

WITN0831001 1

Witness Name: Sonja Cooper

Sam Benton

Statement No.: [WITN0831001]**Exhibits:** [WITN0831002] – [WITN0831075]**Dated:** 8 October 2021**ROYAL COMMISSION OF INQUIRY INTO ABUSE IN CARE**

**WITNESS STATEMENT OF SONJA COOPER AND SAM BENTON OF
COOPER LEGAL — relating to the St John of God Order Investigation**

Introduction

1. Thank you for the opportunity to provide evidence regarding the experiences of a number of current and former clients of Cooper Legal, while they were placed at Marylands School in Christchurch ("Marylands").
2. In this statement, we will summarise the experiences of abuse suffered at Marylands by clients (including former clients) who are unable to give evidence themselves, due to the impact of the abuse they suffered at Marylands and elsewhere, their intellectual or learning difficulties, or because they have since died. We will also, briefly, summarise the experiences of some who are giving their own evidence, as context.
3. While this investigation is focused on Marylands School, we will also examine certain experiences of our clients who were placed at the neighbouring St

WITN0831001 2

Joseph's Orphanage ("St Joseph's"), an institution run by the nuns of the Sisters of Nazareth Order. This discrete section of the statement will be looking only at allegations made of abuse by male adults while they were placed at St Joseph's, as there is some indication that Brothers from Marylands may have been involved in carrying out abuse of residents at St Joseph's on occasion, and/or of St Joseph's residents but on the Marylands property.

4. We will also provide a summary of abuse suffered by clients of Cooper Legal while Brother Bernard McGrath ("Brother McGrath") was working at Hebron Trust ("Hebron") between about 1986 and 1993, a time at which we understand that the Hospitaller Order of St John of God ("the Order") were aware of allegations that Brother McGrath had previously sexually abused children in his care.
[WITN0831002]
5. It is worth noting in passing that no Hebron clients were also at Marylands or St Joseph's. As far as we are aware, only one client (anonymised in this statement as 'MA') was at both St Joseph's and Marylands, but did not allege any abuse at St Joseph's. Aside from this one client, there is no overlap between the three parts of this statement.
6. This statement will also summarise the experiences of our clients in raising their concerns about the abuse they suffered at Marylands with the police, with social workers and the Ministry of Social Development, and with the Order both directly and through Cooper Legal.
7. In reviewing our clients' files, we have identified a number of inconsistencies in the approach of the Order in resolving claims, including settlement payments that – on reflection - are considerably lower than they ought to have been, particularly when considering other settlements. We have highlighted some of these in this statement and invited the Order to consider reviewing its approach those cases. In several cases, we have also suggested that the Ministry of Social Development should review its position. We would be very happy to discuss this further with either organisation.

Overview

8. As far as we are aware,¹ Cooper Legal has acted for 18 clients who were placed at Marylands, ranging from when it first opened in late 1955 through to clients who were there when it closed in 1984.
9. The first Marylands client (MC) we acted for was referred to Cooper Legal in July 2004 by his counsellor, Terence Featherstone (**WITN0764**). We settled our first Marylands claims in 2009. Some of the Marylands clients have since died and others are no longer in contact with the firm, so we have had to rely on the existing information we hold to make this statement.
10. Of those 18 Marylands clients we are aware of, two reported that they were not abused at Marylands, and one reported receiving only physical abuse. As discussed below, the Order would not consider that last client's claim through its settlement process, because his allegations did not relate to sexual abuse.
11. Of the remaining 15 clients, our firm negotiated settlement payments with the Order for seven clients. More details of these settlements are provided below. One of these seven had previously received two settlement payments from the Order before we were instructed. We also negotiated a "top up" payment for another of these seven clients in 2018, having negotiated an initial settlement for him in 2009 that, it turns out, was out of step with other settlements from the Order.
12. The other eight clients had already received payments from the Order between 2002 and 2004, before they instructed us in relation to represent them in their psychiatric hospital and/or Social Welfare claims. Some of these eight clients had legal representation at the time through Christchurch lawyer Grant Cameron and his firm, GCA Lawyers (originally Grant Cameron Associates). We have some information in our records about their experiences in Marylands and later of their

¹ Given the thousands of clients Cooper Legal has acted for in relation to a range of non-recent matters, it is probable that some had been placed at Marylands and not disclosed this to us – either because they do not recall suffering any abuse there, or because they had already resolved their concerns with the Order before instructing us.

WITN0831001 4

experiences in trying to resolve their complaints with the Order, which we have incorporated into this statement.

13. In August 2010, we received our first instruction from a client who was abused at Hebron. This client, HA, was referred to us by the law firm acting for the Order. Several years later, in September 2016, another Hebron client (HB) was referred to us, through a counsellor in Christchurch Men's Prison with whom we had an existing relationship in terms of other non-recent abuse claims. In 2017 subsequently, several other Hebron claimants were referred to us by this counsellor, and a number of others have instructed us directly, after hearing about the non-recent abuse litigation our firm specialises in.
14. In total, we act or have acted for 23 clients who allege abuse or witnessing abuse by Brother McGrath while he was working at Hebron, between about 1986 and 1992.
15. Most of our clients who were abused at Marylands, St Joseph's or Hebron still live or lived in the Christchurch area when we acted for them. Some of them, particularly the Hebron clients, were inmates in Christchurch Men's Prison at one time or another.
16. We act for large numbers of clients who suffered non-recent abuse. All of them have had their lives profoundly changed by their experiences. It will be no of surprise to the Royal Commission that many have since spent periods in prison, psychiatric institutions, or both. Many suffer from ongoing health concerns, including substance dependence and psychiatric illness. They are, quite typically, living in impoverished circumstances and have limited resources from which they can improve their lives. They are often socially and economically disadvantaged, poorly educated, and inarticulate. Many struggle to comprehend legal progresses or to participate fully in them. They share a strong sense of grievance over their abuse.

Marylands

17. The above description applies equally to those clients who were at Marylands, with the exception that these clients were placed at Marylands because they were intellectually disadvantaged and/or emotionally disturbed or deprived, making them even more vulnerable to the impacts of abuse and grooming and often making their damage more severe.
18. Marylands was a residential special school for children in need of a special education programme. **[WITN0831003]** This covered children who had either intellectual disabilities (including those resulting from brain injuries) or emotionally disturbed behaviour, and occasionally both. Some of these children had been prescribed medication, including tranquilisers to sedate them, while at Marylands.
19. It would appear that the Department of Social Welfare, and indeed, the State, became increasingly more involved in Marylands over the years, particularly after the Order came into financial difficulties in the early 1970s.
20. At the risk of over-generalising, and bearing in mind our clients make up a very small proportion of all total residents, it appears that prior to about 1970 there may have been a greater proportion of residents with intellectual disabilities and, after that time, more residents with emotional disturbance. The reasons for this shift, if it is accurate, are unclear. It may have coincided with the use of other residences such as Campbell Park School, along with growing professional awareness of emotional disturbance, or with increasing State involvement in the care of children with emotionally disturbed behaviour.
21. A similar and presumably related shift that we have observed across roughly the same period relates to the method by which children came to be placed at Marylands. From what we have seen, many early placements were private or with the support religious organisations such as Catholic Social Services and the Presbyterian Social Services Association.

WITN0831001 6

22. In contrast, placements from the 1970s were more likely to have been made at the direction – and with the funding - of the Department of Social Welfare or Psychological Services (a service of the Department of Education), typically because those children were State Wards. Importantly, it appears that boarding fees paid for State Wards increased in the early 1970s, which brought payment levels more in line with private fees. By 1983, there were 22 State Wards placed at Marylands.
23. Marylands became Hogben Special School in 1984 after the Order ceased operating it as a residence.
24. While we do not have records of the ethnicity of all our clients, from what we can ascertain only four of our Marylands clients identify as Māori, and the rest as Pākehā / New Zealand European. The four Māori clients were all placed at Marylands from 1970 onwards. Again, we do not have the data to confirm this point or to identify the reasons for this disparity. It is possibly related to the school's location in Christchurch, socioeconomic differences affecting the ability to pay private board and potentially, as well, what appears to have been the State's tendency to treat Māori children with behavioural difficulties as being delinquent, rather than in need of special education.
25. The St John of God grounds were off Nash Road, in Halswell, Christchurch. The grounds were separated from St Joseph's (run by the Nazareth Sisters) by the Heathcote river, although there were several bridges between the two grounds and, allegedly, a tunnel between the properties as well.
26. The Order also had a bach on Waikuku Beach, north of Christchurch, which the Brothers occasionally took residents to.
27. Marylands School and the residents' living area (including five villas) were located on the Western side of the St John of God grounds². By the 1970s at least, the private St John of God Hospital for Elderly and Spinal Patients made

² We have seen some suggestion that Marylands School was originally located in the neighbouring suburb of Middleton until 1966, although we have not been able to confirm this. This may explain the differing descriptions of the dormitory arrangements, set out below.

WITN0831001 7

up most of the East side of the property. The two areas appear to have been connected through a central building and chapel. There was a smaller chapel or church on the Marylands side as well, along with a swimming pool, gymnasium, squash court, laundry, garages, and classrooms. There were also, reportedly, unmarked graves somewhere on the Marylands or St Joseph's property. One client reported being made to clean coffins in the church down the corridor from the Red Section dormitory.

28. The St John of God institutions were run by a Prior, such as Brother Brian from November 1959, or Brother Moloney from 1971. The Prior had responsibility for Marylands school, all of the Brothers, and the St John of God Hospital.
29. Most of the Brothers living on the St John of God grounds, including the Prior, had living quarters in the monastery on Nash Road, behind the hospital. This appears to have continued to be the case after the closure of Marylands. Those Brothers who had 'housemaster' responsibility for particular school residents' dormitories, or sections of the dormitories, also had small rooms within those dormitories.
30. In addition to residential 'housemaster', the Brothers also took on a number of roles, such as headmaster, school teacher, school nurses and apparently a live-in chaplain or priest. There were other staff employed at Marylands, male and female, working as teachers, gardeners, caretakers, administrators, laundry, and kitchen staff. There was also a number of women working as the "Ladies' Auxiliary", whose tasks included transporting children to and from the Christchurch Airport.
31. With one or two exceptions, noted below, we are not aware of any complaints about the staff at Marylands who were not Brothers of the Order.
32. Some clients recall that certain Brothers were kind to them. Perhaps surprisingly, some of these 'kind' Brothers include those who other clients name as their abusers.

WITN0831001 8

33. As will be seen below, in some cases this 'kindness' was in fact grooming and manipulation, often escalating to serious and repeated sexual assaults.
34. In terms of age, our youngest client was admitted to Marylands on his 6th birthday. Several were 16 years old when they were released. Some older boys were permitted to stay at Marylands after they had stopped attending school and were employed at a nearby business, such as the local Fruit and Vegetable Market. Some of these boys paid their own board to Marylands from their earnings.
35. The first residents in late 1955 included a number of boys who were transferred from the St Joseph's Orphanage due to their age.
36. Some of our clients were placed at Marylands for a matter of months, but most stayed for at least four years. One client stayed for nine years.
37. For some clients, Marylands was their first (or only) residential placement. Others had been in Boys' Homes beforehand. Some would be placed there after they left Marylands. Some clients described Marylands as being an intimidating or scary place – describing it as more like a borstal or prison than a school – with large numbers of boys residing there.
38. Children and their families did not have to be Catholic to be placed at Marylands, and the majority of our client were not from Catholic families. Very few of this firm's Marylands or Hebron clients have a positive view of religion now. Several of them have repeatedly targeted churches with vandalism or arson.
39. Parents and family members were generally permitted to make scheduled visits to Marylands, including when they were deciding whether their child should be placed there, and for planning meetings. Boys were able to send and receive mail and telephone calls, although some clients report some of the letters addressed to them being destroyed by the Brothers and care packages never reaching them.
40. Some boys who lived locally were permitted to return home for weekends. Boys generally spent the holidays away from Marylands, with family if possible. The Prior's views as to suitable holiday placements, as well as the length of a boy's placement at Marylands, were often given significant weight by any social

WITN0831001 9

workers. Holidays for those in State care were often spent in foster home or Family Home placements, or occasionally in Boys' Homes, if no suitable placement could be found or if the original placement broke down due to behavioural or family issues. Concerns were often reported by social workers about the condition and quantity of clothing that boys had been sent home with.

[WITN0831004]

41. Social workers visited Marylands on occasion, but they did not always see every child on their caseload, and they rarely spoke to them without a Brother present. Some social workers expressed the view that their role in relation to boys placed in Marylands (or, similarly, St Joseph's) was limited, even for those in the custody of the State. This inattention is often evident from the Social Welfare files and can sometimes be seen in the lack of documentation surrounding the placement.
42. Sometimes, this attitude was expressly documented. For example, while we no longer have a copy of the Social Welfare record in question, we have an internal document quoting from a 1973 memorandum found on the file of a former client, describing how his social worker had had no contact with this client while he was placed at St Joseph's, and that the boy – who was a State Ward at the time – was “nominally on the case load only as he is living at St Joseph's Boys' Home”.
43. The Ministry of Social Development has previously, for the purpose of settlement of Social Welfare claims, accepted that at least some of its social workers failed to properly supervise boys at Marylands, during which time they suffered sexual abuse, although the abuse itself is not recognised in the settlement payments.

[WITN0831005]

44. The Brothers were highly respected and trusted in the Christchurch community and throughout New Zealand. They were largely left to run their own affairs. The Brothers were well-known for their dedication to helping young boys with special educational needs, as well as their vows of asceticism, hospitality, obedience and chastity.
45. As with many Orders at the time, the Order gave new members a new "religious" forename, often in honour of a saint. This probably contributed to the regard and

WITN0831001 10

authority given to them by the community, and the subsequent difficulty in those disclosing abuse being believed. Other Brothers, inconsistently, appear to have been known by their Christian name (e.g. Brother Peter) – which may be the more modern approach - or by their surname (e.g. Prior Moloney). It appears that these multiple names may have confused some claimants when disclosing their abuse to the police or to lawyers as an adult – for example MD, below.

Routine

46. One client, a resident at Marylands when it opened in 1955, recalled the daily routine as follows:

We were made to get out of bed at about 7am. We had to wash or shower in a communal washroom. The washroom was just along the corridor from the dormitories. There were two or three washrooms. We had to line up and wait our turn to wash.

Breakfast was at 8am. I do not know who made the breakfast. We all ate in one eating hall at the same time. After breakfast we got ready for school which started at 9am.

We went to school five days a week. The school day started with a prayer. After that, we learnt the catechism in Latin. Then we had English and spelling. We were taught by a Brother.

We had a morning tea break from 10 until 10.15am. Then we went back into class until lunch time at 12. Our lunch break finished at 1pm and we returned to class until 3pm.

After school, we went outside for a break until 6pm when we had tea. After tea, we started being moved to the dormitories to get ready for bed. We went to bed in pyjama pants and tops.

We were watched all the time by the Brothers. We were not even allowed outside without permission.

On the weekends we sometimes had an outing to the beach or somewhere else. We were away most of the day and did not get back until around teatime. If we were not taken out on an outing, we just had to spend time around the grounds.

On Sundays, we had Mass at 8 am, which lasted for an hour. Sometimes we didn't have breakfast until after the service.

We all had to sleep in dormitories which were upstairs. There were two dormitories to accommodate the boys living at Marylands. The Brothers told us which beds we had to sleep in. We went to bed anytime between 7.30 and 8pm. At 8pm, one of the Brothers would turn the lights out.

Sleeping

47. Residents in the early 1960s also reported there being two or three dormitories – a smaller one for the younger boys, called the St Augustine dormitory, and a larger one for the older boys. However, by 1970 the sleeping arrangements appear to have changed somewhat.
48. An undated brochure noted that Marylands provided Special Class education for 90 boys on a boarding school basis, with four separate residential units capable of holding 18-20 boys, each led by a Housemaster and each with its own TV lounge, playroom and dining room. **[WITN0831003]**
49. Clients who were at Marylands in the 1970s remember the Residence Section was made up of four or five different coloured sections, each run by a different Brother. The youngest boys (up to age 9) were found in the Red Section, the Green Section was for 10-12 year old boys, the Brown Section was for 12-13 year old boys and the Purple Section was for students from the age of 14 up. Some clients recall a Yellow Section being on the other side of the Purple Section. This was for boys with very special needs, who were also taught in a different part of the school.
50. Clients who were in the Red Section describe it as being a shared dormitory, with the Brother in charge having a room at the end of a corridor beside it. Older boys in some of the other sections appear to have had individual bedrooms.

Other boys

51. While it does not appear to have been as pronounced as in Social Welfare residences, there was a degree of bullying between boys at Marylands, particularly from the older boys who acted as the “kingpins”, used by some of the Brothers to keep the other boys in line. They would use standover and intimidation tactics to get their way, often in small groups, and occasionally violence. There are also several reports of older boys sexually abusing younger boys in the dormitories at night, or outside in the bushes. Some boys reported

that the rule about not disclosing the abuse from the Brothers extended to abuse and bullying from other boys as well.

52. Boys who were seen as particularly unstable would be sworn at, picked on, and teased mercilessly by other boys, in the hope of provoking them into explosive behaviour. The Brothers were reportedly slow to prevent this, or to punish such behaviour.

Schooling

53. One client recalled that the school uniform of Marylands while he was there consisted of a grey jersey, grey shirt, blue tie, grey pants, and black shoes. The undated brochure referred to above describes the school uniform slightly differently – “short grey worsted trousers, blue skivvy, and grey pullover”.
54. Some clients reported that their involvement in school sports such as soccer and swimming was one of their few fond memories at Marylands.
55. While not forgetting that children were placed at Marylands due to intellectual disability and/or emotional disturbance, most clients describe the education they received at Marylands as being very poor and basic, and that they did not learn much. Some clients recall that they did not have to attend school at Marylands once they reached Form Two.
56. As noted, some of the Brothers, such as Brother McGrath, also acted as teachers and headmasters and, at least by the 1970s, there were also teachers who were not Brothers.
57. In addition to being a location for strict discipline and physical assaults, described below, some of the classroom teachers and headmasters were sexually abusing their students. In some instances, that sexual abuse actually occurred in the classroom. In that context, it is perhaps not surprising that clients report that the level of education they were offered at Marylands was poor, or that they simply could not concentrate on it.

Psychological abuse and punishment

58. Despite reports that corporal punishment was supposedly banned by the Prior or Superior from 1959, [WITN0831006] the strap and the cane were frequently used at Marylands throughout its existence. This most commonly took place in an office in the large administration block, or in the classroom. This would be given as punishment for things like not listening, running away, or having fights with staff members. Some clients recall getting this punishment nearly every day, six to eight strokes at a time, with their pants on, to the point where they could hardly stand up.
59. Clients receiving corporal punishment in class describe being lined up and made to bend over a desk. The Brother who was teaching the class would take the leather strap from under their desk and give them the strap six times in front of the rest of the class. One client recalls getting the strap in the classroom several times a week.
60. Some housemaster Brothers also strapped and caned boys in the dormitory blocks. One client remembered Brother McGrath removing his pyjama pants and strapping him in front of everybody in the young boys' dormitory. This was as punishment for not going into Brother McGrath's room, where Brother McGrath had told him to go, in order to sexually assault him. As noted below, Brother McGrath sometimes incorporated the cane or strap in his more violent sexual assaults, leading the boys to believe that the sexual assaults were simply part of the punishment.
61. The strap was commonly deployed on the boys' bottoms, but they were also sometimes strapped on their legs, arms, and backs. Some of the Brothers soaked their leather strap in water to make it more painful. Some Brothers hit boys with a cane for no reason at all, just because they were walking past them.
62. Clients also described a punishment where all the boys were made to stand outside – often in the pouring rain and in their pyjamas - for three or four hours, sometimes missing dinner as a result.

WITN0831001 14

63. Others recall unpleasant punishments such as having their mouth washed out with soap, having their face rubbed in faeces, or having a very hot poultice put on their wrist and bandaging put over it, causing the skin to burn.
64. One client recalls being locked in a broom cupboard for hours on end – for 16 hours, on one occasion – a number of times, as punishment for swearing at the Brothers.
65. Some clients recall the Brothers would call them names or say things intended to make them upset, such as blaming them for things they had not done, and that they would then punish them when they got upset. Several clients described how Brother McGrath would choose individual boys, seemingly at random, to violently punish in front of the other boys when he did not know which boy was responsible for some incident of misbehaviour.
66. Several clients started smoking at Marylands, usually getting them from other boys. Often cigarettes were shared by boys whose families brought them in. Some boys also stole cigarettes from Brothers, staff, visitors' cars and from other boys. Two clients recall Brother McGrath catching them with cigarettes when they were about eight or nine. As part of their punishment, they were forced to smoke several entire packets of cigarettes in front of all the other boys in their section, causing them to vomit and become addicted to nicotine.

Physical abuse

67. Physical assaults from a Brother, or sometimes from several Brothers acting together, was a particularly common occurrence. Nearly all of our clients report both suffering and witnessing other boys being physically assaulted (beyond strapping and caning) by the Brothers, sometimes by several Brothers at the same time. This was given as punishment for perceived or actual misbehaviour, including smoking, swearing, stealing, not singing in church, disclosing sexual abuse, and absconding.

68. The physical assaults occurred all over Marylands, including in the classrooms and outside the chapel. Some Brothers were known to be particularly and unpredictably physically aggressive, such as Brother McGrath.
69. Most commonly, these assaults ranged from slapping, kicking, punching with a closed fist, through to dragging and throwing boys around. They could happen anywhere on a boy's body – for instance, a boy might be slapped across the head or face, kicked in the testicles, and punched in the gut. The boys would sometimes end up lying on the ground from these assaults while the Brother or several Brothers were punching and kicking them, and the other boys could do nothing about it. Bleeding and bruising were occasionally suffered, and some clients recall boys being sent to the hospital from these beatings.
70. Sometimes the beatings from staff involved the cane or the strap being used far more violently than normal corporal punishment. Prior Moloney is reported to have beaten some boys with a hearth brush, as was a staff member named Mrs GRO-B. Another staff member named Mrs GRO-B hit a client on the hand and bottom as punishment for wetting the bed.
71. Some clients report even more serious physical assaults. One talked about Prior Moloney holding his head under the swimming pool until he nearly drowned. Another client talked about a Brother pushing him through a glass window, requiring hospital treatment, and of another Brother putting his hand through a wringer washing machine at the Waikuku beach bach, causing him pain but no injury. A third client reported being hit around the head with a baseball bat several times by Brother McGrath as punishment for refusing to perform oral sex on another boy.

Sexual abuse

72. In spite of the Order's emphasis on the vow and praxis of chastity, nearly³ every client of this firm who attended Marylands reports being sexually assaulted by

³ One client (a resident who went home to stay with his mother every weekend) reported receiving only physical assaults from Brothers and staff, and two clients taking claims in relation to different institutions had limited recall of Marylands due to their brief placements there and only recall receiving corporal punishment.

Brothers at Marylands. Many are not able to name all of, or sometimes any of, the Brothers who sexually abused them.

73. Some clients report that they believe they, and other similar boys, were carefully selected for sexual abuse because they were particularly vulnerable, due to their level of intellectual disability or emotional disturbance and need for affection. There are certainly indications that the Brothers selected certain boys as their 'favourites' for regular sexual abuse, before moving on to others.
74. One of the most common allegations is that certain Brothers wandered the dormitories at night, sometimes with a torch, and sometimes in brown or black robes, or else in civilian clothes. This was one of the first locations that the sexual abuse would often begin. The Brothers each had their own circuit of the dormitories, and particular boys they would target. Most nights, they would spend time sitting on or leaning over the beds of specific boys. The Brothers would cuddle and caress the boys, building up to fondling and masturbation. After some months or longer, these Brothers would then move on to concentrate on other boys.
75. There are some reports of more serious sexual assaults happening in the dormitories, including oral sex and anal rape, sometimes with lubricant. However, presumably for privacy, it was more common for these assaults to take place in individual rooms – particularly the small housemaster's bedroom at the end of the dormitory corridor, or in the boys' individual rooms once they were older. This more serious sexual abuse generally occurred after a period of the cuddling and indecent touching type of abuse described above, as if those Brothers were testing how much they could get away with in relation to that particular boy.
76. Clients describe boys being directed to certain Brothers' rooms at night, often initially under some innocent pretence or bribe of milo, biscuits, sweet cakes or similar, and later under implicit or explicit threat of discipline or violence for non-compliance. Certain boys had this happen to them most nights, usually ending in being raped. Boys reported sometimes falling asleep in the bed of the abusive

WITN0831001 17

Brother, as a result of the terror and exhaustion of the abuse, and either waking up there later or back in their own beds, where they had presumably been carried.

77. In addition to being abused by the Brothers themselves, our clients report seeing other boys being sexually assaulted, hearing the screams of boys being abused, and hearing boys talk about being abused by the Brothers. Many reported seeing certain boys being taken away by known abusers at night and coming back looking very frightened and acting disturbed.
78. Below we have provided a summarised description of the allegations made against a selection of named Brothers at Marylands. We have not included every Brother that we have seen named as a sexual abuser, nor every Brother that we are aware has been the subject of a settlement from the Order.
79. The dates mentioned below are, sometimes rough, approximations only. In terms of dates, there have been occasional reports of abuse from named Brothers before they 'officially' began working at Marylands, or after they had apparently left and gone overseas. While in some cases this could be the result of mistaken identity, it also appears that some Brothers may have been at the St John of God grounds for periodic visits outside the 'official' dates, for instance during their postulancy or possibly as a vacation from their new placement. We do not know whether the Order kept records of such visits, but we are aware of cases where the Order has settled claims for abuse by named Brothers outside of their 'official' dates – for instance, see paragraph 264.

Sexual abuse – Brother William John “Thaddeus” Lebler (c. 1955-1965)

80. We understand that Brother Lebler was either a Headmaster of the school or the Prior. Allegations against Brother Thaddeus included that he sexually assaulted certain boys on a nearly daily basis. The abuse included fondling, forced masturbation, digital penetration, forced oral sex, rape and forcing boys to have sex with each other in front of him. The sexual abuse occurred in his office, in the swimming pool changing rooms, in the showers and in the photography room at the back of his classroom.

WITN0831001 18

81. The abuse was backed up by threats of being caned, or receiving other punishments, at school. Brother Thaddeus told one boy that he would get in trouble if he disclosed the abuse because Brother Thaddeus had made the boy have sex with a younger boy, so the boy was “like him” now – i.e. an abuser. Brother Thaddeus also told the boy that the sexual abuse was fine in God's eyes, and that everyone else at Marylands was doing it anyway.
82. The police unsuccessfully sought to extradite Brother Thaddeus (William Lebler) from Australia in 2003. However, we are aware of two individuals receiving a payment from the St John of God Order in relation to sexual abuse from Brother Thaddeus.

Sexual abuse – Brother Flannan Delaney (c. 1970)

83. Brother Delaney was the Headmaster of the school during this period. A client recalled that he used to come into the showers and watch boys showering. Other clients recalled that he fondled them, while masturbating himself, and performed oral sex on them. This occurred in the dormitories at night.

Sexual abuse – Brother Raymond John “Richard” Garchow (c. 1970s)

84. Brother Garchow was the school nurse. Allegations against him include that he masturbated and anally raped a client in the sick bay, after medicating them with tranquilisers. Brother McGrath reportedly⁴ would later disclose that Prior Moloney also pressurised Brother Garchow to participate in sexual activities, before Prior Moloney arranged for him to be moved to another diocese.
85. Criminal proceedings against Brother Garchow were permanently stayed in 2008 due to his poor health.

⁴ Sydney Morning Herald Article dated 2 December 2012, 'Spreading the rot of child sexual abuse' - <https://www.smh.com.au/national/nsw/spreading-the-rot-of-child-sexual-abuse-20121201-2anl0.html>

*Sexual abuse – Brother **GRO-B-1** (c. 1970s)*

86. Brother **GRO-B-1** was the Director of Nursing at St John of God Hospital for Elderly and Spinal Patients.
87. A client alleges being masturbated by Brother **GRO-B-1** in the St John of God Hospital, where he was recovering from an injury he received at Marylands.
88. The police unsuccessfully sought to extradite Brother **GRO-B-1** from Australia in 2004.

Sexual abuse – Brother “Celsus” Griffin (early 1970s-1974)

89. During this period, Brother Griffin was the ‘housemaster’ in charge of for the Red Section, the dormitory housing the youngest boys at Marylands. He was reported to take boys out of their beds at night into his small bedroom down the corridor from the dormitory, on a regular basis. He masturbated boys and made them masturbate him, often to ejaculation. He also anally raped boys in this room.
90. Brother Griffin was an older man and was acting Prior at some point in 1971. He was moved from Marylands to Australia in about 1974.

Sexual abuse – Brother Bernard Kevin McGrath (c. 1974-1977)

91. It is difficult to overstate the scope of the sexual, physical, and psychological abuse from Brother McGrath between 1974 and 1992 (at a minimum), or the damage it has caused. However, because it is so well documented in court records and in other statements to the Royal Commission, we have chosen to reflect his abuse in Marylands in summary form. Brother McGrath’s abuse in relation to Hebron is covered in more detail later.
92. Brother McGrath replaced Brother Griffin as the housemaster of the Red Section in January 1974. He was a tall man with glasses and, as noted above, was particularly violent to the boys. He was also a prolific paedophile, and he continued Brother Griffin’s approach of taking boys out of the Red Section to abuse them in his room down the corridor, sometimes luring them to his room

- with the promise of tea or Milo. He appears to have started this systematic abuse almost immediately on arrival at Marylands.
93. We pause to emphasise that it is curious, to say the least, that Brother McGrath's sexual assaults were initially so markedly similar to that of those his immediate predecessor in the Red Section, Brother Griffin. This is unlikely to have been an opportunistic coincidence. It suggests some awareness by Brother McGrath of Brother Griffin's *modus operandi*, whether through his witnessing it or discussing it directly with Brother Griffin (we do not know if their paths crossed), or through the involvement of a third party or parties who informed Brother McGrath of Brother Griffin's approach. This hypothetical third party may well have been Prior Moloney.
94. As noted below, Brother McGrath claimed⁵ decades later that: he himself had been a victim of Brother Moloney's sexual assaults when he was a young trainee, and those of another Brother; that Brother Moloney, as Prior of Marylands, acted to suppress any allegations of abuse at Marylands by a number of Brothers; and that Prior Moloney had pressurised Brother McGrath to join him in carrying out sexual assaults on boys at Marylands. Prior Moloney appears to have denied all such allegations.
95. Unlike some of the other Brothers with more specific methods, Brother McGrath's sexual assaults are reported to have occurred in an extensive array of locations on the St John of God grounds, and at any time of day. He was a classroom teacher, and occasionally abused boys there, or in the school-house toilets. He also abused boys in the Red Section TV room, in a bath in his own room, in the old priest dormitory, in the swimming pool pump room, in the gym, in the squash court, in the bushes at the back of the playing fields, in an attic, in both chapels/churches, and at the Order's bach at Waikuku Beach.
96. For many, Brother McGrath's abuse started with him being friendly, particularly to those who were homesick or in need of a father figure. He would groom these young boys, going out of his way to comfort and cuddle them, and then move on

⁵ See footnote 4.

WITN0831001 21

to caressing, groping and sometimes kissing and licking them all over. This would often happen in the dormitories and the dormitory TV room.

97. However, this often escalated before long. Most clients recall his sexual abuse as becoming considerably more violent and terrifying. It was frequently accompanied or followed by threats of severe punishment, physical assaults or even death for not complying, or for any subsequent disclosure of the abuse to other boys or to any adults. As noted above, the abuse was sometimes presented as being punishment for apparent misbehaviour, or under the apparent pretence of being sex education, occasionally taking place in front of other boys or involving other boys.
98. The abuse from Brother McGrath ranged from fondling to anal rape, including oral sex and everything in between. It also occasionally involved blindfolds and doors being locked, a technique that Brother McGrath would incorporate into his later abuse at Hebron. In addition to the threats mentioned above, it was sometimes accompanied by violent beatings, sometimes severely using a cane or baseball bat. It sometimes included anal penetration with objects.
99. The Order transferred Brother McGrath to work in Sydney in October 1977. Given the sheer scale and audacity of Brother McGrath's abuse – in terms of its frequency and the number of boys alone, let alone the disclosures made by the boys he abused – in our view it is inconceivable that it would have gone unnoticed by the other Brothers until that time.
100. Indeed, the abuse would not have been allowed to reach the levels it had, if Brother McGrath had not been protected by the Head of Marylands at the time, Prior Moloney.

