



# **THE FERNS REPORT**

**Presented to the Minister for Health and Children**

**October 2005**

**Chairman: Mr Justice Francis D. Murphy**

**Members: Dr Helen Buckley  
Dr Laraine Joyce**

## Executive Summary

The Ferns Inquiry identified over 100 allegations of child sexual abuse made between 1962 and 2002 against 21 priests operating under the aegis of the Diocese of Ferns<sup>1</sup>. Six of the priests had died before any allegations of abuse were made against them. Three more died subsequent to the allegations.

The nature of the response by the Church authorities in the Diocese of Ferns to allegations of child sexual abuse by priests operating under the aegis of that diocese has varied over the past forty years. These variations reflect in part the growing understanding by the medical professions and society generally of the nature and the consequences of child sexual abuse and in part the different personalities and management styles of successive Bishops.

Between 1960 and 1980 it would appear that Bishop Herlihy treated child sexual abuse by priests of his diocese exclusively as a moral problem. He penalised the priest in respect of whom the allegation was made by transferring him to a different post or a different diocese for a period of time but then returned him to his former position. By 1980, Bishop Herlihy recognised that there was a psychological or medical dimension to the issue of child sexual abuse.

His decision in 1980 to send priests in respect of whom allegations of abuse were made to a psychologist was appropriate and broadly in accordance with the understanding then evolving. What was wholly inappropriate and totally inexplicable was the decision of Bishop Herlihy to appoint to curacies priests against whom allegations had been made and in respect of whom a respected clerical psychologist had expressed his concerns in unambiguous terms as to their suitability to interact with young people.

Equally inappropriate was Bishop Herlihy's decision to ordain clearly unsuitable men into the priesthood when he knew or ought to have known that they had a propensity to abuse children.

It is the view of the Ferns Inquiry, as it was the view of Roderick Murphy SC (now Mr Justice Roderick Murphy) as expressed in his Report on Child Sexual Abuse in Swimming (1998), that where a credible allegation of child sexual abuse is made against an employee (or other person acting under authority) it is the responsibility of the employer or superior to require the employee to step aside promptly from any post or position in which he has access to children. Bishop Comiskey accepted that this principle was equally applicable to the exercise by a bishop of his authority under Canon Law in relation to priests of his diocese. Furthermore it was recognised that in the case of diocesan clergy "stepping aside" from a position in which there is unsupervised access to children necessarily entailed stepping aside from the active ministry entirely pending the investigation of the allegations.

The annexed Report sets out in detail the difficulties experienced by Bishop Comiskey in securing the removal of diocesan clergy under his aegis from particular posts held by them. In almost every case significant periods elapsed before the Bishop could persuade the priest in question to vacate his position and undergo the assessment and treatment suggested by the Bishop. In no case did the Bishop persuade or compel the priest concerned to stand aside from his priestly ministry. The Inquiry

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<sup>1</sup> This figure does not include those priests included in the Appendix annexed hereto.

does not underestimate the difficulties encountered by the Bishop but does expressly criticise his failure to stand aside from the ministry those priests against whom allegations had been made and in respect of whom information was or should have been available to the Bishop.

Subsequent to the appointment of Bishop Walsh as Apostolic Administrator of the Diocese of Ferns in April 2002, more effective steps were taken to ensure the protection of children. In particular all outstanding allegations of child sexual abuse were reviewed by the Administrator in conjunction with a new Advisory Panel. In addition the Bishop appealed widely to members of the public to come forward to the Diocese, the Gardai and the Health Board with information in relation to any allegation or suspicion of child sexual abuse not previously made known or which had been disclosed and had not been satisfactorily investigated or dealt with. There was a very significant response to that appeal.

In April 2002, eleven priests against whom allegations of child sexual abuse had been made were living. Three have been excluded from the priesthood by direction of The Holy See and seven have stood aside from the active ministry at the request of Bishop Eamonn Walsh. The eighth priest is advanced in years and is in retirement. The Gardai Siochana and the Health Board are advised from time to time as to the whereabouts of the priests who have stood aside and the circumstances in which they live. The Gardai and the Health Board are satisfied that the arrangements made in respect of those priests provide an appropriate measure of child protection.

The Inquiry is satisfied that the current practice of the Diocese of Ferns operates to a very high level of child protection. The regret is that this satisfactory position was not achieved at an earlier stage. Hopefully the procedures created and operated in the Diocese of Ferns will provide a model not merely for other dioceses but for other organisations facing allegations of child sexual abuse by their members.

Formal complaints of child sexual abuse were made against eight priests to An Garda Siochana. The Garda Authorities' handling of one of those complaints was wholly inadequate. In the opinion of the Inquiry, the remaining formal complaints were generally investigated by the Gardai in an effective, professional and sensitive manner. In some cases the work of the Gardai was expressly commended to the Inquiry by the victims. The Director of Public Prosecutions directed the institution of criminal proceedings in only three of the six cases in which recommendations in that behalf were made by the Gardai. In two of the criminal proceedings, convictions were obtained. In the third case, the prosecution was withdrawn after the accused priest committed suicide.

Evidence was given to the Inquiry of some complaints that had been made to different members of the Gardai prior to 1988 which do not appear to have being recorded in any Garda file and which were not investigated or pursued in an appropriate manner. This unsatisfactory approach may have been due to the unwillingness of the complainant to pursue his or her complaint or reluctance on the part of members of An Garda Siochana to investigate allegations of wrongdoing by members of the Catholic clergy. The evidence available in respect of the period prior to 1988 is insufficient to enable the Inquiry to express any firm view on this issue.

The Inquiry is fully satisfied that subsequent to 1990 the members of An Garda Síochána were not deterred or inhibited in any way from carrying out a full and professional investigation of complaints made to them of child sexual abuse by members of the Roman Catholic Clergy.

The South Eastern Health Board was notified directly or indirectly of many of the allegations of child sexual abuse. The Board was in a position to provide and did in many cases provide, counselling or support for the alleged victims. All Health Boards have wide ranging statutory obligations to promote the welfare of children in their functional area but there are few, if any, express statutory powers enabling them to achieve those objectives where the welfare of the child is endangered by abuse perpetrated by persons outside the family circle. In the absence of requisite statutory powers there was no significant response available to the Board to the allegations of abuse made known to it. The Inquiry was concerned that the South Eastern Health Board and other authorities appeared to be unaware of the very limited nature of the statutory powers available to them to intervene for the protection of children in the circumstances under investigation by the Inquiry.

With the benefit of hindsight it is possible to see that the Church authorities, the medical profession and society generally failed to appreciate the horrendous damage which the sexual abuse of children can and does cause. The Inquiry was struck by the hurt still borne by mature and fair minded victims who gave evidence before it. The Oireachtas has fixed a maximum penalty of life imprisonment for the more serious offences involving child sexual abuse. The Inquiry is of the view that the severity of that penalty is fully justified.

No allegation was made and no evidence was placed before the Inquiry suggesting the operation or the organisation of a paedophile ring in the Diocese of Ferns or any clerical institution within that diocese.

The Inquiry wishes to express its admiration for the courage and integrity of all those witnesses who helped it in its work.

The Ferns Inquiry has sought to provide an honest and objective description of the events that led to its establishment. In Chapter 8 (g) of this Report, the Inquiry has suggested remedies to some of those problems that have not yet been addressed by Church or State authorities. These include a public education programme and regulatory and legislative changes that would provide protection to children abused by third parties.

The members of the Inquiry would express the hope that should the type of abuse chronicled in this Report ever occur again, there will be mechanisms and procedures in place which will enable victims promptly to report the abuse in the confidence that they would be believed and the certainty that appropriate action would be taken to terminate the wrongdoing.

## TABLE OF CONTENTS

<b>Introduction.....</b>	1
<b>Terms of Reference.....</b>	2
<b>Chapter One.....</b>	3
1.1 Works Programme .....	3
1.2 A Review of the Birmingham Report.....	6
<b>Chapter Two: Child Sexual Abuse and Abusers.....</b>	10
What is Child Sexual Abuse?.....	10
Historical Perspective on Child Sexual Abuse.....	11
Common Perceptions about Child Child Sexual Abuse.....	17
The Process of Child Sexual Abuse.....	18
Impact of Child Sexual Abuse.....	19
Assessment and Treatment of Alleged Abusers.....	20
Returning Alleged Abusers to Ministry.....	21
Mandatory Reporting.....	22
<b>Chapter Three: Legal and Managerial Structures.....</b>	24
3.1 The Catholic Church.....	24
The Church as an Organisation.....	24
Hierarchical Structure.....	24
Overview of the Diocese of Ferns.....	26
Administration in the Diocese.....	27
Management of the Diocese.....	28
St Peter’s College.....	30
Seminary Admission and Formation.....	31
Current Selection Procedures for Maynooth Seminary.....	33
Canon Law.....	37
The Removal of a Priest under Canon Law.....	38
The Framework Document.....	40
The Inter-Agency Review Committee.....	44
Application of Canon Law Procedures by Bishop Brendan Comiskey and Bishop Walsh.....	44
Insurance.....	47
3.2 The South Eastern Health Board.....	49
Administrative Structure of the South Eastern Health Board.....	57
Garda / Health Board Liaison.....	58
The Inter Agency Review Committee.....	59
3.3 An Garda Síochána.....	60
The Garda Process of Investigation.....	62
Sexual Offences Legislation.....	67

<b>Chapter Four: Allegations of Abuse.....</b>	<b>70</b>
4.1 Fr Donal Collins.....	71
4.2 Fr James Doyle.....	76
4.3 Fr Alpha.....	79
4.4 Fr James Grennan (Deceased).....	82
4.5 Fr Sean Fortune (Deceased).....	86
4.6 Monsignor Michael Ledwith.....	101
4.7 Canon Martin Clancy (Deceased).....	104
4.8 Fr Beta.....	107
4.9 Fr Gamma.....	108
4.10 Fr Delta.....	114
4.11 Fr Epsilon (Deceased).....	115
4.12 Fr Iota.....	116
4.13 Fr Kappa.....	117
4.14 Fr Lamda (Deceased).....	118
4.15 Fr Zeta (Deceased).....	118
4.16 Fr Sigma (Deceased).....	119
4.17 Fr Upsilon.....	120
4.18 Fr Theta (Deceased).....	121
4.19 Fr Omrikon.....	121
4.20 Fr Tau (Deceased).....	122
4.21 Fr Omega.....	123
Unnamed Priests.....	123
<b>Chapter Five: The Diocesan Response.....</b>	<b>124</b>
Fr Donal Collins.....	124
Fr James Doyle.....	134
Fr Alpha.....	140
Fr James Grennan (Deceased).....	146
Fr Sean Fortune.....	153
Monsignor Michael Ledwith.....	174
Canon Martin Clancy (Deceased).....	183
Fr Beta.....	188
Fr Gamma.....	191
Fr Delta.....	194
Fr Epsilon.....	196
Fr Iota.....	196
Fr Kappa.....	199
Fr Lamda(Deceased).....	199
Fr Zeta (Deceased).....	200
Fr Sigma (Deceased).....	201
Fr Upsilon.....	202
Fr Theta (Deceased).....	203
Fr Omrikon (Deceased).....	203
Fr Tau (Deceased) .....	204
Fr Omega.....	204

<b>Chapter Six: South Eastern Health Board Response .....</b>	<b>206</b>
Fr James Grennan (Deceased) .....	206
Fr James Doyle.....	211
Fr Alpha.....	213
Monsignor Michael Ledwith.....	215
Fr Omega.....	218
Fr Upsilon.....	219
Bishop Comiskey .....	219
<b>Chapter Seven: An Garda Síochána Response.....</b>	<b>221</b>
Fr James Doyle.....	221
Fr Donal Collins.....	224
Fr Sean Fortune.....	227
Fr James Grennan.....	231
Fr Alpha.....	234
Canon Martin Clancy.....	238
Monsignor Michael Ledwith.....	240
Fr Delta.....	242
Fr Upsilon.....	243
Fr Gamma.....	243
Fr Beta.....	245
<b>Chapter Eight: Conclusions and Recommendations.....</b>	<b>246</b>
<b>Appendix:.....</b>	<b>268</b>

## INTRODUCTION

In August 2002 Mr George Birmingham SC presented a preliminary report on child sexual abuse involving Roman Catholic priests in the Diocese of Ferns to the Minister for Health and Children. Mr Birmingham had been asked by the Minister to investigate the background to allegations of child sexual abuse in the Diocese with a view to recommending an appropriate form and Terms of Reference for an Inquiry to inquire into the issue.

As recommended by Mr Birmingham, the Minister for Health and Children established a non-statutory private inquiry to investigate allegations or complaints of child sexual abuse which were made against clergy operating under the aegis of the Diocese of Ferns.

The Ferns Inquiry was established as a three-person team under the chairmanship of Mr Justice Francis D Murphy, formerly of the Supreme Court. The two other members of the Inquiry are: Dr Helen Buckley, senior lecturer in the Department of Social Studies, Trinity College, Dublin; and Dr Laraine Joyce, deputy director of the Office for Health Management.

The Inquiry was formally established by the Minister for Health and Children on 28 March 2003.

Counsel to the Inquiry was Mr Sean Ryan SC and Mr Declan Doyle SC. Mr Ryan was nominated as a Judge of the High Court in September 2003 and was succeeded by Mr Finbarr Fox SC.

The Secretary to the Inquiry was Mrs Marian Shanley BCL Solicitor.

Solicitor to the Inquiry was Mr Joseph O'Malley BCL LLM Solicitor, of Hayes Solicitors, Lavery House, Earlsfort Terrace, Dublin 2.

The Inquiry was assisted in its work by the following people:

Stephen O'Brien BA, Administrative Officer of the Department of Health and Children;

David Begley, Clerical Officer of the Department of Health and Children.

Gemma Normile B. Corp. Law, LLB, LLM, legal researcher;

Laura Dunne BCL, legal researcher;

Joe Jeffers BCL, LLM (Cantab), legal researcher;

The Inquiry acknowledges with gratitude the assistance of Shirley Hastings and Susan Cummins who provided secretarial and administrative support.



## **TERMS OF REFERENCE**

A To identify what complaints or allegations have been made against clergy operating under the aegis of the Diocese of Ferns in relation to alleged events that transpired prior to 10 April 2002, and to report on the nature of the response to the identified complaints or allegations on the part of the Church authorities and any public authorities to which complaints or allegations were reported.

B To consider whether the response was adequate or appropriate, judged in the context of the time when the complaint or allegation was made, and if the response to the complaint or allegation appears inadequate or inappropriate when judged by those standards, to identify if possible the reason or reasons for this, and report thereon.

C To consider the response of diocesan and other Church authorities and the State authorities to cases where they had knowledge or strong and clear suspicion of sexual abuse involving priests of the Diocese of Ferns, and to consider whether that response was adequate or appropriate judged in the context of the time when the knowledge was acquired or the suspicion formed.

D Insofar as responses are seen to be inadequate or inappropriate, and insofar as it may be possible to identify explanations for that inadequate or inappropriate response, to consider whether those factors remain applicable and to what extent they have been subsequently addressed.

E To examine and report on the levels of communication that prevailed between diocesan and State authorities, to consider whether more appropriate norms or improved communication between the diocesan authorities and the State authorities are now desirable or practical.

F To identify and report on any lessons which might usefully be learned from how complaints or allegations were handled in the past, which will result in improved child protection.

G To identify and report on any difficulties or shortcomings in current laws and regulations and to make recommendations as to legislative or regulatory change that would remedy these.

H In the event of the withholding or withdrawal of full cooperation from the Inquiry by Church authorities or any State authorities, or any suggestion that cooperation is being withheld, to report that fact immediately to the Minister for Health and Children. In the event of the Minister for Health and Children receiving such a report she will then grant the Inquiry statutory powers.

I At the conclusion of their inquiries, to deliver a full and final report to the Minister for Health and Children who will lay it before the houses of the Oireachtas and publish the report in full, subject to legal advice.

J In the event of the Inquiry not producing a final report within 12 months of the date of appointment by the Minister, the Inquiry will publish an interim report and indicate a date for the Inquiry's final report.

## 1.1 Work Programme

The Ferns Inquiry commenced its work in March 2003. Its work comprised four distinct phases.

The first phase was an analysis of Mr George Birmingham's report to establish the parameters of the Inquiry.

The second phase consisted of research and consultation in areas of relevance to the Inquiry, in particular:

- a) Child Sexual Abuse.
- b) Paedophilia/Ephebophilia.
- c) Management structures of the Church, Health Board and An Garda Síochána.

The third phase involved establishing the factual background to the events that had occurred in the Diocese of Ferns<sup>1</sup>. To commence this phase the Inquiry had to make secure and then peruse the documentation made available to it by the Church Authorities, the South Eastern Health Board and An Garda Síochána.

Most Reverend Eamonn Walsh, Apostolic Administrator to the Diocese of Ferns agreed to make available to the Ferns Inquiry all files and documents relating to the subject matter of the Inquiry including privileged material. Much of this privileged material contained confidential legal advice and reports obtained by the Diocese over the past 20 to 30 years. By making this privileged material available to the Ferns Inquiry, the Diocese of Ferns has made it possible for the Inquiry to form a more comprehensive and accurate picture of the events that occurred in Ferns and the response of the Diocese thereto than would otherwise have been possible. This level of co-operation went beyond anything the Inquiry could have required or which a court of law could have compelled.

The Apostolic Administrator and his solicitor, Arthur O'Hagan Solicitors, confirmed to the Inquiry that all relevant documentation has been furnished to it.

Advertisements were placed in three national and four regional newspapers in the weeks commencing 11 August and 29 September, 2003, seeking the assistance of the public.

The Inquiry set in place oral hearings commencing Monday 15 September 2003. The Inquiry was concerned that persons who wished to communicate with it should be able to do so in a manner most appropriate to them. It invited interested parties to communicate with it in any of the following ways:

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<sup>1</sup> The Diocese of Ferns is not a legal entity and this Inquiry uses the term to refer to the office of Bishop or equivalent authority for the time being of the diocese.

- a) by writing out a statement and sending it to the Inquiry either by post or email;
- b) by speaking to a member of the Inquiry legal team either in person or by telephone; or
- c) by attending for an oral hearing of the Inquiry.

Most witnesses chose to attend for an oral hearing; many submitted a written statement in advance. An account of the testimony of those reporting abuse is set out in Chapter 4 of this Report.

Speaking about sexual abuse is a traumatic and emotional experience; coming into a formal Inquiry to speak about sexual abuse suffered as a child is particularly so. The Inquiry sought to offer a sensitive and supportive forum to all who appeared before it. However, because it was in everybody's interest to observe correct procedures, witnesses were guided through their testimony by Senior Counsel engaged by the Inquiry to ensure that information relevant to its Terms of Reference was obtained. A stenographer recorded proceedings and transcripts of all evidence heard were made available to the members of the Inquiry.

The Inquiry wishes to acknowledge its debt to the courageous people who spoke about experiences of abuse. Without exception the witnesses who attended the hearings impressed the Inquiry with their dignity and clarity. Many offered an invaluable insight into the nature and extent of the problem and the lasting trauma it can cause. It would not have been possible to produce this Report without their cooperation and help.

The Ferns Inquiry wishes to acknowledge the courtesy and assistance offered by Mr Colm O'Gorman and Ms Deirdre Fitzpatrick of the *One in Four* organisation. They provided encouragement and support to many of the witnesses who attended for oral hearing.

The hearing of evidence of abuse from witnesses and complainants was substantially completed by February 2004. By that time the Inquiry had conducted oral hearings in respect of over 90 witnesses and had taken statements in respect of a further 57 witnesses who had spoken about abuse suffered by them or about which they had information.

The Inquiry then heard from members of the Church authorities and in particular the Diocese of Ferns, from the South Eastern Health Board<sup>2</sup> and from An Garda Síochána. These witnesses were selected by the Inquiry from documentation and statements that had been made available to it. It was through the attendance of these witnesses that the Inquiry was able to inform itself as to how the authorities responded to complaints or allegations of child sexual abuse; whether their handling of these allegations was appropriate and how the various agencies interacted with each other.

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<sup>2</sup> The Health Services Executive in the Wexford area was known as The South Eastern Health Board (SEHB) during the period which is the subject matter of this Inquiry and that is the title that is used throughout this Report.

The Inquiry spoke with over 100 witnesses during this phase of its work and all of the testimony was duly recorded. The detail of this evidence will be discussed in Chapters 5, 6 and 7 of this Report.

Having spoken with the complainants and the witnesses from the three relevant authorities, the Inquiry asked Bishop Brendan Comiskey to attend to address the issues focused on by the Inquiry. Bishop Comiskey attended the Inquiry for a total of 8 days of oral hearing from 19 to 30 July 2004, and for a further 2 days in September 2004. This evidence is referred to as it arises in the course of this Report but is dealt with in greater detail in the chapter headed "Church Response" at Chapter 5 below.

The Inquiry wishes to acknowledge the high level of cooperation received from Bishop Comiskey throughout this process. Through his lawyers he responded with efficiency and courtesy to the requests made by the Inquiry.

The Inquiry informed itself from the documentation made available by the South Eastern Health Board as to those officers and employees of the Board who would be in a position to assist the Inquiry in identifying how allegations of child sexual abuse were handled by it. This is dealt with in Chapter 6 of this Report. The Ferns Inquiry would like to acknowledge the full cooperation it received from the South Eastern Health Board through their officer Ms Marie Kennedy, who made relevant documentation available to the Inquiry and attended personally on a number of occasions.

The South Eastern Health Board has confirmed to this Inquiry that it has made all relevant documentation available to it.

The Garda files in relation to any allegations of child sexual abuse in which Garda investigations had been completed were forwarded to the Inquiry. The details from these files and the Garda handling of the allegations are set out in Chapter 7 below. The Inquiry wishes to acknowledge the same high level of cooperation from the Garda authorities, particularly through Superintendent Kieran Kenny who attended the Inquiry on a number of occasions and liaised with it to clarify any matters that arose from the Garda files.

An Garda Síochána has confirmed to this Inquiry that it has made all relevant documentation available to it.

The Inquiry wishes to acknowledge the assistance of Mr James Hamilton the Director of Public Prosecutions (DPP), and his staff who met with members of the Inquiry team and discussed matters which arose from the Garda files regarding prosecution and the criminal trial.

The taking of evidence was substantially completed by February 2005 with the attendance of Bishop Eamonn Walsh, the Apostolic Administrator of the Diocese of Ferns.

In its fourth and final phase, the Inquiry prepared a draft Report. This draft Report, or extracts from it, was submitted where possible to any person mentioned therein or any person whose testimony was used in the final draft. As many interested parties as

possible were afforded an opportunity of responding to the draft document and amendments were made where appropriate. This was a lengthy process which occurred over an eight month period.

Because of the non-statutory nature of this Inquiry, all evidence received by it is unsworn. The Inquiry is satisfied that those who contacted it did so in good faith and out of a desire to be of assistance. However, the unsworn nature of the evidence available to the Inquiry must be emphasised.

The Inquiry has not used gender-neutral language in this Report as the alleged perpetrators of the abuse which was considered by the Inquiry were all male. Even when discussing general issues relating to child sexual abuse, the words “he” and “him” are used but the Inquiry does of course accept that child sexual abuse is committed by females as well as males.

The Inquiry interpreted the term “clergy operating under the Diocese of Ferns” as meaning diocesan priests who were ordained for the Diocese of Ferns. This precluded consideration of allegations against seminarians, priests belonging to religious orders and priests ordained for dioceses other than Ferns even when they were in ministry in the Diocese of Ferns.

