

Commission of Investigation

Report into the Catholic Archdiocese of Dublin July 2009

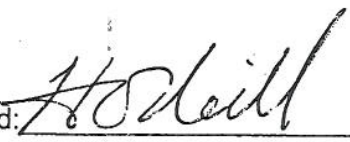


Part 1

This report is submitted to the Minister for Justice, Equality and Law Reform pursuant to the provisions of the Commissions of Investigation Act 2004.

Signed:  Date: 21.7.09
Judge Yvonne Murphy
Chairperson

Signed:  Date: 21-07-09
Ms Ita Mangan
Member

Signed:  Date: 21.07.09
Mr Hugh O'Neill
Member

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PART 1

Introduction

- 1.1 The Dublin Archdiocese Commission of Investigation was established to report on the handling by Church and State authorities of a representative sample of allegations and suspicions of child sexual abuse against clerics operating under the aegis of the Archdiocese of Dublin over the period 1975 to 2004. The report of the Commission is in two parts.
- 1.2 In Part 1, the report outlines the organisational structures of the Archdiocese and the relevant State authorities, that is, the Gardaí, the Director of Public Prosecutions (DPP) and the health authorities. This part also covers the general background to the handling of complaints and includes information on the arrangements made for insurance cover and for financing the costs involved in clerical child sexual abuse. It covers the canon law and the procedures set out by the Roman Catholic Church for dealing with complaints of what Church law describes as the “*worst crime*”, that is, sexual interference with a minor.
- 1.3 Part 2 reports on the cases of the 46 priests who form the representative sample. Below, the Commission gives an overview of what these cases show.
- 1.4 It is important to realise that it was not the function of the Commission to establish whether or not child sexual abuse actually took place but rather to record the manner in which complaints were dealt with by Church and State authorities.

The Ryan Report

- 1.5 The Dublin Archdiocese Commission of Investigation report was completed shortly after the publication of the *Report of the Commission to Inquire into Child Abuse*, generally known as the *Ryan Report*. Because of this, and because the abuse of children by clerics and religious was the underlying reason for both reports, there has been a tendency to assimilate the two reports in public and journalistic commentary. They are, in fact, quite different in subject, scale and nature.

1.6 The Commission to Inquire into Child Abuse was primarily an investigation of the treatment of many thousands of children, over many decades, in residential institutions, including industrial schools, run by various religious orders and congregations. This report is much more restricted in scale and is concerned only with the response of Church and State authorities to a representative sample of complaints and suspicions of child sexual abuse by priests in the Archdiocese of Dublin between the years 1975 and 2004.

1.7 The *Ryan Report* was concerned with establishing whether or not abuse occurred and the nature and scale of that abuse. It was not confined to sexual abuse. This Commission had no remit to establish whether or not abuse occurred although it is abundantly clear, from the Commission's investigation as revealed in the cases of the 46 priests in the representative sample (see Chapters 11 to 57), that child sexual abuse by clerics was widespread throughout the period under review. This Commission's investigation is concerned only with the institutional response to complaints, suspicions and knowledge of child sexual abuse. The Ryan Commission was required to make recommendations. The Dublin Commission has no specific remit to make recommendations but the Commission has given its views on a range of matters which it considers significant at various stages in the report.

Number of Complaints

1.8 The Commission received information about complaints, suspicions or knowledge of child sexual abuse in respect of 172 named priests and 11 unnamed priests. (Some or all of the 11 unnamed priests may, of course, be included in the 172 named priests.) After a preliminary examination, the Commission concluded that 102 of these priests were within remit.

1.9 It is important in the Commission's view not to equate the number of complaints with the actual instances of child sexual abuse. While a significant number of the priests against whom allegations were made admitted child sexual abuse, some denied it. Of those investigated by the Commission, one priest admitted to sexually abusing over 100 children, while another accepted that he had abused on a fortnightly basis during the currency of his ministry which lasted for over 25 years. The total number of documented complaints recorded against those two priests is just over 70. In another case, there is

only one complaint but the priest has admitted to abusing at least six other children.

1.10 The Commission examined complaints in respect of over 320 children against the 46 priests in the representative sample. Substantially more of the complaints relate to boys – the ratio is 2.3 boys to 1 girl.

1.11 Of the 46 priests examined, 11 pleaded guilty to or were convicted in the criminal courts of sexual assaults on children.

1.12 There is one clear case of a false accusation of child sexual abuse – Fr Ricardus*¹ (see Chapter 55). There are two cases where there were suspicions or concerns but no actual complaint of child sexual abuse – Fr Guido* (see Chapter 51) and Fr Magnus* (see Chapter 49).

The priests – where they are now

1.13 Of the 46 priests in the representative sample, 11 are or were members of religious orders. Four of these are dead; four are living within their orders with restrictions on their ministry and activities; two are living within their orders without restrictions and one has become estranged from his order and is living without restriction in another diocese. One priest belongs to a UK diocese and his whereabouts are unknown. Of the 34 priests from the Dublin Archdiocese, ten are dead, 20 are out of ministry and four are in ministry. Of the 20 who are out of ministry, 11 are being financially supported by the Archdiocese and are living under restrictions imposed by Archbishop Martin; nine are laicised.

The Archdiocese and Church authorities

1.14 The volume of revelations of child sexual abuse by clergy over the past 35 years or so has been described by a Church source as a “*tsunami*” of sexual abuse.² He went on to describe the “*tsunami*” as “*an earthquake deep beneath the surface hidden from view*”. The clear implication of that statement is that the Church, in common with the general public, was somehow taken by surprise by the volume of the revelations. Officials of the

¹ * Names marked with an asterisk are pseudonyms.

² Mc Grady, A., Registrar of the Mater Dei Institute Dublin, “Brokenness of the Irish Church” in Liam Bergin (ed) *According to Your Word*, (Dublin: Four Courts Press, 2007).

Archdiocese of Dublin and other Church authorities have repeatedly claimed to have been, prior to the late 1990s, on 'a learning curve' in relation to the matter. Having completed its investigation, the Commission does not accept the truth of such claims and assertions.

1.15 The Dublin Archdiocese's pre-occupations in dealing with cases of child sexual abuse, at least until the mid 1990s, were the maintenance of secrecy, the avoidance of scandal, the protection of the reputation of the Church, and the preservation of its assets. All other considerations, including the welfare of children and justice for victims, were subordinated to these priorities. The Archdiocese did not implement its own canon law rules and did its best to avoid any application of the law of the State.

1.16 The situation improved from the start of the implementation of the *Framework Document*³ in 1996. However, it took some time for the structures and procedures outlined in that document to be fully implemented. In particular, its provisions on support services for complainants were not fully implemented until the establishment of the Child Protection Service within the Archdiocese in 2003. This failure caused added distress to complainants. The Commission is satisfied that there are effective structures and procedures currently in operation. In particular, the Commission is satisfied that all complaints of clerical child sexual abuse made to the Archdiocese and other Church authorities are now reported to the Gardaí. There is no legal requirement for such reporting but the Commission considers that the Gardaí are the appropriate people to deal with complaints. While acknowledging that the current archdiocesan structures and procedures are working well, the Commission is concerned that those structures and procedures are heavily dependent on the commitment and effectiveness of two people – the Archbishop and the Director of the Child Protection Service. The current Archbishop and Director are clearly committed and effective but institutional structures need to be sufficiently embedded to ensure that they survive uncommitted or ineffective personnel.

³ Irish Catholic Bishops' Advisory Committee on Child Sexual Abuse: *Child Sexual Abuse: Framework for a Church Response*, (Dublin: Veritas Publications, 1996).

Knowledge of clerical child sexual abuse

- 1.17 The authorities in the Archdiocese of Dublin and the religious orders who were dealing with complaints of child sexual abuse were all very well educated people. Many had qualifications in canon law and quite a few also had qualifications in civil law. This makes their claims of ignorance very difficult to accept. Child sexual abuse did not start in the 20th century. Since time immemorial it has been a “*delict*” under canon law, a sin in ordinary religious terms and a crime in the law of the State. Ignorance of the law is not a defence under the law of the State. It is difficult for the Commission to accept that ignorance of either the canon law or the civil law can be a defence for officials of the Church.
- 1.18 There is a two thousand year history of Biblical, Papal and Holy See statements showing awareness of clerical child sex abuse. Over the centuries, strong denunciation of clerical child sexual abuse came from Popes, Church councils and other Church sources. A list covering the period 153 AD to 2001 is included in an article by the Promoter of Justice in the Congregation for the Doctrine of the Faith.⁴ These denunciations are particularly strong on ‘offences against nature’ and offences committed with or against juveniles. The 1917 code of canon law decreed deprivation of office and/or benefice, or expulsion from the clerical state for such offences. In the 20th century two separate documents on dealing with child sexual abuse were promulgated by Vatican authorities (see Chapter 4) but little observed in Dublin.
- 1.19 The controversy and drama surrounding the Fr Brendan Smyth case in 1994 (see Chapter 7) brought clerical child sexual abuse to public attention. It is probable that this was the first time that many members of the public became aware of the possibility of clerical child sexual abuse. The claim that bishops and senior church officials were on ‘a learning curve’ about child sexual abuse rings hollow when it is clear that cases were dealt with by Archbishop McQuaid in the 1950s and 1960s and that, although the majority of complaints emerged from 1995 onwards, many of the complaints described

⁴ Scicluna, Charles J., “Sexual Abuse of Children and Young People by Catholic Priests and religious: Description of the Problem from a Church perspective” in Hanson, Pfäfflin and Lütz (eds) *Sexual Abuse in the Catholic Church: Scientific and Legal Perspectives* (Rome: Libreria Editrice Vaticana 2003).

in this report first came to the attention of the Archdiocese in the 1970s and 1980s. The Commission examined complaints in respect of approximately 320 complainants against the 46 priests in the representative sample. Of the complaints examined by the Commission,

- three were made in the 1960s;
- 11 were made in the 1970s and there were two suspicions/concerns;
- 64 were made in the 1980s and there were 24 suspicions/concerns;
- 135 were made in the 1990s and there were 23 suspicions/concerns;
- 112 were made in the 2000s (mainly between January 2000 and 1 May 2004) and there were 10 suspicions/concerns.

1.20 In 1981, Archbishop Ryan showed a clear understanding of both the recidivist nature of child sexual abusers and the effects of such abuse on children when he was referring Fr [redacted] to Stroud (a therapeutic facility in the UK – see Chapter 11). The Archdiocese first made inquiries about insurance cover for compensation claims in the mid 1980s and such cover was put in place in 1987 (see Chapter 9).

1.21 All the Archbishops of Dublin in the period covered by the Commission were aware of some complaints. This is true of many of the auxiliary bishops also. At the time the Archdiocese took out insurance in 1987, Archbishop Kevin McNamara, Archbishop Dermot Ryan and Archbishop John Charles McQuaid had had, between them, available information on complaints against at least 17 priests operating under the aegis of the Dublin Archdiocese. The taking out of insurance was an act proving knowledge of child sexual abuse as a potential major cost to the Archdiocese and is inconsistent with the view that Archdiocesan officials were still ‘on a learning curve’ at a much later date, or were lacking in an appreciation of the phenomenon of clerical child sex abuse.

1.22 Many of the auxiliary bishops also knew of the fact of abuse as did officials such as Monsignor Gerard Sheehy and Monsignor Alex Stenson who worked in the Chancellery. Bishop James Kavanagh, Bishop Dermot O’Mahony, Bishop Laurence Forristal, Bishop Donal Murray and Bishop Brendan Comiskey were aware for many years of complaints and/or suspicions of clerical child sexual abuse in the Archdiocese. Religious orders

were also aware. For example, the Columban order had clear knowledge of complaints against Fr Patrick Maguire in the early 1970s.

1.23 In addition to their clerical education, many of those in authority in the Archdiocese had civil law degrees or occupied prestigious appointments in third level education. Monsignor Sheehy, Bishop O'Mahony and Bishop Raymond Field were qualified barristers. Bishop Kavanagh was Professor of Social Science in University College Dublin where both Archbishop Ryan and Archbishop Connell held high ranking academic posts. Despite their participation in civil society, it was not until late 1995 that officials of the Archdiocese first began to notify the civil authorities of complaints of clerical child sexual abuse. In this context it is significant, in the Commission's view, that every bishop's primary loyalty is to the Church itself. At his consecration every bishop, as well as making a profession of faith, must take an oath of fidelity to the Apostolic See.

1.24 Some priests were aware that particular instances of abuse had occurred. A few were courageous and brought complaints to the attention of their superiors. The vast majority simply chose to turn a blind eye. The cases show that several instances of suspicion were never acted upon until inquiries were made. Some priest witnesses admitted to the Commission that they had heard various reports 'on the grapevine'.

The Church's failure to implement its own rules

1.25 The Church authorities failed to implement most of their own canon law rules on dealing with clerical child sexual abuse. This was in spite of the fact that a number of them were qualified canon and civil lawyers. As is shown in Chapter 4, canon law appears to have fallen into disuse and disrespect during the mid 20th century. In particular, there was little or no experience of operating the penal (that is, the criminal) provisions of that law. The collapse of respect for the canon law in Archdiocesan circles is covered in some detail in Chapter 4. For many years offenders were neither prosecuted nor made accountable within the Church. Archbishop McQuaid was well aware of the canon law requirements and even set the processes in motion but did not complete them. Archbishops Ryan and McNamara do not seem to have ever applied the canon law.

1.26 Only two canonical trials took place over the 30-year period. Both were at the instigation of Archbishop Connell and the Commission gives him credit for initiating the two penal processes which led to the dismissal of Fr Bill Carney in 1990 . The Commission recognises that he did this in the face of strong opposition from one of the most powerful canonists in the Archdiocese, Monsignor Sheehy. Monsignor Sheehy, who had very extensive knowledge of canon and civil law and argued strongly that canon law was capable of dealing with all cases involving allegations of child sexual abuse, actually considered that the penal aspects of that law should rarely be invoked.

Secrecy in canon law

1.27 Most officials in the Archdiocese were, however, greatly exercised by the provisions of canon law which deal with secrecy. It was often spoken of as a reason for not informing the Gardaí about known criminal offences.

1.28 A similar ‘culture of secrecy’ was identified by the Attorney General for Massachusetts in his report on child sexual abuse in the Boston Archdiocese.⁵ In the case of that diocese, as in the case of Dublin, secrecy “*protected the institution at the expense of children.*”

1.29 One aspect of this was the refusal to acknowledge or recognise an allegation of child sexual abuse unless it was made in strong and explicit terms. There were some anonymous reports which were ignored. A number of bishops heard suspicions and concerns but they did not take the obvious steps of asking precisely what was involved or challenging the priest concerned. A mother who contacted the Archdiocese to report that her daughter had been abused as a child was told that the daughter would have to make the complaint. When the mother made it clear that the daughter was unlikely to be able to make such a complaint, she was not even asked for the name of the priest.

1.30 The Commission is satisfied that Church law demanded serious penalties for clerics who abused children. In Dublin from the 1970s onwards

⁵ Office of the Attorney General Commonwealth of Massachusetts: *The Sexual Abuse of Children in the Roman Catholic Archdiocese of Boston* (Boston: Office of the Attorney General Commonwealth of Massachusetts, 2003).

this was ignored; the highest priority was the protection of the reputation of the institution and the reputation of priests. The moving around of offending clerics with little or no disclosure of their past is illustrative of this.

1.31 The American phrase, ‘don’t ask, don’t tell’ is appropriate to describe the attitude of the Dublin Archdiocese to clerical sex abuse for most of the period covered by the report. The problem as a whole never seems to have been discussed openly by the Archbishop and his auxiliaries, at least until the 1990s. Complainants were told as little as possible. The note ‘Gain his knowledge, tell him nothing’ for dealing with complainants and witnesses, discussed in Chapter 4, typifies the attitudes of the Archdiocese.

1.32 Another consequence of the obsessive concern with secrecy and the avoidance of scandal was the failure of successive Archbishops and bishops to report complaints to the Gardaí prior to 1996. The Archbishops, bishops and other officials cannot claim that they did not know that child sexual abuse was a crime. As citizens of the State, they have the same obligations as all other citizens to uphold the law and report serious crimes to the authorities.

1.33 Complainants, too, were required by canon law to observe secrecy in their dealings with the Church. In late 1995, the Archdiocese gave the Gardaí the names of 17 priests against whom complaints had been made. The *Framework Document* provided for the reporting of all complaints. It is clear that Archbishop Connell remained troubled by the requirement of secrecy. In 2002, he allowed the Gardaí access to the archdiocesan files. The decision to do that, he told the Commission, “*created the greatest crisis in my position as Archbishop*” because he considered it conflicted with his duty as a bishop, to his priests. When asked why, he explained:

“Was I betraying my consecration oath in rendering the files accessible to the guards? I think you've got to remember, and this is something that you may not have reflected on, you've got to remember that confidentiality is absolutely essential to the working of the bishop because if people cannot have confidence that he will keep information that they give him confidential, they won't come to him. And the same is true of priests”.

Responsibility for clerical child sexual abuse

1.34 Priests who abuse children are directly responsible for their actions. That responsibility cannot be transferred to their bishops or the heads of their orders or societies. However their superiors are responsible for ensuring that they are not protected by their status and that they do not get special treatment. Their superiors are also responsible for ensuring that offending priests are not protected from the normal processes of the civil law nor facilitated in their privileged access to children and that they are not facilitated in re-offending.

Cover-up

1.35 As can be seen clearly from the case histories, there is no doubt that the reaction of Church authorities to reports of clerical child sexual abuse in the early years of the Commission's remit was to ensure that as few people as possible knew of the individual priest's problem. There was little or no concern for the welfare of the abused child or for the welfare of other children who might come into contact with the priest. Complainants were often met with denial, arrogance and cover-up and with incompetence and incomprehension in some cases. Suspicions were rarely acted on. Typically complainants were not told that other instances of child sexual abuse by their abuser had been proved or admitted. The attitude to individual complainants was overbearing and in some cases underhand (see Chapter 58).