Sexual abuse – Prior Rodger William Moloney (c. 1971-1977)

101. Brother Moloney was appointed the Prior of Marylands in late 1971, where he remained until being seconded to the Vatican by the Order in September 1977 – the same time as Brother McGrath was transferred from Marylands.

WITN0831001 22

102. We understand that these transfers happened, shortly after an anonymous complaint was made by at least one other Brother, a teacher and several members of staff, about both Brother McGrath's and Prior Moloney's abuse of boys. It appears that these written complaints had been received by the Provincial of the Order, Brother Brian O'Donnell. **[WITN0831002]**
103. Prior Moloney fondled and masturbated boys in their beds or in his office, sometimes in exchange for treats like chocolate biscuits. He also forced boys to touch him and perform oral sex on him.
104. As the Prior, Brother Moloney should have been a safe route for boys to disclose ill-treatment and abuse by other Brothers at Marylands. As an abuser himself, he was anything but safe. Instead, he suppressed any allegations of abuse. For example, a client referred to telling Prior Moloney about the abuse from Brother Donnellan on two or more occasions, but Prior Moloney told him that he was "just telling stories".

Sexual abuse – Brother John Joseph "Bede" Donnellan (mid 1970s)

105. Brother Donnellan is described as having white hair and glasses and was the Headmaster at the school. A client recalled asking Brother Donnellan if he could have his own room, while he was still living in the dormitory with other boys. Brother Donnellan replied that he could have his own room if he had sex with Brother Donnellan. While the client refused, he was later moved into his own room anyway. Brother Donnellan came into this boy's room and insisted on sex, or else he would beat the client up. He then anally raped this client repeatedly, over a two-year period.
106. Another client recalls Brother Donnellan groping him in the TV room associated with a dormitory, and repeatedly being directed to go to Brother Donnellan's room of the dormitory where he was anally raped, under threat of a serious beating.
107. Brother Donnellan was another prolific sexual abuser in New Zealand and Australia. He also appears to have been moved to other institutions by the Order after allegations were made against him.

Non-disclosure of abuse

108. There were a considerable number of barriers that acted to prevent boys from disclosing abuse. Some clients reported that they had heard other boys at Marylands talking about how they had been abused by the Brothers, or saying that a certain Brother was an abuser so should be avoided but, at first, they did not really believe the other boys. Essentially, they considered it to be just rumours or idle talk between boys - until it happened to them.
109. Clients who had already been sexually abused before they were placed at Marylands were more likely to believe boys reporting that they had suffered such abuse from the Brothers. However, it made little difference, as the abusive Brothers could not be avoided. There was no place to hide.
110. The boys were all in an institutional environment, some for lengthy periods, where their every movement was monitored and directed by the Brothers, with very limited involvement from any outsiders such as social workers. It felt like the Brothers had absolute control.
111. Boys who were sexually abused, particularly by more than one Brother, felt unsure who they could trust. This was especially significant for boys who were abused by Prior Moloney, as he was the most senior person at the St John of God grounds. Unfortunately, he seems to have intentionally cultivated an environment where abuse could flourish unreported.
112. The residents of Marylands were particularly vulnerable, due to their intellectual functioning, emotional disturbance, and/or a past history of abuse and/or neglect. A number of boys' Social Welfare files mention their need for male role models who would give them affection, or their need for physical contact. Some boys craved the attention of those who would become their abusers. **[WITN0831007]**
113. This vulnerability was capitalised upon by the abusive Brothers, who were careful to groom and befriend particularly vulnerable boys, making them feel special and loved, and giving them cuddles or treats. Some of the Brothers told the boys, while they were abusing them, that they could tell the boys were enjoying the

WITN0831001 24

experience. Many of the boys had erections or ejaculated during the assaults, and for most of them it was their first sexual experience. This made them feel guilt and confusion about whether what had happened to them was good or bad, although this sometimes changed when the sexual assaults were combined with serious physical violence or were otherwise seen as punitive.

114. Some Brothers made boys perform sexual acts with other boys. This sometimes had the effect of normalising the sexual experiences and of making the boys feel complicit.
115. Some of the abusive Brothers, most notably Brother McGrath, told the boys that the abuse was their secret. They said that if they did disclose the abuse, no one would believe them that they would be badly beaten or worse, as punishment. These threats were particularly credible when the Brother had already been violent to the boy he had abused, or if the boy had been seen him perpetrate violence on other boys.
116. Some of the boys had already experienced being beaten and treated as a liar for disclosing abuse in previous residences. Some boys had previously been placed in Boys' Homes where a strong culture of 'not narking' existed. Some clients say that this culture also existed at Marylands – an early resident recalled having to swear an oath of allegiance to the Brothers on admission, which they understood included that they would be beaten by the Brothers if they disclosed what was happening at Marylands. Some clients saw other boys being beaten for this very reason and quickly learned to keep their mouths shut. Other clients reported that, for whatever reason, some of the older boys made a pact amongst themselves that they would not disclose abuse once they left Marylands.
117. Some clients report thinking that the Brothers were legally allowed to abuse them, which is not uncommon among children, particularly in institutional settings or for those with prior experiences of abuse. After all, the Brothers were seemingly allowed to punish boys with the cane and the strap, and they exercised frequent strict and severe discipline, which included physical assaults as part of the official punishment regime. In some cases, several of the sexual assaults were clearly

WITN0831001 25

understood by the boys to be punishment for misbehaviour. The sexual assaults were sometimes carried out in front of other boys, in the same way that other punishments sometimes were.

118. Similarly, there was sometimes a religious aspect to the abuse, with it sometimes occurring in the chapel, or with Brothers saying that the sexual assaults were acceptable to God, or them even thanking God during the sexual assaults.
119. Boys who were too afraid to disclose the abuse externally, or who had done so unsuccessfully, often then tried other ways to get out of Marylands. Most of our clients absconded at one point or another. Others told their family members or social workers repeatedly that they did not want to be at Marylands, but they were either too afraid to say why, or they were not believed when they did say why – as discussed below.
120. Without anyone to trust or listen, the confused and scared boys often turned the abuse on themselves, or on others. Some attempted suicide at Marylands, or self-harmed or self-sabotaged. Others developed disordered nervous behaviour like bedwetting, insomnia, hair pulling, or they started smoking cigarettes. Some turned to explosive violence against anyone who looked at them the wrong way or exhibited sexualised behaviour. **[WITN0831008 and WITN0831009]**
121. This often turned out to be the most effective way to escape – a number of our clients started exhibiting such disturbed behaviour in response to the abuse that the Brothers would not allow them to return to Marylands from their holidays. Unfortunately, this usually meant that they ended up in a series of Social Welfare or psychiatric hospital residences, where they often experienced further abuse.
122. Some boys who had already been abused and neglected at home or in Social Welfare care were reluctant to say anything bad about Marylands because they did not want to be returned to those other placements. For whatever reason, possibly because they were confused about whether they were receiving positive affection and attention or abuse, some boys seemed to prefer to stay at Marylands than be placed elsewhere.

Attempted disclosure of abuse

123. As mentioned, if a boy was overheard by the Brothers warning other boys about the abuse, or if they told Brothers who they thought they could trust about what was happening, they were usually told to shut up, and/or were beaten up, or subjected to corporal punishment for 'lying'. A number of clients have reported this as being the punishment to their disclosing sexual abuse to Brothers McGrath, Garchow, GRO-B-1 and Prior Moloney.
124. At the very least while Marylands and the Brothers were ruled (1971-1977) by Prior Moloney, a sexual abuser himself, there was certainly a concerted effort from the top to prevent disclosure of abuse being made and protect the abusers. There are indications that to some extent, this same protection was available under prior Priors, and the subsequent Priors as well.
125. Brothers like McGrath, Moloney and Donnellan were moved around between institutions and jurisdictions after allegations of abuse were made -- something that is well established as having occurred within the global Catholic Church, and which is supported by Brother McGrath's own statements.⁶ While we can only speculate as to this point, given the scale of abuse committed by these Brothers, it is hard to escape the conclusion that the protection of sexual predators within the ranks of Marylands was also extended by those outside the school, by individuals even more senior than Prior Moloney within the Catholic Church. Indeed, as noted below, Michelle Mulvihill would reportedly state in 2007 that the culture of cover-up and collusion was endemic in the Order even at that time.
126. A number of boys only felt able to disclose their unhappiness, rather than the extent of the abuse. For example, a client who was a resident between 1966 and 1974 reported:

At the end of each home visit, I would cling to my mother and cry. I would beg my family not to send me back. During the school term I would beg the family to let me come home. Marylands staff told my parents that it was normal for boys to behave that way when they went to

⁶ See footnote 4.

WITN0831001 27

boarding school. My family did not know anything about the sexual abuse and never suspected anything was going on.

127. On the other hand, some boys did disclose the abuse externally – to family members, police officers, or to their social workers, generally while they were on leave from Marylands. Although our clients often recall their complaints being documented at that time by the police or social workers, we have only been able to locate one clear record of sexual abuse allegations being documented (see below).
128. Whether because the boys did not describe their abuse in as much detail as they remember, or because the detail of their allegations were considered too implausible to bother recording in detail, a number of files simply record boys as being ‘unhappy’ at Marylands or at most alleging ‘severe punishment’, being ‘mean’ or suffering ‘cruelty’. **[WITN0831010]**, **[WITN0831011]** and **[WITN0831012]**
129. Others, such as the police, simply recorded that the boy was an extraordinary liar who would not change his story. **[WITN0831013]**
130. So when disclosing abuse to professionals who were meant to be protecting them, these boys were treated as if they were liars or at best exaggerating, perhaps viewing them as trying to manipulate a return home. They were not heard. There is a real sense from the records that the universal view was that ‘the St John of God Brothers may be strict, but they would not do a disgusting thing like *that*’.
131. As far as we can tell, such allegations were never followed up on, other than the parts that were considered possibly credible being sometimes referred back to the Prior for his information and follow-up. Some parents raised concerns with the Prior directly, which were also ignored. **[WITN0831014 and WITN0831004]**
132. One client, who was a resident from between about 1968 and 1976, told us:
- I remember one time a boy went home to his parents, and they asked where he got his bruises from. He told them that Brother McGrath had given him the bruises. His parents went to the school and complained, but Brother McGrath denied it.

WITN0831001 28

133. This client also reported regular sexual abuse from Brother Donnellan, starting at age 14, accompanied by threats of violence if he did not comply. He told us:

I tried to tell Brother Moloney, the Prior, about the sexual abuse on at least two occasions, but he told me I was “just telling stories”. Because of Brother Moloney’s reaction and Brother Donnellan’s threats, I never told my parents about any of the sexual abuse I was subjected to.

134. Another client repeatedly asked his father to be removed from Marylands and said that he was finally removed in 1978 after repeatedly telling his father, who didn’t believe him at first, about the sexual abuse he had suffered at the hands of Brother McGrath.
135. One client reported telling his social worker about the sexual abuse he had suffered from the Brothers in 1982 or 1983, and reported that instead of doing anything about the allegations, his social worker uplifted him from Marylands and temporarily admitted him to Templeton Hospital where he was medicated to address his ‘disturbed behaviour’, such as absconding from Marylands. He was returned to Marylands after this hospital placement.
136. Another client disclosed sexual abuse to his social worker while he was on holiday from Marylands, but no action was taken and the abuse was not documented. However, he reported the sexual and physical abuse from Brother McGrath to the same social worker and also to his foster carers a second time, in February 1981. This time, the disclosure was documented on his file, but still no action was taken. Instead, this boy was taken to a Boys’ Home and locked in the Secure Unit, supposedly due to his own offending (which he strenuously denies). He received no support or counselling after this disclosure. While this documented disclosure was several years after he had left Marylands, other boys and State Wards continued to live at Marylands for over three years after his disclosure of sexual abuse from a Brother at Marylands. **[WITN0831015 and WITN0831016]**

Marylands – individual experiences

137. We have summarised the experiences of a selection of anonymised former clients (whose experiences are not already before the Royal Commission) below,

WITN0831001 29

chronologically by time of initial placement. We have included, in selected cases, quotes from statements that we prepared with these clients for their claims, which we provided to the Order or its Investigator.

MA

138. MA was born in Christchurch in 1944 and was placed in St Joseph's as a baby. MA was transferred to Marylands when it opened in November 1955, at 11 years of age, and recalls helping the staff tidy the property up before the other children arrived. There are very few records of either the St Joseph's or the Marylands placement.
139. MA did not know MA's parents or why they left MA at the Orphanage, or whether they were Catholic. MA was not placed at Marylands with any siblings. It is not clear whether MA's siblings or other family members visited MA during this placement, or whether MA was placed with any family members on holiday. MA was Pākehā.
140. Formal neuropsychological testing later (May 1967) assessed MA's overall IQ as being 64, which was in the category of 'Mental retardation'. This is likely to be one reason for MA's placement at Marylands.
141. MA lived at Marylands until December 1959, after which time MA remained in Christchurch and gained some employment.
142. MA was regularly and repeatedly caressed, fondled and digitally penetrated at night in bed, by several Brothers who MA could not identify. This sometimes happened several times a night. Sometimes a Brother put his hand over MA's face and told MA not to scream during these assaults.
143. Even during the day, MA reports Brothers putting their hands down MA's pants and fondling MA's penis, asking if MA enjoyed it:

When I told other boys about what was happening, I was told to shut up by the Brothers. They would cane me until I couldn't stand. On several occasions they nearly killed me. I kept trying to talk about what was happening and tell the other boys to be careful. As a result, I was beaten regularly.

WITN0831001 30

We were also sexually abused in front of all the other boys as punishment. We were punished like this for doing things like swearing at the Brothers. I can remember standing with all the other boys outside, watching another boy be forced to strip naked. Then a Brother pushed him onto the ground and masturbated him. He also put the boy's penis in his mouth and gave him oral sex. I saw this happen to other boys on other occasions too. We were unable to stop this happening, because if we tried to interfere, we would be punished with the strap or cane.

I was punished on a regular basis for trying to intervene. The punishment was pretty brutal. I was given 6-8 slashes a day for 3-6 days in a row. I was slashed with either a strap or a cane which left marks. We could not stop the Brothers doing what they wanted to do. I was also sexually abused in front of the group in this way on several occasions.

144. MA recalled trying to commit suicide at Marylands due to the abuse, at the age of 14. [GRO-C] some of the Brothers, who called MA "stupid" but did not investigate why MA had done this. [GRO-C]

[GRO-C]

[GRO-C]

I have tried to commit suicide eight times. I was on anti-depressants for 6 years, from 1984 or 1985 to 1990. I am currently on anti-depressants as well and have been on them since December 2006. In 2003, I was diagnosed with Post Traumatic Stress Disorder ("PTSD").

My mind goes blank at times and sometimes I forget to eat. I also stop eating when I am stressed out or uptight. I used to go to the Sisters of Mercy/ Home of Compassion soup kitchen nightly. They noticed that I was losing weight at one stage. I think I was trying to make myself sick because I worry a lot.

Sometimes my body goes out of kilter and when it does, I find that I cannot sleep at night and have to sleep during the day. I also suffer from nightmares when I am like this. I frequently suffer from flashbacks. I get flashbacks and nightmares when I feel under pressure.

I do not have relationships because I do not believe in them. I also have a lot of trouble trusting people. I am also anti-authority to the extent that I have no trust or faith in any Government Department or the Courts. I believe that people are not safe, even when they are just walking in the street. There is nothing to help people when they have been hurt.

145. MA was contacted by the police in 2003 as part of 'Operation Authority'. MA recorded a police statement in October 2003 alleging the regular sexual abuse by several unnamed Brothers, as well as physical abuse, described above. MA did not recognise any of the Brothers' names proffered by the police, who advised

WITN0831001 31

- that they were looking into other complaints from the era that MA was at Marylands (late 1950s).
146. The police suggested that MA might want to contact Australasian Head of the Order, Brother Peter Burke. MA did so, later in October 2003, but never met with him, as MA's claim was caught up in the 'pastoral pause' described below. MA instructed us in late 2006 on a legal aid basis.
 147. The process from this time onwards is detailed in another section below. In brief, we sent the Order a summary of MA's allegations, taken from an interview and from the police complaint, and we assisted MA to meet with the Order's Investigator in June 2008.
 148. In his December 2008 report [WITN0831006], the Investigator (John Jamieson, a former Commissioner of Police, as discussed below) recorded that the Brothers he interviewed from MA's era all denied the alleged abuse, although the Investigator acknowledged that there had been complaints made from other residents in the same era. MA – who did not trust police - was very critical of the Investigator's report, stating that he had twisted MA's words.
 149. After a meeting between the Head of the Order, his lawyers, our firm, and MA in December 2008, followed by several months of negotiation, the Order agreed to a full and final settlement of MA's claim of \$20,000, and a written apology. Significantly, this amount was inclusive of legal costs, so MA had to repay \$5,000 to Legal Aid. The settlement deed included a confidentiality clause as to quantum, however we understand that the Order has waived confidentiality and privilege for the purposes of the Royal Commission.
 150. MA's payment of \$15,000 after legal costs was the lowest offer we received – or that we have heard was ever received - for a Marylands survivor, let alone a Hebron Trust survivor.
 151. Understandably, MA was extremely unhappy with the offer, and angrily described the offered payment as being 'blackmail', a 'bribe', complaining of being 'silenced' and 'held to ransom' by the Order. MA wanted to take the Order to court, and we

WITN0831001 32

had to advise that there would be significant legal hurdles for MA to overcome, and the legal aid funding would not be available to do so. After considerable discussions with our firm, MA very reluctantly accepted the settlement, which was realistically the only option available.

MB

152. MB was born in Lower Hutt, in GRO-C 1959. As we did not act for MB in relation to his Marylands claim, we have little information on record about his placement at Marylands or the abuse he suffered, except that it involved sexual abuse from four or five different Brothers over many years.
153. MB was placed at Marylands between about 1966 and 1974, when he was aged 7-15. MB was placed at Marylands following a family meeting with his teachers, the family doctor, and an educational psychologist.
154. MB was not placed at Marylands with any siblings. It is not clear whether MB's siblings or other family members visited MB during this placement, or whether MB was placed with any family members on holiday. MB was Pākehā.
155. MB had significant intellectual disabilities after contracting severe meningitis as a baby. He also suffered from petit mal seizures as a child, which required periods of hospitalisation while he was at Marylands.
156. A November 1973 psychological report described MB, age 13, as being "a boy of considerably below average ability who displays some symptoms of psychotic behaviour". The report recommended that MB remain at Marylands until he was old enough to leave school and advised that he would probably need sheltered or protected employment.
157. MB recalled returning home from Marylands for the August 1974 school holidays and stated that his parents refused to send him back to Marylands because of his continuous pleading to let him stay at home. Although MB was adamant about this, his records suggest a different reason for his return, namely that his mother panicked after MB had a particularly bad epileptic seizure and sought his return. It is likely that both reasons played a part in his parents' decision.

WITN0831001 33

158. On his return, MB started attending work skills training at the Disabled Rehabilitation League. However, several months later he was admitted to Porirua Hospital, where he lived as an informal patient for nearly 20 years, despite his repeated requests to leave. We later acted for MB in relation to his experiences in Porirua Hospital.
159. MB made a police complaint and he was a witness in the trial of Brother McGrath. We do not know if he was also a witness against Prior Moloney.
160. The Order offered MB \$80,000 in 2003, but his family instructed GCA Lawyers and, following negotiations, MB accepted an increased offer of \$140,000.
161. MB's mother told us:

[MB] is my only son. I am still affected now by the devastation of his disability and abuse. I think I have overcompensated with guilt. What a waste of a life and we were part of it, we have to live with it.

I have great sorrow and disappointment for what has happened to MB. From time to time, it causes huge conflict and stress in our relationship, and has done over the years. I have a terrible fear of being left alone to care for MB. [MB's father] and I have always shared the responsibility.

162. Until Brother McGrath was found guilty in 2006, MB's parents originally did not believe MB's allegations, which they thought were exaggerated at best. MB's mother initially thought that, rather than MB being a victim, MB should be locked up in prison to protect himself and others, due to his own sexual acting out combined with his level of understanding.
163. In addition to funding MB's counselling, the Order agreed to provide MB's mother with six sessions of counselling to work through her difficulties with processing these feelings and particularly own guilt.

MC

164. MC was born in Blenheim in GRO-C 1960. He was placed in Marylands at age 7, in 1967, living there until he was 16 years old. He was placed there by his parents because of his severe intellectual disability.

WITN0831001 34

165. MC was not placed at Marylands with any siblings. It is not clear whether MC's siblings or other family members visited MC during this placement, or whether MC was placed with any family members on holiday. MC was Pākehā.

I lived in the dorm with three other boys when I first got to Marylands. When I was about 11 years old I saw another boy, **GRO-C** in Brother Griffin's bedroom. Brother Griffin was going up and down on him, having sex with him. **GRO-C** was on the bed facing down. I know that Brother Griffin sexually abused various boys on a weekly basis. He would take boys out of their beds in the Red Section of the dormitory and take them to his room. Red Section was the dorm for small boys, who were about 8-9 years of age. I remember hearing boys being taken by him in the night.

Brother Griffin repeatedly sexually abused me from when I was about 11 years old. He forced me to masturbate him and he would masturbate me. After he abused me the first time, there was a gap of about a month before he abused me again. He ejaculated when I masturbated him and it was very scary. The sexual abuse always happened at night. He would come and take me out of bed and take me to his bedroom, which was down the other end of the corridor from my dorm. It was a small bedroom with a chest of drawers in it.

Brother Griffin also anally raped me. It happened a lot of times. He would lie me down and take my clothes off. He would put his penis in my bum. It hurt a lot. Each time it would seem like ages. Brother Griffin was an older man and he was the head of the Red Section. The sexual abuse happened a lot until he went to Australia. I think he left when I was about 14 years old.

Brother McGrath took over the Red Section after Brother Griffin left. Brother McGrath was very physically abusive. I remember seeing him kicking boys. He would kick them in the stomach, back and around their bodies. I remember that he did not use his hands to hit boys, he used his feet. I remember seeing boys called **WITN0716** and **GRO-B** being kicked by Brother McGrath. I remember one time a boy went home to his parents and they asked where he got his bruises from. He told them that Brother McGrath had given him the bruises. His parents went to the school and complained, but Brother McGrath denied it. Brother McGrath would take me out of class and I would go back to the dormitory.

WITN0831001 35

I was also sexually abused by Brother Donnellan. This started when I was about 14 years old. I was still living in the dorms, and I asked Brother Donnellan if I could have my own room. He told me I could have my own room if I had sex with him. I said no. A while later, I got a room of my own.

Brother Donnellan came into my room one night and asked me if I would have sex with him. I said no, and that I wanted to go to sleep. He said that if I didn't have sex with him, he would beat me up. He made me get out of my bed and go to his room, which was down the hallway and around the corner. He led me there and stayed close to me. When I got into the room, I stood by him. He took my clothes off and then he took his own clothes off. He pushed me down onto the bed so I was on my back, looking up at him. He pushed his penis into my genital area and, although I tried to push him away, he anally raped me. I was incredibly scared. He must have ejaculated inside me because when he got up, he said something like "what about the shower?" I pushed him away. He got back onto me and he raped me again. He raped me several times that night. I pushed him away finally and got my clothes and ran back to bed. I was upset, scared and in pain.

A few nights later he came and got me again. He took me to his room and raped me again.

Brother Donnellan sodomised me on a regular basis. He often threatened me and told me that he would beat me if I told anyone about it. I tried to tell Brother Maloney, the Prior, about the sexual abuse on at least two occasions, but he told me I was "just telling stories". Because of Brother Maloney's reaction and Brother Donnellan's threats, I never told my parents about any of the sexual abuse I was subjected to. Brother Donnellan had white hair and glasses. He raped me about once a week until I left Marylands at age 16.

166. After leaving Marylands, MC worked at a supermarket in GRO-B while living with his parents. His mental health was affected by the abuse, but it was relatively stable compared to how it would become after he disclosed the abuse in 2004.
167. At that time, MC heard about the Marylands abuse claims on the radio and told his wife "that happened to me". MC contacted counsellor Terry Featherstone (a witness, **WITN0764**, giving evidence with Denis Smith, **WITN0184**), and also

Brother Peter, in early 2004. Over the next four years, the Order funded MC's counselling, paying nearly \$16,000 for this purpose.

168. Terry Featherstone took MC to the police station, where MC gave a detailed statement about the abuse he suffered at Marylands. The police advised MC that Brothers Donnellan and Griffin had both died, but that Brother Donnellan was one of the known abusers at Marylands. MC decompensated after this interview, having big mood swings, and completely avoiding any physical contact with his wife.
169. Mr Featherstone – who had previously supported another client of his to meet with Brother Peter - contacted our firm in July 2004 when he was told that Brother Peter would no longer be meeting with claimants.
170. We have set out in detail below our involvement with MC's case from this time. Briefly, after a lawyer from this firm met with MC and obtained information from him, we prepared a statement for MC from this information and information we had obtained from other sources. In his statement, MC said:

Having to go over the abuse again and again has left me feeling stuck. I have felt stuck for so many years and I want to move on with my life. I can't do this until the St John of God Order engage with me and begin to repair the damage that has been done by the Brothers at Marylands. I want an apology from the Head of the St John of God Order, where he genuinely acknowledges how much I have suffered. I want compensation to help me move on with my life. I want my counselling, which needs to be funded by the Order, to continue.

I am very sad at how my life has turned out and that I didn't get an education at Marylands. Now I am left with jobs like the trolleys at Woolworths, or cleaning. I feel that people don't give me a chance because of my disability.

Because of the sexual abuse I have suffered, I get horrible nightmares. I toss and turn and cry and scream out in my sleep. My wife tries to cuddle me but I push her away. I wake up covered in sweat.

I am so traumatised by the abuse. I want to tell people about it, but I am so ashamed that I find it incredibly difficult. I'm frightened to tell anyone about it even

WITN0831001 37

now; I'm still scared that I might get into trouble. I have got into various difficulties in my life because I don't tell people my problems.

When I was a boy I used to believe in God, but after the Brothers had sex with me I couldn't believe in God anymore.

I don't trust people. I find it very difficult to open up about my problems. I find it hard to ask for help. I think people will hurt me like the Brothers did. I wonder now, if I had not been so messed up by the sexual abuse, whether I would have had a closer relationship with my family.

I have very low self-esteem and my counsellor tells me that there is a lot of blocking and confusion associated with my memories from Marylands. The abuse I have suffered has affected my learning and my relationships. I have lived with the shame and embarrassment of the abuse. I kept it all to myself. I didn't think I would be believed. I had to carry around inside me all the disgusting things they did to me. I blamed myself, I wish I had been stronger so that I could have stopped it.

Until I met [my wife] I didn't have a girlfriend. I was too shy and embarrassed. I thought no-one would love me and that I was disgusting...[We] have had sexual problems as I get memories of the abuse when we have sex and this makes me feel terrible. We do not have children.

I am easily stressed out and when that happens I just close off, I dissociate. It makes it hard for me to work when I'm like that. I just go into my own space and shut everything out. I'm not able to do my job. I have done this ever since I was abused at Marylands.

I have waited and waited for the St John of God Order to help me rebuild my life. I've waited far too long. Even though Brother McGrath was found guilty in March 2006, the St John of God Order has refused to move forward. Until they begin to repair the damage they have done to me, I can't get on with my life.

I don't believe what people say. I don't really think the St John of God Order will apologise and pay me compensation.

171. MC's mental health continued to deteriorate significantly over the period we acted for him. MC finally met with the Order's Investigator John Jaimeson in September

WITN0831001 38

2008, more than four years after making initial contact with Brother Peter, along with a lawyer from this firm, his wife and five support persons.

172. As discussed below, MC collapsed and died in October 2008, without him ever receiving an apology or compensation from the Order. MC's wife, who also had intellectual disabilities and no financial means or income, could not afford to pay for MC's funeral, but the Order agreed to pay for this.
173. MC's wife told us that he would have wanted his claim to continue and instructed us to act on behalf of his estate.
174. In his December 2008 report [**WITN0831017**], John Jamieson summarised MC's allegations, the impact of the alleged abuse, MC's subsequent disclosures and the September 2008 meeting. He noted that another client of Cooper Legal, **WITN0716**, whose own allegations against one Brother had been proven beyond reasonable doubt in a recent criminal trial, described witnessing MC's abuse. Mr Jamieson reported that Brother McGrath could not recall kicking any boys but acknowledged using a cane as a standard form of punishment which was acceptable at that time. Mr Jamieson concluded that MC's allegations against Brother Donnellan were justified given the corroboration from the other client, but that MC's allegations against Brother Griffin were not, on the balance of probabilities, because there was no such corroboration and because he was deceased.
175. After considerable negotiation, in 2009 MC's claim was settled for \$50,000. Again, nearly \$10,000 of this was paid to Legal Aid, as we were unable to convince them to write off much of MC's debt. Nearly \$7,000 went to pay for MC's funeral, leaving MC's wife with roughly \$34,000 to compensate for the abuse MC experienced at Marylands.

MD

176. MD was born in 1960 and grew up in Hastings. MD was severely intellectually disabled and has been assessed as having an IQ of 51. MD was Pākehā.

WITN0831001 39

177. MD had learning and speech difficulties as a child, an uncle suggested he be placed at Marylands, which MD described as being "a school for boys with intellectual difficulties as well as other problems."
178. MD's parents went to visit Marylands on two occasions before agreeing to send him there. They paid his board to the school for eight years, in the belief that he would receive the best care and education that money could buy.
179. MD lived at Marylands between August 1968 and August 1976 (aged 8-16). MD was not placed at Marylands with any siblings. We do not know whether MD's siblings or other family members visited MD during this placement, or whether MD was placed with any family members on holiday.
180. MD disclosed experiencing significant physical and sexual abuse at Marylands:

I was sexually abused by several of the Brothers over the time I was at the school. However, I can't remember exact dates or how old I was on each occasion.

The first abuse I can remember was when Brother Flannagan woke me up while I was asleep in my room. I was only wearing my pyjamas at the time. Brother Flannagan took me from my room to his room which was in another part of the school. When I got to the room, Brother Flannagan made me undress. He then began to fondle my penis. He also made me fondle his penis.

After Brother Flannagan made me do this, he laid me on the bed in the room. He got on top of me and held me down by my arms. He rubbed his penis against me and tried to insert it into my anus. Once he had stopped, he made me get dressed and go back to my room. I remember he did this about three times. On two other occasions he forced his penis into my anus and anally raped me. This was incredibly painful.

I remember that Brother Flannagan wore a singlet. He would take his glasses off while he did this to me, but he would continue to wear his watch. Sometimes he would rub a cream around my anus and genitals, but I'm not sure what it was. I know he raped me and tried to rape me more times than this, but I can't remember how many.

I was also sexually abused by Brother Killian. I remember that Brother Killian wore glasses, had black hair, and he was kind of short. He came into my room one night and he took me to his bedroom. I was wearing pyjamas, but he made me take them off. He took hold of my penis and masturbated me. Once he had done this for a short time, he anally raped me. He did this while I was lying on his bed. I can't remember the details of this, but I remember it happening. It also happened on one other occasion.

There was also a lot of physical abuse at Marylands. Brother McGrath, who was a school teacher, was physically abusive toward me. Brother McGrath wore glasses, and I remember he got the boys to line up outside during school hours. He came up to me and slapped me in the face with an open hand. I don't know why he did this. I

WITN0831001 40

remember another day when I was in class with Brother McGrath as my teacher. I had done something wrong, so I was sent to the headmaster's office. The headmaster at that time was Brother Delaney.