Although the Terms of Reference did not specify child sexual abuse allegations, it was the clear understanding of all persons communicating with the Inquiry that this was the subject matter of the Inquiry and accordingly, allegations of physical abuse or abuse of adults were generally not considered by the Inquiry.

Within its Terms of Reference, the Inquiry identified over 100 complaints or allegations relating to child sexual abuse by 21 priests under the aegis of the Diocese of Ferns. Over forty of those complaints related to two priests only. Ten of the priests complained against are now deceased, three have been laicised and the remaining eight priests are no longer in active ministry<sup>3</sup>.

## **1.2 A Review of the Birmingham Report**

The Birmingham Report had its origin in a documentary entitled *Suing the Pope* broadcast on 19 March 2002 by the BBC as part of its Correspondent series. The programme concerned allegations of clerical child abuse in the Roman Catholic Diocese of Ferns. Less than three weeks later, the Minister for Health and Children met with a group of contributors to that programme who called for a State sponsored Inquiry into the alleged abuse. At the Minister’s suggestion, it was agreed that there would be a preliminary investigation by a senior counsel who could identify the central issues for any Inquiry and make recommendations as to its form and structure. On 10 April 2002, the Minister appointed Mr George Birmingham SC to carry out this exercise.

Mr Birmingham’s Terms of Reference were:

- *To consult with the victims;*

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<sup>3</sup> These figures are subject to the Appendix annexed hereto.

- *To consult with the Catholic Church to ascertain the level of cooperation, if any, which might be forthcoming;*
- *To examine all relevant files within State agencies/authorities (e.g., Health Board files, Garda files, Commissioner's report), to assess whether the role of civil authorities required further inquiry;*
- *To have particular regard to the specific requirement of an inquiry into sex abuse (e.g., confidentiality);*
- *To consult with those involved in the Commission to Inquire into Child Abuse, chaired by Ms Justice Laffoy, to ascertain how that Commission or its experience, might be suitable or useful;*
- *To examine and address any legal issues surrounding such an Inquiry (constitutional issues regarding the Church etc);*
- *To examine whether an inquiry limited to the Diocese of Ferns is feasible, and whether and how the wider picture is to be examined;*
- *To recommend the form of inquiry appropriate and suggest terms of reference.*

George Birmingham met with a number of the persons who alleged child sexual abuse to ascertain their particular needs and to clarify their hopes for and expectations of an Inquiry. He identified the need of the victims for confidentiality and recommended that any Inquiry should minimise intrusion into their privacy.

Mr Birmingham was assured by Bishop Eamonn Walsh (who was appointed Apostolic Administrator of the Diocese of Ferns after Bishop Brendan Comiskey resigned in April 2002) and by Bishop Brendan Comiskey of cooperation in any Inquiry that might be set up. On his appointment, Bishop Walsh stated that he would *“fully co-operate with whatever instrument of Inquiry was deemed most appropriate”*.

George Birmingham operated on the basis that a child is a person under the age of 18 years. Abuse of persons over 18 was of significance to the Inquiry where the abuse had commenced during the victim's childhood or where it happened in the context of a perpetrator who had multiple victims known to the Inquiry, some of whom were under 18.

Mr Birmingham suggested that while it would be important for the Inquiry to place responses or lack of responses to allegations in the context of the time, there was also a real public interest in knowing how complaints of abuse would be handled today and whether changes have been effected since allegations first came to light. The Ferns Inquiry therefore brought within its remit allegations of abuse received by the Diocese of Ferns after April 2002 (the cut-off point identified in the Terms of Reference), where those allegations referred to a priest already identified to the Inquiry as an alleged child sex abuser, or where they referred to allegations of abuse that occurred prior to April 2002 even where they involved a priest previously not identified to the Inquiry. The Terms of Reference of the Inquiry were interpreted in this way to facilitate a proper understanding of the ways in which abuse allegations are handled by the Diocese of Ferns today. It must be noted that the diocesan authorities cooperated with the Inquiry in interpreting its Terms of Reference in this manner.

Mr Birmingham considered whether legal or constitutional issues constrained the Minister in determining what type of Inquiry ought to be established. He concluded that while undoubtedly an Inquiry would encroach on the Church's right to privacy and the right to privacy of individuals who played a role in various controversies, the importance of the issues to be enquired into would render the decision to establish a tribunal immune from challenge.

This raised the question as to whether the Roman Catholic Church could be regarded as no more than a private organisation, given the particular constitutional position which all religions enjoy under Article 44.1.5:

*"Every religious denomination shall have the right to manage its own affairs, own, acquire and administer property, moveable and immoveable and maintain institutions for religious or charitable purposes."*

Mr Birmingham was of the view that any challenge based on an argument that the Inquiry denied the Church the right to manage its own affairs would fail, because the purpose and effect of the Inquiry was not to interfere with the management of Church affairs, but to identify how those affairs are managed. Accordingly, in his judgement, the Minister was not constrained by any legal or constitutional issue from deciding what type of Inquiry was most appropriate. In conclusion, Mr Birmingham said,

*"In my view the most effective form of Inquiry, and the one which is most flexible and most receptive to the various needs that must be addressed, is a non-statutory Inquiry, sitting in private, capable of designing its own procedures and tailoring those to the needs of those with whom it is dealing."*

Mr Birmingham strongly recommended that the Inquiry should be limited in geographical area to the Ferns diocese and this has been an important and useful limitation.

The Inquiry would like to acknowledge the important contribution of Mr Birmingham to this process. His unpublished report was a valuable resource and his insightfulness in making the recommendations which he did and in drawing up the Terms of Reference were important factors in this Inquiry carrying out its work within a reasonable time frame.

Because of the non-statutory nature of the Inquiry, its Terms of Reference contained a condition that in the event of the withholding or withdrawal of full cooperation from the Inquiry by Church or State authorities, or any suggestion of such cooperation being withheld, such a fact should be reported immediately to the Minister for Health and Children who would then grant the Inquiry statutory powers.

The Ferns Inquiry is appreciative of the considerable assistance provided to it by the Diocese of Ferns and its solicitors. A number of documents which were of relevance to the Inquiry were not made available by the Diocese until shortly before the Inquiry completed its work. The Inquiry is satisfied following careful examination of the process by which diocesan discovery was made that this delayed delivery arose as a result of genuine errors of judgement.

The nature of that documentation and the material which it discloses has been summarised in the Appendix hereto. It would not be practicable to analyse or investigate this material in depth and incorporate any findings arising in the Report without unduly delaying the completion of the work of the Inquiry. In the circumstances, the Appendix hereto must be read as an addition to the principal Report. The Inquiry believes that whilst the material might call for alterations in the detail of the Report, it does not affect any matter of principle contained therein.



## CHILD SEXUAL ABUSE AND ABUSERS

This chapter considers the nature and treatment of child sexual abuse. It has been informed by a review of literature on the subject which led to a two-day consultation with an Expert Group comprising therapists with specific experience of working with priests who have sexually abused children (hereinafter referred to as the Expert Group).<sup>4</sup>

### What is Child Sexual Abuse?

While definitions of child sexual abuse vary according to context, probably the most useful definition and broadest for the purposes of this Report was that which was adopted by the Law Reform Commission in 1990<sup>5</sup> and later developed in Children First, National Guidelines for the Protection and Welfare of Children (Department of Health and Children, 1999) which state that "*child sexual abuse occurs when a child is used by another person for his or her gratification or sexual arousal or that of others*". Examples of child sexual abuse include the following:

- (i) exposure of the sexual organs or any sexual act intentionally performed in the presence of the child;
- (ii) intentional touching or molesting of the body of a child whether by a person or object for the purpose of sexual arousal or gratification;
- (iii) masturbation in the presence of the child or the involvement of the child in an act of masturbation;
- (iv) sexual intercourse with the child whether oral, vaginal or anal;
- (v) sexual exploitation of a child which includes inciting, encouraging, propositioning, requiring or permitting a child to solicit for, or to engage in prostitution or other sexual acts. Sexual exploitation also occurs when a child is involved in the exhibition, modelling or posing for the purpose of sexual arousal, gratification or sexual act, including its recording (on film, video tape or other media) or the manipulation for those purposes of the image by computer or other means. It may also include showing sexually explicit material to children which is often a feature of the "grooming" process by perpetrators of abuse.

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<sup>4</sup> Mr. Donald Findlater, deputy director, the Lucy Faithful Foundation  
Mr. Steven Lowe, senior therapist, the Lucy Faithful Foundation  
Dr Patrick Randles, principal clinical psychologist, the Granada Institute, Shankill, Co Dublin  
Mr. Joseph Sullivan formerly principal therapist for the Lucy Faithful Foundation  
Dr Patrick Walsh, Director, the Granada Institute, St. John of Gods, Shankill, Co. Dublin  
Mr. Ray Wyre, Ray Wyre Associates, a company that provides independent assessment of sexual crime and abuse.

<sup>5</sup> This definition was originally proposed by the Western Australia Task Force on Child Sexual Abuse, 1987 and is adopted by the Law Reform Commission (1990) Report on Child Sexual Abuse, p. 8.

Although this definition has been adopted by many State and private organisations, it has not been formally enacted into law by the Legislature. For the purposes of Irish criminal law therefore, child sexual abuse is not statutorily defined but rather consists of many specific offences of which the principal ones are set out in Chapter 3.3 of this Report.

A central characteristic of any such abuse is the dominant position of an adult that allows him or her to coerce a child into engaging in sexual activity.

It is important that child sexual abuse is not reduced to a single theory or categorisation, but is seen for what it is, a complex phenomenon, the nature and impact of which depend on a number of circumstances. While formal definitions are useful in terms of classifying it and separating it from other forms of child maltreatment, caution needs to be exercised in the application of a technical description, as the dynamics and contextual factors surrounding abusive situations can make it difficult to explain in a rational fashion. It also has to be remembered that the impact of sexual abuse upon a child or young person will be determined by a number of factors concerning the child, the relationship that the abuser has with the child, the child's previous experiences, resilience and vulnerability, and the circumstances in which the abuse takes place and the response to any complaint made.

### **Historical Perspective on Child Sexual Abuse**

In assessing whether a particular response to an allegation of child sexual abuse was adequate or appropriate, the Ferns Inquiry believed it important to establish the extent of awareness of this problem that was or should have been present in the authority dealing with it.

Public consciousness of the problem of child abuse (and in particular child sexual abuse) was a gradual development from the early 1960s. In the earlier half of the twentieth century, although child abuse and cruelty was known to exist, it was generally identified with neglect and poverty. In the United States, mandatory reporting of non-accidental injury to children became a requirement in a number of states between 1960 and 1965. Through this reporting, it became clear that child abuse within families was a major problem in the community and this, together with the development of a strong feminist movement, led to a greater awareness of this problem and the problem of sexual abuse of children among the population as a whole. Over the next decade, the extent of sexual abuse of children both within and outside of families was recognised as a world-wide problem.

In May 1975 an expert group was brought together by the Department of Health to establish the extent of the problem of non-accidental injuries to children.<sup>6</sup> The group unanimously agreed that a significant problem of child abuse existed in Ireland at the time and that coordinated efforts should be made to remedy the situation. In March 1976, the expert group published a report on non-accidental injury to children and this led to the 1977 Memorandum on Non-Accidental Injury to Children issued by the Department of Health. This memorandum, and the report leading up to it, made no reference to the sexual abuse of children. Further guidelines published in 1983

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<sup>6</sup> See p 52 *et seq.*

mentioned sexual abuse of children in passing but it was not until 1987 that the Department of Health child abuse guidelines set out procedures for the identification, investigation and management of child sexual abuse. All of these guidelines dealt with child abuse perpetrated by a member of the family or the carer of the child and did not advert in any detail to the situation of the child being abused by third parties. These guidelines did not address the issue of allegations of child sexual abuse which were not reported until the victim had become an adult. This was the position in all but five of the episodes of abuse identified by this Inquiry. It was not until after the Framework Document<sup>7</sup> that the position was clarified and an obligation was assumed by all dioceses to report all allegations of child sexual abuse against priests of the Diocese, irrespective of whether the complainant was an adult or a child at the time of making the complaint.

It is generally accepted that awareness of the nature of child sexual abuse in Ireland coincided with high profile cases such as the Kilkenny Incest Investigation in 1993 and The West of Ireland Farmer case in 1995. These cases demonstrated that child sexual abuse was a crime perpetrated by apparently upright and decent members of the community. Both these cases however, dealt with sexual abuse of children within families. It was not until after Fr Brendan Smyth's arrest in Belfast and the publicity that surrounded the seeking of an extradition warrant by the Northern Ireland authorities in 1994, that Irish society was fully exposed to the phenomenon of the systematic abuse of children by third parties who were in a position of trust and authority over those children. This "third-party" abuse represents only a small fraction of the abuse occurring in Irish society<sup>9</sup> but is a major problem for any organisation entrusted with the care of children in which it becomes manifest.

In response to the growing public awareness of child sexual abuse within the Church, the Irish Catholic Bishops' Conference and CORI<sup>10</sup> established an Advisory Committee in 1994 to set down guidelines for the proper handling of allegations that came to the attention of Church authorities here. The Framework Document was adopted by all dioceses in this country although implementation of these guidelines was left to the individual bishop in his diocese. In the Diocese of Ferns, the guidelines were adopted before their official publication, in December 1995.

The convening of the Advisory Committee and the terms of its Report were a clear acknowledgement of the seriousness of the problem of clerical child sexual abuse and the need for guidance on how the problem should be handled. The Report only came

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<sup>7</sup> The Report of the Advisory Committee of the Irish Catholic Bishops Conference. This Committee was established in May 1994 and published its report in 1996. This report, which set down guidelines for the handling of child sexual abuse allegations against clergy by Church authorities is referred to as "The Framework Document" throughout The Ferns Report. For further discussion see p40 below.

<sup>9</sup> Sexual Abuse and Violence in Ireland: A National Study of Irish Experiences, Beliefs and Attitudes Concerning Sexual Violence. Hannah McGee, Rebecca Garavan, Mairead de Barra, Joanne Byrne, Ronan Conroy. The Royal College of Surgeons in Ireland. (The SAVI Report 2002). The Liffey Press 2002

<sup>10</sup> Conference of Religious of Ireland

into effect after 1995 but it did, nevertheless, provide an objective standard by which to judge whether a particular response was deemed appropriate.

After a number of allegations were received by authorities regarding the behaviour of two swimming coaches in the Leinster region, an Inquiry was conducted by Mr Roderick Murphy SC (now a judge of the High Court) in 1998 into how these allegations were handled by the Swimming Authorities. The Roderick Murphy Inquiry is the only other Inquiry that dealt with the issue of child sexual abuse outside of the familial context.

The Ferns Inquiry, in the course of its oral hearings and research, encountered a widely held view among commentators, journalists and victims themselves, that the Catholic Church had an awareness of the problem of child sexual abuse by priests before it entered the public domain. The Inquiry sought to establish the development of this awareness both in the Catholic Church in Ireland and in the wider Church.

Early Church law ranked sexual sins as the most serious offences along with homicide and idolatry. The three most serious of these were fornication, adultery and sexual corruption of young boys.<sup>11</sup>

The first Code of Canon law, published in 1917, contained specific canons condemning solicitation, false denunciation and the failure to denounce. This only became relevant to the issue of child sexual abuse by clergy when, in 1962 Pope John XXIII issued a special procedural law for the processing of solicitation cases. The document was sent to a number of Bishops throughout the world who were directed to keep it in secret archives and not to publish or comment upon it. This document related specifically to solicitation in the course of hearing Confession. It is of interest to the Inquiry as it also specifically dealt with how priests who abused children were to be handled and imposed a high degree of secrecy on all Church officials involved in such cases. The penalty for breach of this secrecy was automatic excommunication. Even witnesses and complainants could be excommunicated if they broke the oath of secrecy. The Inquiry has seen no evidence of the existence of this document in the files of the Diocese of Ferns that it has examined. It has been informed that the Diocese never received such a communication from Rome and was not aware of its existence until it was publicly discussed by commentators in 2001.

This is the first document from the Vatican of which the Inquiry is aware which directs bishops on the handling of child abuse allegations. The code of secrecy which was emphasised in the document has been perceived by the media and members of the general public as informing the Church authorities on how allegations of child sexual abuse should be dealt with. This 1962 document was referred to in a document issued by the Vatican in 2001 outlining new norms for handling certain grave offences. The document which was entitled, "*Sacramentorum Sanctitatis Tutela*"<sup>12</sup> (Protection of the Holiness of the Sacraments), was issued "*motu proprio*"<sup>13</sup> by Pope John Paul II. The norms were not themselves published and the understanding appears to have been

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<sup>11</sup> Brundage, Law, Sex and Christian Society in Medieval Europe, (Chicago, University of Chicago Press, 1987, Page 71).

<sup>12</sup> See below p41

<sup>13</sup> *Motu proprio* is the commonplace format for a document from the Pope in a disciplinary matter. It translates as "on his own initiative".

that local bishops would receive them on a case by case basis. However, on 19 May 2001, the norms were discussed and explained in a letter to the world's bishops and heads of religious orders from the Congregation for the Doctrine of the Faith and signed by Cardinal Joseph Ratzinger, Prefect. It outlined how the Congregation was to continue to have "exclusive competence" regarding certain grave offences including sexual offences with a minor under the age of 18.

One commentator who worked closely with the Church during the early 1960s and 1970s was the American, A.W. Richard Sipe<sup>14</sup>. He pointed out that, up until the 1950s, sexual activity in a priest was seen as a moral/spiritual problem. Where that sexual activity involved behaviour which was perceived as deviant, that is, sexual interest in men or children, there developed recognition that such behaviour had a psychological dimension. This opened up the problem to lay psychiatric and psychological intervention and increased awareness, in the medical community at least, of the presence of this problem in the priesthood. This Inquiry has observed that Bishop Donal Herlihy (Bishop of Ferns 1964-1983), began to engage psychological experts to assess priests accused of child sexual abuse in the late 1970s.

Dr Sipe observes that from the early 1950s, Fr Bier, a Jesuit from Fordham University, advocated psychological testing of candidates for the priesthood to eliminate problem priests including those who were sexually active. Fr Bier's writings and advocacy of the use of screening tests reflected a growing awareness within the Catholic Church that deviant sexual behaviour by men professing celibacy was not merely a spiritual problem but also contained psychological components.

In his book entitled "The Sipe Report", Dr Sipe observed:

*"In 1976 the Servants of the Paraclete opened what was perhaps the first programme in the world with a treatment regime designed to treat psychosexual disorders, including disorders involving the sexual abuse of minors. The ability of the Catholic community to design and implement such a programme is both a reflection of the need for such a programme and the degree of knowledge of the scope of the problem of sexual misconduct with children by Catholic priests and religious. The fact that preparations for the opening of this programme were years in the making, demonstrates widespread knowledge of existing sexual misconduct with minors by Catholic clergy by the late 1960s and early 1970s.*

*I conclude that the bishops of the United States, individually and collectively, were by the 1970s, well aware of certain psychological problems of priests, including sexual involvement with minors, and were also aware of alternative modes of addressing psychosexual problems, other than spiritual renewal and geographic transfers.*

*As early as the 1960s, Catholic bishops and religious superiors attempted to handle some of the more severe cases of sexual misconduct through the use of*

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<sup>14</sup>Dr AW Richard Sipe. A former Roman Catholic priest and current psychotherapist and psychiatrist, he is the author of "The Sipe Report" and has written extensively on this subject, including his 1995 book "Sex, Priests and Power".

*psychiatry and psychology. This effort grew in size, scope and sophistication until by the late 1970s Catholic treatment centres were on the cutting edge of psychiatry and psychology in the use of sophisticated treatment techniques for the treatment of Catholic priests and religious who had acted out sexually with minors. It is reasonable to ask; what care was given to known child victims of priest sexual involvement? What steps were taken to protect Catholic children and their families from the known risk of future abuse?"*

Even before the Servants of the Paracletes had developed its programme for the treatment of priests who had sexually abused children in 1976, they had in 1959, founded an assessment and treatment centre for priests with behavioural problems including child sexual abuse in Stroud in Gloucester, England which was used by the Diocese of Ferns from the mid 1980s in dealing with priests accused of child sexual abuse. The Diocese also used American assessment and treatment centres from that date.

By the end of 1984, the case of Fr Gilbert Gauthé of Lafayette, Louisiana, was receiving worldwide publicity. Fr Gauthé was charged on multiple counts for abusing children in his parish. Not only was this the first time that such a criminal case had this level of publicity, but it was also the first time that a civil suit was initiated against a diocese anywhere in the world for failing to protect children from the activities of a known clerical abuser.

In May 1985 a document was prepared by clergy and a civil lawyer involved in this case entitled, "The Problem of Sexual Molestation by Roman Catholic Clergy: Meeting the Problem in a Comprehensive and Responsible Manner".<sup>15</sup> This document, which became known as "The Manual" set out to inform the Church hierarchy in the United States of America about the growing problem of sexual abuse of children and adolescents by clerics. It represented the first in-depth analysis of this problem in the United States. It posed a number of legal and medical questions and suggested, among other things, that bishops should ensure that their insurance policies protect them from claims of child sexual abuse. The Report predicted that the Catholic Church could be found liable for millions of dollars in damages in cases arising out of the sexual abuse of children by clergy who were subsequently protected by their Bishop.<sup>16</sup> The Diocese of Ferns has stated that it was not aware of the existence of this "Manual" until informed about it by this Inquiry.

What is clear, however, is that Irish bishops were alerted to a potential liability for child sexual abuse by clergy, from the cases that had emerged in the 1980s in the United States. According to a press statement issued by the Irish Catholic Communications Office on 4 February 2003, most dioceses obtained insurance policies between 1987 and 1990 against the eventuality of legal liability accruing to a diocese from acts of child sexual abuse by priests. The Inquiry is aware that Bishop Comiskey entered in to such an insurance policy in 1989<sup>17</sup>.

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<sup>15</sup> Fr. Thomas Doyle, Secretary Canonist to the Papal Nunciature in Washington, Fr. Michael Peterson, Director of the St. Luke's Institute in Hartford, Connecticut and Mr. Raymond Mouton, a civil lawyer.

<sup>16</sup> Time to Listen; Confronting Child Sexual Abuse by Catholic Clergy in Ireland. Goode McGee and O'Boyle. The Liffey Press 2003 p 127 *et seq*.

<sup>17</sup> See pp 46 *et seq*

“Time to Listen” was commissioned in late 2000 by The Irish Bishops’ Committee on Child Abuse (now known as the Bishops’ Committee on Child Protection) and published in 2003. It states:

*“Child sexual abuse by clergy has occurred over an extended period. Therefore some awareness of the problem must have existed among clergy, most likely senior members of the Church, for some time. However the way in which inappropriate sexual behaviour was interpreted by senior Church personnel varied. Anecdotally, sexual contact with male children was sometimes understood as homosexual behaviour rather than child sexual abuse per se. The emphasis was on the moral implications for the offending cleric and a confessional approach was used.”*

This Study went on to say that most clergy it had spoken to, particularly “front-line” priests and religious, reported becoming aware of the problem of priests abusing children quite recently, just as the general public did, through media reports, in particular media reports from America. Church personnel interviewed in the study recalled first hearing of child sexual abuse by clergy in the late 1980s or early 1990s. This would accord with the testimony of priests from the Diocese of Ferns who spoke with this Inquiry.

