

**COPY**

L A W Y E R S

14 August 1998

**Partner**  
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**Our reference**  
RAL/ROMA5455-001

Most Rev. D J Hart, DD VG  
Auxiliary Bishop  
Catholic Diocesan Centre  
P O Box 146  
EAST MELBOURNE VIC 3002

My Lord

**EMMA FOSTER**

**Compensation Panel Recommendation**

Emma Foster's compensation application was heard by the Panel on 11 August 1998. David Habersberger tells me that the Panel has recommended that she be offered the maximum available compensation, namely \$50,000. (The Panel's written recommendation will be available early next week when David's secretary returns from leave).

As you are aware, Emma Foster's case has been a difficult one. Peter O'Callaghan, Richard Ball, Sue Sharkey, you and me have all spent a lot of time on it.

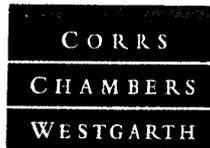
**Background**

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

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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.

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.

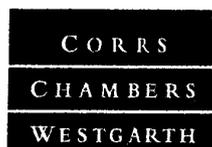
My involvement with Emma Foster's case began in early 1997, in relation to issues concerning Carelink. The Fosters were seeking reimbursement for large amounts of money, but refused to allow Professor Ball to conduct any form of assessment of the case, in order to determine the reasonableness of amounts 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 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:



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“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.”

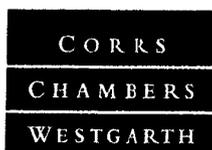
Since then, Peter O’Callaghan finalised his enquiries and, in a report to the Compensation Panel dated 29 April 1998, concluded that Emma Foster was the victim of sexual abuse by Father O’Donnell. He concluded that the abuse took place while Emma was a student at Sacred Heart Primary School in Oakleigh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

- 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;



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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 ...";

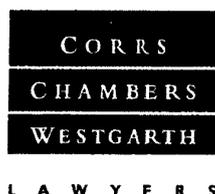
5 the letter continued:

"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.";

6 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."

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:



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***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:***

*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?*



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***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 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.*

***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?*



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***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 funding 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:***

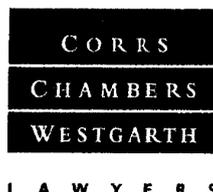
*What do you think of the chances of the lawyers or the Archbishop ...*

***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*



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*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".

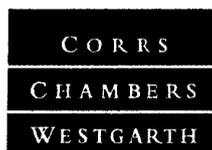
This is where matters stood when the matter came before the Compensation Panel.

### **Trust Fund**

In terms of compensation for Emma there is, however, a further complication. As noted above, Emma is only 16. Accordingly, she lacks legal capacity to provide an enforceable release. It was apparent to me that the recommended compensation figure would be substantial, and I discussed the legal complications with David Habersberger on a number of occasions before they dealt with Emma's claim. David and I formulated a proposal whereby the compensation money would be held in trust until Emma turns 18. At that time, she would have the option of ratifying her acceptance of the compensation payment, signing a legally enforceable release, and receiving the compensation payment together with interest. Alternatively, if she declined to sign a release, the funds would be returned to the Archdiocese, and Emma's legal rights would remain unaffected.

I put this proposal in a letter to Mr and Mrs Foster dated 7 August 1998, a copy of which is **enclosed**. Copies of this letter were also provided to the Compensation Panel members. I understand from David Habersberger that the Fosters are agreeable to the proposal of a trust fund, and if Emma accepts the \$50,000 offer that we will shortly make to her, I will need to work through the practicalities of a trust with Ted Exell.

As you will see from my enclosed letter to Mr and Mrs Foster, the proposal I made is that the trust be jointly administered by representatives of the Archdiocese and



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by the Fosters. I had discussed with David Habersberger what might occur in the event that funds were needed urgently by the Fosters before Emma turns 18. I envisaged that we might agree to lending some of the trust funds in the case of an emergency. However, David tells me that Mr and Mrs Foster have made it clear that the compensation money is for Emma, and that they will not spend it on her treatment. Particularly in view of the recent heroin usage, it strikes me that it would be unwise to allow Emma access to any funds at this time. Accordingly, and with the apparent agreement of her parents, I will not pursue the loan issue any further at this stage.