Individual Archbishops and bishops

1.36 All the Archbishops and many of the auxiliary bishops in the period covered by the Commission handled child sexual abuse complaints badly. During the period under review, there were four Archbishops – Archbishops McQuaid, Ryan, McNamara and Connell. Not one of them reported his knowledge of child sexual abuse to the Gardaí throughout the 1960s, 1970s, or 1980s. It was not until November 1995 that Archbishop Connell allowed the names of 17 priests about whom the Archdiocese had received complaints to be given to the Gardaí. This figure was not complete. At that time there was knowledge within the Archdiocese of at least 28 priests against whom there had been complaints.

Archbishop McQuaid

1.37 Archbishop Mc Quaid was familiar with the requirements of canon law but did not apply them fully. It is clear that his dealings with Fr Edmondus* in 1960 were aimed at the avoidance of scandal and showed no concern for the welfare of children.

Archbishop Ryan

1.38 Archbishop Ryan failed to properly investigate complaints, among others, against Fr McNamee, Fr Maguire, Fr Ioannes*, , Fr Septimus* and Fr Carney. He also ignored the advice given by a psychiatrist in the case of Fr Moore that he should not be placed in a parish setting. Fr Moore was subsequently convicted of a serious sexual assault on a young teenager while working as a parish curate.

1.39 As problems emerged, Archbishop Ryan got different people to deal with them. This seems to have been a deliberate policy to ensure that knowledge of the problems was as restricted as possible. This resulted in a disastrous lack of co-ordination in responding to problems.

1.40

Archbishop McNamara

1.41 Archbishop McNamara was seriously ill when he was appointed Archbishop of Dublin in 1984. He restored priestly faculties to Fr Carney despite his having pleaded guilty to charges of child sexual abuse in 1983 and despite the fact that there were suspicions about him in relation to numerous other children. He failed to ensure that Fr Carney obeyed instructions and allowed him, in effect, to flout the wishes of his superiors. He also promoted Fr Payne to the position of Vice-Officialis of the Marriage Tribunal despite the previous refusal of Archbishop Ryan to do so. He saw the need for insurance cover and started the process of getting it.

Archbishop Connell

- 1.42 The appointment of Archbishop Connell in 1988 was a surprise. He was an academic with virtually no experience of parish work or of management of an organisation. He was aware that Fr [redacted] had a problem before he became Archbishop. He was immediately faced with the problems of Fr Carney and [redacted]. The Commission has no doubt that he was stunned not by the fact but by the extent of the clerical child sexual abuse with which he had to deal. Bishop O'Mahony told the Commission that, of the three Archbishops he served as an auxiliary bishop, it seemed to him that Archbishop Connell was *"the most deeply affected by the harm of clerical sex abuse. He was also the most proactive in seeking improvement in the church management of the issue"*.
- 1.43 The Commission considers that Archbishop Connell was slow to recognise the seriousness of the situation when he took over in 1988. He was over-reliant on advice from other people, including his auxiliary bishops and legal and medical experts. He was clearly personally appalled by the abuse but it took him some time to realise that it could not be dealt with by keeping it secret and protecting priests from the normal civil processes.
- 1.44 It is the responsibility of the Archbishop to make decisions. It is entirely appropriate to take account of professional advice but the weight to be given to that advice is a matter for the Archbishop to decide. In spite of his knowledge of the recidivist nature of abusers such as Fr [redacted], [redacted] and Fr Carney, Archbishop Connell still allowed Fr Payne to continue in ministry when the complaint against him became known in 1991.
- 1.45 The Commission recognises that the current structures and procedures were put in place by Archbishop Connell.
- 1.46 On the evidence Archbishop Connell personally saw very few complainants. (His predecessors do not appear to have seen any). Of those he did see, some found him sympathetic and kind but with little understanding of the overall plight of victims. Others found him to be remote and aloof. On the other hand he did take an active interest in their civil litigation against the Archdiocese and personally approved the defences which were filed by the Archdiocese. Archdiocesan liability for injury and damage caused was never

admitted. The Archbishop's strategies in the civil cases, while legally acceptable, often added to the hurt and grief of many complainants.

Auxiliary bishops

1.47 A number of auxiliary bishops were made aware of complaints of child sexual abuse by priests in their geographical areas. Others found out about such priests through the regular monthly meetings involving the Archbishop and the auxiliaries. One of the principal tasks of the auxiliary bishops was the assignment of priests to parishes, subject to final approval by the Archbishop. In the Dublin Archdiocese priests were reassigned approximately every five years. The evidence shows that these appointments were often made without any reference to child sexual abuse issues. The auxiliary bishops who dealt particularly badly with complaints were Bishops O'Mahony and Kavanagh. Bishop Murray also dealt badly with a number of complaints. (A full list of auxiliary bishops is given in Chapter 11.)

Bishop O'Mahony

1.48 Bishop O'Mahony told the Commission that Archbishop Ryan had given him pastoral responsibility for priests, especially the younger priests. This appointment was not in writing. Bishop Comiskey told the Commission that Bishop O' Mahony because of his "*nature and intelligence and kindness, he was often given a mandate to speak to a priest in trouble*".

1.49 Bishop O'Mahony's handling of complaints and suspicions of child sexual abuse was particularly bad. He is one of the longest serving auxiliary bishops of Dublin (from 1975 to 1996). The Commission has established that he was aware of 13 priests from within the representative sample (and a number of others) against whom there had been allegations/suspicious by 1995. The full details of his involvement are detailed in the chapters on individual priests. As chancellor (he was a bishop while he was the chancellor), he dealt with one complaint and he did not inform the Archbishop about it. When he ceased to be chancellor, he failed to tell Archbishop Ryan about a number of complaints, for example, the complaint relating to Fr Vidal* on whose behalf he gave a reference to the diocese of Sacramento in California without giving details of his past history (see Chapter 15).

1.50 In the case of Fr Payne he allowed a psychiatric report which was clearly based on inaccurate information to be relied on by Archbishop Ryan and subsequently by Archbishop Connell (see Chapter 24).

1.51 He failed to tell either the National Rehabilitation Hospital, Archdiocesan authorities or the Gardaí that Fr Reynolds, who was chaplain to the hospital at the time, might have a problem with child sexual abuse (see Chapter 35).

Bishop Kavanagh

1.52 Bishop Kavanagh was the longest serving auxiliary bishop (from 1972 to 1998). He failed to deal properly with Fr Carney even when he had pleaded guilty to child sexual abuse. He tried to influence the Garda handling of the criminal complaints against Fr Carney. He persuaded a family to drop a complaint they had made to the Gardaí in relation to Fr

Bishop Murray

1.53 Bishop Murray was another long serving auxiliary bishop (from 1982 to 1996). He handled a number of complaints and suspicions badly. For example, he did not deal properly with the suspicions and concerns that were expressed to him in relation to Fr Naughton (see Chapter 29). When, a short time later, factual evidence of Fr Naughton's abusing emerged in another parish Bishop Murray's failure to reinvestigate the earlier suspicions was inexcusable. Bishop Murray did, however, accept in 2002 that he had not dealt well with the situation.

Bishop Forristal

1.54 Bishop Forristal was the only bishop to unequivocally admit in evidence to the Commission that he may not have handled matters satisfactorily. He cited the Fr Cicero* case as an example and also the Fr Hugo* case.

Management of the Archdiocese

1.55 The Church is not only a religious organisation but also a human/civil instrument of control and power. The Church is a significant secular power with major involvement in education and health and is a major property

owner. As an organisation operating within society, it seems to the Commission that the Church ought to have some regard to secular requirements in its choice of leader. The Archbishop is the manager of the Archdiocese as well, of course, as being its spiritual leader. The Church is not a democracy and does not have transparent selection procedures so it is not known what criteria are used when Archbishops are being chosen. Appointments to positions as Archbishops and bishops seem to have been made primarily on the basis of doctrinal orthodoxy. Management ability does not seem to have been a relevant criterion.

1.56 For most of the time covered by the Commission's remit, there was nothing resembling a management structure in the Archdiocese. Auxiliary bishops were appointed – initially there was one auxiliary for most of Archbishop McQuaid's time. The numbers of auxiliary bishops was increased substantially by Archbishop Ryan. However, there was no clear job description for the auxiliary bishops. They were required to deputise for the Archbishop at ceremonies such as confirmation but they had no clear delegated authority to deal with specific problems as they arose. They had designated geographical areas of responsibility but no delegated power to make decisions. They were involved in decisions about the appointments of priests but might not be aware of the full background of each priest. Bishop Comiskey told the Commission that the auxiliary bishops had a significant involvement in appointments of priests to parishes: "*those appointments were made by the auxiliaries and the Archbishop sometimes sitting in*"; "*It was the only little bit of power that we had if you could call it that*".

1.57 The auxiliary bishops appeared to have had a role akin to that of deputy chief executives but they did not have the clarity of responsibility or power that such a position would normally entail.

1.58 Each auxiliary bishop seems to have interpreted his role in his own way. He did not always report significant information to the Archbishop. When asked by the Commission, Bishop Murray agreed that the management of the diocese was not well organised. Most of the auxiliary bishops regarded the Archbishop as the only person who had knowledge of everything. Bishop Murray said: "*But I think we would have seen the Archbishop as a person who was the repository of the overall perspective*". However, as some bishops did

not report all complaints, or gave inaccurate accounts of complaints, it was the case that the Archbishop sometimes had the responsibility without the necessary information.

- 1.59 The Commission noted that, apart from Bishop Forristal, there was a disturbing failure to accept responsibility on the part of some of the bishops who gave evidence. There was also a tendency to blame the Archbishop and/or the chancellor and, in the case of Archbishop Connell, to regard auxiliary bishops and the chancellor as having more delegated authority than they actually had.

Chancellor

- 1.60 Considerable reliance was placed on the chancellor to deal with issues of child sexual abuse. It must be pointed out that the chancellor has no decision making powers in this area. He was often the person who met the complainants, who arranged for assessment and/or treatment of priests and who delivered the decisions of the Archbishop to the priests against whom complaints were made. He was also frequently involved in warning priests about their behaviour. He was often the only official of the Archdiocese who met the complainants and they, not unreasonably, often assumed that he had greater powers than was actually the case. Monsignor Alex Stenson was the chancellor from the early 1980s to 1997.

Monsignor Stenson

- 1.61 It is the Commission's view that Monsignor Stenson carried out the investigation of complaints superbly but was less successful in dealing with the complainants. It is clear that he did generally believe the complainants but, unfortunately, he did not tell them that. The Commission is critical of his failure to validate complainants by not telling them that there were other complaints about the priest in question. The Commission also criticises certain of his actions in specific cases. Many complainants found Monsignor Stenson to be personally kind while a number were severely critical of his approach to them. It is notable that some of the priests about whom the complaints were made clearly considered that Monsignor Stenson was their scourge. He was conscious of the need for monitoring but was not himself in a position to require or enforce such monitoring unless given specific authority. When he was given the authority to do so, he did try to ensure that

the priest abided by the restrictions placed on him. Overall, the Commission considers that Monsignor Stenson performed his task better than other office holders in the Archdiocese.

Monsignor Sheehy

1.62 Monsignor Sheehy was one of the leading canon lawyers of the Archdiocese. According to the evidence, Monsignor Sheehy exercised a good deal of influence in relation to how child abuse cases should be handled even though he had no specific role in handling them. He rejected the view that the Archdiocese had any responsibility to report child sexual abuse to the state authorities. He thought the Church's internal processes should be used but, in fact, he was totally opposed to the use of the Church penal process. He interfered, and was allowed to interfere, in the management of a number of the cases, notably Fr Payne and Fr Cicero*.

Communications between Church authorities

1.63 The cases examined by the Commission are littered with examples of poor or non-existent communication both internally in the Archdiocese and between it and other church authorities.

Internal communications

1.64 As already described, the overriding requirement of secrecy meant that the Archbishop communicated with a very small number of people. Sometimes the priest or bishop to whom the alleged abuse was reported did not then report to the Archbishop. When complaints were made to the Archbishop, he frequently told only one other person. This meant that the auxiliary bishop for the area might not know. When another complaint was made, a different person might be asked to investigate. People who needed to know were frequently not told. For example, the Marist Fathers were not told why Fr Carney was staying with them even though they asked. Archbishop Ryan did tell a number of relevant people about Fr Horatio* but this was highly unusual for him.

1.65 The extent of the lack of internal communication is clear from the fact that it was only when they were preparing to give evidence to the Commission that a number of bishops saw documentation in relation to priests with whom they had dealt. For example, Bishop Murray saw medical reports about Fr

Moore with whom he had extensive dealings for the first time when he gave evidence to the Commission. Bishop Field found out about various decisions in relation to Fr Benito* when he received the first draft of this report.

1.66 One of the greatest failures of communication was the information that was conveyed to fellow priests when a known abuser was being transferred to a new parish. For example, priests in Sutton were not told of Fr Payne's past. The priest occupying the house to which Fr Naughton moved after abusing in Donnycarney was not told of his past. Archbishop Connell failed to inform personnel at the National Rehabilitation Hospital about suspicions relating to Fr Reynolds. Despite having issued a preliminary investigation into an alleged child sexual abuse case against Fr McNamee and being aware of his past he did not inform the nuns in Delgany, to whom he was appointed as chaplain, about him.

1.67 Again, there was a lack of clarity about who was supposed to tell the other priests. Bishop O'Mahony regarded it as the Archbishop's job to tell parish priests about the priests who were being sent to the parish. This may have been the case but it did not preclude the auxiliary bishops from using their initiative. Bishop O'Mahony accepted that the policy of giving little or no information to the parish priest was probably there in order to protect the reputation of the priest and that it was a "*wrong policy*".

Communications with other dioceses

1.68 In some cases, known abusers were sent to other dioceses with untrue or misleading information about them. It seems likely that bishops communicated problems orally but gave written references which did not refer to these problems.

Communications between the Archdiocese and religious orders

1.69 Another major gap in communication identified by the Commission is that between the Archbishop of Dublin and the heads of religious orders and societies. There are several cases - especially those of Fr Maguire, Fr Boland and Fr Gallagher - which illustrate this. It is clearly the case that the major fault here lies with the religious orders.

Psychiatric and psychological treatment

1.70 In the 1960s and 1970s, priests were sent for assessment to a number of psychiatrists and psychologists. In the 1980s the Archdiocese began to realise that priests who had committed child sexual abuse needed lengthy treatment and therapy. Of the 46 priests in the representative sample, 12 received no form of treatment (five of these had already died when the complaint was made). Twenty five of the priests were assessed or treated by the Granada Institute (see Chapter 11) and eight attended Stroud (see Chapter 11). Some attended both facilities. A small number attended other assessment and/or treatment facilities. Some priests attended more than two therapeutic facilities.

1.71 The Commission is very concerned at the fact that, in some cases, full information was not given to the professionals or the treatment facility about the priest's history. This inevitably resulted in useless reports. Nevertheless, these reports were sometimes used as an excuse to allow priests back to unsupervised ministry.

1.72 Sometimes psychiatric and/or psychological reports were used to justify decisions and sometimes they were just ignored. Ultimately it was a matter for the Archbishop in office to decide the weight he gave to such reports. The Commission accepts that the therapy available to perpetrators may well have been of assistance to them. The question of returning a priest to pastoral ministry following treatment is a judgement which ultimately falls on the Archbishop.

Allowing alleged abusers back to ministry

1.73 The evidence of the Granada Institute was that there is no treatment which will guarantee that a child sex abuser will not re-offend. However, they state that the recidivism rate for those who have received treatment is between 1% and 8% for low risk offenders and up to 25% for high risk offenders. For untreated offenders the Institute says that the risk of recidivism is between 15% and 50%. The Commission does not have the expertise to either question or endorse this assessment.

1.74 The Institute has pointed out that in all the cases where they recommended a limited form of ministry their clinical judgment was that the

priest in question was low risk. He had not abused for many years and/or the circumstances in which he had abused had changed. They stated that a priest's status as a cleric in no way influenced their recommendation as to whether he remained in his professional role. However, in most cases, they considered that such a solution would be helpful in continuing rehabilitation of the priest.

- 1.75 While the Commission recognises that some form of work may indeed be of help in rehabilitating sexual offenders, it is concerned that any form of pastoral work will almost inevitably include contact with children. Equally, pastoral work by a child abuser, no matter how many years ago the offences occurred, is impossible if the offender's proclivities are widely known. If however the proclivities are not widely known, supervision of the offender becomes almost impossible. There is also the fact that a priest is still a priest and by his very status, if he wishes to commit child sexual abuse, he will find it easier to do so than if he were a layman. The Commission recognises that these are conflicting problems which do not easily admit of a solution.

Contact between the abusers

- 1.76 The Commission could find no direct evidence to show that a paedophile ring existed among priests in the Dublin Archdiocese. However, as can be seen from the chapters on the 46 priests, there were some worrying connections.
- 1.77 Fr Carney and Fr McCarthy abused children during their visits to children's homes. They also brought children on holidays and shared accommodation with two separate complainants. A boy who was initially abused by Fr McCarthy was subsequently abused by Fr Carney. Fr Carney abused children at swimming pools and was sometimes accompanied to swimming pools by Fr Maguire.

- 1.78 When Fr Ioannes* was being investigated for the abuse of a young boy, Fr Boland, who was not a priest in the diocese at the time, turned up at

the young boy's home offering comfort and took the opportunity to abuse the young boy himself. There is nothing in the evidence available to the Commission to show how Fr Boland became aware of this young boy. A witness told the Commission that Fr Ioannes used to recruit altar boys for the Pro-Cathedral in the parish of North William Street and its surrounding area.

1.79 Another connection of relevance was the fact that Fr Horatio* was given the key to a holiday cottage by Fr Sean Fortune, the notorious child sex abuser from the diocese of Ferns. It is alleged that abuse of a young girl took place at that cottage. Fr Horatio claims that the only link between them was that they lived in the same area.

