

2 September 1998

Partner
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Our reference
RAJ/ROMA5455-001

Professor Richard Ball
Carelink
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Dear Professor Ball

EMMA FOSTER

As you would know, Emma Foster's compensation claim has now been considered by the Compensation Panel. The purpose of this letter is to address some of the issues raised in your letter of 5 May 1998 to Bishop Hart. I am aware that Bishop Hart has already written to you in relation to the issues that you raised.

The following is an extract from a letter I have written to Bishop Hart:

"I have read a number of medical reports and other material. I might say that although I have now been dealing with these issues for a number of years, this is one of the most horrendous cases that I have seen, in the sense of what alleged sexual abuse can do to a young and obviously fragile child.

Contact between the Archdiocese and the Fosters began in 1996, and counselling and medical fees were paid through Helen Last's office.

The case moved slowly into and through the Archdiocese's system, beginning with contact with Carelink and Peter O'Callaghan last year, and moving through to compensation only now. Mr and Mrs Foster do, I am sure, feel frustrated by our requirements that they comply with our procedures. Nevertheless, I believe that our procedures have been effective in providing important assistance and support to Emma and her parents, in a structural framework, while being mindful of the potential legal issues.



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While the level of compensation recommended by the Compensation Panel is of course a matter for it, I venture to say that in this case, I entirely concur with their recommendation. This is plainly a situation where special efforts are needed to try and solve a horrendous problem.

My involvement with Emma Foster's case began in early 1997, in relation to issues concerning Carelink. The Fosters were seeking reimbursement for large amounts of money, but refused to allow Professor Ball to conduct any form of assessment of the case, in order to determine the reasonableness of amounts claimed. As you may recall, the Fosters initially took the position that they would not speak to Professor Ball, and then agreed that even if Medicare was available to cover some of their expenses, they should not be required to claim on Medicare but rather, should insist the Archdiocese pay the whole amount.

We resisted this. The position put to the Fosters was that:

- 1 there was no need for Emma to meet directly with Professor Ball and Sue Sharkey, providing a sufficient report was provided to Carelink. (You put this position to them in your letter to Mr Foster dated 3 April 1997);
- 2 medical expenses should be claimed on Medicare, and if there was any gap, the gap would be met by Carelink;
- 3 private medical expenses should be claimed on their private health insurance. Once again, any gap would be met by Carelink; and
- 4 psychological and other invoices, that were not covered by Medicare or private health insurance, would be reimbursed by Carelink.

Points 2-4 were made in your letter to Mr and Mrs Foster of 24 June 1997, although I note that as we were waiting to hear from the Health Insurance Commission, we agreed to pay medical expenses that were covered by Medicare, on the basis that they would be reimbursed. I do not know if reimbursement was ever sought.

In September 1997, and having finally received the Health Insurance Commission's approval of the Carelink processes, I drafted a letter for



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you to send to the Fosters to respond to their concerns about the future. Your letter to them is dated 16 October 1997 and read in part as follows:

"For the duration of the operation of Carelink, medical, psychological and related professional care will continue to be provided to your daughter through Carelink in relation to the abuse of which she complains. This support is of course subject to Carelink's ordinary requirements, including an annual review of the progress towards recovery, and subject to any finding by the Independent Commissioner that the provision of further support would be inappropriate.

If Carelink is disbanded at any future time, appropriate alternative arrangements will be made.

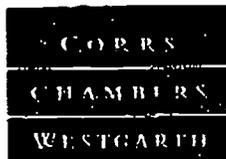
In light of the advice received from the Health Insurance Commission referred to above and in the enclosed correspondence, claims should of course continue to be made on Medicare where this is appropriate."

Since then, Peter O'Callaghan finalised his enquiries and, in a report to the Compensation Panel dated 29 April 1998, concluded that Emma Foster was the victim of sexual abuse by Father O'Donnell. He concluded that the abuse took place while Emma was a student at Sacred Heart Primary School in Oakleigh and O'Donnell was the local parish priest.

Despite the volume of medical material, details of the abuse itself are sketchy. It is known that Emma remembers O'Donnell taking her to a room in a school hall marked "shower", that "O'Donnell would sit her on his knee and hug her and that awful things used to happen in there". It is suggested that O'Donnell may have drugged Emma with Coca Cola laced with alcohol. In a conversation with a policeman, subsequently conveyed to Peter O'Callaghan, Emma suggested that she had been fondled, but not penetrated.

Emma, who is presently 16, has engaged in repeated self destructive behaviour, including anorexia, bulimia, repeated suicide attempts, drug abuse and most recently abuse of heroin, to which she may be addicted.