#### **Foster's Further Requests**

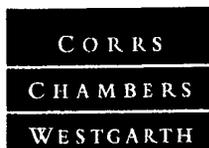
The Compensation Panel was provided with a copy of the 12 March 1998 transcript to which I have referred above. I had rehearsed with David Habersberger the fact that although the Fosters seemed to be very angry, and very dissatisfied, it was not clear what specific requests they had. David tells me that he explained to the Fosters that if they had any additional specific requirements, these would be considered by the Archdiocese, and could be discussed with me if they wished. There was a long discussion about Emma's education, but at the end of that discussion, they made no specific requests.

At my suggestion, and before the Panel met, David had spoken with Peter O'Callaghan in order to determine whether there was any prospect of Emma's parents seeking compensation from the Panel, on the basis that Emma's condition has, quite plainly, caused incredible disruption to their ordinary family life. Peter indicated that in his view, the parents are not victims in this circumstance.

It is worth noting, in passing, that Emma's youngest sister, Katie also claims to have been abused by O'Donnell. As I understand it however, no complaint has yet been made about this to Peter O'Callaghan.

Over the last 18 months, I have had various discussions with Sue Sharkey about the Foster's case. She is certainly very concerned about the high expenditure already incurred, and about the potential for the future.

I would also mention that from my own assessment, it is by no means clear that Emma's difficulties can all be related to sexual abuse. Clearly, this issue is at the core of the difficulties in this case. My view is that while we must act with compassion, we must also act reasonably.



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### **Recommendations**

I apologise for the length of this letter and in summary, recommend the following:

- 1 That there be an offer of compensation to Emma in accordance with the Panel's recommendation. The offer would make it clear that if it is accepted, the money will be held in trust for Emma until she turns 18.
- 2 My letter should also refer to the issues raised by Mr and Mrs Foster in their discussion with Professor Ball and Sue Sharkey in March, and raised with the Compensation Panel, about "other claims". I suggest that I say that I am aware that they have raised the issue, and indicate that within the confines of the Archdiocesan compensation scheme, any specific requests can be considered. This will need to be phrased with care, because I would not want in any way to detract from the release.
- 3 I believe that there should be some flexibility in terms of what can be paid to the Fosters through Carelink. Certainly we should continue to insist that there be regular and presumably annual appraisals by Professor Ball, but subject to that, and as you indicated in your letter to Carelink of 25 June, "all appropriate costs" can be charged against Carelink. For example, if urgent detoxification is required at Warburton, that would be an appropriate medical expense unless Professor Ball advised otherwise. On the one hand, the link between what appears to be relatively minor abuse and treatment for a heroin addiction might be thought tenuous. On the other hand, and for the reasons set out in this letter, there are compelling reasons to do whatever we can for Emma.
- 4 To that end, the letter of offer should reiterate what was said in your letter to the Fosters in September 1997, namely that for the duration of the operation of Carelink, medical, psychological and professional medical care will continue to be provided to Emma through Carelink, subject to Carelink's ordinary requirements including an annual review. If Carelink is disbanded at any future time, appropriate alternative arrangements will be made. Where appropriate, claims should be made on Medicare and on private health insurance.
- 5 I suggest that I also draft a response to Professor Ball's letter to you of 8 July 1998, that also makes the above points.



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- 6 Finally, I propose to discuss with Sue Sharkey whether we should make any specific offer to Mr and Mrs Foster that the services of Carelink are also available to them and to other members of their family.

Once you have considered the contents of this letter, I would like to discuss its distribution with you. I am inclined to share its contents with Peter O'Callaghan, David Habersberger and Carelink. I suggest that you provide a copy to Ted Exell, and perhaps to His Grace.

With kind regards



**Richard Leder**

**encl**