1.80 The Commission is aware that Archbishop Martin has referred some of these matters to the Gardaí in recent times.

Dealing with offending priests

1.81 One of the aims of the Archdiocese and the religious orders was not to punish the priest but to help him towards recovery or rehabilitation. The Commission considers this to be reasonable provided he is not at liberty to commit other abuses.

1.82 Until the mid to late 1990s, there was generally very poor monitoring of priests against whom allegations were made even when those allegations were admitted. No one was appointed to be in charge of monitoring. Sometimes, the treating psychologist or psychiatrist was regarded by the Archdiocese as having some limited monitoring role, a role which that person could not reasonably fulfil.

1.83 Since the late 1990s, the level of monitoring of clerical offenders, while it may not be considered satisfactory, is generally far greater than the limited or non-existent monitoring that is provided for non clerical offenders. Sex offenders who have served their sentences are generally released into the community without supervision although some may be under the supervision of the Probation and Welfare Service. The requirements of the *Sex Offenders Act 2001* (see Appendix 2) do not mean that there is any real supervision.

1.84 Religious orders and societies can and do provide a supervised setting for their members who have abused children. This could be seen as a form of house arrest and, indeed, some of the priests being supervised have so described it. However, they are free to leave if they are prepared to leave the order or society. A number of priests in the representative sample are living with their religious orders under supervised conditions. The Commission acknowledges that this provides much greater supervision than applies to non clerical sex offenders.

1.85 Diocesan priests cannot be kept in the same conditions. The Archdiocese does not have the facilities which are available to religious orders. The Archdiocese has recently appointed a person to look after offenders but there are limits to the supervision that can be exercised.

1.86 Clerical sex abusers receive far more counselling and care than sex offenders generally. The Archdiocese and religious orders spent a great deal of money on treatment for offending priests. The same level of treatment is rarely available to other sex offenders.

Co-operation by the Archdiocese and religious orders

1.87 The Commission would like to acknowledge the co-operation given by Archbishop Martin and by the relevant religious orders. Without this co-operation it would have been impossible for the Commission to give a comprehensive picture of the handling of clerical child sexual abuse cases.

1.88 The documentation provided by the Archdiocese and religious orders was generally of a very high quality. It included a significant amount of contemporaneous documentation. The Commission regards the contemporaneous documentation as being inherently more reliable than later recollections. This is because these documents were originally compiled exclusively for internal purposes and with no expectation that they would ever be read by any non Church personnel, let alone the members of a State investigation.

1.89 Since the implementation of the *Framework Document*, starting in 1996, complaints, suspicions and actions taken as a result of them are all

comprehensively recorded. Prior to that, inevitably, there is some variation in the quality of documentation compiled by different individuals. Monsignor Stenson, who recorded and investigated many of the complaints/suspensions, consistently produced very high quality, comprehensive accounts. He seems to have made a detailed written record of virtually every discussion, whether held in person or on the telephone, which was related to the complaint or suspicion. Canon McMahon, who was involved in investigating a small number of the cases in the report, also produced comprehensive reports. Archbishop McQuaid made a comprehensive handwritten record of his dealings with Fr Edmondus* in 1960. Unfortunately, a number of other Archdiocesan personnel compiled virtually no contemporaneous written reports. For example, the Commission has seen only one contemporaneous written report by Bishop Kavanagh (in the Fr _____ case) even though Bishop Kavanagh played a major role in the handling of several cases. It is clear that he was the recipient of subsequent complaints against Fr _____ but there is no evidence that he made a written record. There are no notes of his dealings with Fr Carney even though he had a significant involvement in that case. Bishop Murray told the Commission that he did make contemporaneous written notes of the concerns expressed to him by Valleymount parishioners in respect of Fr Naughton. However, there is no contemporaneous record of these notes on the Archdiocesan files. There is no evidence that Monsignor Glennon compiled a written record of the complaint against Fr Ioannes* in 1973.

The role of the Church in Irish life

1.90 The Commission recognises that the Archdiocese of Dublin and the many religious orders that operate within it have made and continue to make a major contribution to the lives of the citizens of Ireland by providing various social services including schools, hospitals and services to socially excluded people. The majority of the priests of the Archdiocese and religious orders carry out their spiritual and moral role within the Church properly. Unfortunately, it may be that the very prominent role which the Church has played in Irish life is the very reason why abuses by a minority of its members were allowed to go unchecked.

1.91 Institutions and individuals, no matter how august, should never be considered to be immune from criticism or from external oversight of their

actions. In particular, no institution or individual should be allowed such a pre-eminent status that the State, in effect, is stymied in taking action against it or them should there be breaches of the State's laws.

State authorities

The Gardaí

1.92 There were a number of inappropriate contacts between the Gardaí and the Archdiocese. Clearly the handing over of the Fr Edmondus* case to Archbishop McQuaid by Commissioner Costigan was totally inappropriate. The relationship between some senior Gardaí and some priests and bishops was also inappropriate – in particular, in the Fr Carney and Fr cases.

1.93 A number of very senior members of the Gardaí, including the Commissioner in 1960, clearly regarded priests as being outside their remit. There are some examples of Gardaí actually reporting complaints to the Archdiocese instead of investigating them. It is fortunate that some junior members of the force did not take the same view.

1.94 The Commission was impressed with those directly involved in the prosecution of Fr Carney in the early 1980s. The Commission was not impressed by the delay that occurred (over 20 years) in reaching a decision to bring charges against Fr .

1.95 The Garda investigation into the various complaints was sometimes very comprehensive and, in other cases, was cursory. Many of the complainants who gave evidence to the Commission praised the professionalism and courtesy which they encountered when making complaints to the Gardaí operating within the specialist child sex abuse unit at Harcourt Square, Dublin. The Commission notes that investigations carried out by this unit are generally very well conducted. The Commission was minded to suggest that, because of the expertise which it has developed, this unit should have responsibility for investigating all child abuse complaints. However, the Garda Commissioner has pointed out that a number of initiatives have been put in place in recent years in order to bring the garda practices into line with international best practice and in order to implement

the recommendations in the *Ferns Report*.⁶ The Commission will look again at this issue when it is conducting its investigation into the diocese of Cloyne.

- 1.96 As already stated, the Church did not start to report complaints of child sexual abuse to the Gardaí until late 1995. The Commission notes that the Gardaí were happy with the co-operation they received from Archbishop Connell in 2002. For many complainants it was a gesture that came too late.

The health authorities

- 1.97 As is described in Chapter 6, the health authorities have a very minor role in dealing with child sexual abuse by non family members. The Commission is concerned that the legislation governing the role of the HSE is inadequate even for that limited role. There is a need to clarify exactly what the role of the HSE is in relation to non family abusers and to set out clearly the powers it has to implement that role. The HSE and the health boards have given the impression to Church authorities and the Gardaí that they can do more in the area than they actually have the power to do.

- 1.98 The health boards and the HSE do not properly record cases of clerical child sexual abuse.

State responsibility for child protection

- 1.99 The Commission notes that there was an extraordinary delay in introducing child protection legislation. The need for new legislation was clearly recognised in the early 1970s but it was not actually passed until 1991 and not fully implemented until 1996. That new legislation, the *Child Care Act 1991*, does not sufficiently clarify the powers and duties of the health authorities.

- 1.100 The primary responsibility for child protection must rest with the State. In enforcing child protection rules and practices, organisations such as the Church cannot be equal partners with the state institutions such as the Gardaí and health authorities. The Church can certainly work in co-operation with the State authorities in promoting child welfare and protection as, for example,

⁶ The report of the inquiry into the handling of clerical child sexual abuse allegations in the diocese of Ferns was published in October 2005.

the sports bodies do, but it must be remembered that it is not an agency with equal standing.

Communications between Church and State authorities

1.101 Such communications as took place between the Archdiocese and the Gardaí prior to 1995 were largely inappropriate. Since the implementation of the *Framework Document*, the Archdiocese and other Church authorities report complaints of clerical child sexual abuse to the Gardaí – this is appropriate communication.

The complainants

1.102 The Commission would like to pay special tribute to the complainants who gave evidence before the Commission. Reliving their experiences was extremely painful, and the Commission was left in no doubt about the devastating effect child sexual abuse can have not just on victims but also on their families of origin and the families they create subsequently. Their evidence was also instrumental in helping the Commission to properly examine the catalogue of secrecy, cover-up and inaction which the Church authorities indulged in during the vast majority of the period covered by this investigation.

1.103 The vast majority of those who were abused as children complained when they were adults. In almost all cases they said that they did not complain as children because they did not think they would be believed or because the abuser had told them not to tell anyone. It is striking that, of the relatively small number who complained at the time, the majority were in fact believed. They were believed by their parents and they were believed by the authorities to whom the abuse was reported. This makes the failure by the authorities all the more egregious.

1.104 It is also striking that the main concern of complainants when they report abuse is the protection of other children. When dealing with Church authorities, the complainants almost invariably inquire about the whereabouts of the abuser and whether or not he has access to other children. In a number of cases, this was the only concern of the complainants.

1.105 The Commission has been impressed by the extraordinary charity shown by complainants and their families towards offenders. It is very clear to the Commission that complainants and their families frequently behaved in a much more Christian and charitable way than the Church authorities did. Many indeed expressed concern for the welfare of the priest concerned.

1.106 A relatively small number of complainants actually sought compensation and, as is outlined in Chapter 58, they were often driven to do so because of the failure of the Church authorities to engage with them.

Archdiocese of Dublin compared to other dioceses

1.107 This report deals only with the Archdiocese of Dublin but reports are also available from other comparable dioceses. The *Ferns Report* identified approximately 100 allegations or complaints of child sexual abuse that were made between 1966 - 2005 against 21 priests operating under the aegis of the diocese of Ferns.

1.108 The Attorney General of Massachusetts report into the Boston Archdiocese, which had a Catholic population of just over 2 million, identified 250 priests and other Archdiocesan workers who were alleged to have sexually abused at least 789 children since 1940.

1.109 Of the 46 priests (which, of course, is a representative sample of 102 within remit) examined for this report, the Commission has identified approximately 320 people who complained of child sexual abuse during the period 1975 - 2004. A further 130 complaints against priests operating under the aegis of the Dublin Archdiocese have been made since May 2004 (the end date of the Commission's remit).

1.110 The conclusion reached by the Attorney General in Massachusetts was that:

“The widespread sexual abuse of children in the Archdiocese of Boston was due to an institutional acceptance of abuse and a massive and pervasive failure of leadership. For at least six decades, three successive Archbishops, Bishops and others in positions of authority within the Archdiocese operated with tragically misguided priorities. They chose to protect the image

*and reputation of their institution rather than the safety and well being of the children entrusted to their care. They acted with misguided devotion to secrecy”.*⁷

1.111 Unfortunately the same conclusion could be reached about the Archdiocese of Dublin up until the adoption of the *Framework Document* in 1996. While proper support structures were not put in place for victims until much later the Archdiocese began to report complaints received after January 1996 to the Garda authorities.

1.112 Since Archbishop Martin took over in 2004 he has published full details annually of all settlements made by the Archdiocese.

Conclusion

1.113 The Commission has no doubt that clerical child sexual abuse was covered up by the Archdiocese of Dublin and other Church authorities over much of the period covered by the Commission’s remit. The structures and rules of the Catholic Church facilitated that cover-up. The State authorities facilitated the cover up by not fulfilling their responsibilities to ensure that the law was applied equally to all and allowing the Church institutions to be beyond the reach of the normal law enforcement processes. The welfare of children, which should have been the first priority, was not even a factor to be considered in the early stages. Instead the focus was on the avoidance of scandal and the preservation of the good name, status and assets of the institution and of what the institution regarded as its most important members – the priests. In the mid 1990s, a light began to be shone on the scandal and the cover up. Gradually, the story has unfolded. It is the responsibility of the State to ensure that no similar institutional immunity is ever allowed to occur again. This can be ensured only if all institutions are open to scrutiny and not accorded an exempted status by any organs of the State.

⁷ Office of the Attorney General Commonwealth of Massachusetts *Ibid* at page 5.

Appointment

- 2.1 The Dublin Archdiocese Commission of Investigation was appointed by Instrument of the Minister for Justice, Equality and Law Reform on 28 March 2006, pursuant to the *Commissions of Investigation Act 2004*. Notice of the order of the Government setting up the Commission was published in *Iris Oifigiúil* on 7 April 2006.

Terms of reference

- 2.2 The terms of reference of the Commission were to:
- (a) select a representative sample of complaints or allegations of child sexual abuse made to the archdiocesan and other Catholic Church authorities and public and State authorities in the period 1 January 1975 to 1 May 2004 against Catholic clergy operating under the aegis of the Catholic archdiocese of Dublin;
 - (b) examine and report on the nature of the response to those sample complaints or allegations on the part of the authorities to which those sample complaints or allegations were reported, including whether there is any evidence of attempts on the part of those authorities to obstruct, prevent or interfere with the proper investigation of such complaints;
 - (c) in the case of complaints or allegations being examined, examine and report also on the nature of the response to any other complaints or allegations made by the complainant or against the person in respect of whom those complaints or allegations were made, including any such complaints or allegations made before 1 January 1975;
 - (d) select a representative sample of cases where the archdiocesan and other Catholic Church and public and State authorities had in the period 1 January 1975 to 1 May 2004 knowledge of or strong and clear suspicion of or reasonable concern regarding sexual abuse involving Catholic clergy operating under the aegis of the Catholic archdiocese of Dublin;

(e) establish the response of the archdiocesan and other Catholic Church and public and State authorities to those sample cases;

(f) establish the levels of communication that prevailed between the archdiocesan and other Catholic Church authorities and public and State authorities with regard to those sample complaints, allegations, knowledge, reasonable concern or strong and clear suspicion;

(g) examine, following a notification from the Minister for Health and Children that a Catholic diocese in the State may not have established the structures or may not be operating satisfactorily the procedures set out in the Report of the Irish Catholic Bishops' Advisory Committee on Child Sexual Abuse by Priests and Religious, Child Sexual Abuse: Framework for a Church Response (1996) and any subsequent similar document, the position in that diocese;

(h) examine, following a notification from the Minister for Health and Children that a Catholic diocese in the State may not be implementing satisfactorily the recommendations of the Ferns Report delivered to the Minister for Health and Children on 25 October, 2005, the position in that diocese; and make a report on these matters considered by the Government to be of significant public concern.

2.3 In January 2009, the Government amended the Commission's terms of reference pursuant to Section 6 of the *Commissions of Investigation Act 2004* to provide for an investigation into the diocese of Cloyne.

2.4 This report deals only with the Commission's investigation into the Archdiocese of Dublin.

Establishment

2.5 The Minister for Justice, Equality and Law Reform appointed Judge Yvonne Murphy, Judge of the Circuit Court as Chair of the Commission, and appointed Ms Ita Mangan, Barrister, and Mr Hugh O'Neill, Solicitor, to act as part-time Commissioners.

2.6 The Secretary General of the Department of Justice, Equality and Law Reform, Mr. Sean Aylward, procured office accommodation for the Commission at Fitzwilliam Square, Dublin and assigned five officers from the department to act as administrative staff to the Commission. The Commission appointed a full time solicitor, Ms Maeve Doherty; a Senior Counsel, Ms Deirdre Murphy SC; a Junior Counsel, Mr Donal McGuinness BL and three legal researchers to assist the investigation. A full list of the Commission's staff is in Appendix 6.

2.7 The premises at Fitzwilliam Square required complete renovation and this was overseen by Ms Nóra Ní Dhomhnaill, HEO of the Department of Justice, Equality and Law Reform. Having taken possession of the offices it was necessary for the Commission to seek expert advice and assistance in installing in its offices appropriate electronic and other security systems to protect the sensitive documentation and information which it was likely to receive in the course of its work. Suitable computer systems capable of processing large quantities of information were also procured and installed.

The Commission's interpretation of its terms of reference

2.8 Having considered its terms of reference as contained in the instrument creating it, the Commission took the view that its task was as follows:

- To ascertain the full extent of complaints or allegations of child sexual abuse made to the Archdiocesan and other Catholic Church authorities and public and State authorities in the period 1 January 1975 to 1 May 2004 against Catholic clergy operating under the aegis of the Catholic Archdiocese of Dublin.
- To ascertain all of the cases during the relevant period in which the Archdiocesan and other Church authorities and/or public and State authorities:
 - knew of sexual abuse involving Catholic clergy;
 - had strong and clear suspicion of sexual abuse; or
 - had reasonable concern.
- Ancillary to its primary tasks set out above, the Commission was mandated to establish the levels of communication that prevailed between all relevant authorities relating to the sample complaints or allegations of child sexual abuse, incidents of known abuse, incidents

of strong and clear suspicion of sexual abuse and incidents giving rise to reasonable concern that there may have been sexual abuse.

- Having ascertained the full extent of such complaints and allegations, knowledge, suspicions or concerns of child sexual abuse, to select a representative sample of same for the purpose of examining them in detail in order to report on the nature of the response to those complaints and allegations by the Archdiocese and other Church authorities and by public and State authorities.
- In examining the chosen sample, the Commission was specifically asked to ascertain whether there was any evidence of attempts on the part of the Archdiocese or other Church authorities or on the part of public or State authorities to obstruct, prevent or interfere with the proper investigation of such complaints. In choosing its representative sample the Commission has had specific regard to this requirement.

What is child sexual abuse?

2.9 The Commission adopted the definition of child sexual abuse which had already been adopted by the *Ferns Report*. The following is the relevant extract from that report:

“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 1990⁸ 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:

- *exposure of the sexual organs or any sexual act intentionally performed in the presence of a child;*
- *intentional touching or molesting of the body of a child whether by person or object for the purpose of sexual arousal or gratification;*

⁸ 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.

