

**THIS FINDING IS SUBJECT TO PROHIBITIONS AND RESTRICTIONS ON  
PUBLICATION UNDER S74 OF THE CORONERS ACT 2006**

**IN THE CORONER'S COURT  
AT AUCKLAND**

CSU-2011-AUK-001471

**UNDER THE CORONERS ACT 2006**

**AND**

**IN THE MATTER OF An inquest into the death of  
CHRISTIE ALEXIS LESLEY  
MARCEAU**

Hearing: 12–22 June 2017 and 7 July 2017  
Appearances: N Pender and P McMillan for Mr and Mrs Marceau  
H Janes and S Wiseman as counsel assisting Coroner  
J Miles QC and A Todd for Solicitor-General and North Shore District  
Court  
S Grieve QC for Mary-Anne Lowe  
A Perkins QC for the New Zealand Police  
A Ross QC and S Mechen for Waitemata District Health Board  
T Simmonds for Police members R Stace, A Pell and A Iremonger  
B Manning for Dr Makal  
A Witten-Hannah for Suchita Chand, Shayal Chand and A Williams  
M Reddy for Department of Corrections

**Date of Findings: 5 March 2018**

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**FINDINGS OF CORONER K H GREIG**

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**An embargo on publication of any details contained in these findings remains in place until  
5pm on Tuesday 6 March 2018.**

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## ABBREVIATIONS

Abbreviation	Full Form
ARFPS	Auckland Regional Forensic Psychiatry Services
CMS	Case Management System (refers in these findings to the District Court's case management system)
CPMIP Act	Criminal Procedure (Mentally Impaired Persons) Act 2003
DHB	District Health Board
FCLN	Forensic Court Liaison Nurse
FPT	Forensic Prison Team
HCC	Health Care Community (an electronic health care records system used by some DHB mental health services, including Waitemata DHB)
JDS	Judicial Decision Suite (a centralised electronic folder to manage and transfer word documents primarily judicial decisions)
Mental Health Act	Mental Health (Compulsory Assessment and Treatment) Act 1992
NSDC	North Shore District Court
NIA	National Intelligence Application (New Zealand Police electronic database)
POTB	Police Opposition to Bail
PA	Personal Assistant
RIC	Remanded in Custody
The external review	External Review of Care of Mr Akshay Chand by Waitemata District Health Board 6.9.11 to 7.11.11 commissioned by Waitemata DHB
The external reviewers	Reviewers who completed the External Review of Care of Mr Akshay Chand by Waitemata District Health Board 6.9.11 to 7.11.11

## INTRODUCTION

[1] On the morning of 7 November 2011 Christie Alexis Lesley Marceau, aged 18 years, died at her family home at the hand of Akshay Chand, also aged 18 years.

[2] Christie,<sup>1</sup> who was in her first year of university studies, was at home with her mother and grandmother when she was attacked by Mr Chand, who pushed his way into the house past Mrs Marceau and stabbed Christie multiple times. She was dead when ambulance staff arrived.

[3] Christie and Mr Chand knew each other, having attended the same primary school for a year, and for a short period in 2011 they worked in the same local supermarket. They lived in the same neighbourhood (within short walking distance). While working together at the supermarket they had socialised occasionally (including Christie inviting Mr Chand to her home on one occasion) and communicated on Facebook. Although they had been on civil terms they were not ever close friends.

[4] Christie was not a random victim. Mr Chand went intentionally to her house on 7 November intending to kill her. At that time he was remanded on bail, charged with kidnapping Christie on 6 September 2011, assaulting her with intent to commit sexual violation, and threatening to do grievous bodily harm. Mr Chand admitted these offences when interviewed by police shortly after he was charged. He had been granted bail on 5 October 2011, with conditions that included that he reside at his mother's home on a 24-hour curfew (except when attending legal or medical appointments in the company of his mother or aunt) and that he not go to Christie's address or associate with her. He was due back in Court on 9 November.

[5] Mr Chand lived with his mother and 16-year-old schoolgirl sister. On the morning of 7 November, while his mother was at work and his sister was asleep, Mr Chand left home around 7 am and walked the less than five-minute walk to the Marceaus' home and killed Christie. He was subsequently found to be insane at the time he did so.<sup>2</sup> He was convicted of the three serious charges that arose out of the 6 November offending against Christie (to which guilty pleas were entered).

[6] Christie's death and the circumstances in which it occurred shocked the nation. Following Christie's death her family spearheaded high profile efforts to reform aspects of the bail laws. During this campaign, and since, images of Christie's smiling face have been published in the

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<sup>1</sup> Christie's parents expressed a preference that Christie be called by her first name, rather than Ms Marceau, during the inquest and these findings.

<sup>2</sup> *R v Chand* [2012] NZHC 2745.

media regularly, and her face is a familiar image to New Zealanders. The tragedy and futility of Christie's death, together with questions as to how Mr Chand came to be in a position where he could kill Christie, have continued to resonate and are a matter of strong public interest.

### **ACKNOWLEDGING CHRISTIE**

[7] At the outset of these findings I wish to acknowledge Christie and the tragedy of her death. Christie was young, vibrant, and deeply loved by her family. She had many friends. Her life was cruelly cut short just as she was embarking on adulthood.

[8] The evidence before me is that Christie was intelligent, caring, compassionate (with a keen sense of the underdog) and joyful. She was described by her family as "*a beautiful baby who grew into a happy toddler, a mischievous and intelligent child and a striking teenager with a huge heart and a smile that you couldn't help but be warmed by*". She loved her family and her friends.

[9] Christie's death has been a devastating loss for her family, whose lives are forever changed. There is nothing I can say that will bring them solace, but I extend to them my heartfelt condolences.

### **PARAMETERS OF INQUEST**

[10] The role of the coroner includes establishing the cause and circumstances of a person's death and, where relevant, making recommendations with the purpose of preventing deaths in similar circumstances in future.

[11] The purposes of a coronial inquiry cannot be narrowly construed, and establishing the "circumstances" of a death involves a wider inquiry into acts, omissions, and the context that contributed to the death in some way. Unlike the scope of a criminal trial, which determines criminal responsibility, or civil proceedings, which determine liability for compensation, the scope of an inquest is not always easily defined. Doing so in this case has required careful consideration of the matters the inquest was properly able to consider and what matters were beyond its scope. Because of the temporal proximity of the bail decision to Christie's death, certain questions surrounding the granting of Mr Chand's bail were relevant and legitimate lines of inquiry. However, for reasons explained below, some matters fell outside the scope of the inquest.

## MATTERS WITHIN THE SCOPE OF THE INQUEST

[12] After considering submissions from interested parties the parameters of the inquest were settled as follows:

- (a) The administrative processes of the North Shore District Court in relation to applications and granting of bail, including the nature and adequacy of information available to the presiding judge when making such determinations;
- (b) Following a grant of bail, the processes relating to supervision and monitoring of bail conditions, including liaison with family members undertaking responsibility for the person while on bail, as well as with the victim and her family;
- (c) Mr Chand's mental health, and the nature and adequacy of assessments undertaken prior to the grant of bail, and oversight of his mental health while on bail.

A list of issues arising from the identified parameters is attached as **Appendix One**.

## MATTERS OUTSIDE THE SCOPE OF THE INQUEST

[13] Matters determined to be outside the scope of the inquest are set out below, together with brief reasons to assist with understanding why they were not included:

- (a) Because Christie died while Mr Chand was on bail, there was some public expectation that the coronial inquiry would consider whether the Judge exercised his judicial discretion to grant bail correctly. However, the inquest had no power to do so. This is because the grant of bail is a judicial decision that can be properly reviewed only by way of appeal (which did not occur in this case)<sup>3</sup> or judicial review by a higher court (which the Coroner's Court is not). A coroner's inquest cannot be used to re-litigate the correctness or otherwise of a judicial decision.
- (b) Likewise, broader issues raised by some parties involving district court judicial processes (for example, continuity of judges hearing bail applications and requirements relating to what a judge must be required to consider for a bail application) were outside the scope of the inquest as such issues encroach on judicial independence.

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<sup>3</sup> Section 44 of the Bail Act 2000 sets out the process for appealing a bail decision of a district court judge. Subsection 2 states that "if a District Court Judge grants bail to a defendant (whether before or after conviction), the prosecutor may appeal to the High Court against that decision".



(c) Electronic bail was a matter that arose from the factual matrix. It was a relevant factor for the inquest that an application for electronic bail was available. However:

- It was not appropriate to make an inquiry into why no application for electronic bail was made as it would trespass principles of legal privilege (between client and solicitor).<sup>4</sup>
- Inquiry into what may have occurred had Mr Chand been on electronic bail would require speculative counter-factual investigation and, accordingly, was not appropriate.
- Further inquiry into electronic bail, including public policy issues relating to electronic bail, was too remote and therefore outside the scope of my inquiry, as well as being unlikely to assist in achieving the statutory objectives of this inquest under the Coroners Act 2006.

(d) It was outside the scope of the inquest to inquire retrospectively into whether the amendments to the Bail Act passed into law in 2013 are adequate.

## **THE CIRCUMSTANCES OF CHRISTIE'S DEATH**

### **Introduction**

[14] The following section of these findings sets out how the events leading to Christie's death unfolded. The circumstances include several court hearings for Mr Chand, assessment and treatment of Mr Chand by mental health professionals as well as advice to the court by mental health professionals, issues relating to bail to his mother's home, monitoring of the bail conditions, as well as the court and police interface with Christie and her family.

[15] The context in which the events unfolded is multi-layered. Although some aspects of the circumstances cannot be analysed for the reasons set out previously, in order to provide a full view, the matters that took place during the relevant period (many of which occurred in the complex system that comprises the criminal justice system) need to be traversed.

### *Unfair Scrutiny and Hindsight Bias*

[16] Before setting out the circumstances of Christie's death, I acknowledge a concern that was expressed by counsel for one of the interested persons that wrong conclusions may be drawn from an intense focus on the facts of this case, and that no system (and in this case the criminal justice system) can bear the type of scrutiny given during the inquest.

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<sup>4</sup> Evidence on this issue was given at the inquest by Mr Chand's counsel and, accordingly, the issue is canvassed in these findings.

[17] As noted by the State Coroner of New South Wales, State Coroner Barnes, in the findings from the inquest into the deaths arising from the Lindt Café Siege:<sup>5</sup>

Apprehension that the process distorts and sets unreasonable standards is understandable, but it is misplaced: those involved in the inquest recognise the limitations of the proceedings. Nor do the findings of the inquest rest on lawyers' opinions. Rather, they are based on the considered and carefully tested evidence of eyewitnesses, experienced members of the NSWPF, other police forces and other expert witnesses.

[18] I also note the concern that the inquest may unfairly judge the performance of individuals by relying on the benefit of hindsight. Again, as noted by State Coroner Barnes in the Lindt Café Siege findings, the concern about hindsight is understandable but unnecessary.<sup>6</sup> The inquest into Christie's death compiled a more complete picture of the events from 6 September 2011 to 7 November 2011 than was available to any individual at the time. I echo the words of State Coroner Barnes:<sup>7</sup>

The insight this knowledge afforded can be applied to the interests of [in this case, the institutions, services and systems comprising the criminal justice system] and the public. Such use of hindsight is fair and proper. Using hindsight to criticise individuals by reference to things they did not know and could not reasonably have been expected to know would be unfair. That has not been done in this report.

## **Background**

### *Christie — Home and Work*

[19] Christie's family home was in Hillcrest, Auckland. She lived there with her parents and grandmother. Her older sister worked out of Auckland. Christie's father had a fly in/fly out job in Australia and so was away from home for stretches of time.

[20] Christie left school at the end of 2010. At the time she died, Christie was in the first year of an events management degree at Auckland University of Technology. She also had a part-time job in Auckland City, having left the supermarket where she and Mr Chand had worked.

### *The Chand Family*

[21] Akshay Chand moved to New Zealand in 2003 with his parents and younger sister. His parents subsequently divorced and Mr Chand's father no longer lived in New Zealand.

[22] Mr Chand and his mother and sister also lived in Hillcrest, only a short distance from the Marceau's house. Mr Chand's mother (Suchita Chand) was working as a nurse in a rest home five days a week at the time Christie died. His sister (Shayal Chand) was at secondary school. Mrs

<sup>5</sup> *Inquest into the deaths arising from the Lindt Café Siege*, NSW Coroner's Court, 5 June 2015, at [5].

<sup>6</sup> *Ibid*, at page 10.

<sup>7</sup> *Ibid*, at page 10.

Chand's sister (Amita Williams) lived nearby. Mrs Chand described Mrs Williams as her only family support in New Zealand. Mrs Williams' husband had died in early 2011, following which she spent a period in hospital for treatment of a cardiac issue. She was the solo parent of an eight-year-old son.

[23] Mr Chand left school at the end of 2010. In 2011 he started work at the local supermarket, where his aunt then worked. He worked there for a short period before resigning, stating that he found it "*completely trivial*". He had not got another job, a source of some friction with his mother, who felt he should do so. Mrs Chand said her son spent most of his time alone at home on his computer, interacting very little with her and his sister. He had few friends.

#### **Arrest to Bail (6 September 2011 to 5 October 2011)**

##### *6 September: Christie Responds to Plea for Help from Mr Chand*

[24] On the morning of 6 September 2011 Mr Chand was alone at home. He rang Christie at around 10 am and told her that he had crushed a number of pills and made them into a drink and if Christie did not get to his house within 10 minutes he was going to drink them.

[25] Christie, concerned that Mr Chand was going to try to end his life, went straight around to Mr Chand's house, arriving within the stipulated 10 minutes. When she got there, Mr Chand had a knife. He held it to her, demanded she remove her clothes, and threatened to rape and kill her. He eventually allowed Christie to leave.

##### *Overdose: Mr Chand*

[26] After Christie left, Mr Chand swallowed around 50 of his mother's multivitamin tablets. His sister came home from school sometime later and at Mr Chand's request called an ambulance, which took him to North Shore Hospital Emergency Department. Whilst there Mr Chand was assessed by a psychiatric registrar (Dr Speeden) and a registered nurse (Ms Charles), both members of Waitemata DHB's Liaison Psychiatry Team. Mr Chand told them that he felt "*depressed*", "*unloved as a human being*", that his parents "*couldn't care less*" and that he had felt like this for two years. He described a difficult relationship with his mother, with whom he was angry for the indifference he perceived her to have to his plight and unhappiness. He told Dr Speeden that he had had suicidal thoughts since the beginning of 2011, with these thoughts increasing in frequency. He said that he had had no plan or intent to take an overdose on the morning of 6 September and denied any trigger. He said that he saw the pills on the microwave, read that too much would be toxic for him, and took 50 tablets. He did not tell Dr Speeden and Ms Charles about what had happened with Christie earlier in the day.

[27] Dr Speeden's diagnosis was "*depression with suicidality and ?Cluster B traits*". He recorded that he found no psychotic symptoms, but did record in his notes the following themes:

"[Mr Chand] felt people were excluding him on purpose as a type of paranoia but more suggestive of hypercritical to personal slights/rejection."

"Tried to not accept medications as it was feeding the capitalists."

"Some grandiose or entitled flavour to his discussion. Also slightly narcissistic ..."

"Transferentially there is a flavour of personality disorder traits."

[28] Dr Speeden prescribed Mr Chand an antidepressant medication, citalopram, and referred him to a community mental health team for follow-up, including daily telephone calls because of Mr Chand's ambivalence about suicide.

#### *Crime Reported/Police Arrest*

[29] In the meantime, Christie (with the support of family) had been to the police and reported what had happened that morning.

[30] The police located Mr Chand at North Shore Hospital and arrested him there. Dr Speeden, who had completed his assessment prior to the arrest, was concerned that the arrest would cause a likely escalation of Mr Chand's suicidal thinking. Dr Speeden suggested to police that Mr Chand be kept on a direct watch overnight and the court liaison nurse be involved the next day.

[31] Dr Speeden noted in the clinical records that as Mr Chand had not disclosed any detail of the incident that had occurred that day he (Dr Speeden) had not felt it necessary to make an assessment of Mr Chand's risk to others — but in light of the new information from the police, such assessment would need to be completed at Mr Chand's next appointment with mental health services.

#### *Police Evidential Interview/Preparation of Opposition to Bail*

[32] On the evening of 6 September Mr Chand was charged with kidnapping, assault with intent to commit sexual violation, and threatening to do grievous bodily harm. He was interviewed by the officer in charge of the case, Detective Aaron Iremonger, and admitted the offending.

[33] Following the interview, Detective Iremonger and his supervisor, Detective Sergeant James Watson, were of the clear view that the offending was serious and that the police had strong grounds for opposing bail. Detective Sergeant Watson's evidence was that a key concern was that Mr Chand had gone from being unknown to police to his first offence being for three

very serious charges containing violence, sexual aspects, and deprivation of the victim's liberty. He said they viewed this as *"quite a big jump for somebody who, to us, had never offended before"*.

[34] The police prepared the various documents required for Mr Chand's court appearance the next day, including the informations.<sup>8</sup> Detective Sergeant Watson completed the standard police document entitled "Grounds for Opposing Bail" (referred to as "police opposition to bail" ("POTB")). In it he identified the biggest risk of allowing Mr Chand bail was that he had admitted during his interview that the reason for the attack was revenge against the victim (Christie) for not helping him during his depression, and that his desire for revenge still existed. Detective Sergeant Watson recorded that Mr Chand suffered from depression and had tried to take his life — stating: *"This shows that he can become desperate and when in that state extreme behaviour such as sexual assault can occur."* Detective Sergeant Watson noted the likelihood of conviction as being very strong (given the confession) and that a term of imprisonment was inevitable given the seriousness of the charges. He also noted that Christie was terrified of Mr Chand and that she did not want him to get bail and was concerned that if this was granted he might try to attack her again or go around to her house as *"she lives quite close"*.<sup>9</sup>

#### *7 September to 5 October: Mr Chand in Custody — Overview*

[35] Following his arrest Mr Chand was remanded in custody until 5 October. He appeared in the North Shore District Court on five dates between 7 September and 5 October 2011. Bail (which was discussed at each appearance) was granted at the 5 October hearing. At these Court appearances Mr Chand appeared before three judicial officers (two District Court judges and a community magistrate). There were three different police prosecutors. His defence counsel on each occasion was Ms Mary-Anne Lowe. Mr Chand's mother and aunt were present in Court on all occasions except 7 September.

[36] North Shore District Court (NSDC) is a busy court (the fifth busiest criminal court in the country), and has several courts running each day. As an indication of the work volumes, NSDC had approximately 1,200 cases on hand in March 2015. Mr Pell (police prosecutor) estimated that in 2011 anywhere from 40–60 matters would be dealt with on a typical day in the list court. He

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<sup>8</sup> In 2011 police attended personally at court with the information(s) (now called charging documents under the Criminal Procedure Act 2011). Each information alleged one criminal offence and had a unique criminal record number (CRN) assigned to it. The information(s) were "sworn" before a Deputy Registrar of the Court, who would then accept the information for filing and place it and other documents provided (e.g., the criminal history) on the paper-based court file. Since July 2013 the District Court receives all charging documents from the police in electronic form. A copy is printed off and placed on the paper-based court file.

<sup>9</sup> This was information provided by Christie in her initial police interview.

explained that at times matters were moved between courts for expediency, meaning that a matter that had been scheduled in a particular court would be moved to another court in front of a different judicial officer with more capacity. Ms Lowe described the environment from a defence counsel's point of view as follows:

It's a very busy court, bail lists are difficult, high volume, you're busy moving between trying to see clients and appearing in court.

[37] Carl Lewens, who was Court Services Manager for the criminal jurisdiction of the NSDC<sup>10</sup> for a period from August 2013, stated that when a defendant is facing serious charges, such as those faced by Mr Chand, the defendant will make a number of appearances before the court, including for bail applications, and it would not be unusual for those appearances, whether for bail or otherwise, to be before different judges.

[38] Running in tandem with the court appearances, while Mr Chand was in custody he had eight face-to-face assessments undertaken by mental health professionals from the Auckland Regional Forensic Psychiatry Services (ARFPS), and reports were provided to the court by two forensic court liaison nurses from ARFPS and a health assessor/consultant forensic psychiatrist from ARFPS.

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<sup>10</sup> Mr Lewens gave evidence in his capacity as Court Services Manager of the North Shore District Court but not as an official of the Ministry of Justice. Ministry officials are not permitted to comment on the particular processes followed in individual court cases of individual district courts.

### **Auckland Regional Forensic Psychiatry Services (ARFPS)**

The ARFPS provides specialist mental health services to individuals diagnosed with, or suspected of having, a mental illness or intellectual disability, who are within the criminal justice system in the northern region of New Zealand. It includes an inpatient service (the Mason Clinic), a Forensic Prison Team to the five regional prisons, and a Court Liaison Service to all regional District and High Courts. Health Assessors from the Mason Clinic (psychiatrists and psychologists) provide court-ordered reports.

The Court Liaison Service is staffed by registered mental health nurses. The general objectives of Forensic Court Liaison Nurses are:

1. To provide liaison and consultation with courts, corrections, police, community mental health services, and community agencies on matters of mental health and management of associated problems with the identified agency;
2. To act as a mental health resource and provide an advisory role for co-ordination of health care (as it relates to mental health issues);
3. To provide informal written assessments for the court on whether a defendant is fit to stand trial, whether the person is suffering from a mental illness, and whether the person poses a risk to self or others.

Health Assessors engaged by the court are asked to assist the court with focused legal questions, such as fitness to stand trial, insanity, or pre-sentencing matters. Occasionally they are more specifically asked by the judge to address community safety in contemplation of a bail application.

#### *7 September 2011 — First Court Appearance*

[39] On 7 September 2011 (the morning after his arrest) Mr Chand was taken to court for his first appearance. Prior to the hearing Mr Chand was assessed in the court precinct by forensic court liaison nurse (FCLN) Ellen Wilson.<sup>11</sup> She had been asked to assess Mr Chand urgently by the police (who were following the advice of Dr Speeden). Ms Wilson's evidence was that the primary purpose of the assessment was to look at safety issues and Mr Chand's risk of harm to himself. At the time she assessed him she had not seen the charging sheet, caption summary, POTB or Mr Chand's clinical records. Mr Chand was able to tell her the charges he was facing.

[40] Ms Wilson said that she found Mr Chand to be considered and logical in answering questions, and not disorganised in his speech, thought or behaviour. She said that Mr Chand was keen to speak to her of his problems and current unhappy state but was not willing to give anything more than a brief account of his version of the events leading to his arrest. She described

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<sup>11</sup> Ms Wilson is a registered comprehensive nurse and a Duly Authorised Officer under the Mental Health (Compulsory Assessment and Treatment Act) 1992.

him as becoming irritable with her when she pursued the issue of why he had committed the offences. Mr Chand denied suicidal ideation and said he felt hopeful that his engaging with mental health services would be beneficial for him. The assessment lasted approximately 20 minutes, with Ms Wilson saying that because of circumstances beyond her control (i.e., the request for an urgent assessment prior to the court appearance), she had limited time with Mr Chand. Given the seriousness of the charges, she would have liked to have had longer, and did not feel she had time to carry out a full assessment.

[41] After seeing Mr Chand, Ms Wilson accessed and read the notes of the consultation Mr Chand had had the previous day with the Psychiatric Liaison Team at North Shore Hospital. She then prepared a letter for the Court, which was not completed by the time the matter was called that day. It was subsequently placed on the paper-based court file before Mr Chand's next appearance on 9 September.

#### **Paper-based Court File**

In court, a judge has access to a paper-based court file on which all relevant documents relating to the matter are expected to be held (with the evidence in this case being that there are variable practices with registrars in some courts holding the paper-based file and providing the judge with just the informations (and only with other documents if requested/as required)).

The initial documents received on the file are the informations (now called charging documents) and criminal record sheet. Other documents that may be placed on the file initially include the police caption summary and notice of opposition to bail.

Subsequently any documents received or generated by the court, including any judges' signed (i.e., finalised) notes of decision are placed on the file.

Registry staff are expected to record on the electronic Case Management System (CMS) (which electronically manages and tracks criminal prosecutions) receipt of documents received by the court registry, either prior to a hearing or subsequently (before the matter is disposed of). There is no system for recording on CMS the receipt of documents that are handed up in court, and they are not date stamped when received.

In 2011 the information and criminal record sheet were folded, and all other loose documents that comprised the "file" placed between them.

Case managers were, and are, responsible (to the judges) for maintaining an accurate court file.



[42] The Court hearing on 7 September was before Judge BA Morris. Mary-Anne Lowe appeared as Mr Chand's counsel, and Adam Pell was the police prosecutor.<sup>12</sup> The POTB, summary of facts, and caption summary were handed up to the Court.<sup>13</sup> At the commencement of the hearing, Ms Lowe referred to Mr Chand facing several indictably laid charges of a serious nature and advised the Court that bail was opposed. She stated that the allegations were troubling "*but there seemed to be quite a significant forensic background*". She pointed to Mr Chand's history of depression and told the Court that an incident "*arose on the background of that depression*" and of the suicide attempt that followed. She advised that a FCLN had seen Mr Chand that morning and had advised her that she did not believe Mr Chand met the criteria "*to be compelled to assessment under the Mental Health Act*", but that Mr Chand had said that he would voluntarily engage with community-based mental health services.

[43] Ms Lowe told Judge Morris that although it was incorrectly recorded on the POTB, s15 of the Bail Act 2000 applied as Mr Chand was only 18 years old, and that "*bail ought to be applied for*".<sup>14</sup>

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<sup>12</sup> The Police Prosecution Service conducts proceedings for all category 1–3 criminal and traffic proceedings commenced by police, from first appearance to disposal (except where the proceeding becomes a Crown prosecution). To be appointed a police prosecutor a person must be a police employee holding the office of constable, or hold a law degree and a current practising certificate (with two years' experience as a practitioner). Mr Pell is a barrister and solicitor of the High Court of New Zealand — admitted in 2006.

<sup>13</sup> These documents were placed on the paper-based court file.

<sup>14</sup> Police accept that s15 of the Bail Act did apply to Mr Chand.



### Statutory Framework for Bail Decision — S15 of the Bail Act 2000

The Bail Act 2000 was in force when Mr Chand was charged and remanded in custody. This governed the circumstances in which bail may or may not be granted, and the terms upon which it may be granted.

Mr Chand was 18 years old. Because of Mr Chand's (young) age judges were required to take into account s15 of the Bail Act, which applied to defendants charged with an offence who were over the age of 17 years and under 20 years. At that time s15 provided:<sup>15 16</sup>

#### **Grant of bail to defendant under 20 years of age**

If a court remands a defendant at any stage of the proceedings for the offence with which the defendant is charged, including for sentence, and the defendant appears to the court to be of or over the age of 17 years but under the age of 20 years, it must release the defendant on bail or otherwise subject to such conditions as it thinks fit.

The effect of s15(1) was to create a presumption in favour of bail — the requirement being that where s15(1) applied a judge should grant bail (in essence it was mandatory unless the person had a previous conviction), subject to being able to impose suitable conditions.

[44] Ms Lowe advised the court that notwithstanding s15, her instructions were that Mr Chand was content to be remanded in custody by consent for a short period to “*see if there can be safety issues put around him.*” She suggested that a short period in custody would provide an opportunity for further assessment from psychiatric services.

[45] Judge Morris concluded as follows:<sup>17</sup>

Mr Chand is here in respect of very serious offences and, sadly, the allegations emanate from Mr Chand's mental wellbeing and state of depression. It was said that shortly after the allegations arose that Mr Chand attempted to take his own life and his family called an ambulance.

Section 15 of the Bail Act applies, but Mr Chand was at his family home when these allegations arose. There are some difficulties with that address and that his father at least is overseas, and there's some relationship problems there as well.

Without detailed investigation going as to where it is proposed Mr Chand go, and without some information on the forensic side, I consider that there is no other alternative option than to remand Mr Chand in custody for a two-day period.

<sup>15</sup> Section 15(2) of the Bail Act made the operation of s15(1) subject to eight other specified exceptions. The exceptions related to sections of the Bail Act or the Criminal Proceedings Act 2011, specifying either particular offences or instances where the person charged is already on bail for another offence. None of the exceptions were relevant in Mr Chand's case.

<sup>16</sup> In September 2013 the Bail Amendment Act 2013 came into force, which amended s15 and limited presumption of bail to those aged 17 years who have not received a previous sentence of imprisonment.

<sup>17</sup> These notes were electronically recorded but not transcribed until after Christie's death. It is not standard practice to transcribe the recordings of hearings unless a request is made.

I would ask if possible that the forensic nurse who saw Mr Chand put something in writing today. I would also ask that the prison forensic people see Mr Chand, if that's possible, in that period of time.

I will also record that at the moment it is just tentative, looking at these issues rather than any formal triggering of any mental health process under the Act.

Mr Chand is remanded in custody to the 9<sup>th</sup> of September at 10 o'clock for a bail application. I will not formally refuse it today, it can be sought in more detail on the 9<sup>th</sup> of September.

[46] Judge Morris recorded on the criminal record sheet<sup>18</sup> for the kidnapping charge:

RIC [remanded in custody] 9/9/2011 at 10.00 for bail application

— ask forensics to see him and provide report

Notation on warrant — risk of self harm.

[47] Mr Chand returned to remand in custody at Mt Eden Corrections Facility (the main reception prison for newly remanded male prisoners in the Auckland region) where he was placed in the Care, Support and Integration Unit — a unit that runs a therapeutic model for at-risk prisoners.

#### *9 September 2011 — Second Court Appearance*

[48] On 9 September Mr Chand again appeared before Judge Morris at NSDC. Mr Pell was again the police prosecutor and Ms Lowe was defence counsel. Mr Chand's mother and aunt were in court. When the matter was first called it was stood down as the police prosecution file was not available. Judge Morris also did not have a copy of the notice of opposition "*or anything of that nature*" in front of her. Ms Lowe was able to offer her copies of the relevant documents including the caption summary, POTB, and a memo from the forensic court liaison nurse to review. It is not clear whether Ms Lowe provided these documents to the judge or the court taker was able to provide them from the court file.

[49] The matter was called again at 11 am. Ms Lowe made a bail application and noted that s15 of the Bail Act applied. Ms Lowe advised that Mr Chand had no previous convictions and had not previously appeared before the court. She referred to a memorandum before the Court from FCLN Ms Ellen Wilson, which confirmed that an outpatients mental health appointment

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<sup>18</sup> As a court of record, the Court is required to maintain a permanent record of the formal steps in a criminal proceeding. At all district courts this requirement is met by way of a handwritten record/note, usually made by the Judge, of the directions and orders made at a hearing. It is written on the relevant charging document (in 2011 the information). The record must be signed by the judge. The handwritten notation is part of the paper-based court record and is available for other judicial officers dealing with the matter to see. There were three informations for Mr Chand (one for each charge). On 7 September Judge Morris made notations on each, with the fullest note recorded on the kidnapping charge.

had been made for Mr Chand at Taharoto (part of Waitemata DHB's adult mental health service) the following week, and noted: "[T]here are obviously significant issues with Mr Chand's health that also bear to be considered." She submitted that it would be appropriate for him to be bailed to his mother's address with appropriate conditions, stating that from there his mental health issues could be addressed. She advised that she and Mr Chand both hoped that when he was assessed the following week at Taharoto he would be admitted to the mental health unit on a voluntary basis, but until that time his mother and aunt could stay with him so that he would not be alone. Ms Lowe highlighted that Mr Chand had been prescribed antidepressant medication but had not yet started on this.

