

**ABUSE IN CARE ROYAL COMMISSION OF INQUIRY
FAITH-BASED INSTITUTIONAL RESPONSE 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 Anaru Erueti
Ali'imuumua Sandra Alofivae
Paul Gibson

Counsel: Mr Simon Mount KC, Ms Kerryn Beaton KC, Ms Katherine Anderson, Ms Tania Sharkey, Mr Michael Thomas, Ms Kathy Basire and Ms Alisha Castle for the Royal Commission

Ms Rachael Schmidt-McCleave and Ms Julia White for the Crown

Ms Sally McKechnie and Ms Brooke Clifford for Te Rōpū Tautoko, the Catholic Bishops and Congregational Leaders

Mrs Fiona Guy-Kidd, Mr Jeremy Johnston and Ms India Shores for the Anglican Church

Ms Maria Dew KC, Ms Kiri Harkess and Mr Lourenzo Fernandez for the Methodist Church and Wesley Faith

Mr Brian Henry, Mr Chris Shannon and Ms Sykes for Gloriavale

Ms Sarah Kuper and Mr Matthew Hague for the Presbyterian Church

Ms Helen Smith and Ms Sarah Kuper for Presbyterian Support Central

Mr Sam Hider for Presbyterian Support Otago

Mr Andrew Barker and Ms Honor Lanham for Dilworth School and Dilworth Trust Board

Mr Karl van der Plas, Mr Jaiden Gosha, Ms Rachael Reed and Ms Ali van Ammers for the Dilworth Class Action Group

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

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1 and that there was a sinister cover-up of sexual abuse within the school. These views may
2 be genuinely held. But they are wrong.

3 No known abuser was ever permitted to remain on the staff and there was never any
4 sinister cover-up within the school as alleged.

5 There has also been criticism to the effect that known abusers were not reported to
6 the Police. Now, you will see from the first page of the two-page statement that's been
7 referred to, and I've mentioned the witness page there, I don't know if it's appropriate to put
8 that on the screen or not, but anyway, I'll just refer to it, but you'll notice the first page,
9 which is in tabular form, sets out the known abusers at the time this statement was made on
10 10 October.

11 Now, I should interpolate to say that since then I have seen a couple of victim
12 statements that have been sent to me, and I think even one or two other staff members have
13 popped up, sadly. But these are the 12 who were known to us, or me, at the time of the
14 statement. And you'll see that I've listed them down, the years of their abuse, who was the
15 head and chair in each of those periods, when the abuse was reported to the head, the action
16 taken, when it was reported to the Police and by whom, and when it was reported to the
17 Teaching Council.

18 So this one page, this one page captures all of that information, and this information
19 is correct and is drawn from that information that I carry on.

20 The true position is that throughout the whole of the approximately 40-plus-year
21 period, only one known sexual abuser was not immediately reported to the Police at the
22 time.

23 **MS ANDERSON:** Can I just pause you there, Derek, that 40-year period you're referring to, that's
24 from the period when you first become involved as a trustee through to the period in 2015
25 when you left your role as chair.

26 **MR FIRTH:** Yes, mid-70s to 2015, yes.

27 That was over 40 years ago and it was a decision taken on my advice as the new
28 trustee. At the time the known abuse was of inappropriate touching and the abuser said he
29 was determined to fight the allegations in court.

30 **MS ANDERSON:** Here, Derek, we're referring to the first chaplain.

31 **MR FIRTH:** Yes, the first chaplain.

32 **MS ANDERSON:** That's how we'll refer to that person.

33 **MR FIRTH:** Yes, can I use his name?

34 **MS ANDERSON:** No.

1 **MR FIRTH:** But the first chaplain, yes. When he was confronted by the chair, the then principal,
2 and myself, the three of us, he denied it and said he was determined to fight it in court. I
3 was concerned, having conducted a number of sexual abuse cases as counsel in court, that
4 there was a reasonable possibility that the young victims would not be believed by a Jury
5 and this would be more harmful to them than what they were then reporting, I emphasise
6 the "what they were then reporting".

7 It has since transpired that his degree of abuse was greater than was reported to us at
8 that time.

9 Now, under headmaster Peter Parr, that was the only reported case of sexual abuse
10 of which I am aware and the only one known to trustees.

11 **MS ANDERSON:** And Peter Parr was the headmaster immediately before Mr Wilton.

12 **MR FIRTH:** Dr Wilton, yes, that's right. And that first chaplain abuser was later reported to the
13 Police by others and prosecuted.

14 Now, under headmaster Murray Wilton there were only two reported cases of
15 sexual abuse and only two known to trustees in his 18 years. Now, can I take the rest of
16 that paragraph as read because Dr Wilton covered that in his evidence yesterday afternoon.
17 There seems to be no need to repeat it.

18 **CHAIR:** No, you're right, thank you.

19 **MR FIRTH:** But it's the way we pull back to only two in 18 years who were reported.

20 **MS ANDERSON:** We'll come back in later questioning about what's properly characterised as
21 sexual abuse, because from the discussion with Murray Wilton yesterday you'll appreciate
22 that there's --

23 **MR FIRTH:** Yes.

24 **MS ANDERSON:** -- there's a difference of view about whether what was reported --

25 **MR FIRTH:** Yes, can I address that --

26 **MS ANDERSON:** -- should have been characterised as sexual abuse.

27 **MR FIRTH:** Can I address that now because I think one of the Commissioners asked Dr Wilton
28 whether or not the showering naked with boys by a housemaster was a form of sexual
29 abuse. Of course, today it would seem to be without a doubt. Back in the 70s it was
30 obviously totally unacceptable conduct, it was not seen to be criminal abuse and I think
31 Dr Wilton was advised by the Police and two other Heads that it was not criminal abuse,
32 but to all of us here of course it was. But that's not how it was perceived at the time, in '79
33 that was.

34 **MS ANDERSON:** Although the criminal offence of indecent exposure would have existed at that

1 time.

2 **MR FIRTH:** Yes, yes, of course. Yes, that's true, yes.

3 **MS ANDERSON:** I'll let you continue with your opening statement.

4 **MR FIRTH:** Coming down to the next paragraph, under Headmaster Donald McLean, there was
5 only one reported case in his 21 years and the only one known to trustees. And that was of
6 sexual abuse by a young overseas tutor over 10 years ago. He was summarily dismissed
7 and reported to the Police, Chaplain Ross Browne was made to resign in March 2006 for
8 inappropriately encouraging boys to masturbate in class and before any sexual abuse, and I
9 emphasise the next bit, involving direct physical contact was known.

10 Now, in my more detailed statement of course I cover that in more detail.

11 Now, if as requested by me on several occasions, Dr Wilton and I had been briefed
12 by the Dilworth advisors immediately when the extent of abuse was first known, all of this
13 evidence could have been made known to them in December 2019 or early 2020. This
14 would have enabled Dilworth to confidently rebut immediately the false statements to the
15 media about cover-up and about retaining known abusers. And as a result of refusing to
16 comment, the current trustees have, I believe, caused harm to many victims by permitting
17 their wrong assumptions to fester without question. I think that was an awful thing to have
18 happened. There may have been good reasons which will be explained in due course, but
19 I cannot think of them.

20 Now, that's the end of my prepared opening statement. I don't know if I'm still
21 within a flexible 10 minute period or not, but may I comment on one or two things that
22 transpired yesterday afternoon?

23 **MS ANDERSON:** Yes, please do.

24 **MR FIRTH:** Mr van der Plas representing a group of, a large group of victims touched on the
25 redress proposed by Dilworth at the moment and the delay with that happening. I totally
26 agree with him that the current proposed redress should have been offered earlier, I think
27 it's caused victims a lot of grief for it not to have been offered earlier, but in fairness to
28 Dilworth, I understand that there were negotiations with the victims group and that may
29 have protracted the finalisation of that.

30 So it may not be entirely at Dilworth's door that there was that delay.

31 Mr van der Plas made what I respectfully suggest was an excellent point when he
32 asked how many victims might have been spared if these early matters had been acted on
33 more appropriately. I think that's the nub of the matter, Madam Chair, you touched on this
34 at the end of the day yesterday, and I think that will end up being the nub of the matter.

1 And I totally agree with Dr Wilton that with those very early cases of offending by the first
2 chaplain and Rex McIntosh, that if we had made a more detailed inquiry, detailed inquiry
3 of the victims, we may have discovered more and we may have been able to prevent a lot of
4 the subsequent abuse.

5 Now, when I say "we", I did not think then and I do not think now that it was
6 appropriate for trustees to interview boys. I think that would have been absolutely wrong.
7 But we could have insisted and required the head and any outside people to come in and
8 better talk with the boys and perhaps get from them details, more details of the abuse,
9 which seems to have been worse than was reported, and of other victims. So I totally agree
10 with that point.

11 In Mr Barker's statement he referred to what the Dilworth Trust Board has now
12 done, and I wish to applaud that to the extent I can, having been approved, the school
13 having been approved through a rigorous Child Wise programme, having a full-time safety
14 officer, rewriting policies, having an advisory group and providing for anonymity of
15 reporting, and I'm sure there will be more about that later in the day, but I just want to say
16 that that seems to be absolutely, absolutely right.