- *masturbation in the presence of the child or the involvement of the child in an act of masturbation;*
- *sexual intercourse with the child whether oral, vaginal or anal;*
- *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 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.”*

Preliminary inquiries

2.10 The Commission first sought to identify all potential sources of information and documentation necessary to the discharge of its remit. Bearing in mind the requirements of Section 10(2) of the *Commissions of Investigation Act 2004*, that a Commission seek the voluntary cooperation of persons whose evidence is desired, the Commission had numerous meetings and contacts with Church and State authorities, as well as with individuals whom it considered might have evidence relevant to its work. Inquiries were made of the Archbishop of Dublin, former bishops of the Dublin Archdiocese, a number of other diocesan authorities, 38 religious orders operating within the area of the Dublin Archdiocese, the Health Service Executive, an Garda Síochána, the Director of Public Prosecutions, Our Lady’s Hospital for Sick Children, Crumlin, Children’s University Hospital, Temple St., the Department of Education and Science, the Department of Health and Children and a number of individuals who the Commission considered might have information relevant to its work.

Complainants of child sexual abuse

2.11 In tandem with these preliminary inquiries, the Commission launched an advertising/information campaign to alert complainants of child sexual abuse and those with relevant information as to its existence and to invite contributions from those who wished to assist the Commission in its work.

This campaign covered the entire area of the Archdiocese of Dublin. Advertisements were placed in many local newspapers and a number of national newspapers together with many local radio stations and RTE Radio 1. Information was provided through churches, doctors' surgeries and information centres in order to encourage those who wished to be heard to come forward.

2.12 All of those who came forward who appeared to be within the Commission's remit were interviewed by the Commission's counsel and many gave formal evidence to the Commission. Some of those who were interviewed made complaints which were outside the terms of reference of the Commission, for example, because their complaint had not been made during the relevant period between 1975 and 2004, or because the cleric in respect of whom they made a complaint was not acting under the aegis of the Dublin Archdiocese. In such circumstances the Commission thought it appropriate to listen to the complaints made and where necessary to refer people to the available support services.

Practice, procedures and protocols

2.13 In order to facilitate formal hearings as well as the gathering of evidence generally, the Commission developed procedures and protocols, for example, relating to the taking of evidence and the rights of witnesses giving evidence before the Commission. A formal book of procedures was compiled to comply with the terms of the *Commission of Investigations Act 2004*. Given the sensitive and confidential nature of much of the information being furnished to it, the Commission devised a Memorandum on Confidentiality for parties involved in the Commission's work as well as protocols on confidentiality and conflicts of interest for its own staff.

Formal hearings

2.14 Following its preliminary inquiries, it became clear to the Commission that it needed to hear oral evidence in relation to administrative structures of Church, public and State authorities within its remit during the relevant period. The focus of these hearings was on how complaints, allegations or suspicions of child sexual abuse were handled generally by the various authorities throughout the relevant period. The purpose of these hearings was:

- (a) to inform the Commission of the way in which specific complaints were handled and
- (b) to identify potential sources of evidence, within each body, documentary and otherwise as well as the places where such evidence might be located.

2.15 During this phase, the Commission also heard evidence from an expert on canon law, so as to understand the Catholic Church's perspective on what it considered its duties and obligations.

2.16 In all, between the preliminary phase and the hearings into the individual cases, 145 formal hearings took place at the Commission's offices and a stenographer recorded all hearings. In addition to the formal hearings a significant number of informal hearings took place.

Discovery of documents

2.17 The Commission issued formal Orders of Discovery against the Dublin Archdiocese, the Health Service Executive (HSE), an Garda Síochána, the Director of Public Prosecutions (DPP), a number of religious orders whose priests worked under the aegis of the Catholic Archdiocese of Dublin and a number of other organisations. This should not be taken as an indication of a lack of co-operation on the part of those to whom the orders were directed. The reasons for issuing formal Orders of Discovery were, first, that the Commission had to be satisfied that it had received all relevant information and, secondly, to protect those who were furnishing to the Commission confidential information on third parties. The Commission considered that it would be unreasonable to expect people to furnish such confidential information without giving them the statutory protection afforded by Section 16 of the *Commissions of Investigation Act 2004*. Without information obtained through discovery, the Commission could not have effectively discharged its remit.

2.18 The discovery process was protracted by a number of factors. In the case of the Dublin Archdiocese, the sheer volume of material to be discovered - over 70,000 documents - was hugely time consuming. The Commission was fortunate in that the Archdiocese had assembled a good deal of its documentation in connection with a Garda investigation that took

place subsequent to the Prime Time programme *Cardinal Secrets* which was broadcast in 2002 (see Chapter 5). The Archdiocese had transferred that information onto a computer program much of which was transferred to the Commission.

HSE discovery

2.19 In the case of the HSE, it transpired from early hearings that it had, in effect, insuperable difficulties in identifying relevant information in its files. The Commission was told that, because the HSE files were filed by reference to the name of the abused and were not in any way cross-referenced to the alleged abuser, it would have to examine individually up to 180,000 files in order to ascertain whether an alleged abuser was a priest in the Dublin Archdiocese. On the basis of this, the Commission calculated that it could take up to ten years to carry out such an exercise. In the light of this information, and bearing in mind the time allotted to its investigation, the Commission decided to take a pragmatic approach to the problem. The Commission asked the HSE to contact all relevant current and former staff including directors of community care, senior social workers and childcare managers, who had been employed in the area of the Dublin Archdiocese during the relevant period, to ascertain their knowledge of complaints of child sexual abuse by clerics. It heard evidence from senior social workers, childcare managers and senior managers. Subsequently, an affidavit of discovery was filed by the HSE. This was unfortunately incomplete as the Commission continued to receive material from the HSE after it sent parts of the draft report to the HSE for its consideration.

Garda discovery

2.20 The Garda Síochaná gave what documentation they had. This documentation was quite extensive for the period after 1995. They were unable to supply files in relation to some of their activities in the 1960s, 1970s, or 1980s as these had been destroyed or mislaid. Members of the force who had been involved in cases about which the Commission had queries and for which the files were missing or destroyed gave evidence of their recollections of those cases.

2.21 The Commission agreed with the main parties that documents generated up to 31 March 2006 would be covered by the Orders for

Discovery. In practice, as the investigation got under way, later documents were provided by the Archdiocese, the religious orders and the Gardaí. This happened both at the instigation of the parties and on request from the Commission. The Commission is grateful for this flexibility as it allowed a number of the individual cases to be completed.

2.22 The discovery process has to date yielded almost 100,000 documents, the bulk of which have been supplied by the Dublin Archdiocese. By far the largest proportion of the Commission's time over its first year was spent in reading, collating and analysing this large volume of documentation.

Documents held by Rome

2.23 The Commission wrote to the Congregation for the Doctrine of the Faith (CDF) in Rome in September 2006 asking for information on the promulgation of the document *Crimen Sollicitationis* (see Chapter 4) as well as information on reports of clerical child sexual abuse which had been conveyed to the Congregation by the Archdiocese of Dublin in the period covered by the Commission. The CDF did not reply. However, it did contact the Department of Foreign Affairs stating that the Commission had not gone through appropriate diplomatic channels. The Commission is a body independent of government and does not consider it appropriate for it to use diplomatic channels.

2.24 The Commission wrote to the Papal Nuncio in February 2007 requesting that he forward to the Commission all documents in his possession relevant to the Commission's terms of reference, "*which documents have not already been produced or will not be produced by Archbishop Martin*". The letter further requested the Papal Nuncio, if he had no such documentation, to confirm this. No reply was received. The Commission does not have the power to compel the production of documents by the Papal Nuncio or the Congregation for the Doctrine of the Faith. The Commission again wrote to the Papal Nuncio in 2009 enclosing extracts from the draft report which referred to him and his office as it was required to do. Again, no reply was received.

Legal privilege

2.25 Of the 100,000 documents received from all parties, there were approximately 5,000 over which the Archdiocese initially claimed legal privilege. Generally speaking, a document is legally privileged if it either seeks or contains legal advice and people cannot be compelled to show such documents to any legal forum. The *Commissions of Investigation Act 2004* provides a mechanism for determining whether a document is legally privileged which involves an examination of the document by the Commission. In an attempt to expedite the discovery process and mindful of the sensitivities and concerns of the Archdiocese in respect of documents which might transpire to be legally privileged and equally mindful of the fact that it should make every effort to conduct its affairs by agreement as set out in Section 10 of the *Commission of Investigation Act 2004* the Commission's legal team engaged in discussions with lawyers for the Archdiocese to settle the question of how it might be determined whether specific documents were or were not legally privileged in a fair, fast and efficient manner. The Commission's legal team proposed to the Archdiocese that all of the documents over which legal privilege was claimed would be examined by an eminent third party (a former Supreme Court Judge) for his opinion as to whether or not the documents were legally privileged. The Commission proposed to act on his opinion and to read only those documents which he, in his expert opinion, considered not to be legally privileged. The Archdiocese, on the other hand, would not be bound by his opinion and was free to challenge, both before the Commission and if it had deemed it necessary before the High Court, any conclusion that a document was not legally privileged. That proposal was formally made to the Archdiocese on 7 September 2007.

2.26 As this proposal did not derive from the statutory investigation scheme laid down in the *Commission of Investigations Act 2004*, it could be implemented only with the consent of the parties and not otherwise. On 22 October 2007, the Archdiocese approached the Commission with a suggestion about how to resolve the matter. The essence of this suggestion from the Archdiocese was:

- That the current Archbishop, having regard to the public importance of the Commission's work and the value which he placed on the Commission having the broadest possible

base of information in which to situate the facets of the archdiocesan response, wished to give the Commission access to legal advice which was made available to the Archdiocese at different times in relation to complaints of child sexual abuse.

- That in Archbishop Martin's view there were other parties who had an interest in the privilege attaching to the legal advice in question and that it was his intention to explore with them whether releases would be forthcoming.
- That privilege would not be waived in respect of the legal advices touching directly on liability and quantum⁹ in specific or prospective cases.
- It was Archbishop Martin's hope that, to a very great extent, the task that had been envisaged for the eminent third party would in fact be obviated by this mechanism which he hoped, having consulted with others, to be in a position to propose. A strong indication was given that the Commission would be made a firm proposal within a week or so of that October date.

2.27 This proposal was volunteered by Archbishop Martin and was not imposed by any order of the Commission.

2.28 No progress was made but the proposal was again put at a meeting of the Commission on 8 November 2007. It was, of course, subject to the original caveat of obtaining the consent of certain third parties of whom Cardinal Connell was one.

2.29 Almost six weeks passed and, although a small number of documents were received, there was no indication that all the documents would be forthcoming in accordance with the archdiocesan proposal within any reasonable timeframe. Whereas the Commission fully accepted Archbishop Martin's *bona fides* in making his proposal of 22 October 2007, the fact is that in reality it resulted in further delays in furnishing the documents over which legal privilege was claimed because he was unable to deliver the

⁹ Liability for damages and the amount of such damages.

consents of third parties, in particular Cardinal Connell's consent which he considered a necessary requirement.

2.30 In the circumstances the Commission had no option but to have recourse to its statutory powers under Section 21 of the *Commissions of Investigation Act 2004* to determine whether or not those documents over which legal privilege had been claimed were, in the determination of the Commission, so privileged.

2.31 As a result of issuing an order to produce under Section 21 of the Act the Archdiocese furnished the Commission with all privileged documents. They consisted of approximately 5000 documents some of which were over 100 pages in length. In early January 2008 the Commission members together with its legal advisors set about reading each and every document as was required by the Act in order to give a preliminary view on whether the documents were privileged or not.

2.32 This process was fully explained to Cardinal Connell's legal representatives and submissions from them were heard in early January.

Legal challenge

2.33 As soon as the Commission members commenced to read the privileged documents Cardinal Connell's legal team sought and were granted injunctive relief in the High Court against the Commission's work. Under the circumstances, the Commission gave an undertaking not to proceed with its plans to read the privileged material. The Cardinal was also granted leave to apply for judicial review. Though the Cardinal later withdrew his action and agreed that the Commission should have its costs, his conduct of the case was gravely disruptive of the Commission's work.

2.34 It is important to note that the issue in the case was legal professional privilege. The documents in issue were those in which the Archdiocese had sought legal advice and documents containing legal advice to the Archdiocese. The issue did not concern the confidentiality of disclosures made by either complainants or priests.

2.35 Even though the case was eventually withdrawn by Cardinal Connell, it cost the Commission valuable working time estimated at about four months. The Commission members themselves, as already stated, then had to read all the documents over which privilege was claimed before it could pronounce on the validity of the privilege claim asserted. The Archdiocese waived privilege over a substantial number of documents. The Commission is satisfied that it had access to all documents over which privilege was claimed for the purpose of compiling its report.

Religious orders discovery

2.36 A number of the priests in the representative sample are there because, although they belong to a religious order or society, they worked in the Dublin Archdiocese. Orders for discovery were issued to the relevant religious orders and a significant volume of documentation was received. Documents over which privilege and/or confidentiality were claimed were provided to the Commission and were read by the Commission members. A number of religious orders made no claim of privilege; others waived privilege over the documents identified by the Commission as being necessary for the completion of its report. As with the Archdiocese, the Commission is satisfied that it had access to all documents over which privilege was claimed by religious orders and societies for the purpose of compiling its report.

Investigating the representative sample

2.37 The process by which the representative sample was chosen is described in Chapter 11. The Commission conducted its investigation by means of oral evidence and in-depth analysis of the documentation supplied by all parties. Where gaps in the evidence were apparent, the Commission filled them, where appropriate and possible, with questionnaires and follow-up interviews. Follow-up was not always possible because a number of the significant participants had either died or were too ill to be interviewed.

Research

2.38 In addition to the foregoing, the Commission carried out research into canon law, the law relating to child abuse and the law relating to discovery, confidentiality and other relevant legal topics.

2.39 The Commission has also considered a range of reports of similar investigations from Ireland, the UK and the USA.

The report

2.40 The report was drafted mainly in the later part of 2008 and the early part of 2009. As required by the *Commissions of Investigation Act*, relevant parts of the report were sent to people who are identified or identifiable and who could be contacted. A large number of submissions were received from the relevant parties. These were considered by the Commission and amendments were made as the Commission considered appropriate. A second draft was then sent to the parties who had made submissions and to others affected by any amendments made. All relevant parties were then invited to provide any further information or make any further submissions which they considered appropriate. The final draft was completed in July 2009.

Acknowledgements

2.41 The Commission would like to acknowledge the considerable assistance it has received from Mr Justice Francis D Murphy and his team who produced the *Ferns Report* and Mr Justice Sean Ryan and his team of the Commission to Inquire into Child Abuse.

Costs to date

2.42 The total cost of the Commission's work to 30 April 2009 was €3.6 million. This does not include third party costs. Guidelines on legal costs have been prepared in accordance with Section 23 of the *Commissions of Investigation Act 2004* and given to the relevant parties.

Additional information

In June and July 2009, just as this report was being finalised, the Commission became aware of additional information which may require further investigation and, if necessary, the preparation of a further report.

Introduction

- 3.1 The Diocese of Dublin was founded in 633 AD and was elevated to the status of Archdiocese in 1152 AD. It includes the city and county of Dublin, nearly all of Co Wicklow and portions of counties Kildare, Carlow, Wexford and Laois. A map of the Archdiocese is in Appendix 5.
- 3.2 In 1975, according to statistics supplied by the Archdiocese, its Catholic population was 900,000. At that time, it comprised 163 parishes, served by almost 900 diocesan priests.
- 3.3 There are now (2009) more than one million Catholics in the Archdiocese and the number of parishes has risen to 200. (One of these parishes is non-territorial: it provides services to the Traveller community.) There are more than 650 active priests serving in parishes. Of the 200 parishes, 42 are in the care of religious orders, one is in the care of the priests of the Archdiocese of Cashel and one is in the care of the Personal Prelature of Opus Dei.
- 3.4 Since 1940, about 1,350 priests were ordained for the Archdiocese of Dublin and about 1,450 members of religious orders and societies held appointments in the Archdiocese. An unquantifiable number of priests did supply work.
- 3.5 The Archdiocese engages in many activities. Its main activities are the running of parishes, the patronage of 477 national schools, the provision of services to these schools and to 189 post-primary schools, and the provision of services through its Catholic Youth Care programme and its Crosscare programme, which provides social services for less well-off people. Its many other activities include agencies to assist marriage and families and chaplaincy services to prisons, the defence forces and almost 50 hospitals. The Archbishop is involved in appointing members of the boards of a number of hospitals.

Legal status

- 3.6 Despite its level of activity, the Archdiocese has never become an incorporated entity under the *Companies Acts* or otherwise, nor does it have to comply with any regulations or norms that are supervised by the Office of the Director of Corporate Enforcement.
- 3.7 From a financial point of view, it would appear that the Archdiocese's assets are managed through a variety of trusts. One such trust, the St Laurence O'Toole Trust, which is a holding entity for many of its properties, is incorporated as a limited company and is therefore subject to the normal requirements of company law.
- 3.8 In the USA, some bishops, for example, the Archbishop of Boston, have been legally established as corporations sole. The precise legal status of the Archbishop of Dublin has yet to be determined by the Irish courts but, according to his legal advisors, it is not open to the Archbishop to establish himself as a corporation sole. (A corporation sole is a legal entity consisting of a single person, so that the corporation passes from one holder of a position to the next, giving the position legal continuity, with each subsequent office holder having identical powers to his predecessor.)
- 3.9 The imprecision of the legal status of the Archbishop and the Archdiocese has presented some difficulties for those attempting to initiate legal action against the Archdiocese or the Archbishop in respect of claims for clerical child sexual abuse.

Managerial structure of the Archdiocese

- 3.10 The Archdiocese is headed by the Archbishop. He appoints a vicar or vicars general to assist him in the governance of the Archdiocese. Their authority is the same as that of the Archbishop, although it has to be exercised in his name.
- 3.11 According to canon 479 of the code of canon law,
"In virtue of his office, the Vicar general has the same executive power throughout the whole diocese as that which belongs by law to the diocesan Bishop: that is, he can perform all administrative acts, with

the exception however of those which the Bishop has reserved to himself, or which by law requires special mandate of the Bishop”.