[50] The memorandum from Ms Wilson referred to by Ms Lowe was the letter that Ms Wilson completed after she assessed Mr Chand in the police cells on 7 September. The letter stated that she had undertaken an assessment at the request of the police for the purpose of assessing Mr Chand's risk of further self-harm. She referred to the overdose attempt of 6 September and recorded that Mr Chand had told her that he had a five-year history of depression and anxiety. Ms Wilson reported that Mr Chand had no thought disorder and/or disorganisation in thinking or speech, and he currently denied suicidal ideation and had said he was keen to engage with mental health services once he was bailed. She recorded that this was a "*protective factor*" for him. She advised that she had organised an outpatient appointment for Mr Chand with Waitemata DHB Community Mental Health Services for 14 September, which could be utilised if Mr Chand was bailed to his current home address. She asked that if Mr Chand were to be bailed, attendance at this appointment be made a condition of bail. She advised that if Mr Chand were to be further remanded in custody she would contact the prison medical team and request that they assess him for risk to self, with a view to admission to the prison's special needs unit, if warranted.

[51] Judge Morris stated that she wanted a doctor rather than a forensic nurse to examine Mr Chand and provide more information, and that she would be concerned about bailing Mr Chand without him being on antidepressant medication and knowing the views of the doctor. However, she said that she might be willing to grant bail if Mr Chand would be going from custody to the Taharoto Unit as an inpatient.

[52] Mr Pell gave evidence at the inquest that, as was his normal practice, he made notes on his copy of the POTB that outlined his key concerns and talking points in opposing bail. He stated that his practice as prosecutor was, and is, to emphasise and highlight key points from the POTB, but (unless asked to by the judge) usually he will not restate the opposition to bail as set out on the POTB per se as it is likely the judge would already have read that. His notes on Mr

Chand's POTB included as key concerns: "*8(4) victims views; depression exists has done for 5 years; cause of this offending still exists; full admissions of offending; statements of 'I'll stab you'; intention to rape her; 1.1 km away.*" Mr Pell stated that as the POTB did not stipulate the distance between the two addresses, he used his own private cell-phone (as he recalled it with the permission of the Court) to access Google maps and ascertained that there was only one kilometre distance between them.

[53] When Mr Pell spoke, he raised with Judge Morris that Mr Chand's home address was "*totally inappropriate*" for bail as it was only one kilometre from Christie's home address. Mr Pell did not raise the other handwritten "talking points" on his copy of the POTB.<sup>19</sup>

[54] Judge Morris stated that she was not talking about bailing Mr Chand to his home address — only to Taharoto on a voluntary basis: "*That is the only way bail at the moment is going to be achieved without knowing more about his medical condition.*"

[55] The matter was stood down for Ms Lowe to contact Taharoto. During this adjournment FCLN Mr Robin Byrt<sup>20</sup> conducted an assessment of Mr Chand and concluded that Mr Chand "*was moderately depressed, displayed no psychotic symptoms and had a low risk profile*".

[56] Mr Byrt then attended Court and provided an oral report to Judge Morris. He advised that Mr Chand did not show any symptoms that would warrant him being placed under the Mental Health (Compulsory Assessment and Treatment) Act 1992 ("the Mental Health Act") or admission to Taharoto, and that Mr Chand did not show any risks to himself or others. Mr Byrt advised that if Mr Chand went to Taharoto Inpatient Unit it would not accept him.

[57] Ms Lowe indicated that bail was still sought.

[58] Judge Morris issued an oral decision. After noting that Mr Chand was unlikely to be accepted into places such as Taharoto because he was not exhibiting any of the classic symptoms of a mental health issue that would require intervention of the Mental Health Act, she stated (in part):

What is proposed by way of bail is that he would go back to be with his aunt and his mother and that he attend an appointment with the mental health services early next week so that he can get assistance for depression. Further, the family support is such that they have undertaken to remain with Mr Chand until he attends that appointment.

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<sup>19</sup> Ms Lowe's evidence was that she was aware of the proximity of the addresses only from what Mr Pell said to the Court on 9 September.

<sup>20</sup> Mr Byrt has been a registered psychiatric nurse since 1992.



As I say, this is a difficult matter but nothing has changed at the moment from when these allegations arose. There is no question that Mr Chand is certainly depressed and there is no dispute with that. I am appreciative of the forensic nurses' input, both yesterday and today, and of course they are extremely skilled people.

From public safety concerns, however, and with a complainant who is exceedingly fearful, and under the Bail Act 2000 I must take her wishes into account in terms of bail, I do not consider it prudent or wise to grant bail until at least a full forensic report can be obtained. In the meantime Mr Chand can hopefully commence on the medication.

I am concerned too, notwithstanding the support of his family which is welcomed and comforting, that it is only a short distance away from the complainant's address. It may be with the declinature of bail that steps could be put in place for as rapid as possible electronic bail assessment to an address that would need to be well away from the complainant. Given Mr Chand's age of 18 I would ask, despite limited resources, for an electronic assessment to be made urgently. I would also order a psychiatric report on Mr Chand.

Insofar as process is concerned there is no triggering of a need for any hearings at this point, it is simply investigatory. If the s38 report says otherwise then that may well trigger a different procedure but that is not anticipated at this point. It may also be that there is material in that report that may assist a Judge in terms of a bail decision.

I should also say this, obviously disclosure would need to be obtained but pleas should be looked at as well as soon as possible. It might be that if there is suitable treatment that short term imprisonment, in light of Mr Chand's age and difficulties, may mean that options other than a full custodial sentence could be looked at. I would ask that counsel look at that issue as well.

If it is not to resolve in light of Mr Chand's age and lack of previous [criminal history] obviously I am not saying that he would be remanded in custody until this matter is dealt with. That issue would need to be dealt with on another day once there is more information to hand and once Mr Chand has commenced on medication.

In the meantime in the current state of play, where nothing has altered since two days ago, I consider in the light of the two that the address is so close to the complainant that there is no other appropriate course of action put in front of me.

I would ask that these notes be transcribed and sent to the prison and the mental health services, and I also ask that a report be done as soon as possible. Once it is done Mr Chand can be brought back before the Court, but I will remand it for two weeks in the event. I would also ask that these notes be transcribed and sent to the police personnel who are involved in electronic bail considerations.

**ADDENDUM:**

I would also ask that the prison authorities do all they can to ensure that Mr Chand gets the medication and the assistance that he requires in the next few days.

[59] Judge Morris recorded on the criminal record sheet for the kidnapping charge:

R [Remanded] to 23 September 2011 at 10.00

38(1)(b) report ordered

— Elec [Electronic] bail to be put in place

— Risk of Self Harm

[60] That afternoon the court taker sent a request to the National Transcription Service for the notes of Judge Morris's decision to be transcribed within the standard timeframe (three days).<sup>21</sup>

[61] A Deputy Registrar also signed a standard form order for a health assessor to prepare an assessment report (remanded in custody) pursuant to s38(2)(b) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (CPMIP Act). It detailed the charges and noted that the Court had ordered an assessment report be prepared on the defendant for the purpose of assisting the Court to determine whether the defendant was unfit to stand trial.

[62] Mr Pell said that at the end of the hearing he considered that bail had been declined<sup>22</sup> and handwrote on the cover sheet of Mr Chand's prosecution file "*bail declined*" and that Mr Chand was a direct danger to the victim. He also thought he had written "*address too close*".<sup>23</sup>

### *13–16 September — Further Mental Health Assessment*

[63] On 13 September Mr Chand had a face-to-face triage assessment with a Forensic Prison Team (FPT) nurse at Mt Eden Corrections Facility. He was assessed as having a deferred diagnosis of atypical depression with moderate to high risk to self but low immediate risk to others (i.e., within the remand setting). The nurse, who was aware that Mr Chand had been prescribed antidepressant medication on 6 September at North Shore Hospital (before he was arrested), but that the medication had not been commenced, made a request for a review by a doctor to assess whether Mr Chand currently required antidepressant medication.

[64] On 16 September, in accordance with the s38(2)(b) order made by Judge Morris, Mr Chand was assessed by a health assessor, consultant forensic psychiatrist Dr Ian Goodwin. Following the assessment, Dr Goodwin prepared a report for the Court dated 20 September 2011 that stated (in part):

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<sup>21</sup> Counsel for the Crown Parties requested in submissions that to ensure accuracy (and avoid confusion) these findings should properly refer throughout to the *notes* of Judge Morris's decision of 9 September 2014, rather than her *decision*. Judge Morris's decision of that date (to remand Mr Chand in custody pursuant to s30 of the CPMIP Act) was recorded in writing by way of a minute on the criminal record sheet for the kidnapping charge (as recorded at paragraph [59] of these findings). Her notes of the decision were recorded and ultimately transcribed, and it is these notes (and the transcript thereof) that were scrutinised during the inquest. To the extent possible, reference is made to the notes of Judge Morris's decision; however, where it would require a change to the evidence given by a witness, the terminology has been left as "decision".

<sup>22</sup> Mr Pell's interpretation of Judge Morris's decision differs from that of Ms Lowe. The divergence of opinion is canvassed later in these findings.

<sup>23</sup> Each prosecution file has a three-page cover sheet (this is a national standard). This document is used by the prosecution service to record relevant information as the case progresses. As well as standard entries on the cover sheet such as the offender's details, charges, officer in charges details, whether there is opposition to bail and bail status, the details of who has appeared in court, the judicial officer and an outline of what happened in that court is also expected to be recorded. The third page is for notes "*where you'd usually write things of merit or interest that would be relevant to the next person*". The prosecution service has not been able to locate the cover sheet for Mr Chand's file.

## **OPINION**

### **Re: Mental Illness/Mental Disorder/Mental Impairment**

Mr Chand presents with symptoms of a mild to moderate depressive illness. This appears to have been present for at least a 12 month period and possibly up to two years. ... There is no evidence of any psychotic process or any history that suggests bipolar affective disorder. Mr Chand does not in my opinion fulfil the criteria for mental disorder as outlined within the Mental Health (Compulsory Assessment and Treatment) Act 1992. He is currently cooperative with treatment and the idea of ongoing treatment and follow-up in the community as required ...

### **Re: Fitness to Stand Trial**

... I am on balance of the opinion that it is unlikely the court would find Mr Chand unfit to stand trial at this time.

## **RECOMMENDATIONS**

1. I would strongly recommend that Mr Chand continue to be treated for his depressive illness. Should he be granted bail this can be undertaken in the community and on a voluntary basis.
2. If Mr Chand were to be further remanded in custody he will continue to be treated by the Forensic Prison Team of Regional Forensic Psychiatry Services.
3. Counsel for Mr Chand may wish to explore the issue of Mr Chand's mental state at the time of the alleged offending further and consider the possibility or otherwise of a defence pursuant to section 23 of the Crimes Act 1961. It is not however necessary that Mr Chand be further remanded in custody for such a report. Counsel may wish to consider this potential option once the issues of fitness to stand trial have been finalised.

[65] Dr Goodwin prescribed the antidepressant medication citalopram for Mr Chand.

[66] Dr Goodwin's report was received by court staff on 22 September and placed on the court file.

### *23 September 2011 — Third Court Appearance*

[67] On 23 September Mr Chand had a further court appearance at NSDC. This time he was before Judge DJ McNaughton. There was also a different police prosecutor.<sup>24</sup> Ms Lowe was present as Mr Chand's defence counsel.

[68] Prior to his court appearance Mr Chand was assessed by FCLN Mr Byrt. Mr Byrt noted in the clinical records that Mr Chand told him that he had started on antidepressant medication in the last four days and felt his mood had improved and he was more balanced. Mr Chand denied to Mr Byrt being a risk to himself or others. Mr Byrt noted no thought disorder or disorganisation in Mr Chand's thinking or speech. He did not provide an update to the Court that day.

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<sup>24</sup> The prosecutor who appeared has subsequently retired and did not give evidence at the inquest.



[69] Ms Lowe opened the proceedings by checking that Judge McNaughton had a copy of the s38 report of Dr Goodwin, which the judge confirmed he had. She advised Judge McNaughton that “[t]he matter was remanded by her Honour Judge Morris for that report to be undertaken”. Ms Lowe advised that Mr Chand was supported in Court by his mother and aunt.

[70] Ms Lowe told Judge McNaughton that her instructions were that the issue of fitness to stand trial would not be pursued. She gave an indication that they were looking at the possibility for early resolution of the charges. She stated:

I haven't received any disclosure yet but essentially this is a young man. He's 18, he's been found by the doctors and had confirmed the diagnosis of depression that's been ongoing for a year and the events that occurred with his friend really were a boiling point for him to get the help that he needs. At the last hearing we did investigate whether or not it would be possible for him to be admitted to Taharoto Unit but none of the reports supported that in terms of an inpatient treatment programme. So Sir we're at the point where Judge Morris indicated and of course she wouldn't be — her decision of course, but if these matters were resolved early and there are a lot of things that could be done for Mr Chand both by way of rehabilitation and restorative justice. He's written me a letter Sir which, given the state of the proceedings, at the moment I won't hand up but basically he's incredibly remorseful. He says he appreciates how disturbing it was for his friend and that whereas she may forgive him he can't forgive himself for what he did to her. So your Honour that's a very frank evaluation of, of where we're at. The question is, now for him what will be his custody status while we wait for an early resolution, hopefully, of these charges.

[71] Judge McNaughton asked if bail was opposed. Ms Lowe advised that it was but that s15 of the Bail Act applied. Judge McNaughton responded that he knew nothing about the matter. He advised that all he had before him were the charges and the s38 assessment, so he did not even know what the facts were. He enquired if there was a caption summary, an opposition to bail, information about Mr Chand's criminal history, and a victim impact statement.

[72] Ms Lowe offered to provide Judge McNaughton with the caption summary and opposition to bail document and advised that Mr Chand had no history. She also advised that she had not seen a victim impact statement, stating:

Basically this incident involved his best friend<sup>25</sup> where he asked her around, he said he was going to commit suicide. She went round to talk him out of it and then he, he basically lost it.

[73] Ms Lowe then handed up Mr Chand's letter to Judge McNaughton, stating that she considered it relevant to the question of bail. She told Judge McNaughton that if granted bail

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<sup>25</sup> Ms Lowe's evidence at inquest was that her submissions to the Court are based on what her client tells her and she now understands that it was not true that Mr Chand and Christie were best friends. Likewise Ms Lowe now understands that Mr Chand stated after Christie's death that he was not remorseful at all and it had taken him two minutes to write the [untrue] "sappy letter" to the Court expressing remorse.

Mr Chand would remain at home under 24-hour supervision by either his mother or aunt. Ms Lowe noted that Mr Chand's mother did not work full time and his aunt did not work.

[74] Apart from bringing the POTB to the Judge's attention, the police prosecutor said nothing during the hearing.

[75] A copy of the transcribed notes of Judge Morris's decision of 9 September was not on the court file or available to counsel, and neither the matters Judge Morris raised nor her request for the notes to be transcribed and circulated were referred to by the police prosecutor or defence counsel. There was nothing on the court file to indicate that a transcription had been requested.

[76] Judge McNaughton observed that Mr Chand had only just started a course of treatment in prison and said that he would want to be satisfied that Mr Chand was responding to treatment and reasonably stable before he would even consider a bail application. Judge McNaughton left open the possibility that bail could be considered later on and noted that at such time he would have to take into account Mrs Chand's position and also the victim's position. Judge McNaughton stated: *"I think releasing him now could be utterly disastrous."*

[77] Judge McNaughton remanded Mr Chand in custody until 29 September for a pre-committal conference. Judge McNaughton indicated that on that date he wished to be provided with information from the FCLN about Mr Chand's response to treatment, and if he received a positive report and Mr Chand had stabilised, he could consider bail at that point. Judge McNaughton made a note on the kidnapping information as follows:

S.38 report Dr Goodwin 20.9.11

Def [defendant] unlikely to be found unfit at this time

— Defence do not wish to pursue further

— Remand Pre-committal conference 29.9.11

— Should be report from forensic liaison nurse at next appearance regarding response to treatment in custody. If the D [defendant] stable should consider a bail application.

#### *29 September 2011 — Fourth Court Appearance*

[78] In preparation for the hearing on 29 September, FCLN Mr Byrt sent a letter to the Court on 28 September stating:

I have had access to the Forensic Prison Team health notes. These notes indicate that the defendant is doing well and appears bright in mood. He has been cooperative and reports to staff that he [is] tolerating his antidepressant medication well. The defendant was

commenced on antidepressant medication last week.<sup>26</sup> I intend to assess the defendant on arrival at court. Should the court require further information of his mental state or risk issues, I am available to report back ...

[79] Mr Byrt assessed Mr Chand in the cells on 29 September, prior to his court appearance. Mr Byrt stated that he considered that Mr Chand continued with stable improvement and mood. He did not exhibit any thought disorder, or disorganisation in his thinking and speech and he denied any risk issues to himself or others.

[80] On 29 September Mr Chand appeared before Community Magistrate Nathan. Ms Lowe was present as Mr Chand's defence counsel. Mr Pell was the police prosecutor on duty in the Community Magistrate's Court that day. He was unaware that Mr Chand was appearing in Court that day until he saw Ms Lowe in the court-room. Before Court started there was an exchange between Mr Pell and Ms Lowe about the status of the bail application.

[81] Mr Pell stated:

By sheer coincidence I appeared as prosecutor in court room 1 at North Shore District Court on 29 September 2011 when Mr Chand's file was called, on this occasion in a Community Magistrate's list in front of Community Magistrate Nathan.

Ms Lowe advised [me] that she was again applying for bail on behalf of Mr Chand. I found this very odd and asked "what is the changed circumstance, bail was declined."<sup>27</sup> Ms Lowe responded by stating that bail had not been declined by Judge Morris and there was no change in circumstances.

I replied to Ms Lowe that my recollection was that Judge Morris had declined bail when we had earlier appeared before Her Honour. I had recorded the prosecution file that way and I do not do this unless the judicial officer has said it.

Ms Lowe stated that we should look at the court document (i.e. the "information"). I inspected the information on the court file but there was nothing that I recall seeing at that

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<sup>26</sup> The last forensic prison team assessment of Mr Chand had occurred on 13 September. Mr Chand was discussed at meetings of the High Risk Assessment Team on 19 and 26 September. These meetings were correctional facility-run meetings attended by members of the forensic prison team. Records of the meeting outcomes were recorded in Mr Chand's clinical records. At the 19 September meeting, staff from Mr Chand's unit reported that he had started antidepressant medication and did not appear to be depressed. An entry in Mr Chand's clinical records summarised the meeting as: "[D]oing well, settling into the unit ok. No concerns. Compliant with medications, no concerns at present." On 26 September, the clinical record entry states: "HRAT team report that Mr Chand is doing good, he appears bright in mood. He has been cooperative, reports that his antidepressant medication is working well."

<sup>27</sup> Mr Pell stated that he understood the reason bail had been declined by Judge Morris was because of the proximity of the addresses and that it was not suitable for Mr Chand to be bailed so close to Christie. Mr Pell considered that although Judge Morris had declined bail, she had indicated that a further bail application could be considered by way of electronically monitored bail, subject to a favourable bail assessment. His conclusion that bail had been declined had some significance as it is a well-established principle that a defendant does not have the right to make successive applications for bail unless there is a material change in circumstances (*Police v Wang* High Court, Auckland, 16/2/2011, CRI-2011-404-86). Generally speaking, a defendant who does not accept a bail decision declining an application for bail must appeal against that decision rather than lodge another application based on the same set of facts.

point in time recorded on the information to indicate that bail had been earlier declined by Judge Morris.<sup>28</sup>

Ms Lowe then stated to me that (paraphrased) “she was correct, bail had not been declined, and that Judge McNaughton had indicated that bail would be reconsidered on receipt of a positive forensics report”.

[82] Ms Lowe’s evidence was that she was firmly of the view that Mr Pell was mistaken in his belief that the bail application had been formally declined and that, accordingly, she had no jurisdiction to seek bail and “*strongly objected*” to that suggestion. Her view was that the formal bail application had not been finally determined and “*dismissed*” by Judge Morris; rather Ms Lowe considered that on 9 September Judge Morris had declined bail “*at that point*” and Mr Chand was remanded in custody for further information to be obtained by the Court (specifically a psychiatrist’s report and information that Mr Chand had been started on antidepressants). If he was found to be no risk (or any risk could be mitigated by appropriate conditions) and was responding to treatment, then it was possible for bail to be reconsidered to the home address. Accordingly, Ms Lowe believed she could pursue the adjourned bail application and did not have to show any change of circumstances. She stated that the information that she and Mr Pell looked at supported her view.

[83] Both Mr Pell and Ms Lowe gave evidence that when they looked at the informations on the Court’s paper-based file they would have expected to see “B/D” (bail declined) or “BAD” (bail application declined) on the informations if bail had been formally declined; instead, when they looked they saw “R” (remanded in custody). Mr Lewens, however, stated that if bail is declined, the judge would note on the information “RIC”, and that Judge Morris’s notation in his view indicated that she had declined bail and Mr Chand was remanded in custody.

[84] By the time of the 29 September hearing neither Mr Pell nor Ms Lowe had received a copy of the notes of Judge Morris’s 9 September decision, so could not refer to them (although Ms Lowe stated that Judge Morris had not directed she receive a copy so she had not necessarily been expecting it).

[85] When the matter was called, Ms Lowe advised Magistrate Nathan that the matter was in court for procedural reasons (which are irrelevant to the inquest) but also so that the issue of bail could be progressed and she made a bail application. She advised that as previously proposed, Mr Chand would reside with his mother at his home and either his mother or his aunt would be with

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<sup>28</sup> See footnote 18. On 9 September Judge Morris again made notations on each information with the fullest notation on the kidnapping information, on which she recorded: “R [remanded] to 23/09/11 @10.00; 38(1)(b) report ordered; electronic bail to be put in place; risk of self harm.” Ms Lowe stated that the information she and Mr Pell looked at did not mention electronic bail.

him 24 hours a day. Ms Lowe noted that an FCLN was in Court because Judge McNaughton had made a note on 29 September that if there was a further follow-up by the forensic liaison nurse and things were going well, bail could be looked at for Mr Chand.

[86] Mr Byrt, who was the FCLN present in Court, advised Magistrate Nathan that he had spoken to the FPT the previous day and they had confirmed the contents of the letter he had provided the Court on 28 September. Mr Byrt stated: “*He’s [Mr Chand] been taking his medication. His mood has stabilised. He’s tolerating his medication ... he’s currently psychiatrically stable and there are no current risk issues.*”

[87] Mr Pell made no submissions to the Court on this date.

[88] Magistrate Nathan decided that given the nature of the charges, Mr Chand’s age, and the previous involvement of Judge McNaughton, it would be best for the bail application to go back before Judge McNaughton. She remanded Mr Chand in custody until 5 October to go before Judge McNaughton. She wrote on the informations:

*FRIC [Further Remand in Custody] 5/10/11  
To make Bail App before Judge McNaughton*

[89] Following the hearing that day Mr Pell requested that the registrar obtain for him a transcript of the hearing on 9 September because:

*Even though nothing had been recorded on the information, I was certain that Her Honour had declined bail and I wanted to check exactly what Her Honour had said in court on 9 September 2011. I was also aware that Her Honour had directed the transcript of her decision be issued to Police on 9 September 2011 and we were still waiting on the decision as at 29 September 2011.*

[90] Mr Chand returned to Mt Eden Corrections Facility. On 30 September, he was assessed by the FPT leader (a nurse), who considered that Mr Chand had no psychotic symptomology. She recorded that Mr Chand did not think the antidepressant medication was working yet and still saw himself as depressed.

#### *Preparation for 5 October Bail Application*

[91] Mr Pell said that he was greatly concerned at the possibility of Mr Chand being granted bail in light of the matters outlined in the POTB and also the proximity of the addresses of the victim and Mr Chand. On 30 September, Mr Pell emailed Detective Iremonger to advise him what had happened in court the previous day, and spoke to him by telephone the same day. Mr Pell’s email read:



This is in court again next week for a full bail application. I note there are full admissions as evidence?

Mary Anne Lowe wishes to get bail for her client, for kidnapping, threatens to do GBH [grievous bodily harm] as well as assault with intent to rape. If there are full admissions as you say in your OTB, to my mind there is a strong case to keep him in custody. McNaughton mentioned bail may be a possibility if he is "stable" he is of course now "stable" but due to being RICd and being put onto the meds he must take, compared to outside where he does not have to keep his meds up to date.

If there is anything you have for the file that we can provide to the court to justify continued detention, this is the time to provide it, signed statements, full transcript of interviews (100% accurate) with those admissions.

[92] Detective Iremonger responded in an email that stated in part:

One other thing that has an impact on his bail (or at least bail to his Mount Batten address) is that the victim only lives 2 minutes walk from his address. He lives in Mount Batten Avenue, she lives in Eban Avenue.

There is a walkway that runs from Eban Avenue to Mountbatten Ave and if the walkway is used, the offender only needs to walk past 12 residential properties before he is at her house.

[93] They agreed that Detective Iremonger would arrange for a transcript of Mr Chand's interview (containing admissions) along with any available signed statements to be compiled so that this information could be placed before the presiding judge at the next scheduled court appearance on 5 October.

[94] Mr Pell ascertained that the prosecutor assigned on the roster to appear at the hearing on 5 October was Sergeant Rohan Stace, a police officer with approximately 18 months' experience in the role of police prosecutor at that time.<sup>29</sup>

[95] Mr Pell explained that police prosecutors do not follow a case through but rather appear in various courts on a rostered basis, with rosters prepared some weeks in advance. He described how cases are assigned as follows:

Just because of the sheer number of files and the nature of the beast if you like, there is a roster where you are responsible for Court 1 on Monday say, and then you're in trials on Wednesday so you have preparation time on Tuesday for the trials on Wednesday and then you might be in the Magistrate's list on Thursday. And it repeats and rotates. So whilst one of you might be in the judge's list, another might be in a magistrate's list and another might be in a registrar's list. There's different roles and they are all shared as the days go by.

[96] Mr Pell asked Detective Iremonger to forward the information he was collating to Sergeant Stace. Mr Pell also emailed Sergeant Stace on 30 September (attaching the email trail

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<sup>29</sup> In 2011 Sergeant Stace had been a police officer for 16 years.

between him and Detective Iremonger) and advised what evidence he had asked Detective Iremonger to obtain in time for the next appearance on 5 October. Mr Pell included in his email reference to s20 of the Bail Act, which he considered gave police the ability to place any admissions made by Mr Chand before the Court as part of their opposition to bail. His email stated:

Rohan, let's discuss this please before your appearance on Wednesday. Iremonger is getting all the proof we have with the dvd interview with full confession to all allegations that we can use (in my view) in the bail application to keep him RIC, per s20 of the bail act. We must protect the victim here. Discuss further next week.

[97] Mr Pell said that the steps he took were unusual and he took them because of the direct risk he saw Mr Chand posing to Christie.<sup>30</sup> Mr Pell stated that he was satisfied that Sergeant Stace had understood from him the importance of police strongly opposing bail.

[98] Detective Iremonger duly obtained the transcribed interview and highlighted on it the admissions made by Mr Chand relating to the specific offences he was charged with and the specific threats he had made to Christie's ongoing safety if he were granted bail. Detective Iremonger tabbed the relevant passages in the transcript for the judge to see, and provided a cover sheet to show how long each segment was and the time reference where it could be located when viewing the evidential interview DVD. He also printed off coloured maps of the suburb of Hillcrest showing the driving and walking distances between Mr Chand's home and Christie's home — with the walking distance being only two minutes — past eight houses and a short walkway between streets, and the driving distance being five minutes. Detective Iremonger highlighted each address and the routes that could be taken so that the judge could see how close they lived to each other.

[99] On 3 October Detective Iremonger delivered a package of three copies of these documents to Sergeant Stace, together with a copy of the DVD for the judge. Sergeant Stace received Detective Iremonger's package on the morning of 4 October.

[100] Detective Iremonger also discussed the case with Sergeant Stace on 29 September. Detective Iremonger said that he told the sergeant at that time that it was imperative that bail not be granted, and he made Sergeant Stace aware of the proximity of the properties. Detective Iremonger emphasised to the sergeant that it was important that the judge was "*totally aware of the tiny distance between the proposed bail address and the victim's address*".

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<sup>30</sup> Superintendent Johnson confirmed that this was an unusual stage to seek a transcript and reflected the level of concern.

[101] As well as the discussions about the transcript and maps, Sergeant Stace recalled that Mr Pell and Detective Iremonger had foreshadowed the possibility that the bail hearing would focus on mental health and medication issues. These mental health and medication issues were also referred to in the email exchanges on 30 September. The police position was that despite Mr Chand starting on medication, bail was still opposed as Mr Chand was considered an ongoing risk to Christie.

[102] Sergeant Stace stated that she understood going in to the 5 October hearing, that bail had been “*vigorously opposed*” to date and that police remained opposed to bail being granted to Mr Chand. Sergeant Stace said that she relied on Mr Pell’s and Detective Iremonger’s assessment of where the bail opposition was going. She confirmed that she understood from Mr Pell the imperative nature of getting the information before the Court.

[103] Mr Pell stated that prior to the 5 October hearing he made further requests to the Court registry for a copy of the notes of Judge Morris’s decision, but they were not provided, although Mr Lewens’ evidence is that he would have expected that if a prosecutor requested a transcript it would be produced within the standard three-day time frame.

*5 October 2011 — Fifth Court Appearance — Bail Granted*

[104] The final bail hearing was on 5 October before Judge McNaughton. FCLN Mr Byrt said that prior to the hearing he briefly assessed Mr Chand in the cells and prepared a letter for the Court as follows:

This letter seeks to further update the court.

I have assessed the defendant today in the court cells.

The defendant told me that he feels “well” and is pleased to be on anti-depressant medication.

Mood appears to be stable.

Today the defendant denies any risk issues to himself or to others.

Today there is no evidence of thought disorder and or thought disorganisation in the defendants thinking and resultant speech.

I have had access to the health information from the Forensic prison team. Their notes indicated that he has commenced on anti-depressant medication and are awaiting the full effect (efficacy) to have effect. There are no psychotic features and no concerns from custodial staff.

The prison team happy for follow-up by community mental health team if bailed to the community.



Court liaison are able to make follow-up arrangements if bailed today if a suitable bail [address] is provided.

At this stage I have not been contacted by counsel.

[105] Mr Byrt also spoke with Mrs Chand and Mrs Williams before Court started. He explained about the medication Mr Chand was on, his diagnosis and treatment, and that if Mr Chand were to be bailed he would be followed up by a community mental health team, but that if he were to be remanded in custody, then the FPT would follow him up.

[106] Ms Lowe again appeared for Mr Chand, and Sergeant Stace was, as expected, present as police prosecutor.

[107] Sergeant Stace advised that she had read the prosecution file prior to the hearing (as well as being briefed as previously outlined). She said that when she arrived in Court on 5 October she had the copies of the additional information in support of the police opposition to bail provided by Detective Iremonger. She attempted to pass one set to Judge McNaughton in advance, by giving it to the registrar before Court began. The registrar advised her that if the material was to be relied upon she should hand it up to the judge once the matter was called in court.<sup>31</sup> Sergeant Stace did not provide Ms Lowe with a copy.

[108] When the matter was called, Judge McNaughton began the hearing by observing that Mr Chand had been in custody for a month. An interaction with Ms Lowe about Mr Chand's mental health followed — with Ms Lowe advising Judge McNaughton that the FCLN (Mr Byrt) had seen Mr Chand at least twice since Mr Chand's last appearance before Judge McNaughton. Judge McNaughton reviewed Mr Byrt's letter of 5 October, and asked Mr Byrt about what he meant in his note about the full effect of the medication. Mr Byrt told the Court that Mr Chand had started taking his medication two weeks earlier and that it was a medication that "*takes a couple of weeks before it reaches its full potential*". Mr Byrt confirmed that the medication should have just about reached its full potential. Ms Lowe advised that Mr Byrt had arranged an outpatients appointment at Taharoto for the following week, if Mr Chand were to be granted bail. She noted that her proposal (already advised to the Court) was that if Mr Chand were granted bail:

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<sup>31</sup> Mr Pell's expectation was that Sergeant Stace would have provided this information to the Court in advance so the Judge could read it beforehand. Sergeant Stace did not agree with the proposition that she could have filed this material on 4th October, which was the same date the Victim Advisor had filed Christie's letter on the Court file. In Sergeant Stace's view, it had passed the point of pre-hearing filing, but she said that if someone (else) had addressed it earlier, they could have drafted a memorandum and appended it and filed it in Court before the hearing.