17 I don't know whether it's appropriate to comment on Commissioner Erueti's
18 comment or whether he might ask me the same question later, but I have a comment on a
19 couple of those points if it's appropriate now.

20 **MS ANDERSON:** Why don't we commence with the questioning --

21 **MR FIRTH:** Yes.

22 **MS ANDERSON:** -- and then these aspects might come out and then at the end if there's anything
23 that you haven't covered through the questioning that you think you may wish to, then there
24 will be an opportunity.

25 **MR FIRTH:** That would be wonderful, thank you very much.

26 **MS ANDERSON:** Derek, you've in fact been very keen to have your opportunity to present at the
27 Royal Commission and to have your witness statements, including your long and the
28 two-page short-form publicly available, haven't you?

29 **MR FIRTH:** Yes, I have.

30 **MS ANDERSON:** And you've expressed in that documentation perhaps one of your driving
31 concerns is that you felt a bit shut out of what the current Trust Board process is and that
32 you don't feel that they've put the right messages into the public domain. Is that accurate?

33 **MR FIRTH:** Only in the two issues that I've referred to. I think everything else has been
34 excellent. But on those two issues of -- well, on the issue of just staying silent when the

1 victims were festering and I think in my statement I say like an unlanced boil, they were
2 allowed to fester over these things that were not correct and they were not being corrected,
3 so they just got greater entrenched in their minds.

4 So for the last year, 18 months or even more, the victims have been unnecessarily
5 stirred up over a lack of reaction to those allegations, and I'm not suggesting that the
6 victims should agree with me or agree with what we did, I'm not suggesting they will think
7 what we did was right. But what they were yearning for was some explanation and they
8 never got it, and that annoyed me.

9 **MS ANDERSON:** I think that comes across quite clearly in your statement.

10 The one-page summary table document that you and Dr Wilton prepared, I'm not
11 calling it up, but I am just talking about the nature of it, is it accurate to describe that what
12 you've listed in there includes reports that were known to you through your role on the
13 Board? Is that right?

14 **MR FIRTH:** No. Some of this material I only learned when it came forward as a result of the
15 Police inquiry or this Inquiry.

16 **MS ANDERSON:** Right, but it includes -- you'd be able to identify from the list here those that
17 you were aware of at the relevant time.

18 **MR FIRTH:** Just going very quickly, I think -- yes, I've got the redacted version, just going
19 extremely quickly through them, Stephens back in '71, never heard about him until a week
20 or two ago.

21 **MS ANDERSON:** Let's go through them, the ones that you do. So that second one, Dixon, you
22 were aware of that during your time on the Board?

23 **MR FIRTH:** So from '75 on, the school chaplain would be the first from my time on the Board.

24 **MS ANDERSON:** The first for you?

25 **MR FIRTH:** And I knew within hours or a day of those complaints being received.

26 **MS ANDERSON:** And you knew about McIntosh?

27 **MR FIRTH:** Yes, in fact I think Dr Wilton said in his detailed statement that he and the chair,
28 who would have been Bill Cotter, confronted McIntosh. I'm quite sure it was Dr Wilton
29 and myself who confronted Rex McIntosh.

30 **MS ANDERSON:** But you recall involvement with that?

31 **MR FIRTH:** Absolutely.

32 **MS ANDERSON:** Clearly you were aware in terms of involvement with Ian Wilson in '96?

33 **MR FIRTH:** Yes.

34 **MS ANDERSON:** And with Mr Wynyard?

1 **MR FIRTH:** Cave -- oh, Wynyard, yes. Now, I'm not sure that I knew much about him. I think
2 it's the sort of thing that would have been reported to the Board and I must have known
3 about that at the time.

4 **MS ANDERSON:** And Cave, you would have known at the time.

5 **MR FIRTH:** The same, yes.

6 **MS ANDERSON:** And then the next person listed is the housemaster. Would that have been
7 something you knew about during your time on the Board?

8 **MR FIRTH:** I must have, I just need to look at the unredacted copy just to remind myself of who
9 it is.

10 **MS ANDERSON:** It relates to a 2018 report, so after your time on the Board so it --

11 **MR FIRTH:** Yes, I don't recall him being reported, but --

12 **MR ANDERSON:** The next one is the 1994 report, about a person --

13 **MR FIRTH:** Yes, I certainly --

14 **MS ANDERSON:** You knew about that.

15 **MR FIRTH:** -- remember that person.

16 **MS ANDERSON:** And the next one says "not reported until much later in time".

17 **MR FIRTH:** No, that's right.

18 **MS ANDERSON:** And then the second chaplain, Ross Browne, you clearly knew about that.

19 **MR FIRTH:** Yes. Yes, and picking up the point the Commissioner made about showering naked
20 with boys should perhaps be considered as sexual abuse, one might well say exactly the
21 same about encouraging boys to masturbate in class, I mean, it was appalling.

22 **MS ANDERSON:** Absolutely.

23 **MR FIRTH:** It was just appalling.

24 **MS ANDERSON:** Absolutely.

25 **MR FIRTH:** That's why I referred in my brief statement to the events that resulted in direct
26 physical sexual contact.

27 **MS ANDERSON:** Yes, and I think we'll come back to that, Derek, because I think there probably
28 has been an understanding in the decision-makers in the school that perhaps only if
29 something required -- had involved that physical contact that it was properly characterised
30 as sexual abuse.

31 **MR FIRTH:** Yes, I'm not sure it's as simple as that, because we regarded the showering naked
32 with boys as appalling, we regarded the encouragement of the activity in class as appalling.

33 **MS ANDERSON:** Yes, but still, not necessarily conceptualising of that activity as sexual abuse at
34 the time.

- 1 **MR FIRTH:** We probably did not see it as criminal sexual abuse.
- 2 **MS ANDERSON:** And that last tutor on that page, that would be somebody that you would have
3 been aware of.
- 4 **MR FIRTH:** Oh, yes. In fact I should make it clear that despite, despite a lot of press -- well, I'm
5 not blaming the press, but as a result of statements that have been made, my understanding,
6 and I think it's a fairly reliable one, is that this last young tutor, who's last on the list, was
7 the only offender who actually raped a boy. Now, if that had happened earlier, there was
8 no hint of it in any of what was reported to us. So I'm not saying it didn't happen, I'm
9 saying that if it did it was not reported to us, this was the only conduct amounting to rape
10 that was ever reported to us.
- 11 **MS ANDERSON:** In terms of the dynamic between the Board and the headmaster, so the
12 operational arm under the headmaster and the governance arm at the Board level, do you
13 agree that you'd be very reliant on what was escalated up to the Board in terms of what you
14 were told about reports of abuse at the school?
- 15 **MR FIRTH:** Yes, of course. I mean, the trustees didn't get involved with the house activity
16 routines or --
- 17 **MR ANDERSON:** No, no, but you'd expect to, and Mr Wilton was very clear that all reports of
18 abuse were advised to the Board.
- 19 **MR FIRTH:** Yes, and I'm sure they were.
- 20 **MS ANDERSON:** And when you've come and made the statement that there was no cover-up,
21 you're really relying on what you as a Board member knew at the time and the actions you
22 say were taken as a consequence of that knowledge; is that right?
- 23 **MR FIRTH:** Yes, that is. And just -- in my whole career I tell witnesses never to try and think
24 where the questioning is going, but where that might well be leading to I think is this, that
25 there may well have been other students who covered up, so to speak, or who did not
26 mention it, and there may have been one or two junior staff members who did not mention
27 it when they should have. I understand that.
- 28 But yes, we relied on what the head reported to us because we did not have any
29 direct reporting line with any other staff member.
- 30 **MS ANDERSON:** That's right. So from a governance perspective, you need to know that your
31 systems and policies are appropriate and the right information is coming up to you.
- 32 **MR FIRTH:** Yes.
- 33 **MS ANDERSON:** And your risk management includes making sure that that happens.
- 34 **MR FIRTH:** Yes.

1 **MS ANDERSON:** Now, I think you're aware that a number of survivors say that they disclosed
2 reports of abuse to different staff members and sometimes to the head and that they weren't
3 believed, and in fact at times they were disciplined. You're aware that that's what some of
4 the survivors say?

5 **MR FIRTH:** Absolutely. In fact I understand two boys were caned for reporting abuse, which
6 is --

7 **MR ANDERSON:** Can you tell us about -- I think that's referred to as "the caning incident", isn't
8 it?

9 **MR FIRTH:** Well, I thought there might have been two, one or two.

10 **MS ANDERSON:** Can you tell us about those.

11 **MR FIRTH:** I don't really know much about them except that I heard that this had happened.

12 **MS ANDERSON:** At about what kind of era, 70s, 80s?

13 **MR FIRTH:** Back in the late 70s, because caning was abolished in the very early 80s, so it would
14 have been the late 70s or very early 80s, and the -- I'm not sure of his title, but he was, I
15 think, like the head of the junior school, a chap called Burnett, I think did that, I'm not sure
16 if anyone else did, and all I can say is it was appalling. But that reflected the view of that
17 staff member at the time.