At the time I went to Brother Delaney's office, I was wearing my school uniform. The uniform of Marylands consisted of a grey jersey, grey shirt, blue tie, grey pants and black shoes. While I was in Brother Delaney's office, he forced me to take off my pants and shoes. He hit me with a cane on my bare bottom a lot of times.

Another time I was in Brother Delaney's office he made me take my pants down. Brother Delaney sucked my penis and fondled me and then anally raped me.

I was also sexually abused by Brother Maloney. There was a headmaster at Marylands who died, and then Brother Maloney became the headmaster part-way through my time at Marylands. Brother Maloney would come into my bed and begin to play, fondle and masturbate me while I was in bed. This happened a few times, but not many.

I remember Brother Gashou [sic] was the doctor at the Marylands. He left the school while I was there but returned occasionally to see sick pupils. On one occasion while I was at the school, I went to see Brother Gashou in the doctor's office because I was sick. While he examined me, Brother Gashou masturbated me and he anally raped me.

On a second occasion, after Brother Gashou had left the school, he returned to examine me. I remember that he wore a black jacket, black pants, black shoes, and white shirt with a black tie. Brother Gashou examined me in the doctor's office at the school. When he examined me a second time, he again masturbated me and anally raped me. I remember that both times I was sick with a stomach bug.

I was also sexually abused by Brother Keane. On one occasion, I was in my room asleep when Brother Keane came into my room. I was wearing my pyjamas but Brother Keane made me take them off. He took hold of my penis and masturbated me. He then climbed onto my bed and forced his penis into my anus, and anally raped me. Once he was done, he made me masturbate him.

As I have already said, Marylands was a very physically abusive place. I remember one day, I was walking down the stairs adjacent to a glass window. Brother ^{GRO-B}₁ was behind me and for some reason he pushed me forward. This caused me to fall through the glass window. My right arm got badly cut and the top of my right index finger was severed off. As a result of the injuries I received, I ended up in the hospital at the school and was sent home for a short time a couple of weeks later. I still have the scars on my arm and the top of the right index finger is missing down to about the first knuckle. I don't know why Brother ^{GRO-B}₁ pushed me, but I feel that it was an intentional thing. Brother ^{GRO-B}₁ took me to the hospital part of the school where he worked and put me in a hospital bed. While I was there, he masturbated me. I was too scared to tell anyone about any of this.

I remember an occasion when Brothers Griffin and Sebastian took me and some other boys on a holiday to a beach house. I can't recall where the beach house was and I am not able to describe it, apart from knowing that it was at the beach. While we were at the beach house, I remember Brother Griffin taking me outside to where a wringer washing machine was. Brother Griffin grabbed my right hand and forced it through the

WITN0831001 41

wringer section of the machine. This didn't cause any injury requiring medical attention that I can remember but it really hurt.

I remember that, as well as Brother McGrath, who would slap me on the face with both hands, Brother Maloney would hit me and Brother Keane would hit me with a black belt. These physical beatings were pretty frequent. Brother Raphael Dillon also hit me with a belt.

I remember Brother Ambrose, mainly because he was kind.

181. After leaving Marylands, MD lived with his uncle and trained as a joiner. He later spent time in IHC care and Timata Hou. His brother was later appointed as his welfare guardian.

As a result of the sexual abuse I have suffered, I have had had major difficulties trusting people. I tend to think that everybody is against me, including my family and the staff at the IHC and Timata Hou.

I suffer from post-traumatic stress disorder. I have nightmares and flashbacks about the abuse. I am known to be hyper-vigilant and over-react to perceived threats. I can be violent, both physically and verbally if I don't get my own way, and I particularly hate people entering my bedroom.

I have tried to avoid the issue of the abuse, and did not talk about it at all until I attended counselling. My counsellor says that my aggression is also a way of avoiding, what he calls traumatic affect.

I have had considerable difficulties with my sexuality and sexual behaviour as a result of the sexual abuse I have suffered. This has made it difficult for me to be integrated into the community, as there are often complaints about my inappropriate behaviour. I have never touched anyone sexually, but I have difficulties with boundaries and being too friendly. This behaviour has meant that I have struggled to be independent. My mother says that when I got out of Marylands, I was fascinated by transvestites.

I have suffered from intense episodes of depression. I can spend a lot of time crying about what happened to me at Marylands. I have spent most of my life blaming myself for what happened there, and thinking that it was my fault. I feel intensely ashamed by the sexual abuse, and I often feel intensely alone as well. I don't believe that people like me, and I often feel distressed about my life.

What the Brothers of St John of God took from me is priceless. I have not been able to move on from the trauma of what happened to me while I was in their care, or the drawn-out process and non-resolution of matters pertaining to the abuse, such as an apology and acknowledgement of the wrongs perpetrated on me.

I would also like to see my parents reimbursed for the 8 years of school fees that they paid, in the belief that I was receiving the best care and education that money could buy. For all that time they were paying the St John of God Order money, all the Brothers were doing was abusing me.

WITN0831001 42

182. In terms of the last quoted paragraph above, we note that the requested reimbursement of the school fees that were paid by MD's parents was frequently raised with Brother Peter and later Brother Timothy and his lawyers. These understandable requests were never acknowledged by the Order or its representatives.
183. MD contacted psychologist Brent Cherry in late 2003 or early 2004. Mr Cherry told MD about the Marylands claims and wrote to Brother Peter in February 2004 on his behalf, setting out MD's allegations and how it had affected him, and MD's immediate needs.
184. Brother Peter's response to Mr Cherry, and to MD's mother, in February 2004 was that he would not be able to meet with MD until the court cases were over. Brother Peter paid for some of MD's counselling for a time. **[WITN0831018]**
185. In a letter to MD's mother in June 2004, Brother Peter said he would continue to pay for MD's counselling until the court cases were over and he was able to meet with MD. **[WITN0831019]** It appears that this promise would be broken just over a year later.
186. In July 2005, MD made a detailed statement to the police about his abuse. MD identified eleven Brothers by name from photographs that the police showed him.
187. In August 2005, MD's mother contacted this firm on the advice of MD's psychologist, after Brother Peter had written to say that MD's counselling would be stopping in 6 weeks. There is some evidence that Brother Peter changed his mind about the withdrawal of counselling for at least some claimants after several months, but we do not know when or if MD's counselling was resumed.
188. Despite MD's intellectual disability, we were able to draft a detailed and coherent statement outlining the abuse he experienced at Marylands and its impact, which we have quoted from above. This information was largely taken from his police statement, his counsellor's communications and from his medical records, with some input from MD, his family and support persons. However, it was always going to be impossible to get a perfectly accurate statement in light of MD's

WITN0831001 43

intellectual and mental health difficulties, the passage of time, and the significant funding and time constraints we were under. As detailed below, this may have resulted in errors with the names of the Brothers, which resulted in the Order having significant concerns about MD's overall credibility.

189. After considerable negotiation, in 2009 MD's claim was settled for \$22,500 (which included legal fees), and a written apology. Legal Aid wrote off some of MD's debt for our representation of him, but they required \$5,500 to be repaid.
190. Despite his serious allegations against Brothers named by other boys as being abusive, MD's payment of \$17,000 after legal costs was the second lowest offer we received – or that we have heard was ever received - for a Marylands survivor.
191. We have detailed below the reaction of MD's family to the settlement process and the amount. Given what we now know about other settlements, and the significant issues identified below about John Jamieson's report, we agree with MD's family that this settlement was far too low. In fairness, it should be reviewed.

ME

192. ME was born in 1957 and was raised on a farm near Hamilton by his grandparents. ME is Māori.
193. Because of ME's intellectual difficulties (he was assessed at the time as having an IQ of 57-67), and because he started getting into trouble, he was placed at Marylands in 1970. He was only there for a term before he was withdrawn by his grandparents, who could not afford the school fees.
194. The sexual assault on ME occurred during this first placement at Marylands. ME thinks that Brother Delaney saw that he was vulnerable and that is why he singled him out for abuse. ME had already learned from his experiences in a Social Welfare Boys' Home not to disclose any bad things going on, although he did try to phone his grandmother to get him out of Marylands after the abuse occurred.
195. On one occasion, Brother Delaney came into the dormitory, in the early hours of the morning. ME was asleep. Brother Delaney woke up ME by shining a torch on

WITN0831001 44

him. ME woke up to find Brother Delaney touching ME's genitals, underneath ME's pyjamas. After this, Brother Delaney pulled down his pants and took his penis out. Brother Delaney started masturbating himself, while he was continuing to masturbate ME. Brother Delaney masturbated ME until he ejaculated. He remembers this was ME's first sexual experience and that he was very scared and confused. After the sexual assault, Brother Delaney left the dormitory.

196. A couple of days later, Brother Delaney came back to ME's bed, again in the early hours of the morning. ME was awake because he was afraid that he was going to be sexually assaulted again. When Brother Delaney saw that ME was awake, he left. Brother Delaney did not try to assault ME again.
197. ME remembers he experienced sleepless nights and was anxious and afraid for the rest of his time at Marylands. He believes that Brother Delaney moved into other parts of the dormitory and possibly sexually assaulted other boys.
198. ME recalls that his response to the sexual abuse was to become quite withdrawn. He was completely unable to process the sexual abuse.
199. The following year, ME became quite distressed when he learned he had to return to Marylands, however the abuse did not reoccur. ME states that once he got used to being at Marylands again, he became the 'kingpin' there. The records we have available confirm both these statements. **[WITN0831020 and WITN0831021]**
200. ME returned to Marylands in September 1971, remaining there for nine months, as a State Ward, aged 14.
201. As a result of this sexual assault ME lost his ability to trust people, he lost his ambition and he became extraordinarily angry. ME went on to offend, spending time in borstal and then prison. ME has been affiliated with gangs for almost 30 years and has struggled to hold down any regular employment.
202. ME still finds it difficult to have personal relationships. He has been very 'anti' those in positions of authority, which has continued to get him into trouble with

WITN0831001 45

the law. ME he has had long-term problems with alcohol which he has used to bury the memories of the abuse.

203. ME's daughter contacted us on his behalf in May 2019.
204. In 2020, ME's claim was settled for \$80,000 plus legal costs, along with a letter of apology.

MF

205. MF was born in GRO-C 1963. He was placed at Marylands in February 1973, and he lived there until August 1977.
206. Unusually in our experience, MF has received three separate settlement payments from the Order, not including the small November 2002 payment that all Marylands pastoral payment claimants at that time received. It appears that these three discrete settlements were partly due to his gradual disclosure of further abuse from additional named Brothers.
207. As we did not act for MF in relation to his initial two Marylands claims, we have little information on record about his placement at Marylands or the abuse he suffered, except that it involved prolonged and serious physical and sexual abuse from Brother McGrath, including being hit around the head by a baseball bat and being made to frequently perform sexual acts on other boys, as well as sexual abuse from Prior Moloney and two other named Brothers.
208. As set out in more detail below, following legal mediation MF received a confidential settlement of \$50,000 from the Order in about August 2000, as well as payment of his legal costs and an 'unreserved apology' from Brother Peter. This may have related only to the abuse he disclosed from Prior Moloney.
209. In August 2002, MF met with Brother Peter under the pastoral process and disclosed further abuse, apparently relating to Brother McGrath. Brother Peter apologised, gave MF the details of the detective in charge of Operation Authority and offered support with counselling and MF's hearing. **[WITN0831022]**

WITN0831001 46

210. Like all other 2002 pastoral process claimants, MF received a payment of \$1,500 in November 2002 and was offered a full payment in March 2003 – although even this second payment was expressly not in full and final settlement. In MF's case, it was an additional \$30,000, which he accepted. **[WITN0831023]**
211. In August 2017, MF was referred to this firm by the New Zealand Catholic Church's National Office of Professional Standards. We acted for MF in relation to several other matters.
212. We contacted the Carroll & O'Dea, the Australian lawyers for the Order, on MF's behalf. We noted that MF had serious health issues and financial needs and we sought the final resolution of MF's claim under the pastoral process that Brother Peter had started in 2002.
213. In 2019, the Order offered a further \$35,000 to MF, to be paid to a relative of MF, to be managed and used for specific agreed purposes to assist MF, plus our reasonable legal fees. This offer was accepted.

MG

214. MG was born in **GRO-C** 1965. He was placed at Marylands by his parents between 1974 and 1978, as a result of his significant intellectual disability. He returned to his parents' care during the holidays.
215. On about six occasions, Brother McGrath took MG from his dormitory bedroom at night to Brother McGrath's bedroom for a 'Milo'. Brother McGrath locked the door, blindfolded MG, and raped him on each occasion. MG also reported other occasions, including during the daytime, where Brother McGrath performed oral sex on MG. MG stated: "He told me that if I told the other kids he would kill me. I was quite scared."
216. MG repeatedly asked his father to be removed from Marylands and was finally removed after telling his father about the sexual abuse he was suffering at the hands of Brother McGrath, although his father didn't believe him at first.

WITN0831001 47

217. MG has suffered significant trauma as a result of this abuse, including anger and trust issues.
218. MG instructed us through his advocate in May 2015, after MG and the Order met to discuss MG's allegations. More details of this are set out below.
219. MG's claim was settled for \$80,000 in 2015, plus our legal fees and those of MG's advocate.

MH

220. MH was born in GRO-C 1966. He was placed at Marylands by the Department of Social Welfare in September 1974 and lived there until October 1982.
221. MH reports being physically assaulted by Brother McGrath, as well as being sexually abused by him on over 100 occasions, in an array of different locations around the Marylands grounds. This abuse consisted of fondling, mutual masturbation, mutual oral sex, and anal rape.
222. MH also reports being sexually abused by about three other Brothers that he could not name, but whom he could clearly describe – one from the Yellow Section dormitory (who we believe was Brother Donnellan), one from the Brown Section dormitory, and a third Brother who only had one lung. He was also sexually abused by a Brother who wore a black hooded robe with a cross on the side, who gave MH sweets and cakes to get him to come to that Brother's room, where the abuse took place.
223. MH was also physically assaulted by various Brothers, as well as some older boys, one of whom forced him to perform oral sex on him.
224. MH reports repeated attempts to run away from Marylands and recalls telling his social worker about the abuse he was suffering from the Brothers, which the social worker wrote down. We have been unable to locate this in MH's Social Welfare records, although there are vague references to MH being upset about being at Marylands **[WITN0831024]** and reporting bullying from a named boy as well as "encounter[ing] the displeasure of the staff through no fault of his own.

WITN0831001 48

This may be a fabrication, but I pass it on for what it is worth." The social worker took no further action. [WITN0831014]

225. In December 2003, MH received \$95,000 from the Order. This appears to have been settled under Brother Peter's pastoral process, without any deed having been signed. It is not clear whether MH was legally represented at the time.
226. The Order also paid for medical treatment for MH for several years, until Brother Timothy abruptly cut this support off in May 2008 as part of the 'belt tightening' Brother Timothy instigated after becoming the Head of the Order in 2007, discussed further below. [WITN0831025]
227. MH contacted us in July 2015 through a support worker in relation to his experiences in DSW care and at Marylands. He was suffering flashbacks and anxiety at this time.
228. In December 2015, after we had made contact with the Order's lawyers, they advised us that MH had already had a settlement in 2003, and we could not progress his claim in relation to Marylands any further. This position was inexplicably inconsistent with the approach the Order took with a number of other claimants.

MI

229. MI was born in 1968. He was made a State Ward and was placed at Marylands between September 1976 and December 1977. He returned to his mother every weekend, from Friday afternoon until Sunday evening. We suspect that this close family contact ultimately protected MI from suffering any sexual assaults.
230. MI recalled being hit by female staff members with a hearth brush and a metal spoon, as well as being kicked and hit by a Brother who wore glasses (possibly Brother McGrath), which made his nose bleed once. He reported seeing boys being taken to the church by a Brother Ray (possibly Ray Garchow), that the boys were disturbed and played up when they returned, and said that they had been abused by Brother Ray.

WITN0831001 49

231. MI contacted us in February 2005. At the time he was receiving counselling from Brent Cherry, although it is not clear whether the Order was funding this or whether this was through ACC.
232. Ultimately, we were unable to progress MI's claim to a successful resolution. The Order abruptly decided in 2008 that it would only consider claims of sexual abuse under its *Towards Healing* process, and as we acted for MI on a legally aided basis at the time we were unable to challenge this position. As stated below, this position is at odds with that of other organisations seeking to resolve historic complaints. In fairness, it should be reviewed.
233. MI did receive a settlement from the Ministry of Social Development in 2018 in relation to other experiences in State care. In its letter of offer, the Ministry expressly stated that it did not accept any allegations relating to MI's placement at Marylands while he was a State Ward, as "The Ministry is not responsible for the actions of staff at the Marylands School." [WITN0831026]

KERRY JOHNSON - WITN0084001

234. Mr Johnson has already given evidence in the State Redress Hearing. We reference his claim here for completeness. He was placed at Marylands in January 1980, aged 7, and lived there until February 1981, aged 8. Mr Johnson's mother was Catholic, and he was placed there on the recommendation of Psychological Services, because of his intellectual disability and literacy issues.
235. Mr Johnson was sexually abused by two Brothers who he described as a bald Pakeha man in his 40s and another Pakeha man with glasses, who was a chaplain or priest who lived at Marylands and who may have had a moustache. The bald Brother abused Mr Johnson in the dormitory on two occasions, involving fondling, oral sex and, on the second occasion, anal rape. In light of Mr Johnson's age and the nature of the allegations, we wonder whether this unnamed Brother took over from Brother McGrath as Red Sector housemaster. The chaplain or priest abused Mr Johnson in the dormitory on three occasions, involving fondling, oral sex and anal rape each time.

WITN0831001 50

236. A third Brother, or possibly a staff member, who had long blonde hair and was in his late 30s, made Mr Johnson and other boys perform oral sex on each other in front of him. This occurred both in the dormitory and in a church beside a field, about once a week.
237. As previously stated in evidence, Mr Johnson was given a confidential settlement of \$28,500 in 2009 and had to pay \$3,600 of that back to Legal Aid.
238. Notably, Mr Johnson reinstructed us nine years later, to ask the Order to review the 2009 payment. We provided the Order with a recent report from Mr Johnson's counsellor, which demonstrated the degree of damage Mr Johnson had suffered as a result of the abuse at Marylands.
239. In late 2018, the Order agreed to pay Mr Johnson an additional \$25,000 as well as our legal fees in relation to the reinstruction.

MJ

240. Lastly, MJ was born in GRO-C 1970. He was placed in Marylands in around 1982 and lived there until it closed in 1984. He was a State Ward with an intellectual disability.
241. We have limited information about MJ's allegations, and we have not seen his records. He reported being sexually abused by several of the Brothers, who fondled his genitals and threatened him with violence. The Brothers also hit him and threw him around a room, requiring stitches.
242. MJ stated that when he told his social worker about the abuse, he was placed in Templeton Hospital.
243. MJ suffers from PTSD, including depression, anxiety, and alcohol abuse.
244. In 2003, MJ contacted Brother Peter on the 0800 number for Marylands claims, then contacted GCA Lawyers after waiting several months for Brother Peter to meet with him.

WITN0831001 51

245. MJ met Brother Peter later in 2003 and, in December 2003, was offered \$65,000 through the pastoral process. MJ, through his lawyers, accepted the money in January 2004 on a strictly interim basis, to be renegotiated with a number of other clients' claims at a meeting between GCA Lawyers and the Order the following month. That meeting was cancelled, as described below, and the Order then refused to enter into any renegotiations – another broken promise.
246. GCA Lawyers referred MJ to us in November 2007 to represent him in relation to his Social Welfare claim, as well as in pursuing a top-up of his Marylands settlement, once the Order resumed settlement negotiations.
247. Unfortunately for MJ, the Order decided in 2008 that it would not 'top up' or revisit earlier claims, so we were unable to progress the negotiations of his settlement any further. Again, this position is inconsistent.
248. Unfortunately for MJ again, at around that same time we identified from MJ's Social Welfare records that his primary allegations were a combination of social work practice failings and a failure to properly supervise MJ while he was a State Ward at Marylands, as a result of which he experienced abuse. At that time, neither of these failings were considered sufficient to justify Legal Aid to pursue a Social Welfare claim, so we had to close his social welfare file as well. Based on our experience of the current MSD settlement process, we consider that these social work failings would now be likely to result in a modest settlement from the MSD and payment of his legal aid debt, however we have not been in contact with MJ for many years.

Other witnesses – WITN0716, WITN0744 and WITN0745

249. We are assisting three other Marylands clients to give evidence to the Royal Commission. Accordingly, we have not covered their allegations or settlements in detail in this document. However, given what we now know about other settlements, we consider that settlement made to them in each of their cases were too low. In fairness, once again, they should be reviewed.

St Joseph's Orphanage — Marylands Brother or Priest

250. We have been asked to address whether any of our clients suffered abuse at the hands of a Brother or visiting Priest from Marylands, while they were residing at the nearby St Joseph's Orphanage ("St Joseph's").
251. We have acted for a number of clients who were placed at St Joseph's and suffered physical and sexual abuse there, primarily at the hands of the nuns. Some have settled their claims with the Sisters of Nazareth Order.
252. St Joseph's was located southeast of the St John of God grounds. As noted above, the properties were separated by the Heathcote River but connected by Nash Road and at least two other bridges. It appears that initially, St Joseph's housed both boys and girls, but became a Home for boys only in around 1955.
253. Some clients recall being taken to Marylands from St Joseph's to use the swimming pool, although it appears that St Joseph's had a pool of its own as well – perhaps this was under maintenance for the period in question. Indeed, the former St Joseph's grounds currently appear to be the location for a swimming school, as well as a Christian School.
254. Residents remember being taken to school from St Joseph's by bus, to an external location in Brougham Street, Addington, known as Nazareth House.
255. St Joseph's was run by nuns and a Mother Superior. While the nuns went to mass at 7am every day, it appears that the residents only attended Sunday Mass. It is likely that this was at a chapel or church on the St Joseph's or St John of God grounds, but we do not know if there was a chapel or church as St Joseph's.
256. Two clients who were placed at St Joseph's in 1970 recall that, while the institution was run by nuns, there were always a few priests or brothers around the place, although their main interaction with them was at church. We do not know what Order they belonged to. We have seen a Reverend Father Cahill referred to in documents as having some involvement with a St Joseph's resident in 1975, attending a planning meeting at the Orphanage with Catholic Social Services and the Department of Social Welfare. To be clear, we are not aware of

- any allegations being made against Reverend Father Cahill, and we do not know the nature of his relationship with St Joseph's.
257. We have identified eight current or former clients who allege sexual abuse by a man who was possibly a St John of God Brother at St Joseph's, between the years 1966 and 1980. None of these clients were also placed at Marylands.
258. Particularly due to the ages of the boys at the time of their abuse, and the circumstances in which the abuse occurred, it is difficult to determine the identity of the men who these clients allege sexually abused them. Those who have some recall of what their abuser looked like, recall them as being either a Brother or a priest, but only one client was able to name them (see below).
259. To complicate matters, there were clearly some sexually abusive men at St Joseph's who recalled were not Brothers or priests. For instance, two of these eight clients also allege abuse by a **GRO-C** at St Joseph's - one in the late 1960s and the second in 1974. In addition, a number of boys were sexually assaulted in around 1978 by a **GRO-C** at St Joseph's, who was also a Cubs or Scout leader, in this man's house, or on Scout camps. He was convicted after one of our clients told the nuns about the abuse.
260. Of the eight clients, one lived at St Joseph's between 1966 and 1969 (aged 6-9). He recalls being asleep in his dormitory bed one night, when he was woken up by the light from a torch. A man was at the foot of his bed, holding a torch. This person was touching our client's genitals, fondling his penis and anal area. Our client did not know how to react, so he froze, and the perpetrator eventually left. Our client recalls that normally a nun patrolled the dormitories during the night. He is unable to identify this man or whether he was a religious.
261. Another client from 1970 (age 7) recalls a man, who he believes was a Brother of St John of God rather than a staff member such as a gardener or nightwatchman, although he did sometimes keep an eye on the boys at night-time. He recalls this man taking him from his dormitory bed at night to a little room at the end of the dormitory, where the man sexually assaulted him. He recalls this man, who he describes as Pākehā with dark hair, was also around during the

WITN0831001 54

daytime, and abused him then as well. He would take the boy from outside in the garden into a garden shed, or into a room in the back of a church. The abuse consisted of fondling, licking the boy all over, oral sex and attempted anal rape. The client does not recall what this man wore as clothing.

262. A client at St Joseph's in 1971 (age 10) alleged repeated sexual assaults from two men that he named as being Brother McGrath and Brother Moloney. This consisted of rape, being made to masturbate the two Brothers, and being forced to engage in mutual oral sex. He alleged that these two Brothers took him out of bed at St Joseph's a number of times, but not together, and abused him in an older wooden house in Wigram.
263. This client also reported being taken from his bed on a number of occasions by several nuns, down a gravel path to a chapel at Marylands School, where other boys from St Joseph's and several Brothers or priests were present. The pews had been removed from the chapel and there were candles and incense burning. He recalls being given red wine in this chapel and being injected with a sedative in a sick bay next door, before being forced to carry out sexual acts on the other boys, the nuns and the Brothers or priests.
264. The St John of God Order paid this client significant compensation in relation to this abuse in 2003, through the pastoral process, and further compensation again in 2009 through GCA Lawyers (as well as his reasonable legal costs, which is something the Order was not paying when settling claims for Cooper Legal clients at that point). It is noteworthy that Brother McGrath does not appear to have officially started at Marylands until several years after this client's experiences. As we did not act for this client in relation to the St John of God allegations, we cannot ascertain the basis of these settlements, given the dates in question. We query whether this man gave evidence in the trials of Brother McGrath or Moloney, which might explain the 2010 top up payment.
265. One of the clients who alleges sexual abuse by a male GRO-C also alleges being repeatedly sexually assaulted by two Brothers or priests, who wore brown 'gowns', when he was placed at St Joseph's in 1974 (aged 5-6). He described

WITN0831001 55

- that both 'Brothers' would fondle his genitals, but that the older 'Brother' would go further, performing oral sex on him and anally raping him. This abuse took place at night, with the 'Brother' getting him out of bed to take him to a room that seemed to be an office, down a long corridor. Given the time frame, we query whether these two 'Brothers' might have been Brother McGrath and Prior Moloney.
266. This client received a \$20,000 settlement from the Sisters of Nazareth, \$3,000 of which went to Legal Aid, however it is not immediately clear whether the Sisters accepted the fact of – and liability for – the abuse from the two Brothers, or whether the settlement was for the abuse from the gardener alone. If that was just in relation to the **GRO-C** which may be the case in light of the quantum, we query whether the St John of God Order would consider a settlement for the abuse from the Brothers. We have not raised this question with the Order before now, and we note it here primarily to highlight the difficulty in having opaque settlement processes where it is not clear what has been accepted for the purpose of settlement, and also in the difficulty of having two distinct settlement processes for each Order – despite both being represented in New Zealand by the firm Saunders Robinson Brown.
267. Another client (age 4-10) who lived at St Joseph's between 1974 and 1980 recalls that a nun took him down a hallway and left him with a Brother or priest, as punishment for doing something. The Brother or priest fondled this client's genitals. The client also recalls the nuns always threatened him that, if he did not behave, they would take him next door to Marylands, where they said the Brother or priest lived and worked.
268. A 1975 resident (aged 9) recalls being abused by a Pākehā male with glasses in St Joseph's. This man seemed to have some sort of authority in the institution, including his own office. On about ten separate occasions during the daytime, our client was taken to this man's office, where the man gave our client sweets in his office and fondled his genitals. He also told our client not to tell anyone what had happened. Years later, in 2006 or 2007, this client read about a Brother facing charges in a newspaper (therefore likely to have been Prior Moloney,

WITN0831001 56

- Brother McGrath or Brother Garchow). Seeing this Brother's photograph gave him flashbacks to the abuse, so he believed it was the same person. However, when we acted for this client in 2009, the St John of God Order refused to consider this resident's claim for settlement, on the basis that this man was abused in St Joseph's, and not as a resident at Marylands. We are now aware that this was inconsistent with the approach in 2010 to the 1971 St Joseph's resident represented by GCA Lawyers, described above. Again, we do not know if this client's very modest settlement from the Sisters included any recognition of his Brother's abuse, but we think it probably did not.
269. Another 1975 resident (aged 11) reported being raped by a middle-aged, bearded Brother or 'Priest' on two occasions. On one occasion, this occurred in an office, and the other time in a room off a nun's room (we understood this to have been an office-type room, rather than a bedroom).
270. Finally, a 1978-1979 resident (aged 11-12) described that a Brother or priest made him and several other boys strip naked on a stage at St Joseph's. The 'Priest' fondled the boys' genitals, and our client felt profoundly helpless and fearful. However, the abuse was interrupted by a nun, who looked at the Brother or priest and then at the boys, telling them to get dressed. This resident also recalls that he was walking around a path on the grounds beside the river on two separate occasions, when he was grabbed by a male adult, who took him off the path and raped him. Due to the nature of these assaults, the resident did not see this man – or potentially, the two separate men - and cannot describe him.
271. As an aside, we note that when investigating a complaint by 1980-1981 Marylands resident Kerry Johnson in 2008, Investigator John Jamieson was advised by a Brother Ray that allegations made by Mr Johnson about being sexually abused in the church were part of 'myths' that had been spread around that Brother McGrath had sex with dead nuns on the altar at Marylands. **[WITN0084018]** It is not clear whether 'Brother Ray' was Brother Raymond Garchow or another Brother. Aside from the acknowledgment that there were rumours of Brother McGrath having sex with (dead) nuns in the church at

WITN0831001 57

- Marylands, it is interesting to observe that Brother McGrath had, officially, left Marylands three years before Mr Johnson was a resident.
272. It is also interesting that some Brothers were still referring to allegations of sexual abuse relating to Brother McGrath (or, it appears, to any sexual abuse taking place at Marylands, or at least in the church building) as being part of some fantasists' mythology, despite Brother McGrath's 1993, 1997 and 2006 convictions on numerous charges by the time of 'Brother Ray's' comments.
273. We conclude this section by noting that the inability of any claimant to name or otherwise identify an abuser makes it considerably harder to satisfy the relevant defendant that abuse occurred. In the case of these eight St Joseph's clients, it also means that we are unable to identify which Order had pastoral, or legal, responsibility for that abuser, regardless of which institution the abuse occurred in. The inability to determine who had responsibility can be fatal to resolving any claim - it is not sufficient to state that it was a member of a Catholic Order.
274. Even if one of the two Catholic Orders running St Josephs and Marylands were willing to assume responsibility for the purpose of settlements, which is unlikely, each Order assesses and resolves claims very differently, despite both being represented (at least for certain matters and at certain times) by the same New Zealand law firm. Being an Australian Order, St John of God were, or at least are now, more generous and more sympathetic to survivors than the Sisters of Nazareth, whose 'wellness payments' have been very modest. In part, this is also due to the differences in approach between the Terms of Reference for the New Zealand and Australian pastoral processes, discussed below.
275. These eight clients did not get any help by having Social Welfare claims, either: the Ministry of Social Development absolutely disclaims any vicarious liability for abuse suffered by State Wards from caregivers in religious institutions. This position is wrong in law – case law in multiple jurisdictions is clear that they are joint tortfeasors in such cases – and a complete abdication of legal and moral responsibility. The State should urgently review its position in relation to such cases.

WITN0831001 58

276. With all three organisations disclaiming legal or pastoral liability and blaming the others, the result of this is that a survivor who was in St Joseph's, regardless of whether they were also in the care of the State, may be left unable to obtain any remedy for the abuse they suffered, if they are not certain as to which specific religious Order their abuser belonged to or able to name them.