... he would be able to be in the company of either his mother or his aunt, or his sister who is a university student, at any time; and obviously strict bail conditions would be appropriate.

[109] Judge McNaughton stated that he had a letter from the victim advisor (which attached a letter from Christie opposing Mr Chand getting bail) and asked Ms Lowe if she had seen it. Christie's letter stated:

I wish to oppose Akshay receiving bail as the events have made me wary of his intentions. I worry for my safety because of this and particularly as my father is currently on a Fly in Fly Out job in Australia which reduces the support I can rely on. Akshay's family, mother and aunty, live close to my home so I feel that he may play on my thoughts as he knows my father is away for a reasonable period but he also knows my routine travelling to Uni and where I work in the city. I am worried that he may still try to get revenge on me as he is already in trouble and has nothing to lose if he tries again. This causes me to fear for my safety.

I catch the bus to uni or work every week day, travelling from my local stop through Northcote to the city. So I am worried that living close by me he would be able to follow me and get on the bus. As it is very public and I feel I will be very vulnerable. I also have exams for university coming up and wish to be able to concentrate on my studies and not have it constantly on my mind that he is out and has the possibility of getting me again.

I would like to get on with my life but at present I need to know that I don't have to encounter him as I try to restore my faith in people as this has caused me a lot of distress.

[110] Ms Lowe confirmed to Judge McNaughton that she had seen the letter, stating:

I understand the sentiments expressed in that letter. They are not unusual in any way, and to be completely understood. I have advised the family of those views.

[111] Ms Lowe advised Judge McNaughton that Mr Chand's mother and aunt were in Court to take him home. Judge McNaughton then turned to bail conditions and asked where Mr Chand was going to live. Ms Lowe confirmed that it would be with his mother and gave the address. Ms Lowe asked that if there were to be a 24-hour curfew that it be unless Mr Chand was attending mental health services appointments or medical appointments or visiting counsel, and said that his mother or his aunt could take him to those appointments.

[112] Judge McNaughton noted that he would make it a condition that Mr Chand not go to Christie's address and asked Sergeant Stace for that address. Sergeant Stace spelt out the name of the street where Christie lived and gave the number of the street, but not the suburb.

[113] The only other time Sergeant Stace spoke during the hearing was in response to a question from Judge McNaughton about whether he should consider any other conditions than residence, 24-hour curfew, non-association, and not to go to Christie's address. Her response was:

I can't think of anything else that would further address the concerns raised by the police in the opposition to bail sir.

[114] Judge McNaughton remanded Mr Chand until 9 November 2011 and granted bail with the following bail conditions:

- (a) You live at 1/5 Mountbatten Avenue, Hillcrest [his mother's address].
- (b) You will be on a 24-hour curfew.
- (c) The only time you will be able to leave is for medical or legal appointments with Suchita Chand or Amita Williams. So you cannot leave the house on your own at all. If you do that is breach of bail, and you will be arrested, you will be back here and you will be in custody.
- (d) You are not to associate with the complainant, that is Christie Marceau, and that means in any way at all. You cannot go to her address, you cannot ring her, text her or send letters.
- (e) You are not to go to 93 Eban Avenue which is where she lives.

[115] Ms Lowe spoke to Mrs Chand and Mrs Williams after the hearing and explained the bail conditions and that Mr Chand would be signing a bail bond prepared by Court staff. Ms Lowe stated that she did not realise at the time that in fact although Judge McNaughton had imposed a 24-hour a day curfew, he had not made it a condition of bail that either Mrs Chand or Mrs Williams had to be at the house 24 hours a day, and she (Ms Lowe) did not see the notice of bail. Because she thought that 24-hour supervision was a condition, she had made it clear to Mrs Chand and Mrs Williams that it was an expectation.

[116] Mr Chand signed and was given a copy of the written notice of bail setting out the bail conditions, which was signed by a deputy registrar. Mr Byrt gave him an appointment to see the Waitemata DHB community mental health team on 11 November. Mr Chand then went home with his mother.

### **Mr Chand on Bail (5 October to 7 November)**

#### *Police Monitoring*

[117] The bail condition of a 24-hour curfew to his home address meant that Mr Chand had to be at the nominated address 24 hours per day, unless he was attending medical or legal appointments, in which case he had to be accompanied by his mother or aunt. He was not permitted to leave the house on his own.

[118] Where bail is granted with conditions, police enforce the bail conditions. They do so through bail checks and ensuring that the conditions imposed (as set out in the bail bond) are



being complied with.<sup>32</sup> If a breach is detected, an alert is created against that person in the police National Intelligence Application (NIA)<sup>33</sup> so that the person can be arrested by police staff anywhere in the country when detected.

[119] On 5 October after Mr Chand was granted bail, the bail bond was sent from NSDC to the District Intelligence Unit at North Shore policing unit. Normal processes for bail management in place at the time were instituted, and sectional police staff were tasked with conducting bail checks. The first bail check on Mr Chand was undertaken on 6 October at 7.15 pm.

[120] On 16 October Detective Iremonger sent an email to the Officer in Charge of the Intelligence Unit, Detective Williams. In it Detective Iremonger alerted the detective to the charges against Mr Chand and the bail conditions, and stated:

The problem is that he lives one street over from the 18 year old victims address of 93 Eban Avenue, Hillcrest.

If he wants to breach his bail and go to the victims house, he only needs to walk past 5 addresses in his street, go down a walkway which takes him to Eban Ave and then walk past about another 5 addresses and he is at the victims ...

... The victim is really scared that he [Mr Chand] is going to breach and go to her house.

[121] Detective Iremonger asked Detective Williams to take steps to ensure that a special mention about Mr Chand was made at the line-ups for each shift so that as many bail checks as possible were conducted on Mr Chand. Detective Iremonger stated that he did not usually send out such emails, but doing so on this occasion reflected the level of his concern.

[122] Superintendent Johnson stated that it was a proactive step for Detective Iremonger to send this email, and doing so highlighted the degree of concern he felt.

[123] Detective Iremonger also visited Mr Chand on 24 October to check that he understood, and was complying with, his bail conditions. Detective Iremonger stated that this is not something he does in respect of every defendant.

[124] The evidence is that in the period between 6 October and 6 November police conducted 23 bail checks at Mr Chand's home at various times of the day, with the last check on the evening of 6 November. On each occasion Mr Chand was at home.

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<sup>32</sup> Since 1 February 2014 electronic bail has been monitored by the Department of Corrections.

<sup>33</sup> The National Intelligence Application is the police electronic database.

[125] Mrs Chand said that she was home many times when the police made the bail monitoring visits: in the middle of the night or early mornings she was the one who opened the door. There was never any occasion she felt she wanted to tell them anything.

#### *Supervision by Family*

[126] Mrs Chand said that when her son came home on bail she took a week's leave to stay with him full time.

[127] The following week, Mrs Chand returned to work five days a week — leaving the house at 6 am and returning in the early afternoon. When she returned to work after her leave, she did not work extra hours filling in for others as she had done before her son was granted bail. She said that she would often ring her son from work and he was always at the house.

[128] Mr Chand's aunt, Mrs Williams, who lived near the Chand family, was a widow. She had an eight-year-old son who she needed to get ready for school each morning, so she was not available for any supervision of Mr Chand until after her son was at school. Mrs Williams' evidence was that when her sister was not there, after she dropped her son at school she would visit Mr Chand and he was always at home. The earliest she could get there was some time around 9 am. She would also call him from her home to check that he was at home. However, because Mrs Chand worked, and Mrs Williams had a child to look after, Mrs Williams confirmed that there were times when Mr Chand was by himself.

[129] Mrs Chand said that while her son was on bail he never left the house as far as she knew. She said that he seemed to accept his curfew and spent most of his time watching TV or playing chess on the internet. He had scant interaction with her or his sister, although as time passed he began eating dinner with them instead of in his room, and seemed happier.

[130] Mrs Chand stated that she had not heard of Christie before the events of 6 September, and she and her son never discussed the events that led to his arrest, and never spoke of Christie.

[131] Mrs Chand said that while her son was on bail she initially hid all the kitchen knives from him. The reason she did so was because she was worried about what he had done to Christie previously, and did not want him to harm anyone else. Mrs Chand was also worried that he might try to harm himself because of his previous suicide attempt. However, in the couple of days prior to 7 November she took the knives out and did not put them back in the hiding place, as her son appeared quite well and she thought he was fine. Her evidence was that she thought he would be

all right at home (on bail) because he would have learned his lesson and also because he was on antidepressant medication, which she felt would help.

[132] Shayal Chand, Mr Chand's sister, described herself as "*terrified*" about her brother getting bail. She said that on the night Mr Chand was arrested the police came and searched their house, and she heard the police telling her mother what Mr Chand had done. Shayal said that that made her very scared of him. Later, while her brother was in prison, before he got bail, she read what she described as a statement given by Christie, which she thought her mother had got from her brother's lawyer.<sup>34</sup> Shayal said that that also made her really scared of what her brother had done and what he might do to her.

[133] Shayal said that while her brother was on bail she took every opportunity to stay at friends' houses so that she did not have to be at home, and did not want to be anywhere near him.

[134] Shayal said that she did not ever meet her brother's lawyer (Ms Lowe) and she never had a conversation with her mother or aunt about her brother being bailed to the home address, his bail conditions, or about any responsibility she may have for supervising him. She recalled police officers coming to check on her brother while he was on bail, but never spoke to any of them.

[135] Mrs Chand said that she never had any expectation that her daughter would supervise Mr Chand.

#### *Mental Health Care While on Bail*

[136] The day after Mr Chand was released from custody (6 October) Mrs Chand took him to general practitioner Dr Ajay Makal, the Chand family doctor. She said that she was aware that her son had been taking antidepressants in prison and she wanted to make sure the medication continued.

[137] Dr Makal had not seen Mr Chand previously, although he was registered with the practice and had attended another doctor at the practice on a previous occasion for a physical issue. Before seeing Mr Chand, Dr Makal reviewed the discharge summary from Mr Chand's assessment at North Shore Hospital on 6 September (after Mr Chand took an overdose of multivitamins), which had been sent electronically to the practice from North Shore Hospital.

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<sup>34</sup> This document may have been the caption summary. Ms Lowe's evidence is that she did not give Mrs Chand any statement made by Christie, and Shayal Chand confirmed that the caption summary looked more like the document she had seen.

[138] Mr Chand asked Dr Makal for a prescription for the antidepressant citalopram, which Mr Chand said had been prescribed for him by a psychiatrist while he was in Mt Eden prison. He indicated to Dr Makal that the doctor had recommended that he continue taking this medication but had not given him a repeat prescription. Mr Chand told Dr Makal that he had been bailed the previous day, but would not disclose why he had been in prison. Mr Chand told Dr Makal that he was feeling a lot better since he had been on citalopram and thought his mood had lifted and he was finding interest in things. Mr Chand denied any thoughts of harming himself or others. He told Dr Makal that he had an appointment on 11 October with the community mental health team.

[139] Dr Makal said that when he saw Mr Chand that day he had only a limited amount of information, and Mr Chand was unforthcoming. Dr Makal prescribed Mr Chand a 10-day supply of citalopram 20 mg once daily and asked that he return in two weeks' time for a follow-up. At that stage Dr Makal's understanding was that he was to prescribe medication for Mr Chand but his mental health care was under the supervision of the acute community mental health service, and Mr Chand was going to be reviewed by that service the following week.

[140] That day two nurses from the FPT visited Mr Chand's home to deliver him some antidepressant medication, as they were aware that he had been bailed without having a supply of medication. He advised that he had already got a script from his general practitioner.

[141] On 11 October Mr Chand attended an outpatients appointment with Waitemata DHB's acute community mental health team and was assessed by two registered mental health nurses (Sally French and Louise Hayward-Rowse) in accordance with the arrangements made by FCLN Mr Byrt. Mr Chand's mother was present but at Mr Chand's request was not part of the review, although he agreed that she could join towards the end.

[142] Ms French stated that the purpose of the review was in part to reassess Mr Chand's mental state, risk, and response to medication. Ms French's evidence was that at that stage they were aware that Mr Chand was being treated for depression, that he had started an antidepressant, and that he was facing charges of kidnap and assault with use of a weapon. They were also aware of the overdose and subsequent assessment of Mr Chand at North Shore Hospital.

[143] Mr Chand denied to the nurses any current thoughts to either harm himself or end his life. Regarding the overdose of multivitamin tablets, Mr Chand described having a "*small amount*" of regret that he had not been successful in his intention at that time to end his life. He denied having had further thoughts of ending his life.

[144] Ms French asked Mr Chand whether he had had, at any time, thoughts or plans in regard to harming others. He denied any such thoughts or plans. Ms French said she was accepting of this taking into consideration that, apart from the charges he faced, Mr Chand had no other known history of risk to others. She said that she obtained collateral information from Mrs Chand that she did not express any concerns regarding risk. Ms French also noted that Mr Chand did not have any known alcohol or substance abuse issues that could further increase risk to himself or others.

[145] Ms French stated that clinically she and her colleague did not assess Mr Chand to have severe mental health symptoms at that time that would indicate increased concern regarding risk. He was compliant with treatment and medication for a mild to moderate depressive episode, to which he had responded with noted improvement. He was also at that point compliant with bail conditions and was not presenting as being acutely mentally unwell. He acknowledged that it was likely that he would get a custodial sentence when next due in court on 9 November 2011.

[146] Ms French said that Mr Chand was not thought disordered or distracted, and did not exhibit any behaviours that would have been potentially indicative of him experiencing underlying psychosis. He presented with organised thoughts and was able to respond to questions asked.

[147] Following the review Ms French discussed the assessment, risks, and a plan for going forward with other colleagues from the mental health team (including the acute team psychiatrist and other team members including nurses, social workers, and the team co-ordinator) at a team handover. They agreed that Mr Chand did not fit the criteria for being followed up by an acute mental health team. However, the service wished to obtain further information from the Mason Clinic to find out its involvement (as they were unsure why staff of the ARFPS had made a home visit to Mr Chand, and whether that service was going to remain involved) and to clarify whether the bail conditions required Mr Chand to attend the community mental health service while on bail.

[148] FCLN Ms Wilson (from NSDC) was contacted. She advised that it was a condition of bail that Mr Chand attend the appointment on 11 October, but that following the assessment it was up to the community mental health service and Mr Chand to decide whether further follow-up by that service was required. A member of the ARFPS was also contacted and expressed concern that due to Mr Chand's age and serious charges he was an ongoing risk (with Ms French's evidence being that this comment appeared to be made with particular reference to risks of safety to himself).



[149] On 12 October the acute community mental health service concluded that there was no indication for follow-up of Mr Chand, and that after liaison with his mother and GP, the file was to be closed.

[150] On 19 October Mr Chand went back to Dr Makal, who by that stage had been advised that following assessment by the community mental health team Mr Chand had been discharged to his care as there was no indication for him to be followed up by the specialised service. Copies of the psychiatric assessments done by the DHB's mental health team, including a full record of the assessments done on 6 September and 11 October were sent to the practice. Dr Makal reviewed this material before seeing Mr Chand. Dr Makal said that he was reassured that the specialist team did not think there was any significant risk with Mr Chand but was aware that he needed to keep an open mind in assessing him.

[151] At the 19 October consultation Mr Chand advised Dr Makal that he was feeling better but would like to increase the dose of citalopram as he felt that he needed a higher dose to feel fully better. He told Dr Makal that he was getting bored at home. He denied any thought of harming himself or others. Mrs Chand, with her son's consent, joined the consultation part-way through as Dr Makal wished to get her involved in her son's care. Both expressed concern at his upcoming court case.

[152] Dr Makal did not identify any signs or symptoms of psychosis in his assessments of, or his interactions with, Mr Chand. Dr Makal advised that at that stage Mr Chand had been on citalopram for four weeks and it was an appropriate time to assess whether it was working and if the dose needed to be increased. Dr Makal felt it reasonable to increase the dose, which he did by 10 mg (to 30 mg a day). He planned to review Mr Chand the following month.

### **7 November 2011**

#### *Chand Breaches Bail and Kills Christie*

[153] At 7.04 am on 7 November police received a 111 call from the Marceau's home. At that time Mr Chand had pushed his way into their house and attacked Christie. The call was given a "Priority 1" status and police arrived at the Marceau home at 7.13 am. Tragically, by that time, Christie had died. Mr Chand was still at the house.

[154] That morning, Shayal Chand, who had time off to study for exams, had woken up later than usual — sometime after her mother had left for work. Shayal noticed that the door of her brother's bedroom was open, which was unusual. He was not in the room, and when she looked for him in the house and garden he was not there. She then rang her mother.

[155] When Mrs Chand received the call from her daughter her immediate concern was that her son might have taken off so that he could kill himself. Mrs Chand rang mental health services (with the records indicating that the call was made at 9.29 am) and then her sister, Mrs Williams. Mrs Chand agreed that the community health records noting her call at 9.29 am was likely correct. Shayal believes it is likely she called her mother just before that time.

[156] Although not asked to do so by Mrs Chand, when Mrs Williams received the call from her sister she drove straight around to Christie's house, where she was advised by police that Christie had died.

[157] Mr Chand confirmed in his interview with police on 7 November that he complied with his bail conditions, and remained at home, until he went to Christie's home around 7 am on 7 November and killed her. He stated in the interview:

- *"[W]hen I went into prison I had thoughts of killing her I mean I knew I had to get out so yeah I mean act naïve tell the truth tell the med team I'm not gonna hurt anyone I'm not gonna hurt myself which was true because I mean I'm in a much better place now the medication works. I mean it's sort of strange because I mean the medication might have made it easier for me to kill her because I don't know um if you look up Citalopram one of the side effects is um apathy."*
- His main reason to deceive was to kill Christie once he got out.
- He had started to plan to kill Christie from the day he was granted bail.
- It started with a desire for "reprisal" for all the things he believed she had done to him.
- He knew he had to bide his time; he thought that when he first got out Christie would probably be fearful that he would come for her, so he left it a month so she would lessen her guard, and did it two days before he was going back to jail because he thought by then she would assume he would never come.
- *"When you've got nothing to lose nothing to gain it becomes completely viable to kill someone."*

### **Subsequent Court Decisions**

#### *Not Guilty by Reason of Insanity*

[158] Mr Chand was found not guilty of Christie's murder by reason of insanity.<sup>35</sup>

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<sup>35</sup> *R v Chand* [2012] NZHC 2745.

### *Guilty of 6 September charges*

[159] Mr Chand pleaded guilty to the charges of kidnapping, assault with intent to commit sexual violation, and threatening to do grievous bodily harm arising from the events of 6 September 2011. He was convicted and sentenced to three years' imprisonment for kidnapping; one year for threatening to cause grievous bodily harm, and two years for assault with intent to sexually violate.

### **ISSUES**

[160] The following section deals with the issues identified for the inquest (see Appendix 1). As explained earlier, the issues fall within the following parameters:

- 1) The administrative processes of the North Shore District Court in relation to applications and granting of bail, including the nature and adequacy of information available to the presiding judge when making such determinations.
- 2) Following a grant of bail, the processes relating to supervision and monitoring of bail conditions, including liaison with family members undertaking responsibility for the person while on bail, as well as with the victim and the victim's family.
- 3) Mr Chand's mental health, and the nature and adequacy of assessments undertaken prior to the grant of bail, and oversight of his mental health while on bail.

[161] Evidence at the inquest clarified that some of the matters identified as separate issues were so closely linked they are difficult to consider in isolation. Where this occurred, if sensible, such matters are dealt with together in these findings.

### **ADMINISTRATIVE PROCESSES — NORTH SHORE DISTRICT COURT**

#### **Obtaining Information about Mr Chand's Safety and Health Status**

[162] At the Court hearings on 7 and 9 September, Judge Morris was considering an application for bail. In this context, she was concerned about Mr Chand's mental health and sought more information in respect of safety issues and mental health status. This section considers the process for seeking such information, and the outcome.

### *Sources of Information*

[163] There were two sources of information available to the Court from the specialist mental health staff of the ARFPS. The first was to request a report from a forensic court liaison nurse stationed at NSDC and available to assess defendants who may have mental health concerns and provide reports to the Court. The second was to make an order for a report from a health assessor (a forensic psychiatrist or psychologist).

[164] Dr Skipworth (Consultant Forensic Psychiatrist and Clinical Director of the Auckland Regional Forensic Psychiatry Service) gave evidence that FCLNs generally confine their advice to the Court to clinical information that may help with the decisions needed to be made by the Court. If those questions relate to an assessment of risk in the context of a bail application, an FCLN would be expected to confine that advice to the potential need to engage processes under the Mental Health Act, in the context of which an assessment is made about the extent to which any “*abnormal state of mind*” experienced by the defendant may lead to a serious risk to that person or others.<sup>36</sup> The focus of this advice therefore relates to the potential application of the Mental Health Act and risk in that context, rather than the broader question of safety implied by a bail application, which must also contemplate risks unrelated to any mental illness.

[165] Dr Skipworth stated that in contrast, health assessors (psychiatrists and psychologists) engaged by the Court are asked to assist the Court with more focused legal questions, such as fitness to stand trial, insanity, or pre-sentencing matters. Occasionally they are more specifically asked by the judge to address community safety in contemplation of a bail application.

### *Information from Forensic Court Liaison Nurses*

[166] On 7 September Judge Morris indicated that she wanted some information “*on the forensic side*” and asked that the FCLN who, she had been advised, had seen Mr Chand that morning put “*something in writing*” that day.

[167] As set out in more detail at paragraphs [39]–[41], that day FCLN Ms Wilson had conducted an assessment of Mr Chand urgently before Court commenced as police were

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<sup>36</sup> “Mental disorder” is defined in s2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 as follows:

**mental disorder**, in relation to any person, means an abnormal state of mind (whether of a continuous or an intermittent nature), characterised by delusions, or by disorders of mood or perception or volition or cognition, of such a degree that it—

(a) poses a serious danger to the health or safety of that person or of others; or

(b) seriously diminishes the capacity of that person to take care of himself or herself; —

and **mentally disordered**, in relation to any such person, has a corresponding meaning.

concerned for Mr Chand's safety. She prepared a letter for the Court that did not reach the Court file until after Mr Chand had already been remanded in custody. The contents of the letter are detailed at paragraph [50].

[168] On 9 September Judge Morris had Ms Wilson's report before her. She also (subsequently) had an oral report from FCLN Mr Byrt, who assessed Mr Chand in the presence of Ms Lowe during an adjournment in the Court proceedings that day. The assessment was made at a time when Judge Morris was contemplating granting Mr Chand bail if he could be admitted to the Taharoto inpatient unit on a voluntary basis — going directly from custody to hospital. Mr Byrt attended Court and gave an oral report advising that Mr Chand did not show any symptoms that would warrant him being placed under the Mental Health Act or admission to Taharoto. Mr Byrt concluded that Mr Chand was "*moderately depressed, displayed no psychotic symptoms and had a low risk profile*".

#### *Information from Health Assessor*

[169] Judge Morris remained concerned and on 9 September indicated that she wanted a doctor to examine Mr Chand and provide more information. She stated that she wanted "*a full forensic report*" and referred to s38 of the Criminal Procedure (Mentally Impaired Persons) Act 2003.

[170] In her decision, Judge Morris stated:

Insofar as process is concerned there is no triggering of a need for any hearings at this point, it is simply investigatory. If the s38 report says otherwise then that may well trigger a different procedure but that is not anticipated at this point. It may also be that there is material in that report that may assist a Judge in terms of a bail decision.

[171] Section 38 of the CPMIP Act authorises a Court, in its discretion, to order a health assessor to prepare an assessment report in any case where a person is in custody during proceedings, whether before or during a hearing or trial or while awaiting sentence or the determination of an appeal. Section 38 sets out the specific purposes for which a report may be requested. The relevant sub-section of the provision states:

#### **38 Power of court to require assessment report**

- (1) When a person is in custody at any stage of a proceeding against the person, whether before or during the hearing or trial, or while awaiting sentence or the determination of an appeal, a court may, on the application of the prosecution or defence or on its own initiative, order that a health assessor prepare an assessment report on the person for the purpose of assisting the court to determine 1 or more of the following matters:
  - (a) Whether the person is unfit to stand trial;
  - (b) Whether the person is insane within the meaning of section 23 of the Crimes Act 1961;

- (c) The type and length of sentence that might be imposed on the person;
  - (d) The nature of a requirement that the court may impose on the person as part of, or as a condition of, a sentence or order.
- (2) If a court orders that an assessment report on a person be prepared under subsection (1), the court may —
- (a) ...
  - (b) Order that a person be detained in a prison for the purpose of the assessment for any period not exceeding 14 days as the court thinks fit; or
  - (c) ...

[172] Later that day a court registrar prepared an order that a health assessor prepare a Health Assessment Report (remanded in custody) pursuant to s38(2)(b) of the CPMIP Act. Advising on risk to others in connection with bail applications is not one of the express statutory assessments in s38, and Judge Morris's statement that such a report may assist a judge in terms of a bail decision was not communicated in the order. The order was provided to the FCLN (in this case Mr Byrt), who then passed on the information to ARFPS for administrative action.

[173] Mr Byrt does not recall being in Court when Judge Morris made the order, or being aware of Judge Morris's statement concerning the possibility of the s38 report providing information that may assist a judge in a bail decision (stating that perhaps he had been called away). He stated that generally the FCLN would pass on whatever information they had received, and if he had heard the Judge's comments he would have conveyed the information.

[174] Dr Ian Goodwin, a consultant liaison and forensic psychiatrist in the ARFPS in September 2011, was assigned to prepare the health assessment report. Dr Goodwin's evidence was that he understood that the express purpose of Judge Morris's order was to assess the issue of Mr Chand's fitness to stand trial. Dr Goodwin explained that the purpose of such reports is to assist the Court in determining whether a defendant is fit to stand trial within the meaning of s4 of the CPMIP Act.<sup>37</sup>

[175] Dr Goodwin's evidence was that he was not aware of Judge Morris's comments that the report may assist a judge in a bail decision, noting that there was basically no relationship between a "section 38 report" and a bail decision. He had assumed the request for the s38 report had been initiated by defence counsel, noting that "*90% of requests come from them*". His

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<sup>37</sup> The concept of fitness to stand trial relates to a defendant's current mental state, rather than any potential mental state at the time of the alleged offending. The determination of fitness is made by the court, not the health assessor. Insanity is to do with the mental state at the time of the offending.

evidence was that had he known that the Judge wanted the report he may well have asked the FCLN why the Judge had asked for it.

[176] Dr Goodwin stated that in two decades as a forensic psychiatrist he could think of only two occasions when a judge had specifically asked him to do a risk assessment because the judge was considering bail. On these rare occasions, the request had still been under the fitness to plead part of s38. He stated that on both occasions he received a direct note from the Bench asking him to cover risk assessment and, if that is what a judge is wanting, he would expect to receive a note from the judge to that effect.

[177] Dr Goodwin did not see the notes of Judge Morris's 9 September decision, which she had requested be sent to mental health services, and agreed in evidence at the inquest that it would have been useful to have seen the transcript, as "*it would have been helpful to have it just in terms of seeing what the bench is thinking at the time*".

[178] Dr Goodwin advised that in order to provide an assessment of fitness to stand trial a comprehensive history and psychiatric examination of the defendant is undertaken. This includes information from collateral sources as well as information obtained from the defendant. Aside from the order to prepare the report, the information Dr Goodwin had available to him<sup>38</sup> was:

- The clinical notes of Mr Chand's assessment at North Shore Hospital Accident and Emergency Department (following the overdose) of 6 September 2011;
- Police Caption Sheet and Summary of Facts in relation to Mr Chand's offending on 6 September 2011;
- Police Opposition to Bail dated 7 September 2011;
- Information from an interview with Mrs Chand that Dr Goodwin conducted by telephone on 19 September.

[179] Dr Goodwin interviewed Mr Chand at Mt Eden Correctional Facility on 16 September, spending 1 hour and 20 minutes with him. Dr Goodwin subsequently prepared a report for the Court, dated 20 September 2011.

[180] In his report Dr Goodwin opined that Mr Chand presented with symptoms of mild to moderate depressive illness, and noted the suicide attempt of 6 September. Dr Goodwin also opined that there was no evidence of any psychotic process or any history that was suggestive of

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<sup>38</sup> The documents were put together by administrative staff at the Mason Clinic.

bipolar affective disorder. He considered that Mr Chand did not fulfil the criteria for “mental disorder” as set out in the Mental Health Act. Dr Goodwin also considered that Mr Chand had a good understanding of the charges he was facing, and Dr Goodwin stated that he was “*on balance, of the opinion that it is unlikely the court would find Mr Chand unfit to stand trial at this time*”.

[181] Dr Goodwin stated that part of his psychiatric assessment of Mr Chand was an assessment of the criteria for mental disorder under the Mental Health Act. This included evaluation of risk to self and risk to others because risk evaluation is part of the test for compulsory assessment and treatment of people who have, or may have, a mental disorder. He explained that the evaluation relates to risk to self and others as a result of a mental disorder, it is not an evaluation of risk to others that arises from factors unrelated to mental health issues.

[182] Dr Goodwin said that he focussed on Mr Chand’s risk to Christie and, in his opinion, Mr Chand’s risk to Christie was low. His evidence was that Mr Chand repeated several times during the assessment that he would not harm Christie again. Dr Goodwin’s evidence was that although he had not been asked to use any structured professional judgement tool, had he done so Mr Chand would have “*still come out as low risk at that time*”.

[183] Dr Goodwin did not include any statement about Mr Chand’s risk to others in his report, but his evidence at inquest was that where a clinician is concerned about the risk a prisoner may present to someone in the community because of a mental illness, then the clinician would be expected to say so in their assessment.<sup>39</sup> Dr Goodwin stated in evidence:

Q And you concluded as you’ve told us that his risk to others in your opinion was low?

A Well to Ms Marceau, yes that’s who I was focused on.

Q You were focused on Christie. Put it another way, if there’d been a red flag arising from your mental state exam, about his risk to Christie, you would have said so in this report, wouldn’t you?

A Correct.

Q Even though it was a 39 [sic](2)(b) report?

A Because it’s part of, when you do a psychiatric assessment, those risks are always covered anyway, you just do it. ...

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<sup>39</sup> Dr Skipworth’s evidence was that if Dr Goodwin had formed the view that the offending Mr Chand was charged with related to a mental disorder or an abnormal state of mind that he had assessed as being present in Mr Chand, he would have expected that Dr Goodwin would communicate that information to the health professionals involved in Mr Chand’s care. This would ensure that those issues could be addressed and the potential application of the Mental Health Act thought through if there was to be a bail application, for example. Dr Skipworth noted, however, that Dr Goodwin did not view the motive and the offending as being related to the mild to moderate depression Mr Chand was diagnosed with (i.e., the offending was not a product of the depression Mr Chand was thought to be suffering from at the time).