- 3.12 In addition to the office of vicar general, there also exists the office of episcopal vicar. The episcopal vicar has the same authority as a vicar general “*but only for that determined part of the territory or type of activity ...for which he was appointed*” (canon 479).
- 3.13 In the Roman Catholic hierarchy, the rank of metropolitan bishop, or simply metropolitan, is that of a diocesan bishop or archbishop (then more precisely metropolitan archbishop) of a ‘metropolis’, that is, the chief city of an old Roman province or a regional capital.
- 3.14 The Archbishop of Dublin is a metropolitan archbishop and has authority over the other bishops in his ecclesiastical province, that is, the Bishop of Ferns, the Bishop of Kildare and Leighlin and the Bishop of Ossory. These three bishops are known as suffragen bishops.
- 3.15 The supervisory role of an archbishop over suffragen bishops has been described by canon lawyers as “*very, very minor*”. As can be seen from the *Ferns Report*, there was no evidence that the metropolitan exercised any jurisdiction over Bishop Herlihy or Bishop Comiskey in their running of the diocese of Ferns.
- 3.16 A bishop in his diocese is autonomous and every bishop is accountable directly to the Holy See. According to canon law, the diocesan bishop governs the particular Church entrusted to him with legislative, executive and judicial power, in accordance with the law (canon 391).
- 3.17 As long as he operates within the canon law, the bishop is free to organise the day-to-day running of his diocese as he sees fit. The Ferns Inquiry learned that the way in which a bishop managed his diocese was to a certain extent dependant on his personality. The Commission agrees that this is so.

Auxiliary bishops

3.18 During the period under investigation by the Commission, the Archbishop of Dublin was assisted by a varying number of auxiliary bishops. (There is a full list of auxiliary bishops in Chapter 11). Auxiliary bishops are appointed by the Pope. They are generally assigned geographic or thematic areas of responsibility by the Archbishop. All the present auxiliary bishops are also vicars general. Any cleric may be appointed as coadjutor bishop, giving him the automatic right of succession when the diocesan bishop dies, retires, resigns or is reassigned. For example, Archbishop Martin was initially appointed as a coadjutor bishop on 3 May 2003 and he succeeded Cardinal Connell as Archbishop on 26 April 2004. There is currently no coadjutor bishop in the Dublin Archdiocese.

Dealing with complaints of clerical child sexual abuse

3.19 The precise role of the Archbishop and the auxiliary bishops in dealing with complaints of clerical child sexual abuse varied over time. During his time as Archbishop (1940 – 1972), Archbishop McQuaid dealt personally with complaints of child sexual abuse and, as can be seen from the Fr Edmondus* case (see Chapter 13), there was tight control over who became aware of such matters. Archbishop McQuaid had one auxiliary bishop for most of his tenure and in 1968, a second auxiliary was appointed.

3.20 During Archbishop Ryan's term of office (1972 - 1984), the number of parishes increased by 47 and the number of auxiliary bishops was increased from two to five. Each of them was given an area of geographical or pastoral responsibility. This, the Commission heard, led to much greater fragmentation in the way child sexual abuse cases were managed.

3.21 Archbishop Ryan set up a general secretariat, a financial secretariat and an education secretariat. He was the co-ordinating figure and, as one bishop has told the Commission, he often delegated in a piecemeal manner in relation to abuse cases, so that one auxiliary bishop might not be aware of the participation of another in the same case.

3.22 Bishop Comiskey, referring to Archbishop Ryan, stated:

“When he appointed area bishops, there was no discussion of it nor was there any document or mandate given to us. It evolved gradually.

How would I describe it? We were more or less an episcopal presence in the four areas of the diocese devoted to helping and promoting the priests and looking after them pastorally, in whatever way they asked us to do.”

3.23 Bishop Murray, who served under Archbishops McNamara and Connell, stated:

“I mean, I think the one thing that was clear was that the Archbishop was in charge. Canon law says that auxiliary bishops work according to the mind of the Archbishop. I think the division into territorial areas was a strange thing in some ways, because you were the person that went and did the confirmations and dealt with the priests and so on, but you weren’t the person in charge.”

3.24 His view was that the auxiliary bishops were “*informed rather than consulted*” on the issue of child sexual abuse.

3.25 The Commission has noted that, in addition to their clerical education, many of those in authority in the Archdiocese had civil law degrees or occupied prestigious appointments in third level education. Bishop O’Mahony and Bishop Field were qualified barristers. So also was Monsignor Sheehy. Bishop Kavanagh was Professor of Social Science in University College Dublin where both Archbishop Ryan and Archbishop Connell held high ranking academic posts.

Vicars Forane (Deans)

3.26 A number of parishes may be designated as a vicariate forane or deanery. Priests are appointed as vicars forane or deans. In the Archdiocese of Dublin, they are appointed by the Archbishop and their job is to see that clerics in their districts lead a life befitting the clerical state. They also have the job of easing the administrative burden on the Archbishop. There were 16 deaneries in the Archdiocese of Dublin in 2004. Pastoral responsibility for the deaneries rests with a number of the auxiliary bishops.

Parish priests and curates

3.27 Next in the structure of the Archdiocese comes the parish priest, who is in charge of a parish, subject to the authority of the Archbishop. He is

appointed by the Archbishop and has responsibility and canonical authority within his parish.

3.28 The parish priest is assisted in his parish by the assistant priest or curate who is appointed by the Archbishop, who may consult with the parish priest or the vicar forane in relation to the appointment.

3.29 Priests have a duty of obedience to and respect for their bishop. At his ordination a diocesan priest is required to answer the following question from his bishop in the affirmative: “*Do you promise respect and obedience to me and my successors?*”. Bishops must take an oath of fidelity to the “*Holy Apostolic Roman Church*” and the Pope.

Consultative bodies

Council of Priests

3.30 One of the principal consultative bodies in the Archdiocese of Dublin is the Council of Priests. The role of the Council of Priests in a diocese is to assist the bishop in the governance of that diocese. The bishop is obliged to consult with the council on a range of matters, for example, the alteration to parishes, offerings made by the faithful, the building of churches and the use of churches for secular purposes. The council consists of priests selected by their peers, as well as those nominated by the Archbishop and also some ex-officio members.

College of Consultors

3.31 The College of Consultors is a body of no fewer than six and no more than 12 priests appointed by the bishop of a diocese for a five year term of office. A bishop is obliged to obtain the consent of this body when making decisions about certain financial matters.

Other diocesan priests and priests from religious orders

3.32 Diocesan priests who are ordained for the service of a diocese are said to belong to that diocese. Priests who are ordained for other dioceses may apply to become a priest in the Archdiocese of Dublin. If that happens the priest’s suitability is assessed and, if that is satisfactory, he may then be given an appointment in the Archdiocese. The two dioceses agree the terms of the transfer but the priest continues to ‘belong’ to his original diocese. After

a period working in the Archdiocese, the priest may apply to be ‘incardinated’ into the Archdiocese. If this is agreed between the two dioceses, he is ‘excardinated’ from his original diocese and ‘incardinated’ into the Archdiocese. He is then in the same situation as a priest who was ordained for the Archdiocese and continues to serve in it.

3.33 There are many clergy other than diocesan priests living and working in the Archdiocese of Dublin - priests belonging to religious institutions, societies of apostolic life¹⁰ and those who belong to personal prelatures. (A personal prelate is an institution having clergy and (possibly) lay members which carries out specific pastoral activities. Currently, the only personal prelate in the Catholic Church is Opus Dei.) While such priests are not under the direct supervision of the Archbishop in those matters that concern their ordinary living, they are subject to his jurisdiction in all matters pertaining to public worship, ministry and other apostolic activity. Sometimes such priests are appointed to parishes and other positions in the Archdiocese but they remain as members of their congregations. They may apply for incardination in the Archdiocese in broadly the same way as priests from other dioceses.

3.34 Although a bishop is bound to respect and defend the external autonomy and governance of religious institutions, he can draw the attention of religious superiors to situations of lack of discipline or abuses uncovered by him in the course of visitation. In the latter case, if the superior fails to act, the bishop is authorised to take action.

The chancellery

3.35 Canon 482 s.1 provides that each diocese is to have a chancellor *“whose principal office... is to ensure that the acts of the curia are drawn up and dispatched, and that they are kept safe in the archive of the curia”*.¹¹

3.36 Other canons outline other roles and functions as follows:

¹⁰ In this report, the term ‘religious order’ is used to cover all such orders, institutes and societies in respect of those cases where the priest is not named.

¹¹ The curia in a diocese is the offices supporting the bishop in the administration of the diocese. The Roman Curia is the ensemble of departments or ministries which assist the Pope in the government of the Church.

“Besides the chancellor, other notaries may be appointed, whose writing or signature authenticates public documents...” (canon 483 s1).

“In each curia there is to be established in a safe place a diocesan archive where documents and writings concerning both spiritual and the temporal affairs of the diocese are to be properly filed and carefully kept...”(canon 486 s2).

“In the diocesan curia there is also to be a secret archive... In this archive documents which are to be kept under secrecy are to be most carefully guarded. Each year documents of criminal cases concerning moral matters are to be destroyed whenever the guilty parties have died, or ten years have elapsed since a condemnatory sentence concluded the affair. A short summary of the facts is to be kept, together with the text of the definitive judgement.” (canon 489 s1 and s2).

3.37 Although not directly part of the managerial structure, the chancellor of the Dublin Archdiocese and his assistants played a vital role in advising the Archbishop of the applicability of canon law to the handling of complaints of child sexual abuse.

3.38 Monsignor Alex Stenson (Chancellor 1981 - 1997) told the Commission that in the earlier period of the Commission’s remit, the chancellery had two distinct functions. One was administrative - it dealt with pre-marriage queries, dispensations for mixed marriages and laicisations among other matters. The second function was judicial, in that it housed the Marriage Tribunal which dealt with annulments. In later years, before the setting up of the Child Protection Service of the Dublin Archdiocese in 2003, it played a major role in dealing with complaints of child sexual abuse.

The Bishops’ Conference

3.39 On the island of Ireland, there are 26 Roman Catholic dioceses and 33 bishops, including seven auxiliary bishops. These bishops meet as the Irish Bishops’ Conference (sometimes called the Episcopal Conference) four times a year. While all of the bishops who formed part of the Conference had

taken out insurance between 1987 and 1990 to protect them against claims that could result from clerical child sexual abuse, it was not until 1994 that they established a committee to advise on the appropriate responses to an accusation, suspicion or knowledge of a priest or religious having sexually abused a child.

3.40 It took that committee until 1996 to produce the document entitled *Child Sexual Abuse: Framework for a Church Response* (generally described as the *Framework Document* in this report). This document was endorsed by the Irish Bishops' Conference and by the Conference of Major Religious Superiors¹² that year. In effect, it became the first written policy which the Dublin Archdiocese had on the handling of complaints of clerical sexual abuse of children.

3.41 Bishops are not bound by the decisions of the Bishops' Conference either in canon law or by convention. The conference cannot set aside the proper authority of the bishop to govern his diocese. Canon law does, however, empower an episcopal conference to declare binding norms in certain circumstances and after approval from the Holy See. Examples of such norms include those dealing with seminary formation and with the duration of the appointment of parish priests.

3.42 The *Framework Document* was not a norm and therefore was not binding on individual bishops. The Holy See did not formally recognise it either. Victims have expressed disappointment that neither the *Framework Document* nor its successor, *Our Children Our Church*, received recognition from Rome, thus leaving both documents without legal status under canon law.

3.43 This was in direct contrast to the approach adopted by the Holy See to the request of the American Conference of Bishops, who sought and received recognition for their 2002 and 2006 norms. The fact that a number of the bishops in the USA disagreed with the norms was probably a factor in Rome granting recognition to the USA norms and thus making them binding in canon law.

¹² This is now known as the Conference of Religious of Ireland (CORI).

3.44 Witnesses have told the Commission that the Irish Bishops' Conference is not seen as having the strength of other episcopal conferences. One bishop has suggested to the Commission that its *modus operandi*, which is to try and achieve consensus, may be a contributory factor: *"When you are asked about consensus you can find very easily that different people may have slightly different interpretations of what they actually agreed to."*

The Relationship of the Archdiocese with Rome

3.45 The structures and organisation of the Catholic Church are governed by the code of canon law – see Chapter 4. The Pope is the supreme legislator for the Catholic Church and all its members. Only he can create and change Church law on a worldwide level. Many of these laws are found in legal codes or in papal decrees.

3.46 To assist him, the Pope is supported by a number of bodies which are akin to government departments. The most relevant of these bodies to the Commission's investigation are the Congregation for the Doctrine of the Faith, the Congregation for the Clergy and the Roman Rota. Cardinal Connell served as a member of the Congregation for the Doctrine of the Faith for 12 years from 1992 to 2004 under the prefecture of Cardinal Ratzinger, now Pope Benedict XVI. The discussions and deliberations of that congregation are secret. Cardinal Connell, explaining why he could not discuss the affairs of that body, stated:

"Well, I think the Commission will have to accept that on my first meeting of the Congregation for the Doctrine of the Faith, I took an oath that I would not reveal what was discussed at meetings of the Congregation and I will of course be as true to that oath as I am to the oath I have taken here."

3.47 One witness told the Commission that *"it is important to realise that the bishop is not the vicar of the Pope and that the dioceses are not branch offices of Rome."*

3.48 The Archbishop must make a report every five years to Rome. This is known as the *Ad Limina* or Quinquennial Report. The latest report was

delivered in October 2006, almost seven years after the previous report. This gap arose because of the ill-health of the late Pope John Paul II.

3.49 The purpose of the report is to inform Rome on the running of the Church in Ireland and, in the case of Dublin, how the Archdiocese is faring. Archbishop Martin has told the Commission that these reports were effectively in response to questionnaires that Rome presented to the Archbishop. He said he had looked at a number of these reports which went from the Dublin Archdiocese to Rome. The first reference to child sexual abuse which he discovered was contained in the last report of Archbishop Connell, which was written in 1999. Archbishop Martin told the Commission that, in a 100 page document, there were ten lines that dealt with the question of child sexual abuse in the Archdiocese. It was a very simple statement that the Archdiocese had gone through a difficult time, that there had been allegations of child sexual abuse and that priests had been convicted. He said that no statistics on child sexual abuse were furnished in the report.

3.50 Archbishop Martin said that the current policy, as far as he is concerned, is that at the conclusion of a preliminary investigation into an allegation of child sexual abuse, he sends a summary of the facts to the Congregation for the Doctrine of the Faith (CDF), asking how it should be dealt with canonically. This was not the practice of previous Archbishops even though it appears to have been a mandatory requirement of canon law at least since 1917. This mandatory requirement was re-iterated in the 2002 document *Sacramentorum Sanctitatis Tutela* (see Chapter 4).

The Papal Nuncio

3.51 The Papal Nuncio has two distinct roles. He is the diplomatic representative of the Holy See in Ireland and he is the papal legate to the island of Ireland. Canon 364 sets out his papal legate functions as follows:

“The principal task of a Papal Legate is continually to make more firm and effective the bonds of unity which exist between the Holy See and the particular Churches. Within the territory assigned to him, it is therefore the responsibility of a Legate:

1° to inform the Apostolic See about the conditions in which the particular Churches find themselves, as well as about all matters which affect the life of the Church and the good of souls;

2° to assist the Bishops by action and advice, while leaving intact the exercise of their lawful power;

3° to foster close relations with the Episcopal Conference, offering it every assistance;

4° in connection with the appointment of Bishops, to send or propose names of candidates to the Apostolic See, as well as to prepare the informative process about those who may be promoted, in accordance with the norms issued by the Apostolic See;

5° to take pains to promote whatever may contribute to peace, progress and the united efforts of peoples;

6° to work with the Bishops to foster appropriate exchanges between the Catholic Church and other Churches or ecclesial communities, and indeed with non-Christian religions;

7° to work with the Bishops to safeguard, so far as the rulers of the State are concerned, those things which relate to the mission of the Church and of the Apostolic See;

8° to exercise the faculties and carry out the other instructions which are given to him by the Apostolic See”.

Child Protection Service

- 3.52 The Archdiocese established a Child Protection Service in September 2003.
- 3.53 Its function is to assist the Archdiocese in the implementation of child protection policies and procedures, both in terms of prevention and in response to allegations. It also provides pastoral outreach and support for victims of child abuse.
- 3.54 The Child Protection Service is responsible to the Archbishop of Dublin and reports directly to him. It has the support of the child protection advisory panel.
- 3.55 The child protection advisory panel has responsibility for reviewing individual cases of child abuse by priests. It makes recommendations to the

Archbishop. Its recommendations have been acted on in every case to date. The panel's membership includes people with expertise in a variety of fields relevant to its work.

3.56 The first (and current) director of the service, Mr Philip Garland, told the Commission that his role is:

- to implement diocesan policies and procedures in relation to child protection and in response to allegations: in particular, to assist in promoting best practice throughout the diocese in relation to the prevention of abuse as well as the response to allegations at a diocesan and local level;
- to be the first point of contact for all those who wish to make allegations of child abuse against clergy, employees and volunteers;
- to be responsible for the overall management of the child protection service;
- to be of assistance to the priest delegate in the discharge of his responsibility in relation to allegations against priests;
- to liaise with the director of the Church's National Child Protection Office in Maynooth;
- to establish and maintain contact with relevant statutory and voluntary organisations and;
- to assist and, where needs be, lead responses to media inquiries.

3.57 In addition to Mr Garland, there is a support co-ordinator who provides a separate support for victims and their families. He also provides assistance in the making of complaints, in facilitating access to information and assistance and in representing the concerns of victims and families to the director.

3.58 The priest delegate is responsible for the management of the pastoral response to the priest accused of child abuse. A number of priest advisors provide support for accused priests and their families and can be contacted through the priest delegate.

3.59 The child protection training and development co-ordinator is responsible for the implementation of parish and diocesan child protection structures. This consists of assisting the development of diocesan policies

and procedures, the selection and recruitment of parish child protection representatives and the provision of support to parishes and other groups in relation to best practice in child protection.

3.60 In so far as the Commission is aware, the Child Protection Service has aimed to keep in contact with and to assist all victims who wish to avail of their service.

3.61 The Child Protection Service is at:

Diocesan Offices,
Archbishop's House,
Drumcondra,
Dublin 9.