Hebron House

277. Brother McGrath worked mainly in New South Wales between late 1977 and about 1986, at the Kendall Grange Home in Morrisset (where Brother Moloney would later work) – an institution now infamous for its own extensive history of sexual abuse of boys, including from Brother McGrath.
278. In around 1986, the Order transferred Brother McGrath back to Christchurch to work at Hebron House. We do not know the circumstances in which Brother McGrath was transferred, but it is plausible that it could have been the result of the Order receiving reports of his abuse at Kendall Grange.
279. In this section, we will cover Brother McGrath's abuse of boys while working at Hebron House ("Hebron"). Hebron was at 187 Halswell Road, run by the Hebron Trust. We understand it was beside Timberlands, and next to what would later be a gang pad. The documents that we have seen describe it as being a "learning centre for street kids" that ran "a residential life skills course for young people".
280. As best we can have been able to piece together, Hebron Trust was a local community group initiative, with a community worker assigned to link young people into various services. Its youth outreach workers were supposed to help 'at risk' young people. Hebron provided a series of youth services involving outreach workers, alcohol and drug assessment and education, and accommodation. It ran a three-week residential drug and alcohol course named Whakatipu, or "directed growth", involving lifestyle skills, building up self-esteem and knowledge of drugs and alcohol.
281. The 'correct' terminology for Hebron Trust and the Hebron property or properties is not always clear from the few records we have been able to locate. Some

WITN0831001 59

- clients referred to it as simply being called "St John's". We have seen Hebron and Hebron Trust sometimes referred to in records as "Halswell Road House", "Waipuna House", "Hebron Community Trust", "Hebron Youth Ministry", "Hebron Youth Services", "Hebron's youth refuge" or "Brother McGrath's Youth Home".
282. Brother McGrath's abuse while working at Hebron occurred in a number of locations around Christchurch as well as Hebron itself. This included a house at 17 Havelock Street, Linwood, which appears to have been owned by the Order or by Hebron Trust as well, a marae on **GRO-C** Road (which appears to have been be **GRO-C**), and a monastery on Nash Road in which Brother McGrath lived. This is likely to have been the same building the Marylands Brothers resided in. The abuse also occurred in a church or churches, in Brother McGrath's red Kombi van and in parks around Christchurch. It also occurred in an office in town, which may have been off Madras Street – and which appears to have been referred to as '6A' - or at the Christchurch Youth Centre on Worcester Street. **[WITN0831027 and WITN0831028]**
283. As noted above, over the past 11 years Cooper Legal has acted for 23 clients who allege suffering or witnessing abuse by Brother McGrath while he was working at Hebron House, between about 1986 and 1993. At the time of this statement, we have settled nearly half of these claims to date. We have had a number of additional enquiries from individuals wanting to take claims in relation to abuse from Brother McGrath at Hebron, who have yet to return initial documents instructing us to act.
284. While we do not hold all relevant information, our analysis would suggest that approximately one-third or more of this group were Māori, up to three were of Pacific Island heritage, and the rest were Pākehā.
285. Once again, Brother McGrath commanded considerable respect in the community. He wrote letters to judges in support of youth in his care, signing them off as "Bernard McGrath, O.H." (the post-nominal abbreviation OH stands for "the Hospitaller Order of the Brothers of Saint John of God"). He attended Family Group Conferences as a support person, and supervised youth justice

- clients on remand, or while they were carrying out community work at Hebron. Some clients were placed with him at Hebron by family members, or by Catholic Social Services.
286. The trust and respect given to Brother McGrath as a religious youth worker and a father figure to troubled young people was a key tool in his abuse being able to occur, as well as a particular image he would invoke as part of his grooming. As noted below, he would befriend boys by putting hands on their shoulders and calling them 'son'. He would also refer to God during his sexual abuse sometimes.
287. Brother McGrath gave speeches at colleges about his work, sometimes taking college students with him on holiday career placements as he provided outreach to the several hundred⁷ 'street kids' throughout the city. This 'outreach' included transporting the street kids to temporary accommodation, supplying them with fish and chips and takeaway food, and evangelising to them. He also supplied them with money, cigarettes, alcohol, glue, alcohol, and other solvents.
288. These street kids were often absconders from foster placements, boarding schools, Stanmore Road Boys' Home, Kingslea Residential Centre, or had otherwise been recently discharged from care. They frequently congregated in areas like Cathedral Square, Hagley Park, Linwood Park, or in Aranui and Papanui. They were usually teenagers but sometimes as young as 10 years old. They were often survivors of abuse and neglect, at home or in Social Welfare care, or both. Largely as a result of this history, almost all had issues with substance abuse, mostly alcohol, cannabis, and solvents. While some of them had committed offences such as theft and burglary, usually in order to survive on the streets or to obtain substances abuse, or occasionally taking cars for joy rides, they were all vulnerable.
289. Brother McGrath's name and face quickly became a familiar sight in Christchurch. For children and teenagers in need of shelter, food, and substances, he was a

⁷ We have heard estimates from former a youth worker that there were around 600 street kids in Christchurch at any one time during this period.

- friend, at least initially, or at least someone they could get support from who would not impose restrictions on them like in a residence.
290. Most of the street kids knew each other by street nicknames. They did not trust the police, as they reportedly mistreated and brutally assaulted the street kids in custody and otherwise treated them as invisible. This attitude would have made it much harder for the street kids to have reported abuse to the police or any authority figure, or for it to have been properly documented, with their real names, if they ever did.
291. A number of clients (eg **WITN0715**) reported losing friends in the Ferry Road hostel fire of November 1992,⁸ in which seven street kids (one of whom was known as **GRO-B**) died after smoking, drinking and sniffing solvents in a shed. These clients reported that the street kids had been squatting in the shed because they were trying to avoid Brother McGrath's abuse.
292. Other clients report that some of their friends or family members **GRO-C** **GRO-C** as a direct result of Brother McGrath's sexual abuse during this period.
293. Half of our client group met Brother McGrath while they were living on the streets and / or were associated with street kids. Three other clients were taken to Brother McGrath by siblings or friends. Often, those siblings had met Brother McGrath while on the streets, or associating with those on the streets.
294. Four of our client group came in contact with Brother McGrath through their parents, who turned to Brother McGrath when their sons were misbehaving or in trouble. Three of our clients had contact with Brother McGrath through community work. One client was placed at Hebron Trust through Catholic Social Services.
295. We have summarised the experiences of this client group, including current and former clients below, chronologically by the approximate date of instruction, rather than by date of initial contact with Hebron - as this is generally not known.

⁸ See

https://www.researchgate.net/publication/273123751_FIRE_SAFETY_IN_NEW_ZEALAND_TRANSIENT_ACCOMMODATION_BUILDINGS

WITN0831001 62

- We have chosen to cover this group's experiences, and the settlement process, in considerably more detail than the Marylands clients. A number of this client group are providing their own Witness Statements, to which we will refer, to demonstrate the themes and redress process for those whose claims have already been settled.
296. The age of this group is relevant. As already stated, most of this group were between 10 and 14 years of age when they were abused by Brother McGrath, although one client was about 5 or 6 (HT) and other clients (e.g. HA) were a little older, with one of the clients being abused over a long period into his later teens (HB).
 297. As noted, the clients were also particularly vulnerable due to being homeless, or in trouble at home. They were already often abusing alcohol and/or solvents and if they weren't, they were always introduced to substances by other young people or by Brother McGrath himself - either in Brother McGrath's Kombi van, at Hebron House, or the other properties used by Brother McGrath.
 298. It is also of note that Brother McGrath often used 'currency' including money, food, cigarettes and/or alcohol and substances, to entice these vulnerable children to come with him in the van and/or to one of the places he eventually abused them.
 299. Most of this group describe being under the influence of substances when they were sexually abused by Brother McGrath. This also made them more vulnerable and less able to protect themselves from the assaults. A number of the clients refer to the assaults happening without any awareness that this was going to happen. On some occasions, as with the Marylands assaults, Brother McGrath used restraints and locked rooms to detain his victims. Some clients were not only sexually assaulted but they were physically assaulted by Brother McGrath as well, often in a very violent manner.
 300. A number of clients were forced to participate in sexual acts with other children, including family members, or were made to watch while Brother McGrath

WITN0831001 63

assaulted their family member. This has caused considerable ongoing trauma for many of our clients.

301. Brother McGrath was often very cruel to his victims, calling them names and threatening them. As we comment below, Brother McGrath seemed to instinctively know which children he needed to threaten to ensure the abuse was not reported and which clients he could just abuse and know he would get away with it. Those who had closer family relationships were more likely to be threatened.
302. The final comment we make at this point is to emphasise the brutality and severity of the abuse carried out by Brother McGrath on this client group. Given that we have dealt with literally thousands of victims, we rank Brother McGrath's abuse as right at the top of the scale, in terms of its nature, severity, and long-term damage to the client group.

HA

303. HA was born in [GRO-C] 1975. He is Pākehā.
304. HA came into contact with Brother McGrath after leaving St Bede's College in Christchurch. HA was placed at Hebron House by a Catholic Social Services social worker. HA had at least two three-week placements in 1990 and in 1991. HA would have been fifteen or sixteen years old. He stated that the house he was placed at was with kids who were mainly older than he was and were off the streets. [WITN0831029]
305. HA stated that the abuse started when Brother McGrath took him to a church. In a room out the back of the church, Brother McGrath hugged HA because he was upset about missing his parents. Following on from that, Brother McGrath would visit HA in his room, every night, asking if he was alright. This is a common pattern we have observed, where Brother McGrath would initially behave in a friendly, almost fatherly manner, before progressing to abuse his victims. Before long, Brother McGrath was climbing into HA's bed and hugging him. He would then

WITN0831001 64

- touch HA's penis and masturbate HA. He would also place HA's hand on Brother McGrath's penis, teaching HA how to masturbate him.
306. The attention continued. Brother McGrath would buy HA cigarettes and special food privileges. As already stated, this is another common pattern. We note the supply of cigarettes particularly, which were being provided to a child who was too young to legally smoke. He started to come into HA's room in the middle of the night and then would ask HA if he could perform oral sex on him. Without permission, Brother McGrath did so. Brother McGrath would then masturbate himself and ejaculate. He would clean up and go back to his room.
307. From there, the abuse got worse. Twice, Brother McGrath penetrated HA with his penis and was also masturbating himself every night. HA states that the abuse would sometimes happen in the middle of the day as well. Brother McGrath would take HA to an office in town, where the abuse would continue.
308. The abuse stopped only after HA became very unwell. HA was shifted then to a different room with other street kids. Again, this is common. Once a young person was 'out of favour' their privileges would be removed.
309. HA contacted Cooper Legal at the end of August 2010, advising that he had received an email from someone in Australia, telling him to contact Cooper Legal. It transpired that HA's contact with the firm was at the suggestion of Carroll & O'Dea, the Australian lawyers for the Brothers. Up until then, HA had been unrepresented, and it was clear the settlement negotiations were not proceeding smoothly.
310. HA had a lengthy telephone conversation with Sam Benton on 31 August 2010. He explained that he was not going through a very good time. He stated he had had various meetings with St John of God which had been going on for months. He was suspicious that Cooper Legal had been recommended by St John of God, explaining that he had been angry because of the abuse for the whole of his life.
311. HA explained that he wanted compensation. He also wanted to meet with Brother McGrath as he had some questions for him. He wanted some compensation. HA

WITN0831001 65

- also wanted counselling for as long as he needed it. At that time, the Brothers were paying for his counselling.
312. HA explained that he was a qualified chef but had lost many jobs because of his anger. He explained that he had been through the *Towards Healing* process, the equivalent of the New Zealand *A Path to Healing* process. He also explained that he was brought up Catholic and that an aunt was a senior nun in another Catholic Order. Because of the abuse, he had broken away from the Church.
313. HA explained that earlier that year, he had met with Brother Peter Burke. He remembered telling Brother Peter briefly what had happened and signing a statement.
314. HA explained that he had been in contact with someone called Yolande in Australia – a Case Manager in the Professional Standards Office for the Australian Catholic Church. HA had also met with John Jamieson, the Investigator appointed by the Professional Standards Office a few months earlier. He understood that his aunt had written him a letter in support. HA was frustrated that John Jamieson was saying that HA's claim was unsubstantiated because Brother McGrath had denied the abuse of HA. While Brother McGrath had some recollection of HA being at Hebron House, he denied abusing HA, stating he remembered HA stating he had been abused beforehand. HA explained that he was furious at being told that. HA explained that Peter Burke had made no decision about his claim. He also explained that he had contacted Yolande, but that she was not coming back to him. Yolande suggested that HA write down a whole lot of the stuff about how he had been affected. HA explained that he was then thirty-five. He had done a lot of drugs to block out his past memories. He had lots of criminal convictions. He suffered from anxiety. He also explained that he had two children but could not see them because of the impact of his abuse.
315. Mr Benton warned that the process would be a long one but indicated Cooper Legal could help.
316. Following that conversation, Cooper Legal contacted Carroll & O'Dea to advise that we had been in touch with HA. We asked what was expected of us. On 6

WITN0831001 66

September 2010, we received a letter dated 1 September 2010, asking for further contact from us. We were told there may be documents which would be copied to us. There was then a suggestion that there should be a meeting involving HA, Brother Timothy, Michael Salmon (the new *Towards Healing* representative) and Cooper Legal to work through a resolution plan.

317. As HA's was our first claim involving Hebron House, we arranged for his claim to be funded for our work through Legal Aid. We also offered HA the option of entering into a private retainer with the firm, on the basis that the Brothers would meet our costs in due course.
318. Funding through Legal Aid took many months to be confirmed. We contacted Carroll & O'Dea by email on 5 October 2010, asking them to send through relevant documents.
319. On 22 October 2010, Cooper Legal received a number of documents, including: the assessment report prepared by John Jamieson, the Statement of Complaint dated 6 May 2010 signed by HA, and an extract from the Statement of Complaint. The extract was identical to other information but contained additional information about HA's expectations for resolution. At that stage, HA indicated he wanted financial reparation for the sum of NZD \$1,000,000 to cover his hurt, anxiety, fear, drug addiction, deprecation of his children, depression, loss of enjoyment of life, social isolation, his inability to maintain relationships, and the impact on his employment to provide financial security for the future of his two children and to cover his own feelings of being dirty and unworthy as a human being.
320. Additionally, HA was seeking a further sum to cover counselling when required. He indicated at that stage he could use in excess of 100 hours of counselling over the next two years. Finally, HA requested a face-to-face meeting with Brother McGrath as he had unanswered questions.
321. We were particularly interested in the report from John Jamieson. The report stated that John Jamieson had forwarded the four details of HA's complaint to Bernard McGrath. Brother McGrath replied in writing to Mr Jamieson, observing that while he had some recollection of HA, he did not offend against him. He did

WITN0831001 67

recall, however, that HA had disclosed to Brother McGrath that he had been offended against during his time at school. The report indicated that John Jamieson had invited HA to respond, particularly in relation to the statement that he had disclosed to Brother McGrath that he had been offended against during his time at the school (presumably St Bede's). HA was clear he had definitely not done so.

322. As part of the investigation, John Jamieson contacted an uncle of HA, asking if he could remember visiting HA at Hebron. The uncle replied that he had visited his nephew on three occasions, including once at Hebron. He described Hebron as "disgraceful, with young boys sleeping in all rooms and some on the floor". He said the place was untidy and unclean. He also said he had "bad vibes" about the place.
323. Mr Jamieson also contacted HA's aunt, the senior nun. HA's aunt confirmed that HA had complained about being abused by Brother McGrath, possibly twenty years before.
324. Mr Jamieson's conclusion was that there was a strong allegation (made by HA) and an equally strong denial. There was no independent evidence to draw a conclusion. For that reason, his assessment was that the complaint was not upheld on the balance of probabilities.
325. Mr Jamieson further stated that HA had presented well at evidence and answered all questions in a straightforward manner. He noted that HA had low self-esteem and had difficulty seeing himself in any positive life. He had acknowledged he had been to prison and admitted to many poor choices. Mr Jamieson observed that those past offences detracted from his credibility.
326. With regards to Brother McGrath, Mr Jamieson recorded that he was a "serial offender and has previously admitted a large number of sexual abuse offences for which he has been sentenced to terms of imprisonment". Mr Jamieson noted that Brother McGrath's record of offending also detracted from his credibility. Frankly, it is surprising that Brother McGrath's denial was given any credibility at

WITN0831001 68

- all, given that he had denied much of the offending he had been convicted of beyond reasonable doubt.
327. The recommendations were that HA be advised that no evidence could be found to corroborate his complaint, but this did not mean he was disbelieved. The suggestion was that consideration be given to further pastoral support and that Brother McGrath be advised of the outcome.
328. We were clear, by the time HA came to Cooper Legal, that he was well aware of this state of affairs.
329. On 4 November 2010, Sonja Cooper and Sam Benton spoke with Howard Harrison from Carroll & O'Dea. At that stage, Mr Harrison stated that the assumption was that the best way forward would be to set up a meeting in our office involving HA, Brother Timothy, Michael Salmon and representatives from our office. Mr Harrison noted that the Brothers would pay the costs to cover a support person being present for HA. It was proposed that the meeting take place in December, or more likely the following year.
330. Sam Benton advised HA of this update on the same day. The proposal, at that stage, was to have the meeting at our office in Wellington. After several communications, HA eventually confirmed that he was happy to meet at our office in Wellington. We proposed dates in January and February 2011.
331. Eventually, we were able to settle on 28 February 2011 as being a date that all parties were available to meet. We advised HA that the Brothers would fund the cost of him flying to and from Wellington so he could be up and down in a day.
332. On 20 December 2010, we received a letter from Carroll & O'Dea dated 15 December 2010, advising that the St John of God Brothers had approved funding for five additional sessions of counselling.
333. In January 2011, Cooper Legal made the appropriate arrangements for HA to travel to Wellington for a meeting at our office on 28 February 2011.

WITN0831001 69

334. The meeting duly proceeded on 28 February 2011. Sonja Cooper and Sam Benton had a preliminary meeting with HA, before meeting with Brother Timothy and Michael Salmon. During the course of the meeting, HA explained that counselling was really helping. HA talked about his counselling being 'really good' and that he was finally ready to open up. HA explained he would need a lifetime of counselling. He also explained that he had some good mentors and that he was hoping to get some justice.
335. After that discussion, we proceeded with the meeting. Mr Salmon discussed the process undertaken by John Jamieson. He said that the Brothers accepted 'something happened', albeit that Brother McGrath had not put up his hand to everything. Mr Salmon also explained that Hebron House should have been a place of safety for HA, and it wasn't. It was acknowledged that Brother McGrath 'let down' the Brothers by his conduct.
336. Brother Timothy then spoke. He said he felt completely comfortable believing HA's story. HA explained that it had taken him a long time to remember all the details. He was clear that he did not want to end up in prison. Again, he stressed the importance of counselling continuing. He indicated that he wanted a sum of money to buy a plot of land. He also wanted a letter of support from the Brothers so that he could travel. In addition, HA wanted some assistance to visit his mother in Australia.
337. Following this, there was a discussion about potential courses HA could undertake. From there, the discussions moved to reaching agreement on an ex-gratia payment, and Brother Timothy left the room for this part of the discussion.
338. On behalf of the Brothers, Mr Salmon acknowledged that the abuse was at the more serious end in terms of the abuse. Michael Salmon also acknowledged that HA was a vulnerable kid. He indicated that Brother Timothy was thinking of \$30,000 as a minimum payment. Sonja Cooper indicated that \$50,000 was more appropriate. Michael Salmon discussed the possibility of paying that sum of money, so long as that included legal costs.

WITN0831001 70

339. We observe that while this sum was towards the higher level of the Marylands settlements our firm had negotiated for several clients the previous year, it is now clear that it was considerably lower than the average payment made to previous claimants against the Order. This was our first client who had suffered abuse at Hebron Trust and so there were limited comparisons that we could make when proposing the level of settlement. We do not know how many Hebron settlement payments the Order had made prior to HA, but given the Brothers eventually accepted some of the abuse HA that alleged, we can assume that his claim wasn't the first.
340. In terms of counselling, the discussion had been around approving counselling in batches of ten. It was acknowledged that HA would have the ability to re-apply for further counselling funding as part of a settlement.
341. At the end, HA indicated he would accept \$50,000 in the hand, plus the legal costs. It was agreed that a settlement deed would need to be signed. It was hoped that the resolution could take place within the next few weeks.
342. Following the meeting, Carroll & O'Dea sent us a Deed of Settlement, in the usual way. The Deed recorded that HA would receive a total sum of NZD \$56,000, including legal costs. In addition, it was agreed to fund an additional ten counselling sessions (although the Deed did not contain provisions for requests for further counselling funding). It was a condition of the settlement that the terms were confidential to the parties.
343. Cooper Legal picked up the error in the draft Deed regarding counselling and asked for that to be amended. Following that, further amendments were asked for, including that: Brother Timothy was to provide HA with a letter of support for a passport application, Brother Timothy was also to help arrange a potential family meeting in the future, if HA felt this was helpful, and the Brothers were going to provide funds for a Trades course, by negotiation with HA.
344. We did not hear back from Carroll & O'Dea and needed to chase the firm for a response. In the meantime, HA was becoming reasonably anxious as he was not

WITN0831001 71

in a good headspace. He had smashed several things in his house. He was keen to get further counselling support.

345. By email on 22 March 2011, we received a revised Settlement Deed. This contained the additional components that had been agreed at the meeting.
346. On 24 March 2011, the Deed was sent to HA, via email, with instructions as to how to sign it. HA found the wording of the agreement difficult, and he was again not in a good headspace when he agreed to sign the Deed in its then form.
347. On 30 March 2011, Sonja Cooper spoke with HA to explain the terms of the agreement (which was one of the conditions). After that, the settlement documents were sent back to Carroll & O'Dea, both by email and by mail. Sonja Cooper explained that HA was in a poor financial and mental state. Accordingly, a request was made that steps be taken for the matter to be finalised as soon as possible.
348. On 11 April 2011, Cooper Legal received an apology letter for HA, which was forwarded to him by email. The apology letter, signed by Brother Timothy Graham, reiterated his previous apology to HA for "all hurt and harm" sustained by him. The letter also hoped that HA would now be able to move forward. Finally, Brother Timothy stated that he would keep HA in his prayers and wish him all the best for the future. **[WITN0831030]**
349. Excluding costs, the settlements we have been able to negotiate in relation to Hebron Trust ranged from \$50,000 for HA and HE, below, to \$105,000 for HS, below. Some of these settlement levels are wildly inconsistent – HA's offer, as an example, was the lowest, despite the Order acknowledging that the abuse (at least, that which they were willing to accept) was at the more serious end. We invite the Order to review it.

HB [WITN0759]

350. As HB is providing a Statement, this is a summary of the key points of his story.

351. HB was born in **GRO-C** 1973. HB is Māori.

WITN0831001 72

352. As HB explains in his Witness Statement, he is one of a large number of Christchurch young people who ended up on the streets after running away. HB was fifteen. He estimates living rough on the streets for about three years with other street kids.
353. HB describes Brother McGrath picking him up with the other street kids and taking them back to his place, a common theme. About a year after he first met Brother McGrath, HB was invited by Brother McGrath to have community meals with other Brothers or staff (he cannot recall which) in the monastery on Nash Road, where Brother McGrath lived.
354. HB was raped by Brother McGrath in the monastery on numerous occasions. The abuse took place between 1989 and 1992, so a similar timeframe to the abuse of HA and others.
355. HB was also raped numerous times at the Havelock Street property in Linwood, in a cottage at the back of Hogben School (which appears to have been known as 'Pampuri'⁹ or 'the farm cottage'), and at the address in Halswell Road (which appears to have been known as 'Silverwind'). Brother McGrath told HB not to tell anybody about what had happened, which is another common theme. HB was too scared to tell anyone and thought Brother McGrath might kill him if he tried. He also felt that he would not be believed or heard if he did tell anybody.
356. It is important to emphasise that the rapes from Brother McGrath had an added violent, ritualistic and fetishistic component. During most of the rapes, Brother McGrath would put a scarf in HB's mouth and tape his mouth with duct tape, presumably to prevent him from making a sound. Brother McGrath also had handcuffs and would handcuff HB to the bed and blindfold him. He was very rough towards HB once he was bound, gagged and "trussed up".
357. It is also relevant to note that Brother McGrath provided HB – who was addicted to substance abuse - with alcohol and pills, including Rivotril, as a way of

⁹ Presumably named after Richard Pampuri, a member of the Order who was canonized in 1989.

WITN0831001 73

- maintaining some power over HB. HB reports that he believes Brother McGrath would put drugs in his drinks, as he would sometimes feel dizzy.
358. Before long, HB ended up living in the small cottage at the back of Hogben School, which was linked to the hospital by a gravel road, and which was owned by the Order. This accommodation became a mechanism of control over HB, serving as a reminder to him that he was dependent on Brother McGrath in a number of ways. HB had nowhere else to go. **[WITN0831031 and WITN0831032]**
359. As well as officially providing HB with accommodation, and supposedly drug and alcohol counselling, Brother McGrath acted as HB's representative and advocate, writing letters of support for HB to the Court and being the contact person for social workers – when they rarely tried to contact HB - and for HB's counsel for child. He also supervised HB's community work at Hebron and attended Family Group Conferences with him, along with a Hebron support worker named Ricky Howe. **[WITN0831033]**
360. The fact that Brother McGrath was so open and public about his supposedly supportive relationship with HB, effectively 'parading' him around before other Brothers or staff at the community meals and in other circumstances, emphasised to HB that Brother McGrath could get away with the abuse and that HB could do nothing about it.
361. HB wonders if the reason that the other Brothers or staff did not do anything, when Brother McGrath's abuse should have been obvious, is because they were themselves abusing other residents. Unlike with Marylands, however, our firm has had no reports of any abuse from anyone at Hebron other than Brother McGrath.
362. HB recalls that the abuse stopped after he built up the courage to stand up to Brother McGrath by throwing a glass at his head in front of the other street kids, telling him to leave HB alone and never touch him again. This appears to have been in early May 1992. HB was imprisoned later that month, after Hebron told

WITN0831001 74

the police he had breached his curfew. Brother McGrath visited HB in jail in June and July 1992. **[WITN0831034]**

363. HB reported the abuse in around 1993, when he was about 19 or 20 years' old, although it is not clear whether he was reported it to the Hebron staff or to the police. Either way, HB's whistleblowing precipitated an investigation into Brother McGrath and Marylands and enabled other victims to come forward and make police complaints. In December 1993, Brother McGrath was jailed for three years in relation to abuse against two children at Marylands (between 1974 and 1977) and Hebron Trust (four teenage boys, in 1991). Brother McGrath pleaded guilty to those charges. HB was not a witness in that trial.
364. HB was under the legal supervision of the Department of Social Welfare for at least 12 months while he was placed with, and being abused by, Brother McGrath. He did not see a social worker for nearly all of this time, as one was not assigned to his case for most of this time. When HB met with the "Care Claims Unit" of the Ministry of Social Development in 2013, without legal representation, he was given a \$30,000 payment to recognise earlier abuse in a Social Welfare residence, as well as the 'practice failure' that he was not properly supervised by a social worker during this 12 month period. As can be seen in the MSD apology letter, there plainly was no recognition of, or apology for, the abuse from Brother McGrath. This is in stark contrast to the acknowledgment in the previous paragraph that DSW had an obligation to keep HB safe from harm while he was placed in another Social Welfare placement where he had also suffered abuse. The Ministry of Social Development is urged to revisit HB's claim in this regard, and also in light of other failures HB identifies in his witness statement. **[WITN0831034]**
365. HB contacted Cooper Legal in September 2016 through his prison counsellor in relation to several issues. In about October 2016, Cooper Legal ascertained that HB had been abused while in the care of the Order. Cooper Legal was asked to help with that claim.

WITN0831001 75

366. On 13 December 2016, we notified Carroll & O'Dea that HB had instructed us to bring a claim in relation to his sexual abuse by Brother McGrath.
367. As part of the information that we collected in about HB, we received a psychiatric report completed by Dr Richard Porter on 5 December 2016. That report diagnosed HB with Post Traumatic Stress Disorder, secondary to the extreme and protracted sexual abuse he suffered (both at the hands of Brother McGrath and a Housemaster at Campbell Park School), Major Depression (again precipitated by the sexual abuse), alcohol misuse, opiate dependence, and Hepatitis C.
368. Cooper Legal participated in a teleconference with Howard Harrison to discuss HB's claim on 11 April 2017. At that stage Howard Harrison, on behalf of the Order, accepted there had been 'some sexualisation' of HB. It was stated, however, that it was "difficult to work out what else [had] happened". It was agreed that both parties would obtain instructions as to a settlement. It was also accepted that there was enough to proceed towards resolving the matter via a settlement.
369. A formal offer was made to settle HB's claim on 15 May 2017. At that time, the Order offered NZD \$70,000, plus payment of the reasonable legal costs. A counter-offer was made on behalf of HB by Cooper Legal on 24 May 2017. At that stage, Cooper Legal pointed to the extent and duration of the abuse, particularly the fact that HB was raped by Brother McGrath, on an almost weekly basis, over three years. In addition, the rapes were violent and involved the use of implements to both detain and gag HB. Cooper Legal also pointed to the fact that HB was one of the initial 'whistleblowers' who reported Brother McGrath's abuse. Finally, Cooper Legal pointed to the long-term effects of the abuse. At that stage, Cooper Legal also pointed to the fact that we were now aware from newspaper reports and the files of other clients that the Order had settled other claims at above \$100,000.

WITN0831001 76

370. The response to that came back reasonably quickly. On 30 May 2017, Carroll & O'Dea advised that the Order would not agree to a figure of \$100,000. The offer was made of \$80,000, together with \$5,000 towards the legal costs.
371. After providing advice to HB, he accepted the offer, thanking us "from the bottom of [his] heart for the work that we had to do". His instructions were communicated to Carroll & O'Dea on 4 July 2017.
372. Following that, the usual process of signing a Settlement Deed was undertaken. HB received the settlement funds in mid-September 2017.
373. HB received a face-to-face apology on behalf of the Brothers on 13 December 2017. That apology was conveyed by Brother Timothy Graham, Provincial, and Brother Julian Liddiard. Cooper Legal was not present when the apology took place.

HC

374. HC was born in GRO-C 1973. We believe he is Māori.
375. HC came into contact with Brother McGrath at about age 13 or 14, between 1986 and 1987, so somewhat earlier than the previous 2 clients.
376. HC met Brother McGrath while he was living with other street kids and was running away from home. He describes Brother McGrath as seeming nice and caring to begin with. He picked up street kids in his van and took them back to his house. He would give the street kids food and allow them to drink alcohol at his house.
377. Brother McGrath sexually assaulted HC twice. Both assaults happened at the property where Brother McGrath lived near the Linwood side of Christchurch. This is likely to be the Havelock Street property.
378. On the first occasion, Brother McGrath woke HC who was sleeping in a bunk bed. Brother McGrath put HC's hands on Brother McGrath's penis and then forced HC to masturbate Brother McGrath and then perform oral sex on him. While this was happening, Brother McGrath digitally penetrated HC.