[184] Dr Goodwin's report contained three recommendations:

- I would strongly recommend that Mr Chand continue to be treated for his depressive illness. Should he be granted bail this can be undertaken in the community and on a voluntary basis.
- If Mr Chand were to be further remanded in custody he will continue to be treated by the Forensic Prison Team of Regional Forensic Psychiatry Services.
- Counsel for Mr Chand may wish to explore the issue of Mr Chand's mental state at the time of the alleged offending further and consider the possibility or otherwise of a defence pursuant to section 23 of the Crimes Act 1961. It is not however necessary that Mr Chand be further remanded in custody for such a report. Counsel may wish to consider this potential option once the issues of fitness to stand trial have been finalised.

[185] Dr Goodwin's evidence was that he included recommendations in his report as he considers that reports that do not make recommendations to the Court are not particularly helpful. As he did not know what the Court was going to do, he had to "*... cover off whether he is bailed or whether he is remanded in custody because I need to ensure that he continues in treatment*". He accepted in response to questions from counsel at the inquest that mentioning the possibility of bail in his report (which he had become aware of from his interview with Mr Chand), or referring to it in his recommendations, and given the absence of any warning in the report about possible harm to others, could possibly result in a judge accepting his report as reassuring in terms of Mr Chand's mental state in the context of bail. However, he stated that judges need to be very careful about not conflating mental health risk and non-mental health risk. He said:

I would be disturbed if a judge saw these kind of reports as enough evidence of diminished risk to another person to give them bail because they're not designed for that at all, they're just not.

[186] Dr Goodwin's evidence was that there is a danger in making a false assumption that just because the individual is mentally ill that the offending is the result of the individual's mental illness. It may have a contribution or it may not. He stated that unless a psychiatrist states that offending is related to the mental illness it should be assumed that it is not.

[187] Dr Goodwin was clear that forensic services provide an assessment of risk related to mental health only, it is not up to mental health services to completely protect the public. He stated:

I think the underlying false premise is that Mental Health Services should be managing his risk. In a situation like this, where I interview a person, and I read what they have done and I get an account of what they have done, and I do not believe that it is in any way related to his mental illness, I rely on other agencies to contain his risk, not Mental Health Services.

[188] In his evidence Dr Skipworth agreed with Dr Goodwin that it is rare for district court judges to commission s38 reports specifically for bail decisions, and he was aware of only two cases in the Auckland region over the last few years. Dr Skipworth stated that in his opinion a Court should not use a fitness to stand trial report to inform a decision about bail, but that there was a subtle distinction, as there may be information in the s38 report that might be useful to the Court when making a decision about bail. He therefore accepted that even where a s38 report had not been specifically requested in the context of a bail application, the Court may nevertheless use them in that context, and that the ARFPS would not be aware of it. He did not, however, have any particular reason to believe they were widely used for purposes outside of that for which they were requested.

[189] Dr Skipworth stated that he had no reason to be concerned that health assessors, in completing s38 reports, were providing opinions about risk or other issues, which were not clear in the way they were worded and which might potentially be misused or inappropriately applied or understood by the Court or other parties.

#### *Further Information from Forensic Court Liaison Nurses*

[190] At subsequent hearings, as discussed later in these findings, Judge McNaughton requested, and was provided with, further information from an FCLN.

#### **Conclusions**

[191] The Court received timely responses to its requests for input from the ARFPS staff concerned, all of whom provided feedback on mental health issues to the Court. Written and oral input was provided by the two FCLNs located at NSDC to assist the Court at the 9 September hearing. When Judge Morris sought the expertise of a health assessor, forensic psychiatrist Dr Goodwin provided the Court with an opinion on the issue of fitness to stand trial in accordance with the order he received. The report also provided collateral information that may have been of assistance to the Court at subsequent hearings, in the manner suggested by Dr Skipworth. The report was available for the next scheduled Court hearing on 23 September.

[192] An issue arising is that Dr Goodwin was not advised that the s38 report had been ordered because a judge had indicated that she required it. His evidence is that he would likely have enquired further as to the reasons for the Judge's request, had he been aware of it. The evidence suggests that the only way he would have known about this matter was if FCLN Mr Byrt had been aware of it (not a reliable method as FCLNs are not always in court to hear what a judge says) or if a copy of the notes of Judge Morris's decision had been made available to him (a

matter considered later in these findings). Dr Goodwin's evidence was that it would have been useful for him to have had a copy of the notes of her decision to know what she '*was thinking*'.

[193] It is not possible to know whether Dr Goodwin's report would have contained any additional material if he had been aware that Judge Morris had specifically asked for the report, and/or if he had received a copy of the notes of her decision.

## **RECOMMENDATION**

### **To the Secretary for Justice/Chief Executive Ministry of Justice:**

I recommend that district court processes are amended to provide that:

When an assessment report pursuant to s38 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 is ordered by the Court on its own initiative while bail for a serious offence/offences is being considered, the Judge's notes pertaining to the decision to order the report are routinely made available to the health assessor appointed to prepare the report (to form part of the collateral information the health assessor will consider before making the report).

### **Keeping Christie and Her Family Informed**

[194] There were two specific avenues of information for keeping Christie and her family informed during the court process — a victim advisor and the police, with Detective Iremonger, officer in charge of the case, the primary police contact for the Marceaus in this regard.

#### *During the Court Process — Victim Advisor*

[195] Andrea Swager, a victim advisor employed by the Ministry of Justice, was appointed as victim advisor for Christie. A referral to the victim advisor service had been sent by Detective Iremonger prior to Mr Chand's first Court appearance on 7 September. It named Christie's mother as her support person and provided details for both Christie and Mrs Marceau.

### **Victim Advisor Service**

The victim advisor service is provided by the Ministry of Justice. It aims to ensure that a victim's rights under the Victims' Rights Act 2002 are facilitated. A victim advisor is the central point of contact for the victim regarding court processes. The primary function of the victim advisor is to ensure that a victim is made aware of her/his rights to participate in and receive information about the case. Core functions include education of the victim about the court process, keeping the victim up to date with progress on the case, and how best to communicate a victim's views to the court (including the victim's views on bail) if that is something the victim wishes to do. The victim advisor role usually commences with the defendant's first appearance and concludes with the disposal of the charges.

### **Victim Support**

The victim advisor service is a different service to victim support, which is run by the police. Victim support workers provide emotional support to victims. Victim impact statements are usually prepared with the assistance of victim support staff or police. A victim impact statement outlines the impact on the victim as a result of the offence and covers physical, emotional, and financial harm as a result of the offending. At the time of Christie's death, victim impact statements were considered by the judge primarily at sentencing. A victim impact statement had not been prepared by Christie, as Mr Chand had only recently been arrested, so it had not reached that point in the proceeding.<sup>40</sup>

[196] Ms Swager stated that a victim advisor receives the summary of facts, which states the charges, and has access to CMS<sup>41</sup> but does not get the POTB.

[197] All contact between Ms Swager and Christie and Mrs Marceau was by letter or telephone. Ms Swager's evidence was that the only other option would have been for Christie and Mrs Marceau to meet her at the Court, and she is not sure whether she discussed that option with them.

[198] Ms Swager wrote to Christie on 7 September and offered her the victim advisor service. Ms Swager said that in accordance with her usual practice she is sure she would have enclosed pamphlets explaining the service and the victim's rights, and a pamphlet for victims of sexual violence, but cannot confirm that the pamphlets were sent, as she has no recollection of checking with either Christie or Mrs Marceau if they received them.

[199] Ms Swager also telephoned Mrs Marceau on 8 September and offered her service as a victim advisor. Ms Swager updated Mrs Marceau that Mr Chand had been remanded in custody

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<sup>40</sup> There is no evidence before the inquest that Victim Support was involved with the Marceau family during the period under consideration. The information on the Victim Support role is included for completeness and to avoid confusion, particularly because during one hearing reference was made to a victim impact statement.

<sup>41</sup> CMS (the Court's case management system) contains a record of incoming documents but does not contain the full text of the document.

and told her the next Court date. Mrs Marceau asked about bail conditions for Mr Chand, and Ms Swager explained that there should be conditions in place if bail were granted and suggested she talk about this with the police officer in charge. Mrs Marceau said that she asked Ms Swager if Christie should be at the bail hearings and was advised that the hearings were mainly administrative and Christie would not be asked to speak, and therefore did not need to be there. Ms Swager stated that she would have told Mrs Marceau that bail hearings are open to the public and it was an option for them to attend, but confirmed that she would have advised that the judge would almost certainly not invite Christie to speak.

[200] Ms Swager stated that either the victim advisor or the police or both would seek the victim's views on bail. She was, however, not aware that the hearing on 9 September was a bail application, so did not speak to Christie about providing her views on bail to the Court prior to that hearing.

[201] After Mr Chand appeared in Court on 9 September Ms Swager spoke to Christie by telephone on 12 September and updated her with the next Court date and that Mr Chand was still in custody. Ms Swager made no record of telling Christie that Mr Chand was remanded in custody for a health assessor's report. Christie told Ms Swager that she would like her to update her mother in future.

[202] Mr and Mrs Marceau's evidence is that they were not aware, until after Christie's death, that a judge had sought a forensic report about Mr Chand at the 9 September hearing. Mr Marceau stated that had they been aware of this they would have been more vigilant. Mrs Marceau, with whom Ms Swager had direct contact, does not recall Ms Swager telling her anything about the s38 CPMIP Act report that Judge Morris had sought. Ms Swager's evidence is that it is her practice to tell victims or their support person all information available to her, and she stated that she was "*fairly confident*" that she would have passed that information on, even though she acknowledged that it was not recorded as having been discussed with either Christie or Mrs Marceau in her notes. Ms Swager conceded, under cross-examination, that it was possible that because it took her several calls over some days to get hold of Christie after the 9 September hearing (which is when the issue arose) it may have slipped her mind when she next made contact with the Marceau family.

[203] Ms Swager telephoned Mrs Marceau following Mr Chand's appearance on 23 September and provided an update. Ms Swager spoke with Mrs Marceau about preparing a memorandum in relation to bail on behalf of Christie and her family if they were concerned about their safety and

wished to express their views on bail. At that point Mrs Marceau said that as the police were opposing bail that should be sufficient.

[204] Ms Swager spoke to Mrs Marceau again after Mr Chand's appearance on 29 September and told her that a hearing date had been set for a bail application on 5 October. Mrs Marceau advised her that the police had already informed her of this and that police would be opposing bail, but on this occasion, she thought Christie would like to write a memorandum opposing bail as well. Ms Swager has recorded that she "*explained what the court requires in this*". Her evidence was that her practice was to discuss with victims their key concerns and what to include in a memorandum, but that she had to be wary of not coaching the victim. She said she always advised victims to be specific, honest, and to include everything they felt was significant. Mrs Marceau, however, did not feel they received any guidance.

[205] At some point, although it is not documented whether it was after the hearing on 23 or 29 September, Ms Swager told Mrs Marceau that Mr Chand had written a letter that had been provided to the Court.

[206] Christie, with the help of her parents, wrote a letter to the Court dated 3 October 2011. On 4 October Mrs Marceau sent Ms Swager an email attaching Christie's letter. That day Ms Swager prepared a covering memorandum and distributed Christie's letter and her memorandum to the Court case officer, prosecutors' office, and defence counsel. Before doing so Ms Swager had assessed Christie's letter for suitability. Ms Swager's evidence was that she considered the letter to be "*appropriate*" and to "*contain well articulated concerns*", and that Christie had directly addressed the issue of bail and clearly outlined the reasons for her concern.

#### *Following Grant of Bail — Victim Advisor*

[207] Ms Swager telephoned Mrs Marceau on 5 October and advised her that Mr Chand had been granted bail. Ms Swager stated:

She [Mrs Marceau] was hugely disappointed and said that she knew what address he would have been bailed to and that it is visible from their house. She was very upset and concerned about their safety and I was affected enough by her reaction to quote her words in my case-notes. She said "Christie's life is over now." I explained the existence of the 24-hour curfew and other bail conditions and advised Tracey to speak to the police officer in charge for more details about the reasons behind the decision. I advised Tracey to contact the police if they had any problems at all with the defendant.

[208] Ms Swager's evidence was that she rarely uses quotations in her case-notes but the remark by Christie's mother stood out as important. Ms Swager stated that victim advisors are not usually informed of the proposed conditions of bail, and she was not aware at any time during the

process what bail address was being proposed by defence counsel.<sup>42</sup> She said that if she had been aware of the proposed bail address she “*may have suggested [Christie] specifically mention it if that was a key part*” but went on to say “*But I mean she really has*” (mentioned the proximity).

[209] Mrs Marceau said that she asked Ms Swager on 5 October about appealing the bail decision, and understood from Ms Swager’s response that the decision was not reversible. Ms Swager did not record any discussion about appeal rights. She does not recollect such a discussion and said she did not believe she would have advised Mrs Marceau that an appeal was not possible, as she knew this was not the case. Ms Swager said it was possible that Mrs Marceau asked her whether they could change the Judge’s mind that day and, if so, she would have told her that it was not.

[210] Because Mrs Marceau had told Ms Swager that she would contact Detective Iremonger directly about her concerns regarding bail, Ms Swager did not contact him herself. She stated that some conversations were more appropriate coming from the officer in charge rather than the victim advisor, such as safety discussions and bail monitoring. She also noted that at least once a week she would receive a call from someone similarly as distressed as Mrs Marceau, and her workload would increase if she had to speak to the officer in charge each time. She conceded, however, that she could email the officer in charge.

### **Conclusions**

[211] I find that Christie and her mother received regular information throughout the Court process from Ms Swager. Although there is disagreement on some aspects of the information provided, I am satisfied that Ms Swager generally advised Christie, and subsequently Mrs Marceau, what had happened at the various Court hearings and of Christie’s right to make her views known to the Court about Mr Chand’s bail application (albeit belatedly, with the advice not provided in time for the bail application on 9 September because, for reasons not explained in the evidence, Ms Swager did not realise that there was to be an application on that date).

[212] I cannot determine on the evidence available whether Ms Swager did advise Christie that the Court was seeking a report from a forensic psychiatrist. I accept Ms Swager’s evidence that the report was information she considered pertinent to pass on, but as she noted, she may have omitted to do so as it took several calls to contact Christie. It cannot be known whether, if Mr and Mrs Marceau had been aware of this matter, it would have altered their assessment of the risk Mr

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<sup>42</sup> Ms Swager’s evidence was that victim advisors are now more commonly being advised in advance of proposed bail addresses, and it is very helpful.

Chand posed, although with hindsight Mr Marceau believes it would have made them more alert to the level of risk that existed.

[213] Overall, I have formed the view that while Ms Swager provided Christie and her mother with regular information, the victim advisor service provided for Christie could have been improved if Ms Swager had been privy to more specific information to help her to assist the Marceaus better. This is particularly so in relation to the proposed bail address, which Ms Swager was not aware of before bail was granted.

[214] Ms Swager had the summary of facts, containing the charges, but not the POTB, which contained information about proximity of address. Aside from the initial referral from Detective Iremonger, there was no contact between Ms Swager and Detective Iremonger about the case — although Detective Iremonger’s evidence was that in his experience it was usual practice for there to be communication between an assigned victim advisor and assigned officer in charge, if important matters needed to be communicated. The evidence is that at the time there was not an expectation that victim advisors were provided routinely with information about proposed bail addresses and it was not a matter conveyed to Ms Swager. Ms Swager also did not become aware of the proposed address or the Marceaus’ very specific concerns about the proximity of the address in her conversations with Christie or Mrs Marceau, even when discussing with them Christie putting her concerns about bail to the Court.

[215] I find that the lack of information about this key issue resulted in a missed opportunity for Ms Swager to advise the Marceaus how their specific concerns in this regard could best be conveyed in Christie’s letter to the Court — something Ms Swager acknowledged would have occurred had she known about the issue.

[216] It cannot be known whether Christie’s letter to the Court would have been any different if Ms Swager had been in a position to advise Christie and her mother how best to convey their specific concerns about the proposed bail address to the Court in Christie’s letter, given that, to use Ms Swager’s phrase, Christie’s letter to the Court contained “*well articulated concerns*” and included the information that Mr Chand lived close to her home. However, a consistent thread in this case is the importance of clear information being provided by all those communicating information that judges will consider when exercising their discretion. While it cannot be known what effect more precisely articulated concerns by Christie about the proximity issue would have had, it is possible that Christie’s concerns about the proximity of the proposed bail address to her home may well have been more detailed or explicit if Ms Swager had been aware of the issue and been able to advise the Marceaus.



[217] I am also satisfied that it would have been prudent for Ms Swager to communicate to Detective Iremonger the strong concern Mrs Marceau expressed to her after Ms Swager told her that Mr Chand had been granted bail. This issue raised a mental “red flag” for Ms Swager, but she did not feel it necessary to inform Detective Iremonger as Mrs Marceau had said she would be talking to him directly, and she left it to her to convey her concerns to the police. The result of Ms Swager’s decision was that information relevant to concerns about Christie’s ongoing safety was not conveyed from one professional with specific responsibilities to the victim to another.

[218] In making this finding I acknowledge the context in which Ms Swager’s decision was made, with evidence suggesting that communication between an NSDC victim advisor and officer in charge was not necessarily consistent at that time, and Ms Swager’s evidence about how busy her role was and the time it might take to contact an officer in charge by telephone (although she agreed that communication would have been possible by email) and that it was a judgement call. I also acknowledge that Mrs Marceau did discuss her concerns about the address Mr Chand was bailed to with Detective Iremonger, so there is no suggestion that the lack of communication had a bearing on the outcome of this matter. Rather, this issue highlights the need for routine communication between the assigned victim advisor and assigned officer in charge about important matters affecting a victim, which will assist each professional to perform their role better.

[219] Both Detective Iremonger and Ms Swager advised that they would support a recommendation for there to be more contact between the assigned officer in charge and the assigned victim advisor.

#### *During Court Process — Police*

[220] After Mr Chand was arrested, Detective Iremonger communicated with Mrs Marceau on several occasions to keep her updated as to what was happening. This started from 6 September when he ensured Mrs Marceau was advised that Mr Chand had been arrested and charged and was in custody. From the outset, Christie’s concern about the possibility of Mr Chand getting bail (expressed at her first interview with police) was before the Court on the POTB, which has a section on the standard form for the victim’s views.

[221] Detective Iremonger stated that he kept a very close eye on the outcome of the various Court hearings so that he could keep the Marceaus up to date. His evidence was that as the officer in charge he was reliant on the prosecutor updating him after each hearing, and the information the prosecutor provided was the information he would convey to the Marceaus, in addition to

other information they sought. Detective Iremonger gave Mrs Marceau his cell-phone number and email address so that she could contact him if she had questions.

[222] Detective Iremonger telephoned Mrs Marceau on 16 September and 23 September to advise that Mr Chand was still in custody and the next Court dates. Although he could not recall the date on which he did so, he said that he advised Mrs Marceau that bail was being sought to Mr Chand's home address. He stated that he and Christie and Mr and Mrs Marceau were all of the view that bail to any address was not satisfactory.

[223] While Mrs Marceau recalls Detective Iremonger saying that if Mr Chand were to be granted bail electronic monitoring would be in place, he does not recall any discussion about this issue with the Marceaus.

#### *Following Grant of Bail — Police*

[224] On 5 October, the date Mr Chand was granted bail, Detective Iremonger was working a late shift. Superintendent Johnson's evidence was that where there are charges of a serious nature and a defendant is granted bail with conditions, it is appropriate for a police prosecutor to be in contact with the officer in charge as soon as possible, and for the officer in charge to in turn contact the victim(s) to alert them to the fact that bail has been granted, along with the conditions of that bail.

[225] By the time he got to work on the afternoon of 5 October Detective Iremonger had had no communication from the police prosecutor about the outcome of the hearing. It was not until he checked the police's computer system (NIA) that he found out that Mr Chand had been granted bail to his home address. He immediately took steps to inform Mrs Marceau.

[226] Detective Iremonger said that when he spoke to Mrs Marceau he discussed with her the ramifications of Mr Chand receiving bail to his home address, and apologised to her for the unsatisfactory bail conditions. Detective Iremonger told her that the police had done everything they could to oppose Mr Chand's bail (which was his belief at the time).<sup>43</sup>

[227] Detective Iremonger said that during the conversation Mrs Marceau asked him if Mr Chand was likely to go over to their home. Detective Iremonger responded that it was not likely but that:

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<sup>43</sup> The first time Detective Iremonger became aware that the evidence he had prepared for the 5 October hearing before Judge McNaughton had not been raised with the Judge, and that the police prosecutor had raised no substantive issues in opposition to bail on that date was when he was giving evidence at the inquest.

... at the same time you could not rule it out as no one really knows what these people are thinking and there is still the risk he could go over.

[228] Detective Iremonger told Mrs Marceau that although Mr Chand was on a 24-hour curfew he was bailed so close to their address that if he wished to, he could probably get to their home before the police. Detective Iremonger advised her to be vigilant, and that if Mr Chand did go to their house to keep the front door closed and locked and to make the rest of the house secure and call the police, who would arrest Mr Chand for breach of bail. Detective Iremonger advised Mrs Marceau that police would be conducting bail checks on Mr Chand's address as a matter of course.

[229] Detective Iremonger's evidence was that he has some recollection of Mrs Marceau raising with him the issue of an appeal against the decision to grant bail. He stated that at that time he was aware that the Bail Act did provide for an appeal by the prosecution, but that such appeals are rare as they involve an appeal against the exercise of a judicial discretion, and the police had, as far as he was aware, provided the Court with all available grounds for opposing bail.<sup>44</sup> On that basis he said that he would have conveyed to Mrs Marceau that an appeal was unrealistic.

[230] On 24 October Detective Iremonger visited the Marceaus at home to get Christie to sign her formal statement. He stated that he again spoke with the Marceaus about the need to keep the house locked and not to open the door if Mr Chand should come to their address, and advised them to call 111 immediately if he did. During this visit, Mr Marceau asked Detective Iremonger if he should delay his return to work, as he had fears for Christie's safety. Detective Iremonger confirmed that he advised Mr Marceau that he did not think this was necessary, as the police were making frequent visits to Mr Chand's address to ensure that the bail conditions were being complied with.

[231] Superintendent Johnson gave the following evidence:

It is important for police to provide and explain to victim(s) all of the information along with the conditions that are imposed to allow them to make informed decisions for themselves about any steps they wish to take as a result.

It is not the role of police to advise/recommend that complainants/victims move house or alter their normal living patterns. But it is for police to highlight the risks and often to make suggestions around reasonable precautions to take to protect themselves.

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<sup>44</sup> An appeal against the granting of bail is an appeal against the exercise of a discretion. Accordingly, the appellant must establish that the decision was contrary to principle, or that the judge failed to consider all relevant matters or took into account irrelevant matters or that the decision was plainly wrong. An appeal must be made by the prosecutor. There is no statutory right for a complainant or victim to appeal a bail decision.

## Conclusion

[232] I find that during the Court process and after Mr Chand was granted bail, Detective Iremonger conveyed appropriate information to the Marceaus in a proper and thorough way.

### RECOMMENDATIONS

#### **To the Secretary for Justice/Chief Executive of the Ministry of Justice and the Commissioner of Police:**

I recommend that, consistent with the legislative framework set out in the Victims' Rights Act 2002, particularly s12, the victim advisor service and the New Zealand Police develop:

1. A protocol identifying the types of information it is appropriate for the two organisations to share routinely on cases referred to the victim advisor service by the police, to enable police and victim advisors to work together more collaboratively in order to undertake their respective responsibilities to victims of crime better; and
2. A process whereby this information is exchanged by police and victim advisors on a nationally consistent and timely basis.

#### **To the Secretary for Justice/Chief Executive of the Ministry of Justice:**

I recommend that the victim advisor service review its processes for advising victims of crime who wish to provide their views to the Court on a bail application, and consider:

1. Whether the process victim advisors use to provide victims with information about preparing letters for the Court expressing the victim's view on a bail application is sufficient to meet the needs and address specific concerns of victims (including helping victims to identify issues they wish to draw to the Court's attention, matters not appropriate to include, and the degree of specificity advisable); and
2. If necessary, amend its processes.

### **Provision of Information and Consultation with Chand Family about Bail**

[233] Mrs Chand and Mrs Williams attended all Mr Chand's Court hearings from 9 September. It was the first time Mrs Chand or her family had been involved in the criminal justice system.

#### *Discussions with Mr Chand's Lawyer about Bail and Proposed Bail Conditions*

[234] On each occasion Ms Lowe (who was Mr Chand's lawyer, and was not acting for Mrs Chand) spoke with Mrs Chand and Mrs Williams both before Court began and after the hearing was concluded.

[235] While giving evidence at the inquest Mrs Chand's initial recollection was that the discussions with Ms Lowe were brief, and occurred only before Court. By "brief" she meant 5–10 minutes. Mrs Chand agreed, however, that Ms Lowe would talk to them outside Court after each hearing to explain things such as when the next Court appearance was scheduled. Ms Lowe, on the other hand, did not believe the meetings she held with Mrs Chand and her sister were brief, quick, or inadequate.

[236] Ms Lowe said that before the hearing started on 9 September she met with Mrs Chand and Mrs Williams and explained the charges against Mr Chand. Ms Lowe advised them that Mr Chand had told her that he had been depressed for some time and that her impression was that the offending had sprung from those mental health issues. She explained to them that there had been an appointment made for Mr Chand at Taharoto the following Wednesday, and that if Mr Chand went to that appointment he might well be admitted to inpatient care. Ms Lowe sought Mrs Chand's agreement to the proposal that Mr Chand be bailed to the family home, as he had instructed. Ms Lowe said that Mrs Chand was supportive of her son being bailed to their home. Mrs Chand confirmed in evidence that this was correct — she wanted her son to get bail as soon as possible and, if he were bailed, for him to come home.

[237] Ms Lowe said that she understood from the meeting that Mrs Chand worked part time and Mrs Williams did not work, and that if required they would be able to stay with Mr Chand 24 hours a day until his appointment at Taharoto — with Mrs Chand indicating that she could take some leave from work.

[238] Mrs Chand recalled Ms Lowe explaining to her on 9 September that it was going to be difficult to get bail for her son, because of the serious charges he was facing. Mrs Chand recalled Ms Lowe asking about what assistance she and her sister could provide in order for Ms Lowe to make a successful bail application. Mrs Chand agreed that Ms Lowe made it clear that she (Ms Lowe) needed to understand what they could do about monitoring or keeping an eye on Mr Chand should he get bail. Mrs Chand remembered Ms Lowe discussing that she hoped Mr Chand could be voluntarily admitted to Taharoto Clinic, so that there would be a short number of days of needing to provide 24/7 availability. Mrs Chand understood that if bail were refused, then her son would be remanded in custody.

[239] Mrs Chand said that she understood "monitoring" to mean that her son should stay home all the time, not that she and her sister would be responsible for watching over him 24 hours a day, seven days a week.

[240] Mrs Chand said that she was aware of where Christie lived (from the night the police came to search the house on 6 September), and had a concern about how close the two addresses were, but did not discuss it with anyone (including Ms Lowe) and it was not ever raised with her. Mrs Chand does not recall the proximity between the two addresses being raised by Mr Pell in Court on 9 September. Mrs Williams remembers the Judge on 9 September having concerns about the closeness of the two addresses, but I am satisfied that she also did not raise the issue with anyone.

[241] On 23 September Ms Lowe again talked to Mrs Chand and Mrs Williams before the Court hearing. Ms Lowe said that she told them the essential findings of Dr Goodwin's report, including that Mr Chand was fit to stand trial, which meant that he was able to instruct her and that he understood the process and the consequences of the procedures. Mrs Chand does not recall this discussion.

[242] Ms Lowe said that she told Mrs Chand and Mrs Williams that she would be applying for bail that day and revisited whether or not supervision of Mr Chand on a 24-hour basis was available. She said that she was reassured by them both that if Mr Chand were granted bail, he could be in the company of one or other of them 24 hours a day until the matter was disposed of.

[243] Mrs Chand recalls a discussion with Ms Lowe on 23 September, before Court, where the subject was raised of whether she could offer 24-hour supervision for her son. Mrs Chand recalls telling Ms Lowe in their discussions that there would "usually" be someone home, being herself, Mrs Williams or Shayal, or that they would be there "most of the time". Mrs Chand does not believe she said there would "always" be someone home. She said she did tell Ms Lowe that her sister, Mrs Williams, could cover for her when she was not there, but she did not think she had been told that they would have to be there 24/7. However, when she heard Ms Lowe say in Court that day that the family could provide 24-hour supervision it did not occur to her to let Ms Lowe know that it might not be possible.

[244] Mrs Williams said Ms Lowe knew that she lived at a different address, and so would not be available to look after Mr Chand 24/7. However, Mrs Williams also recalled a discussion where she confirmed to Ms Lowe that she was not working, lived close by, and could help Mrs Chand keep an eye on Mr Chand.

[245] Ms Lowe said that when she spoke to Mrs Chand and Mrs Williams before the 29 September hearing she revisited the bail issue. Ms Lowe's evidence is that they confirmed that her proposal that Mr Chand be bailed to the family home and that while on bail he could be in the

company of one or other of them 24 hours a day was acceptable. Ms Lowe had previously established that Mrs Chand worked part time and Mrs Williams did not work, and that Mrs Williams had said she could be there when Mrs Chand was at work. Ms Lowe said that she did not ascertain more detailed information except to confirm that there could always be someone with Mr Chand and was told “Yes”.

[246] When Mrs Chand heard Ms Lowe repeating the 24/7 supervision option to the Court on 29 September, she again did not have a discussion with Ms Lowe after Court about whether it was possible she could fulfil it.

[247] Ms Lowe’s evidence is that she had the same conversation about the proposed bail address and 24/7 supervision with Mrs Chand and Mrs Williams prior to the 5 October hearing. Under cross-examination by Ms Lowe’s counsel, Mrs Chand agreed that at the last hearing on 5 October Ms Lowe had made it plain that either Mrs Chand or Mrs Williams had to be with Mr Chand “always”, not “usually”. While initially stating that she did not recall a discussion before Court that day about the 24/7 supervision proposal, believing there had been a discussion in which Ms Lowe told her only that she needed to take her son to a mental health appointment if he were granted bail, in response to questions from Ms Lowe’s counsel Mrs Chand agreed that she recalled that on that date Ms Lowe had confirmed with her and her sister, before the hearing, that either she or her sister would be with her son 24/7.

[248] Ms Lowe did not accept in cross-examination that there were limitations on Mrs Chand or Mrs Williams being able to articulate fully their working conditions and family responsibilities, or to inform her properly of their circumstances. Ms Lowe believed they were given every opportunity to do that every time, “*because I didn’t assume from one remand to the other that the offer was still there*”. She said there was no rush and she would “*spend as long as it takes with family members to discuss the issues around bail*”. Her evidence was that while she knew that English was Mrs Chand’s and Mrs Williams’ second language, she never had any impression that they had problems understanding. Mr Byrt, who also spoke to Mrs Chand and Mrs Williams on 5 October, did not notice any language difficulties.

[249] Ms Lowe accepted that there was information that she was not aware of, or got wrong, as a result of her discussions with Mrs Chand and Mrs Williams. Specifically:

- Ms Lowe was not aware that Mrs Chand left the house at 6.30am to go to work during week-days, and was not home until after 1.00 pm but usually before 3.00 pm.

- Ms Lowe was not aware that Mrs Williams had an eight-year-old child and so with school obligations there would always be a 2.5-hour gap between Mrs Chand leaving for work at 6.30am and Mrs Williams being able to go to the Chand's home at 9.00 am. Ms Lowe said that if she had been aware of that hiatus at any stage she would have told the Court.
- Ms Lowe had taken from her discussions with Mrs Chand that Shayal Chand was a university student, not 16 years old and only a high-school student. Ms Lowe accepted that her reference to the Court on 5 October about Shayal being a university student was incorrect.

*Discussion between Chand Family and Court Officials about Providing Bail Address*

[250] The evidence was that there is no requirement for court officials to engage with those considering offering a bail address for bail simpliciter and, accordingly, no process for doing so.