18 **MS ANDERSON:** That's right, but also a systems failure because that information hasn't come up
19 to the Board, has it, that somebody's reported abuse, and simply because they actually
20 haven't been believed and they've been punished.

21 **MR FIRTH:** Well, that never reached the Board at the time. I would be reluctant to call it a
22 systems failure. But it never got to the Board, that's true.

23 **MS ANDERSON:** But your system is designed to make sure all reports of abuse come up to the
24 Board so you can take appropriate --

25 **MR FIRTH:** Absolutely, that was the intention.

26 **MS ANDERSON:** And if that system doesn't work as intended, that's a break-down of the system,
27 isn't it?

28 **MR FIRTH:** Yes. Yes, of course that's a break-down in the system, but whether it's a
29 break-down that one could easily guard against or not, I'm not sure.

30 **MS ANDERSON:** And so at the Board level there might be various of these incidents of boys
31 reporting abuse and getting a punitive response that the Board's just simply unaware of.

32 **MR FIRTH:** Yes, that's true. I'd like to think there were not too many.

33 **MS ANDERSON:** And do you accept that for those survivors who have come forward and said
34 that that was their experience, that they consider it can be fairly characterised as a cover-up,

1 because no action was actually taken to prevent the person they were saying was harming
2 them from going on to harm other people?

3 **MR FIRTH:** No, I think that where a complainant was not believed, even if wrongly not believed,
4 that's not correct to call that a cover-up. I think it could only be rightly called a cover-up if
5 it was known and accepted to have been abuse that was then concealed.

6 **MS ANDERSON:** That requires, doesn't it, quite a few steps, because that would require an
7 investigation into the allegation, wouldn't it?

8 **MR FIRTH:** Yes, but if a staff member receives a complaint and doesn't believe it and wrongly
9 doesn't believe it, that's not the sort of thing that would ever normally go further.

10 **MS ANDERSON:** We can agree that it wouldn't normally go further. I think the point we're
11 disagreeing on is that you don't accept that from a survivor's perspective that that's a
12 cover-up of the abuse that was occurring at the time.

13 **MR FIRTH:** Ah. Sorry, I'm a bit slow, I've got the point. Yes, I can certainly understand
14 survivors thinking that was a cover-up.

15 **MS ANDERSON:** And that perhaps that might have influenced -- knowledge of those sorts of
16 events might have influenced the school of not wanting to go out publicly and deny that
17 there had ever been any cover-up in the way that you and Dr Wilton have been quite keen
18 that the messaging should have been.

19 **MR FIRTH:** Yes, I'm not quite following the point, Ms Anderson.

20 **MS ANDERSON:** Your very strong point in your evidence is that there's no cover-up; that's right,
21 isn't it?

22 **MR FIRTH:** Correct.

23 **MS ANDERSON:** And you say the messaging from the current School Board should have been
24 publicly that there was no cover-up. That's what you say they should have gone out and
25 said and that that would have prevented further harm to the survivors.

26 **MR FIRTH:** Yes, had the position of myself and the current Board been reversed, I would have
27 insisted on it.

28 **MS ANDERSON:** But can you see the danger of going out and saying there's no cover-up while
29 there may be instances, from a survivor's perspective, that they've reported abuse and been
30 disbelieved and that they consider that that is in fact a cover-up?

31 **MR FIRTH:** Yes, I can see it would have been helpful to have a bit of a clearer understanding of
32 what was or was not a cover-up. What I, and I believe Dr Wilton are saying, is that no
33 known abuse, no accepted or no believed abuse was ever covered up.

34 **MS ANDERSON:** That's right, but I think we can further confine that, can't we, to no abuse that

1 the Board was aware of. Because there seemed to be reports of abuse to various people in
2 the school environment over time that were never -- never came up to the Board because
3 the reaction was disbelief and punishment in some instances.

4 **MR FIRTH:** Yes, but every complaint had to be addressed in some way. I mean, there was at
5 least one case where a boy complained to the Police and then withdrew and said he'd been
6 lying. Now, you know, that's why the staff had to be careful and look into each complaint.
7 I'm not doubting for a minute what's been claimed by these survivors, it's just terrible. I'm
8 not doubting the accuracy of that for a moment. But I would fully support the staff
9 questioning it when it was raised, I mean they had to make sure they were being told the
10 truth, and in my case I was going a step further with the first chaplain and those complaints
11 and I was focusing on whether or not a Jury might accept their evidence if it was contested.

12 And incidentally, if I can add to that point, there's a respected lawyer in Auckland
13 whose name is prominent, Sonja Cooper, who specialises in this area, and some years later
14 Sonja Cooper wrote to the Board on behalf of a victim who had been -- whose abuser had
15 been reported to the Police, and Sonja Cooper, an expert in this area, complained to the
16 Board, I think while I was still on it, complained to the Board that it had complained to the
17 Police without the victim's consent, for the reason that it can be a terribly -- a terrible
18 process and can rebound against the victim.

19 They were Ms Cooper's reasons for writing to the Board about a totally unrelated
20 matter, and that reflected exactly my reason back in 1978 with the first chaplain.

21 **CHAIR:** Can I just -- Mr Firth, can I just take you back to the question of the staff receiving
22 complaints and not acting on them --

23 **MR FIRTH:** Yes.

24 **CHAIR:** -- because I think that's what we're aiming on here. Was it the Board's policy or the
25 school policy that a teacher who received any complaint of misbehaviour by other staff
26 should deal with it unilaterally on their own without reference to anybody else?

27 **MR FIRTH:** No, there would not have been a policy to that effect at the time.

28 **CHAIR:** So when you say that a staff member has received a complaint and hasn't done anything
29 because they didn't believe them, that is effectively a staff member acting unilaterally, isn't
30 it?

31 **MR FIRTH:** Yes, and that was wrong.

32 **CHAIR:** That's right, I think that's the point, that when boys brought complaints to staff members
33 and the staff member dismissed them out of hand or didn't believe them, however well
34 justified they felt, that that was not a proper action on the staff behaviour and it deprived

1 the Board of the opportunity to properly investigate.

2 **MR FIRTH:** Yes, absolutely. I would like to think that was a pretty rare sort of thing, but I agree
3 entirely.

4 **CHAIR:** I think that's probably where we get to, was it rare, did it happen, etc.

5 Thank you, Ms Anderson.

6 **MS ANDERSON:** Thank you, Madam Chair.

7 So turning to the first chaplain which is the example in which you say that there was
8 a thorough investigation carried out, and I think you also say --

9 **MR FIRTH:** I'm not sure about thorough, there was an investigation, Mr Parr was certainly asked
10 to inquire. I specifically asked Mr Parr if there were any allegations involving penetration
11 or oral sex and he specifically asked that, --well, he told me that he asked that of the
12 complainants and that there were none.

13 Now, the complainants may well have been more abused than they reported and I'm
14 not criticising that. All I'm saying is that that is what was reported back to Mr Parr on those
15 specific issues which I asked him to inquire about, and there were no complaints to him of
16 that degree of activity.

17 **MS ANDERSON:** And we don't have records of that investigation, do we, because it appears that
18 those, as you will have heard in the discussion with Mr Wilton yesterday, there's a
19 document recording --

20 **MR FIRTH:** Yes.

21 **MS ANDERSON:** -- that in '92 or '93 the documents were destroyed in a clean-out?

22 **MR FIRTH:** Yes, and I heard that and watched that yesterday and I was aware that that had
23 happened. And that was the last thing we would have wanted to have happened. When
24 eventually the Board caught up with the fact that these older documents had been
25 destroyed, we were annoyed, we had not wanted that, we did not want it, I wish they were
26 available, and that was a unilateral action by the then general manager who obviously
27 thought he was doing the right thing by having a clean-out. But it was not right, he should
28 not have.

29 **MS ANDERSON:** Not in accordance with any Board policy on document retention at the time?

30 **MR FIRTH:** No, in fact -- sorry, I'm very familiar with the concept of document retention, and
31 have advised a number of organisations on it, including the tobacco industry of all people.
32 So I'm very familiar with this notion of document retention policies.

33 But we had, as far as we were concerned, it was left to the discretion of the general
34 manager. We did not have a document retention policy in those days. That expression

1 "document retention" is, of course, sometimes euphemistic for a document destruction
2 policy, but we had no policy of any kind involving documents. It was left to the discretion
3 of the general manager. But I could not believe that he thought it inappropriate to keep
4 those documents or to destroy them.

5 **MS ANDERSON:** From your knowledge of the investigation, because from what we've seen it
6 doesn't appear that there was a great attempt to reach out to boys who -- because the
7 chaplain had contact with a wide range of boys --

8 **MR FIRTH:** Yes.

9 **MS ANDERSON:** -- at the school, to go very broadly to work out who might need to be
10 approached to see whether they had been harmed.

11 **MR FIRTH:** Absolutely, and that was a very, very unfortunate failure. We felt that we were
12 doing the right thing by asking the principal, the head to do what he did, but in view of the
13 way things have turned out and what we now know, that was absolutely wrong and
14 unfortunate. It looks quite clear now that if we had had either Mr Parr or an outside person
15 to give more comfort to the boys, that if we had had someone make more inquiry of the
16 boys that may well have led to more information of other victims and other kinds of
17 offending.