WITN0831001 77

379. The second assault occurred when Brother McGrath collected three street kids and took them back to his house. Brother McGrath asked HC if he wanted anything to eat. He took HC to the food storage room, where he locked the door behind them. Brother McGrath forced HC to perform oral sex on him. Brother McGrath inserted his fingers into HC's anus and eventually raped him via penile penetration.
380. After the rape, Brother McGrath instructed HC to dress himself. He told HC he was a 'bad kid' and that 'no one wanted him'. HC ran away and never returned to Brother McGrath's property after that assault.
381. HC did not tell any of the other street kids about what had happened. This was mainly because he had been taught that 'narking' would be wrong and he would be beaten if he did.
382. HC tried to suppress the memories of the abuse by Brother McGrath, by using drugs and alcohol. He tattooed himself all over his body, to make himself unattractive. HC resorted to violence. He described not trusting others and suffering from low self-esteem.
383. As a consequence of Brother McGrath's abuse, HC hates everything Brother McGrath stands for, including religion. For a long time, HC was angry at his own family for believing in God.
384. HC contacted Cooper Legal at the end of 2016 through his counsellor. At the outset, HC did not disclose the sexual abuse by Brother McGrath. It was only when he was interviewed by a lawyer from Cooper Legal that he was able to disclose the abuse. He provided further details about the abuse in writing.
385. We notified Carroll & O'Dea on behalf of behalf of the Order about HC's claim on 12 June 2017.
386. Cooper Legal forwarded details of the claim to Carroll & O'Dea on 13 July 2017.
387. On 4 October 2017, Cooper Legal forwarded additional information in the form of a report from HC's counsellor. That report identified that the violation done by

WITN0831001 78

Brother McGrath reinforced for HC that the world was an unsafe place, well into his adulthood. The counsellor also stated that HC still felt powerless and angry in his daily life. [WITN0831036]

388. While waiting for the Order to respond to HC's claim, he was in frequent contact with the firm. It is clear he found the process and anxiety-causing.
389. In early November 2017, the Order made an offer to settle HC's claim by paying him NZ \$70,000, plus his reasonable legal costs. That offer was accepted by HC and communicated to Carroll & O'Dea on 8 November 2017.
390. HC was required to sign a formal Settlement Deed, which was signed in November 2017. The settlement documents were then returned to Australia for signing by the Order counterparts.
391. The settlement funds were ultimately transferred to HC in early December 2017.
392. In January 2018, the Brothers sent an apology letter for HC. The letter was signed by Brother Timothy Graham as Provincial. In that letter, it was acknowledged that HC was young and vulnerable and needed care and protection. Instead, he had been 'cruelly betrayed'. The letter expressed sorrow that this had happened to HC. [WITN0831037]

HD

393. HD was born in GRO-C 1977. We believe he is Māori.
394. He is another client who came into contact with Brother McGrath when he was hanging out with other street kids in Christchurch between about 1987 and 1990, so when he was between 10 and 13 years old.
395. HD is clear that the street kids knew who Brother McGrath was. HD met Brother McGrath a number of times before he was abused. Brother McGrath used to come into the centre of Christchurch, where HD spent a lot of time around the Aranui shops and Linwood Park. Brother McGrath often turned up at places where it was known that street kids were congregating.

WITN0831001 79

396. HD went to Brother McGrath's house with a group of street kids, because he was told by other sniffers that there was a can of petrol there in Brother McGrath's garage. He recalls that he would have been about 10 or 11 years old at this time. The house was on Havelock Street in Linwood.
397. HD knew from other street kids that he could go to this house and that Brother McGrath would give him food and a place to stay the night.
398. HD recalls that the other street kids left him at Brother McGrath's house, after introducing him to Brother McGrath. Thinking back, HD is clear that the other street kids would have known what was going to happen to HD and that is why they left the house.
399. HD had few recollections of the first assault, but states that Brother McGrath was extremely approachable and friendly. He recalls that he was raped by Brother McGrath but no longer clearly recalls the details. The location of the rape was the converted garage, used as a sleep-out by the kids.
400. HD suffered a more serious encounter with Brother McGrath, two to three years later, when he was between 13 and 14 years of age. On the second occasion, HD took his cousin J with him to Brother McGrath's house. Brother McGrath forced HD to put Brother McGrath's penis in HD's mouth. This happened in front of his cousin.
401. After that, Brother McGrath raped HD's cousin. HD states that Brother McGrath made HD stand right beside him, while Brother McGrath had his hands in HD's hair and made him watch what was happening. HD recalls Brother McGrath saying "it's okay son" while this was happening. Once again, we see Brother McGrath misappropriating the language of a caring adult figure while committing a violent act.
402. HD carries considerable grief, shame, and anger about this incident. He took his cousin with him to Brother McGrath's house to avoid being raped himself. These feelings have been intensified, because J could never cope with the impact of the rape: **GRO-C**

403. HD's cousin J GRO-C sometime between 2007 and 2008. This was some 15 years after the abuse had occurred. J also blamed HD for the rape, until the day he died.
404. HD had a third and final contact with Brother McGrath about three years after the first two incidents of abuse. HD was caught offending, and, like others, was directed to undertake community work, painting a house on Halswell Road in Christchurch. HD was 14, attending the nearby Hillmorton High School, and the community work was the outcome from a Family Group Conference. The property turned out to be the Hebron House, where Brother McGrath was working and possibly living.
405. HD recalls that when he went to do the community work and saw Brother McGrath at the house, he was shocked by what he saw. He saw other street kids there who were all sniffing solvents, while they were painting the house. This triggered memories of the abuse that he and his cousin had suffered, because he had not sniffed petrol or any other substance for some years.
406. HD recalls that Brother McGrath took him into a room to talk to him. Brother McGrath was asking HD how he was going and what he was going to do. Brother McGrath unzipped HD's pants and put HD's penis into Brother McGrath's mouth. HD recalls this happened so quickly he had no time to work out what was going on.
407. HD snapped at this time. He grabbed Brother McGrath's face and squeezed it. He told Brother McGrath he was a "fucking kid fucker" and other abusive words and threw him across the room. He recalls that Brother McGrath got up and asked HD to stop, repeatedly calling him "son".
408. HD states that following this confrontation, he and Brother McGrath then reached an agreement that HD would leave the property and never see Brother McGrath again, and Brother McGrath would say to police that HD had completed the community work.

WITN0831001 81

409. HD went to leave the property and saw another boy, HS (referred to below), going in to see Brother McGrath. Later that day, HD bumped into HS and 'knew' that he had also been sexually violated by Brother McGrath.
410. HD recalls that he and HS retrieved a weapon, with the intention of "putting Brother McGrath out to pasture". Brother McGrath was not at Hebron House when they returned, so HD GRO-C told the other street kids there to tell Brother McGrath they were out to get him. HD never saw Brother McGrath again.
411. HD reported to us that he had met at least twenty men in prison who were abuse victims of Brother McGrath. He described Brother McGrath affecting a "whole generation" and that his abuse is "the biggest secret that everybody knows". HD reported that there is a large group of victims of Brother McGrath, now doing long years in prison (or life), because they have been unable to handle the effects of his abuse of them.
412. At the time of coming to Cooper Legal, HD had already spent half of his life in prison. Because of the abuse, he felt he no longer fitted into society and had started to hang out with the gangs. That led to crime and subsequent imprisonment.
413. HD said that because of Brother McGrath, he has despised and hated the Catholic Church and Christians, since the time of the abuse. HD explained that Brother McGrath wrecked Christianity for him and he cannot tolerate any form of religious person, as he thinks of them all as "kid fuckers". HD used to misattribute his anger towards any clergy with collars, swearing at them in the prison, and having homicidal thoughts.
414. Following the abuse, HD has found it hard to trust people in authority. The thing that affects him most, to this day, is that his cousin J took his own life because of Brother McGrath's abuse.

WITN0831001 82

415. HD can no longer have long hair, as Brother McGrath wrapped it around his hand when he sexually assaulted him. HD also reacts very badly to anyone calling him "son".
416. Because of HD's hatred for the Catholic Church, he has turned his whole body into a **GRO-B** HD has covered his whole body in tattoos of **GRO-B**, all because of Brother McGrath. HD still carries hatred towards Brother McGrath and will never forgive him.
417. HD described his tattooed body as being one of anger and hatred. He stated it is a map of his life, but he does not like looking at it, because it reminds him all the time of what happened to him and to his cousin.
418. HD reported that many, everyday events trigger memories of the abuse of Brother McGrath. This even happens when he has a shower.
419. HD stated that he hurt others because of the abuse he suffered at the hands of Brother McGrath. Because of that, no one comes near him, and he is socially isolated and lonely.
420. HD contacted Cooper Legal in January 2018, through his counsellor – the same counsellor responsible for referring a number of other victims of Brother McGrath to the firm.
421. At the point of dealing with our firm, HD still lived with the memories of the abuse and its aftermath. He said it was with him all the time. Not only that, HD has to live with the fact that his cousin J **GRO-C** because of what happened. While HD can acknowledge to himself that he was a child when this happened, and that he is not responsible for Brother McGrath's actions, he still lives with the impact of Brother McGrath's abusive conduct and breach of trust.
422. HD was interviewed by a lawyer from Cooper Legal at Christchurch Men's Prison in March 2018. Steps were also taken to collect in any records that might assist HD's claim.

WITN0831001 83

423. At the end of March 2018, Cooper Legal prepared a draft statement for HD, which was sent to him for his input. Once HD's input was received, the statement was finalised and it was forwarded to Carroll & O'Dea on behalf of the Order, on 10 April 2018. In the covering letter forwarding the statement, Cooper Legal observed that HD has been diagnosed with PTSD, Social Anxiety Disorder, Major Depression, and Claustrophobia.
424. In May 2018, HD's counsellor provided us with a report to support HD's claim. **[WITN0831038]** He explained that HD has been an intensely angry man growing up, hating religion and religious practices. He was enraged and angry throughout his teen years and developed a penchant for demonstrating unpredictability and ferociousness. At age 16, he assaulted members of a motorcycle club in the middle of the city. As a response, he was stabbed thirty-two times and left in a pool of his own blood.
425. The counsellor stated that HD carried on "seeing ugliness and grey in the world around him, developing a generic attitude of distrust and animosity". HD interpreted vulnerability as weakness for years and balanced his life between highs and lows, using legal and illegal drugs to self-medicate.
426. The counsellor also referred to the powerlessness HD felt. He counteracted that by being the fastest, fittest, and most emotionally detached person for years. Older inmates took him under their wing because he was doing a long sentence. His name became synonymous with risk-taking and fearlessness.
427. At the time of the report, the counsellor described HD as "warm and inviting". The report concluded with the statement that HD was "literally blown away to know that some St John of God brethren have spent the better part of more than a decade making amends through apologising and taking responsibility for Brother McGrath's actions". For that reason, HD was inspired to give back to others on eventual release from prison. This report was sent to Carroll & O'Dea in May 2018.
428. On 23 July 2018, Sonja Cooper and Howard Harrison spoke about the claims of HD and HF, discussed below. The Order proposed a settlement for HD in the

sum of NZD \$70,000, along with payment of his reasonable legal costs and an apology.

429. This offer was communicated to HD through his counsellor, along with information that there may be some "wobble room" on the offer. It was agreed between the counsellor and Cooper Legal that the counsellor would speak with HD (and HF) about the respective offers and Cooper Legal would prepare written advice.
430. On 24 July 2018, Cooper Legal sent written advice to HD about the offer from the Order. Cooper Legal observed that the offer was consistent, at that time, with offers made to other clients with St John of God claims. Having said that, our advice was to consider making a counter-offer.
431. After considering our advice, HD instructed Cooper Legal to make a counter-offer of \$80,000. That counter-offer was communicated in a letter to Carroll & O'Dea, dated 7 August 2018.
432. On 10 September 2018, Sonja Cooper and Howard Harrison had a further telephone discussion. At that stage, a number of claims were discussed, including that of HD. Howard Harrison, on behalf of the Order, communicated that the Brothers would accept the counter-offer made of NZD \$80,000 to settle the claim, along with payment of his reasonable legal costs. This was contingent on HD signing a formal Deed of Settlement.
433. This was communicated to HD by letter dated 11 September 2018. At the same time, Cooper Legal asked for HD to provide instructions about whether he wanted an apology and in what form he wanted that apology.
434. After receiving HD's instructions to accept the revised offer of NZD \$80,000, this was communicated to Carroll & O'Dea on 24 September 2018.
435. In due course, and consistent with practice at that time, Cooper Legal received Settlement Deeds to be executed by HD, which were forwarded to him. Once HD had executed the Deeds and returned them to Cooper Legal, they were sent to Carroll & O'Dea to be signed by the Order counterparts.

436. The settlement funds were subsequently paid into HD's nominated bank account in November 2018.
437. HD did not receive an apology letter, although we had indicated that he would likely prefer a written apology.

HE [WITN0721]

438. HE has provided a witness statement. Accordingly, this will be a brief summary of his evidence.
439. HE was born in Christchurch in GRO-C 1976. He is Pākehā. HE came into contact with Brother McGrath after he was taken into care and placed at Kingslea Residence. HE had admissions to Kingslea between April 1989 and August 1993. His records show that he absconded from Kingslea, reasonably frequently, between December 1989 and September 1991. He would have been between thirteen and fifteen years old. We estimate that this is when HE would have come into contact with Brother McGrath.
440. As HE has reported, during one of the times he absconded from Kingslea, he took off with an older boy. They met up with other street kids and sniffed at Linwood Park, around Cathedral Square in Christchurch and at a burger bar. The two then went to Brother McGrath's place on Havelock Street to get food and possibly money to buy solvents. Brother McGrath was known to provide both.
441. The sexual assault happened in Brother McGrath's office, while HE was under the influence of solvents. Brother McGrath slipped down HE's pants and put his hands between HE's legs. Brother McGrath digitally penetrated HE's rectum and then raped HE.
442. After the rape, HE went straight to Linwood Park. He lost his bowels and then tried to clean himself in the toilet. After that, HE started sniffing solvents more heavily, trying to forget about the rape.
443. HE has suffered multiple impacts from the abuse by Brother McGrath and from other abuse he has described while he was in State care. He describes suffering

WITN0831001 86

from anxiety and an inability to sleep well at night. He has a corroded self-esteem, sense of self-worth and a lack of confidence.

444. HE has a deep sense of grief and loss for the life he never had. He is unable to have relationships with others. He isolates himself. HE describes feelings of anger and rage. He trusts no one. He questions his sexuality. For a long time, he wanted to hurt people because of his anger.
445. After the rape by Brother McGrath, HE lost all faith in religious people and others in positions of authority. He kept the abuse hidden for some thirty years.
446. For many years, HE blamed himself for the abuse by Brother McGrath. He can still have feelings of shame and embarrassment.
447. HE contacted Cooper Legal in January 2018, primarily in relation to making a claim in respect of the abuse he suffered in State care. Soon after that contact, HE advised Cooper Legal that he had been abused by Brother McGrath when he had escaped from Kingslea.
448. On 28 February 2018, Cooper Legal wrote to Carroll & O'Dea advising of HE's intention to make a claim. HE's claim was sent to Carroll & O'Dea on 12 April 2018.
449. HE has described the negotiation process in his Witness Statement. His claim was ultimately settled by payment of the sum of NZD \$50,000, along with payment of his reasonable legal costs.
450. Of importance, HE has not had any form of apology from the Order, albeit he requested a face-to-face meeting.

HF

451. HF was born in GRO-C 1970. We believe that he is Māori.
452. Between about 1986 and 1987, when he was between 16 and 17, HF ended up on the streets of Christchurch where he hung out with about 25-30 street kids in central Christchurch. This is how he met Brother McGrath. Brother McGrath

WITN0831001 87

would pick up HF in his Kombi van and provide HF (and other street kids) with food and a place to sleep.

453. Brother McGrath supplied HF with glue, and occasionally cigarettes and money. The sexual abuse started about a year after HF first met Brother McGrath.
454. The first assault took place in the Kombi van. HF was raped by Brother McGrath. After that assault, HF was repeatedly and regularly sexually abused by Brother McGrath. The assaults included penile penetration, Brother McGrath performing oral sex on HF, forced digital penetration of HF by Brother McGrath. Brother McGrath would then force HF to perform the same sexual acts on Brother McGrath.
455. HF is another client who describes being gagged and restrained by Brother McGrath. In particular, Brother McGrath would put his hands around HF's mouth, tie his hands behind his back and, on some occasions, push HF's head into a pillow before raping him again. This resonates with the account of HB.
456. Brother McGrath told HF not to tell anyone about what had happened. He threatened to throw HF in the river and drown him or stab him so he would not be able to talk.
457. The sexual abuse also took place on the property of a marae in [GRO-C] Road, [GRO-C]. This was a place where the street kids were permitted to sleep by the marae administration. Brother McGrath would take street kids there at the end of the day, usually after nightfall. HF states he was abused on multiple occasions at this marae, upwards of 30-40 separate incidents.
458. HF reported that Brother McGrath started abusing him and another boy whose street name was [GRO-B-2] at the marae. Brother McGrath would force HF to have intercourse with [GRO-B-2] while Brother McGrath watched. He would then make [GRO-B-2] have intercourse with HF. Brother McGrath would make the boys perform sexual acts on each other. He would then tie up HF and make him watch while [GRO-B-2] was raped by Brother McGrath.

WITN0831001 88

459. HF was also raped by Brother McGrath at the Havelock Street property in Linwood. His recollection is this happened on about eight occasions.
460. HF is another client who was assisted by his counsellor through the settlement process. He has been diagnosed with Complex PTSD, depression, anxiety, and drug abuse issues as a direct result of the abuse he suffered at the hands of Brother McGrath.
461. HF abused drugs and alcohol, particularly alcohol, to suppress the memories of the abuse.
462. Even when engaging with us, HF still carried a great sense of shame about being a victim of sexual abuse. This was particularly troublesome for him as a long-term prison inmate.
463. HF has problems with relationships and intimacy. He has had ongoing physical health issues because of the damage to his anus.
464. As stated above, HF contacted the firm through his counsellor, along with other clients of the firm, in September 2017.
465. Cooper Legal contacted Carroll & O'Dea to notify the claim on 13 December 2017. At that time, Cooper Legal attached a document from HF's Social Welfare records referring to HF living with street kids and having contact with Brother McGrath in 1987. This shows that State social workers were also aware of Brother McGrath's involvement with HF and street kids. **[WITN0831027 and WITN0831028]**
466. HF's formal claim was sent to Carroll & O'Dea by Cooper Legal on 10 April 2018.
467. Subsequently, Cooper Legal provided Carroll & O'Dea a report from HF's counsellor dated 14 May 2018. The report highlighted the multiple impacts of the abuse on HF, including being totally out of control and having spent many years being distrustful, suspicious, and hypervigilant. HF also interpreted people as seeking to hurt and harm him. It took counselling for HF to understand the extent

WITN0831001 89

of the grooming and sexual abuse done to him by Brother McGrath.
[WITN0831039]

468. Following a period of negotiation, the Order offered HF the sum of NZD \$85,000, along with payment of his reasonable legal costs. After reflecting on that offer, HF gave Cooper Legal instructions to accept that offer. Given the extremely serious abuse suffered by HF, and the impact it has had on him, the settlement is lower than it should have been.
469. HF was required to sign a Deed of Settlement, which was undertaken in October 2018. The Deed was then sent to Australia, for execution by the St John of God Brothers counterparts in the usual way.
470. The settlement funds were duly paid to HF in late November 2018.
471. As part of the resolution, HF asked for a face-to-face meeting with a representative from the Brothers. That meeting has never taken place, as the Brothers have not travelled to New Zealand, to our knowledge, for some time.

HG **[WITN0726]**

472. HG was born in **GRO-C** 1973. HG is Pākehā.
473. HG has provided a statement, so this will be a brief summary, only.
474. HG first became known to Social Welfare at around 13 years of age. Following family difficulties, he began living with a male caregiver who he had met in the community. Initially, this was under an informal agreement between HG's parents and the caregiver but, after approximately two years, the arrangement was formalised by Social Welfare.
475. HG first came into contact with Brother McGrath in the late 1980s, on the streets of Christchurch. HG recalls that he was around 14 or 15 years old at this time.
476. HG was picked up from the streets by Brother McGrath and an older boy and taken to Brother McGrath's sleepout in Linwood, Christchurch. There, Brother

McGrath gave HG glue to sniff and cigarettes and sexually abused him. The older boy sexually abused HG at the same time as Brother McGrath.

477. After the first incident, HG returned to Brother McGrath's sleepout on multiple occasions and was sexually abused by him. HG disclosed that he was raped at least a dozen times by Brother McGrath. On 5 or 6 occasions, Brother McGrath performed oral sex on HG, and then made HG perform oral sex on him (Brother McGrath).
478. HG states that Brother McGrath sometimes gave him small amounts of cash. He also made HG take other boys to the sleepout, one of whom was his younger brother, HN, referred to below.
479. As HG has set out in his Witness Statement, it took some time for him to be able to disclose the sexual abuse. It was only through counselling that HG realised he had been assaulted, rather than consented to the sexual assaults.
480. HG has been addicted to drugs for over thirty years. He has been diagnosed with PTSD in relation to this, and other sexual abuse he suffered as a child and teenager.
481. HG has spent much of his life in and out of prison due to offending caused by his drug addiction. He has been unable to maintain intimate relationships and for many years questioned his sexuality.
482. HG is unable to trust others, which has impacted his ability to engage in work and social relationships.
483. As HG has set out, HG settled his claim with the Order towards the end of 2019. He received NZD \$85,000, plus payment of his reasonable legal costs.
484. HG received a belated apology letter from the Order in August 2020. The apology letter is attached to his Statement. It is a templated and pro forma apology which expresses shame and sorrow that HG was betrayed as he was and abused when he should have been helped. Three other clients received identical apologies.

HI [WITN0709]

485. HI was born in [GRO-C] 1975. He was brought up in Christchurch with his parents. HI is Pākehā.
486. HI came into contact with Brother McGrath between about 1985 and 1990 through his mother, who worked as a nurse at the St John of God Hospital in Halswell. His mother brought Brother McGrath into the family home when HI was about 11 or 12, to help with an older brother who was in trouble.
487. HI's mother then arranged for Brother McGrath to speak with HI at the St John of God Hospital. In the initial meetings, Brother McGrath was soft and gentle. HI said he was 'almost fatherly'. HI was told he was special.
488. On the second or third occasion, Brother McGrath started asking HI questions of a sexual nature. He told HI that he had the devil in him, and he needed to be clean. Brother McGrath also told HI that he wanted to help him. The first episode of abuse took place in the chapel, where Brother McGrath rubbed water on HI and stroked HI's erect penis. Brother McGrath assisted HI to masturbate until he orgasmed.
489. HI was abused on a second occasion at Brother McGrath's house in Linwood. At the time of the assault, HI was drunk. As HI explains, Brother McGrath engaged HI in mutual masturbation.
490. On a third occasion, HI skateboarded to Brother McGrath's house in Linwood. Once again, he had been drinking alcohol. Brother McGrath asked HI to masturbate Brother McGrath.
491. On a fourth occasion, HI went to Brother McGrath's house in Linwood. A younger boy named [GRO-B] was there. On this occasion, Brother McGrath engaged the boys in sexual conduct with Brother McGrath and each other, something that has been referred to in other accounts above. On this occasion, Brother McGrath also physically assaulted HI, smacking him with something like a cane. He was also yelling at HI.

492. At about this time, HI started to wet his bed. He would be punished by his father for this, including being whipped with a horse whip.
493. Unfortunately, HI was required to have further contact with Brother McGrath due to his offending, which required the undertaking of community work. His community work was undertaken at the St John of God Hospital.
494. On one occasion, at the end of community work, HI's mother took him to the chapel. Brother McGrath was there. HI's mother asked Brother McGrath to have HI stay with him at the home he ran for troubled boys. As a result, HI ended up at Hebron House.
495. At Hebron House HI drank alcohol. On the third night, Brother McGrath came into HI's room. Brother McGrath again told HI that he had the devil in him. He made HI masturbate himself and then masturbate Brother McGrath.
496. Two days later, HI accidentally broke a door window. Brother McGrath yelled at him. He made HI pull down his pants. He again smacked HI with something like a cane. Brother McGrath then pushed HI down and raped him. HI recalls there were faeces everywhere and that Brother McGrath was calling him a 'filthy boy' as the rape was happening.
497. HI was extremely traumatised after the rape. He was also bleeding and crying. When Brother McGrath saw the faeces all over HI's bed, he made HI clean it up. Brother McGrath rubbed HI's face in his own faeces.
498. HI fled from the property after that. He returned home and was not made to go back to Hebron House.
499. HI was unable to disclose what had happened to him for many years.
500. As HI describes, he has suffered profound, serious, and ongoing psychological and physical damage. This has included use of alcohol and drugs. HI has also felt a sense of loss, resentment, not belonging, and feeling worthless. HI has prostituted himself for money and become involved with Satan and Satanists. He also joined a gang.

WITN0831001 93

501. HI has been diagnosed with PTSD, anxiety, and depression. He has made multiple attempts to take his own life.
502. HI contacted Cooper Legal in January 2019. This was a very difficult process for him from the outset.
503. Cooper Legal notified Carroll & O'Dea of HI's claim on 22 May 2019.
504. HI's claim was sent to Carroll & O'Dea on behalf of the Order on 17 October 2019.
505. As HI explains, on 2 December 2019, the Order offered HI NZD \$75,000, along with payment of his reasonable legal costs.
506. HI instructed Cooper Legal to make a counter-offer of NZD \$85,000, along with payment of his reasonable legal costs. This counter-offer was made on 11 December 2019. The counter-offer was accepted on behalf of the Order on 16 December 2019.
507. HI was required to sign a Deed of Settlement, which he signed in February 2020. The Deeds was then returned to Australia for signing by the St John of God Brother counterparts. The settlement funds were duly paid into Mr HI's nominated account in March 2020.
508. As Mr HI explains, the Order overlooked providing an apology letter. Accordingly, it was necessary to chase this up in July 2020.
509. Ultimately, an apology letter was sent to HI in early September 2020. It is identical to the apology to HG. Indeed, the original apology referred to HG at one point and so had to be redone.

HJ

510. As will be evident from the narrative in this Witness Statement, most of the clients were brought up in Christchurch. HJ, on the other hand, was brought up in the Gisborne and Manawatu regions. HJ and his family had ongoing involvement with

WITN0831001 94

Social Welfare, due to ongoing concerns about neglect and physical abuse within the family. HJ is Māori.

511. HJ was born in GRO-C 1976. He was often passed between family members because he kept getting into trouble. On one occasion, HJ's mother sent HJ to his aunt in Christchurch, to get him away from the people he was mixing with. HJ believes he was about 11, so this would have been towards the end of the 1980s.
512. By the time HJ went to stay with his aunt, he was already using solvents and drinking alcohol. HJ's aunt lived in Linwood, Christchurch. HJ spent a lot of time at the park nearby with other kids, who were drinking and sniffing in the park. He also used solvents.
513. HJ became involved with Brother McGrath when Brother McGrath pulled up at the park in a van, providing food to the kids in the park. The other kids at the park already knew Brother McGrath. One of those boys was HJ's cousin, who was a bit older than HJ.
514. Initially, HJ thought Brother McGrath was a good person. He thought it was cool that he brought the boys food.
515. The abuse started when Brother McGrath asked a few of the boys to go back to his house, to learn about Jesus. HJ recalls that he, his cousin, and another boy went with Brother McGrath in his van. HJ remembers his cousin telling him that things would be fine. His cousin also said that Brother McGrath had wine and there was the possibility of getting food, or a can of gas.
516. HJ went into a garage that had been converted into a sleep-out. Brother McGrath came into the sleep-out. He started patting the top of HJ's head and then touched HJ all over his body. Brother McGrath then pushed HJ's head down and forced HJ to perform oral sex on Brother McGrath. Brother McGrath was telling HJ that everything would be alright during this.
517. After this, Brother McGrath bent HJ over the bottom of a bunk, pulled down his pants, and raped HJ.

WITN0831001 95

518. Brother McGrath left HJ in the shed for 5 or 10 minutes and then returned, asking HJ if he wanted to be dropped anywhere. HJ remembers not knowing how to respond, because he was under the influence of glue. He does remember that he was bleeding and in a lot of pain. Brother McGrath returned HJ to the park, where he ran into his cousin. HJ realised that his cousin knew exactly what had happened to HJ and distinctly recalls asking his cousin whether he had set HJ up.
519. HJ was assaulted a second time about a week later. He was down at Linwood Park, with street kids. Again, he had been sniffing glue and drinking alcohol. Brother McGrath again picked up HJ from Linwood Park. There were spray cans in the back of the van, that HJ helped himself to. Brother McGrath then drove around Christchurch, picking up other boys.
520. Brother McGrath returned to the house and asked HJ to wait in the sleep-out. HJ tried to get out of the room, but the door was locked.
521. Brother McGrath came back into the sleep-out. Again, he told HJ that everything would be alright. This time, anticipating what was happening, HJ tried to put up a bit of a fight. This was unsuccessful. Brother McGrath masturbated HJ. Again, he forced HJ to perform oral sex on Brother McGrath before he once again raped HJ.
522. Following the rape, Brother McGrath went out and asked HJ to wait. As soon as the door opened, HJ ran away. He ended up back in the park, where he stayed for the night because he was so distressed about what had happened.
523. The next day, HJ returned to his aunt and asked if he could go home. He remembers his aunt pressing him as to what had happened. HJ told his aunt to speak with his cousin and ask him.
524. HJ remained at his aunt's home for a couple more days. He hung around and sniffed but did not return to the park.
525. HJ returned to Gisborne. He was unable to tell his family what happened.

WITN0831001 96

526. HJ did speak with his cousin about the rapes a few years later. His recollection is that his cousin treated it as if it were a kind of joke. HJ believes his cousin told a couple of uncles what happened, because HJ was teased by some of those uncles, including being called a "little homo boy".
527. HJ was very much affected by the abuse. Even at the point of instructing us, he still believed somehow it was his fault.
528. At the time of coming to Cooper Legal, HJ had just started counselling through prison. Even then, he had been unable to talk about this abuse.
529. HJ tried to commit suicide on two occasions. On multiple, other occasions, he
- GRO-C**
530. HJ is still unable to have males touch him. This resulted in big fights while HJ has been in institutional care.
531. HJ has described finding it difficult to get close to anyone. He has had multiple sexual partners and has children to nine different mothers.
532. HJ blamed his mother, for a long time, for sending him to his aunt in Christchurch. He spent a lot of time running away from home, staying with an uncle who was a gang member in Gisborne. That uncle raised HJ, encouraging him to deal drugs and grow marijuana. HJ ended up becoming part of the gang life as well.
533. HJ abused pills and cannabis for many years. Only in more recent years has HJ been trying to manage his addictions and leave behind his use of drugs to self-medicate.
534. HJ has described having many flashbacks to the abuse by Brother McGrath, even doing something simple as holding a partner's hand. For many years, HJ had nightmares. He has ongoing problems with sleep.
535. HJ finds it very hard to trust anyone. This has been something he has been working on as a consequence of starting to address the abuse.

WITN0831001 97

536. At the time HJ instructed us, he wondered what his life would have been like had he not been sexually abused by Brother McGrath. He believed that the abuse had had a detrimental impact on all aspects of his life which he was only then able to start addressing.
537. HJ contacted Cooper Legal in October 2018, advising that he wished to make a claim in relation to abuse by Brother McGrath.
538. Cooper Legal notified Carroll & O'Dea of HJ's claim against the Order by letter, dated 15 November 2018.
539. HJ was interviewed by a lawyer from Cooper Legal while he was still in prison at the end of February 2019.
540. Once Cooper Legal had collected in relevant records, a draft statement was sent to HJ for his input at the end of May 2019. By that time, HJ had been released from prison.
541. After receiving HJ's feedback and reviewing supporting documents, his claim was sent to Carroll & O'Dea on 21 October 2019.
542. Sonja Cooper and Howard Harrison had a preliminary telephone discussion about HJ's claim, among others, on 12 November 2019.
543. On 2 December 2019, the Order offered to settle HJ's claim by paying him NZD \$75,000, along with payment of his reasonable legal costs. This offer was communicated to HJ in writing. HJ advised Cooper Legal that, after discussing the offer with his family, he had decided to accept the offer. He also advised that he did not need an apology.
544. On 18 December 2019, Cooper Legal communicated acceptance of the offer made to HJ to Carroll & O'Dea.
545. As with other clients, HJ was required to sign a formal Settlement Deed recording the agreement. Because of the intervening summer break, the Deed was not forwarded to Cooper Legal until mid-January 2020.

WITN0831001 98

546. Once the settlement documentation was signed by HJ, it was sent to Carroll & O'Dea in Australia on 19 February 2020, for the Order counterparts to sign.
547. HJ received his settlement funds on or about 18 March 2020.
548. Although he had not requested an apology letter, HJ also received an apology letter, sent in July 2020. This apology letter, signed by Brother Timothy Graham, expressed shame and sorrow that HJ was betrayed in the way he was and abused when he should have been helped. The letter also acknowledged that HJ's life had not been easy, so Brother Timothy was pleased that the reparations – civil issue had been resolved. He also hoped that life would be a bit easier for him going forward. As stated above, this letter was identical to the letter sent to HG, HI, and HK.