On 5 May 1998, Professor Ball wrote to you, at the request of Mr and Mrs Foster. That letter made the following points:



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- 1 this is a complicated case, in which Carelink has had no direct contact or dealings with Emma herself.
- 2 Professor Ball and Sue Sharkey have seen Mr and Mrs Foster on a few occasions;
- 3 the letter then summarised Emma's medical/psychological/psychiatric condition:
- 4 the letter said that "all of these problems ... have had a major damaging effect on Emma's relationships with her parents, with her siblings, and with her peers. It has been massively disrupting to her education, and the family has certainly been exposed to an enormous degree of stress. The costs have been very great, and are probably the greatest that Carelink has yet had to bear, and certainly as yet there is no end in sight ...":

the letter continued:

"We have been asked to write to you by the parents because as yet there is no end in sight, and these problems may continue, if not indefinitely, at least for a very long time. This has consequences both with regard to ongoing education costs, because of the damage and disruption to the schooling; hospitalisation and related costs, and in the light of the new development of narcotic abuse, the problems consequential upon that, and the possible need for detoxication admission and related aspects of that management.";

the letter continued:

"The costs are likely to be major, and we are unclear whether these should be a direct charge to Carelink, or whether they should be handled in some other way. If they are not strictly medical or psychological, and also if and when Carelink no longer exists, should special arrangements be made for that situation? An additional aspect is that related to help which the family may need to deal with these problems. We presume that where direct counselling is necessary then this could be a charge against Carelink, but again, it may have long term implications."



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Among the material enclosed with Carelink's letter of 5 May, is the transcript of an interview between Richard Ball, Sue Sharkey and Anthony and Chris Foster on 12 March 1998. It was obviously this interview that prompted the 5 May letter. In the interview, Mr and Mrs Foster expressed a number of concerns and complaints, but having reviewed that transcript a number of times, it remains unclear to me precisely what it was that the Fosters were seeking. I think that the best summary appears from the following extracts:

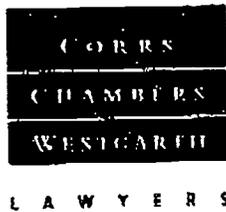
"Richard Ball:

Peter's brief is very specific, in the sense that he is required to assess and determine whether or not abuse occurred. Then, having determined that, his role finishes in the ordinary course of events, except that he refers people here for ongoing assessment, ongoing care, or the care to be arranged, and asks us to do a report for the Compensation Panel. And the sort of package developed, as we understand it, specifically relates to the Compensation Panel and the figure of \$50,000. Now what we're saying is that if you want us to, we can get whatever information Peter has, if we get appropriate details from Schwarz [Emma's treating psychiatrist] and ? about the current situation. Then we can make a case on your behalf for additional help. Alternatively, we can simply say to Peter, look you do it, because you've got it all, we haven't. Now, the fact of the matter is, Peter is not a clinician, he's a lawyer, so it would probably be better done by a clinician, if we had the information. As far as the current state of affairs is concerned, what do they advise, the people who are looking after her now? What do they want to do?

Anthony Foster:

Well everything with Emma has been a response to where she is at the time, because their ground is shifting so much all the time, and there might be some very general overall strategy, but apart from that, it is extremely difficult to plan anything, and if we have to work within a system which takes time doing things, she may be dead before it's done.

Richard Ball:



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What do you want us to do? Or what do you want them to do?

Christine Foster:

Just ongoing care. She sees the psychiatrist once a week and the paediatrician once a fortnight.

Richard Ball:

But that's already happening, so what else do you want them to do? What do you want us to do?

Anthony Foster:

We want to be ready for what may need to happen. As I indicated earlier, Emma may need some sort of detox. Now if that happens, it would happen in a matter of days or a week. Suddenly she might need to go to Warburton for instance, which is one place. It's a \$10,000 figure for a five or six week course. We're not capable of that. We need to know that the Church is willing to stand up for what has happened and be willing to fund whatever is required at any point in time at very short notice, because without that, she could be gone. Now the Church isn't, and bigger organisations aren't good at that, but if they're not good at that, they don't develop a strategy before, then they're going to be looking down the face of it at the end, and all the publicity that's going to happen around that as time goes on. So they have come face to face with it now before it happens, and help us with lots of ongoing care, and really, what it is an open cheque book, to make sure that Emma has the best possible care. And we may not be able to pay you. Now we have in the past put funds into new schools, new programs, whatever we can for Emma, but we're running out, and we need the Church to say we will look after her, no restrictions. We accept that the problem is there, and that the problem was triggered by what was done to her by a Catholic priest.