Tel: +1 836 0314

Fax: +1 884 2599

Email: cps@dublindiocese.ie

Website: www.cps.dublindiocese.ie

Introduction

- 4.1 This Commission is established under the law of Ireland and it is therefore arguable that this is the only law relevant to its work. However, an understanding of aspects of canon law and internal Church procedural rules is essential to understanding how allegations and suspicions of clerical child sexual abuse were handled by Church authorities. The fact is that Catholic Church authorities, in dealing with complaints against its clerics, gave primacy to its own laws. Therefore, since no matter what penalties are imposed on a clerical abuser by the State, only a canon law process can affect his status as a cleric or a priest, an understanding of the role of canon law is necessary in order to fully understand the response of the Church authorities to complaints of child sexual abuse.
- 4.2 It is very clear from the accounts given by victims and from the reports of psychologists and psychiatrists that offending priests used their status as clerics and their privileged access in order to groom and abuse children. It is notable that a major concern of virtually all victims, when they first made a complaint to Church authorities about an alleged priest abuser, was that he be removed from ministry so that he could no longer use his status to gain access to children. Parents frequently made the point to the Archdiocesan authorities that this was their major concern. It was the failure to deal with that concern that distressed many of those parents. It is clear that the suffering and the stress of victims was often related to the fact that their abuser was still functioning as a cleric and might therefore be a threat to other children. This is specifically acknowledged in the evidence of Monsignor John Dolan, the current chancellor of the Dublin Archdiocese, and was mentioned by many others who gave evidence to the Commission.
- 4.3 Canon law provides the Church authorities with a means not only of dealing with offending clergy, but also with a means of doing justice to victims, including paying compensation to them. In practice, it appears to the Commission that, for a significant part of the period covered by the Commission, canon law was used selectively when dealing with offending clergy, to the benefit of the cleric and the consequent disadvantage of his

victims. The Commission has not encountered a case where canon law was invoked as a means of doing justice to victims.

What is canon law?

4.4 The body of canon law in question in this report is the law of the Latin Church – in effect, the Roman Catholic Church. The canonical system is said to consist of three bodies of law: divine law, ecclesiastical law and civil law.¹³ Divine law consists of certain truths of the faith both dogmatic and moral which cannot be changed by human beings. Ecclesiastical law, on the other hand, is human in origin and can be created, reformed and abolished by competent legislative authorities of the Church. It concerns the internal regulation of the Church and binds only those who have been baptised in the Catholic Church or received into it.¹⁴ The requirement of clerical celibacy is an example of this type of law.

4.5 Canon law can defer or yield to civil laws.¹⁵ Canon 22 of the 1983 code states: “*When the law of the Church remits some issue to the civil law, the latter is to be observed with the same effects in canon law, insofar as it is not contrary to divine Law, and provided it is not otherwise stipulated in canon law*”.

4.6 It is not easy to provide a coherent description of the relevant parts of canon law because, since the 1960s, canon law itself has been in a state of flux and considerable confusion, making it difficult even for experts to know what the law is or where it is to be found. This is the case, not only with local canonists, but also, it appears, even with spokesmen for the Holy See itself. A Vatican spokesman believed the 1962 instruction, *Crimen Solicitationis*, had been superceded by the 1983 *Code of Canon Law* when its existence in the late 1990s was being referred to by others.

4.7 An eminent English canon lawyer, Monsignor Gordon Read, chancellor of the diocese of Brentwood, whom the Commission heard as an independent expert, explained to the Commission that canon law was not

¹³ Huels, “Introduction” in J Beal et al (eds) *New Commentary on the Code of Canon Law* (New York: Paulist Press, 2000).

¹⁴ Canon 11.

¹⁵ It should be noted that “civil law” in this context refers to the entire law of the State and is not used to refer to civil law as distinct from criminal law.

codified until the beginning of the twentieth century. Previously it was found in a complex series of books, volumes of decrees of councils and letters of popes. At times it was very hard even for a canonist to determine the actual content of the law or the authoritative source of law on a particular matter.

4.8 At the end of the nineteenth century, the Church decided to produce a code of canon law along the lines of the (Napoleonic) continental civil codes. The intention was that the law would be found in one book with numbered canons that could be cross referenced. If these were changed, any new edition would contain the changed text. It took rather a long time to produce but the code of canon law was eventually published in 1917. While amendments were made, the code as a whole was not updated until the 1980s.

4.9 By the 1950s, a mass of legislation had accumulated outside the published code and few Church members knew where to find it. Pope John XXIII decided to revise the canon law. In the meantime, the same Pope convened the second Vatican Council in 1961. The revision of the 1917 code was deferred as it was thought that it might be appropriate to incorporate some of the decisions of Vatican II into the legal system of the Church.

4.10 Pope Paul VI, who became Pope in 1963, set up a Commission for the Revision of the 1917 code of canon law during the Vatican Council (1961 – 1965). This revision work took almost two decades to complete, decades during which the older system it was replacing was either discredited or unused. The new code of canon law was eventually finalised in 1983 and took effect on the first Sunday of Advent in that year. So, during the time relevant to the Commission's terms of reference, there were successive codes of canon law in effect, the 1917 code and the 1983 code.

4.11 It is clear to the Commission that canon law was, for many centuries, the prime instrument of governance in the Church. Priests were governed by it. There was, up to the time when the new code was promulgated in 1983, an extensive penal and criminal content in canon law; priests and others under its jurisdiction could be accused of offences and subjected to an extensive range of penalties on conviction. However, it is also clear that this system suffered an enormous loss of confidence in the 1960s and seems to

have fallen into disuse. The Commission heard evidence from canon law experts that the status of canon law as an instrument of Church governance declined hugely during Vatican II and in the decades immediately after it. The Church courts, according to Monsignor Dolan, became little more than marriage tribunals; the penal (criminal) law of the Church fell into disuse; and the modern generation of canonists lacked any experience of it. This was an obvious problem in an era when a large number of clerics were being accused of criminal offences.

4.12 In the words of Monsignor Dolan, canon law *“had been judged by many, rightly or wrongly to have had a significantly negative impact on the mission of the Church, this attitude could perhaps best be summed up by the following: that many placed more faith in the code than in the Gospel”*.

4.13 The second Vatican Council brought about a reassessment of the place of canon law in the Church. Accordingly, by the time the new code was published in 1983 canon law’s influence in and on the Church had significantly diminished particularly in relation to disciplinary actions.

4.14 Monsignor Dolan, in his evidence, analysed the reasons for this state of affairs as he saw it. The Commission is satisfied that this analysis was offered in an effort to be helpful and in total good faith. The view was taken that *“It remains true that law and authority had a role in the church that was often overstated which could tend to stifle other values which could be harmful to individuals”*.

4.15 This development is perhaps not unrelated to broader developments in western society, featuring an increased emphasis on the rights of individuals and an attitude of suspicion of ‘heavy’ regulation or control. Monsignor Dolan freely stated that pre-Vatican II, the tendency in the Church had been to subordinate the individual to the institution. It may be that there was so strong a reaction against this that it left the institution in a condition of near powerlessness when faced by the numerous and gross misdeeds of individual priests. However, it should be noted that this attitude extended only to priests; it did not extend to lay people and particularly, it did not extend to lay complainants of child sexual abuse.

4.16 When the new system came into being in 1983, it was not clear by any means, even to canonists, what its effect was on older decrees or sources of law. These included the procedural rules on dealing with child sexual abuse issued in 1922 and 1962.

Procedural rules regarding child sexual abuse

4.17 As well as the codes of canon law, there are procedural laws or instructions issued by the Vatican which are relevant to the Commission's work. These are documents dealing with the manner in which allegations either of "*crimen sollicitationis*" (solicitation within the confessional) or of sexual abuse of minors by clergy were to be handled.

4.18 The first relevant set of instructions was promulgated in 1922 and was entitled *Crimen Sollicitationis*. It sets out procedures for dealing with solicitation in the confessional (*crimen sollicitationis*) and it also dealt with what it described as the "*worst crime*". This term includes any obscene external gravely sinful act committed in any way by a cleric with young people of either sex – in other words, child sexual abuse by priests.

4.19 This document was issued in Latin and no definitive English text was or is available. A new version of this instruction was issued in 1962; it, too, is in Latin. The Commission is grateful to Fr Aidan McGrath, the judicial vicar of the Archdiocese of Dublin and Monsignor Read of the diocese of Brentwood (England) for providing it with translations of the 1962 document.

4.20 The instructions contained in the two documents appear to be identical. The main difference between the 1922 and the 1962 documents is that the latter extended the instructions contained in the 1922 document to members of religious orders.

4.21 The main problem with these procedural rules was that virtually no one appears to have known anything about them – including the people who were supposed to implement them. It appears that both documents were circulated only to bishops and under terms of secrecy. Each document stated that it was to be kept in the secret archive to which only the bishop had access. The Commission has evidence that the 1922 document was known to senior figures in the Archdiocese of Dublin, especially during the time of

Archbishop John Charles McQuaid and that, in the words of one witness, it was a “*well thumbed*” document. The Commission could find no evidence that the 1962 document was ever received by the Archdiocese of Dublin and it certainly was unknown to the officials of the Archdiocese until sometime in the late 1990s. The 1922 document was used by Archbishop McQuaid in the case of Fr Edmondus* (see Chapter 13). It is not clear if it was ever used by Archbishop Dermot Ryan or Archbishop Kevin McNamara. Cardinal Connell told the Commission that he did not become aware of the 1922 instruction immediately on becoming Archbishop of Dublin (in 1988), but at some later stage he did become aware of it. He said he “*could not recall ever being acquainted with it ...the technical details of what a particular document had to say on the matter was something I wasn’t involved in. This was a matter for the chancellery to deal with and to present recommendations to me*”. He told the Commission that he had never read, and he had never seen, the 1962 document nor had he met anyone who had seen it. He told the Commission that he relied on his canonists to advise him on canon law – his principal canonical advisors were Monsignor Gerard Sheehy (then the judicial vicar of the Archdiocese and a former chancellor), Monsignor Alex Stenson (then the chancellor of the Archdiocese) and Monsignor Dolan.

4.22 Monsignor Stenson worked at the chancellery from 1967-1997; he was chancellor from 1981 to 1997. He lectured in canon law in Clonliffe College from 1972 until 1997. He gave evidence that he never saw the 1922 document until the end of his time as chancellor.

4.23 Monsignor Dolan told the Commission that he only became aware of the 1922 document after he became chancellor in 1997. He thought that it only dealt with the crime of solicitation in the confessional: “*I didn’t know that lurking in the very end at the very back was a little paragraph on the worst crime [child sexual abuse by clerics]*”. He too was unaware of the 1962 document until an Australian bishop discovered towards the end of the 1990s that it was still valid. Monsignor Dolan told the Commission that this bishop wrote to Rome to ask if the law in this document was still valid. He was told that it was. Monsignor Dolan’s evidence was that for the first time they had an acknowledgment that “*we have some guidelines*”. Bishops wanted procedures that they could be certain of; they felt extremely vulnerable because in 1996 (the year the *Framework Document*, which set out

guidelines for dealing with allegations of abuse, was published) “*they did not feel Rome was supporting them in dealing with this issue [of child sexual abuse]...they were meeting an onslaught of complaints and Rome was pulling any particular solid ground that they had from under them*”.

4.24 So, an unusual situation had existed whereby a document setting out the procedure for dealing with clerical child sexual abuse was in existence but virtually no one knew about it or used it.

The 1922/1962 procedural requirements

4.25 The 1922 and 1962 instructions covered how the investigation into an allegation of solicitation or “*the worst crime*”, including child sexual abuse, was to be conducted; they also covered what was to happen after the investigation process had closed. The entire process was permeated by a requirement of secrecy. For example, the accuser was required to take an oath of secrecy. The penalty for breach of that oath could extend to excommunication.

4.26 The instructions stated that the bishop was to proceed as follows:

- (a) If it was proved that the accusation was without any foundation whatsoever, he was to order that this be declared and the documents of the accusation be destroyed.
- (b) If there were vague and undetermined or uncertain indications of the crime he was to order that the documents be placed in the archive to be taken up again if anything should occur at a later date.
- (c) If there were indications in relation to the crime that were quite serious but not yet sufficient to warrant establishing an accusatory process, the bishop had to order that the accused be warned in a fatherly manner or most gravely adding, if necessary “*an explicit threat of a process if a new accusation is made*”. This material was to be kept in the archives, and the behaviour of the accused monitored.
- (d) If there were arguments to hand that there were certain, or at least probable, reasons for the setting up of an

accusatory process he was to order that the accused should be cited.

4.27 The element of secrecy in this process was very prominent. The warning mentioned at c) above was always to be made in secret. It was to be done either by or through an intermediate person. No matter how it was done, there was to be proof kept in the secret archives that it was done and that the accused had received it.

4.28 The document then went on to deal with bringing the accused to trial, the sentence and the appeal process. The document contained instructions as to what was to happen if a priest who was found guilty of the alleged crime, or had even received a warning, was transferred to another territory. The bishop of the place to which he was being transferred was to be warned as soon as possible about the priest's history and juridical status.

The 2001 procedural rules

4.29 A further instruction came from the Vatican in May 2001 entitled *Sacramentorum Sanctitatis Tutela*. Unlike the 1922 and 1962 documents, this document was made widely available. This initiative represented a major change in Vatican policy. It provided that all allegations of child sexual abuse, which have reached the threshold of “a semblance of truth” should be referred directly to the Congregation for the Doctrine of the Faith (CDF) in Rome. That body would either elect to deal with the matter itself or would advise the bishop on the appropriate action to take in canon law. The Commission has been informed that this policy was adopted in order to ensure a co-ordinated and uniform response to allegations of child sexual abuse against clergy throughout the Roman Catholic world. The chancellor, Monsignor Dolan, gave evidence that the policy was subsequently modified as Rome was unable to deal with the vast numbers of referrals. The position now, he said, is that all cases brought to the attention of the Archdiocese before April 2001 and which were outside prescription (see below) were not going to be dealt with by the CDF. It was up to the bishop to apply disciplinary measures to the management of those priests. Monsignor Dolan told the Commission that, up until 2007, 19 cases had been referred by the Archdiocese of Dublin to the CDF. These did not include most of the very serious cases such as those of Fr Bill Carney (Chapter 28), , Fr Ivan Payne (Chapter

24), Fr _____ or others that had already been dealt with by the Archdiocese.

Canon law on investigating complaints

4.30 Both the 1917 and the 1983 codes of canon law included rules for dealing with clerics who are accused of child sexual abuse. The vast majority of the complaints of child sexual abuse dealt with by the Commission were made after 1983 so we concentrate on that code here. Monsignor Stenson has told the Commission that, for the bulk of the period during which he was dealing with clerical child sexual abuse, he relied on the 1983 code. He had encountered two cases prior to 1983 but the investigation of these cases was dealt with by others.

4.31 The Commission has used the text of the 1983 code as set out in *The Canon Law: Letter & Spirit* prepared by the Canon Law Society of Great Britain and Ireland in association with the Canadian Canon Law Society.¹⁶ The translation into English of the text of the code of canon law in this publication is approved by the Bishops' Conferences of Australia, Canada, England and Wales, India, Ireland, New Zealand, Scotland and Southern Africa. The editorial board for this text included Fr Aidan McGrath, the current judicial vicar of the Archdiocese of Dublin, his predecessor and former chancellor Monsignor Sheehy and one other canonist, Fr Donal Kelly, associated with the Archdiocese of Dublin. It should be noted that the American Canon Law Association translation of the code is slightly different from that used in the publication being quoted.

4.32 Canon 1395:2 of the 1983 code states "*A cleric who has offended ... against the sixth commandment of the Decalogue,¹⁷ if the crime was committed... with a minor under the age of sixteen years, is to be punished with just penalties, not excluding dismissal from the clerical state if the case so warrants.*" The age limit was raised to 18 in 1996.

¹⁶ Canon Law Society of Great Britain and Ireland *Canon Law: Letter & Spirit: A Practical Guide to the Code of Canon Law* (London: Geoffrey Chapman, 1995).

¹⁷ The Decalogue is the Ten Commandments. Section one of canon 1395 deals with clerics living in concubinage whereas section two deals with child sexual abuse.

4.33 The procedure for handling such accusations is set out. It is very clear that the responsibility for dealing with complaints rests with the bishop (or the head of the order in the case of religious orders). While aspects of the investigation may be delegated to others, it is the bishop who is required to make the decisions.

4.34 Canon 1717:1 states that whenever an ordinary (bishop) receives information which has at least *“the semblance of truth”* about an offence, he is to inquire carefully, either personally or through some suitable person about the facts and circumstances and about the imputability (guilt) of the offender unless such an inquiry would appear to be entirely superfluous.

4.35 The issue arises as to whether an anonymous complaint should be investigated. In practice, complaints are made by victims, by parents, or a third party who may or may not be an anonymous complainant. Speaking to the episcopal conference in 1994, Monsignor Stenson stated that it would be inadvisable to ignore an anonymous complaint. He told the conference that

“A person may have a genuine complaint and be anxious to communicate it to the Church authorities if only to alert them and prevent further abuse while not wishing to be involved. There may sometimes be a genuine concern that the priest gets help. It would seem wise to at least record such complaints, inform the alleged perpetrator of the fact of the complaint and note his response. To do nothing on the basis that its source was unknown would seem to be a precarious practise nowadays”.

4.36 It is clear that Archbishop Ryan certainly did not agree with this as he refused to deal with anonymous complaints (see Chapter 16 in relation to Fr Maguire). Monsignor Sheehy also considered that such complaints should not be entertained (see Chapter 24 in relation to Fr Payne). The Commission accepts that it could be difficult to investigate a complaint without the co-operation of the victim.

4.37 According to Monsignor Stenson, all complaints were to be recorded and investigated since they arose from various sources and the information often differed greatly both in quality and detail. He considered that the matter

should be investigated in a discreet manner, as soon as possible, certainly within 48 hours.