HK

549. HK was born in **GRO-C** 1980. This makes him one of our younger clients in the group. HK is Pākehā.
550. HK met Brother McGrath when his father took HK to Brother McGrath's house in Halswell Road. He believes his parents placed him with Brother McGrath because he was a bit hyperactive and "running around a bit". HK was very young, around age 10, when he was placed with Brother McGrath, although he acknowledges he may have been a little older. This puts the timeframe in the early 1990s.
551. Initially, Brother McGrath was friendly and kind. The sexual assaults started after HK got into trouble for eating biscuits the boys were not meant to eat. Brother McGrath took HK into the sleep-out area and said something to him about being naughty. Brother McGrath put his hands on HK's shoulder and then touched HK's genitals over his clothes. Following that, Brother McGrath put his own penis into HK's mouth. He was telling HK that he needed to be good.
552. HK reported that this happened on about five further occasions. After the first assault, Brother McGrath also masturbated HK, still telling him he was a good boy.

WITN0831001 99

553. The worst memory for HK was being raped by Brother McGrath. When this happened, Brother McGrath touched HK's penis. He made HK perform oral sex on him. After that, Brother McGrath turned HK around and raped him.
554. HK states that the last time he saw Brother McGrath was an occasion when Brother McGrath had collected HK in his van and had taken HK to the house in Halswell Road. HK remembers that when they got to the house, all the windows were broken, so Brother McGrath dropped HK back home again. This may have been after HD and HS smashed up the property. HK's father said that he would not be seeing Brother McGrath again, which gave HK a huge sense of relief.
555. HK had not told anyone about the abuse by Brother McGrath until he saw a priest and became angry at him. Eventually, HK told the priest what had happened to him. The priest gave him the details for Cooper Legal and told HK to contact Cooper Legal.
556. HK reports being deeply affected by the abuse. He engages in homosexual acts when he is "out of it" on drugs or alcohol, even though he is heterosexual. HK is the only person in his family who has been in trouble. He has lost his confidence and sense of self-worth.
557. Although HK had never smoked cigarettes before his contact with Brother McGrath, he started smoking and using drugs. Prior to the abuse, HK had been playing hockey, at a level which may have later qualified him to play for New Zealand. As a result of the abuse, HK eventually gave up hockey as he started hanging out with the wrong people, increasing his use of alcohol and drugs.
558. HK has multiple assault convictions, mainly as a consequence of anger issues. He is often depressed, something he still struggles with. HK sometimes has flashbacks to the abuse.
559. Although HK has been employed, because of his criminal history he has been unable to pursue a career he really wanted to pursue. He would have become a police officer, but was unable to do so because of his convictions.

560. HK describes himself as the “black sheep” of his family. On one occasion he hit his father, knocking his father’s teeth out. He remembers he was angry with his father and blamed him for the abuse.
561. HK contacted Cooper Legal in February 2019, advising us that he had been abused by Brother McGrath and wanted to bring a claim against the Church.
562. In April 2019, HK was interviewed by a lawyer from Cooper Legal. At the same time, Cooper Legal started to collect in various records to support HK’s claim.
563. On 22 May 2019, Cooper Legal notified Carroll & O’Dea that HK had reported sexual abuse by Brother McGrath and that we were instructed to bring a claim. Our letter was acknowledged on 22 May 2019.
564. At the end of May 2019, Cooper Legal prepared a draft claim document for HK to review and provide feedback on. After receiving that feedback, HK’s claim was finalised and sent to Carroll & O’Dea, by email, on 22 July 2019.
565. By 15 October 2019, Cooper Legal had received no response, at all, from Carroll & O’Dea, so sent a chase-up email. That day, Carroll & O’Dea acknowledged having received the claim for HK and HG and undertook to come back early the following week.
566. Ultimately, Sonja Cooper and Howard Harrison discussed HK’s claim, along with three other claims, on 12 November 2019. During that discussion, Mr Harrison stated that there was a potential for fraudulent claims. He referred to the lack of contemporaneous records. He acknowledged, however, that HK and the other three referred to (HG, HI and HJ), all had different ways in which they had come to meet Brother McGrath. He stated that the Order accepted, generally, that they were telling the truth and they would make offers to settle their claim.
567. On 2 December 2019, Cooper Legal received an offer from the Order to settle HK’s claim by paying him NZD \$75,000, along with payment of his reasonable legal costs.

WITN0831001 101

568. The offer was communicated to HK in writing on 4 December 2019. The advice from Cooper Legal was that the offer was consistent with offers made to other clients of the firm who had suffered similar abuse but suggested we could go back with a small counter-offer.
569. On 17 December 2019, Cooper Legal was instructed to make a counter-offer of NZD \$85,000, along with payment of HK's reasonable legal costs. HK asked Cooper Legal to stress that he had been placed with Brother McGrath by his parents, who believed that Brother McGrath could help their son with his behaviour. The ensuing sexual abuse and the breach of trust perpetrated by Brother McGrath was profound and had resonated throughout HK's life, including feeling alienated from his family.
570. For that reason, we asked that the counter-offer be accepted so that settlement could be proceeded with. That same day, we received confirmation that the Brothers had accepted the counter-offer.
571. As with other claimants, HK was required to sign a formal Settlement Deed. Because of the Royal Commission of Inquiry into Abuse in Care, Carroll & O'Dea confirmed that HK would not be required to enter into a confidentiality clause (as was the case for the previous 3 clients). Carroll & O'Dea did advise, however, that there would be a delay in receiving the settlement documentation because of the impending Christmas break.
572. Ultimately, the settlement documentation was received towards the middle of January 2020. It was then sent out to HK. Once the settlement deeds were executed, they were returned to Cooper Legal and then sent to Sydney to be signed by the Order counterparts.
573. The settlement funds were ultimately paid to HK on 17 March 2020.
574. In July 2020, Cooper Legal contacted Carroll & O'Dea, reminding Carroll & O'Dea that HK, among others, had never received an apology letter.
575. The apology letters were sent through on 14 July 2020. The apology letter for HK was identical to the apology letters received for HG, HI and HJ. As already noted,

there was also an error in the apology letters, in that they all referred to HG, rather than the individual claimants at one point in the apology letter. Accordingly, it was necessary to ask for amended apology letters, which were sent through on 18 August 2020.

576. HK's letter was then sent to him in September 2020.

HL

577. HL was born in GRO-C 1981, so is another of our younger cohort. His mother is Māori.

578. Like HK, HL came into contact with Brother McGrath at about age 12 through his father, who got hold of Brother McGrath to provide some oversight of HL while his father was at work. HL first met Brother McGrath at his grandmother's house, where it was agreed that HL would go and help at Brother McGrath's house doing gardening, painting, and reading the Bible.

579. On the first day HL spent with Brother McGrath, he was picked up by Brother McGrath in Brother McGrath's van. There were already a couple of boys in the van. Brother McGrath took HL and the other boys back to his house. Brother McGrath went into the house and the boys started to do their own thing in a shed at the back of the house. In particular, the boys were smoking and sniffing.

580. One of the first things HL reports is seeing Brother McGrath giving cigarettes, paint, and glue to the boys. HL had never seen anything like this in his life and was shocked. He describes having to fit in, however.

581. Brother McGrath came into the shed when HL was holding solvent in his hand. Brother McGrath said he wanted to talk to HL and grabbed him by the scruff of his neck. He took HL inside the house and sat him down. HL reports that, before he knew it, Brother McGrath had pulled out his penis and forced it into HL's mouth. HL was forced to perform oral sex on Brother McGrath. HL remembers that he was retching and crying. He also remembers Brother McGrath was telling him that he should not be doing that kind of stuff, referring to glue-sniffing.

582. HL remembers that Brother McGrath made threats against HL's father, who was Irish. In particular, he was threatening to have HL's father sent back to Ireland because he was an overstayer. The purpose of this threat was presumably to discourage HL from reporting the abuse and instead to co-operate with Brother McGrath's sexual assaults.
583. Later, Brother McGrath took HL and a couple of other boys back home in the van. HL was the last in the van. He remembers that Brother McGrath came into his grandmother's house and had dinner. Brother McGrath told the grandmother that HL was troubled and was telling lies.
584. The next morning, Brother McGrath picked up HL very early in the morning. They went straight back to the house. Brother McGrath took HL to Brother McGrath's room. He shut the door and told HL to take his clothes off. Brother McGrath made HL lay face-down on the bed, naked. Brother McGrath was massaging him with something like oil. Before he knew it, HL was screaming and crying because Brother McGrath was anally raping him. HL remembers trying to tell Brother McGrath to stop because it was hurting. Brother McGrath pushed HL's head into the pillow to muffle his screams. This has echoes with the narrative of HF.
585. After the rape, HL was forced to perform oral sex on Brother McGrath. He remembers that Brother McGrath's penis was covered with faeces and blood. This made HL retch and vomit again.
586. After HL was raped and violated, Brother McGrath threw him into the bathroom to clean himself up. Brother McGrath took HL's underwear. After this, HL remembers ending up in the van and he and Brother McGrath went to pick up the rest of the boys. He was told to act as if nothing was happening.
587. HL remembers that the other boys were huffing paint or glue and smoking cigarettes. One of those boys was HQ, who was a bit older than HL and is referred to below.
588. HL remembers that towards the end of the day, he was again taken by Brother McGrath back to his grandmother. He remembers that Brother McGrath said to

HL's grandmother that he, Brother McGrath, would pick up HL for the weekend and take him for the whole weekend. HL was terrified hearing that.

589. HL recalls that on the third day Brother McGrath came to collect him, HL acted as if he was still asleep. HL says that he jumped out of the window and ran off. The other boy HQ lived in the area, so he ran down to his house.
590. HL never saw Brother McGrath after that day. He does recall ending up with the police, he thinks because he smashed a window in a vehicle. Because of that, he was sent back to Auckland.
591. HL has been profoundly affected by the abuse. HL described himself as having had "a mask on" his whole life. He states he has acted as though he is alright, like he is hard and a gangster. HL has hidden behind this tough mask in prison for 19-20 years, knowing he would be vulnerable if the abuse became known to other inmates.
592. HL has been in and out of prison. There was a period of his life where it was just drugs, to mask the memories of what had happened to him at the hands of Brother McGrath. At one point, HL tried to kill himself because of the bad thoughts he could not live with.
593. HL was summoned to a gang pad in Halswell, in about 2001. When he went to the pad, he discovered that Brother McGrath's nearby house was still intact. He had an overwhelming desire to burn the house down but instead got himself "wasted".
594. HL has committed multiple offences, mainly to feed his drug habit. Although HL has undertaken programmes to help deal with his anger, as well as his drug addiction issues, at the point of instructing us he recognised the need to confront the abuse he had suffered at the hands of Brother McGrath if he was really to move forward.
595. HL first contacted Cooper Legal at the end of April 2019. At that time, he was in prison. He had heard Cooper Legal was helping people who had been victims of

WITN0831001 105

Brother McGrath. He explained that he had been a victim himself and was wanting our assistance to make a claim.

596. After formally instructing Cooper Legal, we set about to collect in records to support HL with his claim.
597. On 22 May 2019, Cooper Legal sent a letter to Carroll & O'Dea notifying the firm that we had been instructed to act for HL in relation to the abuse by Brother McGrath. We explained that our understanding was the abuse occurred in 1990 / 1991.
598. Our letter was acknowledged by Carroll & O'Dea on behalf of the Order on 22 May 2019.
599. HL was interviewed by Amanda Hill on 5 July 2019. In September 2019, HL contacted the firm to advise us that there was additional information he needed to tell us.
600. After collecting in HL's records, a draft statement was sent to him to review in February 2020. HL met with a lawyer from Cooper Legal at the end of February 2020, at which time he provided his feedback on the draft statement.
601. HL's claim was finalised and sent to Carroll & O'Dea, with supporting documents, on 19 March 2020. Carroll & O'Dea acknowledged receiving the claim. By that time, New Zealand was preparing to move into lockdown.
602. Cooper Legal chased Carroll & O'Dea for progress on 30 May 2020. Cooper Legal was advised that we should hear something on 30 May 2020.
603. Cooper Legal chased up Carroll & O'Dea on 18 June 2020, having heard nothing. On 22 June 2020, Cooper Legal was advised that Carroll & O'Dea had instructions from the Order.
604. On 25 June 2020, Sonja Cooper and Howard Harrison had a telephone discussion about HL's claim and the claim of ME (who was at Marylands). At that stage, HL was offered NZD \$95,000 plus payment of his reasonable legal costs,

WITN0831001 106

conditional on him signing a Settlement Deed. He was also offered an apology in person and / or by letter.

605. Cooper Legal communicated with HL about the offer on 26 June 2020, and by telephone on 29 June 2020. Cooper Legal was instructed to make a counter-offer of \$120,000. At that stage, Cooper Legal estimated that the claim would probably settle for between \$100,000 and \$115,000.
606. The counter-offer was communicated in writing to Carroll & O'Dea on 1 July 2020. In that counter-offer, Cooper Legal referred to the very serious nature of the abuse, as well as the profound and long-term damage HL has suffered. By that time, New South Wales was in lockdown which caused further delays.
607. Cooper Legal chased up Carroll & O'Dea on 7 July 2020. On 8 July 2020, Carroll & O'Dea advised that the Brothers were prepared to go to a final figure of NZD \$105,000, along with payment of the reasonable legal costs and an apology.
608. This settlement is the highest we have received for a Hebron client, but we cannot say why it was so high. Having reflected while preparing this Witness Statement, we query whether the level is due to the timing of the abuse of HL, which may have taken place after the Order was made aware of Brother McGrath's abuse at Hebron and Kendall Grange (see below). We can only speculate, not being privy to such information. The lack of transparency about quantum, which we comment more on below, as well as the Order's knowledge about the dates it was aware of reports of abuse, are two of the many concerns we have with a process where the Order investigates and settles claims against itself, without proper external scrutiny or equality of arms.
609. The revised offer was communicated to HL on 8 July 2020. HL communicated his acceptance of the offer. Carroll & O'Dea was formally advised of that acceptance in a letter dated 9 July 2020.
610. As with other claims, HL was required to sign a formal Settlement Deed, which was sent to him in mid-July 2020. Once the signed Deed was returned to Cooper

WITN0831001 107

Legal, it was then sent to Sydney for execution by the Order's counterparts at the end of July 2020.

611. It took some time for the settlement funds to come through, due to both countries being in various forms of lockdown. Accordingly, Cooper Legal chased up with Carroll & O'Dea on 31 August 2020 and 17 September 2020.
612. The funds were finally received into the firm's trust account in late September / early October 2020, at which time they were transmitted to HL.
613. HL is another claimant who has received a reasonably pro forma apology from the Brothers. The letter said sorry from the Brothers for what Brother McGrath had done to HL. The letter also expressed shame and sorrow that HL was betrayed in the way he was and abused when he should have been helped. As with other letters, the letter stated that Brother Timothy knew HL's life had not been easy, so he was pleased that the reparations – civil issue had been resolved. Brother Timothy also expressed the hope that life would be a bit easier for him going forward and wished him all the best for the future. That letter was sent to HL on 16 October 2020, the date Cooper Legal received it.
- [WITN0831040]**

HM **[WITN0715]**

614. HM was born in GRO-C 1972. She spent most of her life in Christchurch. She was first taken into the care of the State in May 1985. She was finally released from care by 1988.
615. As with Joanna Oldham, referred to below, and who gave evidence in the Pacific People's Hearing, HM came into contact with Brother McGrath through other street kids, mainly when she had run away from home and foster placements. She met Brother McGrath at about age 13 or 14, as he was often around the centre of Christchurch in places where the street kids hung out.
616. In her Witness Statement, HM describes witnessing Brother McGrath sexually assault two young boys on three separate occasions. This was serious sexual abuse, comprising forced oral sex and rape. After the first sexual assault, Brother

WITN0831001 108

McGrath made HM clean up the vomit of the boy he had sexually assaulted. HM also describes Brother McGrath inappropriately touching her chest and hair.

617. HM talks about turning to glue, in a serious way, to block out the memories of what she saw Brother McGrath do. She also talks about many of her friends who were victims of Brother McGrath being dead through drug abuse [GRO-C]. As with others, Ms [GRO-B-H
M] refers to those who died in the fire in 1992.
618. HM has made a claim against the Order. At the time of preparing this Statement, HM has received an offer to settle her claim, including a cash sum and payment of her reasonable legal costs, contingent on signing a settlement deed.

HN

619. HN was born in [GRO-C] 1975. He is the younger brother of HG, referred to above. HN is Pākehā.
620. HN came into contact with Brother McGrath in about 1988 when he was hanging out with his brother HG on the streets of Christchurch. HN would have been 13 or 14 years old. He recalls that Brother McGrath was always around town, helping out the street kids and initially he thought Brother McGrath was "cool".
621. On one weekend, HN went with his brother and his brother's friend, along with some other boys, to hang out at Brother McGrath's house, in Linwood.
622. Brother McGrath gave the boys beer, cigarettes, and let them sniff glue. The boys stayed the night.
623. Brother McGrath then invited HN to go for a ride in his van. Brother McGrath parked the van at Linwood Cemetery, where he gave HN cigarettes and told him to get into the back of the van and sniff glue if he wanted.
624. HN sniffed glue. It was then that Brother McGrath sexually assaulted HN for the first time. Brother McGrath began to masturbate HN and then started masturbating himself. Following this assault, Brother McGrath apologised and said not to tell anyone else because Brother McGrath might not be able to help the street kids anymore.

WITN0831001 109

625. Later that day, Brother McGrath took HN into the sleep-out connected to the property, where HN sniffed more glue and drank alcohol. HN fell asleep and woke up to Brother McGrath raping him.
626. After the rape, Brother McGrath told HN to stay in the sleep-out and he would be back soon. HN was crying. Brother McGrath told HN not to let the other boys see him crying, or they may give him a hard time. Brother McGrath then raped HN again. HN states he was raped by Brother McGrath twice more that weekend, also in the sleep-out.
627. HN never returned to the place after that weekend, and he never told anyone about what happened.
628. HN was only able to disclose this abuse after his brother, HG, reached out to him from prison, asking for HN's forgiveness and telling HN he knew what had happened to him. It was then that HN was able to start confronting the abuse he had suffered at the hands of Brother McGrath.
629. HN contacted Cooper Legal in June 2020, stating he wanted to make a claim against Brother McGrath.
630. HN explained that hearing that his brother was also abused by Brother McGrath gave him the courage to tell someone else about how damaging his own abuse had been in his life. HN explained to Cooper Legal that he blocked out the abuse for decades by using drugs and alcohol. He also isolated himself from his family and the rest of the world.
631. On 18 September 2020, Cooper Legal contacted Saunders Robinson Brown, lawyers, asking if the firm held any records in relation to HN. As expected, we were advised that no records are available.
632. HN's claim has been prepared entirely on the basis of written communications between Cooper Legal and HN as, to this day, HN has not been able to speak about the abuse to a lawyer from our firm. HN signed a written statement dated 28 July 2021.

WITN0831001 110

633. The written statement, along with supporting records from HN's Social Welfare file, was sent to Carroll & O'Dea on behalf of the Order on 4 August 2021.
634. To date, there has been no acknowledgment of that claim.

HO [WITN0734]

635. HO was born in **GRO-C** 1977. He is Pākehā. HO has completed a Witness Statement. Accordingly, this provides brief details about his claim.
636. As HO has explained, he started getting into trouble at about age 13 or 14, which places the timeframe in the early 1990s. HO was breaking windows, breaking into cars, and staying out late. HO recalls he was required to undertake community work for his offending through the Community Council. The community work was with Brother McGrath.
637. HO describes being sexually abused by Brother McGrath at Hebron House on Halswell Road. He recalls that Brother McGrath picked up HO and other boys from community work in his van and then took them to his property.
638. At Brother McGrath's property, HO came into contact with skinheads huffing petrol and sniffing glue. He remembers how that group seemed older to him than he was, which is consistent with HA's account.
639. The sexual abuse started when Brother McGrath called HO into his office. HO states that Brother McGrath started out being nice. Then, all of a sudden, HO was made to perform oral sex on Brother McGrath. He threatened HO with being placed at Kingslea Residential Centre if HO did not do what he was told.
640. HO had to complete the community work and returned to Hebron House to do gardening and other chores. He remembers that skinheads were there again, sniffing glue. As with the first occasion, Brother McGrath called HO into his office. On this occasion, HO was anally raped.
641. After HO was sexually violated, he remembers walking down the road. He had blood in his underwear. For reasons that are unclear, he was not required to complete his community work and did not return to Hebron House.

WITN0831001 111

642. HO describes leaving home after he was abused by Brother McGrath. He started to sniff glue and became a skinhead and a drug addict.
643. HO started to offend. He had a brief admission to Kingslea in 1992. By that stage, he was prospecting for a gang.
644. From there, HO progressed to prison. He has been in and out of trouble. He still has problems with drugs and alcohol.
645. HO describes having intimacy problems. Dealing with the abuse creates anxiety.
646. HO hates anything to do with the Church. He also hates people in authority, although he is coming to realise that not all people in authority are bad.
647. HO has described frequent nightmares and flashbacks. He has periods of anger. He is unable to hold down jobs for long because he starts getting angry at people for no reason.
648. HO is estranged from his parents because he blames them in some ways for what happened. He is overprotective of his children because he is worried about what might happen to them.
649. His claim has not yet been sent to Carroll & O'Dea.

HP

650. HP was born in GRO-C 1974. He was brought up in Christchurch. HP is Pākehā.
651. HP started getting into trouble at about age 13 or 14, which would be in around the late 1980s.
652. In common with other clients, HP was taken to Brother McGrath by his father, who had arranged this through a friend. HP understood he would be told about the Bible and how to do practical tasks.
653. HP was sexually assaulted by Brother McGrath on three separate occasions. Each of the assaults took place at the property at Halswell Road.

WITN0831001 112

654. On the first occasion, Brother McGrath played with HP's genitals and then raped HP. After the rape, Brother McGrath forced HP to perform oral sex on him. Brother McGrath belittled HP, telling him that he was overweight and needed to go on a diet.
655. On two subsequent occasions, HP was forced to return to the property by his father. He was collected by Brother McGrath in the van along with other kids and taken to the property, where he was again raped by Brother McGrath in the same way as had occurred on the first occasion.
656. HP recalls rapidly deteriorating as a consequence of the rapes. His use of methamphetamine, cannabis and pills escalated. He resorted to drinking alcohol daily. HP suffered from nightmares frequently and resorted to violence, frequently assaulting those he came across. HP stills suffers from nightmares.
657. HP has served prison sentences for offending, which occurred under the influence of drugs. HP was later diagnosed with depression and anxiety.
658. HP has significant trust issues. He struggles with intimacy. He cannot have relationships. HP states that he cannot work and hates his life. Most of the time, he wants to die.
659. His claim has not yet been forwarded to the Order but should have been sent by the time of the public Hearing.

HQ

660. HQ was born in **GRO-C** 1977. He is Māori. HQ often roamed the streets and hung out with the street kids because his home life was not great. He is referred to above, by HL.
661. HQ states that everyone on the streets knew Brother McGrath, including that he was known to abuse street kids. HQ first met Brother McGrath when Brother McGrath was driving his van around. He would have been about 14, we understand. When Brother McGrath pulled up in the van next to HQ, there were three other children in the van. One was a couple of years older than HQ. The

- other two were younger than him. One of the younger ones, who HQ thought was about five years younger than him, was HL, who HQ believes was sexually abused by Brother McGrath between five and seven separate occasions.
662. HQ reports that Brother McGrath later lured him into the van with a promise of money and food. While they were in the van, Brother McGrath forced HQ to masturbate Brother McGrath and Brother McGrath masturbated HQ. Brother McGrath ejaculated on HQ. In exchange for this, Brother McGrath gave HQ a little bit of money and some fish and chips.
663. The second assault also occurred in the van. HQ recalls that Brother McGrath grabbed him and touched his face. Once again, mutual masturbation took place.
664. On the third occasion, in addition to forced masturbation, HQ has described Brother McGrath forcing HQ to give him oral sex.
665. The assaults progressed and became more serious. Between three and five separate occasions, Brother McGrath took HQ in his van and drove him to a park near the rugby club rooms. This was usually at around twilight. On these occasions, HQ was raped by Brother McGrath. HQ states that this happened on a minimum of three occasions, but more likely four or five.
666. HQ has also described a house that was on Halswell Road. Across the road was a house for naughty boys. HQ believes this was Hogben, a state-run Special Residential School. HQ says that boys would go to the house on Halswell Road to get a cup of tea and biscuits. It was also a warm place where he could get away from family and the violence that was going on at home. HQ remembers there were always kids at the house. Generally, those kids were associated with White Power. HQ remembers there were other people at the house doing community service.
667. HQ recalls being at this property to work in the gardens, so presumably he was required to do community work at some point. Brother McGrath called him inside the house. HQ recalls that Brother McGrath was being really nice to him, and

WITN0831001 114

then all of a sudden Brother McGrath was raping him. This is something that is a repeated theme in the accounts from our clients.

668. HQ remembers that Brother McGrath was teasing him about what HQ would do about being raped. Brother McGrath was saying that if he told HQ's father or his uncles, they would think he was a 'little homo'. HQ did not know what to do, as he had no one to turn to.
669. He does remember that not long after this, a couple of skinheads (presumably HD and HS) went to Brother McGrath's house to shoot him.
670. HQ was raped by Brother McGrath on at least a couple of further occasions at the house. After that, HQ stopped going there. HQ recalls that this may have been because things got a bit better at home because his father had gone to prison, so he was not so scared of going home.
671. HQ reports that he has been greatly affected by the abuse. He is very paranoid and trusts no one. He firmly believes that Brother McGrath ruined his life. He could have been a sportsman or had other worthwhile jobs, but he could not commit to anything because of the abuse.
672. HQ has been in prison numerous times. He is addicted to drugs and alcohol. He has committed violent offences. He has had no meaningful relationships or friendships. He says that all his relationships have been built on a common addiction to drugs and pills.
673. HQ will not have children. He says this is because he had strong parents and a strong family who should have protected him, but they were unable to do so because HQ did not know how to ask them for help.
674. HQ has done some counselling over the years, on and off, but has found this difficult because he is reclusive.
675. The abuse by Brother McGrath has made HQ hate Catholics, hate the Church, and hate all Christians.

WITN0831001 115

676. What particularly affects HQ to this day is the blackmail perpetrated by Brother McGrath. In particular, the threats to tell his uncles and that he would be seen as scum and disowned still haunts HQ. He also has vivid memories of the blood and faeces after the abuse.
677. HQ contacted Cooper Legal in 2020. It took some time for him to return the necessary paperwork for us to commence work for him.
678. HQ was interviewed by a lawyer from Cooper Legal over the phone. HQ found it very difficult to disclose what had happened to him.
679. Cooper Legal has been collecting in records to support HQ's claim and has only recently received records from the Ministry of Social Development.
680. His claim is yet to be submitted to Carroll & O'Dea.

HR

681. HR was born in GRO-C 1973. He identifies as Māori. His iwi is Ngati Porou.
682. The records available to Cooper Legal suggest that HR came to notice at a reasonably young age due to behavioural problems at school and at home.
683. Between at least October 1985 and approximately February 1987, HR was placed at Stanmore Road Boys' Home in Christchurch. This makes him between 12 and 13 years old. HR states that he started to abscond from the Boys' Home, which is confirmed in his records. During the periods he absconded from the Boys' Home, HR stayed on the streets, around Christchurch City, with other boys who were living on the streets.
684. HR describes going to a house on Halswell Road a couple of times. There were always other street kids in the house. HR states that he was sexually assaulted by Brother McGrath at least three or four times at the house. To date, he has been unable to provide Cooper Legal with the details of that abuse.
685. In addition to those assaults, HR states that the street kids often hung out at a building towards the back of a bar. Street kids would often congregate there for

WITN0831001 116

cigarettes and to catch up with one another. This appears to have been what we have seen called the '6A' drop-in centre on Madras Street, although we do not have any further information about this other than that it was reportedly run by a male social worker known as 'Cooper'.

686. On one or two occasions, Brother McGrath sexually assaulted him with another boy, whose street name was **GRO-B**. Again, HR has been unable to provide the details of these assaults.
687. HR has disclosed that Brother McGrath would give the boys cigarettes. He also gave HR food and pyjamas. The other boys gave him glue, which he continued to use after the abuse, to block out the memories of what had happened.
688. HR has lost trust in people as a result of this abuse (and other abuse he suffered in State care). He spent years abusing alcohol and drugs, particularly to block out the memories of his abuse.
689. HR states he has been treated for anxiety. He has nightmares and flashbacks to the abuse he suffered and often finds it hard to sleep.
690. HR has described difficulties with intimate relationships. He has problems with anger.
691. HR is engaging in counselling, which he finds difficult because it forces him to confront what happened to him.
692. In common with many clients, HR has spent a lot of time in prison.
693. HR contacted Cooper Legal in June 2020, mainly in relation to what happened to him in care of the State and other entities. At his first interview in early December 2020, HR was not able to speak, at all, about his abuse by Brother McGrath. Even in his second interview, later in December 2020, HR was still unable to disclose what had occurred.
694. HR's claim against the Order is yet to be progressed, as we are still collecting in relevant supporting records and further details from HR.

HS [WITN0731]

695. HS has provided a Witness Statement so this discussion will be brief.
696. HS was born in [GRO-C] 1977. He came into contact with Brother McGrath in about the mid to late 1980s, when he was about 9 years old. HS is another client who hung out with the street kids and petrol sniffers at Linwood Park.
697. HS saw Brother McGrath at Linwood Park, as Brother McGrath spoke with one of HS's friends.
698. As HS explains in his Witness Statement, Brother McGrath first sexually assaulted him at the Havelock Street property. HS went to this place with his friend. While there, Brother McGrath tried to masturbate HS and his friend, and also performed oral sex on them both. This happened on two separate occasions. The first time this happened, Brother McGrath gave the friend money and drugs. Brother McGrath also gave HS money and drugs after the second assault.
699. Subsequently, HS came into contact with Brother McGrath through offending. He believes this would have been in the late 1980s to early 1990s.
700. As a result of the offending, HS was required to do community work. He was sent to Hebron Trust to undertake that community work.
701. While Mr HS was at Hebron Trust to do community work, Brother McGrath took him into the house. On three or four separate occasions, Brother McGrath forced HS to perform oral sex on Brother McGrath.
702. HS was also raped by Brother McGrath on two of these occasions.
703. Following this, HS and two friends, one of whom was the older brother of HT, and HD (referred to below and above), [GRO-C], [GRO-C], [GRO-C]. The boys had the intention of shooting Brother McGrath, but he was not at the property. This evidence is consistent with the accounts of HD and HQ, above.

WITN0831001 118

704. HS has disclosed ongoing consequences of the abuse by Brother McGrath, one being that he is unable to maintain friendships due to trust issues. His relationship with his family is strained. He has an ongoing feeling of loss.
705. HS has struggled with jobs. This is largely because he has continued to abuse drugs to block out the memories of the abuse.
706. HS often feels angst. He also has feelings of anger, for which he has been treated. HS feels that he is unable to fit in. He still feels shame that he was abused.
707. HS contacted Cooper Legal on 26 January 2021. At that stage, he gave no details about his claim. It was not until HS provided us with information about his claim, that Cooper Legal learned he had been sexually abused by Brother McGrath.
708. HS was interviewed by a lawyer from Cooper Legal on 9 April 2021.
709. Since that time, we have been collecting in records for HS. His claim is yet to be progressed.