Where an organisation is aware of a serious problem within its structure with criminal and child protection implications, it has a duty to alert and inform its personnel of this and to ensure that every step is taken to eliminate it as soon as possible. From the documentation furnished to this Inquiry by the Diocese of Ferns there is no evidence that the growing awareness of this problem was communicated to the Church Authorities in the Diocese. The knowledge which is now in the public domain and therefore in the possession of priests generally, did not come from Church authorities, but from the media and from victims speaking out about their experiences. Once this problem entered the public domain, a high-level education programme was embarked upon by the Diocese of Ferns and by 1996, priests were well informed of the damage that sexual abuse can do to children and were encouraged by the present administration within the Diocese to communicate any concerns they had around this issue.

The Inquiry recognises that most of the developing awareness of child sexual abuse by priests occurred in the United States and it is not possible to impute any particular knowledge of this on the part of priests or Church authorities in the Diocese of Ferns. When Bishop Comiskey became aware of a problem with child sexual abuse among his clergy, he did, nevertheless, have available to him a reasonably sophisticated treatment centre established by the Servants of the Paracletes in Stroud in England. This treatment centre offered assessment and residential care to priests who had a wide range of behavioural problems including alcoholism, depression and sexually inappropriate behaviour. By 1980, the practice of referring priests with sexual problems to reputable psychiatrists for analysis and treatment had been established in the Diocese of Ferns.

Individual priests who attended this Inquiry spoke of their lack of any awareness of the problem of sexual abuse of children in society in general or among their numbers. The Inquiry believes that this lack of awareness was, in most cases, genuine, but is

concerned that the Church Authorities either in this country or in Rome did not properly alert their priests to the danger of child sexual abuse at a time when they did or should have known of this danger which had been clearly identified by Church authorities elsewhere.

## **Common Perceptions about Child Sexual Abuse**<sup>18</sup>

Perceptions about child sexual abuse are linked to the way the subject is understood and categorised and often reflect society's reluctance to believe that it is something committed by people seen as being "normal". The use of certain terminology in describing child sexual abuse can also be misleading. For example, describing it as an addictive or pathological illness can be disingenuous and give the impression that sexual attraction to children is beyond the control of the majority of people who commit it. The belief that sexual abuse is most frequently committed by the sinister and deviant stranger belies the information which we now have that the majority of children are abused by persons known to them<sup>19</sup>, many of whom present as benign and admirable people.

One of the most striking aspects of the profiles of the clerical abusers that emerged from the Ferns Inquiry and from the Expert Group was that, in certain respects, many of these men were successful, spiritual and even caring human beings. Some were known to be excellent teachers who elicited high academic standards from the young people they taught; most were considered pious and holy; some were outstanding managers and fund raisers while others were described as gentle and inoffensive. Many of these priests were readily accepted in their communities and befriended the families of their victims with ease. The verbal or pictorial portrayal of the perpetrator as a man of unmitigated evil is frequently inaccurate and often misleading, resulting in parents failing to appreciate that the child abuser may be someone with a kind and pleasant appearance, capable of warmth, affection and generosity and of intellectual and professional worth. This benign and unthreatening image can be applied to many men who abuse, not just clergy, and is a key factor in abuse being allowed to continue undetected for long periods of time.

People who abuse children sexually are often assumed to be suffering from a classified psychiatric condition known as 'paedophilia'. This condition is categorised by the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, 4<sup>th</sup> Ed. (DSM-IV), as involving fantasies about sexual activity by an adult with a prepubescent child. There are, however, some variations within this categorisation. Some individuals prefer females, usually 8 to 10 years old. Those attracted to males usually prefer slightly older children. People attracted to post-pubescent children are known as ephebophiles, although this distinction is not generally made in Europe. Some perpetrators are attracted to both sexes. While some are sexually attracted only to children, others are sometimes also attracted to adults. One of the outstanding characteristics of paedophiles or ephebophiles is their capacity to rationalise and normalise their sexual fantasies and activities; another is their propensity to form associations which facilitate contact with like-minded people and

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<sup>18</sup> As already stated at p.6 of this Report, the Inquiry has not used gender neutral language in the discussion that follows.

<sup>19</sup> SAVI Report, 2002.



promote paedophilic literature. The Inquiry has been informed that the distinction between paedophiles and ephebophiles is not useful, nor is the sexual orientation of the priests concerned particularly relevant. The main point for consideration must be the abusive behaviour and the fact that the perpetrators prioritised their desires over their doubts or inhibitions and over the safety and welfare of children.

Overall, the literature searches and consultations carried out by and on behalf of the Inquiry would lead it away from associating child sexual abuse solely with issues such as sexual orientation, celibacy, sexual dysfunction, relationship problems, traumatic childhood experiences, previous victimization, loneliness, isolation, problem drinking, immaturity or other social or psychological factors. Any of the above features could be associated with most of the incidents reported; however, focusing on single causes fails to acknowledge that many people, including priests, who experience these factors in their lives, do not abuse children.

### **The Process of Child Sexual Abuse**

It is generally agreed that child sexual abuse rarely consists of a once-off incident or a chance occurrence, but is ordinarily the result of a lengthy and well-planned grooming process on the part of the offender. It can be argued that the process starts well before the incident of abuse and consists of a combination of factors and circumstances that the abuser creates. The abuser may contrive to place himself in situations where he will have frequent contact with children. Two examples are: joining a profession or becoming involved in an activity, e.g. youth work or sporting activities, that will bring him into contact with or place him in positions of responsibility over children; or, joining or befriending a family with children. The abuser will often target particularly vulnerable children with interests that he, the abuser, can satisfy which will draw the victim into a close relationship with him. This can lead to a form of emotional blackmail whereby the victims may be confused into thinking that they themselves are responsible for the abuse.

Finkelhor,<sup>20</sup> an acknowledged international expert in child sexual abuse, has proposed four pre-conditions that facilitate this gradual initiation. These are (i) motivation to abuse, (ii) overcoming internal inhibitions, (iii) overcoming external obstacles, and (iv) overcoming the child's resistance.

A slightly different conceptual framework called "The Spiral of Sexual Abuse"<sup>21</sup> has provided a useful clinical tool for working with sex offenders. According to this model, the behavior begins when a perpetrator develops, or becomes aware of, a sexual interest in children. It describes how perpetrators, when confronted, will deny, rationalise and minimise their actions, so that the normal moral inhibition that prevents people from acting on their arousal is overcome. Fantasising about sexual contact with children further reinforces their arousal and their cognitive-distortion through a type of behavioral conditioning.

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<sup>20</sup> Finkelhor D (1984) *Child Sexual Abuse: New Theory and Research*

<sup>21</sup> Sullivan J. (2002). *The Spiral of Sexual Abuse: A conceptual Framework for Understanding and Illustrating the Evolution of Sexually Abusive Behaviour*. NOTANews, 41:17-21

The next step is realising the fantasy by preparing or 'grooming' a child by, for example, giving him sweets or special attention but also by intimidating him. This process can also include building up, for other people, an image or reputation of the child as an attention seeker or troublemaker, who is subsequently less likely to be believed should he allege abuse. The gains which perpetrators experience from abuse will vary from sexual excitement and satisfaction to enjoying a sense of power and control.

The term "cognitive distortion" is commonly used to describe the type of rationalisation which allows someone to go beyond barriers set by guilt or fear in this type of situation. Thus the spiral continues.

In many instances, the only people who know about the abuse are the child and the abuser, and this situation may continue for a prolonged period. Evidence shown to the Inquiry illustrated how cognitive distortions operated by priests are particularly strong, given the conflict that exists between their abusive behaviour and their spiritual aspirations. Rationalisations used by some of them are particularly extreme, for example, that God, in calling them to the vocation of priesthood, had done so in the knowledge that they suffered from certain human weaknesses. This device served as a pardon for their abusive behaviour. They tended to see the abuse on a scale which when weighed against all the good they did in their ministry, could be excused and forgiven.

### **Impact of Child Sexual Abuse**

Child sexual abuse is, according to studies, linked with depression and post-traumatic stress disorder, emotional and behavioural problems, interpersonal relationship difficulties and suicidal behaviour in both childhood and adult life, which places children at further health and emotional risk.<sup>22</sup> It is recognised that where child sexual abuse is perpetrated by a clergyman, its impact on the victim can have additional consequences such as a loss of faith and an alienation from religion. Many victims have spoken of the profound sense of loss this has caused. Research on clerical sexual abuse carried out in Ireland indicates that when victims reported their abuse and received an inadequate response from church authorities, they experienced re-traumatisation.<sup>23</sup>

Many members of the diocesan clergy in Ferns have indicated to the Inquiry that they had no appreciation of the impact of child sexual abuse on the victims. This was also a view expressed by individual clergymen in "Time to Listen". It has been a very strong feature of recent educational initiatives undertaken by the Diocese of Ferns to emphasise the horrific impact such abuse has on victims.

The question is asked why children, who were being abused by priests in Ferns, did not confide in their parents or other trusted adults who would have been in a position to protect them and prevent such abuse from recurring. We know from research

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<sup>22</sup> Jones, D. P. H. & Ramchandani, P. (1999) *Child Sexual Abuse: Informing Practice from Research*. Abingdon: Radcliffe

<sup>23</sup> Time to Listen: Goode et al, (2003).

evidence<sup>24</sup> and from the evidence to this Inquiry that only a minority of children who are abused will tell a protective adult, and the unpalatable reality is that reported and treated cases are the exception rather than the norm. The reasons for this are numerous but include: intimidation generated by blackmail or threats, fear of being disbelieved and guilt or dread of official intervention both for themselves and for the abuser. This reluctance to speak about sexual abuse is not confined to the victims of clerical abuse but is a recognized factor in all sexual abuse situations. Studies show that people abused a long time ago are more likely never to have revealed that abuse to anybody (over 82% of men aged 70+ reducing to over 55% for men aged 18 – 29; women have a higher rate of disclosure through all age groups).<sup>25</sup>

What are termed ‘corruption’ and ‘entrapment’ can inhibit a child from disclosing child sexual abuse.<sup>26</sup> Drawing children into secrets, colluding with them about what stories to tell and excuses to make, can force a child to assume some responsibility and culpability for the sexual relationship. The Inquiry was told how, in Ferns, some young boys were seduced with alcohol and pornographic material by priests, which they were then reluctant to report to their parents for fear of getting into trouble.

From speaking with victims of child sexual abuse, it appears to the Inquiry that children abused by priests, particularly during the decades prior to the increased awareness of child sexual abuse and the development of a child protection system within the Church, were notably less likely to disclose their abuse to their parents. The very powerful position of the priest in the community and the reverence with which families held him militated against the child speaking about what had happened. The dearth of guidelines and awareness programmes left these children without information or knowledge on how to get help.

The pattern of disclosure in the Diocese of Ferns shows that only a handful of cases were reported to the Diocese prior to 1990 after which the numbers increased considerably. The lack of any proper diocesan reporting system prior to 1995 and the growing public awareness of this problem must be seen as factors that led to an increase in this reporting.

### **Assessment and Treatment of Alleged Abusers**

Professional assessment of a person’s sexual maturity, which is initially conducted over a two or three hour session by an experienced therapist, may identify unresolved sexual issues. Assessment will not identify whether a particular person has committed a particular offence but it will indicate whether further assessment or treatment is advisable. If a person admits to having a problem, assessment can help establish the extent of that problem. Difficulties arise when a person denies the activity complained of and denies the existence of a problem. A properly conducted preliminary assessment however, can significantly aid the diagnosis of sexual problems in such a person, indicating a need for more intensive assessment which may take up to a month to complete.

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<sup>24</sup> SAVI Report, 2002

<sup>25</sup> SAVI Report 2002 p121 et seq

<sup>26</sup> Wyre in Itzen 2000.

Whilst the Inquiry has not conducted an in-depth analysis of Assessment and Treatment programmes, it is clear from the material made available to it that medical and psychological thinking has changed radically over the past twenty years. At one time it was believed that men who abused children were suffering from a medical disorder which was capable of being cured. From the mid-1990s onwards it was recognised that a sexual propensity for children was not something that could be cured but it was believed that it could be controlled through medication and therapy.

The overall goal of sexual abuse treatment programmes is to prevent re-offending. Important elements of treatment include establishing the pattern of behaviour that led to the abuse, the degree of acknowledgement by the perpetrator, the fantasies held and operated by him and the level of empathy for his victims displayed by him at the beginning of and during therapy. Treatment programmes also focus on the assertiveness and self-sufficiency of the abuser and can include social skills training. Work is done in one to one and group settings. A battery of psychometric tests administered at the beginning and end of the treatment seeks to establish whether there is any significant change during the process.

Treatment will typically involve a twelve-month period of intensive therapy followed by a number of years of counselling and support. No time limit is placed on the ongoing care that may be involved as it will vary from person to person.

### **Returning Alleged Abusers to Ministry**

A propensity to abuse children is not necessarily established by a single act of abuse. This is particularly true where the abuse occurred many years previously during the youth of a perpetrator who subsequently followed a lifetime of normal behaviour. The Expert Group advised, that with his co-operation, any person with such a propensity could be treated with a reasonable prospect that after the treatment he would not repeat the abuse. Unfortunately, that measure of success could not be guaranteed. Moreover, even successful treatment did not eradicate the underlying propensity to abuse.

This pessimistic view represented a radical departure from opinions expressed by other experts up until the late 1990s when psychiatrists were prepared to recommend that priests be returned to ministry. Such recommendations were sometimes accompanied by the caveat that the priest be subject to certain restrictions on their contact with children and to monitoring, but this was not always the case.

The Expert Group could not give definitive statistics on the number of offenders who re-offend after treatment but the view was unanimous that a properly constituted treatment programme did offer the best chance of preventing further abuse. These treatment programmes have been and continue to be, widely availed of by the Diocese of Ferns for the past twenty years. They are costly both in terms of time and of money but represent the best prospect of preventing further abuse of children.

It does appear that the treatment programmes made available by the Diocese of Ferns to priests acting under its aegis are not available to the community generally because of the high cost involved. It is recognised by the Inquiry that sex abusers may be

returned to society after serving a prison sentence without receiving proper or continuing treatment.

The question has been raised as to whether Roman Catholic clergy display a greater propensity to sexually abuse children than the population as a whole. It would be impossible to give any estimate of the percentage of priests who may be abusing children, any more than it would be possible to assess the number of other professionals who may be child abusers. However, the high incidence of clerical sexual abuse of boys reported to this Inquiry and in other surveys of clerical child sexual abuse is striking.

The Expert Group was unanimous in its view that homosexuality is not a factor in increasing the risk to children. It would be seen as a factor in increasing the risk to adolescent boys but no more than a heterosexual priest would be a risk to adolescent girls. They advised that it was better to see child abuse for what it was and not focus on issues of sexual orientation or victim profile. In terms of treatment and recidivism, the sexual orientation of the child abuser makes no material difference. Mr Joseph Sullivan stated to the Inquiry: *"It's easy to make the link between someone abusing boys and being homosexual but would we call someone who sexually abuses 12 and 13 year old girls heterosexual? No we wouldn't; we'd call them a child abuser."*

The reported prevalence of child sexual abuse by religious in Ireland according to the research undertaken by SAVI<sup>27</sup> is 3.2% of all cases of child sexual abuse reported to them. It is higher for abused boys (5.8%) than abused girls (1.4%). In absolute numbers, four times as many boys as girls were reportedly abused by religious.

The number of priests that have come to the attention of this Inquiry operating under the aegis of the Diocese of Ferns and against whom allegations of child sexual abuse were made in accordance with the interpretation of the Terms of Reference of this Inquiry is 21<sup>28</sup>. The Inquiry did not consider allegations received against members of religious orders or seminarians who did not proceed to ordination in the Diocese of Ferns or, against priests who, although in ministry in the Diocese of Ferns were ordained for another Diocese<sup>29</sup>. A very high number of allegations of abuse referred to the period 1975 – 1985.

### **Mandatory Reporting**

Mandatory reporting would place a legal requirement on professionals involved with the welfare of children, such as doctors or health workers, to inform Health Boards and the Gardai if they know or suspect that a child is being abused. The Law Reform Commission in 1990 argued that the obligation to report should arise when the mandated reporter *knows* or has *good reason to believe* that child abuse has occurred.

Mandatory reporting emerged as a major issue in Irish child care management in the 1990s. The Law Reform Commission Consultation Paper and the subsequent Law

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<sup>27</sup> SAVI (2002)

<sup>28</sup> This figure does not include those priests outlined in the Appendix to this Report

<sup>29</sup> 248 priests were ordained in the Diocese of Ferns since 1932, the ordination date of the first priest against whom an allegation was made. There were 130 ordained priests in the diocese in 1932.

Reform Commission Report on Child Sexual Abuse 1990<sup>30</sup> favoured the enactment of legislation requiring doctors, psychiatrists, psychologists, health workers, probation officers, social workers and teachers to report to the Director of Community Care and Medical Officer of Health within the relevant Health Board, cases of suspected child sexual abuse. It must be recognised that this was a controversial recommendation and not a unanimous one on the part of the commissioners. The recommendations of the Law Reform Commission were not extended to any church or religious organisation. In any event, the recommendations of the Commission in this regard have not been given legal effect by the Oireachtas.

Following the publication of the Report of the Kilkenny Incest Investigation in 1993, the Department of Health issued a policy document in 1996 entitled "Putting Children First: A Discussion Document on Mandatory Reporting" which summarised the advantages and disadvantages of mandatory reporting and invited submissions on the subject from all interested parties. Following the consultation process, and in response to the majority view opposed to mandatory reporting, the government decided against introducing it. Instead, it proposed a revised template for the delivery of child protection services, including the appointment of an Ombudsman for Children, the appointment of child care managers, revision of the child protection guidelines, compulsory child protection polices in government funded children's services and the appointment of area child protection committees.

In 1998, the Irish government was challenged by the UN Committee on the Rights of the Child in relation to their commitment to mandatory reporting, and undertook to reconsider the matter. No further developments have occurred.

One of the concerns which arose from the recommendations for mandatory reporting was the vulnerability of reporting persons to accusations of defamation. In order to address this difficulty and make it easier for members of the public and professionals to refer their concerns to the appropriate agencies, the Oireachtas passed The Protections for Persons Reporting Child Abuse Act 1998. It gives protection from civil liability to persons who have reported child abuse unless it is *'proved that he or she has not acted reasonably and in good faith in forming that opinion and communicating it to the appropriate person.'* False reporting could result in fines up to £15,000 or a term of imprisonment up to 3 years.

The most significant feature in relation to reporting clerical child sexual abuse was the obligation voluntarily assumed by every bishop in the State who adopted the 1996 Framework Document, to report all known or suspected cases of child sexual abuse to An Garda Síochána and the Health Board. Under this document no guarantee of confidentiality can be given to a complainant. However, in the Diocese of Ferns, the diocesan delegate who is charged with the function of reporting, will respect where possible the confidentiality of a complainant and not disclose his or her identity when reporting to the State authorities where that complainant has expressed such a desire.

It is the view of the Inquiry that the maximum confidentiality should be extended to the victim consistent with achieving protection for other children at risk.

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<sup>30</sup> Report on Child Sexual Abuse. LRC 32 – 1990.

The Health Boards and An Garda Síochána also have formal arrangements with regard to sharing information on child sexual abuse suspicions or complaints of which they are aware.<sup>31</sup>

-3-

## LEGAL AND MANAGERIAL STRUCTURES

The Ferns Inquiry examined the organisation of the Roman Catholic Church, the South Eastern Health Board and An Garda Síochána in terms of both their management structure and their legal framework. This was necessary in order to properly assess the adequacy and appropriateness of the organisational response to child sexual abuse allegations.

### 3.1 THE CATHOLIC CHURCH

#### **The Church as an Organisation**

The Inquiry has examined the organisation of the Catholic Church to ascertain the extent to which it is possible for the Catholic Church in general, and the Diocese of Ferns in particular, to respond to allegations, rumour or suspicion of child sexual abuse against members of the diocesan clergy.

#### **Hierarchical Structure**

The structures and organisation of the Catholic Church are governed by the Code of Canon law.

**The Pope**<sup>32</sup> is the Supreme Legislator for the Catholic Church and all of its members; only he can create and change law on a universal (or worldwide) level. Many of these laws are found in legal codes or in papal decrees.<sup>33</sup>

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## **Seminary Admission and Formation**

The issue of how entrants to the priesthood are selected, screened and trained has been identified to this Inquiry as an area that has undergone considerable change in response *inter alia* to the crisis of child sexual abuse that has occurred in the Catholic Church in recent years.

A former dean of St Peter's seminary told the Inquiry that most clerical students were sent to St Peter's by the Bishop of Ferns, the Bishop of Down and Connor and a few by Bishops of other dioceses. Where referred by a Bishop, a candidate was not vetted before admission. Two priests described to the Inquiry that they entered the seminary in Maynooth in 1961 with absolutely no preliminary screening at all. Candidates were admitted on the basis that they had an interest in becoming a priest and their suitability was reviewed in the course of seminary training. In "Time to Listen", a lack of seminary training on the issue of sexual abuse of children by priests was particularly identified as a failing<sup>37</sup> and this has been confirmed by a number of clerical witnesses who came before this Inquiry.

Dr Conrad Baars, a psychiatrist with many years experience in treating priests, presented a research paper to the 1971 Synod of Bishops in Rome in which he identified emotional and psychosexual immaturity, which manifested itself in hetero- or homosexual activity, as a serious problem for ordained priests. This research was confirmed by subsequent studies and in 1976, Fr Eugene Kennedy, in a comprehensive study commissioned by the National Conference of Catholic Bishops, found that a significant number of American priests were emotionally or psychologically underdeveloped.

Fr Kennedy reported that the underdeveloped priests were generally "allowed" to maintain inappropriate or even destructive behaviour patterns or lifestyles due to a lack of adequate and effective guidance and supervision. Any mentoring of young priests centred on the performance of their priestly duties and did not focus on their total human development.

The Inquiry understands from senior staff members who were in St Peter's at the time, that at the time when Fr Sean Fortune entered the seminary (1973), no screening of those candidates recommended by their Bishops occurred. The Inquiry understands that Fr Sean Fortune was not himself sponsored by a Bishop when he entered St Peter's but was subsequently adopted by the Diocese of Ferns. His attendance at a Christian Brother Juniorate immediately prior to his attendance at St. Peter's allowed him to enter the seminary without assessment. The Inquiry has seen extensive questionnaires completed by serving members of the clergy who monitored Sean Fortune during summer placements whilst he was still a seminarian. Whilst serious personality defects were identified by some of these assessments, there was no identification of any sexual problems at that time. Nevertheless, the Inquiry is satisfied that Sean Fortune did engage in child sexual abuse during his years as a seminarian and in spite of clear warning signs from his own behaviour apart from any warnings that may have been communicated to the authorities in St Peter's, this did not prevent his ordination.

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<sup>37</sup> "Time to Listen" p61



Similarly, grave doubts were expressed about Fr James Doyle's suitability for the Diocesan priesthood but his ordination was proceeded with in spite of this.