*Discussions with Police about Providing Bail Address*

[251] Police did not discuss the proposed bail address or issues arising from it with Mrs Chand or Mrs Williams.

[252] Detective Superintendent Lynch's evidence was that for bail simpliciter it is usual for the applicant and/or his/her lawyer to advise the Court that the proposed bail address is suitable in the sense that the occupants of the address are content to have the applicant reside there. He stated that where such an application for bail is made, it is not the job of the police to liaise with family members offering a bail address, and there is no requirement, statutory or otherwise, for the police to perform such a role.<sup>45</sup> He pointed out that, in his opinion, if police were to do so it would likely prove problematic in many cases, given that police are the agency that has recently arrested and charged a relative of the family.

[253] The police position was that bail to any address for Mr Chand was not appropriate. Detective Superintendent Lynch expressed the opinion that in Mr Chand's case he would have been very surprised if police had not continued to oppose bail even if another address had been provided. He stated that any alternative address would have needed to be a considerable distance away from Auckland for police to adopt a neutral position on an opposition to bail, given the

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<sup>45</sup> Detective Superintendent Lynch's evidence was that on occasion police consult with the family of the applicant or other occupants of an address, but only if asked by the court or on their own initiative to make sure the occupants of the address are willing to have the applicant reside with them (for example, where there is a suspicion by police of intimidation).



magnitude of the charges Mr Chand was facing. Detective Superintendent Lynch said that even a separation in distance of 20 kilometres would probably not make a significant difference.

[254] The evidence, however, highlighted an inconsistency in the system. As Superintendent Johnson pointed out, a 24-hour curfew is a strict bail condition that has the same effect as electronically monitored bail (EM bail), except for the electronic monitoring component. However, there is a significant difference in the formalities required before each type of bail is approved, which all relevant witnesses at the inquest agreed was an anomaly (at least in serious cases). Specifically, unlike bail simpliciter, EM bail requires an official assessment of the intended bail address and an interview with the occupant/s and completion of formal documentation for the court.

[255] At the time bail was being considered for Mr Chand, the police were responsible for managing EM bail. Where an application was made, an electronic bail assessor would conduct the required assessment and interview of the occupant/s of the bail address. The Department of Corrections now manages EM bail and a similar process is followed. The evidence of Mr Howes, Team Leader Electronically Monitored Bail, Department of Corrections, is that assessment for EM bail requires consideration of aspects such as:

- Any concerns relating to the defendant such as interfering with witnesses or offending while on bail; and
- An interview with the occupant/s of the proposed bail address, which covers their role and expectations in supporting the defendant while on EM bail. If the occupants consent, they are required to sign the Occupants Consent Form. If they refuse consent, then they sign the Occupants Withdrawal Form.

[256] Documents setting out the results of the assessment of the address and occupant/s and their willingness to supervise are required to be filed in court, whereas in a bail simpliciter application the only written information before the court may be the POTB.

#### *Information Provided to Mrs Chand after Bail Granted*

[257] After a judge has determined that bail should be granted, the court's role is limited to producing the bail bond and updating CMS. It does not have a role in liaising with persons undertaking responsibility for the person on bail. Accordingly, no information was provided to Mrs Chand by the Court staff.

[258] Ms Lowe was the only person who spoke to Mrs Chand and Mrs Williams about supervision and monitoring of bail conditions. As already traversed, after the hearing on 5 October Ms Lowe explained the bail conditions to Mrs Chand and Mrs Williams and that Mr Chand would be signing a bail bond prepared by Court staff. As Ms Lowe did not realise at the time that Judge McNaughton had not made it a condition of bail that either Mrs Chand or Mrs Williams had to be at the house 24 hours a day, and because she thought that it was a condition, she said she had made it clear to Mrs Chand and Mrs Williams that it was an expectation. Ms Lowe stated that she believed that they completely understood that their obligations meant that one or other of them had to be at the house.

[259] Mrs Williams said that she did not see the notice of bail or any document that set out the expectations for Mr Chand's bail. Mrs Chand did subsequently see the bail bond that her son brought home.

[260] Mrs Chand's uncontested evidence was that she was not advised about whom she should contact if she had concerns while her son was on bail (except as relating to his mental health). Her evidence was that the people/organisations she would have contacted were the family GP, Dr Makal, the Waitemata DHB community mental health service (who provided her with the crisis line contact number when Mr Chand attended his appointment there) or Ms Lowe (whose telephone number she had obtained from her son). When questioned specifically at inquest she added police to the list. When Mr Chand did breach bail on 7 November she contacted the DHB crisis team.

### **Conclusions**

[261] Mrs Chand (and her sister) had no experience of the criminal justice system. Mrs Chand was confronted with the challenging issue of "out of the blue" having her son arrested and in custody for violent offending. She was aware that on the same day the offending occurred her son had made a suicide attempt, again something unexpected and unfamiliar. Mrs Chand understood, from what she was told, that her son's offending occurred in the context of mental health issues (depression). She was aware that he needed treatment for the mental health issues and had heard the view expressed that he could be treated in the community if he got bail.

[262] The only source of information Mrs Chand and her sister had about the criminal justice system and bail issues was Ms Lowe. Ms Lowe did not act for Mrs Chand and Mrs Williams. Her instructions (to get bail) came from Mr Chand and she represented his interests.

[263] The evidence shows that Mrs Chand's focus was on her son's well-being. From the outset, she agreed to have her son home on bail. The reality was that the family home was the only address available, as Mrs Chand's support network in New Zealand was limited, and if she did not agree to her son being bailed to her home he would remain in prison.

[264] I am satisfied that Mrs Chand (and her sister) did not properly appreciate the implications and risks associated with offering the family home as the bail address and, specifically, that Mrs Chand had little focus on a potential threat to Christie arising from Mr Chand being bailed so close to her home. Mrs Chand derived some comfort from knowing that by the time Mr Chand was granted bail he was being treated for his depression, which she understood to be at the heart of his offending. There is no evidence that the ongoing level of risk the police perceived Mr Chand to be to Christie, even though Mr Chand was receiving treatment, was something the two women were cognisant of.

[265] Counsel for the Solicitor-General submitted, and I accept, that a judge is entitled to work on the basis that if counsel for a defendant proposes a condition of bail and/or confirms that a condition is acceptable, it can and will be satisfied. I find that on each occasion before Ms Lowe proposed to the Court that Mr Chand be bailed to the family home, Ms Lowe verified with Mrs Chand that she agreed to this. I am also satisfied that when Ms Lowe proposed the 24-hour curfew to the Court, including that either Mrs Williams or Mrs Chand (or Shayal) would be with Mr Chand 24/7, she believed that Mrs Chand and Mrs Williams understood and had agreed to such supervision.

[266] However, it is clear from the evidence that the practicalities of Mrs Chand's and Mrs Williams' day-to-day lives (Mrs Chand's working hours, Mrs Williams' parental responsibilities, and Mrs Chand's determination that it was not appropriate for Shayal to have supervision responsibilities) meant that they could not provide 24/7 supervision for Mr Chand once Mrs Chand went back to work, and such supervision did not occur.

[267] In fact, 24/7 supervision was not a requirement of the bail conditions imposed by Judge McNaughton on 5 October. However, Ms Lowe, who had proposed 24/7 supervision to the Court and who understood 24/7 supervision to be a condition of bail, had impressed on Mrs Chand and Mrs Williams after the hearing on 5 October that this was a condition of the bail. No one disabused Mrs Chand and Mrs Williams of this, and they proceeded on the basis of the information provided to them by Ms Lowe.

[268] I am unable to determine whether there was an element of Ms Lowe and Mrs Chand/Mrs Williams talking past each other, with the result that Mrs Chand and Mrs Williams did not fully appreciate the exact nature of the supervision obligations Ms Lowe had advised the Court they could meet (and subsequently advised them they had to meet). Or, alternatively, whether once Mrs Chand went back to work she and her sister simply organised things as best they could and undertook supervision by way of telephone calls to Mr Chand if neither woman was at home, disregarding the requirement for 24/7 supervision Ms Lowe had advised them of. Neither scenario is acceptable. However, in the circumstances, it is not surprising.

[269] The evidence illustrates starkly that a system existed in which there was no one in an official capacity with responsibility for ensuring that Mrs Chand was in a position where she could make an informed decision as to whether to have her son home on bail. Nor was there any explicit expectation that this should occur. This meant there was no one responsible for discussing with Mrs Chand and Mrs Williams what the risks might be (such as the risk that Mr Chand might harm himself, or the potential risk posed to Christie by the proximity of the addresses, or the potential risk to others) or clarifying that they understood what their responsibilities would be if bail was granted and teasing out whether they could actually provide the 24/7 supervision proposed by Mr Chand's counsel. Nor was there any process to assess the suitability of the address or a mechanism that required Mrs Chand to indicate formally that she agreed to provide the bail address and understood and accepted the responsibility for any supervision that might be imposed — a step with a degree of formality that may help to underscore for the person offering a bail address the responsibilities she/he is accepting.

[270] Mrs Chand's evidence (with the benefit of hindsight) was that it would have been helpful for her if there had been a process where she had had someone to help her think about the implications of the decisions being made, such as her availability, suitability of the address, and proximity to Christie's house. I also note Ms Lowe's evidence that, while she did not accept that there was a conflict of interest in acting as defence counsel for Mr Chand and at the same time talking to his family about a bail address, she did think that for serious charges, where 24/7 bail is being sought, it would make sense if there was a third party who could speak frankly to families and get their views on things, much like the victim advisor does for complainants.

## RECOMMENDATION

**To the Secretary for Justice/Chief Executive of the Ministry of Justice, the Commissioner of Police, and the Chief Executive of the Department of Corrections:**

I recommend that the Secretary for Justice/Chief Executive of the Ministry of Justice, the Commissioner of Police, and the Chief Executive of the Department of Corrections:

Consult with key stakeholders on the most effective way(s) (including consideration of operational options and potential legislative amendment) to ensure that in all applications for bail simpliciter involving serious offences and where a 24-hour curfew is proposed as a condition of bail, evidence is provided to the Court in a suitable format (e.g., affidavit from the owner/lawful occupant of the proposed bail address), which includes:

- Details of the proposed address;
- That the occupant of the proposed address is the owner or lawful occupier, and their relationship to the defendant;
- Whether or not the proposed bail address is acceptable to the prosecuting authority;
- That the occupant of the proposed address has been officially informed of the nature of the charges faced by the defendant; and has been informed of the nature of any past offending by the defendant; and has been advised of and understands the effects of the 24-hour curfew condition and any other proposed conditions of bail, and the role of the occupant and the expectations of the occupant in relation to supporting the defendant while on a 24-hour curfew;
- The level of supervision, if any, the occupant could realistically commit to; and
- That the occupant has made an informed decision whether (or not) to consent to the defendant remaining at the bail address for an indeterminate period while on bail with a 24-hour curfew.

### **Information Available to Judge McNaughton**

[271] Judges exercise a discretion when making a decision on an application for bail. Their decision is not made in a vacuum; it is made on the basis of the applicable law (in Mr Chand's case the presumption in favour of bail in s15(1) of the Bail Act 2000) and the information made available to the judge.

[272] For judges to be able to make a fully informed judgment, the information provided to the court by all those involved in the criminal justice system (including police, defendant and court system, including regional forensic psychiatry services) must be sufficient, robust, and reliable.

[273] As Andrew Little MP noted during the Third Reading of the Bail Amendment Act 2011:

[I]n the end it is the judges sitting in Court, with the information provided by the police and the defendant, who are in the best position to make judgments about the management of the offender, or alleged offender as the case may be.

[274] This section examines what information Judge McNaughton had available to him on the Court file, orally or otherwise, when he exercised his discretion to grant Mr Chand bail.

#### *Documents Available on Court File*

[275] Mr Lewens' evidence was that information relating to a criminal proceeding before the NDSC is located in four to five different places. The locations are not interactive, not all documents are formally recorded on the Court's case management system (CMS)<sup>46</sup> as being received (e.g., if a document is handed up in Court it is not recorded on CMS and nor is it dated), not all information is recorded in the same place so that there is one comprehensive record available, and not all documents or information can be accessed by everyone within the judicial system. In Court, for example, a judge has access only to the paper-based court file. Mr Lewens stated that there is no index or "tick sheet" with any of the systems, so he was not sure how one could be certain that the right documents were on the file and that it was accurate.

[276] Detective Sergeant Watson gave evidence of the documents that must always be filed at the outset of criminal proceedings, and it was generally accepted by relevant witnesses that the informations, criminal history, summary of facts, and POTB (if relevant) would or should be on the paper-based file from the beginning, and the judge would expect these documents to be on the file or made available to her/him if not.

#### **Conclusions**

[277] In Mr Chand's matter, I am satisfied that the POTB, the informations, summary of facts, and criminal history were available for the paper-based court file from the outset, in accordance with filing requirements and usual process. The transcripts of the various Court hearings show, however, that on more than one occasion when Mr Chand was in Court, the presiding judge did not initially have the POTB and other relevant documents before her or him (including Judge McNaughton on 23 September). The evidence indicates that on each occasion the lack of documents was a temporary state of affairs, with such documents being sought by the judge and provided. It is not clear whether these were provided by the court taker from the file held by that

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<sup>46</sup> CMS provides a mechanism for electronically managing and tracking criminal prosecutions. It can automate scheduling of case events, alert staff to upcoming events, and enable updating of cases in Court. It is not possible to store documents on the system, but a record of documents received and created in respect of the prosecution can be recorded in CMS.

person or whether copies were provided by the police prosecutor or defence counsel, and I am unable to take further whether documents were misplaced from the file between hearings or the court taker had not provided the relevant documents to the judge at the commencement of the hearing.

[278] The evidence establishes that on either 23 September 2011 and/or 5 October 2011 (the date Judge McNaughton granted Mr Chand bail) the following documents had been seen by, or were available to him, on the paper-based court file:

- Criminal Informations and Criminal History;
- Summary of Facts;
- Police Notice of Opposition to Bail;
- Dr Goodwin’s s38(2)(b) Criminal Procedure (Mentally Impaired Persons) Act 2003 Act report;
- Mr Chand’s letter handed to the Court on 23 September 2011;
- Christie Marceau’s letter expressing her views on bail filed with the Court on 4 October 2011; and
- Reports from the FCLNs (including FCLN Ms Wilson’s report of 7 September; a letter from FCLN Mr Byrt dated 28 September, and Mr Byrt’s report of 5 October 2011).

#### *Documents Not on Court File*

[279] It is not contested that the notes of Judge Morris’s bail decision of 9 September 2011 (which she directed on that date be transcribed and circulated) were not on the paper-based court file on 23 September or 5 October. What happened to the notes of her decision and whether they were available to Judge McNaughton is considered further below.

[280] The notes of Judge Morris’s decision of 9 September were electronically recorded,<sup>47</sup> a process managed by the court taker, who sent a request that day to the National Transcription Service to transcribe the recording.

[281] Mr Lewens’ evidence was that there is an agreed “Responsive Standards Service Agreement” between the National Transcription Service and the district courts that sets out the timeframes for documents to be transcribed. This provides that an oral judgment will be transcribed no later than three days after the submission of a request unless an urgent request is made, in which case the time frame is no later than an hour after submission. On 9 September, no request for urgency was made, although Judge Morris had asked that the notes of her decision be transcribed “*as soon as possible*”.

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<sup>47</sup> It is usual practice for a judge’s notes of decision to be recorded electronically.

[282] The transcription was completed on 12 September (within the three-day time frame) and sent to an electronic folder called the Judicial Decision Suite (JDS). JDS provides a centralised location to manage and transfer Word documents, primarily judicial decisions, from the National Transcription Service to the electronic folder of the court where the judge resides. It is also utilised to store final decisions.<sup>48</sup>

[283] Court staff at NSDC do not have access to JDS and are not notified when the documents have been transcribed (unless there is a specific request, which there was not in this matter). The protocol is that the National Transcription Service notifies the personal assistant (PA) for the judge that the document has been transcribed. In accordance with this, on 12 September the judge's PA received an email advising that the transcribed document was in JDS.

[284] Mr Lewens' evidence was that the judge's PA is responsible for bringing the draft (notes of) decision to the relevant judge's attention and, once the judge has reviewed the document and made any amendments, a final version of the (notes of) decision is printed off for signing by the judge. He further stated that the mechanism for getting draft (notes of) decisions signed and returned is an internal matter between a judge and her/his PA. Mr Lewens stated:

The time it takes for a judge to finalise a decision is dependent on a number of factors including whether the judge is resident at the relevant court, on leave, possibly on circuit, or has other work commitments.

If a visiting judge has made a decision which is transcribed, the document will be sent to the PA at the court where the decision was made. It is then the responsibility of the PA to send the draft decision to the visiting judge for finalising.

Once a decision has been signed it is recorded as being finalised on the JDS system. The JDS system records a date and a time on which the JDS system has been updated. The time recorded on the JDS system is the time that the JDS system has been updated by the PA; it is not necessarily the exact time the final version of the decision has been signed by the judge.

[285] Mr Lewens advised that a hard copy of the finalised (notes of) decision is placed in the "out tray" in the PA's office for delivery to the registry officer managing the proceeding. It is the responsibility of the registry officer to note in CMS receipt of the document. This person is also responsible for sending out the notes of decision to the relevant parties, for example the police, Crown and defence counsel (and also recording that on CMS), something that Mr Lewens stated he would expect to be done in a timely fashion.

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<sup>48</sup> JDS has been replaced with a system called the "Judicial Decisions Interface", described by Mr Lewens as an "enhanced system".



[286] Mr Lewens' evidence is that Judge Morris was on leave when the transcribed notes of decision were received in JDS, and thereafter presided over a jury trial at another court (i.e., not at NSDC) from 13 September until 3 October. The PA was not able to provide a record of any emails relating to this case being sent to Judge Morris over this period.

[287] Judge Morris returned to NSDC on 4 October and signed the notes of decision on 4 or 5 October 2011. The notes of decision were not recorded as finalised on JDS, but a book operated by PAs at NSDC has a manual entry recording that the decision was finalised on 5 October. The notes of decision were put on the paper-based court file some time later, but Mr Lewens stated that as it was an internal document it was not date stamped by the registry officer on receipt, so he cannot be certain when it was received. Its receipt is not recorded in CMS and nor is there an entry that specifies if or when the notes of decision were distributed to police, prison, mental health services, and defence counsel. Likewise no emails could be located that showed that the document had been sent. Mr Lewens' evidence was that "*[i]t is usually for the case manager to email a copy of a decision or notes to the parties or provide a hard copy in person*".

[288] Although Mr Lewens stated that he expected that the Court case manager would send the finalised notes of decision to relevant parties within a few days of receiving it, Mr Pell's evidence is that police prosecutions did not receive a copy of the notes of Judge Morris's decision until after Christie had died, even though he had requested a transcribed copy from the court taker after Court on 29 September and made further requests through the registry subsequently, as he had wished to have the document before the 5 October hearing.<sup>49</sup>

[289] Mr Lewens stated that a draft judicial decision can be accessed by Court staff and other judges. He stated that it would be open to a judge who perused the paper-based court file and saw that a decision had been made but was not on the Court file, to request a copy of the draft decision. He stated: "*[I]t is not uncommon for a judge to request and be provided with a draft, i.e. unsigned, version of a decision by another judge.*"<sup>50</sup>

[290] Mr Lewens also gave evidence that a judge does not have access to JDS when in Court. Rather, a request for a hard copy would need to be made to the judge's PA.

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<sup>49</sup> Mr Lewens confirmed that although Judge Morris had specifically asked that a copy of the notes of her decision go to the police personnel involved in EM bail considerations, the police prosecution service would routinely be sent a copy.

<sup>50</sup> There is no evidence available as to how Court staff can access draft notes of a decision. The evidence at inquest was that they do not have access to JDS generally or in Court.

[291] When asked at the inquest how a judge would know there were draft (notes of a) decision available, Mr Lewens responded:

On the information ... the previous judge would have noted down their information. The judge would be able to see that there is a previous hearing and they can ask to see if there was any notes or transcriptions which are actually there. It's down to the individual judicial officer to make that enquiry.

[292] Mr Lewens confirmed that there is nothing required to be recorded by the court taker on the paper court file to show that a request for transcription has been made and, accordingly, that there is a decision waiting to be transcribed or waiting to be signed by a judicial officer.

[293] Mr Lewens submitted that the ability for a judge to access draft (notes of) decisions of another judge means that *“potential difficulties that could arise due to a delay in the finalisation of a decision, can be met. A draft decision would not however be available to the prosecutor or defence counsel (or indeed the public).”*

[294] Mr Lewens acknowledged that NSDC handles a very large volume of bail applications on a regular basis, with a number of serious cases being dealt with day to day. His evidence was that it is not normal practice to request a transcription of the judge's notes of a decision from every hearing. In cross-examination he accepted that given these factors, unless a judge had been apprised of the existence of draft notes of a decision it could be difficult for a judge to know which matters they should ask to see transcribed notes on.

[295] Mr Lewens' evidence raised the issue of whether, although not on the paper-based court file, Judge Morris's notes of decision were otherwise available to Judge McNaughton. Counsel for the Solicitor-General and NSDC submitted that this was the case, stating:

Judge Morris' finalised decision of 9 September 2011 was available to Judge McNaughton from 12 September 2011 in that the JDS system allowed other judges to access transcribed decisions before they are finalised.

## **Conclusions**

[296] Although technically Judge Morris's draft notes of decision were available for another judge to see from 12 September, such “availability” is not a reliable system. In a busy court where judges handle a large volume of serious cases on a regular basis, and where transcription of notes of a decision after every hearing is not routine practice, the reality of the situation is that unless a judge has specific information of the existence of outstanding transcribed notes of a decision, the judge will not necessarily be aware that there are draft notes of a decision that can be accessed on JDS if she or he so chooses. This is because there is no mechanism for alerting

them to the existence of transcribed notes of decision (including no notation on the paper-based file by the court taker requesting the transcript) and a draft is not put on the paper-based court file to be available for the next judge dealing with the matter to see.

[297] The evidence shows that on 23 September and 5 October, the fact that a transcription had been requested by the Judge was not recorded anywhere on the paper-based court file, and there was no record on the Court file of the court taker's request to the transcription service on 9 September. Judge McNaughton could not access JDS in Court to check for any draft notes of a decision. Accordingly, I am satisfied that the draft notes of Judge Morris's decision of 9 September 2014 did not form part of the documentation realistically available to Judge McNaughton on 23 September or 5 October.

### **Comment**

[298] This inquest was not an inquiry into district court document management and administrative processes — rather Christie's death has required a spotlight to be shone on issues arising in the management of Mr Chand's case at NSDC. However, the evidence from the inquest has highlighted uncertainty about the robustness of administrative processes related to document management at NSDC. Such evidence included the apparent "confusion" for the judge at the start of two of the hearings as to what documents were on the Court file, Mr Lewens' evidence that at NSDC at least, there is no index of documents (on the Court file or otherwise) showing what documents have been filed, what documents have been handed up in Court, what documents are awaited (e.g., transcribed notes of decisions), the lack of a system for recording receipt of, or date stamping, a number of documents, the number of locations for documents that are not all interactive, and Mr Lewens' evidence that he was unsure how one could be certain that the right documents were on the file or whether the file was accurate.

[299] An accurate court file in which it is clear what documents should be available and on the file, is vital. This is particularly so in the extremely busy list court environment where, from necessity, there is not always continuity of judges or police prosecutors as matters progress through the criminal justice system.

[300] Mr Lewens' evidence was that Ministry of Justice staff are continually reviewing processes and seeking ways to improve service delivery. Procedures are updated regularly and staff training is in place. He acknowledged that no review of the handling of Mr Chand's case had been undertaken, but said that *"from this hearing with the Coroner as well, we'll take any learnings from that as we go forward"*.

## RECOMMENDATIONS

### To the Secretary for Justice/Chief Executive of the Ministry of Justice:

I recommend that:

1. An in-depth review of the issues relating to document management at NSDC highlighted in these findings is undertaken (including a review of the adequacy of electronic document management systems, particularly in relation to access, accuracy, and interoperability); and
2. The changes necessary to address the issues are implemented nationally.  
(In particular, changes are introduced to ensure that there is an accurate court file on which it is clear what documents have been received (by whatever means), and when, and what documents have been sought (e.g., transcribed notes of decisions and reports by health assessors), and when.

In the interim, I further recommend that:

1. District Court processes are amended forthwith to ensure that court takers routinely record on the paper-based court file:
  - a. that a request for a transcription of the notes of a decision has been made by a judge; and
  - b. that the request for transcription has been sent to the National Transcription Service; the date of request; and whether the request was for an urgent or standard turnaround.  
  
Or an alternative process is introduced to ensure that this information is recorded clearly on the paper-based court file.
2. There is consultation as to whether, once the notes of a draft decision that a judge has asked be transcribed are received back from the National Transcription Service, they may routinely be placed on the paper-based court file until a finalised decision is available.

[301] In response to consultation on these recommendations, counsel for the Crown parties (NSDC, Ministry of Justice employees who gave evidence at the inquest, the Secretary for Justice, and the Solicitor General) advised that there have been two significant legislative changes since Mr Chand appeared in the NSDC in 2011. First, the Criminal Procedure Act 2011, which introduced new and fundamental changes to criminal procedures and the conduct of criminal cases from 1 July 2013 and, secondly, the District Court Act 2016, which reconstituted the individual district courts (such as NSDC) as a single district court of record. This led to the introduction of uniform processes throughout the country. I was advised that district court practices have changed to reflect, and incorporate, the provisions of these Acts. Accordingly, any review of document management at North Shore District Court (and national implementation of changes necessary to address the issues), and the content of the paper-based file, will be tempered

by the fact that certain changes have occurred already. However, counsel advised that the Crown parties wish to co-operate with the recommendations and “*to the extent that they are relevant to current processes, these issues would be examined as appropriate if the recommendations were to be made*”.

*Information Available to Judge McNaughton re Issue of Electronic Bail*

[302] As referred to previously, at the 9 September hearing Judge Morris recorded that “*electronic bail be put in place*” on the information for the kidnapping charge.<sup>51</sup> In her oral decision she asked that an “*electronic assessment*” be made urgently and made it clear that she did not consider that Mr Chand’s home address was suitable for bail with electronic monitoring (EM bail). She stated that the address would need to be well away from the complainant. She directed that her transcribed notes be sent to the police personnel involved in electronic bail considerations.

[303] No such assessment was made and the issue of EM bail was not progressed.

[304] The evidence is that EM bail (which can be imposed by the courts as a special condition of bail for court-approved defendants) is usually an applicant-driven process made by defence counsel or the defendant. It is an application most often made if bail simpliciter is declined. However, Superintendent Johnson, who is currently District Commander for the Tasman Police District, but in a former role (as the National Manager of the Police Prosecution Service) was responsible for overseeing the EM bail programme of work for police, gave evidence that on rare occasions a judge will directly request that EM bail be considered without an application by the defendant. He stated that in terms of Judge Morris’s direction for an urgent assessment for EM bail, the trigger point for the assessment would have been receipt of the transcribed notes of decision she had asked be distributed. However, the difficulty would have been that Judge Morris had indicated that the Chand family home was not a suitable address, so the EM bail assessors would not have had a bail address that could be assessed. He stated that the responsibility for providing such an address is the defendant’s. It is not a police responsibility, although he noted that one option would have been for the prosecutor to discuss an alternative address with defence counsel, which did not occur in this case.

[305] Mr Lewens’ evidence was that there was no record of any steps being taken by the case manager to action Judge Morris’s direction, and likewise there was no record that the court taker indicated to other Court staff that the direction had been made. Mr Lewens did not consider this to

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<sup>51</sup> This was not recorded on the other two informations.

be an omission by the case manager or Court staff, as the general practice adopted then, and today, is that if a prisoner wants EM bail, it was, and is, incumbent on the prisoner, or counsel for the prisoner, to make an application and provide the necessary information.<sup>52</sup> One of the pre-requisites is that an address for bail is provided so that it can be established whether EM bail is suitable.

[306] Mr Lewens viewed Judge Morris's direction as "*more of an invitation by Judge Morris for the parties involved to actually start the process and then for the documentation to come through to the court*".

[307] Mr Pell, the police prosecutor present in Court on 9 September, held a similar view. He stated that he does not think that he would have recorded anything about electronic bail on the cover sheet of the prosecution file because that process was contingent on an electronic bail application being made by defence counsel, and there was nothing for police to do unless/until such an application was made.

[308] No application was made for EM bail by Mr Chand or Ms Lowe, nor was an alternative address provided. Mrs Chand's and Ms Lowe's evidence at inquest was that there was no alternative address that could have been considered for bail.

[309] Ms Lowe's view was that Judge Morris did not have jurisdiction to require EM bail at this stage as the bail simpliciter application had not been "dismissed" and, in any event, it is an application formally filed by the defence. She stated that she viewed the section of Judge Morris's ruling that states that "*[i]t may be with the declinature of bail that steps could be put in place for as rapid as possible electronic bail assessment to an address that would need to be well away from the complainant*" as a future possibility, stating in evidence at the inquest:

I don't really understand why Her Honour went on to, at the end of that, ask for the [transcribed] notes to go to electronic bail because I didn't take it that there had been a final dismissal of the application for bail at that stage.

[310] Mr Lewens' evidence was that there are no express rules requiring a judge to consider minutes of decisions made by another judge who presided over an earlier appearance by a defendant, although in practice judges are likely to do so, particularly as the minutes are recorded on the information (now criminal record sheet), a document before the judge on each occasion on which a defendant appears.

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<sup>52</sup> This is consistent with the provisions of s30(D) of the Bail Act 2000, which requires an application for bail with electronic monitoring conditions to be on the prescribed form, and a court can consider bail with electronic monitoring conditions only upon receipt of an application.

## Conclusion

[311] On 23 September and 5 October, Judge Morris's handwritten direction of 9 September on the kidnapping information, which stated "*electronic bail to be put in place*", was on the paper-based court file. However, on both occasions, the issue of EM bail was not raised by the police prosecutor or defence counsel, and Judge McNaughton did not have the fuller information contained in the transcribed notes of Judge Morris's decision of 9 September. The notes of decision, as traversed, expressed views on the unsuitability of the Chand family home as the bail address, based on information provided orally by the police prosecutor on the proximity of the addresses, and referred to assessment for electronic bail to another address.

[312] It is impossible, in the absence of a copy of the notes of Judge Morris's decision being available to Judge McNaughton, and in the absence of either Sergeant Stace or Ms Lowe referring to the specifics of that decision, to know whether Judge Morris's notes of decision would have had any significance for Judge McNaughton, or the decision made, on 5 October 2011. However, it is concerning that the notes of her decision, which captured information not captured elsewhere in documentation on the paper-based court file, were not available.

### *Information Provided to Judge McNaughton by Police Prosecutors*

[313] Superintendent Johnson's evidence was that it is the responsibility of police to work on behalf of complainants/victims to ensure that any risk to them is minimised as much as possible. He stated that police do this by opposing bail or by seeking strict bail conditions appropriate to each circumstance. He views the role of the police prosecutor as being to assist the court and ensure that it has all the relevant information to make sound decisions, noting that the better the information, the better the decision-making can be. Mr Pell's evidence, which Sergeant Stace agreed with, was that the prosecutor is there to represent both police and victim's interests, and to ensure that the police position is fairly and squarely before the Court when it makes a decision.

[314] Police prosecutors Mr Pell and Sergeant Stace (and Superintendent Johnson) highlighted the importance of the POTB prepared by Detective Sergeant Watson on 2 September 2011, which was on the paper-based court file from the outset. It contained the primary information police relied on as fundamental to the determination of bail. Sergeant Stace considered that this document provided all salient information the Judge needed to understand the police opposition to bail.

