Deacons Graham & James Brisbane

M E M O R A N D U M

To: **Sisters of Mercy, Rockhampton**

From: **Geoff Hancock/Mark Boge**

Date: **6 February 2014**

Subject: **Neerkol ASG - Settlement Mechanism**
61001897

Advancing the compensation discussions

1. From the point of view of RSOM and the Diocese, there are three steps on the path to settlement:

I. Obtaining information about the claimants
II. Assessing that information
III. An offer or offers of settlement

We doubt Mr Morrison would disagree with this. His proposal of 19.2.98 pretty much follows this pattern. He provides (limited) information about (some of) the claimants. He suggests that panels of psychiatrists assess the seriousness of the residents' ailments and that panels of lawyers then assess compensation.

The differences between us, then, will be in the detail of what is to be done under these three headings.

2. Our view is that until Step I is completed to our satisfaction (and that of Swanwick Murray & Roche, for the Diocese), it is not possible to finalise the details of Steps II and III. Without adequate information about each of the 65 claimants:

X we are unable to decide which of them, if any, ought to be examined by a psychiatrist or other medical specialist
X we could not assess the strength of the causal link between their experiences at Neerkol and the disadvantages and conditions of which they now complain
X we could not advise RSOM with any confidence about the amounts of compensation the claimants might be awarded in court (leaving aside difficulties of law and proof in the way of the claimants, which are discounting factors); and
X we could not confidently advise RSOM on the sort of offer or offers it ought to make.

The information we have about the claimants at present is insufficient to allow us to formulate a settlement proposal for all 65 claimants. We have been given information about only 36 of them and one of those 36 did not attend Neerkol. We have so little information about the other 35 that any offer made to them would be completely arbitrary and hardly likely to be acceptable.

Step I

3. Step I, then, must involve obtaining more information about the claimants than we have yet been given. The aim of Step I would be to gather as much information about the claimants as one might expect to obtain in the lead-up to a trial. Just how this might be done quickly and informally will have to be discussed with NASG's lawyers. The simplest way would be for each claimant to answer a questionnaire, prepared by us, about their experiences at Neerkol, their medical history since leaving Neerkol and about significant events in their life since then. The questionnaire will probably be seen as intrusive (for instance, it would be relevant to know of any criminal history of claimants) and as a topic for debate with NASG's lawyers.

Also desirable, but perhaps unacceptable to NASG's lawyers, would be the ability to interview claimants (in the presence of their lawyers) to clarify answers to the questionnaire.

Step II

4. Possessed of the maximum amount of information practically obtainable about the claimants, we can begin to assess the approximate worth of their claims. In some cases, we might need medical evidence in order to do so.

We see no purpose in agreeing, at this stage, to the appointment of a panel of psychiatrists to assess the claims. We know too little about the claimants, about their life histories, to justify agreeing to that. The cost of three specialists, the difficulty of assembling them for an extended period and the problem of defining the authority of their conclusions are other reasons not to be attracted to Mr Morrison's suggestion.

Similarly, we see no point in Mr Morrison's suggestion for the appointment of a "legal assessment panel". Again, there are the problems of cost, delay and whether the panel's decisions should be accepted as conclusive. Negotiations between our firm and Swanwick Murray & Roche, on the one hand, and Mr Morrison's firm, on the other, will readily establish the outer limits of acceptable compensation. Adding the opinions of other lawyers is unlikely to accelerate or assist the negotiations.

5. Our assessments of the worth of individual claims are more likely to be expressed as lying within a range than as a reasonably specific dollar sum because, we suspect, we will end up with less information about the claimants that might be received by the time of a trial.

Step III

6. When it comes to framing an offer, we will have to consider whether to express the offer as:

(a) an offer of a global sum to satisfy all 65 claims (and others that emerge) without attempting to allocate specific amounts to individual claimants;

(b) a series of specific sums to be paid to each of the claimants; or

(c) a series of categories attracting common levels of compensation.