18 **MS ANDERSON:** And might have influenced actions taken in relation to activities of that
19 chaplain in the community after he departed Dilworth.

20 **MR FIRTH:** Yes, probably -- it possibly would have depending on what it had led to. In that
21 particular case we felt, rightly or wrongly at the time, that reporting him to the Bishop was
22 a pretty huge sanction. It seems to have not been the case.

23 **MS ANDERSON:** And in fact you later learned, didn't you, that the chaplain had -- there'd been a
24 glowing communication relating to the chaplain before he came to the school, but you later
25 found out that there'd been allegations that he'd abused others in a different place before he
26 came to Dilworth; do you recall that?

27 **MR FIRTH:** Yes, we're getting into second or third round of hearsay, which I presume is
28 permissible.

29 **CHAIR:** The sky's the limit in this Commission.

30 **MR FIRTH:** Yes, so on that basis, yes. It is hearsay, but Peter Parr, who was the head, made
31 inquiries of this chaplain's former employment, it was in a cathedral in the South Island and
32 he was told that this chaplain had abused choir boys in that cathedral.

33 **CHAIR:** Just a moment. Mrs Guy Kidd is on her feet.

34 Yes, Mrs Guy Kidd.

1 **MRS GUY KIDD:** Ma'am, if I could just indicate, just the factual matters that have been brought
2 out already show the risks of dealing with hearsay. This chaplain was never in a cathedral,
3 never worked in a cathedral.

4 **CHAIR:** That's a salutary reminder. Thank you, Mrs Guy Kidd.

5 **MR FIRTH:** I'm sorry, that's not right.

6 **CHAIR:** Mr Firth, we won't start a toing and froing. I think these are -- and because we are a
7 Commission, we can tidy these matters up afterwards and get to the bottom of it, but the
8 danger of course here is a reputation, natural justice issue that can't be answered in the
9 context.

10 **MR FIRTH:** Absolutely.

11 **CHAIR:** So for that reason -- this is not a cover-up but this is a protection for people who need an
12 opportunity to respond and they will get that. So I think, if we can just be very careful, you
13 can tell us what you heard but if you could just refrain from mentioning names, institutions,
14 organisations who might be negatively impacted and need an opportunity to respond. Does
15 that make sense to you?

16 **MR FIRTH:** Absolutely, Madam Chair if I can perhaps confine it to this which hopefully won't
17 cause too much disturbance.

18 **CHAIR:** Yes.

19 **MR FIRTH:** This chaplain came to us and his application form and his details set out that he had
20 been at a cathedral in the South Island.

21 **CHAIR:** Let's not repeat the thing, he'd been at other institutions, if we can just leave it at that
22 point.

23 **MR FIRTH:** All right, but if he wasn't then that was something false in his application.

24 **CHAIR:** Okay. All right.

25 **MR FIRTH:** Because, as I pointed out in my more detailed statement, the trustees of Dilworth
26 make only two direct appointments, the headmaster and the chaplain. They are the only
27 two direct appointments that the trustees ever make.

28 **MS ANDERSON:** Derek, in terms of a comment that you've made in an email in 2021 that you
29 provided professional counselling to the boys in relation to this complaint in relation to the
30 chaplain, and -- is it your recollection that was counselling to the two boys who'd come
31 forward? It's not to be interpreted as you provided counselling generally to boys who might
32 have been harmed by this chaplain at the school?

33 **MR FIRTH:** We asked Peter Parr to arrange counselling for boys who had been molested by this
34 chaplain.

- 1 **MS ANDERSON:** But you didn't have a wider investigation to find out how many, did you, so
2 you were just dealing with those that had come forward?
- 3 **MR FIRTH:** Yes, at the time he told us who the boys were but I cannot remember now how
4 many. So there would have been --
- 5 **MS ANDERSON:** Do you recall Neil Harding's evidence in the witness bundle that you've looked
6 at?
- 7 **MR FIRTH:** Yes, I've read his evidence twice.
- 8 **MS ANDERSON:** And of course he says that he was abused by the chaplain but no-one ever
9 approached him to find out whether he'd been abused by the chaplain.
- 10 **MR FIRTH:** Yes, and I don't doubt for a moment that would be true. If he was one who
11 complained to Peter Parr, then --
- 12 **MS ANDERSON:** That's my point of distinction, you know, were you dealing only with people
13 who proactively came forward and reported the abuse, or were you looking at, and I think
14 you've conceded that there should have been, but wasn't, a wider investigation into who
15 else might have been harmed by that chaplain.
- 16 **MR FIRTH:** Yes, we only spoke to Peter Parr about the boys he said he was aware of. Now, I've
17 agreed earlier that we should have asked Peter Parr or some outside person to come in and
18 see if there were more victims.
- 19 **MS ANDERSON:** I'm just going to move on to the second chaplain, Ross Browne, whose name
20 we can use. I'm going to take you to a document which is TGC0000514.
- 21 **MR FIRTH:** Is that popping up?
- 22 **MS ANDERSON:** It will come up on the screen. While it's coming up, Derek, I will just
23 orientate you to it. It's a New Zealand Police job sheet in 2001 and it relates to possible
24 possession of objectionable material. Do you see that in the middle of that first page?
- 25 **MR FIRTH:** Yes, I do.
- 26 **MS ANDERSON:** And we're going to turn over to page 2. Can we just enlarge it slightly for
27 Derek. You can see there's been an inquiry made at the school in February 2001 about the
28 Police having concerns that Ross Browne had been in possible possession of sexually
29 explicit material involving boys. The question's asked of the school had there been any
30 complaints made or concerns, so not limited to complaints, and the then GRO-C
31 GRO-C who came in after Mr Wilton, says that there'd been no complaints or concerns.
32 And the last bullet point there, he does not consider Browne to be a risk to any boys.
33 Do you see that there?

1 **MR FIRTH:** Yes, that's 2001?

2 **MS ANDERSON:** 2001.

3 **MR FIRTH:** Yes, I certainly was not aware of the allegation of having pornographic material
4 until he was charged before the court.

5 **MS ANDERSON:** So just in terms of the system, the GRO-C has clearly known that Police
6 are looking at this, but it's not something that's been elevated to the Board. Is that a fair
7 characterisation?

8 **MR FIRTH:** That's right. This was certainly not drawn to our attention.

9 **MS ANDERSON:** And as a Board member, do you think it should have been? Isn't that the kind
10 of information you'd want to know?

11 **MR FIRTH:** Yes, I think that's the sort of thing that I would have wanted to have known, yes.

12 **MS ANDERSON:** Just coming on to another document, which is a couple of years later in June
13 2003, ANG0019385.

14 Just while that's coming up, Derek, you see it's a letter from the Bishop to an
15 unidentified Dilworth School parent in June 2003 and says -- the Bishop doesn't know the
16 parents' name but he says:

17 "I've been made aware by the principal of Dilworth School of the details of your
18 recent formal complaint to him involving your son and a group of boys at the school in
19 relation to an incident caused by the school chaplain."

20 He goes on to say that he's taking the matter very seriously and he's going to be
21 requiring the priest involved to come and talk to him and that he's advising the parent that
22 both the principal and he are acting on this complaint.

23 **MR FIRTH:** Yes, I was certainly not aware of that at the time, but I'm fairly certain, as I learned
24 subsequently, like after he was being met with to leave, I'm fairly certain this was an
25 incident where he told a foul joke to a group of boys and that led to this complaint.

26 **MS ANDERSON:** So by "foul" you mean a sexually explicit joke?

27 **MR FIRTH:** Oh, it was -- I can't remember it and wouldn't want to, it was absolutely awful.

28 **MS ANDERSON:** Again, an incident of -- it would have been of concern but you're saying the
29 Board didn't know about this at the time, is that what you're saying?

30 **MR FIRTH:** Yes, that's correct, yes.

31 **MS ANDERSON:** So again, it looks like the system is just not working properly, is it, that
32 things that are significant enough to write to the Bishop about are not coming to the Board.

33 **MR FIRTH:** Yes, I'm slightly resisting but -- I don't want to be defensive about it. But I'm

1 slightly resisting this regular reference to "systems". The particular rule, as I mentioned in
2 my detailed evidence, was that both principals, they were well aware that the Board
3 expected no surprises, and that was a very simple way of saying we did not want to be
4 taken by surprise ever.

5 One of our trustees during part of this period was a director of the owner of The
6 Herald and he often used to say to us, "Whatever we do or don't do we've got to assume it
7 might end up on the front page of The Herald." He was a flipping director of the
8 publication and we were constantly vigilant to avoid that sort of thing.

9 So the two principals were under very strict instructions that we did not ever want to
10 be taken by surprise.

11 **MS ANDERSON:** So those expectations were very clear, weren't they?

12 **MR FIRTH:** They were clear, but I really, if I may, Madam Chair, follow this with a very quick
13 comment because things could get out of proportion. Dr Wilton and Mr MacLean were
14 exemplary headmasters, in my view, and I'm very unhappy at their reputations being
15 tarnished in this way when they were almost -- when they were unquestionably doing what
16 they thought was best for the school. And I just hope that's not overlooked in this whole
17 process.