Norms for Priestly Training in Ireland were promulgated by the Episcopal Conference in 1973 and they stated:

*32. As far as possible the suitability of a candidate for a seminary should be assessed before admission.....*

*A thorough medical examination should be made.....*

*A thorough psychological assessment should also be made, before acceptance if possible, otherwise shortly after, to ascertain whether he has the necessary qualities of personality for exercising the duties and sustaining the obligations of the life he has chosen as well as to help him with his own development.*

*34 Each student's position should, with his own cooperation, be kept under review so that a student unsuited to the priesthood may be enabled as soon as possible to recognise this fact, and may be helped to choose another state in life.*

The Inquiry has spoken to former presidents, deans and senior staff members in St Peter's and examined files furnished to the Inquiry in respect of priests who attended the college who were accused of child sexual abuse. The Inquiry could not identify any reference to these norms or their implementation in St Peter's. Had they been properly implemented, it is difficult to understand how the ordinations of clearly unsuitable men were allowed to proceed.

The Inquiry has been informed that from the early 1980s more emphasis was placed on the personal development of seminarians in St. Peter's, and in 1988 a stringent interview process was introduced prior to admission of all candidates. A course on personal formation given by qualified psychologists was also introduced from 1989.

### **Current Selection Procedures for Maynooth Seminary**

All candidates for the diocesan priesthood in Ireland now attend seminary training in Maynooth College in Kildare or in the Irish College in Rome. The Inquiry is indebted to Monsignor Dermot Farrell, President, St Patrick's College Maynooth, who offered a full account of the present arrangements regarding seminary admission to Maynooth. Monsignor Farrell first pointed out that it was the primary responsibility and task of a Bishop to examine the suitability of candidates for the priesthood and to select them (Can. 241). The canonical requirements governing the admission of candidates to the seminary state that "*the Diocesan Bishop is to admit to the major seminary only those whose human, moral, spiritual and intellectual gifts as well as physical and psychological health and right intention, show that they are capable of dedicating themselves permanently to the sacred ministries*". The Inquiry notes that this canonical power is now exercised with the assistance of professional advice.

In practical terms the Inquiry is informed that it is considered necessary to consider the following areas when assessing the suitability of seminarians:

- *Life and family history;*
- *Age: a candidate must be at least eighteen years old;*
- *Faith History: there must be a reasonably clear understanding of the priesthood;*
- *Capacity for Friendship: candidate must relate to men and women in a healthy way;*
- *Academic Suitability: he should have passed five subjects in his Leaving Certificate;*
- *Sexual History;*
- *Medical History;*
- *Transfer between Seminaries.*

With regard to sexual history the following issues are addressed:

- *An applicant who has been in a prior relationship should have concluded that relationship and have allowed for a significant period of time before being accepted by a Diocese. In the case of a candidate who has had a sexual relationship (heterosexual), a substantial period of celibate living should precede entry into the seminary;*
- *In a recently expressed judgement of the Congregation for Divine Worship and Discipline of the Sacraments, the Cardinal Prefect stated "The ordination to the Diaconate or to the priesthood of homosexual persons or those with a homosexual tendency is absolutely inadvisable and imprudent and, from a pastoral point of view, very risky... A person who is homosexual or who has homosexual tendencies is not, therefore, suitable to receive the sacrament of sacred orders." (Congregations Bulletin, December 2002). According to Dr Farrell, the College in Maynooth accepts the force of this reasoning and advice;*
- *If it becomes known that a seminarian is engaging in physical genital activity with another person while he is in formation, he is asked to leave immediately. Certain other kinds of behaviour are also inconsistent with celibate chastity e.g. engaging in flirtatious or seductive behaviour and dating. It goes without saying that being in possession of, or accessing, pornographic material (whether print, video, electronic, digital etc.) is completely incompatible with being a seminarian. It is also unacceptable to participate in or to advocate the gay subculture by which is meant allowing a seminarian to define his personality, outlook or self-understanding by virtue of same-sex attraction;*
- *Insofar as it is possible to determine, the older applicant should have achieved a successful integration of his sexuality and the younger applicant should have the capacity for such integration. Where there are clear contrary indications, the applicant should not be accepted;*
- *A competent person should take a full history of the candidate. Particular attention should be paid to the presence of sexual abuse, sexual acting out or sexual orientation problems etc;*
- *The child protection policy as set down by the Episcopal Conference should be fully complied with.*

Dr Farrell informed the Inquiry that Maynooth College recommends strongly that the bishop should consider a psychological assessment as an integral part of the admission procedure; it is the understanding of the Inquiry that this is generally done.

St Peter's seminary introduced such a screening process in 1988. This psychological assessment – a combination of written tests and interview – should be carried out during the initial selection process by a trained psychologist who is chosen by the individual bishop or diocese and again during the formation of the student. In addition, Maynooth College has for many years employed a trained counsellor whose ministry includes assisting candidates with their personal and emotional development for priesthood. If, for a just reason, a psychologist or a psychiatrist is required to furnish a certificate of a candidate's state of psychological health (can. 1051:1), one is called in from outside the seminary.

According to Dr Farrell, the past four decades have seen considerable development in the Church's approach to assessing and screening candidates for entry to seminary. The Conciliar document *Optatam Totius*, dealing expressly with the priesthood, outlines a broad range of criteria, which should be taken into consideration before accepting candidates: "*Each candidate should be subjected to vigilant and careful inquiry, keeping in mind his age and development, concerning his right intention and freedom of choice, his spiritual, moral and intellectual fitness, adequate physical and mental health and possible hereditary traits. Account should also be taken of the candidate's capacity for undertaking the obligations of the priesthood and carrying out his pastoral duties*". (OC III 6, 1965)

Less than a decade later, the magisterial documents began to advert to the need to carry out admission and selection procedures in "*accordance with modern psychological diagnosis*" but "*without losing sight of the complexities of human influences on an individual*" (*Directorium* Congregation for Catholic Education (#38/1974). This reference to the admissibility of recourse to psychology is gradually strengthened until eventually it is described by the *Ratio Fundamentalis Institutionis Sacerdotalis* (1985) as a resource which "*as a general rule*" should be availed of whenever the case merits.

Five years later the Holy See advised that candidates accepted for seminary should already display a "*balanced affectivity – especially a sexual balance which presupposes an acceptance of the other*". It reaffirmed that psychological assessments could play a useful role here.

These insights were incorporated into the *Irish Bishops Document of Child sexual Abuse: Framework for a Church Response* (1996). It states that the "*screening of candidates should normally include a full psychological assessment by an experienced psychologist well versed in and supportive of the Church's expectations for the priesthood and religious life, especially in regard to celibacy*".

Thus, much has changed in the screening process and in the overall formation of seminarians in the aftermath of the Second Vatican Council. Today a much greater emphasis is placed on screening for men who are able to live a life of chaste celibacy. In order to ensure that candidates possess the psycho-sexual-socio maturity necessary for priests today, Maynooth College has been providing more resources for students, which is a vast contrast to the situation 40 years ago. Celibacy formation is integrated into the entire seminary programme through conferences, formal lectures and advice from formation personnel, spiritual direction and the fulltime availability of professional counselling.

What it is clear from the foregoing is that celibacy and the ability of young men to live chaste celibate lives was one of the major issues addressed by church authorities in dealing with the growing problem of child sexual abuse within the Church.

Celibacy is the state of being unmarried. Chastity is the avoidance of all sexual activity outside the married state.<sup>38</sup> For a Roman Catholic priest, a vow of celibacy must also include a vow of chastity.

It must be remembered that the vow of celibacy taken by a priest is a conscious spiritual decision reinforced by prayer and faith. It is a vow that is sincerely meant in the majority of cases. If a man wishes to live his life as a Latin rite Roman Catholic priest, a vow of celibacy is mandatory.

The Expert Group was unanimous in its view that the vow of celibacy contributed to the problem of child sexual abuse in the Church. There have been important changes brought about in seminary selection and training with regard to assessing the suitability of men to adhere to a celibate lifestyle and to provide ongoing support in this regard. The Inquiry believes that such changes represent a response on the part of Church authorities to the growing awareness of the problem of clerical child sexual abuse.

Dr Patrick Randles, a senior therapist with the Granada Institute, is experienced in the assessment of candidates. He commented that in the past the standard of evaluation by psychologists had been quite variable and that for some it was a very quick assessment which sought to establish whether a candidate suffered from specific psychopathology. More recently according to Dr Randles, religious orders and dioceses have become more demanding with regard to the comprehensiveness they expect from an assessment. There is no definitive test which would assess a person's suitability for priesthood; although it is possible to identify psychological factors which would indicate unsuitability.

Mr Joseph Sullivan, formerly of The Lucy Faithful Foundation in Nottingham, pointed out that in the course of his research, he conducted a study of 41 professionals who had all been referred to him because of child abuse. Of these, 92.5 per cent said that they were aware by the time they were 21 years of age, that they had a sexual interest in children. This would indicate that when these men made the final step into their profession or vocation, they were aware of their attraction to children and this attraction was a motivating factor in their choice of career. It would, of course, be of vital importance if this attraction could be identified prior to their achieving a qualification that gave them access to children. Regrettably, the current state of knowledge in this area does not make it possible to assess with any degree of certainty whether a man was likely to be a child abuser. What can be assessed however is the level of maturity and awareness that a person has in respect of his or her sexuality. A sexually immature man may be a potential risk to children.

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<sup>38</sup> Walsh, H. A., "Mandatory Celibacy and Sexual Ethics in the Latin Rite of the Roman Catholic Church" *Electronic Journal of Human Sexuality*. Vol. 2, Feb 6, 1999.

Whilst the rigorous standards now in place in Maynooth would be of assistance in ensuring that only men who are emotionally, intellectually and sexually mature are admitted for ordination, the reality is that very few diocesan priests are ordained in Ireland in any year. Increasingly, parishes are welcoming priests ordained abroad to replace retiring clergy. Priests who are ordained in seminaries outside Ireland should be subjected to the same level of assessment as has been undertaken by seminaries such as Maynooth.

### Canon law

The right of a religious denomination to regulate its own affairs is recognised by Article 44.2.5 of the 1937 Constitution of Ireland, which states: “*Every religious denomination shall have the right to manage its own affairs, own, acquire and administer property, moveable and immovable, and maintain institutions for religious or charitable purposes*”.

Until its amendment in 1973, Article 44.1.2 of the Constitution referred to the special position of the Catholic Church in Ireland. The removal of this provision by referendum means that the Catholic Church in Ireland now stands equally with all other religious denominations in the State and enjoys the same constitutional guarantee of freedom and no more.

Vatican Council II tackled the matter of Church/State relations in Chapter IV of Part II of the Pastoral Constitution on the Church in Today’s World, *Gaudium et Spes*. Catholic teaching in this area emphasises the principle that the temporal and the religious are two distinct competences with respective powers and faculties. It is summarised in *Gaudium et Spes* as follows: “*The political community and the Church are autonomous and independent of each other in their own fields.*”

Canon law has a long history, having its roots in the Old and especially the New Testament. Various connections of norms can be found during the first three centuries of the Christian era (e.g., the didascalia). In the 6<sup>th</sup> century, the Emperor Justinian compiled collections of law, to be called the *Corpus Iuris Civilis*, which included some Canonical norms. After the Dark Ages this work inspired Canonists to collect and organise many earlier collections of Canonical norms and so to form material for the *Corpus Iuris Canonici* which was the standard for Canonists from the Middle Ages until Pope Benedict XV promulgated the first Code of Canon law in 1917 following the model of the Napoleonic Code. After the reform of the Second Vatican Council, Pope John Paul II promulgated the revised Code of Canon law for the Latin Church in 1983.

The Irish legal system recognises Canon law as a scientific legal system and body of law, both substantive and adjective. It is a body of rules emanating from a legislative authority for the ordering of the conduct, regulating the social and domestic relations and punishing the disobedience of those who recognise that authority, and which speaks and gives judgement through its own tribunals. Canon law regulates the relationship between a Bishop and a priest of his diocese. As both Bishop and priest, by their ordination agree to be bound by Canon law, the relationship between them might be seen, in practical terms, as consisting of a contract comprising the material provisions of Canon law. The strict legal position is otherwise. Both parties are seen

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#### **The Church as an Organisation**

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#### **Hierarchical Structure**

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The **College of Bishops** is also the subject of supreme power in the Church but only in union with the Roman Pontiff. The College of Bishops exercises its power over the universal Church in Ecumenical Council. Its decrees do not oblige unless approved by the Roman Pontiff.

A **Diocese** is a portion of the faithful, normally but not exclusively in a given territory, which is entrusted to the pastoral and spiritual care of the Bishop, with the co-operation of his priests. The **Bishop** acts as a vicar of Christ in his diocese and not as a vicar of the Pope; he does not act as a delegate of a higher authority and he can exercise his power personally and directly for the benefit of the people entrusted to his care. A Bishop can make “particular law” for his subjects as long as this law is in harmony with the universal law of the Church and/or divine law.

*“The diocesan bishop governs the particular Church entrusted to him with legislative, executive and judicial power, in accordance with the law”* (Can. 391.1). The Bishop exercises legislative power himself. He exercises executive power either personally or through vicars general or episcopal vicars, in accordance with the law. He exercises judicial power either personally or through a judicial vicar and judges, in accordance with law.<sup>34</sup> Bishops may consult with senior clerics in his diocese but ultimately all decisions rest with the Bishop who is not bound by any advice received.

There are 26 dioceses in Ireland and 33 bishops. These bishops meet as **The Irish Episcopal Conference** four times a year. Bishops are not bound in law or convention by decisions of the Episcopal Conference which cannot usurp the proper authority of the bishop to govern his diocese. The bishops are bound only when the Episcopal Conference issues a norm in those cases where the Code of Canon law expressly gives the Conference the authority to do so or when it has been authorised by the Holy See. Alternatively, the Episcopal Conference may request the Holy See to give “recognitio” to any new norms it may wish to be binding in all dioceses in Ireland. It is noteworthy that the Framework Document setting out guidelines for the handling of child sexual abuse in dioceses in Ireland, which was passed by the Bishops’ Conference in 1996, has not been given a “recognitio” by the Holy See to date and has, therefore, no legal status under Canon law.

The Inquiry has been advised by Canon lawyers that a bishop in his diocese is autonomous and every Bishop is accountable directly only to the Holy See. A Bishop makes a yearly report to Rome and every five years visits Rome to make an “Ad Limina” or “Quinquennial” report. Specific questions, confidential issues or problems are discussed with the relevant Congregation in Rome, such as, for example the Congregation of Clergy or the Congregation for the Doctrine of the Faith. The quinquennial and annual statistical reports contain little information about the day to day running of a diocese and there is no overview of a Bishop’s performance.

The supervisory role of an **Archbishop** (metropolitan) has been described by canon lawyers as “very very minor”. Interventions by metropolitans, though rare, do occur occasionally. This is particularly the case where a concern arises involving the

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Canon 333.3: There is neither appeal nor recourse against a judgement or decree of the Roman Pontiff.

<sup>34</sup> Canon 391.2

behaviour of a Bishop. The metropolitan with responsibility for the Diocese of Ferns is the Archbishop of Dublin.

The Bishop must appoint a **Vicar General** to assist him in the governance of the whole diocese and to deputise in his absence. His authority is the same as that of a bishop although it must be exercised in the name of the Bishop. **Vicars Forane** or **Deans** may also be appointed by the Bishop. Their function is to see that clerics in their district lead a life befitting their state and that spiritual assistance is available to them. According to the Inquiry's interpretation of Canon law one of the primary functions of the vicar forane is to ease the administrative burden of the Bishop; it is not the function of the vicar forane to make decisions on his behalf.

Canon law requires the establishment of a **Council of Priests** to assist the Bishop in the governance of the diocese by providing advice and information to him when requested to do so or when required by law.

The Bishop is the proper pastor of the diocese as a whole; **the parish priest** is the proper pastor of the parish, under the authority of the Bishop. Although Canon law describes the parish priest as answerable to the Bishop, he is not simply his delegate but enjoys ordinary authority within his parish.

The appointment of a parish priest is the function of the diocesan Bishop. In practice in Ireland, such an appointment is on the basis of seniority unless a priest has provided particular services to the Diocese in education or advisory matters in which case he would be considered for early appointment to a parish.

The diocesan Bishop may freely appoint an **assistant priest or curate** (Can. 547) after consulting with parish priests or the vicar forane where he deems it appropriate. The assistant priest or curate is required "*by common counsel and effort with the parish priest and under his authority, to labour in the pastoral ministry*"<sup>35</sup>.

In 'Time to Listen' priests identified the hierarchical structure of the Church as an impediment to dealing effectively with the problem of clerical child sexual abuse. Priests are answerable to their Bishop who in turn is answerable only to the Pope. There is no prescribed middle management as would be found in most other organisations.

Priests have a duty of obedience to and respect for their Bishop. Part of the Oath of Freedom and Knowledge taken by every diocesan priest at his ordination states "*I bind myself to carry out with devotion, according to the laws of the Church, all that my superiors may command, or the service of the Church may ask*". However, in the day to day running of his parish, a priest is not subject to either direct control or monitoring by his Bishop and this has been a crucial factor in the ability of certain priests to apparently continue sexually abusive behaviour undetected for many years. The present Apostolic Administrator in Ferns, as discussed below, has attempted to address this issue.

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<sup>35</sup> Canon 545.1



## **Overview of the Diocese of Ferns**

The Diocese of Ferns was founded in 598 AD by St Maoldhóg (Aidan). It now consists of 49 parishes covering most of Co Wexford and parts of Co Wicklow. It stretches in the north from Annacurra outside Aughrim to the south at Fethard-on-Sea. There were 133 Ferns diocesan priests in 2005. 92 of them hold appointments with the Diocese and 11 outside the Diocese. There are 18 retired priests, 8 priests out of ministry and 4 on sabbatical leave. The Diocese has a Catholic population of between 105,000 and 110,000. This increases to over 150,000 during the holiday period between May and September, mainly due to an influx of visitors to holiday homes, hotels and caravan parks.

The general structure of a Roman Catholic parish in Ireland means that a curate would report directly to his parish priest and the parish priest would report directly to his bishop. The Diocese of Ferns has a particular structure going back to famine times, which treats curacies as what are termed "half parishes". This arose from a decision of the Bishop at the time that each community where there was a church should have a priest resident in it. All of the 92 priests who are in active ministry in the Diocese of Ferns report directly to the bishop rather than through a parish priest. During the 1980s there were over 150 priests ministering in the Diocese at any one time.

### **Administration in the Diocese.**

The administrative resources available to the Bishop of Ferns are extremely modest. During the episcopacy of Bishop Herlihy (October 1964-April 1983), the Bishop was assisted by one priest who acted as his liturgical master of ceremonies, his secretary and his driver. The Bishop dealt personally with the majority of correspondence and kept few copies or records of any description. Some changes were introduced by Bishop Comiskey on his appointment in April 1984. (An administrator, Monsignor Shiggins, was appointed between May 1983 and April 1984 pending the appointment of the new Bishop). He retained his secretary who was a layperson who had worked for him when he was auxiliary Bishop in Dublin in addition to Fr Tommy Brennan who as diocesan secretary carried out clerical duties as well as acting as liturgical master of ceremonies.

A small but revealing fact is that within a week of arriving in Wexford, Bishop Comiskey's secretary purchased a filing cabinet in order to establish a personal file on priests in the Diocese. Forms were created and circulated inviting all diocesan priests to provide more detailed information than that which had previously been available to the Bishop. Bishop Comiskey informed the Inquiry, and other witnesses confirmed, that the only documents which he received in relation to the priests of the diocese would have numbered less than twenty and would have fitted into a shoe box. Although the Inquiry believes the documentation was more numerous than that, it is clear that the records were inadequate and that this inadequacy was apparent to Bishop Comiskey whose many qualifications include a degree in management studies.

In practice, the day to day administration of the ministry within a parish traditionally has not called for or received the intervention of the bishop. Contact with the parish priest was limited and contact with a curate was even less frequent.

Bishop Comiskey, though not himself a priest of the diocese, was warmly received as a young, energetic and progressive Bishop and arranged meetings with all of his priests. Those who worked closest to Bishop Comiskey spoke highly of his ability and energy but did recognise that he developed – as he publicly recognised – a serious problem with alcohol abuse. This problem and the associated depression resulted in his absence from the diocese for significant periods of time and even when he was present, it unquestionably affected his capacity to deal with the many problems which were placed before him.

### **Management of the Diocese**

The bishop is free to organise the day-to-day running of his diocese as he sees fit, provided he operates within Canon law. As a consequence, it was reported to the Inquiry that the way in which a Bishop managed his diocese was to a certain extent dependent on the personality of the individual Bishop. This is due to the absence of common formal management systems and procedures across dioceses. In addition, there is no central authority in Ireland to whom individual Bishops are accountable or to which they can turn for advice or support. Bishops are not obliged to follow the advice of the Episcopal Conference which has no supervisory role over them.

This is an important point given the Terms of Reference of this Inquiry: until the 1996 Framework Document, there was no uniform system in Ireland for dealing with allegations of child sexual abuse. Each Bishop had to formulate his own approach to this problem within the context of the Canon law. As will be outlined below, there was no clear guidance on the correct application of Canon law to priests who offended, particularly those priests against whom no criminal conviction had been secured and who were denying the allegations. The diocesan response must be seen in the context of such a managerial structure. Even since the publication of the Framework Document, the application of the Guidelines and in particular the threshold at which the Guidelines are activated is a matter for individual Bishops acting alone. This Inquiry recommends that where such a body exists in a diocese, Bishops should consult **the Inter-agency Review Committee**<sup>36</sup> when making these decisions in future.

It is not the role of this Inquiry to comment in any way on the adequacy or otherwise of the management structure in the Diocese. Rather, its function is to identify what those management structures are and indicate where they have an impact on the church response to allegations of child sexual abuse.

It is evident to the Inquiry that since his appointment, Bishop Eamonn Walsh has adopted an active managerial approach to identifying and dealing with allegations of clerical sexual abuse of children. The priority he accorded to child protection is striking, as is the effort he put into communicating with all parties involved. The Inquiry hopes that such an approach and practice is formally adopted as management practice for the future, but is concerned that another Bishop appointed to the Diocese of Ferns would be free to adopt an alternative course of action. The Inquiry welcomes the introduction of a more active middle-management role for the vicars forane in

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<sup>36</sup> See p 42

supervising and monitoring the priests of the diocese, so that issues of child protection can be addressed efficiently and in a transparent way.

Priests undergo lengthy seminary training which should equip them to operate without a high degree of supervision in everyday matters. Under Canon law, such a supervisory role is not provided for but neither is it prohibited. However, it has been stated to the Inquiry that the practice of curates reporting directly to Bishops as occurs in the Diocese of Ferns has, in the past, left them feeling isolated, unsupported and unsupervised in a role for which many of them felt ill-prepared. Effectively, a Bishop only intervened when a complaint was made about a curate. Priests with free access to children and vulnerable adults operated under a structure with no supervisory provision. Priests have described to the Inquiry a culture which did not encourage reporting of complaints, rumour or suspicion against fellow priests to any diocesan authority.

In recognition of this, church authorities are developing norms of behaviour for priests in their interaction with children which will allow a measure of supervision by peers, the community and their bishop. In the context of this Inquiry, professional standards are particularly directed to ensuring that activities, relationships or conduct which might imperil the safety or welfare of children be avoided. In addition, it is necessary that colleagues and the community generally would know of these standards, recognise any departure from them and have a transparent procedure for making complaints where transgressions occur.

The Inquiry endorses the recommendation in 'Time to Listen' that Bishops should receive leadership and management training to enable them to fulfil their managerial role.