Initial inquiry

- 4.38 The purpose of the initial inquiry is to decide whether the accusation has a “*semblance of truth*” – in effect, is it a genuine complaint that could not be ignored.

Preliminary Investigation

- 4.39 Once the allegation has been found to have at least “*a semblance of truth*”, the bishop, either personally or through some suitable person, is obliged to start a formal investigation known as the preliminary investigation. This, as outlined in Canon 1717:1, requires the bishop to inquire about the facts and circumstances and about the imputability (guilt) of the offender.

Delegate

- 4.40 The preliminary investigation is to be conducted by a person known as the delegate. The delegate was usually a priest but is now a lay person in the Archdiocese of Dublin. This person is appointed by decree and must be a suitable person. A person appointed a delegate cannot subsequently act as a judge in the case if it is decided to establish a penal process.

- 4.41 For the bulk of the time within the Commission’s remit, the delegate was either Monsignor Stenson or Monsignor Dolan. Fr Paddy Gleeson and Fr Cyril Mangan were delegates for some of the time.

- 4.42 A delegate has the same powers and obligations as an auditor. An auditor in canon law may be either a cleric or a lay person endowed with good morals, prudence and doctrine, but it was thought for clerical sexual abuse cases that they were better investigated by a priest. It is up to the delegate to decide what evidence is to be collected and how. His responsibilities include not only evaluating the complaint but assessing the credibility of the complainant and any other witnesses who might have information. He also has responsibility for compiling a report for the bishop.

- 4.43 Canon 1717:2 requires that “*care is to be taken that this investigation does not call into question anyone’s good name*”. This seems to be the

reason why the processes set out in the procedural rules require such a degree of secrecy.

4.44 Anyone accused of a crime at canon law (or in civil law) has a right to an impartial investigation. The complainant and his/her family also have a right to an impartial investigation. The accused cleric is to be informed about his right to obtain legal advice and, if necessary, to be accompanied by a lawyer if being interviewed during the process of the preliminary investigation. There is no requirement on the priest to respond to the allegation; he is entitled to remain silent and is not required to take an oath or explain his situation. No adverse inference can be drawn by the delegate if the accused exercises his right to silence.

Status of an accused person during the preliminary investigation

4.45 Administrative leave is a well accepted and standard procedure for lay people accused of child sexual abuse. Such leave involves the temporary removal of individuals from their duties, with pay, during the course of an investigation of their behaviour. There is no presumption of guilt involved. The procedure is designed to:

- protect the individual from further accusations pending the outcome of an investigation;
- protect the public from the possibility of further wrong doing;
- ensure the integrity of the investigative or judicial process is not compromised.

4.46 This procedure is followed in many workplaces and institutions where workers have been accused of child sexual abuse.

4.47 Monsignor Stenson was of the view that during the course of much of his tenure as chancellor, there was no such equivalent to administrative leave within the canon law process unless a process to impose a penalty was directed by the bishop. It was his view that a bishop would have to ask a priest to step aside voluntarily and temporarily while the preliminary investigation was going on. If the priest failed to do so then a real dilemma was created.

4.48 Other canonists hold a different view. Fr Thomas Doyle,¹⁸ an American expert, is of the view that Canon 1722 enabled the bishop to compel an accused to cease public ministry or refrain from the administration of the sacraments. The bishop could compel him to change his residence or even refrain from celebrating the Eucharist. Fr Doyle fairly acknowledged that there were two schools of thought concerning the applicability of Canon 1722. Monsignor Stenson's view, while shared with many canonists, would accord with the more narrow interpretation, that this canon could only be invoked during the more formal judicial process and not during the preliminary investigation. A contrary view is that administrative leave could be imposed as soon as the bishop had reason to believe that it was needed. That view stems from the fact that formal judicial proceedings were rare and canon 1722 would be useless to bishops if the narrow interpretation were followed.

4.49 It should be noted that, under canon 552, the bishop or diocesan administrator may move an assistant priest for "*just reason*". On the other hand a parish priest can be removed only for a "*grave reason*".

4.50 In giving evidence to the Ferns Inquiry, Bishop Eamonn Walsh said that the criterion for removing a parish priest (a grave cause) or a curate (a just cause) would be met by a credible allegation or a reasonable suspicion of child sexual abuse. He told that inquiry that the same standards applied to all priests in the diocese of Ferns. Most of the priests in the Archdiocese of Dublin who were confronted with the allegation of child sexual abuse agreed to take administrative leave on request. They did this without admission of guilt and they were entitled to be provided with a residence and a "*proper income*" until the matter could be fully investigated.

Removal of faculties

4.51 In certain circumstances, a priest may be subject to various forms of censure. One such is removal of faculties which can prevent the priest from carrying out some or all of his priestly functions. The bishop issues a precept; this is effectively a ruling about what the priest is allowed to do. So, for example, he may be forbidden to say mass in public and/or to wear clerical dress and/or to be seen in the company of any young person less than 18

¹⁸ Author of "The Canonical Rights of Priests Accused of Sexual Abuse" (1990) 24 (2) *Studia Canonica* 335 – 336.

years of age. Many such precepts are described in the chapters on individual priests. Such precepts cannot be perpetual and must be renewed if they are to remain in place.

The Application of penalties

4.52 When the preliminary investigation is complete, canon 1718:1 requires that the bishop must decide:

- whether a process to impose a penalty can be initiated;
- whether this would be expedient, bearing in mind canon 1341;
- whether a judicial process is to be used or whether the matter is to proceed by means of an extra judicial decree.

4.53 Canon 1341 states that the bishop is to “*start a judicial or administrative procedure for the imposition or the declaration of penalties only when he perceives that neither by fraternal correction or reproof, nor by any methods of pastoral care, can the scandal be sufficiently repaired, justice restored and the offender reformed*”.

4.54 This canon was interpreted to mean that bishops are required to attempt to reform the abusers in the first instance. In the Archdiocese of Dublin, significant efforts were made to reform abusers. They were sent to therapeutic facilities, very often at considerable expense. In a number of the earlier cases in particular, the Archdiocese seems to have been reluctant to go beyond the reform process even when it was abundantly clear that the reform process had failed. In fact, when a penal process was finally initiated in the case of Fr Carney (Chapter 28), the judges in that process were severely critical of the delay in starting it.

4.55 The Commission could find very little evidence, particularly in the early decades of the Commission’s remit, of any attempt by Church authorities to restore justice to the victims. The main emphasis was on the reform of the priest and the repair of scandal. Under canon 1718:4, it is open to the bishop to decide if in order “*to avoid useless trials, it would be expedient, with the parties’ consent, for himself or the investigator to make a decision, according to what is good and equitable, about the question of harm*”. This does not ever seem to have been considered by the Archdiocese.

Imputability

4.56 Canon 1395 allows for just penalties, not excluding dismissal from the clerical state, to be imposed if a cleric is found to have committed child sexual abuse. The concept of imputability (guilt) is of fundamental importance in canon law when considering the offence of child sexual abuse. Before imposing any penalty for such offence, the ecclesiastical authority must be morally certain that there has been an offence which is gravely imputable in the sense explained at canon 1321.

4.57 Canon 1321 states that no one can be punished for an offence unless it is *“gravely imputable by reason of malice or of culpability”*.

4.58 It goes on to state *“A person who deliberately violated a law or precept is bound by the penalty prescribed in the law or precept. If, however, the violation was due to the omission of due diligence, the person is not punished unless the law or precept provides otherwise. When there has been an external violation, imputability is presumed, unless it appears otherwise”*.

4.59 The Canon Law Society of Great Britain and Ireland’s commentary on canon 1395 states that:

“Among the factors which may seriously diminish their imputability in such cases is paedophilia. This is described as ‘the act or fantasy or engaging in sexual activity with pre-pubertal children as a repeatedly preferred or exclusive method of achieving sexual excitement.’ Those who have studied this matter in detail have concluded that proven paedophiles are often subject to urges and impulses which are in effect beyond their control.

When the facts of a particular case are examined carefully it may well emerge that the cleric did indeed commit a sexual offence or a number of them with a minor; as such he may be subject to punishment by the criminal law of the state; nevertheless because of the influence of paedophilia he may not be liable by reason of at least diminished imputability to any canonical penalty or perhaps to only a mild penalty, to a formal warning or reproof, or to a penal remedy. Dealing with such cases the ecclesiastical authority must tread very carefully, balancing the harm

*done to the victims, the rights of the cleric in Canon law and the overall good of the Church in its striving for justice for all.*¹⁹

This is a major point of difference between the Church and the State law. In the former, it appears that paedophilia may be an actual defence to a claim of child sexual abuse just as insanity would be in the law of the State.

4.60 It must be noted that two of the three priests in the representative sample (see Chapters 16 and 19) who were dismissed from the priesthood following canonical trials appealed their dismissals to Rome and had their sentences varied by Rome. They were both child sexual abusers and both were diagnosed as paedophiles.

4.61 This Commission finds it a matter of grave concern that, under canon law, a serial child sexual abuser might receive more favourable treatment from the Archdiocese or from Rome by reason of the fact that he was diagnosed as a paedophile.

Periods of prescription/Limitation periods

4.62 Many of the complaints investigated by the Commission could be classified as historical complaints. Here the canon law and the civil law differ considerably. In Ireland there is no general statute of limitations with regard to serious criminal offences. In canon law, criminal actions, even of the most serious kind, were time barred after a certain period. Under canon law, this period was five years for most of the time with which the Commission is concerned (1975-2004). This is known as the period of prescription. This meant that, in canon law, many of the complaints made to the Church were time barred and could not be properly investigated.

4.63 In 2001, Rome extended the time for making a complaint to ten years. In the case of a minor, this ran, not from the last offence, but from the victim's 18th birthday. The preliminary Church investigation, therefore, now has first to establish the dates of the alleged offences and especially the last occasion, and also the age of the victim both at the time the offences were committed and at the time of the investigation.

¹⁹ Canon Law Society of Great Britain and Ireland, *supra* note 16, p 805.

4.64 A further concession was made by the Pope in 2002 when he granted to the Congregation of the Doctrine of the Faith (CDF) the faculty to derogate from the period of prescription on a case-by-case basis. This meant that a complaint dating back a period of ten years or more could be investigated on a discretionary basis.

The canonical penal process

4.65 Archbishop Connell was one of the first bishops in the world to initiate canonical trials in the modern era. He did so in relation to Fr Bill Carney in 1990 (Chapter 28). A canonical trial was also held in the case of Fr Patrick Maguire (Chapter 16); this was initiated by his religious society in 1999. The canonical penal process is governed by canons 1717 – 1728.

Decision to start a penal process

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Conduct of canonical trials

4.69 The trials which were conducted in the Archdiocese of Dublin were presided over by a canonical tribunal. All three judges were priests and all had qualifications in canon law. Until February 2003, the officers of the court had to be priests. From that date the Pope authorised the Congregation for the Doctrine of the Faith to dispense (in individual cases) with the requirement of priesthood and with the requirement of a doctorate in canon law.

4.70 Each case was presented by a priest who was designated to be the Promoter of Justice for the trial – this is the equivalent of the prosecutor in a criminal trial. The defendant priest was represented by a person known as the Advocate for the defendant. The canonical judges heard the evidence of the witnesses put forward by the Promoter of Justice. Evidence from the preliminary inquiry was permitted as was all data collected by the chancellery. It appears to the Commission that proceedings were more akin to a European model of law, in other words an inquisitorial rather than an adversarial model.

4.71 A number of the witnesses who attended the trials in Dublin told the Commission they had only a vague idea why their evidence was needed. The process and their role in it were not explained to them.

4.72 Once the judges heard the evidence, they then issued their determination. The decision can be appealed.

, Fr Carney,

who did not attend the trial, accepted the determination that he be dismissed from the clerical state. Overall, it seems to the Commission that these trials were conducted carefully and

diligently.

Damages

4.73 Under canon 1729, a party who has suffered harm can bring a “*contentious action*” for damages in the course of the penal case. The victims who gave evidence to the Dublin canonical trials were not told of this option for reasons which have never been explained.

The appeal to Rome

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4.78 Two further canonical trials were held in respect of priests in the representative sample and both priest defendants appealed the outcomes to Rome. One of the trials was initiated at the behest of the Society of St Columban in 1999. The trial and appeal of the other priest was post 2004 and has not been disposed of at the time of this report.

4.79 In the case of the Columban priest, Fr Patrick Maguire (see Chapter 16), once again Rome directed that the decision of the diocesan tribunal to dismiss Fr Maguire should be changed to a “*penalty of the censure of suspension from all public acts of the exercise of the powers of orders and jurisdiction for nine years and an expiatory penalty of residing in a designated house of the Institute of St. Columban under the direction and vigilance of the superior for an indefinite time*”.²⁰

4.80 In the case of Fr Maguire, because he was a Columban priest, it clearly was easier for the order to facilitate the decree from Rome as they could accept him into one of their houses where they could monitor him and supervise him.

Penalties for ecclesiastical authorities who fail to apply the canon law

4.81 Canon 1389 provides for a penalty, including deprivation of office, for an official who abuses ecclesiastical power or who omits through “*culpable negligence*” to perform an act of ecclesiastical governance. A bishop who fails to impose the provisions available to him in canon law in a case of sexual abuse of a child is liable to penal sanctions imposed by Rome. The Commission is not aware of any bishop who was subjected to such penalty in the period covered by its remit.

²⁰ This translation from the Latin of the Roman order was provided by the Missionary Society of St Columban.

Confidentiality

- 4.82 There is no doubt that the code of canon law places a very high value on the secrecy of the canonical process. This obligation of secrecy was described as a “*secret of the Holy Office*” in the 1922/1962 documents, the penalty for breach of which was excommunication and which breach was a sin which could only be absolved by a bishop. In hearings before the Commission, it was notable that Church officials preferred to refer to it now as a duty of confidentiality. Whichever it be, it is in stark contrast to the civil law which requires the public administration of justice. Moreover, an obligation to secrecy/confidentiality on the part of participants in a canonical process could undoubtedly constitute an inhibition on reporting child sexual abuse to the civil authorities or others.
- 4.83 It is not clear from the evidence or the documents available to the Commission whether the obligation of confidentiality relates only to what takes place during the canonical process or whether it extends to the underlying details of complaint.
- 4.84 A number of complainants, however, spoke of being urged, when making a complaint outside the canonical process, to keep it confidential. According to the evidence of Monsignor Dolan, which the Commission regards as truthful and helpful, a number of complainants wished to make complaints to the church authorities only because, ironically, they did not trust the confidentiality of the civil authorities.
- 4.85 Another aspect of the emphasis on the secrecy of the canonical process is that it was very definitely a process in which the complainant (like the accused) was subjected to questioning but no information was given to the complainant. This is illustrated graphically in a handwritten note made by Fr Dolan (before he became chancellor) while attending a lecture by another canon lawyer entitled “Preliminary Investigation, Canonical responses and Processes in Cases of sexual misconduct by Church personnel with minors”. Fr Dolan’s handwritten note records in relation to the examination of the witness: “*gain his knowledge/tell him nothing*”. It is important to emphasise that this statement may not be as sinister as it might be made to appear but it does indicate that the mode of procedure was to extract from the complainant

what he knew without in any way informing him as to the process, the other evidence available, the standing of the accused or other matters.

4.86 While, strictly speaking, these notes related to the examination of a witness for canonical purposes it seems likely that this attitude informed the examination of witnesses generally and the receipt of complaints, even outside the canonical process or investigation.

Conclusion

4.87 The Commission finds the lack of precision and the difficulties of finding the exact content of canon law very difficult to understand. The Archdiocese of Dublin was, in the period relevant to the Commission's inquiry, apparently ignorant of many of the laws relating to the Church's self governance and sought to justify its actions and inactions by reference to canon 1341 which, as we have seen, provides for fraternal rebuke and reform rather than legal process. Even the best attempts of competent people to discover the norms which, according to canon law, should be applied to cases of sexual abuse were in vain. The Commission is quite satisfied that the evidence of the present chancellor of the Dublin Archdiocese, Monsignor Dolan, as to the general canon law background is truthful and accurate. More than that, this witness made every attempt to render what he had to say comprehensible insofar as he could and did not shrink from painting a picture on occasion of chaos and confusion within the Archdiocese and between the Archdiocese and Rome.

4.88 There seems to have been a total absence of any straightforward, easily verifiable system for ascertaining which decrees or statements had the force of canon law and which had not, and what the effects of new canonical instruments, such as the code of 1983, or the 2001 procedural rules, had on previous instruments which had been treated as having the force of law. The Commission was surprised to discover that the 1962 instrument referred to above and its predecessor in 1922 were circulated under terms of secrecy, were kept in a secret archive and, in the case of the latter, apparently never translated from the original Latin. Even more astonishing, Monsignor Stenson, a former chancellor and long term advisor to successive Archbishops did not see the 1922 document until the end of his time in Archbishop's House. There was no evidence that Archbishops Ryan or

McNamara ever applied that document or even read it and the most recent former Archbishop, Cardinal Connell, told the Commission that he did not become aware of the 1922 instruction for some time after becoming Archbishop and that he had never read or seen the 1962 document or met anyone who had seen it.

4.89 It is a basic feature of every coherent legal system that there is a firm, simple and unmistakable procedure for the promulgation of a law. The absence of any such procedure within Church law, in the Commission's view, makes that law difficult to access, and very difficult to implement and to monitor compliance.

4.90 The Commission considers that clear and precise rules are required to ensure that priests suspected of abusing children are not allowed to use their status to give them privileged access to children. This requires that they be removed from ministry. The Commission does not consider that an order to stay away from children, or to minister only to adults, or to meet children only when accompanied by another adult, is adequate. It is virtually impossible for such orders to be enforced. The power to remove priests from ministry is available only from canon law. The penal process of canon law was for a period of years set aside in favour of a purely 'pastoral' approach which was, in the Commission's view, wholly ineffective as a means of controlling clerical child sexual abuse. The abuse of children in Dublin was a scandal. The failure of the Archdiocesan authorities to penalise the perpetrators is also a scandal.