18 **MS ANDERSON:** I'm not asking the questions from that perspective, I'm asking about the
19 expectation about how the reporting upward would work and whether this is an example of
20 that expectation, your word, I'd use the "system" word but you're using "expectation", that
21 that hasn't,- your expectation hasn't been met in relation to something as significant that
22 required a letter to the Bishop-.

23 **MR FIRTH:** Yes, I would have expected to have been warned of something of this nature.

24 **MS ANDERSON:** And then a couple of years further on in the sequence, so that was 2003 we
25 were looking at, so two years later, June 2005, calling up DSW0000104.

26 So just while this is coming up, Derek, it's a letter from Principal MacLean to Ross
27 Browne in June 2005, and you'll see in the fourth paragraph there's an allegation that he
28 was, the chaplain was allowing students to sit on his knee and at the bottom of the page
29 some other allegations that are not very clear but which are described as a blurring of
30 boundaries between a group of students and the chaplain.

31 And then over the page, we see that there's recording on the file, we'll just bring that
32 second page up so you can see, recording on the file "a strong caution with regard to the
33 specific instance discussed".

34 **MR FIRTH:** Yes, I don't remember the particular letter but I was certainly involved at this point.

1 **MR ANDERSON:** So in 2005 --

2 **MR FIRTH:** Yes.

3 **MS ANDERSON:** --you're aware of this because it's leading to a formal sanction on a staff
4 member.

5 **MR FIRTH:** Yes, absolutely.

6 **MS ANDERSON:** And then we know, don't we, that Ross Browne's resignation is in March 2006.

7 **MR FIRTH:** Yes.

8 **MS ANDERSON:** After the incident that you've described in your opening statement of
9 encouraging boys to masturbate in class.

10 **MR FIRTH:** Yes, I think we were aware of that, I think the previous year, in 2005.

11 **MR ANDERSON:** Well, certainly I think Ross Browne's letter, we won't take the time to come
12 up to it, but accords with that, because he's contemplated the position over the Christmas
13 break.

14 **MR FIRTH:** Yes.

15 **MS ANDERSON:** And then -- yeah.

16 **MR FIRTH:** Yes, we had a lengthy period of discord with Ross Browne. I don't know what
17 expression to use, but he had the gift of the gab. And he was adamant that everything he
18 was doing was consistent with proper educational instruction and not causing harm and so
19 on, and GRO-B and I and the other trustees were equally adamant that he was
20 going off the rails, and we were very, very unhappy about it.

21 Now, I'm sure back in 2005 we were taking legal advice from our lawyer who was
22 an employment expert, and we were advised that we had to be very careful because he was
23 denying wrongdoing, the lawyer pointed out the need for notice and warnings and all those
24 well-known things, and we were well at the point before Christmas in 2005 that we were
25 very unhappy with this chap, uneasy about him and wanted him to go, and we were getting
26 legal advice at the time.

27 **MS ANDERSON:** And was he stood down over this period that you've got this concern and
28 you're engaging with lawyers?

29 **MR FIRTH:** No, I don't remember him being stood down, no.

30 **MS ANDERSON:** So not stood down?

31 **MR FIRTH:** No, and we would have been advised against that. You see, at the moment, now, we
32 know that he crossed the boundary in a horrible, criminal way. We had no idea of those
33 events that eventually led to his conviction. We were only aware of these sorts of things

1 like having boys sit on his knee and encourage them to masturbate in class, it was
2 appalling, absolutely appalling.

3 **MR ANDERSON:** Well, they're significant red flags, aren't they?

4 **MR FIRTH:** Absolutely, absolutely. So really from whenever we were aware of that in 2005
5 through to persuading him to go in March 2006, and I was actively involved in that directly,
6 we were getting constant legal advice, there'd be meetings with him, I think there might
7 have been one or two with his legal representative present, I mean.

8 **MS ANDERSON:** So quite a process, yeah.

9 **MR FIRTH:** He was shaping up for a fight, yes.

10 **MS ANDERSON:** And so then in that context that's where a resignation is accepted rather than
11 dismissal of him from the staff, that's right?

12 **MR FIRTH:** Yes, yes, that's right. He --

13 **MS ANDERSON:** And we have heard Dr --

14 **MR FIRTH:** Sorry, I think it was apparent to him that if he didn't resign he would have been
15 dismissed.

16 **MS ANDERSON:** Yes, but it's still -- we've had a trend of persons who have been accused of
17 abuse, not just at Dilworth, in a lot of other institutions, where the option of a resignation
18 and moving on happens rather than a formal disciplinary process, and that's what happened
19 here, isn't it?

20 **MR FIRTH:** We were advised that he had not committed an offence for which he could be
21 summarily dismissed. Now, I'm far from confident that was the right advice, and I said so
22 at the time to our advisor. But that was the advice.

23 **MS ANDERSON:** And Derek, does that relate to the basis of the information that you've got is
24 really what people have come forward and reported as opposed to a wider investigation of
25 what actually might have been the harm this chaplain had been inflicting in the school -- so
26 you were on the subcommittee that did the investigation, weren't you?

27 **MR FIRTH:** Yes.

28 **MS ANDERSON:** And that investigation report, I'm not going to bring it up, but I think they
29 spoke to eight boys who'd come forward, they spoke to eight boys in that investigation?

30 **MR FIRTH:** I don't remember us speaking with boys directly. That would surprise me but I don't
31 remember that.

32 **MS ANDERSON:** I don't think the Board spoke to them directly.

33 **MR FIRTH:** No, no.

34 **MS ANDERSON:** But just in carrying out the investigation.

1 **MR FIRTH:** It would have been Mr MacLean.

2 **MS ANDERSON:** And no calling in an independent person to investigate at this point, that didn't
3 occur to the Board --

4 **MR FIRTH:** No, correct.

5 **MS ANDERSON:** -- as an option. And so again, sort of decisions made on, you know, a certain
6 pool of information, but had there been an investigation, there might have been much more
7 information available to the Board at this time.

8 **MR FIRTH:** Well, looking back now and the horrible things he was doing, yes, I guess if there'd
9 been some sort of wider investigation they would have emerged, and boys saved from the
10 terrible things he was doing. But, no excuse for him, but we believed we were following
11 the right process, because as you will well you know, 80% of employment law is getting
12 the process right, and as most employers know, that drives them mad.

13 So we just had to comply with the law as we were advised by an expert in
14 employment law. Our advisor is now a judge.

15 **MS ANDERSON:** You'll see, you will have heard Mr Wilton yesterday, I think he conceded that
16 by 1996 with all of the information available at that time, at the point in time of Ian Wilson
17 that that could have legitimately have been a point in time that the Board could have
18 commissioned a wider inquiry of the type that has been commissioned in 2021 about the
19 nature and extent of abuse at the school.

20 **MR FIRTH:** No, I think that's easy to conclude now, but if you look at my opening statement
21 now, there was one case of known abuse, known to me anyway, Mr Parr, two in the case of
22 Dr Wilton over 18 years, and one in the case of Mr MacLean.

23 **MS ANDERSON:** But that's partly how you characterise what is the actual sexual abuse though,
24 isn't it? In terms of --

25 **MR FIRTH:** That would add one or two at the most to those numbers.

26 **MS ANDERSON:** So you don't accept that there's a point of time, either in 1996 or moving
27 forward 20 years to 2006, in relation to Ross Browne, where you've -- it's the point in time
28 in which you've known the two chaplains have -- their conduct has been highly
29 questionable in the school environment. So thinking about 2006 with the history leading up
30 to that point, my question to you is, did the Board ask itself at that time, "Is there a problem
31 that we actually need to do some work to understand the nature and extent of it?"

32 **MR FIRTH:** No, when I was chair at the time that was not considered or discussed. All I can do
33 is repeat those numbers, give or take one depending on the definition of abuse, over 18 and
34 21 years, 39 years, there were three or four depending on that definition. It wasn't a setting

1 in which we saw the need for that sort of wider investigation.

2 Now, compare that with the last couple of years with Operation Beverley, all the
3 information that's come to light, all the complaints that have come to light, all the
4 prosecutions that have come to light, it's a different world, a totally different scene. To
5 think that we might have been in that setting in 2006 is just not right.

6 **MS ANDERSON:** Do you accept that in Operation Beverley one of the different features was that
7 the name of the school was put out in the public domain?

8 **MR FIRTH:** Yes, and I've certainly –

9
10 **GRO-C**

11 **MS ANDERSON:** I've got one further topic, Derek, I'm going to explore with you before I give
12 Commissioner's time for questions, and it relates to an exchange of letters that you are
13 familiar with from the bundle between yourself and Frances Joychild and the person that
14 she was representing beginning of December 2012; do you recall the documents I'm talking
15 about?

16 **MR FIRTH:** I've just about memorised them.

17 **MS ANDERSON:** Yes. So we won't need to bring them up. I'll call them out so we can read into
18 the record and then I'll give you an opportunity to respond.

19 You've written a letter to Ms Joychild in January 2013. Just so that we have a
20 transcript reference, the document number is DWS0001984, and you're saying that you are
21 happy to meet with her client, but that you intend to do nothing -- that is nothing more than
22 a courtesy. Do you recall that language? And then you say:

23 "You will appreciate that one has to be very careful about historical complaint
24 because..."