Richard Ball:

All right, if we have adequate information, we would be very happy to make such an approach on your behalf to the Church.



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Anthony Foster:

Well I don't think I've got a problem with Peter O'Callaghan passing on whatever information he has to you. If it's going to help Emma, I don't care.

Richard Ball:

But the important this is you see, how up-to-date is that, how thorough is the information?

Anthony Foster:

Sure, but it's a basis and we will ... having heard the problems with Michael Schwarz, we will now attempt to facilitate that contact. And that will hopefully then bring it up-to-date. You can also talk to Emma's teachers, we can put you in contact with the school, they have good ongoing day-to-day contact, they have a counsellor at the school, so you can get that contact.

Richard Ball:

Well what we would basically need to be sure is that we have a thorough report from Michael Schwarz or whoever, and that if that exists, that we have an updated report as of now, about the heroin and whatever else is happening, so that we can say that these are the current problems, socially, educationally, medically, psychiatrically, etc., it's disaster mode and anything can happen at any time. In that context, are you prepared to guarantee that finding would be appropriate? We're happy to do that.

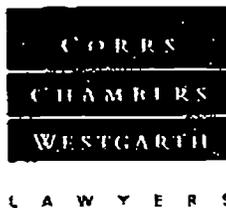
Anthony Foster:

Well that's where we need to get"

Later in the conversation, the following took place:

"Christine Foster:

What do you think of the chances of the lawyers or the Archbishop ...



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Sue Sharkey:

Well as you say this part of her care isn't it? And in terms of what you're talking about detox, I mean that's hospitalisation and so forth.

Anthony Foster:

They have to understand - we have to get them to the point of understanding that this is a disaster situation. This is not a person who's gone through adolescence and gone through early adulthood and maybe is a bit more stable, which is how some others are that you see no doubt and you're trying to improve their life. We're actually trying to save her life here".

By a letter dated 25 June 1998, you responded to Richard Ball acknowledging his letter of 5 May 1998 and continuing:

"We are happy that all appropriate costs be charged against Carelink. Naturally, if there are matters involved which are psychiatric in nature and can be covered by Medicare then obviously we would prefer that this be done".

Professor Ball responded to Carelink on 8 July:

"I believe it would be appropriate to discuss with you what the relevant costs to be charged against Carelink will include, and also the nature of any correspondence that should be forwarded to her parents".

This is where matters stood when the matter came before the Compensation Panel."

In my letter to the Vicar General, I then noted that as Emma was only 16, there were legal complications associated with her accepting the Compensation Panel's offer. To deal with these complications, what is proposed is that if she accepts the compensation offer, the money will be placed into a trust which will be jointly administered by Mr and Mrs Foster and by the Archdiocese.

Enclosed for your information, and on a confidential basis, are copies of the Compensation Panel's recommendation to the Archbishop, and of my letter of



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offer. As you will see, the matters that were raised by Mr and Mrs Foster in their discussion with you and Sue Sharkey in March have been addressed, in the sense that they have now been asked by you, by David Habersberger and by me what it is that they might want other than continuing assistance through Carelink and an ex gratia compensation payment.

In your letter to the Vicar General of 8 July 1998, you said that it would be appropriate to discuss what the relevant costs that would be charged against Carelink will include, and the nature of any correspondence that should be forwarded to Mr and Mrs Foster. In relation to the second issue, I would hope that the enclosed copy correspondence will suffice. In relation to the costs to be charged against Carelink, I presume that what you had in mind, in particular, was the issue of urgent detoxification at a facility such as Warburton, as raised by Anthony Foster in March.

I have discussed this with the Vicar General who agrees that in all of the circumstances of this difficult case, there should be some flexibility in terms of what is paid for. It is important that we continue to insist that there be regular, and presumably annual, appraisals by you of Emma's progress and of the reasonableness of the bills being submitted to Carelink for payment. In relation to any issues such as urgent detoxification at Warburton, the Vicar General and I consider that it would be appropriate for such costs to be met, providing that you are satisfied that the treatment is necessary and appropriate, either from your own investigations or based on the advice or report of a medical practitioner that is acceptable to you. In other words, we consider that unless you disagree, we can continue to follow the previous practices in relation to the Fosters, namely that you not insist on seeing Emma personally, providing you receive satisfactory and sufficient reports from her treating physicians.

Finally, I am not sure whether any offer of counselling through Carelink has been made to Mr and Mrs Foster. If it has not, I would seek your comments as to whether the making of such an offer to them would be an appropriate means of providing this family with further support.

With kind regards

Richard Leder

Copy: Most Rev. D J Hart, DD VG
Auxiliary Bishop