The Church has a responsibility to ensure that systems are in place to protect the congregation served by its priests and to ensure accountability of each priest to his bishop. The Inquiry is informed that the Apostolic Administrator or the Vicars of the Diocese of Ferns have established a number of methods for ensuring that priests are supported and accountable in the Diocese. These include:

- a. Priests ordained less than five years meet on an on-going basis with members of the Diocesan Vocations Committee. The primary role of these meetings is to be supportive of newly ordained priests and to monitor their responses to the challenges and opportunities that their new roles bring.
- b. The practice for some years now has been to appoint newly ordained priests to town parishes where they live with other priests and take on an established role with specified duties. Their work there is overseen by the parish priest or administrator with whom they work, and in all cases either live beside or with other priests.
- c. ....
- d. The diocesan offices provide to priests updates of procedures on a regular basis regarding aspects of their ministry, such as school management, celebration of sacraments, child protection policy and code of conduct, on-going education of those administering, missionary and development activities

of the church, property and financial matters. Adherence to approved procedures and norms is expected and the policies and codes guide the diocesan response where problems arise.

- e. The vicars forane are asked to individually meet with the priests of his area yearly and more regularly where appropriate, to enquire as to the priest's outlook and well being, his current appointments and so forth. The vicar briefs the apostolic administrator on any matter giving rise to concern.
- f. Regular meetings of the vicars with the apostolic administrator occur, at which matters relating to parishes and priests are discussed and addressed.
- g. Retreats and seminars are organised for priests. At these seminars, current issues are addressed and specialised topics are examined.

The Inquiry did not conduct an in-depth analysis on whether the way in which diocesan priests lived and worked was a contributory factor in the apparently high number of priests who abused children in the Diocese of Ferns over the past thirty years. The Expert Group and individual priests spoken to by the Inquiry did identify the relative loneliness and isolation of the diocesan priesthood as presenting particular challenges for young men. It would appear to the Inquiry that this difficulty is now being responded to by Church authorities in Ferns.

In the absence of regular meetings and performance reviews between priests and their bishop, the flow of information in the Diocese during the episcopacy of Bishop Brendan Comiskey was necessarily irregular and unsystematic. A Bishop is to a large extent dependent upon information provided by his priests or by parishioners and the Inquiry would identify the lack of a formal system of communication in the Diocese as a contributory factor to an inadequate response on the part of the diocesan authorities to child sexual abuse.

Bishop Comiskey complained that the priests of the Diocese were reluctant to inform him of information or suspicions which they had in relation to child sexual abuse by their colleagues. The Inquiry did hear evidence which supported this concern. The failure to communicate with the Bishop was a particular problem as Bishop Comiskey was new to the Diocese and did not have the benefit of a network of informal contacts who might have briefed him on issues of importance to his ministry.

However, where complaints were made by either victims or parishioners, they were not handled in a sensitive or supportive manner which led to further hurt and alienation for the complainant.

### **St Peter's College**

All the priests who are the principal subject matter of this Inquiry were ordained for the Diocese of Ferns. The majority of them attended seminary training at St Peter's College, Wexford, with a few attending Maynooth College in Kildare.

St. Peter's boarding school closed in 1997 and the seminary closed in 1998. It is now a secondary day school for boys. The Inquiry would like to emphasise that the events

discussed in this Report are not a reflection on the standards pertaining in St Peter's College at present.

The situation in St. Peter's College was understandably raised as a matter of concern in the Birmingham Report. It is established that Fr Donal Collins who was a distinguished teacher in St. Peter's from 1964 and who was Vice President from 1983 until 1988 and Principal from 1988 to 1991, consistently abused boys over a twenty-year period.

This Inquiry has heard other serious allegations of child sexual abuse against priests who were associated with St Peter's either as seminary students or members of the teaching staff. Many of these priests allegedly went on to abuse in parishes in the diocese after leaving St Peter's.

Within a random 5-year period selected by the Inquiry, for example, 10 priests who were in St Peter's have come to the attention of this Inquiry as being the subject of child sexual abuse allegations.

St Peter's College campus, which included the seminary, the boarding school and the day secondary school, was headed by a President who was a senior cleric appointed by the Bishop of Ferns.

This Inquiry has heard very little evidence from either pupils or staff members of St Peter's relating to the period before the 1960s. Those who did speak recalled an era, which was not unusual in Ireland at that time, of rigid and austere discipline where minor indiscretions were met with severe punishment. St Peter's secondary school enjoyed an extremely good national reputation both academically and on the sports field.

Priests who spoke to this Inquiry about their time in St Peter's both as secondary school pupils and seminarians during the 1960s, 1970s and 1980s, stated that they had no knowledge or awareness of sexual activity during their time there. This was a view also expressed by some laymen who were past pupils of the school. However, some pupils and a lay staff member who were present during that time have expressed a different view and have described an environment with a relatively high level of sexual activity both with adults and children. A member of a religious order who spoke to the Inquiry also recalled a high level of sexual activity but did not recall child sexual abuse as being a problem at that time.

One of the questions asked of this Inquiry is whether there is any evidence of a paedophile ring in St Peter's. A paedophile ring may be said to exist where a number of adults share victims with each other. This Inquiry has found no such evidence. None of the complainants who presented evidence directly to this Inquiry or to An Garda Síochána, the Health Board or the Diocese has indicated that he or she was, at any time, introduced to or abused by another priest at the instigation of the priest against whom his or her complaint was made.

## **Seminary Admission and Formation**

The issue of how entrants to the priesthood are selected, screened and trained has been identified to this Inquiry as an area that has undergone considerable change in response *inter alia* to the crisis of child sexual abuse that has occurred in the Catholic Church in recent years.

A former dean of St Peter's seminary told the Inquiry that most clerical students were sent to St Peter's by the Bishop of Ferns, the Bishop of Down and Connor and a few by Bishops of other dioceses. Where referred by a Bishop, a candidate was not vetted before admission. Two priests described to the Inquiry that they entered the seminary in Maynooth in 1961 with absolutely no preliminary screening at all. Candidates were admitted on the basis that they had an interest in becoming a priest and their suitability was reviewed in the course of seminary training. In "Time to Listen", a lack of seminary training on the issue of sexual abuse of children by priests was particularly identified as a failing<sup>37</sup> and this has been confirmed by a number of clerical witnesses who came before this Inquiry.

Dr Conrad Baars, a psychiatrist with many years experience in treating priests, presented a research paper to the 1971 Synod of Bishops in Rome in which he identified emotional and psychosexual immaturity, which manifested itself in hetero- or homosexual activity, as a serious problem for ordained priests. This research was confirmed by subsequent studies and in 1976, Fr Eugene Kennedy, in a comprehensive study commissioned by the National Conference of Catholic Bishops, found that a significant number of American priests were emotionally or psychologically underdeveloped.

Fr Kennedy reported that the underdeveloped priests were generally "allowed" to maintain inappropriate or even destructive behaviour patterns or lifestyles due to a lack of adequate and effective guidance and supervision. Any mentoring of young priests centred on the performance of their priestly duties and did not focus on their total human development.

The Inquiry understands from senior staff members who were in St Peter's at the time, that at the time when Fr Sean Fortune entered the seminary (1973), no screening of those candidates recommended by their Bishops occurred. The Inquiry understands that Fr Sean Fortune was not himself sponsored by a Bishop when he entered St Peter's but was subsequently adopted by the Diocese of Ferns. His attendance at a Christian Brother Juniorate immediately prior to his attendance at St. Peter's allowed him to enter the seminary without assessment. The Inquiry has seen extensive questionnaires completed by serving members of the clergy who monitored Sean Fortune during summer placements whilst he was still a seminarian. Whilst serious personality defects were identified by some of these assessments, there was no identification of any sexual problems at that time. Nevertheless, the Inquiry is satisfied that Sean Fortune did engage in child sexual abuse during his years as a seminarian and in spite of clear warning signs from his own behaviour apart from any warnings that may have been communicated to the authorities in St Peter's, this did not prevent his ordination.

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<sup>37</sup> "Time to Listen" p61

Similarly, grave doubts were expressed about Fr James Doyle's suitability for the Diocesan priesthood but his ordination was proceeded with in spite of this.

Norms for Priestly Training in Ireland were promulgated by the Episcopal Conference in 1973 and they stated:

*32. As far as possible the suitability of a candidate for a seminary should be assessed before admission.....*

*A thorough medical examination should be made.....*

*A thorough psychological assessment should also be made, before acceptance if possible, otherwise shortly after, to ascertain whether he has the necessary qualities of personality for exercising the duties and sustaining the obligations of the life he has chosen as well as to help him with his own development.*

*34 Each student's position should, with his own cooperation, be kept under review so that a student unsuited to the priesthood may be enabled as soon as possible to recognise this fact, and may be helped to choose another state in life.*

The Inquiry has spoken to former presidents, deans and senior staff members in St Peter's and examined files furnished to the Inquiry in respect of priests who attended the college who were accused of child sexual abuse. The Inquiry could not identify any reference to these norms or their implementation in St Peter's. Had they been properly implemented, it is difficult to understand how the ordinations of clearly unsuitable men were allowed to proceed.

The Inquiry has been informed that from the early 1980s more emphasis was placed on the personal development of seminarians in St. Peters, and in 1988 a stringent interview process was introduced prior to admission of all candidates. A course on personal formation given by qualified psychologists was also introduced from 1989.

### **Current Selection Procedures for Maynooth Seminary**

All candidates for the diocesan priesthood in Ireland now attend seminary training in Maynooth College in Kildare or in the Irish College in Rome. The Inquiry is indebted to Monsignor Dermot Farrell, President, St Patrick's College Maynooth, who offered a full account of the present arrangements regarding seminary admission to Maynooth. Monsignor Farrell first pointed out that it was the primary responsibility and task of a Bishop to examine the suitability of candidates for the priesthood and to select them (Can. 241). The canonical requirements governing the admission of candidates to the seminary state that "*the Diocesan Bishop is to admit to the major seminary only those whose human, moral, spiritual and intellectual gifts as well as physical and psychological health and right intention, show that they are capable of dedicating themselves permanently to the sacred ministries*". The Inquiry notes that this canonical power is now exercised with the assistance of professional advice.

In practical terms the Inquiry is informed that it is considered necessary to consider the following areas when assessing the suitability of seminarians:

- *Life and family history;*
- *Age: a candidate must be at least eighteen years old;*
- *Faith History: there must be a reasonably clear understanding of the priesthood;*
- *Capacity for Friendship: candidate must relate to men and women in a healthy way;*
- *Academic Suitability: he should have passed five subjects in his Leaving Certificate;*
- *Sexual History;*
- *Medical History;*
- *Transfer between Seminaries.*

With regard to sexual history the following issues are addressed:

- *An applicant who has been in a prior relationship should have concluded that relationship and have allowed for a significant period of time before being accepted by a Diocese. In the case of a candidate who has had a sexual relationship (heterosexual), a substantial period of celibate living should precede entry into the seminary;*
- *In a recently expressed judgement of the Congregation for Divine Worship and Discipline of the Sacraments, the Cardinal Prefect stated "The ordination to the Diaconate or to the priesthood of homosexual persons or those with a homosexual tendency is absolutely inadvisable and imprudent and, from a pastoral point of view, very risky... A person who is homosexual or who has homosexual tendencies is not, therefore, suitable to receive the sacrament of sacred orders." (Congregations Bulletin, December 2002). According to Dr Farrell, the College in Maynooth accepts the force of this reasoning and advice;*
- *If it becomes known that a seminarian is engaging in physical genital activity with another person while he is in formation, he is asked to leave immediately. Certain other kinds of behaviour are also inconsistent with celibate chastity e.g. engaging in flirtatious or seductive behaviour and dating. It goes without saying that being in possession of, or accessing, pornographic material (whether print, video, electronic, digital etc.) is completely incompatible with being a seminarian. It is also unacceptable to participate in or to advocate the gay subculture by which is meant allowing a seminarian to define his personality, outlook or self-understanding by virtue of same-sex attraction;*
- *Insofar as it is possible to determine, the older applicant should have achieved a successful integration of his sexuality and the younger applicant should have the capacity for such integration. Where there are clear contrary indications, the applicant should not be accepted;*
- *A competent person should take a full history of the candidate. Particular attention should be paid to the presence of sexual abuse, sexual acting out or sexual orientation problems etc;*
- *The child protection policy as set down by the Episcopal Conference should be fully complied with.*

Dr Farrell informed the Inquiry that Maynooth College recommends strongly that the bishop should consider a psychological assessment as an integral part of the admission procedure; it is the understanding of the Inquiry that this is generally done.



St Peter's seminary introduced such a screening process in 1988. This psychological assessment – a combination of written tests and interview – should be carried out during the initial selection process by a trained psychologist who is chosen by the individual bishop or diocese and again during the formation of the student. In addition, Maynooth College has for many years employed a trained counsellor whose ministry includes assisting candidates with their personal and emotional development for priesthood. If, for a just reason, a psychologist or a psychiatrist is required to furnish a certificate of a candidate's state of psychological health (can. 1051:1), one is called in from outside the seminary.

According to Dr Farrell, the past four decades have seen considerable development in the Church's approach to assessing and screening candidates for entry to seminary. The Conciliar document *Optatam Totius*, dealing expressly with the priesthood, outlines a broad range of criteria, which should be taken into consideration before accepting candidates: "*Each candidate should be subjected to vigilant and careful inquiry, keeping in mind his age and development, concerning his right intention and freedom of choice, his spiritual, moral and intellectual fitness, adequate physical and mental health and possible hereditary traits. Account should also be taken of the candidate's capacity for undertaking the obligations of the priesthood and carrying out his pastoral duties*". (OC III 6, 1965)

Less than a decade later, the magisterial documents began to advert to the need to carry out admission and selection procedures in "*accordance with modern psychological diagnosis*" but "*without losing sight of the complexities of human influences on an individual*" (*Directorium* Congregation for Catholic Education (#38/1974). This reference to the admissibility of recourse to psychology is gradually strengthened until eventually it is described by the *Ratio Fundamentalis Institutionis Sacerdotalis* (1985) as a resource which "*as a general rule*" should be availed of whenever the case merits.

Five years later the Holy See advised that candidates accepted for seminary should already display a "*balanced affectivity – especially a sexual balance which presupposes an acceptance of the other*". It reaffirmed that psychological assessments could play a useful role here.

These insights were incorporated into the *Irish Bishops Document of Child sexual Abuse: Framework for a Church Response* (1996). It states that the "*screening of candidates should normally include a full psychological assessment by an experienced psychologist well versed in and supportive of the Church's expectations for the priesthood and religious life, especially in regard to celibacy*".

Thus, much has changed in the screening process and in the overall formation of seminarians in the aftermath of the Second Vatican Council. Today a much greater emphasis is placed on screening for men who are able to live a life of chaste celibacy. In order to ensure that candidates possess the psycho-sexual-socio maturity necessary for priests today, Maynooth College has been providing more resources for students, which is a vast contrast to the situation 40 years ago. Celibacy formation is integrated into the entire seminary programme through conferences, formal lectures and advice from formation personnel, spiritual direction and the fulltime availability of professional counselling.

What it is clear from the foregoing is that celibacy and the ability of young men to live chaste celibate lives was one of the major issues addressed by church authorities in dealing with the growing problem of child sexual abuse within the Church.

Celibacy is the state of being unmarried. Chastity is the avoidance of all sexual activity outside the married state.<sup>38</sup> For a Roman Catholic priest, a vow of celibacy must also include a vow of chastity.

It must be remembered that the vow of celibacy taken by a priest is a conscious spiritual decision reinforced by prayer and faith. It is a vow that is sincerely meant in the majority of cases. If a man wishes to live his life as a Latin rite Roman Catholic priest, a vow of celibacy is mandatory.

The Expert Group was unanimous in its view that the vow of celibacy contributed to the problem of child sexual abuse in the Church. There have been important changes brought about in seminary selection and training with regard to assessing the suitability of men to adhere to a celibate lifestyle and to provide ongoing support in this regard. The Inquiry believes that such changes represent a response on the part of Church authorities to the growing awareness of the problem of clerical child sexual abuse.

Dr Patrick Randles, a senior therapist with the Granada Institute, is experienced in the assessment of candidates. He commented that in the past the standard of evaluation by psychologists had been quite variable and that for some it was a very quick assessment which sought to establish whether a candidate suffered from specific psychopathology. More recently according to Dr Randles, religious orders and dioceses have become more demanding with regard to the comprehensiveness they expect from an assessment. There is no definitive test which would assess a person's suitability for priesthood; although it is possible to identify psychological factors which would indicate unsuitability.

Mr Joseph Sullivan, formerly of The Lucy Faithful Foundation in Nottingham, pointed out that in the course of his research, he conducted a study of 41 professionals who had all been referred to him because of child abuse. Of these, 92.5 per cent said that they were aware by the time they were 21 years of age, that they had a sexual interest in children. This would indicate that when these men made the final step into their profession or vocation, they were aware of their attraction to children and this attraction was a motivating factor in their choice of career. It would, of course, be of vital importance if this attraction could be identified prior to their achieving a qualification that gave them access to children. Regrettably, the current state of knowledge in this area does not make it possible to assess with any degree of certainty whether a man was likely to be a child abuser. What can be assessed however is the level of maturity and awareness that a person has in respect of his or her sexuality. A sexually immature man may be a potential risk to children.

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<sup>38</sup> Walsh, H. A., "Mandatory Celibacy and Sexual Ethics in the Latin Rite of the Roman Catholic Church" *Electronic Journal of Human Sexuality*. Vol. 2, Feb 6, 1999.

Whilst the rigorous standards now in place in Maynooth would be of assistance in ensuring that only men who are emotionally, intellectually and sexually mature are admitted for ordination, the reality is that very few diocesan priests are ordained in Ireland in any year. Increasingly, parishes are welcoming priests ordained abroad to replace retiring clergy. Priests who are ordained in seminaries outside Ireland should be subjected to the same level of assessment as has been undertaken by seminaries such as Maynooth.

### Canon law

The right of a religious denomination to regulate its own affairs is recognised by Article 44.2.5 of the 1937 Constitution of Ireland, which states: “*Every religious denomination shall have the right to manage its own affairs, own, acquire and administer property, moveable and immovable, and maintain institutions for religious or charitable purposes*”.

Until its amendment in 1973, Article 44.1.2 of the Constitution referred to the special position of the Catholic Church in Ireland. The removal of this provision by referendum means that the Catholic Church in Ireland now stands equally with all other religious denominations in the State and enjoys the same constitutional guarantee of freedom and no more.

Vatican Council II tackled the matter of Church/State relations in Chapter IV of Part II of the Pastoral Constitution on the Church in Today’s World, *Gaudium et Spes*. Catholic teaching in this area emphasises the principle that the temporal and the religious are two distinct competences with respective powers and faculties. It is summarised in *Gaudium et Spes* as follows: “*The political community and the Church are autonomous and independent of each other in their own fields.*”

Canon law has a long history, having its roots in the Old and especially the New Testament. Various connections of norms can be found during the first three centuries of the Christian era (e.g., the didascalia). In the 6<sup>th</sup> century, the Emperor Justinian compiled collections of law, to be called the *Corpus Iuris Civilis*, which included some Canonical norms. After the Dark Ages this work inspired Canonists to collect and organise many earlier collections of Canonical norms and so to form material for the *Corpus Iuris Canonici* which was the standard for Canonists from the Middle Ages until Pope Benedict XV promulgated the first Code of Canon law in 1917 following the model of the Napoleonic Code. After the reform of the Second Vatican Council, Pope John Paul II promulgated the revised Code of Canon law for the Latin Church in 1983.

The Irish legal system recognises Canon law as a scientific legal system and body of law, both substantive and adjective. It is a body of rules emanating from a legislative authority for the ordering of the conduct, regulating the social and domestic relations and punishing the disobedience of those who recognise that authority, and which speaks and gives judgement through its own tribunals. Canon law regulates the relationship between a Bishop and a priest of his diocese. As both Bishop and priest, by their ordination agree to be bound by Canon law, the relationship between them might be seen, in practical terms, as consisting of a contract comprising the material provisions of Canon law. The strict legal position is otherwise. Both parties are seen

as being bound by Canon law which, in Irish jurisprudence, is a foreign law and like any foreign law, its provisions must be established in the event of a dispute by witnesses expert in that system. Again like all other foreign laws, Canon law is without coercive power because the machinery of coercion is, in this State, kept in the exclusive control of the civil government and parliament for compelling obedience to such laws only as its parliament enacts.<sup>39</sup> No foreign law could exempt a person resident in this State from compliance with an obligation imposed by the Constitution or the laws enacted thereunder.

### **The Removal of a Priest under Canon Law**

The purpose of Canon law is to guarantee and protect the communion of those who believe in the teachings and subscribe to the faith of the Catholic Church. What is material to this Inquiry is the fact that Canon law sets out the manner in which a priest is appointed by a Bishop and the circumstances in which a priest may be supervised in or removed from ministry or dismissed from the clerical state.

The most appropriate response to an allegation which gives rise to a reasonable suspicion of child sexual abuse against any employee or volunteer is the removal of that employee or volunteer from unsupervised access to children either immediately or within days of its receipt by the employer, until the allegation or suspicion has been fully and properly investigated. In the case of a diocesan priest, removal from access to children appears to entail suspension or standing aside from active ministry. In other professions or occupations, a less dramatic course may provide adequate protection. In his report<sup>40</sup>, "Child Sexual Abuse in Swimming", Mr. Roderick Murphy SC recommended this course of action in the case of swimming coaches against whom allegations of child sexual abuse were made and used the phrase "stand down" to describe this procedure. The action is taken without any admission or imputation of guilt and is temporary in its nature. In a legal opinion provided to the Dublin Archdiocese in 1986, such a procedure was also recommended for a bishop dealing with allegations of child sexual abuse from a civil liability perspective where it had been shown after investigation that there was a basis for the complaint. The Inquiry sought to establish whether such a procedure was available under Canon law.

In the Code of Canon law, the procedures available to a bishop for dealing with an allegation of an offence are dealt with. Where a Bishop receives information, "*which has at least the semblance of truth*", that an offence has been committed he must set up a preliminary and purely administrative investigation about the facts and circumstances of the case (Can. 1717.1-3). If, after this preliminary investigation (which after 1996 is conducted according to the Framework Document<sup>41</sup>), the Bishop believes that the facts warrant a penal process, he must then determine whether this would be expedient having due regard to Canon law. "*Care must be taken that this investigation does not call into question anyone's good name*" (Can. 1717.2). This rule is described by one commentary on this canon as being of "*fundamental and vital importance*". Under Canon 1722, the bishop can, at any stage of either a judicial or extra-judicial process "*prohibit the accused from the exercise of the sacred ministry*

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<sup>39</sup> O'Callaghan v O'Sullivan 1925 IR 90

<sup>40</sup> 1998

<sup>41</sup> See below p39.

*or some other ecclesiastical office or position.....or even prohibit public participation in the blessed Eucharist."*

Although there are many commentaries on Canon law, they are only a form of legal opinion. Of more importance are the rulings and interpretations that come from the Roman authorities. In the end however, there is only one authentic interpreter of Canon law and that is the Pope. This presents a problem for lay people and clergy seeking to determine what the Canon law position is on any given subject.

The Inquiry posed the following question to a leading Canon lawyer:

**"Has the Bishop power under Canon law to suspend temporarily a priest of his diocese from his priestly ministry in such a way as to remove him from contact with potential victims on the basis of an express allegation or reasonable suspicion that the priest in question has in the past, and may in the future, abuse children?"**

The Inquiry was told that if the Bishop was satisfied that there was some credibility to the allegation, he had the power to remove the priest and could temporarily suspend that priest pending final determination of the matter.