25 First bullet point:

26 "Many cannot be authenticated because of the passage of time."

27 Second bullet point:

28 "We are informed that a relatively high proportion tend to be made late as an excuse
29 for difficulties which have arisen in the person's life. This is not to say that the abuse does
30 not occur."

31 And then your third bullet point:

1 "We are informed that a number of late complaints are motivated by an intention to
2 seek Accident Compensation."

3 You go on to say:

4 "I do not intend to offend this person by these remarks but simply statement the
5 factual context in which we must consider what is being said."

6 Then you go on to say:

7 "The Trust Board will not make any financial contribution to this person's travel
8 costs to meet or the legal costs as it would be quite inappropriate to do so."

9 Then you say:

10 "I also signal that the Board will not make any other payment of any kind to this
11 person."

12 So you recall this --

13 **MR FIRTH:** Vividly.

14 **MS ANDERSON:** -- correspondence.

15 In terms of a survivor being given a copy of your letter, Ms Joychild would have
16 been required to share that with her client, what do you say about the harshness, my word,
17 harshness of the propositions that you've put forward in this letter?

18 **MR FIRTH:** If I had any inkling then of what I know now, I would never have said those things.

19 May I add a bit more?

20 **MS ANDERSON:** Yes.

21 **MR FIRTH:** At the time it's absolutely true there had been coverage in the media of the ACC
22 paying out \$10,000 as a blanket figure to a victim, male and female victims of sexual
23 abuse, and the point of some coverage was to the effect that the ACC was getting wary of
24 this about the veracity of some of these complaints. So that was absolutely true, but it
25 wasn't an appropriate thing to say, obviously, and I shouldn't have said it. But it was true.

26 **MS ANDERSON:** But the point that people make complaints late as an excuse for difficulties that
27 have arisen in the person's life, do you think that perhaps clearly doesn't illustrate an
28 understanding of the impact of trauma on someone's life?

29 **MR FIRTH:** Totally agree, if I knew now what I knew then I would not have said that.

30 **MS ANDERSON:** What's the message that you might want to give the survivor today about your
31 statements in that letter?

32 **MR FIRTH:** Well, the publication of that letter by The Herald led to a complaint to the
33 New Zealand Law Society and --

34 **MS ANDERSON:** I've asked you about what you want to say to the survivor.

1 **MR FIRTH:** Well, I'm sure that my response to the Law Society would have gone to the survivor
2 and in it I made exactly these points, that I would not have said those things.

3 **CHAIR:** Excuse me, I just want to -- I understand that this evidence may well and is obviously
4 upsetting and triggering to many people, but the Commission's not helped by noises of and
5 it's interrupting the flow of our concentration. If you want us to listen carefully, analyse
6 carefully what's being said, please don't interrupt. If you feel you need to express yourself
7 loudly, please do it outside so that it doesn't interrupt our ability to concentrate on the
8 evidence because it's doing that now. Thank you.

9 **MR FIRTH:** The short answer to your question is that I wish I had not written that letter, and I'm
10 sorry. But that point's been well and truly made before now, and to everyone concerned.

11 **MS ANDERSON:** Do you think the mindset that you had when you wrote these words, which is a
12 decade ago, so relatively proximate in time, and at a time when you were Chair of the
13 Board, is reflective that there was a culture of disbelief of what survivors were saying at
14 that time in 2013?

15 **MR FIRTH:** No, no, I just think it reflected my age and my view of the world at that time.

16 **MS ANDERSON:** You did say that you had some comments that you wanted to make, further
17 comments. I don't think we've covered perhaps your opening statements that you wish to
18 make in relation to a matter Commissioner Erueti had raised with you yesterday perhaps. Is
19 there anything else you wish to cover before we open up to questions from the
20 Commissioners?

21 **MR FIRTH:** No.

22 **CHAIR:** Thank you, Ms Anderson. I'll just ask my colleagues if they have any questions.
23 Paul, do you have some questions?

24 **COMMISSIONER GIBSON:** Thanks, Mr Firth. Just clarify for me, you made the comment
25 around the Board, the advice given about not wanting to end up on the front cover of The
26 Herald, and I wasn't sure whether the context of that was you thought that was a kind of
27 safeguarding against potential cover-up, or that was advice that might advise that we want
28 to cover up.

29 **MR FIRTH:** No, I'm delighted to clarify that. This was in the context of all of the Board's
30 undertakings. Its commercial undertakings, property undertakings, dealing with lessees,
31 not just abuse, in fact I don't think abuse was even being thought of when those comments
32 were being discussed. It was just very wise advice from a very wise trustee to say that
33 when anyone doing anything is deciding whether to do something or not, they should give
34 thought to not wanting it widely published, just because it would be a silly thing to have

1 done.

2 It had nothing to do with abuse. It was just a generalised wise comment and I think
3 it was probably more in relation to our commercial activities.

4 **COMMISSIONER GIBSON:** There's a lot of wise advice, wise trustees, you made the comment
5 about your age and view of the world, would it be fair to say there might not have been a
6 lot of diversity amongst the Board in terms of their age and views of the world?

7 **MR FIRTH:** Yes, there was certainly no gender diversity because the only woman trustee was
8 Mrs Dilworth, until very recently, there's been a woman trustee. But in my time there was
9 no gender diversity. There was no ethnic diversity in my time, but there was considerable
10 diversity in experience and, I mean, the trustees in my time, many of them were chief
11 executives of very, very large organisations.

12 **COMMISSIONER GIBSON:** But that wasn't enough to understand what was going on in the
13 school and to safeguard boys within the school; would that be fair to say?

14 **MR FIRTH:** Yes, it would be fair to say, because the trustees did not -- the trustees saw the most
15 important appointment they made, the two most important appointments they've ever made
16 were the general manager of the Trust Board and the head of the school, and as in all good
17 corporate governance practice, one is expected to let those people drive their relevant areas,
18 I think it's well known that many organisations go off the rails when directors or trustees try
19 and get involved in the detail.

20 **COMMISSIONER GIBSON:** I'm wondering about the culture of the school and what the Board
21 projects. I think you've expressed -- in some cases you're quite adamant about what you
22 thought happened or didn't happen. In recognising the power that boards have and the
23 culture it projects, could you imagine or did this sort of go through the school, I'm just
24 imagining how hard when, if you're a boy at the school wanting to say something and there
25 was almost this adamancy about what has or hasn't happened, do you think that would have
26 made it hard for boys to report abuse?

27 **MR FIRTH:** Certainly boys would not have come direct to the Trust Board while they were
28 students. That would not have been encouraged and I don't think it would have dawned on
29 anyone, any of them to do that. But I can't see why they should have felt daunted about
30 talking to staff about any topic.

31 **COMMISSIONER GIBSON:** I suppose could the adamancy of the Board project the point of
32 punitiveness that if somebody was to challenge --

33 **MR FIRTH:** No, no.

34 **COMMISSIONER GIBSON:** -- that there would be canings and things like that?

1 **MR FIRTH:** No, no, it would come back to the approachability of the staff and their
2 approachability would not have been influenced by the Board, they would be wanting to be
3 good educators.

4 **COMMISSIONER GIBSON:** Thanks.

5 **MR FIRTH:** I'm sorry if I've come across as being adamant.

6 **CHAIR:** Well, it's important we hear your views, Mr Firth, and that's the whole point about this
7 hearing, we're hearing the perspective of boards, of the governors at the time, and it's
8 important we hear those and hear them well.

9 Sandra.

10 **COMMISSIONER ALOFIVAE:** Good morning, Mr Firth, thank you for the views that you've
11 shared this morning. I'm still just a little bit troubled, and I'm hoping you'll be able to
12 clarify this for me, given that the Board was made up of so many esteemed members and
13 there was so much legal advice, including your own standing, about the concept of abuse,
14 be it at the very worst that we've seen, at the sexual end, right down to bullying and
15 harassment at perhaps a lower end, depending on the circumstances, and the stance that the
16 Board took really in terms of all of the advice that was coming in around the circumstances
17 in which you were seeking the advice, like Ross Browne, and how you weren't able to
18 marry that with what you were seeing in your practice.

19 So you refer to your own background, and I'm really just wanting to understand,
20 I suppose, what was going on in the school, what you were seeing out in practice, like what
21 was happening at some of the other schools that you were involved with, but also with
22 some of the other bigger communities that you were involved in prosecuting, Centrepont,
23 how you weren't able to, perhaps, draw a stronger thread between what was happening at
24 your school and what was happening, the reality of the context of the day.

25 **MR FIRTH:** Yes, that's a very good question, and I -- looking back, of course there should have
26 been more red flags, but I would invite you to focus on how it was presenting itself to us at
27 the time, because it was much fewer cases of abuse over a very long period. That's all been
28 concentrated into a tsunami of abuse now. But at the time these were one-off things,
29 widely spread out, and I can assure the Commission that -- there were only six trustees, we
30 were very hard-nosed in business, which is obvious for other reasons, and we were very
31 hard-nosed with ensuring that the school did the best it could for the boys and their
32 families.