[315] The evidence, however, shows that information subsequently ascertained by the police about the actual proximity of the Chand's home to the Marceau's home was more specific than

the “quite close” in the POTB. Mr Pell researched, and raised orally, details about proximity in Court on 9 September, and Judge Morris’s concerns in this regard were reflected in her (missing) notes of decision. However, the information on actual proximity was not contained anywhere on the paper-based court file.

[316] The information that Detective Iremonger provided to Sergeant Stace about the proximity of location prior to the 5 October hearing was even more specific (a two-minute walk and eight houses away).

[317] On neither 23 September 2011, nor 5 October 2011 was the specific information about the proximity of addresses raised in Court before Judge McNaughton, nor was documentation showing the proximity of the houses ever handed up for the Court file.

[318] On both occasions on which Mr Chand appeared before Judge McNaughton the police prosecutors who appeared did not offer any substantive information to the Court.

[319] The transcript shows that on 23 September the prosecutor brought the POTB to Judge McNaughton’s attention and said nothing else. Specifically, the prosecutor did not make any comment about Ms Lowe’s repetition of the proposal that Mr Chand be bailed to his home. The prosecutor would have had (or ought to have had) access to Mr Pell’s handwritten notation on the prosecutor’s copy of the POTB referring to “1.1km away” and the information recorded on the prosecution cover sheet by Mr Pell that Judge Morris had declined bail on 9 September.<sup>53</sup> Nor did the prosecutor emphasise salient points from the POTB (for example, police concern that the “*biggest risk*” of bail was to Christie because revenge was the motive for the initial attack and that issue still existed).

[320] On 5 October, Sergeant Stace also referred Judge McNaughton to the POTB in response to a question from the Judge as to whether there should be any other bail conditions apart from the “*residence, 24 hour curfew, non-association and not to go to her address*”. She responded:

I can’t think of anything else that would further address the concerns raised by police in the opposition to bail, sir.

[321] She made no other substantive comment to the Court.

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<sup>53</sup> As previously recorded, the prosecution cover sheet for Mr Chand’s file could not be located for the inquest. Mr Pell thought he had recorded on the cover sheet that bail was declined because the address was too close, but without the cover sheet this cannot be confirmed.



[322] Sergeant Stace confirmed in evidence that there were three salient issues underpinning the police opposition to bail from the very beginning, being the mental health risk, proximity of the address, and the gravity of the offending. Her evidence was that she considered it apparent once the hearing began that Judge McNaughton had moved beyond the issues that had been raised by way of police opposition to bail, and she was not given an opportunity to outline the police position on bail. She stated:

[I] knew that the court was well aware of the police opposition to bail and the reasons for that opposition.

[323] Sergeant Stace said that Judge McNaughton was focussed on Mr Chand's treatment and the ability of mental health services to manage him at home. She stated:

It was clear His Honour was swayed by the strong evidence submitted by mental health services on this point. As I recall these were essentially that the defendant's offending was related to a previously undiagnosed mental health condition, which has now been diagnosed and was being successfully treated, and that he could be safely and successfully treated in the community.

[324] Sergeant Stace stated that her view regarding the issues about proximity of addresses and the confessions made by Mr Chand and his threats against Christie had already been covered in Court. Sergeant Stace said:

I understood that both of these points had already been outlined to the court but this additional material was provided to me should either point need to be addressed further in court.

[325] Sergeant Stace said that even where there are instructions from another prosecutor and the officer in charge to "*vigorously oppose bail*", it is up to the prosecutor on the day to assess what she or he is dealing with. Superintendent Johnson confirmed that whether oral submissions need to be made is a judgement call for the prosecutor.

[326] The evidence shows that Sergeant Stace believed, incorrectly, that the Court had heard the information about the proximity of the addresses and the admissions on several occasions. She thought that Mr Pell had specifically told Judge McNaughton about the proximity of the addresses — based on her (mis)interpretation of an email Mr Pell sent to Detective Iremonger (and copied to her). Unfortunately, although she confirmed that she had reviewed the prosecution file (which included the prosecution cover sheet) prior to the 5 October hearing, she did not pick up that Mr Pell had not appeared before Judge McNaughton, and she did not check the issue with him.

[327] Regrettably, because of Sergeant Stace's misinterpretation of Mr Pell's email and an untested belief that the Court, and in particular Judge McNaughton, was fully aware of police concerns about the proximity of the addresses (in particular, the actual distance of walking past eight houses, as opposed to the POTB description of "quite close"), she made assumptions and no opportunity was sought or taken by her to raise this issue or to remind the Court about the proximity of addresses when the Judge asked Sergeant Stace for Mr Chand's address for the bail conditions.

[328] Sergeant Stace did not agree with the proposition that it would have been prudent to let the Judge know, rather than assuming the Judge knew. She said she had not been given the opportunity to make oral submissions (about the proximity), but neither would it have been appropriate to do so.

[329] Sergeant Stace did not accept that when the Judge asked her for Mr Chand's address, it would have been a perfect opportunity to "remind" the Judge that it was the same suburb as Christie's, and to hand up the highlighted map. In her view, it would have been inappropriate at that stage of the proceedings, as she considered that the Judge had made a decision and simply wanted confirmation of the address to put on the bail bond. She stated that she would have presented the interview transcript and map only if the Court or defence counsel had raised doubts and needed convincing. She believed on the day that this additional information was simply not relevant.

[330] Sergeant Stace confirmed in her evidence that her instructions from Detective Iremonger were that whatever the FCLN might say about Mr Chand's mental health on 5 October, the police concerns about Mr Chand getting bail would not be alleviated — i.e., that notwithstanding the mental health treatment Mr Chand had received, police concerns about Mr Chand and his risk to Christie remained. However, Sergeant Stace made no submissions about this issue. She stated in evidence that she formed the view at the hearing that the evidence from the mental health professionals was such that the risk Mr Chand posed from a previously undiagnosed mental health condition was sufficiently mitigated by treatment. In her view, that dealt with the police concerns, which were about proximity and Mr Chand's admissions of guilt, and she was not qualified to comment on the evidence of mental health experts. She stated:

Once offenders have been on that medication for a period of time they are regarded to be safe because now they're thinking straight, can be relied on to take their medication, he was going to be in the care of his family.

[331] In response to questioning from counsel, Superintendent Johnson stated:

Q: [I]f a particular police prosecutor was of a strong belief that bail needed to be opposed, but had a sense that the court may be looking at different factors, what would your expectations be about bringing relevant and important information to that decision-maker at that time?

A: So my expectation would be and has been that they provide the relevant information and ensure that the decision-maker has got the information that's ... available to inform them or allow them to make the decision that they feel is appropriate in the circumstances. If there was a course had been gone down that they didn't necessarily agree with they may seek an opportunity to have an input. But that would need to be done carefully and respectfully if that was the case.

Q: And as an officer of the court, we've all had circumstances where we felt compelled to raise something that was not necessarily a popular view, but that doesn't mean you don't do it anyway, does it?

A: That's correct.

[332] Superintendent Johnson gave evidence that, in his view, even on 5 October, it was still an option for the prosecutor to seek an adjournment regarding the bail address; it would be up to the Court whether it granted the adjournment or not. He stated: "*There's always an option to make that application to the court but it obviously wasn't done in this case.*"

[333] Superintendent Johnson also stated that when it was clear that a judge was contemplating granting bail, the prosecutor could certainly seek bail conditions on a case-by-case basis. He did not believe it would be helpful for police to advance bail conditions in writing, but it was appropriate for the prosecutor to assist the court to consider conditions that the police thought appropriate.

### **Conclusions**

[334] Management of Mr Chand's case by the police prosecution service was characterised by lack of continuity of prosecutor and lack of active supervision/oversight by a senior member of the police prosecution service as complexities on the file emerged, despite Mr Chand's offending being acknowledged as being particularly serious and the risks associated with bail being granted well identified by the police.

[335] Superintendent Johnson's evidence was that continuity of prosecutors is the ideal situation, particularly in high risk cases, but it is not always an option. He explained that the prosecution service rosters prosecutors on a court-by-court basis, not by ownership of a file. Accordingly, his evidence was that it is important for the next prosecutor to be as familiar with the material on the file as possible, including being aware of actions taken by a previous

prosecutor, the major steps taken, and that information is passed on — verbally as well as that noted on the prosecution cover sheet.

[336] In Mr Chand's case, three police prosecutors appeared over the course of five hearings. The evidence in relation to the hearings of 23 September, 29 September, and 5 October demonstrates that there was a lack of effective handover and continuity of file management.

[337] I am satisfied that the information Mr Pell recorded on the police prosecution sheet on 9 September would have been, or ought to have been, available for the police prosecutor who appeared at a hearing on 23 September (prior to Mr Pell becoming unexpectedly involved again on 29 September), at which time a bail application was pursued. However, the Court transcript shows that the police prosecutor on that occasion did not raise the issue of bail having been declined previously, which suggests that he was not sufficiently familiar with the material on the file to do so.

[338] The transcript shows scant input by the prosecutor at that hearing. Although Superintendent Johnson's evidence was that as the POTB and summary of facts were before the Court, it was a judgement call by the prosecutor as to whether oral submissions should be made, I consider that there were matters that ought properly to have been brought to Judge McNaughton's attention on 23 September by the prosecutor, but were not. Specifically, the fact of the as yet not available notes of Judge Morris's decision of 9 September and issues arising from it (for example, the prosecutor's view that bail had been declined and that accordingly there was a need for defence to show changed circumstances). The issue of electronic bail was not a matter the prosecutor could have brought up, as he would not have been aware of it. Mr Pell's evidence is that he would not have recorded that matter on the police prosecution file, and the notes of Judge Morris's decision were not available for the prosecutor to review.

[339] On 29 September Mr Pell happened, by chance, to find that a bail application for Mr Chand was to be made before a community magistrate in the Court he was assigned to that day. That the matter was back in Court that day should not have been a surprise to the prosecution service, as the Court date had been scheduled in advance. The fact that Mr Pell did not know that he would be dealing with the matter that day meant that he could not review the file and prepare in advance.

[340] It was on this occasion that Mr Pell discovered that the matter had taken a turn he considered unwarranted, given that he believed that Judge Morris had declined bail on 9 September (when he last appeared). Accordingly, he considered that an application by Mr

Chand's counsel showing changed circumstances was required. Since 9 September Mr Pell had not seen the file or discussed it with another prosecutor.

[341] Following the 29 September hearing (at which the community magistrate referred the matter back to Judge McNaughton) Mr Pell was concerned at the prospect of Mr Chand's bail application being progressed. He took quite strenuous steps to ensure that the prosecutor rostered to appear at the next hearing (his colleague Sergeant Stace) was well briefed on how he thought the matter ought to be progressed, and that she had evidence to bolster the matters set out in the POTB. Mr Pell made the judgement that he had taken all steps necessary. He considered that Sergeant Stace had been fully briefed, given all the material required, and would be appearing on instruction from Mr Pell and Detective Iremonger. Furthermore, Mr Pell considered that the position was "*very straightforward and quite a simple argument, to be perfectly honest*". His evidence was that he considered that Sergeant Stace was quite capable of handling the matter.<sup>54</sup>

[342] In the event, Sergeant Stace played a passive role at the hearing on 5 October. Again, although the POTB and summary of facts were before the Court, as well as the victim's statement referring to Mr Chand living close by, which meant that it was a judgement call by the prosecutor as to whether oral submissions should be made, I have formed the view that there were matters that ought to have been brought to Judge McNaughton's attention to ensure that full information was available to him, and were not — specifically (and notwithstanding that Sergeant Stace mistakenly believed that Mr Pell had appeared before Judge McNaughton and already provided him with some detail on the proximity of address), specifics of the proximity of addresses (including the graphic representation in the map) and alerting the Judge to ongoing police concern that risk to Christie was not ameliorated by mental health treatment, in view of the specific threats against her.

[343] Counsel for the New Zealand Police raised concern at my conclusion that specifics of the proximity of the address should have been provided by Sergeant Stace to Judge McNaughton (who had read the POTB and Christie's letter) and submitted that to criticise the prosecutor for failing to elaborate to a judge what "quite close" (information on the POTB) or "close to my home" (information in Christie's letter) meant, in the circumstances of a case like this, is setting the bar too high in terms of the performance expectations of a prosecutor, and underestimating the role and capabilities of the judge. Counsel submitted that it was a "counsel of perfection" that is unrealistic and unfair in the context of busy district courts. He argued that judges are aware that

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<sup>54</sup> Mr Pell had more experience as a prosecutor than Sergeant Stace but was not in a position of formal oversight of the sergeant.

the proximity of addresses is a common issue on bail applications and are well placed to assess that issue alongside all other issues, and that any judge would be well aware of the fact that whether the distances between properties is 1.1 kilometres or 20 kilometres, this will be irrelevant in the case of a defendant who is determined to do harm to a victim. Counsel for the New Zealand Police further submitted that provision of relevant information to a judge does not rest with the prosecutor alone, as *“defence counsel may be the only constant factor in [bail] applications that extend across a number of hearings”*.

[344] Counsel for Sergeant Stace submitted that the evidence establishes that on 5 October Judge McNaughton was well aware of the proximity of the addresses, as he had available the POTB and Christie’s letter to the Court.

[345] My conclusion on this issue, which I maintain, is specific to this case. Police Prosecutor Mr Pell had considered it pertinent to find out how close the “quite close” on the POTB was. He advised Judge Morris on 9 September, and it was a significant factor in her decision in respect to bail on that occasion. The police prosecutors were aware that Mr Chand’s counsel had subsequently continued to seek bail to Mr Chand’s home address and, with that in mind, prior to the 5 October hearing Mr Pell and Detective Iremonger had impressed on Sergeant Stace their very real concern about the proximity of the addresses and just how close “quite close” was. Sergeant Stace had been provided by Detective Iremonger with a map for the Court highlighting the very short walk between the two addresses. Although she had this information in Court, and had been asked by Mr Pell and Detective Iremonger to produce it to the Court, Sergeant Stace neither produced it nor referred to it. Given the requirements of s15 of the Bail Act, which made an affirmative bail decision the most likely outcome given Mr Chand’s age and that he had already spent a month in custody, it was incumbent on the police prosecutor on 5 October to ensure that the Judge clearly understood the issue of proximity of the addresses. In all the circumstances of this case, I do not consider it to be a counsel of perfection to expect her to have raised the issue of the exact proximity. As Superintendent Johnson noted in his evidence, *“the better the information the better the decision making can be”*.

[346] There is no evidence at any stage of oversight of Mr Chand’s case by a senior member of the police prosecution service. Nor is there evidence that following the 23 or 29 September hearings consideration was given to elevating the matter to a senior prosecutor for advice on how best to progress the matter given the issues arising, as well as consideration at a senior level of the most appropriate prosecutor to appear on 5 October, or whether documents (such as an amended POTB attaching the map showing the proximity) should be filed in advance of the hearing. Nor,

following the grant of bail, was any consideration given to whether there should be an appeal of the bail decision, although Superintendent Johnson's evidence was that it is a prosecution function to consider appeal,<sup>55</sup> and that the first step in that process is for the prosecutor to discuss the issue with the district prosecution manager (a senior sergeant level position).

[347] It is not surprising that there was no consideration of an appeal in this case, given that there was no senior oversight of the file and Sergeant Stace's evidence about her understanding of how the matter had been handled by the police prosecutors over the series of hearings, and that, even on reflection, there was nothing she would have done differently at the Court appearance where Mr Chand was granted bail.

## **RECOMMENDATION**

### **To the Commissioner of Police:**

I recommend that:

It may be timely for the Police Prosecution Service processes to be reviewed and, where necessary, amended to ensure that:

1. The Police Prosecution Service maintains a robust procedure to identify/triage serious high-risk cases (particularly those involving alleged offences of violence to others) the service is responsible for managing;
2. An appropriate level of active supervision by a senior member of the Police Prosecution Service is available in relation to such serious high-risk cases; and
3. A sufficiently robust written protocol setting out the information it is expected a prosecutor will record at the end of the hearing is in place to ensure effective handover of the case to another prosecutor

— and that compliance with the matters identified above is audited regularly.<sup>56</sup>

<sup>55</sup> Superintendent Johnson's evidence was that for appeals against a bail decision, police prosecutors have an exemption from seeking the authority of the Solicitor-General, which is required to lodge other appeals against a decision by a district court judge.

<sup>56</sup> Although the processes and procedures of the Police Prosecution Service in relation to bail applications were not specified in the final list of issues confirmed before the inquest commenced, a coroner has an inquisitorial role and is not bound by the final list of issues in the conduct of an inquiry. At the inquest, evidence from the police prosecutors involved in Mr Chand's case included evidence about the processes and procedures of the Police Prosecution Service as it related to the carriage of Mr Chand's case. There was also evidence from senior police personnel. This included some evidence in respect to training received by police prosecutors and processes within the Police Prosecution Service, and the New Zealand Police produced relevant excerpts from the Prosecution Manual. Based on the evidence arising during the inquiry I have therefore made this recommendation. I accept that had the processes and procedures of the Police Prosecution Service been identified at the outset, the New Zealand Police would have produced formal evidence on matters such as the training of prosecutors, the role of the Prosecution Manual, the role of the Police Legal Section, and the instruction of Crown solicitors on certain high-risk cases.

### *Information from Defence Counsel on Bail Address*

[348] Ms Lowe proposed Mr Chand's family home as the bail address at each Court appearance — including on both occasions at which Judge McNaughton presided. Her evidence was that she had no disquiet about continuing to propose that address, notwithstanding the concern expressed about the address by Judge Morris. Ms Lowe also saw no need to raise the issue of proximity. She advised that apart from the home address there was no other address for bail available, and stated:

My obligation was to apply for bail to the family home and to follow the instructions of my client. The police were aware of the issues with the bail address and so it was raised in the opposition to bail. I was never asked at any point about the proximity of the address by Judge McNaughton. And in those circumstances I didn't feel that I had any obligation to raise it, the police were able to raise it if they wished.

[349] Ms Lowe was adamant in her evidence that she would not have proceeded with applying for bail if she believed Judge Morris had formally dismissed the application on 9 September. Ms Lowe's evidence was that, in her opinion, while Judge Morris declined bail that day it was because Mr Chand had not yet been assessed by a doctor and had received no psychiatric treatment, and that the proximity of the addresses was left open.<sup>57</sup> Ms Lowe also noted that at no time had a judge asked her to outline any change of circumstance.

### **Conclusions**

[350] Whether Judge Morris's decision of 9 September was such that the current bail application was declined and a fresh bail application was required showing a change in circumstances (in particular, bail to a different address) is not a matter on which it is appropriate for me to express a view, as it is outside the parameters of the inquest.

[351] I accept Ms Lowe's evidence that she did not consider that Judge Morris had "formally dismissed" the bail application on 9 September and that it was on that basis that she continued to advance the Chand family home as the bail address.

### **Comment**

[352] Different interpretations of terminology used in Judge Morris's decision of 9 September appears, in part, to have contributed to the differing conclusions reached by the police prosecutor and defence counsel about what Judge Morris had determined that day. As already traversed, the position of Ms Lowe (defence counsel) was that bail was "declined" by Judge Morris on 9

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<sup>57</sup> Counsel for Ms Lowe, Mr Grieve QC, stated in submissions that "[i]t is clear from the transcript, and Ms Lowe's evidence confirms it, that taken as a whole in full context bail was declined on 9 September 2011 but the application was not formally dismissed".



September but was not “formally dismissed”. At inquest, her evidence was that she formed this view on the basis of her analysis of Judge Morris’s full decision, but her evidence was also that “formally dismissed” was the terminology she would have expected to hear from the Judge if a fresh application was required. On the other hand, Mr Pell, the police prosecutor, believed that the use of “declinature of bail” by Judge Morris signified that bail was declined (i.e., refused) and a fresh application showing a change of circumstances was required. Sergeant Stace (police prosecutor) also believed that bail had been declined.

[353] There was also an issue of potential confusion with the acronym used by Judge Morris on the charging document to record her decision. Both Mr Pell and Ms Lowe stated that if bail was declined such that a fresh application was required, they would have expected a judge to have recorded the acronym “BAD” (bail application declined) or “B/D” (bail declined) on the charging sheet. Counsel together checked one of Mr Chand’s charging sheets when Mr Pell challenged Ms Lowe’s interpretation of Judge Morris’s decision, and based on the acronym “R” recorded there, Ms Lowe maintained her interpretation of Judge Morris’s decision. However, Courts Services Manager Mr Lewens’ evidence was that “RIC” (and by extension “R”) was used as an acronym on charging sheets if bail was “declined”.

[354] I will draw the issue of the potential confusion arising to the attention of the Chief District Court Judge.

#### *Mental Health Information Available to Judge McNaughton*

[355] The issue of Mr Chand’s mental health was a consistent theme throughout the Court appearances from 7 September to 5 October.

[356] Ms Lowe’s submissions to Judge McNaughton (and Judge Morris) were premised on the assumption that Mr Chand was a young man with no criminal history and his offending was a direct result of his mental health issues and was a catalyst to get the mental health help he needed. For example, on 23 September when she appeared before Judge McNaughton, Ms Lowe stated:

Basically this incident involved his best friend<sup>58</sup> where he asked her around, he said he was going to commit suicide. She went round to talk him out of it and then he, he basically lost it.

... essentially this is a young man. He’s 18, he’s been found by the doctors and had confirmed the diagnosis of depression that’s been ongoing for a year and the events that occurred with his friend really were a boiling point for him to get the help that he needs. At the last hearing we did investigate whether or not it would be possible for him to be

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<sup>58</sup> See footnote 25.



admitted to Taharoto Unit but none of the reports supported that in terms of an inpatient treatment programme.

[357] At the hearing on 23 September, Judge McNaughton observed that Mr Chand had only just started a course of treatment in prison and said that he would want to be satisfied that Mr Chand was responding to treatment and reasonably stable before he would even consider a bail application.

[358] At the 5 October hearing Ms Lowe again laid emphasis on Mr Chand's mental health. She referred to Mr Chand having had ongoing input (assessment and treatment) from Forensic Mental Health Services and advised the Judge that an FCLN was present in Court to give a report on progress, and an outpatients appointment with community mental health services had been made for Mr Chand for the following week, should he be granted bail.

[359] The POTB also raised mental health issues. It recorded that Mr Chand suffered from depression and had tried to take his life — stating: *“This shows that he can become desperate and when in that state extreme behaviour such as sexual assault can occur.”*

[360] Against that background FCLN Mr Byrt provided a report to the Court for the 5 October hearing and was also present in Court to advise.

[361] Mr Byrt's report recorded his assessment of Mr Chand that day in the Court cells: that he appeared stable in mood, was pleased to be on antidepressant medication, there was no evidence of thought disorder or disorganisation in thinking and speech, and that *“the defendant denies any risk issues to himself or to others”*. Mr Byrt also referred to the fact that he had reviewed the health information from the FPT, whose notes on 30 September 2011 indicated that Mr Chand had commenced antidepressant medication and was *“awaiting full therapeutic effect (efficacy) of antidepressant”*. Mr Byrt's letter further noted that the FPT was happy for community mental health team follow-up if Mr Chand was bailed to the community.

[362] Judge McNaughton asked Mr Byrt what his *“note here about the full effect”* meant. Mr Byrt responded:

Okay, yes sir that's just to indicate to the court that with this particular medication it takes a couple of weeks until it reaches its full potential. That's what the — that's what it's referring to with the efficacy.

[363] Mr Byrt confirmed to the Judge that Mr Chand had started taking the medication two weeks previously. The Judge asked, *“So we are just about there”* and Mr Byrt replied, *“Yeah, should be.”*

[364] However, the Medsafe Data Sheet for citalopram<sup>59</sup> states:

- i) Treatment results in general can be evaluated only after 2–3 weeks;
- ii) The antidepressive effect usually sets in after 2–4 weeks;
- iii) Steady state plasma levels are achieved in 1–2 weeks; and
- iv) There is no clear relationship between citalopram plasma levels and therapeutic response or side effects.

[365] At the inquest Mr Byrt agreed that it is not possible to be certain that a therapeutic effect had been reached in two weeks. With respect to efficacy, he said:

It takes time for [citalopram] to build up in the blood until it has that effect, but generally you're looking probably two, maybe four, even six weeks. It just depends on the individual and it depends on their reaction to it and whether they can tolerate the medication.

[366] In respect to Mr Chand, Mr Byrt's evidence was that from his perspective, and from the information from the FPT, the medication Mr Chand was on "*was having an effect*", and there had been "*an improvement or a start of improvement to his mental state due to Citalopram*".

[367] However, this is not entirely consistent with Mr Chand's clinical notes. A clinical entry on 30 September made by an FPT nurse who assessed Mr Chand that day recorded that Mr Chand did not think the medication was working yet, and he was hoping for more efficacy.

[368] Mr Byrt recognised that it would have been useful to provide the Judge with more detailed information about efficacy, for example that efficacy can take anywhere from two to six weeks, although he believed that the information he gave the Court was reasonable in the circumstances. He stated that he would, however, consider varying his practice, in hindsight, to provide fuller information to the Court.

[369] Dr Skipworth confirmed in his evidence that the initial therapeutic effects of citalopram are not anticipated to occur until after two weeks. He agreed that Mr Byrt could have been a lot clearer with the information he provided to the Court about the medication and what that meant to Mr Chand's stability going forward. However, Dr Skipworth qualified that view by saying that he did not think being clearer about the information would likely have changed the overall emphasis of Mr Byrt's advice to the Court.

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<sup>59</sup> Medsafe is the New Zealand Medicines and Medical Devices Safety Authority. It publishes data sheets that provide detailed prescribing information produced by pharmaceutical companies for healthcare professionals.

[370] Dr Skipworth stated that the issue of medication and how long it has been taken for is a relevant part of the picture, but that relying on the idea that the medication is going to have an effect in two to six weeks is flawed, because the medication may not have any effect at all in that time. He stated that more relevant is the person's current mental state and what mental health follow-up would be needed if he were bailed.

[371] Another issue not explained to Judge McNaughton in Mr Byrt's letter was that "*follow up from a community mental health team if bailed*" did not mean there was a guarantee that Mr Chand would remain in the care of a specialist mental health team while on bail. Dr Skipworth agreed that this part of the advice in Mr Byrt's letter could have been more "fulsome" in respect to what may happen with any referral to specialist mental health care, but he did not feel that Mr Byrt's advice was inaccurate in this regard.

### **Conclusions**

[372] The factual matrix (violent offending and a suicide attempt), the POTB linking depression and violence, and the submission of Mr Chand's counsel that his offending was a direct result of his mental health issues, for which he was now receiving treatment, provided the background for consideration of the bail application on 5 October and, accordingly, the evidence of the mental health staff from ARFPS was important.

[373] I find that Judge McNaughton was not provided with accurate information from Mr Byrt in respect to the length of time until efficacy of the antidepressant medication Mr Chand was prescribed was fully clinically achieved, although I note and accept Dr Skipworth's evidence that although he considered that Mr Byrt could have been a lot clearer with the information he provided to the Court about the medication, and what that meant to Mr Chand's stability going forward, he did not think that being clearer about the information would likely have changed the overall emphasis of Mr Byrt's advice to the Court.

[374] Mr Byrt could also have provided Judge McNaughton with a fuller picture about the issue of health supervision for Mr Chand if he were granted bail. Again I agree with Dr Skipworth's assessment that although the information provided by Mr Byrt about community mental health follow-up was not inaccurate, it could have been more helpfully explained so that there was no risk of Judge McNaughton forming a view that Mr Chand was guaranteed ongoing specialist mental health care whilst on bail.

[375] It is impossible to know what reliance or emphasis Judge McNaughton placed on the advice about these issues, and particularly about medication efficacy having been achieved on 5

October, or what decision he would have made had he been fully advised that it could take two to six weeks, and that Mr Chand himself was not necessarily happy with the current efficacy of the medication.

[376] The adequacy of the FCLN's assessment of Mr Chand, including the assessment of his risk, is considered later in these findings.

## **SUPERVISION AND MONITORING OF BAIL CONDITIONS**

[377] One of the issues for the inquest was what information was communicated to Christie and her family concerning the granting of bail and bail conditions. This issue has been considered at paragraphs [194] to [232] of these findings, and recommendations made to address matters arising.

[378] What information was communicated to Mr Chand's mother and aunt about bail expectations, and what the supervision expectations were by family while Mr Chand was at home on bail, and who they should contact if they had any concerns, were also issues identified for the inquest. These matters are considered at paragraphs [233] to [270] and a recommendation made.

[379] Other issues relating to bail are considered below.

### *Police Bail Monitoring Systems 2011*

[380] At the time Mr Chand was granted bail, the police did not have a national policy or practice that related to bail monitoring and response. Each District Intelligence Unit had a stand-alone system in operation to manage bail. The relevant District Intelligence Unit in Mr Chand's case was at the North Shore Policing Unit. Detective Superintendent Lynch described the use of "bail folders" as the bail management system in use within the North Shore Policing Unit at the relevant time. If a breach of bail were detected, this would be reported to the Intelligence Section and an alert would be created against that person in NIA so that the person could be arrested by police staff anywhere in the country when located.

[381] There is not currently, and was not at the time, a specific policy setting out how many times a person on bail should be checked. Evidence given by Detective Superintendent Lynch was that bail checking is a resource-intensive process and, given the large number of people on bail, police need to prioritise who is checked and how often. The system focuses on "active offenders" and those on bail for serious charges. As Mr Chand was on bail for serious charges he was prioritised as someone needing quite intensive bail checking.

[382] Detective Superintendent Lynch stated that the expectation for those who were prioritised for bail checks was that they would be subject to regular checks for at least an initial period. His evidence was that he would expect that if someone was subject to regular checking they would be checked a minimum of three to five times per week initially, and the frequency of checks may diminish as time goes on depending whether the person is complying with the bail conditions.

*Nature and Extent of Monitoring of Mr Chand*

[383] Mr Chand was checked by police visiting his home and checking that he was present a total of 23 times between 6 October 2011 and 7 November 2011. These visits were conducted at varying times of the day and night. On each occasion, he was found to be at home and, accordingly, was complying with his bail conditions.

[384] Detective Superintendent Lynch advised that, in his opinion, on any reasonable assessment, police monitoring of Mr Chand was robust and comfortably falls within the category of “adequate”, with bail checks exceeding three to five checks a week. Superintendent Lynch noted that there was no reduction in the frequency of the checks over the period despite there being no breaches.

**Conclusion**

[385] Mr Chand was appropriately prioritised as requiring regular bail checking because of the serious charges. I am satisfied that the extent of the bail monitoring undertaken met the police expectations for the number of checks it was appropriate to perform for a person expected to be subject to “regular” bail checks. The bail checks commenced very soon after Mr Chand began his bail and did not diminish over the period he was on bail.

*Response Times Then and Now*

[386] Police have a priority code system, which was in force at the time Christie died and remains in place today, that assists communications staff who dispatch police staff to jobs to prioritise the workload. The system runs from priority 1 through to priority 8, with priority 1 being the highest.

[387] In 2011, and today, in cases where a breach of bail simpliciter is detected, an alert is created against the offender in NIA warning police staff anywhere in the country that the person is to be arrested when located.

[388] Superintendent Johnson provided evidence relating to police response times for EM bail breaches. He explained that at the time Christie died, if an offender on EM bail left the address

where the person was bailed to, an alarm was activated and received by a monitoring company. The monitoring company then notified the Police Communication Centre (after the company had established that it was not an equipment malfunction). A breach of EM bail was rated by police as a “Priority 2”,<sup>60</sup> which had an expected police response time of 0–30 minutes following notification from the alarm company, depending on resources and competing priorities.