When the bishop receives an allegation of sexual abuse of a minor by a priest, he must balance the rights of the accused with his responsibility for the care of all the faithful, particularly children and young people. The Bishop can begin by asking an accused priest to voluntarily refrain from the exercise of his ministry, including the public celebration of Mass and other sacraments, for the duration of the investigation of the allegation. The Inquiry has been informed that where there is a risk that an accused priest could re-offend, and he cannot be persuaded to stand aside, or if knowledge of the allegation renders a cleric's ministry ineffective, or if his continuing ministry would constitute a scandal to the faithful, the ministry of the priest should for the good of the Church, be immediately limited. The Bishop can proceed by taking the disciplinary action outlined in the Code (canons 192-192, 1740-1744, 552) and/or decree the removal of the faculties of the cleric (for example, to hear Confessions and celebrate marriages, to preach, etc) for the duration of the investigation.

Where necessary, the Bishop can issue a penal precept requiring him to stand aside from ministry on the pain of incurring a determined penalty (can. 1319, §2). An accused cleric under investigation is still entitled to be provided with a residence and his rightful income until a definitive determination is made.

The Inquiry is informed that it is within the power of a Bishop to suspend and remove a parish priest in certain circumstances, provided he follows certain procedures. Any such decision is appealable to the Congregation for the Doctrine of the Faith. Bishop Walsh has stated to this Inquiry that he believed that "a reasonable suspicion" of child sexual abuse was a sufficient ground for acting. During Bishop Walsh's administration in the Diocese of Ferns all priests requested to stand aside voluntarily did so. He said that if a priest had not agreed to go voluntarily he would have removed him.

Most of the priests who were the subject matter of complaints of child sexual abuse in the Diocese of Ferns were curates: the relevant provision relating to the removing of curates is Canon 552 which states:

*“Without prejudice to Canon 682.2,<sup>42</sup> an assistant priest may for just reason be removed by the diocesan Bishop or the diocesan Administrator.*

The Commentary on the Code of Canon law states that assistant priests or curates always had a lesser security of tenure than parish priests. No formal procedure is required under Canon law for the removal and “just cause”, rather than “grave cause”, suffices. Nevertheless, the Commentary provides that a reason is required, and that that reason should be given in writing.

One Canon lawyer advising the Inquiry has said that from his consultation with Canon lawyers in Rome, it is his understanding that the bishop in exercising Canon 552 is exercising an administrative and not a penal power.

Bishop Eamonn Walsh has said that both the grounds for removing a parish priest (“a grave cause”) and a curate (“a just cause”), would be met by a credible allegation or a reasonable suspicion of child sexual abuse. He has informed the Inquiry that the same standards apply to all priests of the Diocese.

In commenting upon the standard of reasonable suspicion, he said that a suspicion unsupported by other objective facts would not be a reasonable suspicion. Bishop Walsh stated that a formal complaint in itself would normally constitute a reasonable suspicion for the purpose of removing a priest temporarily under Canon law. The Canon lawyer consulted by the Inquiry supported this view.

An appeal from a decision under Canon 552 would lie to the Congregation for the Doctrine of the Faith. If successful, the curate could be reinstated following an appeal and the Inquiry is informed that there are precedents for such an event.

### **The Framework Document**

Under Canon law, a bishop has full judicial power in his diocese. Ultimately, the Bishop must take responsibility for the future ministry of all priests in his care. As was clear to this Inquiry, Bishop Comiskey found this an onerous and difficult task particularly in the context of child sexual abuse.

In March 1994, the Irish Catholic Bishops Conference set up an Advisory Committee to consider and advise on an appropriate response by the Catholic Church in Ireland to an accusation, suspicion or knowledge that a priest or religious had sexually abused a child, to develop guidelines for church policy in that area and to suggest a set of procedures to be followed in those circumstances.

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<sup>42</sup> Canon 682.2 relates to the appointment of members of religious orders as curates in parishes. It provides that the curate may be removed on the direction of his superior or on the direction of his Bishop. Neither needs the consent of the other.

The Report of the Advisory Committee was published in 1996 and is commonly referred to as “The 1996 Guidelines” or “The Framework Document”. The document provided a framework within which the Bishop could fulfil his Canon law obligations, but was not mandatory.

Bishop Comiskey told the Inquiry that prior to 1995, he found Canon law to be of no benefit in removing priests and was “*surprised and disappointed*” with the advice he received. After 1995, with the help of the Framework Document, this should have been a more straightforward procedure. In the one case (which arose in 1995) where he tried to implement Canon law procedure with the aid of the provisions of the Framework Document, he failed.

Chapter 1 of the 1996 document recognised the evils of child sexual abuse and the serious damage it causes. It also identified eight guidelines which should underline the response of church authorities to allegations of child sexual abuse. Those guidelines included the following:

- The safety and welfare of children should be the first and paramount consideration following an allegation of child sexual abuse.
- In all instances where it is known or suspected that a priest or religious has sexually abused a child, the matter should be reported to the civil authorities.
- There should be immediate consideration following a complaint, of all child protection issues that arise, including whether the accused priest or religious should continue in ministry during the investigation.

In the view of this Inquiry, the Framework Document’s recommendation on the reporting of child sexual abuse is one of the most important and has had the most impact on the Church’s handling of this problem in the past nine years. Chapter 2 of the document sets out this reporting policy.<sup>43</sup>

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<sup>43</sup> “2.2.1: *In all instances where it is known or suspected that a child has been, or is being, sexually abused by a priest or religious, the matter should be reported to the Civil authorities. Where the suspicion or knowledge results from the complaint of an adult of abuse during his or her childhood, this should also be reported to the civil authorities.*

2.2.3: *The Advisory Committee recognises that this recommended reporting policy may cause difficulty in that some people who come to the Church with complaints of current or past child sexual abuse by a priest or religious seek undertakings of confidentiality. They are concerned to protect the privacy of that abuse of which even their immediate family members may not be aware. Their primary reason for coming forward may be to warn Church authorities of a priest or religious who is a risk to children.*

2.2.5. *Nevertheless, undertakings of absolute confidentiality should not be given: information should be expressly received within the terms of this reporting policy and on a need to know basis.*

The assumption by the Diocese of Ferns of an obligation to inform the Garda Síochána and the Health Board of allegations of child sexual abuse against members of the diocesan clergy was a radical departure from the procedure historically adopted in the Diocese. Before 1990, the Bishop of Ferns did not report any allegations of abuse. Between 1990 and 1996 some were reported either directly or indirectly and others were not reported at all. The Inquiry is informed that this obligation to report relates to all allegations of child sexual abuse made to the Diocese of Ferns at any stage, including such allegations accumulated at the date of inception of the Framework Document.

Bishop Eamonn Walsh has informed the Inquiry that he is satisfied that every allegation of child sexual abuse made known to the Diocese of Ferns against a member of the clergy of the Diocese has been duly reported to the Civil Authorities. The Inquiry has identified numerous complaints made known to priests of the Diocese in the past which did not appear to have been forwarded to the Bishop or State authorities at the time. The Inquiry has also identified certain conflicts whereby witnesses attending the Inquiry claimed to have made a report to Bishop Comiskey which has been denied and does not appear on diocesan files seen by the Inquiry.

Chapters 2 to 7 (inclusive) of the Framework Document set out a detailed procedure which the advisory committee recommended to deal with allegations of child sexual abuse. This includes the appointment of a delegate and deputy delegate to oversee and implement the procedures for handling the allegations; it was specifically mandated that every complaint be recorded and carefully examined. The duty of promoting awareness and understanding of child sexual abuse among the priests of the Diocese was expressly conferred on the delegate. There was provision for the appointment of an advisor to a priest accused of a sexual abuse. The Framework Document envisaged the appointment or availability of a support person to assist and advise victims or persons by whom complaints were made. The Framework Document specifically provided that each Bishop should appoint an Advisory Panel which would include lay people, with relevant qualities and expertise, to offer their advice on a confidential basis to the Bishop.

The Holy See did not, and the Irish Catholic Bishops Conference could not, impose the Framework Document on individual bishops. The Diocese of Ferns adopted the Framework Document in December 1995, some months before the official publication of the Report of the advisory committee.

The first Diocesan Delegate in Ferns was Fr William Cosgrave, who held that office on a five-year fixed term from December 1995 to December 2000, when he was replaced by Fr Denis Brennan. Sr Helen O'Riordan was appointed to the role of diocesan support person in November 2002. The advisor to accused priests varies from case to case. Upon his appointment, Bishop Walsh established an interim ad hoc Advisory Panel to review all cases of child sexual abuse in the diocese involving priests who were still alive and who therefore required a response based on the need for child protection.



The Framework Document provided procedures to be followed before a bishop could compel a priest to stand aside from active ministry. However, in removing a priest the Bishop had to observe the Code of Canon law. As mentioned earlier in this Report, a parish priest may only be removed for a grave cause and a curate for a just cause.

When the Bishop is satisfied in accordance with the terms of Canon 1717 that there is at least the semblance of truth about a crime having been committed, he is then entitled under Canons 552 and 1740 to remove a priest from office pending a final determination of the matter.

Once the low threshold of “reasonable suspicion” has been reached, the matter must, according to The Framework Document be reported to An Garda Siochana . Where the victim has reported the allegation to An Garda Siochana the Church authority does not proceed with any further investigation that might impede or compromise the criminal process. This is not just a matter of giving undue publicity to an ongoing criminal investigation but also has regard to the danger of contaminating evidence necessary to that criminal trial.

The May 2001 Vatican document entitled “*Sacramentorum Sanctitatis Tutela*”<sup>44</sup>, provided that all allegations of child sexual abuse which have reached that threshold of “semblance of truth” should be referred directly to the Congregation for the Doctrine of the Faith in Rome. The Congregation will either elect to deal with the matter itself or it will advise the Bishop on the appropriate action to take in Canon law. This policy has been adopted in order to ensure a coordinated and uniform response to allegations of child sexual abuse against clergy throughout the Roman Catholic world. The Inquiry is informed that the Congregation recognises that the State authorities are the primary agents in establishing guilt or innocence and will on occasion suspend the Canon law process pending a determination by the State either in a civil or a criminal action. The Congregation envisages a canonical process being established to make a determination for the purposes of deciding the accused priest’s future role in the priesthood irrespective of the outcome of any such state process.

Bishop Eamonn Walsh has informed the Inquiry that he refers all cases in which a reasonable suspicion of child sexual abuse exists to the Congregation.

Whilst the Statute of Limitations can be lifted in civil litigation cases involving allegations of child sexual abuse at Civil law, Canon law does impose a ten year prescription period from the victim’s eighteenth birthday<sup>45</sup>. *Sacramentorum Sanctitatis Tutela* provided for a dispensation from that prescription at the discretion of the Holy See.

If it transpires that a bishop does not have the power under Canon law to remove an accused priest from active ministry within days of an allegation being made, Civil law should confer upon him that right. If the requisite power is conferred by Civil law and not exercised, consideration should be given to identifying another body – presumably the Health Board (or its successor) – that could be empowered to apply to the High

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<sup>44</sup> See page 12

<sup>45</sup> This period was extended from five years in 1996.

Court to restrain any employee, including a priest, from having unsupervised contact with children where a concern exists about his ability to interact safely with children.

The Inquiry believes that this should be a principle of general application. Every person or organisation which employs or appoints an individual to a position which gives him or her unsupervised access to young people must have and exercise the power to suspend that individual from that employment if an allegation is made or reasonable suspicion arises that the individual has sexually abused any child.

### **The Inter-Agency Review Committee**

As an addition to those procedures set out in the Framework Document, Bishop Eamonn Walsh has now instigated a regular meeting between the Bishop and/or the Diocesan Delegate and high level representatives of the Garda Síochána and the Health Services Executive, which this Inquiry terms “**the Inter-Agency Review Committee**”. The business of the Inter-Agency Review Committee is formal to the extent that agendas are circulated and minutes recorded. The primary purpose of the Committee is to enable the diocesan authorities to inform the State authorities on the position and status of members of the diocesan clergy against whom allegations of abuse had been made or suspicions of abuse existed. The position of every such priest is reviewed by the Committee.

As has already been stated, the Inquiry would identify this body as being the appropriate forum for identifying rumour or allegation of child sexual abuse which in the opinion of the Bishop fall short of the “reasonable suspicion” threshold required under the Framework Document. It would afford the Bishop the opportunity of discussing all rumour or innuendo coming to his attention to help establish whether a reasonable suspicion existed. This could be done on a strictly confidential basis without necessarily revealing at first instance the names of any of the people involved. The Bishop would thereby be relieved of the responsibility of deciding without expert guidance, whether the appropriate threshold had been reached which would give rise to a reasonable suspicion that a particular priest was guilty of child sexual abuse. The appropriate body to convene meetings of this committee and to record and collate information would be the Health Services Executive.

### **Application of Canon Law Procedures by Bishop Walsh and Bishop Comiskey**

Bishop Eamonn Walsh was appointed Apostolic Administrator of the Diocese of Ferns on 4 April 2002. On Saturday 6 April 2002 he met with the four Vicars Forane. On Thursday 11 April all the priests of the Diocese were assembled and briefed by Bishop Walsh on how the clerical sexual abuse issue would be dealt with and the implications of the Government Inquiry into Child Sexual Abuse by Clerics in the Diocese of Ferns, which had just then been announced. The bishop held a press conference with the local press and the national media. He met with or offered to meet with the victims of child sexual abuse. Over the following eighteen months, he spoke at weekend Masses in most of the parishes of his diocese. In the course of his address and at informal gatherings afterwards he explained his objectives in the following terms:-

- That there would be no one in the ministry in the Diocese who had sexually abused children;
- That such priests would not be moved from parish to parish;
- That all complaints would be made known to the civil authorities;
- That victims would be invited to come forward to seek help, and
- That priests who had offended would be monitored and placed in therapeutic supervision.

In his address the bishop is recorded as saying:-

*“The Church acted like a family within a family. Instead of reaching out to the wounded she gave her first and sometimes exclusive support to the offending priests. In that way the Church created a family within a family. In so doing the Church allowed other innocent children to suffer sexual abuse later on.”*

Bishop Walsh had the advantage over Bishop Comiskey in that the problem of child sexual abuse by clergy in Ferns had become fully apparent by the time Bishop Comiskey resigned. In addition, the Vatican document entitled *“Sacramentorum Sanctitatis Tutela”* which is discussed above undoubtedly lent greater authority to Bishop Eamonn Walsh when he requested a priest to step aside. Bishop Comiskey did not feel he had such support and has informed the Inquiry that he was very conscious that many Bishops had been overruled by Rome and priests reinstated. He believed that such an outcome would have deeply affected both his credibility and standing in the Diocese and his ability to deliver effective ministry.

In addition, there appeared to be a difference of style and personality between the two Bishops in coping with this very serious problem.

The most significant difference between the procedures adopted by the two Bishops, however, was the different interpretations placed by them upon the relevant provisions of Canon law and the 1996 Guidelines.

Bishop Comiskey told the Inquiry that he was familiar with Canon law in a general sense, but in proceeding against priests, was guided by reputable Canon lawyers. The Inquiry has identified three separate occasions when Bishop Comiskey sought Canon Law advice with a view to removing a priest from active ministry who had had allegations of child sexual abuse made against him. The Canon Law advice he received did not assist in achieving this.

It appears that Bishop Comiskey believed that the duty which he owed under Canon and Civil law to the priests of the Diocese prevented him from exercising such power as he might have under Canon law to remove temporarily from active ministry, a priest against whom an allegation of abuse had been made unless the evidence satisfied the Bishop that the allegation was probably true. Having regard to the emphasis placed by Canon law on the duty to protect the good name of alleged abusers, it is not surprising that Bishop Comiskey should have taken this view. Moreover, it must be recognised that his concern was shared by the chairman of the first Advisory Panel appointed for the Diocese of Ferns. It was expressed clearly in a letter to Bishop Walsh dated 12 October 2002 when referring to the panel’s advice not to remove a particular priest from his parish:

*“We are also conscious of the ‘natural justice’ issues involved where a suspension of a priest in a small tight community was tantamount to convicting him. Having fairly weighted all the pros and cons we unanimously decided to advise as we did and to await the DPP deliberations when the matter could be revisited if necessary ..... It is most important that all our decisions, at all times are based on justice and fair play”.*

The response of the Church authorities as set out at Chapter 5 of this Report demonstrates how Bishop Comiskey, both before and after the adoption of the Framework Document, sought further and more specific information to support allegations or suspicions of child sexual abuse before attempting to exercise his canonical powers. Inquiries by Bishop Comiskey and later by the diocesan delegate, on his own initiative or at the behest of the Advisory Panel, necessarily involved delay. The result was that the priests remained in active ministry for months and even years after the complaints of child sexual abuse had been made against them.

In addition to the delay which such investigations could and did cause, there was the danger that such inquiries might jeopardise subsequent Garda investigations or criminal proceedings. In fact, the Inquiry has been informed by the DPP that no criminal proceedings have been so compromised in the Diocese of Ferns.

Bishop Walsh, and the Advisory Panels by whom he was advised from time to time, were equally conscious of the right of every priest to his reputation and the undoubted hurt and damage which would be caused by his removal from ministry. However, Bishop Walsh adopted and applied the principle emphatically enunciated in both the Framework Document and the National Guidelines for the Protection of the Welfare of Children, namely, that *“the welfare of children is of paramount importance”*. The application of this principle will frequently require persons to stand aside from positions or offices in which, or to the extent to which, they are given unsupervised contact with children because of an allegation of sexual abuse which has not been investigated, less still proved.

The appropriate process for dealing with allegations of child sexual abuse is for a complaint to be made to the Gardai and a proper investigation conducted by them. Where that investigation leads to a criminal prosecution and the ultimate conviction of the accused, the victim is vindicated, the abuser punished and a significant measure of protection provided for other young people. It is recognised that a relatively small number of victims choose to report to An Garda Síochána. It is appreciated that the DPP, in the exercise of his unreviewable discretion does not prosecute in every case. Most particularly it is clearly understood that an accusation of a criminal offence must be proved beyond reasonable doubt and that this is a standard of proof not readily achieved. The fact that a particular accused is not prosecuted or, if prosecuted not convicted, would not constitute sufficient justification for restoring the accused – whatever his vocation or occupation – to unsupervised contact with young people.

Victims can, and many have, instituted civil proceedings for assault to establish the truth of the complaints made by them and denied by the accused. Similarly, an accused person is entitled to institute civil proceedings or counter claim in existing proceedings to establish that the allegations made against him are malicious and untrue. It is in the public interest, and child protection requires, that both parties should have the opportunity of having that crucial issue decided by the civil courts

and expedited as soon as possible. The Inquiry appreciates that the cost of litigation could be an impediment for both the complainant and the accused. For that reason the Inquiry will recommend that the Civil Legal Aid Board be required to provide financial support for such litigation irrespective of the financial means of either party but subject to the Board being satisfied that the party seeking such support has a stateable case.

The issue as to the future of the priest in ministry may be determined by a Canonical Inquiry or internal Church procedures. The Inquiry is not aware of any canonical process for that purpose that has been instituted and completed. There is little specific information available as to the form these procedures would take. They do, however, represent an additional level of scrutiny of the conduct of priests which represents a measure of child protection which would not be available within other organisations.

### **Insurance**

In 1986, the then Archbishop of Dublin, Archbishop Kevin McNamara, consulted Diocesan legal advisors regarding the potential of a legal liability arising for the Archbishop in the context of incidents of child sexual abuse.

Counsel considered the issue of returning priests to ministry where they had undergone remedial care and advised that a Bishop would have potential liability for negligence in respect of such a priest who re-offends after returning to ministry unless the Bishop had received categorical assurances from a psychiatrist or other persons who had been responsible for remedial care that the priest in question was cured. Counsel then advised on the legal response required by a Bishop who received an allegation against a priest in his diocese. He said that a Bishop would have a duty in law to withdraw such a priest from his duties in the event of an investigation showing that there was a basis for the complaint that was made.

At the suggestion of its legal advisors, the Dublin diocese approached Church & General plc, the diocesan insurance company, about the possibility of insurance cover being put in place. After consultation, a limited form of insurance cover was made available for the Dublin diocese from 1987.

During 1988 and 1989, Church & General informed all other Bishops in Ireland of the availability of a diocesan policy and they sought and obtained permission from the Archbishop of Dublin to circulate the opinion of Counsel among the Bishops. By 1990, most dioceses had taken out diocesan policies from Church & General. The premium ranged from IR£515 to IR£750 depending on the terms of indemnity. Bishop Comiskey purchased such a policy in August 1989 and Church & General do not appear to have undertaken any analysis or assessment of risk prior to inception of this cover. Furthermore, it did not seek disclosure from Bishop Comiskey of any matters of this nature which might have been known at the inception date as it regarded these claims as excluded from the policy cover.

A copy of the Diocese of Ferns policy from May 1989 to May 1990 was produced to the Inquiry. The policy was on a claims made basis and the limit of indemnity in that policy was IR£100,000 for any one claim and IR£200,000 in any one year.

The diocesan policy imposed an obligation upon the bishop where he either became aware that a priest was behaving in a such a way as would be likely to give rise to a claim under the policy or, after an investigation it was revealed that there were substantial grounds for believing that a priest was behaving in such a way that would give rise to a claim under the policy, to immediately arrange for the removal of the priest from his duties and arrange for the priest to receive the appropriate medical treatment and not to permit the priest to resume such duties without professional opinion that a resumption of priestly duties was appropriate and timely.

Discussions took place between Church & General and representatives of the Bishops which resulted in an agreement being reached on 31 March 1996 on terms which included the payment of a single sum of €4.3 million for division among the Dioceses. While the diocesan policies were terminated on 31 March 1996, the settlement agreement between Church & General and each Bishop was signed on 2 July 1996. Rather than apportion the settlement sum, the Bishops decided to place it in trust and established the Stewardship Trust. The Stewardship Trust had the power to provide financial assistance to bishops towards the cost of liabilities arising from abuse claims and to fund child protection and victim response initiatives undertaken at national level.

A second agreement between Church & General and all dioceses was made on 26 July 2000 which replaced the first agreement. It obliged Church & General to pay additional sums amounting to €6.3 million upon certain eventualities in the future.

From 1996 to 1999, the Diocese of Ferns had no insurance cover in respect of any liabilities arising in relation to incidents of child sexual abuse by priests. However, since 1999, the Diocese has had the benefit of an insurance policy which provides limited cover against any legal liability it may have for incidents of child sexual abuse which are proven to have occurred after 1996 and where the perpetrator had not been the subject of knowledge or suspicion prior to 1996.

In May 2005, Irish Bishops released information showing that since 1996, the Stewardship Trust contributed to compensation settlements for 143 people in relation to abuse by 36 priests amounting to €8.77million.

### 3.2 THE SOUTH EASTERN HEALTH BOARD<sup>46</sup>

The Ferns Inquiry would like to acknowledge the comprehensive and informative submission prepared by the South Eastern Health Board for the purposes of this Inquiry. This document set out the statutory, legal and administrative framework of the Board and was a valuable resource to the Inquiry.

The South Eastern Health Board is a statutory body created by the Health Act, 1970 and therefore only has such powers as are conferred on it by statute. This Act vested statutory responsibility for administering health services in eight regional Health Boards (the Eastern Regional Health Authority was established by later legislation). Section 6 of that Act conferred on the Health Boards the functions previously carried out by the local authority in relation to the provision of health care in the community. While Health Boards began to take children into care following applications under the 1908 Act in the mid-1970s, it was not until emergency legislation – The Children Act 1989 – that this activity was (retrospectively) legally sanctioned by designating The Health Board as “a fit person” for the purposes of such applications<sup>47</sup>.