HT [WITN0727]

710. HT was born in **GRO-C** 1984 and is the youngest of our Hebron client group, to date. His mother is Pākehā and his father is Tongan. HT came into contact with Brother McGrath between approximately 1989 and 1992, when he was aged between 5-8.
711. HT's older brother, referred to by HS above, was known to Brother McGrath. When HT was between 5 and 7, Brother McGrath drove past HT and his brother when they were going to the swimming pool. Brother McGrath picked them up and took them back to Hebron House. HT went into the living room area with Brother McGrath and his brother. There were other teenagers outside, but no one else was in the living room. HT was forced to perform oral sex on Brother McGrath while his brother was in the room.
712. Approximately a year or so later, HT's brother again took HT to Hebron House. The abuse again took place in the living room. Initially, the brother was in the

WITN0831001 119

- room, but then left his brother alone with Brother McGrath. Brother McGrath rubbed his penis against HT's buttocks and then raped HT. HT found his brother waiting outside. The two left together. HT believes his brother knew what had happened to him.
713. Subsequently, HT was involved with the police and the Youth Court. He attended Family Group Conferences and was required to undertake community work. He had no residential placements.
714. HT has been profoundly affected by the abuse perpetrated by Brother McGrath. He suffers from mental health issues, including anxiety. These issues are still current.
715. HT had time in prison for some years. He was released from prison in 2012. He changed his name and since doing so has felt like half of a new person. He has not returned to prison since then.
716. Between 2015 and 2016, HT studied as he was unable to find a job. He is a qualified technician in computer networking. HT stopped working before COVID. He has not worked since that time. Instead, he has spent more time with his children.
717. Intermittently, HT has abused methamphetamine. Recently he has used alcohol. When he was younger, he sniffed petrol with his brother.
718. HT has described long-term issues with sleeping. He states he sleeps better in prison. He worries having other people around his children and is over-protective of them. He does not trust people, even his own mother, even though she has done nothing to him.
719. HT hated those in authority growing up, but since then has matured.
720. HT has damaged family relations. He sometimes wonders if his family knows about the abuse by Brother McGrath. In particular, he wonders if his brother ever told them, although his brother is one of the likely victims of Brother McGrath.

WITN0831001 120

721. We note that we acted for HT's brother in relation to a social welfare claim many years ago. Before we had to close his claim due to legal aid funding difficulties, HT's brother, now deceased, did not disclose any involvement with Brother McGrath to this firm. It would not surprise us if he had been a victim as well, particularly given his involvement GRO-C with two other victims.
722. HT wants his life back. He believes he could have been something else. He feels frustrated that he is unable to provide for his children what he should have been able to provide. He feels great violence and anger towards Brother McGrath.
723. HT instructed Cooper Legal in September 2020. He said that he had been abused by Brother McGrath and wanted to bring a claim.
724. HT was interviewed by a lawyer from this firm in May 2021. Since that time, we have been collecting in records for HT so that we can formally present his claim to the Order.

HU

725. HU was born in GRO-C 1979. HU is Pākehā.
726. HU came into contact with Brother McGrath at about age eleven or twelve, while he was at Manning Intermediate. This would have been the early 1990s. While he was with two older boys, mountain biking, they took him to a house on Halswell Road in Christchurch. He states that there were maybe seven or eight kids there and that this was a place for kids to hang out.
727. HV returned to the house on his own, perhaps a week later. He no longer recalls how this came about. Brother McGrath took him to a shed or sleep-out at the back of the property. There, Brother McGrath forced HU to perform oral sex on Brother McGrath. There was also forced masturbation. After the assault, HU left the property and never returned.
728. HV reports that he left home about 2½ years after the sexual assault, as he did not get along with his father. He moved to live with a gang-affiliated family and

WITN0831001 121

became involved in criminal activity. Drugs and alcohol abuse were also a problem for a long time. As a consequence, HU served several terms of imprisonment.

729. HV found disclosing the abuse extremely distressing and struggled to disclose the details. He had never been able to speak about the abuse before and has not engaged in counselling. He has been encouraged to do so.
730. It was only reasonably recently that HU discovered his abuser was likely to be Bernard McGrath. He did this by undertaking some research online. Just prior to lockdown in 2020, HU was at a Church in Papanui, talking to the priest or Minister there. HU was able to disclose that he had been abused by Brother McGrath. The priest or Minister gave HU the contact details for Cooper Legal.
731. HV contacted Cooper Legal on 25 February 2021, disclosing that he wanted to take a claim against Brother McGrath. He was interviewed by Amanda Hill of Cooper Legal on 18 May 2021. As stated, HU found this interview very difficult.
732. We are presently collecting in records to support HU's claim before we formally present it to the Order.

HV

733. HV was born in GRO-C 1980 and is one of our younger clients. We have been unable to interview him to date, which appears to be in part because he is finding it too hard to disclose the abuse in any detail. However, he has disclosed that he was abused by Brother McGrath at Hebron.

JOANNA CATHERINE HELEN OLDHAM [WITN0582]

734. Joanna Oldham gave evidence in the Pacific People's Hearing. At the Hearing and in her written Statement, Ms Oldham referred to her contact with Brother McGrath, who she was not permitted to name publicly in that Hearing.
735. Throughout the years that Ms Oldham lived on the streets, which was between about 1986-1989, she described a man named Brother McGrath, who was a

figure who was a constant presence. He would come around the streets with his van, collecting male street kids to take back to his hostel.

736. Ms Oldham stated that Brother McGrath seemed to hate her and most of the other girls on the streets. Ms Oldham did not then know of the abuse Brother McGrath was perpetrating on the boys but learned of it since.
737. Ms Oldham and the other girls would often go to the hostel that Brother McGrath ran, late at night, after Brother McGrath was asleep. The boys would sneak the girls in, and they would use it as a warm place to sleep for the night. Ms Oldham remembers Brother McGrath catching her in the hostel more than once and getting extremely angry and dragging her by her hair out of the hostel.
738. Ms Oldham's social welfare records described her as being 'rescued' from the street kid scene by Brother McGrath, who cared for her at Waipuna for 2 and a half weeks in about 1988. Later in 1988, Brother McGrath was reported to have discussed Ms Oldham's future placements with her social worker, and he attended a Family Group Conference in relation to Ms Oldham in 1989. Other records described Ms Oldham as carrying out community work with Brother McGrath at Hebron House in 1991.
739. Ms Oldham is not making a claim against the Order as his assaults on her were 'only' physical.

Hebron summary

740. As will be evident from this narrative, the clients who have so far contacted Cooper Legal are profoundly affected by the abuse they suffered at the hands of Brother McGrath. Even now, clients struggle to disclose what happened to them. Many have only been able to come to us after having engaged in counselling.
741. We suspect that there is a large cohort of former street kids from Christchurch who have not yet been able to confront this abuse and make a claim. We agree with HD that many are likely to be in New Zealand prisons, if they are not already dead or otherwise too damaged to make a complaint.

WITN0831001 123

742. We have read in online articles that in 1991, two social workers had reported concerns about Brother McGrath's indecent touching of four teenage boys at Hebron in 1991. These reports were apparently made to the Provincial of the Order, Brother Joseph Smith, and then to the police when the Order failed to take any action. Two men also disclosed abuse by Brother McGrath while they were residents at Marylands to the police shortly afterwards. We do not know if this information is correct, but it fits with what we know about Brother McGrath's 1993 convictions, mentioned below.
743. As noted in HB's case, Brother McGrath continued to work with Hebron until at least July 1992. We do not know when his involvement with Hebron ceased, but it must have been within months of this date.
744. In August 1992, further allegations were made by a mother of a Kendell Grange resident about Brother McGrath to Brother Joseph Smith. Brother Joseph observed that he had received a previous complaint about Brother McGrath six months earlier and that the Order had taken steps to deal with Brother McGrath's rehabilitation. Again, these allegations were considered internally rather than being reported to the police. **[WITN0831041]**
745. We understand that the Order sent Brother McGrath to attend a course in the United States for sexual offenders. He returned to New Zealand late in 1993 to face criminal charges.
746. On 23 December 1993, Brother McGrath was sentenced to three years' imprisonment after pleading guilty to sexual assaults against the two residents at Marylands and four who lived at Hebron Trust in 1991.
747. In 1997, Brother McGrath was sentenced to 9 months' imprisonment in Australia, after pleading guilty to the abuse of a boy at Kendall Grange in 1982-1983, while he was the Prior.

Responding to allegations of abuse – the Order, the Police and MSD

748. The information in this 1999 to 2004 section has been gleaned from documents provided to our firm by clients, and from the occasional newspaper article. As noted above, Cooper Legal was not involved in any claims against the Order until July 2004.

The legal mediation process

749. The earliest Marylands settlement that we are aware of, from newspaper reports, took place in 1999 and resulted in a \$30,000 payment to an unnamed Christchurch man, who was forced to fondle the genitals of Brothers and perform oral sex on them in the late 1950s and early 1960s. Other newspaper reports suggested that this man was expecting a further payment when the March 2003 offers were made.
750. In 2000, MF, later a client of this firm, received a \$50,000 ex gratia payment, together with his reasonable solicitor's costs and a brief letter of apology from Brother Peter, relating to sexual abuse at Marylands.
751. We are not clear who represented the Order during these two legal mediation processes, but we do know that at the time, the Order was represented by Christchurch firm Saunders Robinson (now Saunders Robinson Brown), a specialist insurance law firm, at around this time in relation to New Zealand matters. We understand that the Order was also represented by Carroll & O'Dea Lawyers in Sydney, primarily litigation partner Howard Harrison, in relation to Australian matters (although this line appears blurred at times). Both firms still represent the Order.
752. We are aware from the **GRO-B-3** case, discussed below, of a third legal mediation settlement in 2001. **GRO-B-3** was sexually and physically abused by Brother McGrath for a long period at Marylands in the 1970s, as well as sexually abused once by Prior Moloney. He spoke to Brother Burke and a "Ms Mulvaney" (possibly Michelle Mulvihill, see below) about his allegations in 2000. After instructing an Australian firm to represent him, he was offered \$82,500, "take it or leave it", by

the Order's Australian lawyers, Carroll & O'Dea. This appears to have been in Australian dollars. [WITN0831042]

753. We do not know the details of these settlements other than the above, except that they have all been described as having been reached through a "legal mediation process".

Brother Peter Burke – the pastoral process

754. Several key events seem to have started picking up momentum in 2002, although they may have underway for some time prior to that. By 2002, Brother Peter and the Chairwoman of the Order's Australian Professional Standards Committee, Michelle Mulvihill, were investigating reports of abuse by a number of Brothers at Marylands.
755. We have read online¹⁰ that, at some point in 2002, Brother Peter and Ms Mulvihill spoke to Brother McGrath about allegations that had been made against him. Brother McGrath reported that Brother Moloney had made sexual overtures towards trainee Brothers in Sydney, and he disclosed later being forced by the then-Prior Moloney to participate in sexual assaults at Marylands, and that he had witnessed Prior Moloney sexually assaulting boys as well. Brother McGrath reported that this was backed by threats that Brother Moloney would prevent Brother McGrath from making his vows if he reported the abuse. Brother McGrath also alleged that Prior Moloney put sexual pressure on at least two other 'scholastics', including Brother Ray Garchow whom Prior Moloney had moved on to another diocese. Brother Moloney denied Brother McGrath's allegations, but he was stood down from active ministry later that year.
756. In 2002 and 2003, Brother Peter and Ms Mulvihill met with dozens of former Marylands students throughout New Zealand, including in prisons and at the offices of Saunders Robinson Lawyers. This was part of what became known as 'the pastoral process' and was a significantly different approach from the previous 'legal mediation process'. Ms Mulvihill later described the original intention of

¹⁰ <https://www.smh.com.au/national/nsw/spreading-the-rot-of-child-sexual-abuse-20121201-2anl0.html>

WITN0831001 126

these pastoral meetings as being to meet with every Marylands survivor of abuse, assess their needs and then drip-feed the funding required to meet them, although this was later replaced by lump sum payments.

757. While the process was pastoral rather than legal, it was set up on the basis of legal advice, and independent legal advice was also given to the Order when considering offers, as discussed below. Lee Robinson, a partner at Saunders Robinson Lawyers, seems to have had involvement with this process as well.
758. These 2002 meetings were promoted through publicity in newspapers and on the radio, as well as a website and a 24-hour 0800 number set up by the Order for former students to call Brother Peter's office to disclose their experiences.
759. By 2002, Ken Clearwater of the Male Survivors of Sexual Abuse Trust was providing regular support to a group of about 37 Marylands survivors in Christchurch.
760. At least seven men who would later become our clients individually met with Brother Peter and Ms Mulvihill in the second half of 2002, often more than once, and often with support persons or counsellors, including Ken Clearwater. It is clear from the personalised letters our clients received shortly after their meetings **[WITN0831043]**, as well as their recollection and the recognition they would later receive, that their allegations were fully believed and acknowledged.
761. Brother Peter made extensive promises in his letters and at the meetings, including about paying for access to counselling for as long as claimants needed it, whether independently or in addition to ACC-funded counselling. **[WITN0831044]** Other personalised promises were made too, such as paying for hearing tests and hearing aids. **[WITN0831045]**
762. One client, **WITN0716**, was funded by the Order to attend the private Ashburn Clinic for addiction treatment, the cost of which – along with his counselling and other support over several years – came to nearly \$30,000. In the case of this client, Brother Burke also offered to write letters to the Parole Board

- [WITN0831046]** and to assist with treatment programmes, accommodation and a variety of other needs. **[WITN0831047 and WITN0831048]**
763. As noted above in the case of MB, in some cases counselling support was also provided for short periods to family members of claimants who required it in order to help them understand and process their own feelings about the allegations being made by the claimants.
764. In his letters and at his meetings, Brother Peter encouraged the survivors of abuse at Marylands to speak to the police and make a statement. Many did, particularly in 2002 and 2003. The police in turn encouraged survivors who contacted them first to contact Brother Peter (or, at least after 2003, to contact Sonja Cooper), if they had not already done so.
765. These disclosures to the police became part of the extensive 'Operation Authority'. Some survivors who made complaints could not name their abusers or recognise their names or faces from numerous photographs of the Brothers that the police had collected. Some were told that their abusers were dead, so no criminal proceedings could take place, although in these cases the police sometimes acknowledged to the survivors that the named Brothers were known to them as abusers.
766. In September 2002, Brother Peter sent all those survivors involved in the pastoral process a newsletter. This was his second newsletter – it appears that the first was sent in August 2002, but we have not seen a copy. In his September newsletter, Brother Peter wrote about the importance of him meeting everyone personally throughout New Zealand and providing what immediate assistance he could. He repeated the encouragement that any survivors should make a police statement. **[WITN0831049]**
767. Brother Peter sent a further newsletter in October 2002, reporting on his upcoming visits, including with a group of survivors in Christchurch. Brother Peter noted that 70 ex-students had made complaints about Marylands via the 0800 number and that there were, now, only three names left on his list to visit. Brother Peter noted that that week, he had "been seeking advice – totally independent

WITN0831001 128

and professional advice from experts who have no previous connection with us – on how we, the religious Order that ran Marylands, ***can in some appropriate way come up with a satisfactory solution to your complaint***". (emphasis in original). Brother Peter hoped to be able to inform the survivors of the result of this advice within the next month. [WITN0831050]

768. In late November 2002, Brother Peter sent each survivor on his list a letter explaining that there had been some delay to resolving matters. He attached a \$1,500 one-off good faith payment for each survivor, which he described as a small expression of the Brothers' sorrow and shame, to help them until he was able to make a final offer to resolve their claims in February-March 2003. Brother Peter described the process that was now being used as "the fairest and the most out-in-the-open process available to each of us". He noted that over the next three months, Sir Rodney Gallen would "look over and review everything that we have been doing to make doubly sure that what we do offer you next February-March is in fact in your best interests". Brother Peter also advised that he had his own health problems to attend to. [WITN0831051]
769. The precise role Sir Rodney Gallen played in the pastoral process is unclear to us. Some documents, like the above letter, refer to his role as being an oversight of the pastoral process as a whole, whereas others mentioned that he assessed each individual case before an offer was made, including reviewing any psychiatric assessments. [WITN0831052] It is not clear whether Sir Rodney Gallen had any involvement in considering quantum, or any counter-offers. As noted above, how the Order reached quantum was and remains a mystery.
770. Brother Peter's fourth group newsletter was sent in February 2003, confirming his hope that he would be able to make his offers to resolve "**YOUR** complaint" (emphasis in original) very soon. [WITN0831053]
771. In March 2003, the first batch of pastoral offers – that we are aware of – were made. The letters we have seen are written in nearly identical terms [WITN0831054], although we understand Brother Peter also met with some of the complainants in person to talk them through his letter to them. In the letters,

WITN0831001 129

Brother Peter noted that he had met with “most of you” and taken steps like “arranging counselling and access to much needed services – medical, dental, welfare, etc”. Brother Peter said he was offering settlement payments in order to heal the hurt and bring closure, and after seeking advice on the process from Sir Rodney Gallen and the Wellington office of KMPG Legal. He added that people we not obliged to accept the offer he made, but that he would send a cheque to them if they agreed to accept the money. The payments were made without any signed deed of release or other formal agreement, and were noted by Brother Peter to be a part of “our continued association”. **[WITN0831055]**

772. Of the seven clients of this firm that we are aware of receiving settlement offers from the Order in 2003, their final payments ranged from \$65,000 to \$140,000, not including the \$1,500 November 2002 payments, counselling or other support costs, or legal fees.
773. An eighth client (MF) accepted \$30,000 in 2003 on top of the \$50,000 he received in 2000, after disclosing additional abuse he experienced from another Brother. At the time, Brother Peter explained to MF’s support person that the differences between the two payments were due to the different processes involved, rather than the nature of the abuse – the 2000 legal mediation process was in full and final settlement, but the 2003 pastoral process did not have a final settlement or termination date. Brother Peter stated that the 2003 payment was made taking into consideration the assistance and ongoing support this client would need in the future. **[WITN0831056]**
774. It was on this basis that MF would receive a third settlement payment from the Order in 2019, in contrast to other claimants who sought further support from the Order on the same basis and were denied this, inconsistently – see below.
775. At around the same time as the March 2003 offers were made, a former Marylands student wrote to the Prime Minister, Rt Hon Helen Clark, about his experiences. While we have not seen this letter, we have seen the reply that Minister of Social Services and Employment Steve Maharey sent in April 2003. Mr Maharey said that he was sorry to hear of the man’s experiences at Marylands

WITN0831001 130

and was glad to hear that the Church was offering some compensation. Mr Maharey concluded his brief letter by writing that, if the man believed the State bore any responsibility for his experiences, he should contact his solicitor about filing a statement of claim with Child, Youth and Family. [WITN0831057] As noted below, to our knowledge, and in contrast to other placements, the State has refused to accept responsibility for any abuse suffered at Marylands, in any circumstances.

776. In each of Brother Peter's March 2003 offer letters, he said: "If you feel uncertain about accepting it, you should feel free to take separate legal advice." A number of those involved in the pastoral process, including those for whom we would later act in relation to other claims, instructed lawyers, particularly Grant Cameron and GCA Lawyers. We are aware that GCA Lawyers had a number of meetings with Brother Peter and lawyers from Saunders Robinson, and that the Order agreed to pay their "reasonable legal costs" when settling claims, so that the claimants would not have to pay these out of the payments.
777. The *Christchurch Press* later reported, in June 2007, that the average New Zealand settlement made by the Order by that time was \$67,850. We assume that this average did not count those cases – if there were any – where no settlement payment was made. We also assume that this average figure did not include legal fees, counselling or other support, or the November 2002 payments.
778. There were also later reports that the prosecution in the 2018 trial of Brother Moloney revealed that one of the witnesses in that trial had been paid \$317,000 by the Order. The defence claimed, also, that one of the pastoral payments to a witness included a Harley-Davidson motorcycle.¹¹ However, the \$317,000 payment at least is almost certainly a reference to a payment made by the Order to a survivor of abuse in Australia – the June 2007 *Christchurch Press* article reported that Australian payments averaged \$NZ125,000, and that some were as high as \$NZ388,000 including costs. We understand that the significant difference between Australian and New Zealand payments is due, at least in part,

¹¹ <https://www.newshub.co.nz/nznews/court-told-of-irregularities-in-spending-by-orders-head-2008060919>

to the bar to compensation for personal injury under the accident compensation legislation.

779. As with all settlement payments made by the Order, we have not been able to ascertain any cohesive rhyme or reason to the figures offered, which often seem to be plucked out of the air. The process is opaque and therefore difficult to challenge, although there has been some improvement in transparency over the past five years, as indicated below. The only thing that is clear over the 23 years of settlements we cover in this statement is that the financial outcome for claimants has been, consistently, significantly better when they have independent legal representation. This should not be the case.
780. Although more generous than the Order's later settlements would be, the pastoral process was not without its flaws. In 2003, a man who would later become one of our clients (MB) was sent a cheque for \$80,000 by the Order. MB, who was living in a hospice due to his severe disability, hid the cheque from his family. He then tried to cash it, but the family found out and their lawyer managed to dissuade the bank from accepting it. MB's family was unhappy with the Order sending the cheque directly to MB, as MB did not have capacity to accept the Order's offer. The family instructed GCA Lawyers, who negotiated an increased offer for MB of \$140,000. This was reported in the *Dominion Post* in November 2003. **[WITN0831058]**
781. Although Brother Peter initially predicted the list of Marylands survivors as reaching its end in late 2002, the Order continued to receive complaints, and Brother Peter continued to visit these survivors throughout 2003 as part of the pastoral process. We are not aware of any newsletters being sent to this second group, but Sir Rodney Gallen continued to be involved in assessing the claims.
782. In some cases, at least with the later 2003 tranche of claimants, the Order paid for psychological or psychiatric reports of the claimants. This was both to inform the level of quantum that might be paid, as well as the appropriate level and type of therapeutic treatment that would best meet that individual claimant's needs. These also served as a method to check the credibility of the new claimants'

allegations, following the publicity of the first tranche of payments and also following the apparent settlement by the Order of one or two fraudulent claims – one of which resulted in some form of prosecution.

783. On 22 November 2003, the *Dominion Post* reported that the St John of God Order had paid more than \$4 million to 56 men for abuse suffered at Marylands, and that a further 17 had received offers.
784. In late November 2003, the New Zealand Police, as part of Operation Authority, laid charges against five Brothers, relating to assaults at Marylands dating back to 1955: Brother McGrath, who had given a lengthy recorded police interview in May 2003; Raymond Garchow, Rodger Moloney, William Lebler and Brother GRO-B-1 Brothers Garchow, Moloney and Lebler were living in New South Wales, so the police applied to extradite them to New Zealand.
785. However, claimants who first met with, or contacted, Brother Peter in 2003 or 2004 were less fortunate than those from the 2002 group: the pastoral process was to stall in early 2004, despite assurances from Brother Peter throughout 2003 that the same procedure would be followed for the new tranche of claimants. While some of these claimants would be left with interim payments that the Order later decided, unilaterally, would become final and non-negotiable, most were left without any payments for over five years, aside from the \$1,500 November 2002 payment for some.
786. For example, in mid-January 2004, MJ accepted a \$65,000 offer made by the Order in December 2003 through his lawyers, but only on the strict basis that this would be “an interim pastoral payment subject to the further negotiations scheduled to take place with the Order next month”. As noted below, inconsistently, this interim payment ended up being the only payment he would receive from the Order, after it unilaterally cancelled the negotiation meeting.
787. The last payments and offers we are aware of in this pastoral process period were made in January 2004. It would be five years before any more payments were made, to our knowledge.

The pastoral process paused – February 2004

788. In February 2004, without warning, Brother Peter cancelled all meetings he had promised or planned to hold with Marylands claimants, on the advice of Carroll & O'Dea and/or of Detective Sergeant Earle Borrell, who was in charge of Operation Authority.
789. Information from the Order given to our firm and to other individuals and bodies over the years has not clarified whether this advice came from the police and Carroll & O'Dea. It seems that both gave similar advice to Brother Peter. It is also not clear what the advice was – whether it was for Brother Peter to stop meeting with claimants, to stop settling their claims in relation to Brother McGrath (and/or the other four Brothers, and/or any Brothers), or to stop supporting claimants through counselling and other means. The length of the 'pause' is also reported differently in multiple letters – it was initially treated as lasting until the depositions hearings had been completed, then the extraditions hearings, then Brother McGrath's trial, then finally once all five criminal matters had been resolved. Our best guess is that the advice to pause came from both Carroll & O'Dea and the police, but that the nature of the pause that was advised was changed over time. Ultimately, the 'pause' benefitted the Order and the criminal justice process, while significantly prejudicing the claimants – retraumatising them and wearing them down to the point where they would take any offer the Order ultimately made.
790. By way of largely identical letters dated 3 February 2004, Brother Peter wrote to the claimants explaining that due to the criminal charges against the five Brothers, he had been advised that he must stop meeting with any ex-students of Marylands, or with their families, because it could be seen to be interfering in the criminal justice process. He indicated that the criminal proceedings meant that "there may be a major court case taking place in New Zealand over the next few months". Brother Peter said that having to cease meeting with ex-students or their families was "regrettable and I know it will be hard for you and for me. Once these criminal charges had been dealt with fully, then I will be able to recommence my ongoing commitment to you in person." **[WITN0831059]**

WITN0831001 134

791. In February 2004, at the depositions hearing of Brother McGrath, Brother Peter was questioned extensively by the Queen's Counsel that the Order had funded to represent Brother McGrath, in relation to the negotiations and settlements that he had made to survivors. It was suggested that some witnesses may have been motivated by claims of compensation in giving their police statements. During this cross-examination, Brother Peter confirmed to the Court that no further action would be taken with the pastoral process pending the completion of the criminal trials.
792. For some claimants, their counselling and treatment was also abruptly cut off in early 2004. We do not know how they were told of this. For example, the treatment at the Ashburn Clinic that the Order was funding for **WITN0716**, noted at paragraph 762, abruptly came to an end at this time. This claimant had met with Brother Peter in August 2003, but the Order did not resolve his claim before the February 2004 pastoral pause. Without funding, this claimant had to leave the treatment centre, and he ended up back in prison within months.
793. This situation with the Ashburn Clinic treatment may have been the been linked to the high cost of the treatment involved. We know some claimants continued to receive counselling during this pastoral pause, either partially or fully funded by the Order. The Order also offered to consider arranging counselling for certain other clients who had been unable to meet with Brother Peter. **[WITN0831060]** Once again, the Order's approach to different claimants is inconsistent.
794. This pastoral pause continued for many years.

Cooper Legal involvement

795. In July 2004, our firm received our first instructions from a survivor, MC, to act in relation to the abuse he suffered at Marylands. MC was referred to us by his counsellor, Terry Featherstone, after he had been advised that Brother Peter would no longer be meeting survivors at that stage. As with most of our non-recent abuse claimants that were eligible for public funding, we agreed to represent MC on a legal aid basis, as we would do for nearly all of the other Marylands clients we represented over the next ten years. This funding decision

WITN0831001 135

was made was in spite of the considerably lower Legal Aid hourly rates than we could bill on a private basis, but at that stage there was no certainty of our legal costs being paid by the Order even if we were able to settle MC's claim.

796. In August 2004, we wrote to Brother Peter setting out MC's experiences in detail. In our letter, we sought compensation for MC, as well as an apology and counselling.
797. As noted above, MC made allegations against two Brothers who were both deceased and therefore not part of the criminal proceedings being brought against the other five Brothers. Despite this, the Order responded through Lee Robinson of Saunders Robinson, stating that the Order would not progress MC's claim until the criminal proceedings had run their course, although counselling support was offered. **[WITN0831061]**
798. From this time onwards, we contacted Saunders Robinson on a regular basis, expressing concern at the mounting delays and the impact it was having on MC and, later, other Marylands clients we acted for.
799. At some point, probably in 2004, the application to extradite William Lebler from Australia was refused due to his poor health and age, as well as the age of the allegations against him. We understand that his defence was funded by the Order. He was later filmed by a Sydney newspaper in 2013, attending an Alcoholics Anonymous meeting unaided and unsupervised.¹²
800. Also in around 2004, Brother **[GRO-B-1]** received a permanent stay of the charges laid against him. We understand that his defence was funded by the Order.
801. In November 2004, we first received instructions from a second Marylands claimant, Kerry Johnson, who has already given evidence to the Royal Commission. **[WITN0084001]** Mr Johnson originally contacted our office to pursue a claim against the Department of Social Welfare and the psychiatric hospitals, but we did not discover that he had a potential claim in relation to

¹² <https://www.smh.com.au/national/brother-accused-of-child-abuse-left-unsupervised-20130213-2edc4.html>

- Marylands until we were able to review his Social Welfare records in detail, several years later.
802. A third Marylands client (**WITN0716**) contacted us in November 2004, and a fourth (MI) in February 2005, both of whom were State Wards while they were at Marylands. The Marylands group continued to grow from this point, despite the Order refusing to progress the claims. Some of these clients had met Brother Peter in 2003 and had been affected by the pastoral process being paused. Many of these clients also made allegations about abuse in Social Welfare or hospital placements and had heard about our firm through the media or word of mouth.
803. In February 2005, the extradition of Brothers Garchow and Moloney was ordered; however, they lodged an appeal, arguing that the charges were too historic and that there was a possibility of collusion. We understand that their defence was funded by the Order. The appeal was heard in April 2005 and the decision was reserved.
804. In June 2005, Lee Robinson wrote to us again confirming that no negotiations could be entered into in relation to MC while the extraditions and any subsequent trials were in train, however the Order was happy to continue funding counselling for MC. [**WITN0831062**]
805. On 1 August 2005, Brother Peter wrote to MC care of this firm, advising that the Order "simply cannot continue to pay for counselling on an indefinite basis. Therefore the Order has reluctantly decided that these payments will not continue after 30 September 2005." [**WITN0831063**]
806. Brother Peter wrote letters like this to at least two other Marylands claimants that we have seen. Later in August 2005, we were contacted by the mother of another Marylands claimant, MD, who was upset that his counselling was about to be stopped and asked us to represent him in relation to a claim against the Order.
807. It was very distressing and retraumatising for claimants to find out that their counselling was being cut off completely, and that at the same time the Order would not be progressing their claims until all the remaining criminal trials were

WITN0831001 137

- over – which could, and ultimately would, be years away. Fortunately, the Order changed its mind and resumed funding counselling – at least in relation to some clients of this firm – after being sent strongly worded letters from claimants, their counsellors, support persons and family members, as well as from this firm.
808. Brother Peter concluded his 1 August 2005 letter: “Once the Police have finished all of their enquiries and the court cases are finished, I will again write to you and make an appointment to meet with you with a view to bringing closure to your complaint. [MC], as soon as I am able to meet with you, once the criminal matter is finished I will do so.” MC, who had severe intellectual disabilities, took these letters to mean that he would be meeting Brother Peter and then getting compensation in the very near future, and started purchasing items on credit.
809. In November 2005, Brother Peter wrote to AD via Brent Cherry, again promising to meet AD as soon as possible after Brother McGrath’s trial had ended. **[WITN0831064]** As noted below, Brother Peter’s New Zealand lawyers would later say that this promise made to AD and other clients had been based on the erroneous assumption that all trials would be heard together. **[WITN0831065]** This explanation is disingenuous: by November 2005 Brother Peter knew that Brother McGrath’s trial (set down for March 2006) would be held before any trials relating to Brothers Garchow and Moloney, who had outstanding extradition appeals at the time.
810. Brother McGrath’s trial took place in March 2006, and several of our clients gave evidence and prepared victim impact statements. A lengthy video interview with Brother McGrath was played during this hearing, in which he admitted that boys at Marylands were ruled by fear, bribed, and threatened with what would happen if they were to disclose the offending against them. He agreed that senior Brothers punished boys who complained of abuse, noting that he himself had taken no action when a boy complained to him of being abused by another Brother.
811. Brother McGrath pleaded guilty to one charge against him and not guilty on the rest. He was found guilty on 21 of those charges, relating to victims aged 7-15 at

the time. The abuse included a number of representative charges, two of which covered the entire time he was officially working at Marylands. The sexual assaults included touching, fondling, masturbation, and oral sex, but he was found not guilty of charges of sodomy. We understand that his defence was funded by the Order.