[389] On 7 November when Mr Chand breached his bail conditions and went to Christie’s home, the police were alerted when they received a 111 call from the Marceau’s home at 7.04 am. The call was given a “Priority 1” status (threat to life), with an expected response time of 0–10 minutes. Police arrived at the Marceau home in 9 minutes.

#### *Adequacy of Current Police Bail Monitoring and Response Times*

[390] Since Christie’s death there have been changes to how bail is managed. In February 2012 police introduced a nationally consistent process for bail management — using a bail management software application that is linked to NIA. This application provides the means for police to prioritise, assign, and monitor bail checks including identifying when bail conditions have been breached.

[391] The bail management application is managed for each police district by the District Intelligence Unit. Detective Superintendent Lynch’s evidence was that because of the significant number of people on bail,<sup>61</sup> police need to prioritise those who are subject to physical bail checking, and priority is given to recidivist offenders with readily enforceable bail conditions who are on bail for volume crimes (“active offenders”) and others who face serious charges.

[392] In 2013 the use of the bail management application was improved with the introduction of a new police programme whereby all police officers across the country were provided with an iPhone on which they are able to access (amongst other things) the bail management application, and can check bail records and complete bail checks and update results immediately.

[393] Since February 2014 EM bail has been managed by the Department of Corrections and still involves a response via a monitoring company to alert police of an absconding. The police then gather information and dispatch a police unit.

[394] Detective Superintendent Lynch stated that the implementation of the bail management application and the ability to access the application in the field via a mobility device and to enter

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<sup>60</sup> Unless there was a specific threat made known to the communicator who entered the job, which would raise the level of response to “Priority 1”.

<sup>61</sup> As an indication, in January 2016 there were 7,519 people on bail in the greater Auckland area.

real-time information allows for an effective system for police to manage bail. However, he stated that it is important to note that “*no system is infallible*”. His evidence was that bail conditions (EM Bail or a 24-hour curfew) will not stop a motivated offender offending.<sup>62</sup> He observed that if an offender who was not subject to EM bail was living in another city, there would be plenty of opportunity between bail checks for any travel to take place.

[395] Superintendent Johnson gave evidence that the steps involved in dealing with a breach of EM Bail, both before and after February 2014, demonstrate in his opinion that EM bail cannot prevent a defendant from absconding if he/she chooses to do so. He described EM bail as being a useful initiative, but stated that it cannot cater for determined defendants. Superintendent Johnson referred to a decision of Judge J Walker (*New Zealand Police v Joshua Mahi* [2016] NZDC 17703) that outlines the current response process for EM bail breaches, in which Judge Walker describes it as “... *quite a lengthy process* [from the alert to the monitoring company] *before police are notified of an absconding. The ability of police to then respond to such absconding is dependent on resources being available.*”

### **Conclusions**

[396] The evidence at the inquest highlighted that monitoring bail is resource intensive and needs to be prioritised, given the numbers of people on bail. Since Christie’s death there have been ongoing changes in how bail is managed, designed to improve efficiency and responsiveness.

[397] The evidence at the inquest did not disclose any specific issues around how the police monitor bail conditions or respond to breaches. However, this was not a commission of inquiry into bail issues, and I am conscious of the cautionary evidence of Detective Superintendent Lynch that no system is infallible, as well as the issues raised by both Detective Superintendent Lynch and Superintendent Johnson about motivated (determined) offenders and the reference by Superintendent Johnson to the matters relating to EM bail raised by Judge Walker in *New Zealand Police v Mahi*.

[398] This is not a matter on which it is appropriate for me to comment or make recommendations.

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<sup>62</sup> In his definition of motivated offender Detective Superintendent Lynch included an offender with a fixation on an individual or cause.



## MR CHAND'S MENTAL HEALTH

[399] This section of the findings deals with Mr Chand's mental health, the nature and adequacy of assessments undertaken prior to the grant of bail, and oversight of his mental health while on bail (issues 3(a) to (g) at Appendix 1). Aspects of some of the issues specified in Appendix 1 have been considered earlier in these findings — in particular, the report prepared by Dr Goodwin and issues relating to the information about medication efficacy provided to the Court by FCLN Mr Byrt on 5 October. To the extent that these matters have been traversed previously, they are not repeated here.

### **Preliminary Matter — External Review by Waitemata DHB**

[400] After Mr Chand was found not guilty of Christie's death by reason of insanity, Waitemata DHB commissioned an external, independent review of the care Waitemata DHB provided to Mr Chand during the period leading up to Christie's death ("the external review"). This review was undertaken by two forensic mental health experts from other DHBs — Dr Ceri Evans, a forensic psychiatrist and, at the time, Clinical Director of the Canterbury Regional Forensic Psychiatry Service, and Ms Rachael Aitchison, at that time Nurse Director of the Mental Health and Addictions Service at Waikato DHB ("the external reviewers").

[401] The general clinical context for the review (as noted in the instructions for the external review) was that, following the Court proceedings in which Mr Chand was found to be insane at the time he killed Christie, it was understood "*that both the murder and the earlier offences were driven by a psychotic illness, the extent of which was not appreciated by Mason Clinic staff prior to the bail application, nor indeed by other clinicians involved in his care*".

[402] The terms of reference for the external review were (broadly) to "[p]rovide clinical comment with reference to the reasonable standard of care of the service provided by Waitemata DHB clinicians to Mr Chand and the Court between 6 September and 7 November 2011".

[403] The external reviewers undertook a paper-based review, which culminated in a report dated 10 October 2013. There were no face-to-face interviews. Included in specific limitations noted in the external review report were that it was not a legal process, and neither their procedures nor the data and evidence enabled them to make findings equivalent to those of judicial bodies, such as a Coroner's Court. The reviewers highlighted that they focused solely on aspects of delivery of clinical care and did not consider "causation" in terms of Christie's death and, accordingly, the comments they made about limitations of assessment and care should not be taken to imply that they made a material difference to the adverse outcome.

[404] The external review contained a number of findings and recommendations. Dr Skipworth confirmed that these findings had been accepted by ARFPS, and that it was acknowledged by the service that all the limitations in practice identified were probably not confined to this one case. He advised that the recommendations have been considered and largely addressed.

[405] At the inquest the expertise of the external reviewers was not challenged, nor was the validity of their findings and conclusions challenged. The evidence elicited under cross-examination did not contradict the findings of the external reviewers. Professor Mellsop (currently Professor of Psychiatry, Waikato Clinical Campus, University of Auckland and expert advisor to the Coroner for the inquest) expressed the opinion that the external review report “*appeared timely, thorough, relevant and made good, appropriate recommendations*”.

[406] Accordingly, I am satisfied that the conclusions in the external review about the nature and adequacy of mental health assessments undertaken both prior to, and after, the grant of bail represent the “best evidence” on these issues and, although there is additional evidence arising during the inquest to be considered, the review conclusions are drawn on extensively in this section of the findings.

#### **Nature and Adequacy of Assessments Undertaken Prior to Grant of Bail**

[407] As set out in the section of these finding outlining the circumstances of Christie’s death, between 6 September and 7 November 2011 Mr Chand was assessed by the psychiatric registrar at Waitemata DHB (Dr Speeden), as well as several members of the forensic mental health team from ARFPS — including two FCLNs, a health assessor (psychiatrist), and nurses from the FPT. ARFPS became involved in Mr Chand’s mental health assessment and care from the day of his first Court appearance (7 September) because of the overdose of multivitamin tablets Mr Chand had taken the previous day.

[408] The first assessment of Mr Chand by a member of the ARFPS was undertaken by FCLN Ms Wilson. The circumstances of that assessment are set out at paragraphs [39]–[41] of these findings.

[409] Ms Wilson, and subsequent mental health nurses who assessed Mr Chand, used a widely used mnemonic (BATOMI) to guide the mental status examination of Mr Chand. The mnemonic acts as a reminder for clinical observations of the client’s behaviours, affect, thought content, level of orientation, memory, and level of insight.

[410] Dr Skipworth's evidence was that BATOMI does not result in a mental state examination of a kind that might be expected from a psychiatrist, but it does assist nurses at different levels to make sure that they have asked about and/or observed the key different aspects of mental status examination. In his opinion it provides a good structure and format for the mental status component of the assessment.

[411] Ms Wilson's evidence was that Mr Chand "*was very happy to talk about himself*" but that "*... it was extremely difficult for me to get any information from him [about the offending] other than the charges he was facing*". In fact, he would give only a one-word answer, "No", to her question about whether he posed any risk to Christie (although Ms Wilson did not at that time know Christie's name). Ms Wilson took him at his word. This did not mean, however, that she believed him. She challenged him twice but, when she tried a third time, Mr Chand said: "*I don't want to talk about that.*"

[412] Ms Wilson produced a written letter to the Court (set out at paragraph [50] of these findings) under some time pressure. It did not reach the Court file until after Mr Chand had already been remanded in custody. It was available on the paper-based court file for subsequent hearings.

[413] The external review noted that the mental state examination undertaken by Ms Wilson appeared to be selective and incomplete, and there was no overall assessment included in the letter to the Court — i.e., a diagnostic summary, formulation of overall assessment of risk, or risk statement. The reviewers were not aware of the time constraints Ms Wilson was working under, as this was not noted in her letter to the Court, or in Mr Chand's clinical records.

[414] The external review also noted that no reference was made to the appropriate legal framework for the reason for referral ("risk to self"), in this case, the Mental Health Act. It concluded that the recommendations made by Ms Wilson in her report to the Court, which identified that mental health follow-up was indicated, along with options for this follow-up whether the defendant was bailed or remanded, were clinically appropriate.

[415] Mr Chand's second contact with an ARFPS staff member occurred on 9 September at NSDC when he was assessed by FCLN Mr Byrt, who subsequently provided an oral report to the Court. The circumstances of that assessment and the report to the Court are referred to at paragraphs [55] and [56] of these findings. Mr Byrt recorded in HCC.<sup>63</sup>

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<sup>63</sup> HCC stands for Health Care Community — an electronic healthcare records system used by a number of DHB mental health services including Auckland metro.

Counsel came to court liaison to say that Judge Morris had insisted that this man be remanded to Taharoto. Counsel had already contacted Taharoto to arrange a bed. I went down with her to the court cells and assessed the defendant. He did not fill the MHA [Mental Health Act] criteria in my view. Although he had been prescribed antidepressants while in custody. He was mildly depressed, no psychotic symptoms and had a low risk profile. I had the matter recalled and told the court my findings. The outcome was that Chand was remanded in custody for a 38(2)(b) report to address fitness. Return to court on 23<sup>rd</sup> September.

[416] Mr Byrt's evidence was that he was aware that bail was being advanced that day and felt that he had had sufficient time to make the assessment of Mr Chand in terms of risk to others. Mr Byrt's evidence was that generally he tried to see people for half an hour, although it might be "*plus or minus 10*".

[417] Mr Byrt's evidence was that on 9 September Mr Chand was "*very brief in his answers*". Mr Byrt stated that he took Mr Chand's answers at face value, although being mindful that people do not always tell the truth, stating that he "*had no reason to discount him*". Mr Byrt said, however, that apart from the information he had on hand from Ms Wilson, his only other source of information was Mr Chand. Mr Byrt did not have the POTB (his evidence being that the POTB is not routinely provided to FCLNs) or the caption summary. He thought that if he had seen those documents, he might have changed his mind about Mr Chand being a "*low risk profile*" on 9 September.

[418] The external review was critical of aspects of Mr Byrt's assessment. The review noted that the statement by Mr Byrt that Mr Chand did not meet the criteria for detention under the Mental Health Act was not elaborated beyond the brief summary statements in the HCC entry. There was no clinical account of Mr Chand's appearance and behaviour, or objective observations about his affect and speech. There was no explanatory information in relation to the second limb of the Mental Health Act other than the statement about "*low risk profile*". The reviewers observed that stating that an individual has a "*low risk profile*" is a summary statement rather than constituting a risk assessment, especially when multiple risk factors have already been identified or are clinically evident.

[419] The external review stated:

Given the history of an apparent suicide attempt, the nature of the charges against Mr Chand, his demographic profile, his first remand to prison, and the initial diagnosis for a depressive illness requiring medication, the conclusion about low risk profile is at odds, without further qualification, with the presence of these multiple risk factors.

[420] The external reviewers stated that it was appropriate that Mr Byrt had used the Mental Health Act as a reference point for risk assessment, noting that the second limb of the Mental Health Act provided the necessary “context” for considering mental health risk issues.

[421] The external review also identified that Mr Byrt’s statement that Mr Chand had been prescribed antidepressants in custody by the time of his appearance on 9 September was not supported by later documentation (and was not supported by evidence at the inquest).

[422] Mr Chand was assessed at Mount Eden Corrections Facility by a nurse from the FPT on 13 September. She created a detailed clinical note in HCC. The nurse recorded Mr Chand’s risk to himself as medium to high, and his immediate risk to others as low. The external review considered the assessment thorough and that it included collateral information gained from prison staff and available clinical records. There was a detailed mental state examination and important screening “negatives” were listed. The nurse recorded that Mr Chand had not yet started on antidepressant medication and that he needed an assessment from a doctor (a senior medical officer) as to whether he required antidepressant medication.

[423] Dr Goodwin assessed Mr Chand on 16 September at Mt Eden Corrections Facility, pursuant to the s38 order made by Judge Morris. Dr Goodwin’s report is referred to at paragraph [64] of these findings, and issues relating to the report are considered in some detail at paragraphs [169] to [189].

[424] The external reviewers advised that Dr Goodwin’s diagnostic conclusions were clearly stated, including ruling out the presence of evidence for bipolar affective disorder and psychotic symptoms, which the report stated means that other diagnoses and the level of severity of mental illness were considered.

[425] The report concluded that Dr Goodwin’s report provided a clearly stated and reasoned view as to the legal issues in relation to the Mental Health Act and the CPMIP Act. The reviewers were puzzled at the recommendation Dr Goodwin made that counsel for Mr Chand might wish to examine his mental state at the time of offending in relation to a potential defence based on insanity. It noted that the time of the offence (which is when insanity is judged) and the assessment of fitness to stand trial were less than two weeks apart, and Dr Goodwin had concluded that Mr Chand was not psychotic and his depressive illness was only mild to moderate in severity and would not satisfy the criteria for the Mental Health Act. They considered that an explanation of the general basis for making such a recommendation from a clinical perspective would have been helpful.

[426] Dr Goodwin's response to that issue at inquest was that at the time he assessed Mr Chand he was an 18-year-old with no previous history, a diagnosed mental illness, and facing serious charges, and Dr Goodwin thought it was entirely reasonable to make sure that defence counsel (who he believed had requested the s38 order be made) ticked off the possibility of an insanity defence or not.

[427] On 23 September Mr Chand was again assessed by FCLN Mr Byrt at NSDC. On that occasion, he had a copy of the summary of facts. Mr Byrt's evidence was that during the assessment "*Mr Chand was not very forthcoming*".

[428] Mr Byrt's HCC entry stated:

Assessed today in court cells. Mr Chand told me that he had started his medication ?Citalopram over the last four days. He reports an improvement in his mood and feels more balanced. He states he is not so depressed as before. He has no problem with eating or drinking. Mr Chand denies any risk issues to himself or to others. Today there is no evidence of thought disorder and or disorganisation in the defendants thinking and resultant speech. He has not been seen by counsel yet and understands that remand on bail will be sought. He has a script from a tA (sic) NSH doctor (not sure who) and will see his G.P. for further supplies of medication once back in the community.

[429] Mr Byrt did not give evidence (written or verbal) to the Court that day.

[430] The external review stated that the HCC entry did not record any clinical opinion or conclusions. The entry relating to clinical assessment was highly selective, with no account given of Mr Chand's appearance and behaviour, cognitive features of depression, or some basic biological features of depression. The external review noted that there was an idiosyncratic comment about absence of thought disorder without comment about the presence or absence of hallucinations or delusions, and that the content of the assessment was almost exclusively weighted on Mr Chand's self-report as opposed to objective description and assessment.

[431] The external review stated further that the risk assessment was limited to Mr Chand's self-report of an improvement in his mood and his denial of risk to self or others. There was no reference to the previous ARFPS assessment indicating higher level of risk and/or specific features of concern (intermittent suicidal thoughts).

[432] The external review stated:

Assessment of risk to self and others involves, at a minimum, consideration of situational factors (for example, where the defendant is placed; access to potential victims; access to means to harm) and mental state factors (for example, exploration of attitudes, beliefs and motivations that might underpin aggressive or violent behaviour; mood disturbance; suicidal thoughts; objective presentation), on a background of the longitudinal

presentation. Adequate risk assessment requires more than asking an individual about their current intent towards others, although that is part of the assessment.

[433] On 29 September Mr Byrt again assessed Mr Chand at NSDC. In HCC Mr Byrt recorded (amongst other things) that Mr Chand continued with stable improvement in mood; that he denied any risk issues to himself or to others; and that there was no evidence of thought disorder or disorganisation in his thinking or resultant speech. The same day Mr Byrt attended Court for Mr Chand's hearing and advised the magistrate that Mr Chand had been taking his medication, which he was tolerating, and that he was psychiatrically stable and there were no current risk issues.

[434] The external reviewers made similar comments as they had for the assessment of 23 September, noting limitations in the documentation of clinical presentation and that the mental state examination was very limited and restricted to self-report of his mood and denial of risk to others. Again, although a brief risk summary was given, no risk assessment was documented. The reviewers commented that stating that Mr Chand "*today presents with no risk issues*" could be interpreted very broadly, particularly within the context of a bail application.

[435] The reviewers stated that if Mr Byrt's feedback to the Court that "*there are no current risk issues*" was not qualified in relation to mental health/the Mental Health Act it would leave open that an inference could be drawn by the Court that the risk information was intended or applicable to the bail application.

[436] The transcript of the hearing shows that Mr Byrt did not make any limitation of his risk assessment known to the Court.

[437] Mr Chand had a seventh assessment by a member of ARFPS on 30 September, when he was assessed by an FPT nurse who is also a duly authorised officer. Mr Chand reported to the nurse that he did not think his medications were working yet and that he still saw himself as depressed and was hoping for more efficacy from his medication. He said that he still had intermittent thoughts of self-harm. The nurse recorded in HCC notes that no psychotic symptomology was elicited and objectively Mr Chand did not present as obviously depressed, although a minimal range of affect was displayed. He was recorded to be low immediate risk to self and low risk to others.

[438] The external reviewers stated that there was no specific information base or clinical data included in the account on which to base judgement about Mr Chand's "risk to others", noting that up to that point it was unclear on what basis Mr Chand's risk to others had been assessed, other than his denial when asked directly. The reports mentioned risk "to others" as low, but

nothing more specific or informative than that, despite the serious alleged offending behaviour for which Mr Chand was remanded. The external reviewers stated that they had not identified any detailed exploration of Mr Chand's alleged behaviours with respect to assessing "risk to others", nor more specifically, in relation to Christie, the victim of Mr Chand's offences.

[439] On 5 October 2011 Mr Byrt assessed Mr Chand prior to his final Court hearing. Mr Byrt spent only about 15 minutes with Mr Chand, for the purpose of "*just really checking in with him whether there would be any changes in his mood state or his behaviour*".

[440] Mr Byrt recorded in HCC:

Briefly assessed in court cells this morning. States that he feels "well" and is pleased to be on anti depressant medication. Mood appears stable with a flattened affect. Hoping to be bailed today to his mother's address. denies issues to himself or to others. No obvious psychotic features displayed.

[441] When asked about his assessment that day, Mr Byrt's evidence was that "*with Mr Chand there was very little responses*", and that "*the information that he was giving me was very, very limited*".

[442] On the basis of the assessment, and a review of the HCC notes of the FPT, Mr Byrt provided a letter to the Court dated 5 October 2011, which is set out in full at paragraph [104]. Key points were that Mr Chand's mood appeared stable; he denied any risk issues to himself or others; he had no psychotic features; there was no evidence of thought disorder or disorganisation; and he had started on antidepressant medication and was awaiting full effect. There were no concerns about Mr Chand from custodial staff.

[443] The external reviewers stated that Mr Byrt's conclusion that Mr Chand's psychiatric state was stable was not consistent with the longitudinal presentation, including his most recent assessment on 30 September. The review was critical that the assessment pertaining to mental state was extremely brief and did not document a screen for psychotic symptoms. It noted that assessment of psychotic symptoms requires consideration of the overall content of the discussion as well as responding to specific screening questions and objective observations of the individual's appearance, behaviour, and affect. It also commented that Mr Byrt's statement about risk ("*Today the defendant denies any risk issues to himself or others*") was of concern as there was no documented risk assessment other than Mr Chand's self-report in the context of a bail hearing. The reviewers stated:

Given the seriousness of the charges, an adequate assessment of risk to others (if that was what was intended) would have entailed detailed and specific enquiry about the alleged offending behaviour, situational and clinical factors leading up to the alleged offences,



enquiry about past aggressive and violent behaviour, and careful mental state examination about current aggressive or violent ideas, intent or plans. However, we could not identify a dedicated violence risk assessment of this kind in any of the HCC notes.

[444] The reviewers stated that in the context of a bail application it is important for FCLNs to inform the Court about the limitations of their liaison role and any risk assessment information they provide, advising that in general FCLNs in other New Zealand forensic mental health services attempt to, where feasible, restrict their responses to questions about risk to possible Mental Health Act interventions. The reviewers stated that the objective is to be of assistance to the Court in terms of providing possible mental health follow-up options whether the individual is bailed or not, explicitly linked to potential use of the Mental Health Act when risk behaviours are of concern. The reviewers explained that this has the effect of maintaining an explicit, circumscribed link between any risk statements and mental disorder as defined within the Mental Health Act and also providing the Court with potential conditions of bail (as opposed to making explicit, direct recommendations about risk and suitability for bail overall).

[445] The external review noted that unqualified general statements about risk in the context of bail hearings have the potential to be interpreted more broadly so as to potentially imply that a risk assessment has been carried out by clinical services about safety in the community.

[446] Mr Byrt's evidence was that he did not recall whether on 5 October 2011 he conducted a detailed and specific enquiry about the alleged offending, but said that when he tried to press Mr Chand about past aggressive and violent behaviour "*there was nothing forthcoming, he was quite dismissive*".

[447] Mr Byrt's evidence was also that he was not aware that he had to do a careful mental state examination about current aggressive or violent ideas, intent, or plans, and so it was not undertaken, but noted that "*it wasn't undertaken anywhere else either*". He agreed that there is a concern about his statement of risk in the letter to the Court, as there was no documented risk assessment other than Mr Chand's self-report. Mr Byrt clarified that "*if the person in this case was not giving me any information, I can't really explore those issues*".

#### *Overall Conclusions of Expert Review*

[448] The expert review reached a number of overall conclusions. Those of particular relevance to this inquiry in relation to the adequacy of clinical assessment, mental state examination, and risk assessment were the following:

- Dr Goodwin's assessment was in general terms thorough and met the expected standard of care and skill in the circumstances.
- The clinical assessments by the FCLNs were marked by some recurring issues and limitations, having reference to FCLN practice elsewhere in New Zealand, including:
  - Mental state examinations often lacked sufficient detail and comprehensiveness, even having regard for the circumstances;
  - In those situations where the circumstances did restrict or curtail thorough clinical assessment, the limitations of the assessment were not explicitly conveyed to the Court.
- Some clinical assessments that led to communications with the Court were based mainly on feedback from the prison-led High Risk Assessment Team meeting. There are significant limitations in relying on accounts of an individual's mental health rather than direct contact with mental health professionals involved with Mr Chand's care, and it would be expected that such limitations would be made known to the Court.
- There were several instances of suicide risk assessment that did not meet the expected standard for a forensic mental health practitioner, in the circumstances. In particular, there were several assessments by FCLNs in the Court setting and one by a member of the FPT that rated Mr Chand's risk to self and/or risks to others as "low", which was not consistent with the identified presence of risk factors without further qualification. On two occasions the rating of Mr Chand's risk to himself as "low" by an FCLN occurred shortly following assessments by members of the FPT, which had identified clear risk factors for suicide. Adequate risk assessment requires a systematic approach, incorporating a longitudinal view and a range of different types of information. Noting that an individual denied suicidal ideas or intent is insufficient as a suicide risk assessment.
- The assessment of Mr Chand's risk to others, overall, did not meet the expected standard. The external reviewers noted that they did not identify any dedicated systematic assessment of risk to others in the HCC file, or communications with the Court. They did not identify any assessment of risk specifically in relation to Christie, who had already been the victim of the initial offences. The assessment of Mr Chand's risk to others was regularly stated or implied to be "low", including

several FCLN risk statements that simply stated that Mr Chand denied risk to himself or others, i.e., the risk statement was limited mainly or even entirely to his self-report. As for suicide risk assessment, a systematic approach to violence risk assessment is required, and noting self-report of denial of violent ideas or intent is insufficient, particularly in the context of a bail hearing.

### **Conclusions — Clinical Assessment/Mental State Examination and Risk Assessment**

[449] I accept the conclusion of the external review that the clinical assessments of the FCLNs had some significant limitations, as outlined above.

[450] The evidence made clear that time pressures affected the quality of at least one of the assessments (that of Ms Wilson), which could not be completed satisfactorily in the available time. However, this was not recorded in her letter to the Court (or on HCC) so that the Court, and later ARFPS staff, could be aware of the limitations of the assessment.

[451] The suicide risk assessments and assessment of Mr Chand's risk to others undertaken by FCLNs did not meet the expected standard and, accordingly, the Court did not have robust information on these issues.<sup>64</sup> The evidence at inquest confirmed that there was no dedicated systematic assessment of risk to others or any assessment of risk specifically in relation to Christie, and that risk statements were based almost entirely on Mr Chand's self-reporting, which was not sufficient. The fact that assessment by the FCLNs of Mr Chand was consistently hindered by his lack of willingness to communicate about some issues was not recorded.

[452] The Court was provided with generalised statements about risk from FCLNs with no explicit, circumscribed link between the risk statements and mental disorder as defined within the Mental Health Act. I am persuaded by the conclusion of the external review that unqualified general statements about risk by forensic mental health staff in the context of bail hearings have the potential to be interpreted too broadly, so as to potentially imply that a general risk assessment has been carried out about safety in the community (i.e., not restricted to risk arising from mental health issues).

[453] It is outside the terms of reference of the inquest to make findings as to how the statements of risk provided by FCLNs in Mr Chand's bail hearings, and particularly Mr Byrt's advice in this regard on the occasion when bail was granted, may have been interpreted by the Court. In making the finding on the risk of generalised statements of risk I am specifically not

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<sup>64</sup> The issue of whether symptoms of psychosis should have been elicited by ARFPS staff assessing Mr Chand is considered later in these findings.

assuming that judges do not understand the role of the forensic nurse liaison nurse service, or the meaning of “risk” mental health workers are asked to address. I note and accept the evidence of Dr Skipworth that although there is potential for a mental health framed assessment of risk to be interpreted more broadly than it ought to be, in his opinion judges understand that, and he does not have any reason to suspect that judges are misinterpreting or misunderstanding information in reports.

[454] However, the potential for misinterpretation arising from unqualified statements of risk is pertinent to other key players who are required to consider the reports given to the Court by forensic mental health staff—in particular, police prosecutors and defence counsel.

[455] As previously traversed, Sergeant Stace’s evidence was that her instructions from Detective Iremonger were that whatever the FCLN might say about Mr Chand’s mental health on 5 October, the police concerns about Mr Chand getting bail would not be alleviated — i.e., that notwithstanding the mental health treatment Mr Chand had received, police concerns about Mr Chand and his risk to Christie remained. The concerns were related to Mr Chand’s admissions of guilt to serious offences and the proximity of the bail address.

[456] However, Sergeant Stace stated that at the 5 October hearing she formed the view that the evidence from the mental health professionals was such that the risk Mr Chand posed from a previously undiagnosed mental health condition was sufficiently mitigated by treatment. She stated:

Once offenders have been on that medication for a period of time they are regarded to be safe because now they’re thinking straight, can be relied on to take their medication, he was going to be in the care of his family.

[457] Sergeant Stace reasonably believed she was not qualified to comment on the evidence of mental health experts, but she nevertheless did not communicate to the Judge that medical treatment did not alleviate police concerns about Mr Chand being granted bail. As identified by Mr Pell and Detective Iremonger, and implicit in their instructions to Sergeant Stace, while Mr Chand might be “stable” as a result of being in custody, he might not keep up his medication when out on bail.

[458] Ms Lowe was also confused about the role of mental illness in Mr Chand’s offending. She consistently submitted to the Court that Mr Chand’s offending was a direct result of his mental health issues, notwithstanding that she was familiar with the content of Dr Goodwin’s s38 report and the FCLNs’ evidence. Her evidence was that she was under the impression from 9 September through to November that Mr Chand’s offending had sprung from the mental health

issues, although she acknowledged that nowhere in his s38 report did Dr Goodwin state that Mr Chand's offending was a direct result of his mental health issues.

[459] One of the issues raised by Dr Goodwin was that his assessment of Mr Chand was made more difficult by the fact that he had very little information about Mr Chand as he had no previous mental health history, no previous convictions, and no history of violence. The external reviewers were satisfied, and I accept, that the sources of information Dr Goodwin accessed to assist with his assessment were appropriate, orthodox, and sufficient.

[460] Nevertheless, with the benefit of hindsight, police had information that could have been useful to Dr Goodwin when he assessed Mr Chand. This information included Mr Chand's evidential interview on 6 September (something the external reviewers noted was rarely accessed by health assessors at the early stage of the proceedings Mr Chand's matter was at); Christie's interview with the police and a job sheet in which Detective Iremonger recorded Christie's complaint on 6 September and which included things Christie reported Mr Chand had said while he held her at his house.

[461] Dr Goodwin's evidence was that he never received collateral information from the police when preparing s38 reports, and that had the information referred to above been available to him he would have found it useful, stating:

In general, the more information you give me, the better I'm going to do with it. So where stuff like this is useful is if a prisoner gives you one version of events, and you have access to something like this you can then confront them with it, and go back over it and actually try and explore it more.

[462] Likewise, FCLN Mr Byrt gave evidence that more information would have been useful — stating that FCLNs at NSDC are not routinely given access to the POTB. He noted that “*any information is good information*”. I note that the FCLNs were in a similar position to Dr Goodwin, faced with a client they found uncommunicative with little information about him as he had no previous mental health history, no previous convictions, and no history of violence.

### **Subsequent Actions Undertaken by ARFPS**

[463] Dr Skipworth's evidence was the ARFPS has undertaken an extensive review of the FCLNs' role and function for the purposes of credentialling these staff and being assured about the competency of their practice, and has developed clinical nurse practice guidelines aimed at addressing issues identified in the external review report. He also stated that FCLNs' assessments of risk are now much more clearly framed in the way the external review report suggested they should be.

## Comment

[464] The ARFPS was proactive in commissioning a prompt external review, accepting its findings, and acknowledging that the limitations in practice identified by the review were likely wider than Mr Chand's case. It has acted upon the recommendations of the review in a systemic fashion. Given the considerable work already undertaken by ARFPS to implement the recommendations of the external review, the recommendations for ARFPS arising from this inquest are few, and result from matters arising in evidence at the inquest.