The Children Act 1908 provided the main statutory provisions for protecting children at risk until its amendment by the Child Care Act 1991. The 1991 Act was not fully operational until 1996 and it was therefore the 1908 Act that was the relevant legislation at the time when most of the cases looked at by this Inquiry arose. The limited protection which this Edwardian legislation provided was to identify categories of children who, because they were orphaned, neglected or abused lived in circumstances of extreme misery and to empower courts of summary jurisdiction to remove the child from the neglectful or abusive parent and place him or her in an alternative situation. An application to the court for such an order could be made by ‘any person’. The categories of children identified in section 58 were those found begging, wandering, and destitute, under the care, or in the company of reputed criminals or prostitutes; and those in the care of parents or guardians unfit to have such care. The powers of the court under the 1908 Act also extended to cases where the parent or guardian satisfied the court that they were unable to control the child in question and also to cases where the child had failed to comply with the Elementary Education Act 1876.

It is possible to identify clearly the scheme of the 1908 Act from the power which it conferred on the courts. That power was to remove a child from parents who had neglected him or her and to entrust the child to the care of a state agency or a fit person approved by the Court. The powers conferred by the 1908 Act afforded no protection to children who had been abused otherwise than through neglect or abuse

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<sup>46</sup> During the course of this Inquiry, the Health Services Executive was established and has taken on the functions of the former health boards. For the purpose of this report, the original title of South Eastern Health Board (SEHB) will be used.

<sup>47</sup> The State (D and D)-v- G and others 1990 IRLM 136. It was held that Health Boards were not “a fit person” within the meaning and for the purposes of the 1908 Act.

by parents or carers. The Child Care Act 1991, had a more pro-active orientation and conferred a general obligation on Health Boards in the following terms:

### Section 3

- “(1) It shall be a function of every Health Board to promote the welfare of children in its area who are not receiving adequate care and protection.*
- (2) In the performance of this function, a Health Board shall –*
- (a) take such steps as it considers requisite to identify children who are not receiving adequate care and protection and coordinate information from all relevant sources relating to children in its area;*
  - (b) having regard to the rights and duties of parents, whether under the Constitution or otherwise –*
    - (i) regard the welfare of the children as the first and paramount consideration, and*
    - (ii) insofar as is practicable, give due consideration, having regard to its age and understanding, to the wishes of the child; and*
  - (c) have regard to the principle that it is generally in the best interests of a child to be brought up in his own family.*
- (3) A Health Board shall, in addition to any other function assigned to it under this Act or any other enactment, provide child care and family support services, and may provide and maintain premises and make such other provision as it considers necessary or desirable for such purposes, subject to any general directions given by the Minister under Section 69.”*

Health Boards, therefore, have a wide remit to inform themselves in relation to the needs of children in their area and an obligation to promote their welfare as well as responding to concerns about children. However, the actual powers conferred upon the Board to secure the protection of children are not significantly wider than those provided for in the Act of 1908, and would appear to be appropriate primarily in cases where the injury to the child is caused or permitted by the abuse or neglect of a parent or carer.

Just as in the Act of 1908, the Child Care Act 1991, expressly recognised that it was the right and duty of parents to care for their children and that it was the right of children to be cared for by their parents. Intervention by any State agency could only be permitted and required where it was established that parents had failed in this duty to the serious detriment of their child.

The Act of 1991 does not attempt to categorise children in need but in Section 16 describes them in general terms as follows:

*“Where it appears to a Health Board with respect to a child who resides or is found in this area that he requires care or protection which he is unlikely to receive unless a Court makes a Care Order or a Supervision Order in respect of him, it shall be the*



*duty of the Health Board to make an application for a Care Order or a Supervision Order, as it thinks fit."*

The requirement that the Health Board must satisfy the Court that the child in question is '*unlikely to receive*' the requisite care or protection means that the power of the court only arises where it is satisfied that the parent or guardian of the child is unable or unwilling to provide the appropriate degree of care. It is the right and duty of the Health Board to apply for a Care Order or a Supervision Order where such parental failure can be established. Where a child is abused physically or sexually without the connivance of his or her parents or any inability or unwillingness on their part to provide proper care and protection (which may be referred to as the extra-familial case) the 1991 Act confers no express statutory power on the Health Board to intervene directly.

Section 18 of the Act of 1991 provided for a Care Order and Supervision Order respectively. A Care Order commits the child to the care of the Health Board for as long as he remains a child or for such shorter period as the Court may determine.

A Supervision Order authorises the Health Board to visit a child on periodic occasions where it believes that the child could be at risk. The Act envisaged the establishment of Child Care Advisory Committees in each Health Board district to advise the Health Board on the performance of its functions under the Act.

The Domestic Violence Act 1996, empowered the Health Board acting on behalf of an applicant, to seek a safety order or a barring order by way of application to court to protect a spouse or cohabitee, or child or dependant of such spouse or cohabitee, from violence or the threat of violence.

The Children Act 1908, has been replaced by the Children Act 2001, which is primarily concerned with the law relating to juvenile offenders. As with the 1908 Act and the Act of 1991, this Act does not deal with the issue of protecting children from danger in the community. It reiterates the principle that the State should only intervene in the welfare of a child where the family fails to ensure it.

The High Court considered Section 3 of the Child Care Act 1991 in a case reported in 1997 entitled *MQ v Robert Gleeson and Others*.<sup>48</sup> A student of social studies and community care sought judicial review of a decision by the VEC to suspend him from his course following information passed on to them by the Health Board regarding his inappropriate conduct with children.

A material part of the judgement concerned the scope of the duty owed by the Eastern Health Board to children. Considering this question, Barr J. referred to s. 3(1) of the Act and the wide duty which that section imposed on the Health Board. He went on to say that:

*"The Act (and other legislation providing for the welfare of children) is silent on the obligations of Health Boards in taking appropriate measures to protect unidentified children who may be put at risk in the future by a person who, to the knowledge of a*

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<sup>48</sup> [1997]IEHE 26

*Board, intends to enter the realm of childcare work and who the Board has good reason to believe is unsuited for such work and represents a potential hazard for children who come under his / her care.”*

Barr J. held that the statutory function of the Board was not confined to acting in the interest of specified, identified or identifiable children who were at risk of abuse and required immediate care and protection, but extended also to children not yet identifiable but who might be at risk in the future for the reason of a potential specific hazard to them which a Board may reasonably suspect may come about in the future. In those circumstances Barr J. upheld the decision of the Health Board to inform the VEC of their concerns. He held that the Health Board had an obligation to disseminate the information about the alleged child abuse but expressly held that before doing so, the Health Board was bound to take steps to interview the student and give him a reasonable opportunity to make his defence to the allegations. Furthermore, Barr J. held that the VEC was bound under the principles of natural and constitutional justice to afford their student an opportunity of responding to the allegations made before suspending him from the course of studies.

In addition, Barr J. made further observations in relation to the powers and functions of Health Boards:

*“a Health Board has a child protection function which differs fundamentally from the prosecutorial function of the police and the DPP. In the former, the emphasis is on the protection of vulnerable children. In the latter, the objective is the detention and conviction of child abusers. There are many circumstances which may indicate that a particular person is likely to be (or have been) a child abuser, but there is insufficient evidence to establish such abuse in accordance with the standards of proof required in a criminal or civil trial. ....However, there may be evidence sufficient to create, after reasonable investigation, a significant doubt in the minds of competent experienced Health Board or related professional personnel that there has been abuse by a particular person. If such doubt has been established then it follows that a Health Board cannot stand idly by but has an obligation to take appropriate action in circumstances where a person, who the Board reasonably suspects has indulged in child abuse, or is in the situation, or intending to take up a position, which may expose any other child to abuse by him / her”.*

It appears, therefore, that Health Boards have under the Act of 1991, an implied right and duty to communicate, subject to certain legal conditions being fulfilled, information in relation to a possible child abuser, if by failing to do so the safety of some children might be put at risk.

The implication of the imposition of such a duty on the Health Board without any express legislative powers is an issue which the Inquiry believes should be carefully considered by the Legislature. Guidelines, either statutory or regulatory would appear necessary in order to clearly delimit the Health Boards' obligations under Section 3 of the 1991 Act. This is particularly the case in view of the Attorney General's advice given to the Gardai in 1999 that they should inform the appropriate Health Board of all investigations of child sexual abuse irrespective of the source of the allegation giving rise to the investigation, be it anonymous, rumour, suspicion or otherwise.

Indeed, only in cases where the Gardai are satisfied that there is a real danger to children will they themselves notify an employer of an allegation.

In 1998, legislation was enacted to protect people who reported suspicions of child sexual abuse. The Protection for Persons Reporting Child Abuse Act 1998 provided immunity from civil liability to any person reporting child abuse reasonably and in good faith to designated officers of the Health Board or to any member of the Garda Síochána. It provided protection for employees who reported child abuse from all forms of discrimination, including dismissal.

The Act created a new offence of false reporting of child abuse where a person made a report to the appropriate authority “knowing that statement to be false”. This was designed to protect innocent persons from malicious reports.

Prior to the enactment of the 1991 Act, a series of guidelines were issued in 1977, 1983 and 1987 by the Department of Health. These guidelines offer a useful history of the development of awareness of child sexual abuse in the community from the mid-1970s to the present day.

These guidelines provided helpful information to those operating in child protection but they had no legislative effect and accordingly could not impose legal obligations or exempt persons from obedience to laws duly enacted. Further guidelines entitled ‘Children First’ published in 1999 were careful to emphasise this and stated on page 18:

*“These national Guidelines are directed at Health Board personnel, An Garda Síochána, other public agencies, voluntary and community organisations and private citizens. In the case of the Health Boards, the national Guidelines are being issued in the context of the Child Care Act 1991. In the case of other agencies and individuals, while the national Guidelines do not have a legislative background, the intention is the development of good practice in this important area of public policy”.*

The first Expert Group established by the Department of Health to examine the problem of non-accidental injury to children was convened in May 1975. The Memorandum on Non-Accidental Injury to Children (1977) was developed by a committee heavily weighted with medical personnel. An important recommendation of these 1977 guidelines was that case conferences should be seen as an essential part of a team effort to deal with this problem. It was recommended that apart from medical personnel, the case conference should also include social workers, teachers and where appropriate, the Gardai. The Health Board was perceived as having a role in establishing a coordinating authority at local level which would ensure that arrangements for dealing with non-accidental injury to children were satisfactory and were kept under review.

The 1977 guidelines were revised in 1980, and in 1987 Guidelines on Procedures for the Identification, Investigation and Management of Child Abuse were issued by the Department of Health. For the first time, the issue of sexual abuse of children was dealt with. The problem of sexual abuse as identified in 1987 tended to be seen as a problem within families and as requiring a particular response by child care

professionals. Abuse by non-family members or by strangers was essentially a matter for the Gardai and the families of the abused child.

Paragraph 3 of the 1987 Guidelines outlined the duty of any person who knew or suspected that a child was being harmed, or was at risk of harm, to convey his concern to the local health board. It stated that all reports of child abuse (including anonymous calls) should be investigated. In its section dealing with sexual abuse, the Guidelines stated:

*“Sexual abuse of children, like other forms of abuse, has always existed. In recent years professional staff have realised that its prevalence is much greater than previously assumed. The number of cases being identified is increasing and this trend is likely to continue as professional staff becomes better able to recognise sexual abuse and as the public become more willing to report cases or to seek help”.*

It went on to say:

*“Any complaint of sexual abuse made by a child must be taken seriously. The complaint should be followed up by the initiation of the necessary investigation and validation process. Professional staff should take particular care to ensure that the initial verbal complaint by the child to them is preserved in writing.”*

Importantly, the 1987 Guidelines recognised that all suspected cases of child sexual abuse should be reported to the Gardai. They also contained some important observations in confronting the issue of child sexual abuse and in particular, they stated:

*“.....the important element in extra familial abuse is to support the family and to ensure that parents are secure in their role as primary advocates for their child”*

What was clear from the Guidelines was that the Department of Health recognised the role of the Health Board in protecting children where the family failed to do so and saw itself as essentially a support to a family that found itself confronted with child sexual abuse from outside. However, the family would have a right to decline such support and the Health Board would have no power to impose it.

The Inquiry is aware through the direct evidence of Bishop Brendan Comiskey that he knew of the 1987 guidelines and was informed by them in dealing with an allegation of child sexual abuse in 1990. He suggested that the parents of the victim, who had initially come to him with an allegation, should speak to a general practitioner who would then be obliged to report the allegation to the Health Board and through them to An Garda Síochána. This is in fact what occurred. Bishop Comiskey did not believe it was appropriate to use these Department of Health guidelines in dealing with allegations received about priests where those allegations were made by adults. The guidelines do not deal with the issue of whether the reporting recommendation should vary if the victim is an adult at the time of making the report, but in circumstances where the perpetrator is still in a position to abuse children, the rationale for such reporting remains. Reporting complaints by adults has now been adopted by the Framework Document as being an appropriate response to all

allegations of child sexual abuse especially those allegations with continuing child protection implications.

Further guidelines entitled 'Notification of Suspected Cases of Child Abuse between the Health Boards and An Garda Síochána Gardai' were published by the Department of Health in 1995<sup>49</sup>, which purported to oblige the Health Board and An Garda Síochána to notify cases of suspected child abuse to each other and to establish a joint method of investigating cases. These guidelines were referred to as 'administratively mandatory' at the time and reflected a concern, identified in the Kilkenny Incest Investigation (1993), about lack of communication and inadequate exchange of information between the two organisations. These guidelines were subsumed into "Children First" (1999).

This Inquiry has looked in detail at the guidelines entitled "Children First, National Guidelines for the Protection and Welfare of Children" which were introduced by the Department of Health and Children in 1999. Like the 1987 guidelines, these guidelines were intended to assist people in identifying and reporting child abuse and in improving professional practice in both statutory and voluntary agencies and organisations that provide services for children and families. They sought to clarify the responsibilities of various professionals and individuals within organisations and to enhance communication and coordination of information between disciplines and organisations. These guidelines set out clearly the responsibility, albeit not a legal one, of any person who suspected that a child was being abused, or was at risk of abuse, to report his concerns to the Health Board. The guidelines point out that a suspicion not supported by any objective signs of abuse would not constitute a reasonable suspicion or reasonable grounds for concern. As with all previous guidelines, the main issue sought to be addressed was neglect or abuse by parents or carers.

Children First has outlined a system for collaboration and co-operation through liaison management teams comprised of a social work team leader and a district based inspector or sergeant from the Gardai. It is fully recognised by the Health Board that no investigation should be carried out by them which would jeopardise any criminal prosecution; their role being mainly one of assessment.

It is clear that the general focus of these guidelines was to assist officials of the Health Boards and other agencies and persons in dealing with the problem of injury (whether psychological or physical) to children caused by the abuse or neglect of their own parents or others in *loco parentis* to them. A constant theme within the guidelines is the need and difficulty in identifying children who had been abused. Reliance had to be placed upon the observations of experienced teachers; suspicions of family doctors and perhaps rumours circulating in the neighbourhood. The concerned persons were encouraged and required to communicate their suspicions or concerns to the Health Board who would collate the evidence or suspicions; meet and confer with the interested parties and, where appropriate, apply to the district court for a Care Order or other such order considered necessary.

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<sup>49</sup> See p61 below

The Guidelines have little application to the case where a person (whether an adult or child) made a specific allegation that he or she was sexually abused as a child other than by, or with the connivance of, his or her parents or guardians. In such cases a Health Board may be in a position to offer counselling or support, or notify employers or potential employers in certain circumstances, but the agency primarily responsible for handling the allegation of that serious criminal offence is An Garda Síochána.

Public Inquiries into particular cases of child abuse illustrate very clearly the important distinction between the parental neglect or abuse situation and the case of extra familial abuse. The Kilkenny Incest Investigation (1993), The West of Ireland Farmer Case (1995) and the Kelly Fitzgerald Case (1996) were all concerned with allegations of parental neglect or abuse and raised questions as to the due discharge by the relevant Health Board of its statutory functions. The Madonna House Inquiry (1996) focused on the abuse or neglect of children in residential care by staff and management who were entrusted with their care and protection. The Inquiry into Matters Relating to Child Sexual Abuse in Swimming (1998) investigated the adequacy of arrangements then in place for the protection of children engaged in the sport of swimming. It was not suggested that the Eastern Health Board, in whose area the swimming facilities were situated, had any active role to discharge in relation to the protection of children from the wrongdoing of the coaches employed there.

The Health Board has no express statutory power to obtain or seek a court order prohibiting a person suspected of child abuse from having contact with the child otherwise than in the context of the family home. The Health Board does not currently have statutory powers to prevent a suspected abuser from acting in a capacity such as a teacher or sports coach or indeed a priest which would bring him or her into close contact with, and afford him or her ready access to, young people. Essentially it is a matter for parents and guardians to determine the school their children will attend or the sports facilities they should utilise. It would require very exceptional circumstances for a Health Board to satisfy the court that the decision of competent and caring parents to send their child to a particular school was so irresponsible and unreasonable that the child should be taken from the custody of those parents or guardians and placed in an institution or a foster home.

The duty of the Legislature to protect children in the community from potential harm was recognised and dealt with in The Employment Equality Act 1998 (No. 21 1998). In the judgment of Hamilton C.J. delivering the decision of the Supreme Court in *In Re Article 26 and the Employment Equality Bill* ([1997] 2 IR 321), the Supreme Court upheld the exemption from the requirement of that legislation contained in s.16(4) of the Bill which provided that none of the provisions of the Bill required "*an employer to recruit, promote or retain an individual if the employee had a past criminal conviction for unlawful sexual behaviour or anything that was considered on the basis of reliable information that he engages in or has a propensity to engage in unlawful sexual behaviour.*" The Court accepted that this exception was based on the need to protect children from abuse and the general terms in which the exceptions were expressed were appropriate to achieve this purpose.

The Inquiry has been advised that the legislation permitting an employer (or other person in authority) to dismiss an employee from employment on the basis of

comparable information as to the history or propensity of the employee would enjoy the same status of constitutionality.

The Inquiry suggests that consideration should be given to conferring express power on the Health Services Executive to apply to a court of competent jurisdiction for an order prohibiting a named person from engaging in an activity which would give him a ready access to children at all, or otherwise on such terms that the Court might direct. The Court would have to be satisfied by such evidence as the Health Services Executive might adduce that there was a reasonable suspicion that the person concerned represented a potential hazard for such children because of a propensity on his part to sexual abuse.

### **Administrative Structure of the South Eastern Health Board.**

The South Eastern Health Board covers the counties of Kilkenny, Carlow, Wexford, Waterford and South Tipperary. The work of the Health Board is divided into three distinct areas: Community Care, General Hospital Services and Special Hospital Services.

When it was first established in 1970, the South Eastern Health Board was managed by a Chief Executive Officer to whom a Programme Manager for each of the three distinct areas, (hospitals, general and special and community care) reported. The Programme Manager for Community Care had four local managers reporting directly to him who, in turn, liaised with specialist departments covering all aspects of community care. Although the Health Board had responsibility for children in the community and was responsible for setting up vaccination programmes in schools and health examinations, there was no Health Board executive dedicated to child care or child protection. This did not occur until 1998 when the Health Board was restructured to provide for Child Care Managers reporting directly to the General Manager for Community Care. This restructuring also provided for social workers who also report to the General Manager.

Up to 1998, the most senior person in charge of Community Care was the Director of Community Care and Medical Officer of Health (DCC/MOH). This person, a medical doctor, managed the health care services in a community care area and assessed priorities for health care needs in the community. Under the Department of Health Guidelines which were published in 1987, the responsibility in relation to child abuse rested with the DCC/MOH within the community care programme. He/she was the person to whom all cases were notified and who was to ensure that all necessary information was gathered. He/she was also charged with the duty of arranging case conferences and communicating with other agencies.

The social worker was another key person in the structure of the Health Board. Before 1993, social workers were employed to provide a community based range of services to a variety of client groups including the elderly, the disabled, children and families. According to the South Eastern Health Board, the demands of family and child care meant that increasing effort needed to be concentrated on this area, and social workers with skills in dealing with children were recruited from the mid 1980s onwards. Other key personnel in child welfare at that period were public health nurses, public health doctors; child psychiatric staff was not employed until the latter

part of the 1990s. Practitioners not directly employed by the health board, such as General Practitioners, were also expected to cooperate with the child protection network by making reports and attending case conferences.

Each discipline was, according to the Guidelines, heavily dependent on the ready willingness, cooperation and participation of other professionals, within the community care structure, across the community and hospital interface, with general practitioners and with other professionals including Gardai, teachers and voluntary child services. The case conference was and still remains the crucial link between all personnel working in child protection. It occupies a central position in the decision making process in individual cases.

### **Garda/Health Board Liaison**

The Report of the Kilkenny Incest Investigation, which investigated the way in which a particular incident of child sexual abuse was handled by the Health Board and the Garda Authorities, criticised the communication between the different agencies involved. The Health Board and An Garda Síochána have since 1995, established a much closer exchange of information. There are obvious problems and tensions in the respective objectives of each agency – the Health Board must prioritise child protection whilst the Gardai must prioritise a criminal conviction.

In 1998 an Assistant Garda Commissioner sought advice from the Attorney General on whether it was properly the role of the Gardai to inform employers or family members where a rumour or innuendo existed in respect of any individual. The Attorney General's advice was that such information should be passed on to the Health Board in all cases and that that body could pass on any information to third parties such as employers, as it deemed appropriate. The Attorney General's advice stated "*The principal avenue for disclosure of sensitive information to third parties for the protection of children should be through Health Boards rather than the Gardai*". This advice was clearly given with reference to extra-familial abuse as well as family abuse.

This would appear to be a further example of the general duty inferred from Section 3 of the 1991 Act although as already stated; no legislative or regulatory guidelines have been established for such a duty.

The Inquiry has made some recommendations in respect of Health Board/Garda collaboration at Chapter Eight of this Report.

The Inquiry has been informed that irrespective of whether a complainant requested confidentiality vis-à-vis the Gardai, practice was such that all identifying information concerning cases of alleged child sexual abuse were supplied to the Gardai in the first instance. In situations where there were particular sensitivities for complainants around that, the Health Board and Gardai processed the situation over a period of time whereby the timing of identifying the alleged victim was negotiated. The Inquiry has also been informed by a Health Board that the Gardai would have communicated with them in all situations where they could not proceed with an investigation because a complainant would not make a formal complaint to them.



In relation to the policy adopted where the complainant was an adult and deemed capable of bringing the matter to An Garda Síochána, the Health Board officials spoken to by this Inquiry were not aware of any formal policy having been adopted by the Health Board regarding adult complaints.

The Inquiry has been informed by a former Director of Community Care in the South Eastern Health Board that since 1995 all cases of child sexual abuse that came to the attention of the South Eastern Health Board were reported to An Garda Síochána .

### **The Inter-Agency Review Committee**

The Health Services Executive has been represented on the Inter-Agency Review Committee<sup>50</sup> by the child care manager, Mr Joe Smyth, and a principal social worker. The existence of a Committee composed of high level representatives of the Garda Síochána, the Health Services Executive and of the organisation concerned would facilitate the necessary three-way exchange of information particularly in relation to suspicions, rumours, or unsubstantiated allegations of sexual abuse which are difficult for any one agency or authority to investigate adequately. The collation of such information would be of particular importance to the Health Services Executive and assist it *'to promote the welfare of children in its area who are not receiving adequate care and protection'* as required by Section 3 of the 1991 Act. The Inquiry believes therefore that it should be the responsibility of the Health Services Executive to convene these meetings and to collate and maintain records arising therefrom..