33 Now, that was what we intended, that's what we wanted to do, and if you put abuse
34 to one side and consider other risks, like risks of fire, risks of vehicle accidents, all sorts

1 of -- there's a myriad of other risks as you would you know. And we were vigilant in
2 respect of all of them. I mean, we had the buildings, we had remedial work done to the
3 buildings to make them safer from fire, from window breakages, from all sorts of things.
4 We were focused on a very wide range of risks and addressing them all, and if anything
5 cropped up or came to our attention that indicated we were lacking in addressing these risks
6 properly, we jumped on them, and it was pretty heavy jumping. And similarly, when abuse
7 was reported, we jumped on it. Any other approach would have just been wrong.

8 So I would ask you to see what we were doing and how we were addressing things
9 in that broader context of all risks.

10 **COMMISSIONER ALOFIVAE:** That's accepted in terms of the evidence that's been filed, it's
11 been very, very full. But there is a line in the evidence which constantly refers to the
12 vulnerability of the boys that were coming to the school, that it was more than just good
13 work, that there was a nurturing that the school was seeking to do, you've turned out prime
14 ministers, you've turned out politicians, you've turned out exceptional businessmen.

15 But there was also this other underlying vulnerability that was coming through just
16 as strongly, and I guess I'm just wanting to ask now, to give you the opportunity, and this is
17 the beauty of hindsight, the reflection that perhaps there was a gap there in the thinking
18 around that board table around the psychological protection that enabled children and
19 young people -- because what the research tells us is that on average it takes about 20 years
20 for a young person, a young boy or a young girl, to actually find the courage to speak up.

21 So there's a parental responsibility in a sense.

22 **MR FIRTH:** I totally understand that now. I certainly did not understand it in the 70s and 80s,
23 and I think it is fair to say that in the late 70s, from my involvement through into perhaps
24 the mid-80s, there was a lack of nurturing, I think that's the right word. There was a lack of
25 nurturing, and that probably was reflected in how, or the lack of detailed attention that was
26 given to victims, because we simply said to the Heads, "Make sure they get counselling."
27 I mean, to our minds in those years, that's what you did. But we can see now that's totally
28 inadequate.

29 **COMMISSIONER ALOFIVAE:** Thank you, Mr Firth.

30 **COMMISSIONER ERUETI:** Mr Firth, tēnā koe. So following from my colleagues' questions,
31 I notice you said in your evidence your resistance to the idea of systemic problems with
32 governance. I wonder if you still hold that. It seems from listening to the evidence,
33 looking at the brief that there are these gaps in terms of providing the necessary safeguards
34 in terms of vetting of staff and providing an environment where these vulnerable students

1 would feel confident to come and disclose abuse. And your position is a position of
2 enormous responsibility along with the other trustees.

3 So I wonder, just reflecting on that, about whether you think that the systems could
4 have been more robust which would have enabled the complaints to filter through to the
5 trustees during your time at the helm.

6 **MR FIRTH:** Yes, I come back, rightly or wrongly, I come back to the fact that we required the
7 Heads to have the right systems in place as they were understood at the time, and of course
8 they were in constant touch with their counterparts in other State and independent schools.
9 So they were not bringing to Dilworth their personal views only, they were bringing to
10 Dilworth what they had learned through consultation with their own peers in the education
11 world.

12 I don't think for a minute, and I'd say so if this wasn't the case, but I don't think for a
13 minute that the trustees instilled or suggested or influenced amongst the Heads any form of
14 view that they should be resisting a welcoming approach from students. In other words
15 that's anathema to what we would have felt had to be the case, the students had to feel they
16 could speak.

17 Now, back in the 70s there was an incredible level of discipline as you've read in the
18 statements which was not appropriate and was discontinued. But there was this disciplined
19 atmosphere in which the boys were brought up, and that could well have had the effect of
20 making them reluctant to come forward or come forward in the case of the first chaplain
21 with the full details.

22 On systems generally, may I make a comment on protocols, because I think the
23 whole world's been sent into a tizz with having the right protocols and I respectfully
24 suggest that there's an angle to that that can helpfully be addressed.

25 If you think about yourselves and others who have engaged babysitters, I don't think
26 anyone has ever said to the babysitter on arriving at the doorstep, "It's a rule of this house
27 that you must not sexually abuse my children." You wouldn't even think to say that, would
28 you? How many babysitters in the world, how many parents in the world or caregivers
29 would say that to their babysitters? I suggest probably none.

30 So similarly, there's not much point or reason in having in a protocol a statement
31 that you must not sexually abuse the boys. I mean, for the same reason you don't tell
32 babysitters that when they turn up at the door. But from an employment law perspective, it
33 is important to now have that in those protocols, not because that will stop it happening, but
34 because they know that under employment law it will be instant dismissal. I cannot follow

1 the reasoning that a rule book that says you must not abuse the students is going to have the
2 effect of stopping any abuse, just as parents don't say that to babysitters.

3 **COMMISSIONER ERUETI:** You do vet your babysitter, you do check with other parents to
4 say --

5 **MR FIRTH:** Yes, of course.

6 **COMMISSIONER ERUETI:** -- you know, can you trust this person?

7 **MR FIRTH:** Absolutely.

8 **COMMISSIONER ERUETI:** You do call in on your iPhone to check to make sure that, with the
9 kids who have phones these days, there is oversight. So there are systems in place, but it
10 does not seem that -- for example, to be trustees that is a really significant place for
11 oversight and monitoring of the behaviour within the school, including the Heads. And it
12 seems as if that responsibility was really left with the Heads and just assumed by virtue of
13 their character and experience that they would do that monitoring oversight role. Would
14 you say that's fair.

15 **MR FIRTH:** Not quite. Not quite, because with the more senior -- that is certainly fair of more
16 junior appointments, which is where these problems arose, with the more junior
17 appointments. So what you have said, Commissioner, is right, it was left to the Heads.

18 With the more senior staff appointments, the Heads would always come to the
19 Board or the Chair and say, "Look, we're down to these three, what do you think of them?"
20 So although the decision was the Heads, the Chair or the Board would be consulted on the
21 last few. But that did not happen with the more junior appointments and it's the more
22 junior staff, well, initially there it was the more junior staff members who were the
23 problem, although the chaplain, that blessed first chaplain of course was an appointment by
24 us as trustees not by the head, and we certainly relied on certain things.

25 The tutors, of course the Board would never have been consulted about the
26 appointment of tutors.

27 And a couple of the other people were more senior, and at the time would probably
28 have been bounced past the Board, I don't know about Ian Wilson -- before my time -- and
29 Rex McIntosh was appointed before my time, but with the others, the more senior ones, the
30 head would have said, "look, we're down to these two or we're down to these three, what do
31 you think?"

32 **COMMISSIONER ERUETI:** Sir, in the interests of time, also I recognise that you accept that
33 the responsibility really rested with the Heads to carry out that monitoring and oversight
34 role.

1 **MR FIRTH:** Yes, yes.

2 **COMMISSIONER ERUETI:** Can I just turn to another question just following from my
3 colleague Commissioner Gibson about the composition of the trustees, because I
4 understand that within the student body over time there would have been a fairly sizable
5 number of Māori and Pasifika and other ethnic identities, groups, in the student body, and
6 so it is -- it's not surprising I suppose, but it does seem that the composition in terms of the
7 trustees themselves seemed to be largely white men, and I wonder what your view is now,
8 on reflection, about whether it would have been better to have greater diversity in the
9 make-up of your board in terms of genders and perspectives.

10 **MR FIRTH:** There are a few parts to the answer, if I may. First of all, that's been remedied by
11 the new chairman who you will meet shortly, in that there has been both gender and ethnic
12 diversity in appointments under his chairmanship.

13 Coming back to my time, yes, I would agree that some wider diversity might have,
14 or would have been better, but I would hastily follow that with a comment that I can't see
15 for one minute how that would have avoided the abuse you've been hearing about.

16 **COMMISSIONER ERUETI:** I think it's -- the point that my colleague was pressing, you used
17 the words "someone of my age and world view" I think, and if there are other perspectives
18 that -- multiplicity of perspectives, including younger views, let's say, that that would help
19 to identify systems, gaps and errors. That's the proposition we're putting to you.

20 **MR FIRTH:** Yes, I understand the point. That may be so, but I'm not sure of it, no.

21 **COMMISSIONER ERUETI:** You're not convinced of that?

22 **MR FIRTH:** No.

23 **COMMISSIONER ERUETI:** All right. Thank you for your time, thank you.

24 **CHAIR:** Mr Firth, it falls to me at the end. I have a few questions. This has not been touched on
25 yet, but it is coming up later in the morning and that relates to the relationship between the
26 Dilworth School and the Church, the Anglican Church. And I've noted in your brief, of
27 course you've said that the Dilworth Trust Board are totally independent, I understand that.
28 But we have heard evidence of correspondence, haven't we, between the school and the
29 Bishop, and I just wondered if you could explain -- we understand the institutional
30 arrangements, what's on paper, the will, etc, but in terms of what went on below that, what
31 was the level, in your day, of the conversations, the interaction between the bishops and
32 other members of the Church in Dilworth?