## RECOMMENDATIONS

### To the Chairperson of Waitemata District Health Board:

I recommend that the Auckland Regional Forensic Psychiatry Service:

1. Review the June 2012 Memorandum of Understanding in respect of Forensic Court Liaison Services in the district courts to ensure that it reflects the amended version of the Court Liaison Nurse Practice Guidelines.
2. Adopt as a standard the requirement that clinical assessments documented in HCC by ARFPS staff include reference to any limitations of the assessment that may impact on its reliability or constrain use of the assessment (e.g., length of assessment; lack of collateral information; time constraints; uncooperative interviewee).
3. Adopt as a standard the requirement that any limitations of an assessment that may impact on its reliability, or constrain use of that assessment, and/or limitation of any other clinical assessment or report relied upon, are included in all forensic court liaison nurse and health assessor reports to the Court.
4. Review the Waitemata DHB Court Liaison Nurse Practice Guidelines (issued March 2017) and the Waitemata DHB Professional Clinical Knowledge and Skills document for the Forensic Court Liaison Service (issued February 2017) and amend as required, to ensure that they reflect the recommendation contained in the external review of the care Waitemata DHB provided to Mr Chand (undertaken by Dr Ceri Evans and Ms Rachael Aitchison) that forensic court liaison nurses set out the limitations of their assessments in their reports to the Court — to ensure that the requirement for there to be a circumscribed link between any risk statements and mental disorder as defined within the Mental Health (Compulsory Assessment and Treatment) Act 1992 is included.
5. Amend the forensic court liaison nurse template letter to the Court to provide prompts for including limitations of the assessment and specific disclaimers it is important for the Court to consider when reviewing that document or opinion.

**To the Chairperson of Waitemata District Health Board and the Secretary for Justice/Chief Executive of the Ministry of Justice and the Commissioner of Police:**

I recommend that:

The Ministry of Justice and the Auckland Regional Forensic Psychiatry Service (if sensible in conjunction with other regional forensic psychiatric services in New Zealand) and the New Zealand Police:

1. Work together to identify and agree the baseline court documents that forensic court liaison staff throughout New Zealand should routinely be provided (e.g., summary of facts/caption summary and POTB) to enable them to work effectively with offenders they are asked to attend or advise on; and
2. Agree which organisation/agency is responsible for providing a full set of the baseline documents identified above to the forensic court liaison staff, and the process for, and the timing of, delivery (or provision of electronic or other access) of these documents to forensic court liaison staff.

**To the Commissioner of Police and Waitemata DHB:**

I recommend that:

1. Auckland Regional Forensic Psychiatry Service identify (if sensible in conjunction with other regional forensic psychiatric services in New Zealand) whether there are types of evidence (e.g., interviews or job sheets) held by the New Zealand Police that would assist health assessors preparing reports pursuant to an order under s38 of the Criminal Procedure (Mentally Impaired Persons) Act 2003; and, if so
2. The New Zealand Police consider whether such information can be properly disclosed; and, to the extent it can
3. A process is developed for such information to be made available to health assessors prior to undertaking the s38 assessment.

**To the Chairpersons of Waitemata DHB; Waikato DHB; Capital Coast DHB; Canterbury DHB; and Southern DHB:**

I recommend that:

National Court Liaison Nurse Clinical Guidelines are developed to foster consistency of practice in forensic court liaison nurses throughout New Zealand.

**Oversight of Mr Chand's Mental Health While on Bail**

[465] Mr Chand was sent home on bail on 5 October with an appointment to attend Waitemata DHB's community mental health service on 11 October, made by Mr Byrt. In his letter to the Court dated 5 October 2011, Mr Byrt had advised that "[t]he prison team are happy for follow-up

*from a community mental health team if bailed*” and that he would make the follow-up arrangements if Mr Chand was bailed. Mrs Chand was made aware of the appointment.

*General Practitioner — 6 October*

[466] Mr Chand was sent home directly from NSDC and did not have a supply of his prescribed antidepressant medication with him. The following day Mrs Chand took Mr Chand to see the family GP, Dr Makal, to get a prescription for the medication. The circumstances of the consultation are set out at paragraphs [136] to [139] of these findings.

[467] Dr Makal had not previously seen Mr Chand, but had the Waitemata DHB Emergency Department discharge summary from 6 September 2011, which Dr Makal reviewed before seeing Mr Chand. Dr Makal was not able to access Mr Chand’s ARFPS notes. Dr Makal’s evidence was that he felt uncomfortable at the lack of information he had available.

[468] Dr Makal’s consultation lasted approximately 15–20 minutes. He spent about another 10 minutes recording the notes after the end of the consultation. Having spent one year working in mental health services, six months in the Taharoto Unit, and six months in the Mason Clinic, Dr Makal had greater experience in mental health and risk assessment than many general practitioners, but he did not have specialist psychiatric training. In this consultation (and the later one on 19 October), he undertook a “*mini version*” of a mental state examination, which included risk assessment questions and an assessment of Mr Chand’s mental state, as well as assessing his risk profile. Dr Makal’s evidence was that at both consultations, Mr Chand “*clearly denied either risk to himself or others*”.

[469] Dr Makal involved Mr Chand’s mother in the consultation, so that he could obtain collateral information, but he said that “*there was no red flags from her either*”. He stated that he formed the opinion that in terms of Mr Chand’s mental state, nothing else was going on apart from that recorded in the mental health team notes, and that he was dealing with depression.

[470] Because Dr Makal knew that Mr Chand was being assessed by the community mental health service the following week, his evidence was that at that stage he understood that his role was to prescribe medication, but that Mr Chand was still under the care of the community mental health service.

*Community Mental Health Team — 11 October*

[471] On 11 October Mr Chand attended an outpatients appointment with Waitemata DHB’s acute community mental health team in accordance with the arrangements made by FCLN Mr



Byrt and was assessed by two registered mental health nurses. Details of the appointment and follow-up actions of the assessors are set out at paragraphs [141] to [149] of these findings. In summary, the nurses who assessed him considered that he had responded to treatment for a mild to moderate depressive episode, was not a risk to himself or others, was not thought disordered or distracted, and did not exhibit any behaviours that would have been potentially indicative of him experiencing underlying psychosis. Following the assessment, the acute community mental health team did not consider that Mr Chand met the criteria for follow-up by an acute mental health team and discharged him to the care of his general practitioner.

#### *Care Handed Over to General Practitioner*

[472] On 13 October 2011, Dr Makal received a fax from the community mental health service, which consisted of the Waitemata DHB Adult Assessment notes of Dr Speeden on 6 September 2011, and the assessment of 11 October done by Ms French. There was no referral letter from the community mental health team informing him of the working diagnosis or Mr Chand's management plan. Dr Makal was aware from the information of the general charges Mr Chand was facing.

[473] Dr Makal's evidence was that the information he received was consistent with his impression of Mr Chand, and thus reassuring.

#### *General Practitioner — 19 October*

[474] Mrs Chand took her son back to Dr Makal on 19 October, to be reviewed and to obtain another prescription for citalopram.

[475] Dr Makal again spent about 20 minutes with Mr Chand at this consultation. Even though Dr Makal was aware that Mr Chand had another Court date on 9 November, and understood that this could exacerbate risk in terms of risk to self and others, Dr Makal did not discern anything in the mental state examination he undertook or in Mr Chand's risk profile at variance with what had been reported in the ARFPS clinical notes.

[476] At this appointment, Dr Makal increased Mr Chand's citalopram to 30 mg daily. Mr Chand had asked for an increased dose of antidepressant medication as he told Dr Makal that he felt he needed a higher dose to feel fully better. Dr Makal felt that it was reasonable to do so. He explained that Mr Chand had been on the medication about four weeks and it was appropriate at that point to make some judgement about whether he needed a higher dose.

[477] Dr Makal's evidence was that he did not feel that he was alone in managing Mr Chand. Dr Makal considered that even though Mr Chand had been discharged to his care, if he picked up any issues of concern, he could always refer Mr Chand back to the community mental health service.

### **Conclusions**

[478] The assessments of Mr Chand undertaken in the community yielded results consistent with the assessments undertaken while Mr Chand was in custody — including specifically that no psychotic symptoms were elicited and that Mr Chand's risk to others was not identified as an issue of concern.

[479] Dr Makal was not a qualified mental health professional, he was hampered by a dearth of information, particularly at the initial consultation, and he was faced with an uncommunicative patient with whom he had had no previous dealings and who would not disclose the charges he was facing. However, at both consultations Dr Makal gathered and considered what collateral information he could (from Mrs Chand and the hospital discharge summary and subsequently further clinical records) and each time undertook a version of a mini mental state examination, which included a risk assessment. Like the mental health professionals who had previously assessed Mr Chand, Dr Makal did not identify Mr Chand's risk to himself or others as being of concern, and did not elicit psychotic symptoms. By the time of the second consultation Dr Makal was reassured that his initial assessment of Mr Chand was consistent with the further clinical information provided to him, and also by the fact that the community mental health service felt at that stage that Mr Chand did not warrant specialised community mental health care.

[480] I am satisfied that Dr Makal cannot be criticised for reaching the conclusions that he did, and for not eliciting possible psychotic symptoms that mental health professionals had not elicited (an issue discussed later in these findings).

[481] In relation to the care provided by the community mental health team, I note that the assessment of Mr Chand was undertaken by two nurses, one of whom was a very experienced mental health professional (Ms French). Mrs Chand was again spoken to, to try to obtain collateral history. The outcome of the assessment, risks, and a plan going forward were discussed in a meeting that included an acute team psychiatrist and other members of the mental health team. Mr Chand again did not raise red flags. I have no criticism of the care provided.

[482] I am satisfied that, based on the assessment of his condition at the time, there was appropriate health care in place for Mr Chand during the time that he was on bail — and that Dr

Makal would have been able to refer Mr Chand back to the acute mental health service for specialist care if, at any stage, he considered it necessary. Mrs Chand had been given the contact details for the acute mental health service and knew she could call the service at any time if she had concerns.

[483] I am satisfied that Ms French took steps to ascertain what Mr Chand's bail conditions were in relation to mental health care. On the basis of information provided by FCLN Ms Wilson (that it was a condition of bail that Mr Chand attend the assessment appointment of 11 October but that following that assessment it was up to the community mental health service and Mr Chand to decide if further follow-up was required)<sup>65</sup> Waitemata DHB cannot be criticised for transferring Mr Chand's care to the GP, once they had satisfied themselves that Mr Chand did not fit the criteria for being followed up by a specialised mental health service. Dr Skipworth's evidence was that if a person requires secondary level specialist mental health care in the community, he or she will be under the care of the community mental health team. If the person's mental health needs are not at that level, the person will be under the care of a general practitioner. It is the community mental health services that assesses whether a person meets the threshold for entry to the community mental health services (as they did in Mr Chand's case). Dr Skipworth's evidence was that Mr Chand was diagnosed with mild to moderate depression when assessed, and it did not surprise Dr Skipworth that on that assessment Mr Chand's clinical condition was not deemed to be sufficiently severe for management by specialist mental health services.

[484] Overall, there is no evidence that Mr Chand did not receive sufficient oversight of his mental health while on bail.

#### **No Evidence Mr Chand Sought to Go Back to Prison**

[485] An issue that arose at the time of the High Court proceedings was whether Mr Chand had contacted his defence counsel, Ms Lowe, in the days prior to Christie's death, with the intention of trying to be remanded back to prison as he felt unsafe (from a mental health point of view) and was worried about hurting someone. This was something Mr Chand stated in an interview with forensic psychiatrist Dr David Chaplow, who assessed him in order to provide an expert opinion in the criminal proceedings.

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<sup>65</sup> In fact, no reference was made of the requirement for Mr Chand to attend an appointment with the community mental health service in Judge McNaughton's decision of 5 October or in the bail bond.

[486] The evidence before me shows that this allegation was investigated at the time of the High Court proceedings, and any suggestion that Mr Chand communicated such information to Ms Lowe was shown to be groundless, and is not further traversed here.

### **Could or Should Signs and Symptoms of Psychosis Have Been Found**

[487] In the period 5 September to 7 November 2011 multiple mental health professionals in different roles and from different disciplines assessed Mr Chand in a variety of settings, but his ultimate diagnosis (schizophrenia) was not established. Each health professional attempted to elicit psychotic symptoms but none were found. However, as the terms of reference for Waitemata DHB's external review noted, "*both the murder and the earlier offences were driven by a psychotic illness, the extent of which was not appreciated by Mason Clinic staff prior to the bail application, nor indeed by other clinicians involved in his care*".

[488] The issue for consideration is whether signs and symptoms of psychosis could or should have been found.

[489] Dr Skipworth's evidence was that after Christie was killed, Mr Chand was remanded in custody for some time before clinicians became concerned that he might be developing a psychotic illness. He was then admitted to the Mason Clinic (four months after killing Christie) and it took some months following admission to the Mason Clinic before clinicians were clear about the diagnosis. Dr Skipworth advised that Mr Chand was diagnosed as suffering from not just schizophrenia (his primary diagnosis) but that he also has an abnormal personality structure and there are questions as to whether he also has an autistic spectrum disorder.

[490] Dr Skipworth described Mr Chand's case as an extremely unusual one. He explained that an insanity finding in someone suffering from psychotic symptoms is not so unusual, but it is extremely unusual where that happens and there have been assessments from several mental health professionals, none of whom, despite undertaking reasonably comprehensive reviews, has identified any psychotic symptoms, "*which we now know were both there and were related to the offending that subsequently happened*". He described Mr Chand as:

[having] a complex presentation and of course we also know that he's an intelligent man who didn't tell the truth when he was asked questions by clinicians about what was going on. So it was a very difficult diagnosis to come to. It wasn't, as we know from the Evans/Aitchison report, it wasn't that our clinicians didn't undertake comprehensive evaluations. It was that, I think it was that his clinical picture was evolving. He wasn't forthcoming with information about that and it did unfortunately take some considerable time in this case for the diagnosis to be clear ...

[491] Dr Goodwin, who is an experienced forensic psychiatrist, spent an hour and 20 minutes assessing Mr Chand. Dr Goodwin was the only psychiatrist to do so during the relevant period. By virtue of his training and experience and the time available to him, he was able to undertake a more detailed, comprehensive and structured mental state examination than any of the other clinicians who saw Mr Chand. In Dr Goodwin's opinion there was no evidence of Mr Chand having psychotic symptoms at the time he assessed him, and he assessed that Mr Chand's risk to Christie was low.

[492] Dr Goodwin's evidence was that Mr Chand's psychotic symptoms began to emerge only a number of months after he had been in prison following Christie's murder, and only after he had been "*questioning other prisoners about psychiatric symptoms, going round asking them about voices and different things*".

[493] Waitemata DHB's external review concluded that the non-detection of psychotic symptoms in the period under review, which were later revealed by Mr Chand, was explicable for several reasons. These included that difficulties in establishing a diagnosis of schizophrenia are not uncommon in the early stages of the illness and can arise from one or a combination of factors, including deliberate withholding of information by the individual under assessment (noting that Mr Chand later admitted to deliberate non-disclosure of his symptoms to a sequence of assessors, despite adequate clinical enquiry); symptoms that fit more than one diagnosis (for example, depressive features); the natural course of the illness, with symptoms fluctuating in intensity but gradually becoming clearer with the passage of time; and complications introduced by the legal process, such as challenging locations of assessments, and difficulties in getting longitudinal information about his presentation.

[494] Professor Mellsop assessed Mr Chand in July 2012 at the request of the Crown and provided an expert psychiatric opinion to assist the Court at Mr Chand's trial. Professor Mellsop's opinion was that Mr Chand had been suffering from a psychotic illness (which he described at inquest as "*an insidious developing illness*") for at least the whole of 2011, and that the evidence of this was clear and readily elicited at the 2012 assessment. Professor Mellsop advised that the available information suggests that Mr Chand was manifesting psychotic processes long before September 2011.

[495] Professor Mellsop acknowledged at inquest that there was information available to him in 2012 that was not available to staff assessing Mr Chand prior to November 2011. Professor Mellsop also stated that Mr Chand may have been more competent at deception and in his ability to hide his psychotic thinking at the relevant time than subsequently, describing Mr Chand as

having “*sufficient insight to decide not to share some of his psychotic ideas*”. Professor Mellsoy said that Mr Chand would not have been able to control the thought disorder, but may at that time have been more competent at deception and controlling what came out of his mouth than later as his illness developed.

[496] Professor Mellsoy stated that, in his opinion:

It is not possible, even with hindsight, to be definitive about whether or not more extensive or more skilled psychiatric assessments by the clinicians of the Auckland Regional Forensic Services would have elicited psychotic symptoms at that time [i.e., in September to November 2011]. However, when I saw him on 20th July 2012, there was no doubt in my mind about his presentation and diagnosis.

[497] Professor Mellsoy’s evidence was that, in his view, Mr Chand’s ability to dissimulate exceeded the ability of AFRPS clinicians to form accurate opinions. Professor Mellsoy advised:

In this case, most of the assessments were performed by nurses and it would be unreasonable to expect them to be eliciting psychotic phenomena which had not been clearly apparent to the initial psychiatric registrar or the later assessment by Dr Goodwin.

### **Conclusions**

[498] I am satisfied that between 5 September and 7 November, when Mr Chand killed Christie, he was, as was appropriate, assessed for psychotic symptoms on each of the 12 occasions he was seen by a health professional. Most assessments were done by qualified mental health staff.

[499] During the relevant period Mr Chand did not ever admit to psychotic symptoms, and no evidence of psychotic symptoms was elicited by any of the health professionals.

[500] As Professor Mellsoy noted, most of the assessments were done by nurses, who do not undertake the same level of assessment as a psychiatrist. Further, the external reviewers noted that there were limitations in the assessments done by some of the ARFPS nurses. Nevertheless, all were qualified and very experienced mental health professionals and were alert to the issue of psychosis. During the period in question there was a paucity of information about Mr Chand who, as already recorded, had no prior mental health history, and no history of offending or of violent tendencies. The consistent evidence is that Mr Chand was not forthcoming with health professionals and disguised his true thoughts. In evidence for the inquest he was described by forensic psychiatrists as “*extraordinarily deceptive and one has to be very, very careful about*

*what he tells you*”,<sup>66</sup> and “*an intelligent man who didn’t tell the truth when he was asked questions by clinicians about what was going on*”.<sup>67</sup>

[501] As noted in the external review, Mr Chand’s skill in deception reinforces the nature of the clinical difficulty encountered by the mental health professionals involved in assessing him. The external reviewers observed that there was no definitive technique for elucidating his internal world.

[502] I accept Professor Mellsop’s advice that even with hindsight he could not be definitive as to whether more extensive or more skilled psychiatric assessments would have elicited psychotic symptoms at the time.

[503] On the basis of the evidence, and particularly Professor Mellsop’s advice, I am unable to conclude that psychotic symptoms could have been elicited by health professionals between 5 September and 7 November 2011. Accordingly, it follows that specifically I do not conclude that psychotic symptoms should have been elicited during that period.

[504] Mr Chand is an intelligent, complicated, and difficult person who did not give any of the various health professionals who assessed him between 5 September 2011 and 7 November 2011 concern that he had a psychotic illness. It is clear only with hindsight that Mr Chand was so terribly dangerous to Christie because of his psychiatric condition.

## **FORMAL FINDINGS**

[505] It is necessary for me to make formal findings on those matters required to be established under s57 of the Coroners Act 2006.

[506] I find that Christie Alexis Lesley Marceau died on 7 November 2011 at 93 Eban Avenue, Hillcrest, Auckland from multiple sharp force injuries as the result of stab wounds inflicted by Akshay Chand.

[507] The circumstances of Christie’s death have been detailed in the course of these findings.

[508] A full list of recommendations made in these findings is attached as **Appendix Two**.

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<sup>66</sup> Dr Goodwin’s evidence at inquest, which he noted was given with the benefit of the clinical knowledge he has gained of Mr Chand since he killed Christie.

<sup>67</sup> Dr Skipworth’s evidence to the inquest.

## **PROHIBITION ON PUBLICATION**

[509] Pursuant to s74 of the Coroners Act 2006, I make a permanent order prohibiting the making public of diary notes made by Christie Marceau that were included in the evidence for the inquest. This order is made on the grounds of personal privacy.

[510] The reasons for my decision are set out in my Minute of 9 December 2016, in which I prohibited on an interim basis the making public of Christie's diary notes. The only further matter of relevance is that the diary notes were not referred to or relied upon by the parties or the Court during the inquest.

## **CONCLUDING COMMENTS**

[511] I extend my thanks to the witnesses who gave evidence at the inquest. I recognise that giving evidence can be stressful, and, for family members and those giving evidence because they were involved directly in this case because of their work in the criminal justice system or health sector at the time the events under scrutiny occurred, this was particularly so. I also extend my thanks to counsel.

[512] I again express my deepest condolences to the Marceau family and acknowledge the courage and dignity of Mr and Mrs Marceau, who were present throughout the inquest to hear all the evidence about the circumstances of their beloved daughter Christie's death.

Signed at **Auckland** on this 5<sup>th</sup> day of **March** 2018.

  
Coroner K H Greig



## APPENDIX 1: FINAL LIST OF ISSUES

1. The administrative processes of the North Shore District Court in relation to applications and granting of bail, including the nature and adequacy of information available to the presiding judge when making such determinations:
  - (a) Given Judge Morris's concerns on 7 and 9 September 2011 to obtain more information in respect to Mr Chand's safety and mental health status, and her request for a report pursuant to s38(2)(b) of the Criminal Procedure (Mentally Impaired Persons) Act 2003, what were the processes undertaken to obtain this information for the Court?
  - (b) What is the function and role of victim advisors?
  - (c) What information was provided to Christie Marceau and her family in respect to how they could provide information to the Court in respect to any bail application/s?
  - (d) In proposing to the Court that a condition of Mr Chand's bail be that he be put under a 24-hour curfew at his mother's home, what information was provided to, and consultation undertaken with, Mr Chand's mother and aunt about their willingness or ability to provide supervision in these circumstances, and in obtaining their informed consent to this proposal?
  - (e) When granting bail on 5 October 2011, what information did Judge McNaughton have available to him on the Court file, orally or otherwise. In particular:
    - Were Judge Morris's transcribed bail notes available to Judge McNaughton, police, and defence counsel at the time of the bail decision?
    - What information did the police prosecutor and defence counsel provide Judge McNaughton regarding Judge Morris's bail decision on 9 September 2011, as well as other information relevant to the decision to grant bail?
2. Following a grant of bail, the processes relating to supervision and monitoring of bail conditions, including liaison with family members undertaking responsibility for the person while on bail, as well as with the victim and their family. In particular:
  - (a) What information was communicated to Christie Marceau and her family concerning granting of bail and the bail conditions imposed?
  - (b) What information was communicated to Mr Chand's mother and aunt about bail conditions, what the supervision expectations were by family while Mr Chand was at home on bail, and who they should contact if they had any concerns?
  - (c) What were police bail monitoring and response systems in the period 5 October 2011 to 7 November 2011?
  - (d) What was the nature and extent of the monitoring of Mr Chand's bail by police, and was it adequate?
  - (e) Are current police bail monitoring and response systems adequate?

3. Mr Chand's mental health, and the nature and adequacy of assessments undertaken prior to the grant of bail, and oversight of his mental health while on bail. In particular:
- (a) What information did the forensic court liaison nurses, Dr Goodwin, and the Mason Clinic Forensic Psychiatric Team have access to in preparing their reports prior to Mr Chand being granted bail?
  - (b) What were the risk assessment tools used by the various mental health professionals involved in assessing or providing oversight of Mr Chand's mental health during the periods:
    - 6 September until 5 October 2011
    - 5 October until 7 November 2011
  - (c) Were these risk assessment tools, and the actual assessments of Mr Chand performed by the forensic court liaison nurses, Dr Goodwin, and the Mason Clinic Forensic Psychiatric Team, sufficient to assess risks posed by Mr Chand once bailed to the community (and other offenders on bail)?
  - (d) Did Dr Goodwin understand that his s38(2)(b) "fitness to stand trial" report, ordered by the Court, would be used for the purposes of assessing risk for bail, and would this knowledge have led to him altering his report in any way?
  - (e) Could or should signs or symptoms of psychosis have been found by the various mental health professionals, or his general practitioner, who undertook mental health and risk assessments of Mr Chand?
  - (f) Did Mr Chand receive sufficient oversight of his mental health while on bail?
  - (g) Did Mr Chand, as he alleged during his assessment with Dr Chaplow, ring or text his defence counsel in the days prior to Christie Marceau's death with his stated intention being to seek an appointment in the hope of being remanded back to prison because he felt unsafe?

## APPENDIX 2: RECOMMENDATIONS

### RECOMMENDATIONS

#### **To the Secretary for Justice/Chief Executive Ministry of Justice:**

I recommend that district court processes are amended to provide that:

When an assessment report pursuant to s38 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 is ordered by the Court on its own initiative while bail for a serious offence/offences is being considered, the Judge's notes pertaining to the decision to order the report are routinely made available to the health assessor appointed to prepare the report (to form part of the collateral information the health assessor will consider before making the report).

#### **To the Secretary for Justice/Chief Executive of the Ministry of Justice and the Commissioner of Police:**

I recommend that, consistent with the legislative framework set out in the Victims' Rights Act 2002, particularly s12, the victim advisor service and the New Zealand Police develop:

1. A protocol identifying the types of information it is appropriate for the two organisations to share routinely on cases referred to the victim advisor service by the police, to enable police and victim advisors to work together more collaboratively in order to undertake their respective responsibilities to victims of crime better; and
2. A process whereby this information is exchanged by police and victim advisors on a nationally consistent and timely basis.

#### **To the Secretary for Justice/Chief Executive of the Ministry of Justice:**

I recommend that the victim advisor service review its processes for advising victims of crime who wish to provide their views to the Court on a bail application, and consider:

1. Whether the process that victim advisors use to provide victims with information about preparing letters for the Court expressing the victim's view on a bail application is sufficient to meet the needs and address specific concerns of victims (including helping victims to identify issues they wish to draw to the Court's attention, matters not appropriate to include, and the degree of specificity advisable); and
2. If necessary, amend its processes.

**To the Secretary for Justice/Chief Executive of the Ministry of Justice, the Commissioner of Police, and the Chief Executive of the Department of Corrections:**

I recommend that the Secretary for Justice/Chief Executive of the Ministry of Justice, the Commissioner of Police, and the Chief Executive of the Department of Corrections:

Consult with key stakeholders on the most effective way(s) (including consideration of operational options and potential legislative amendment) to ensure that in all applications for bail simpliciter involving serious offences and where a 24-hour curfew is proposed as a condition of bail, evidence is provided to the Court in a suitable format (e.g., affidavit from the owner/lawful occupant of the proposed bail address), which includes:

- Details of the proposed address;
- That the occupant of the proposed address is the owner or lawful occupier, and the occupant's relationship to the defendant;
- Whether or not the proposed bail address is acceptable to the prosecuting authority;
- That the occupant of the proposed address has been officially informed of the nature of the charges faced by the defendant; and has been informed of the nature of any past offending by the defendant; and has been advised of and understands the effects of the 24-hour curfew condition and any other proposed conditions of bail, and the role of the occupant and the expectations of the occupant in relation to supporting the defendant while on a 24-hour curfew;
- The level of supervision, if any, the occupant could realistically commit to; and
- That the occupant has made an informed decision whether (or not) to consent to the defendant remaining at the bail address for an indeterminate period while on bail with a 24-hour curfew.

**To the Secretary for Justice/Chief Executive of the Ministry of Justice:**

I recommend that:

1. An in-depth review of the issues relating to document management at NSDC highlighted in these findings is undertaken (including a review of the adequacy of electronic document management systems, particularly in relation to access, accuracy, and interoperability); and
2. The changes necessary to address the issues are implemented nationally.

(In particular, changes are introduced to ensure that there is an accurate court file on which it is clear what documents have been received (by whatever means), and when, and what documents have been sought (e.g., transcribed notes of decisions and reports by health assessors) and when.)

In the interim, I further recommend that:

1. District Court processes are amended forthwith to ensure that court takers routinely record on the paper-based court file:
  - a. that a request for a transcription of the notes of a decision has been made by a judge; and
  - b. that the request for transcription has been sent to the National Transcription Service; the date of request; and whether the request was for an urgent or standard turnaround.Or an alternative process is introduced to ensure that this information is clearly recorded on the paper-based court file.
2. There is consultation as to whether, once the notes of a draft decision that a judge has asked be transcribed are received back from the National Transcription Service, they may routinely be placed on the paper-based court file until a finalised decision is available.

**To the Commissioner of Police:**

I recommend that:

It may be timely for the Police Prosecution Service processes to be reviewed and, where necessary, amended to ensure that:

1. The Police Prosecution Service maintains a robust procedure to identify/triage serious high-risk cases (particularly those involving alleged offences of violence to others) the service is responsible for managing;
  2. An appropriate level of active supervision by a senior member of the Police Prosecution Service is available in relation to such serious high-risk cases;
  3. A sufficiently robust written protocol setting out the information it is expected a prosecutor will record at the end of the hearing is in place to ensure effective handover of the case to another prosecutor; and that
- and that compliance with the matters identified above is audited regularly.

**To the Chairperson of Waitemata District Health Board:**

I recommend that the Auckland Regional Forensic Psychiatry Service:

1. Review the June 2012 Memorandum of Understanding in respect of Forensic Court Liaison Services in the district courts to ensure that it reflects the amended version of the Court Liaison Nurse Practice Guidelines.
2. Adopt as a standard the requirement that clinical assessments documented in HCC by ARFPS staff include reference to any limitations of the assessment that may impact on its reliability or constrain use of the assessment (e.g., length of assessment; lack of collateral information; time constraints; uncooperative interviewee).
3. Adopt as a standard the requirement that any limitations of an assessment that may impact on its reliability, or constrain use of that assessment, and/or limitation of any other clinical assessment or report relied upon, are included in all forensic court liaison nurse and health

assessor reports to the Court.

4. Review the Waitemata DHB Court Liaison Nurse Practice Guidelines (issued March 2017) and the Waitemata DHB Professional Clinical Knowledge and Skills document for the Forensic Court Liaison Service (issued February 2017) and amend as required, to ensure that they reflect the recommendation contained in the external review of the care Waitemata DHB provided to Mr Chand (undertaken by Dr Ceri Evans and Ms Rachael Aitchison) that forensic court liaison nurses set out the limitations of their assessments in their reports to the court — to ensure that the requirement for there to be a circumscribed link between any risk statements and mental disorder as defined within the Mental Health (Compulsory Assessment and Treatment) Act 1992 is included.
5. Amend the forensic court liaison nurse template letter to the court to provide prompts for including limitations of the assessment and specific disclaimers it is important for the Court to consider when reviewing that document or opinion.

**To the Chairperson of Waitemata District Health Board and the Secretary for Justice/Chief Executive of the Ministry of Justice and the Commissioner of Police:**

I recommend that:

The Ministry of Justice and the Auckland Regional Forensic Psychiatry Service (if sensible in conjunction with other regional forensic psychiatric services in New Zealand) and the New Zealand Police:

1. Work together to identify and agree the baseline court documents forensic court liaison staff throughout New Zealand should routinely be provided (e.g., summary of facts/caption summary and POTB) to enable them to work effectively with offenders they are asked to attend or advise on; and
2. Agree which organisation/agency is responsible for providing a full set of the baseline documents identified above to the forensic court liaison staff and the process for, and the timing of, delivery (or provision of electronic or other access) of these documents to forensic court liaison staff.

**To the Commissioner of Police and Waitemata DHB:**

I recommend that:

1. The Auckland Regional Forensic Psychiatry Service identifies (if sensible in conjunction with other regional forensic psychiatric services in New Zealand) whether there are types of evidence (e.g., interviews or job sheets) held by the New Zealand Police that would assist health assessors preparing reports pursuant to an order under s38 of the Criminal Procedure (Mentally Impaired Persons) Act 2003; and, if so
2. The New Zealand Police consider whether such information can be properly disclosed; and, to the extent it can
3. A process is developed for such information to be made available to health assessors prior to undertaking the s38 assessment.

**To the Chairpersons of Waitemata DHB; Waikato DHB; Capital Coast DHB; Canterbury DHB; and Southern DHB:**

I recommend that:

National Court Liaison Nurse Clinical Guidelines are developed to foster consistency of practice in forensic court liaison nurses throughout New Zealand.