimants, as
11 opposed to claimants who were legally represented.

12 So, that didn't mean that legally represented claimants
13 couldn't get access to that kind of counselling but it was
14 certainly less common.

15 When it comes to, I suppose, what was termed a "wellness
16 payment", then given that earlier Minister's direction, one
17 of the purposes obviously was to acknowledge a claimant
18 where there wasn't the basis for a settlement but I guess
19 this was looking also at, if you like, increasing the scope
20 of such a payment. So that, where a settlement was
21 warranted, then there may also be a wellness payment made on
22 top of that, in addition to that, for whatever purpose.

23 And was there a similar process for claims that went
24 through the ADR process? Yes, as I recall, some wellness
25 payments would have been paid to some of those claimants.
26 Did any receive a wellness payment on top of an ex gratia
27 payment? I honestly can't recall.

28 Q. And just going to the last paragraph it says, "Flowing on
29 from this, we didn't see a need for a wellness policy". So,
30 the policy that we've just looked at, this particular group
31 of people who met on the 13th of February decided that "that
32 policy was not necessary in a rare situation where we felt
33 we should be paying for safe tattoo removal (the tattoos
34 would need to be linked to a failure over and above the

1 settlement payment) we could always approve an ex gratia
2 payment".

3 I suppose the question looking back again for that
4 consistency and transparency, would it not have been useful,
5 not only internally but externally, to have a policy that
6 was very clear about what was available and in what
7 circumstances?

8 A. It would, and it would have been helpful internally. And I
9 think, as I was reflecting on the issue of these payments in
10 preparing my brief, and I know it doesn't always seem like a
11 particularly satisfactory answer but, yeah, there were no
12 documents to rely on and I didn't - I don't recall coming
13 across this when I was preparing that brief but I think one
14 of the issues that I think the team struggled with was,
15 yeah, understanding themselves what the boundaries were for
16 a wellness payment to be made. Because conceptually, it
17 seems like an entirely reasonable thing to do, if not making
18 cash payments, providing funding for some kinds of services.

19 So, yes, a policy would have been helpful. Why it
20 ultimately wasn't agreed upon, I can't explain further than,
21 at the moment anyway, this email.

22 Q. Is there a possibility that it was fiscally driven, in that
23 if you have a policy and it is known to claimants to be
24 available, they may actually ask for it and would have to
25 receive it?

26 A. I hope this is taken genuinely but I have never been of the
27 view that we have been fiscally constrained in the way we
28 can get redress for claimants. Now, I know clearly, you
29 know, every government agency doesn't have an endless
30 budget, but my experience is that there have never been any
31 overt constraints placed on us, whether that's in relation
32 to a settlement or ex gratia payment or a wellness payment.

33 So, certainly from my perspective, and I obviously can't
34 speak for other officials in the Ministry, the way we
35 approached claimants and how we might deal with them and the

1 redress we might be able to get for them is never fiscally
2 driven.

3 **MS JANES:** Commissioners, that ends my wellness
4 section.

5 **CHAIR:** And we have hit 5.00 and gone beyond, so it
6 means that I think Mr Young will be required to come
7 back in the morning, is that correct?

8 **MS JANES:** Yes.

9 **CHAIR:** Mr Young, that probably isn't the best
10 prospect for you but it would be very helpful for us -
11 A. An expected one.

12 **CHAIR:** Thank you for your co-operation. So, we will
13 end the day and ask for our kaumatua kuia.

14

15 (Closing waiata and karakia)

16

17 **Hearing adjourned at 5.05 p.m.**

18