33 **MR FIRTH:** In my time as Chair, it was definitely confined to religious-type things. That is the
34 curricula that the chaplains adopted, how they were generally performing, and it was

1 certainly not wider than that. In fact, I think Dr Wilton makes the point in his detailed
2 submission that it's probably not correct to define Dilworth as a faith-based school, it's a
3 school absolutely independent of the Church.

4 **CHAIR:** I truly understand that, that's why I'm asking not so much on that, we accept that, but in
5 terms of the way the formalities go. I'm just wondering about the level of interaction that
6 the Board had, say with the Bishop, with any other -- was there any? We just need to
7 know.

8 **MR FIRTH:** No, no, the Board never met with the Bishop except once a year when he presented
9 his report. Trustees would see the Bishop when the Bishop attended the chapel and
10 occasionally the Bishop -- the Bishop would have been invited to all the major functions of
11 the school and perhaps attended half of them. So the trustees would meet with the Bishop
12 of the time when he had had the inclination, willingness and time to come to a major
13 function, and formally around the board table once a year when he presented his report.

14 **CHAIR:** And he would attend the board meeting and discuss the report with the members?

15 **MR FIRTH:** Yes, yes.

16 **CHAIR:** Okay, thank you. I won't take that any further.

17 Just hammering this point a bit and I think it's important that we do, it's about this
18 question of how it was back in the 70s and 80s, which you've referred to and the different
19 attitudes and the like. But I need just to refer to your brief of evidence that you -- no, sorry,
20 it's the not your brief of evidence, it's in the responses -- is it a brief of evidence? It's really
21 answering the questions in the Notice to Produce.

22 **MR FIRTH:** Yes.

23 **CHAIR:** And you talk about your work outside the school, which my colleague Sandra has just
24 referred to, and that was about your work with -Centrepoint where you were acting for a
25 group of people who were objecting to Centrepoint and in the course of- that you say that
26 coming to light you received and learned about a lot of sexual abuse that was going on at
27 Centrepoint.

28 **MR FIRTH:** Yes.

29 **CHAIR:** And that that was presented to whichever body, I think it was an environment court.

30 **MR FIRTH:** Various courts and planning bodies, numerous courts, yes, it was a planning...

31 **CHAIR:** But it was put there and you expressed, I think, some disappointment that the evidence
32 about that sexual abuse was not believed in those bodies.

33 **MR FIRTH:** That's right.

34 **CHAIR:** And that was work that you were doing back in the 70s and 80s wasn't it?

1 **MR FIRTH:** Indeed, indeed.

2 **CHAIR:** I just wonder whether you can remember what the effect of that disbelief was on you
3 who was presenting it and on the people who had given that evidence to you.

4 **MR FIRTH:** Well, I was certainly disappointed it wasn't believed. They were young women in
5 all the cases at Centrepoint and I did not speak directly with them, their evidence was
6 briefed and I led it. In fact I don't even think they appeared, I think it was in a setting
7 where they didn't have to appear. And I had no idea of how it was affecting them, but by
8 golly, as a result of this experience I'm sure they were 100 times more devastated than we
9 even imagined.

10 **CHAIR:** I just wondered whether that experience, which you were having contemporaneously I
11 think with the --

12 **MR FIRTH:** Yes.

13 **CHAIR:** -- whether there was any link between what was going on in that world and what was
14 going on in your Dilworth world?

15 **MR FIRTH:** No, no, none at all.

16 **CHAIR:** Just moving on. And coming back to, I know you don't like the word "systems", but the
17 reason we're using it it's in our terms of reference and we're having to look at systemic
18 factors, so however you phrase them, whether it's expectations or the like, you say in one of
19 your -- in response to -- we are asking whether there was a cultural practice of ignoring
20 abuse, and you say:

21 "It would seem that some of the abuse was well known among the students at the
22 time and they may have assumed it was more widely known."

23 So this is, again, a hindsight thing that you now realise it may have been.

24 **MR FIRTH:** Yes.

25 **CHAIR:** Just in terms of systems, you've explained to us why you think that -- the futility of
26 having a rule "You shall not sexually abuse students". I'm just going to put to you whether
27 you think it would be futile to have a protocol, a rule, a value, a statement to the boys, "You
28 have an expectation that you can bring complaints, if anything's going wrong you can come
29 to us"?

30 **MR FIRTH:** Absolutely, and that was brought in, I can't remember when, but a point was reached
31 where the boys were warned and told that they must speak to someone, and indeed
32 eventually, perhaps later than it should have been, but eventually it got to the point where I
33 understand that every student, probably not the very senior students, but every student at
34 the junior level had two other people to turn to, in fact three, they had a mate of the

1 same year, they had someone older in the form of a staff member or an older student, and
2 they had another staff person. So the point was reached where every boy knew that there
3 were up to three people to turn to, and this was not just for sexual abuse but for bullying or
4 anything inappropriate.

5 **CHAIR:** Can you remember when that came in?

6 **MR FIRTH:** No, no, I can't, I'm trying to -- I think that might not have been until Mr MacLean
7 became the principal in '97, which was late.

8 **CHAIR:** Well, it was late, although not as late as 2019. Do you know if there was any increase in
9 complaints as a result of that? I'm trying to work out whether -- it sounds like a good
10 move. Was it an effective one, was it one that made the boys feel more open to disclosure?

11 **MR FIRTH:** I don't know, but I know Mr MacLean thought it was a good scheme and he made
12 sure it was kept alive.

13 Can I just touch on the protocol point again?

14 **CHAIR:** Yes, sure.

15 **MR FIRTH:** Because it would be terrible distortion of my evidence if it was a headline tomorrow
16 that I said there should not be a rule against sexual abuse, that would just be abusing what
17 I've said. One would not expect to see in a protocol a rule that "you should not burn down
18 the buildings"; one would not expect to see a rule "you should not poison anyone"; one
19 could go on forever. There could be 30 examples like that. And, yes, of course it's sensible
20 to pick out abuse, absolutely. But surely the real point of it is to have it there as an example
21 of grounds for immediate dismissal, because it would have to be.

22 **CHAIR:** That's a formal way of doing it, I accept that.

23 **MR FIRTH:** Yes.

24 **CHAIR:** Just your reference to the headmaster brings me on to my last point. I think you've made
25 it very clear, at least in your time, that the Board is very reliant on the headmaster to be its
26 arms and legs, if you like, to be the person who implements the values, the tenor, operations
27 of the school. And the Board of course must place great trust in the person who holds that
28 role; you agree with that?

29 **MR FIRTH:** Yes.

30 **CHAIR:** And I expect there were, with each headmaster, the Board would form a relationship of
31 collegiality with the headmaster?

32 **MR FIRTH:** Yes, yes.

33 **CHAIR:** Trust and confidence and the like.

34 **MR FIRTH:** Yes.

1 **CHAIR:** Did the Board have any, I'm going to say the word "protocol" again, it's almost
2 triggering us all today, but did the Board have a process for monitoring the work of the
3 headmaster? So some sort of, I don't know, performance evaluation of a regular sort and
4 the like?

5 **MR FIRTH:** Yes. There were a number, and I can't immediately think of them all, but I can think
6 of one, and that is that there was a performance review meeting every year and while I was
7 either Deputy or Chair I always participated in those annual performance review meetings.
8 And we would gather together discreet information from senior staff and others about the
9 school. I don't think it occurred to us to gather information from the students.

10 **CHAIR:** I was going to ask you that.

11 **MR FIRTH:** Perhaps we should have but we didn't. And these were quite rigorous meetings.
12 I learned in my former law firm on this topic, that what employers must not do is schedule
13 the annual review and then be too busy or cut it short or whatever, it has to be of full
14 duration and uninterrupted and we certainly observed that with these annual reviews of the
15 Heads.

16 I wasn't involved in the one with Peter Parr, but with Murray Wilton and
17 Mr MacLean.

18 These were quite rigorous and indeed they led to a formal note being issued about
19 their strengths and weaknesses, aspirations for the next year, the usual things you would put
20 in that sort of document.

21 So the Heads were very aware that they were under watch from the Board, they
22 were very aware of the no surprises requirement, yes.

23 **CHAIR:** Okay, and we're over time, but just very quickly, and in those reviews, do you recall
24 whether the question of the incidents, the events that had come up in the course of, you
25 know, relating to the abuse of boys, was that raised in those meetings?

26 **MR FIRTH:** I don't recall, I don't recall abuse being expressly raised, and I was at most of them.

27 **CHAIR:** Thank you. We've come to the end of the evidence, slightly over time, but Mr Firth, can
28 I thank you very much on behalf of the Commissioners for your cooperation with the
29 Commission, your willingness to come forward, your very considered and in-depth brief of
30 evidence and the statements, the preparation for that today. It's very important that, as
31 Commissioners, we get a full, rounded view of what's been going on and you've helped us
32 immeasurably in that. So thank you very much indeed, much appreciated.

33 **MR FIRTH:** Thank you.

34 **CHAIR:** It's the time for the morning adjournment and if we come back at 20 past 11? All right,

1 we'll adjourn until then.

2 **Adjournment from 11.06 am to 11.26 am**