812. On 17 March 2006, the day after the McGrath verdict, Cooper Legal wrote to Saunders Robinson asking them to arrange for Brother Peter to meet with the firm's five Marylands clients in order to progress their claims as quickly as possible. We received a reply stating that the resolution process could not continue until **all** outstanding criminal proceedings, including the extradition appeals, had been concluded.
813. We responded to Saunders Robinson later in March 2006, providing copies of letters from Brother Peter to three of our clients assuring them that the claims could be continued after Brother McGrath's trial ended. However, the Order would not budge.
814. In April 2006, Brother McGrath was sentenced to five years' imprisonment. In his sentencing notes, Chisolm J noted that "the victim impact reports make distressing reading. They refer to anger, fear, anxiety, nightmares, low self-esteem, posttraumatic stress disorder and, in many cases, gross problems in later life."
815. In April 2006, extradition was refused for Brothers Garchow and Maloney, but the police appealed. The decision was reserved.
816. In August 2006, Saunders Robinson advised that one of our clients, **WITN0744**, had already received a pastoral payment in 2003, and that the Order would not be revisiting this. **WITN0744** had understood from Brother Peter that that payment was interim only, and that it would be revisited after he gave evidence in relation to Brother McGrath, who was convicted of charges relating to this client. He had not had legal representation in 2003 and had not signed any deed of settlement when accepting what he understood was an interim payment. It appears from Saunders Robinson that the Order considered the involvement of

Sir Rodney Gallen had provided sufficient legal protection for claimants. We had no choice but to close **WITN0744**'s Marylands file. **[WITN0831066]**

817. Throughout 2006, we exchanged a number of communications with Saunders Robinson as we attempted to progress our clients' claims. We noted our concern that our clients had decided not to file claims in court against the Order in good faith, on the understanding that the Order would continue to resolve them as they had before 2004. We advised that in light of the delays caused by the criminal proceedings, we were now considering filing our clients' claims in court to protect their legal position in terms of the Limitation Act 1950.
818. In light of the previous settlements through the pastoral process, which did not take into account technical legal defences like the Limitation Act and the bar to pursuing compensatory damages imposed by the ACC legislation, we had been reluctant to file proceedings against the Order. In addition, we represented the Marylands claimants on a legal aid basis, and we would have had difficulty obtaining funding to pursue litigation in court while there was a likelihood that, eventually, out-of-court settlement could be obtained.
819. However, due to the Order's considerable delays, failure to keep its promises and its refusals to agree to our suggestion that it provide an irrevocable undertaking as to limitation, which would protect our clients should the pastoral process not resume, we reluctantly prepared draft proceedings for two of our Marylands clients and sent them to Saunders Robinson in September 2006 to try and force the Order's hand. We started to prepare proceedings in relation to a third client as well, however the Order subsequently agreed to our proposal of a limitation undertaking.
820. In October 2006, extradition was finally ordered in relation to Brothers Garchow and Maloney. On arrival in New Zealand, they were granted bail.
821. On 23 January 2007, we received a letter from Brother Peter in relation to the five clients we had with Marylands claims. Brother Peter gave an irrevocable undertaking on behalf of the Order that time was effectively put on hold for the purposes of the Limitation Act, dating from the time the Order or its lawyers was

WITN0831001 140

notified of each claim, until such time as the pastoral process recommenced. Brother Peter assured us that this suspension would not affect any counselling the Order was currently funding for these clients, and that he was committed to meeting with Cooper Legal and/or our clients as soon as he was able, to try and resolve their claims. [WITN0831067]

Brother Timothy Graham – the ‘pause’ continues

822. In early 2007, as a result of health issues, Brother Peter was replaced by Brother Timothy Graham as Australasian Head of the Order. We understand that Brother Peter intended to maintain some oversight of the pastoral process notwithstanding his stepping down, and that he passed away in 2010.
823. As Brother Timothy continued Brother Peter's policy of not taking any steps to progress matters until the criminal trials were completed, the differences between the approaches of the two Heads would not become evident for over a year. However, his settlements would be considerably less generous than Brother Peter's, with limited or no room to negotiate, and without the significant pastoral support that Brother Peter promised and, in some cases, provided.
824. As far as we can recall, Brother Timothy and the Order's representatives also did not continue Brother Peter's approach of encouraging survivors to make police complaints. This may have been intentional.
825. A number of other changes took place in the Order's managing committee in the first half of 2007, including the election of five new leadership team members.
826. On 16 June 2007, articles were published in the *Dominion Post* and *Christchurch Press* reporting the resignation and whistleblowing of former nun and former chairwoman of the Order's Professional Standards Committee, Michelle Muvihill. Ms Mulvihill was reported as saying that there was a culture of sexual abuse and collusion within the Order, and that the Order had received allegations of sexual abuse against four of these five new leadership team members.
827. Other newspaper articles from around this time noted that the Order had settled 80 claims for a total of \$5.1 million, before it stopped keeping track of payments.

828. Having seen these articles, this office contacted Andrew Marsh of Saunders Robinson raising several concerns, especially regarding the suggestion we had seen that the Order might be shut down completely. We noted that we were once again considering filing proceedings in order to protect our clients' positions. Mr Marsh assured us that there was no truth to any suggestion of the Order being wound down and that the Order had put aside a lump sum to deal with outstanding claims against it.
829. We later received a letter from Lee Robinson from Saunders Robinson, asking to meet to discuss a possible resolution process for this firm' clients after the two remaining criminal proceedings were complete. In what would be the first indication to our firm of Brother Timothy's less generous approach, Mr Robinson noted in his letter that the Order was concerned at the extent of counselling currently being provided to certain claimants, pending the final resolution of their claims. **[WITN0831068]**
830. On 25 September 2007, Sonja Cooper met with Lee Robinson. Mr Robinson advised that the Order's managing committee had changed and that from now on, a mediated process based on *Te Houhanga Rongo – A Path to Healing* ("APTH") would be used for those claimants who did not want to take their claim through court. When Sonja Cooper raised concerns about the Order's approach to counselling for clients, Mr Robinson advised that the Order wanted everyone to have up-to-date counselling reports as to whether ongoing counselling in each case was recommended. When Sonja Cooper asked why the Order was unwilling to progress the complaints of clients who made no allegations against the Brothers facing criminal charges – such as MC, whose abusers were both dead – Mr Robinson said that the concern was that in their upcoming trials, Brother Moloney and/or Brother Garchow might allege that Michelle Mulvihill was prejudiced against them, because she just believed the complainants, and had treated them both as if they were already guilty before any trial, and any further settlements would give that argument force.
831. Following this meeting, we received a letter from Lee Robinson expanding on some of the matters that had been discussed. **[WITN0831069]** Mr Robinson

WITN0831001 142

estimated that the process to deal with the firm's clients' complaints could commence in around mid- to late-2008, following the conclusion of the criminal prosecutions. The proposed mediated procedure was based around one used by the Sisters of Nazareth in relation to claims against that Order. Mr Robinson enclosed a report from clinical psychologist Dr Freda Walker, commissioned by the Order to provide her opinion as to what constituted a reasonable level and/or amount of counselling for a person who had been sexually abused. Mr Robinson noted that, due to concerns that counselling may make matters worse for claimants, the Order had taken the view that the appropriateness of counselling should be reviewed every five or so counselling sessions. Mr Robinson also advised that the Order was insisting on psychiatric or psychological reports being carried out in relation to every claimant, because of concerns over fraudulent claims and to help identify the needs of each claimant. Finally, Mr Robinson wrote to query whether any Cooper Legal clients only alleged abuse against Brother McGrath, as their claims might now be able to be progressed following his convictions. While we had no claimants in this position at that time, this position is difficult to reconcile with Mr Robinson's earlier comments in relation to resolving MB's claim, or other claims for people whose abusers were not before the court, such as MA or Kerry Johnson.

832. In terms of our views of the approach used by the Sisters of Nazareth, we refer to the previous Witness Statement of Sonja Cooper dated 1 March 2021 **[WITN0094001]** relating to APTH as well as the conduct of the New Zealand National Office for Professional Standards ("NOPS"). With the exception of the St John of God claims, we understand that APTH remains the current redress process of the Catholic Church in New Zealand.
833. On 16 October 2007, we wrote back to Lee Robinson, discussing our concerns with the proposed process and querying why the Order had chosen not to utilise the existing APTH process. We advised that the Order's requirement that all claimants have psychiatric/psychological reports carried out before they could engage in the new process was an issue that could only be surmounted if the Order funded the reports, which it later agreed to do. We also raised concerns that the ongoing counselling in question had been provided to clients with

WITN0831001 143

intellectual disabilities and had since become a mechanism of support for them.

[WITN0831070]

834. No substantive response to our letter or the concerns we had raised was received until February 2008, when Sonja Cooper was asked to attend a meeting with Michael Salmon, the Director of the Professional Standards Office for the Australian Catholic Church. Mr Salmon confirmed that all Marylands complainants would now be dealt with under Australia's '*Towards Healing*' protocol, rather than the previous pastoral process or the existing APTH process.
835. In March 2008 and April 2008 there were a number of communications exchanged between Mr Salmon and this firm, where we sought clarification on aspects of the new pastoral process, in order to protect our clients. **[WITN0831071, WITN0831072 and WITN0831073]** We were advised that Saunders Robinson Brown would no longer be involved in resolving the claims, and that the first step for clients would be to send the Order a statement of complaint. Each client would then meet with John Jamieson, the former Commissioner for Police in New Zealand, who the Order (and other Catholic Orders) had instructed to investigate and then assess the allegations. We were concerned that our clients would have difficulty meeting, and disclosing abuse to, a former police commissioner, particularly in light of their trust issues and their own past offending. However, we were also concerned about the ongoing delays in the claims being resolved and the lack of other options available to our clients with claims against the Order, so we advised our clients to attend the meetings and we would review any issues afterwards.
836. In June 2008, Rodger William Moloney (aged 73) was convicted on seven charges (indecent assault and inducing an indecent act). He was acquitted on a number of more serious charges, including sodomy. Some charges relating to joint offending with another Brother, who had been acquitted of these charges, were stayed. The allegations ranged from 1971-1977, relating to 11 former Marylands students, five of whom had also given evidence against Brother McGrath. Again, several of our clients gave evidence. We understand that his

defence was funded by the Order. He was sentenced to two years and nine months in prison.

Towards Healing – the new pastoral process

837. After the Brother Moloney trial had concluded, the wheels finally began turning. We sent the Order detailed statements of complaint from our clients, who met with Mr Jamieson, along with a lawyer from our office and any family members or other support persons they wished to bring. The meetings were mostly focused on clarifying matters, rather than testing the allegations in an evidential way. These clients were subsequently given the opportunity to comment on Mr Jamieson's draft meeting notes, or to sign them if they agreed they were accurate, similarly to how a police statement might be confirmed.
838. All of our clients found the meetings with Mr Jamieson retraumatising, as did many of their support persons, who reported that the mental health of some clients deteriorated quickly after the meetings. This was even worse for those clients who had been waiting, in good faith, for years for the Order to consider their claims. Kerry Johnson left minutes into his meeting, damaging a door on the way out when he slammed it with force. Another client, RB, was too afraid of 'narking' to talk about the abuse in any detail. He collapsed shortly after the meeting and died a month later, of vasculitis, although we cannot say whether this was linked to the stress of the interview.
839. In July 2008, the New Zealand prosecutors entered a permanent stay of proceedings in relation to Raymond Garchow because he was too ill, as was one of the two complainants against him. We understand that his defence was funded by the Order. We are aware that he died in March 2011.
840. After the trials ended, there were renewed calls for a state inquiry into the abuse that took place in Marylands – in particular from the Male Survivors of Sexual Abuse Trust and also from a Community Care Leader at Wesleycare, who we understand wrote to MP Annette King to seek an inquiry in August 2008, with a particular focus on MA, who he was supporting. It would be a number of years before these calls were finally heard.

WITN0831001 145

841. We understand that following the hearings, GCA Lawyers also began progressing their claims against the Order. We do not know if these were new claims, or whether they only progressed those affected by the 2004 'pastoral pause'.
842. In August 2008, Saunders Robinson advised us that no 'top-ups' would be paid for any individuals who had accepted payments in 2003-2004, even if they were expressly on an interim basis. While we considered this to be a direct breach of the promises and assurances made by Brother Peter, we had to inform MJ that our hands were tied and his claim had to be closed, particularly as this coincided with significant issues with obtaining legal aid for non-recent abuse clients. There had been good grounds for assuming that his claim would be in a different position to the claim of the client we similarly had to close in August 2006, **WITN0744**.
843. These two claimants – neither of whom had signed a deed of full and final settlement or any similar document and who had expressly accepted the money on an interim basis, and one of whom had not had independent legal advice at the time – had been waiting for a final outcome since they had last met with Brother Peter in 2003. **WITN0744** was a witness against both Brother McGrath and Brother Moloney, at the urging of Brother Peter, and they were both convicted in relation to his evidence. He had expected that a further settlement offer would be made after his involvement in those trials.
844. As noted above, MJ had his Social Welfare claim closed at the same time as his Marylands claim, as a result of the 2008 legal aid difficulties we have addressed in other evidence. This was because his Social Welfare claim was largely about the total failure of the Department of Social Welfare to adequately supervise him as a State Ward in Marylands, during which time he suffered the abuse. This was not something that MSD considered sufficient grounds for compensation at that time.
845. For whatever reason, it appears that the Order took a different approach with claimants represented by GCA Lawyers - we are aware that it offered a 'top up'

to a claimant, later a client of this firm, in 2010 when GCA Lawyers were acting for him. The Order also offered exceptional 'top up' payments to two other clients of this firm in 2018 (**WITN0084**) and in 2019. We cannot identify any valid reason for this disparity of approach, which appears inconsistent and unfair.

846. We also had to close the file of a third client in 2008, MI, as he only made allegations of physical abuse against staff and Brothers (including one in 1976 who matched the description of Brother McGrath), as we were advised that *Towards Healing* would only consider allegations of sexual abuse. To our knowledge, this restriction still remains. It is incongruent with the position taken by other organisations to settling claims for non-sexual abuse, such as the Ministry of Social Development.
847. All three clients (MJ and MI, and a third client whose evidence is already before the Royal Commission) were left with a legal aid debt.

Towards Healing – investigation reports and settlements

848. Another client whose evidence is already before the Royal Commission started decompensating in mid-2008 after giving evidence in the two trials. He was reluctant to meet with John Jamieson to disclose the abuse yet again. We agreed with the Order that this meeting would not be necessary in his case, in light of the outcome of the criminal proceedings, and we sent a detailed report of his allegations instead along with a further copy of the detailed psychiatric assessment of this client that the Order had requested and funded in 2003 as part of the original pastoral process.
849. In December 2008, we met with Howard Harrison of Carroll & O'Dea, Brother Timothy, and Michael Salmon to discuss resolving the claims. The impact of the ACC bar on quantum, and our view that exemplary damages would be available in most cases, was one of the topics discussed. We also discussed counselling, and Brother Timothy advised that the Order was concerned that claimants might become overly dependent on counsellors.

850. Later that day, we all met with MA and then, separately, with MD and his family and support persons.
851. Shortly after this meeting, Howard Harrison forwarded us the then recent decision of the NSW Supreme Court in *Uttinger v The Trustees of the Hospitaller Order of St John of God Brothers* [2008] NSWSC 1354. Mr Uttinger had reported serious sexual, physical and psychological abuse by Brother McGrath and Brother Moloney at Marylands and now wanted to sue the Order and sue his 2001 solicitor for giving him negligent advice. The Order, represented by Carroll & O'Dea, successfully struck out Mr Uttinger's attempt to set aside the ex gratia payment the Order had made through the legal mediation process in May 2001, which had resulted in a signed deed. It appeared that the Order was emboldened by the judgment, and in particular the NSW Supreme Court's (brief) consideration of the ACC bar acting to prevent compensatory damages.
852. We received John Jamieson's reports after the meetings with the Order's representatives. The report for Kerry Johnson is already in evidence. **[WITN0084018]** These reports took a far more legal and evidential approach than we had anticipated. In hindsight, this might have been expected from someone with his police background and with the particular terms of reference the Order had given him, but we did not see those terms of reference in advance. Far from being survivor-centred or starting from a position of belief, as Brother Peter had done and as *Towards Heading* implied, the reports referred to the 'strict legal test' of the balance of probabilities and noted the difficulties any of the clients with intellectual disabilities would have in meeting this threshold.
853. Considerable weight was given in the report to the denials of named Brothers, or of other Brothers who were at Marylands at the same time as the complainant. **[WITN0831006]** Their recollections were considered in the reports to be more reliable than the complainants because of the complainants' ages at the time – even in circumstances where the Brothers had been named by the complainant and/or other complainants as alleged abusers themselves. The reports placed limited evidential weight on the damage demonstrated by the clients, and they

WITN0831001 148

also referred to other adverse life experiences as being a 'complicating factor' to being able to prove any complaints relating to Marylands.

854. The reports also did not recognise that the complainants did not have the same resources that the Order had in terms of being able to accurately name Brothers and staff. Indeed, it is not clear whether John Jamieson himself was provided with this information, as he relied on the vague recollections of the Brothers from that period that he was able to interview as to the names and descriptions of Brothers and staff, which were given too much weight in comparison to the recollections of the complainants. In any event, we have already noted above that the 'official' records the Order held about Brothers and staff appear to have been incomplete or inaccurate, at least on occasion.
855. It is not clear what access John Jamieson had, if any, to the trial records and witness statements, or to the information contained in the numerous reports of abuse made to the Order over the years. This is particularly problematic, given his reports referred to there being 'no corroborating evidence' on the basis of an absence of documentary evidence (which appears to have been in part because the records from Marylands had been destroyed) and of the denials from the Brothers.
856. It is helpful to look at some these issues in some detail, and a good example can be seen in the two reports relating to MD. **[WITN0831074]** and **[WITN0831075]** In the initial report, John Jamieson briefly summarised MD's allegations in an introduction, along with his specific terms of reference and the documents that Mr Jamieson was provided. Mr Jamieson reported that he "interviewed as many Brothers as he could locate", noting his view that accused Brothers "should have an opportunity to respond" to any allegation in which they are named. Those he spoke to included Brother McGrath, Brother Garchow (whose emphasis of the fact that someone must have helped MD make his written report appears to have been an attempt to discredit MD's allegations) and, in an addendum report, Prior Moloney.

857. Unsurprisingly, they all strenuously denied the allegations against them and any other Brothers, and they also disputed that Marylands was a physically abusive place. We have not seen any investigative reports where an accused Brother of the Order admits allegations against them. The report notes: "The denials of sexual abuse by Brothers Damian Kean and Ray Gashou (sic) appear to be sincere. It is very hard to make an assessment of the accuracy of MD's allegations due to his speech impediment and the fact that he is easily distracted when answering a question."
858. This comment also shows the difficulty of utilising a neurotypical investigative evidential process to cases like this. Eliciting a cohesive narrative from some individuals with intellectual disabilities often takes a very long time, requiring close understanding of that individual and their methods of communicating. This usually requires specific training and a close and longitudinal relationship with that person. Their inability to communicate in a certain manner, without significant support, should not be taken as any indication of the veracity of what they are reporting. The report makes no reference to the fact that MD was able to correctly name a large number of different Brothers from their photographs in his police interview, which should have added to his credibility and also demonstrated his ability to answer questions or provide information when appropriately assisted to do so.
859. John Jamieson's report noted that other allegations of sexual abuse were made by other pupils in relation to the same timeframe as when MD was a resident, and that Brother Moloney had recently been convicted of a number of charges that he denied. Apart from this, the report does not note that allegations had been made to the Order about the same Brothers that GRO
C named. Even then, it is difficult to recognise the Marylands environment in the Brothers' rose-tinted descriptions when compared with even what was revealed in the 2006 sentencing notes of Brother McGrath of a culture ruled by fear.
860. The report emphasised some potential inconsistencies between MD's statement and what the Brothers reported, including one accused Brother having officially left Marylands before MD arrived. MD was not asked to address these

inconsistencies, other than Mr Jamieson suggesting that our firm attempt to obtain medical records in relation to one incident (which unfortunately had been destroyed by that time).

861. As noted above, there appears to have been inconsistency at Marylands as to whether a Brother was known by their Christian name, surname or religious name. It appears that this may have confused MD, who made distinct allegations against headmasters named "Brother Flannagan" and a "Brother Delaney", when there in fact appears to have been only a single Brother Flannan Delaney. This may instead have been an error made by the police officer taking MD's statement, in light of MD's intellectual disability and speech impediment. In that regard, we note that MD was able to identify Brother Delaney and ten other Brothers he could name in photographs, but he never (mistakenly) identified any Brother in the photographs as being "Brother Flannagan". When MD's counsellor set out his allegations in a letter to Brother Peter in February 2004, he only referred to allegations against a "Brother Flannagan" and not a "Brother Delaney". The most likely conclusion is that MD's allegations against Brother Flannan Delaney has somehow been misconstrued along the way as being allegations against two separate Brothers, but John Jamieson's report construed this error – which we repeat, may not have been MD's error – as negatively impacting MD's credibility.
862. A survivor-focused processed would allow for any evidential issues to be worked through in a sensitive, unrushed way. It would also not focus overly on apparent evidential consistencies, especially if there might be a plausible alternative explanation that could be teased out with sufficient understanding. The report concluded that MD's complaints "do not reach the evidential standard but do leave some residual concern in that it cannot be said with absolute certainty that all of his complaints are without foundation".
863. On receiving John Jamieson's report, MD's family was angry with the unexpected approach of testing the veracity of MD's evidence in such a direct manner, and on the high evidential burden his report had placed on MD, which had not been made clear to them before the report was received. They wanted to approach the

media to expose the ongoing mistreatment of MD and his family by the Order in resolving his complaints.

864. Instead, we asked John Jamieson to meet with MD's counsellor. After this, Mr Jamieson prepared an addendum report noting MD's counsellor's comments that MD's disabilities meant that his narrative would not have everything in sequence, but that he had never doubted that MD had been sexually abused in Maryland and that his mixed-up sexualised behaviour was consistent with this. In the addendum report, Mr Jamieson wrote that the counsellor's "opinions should be considered when determining the outcome of this complaint".
865. While this was a small improvement, all investigative interviews should have been conducted with this understanding of the difficulties that some individuals with intellectual disabilities have in disclosing a narrative in a direct and cohesive way, rather than focusing on whether their allegations could be proved to the civil standard. Under *Towards Healing*, the investigations were required to have been carried out by someone with specialised experience with interviewing persons with intellectual or psychiatric disabilities. We had asked whether John Jamieson had such experience before agreeing to having our clients meet with him, but did not receive a clear answer.
866. In December 2008, we received our first offers of settlement from the Order. While our clients and their support persons were retraumatised by the John Jamieson meetings and angry about the approach taken in his reports, they were just as unhappy with the level of offers finally made by the Order. However, they were also worn down by the considerable length of time it had taken to get anything, and many were in dire financial straits. In addition, we had to advise them that we would not be able to get legal aid funding to pursue their claims through court, in light of the offers that had been made and the legal difficulties their claims would face, particularly given the significant restrictions on legal aid from early 2008 onwards which we have spoken about in other evidence.
867. While the Order was careful to state that in making its offers, it did not want to take advantage of the disability of our clients, particularly MA and MD, as well as

of MC's death, it is clear that it took the likely inability of these clients to give coherent unassisted evidence in standard civil court proceedings into account when determining quantum – notwithstanding the detailed police statements they had each made. As noted above, these three clients settled for considerably lower than any other claims we have settled, or than we have seen.

868. In MD's case, one of the reasons given for why his offer was low was because he had apparently made allegations against too many named Brothers to be credible.
869. In addition to not matching the quantum of Brother Peter's 2003 offers, the length of time these clients had been waiting for an outcome, and the significant impact of this delay on each of them, was not reflected in the amounts or apologies they were offered.
870. In the case of **WITN0716**, the settlement offer expressly took into account the fact that the Order had paid nearly \$30,000 in treatment costs and counselling, as well as the fact that Brother McGrath was found not guilty on some charges relating to this client. Similarly, in the case of MC, his counselling costs (nearly \$16,000) were taken into consideration, and the cost of his funeral was included in the final offer payment.
871. In contrast to the offers made prior to the pastoral pause, the offers were all initially inclusive of legal costs. This was despite our suggestion to the Order's lawyers that not paying legal costs was unusual in such cases, and that the legal costs could probably be reclaimed as a taxable expense. We are now aware that the Order was paying legal costs for other lawyers at around this time. Each of our client's legal costs were significantly higher than they would have been if not for the lengthy pastoral pause and the Order's changes of position. We were ultimately able to negotiate small increases for all the offers to account, at least partially, for the legal aid debt that each client would need to repay.
872. Each client was made to sign a lengthy and complicated deed of settlement, which included a clause gagging the client from disclosing the terms of

settlement. These settlements concluded in 2009 and, as with later settlements, each client also received a letter of apology from Brother Timothy.

2010 onwards

873. Following these settlements, Carroll & O'Dea referred a client to us in August 2010 directly. As detailed above, this client, HA, had been a victim of Brother McGrath at Hebron House, and had attempted to resolve his claim directly with the Order without legal representation, but he was not satisfied with the recommendation made by John Jamieson. This was our first Hebron client, and the last of our St John of God clients with a (problematic) report by John Jamieson. As noted above, HA's claim settled in 2011 for \$56,000, including legal costs.
874. In 2012, Brother McGrath was convicted on a number of charges in relation to abuse carried out throughout his time at Kendall Grange, New South Wales, and he was again sentenced to imprisonment.
875. In 2013, the Australian Royal Commission into Institutional Responses to Child Sexual Abuse ("the Australian Royal Commission") was established. As we understand it, the Order was originally included in that Inquiry in relation to its Australian activities, but this had to be abandoned when Brother McGrath was arrested on further charges relating to Kendall Grange (along with an Australian Brother of the Order, **GRO-B**). Nonetheless, we understand that both the actual and the anticipated scrutiny of the Order over this period created considerable pressure to ensure that any settlements and settlement processes were seen to be independent and fair. We certainly saw an increase in settlement levels from this time.
876. This improved approach was first seen in the case of MG, a severely intellectually disabled Maryland claimant who approached the New Zealand Catholic Church in 2014. He met with a representative of NOPS in September 2014 then disclosed his experiences a second time to a NOPS investigator – not John Jamieson, who had retired by this time – in November 2014, which was turned into a written statement for him to sign. It seems that neither the Head of NOPS nor the

WITN0831001 154

Investigator understood that Marylands claims were handled under the Australian *Towards Healing* process, as MG then had to meet with Brother Timothy and Michael Salmon in April 2015 to disclose his experiences a third time. We pause to note how distressing and confusing it was for this man to have to disclose his abusive experiences to three groups of strangers.

877. MG contacted us through his advocate in May 2015 after the Order told him that it would pay reasonable legal fees for any independent legal representation that he needed in relation to his allegations. The Order subsequently confirmed this to us, so we did not need to seek public funding. We understand that the Order's new and refreshing approach of encouraging and funding this independent legal advice was a direct result of the scrutiny of the Australian Royal Commission.
878. Although the Order originally offered to settle MG's claim for a sum that included our legal costs, we finally reached a negotiated settlement of \$80,000 with the payment of MG's reasonable legal fees on top of this amount, along with a small additional fee for MG's advocate.
879. When discussing the level of settlement, which was less than we had proposed, the Order's lawyers noted the difficulties MG would have in giving evidence in court if he had to, as well as the limitation hurdles that he would face. These difficulties, as well as causation, the ACC bar, and concerns at the late disclosure of abuse, are consistently referenced when the Order makes offers, as a sort of 'expectation management'. While we understand this approach from a legal perspective, making repeated reference to legal difficulties and technical defences sits uneasily within a pastoral process. As we previously indicated, we cannot say whether, or to what extent, these legal issues are taken into account by the Order when determining quantum. **[WITN0831076]**
880. For our firm's clients from 2015 onwards, the Order has continued to agree, in advance, to pay our reasonable legal costs. We consider this to be a degree of recognition of the value our firm adds to their pastoral process, and respect for the role that our firm plays in advocating better outcomes for clients with legitimate claims and, where appropriate, in managing client expectations.

WITN0831001 155

881. In a similar vein, our clients are now no longer required to meet with representatives of the Order in every case, or provide signed statements, before settlement will be considered. The option remains for them to meet with the Order as part of the pastoral process, before or after settlement of their claim, but it is no longer an evidential requirement mandated in each case. The Order doesn't require investigators to meet our clients and prepare reports – settlement offers are made on the basis of the allegations our firm puts forward to the Order, along with records or other information we can provide that support the claim.
882. We have had difficulties in obtaining records for numbers of our clients from the Order, as many have been lost or destroyed – either intentionally, for instance through scheduled data destruction after a certain period, or accidentally, through being destroyed in the Christchurch earthquakes. In one instance, we were advised that a client's records had been destroyed, but they were later sent to us after we had already settled that client's claim against the Order.
883. In many of the Hebron cases, Brother McGrath's involvement was informal, so in some cases involving voluntary family placements or his abuse of 'street kids', there were simply no records kept. The lack of records has not prevented us from settling claims in relation to Hebron, but we have had to find other sources that will corroborate a client's involvement – most commonly through Social Welfare records, but sometimes Corrections records or counselling records referring to a client's involvement with Hebron, or their disclosure of abuse that occurred there, or a clearly documented and unexplained change in behaviour from a date that matches their involvement with Brother McGrath.
884. In September 2016, we were instructed by our second client alleging abuse from Brother McGrath at Hebron, HB. Since then, we have continued to receive instructions from clients alleging abuse at Hebron, as well as several further Marylands clients. We have detailed the settlement process and outcomes for these clients individually, above.
885. In November 2017, having been extradited to New South Wales, Brother McGrath was found guilty of a number of additional sexual assaults against 12

boys at Kendall Grange. These charges included anal rape, including one incident when Brother McGrath rubbed a boy's face in his own vomit after Brother McGrath had forced him to perform oral sex on him. This offence is reminiscent of some of the Hebron offending described above. In February 2018, Brother McGrath was sentenced to 33 years' imprisonment.

886. As noted in Kerry Johnson's evidence, in 2018 we managed to negotiate an additional \$25,000 payment with the Order for him, as a top-up to the \$28,500 settlement that we had negotiated for him in 2009. This was partly on the basis of a report from his counsellor setting out the current impact of the abuse, but also because we had identified that the 2009 settlements were considerably out of step with other settlements made by the Order. Unlike the first payment, our legal costs were paid separately from this second payment.
887. As noted above, in 2019, we also managed to negotiate an additional \$35,000 payment with the Order for MF, who had already received \$81,500 from previous settlements.
888. In December 2019, Brother McGrath faced even more charges in relation to Kendall Grange, and was again convicted and sentenced to a lengthy period of imprisonment.
889. In December 2019, the Order's lawyers finally agreed to remove the confidentiality clause from its settlement deeds.
890. In 2020, we settled a Marylands claim for ME, who received \$80,000 and a letter of apology. Legal costs were paid separately.
891. In comparison with other organisations our firm litigates against, we have a good relationship with the lawyers for the Order, particularly Howard Harrison. We trust them not to rely unduly on barriers to settlement, and they trust us to carry out due diligence into our clients' allegations and to advise our clients appropriately as to settlements. Claims are resolved promptly, and payments are now, mostly, relatively consistent. We hope that this can continue to be the case after the scrutiny of the Australian and New Zealand Royal Commissions has been lifted.

WITN0831001 157

892. We hope that the Order will review this statement and, in particular, our discussion of its different treatment of some of our clients set out above. We invite the Order to contact us to discuss whether it would be willing to revisit the claims of any of the Cooper Legal clients it agrees were treated unfairly in comparison with others, particularly those claims that were settled or closed before 2019, and to provide some clarity over the principles and process it uses to determine settlement levels.
893. We are grateful for the opportunity to provide this information to the Royal Commission, and we are happy to answer any queries.

Statement of Truth

This Statement is true to the best of our knowledge and belief and was made by me knowing that it may be used as evidence by the Royal Commission of Inquiry into Abuse in Care.

Signed

GRO-C

Sonja Cooper

Dated: 08.10.2021

Signed

GRO-C

Sam Benton

Dated: 8 October 2021

Cooper Legal
Barristers and Solicitors
Level 4, Red Cross House
69 Molesworth Street
PO Box 12063
Thorndon
Wellington 6144

Phone: (04) 499 9025
Email: sonja@smcooperlaw.co.nz