7. A global offer to NASG will be the sum of our estimates of the worth of the individual claims, bearing in mind:

X Mr Shaw's view of the worth of these claims (or, at least, those he feels involve the Diocese)
X agreement being reached with the Diocese and CCI about respective contributions
X discounting for problems the claimants face (such as their being out of time to sue for compensation).

A global offer leaves open the question of how the total is to be allocated fairly between the claimants. If Mr Morrison wishes to undertake that task without our assistance, that is fine. From a legal point of view, if RSOM and the Diocese obtain a release from all claimants in exchange for paying a sum to Mr Morrison's trust account, that is perfectly acceptable.

We doubt, however, that such a global offer is feasible, because one of the conditions attaching to it will have to be that all claimants, collectively, are willing to extinguish their claims against RSOM and the Diocese in return for payment of the lump sum. True, Mr Morrison has indicated the lump sum he says would settle the claims. We are not confident, however, that the 65 claimants he represents have already agreed upon a formula for division of that lump sum. We'll find out whether this is so. If it is not so, then the offer will not be able to be accepted and the negotiations will then have to be on the second or third bases mentioned earlier.

8. In practice, there may not be much difference between these two bases. The first of them - a separate offer to each claimant - carries the risk of divisiveness and consequent delay, as claimants say we have wrongly assessed them in relation to others and, possibly, bicker amongst themselves and with Mr Morrison. That risk is minimised by reducing the number of different amounts offered to the claimants.

Reducing the number of amounts offered as far as possible leads us to the third basis, which is akin to the Christian Brothers model: a few categories of claimant are established according to acceptable criteria (sexual abuse and non-sexual abuse, for instance) and pre-set levels of compensation are attached to each category.

9. In our opinion, deciding which way to structure an offer or offers and, if the second or third method be chosen, the details of that method, cannot be done now. It cannot sensibly be done before Steps I and II are completed.

For instance, we cannot sensibly discuss a Christian Brothers model with Mr Morrison without touching on what the categories might be and what compensation levels might attach to those categories. It may well be that only two categories emerge: sexual abuse and non-sexual abuse. It would not be desirable to have more than a few categories, as this increases the potential for claimants to argue about the class in which they should be placed, but the information we obtain in Step I may suggest others.

Similarly, it would be difficult to set compensation levels now, before Step I is completed, unless they were set at quite conservative levels (likely to be unacceptable to the Group). While one might use Queensland's criminal compensation system as a basis for setting the level of compensation for sexual abuse (and allowing for discounting), selecting a single figure for victims of non-sexual abuse at this stage can only be a guess.

10. There is a need to consider what conditions should attach to the offer eventually made. From the point of view of RSOM and the Diocese, these can be identified now, but there is no point taking them up with Mr Morrison immediately. The main condition is that the claimants (or those with whom agreement is reached) release RSOM and the Diocese from all liability arising from their allegations. As we have discussed at earlier times, it will be prudent to ensure the extinguishment of compensation claims, even against the State and its agencies, in order to avoid claimants suing the State for compensation after settling with RSOM and the State's using the court processes to seek a contribution from RSOM to any compensation the State is ordered to pay.

Confidentiality of the settlement(s) is another possible condition. Members of NASG are likely to have differing views about accepting this. From RSOM's point of view, we think confidentiality should be offered to NASG members as a means of protecting their privacy rather than RSOM's reputation. If some choose not to accept it, fine. We do not

think RSOM can practically ensure the secrecy of any compromise. Details are bound to leak out. If this results in the emergence of claimants as yet unknown, then, at least, we will have developed a model for dealing with them.

11. We haven't overlooked RSOM's commitment to provision of ongoing financial assistance, directly or indirectly, to former residents of Neerkol. We see that being expressed, when the actual compensation offer is made, as more of a moral than a legal commitment. As the level of assistance required, and which RSOM can provide, will be uncertain, the commitment can only be expressed in general terms - as a commitment to do what RSOM is able to do.

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