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<sup>50</sup> See p42 above

### 3.3 AN GARDA SÍOCHÁNA

In this section we set out the general structures of An Garda Síochána, the current procedures for investigating allegations of child sexual abuse, the role of the DPP and the underlying legislation. The files made available to this Inquiry by An Garda Síochána date from 1990 and are discussed at Chapter 7 of this report.

The Garda Commissioner is appointed by the Government and is ultimately responsible to the Minister for Justice, Equality and Law Reform. His management team comprises two Deputy Commissioners and eleven Assistant Commissioners.

Assistant Commissioner, Security, has overall responsibility for crime policy and administration, subversion and security issues within An Garda Síochána. This particular office has been routinely involved in the handling of cases which have been reviewed by the Inquiry.

In January 1996, the Garda Commissioner appointed six regional Assistant Commissioners. The office covering the area represented by the Diocese of Ferns is based in Kilkenny. It acts as a review layer in addition to managing performance and resources available to the Deputy Commissioner, Operations. The Inquiry has identified this office as having extensive involvement in the response of An Garda Síochána to cases involving child sexual abuse since its inception in 1996.

The South Eastern region is comprised of the Garda divisions of Waterford/Kilkenny, Wexford/Wicklow and Tipperary. The region is headed by a regional Assistant Commissioner who reports to the Deputy Commissioner Operations. This region caters for a population of approximately 450,000 with a Garda strength reported in 2002 at 971, serving 117 Garda stations, in sixteen Garda districts.

Each region is divided into divisions commanded by a Chief Superintendent and each division is then divided into districts commanded by a Superintendent assisted by a number of Inspectors. The districts are divided into sub-districts, each normally the responsibility of a Sergeant. Each sub-district usually has one station, the strength of which may vary on a nationwide basis. In some areas there are stations known as sub-stations usually occupied by one Garda.

It is noted from the Inquiry's review of files furnished to it by An Garda Síochána that during the course of an investigation a constant stream of correspondence is

maintained between the office of the Garda Commissioner and local level by way of Assistant Commissioners and Chief Superintendent/Superintendent.

A systemic change occurred within An Garda Síochána from November 1999 whereby a paper trail evidencing such correspondence has now been supported with a computerised system which records all incidents that An Garda Síochána deal with from the time of the initial contact made to it by a complainant or witness until a particular offender is dealt with by the court. This is known as the PULSE system. It is a system which is available online to all networked Garda stations throughout the country. All members are required to record information in relation to incidents which will then be accessible by another member involved in the investigation of that case. It is also safeguarded by restrictions on the access to certain levels of information which is also governed by seniority and area of specialisation.

In this regard, cases involving child sexual abuse would usually be accessible to an investigating Garda, his or her Superintendent and certain Assistant Commissioners. A further notable feature on this system is that it contains no deletion mechanism and it is capable of correlating information to an extensive data bank.

From the Garda Annual Report 2002 it appears that of 1,626 reported complaints of sexual assault in 2002, 534 cases involved criminal proceedings and of those cases which were completed at the date of that report, 157 cases (9.65%) resulted in convictions. 206 cases (12.67%) were still pending and the remaining 171 cases (10.52%) completed without a conviction.

Under the 1995 guidelines, 'Notification of Suspected Cases of Child Sexual Abuse between Health Boards and An Garda Síochána'<sup>51</sup>, where a Health Board suspects a child has been physically or sexually abused, An Garda Síochána must be formally notified. The process of establishing this suspicion involves consulting with professional experts, although the agreement provides that the Health Board need not be satisfied that such abuse is confirmed before reporting. The notification is made by a designated officer of the Health Board to the Superintendent of the district in which it is suspected the offence occurred. The reciprocal duty to report on the part of An Garda Síochána requires it to notify the Health Board where it suspects a child has been a victim of abuse. It is not necessary in this regard for the Gardai to have sufficient evidence to support a criminal prosecution. The Inquiry is advised by both organisations that the identity of the complainant and accused would be made known when a notification is made.

The Gardai participate in the work of the Inter-Agency Review Committee referred to at pages 42 and 58 above. An Garda Síochána is represented on this committee by a Superintendent appointed by the Chief Superintendent of Wexford Division. This Superintendent has described the working of this Review Committee "*as a step forward for all parties involved*".

The Garda structure is also served on a nationwide level by the Domestic Violence and Sexual Assault Investigation Unit (the National Unit) which is based in Dublin. The National Unit was established in 1997 but emanates from the 'Woman and Child

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<sup>51</sup> See page 58.

Unit' established in 1993. It consists of a Detective Superintendent, a Detective Inspector, three Detective Sergeants and up to eleven Detective Gardai. Many of these officers have been sponsored to complete a Postgraduate Diploma in Child Protection and Welfare at Trinity College Dublin which is funded by the Department of Health & Children. The National Unit works within the National Bureau of Criminal Investigation. In cases where a complainant does not wish local Gardai to become aware of his/ her complaint, the National Unit can in exceptional circumstances, carry out its own investigation whilst only notifying the local Superintendent as to progress on the investigation. The National Unit is in a position to refer cases directly to the Director of Public Prosecutions (DPP) via the Chief Prosecution Solicitor for decisions on prosecutions. However, in most cases investigations would be done in conjunction with local Gardai.

Some complainants indicated to the Inquiry that they were reluctant to report to local members of An Garda Síochána either because of personal friendships or connections or because they were fearful that confidential information would be disclosed. It is appreciated that in small communities, whilst friendship with particular members of An Garda Síochána may be seen as support to some, it has undoubtedly been an inhibiting factor for others. The Inquiry noted that complainants could and did chose where they would report the complaint and decided whether to make the complaint to a male or female Garda. If particular circumstances existed that made reporting in the Wexford District undesirable or excessively embarrassing, the complaint could be made to the National Unit. That was done in one case which came to the attention of the Inquiry.

In at least two cases, complaints were made to the Inquiry that information which they gave to Gardai in confidence was improperly divulged. The Inquiry discussed this issue generally with Superintendent Kieran Kenny. The position of the An Garda Síochána is clear. They have stated that they would not condone any breach of confidence and any complaint that confidence was breached would be fully investigated and the culprit punished appropriately. There are ample procedures both within and without the structure of An Garda Síochána for making such complaints and one or other of those procedures should be followed in the event of any complainant suspecting improper disclosure of confidential information. The Gardai did point out however, that anonymity could not be guaranteed fully to a complainant. His identity and the evidence tendered by him must ultimately and as a matter of due process be communicated to the accused.

In 1999, a victim's charter was published by the Department of Justice, Equality and Law Reform. This emphasised the importance of keeping the victim of a crime informed about the progress and outcome of the criminal investigation and trial.

An Garda Síochána works in close cooperation with victim groups who are available to provide assistance to victims in terms of medical care and advice in relation to the criminal process. In some cases, the victim will be brought to court beforehand and shown the witness box and the court procedures involved. The evidence which that person will provide at the trial is not discussed.

## **The Garda Process of Investigation**

When a complaint is received, a statement is normally taken, typed and logged at the incident room where a working file containing the original statement in typed form together with copies thereof will be filed. If a person wishes to attend An Garda Síochána confidentially, that is to say without disclosing his name, that is respected although these persons would be encouraged, perhaps with the assistance of a victim support person, to make a formal statement at a later date.

A statement will be taken from the complainant as soon as is practicable and only then will an investigation team be assembled. In the case of serious complaints, this investigation would usually be lead by a Detective Superintendent with a team of detectives. The nature and extent of the complaint will determine the volume of work involved and this in turn, together with the resources of a particular district, will determine the size and composition of any investigation team. The Inquiry has observed cases which arose prior to 1995 where the entire investigation of child sexual abuse allegations was undertaken by one Garda. The Inquiry has been advised that this practice is no longer continued.

The PULSE system will record the general progress and status of the investigation. Incident Room records including a job book, record every piece of work carried out during the course of an investigation. Regular meetings are held in which the investigation and its progress are discussed. All evidence to the investigating team is analysed and corroborating evidence is sought where appropriate.

An Garda Síochána requires a complainant to make a formal statement of complaint before a criminal prosecution process can begin. However, anonymous complaints made directly to An Garda Síochána or through a third party of rumour, innuendo and suspicion in relation to any crime including child sexual abuse may be filed by An Garda Síochána for intelligence purposes, and an attempt can be made to corroborate and test the truth of such information. If the information is found to have substance, the investigating Garda may make enquiries to encourage the victim to come forward and make a formal complaint. Such information could also be used in linking it with other areas of investigation.

The Inquiry was told that An Garda Síochána does not seek out or canvas for complainants. They generally will not contact a complainant directly unless the complainant has expressed a willingness to co-operate in a Garda investigation. Where a complaint is notified to An Garda Síochána by a third party, such as a diocese or Health Board, it would request the notifying party to invite the complainant to meet with the investigating Gardai. The Inquiry was told that An Garda Síochána would not betray the confidence of that third party in contacting a complainant, although a decision to visit complainants would ultimately depend on the circumstances of each case. In all cases, An Garda Síochána is dependent upon the co-operation of the complainant and if it is seen not to respect confidentiality, then it is unlikely that it will obtain such co-operation.

On completion of the investigation, the Superintendent must decide whether or not to refer the matter to the DPP. His communication with the DPP is channelled through the State Solicitor. The decision to refer any complaint to the DPP for directions

rests with the local Superintendent who will consider the evidence available and the seriousness of the alleged crime. In all cases, as required by the victims' charter, the complainant should be notified of the decision to refer or not to refer the complaint to the Director of Public Prosecutions.

The role of regional Assistant Commissioners is also relevant in this regard. A Superintendent would normally refer complaints of significant importance to this office. Since this office is located on a regional basis it can access all information in relation to alleged crimes committed in its region. Nowadays an investigating Garda will initially log details of a complaint on the PULSE system which will be reviewed by a Supervisor, usually of Sergeant rank, who certifies that he or she is satisfied with the entry.

As already stated, An Garda Síochána was advised by the Attorney General in 1999 in relation to the issue of notification to other bodies or persons of complaints, anonymous complaints, rumour, innuendo or suspicion about child sexual abuse. The Attorney General advised that *"the principal avenue for disclosure of sensitive information to third parties for the protection of children should be through Health Boards rather than the Gardai"*. In all cases, even those involving unsubstantiated allegations, Garda practice as identified by this Inquiry in the Wexford area, is to notify the Health Board, in view of their specific function for the protection of children. In cases involving substantiated allegations where Gardai consider there to be a risk of harm to children, the employer may be notified that an investigation is being conducted but no warning about the employee should be given. It is only where Gardai believe there is a real danger of injury to children that they should inform the employer for the purpose of preventing further offences being committed. In cases where an employer is notified, the accused will usually be advised as to the proposed step to be taken and given an opportunity make a submission. The advice also provides that Gardai must be careful to only notify the proper authority within the employer organisation. The Attorney General has further advised Gardai that liability for non disclosure of certain information where injury results from a person being left in a position with close contact with children would not normally arise. The foregoing advice relating to employers applies equally to other bodies such as sporting associations and dioceses.

The issue of third party involvement also raises concern over the potential impact that interviews conducted by persons other than An Garda Síochána with the accused or accuser may have on the evidence presented at a subsequent criminal trial. Gardai have expressed a desire to be the first party to interview a complainant and the accused in order to elicit information which cannot be claimed to have been tainted. In this regard, An Garda Síochána would wish that the Health Services Executive, Diocese or employer who receives a complaint, allegation, rumour, innuendo or suspicion about child sexual abuse should notify An Garda Síochána before initiating their own investigation. The Inquiry appreciates these concerns but is satisfied that child protection requires an immediate, if limited, investigation by the Bishop (or employer) to ensure that the alleged wrongdoer stands aside pending all other appropriate inquiries. The Inquiry has been informed that collaboration between the Health Services Executive and An Garda Síochána is a matter that is under ongoing review.

Once a Garda investigation is completed and a file is sent to the DPP, then all further action in relation to the criminal investigation and prosecution is done at the direction of the DPP.

The office of the DPP decides on whether a prosecution should proceed in cases concerning child sexual abuse. It examines all files received from its Solicitors Division and local State Solicitors. The office provides ongoing instruction and legal advice to its solicitors division and local State Solicitors in every case. The decision on whether to prosecute is made on the file assembled by Gardai. The conduct of proceedings is entrusted to Counsel in such cases nominated by the office.

In most child sexual abuse cases, the file is reviewed by a second officer in the DPP's office. It is important to highlight that the DPP's decisions in child sexual abuse cases are generally not final; the matter may be reviewed if further evidence is obtained. The DPP does inform its solicitors division or local State Solicitor of the reasons for not proceeding. The reasons are then furnished to the investigating Gardai. However, such information is not made public.

The victim should be kept fully informed of the handling of a criminal prosecution by An Garda Síochána. In addition, the victim or a member of the victim's family or his or her lawyer is authorised by law to request the DPP to review a particular decision although section 6 of The Prosecution of Offences Act 1974 states that it shall "not be lawful" for any person not so authorised to contact the DPP in relation to such matters. This section does not prescribe any sanction for a breach of that provision.

To initiate a prosecution, the DPP requires a complainant and it will not generally subpoena a non-cooperative victim to give evidence in criminal proceedings. It should be observed that complainants are well protected by courts in securing their anonymity. However, a complainant's identity is necessarily made known to the accused in accordance with his or her constitutional rights.

The DPP believes that Gardai now tend to refer all child sexual abuse cases for the attention of the DPP. He also referred to the rights of a victim to ascertain the current status of his or her complaint with An Garda Síochána or the DPP directly.

In deciding whether or not to prosecute in a particular case, the DPP will consider the public interest which prescribes that serious offences should be prosecuted in so far as is practicable. The DPP also considers whether any aggravating or mitigating factors are relevant. The DPP's Guidelines for Prosecutions published in October 2001 list, among others, the following aggravating factors which would influence the decision to prosecute in a particular case.

- Where a conviction is likely to result in a significant penalty;
- If the accused was in a position of authority or trust and the offence is an abuse of that position;
- Where the accused was a ringleader or an organiser of the events;
- Where the offence was premeditated;
- Where there are grounds for believing that the offence is likely to be continued or repeated, for example where there is a history of reoccurring conduct.

The list of mitigating factors, on the other hand, does not appear applicable to cases involving allegations of child sexual abuse. Moreover, these are factors which can be taken into account by the sentencing court in the event of a conviction, rather than factors which should lead to a decision not to prosecute. The DPP will also have regard to the views of a victim and the impact of a failed prosecution on the victim. He informed the Inquiry of two significant developments in the treatment of child sexual abuse cases by the courts that have occurred in recent years, which further impact upon the decision to prosecute or the likelihood of obtaining a successful prosecution.

Firstly, there is an increasing demand for separate trials for child sexual abuse cases involving multiple victims. This may arise even where victims allege similar facts. Secondly, delay in bringing a complaint to the attention of An Garda Síochána does encourage an accused to seek an order of prohibition on the grounds that such delay has prejudiced the fair trial of the charge. The DPP provides in his Guidelines that a prosecutor should, in any case where there has been a long delay since the offence was committed, consider in the light of the case law whether that delay was such that the case should not proceed.

The DPP was concerned about the emerging jurisprudence in regard to the failure of victims to report promptly to Gardai allegations of child sexual abuse, the causes of this delay and the consequences which it may have for the accused in defending proceedings instituted against him. He expressed the view that the grounds currently accepted for justifying the delay were quite narrow.

The Inquiry sought the views of the DPP on authorities other than An Garda Síochána conducting limited investigations for an immediate child protection result parallel to a criminal investigation. These investigations could take the form of a minor scale church investigation into whether or not a reasonable suspicion existed against a priest to justify his immediate stepping aside in accordance with Canon law. The DPP confirmed that such limited investigations do not and have not in his experience, adversely affected a criminal prosecution. However, he advised that protracted parallel investigations and indeed attendances on victims by support persons may prove prejudicial to a criminal prosecution by giving rise to conflicting statements or claims of contaminated evidence. The DPP also stated that he had no difficulty with information on the status of a particular case being shared with the Health Boards and dioceses provided personal information and the reasons for any decision regarding prosecution taken by the DPP were not shared.

The Inquiry has reviewed the principal legislative provisions relating to child sexual abuse in this chapter. The DPP expressed himself satisfied with the powers available to proceed with prosecutions in child sexual abuse cases.

It is clear from the Inquiry's review of the handling of cases by An Garda Síochána at Chapter 7 of this Report that a prosecution was initiated by the DPP only where there were multiple alleged victims of an accused or in one case where there was one victim and the incident was witnessed by family members. The Inquiry therefore asked the DPP whether or not there is a reluctance on the part of his office to prosecute in cases where it merely has an account of child sexual abuse of one victim which is completely denied by the accused. The DPP confirmed that every case would be



carefully looked at by his office individually and his office would certainly be prepared to proceed in a case involving one complainant against an accused who denies the allegation in its entirety and in fact many cases which begin with a multiplicity of alleged victims are ultimately heard on an individual basis.

The Inquiry also raised with the DPP the question of whether or not there was ever a reluctance on the part of prosecutors to prosecute members of the clergy. The DPP stated clearly that neither he nor any of his staff were ever influenced in deciding to initiate criminal proceedings by the identity of the accused as a priest.

## **SEXUAL OFFENCES LEGISLATION**

The response of An Garda Síochána depends largely on the nature of the crimes they are investigating. It is therefore necessary to examine the laws which create the crimes comprised in the general expression “child sexual abuse”. This expression is one widely used in this and other jurisdictions to describe a range of sexual misconduct. The relevant legislation and the material provisions of it are as follows:

### **1& 2) Offences against the Person Act 1861 & Criminal Law (Amendment) Act, 1885**

The Offences against the Persons Act 1861 and the Criminal Law (Amendment) Act 1885 prescribed penal servitude for life for rape and buggery and a maximum sentence of ten years imprisonment for indecent assault. In all cases, it was necessary to prove some physical form of assault on the part of the accused, and in cases of rape and indecent assault the issue of consent was an important constituent of those offences.

The 1885 Act provided for an offence of gross indecency of a male which attracted a term of imprisonment of up to two years. This offence did not depend upon issues of age or consent and encompassed most forms of homosexual activity which were not dealt with under the 1861 Act.

### **3) Criminal Law Amendment Act 1935**

Much of this Act has now been repealed, but of the provisions still in operation, ss. 1 and 2 still form the bedrock of the protection given by the law to girls under 17 years of age. Section 1 of the Act provides a penalty of up to life imprisonment on conviction for unlawfully and carnally knowing a girl under 15 years of age. Section 2 provides for maximum penalties of five years imprisonment in the case of a first conviction and ten years in the case of a second or any subsequent conviction for unlawfully and carnally knowing any girl under 17 years of age.

#### **4) Criminal Law (Rape) (Amendment) Act 1990.**

This legislation was enacted pursuant to the recommendations made by the Law Reform Commission in 1988. It replaced the offence of indecent assault on a male or a female with offences of aggravated sexual assault with a maximum penalty of life imprisonment, and sexual assault with a maximum penalty of 5 years imprisonment. Aggravated sexual assault is defined as sexual assault that involves serious violence or the threat of serious violence or is such as to cause injury, humiliation, or degradation of a grave nature to the person assaulted.

It also created a new offence of rape under section 4, defined as a sexual assault which includes penetration of the mouth or anus by the penis or the vagina by an object manipulated by another person. This carried a maximum penalty of life imprisonment.

#### **5) Criminal Law (Sexual Offences) Act 1993**

This Act made it a statutory offence to commit an act of buggery with persons of either sex under 17 years of age. The Act also created a new statutory offence of gross indecency by a male with a male under 17 years of age.

Section 3 of the Act imposed a maximum penalty of life imprisonment for buggery with persons under 15 years of age and also provided for a maximum penalty of 5 years imprisonment for a first conviction and ten years for a subsequent conviction in respect of buggery with a person of or over 15 years and under 17 years of age.

Furthermore, s.6 made it an offence to importune a child in relation to buggery, gross indecency or unlawful carnal knowledge. The penalty in relation to this offence is a term of imprisonment for a period not exceeding twelve months on summary conviction.

#### **6) Sex Offenders Act 2001**

This Act requires a person who has been convicted of the prescribed sex offences to furnish to An Garda Síochána their name and address and any changes which may be made to either his address or name from time to time. This legal requirement enables An Garda Síochána to maintain a record of the identity and whereabouts of persons who had been convicted of the prescribed sexual offences. The manner in which this record is kept and the categories of persons who may have access to it are not dealt with in the legislation. The Act imposes an obligation on sexual offenders to disclose to certain categories of employers their previous convictions in relation to such offences. Provisions are also made by the 2001 Act for the imposition by the court of a Supervision Order. In addition, the court is authorised, on the application of a member of the Garda Síochána of the rank of Chief Superintendent, to impose such restrictions on the activities of a person convicted of sexual offences as the court may consider necessary for the protection of the public. The threshold for granting such an order is that the court should be satisfied on the balance of probabilities that the person has acted on one or more occasions in such a manner as to give reasonable grounds for believing that an order is necessary to protect the public from serious harm. Furthermore, the order may remain operable for an indefinite period of time

and any breach of the order will attract a maximum penalty of five years imprisonment. One such application has been made by Gardai since the Act came into operation.

In addition to the important protections this Act provides, the legislation is significant administratively in that it confers or imposes on An Garda Síochána powers and obligations designed to protect the community against the perpetration of sexual offences rather than the detection or punishment of offences already committed.

The Inquiry has reviewed corresponding English legislation which was recently updated in the Sexual Offences Act 2003. In brief, this Act provides a modern and comprehensive list of child sex offences which are more specific in nature than prevailing Irish law. It also provides for a series of new orders which may be granted by a court in respect of convicted and in limited cases, suspected, child sex offenders. The Inquiry has identified, by way of example only, the following English offences which do not exist in Irish law:

- (i) Section 15 of the Sexual Offences Act 2003 relates to the offence of meeting with a child following sexual grooming whereby an adult, having met or communicated with a child on at least two earlier occasions, intentionally meets a child or travels with the intention of meeting a child in any part of the world and at the time of doing so, intends to do anything to or in respect of the child, during or after the meeting and in any part of the world which if done will involve the commission by the perpetrator of a relevant offence. A “relevant offence” is defined to include most sexual offences. This offence requires the child to be under 16 years and for the perpetrator to believe that the child is not 16 years or over.
- (ii) The Act also creates offences in relation to abuse of positions of trust whereby it is a separate offence for a person aged 18 years or over to involve a child under that age in sexual activity where he is in a specified position of trust in relation to that child. This list does not include priests or ministers of religion. Even though the age of consent in England is 16, this offence relates to victim or victims under the age of 18.

## **7) Law Reform Commission Recommendations**

In its Report on Child Abuse made in 1990, the Law Reform Commission recommended the creation of an offence of child sexual abuse. Its proposed definition has already been set out at Chapter 2. Furthermore, Article 19(1) of The United Nations Convention on the Rights of the Child 1989, obliges the State to introduce such an offence. It could be committed by any person with a person less than 15 years of age or by a person in authority with a person under the age of 17. This would certainly remove the technical assault requirement and put the emphasis on acts that are abusive and exploitative.