4.91 The Commission is, therefore, very concerned about the lack of precision in canon law about the power of bishops to exercise control over offending priests.

4.92 In particular, the Commission is concerned that canon law is not clear on the power of a bishop to require a priest to stand aside from ministry. At the present time, it appears that standing aside is done on a voluntary basis due to a lack of confidence in the canonical powers available to enforce it. It must also be acknowledged that this 'standing aside' raises considerable questions from the point of view of the rights of the accused. It is clear to the Commission that this aspect of the present procedure is greatly resented by

many priests. However, the Commission is strongly of the view that there needs to be clear, unequivocal power available to bishops to require priests to stand aside.

4.93 The Commission is also concerned about the uncertainty which exists as to whether a person who has been diagnosed as a paedophile could ever be guilty of a canonical offence. If it is to be the case that, because of their psychiatric or psychological condition, paedophiles cannot be guilty of offences, then canon law needs to provide for alternative means of dealing with paedophile priests.

4.94 As the Roman Catholic Church is a private organisation, it appears to the Commission that the status of priests within that organization is a matter over which the State has no power. Accordingly, if these particular concerns are to be addressed, it is for the Church rather than the State to address them.

Chapter 5 Investigation and prosecution of child sexual abuse

Introduction

5.1 Allegations of child sexual abuse, like all allegations of breaches of the criminal law, are investigated by An Garda Síochána. The decision to prosecute in child sexual abuse cases is made by the Director of Public Prosecutions (DPP).

An Garda Síochána

5.2 The Garda Commissioner as head of An Garda Síochána is responsible to the government through the Minister for Justice, Equality and Law Reform. The commissioner has two deputy commissioners. In addition, there are ten assistant commissioners; four have responsibility for issues that concern the force on a national basis while each of the remaining six has responsibility for a designated region within the State. One of those regions is the Dublin Metropolitan Region.

The Dublin Metropolitan Region

5.3 The Dublin Metropolitan Region (DMR) is made up of Dublin City and County and also includes small portions of counties Kildare, Meath and Wicklow. The boundaries of the DMR have changed only minimally since 1975. In 1998 Rathcoole Garda Station was subsumed into the DMR. In 2002, the Leixlip Garda sub district extended the boundaries of the DMR slightly into counties Kildare and Meath. Leixlip became a garda district in 2008. The DMR is divided into six divisions, each of which is commanded by a chief superintendent. These divisions are subdivided into districts commanded by a superintendent who is assisted by Inspectors. The DMR contains 18 garda districts and a total of 45 garda stations.

Investigation of complaints

5.4 The normal procedure of investigation by the Gardaí begins once a formal complaint is received by a member of An Garda Síochána from a person claiming injury. This usually involves the provision of a statement of the allegations by that person. It is apparent, from many of the complaints considered by the Commission, that historically a single garda often conducted the entire investigation. Today, however, it is likely that, in the case of clerical child sexual abuse, an investigation team is formed to assist in the

investigation. That team then normally seeks out corroborating evidence to substantiate matters arising from the complainant's statement. During the course of the investigation, the priest concerned would, at some stage, be invited to attend the garda station for questioning or be arrested for that purpose. The file containing the various statements and any other evidence would in normal circumstances be reviewed by a superintendent or an inspector acting for a superintendent. Arising from that review, further work might be directed prior to submission of the file to the DPP.

5.5 Prior to 1980, the usual protocol was that a superintendent decided whether or not to refer the file to the DPP. In April 1980, the Garda Commissioner sent a directive to garda officers that in cases of murder, attempted murder, manslaughter and sexual offences, the file must in all cases be sent to the DPP for directions. This practice remains in operation but has now been put on a statutory footing. Under section 8 of the *Garda Síochána Act 2005*, the DPP may issue general or specific directions to An Garda Síochána in relation to prosecution work. The DPP issued a general direction under this section in January 2007. This general direction provides, among other things, for a continuation of the requirement that decisions on prosecution in cases of sexual offences must be taken by the DPP. Once a garda investigation is completed and a file is sent to the DPP, all further action in relation to the criminal investigation and prosecution is done at the direction of the DPP.

5.6 A detective superintendent from the Domestic Violence/Sexual Assault Investigation Unit (DVSAIU) in the National Bureau of Criminal Investigation (NBCI) confirmed to the Commission that all child sexual abuse cases are now sent to the DPP.

5.7 In 1999, the Department of Justice, Equality and Law Reform published a victim charter. This charter calls for the notification to all complainants of the decision of the DPP and of the need to keep complainants updated with the progress and outcome of the criminal investigation.

PULSE

5.8 The computer system known as 'PULSE' electronically records all work carried out during the course of an investigation. In June 2006, following the publication of the *Ferns Report*, a directive was issued from garda headquarters requiring that all complaints of child sexual abuse must be recorded on the PULSE system and that the investigation of such cases was to be subject to review and scrutiny by supervisory ranks.

The Woman and Child Unit

5.9 The Woman and Child Unit was set up in March 1993 within the Central Detective Unit (CDU). It was run by a sergeant and assisted by three gardaí at the Serious Crime Section, Harcourt Square. The Woman and Child Unit was under the control of a detective chief superintendent. The purpose of the Woman and Child Unit was to oversee cases of sexual violence or assaults and to assist, when necessary, in the investigation of more complex cases. A decision to take over the investigation of a particular case rested with the detective chief superintendent in the unit. The CDU subsequently became the National Bureau of Criminal Investigation (NBCI). The role of the Woman and Child Unit is now undertaken by the Domestic Violence/Sexual Assault Investigation Unit.

Domestic violence /sexual assault investigation unit (DVSAIU)

5.10 This unit was established in 1997 and is based in Harcourt Square in Dublin. It is attached to the NBCI. The unit is supervised by a detective superintendent, managed by a detective inspector and is staffed by three detective sergeants and 12 detective gardaí. The Commission has been informed by An Garda Síochána that many of the officers in the unit have been sponsored by the force to complete a diploma in child protection and welfare at Trinity College Dublin.

5.11 The Commission has been told that this unit operates as a central unit and is available to assist gardaí nationwide, giving guidance and assistance on complaints of a sexual nature. The unit works in conjunction with the local gardaí. The unit may also offer guidance and assistance by way of the supply of members to assist with an investigation (for example making inquiries, taking statements). In exceptional circumstances, for example, if a complainant does not want local gardaí to become aware of his or her

complaint, this unit may carry out its own investigation while only notifying the local superintendent of the progress. The unit is also in a position to refer cases to the DPP for decisions on prosecutions.

5.12 Following the Prime Time programme, *Cardinal Secrets*, on RTE television in October 2002, a major investigation was undertaken by the DVSAIU into all clerical child sexual abuse complaints including those relating to clerics in the Archdiocese of Dublin. Details of this investigation are set out below.

Contact between the Archdiocese and An Garda Síochána

5.13 Although the documents considered by the Commission illustrate many instances of contact between members of the Gardaí and the Dublin Archdiocese relating to specific allegations against priests of child sexual abuse, the first formal structured and non-case specific contact between the Archdiocese and An Garda Síochána was in 1995. In January and February of 1995, the Irish Catholic Bishops' Advisory Committee on Child Sexual Abuse by Priests and Religious held a number of 'listening days' for statutory sectors involved in child protection and welfare. The Commission understands that An Garda Síochána sent a representative to at least one such meeting. The product of this advisory committee was a document entitled *Child Sexual Abuse: Framework for a Church Response* published in early 1996 (generally described in this report as the *Framework Document* – see Chapter 7).

5.14 The *Framework Document* contained detailed provisions relating to the manner in which child sexual abuse complaints should be handled by the Church. The *Framework Document* states:

*“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.*

2.2.2 *The report should be made without delay to the senior ranking police officer for the area in which the abuse is alleged to have occurred...* (Emphasis added).

5.15 In anticipation of the publication of the *Framework Document*, a meeting was arranged at the request of Archbishop Connell with a representative of An Garda Síochána. A detective inspector and a detective garda met a representative of the Archdiocese at Archbishop's House on 17 November 1995. The representative delivered details of "*all persons who had made allegations of sexual abuse against members of the clergy that were in his possession*". These details comprised the names of 17 alleged clerical abusers together with the names of each complainant and brief details of the allegations. The Commission does not consider that the reporting carried out in this instance by the Archdiocese was in fact in compliance with the standards of the *Framework Document*. Within the collective knowledge of priests and officials of the Archdiocese, there was an awareness of complaints concerning a total of at least 28 priests or former priests (at least 12 more than were named on the list).

5.16 When Cardinal Connell was asked by the Commission about the absence of any reference on this list to a particular named priest, his reply was that this priest's name was possibly not on the list because he had been laicised at the time the list was produced and consequently was not a member of the clergy. In further evidence before the Commission, the Cardinal responded that the disclosure "*was a beginning and it was a very big beginning because nothing of the kind had ever happened before*".

5.17 Six of the cases referred to on the list supplied by the Archdiocese were the subject of ongoing investigations. In other cases, investigations or prosecutions had been concluded. Five new statements were obtained from complainants and nine new investigations were commenced following receipt of this notification.

5.18 More recent Church guidelines that have been published on behalf of the Catholic Church in Ireland are set out in the document entitled *Our Children Our Church*. While not altering the imperative of reporting all complaints of child sexual abuse to the civil authorities, a small change to the

requirement of reporting to An Garda Síochána and the health authorities was made in this document. These guidelines direct the Church, in circumstances where it is established that there are “*reasonable grounds for concern*”, to report the allegation to the civil authorities immediately. Paragraph 6.5 gives a number of examples that would constitute reasonable grounds for concern. One of those grounds is “*specific indication from the child that (s)he was abused*”.

Continued inter agency cooperation

5.19 The Commission understands that, as a result of recommendations in the *Ferns Report*, a committee was established by the HSE to implement the formation of inter agency review committees. A committee was convened in October 2005 and included representatives of the Health Service Executive (HSE), the chief superintendent of crime policy and administration on behalf of the garda commissioner and representatives of the Catholic Church. The proposal was to begin the process of setting up inter agency review committees on a national basis. The Commission has been advised by An Garda Síochána that they nominated and forwarded to the HSE a list of superintendents to sit on the proposed committees but that the HSE has informed participants that it was not proceeding with the committees due to difficulties that arose surrounding the legality of the discussion and use of information that amounts to rumour, suspicion, innuendo or allegations of abuse (so called ‘soft information’).

5.20 Separately, in accordance with the terms of *Our Children Our Church*, the Archdiocese appointed a liaison person to communicate directly with An Garda Síochána on matters of alleged abuse of children by clerics.

The HSE and the Gardaí

5.21 Under the child abuse guidelines issued by the Department of Health in 1987 (see Chapter 6), a health board was expected to notify the Gardaí of any alleged case of child abuse where it was suspected that a crime had been committed. Those guidelines were not specific as to when the referral ought to be made. The 1995 guidelines published by the Department amended the 1987 guidelines in relation to the circumstances requiring notification. The 1995 guidelines established a procedure in line with a recommendation of the *Report of the Kilkenny Incest Investigation*. The

process required that where either agency suspected that child abuse has taken place, it must notify the other in accordance with the specific terms of those guidelines. The procedure involved the use of notification forms by the health boards to the local garda superintendent. Once that notification form is received, the Superintendent is required to assign the case to a garda and to notify the designated officer in the health board of the details of that garda. The Garda in charge is, in turn, obliged to make early contact with the social worker handling the case in order to obtain details of the case. The guidelines also detail when the Gardaí must notify the health boards, namely in circumstances “*where the Gardaí suspect that a child has been the victim of emotional, physical or sexual abuse or neglect (whether wilful or unintentional)...*”. It is specifically stated that the Gardaí need not have sufficient evidence to support a criminal prosecution before notifying the health board. The notification procedure is similar to the health board notification procedure: the garda superintendent sends a notification form to a designated officer in the health board which in turn appoints a social worker. The social worker then makes direct contact with the garda in charge of the case. The guidelines envisage both the garda in charge and the social worker agreeing a strategy for the investigation and an ongoing liaison in the matter.

5.22 The *Children First* guidelines published by the Department of Health and Children in 1999 restate the necessity for early notification between the Gardaí and the health boards. The guidelines revised the procedures to a degree. The changes included the introduction of new forms for notification. The Commission was advised by An Garda Síochána that specialist training in relation to the *Children First* guidelines is undertaken by trainees at Garda College.

5.23 An Garda Síochána has indicated to the Commission that it has sought to operate in accordance with the various guidelines referred to above in its relations with the health services.

Garda Investigations from 2002

5.24 The management of some of the individual garda investigations is referred to in the individual chapters on the representative sample of cases selected by the Commission in this report. Up until 2002, so far as the Commission can ascertain, the general practice was that most investigations

into child sexual abuse allegations against priests in the Archdiocese of Dublin were handled by gardaí local to the complainant or at the garda station where complaints were made.

5.25 In October 2002, following the Prime Time broadcast on RTE which referred to nine priests in the Dublin Archdiocese, the Gardaí established an incident room at the NBCI. A dedicated hotline was allocated to receive complaints. The incident room was managed by an inspector and staffed by other senior gardaí.

5.26 In October 2002, Detective Chief Superintendent Sean Camon was appointed to head a team to conduct what was termed an “*analytical overview*” of clerical abuse cases previously investigated by An Garda Síochána. The task assigned by garda headquarters to the team was both to review all clerical sexual abuse cases previously investigated and to carry out a comprehensive investigation of all new complaints of clerical sexual abuse wherever they occurred. The instructions were to:

“review the cases and establish if further lines of inquiry were available which could lead to the preferring of criminal charges; pursue additional evidence; fully investigate new complaints ; establish the number of cases investigated by the Garda, the number of cases where no further action was taken and the results of those investigations”.

This initiative set up what was most probably the most comprehensive Garda investigation into clerical child sexual abuse ever undertaken in the State.

5.27 The strategy proposed obtaining all files previously forwarded to the DPP in order to review them. A designated telephone number was set up to receive new complaints. An analysis of the recent media programmes, Prime Time and Liveline, and all calls to the media was undertaken with all callers to be identified and complaints to be investigated. Inquiries were then to be carried out to establish if there was evidence to substantiate the complaints. This process involved looking at the Church files, interviewing the hierarchy of the Church, checking health board records and interviewing gardaí who had previously investigated complaints.

5.28 A request was made shortly thereafter by Detective Chief Superintendent Camon to Archbishop Connell seeking access to archdiocesan files on named individuals and on other clerics against whom allegations had been made to the Archdiocese. Copies of the relevant programmes were obtained from RTE and transcribed.

5.29 In December 2002, following a meeting between garda officers and legal representatives from the Archdiocese, the Archdiocese's solicitors outlined the basis on which access to the diocesan documents would be permitted.

Legal privilege

5.30 The Archdiocese was prepared to allow the Gardaí access to all files with the exception of documents that it asserted were legally privileged. Legal privilege is a long standing legal status that is given to certain documents that were created in the context of giving or receiving legal advice or in anticipation of formal court proceedings. The law has traditionally regarded those documents as private to the person who sought the advice as it is considered by the courts that it is in the common good that people can freely seek legal advice without having to be concerned that the written record of the advice sought will ever be seen by anyone else. It is however always open to the person or organisation for whose benefit those documents were created to waive their legal privilege.

5.31 A barrister was appointed by the Archdiocese to decide which documents were legally privileged. Detective Chief Superintendent Camon recalls that there were over 1500 documents over which privilege was claimed. Following a review by lawyers for the Archdiocese of the claims of legal privilege, additional documents were delivered to the Gardaí, the claim for privilege having been withdrawn with respect to those documents. Privilege was however still being asserted over "*a considerable number of documents*" and he recalls that the issue of privilege was always a "*live one*" throughout the investigation. The records discovered to the Gardaí illustrate this to some degree as Archbishop Martin agreed in 2004 that a description of each document over which privilege was being claimed would be provided by the Archdiocese by way of justification for any continuing claim.

Material considered

5.32 In January 2003, members of the garda investigation team started reading the Archdiocese's files in a room set aside at church property at Clonliffe in Dublin. Synopsised files were created and stored at the incident room at the NBCI. By January 2004, the files were still being considered by the Gardaí.

5.33 Cardinal Connell wrote to all former chancellors, bishops and priests who had dealings with chancellery files to check if they had any documents that could form part of the Archdiocese records. Records from the secret archives of the Archdiocese were produced. Retired Detective Chief Superintendent Camon confirmed to the Commission that he found the Archdiocese of Dublin co-operative throughout this investigation and that the Gardaí did not feel in any way obstructed in their investigation. The Archdiocese assisted the Gardaí in locating a number of priests against whom complaints had been made.

5.34 In May 2004, a detective garda forwarded an analytical overview of RTE's Prime Time and subsequent Liveline programmes to a detective superintendent in the NBCI. This report focused on the detail contained in the TV programmes. The author of the report concluded that the Prime Time programme left viewers with the impression that the Archdiocese had not properly dealt with complaints of child sexual abuse and that the Archdiocese had, in letting the priests return to ministry, facilitated further access by these priests to children and that some of them continued to abuse children. The analysis included an overview of the Liveline programmes on RTE radio and the calls that were made to the radio station following the Prime Time programme. Many of the callers identified the priests who, they said, had abused them.

Misprision of felony investigation

5.35 In addition to investigating the individual complaints, the investigating Gardaí were requested to consider the possibility of bringing a charge against any relevant people in the Archdiocese for the offence of 'misprision of felony' arising out of the alleged abuse by the nine priests to whom reference was made in the Prime Time programme.

5.36 The offence of misprision of felony was an offence at common law.²¹ Briefly described, a person who knew that a felony had been committed and, although not a party to it, concealed it from the authorities, was thereby guilty of misprision of felony.

5.37 The expression 'felony' was used to distinguish very serious offences from lesser ones and was originally applied to offences that carried the death penalty such as murder, treason, rape and kidnapping. The term 'misdemeanour' was then used to describe lesser offences that carried penalties of imprisonment or fine. Aside from the penalty, an important distinction between felonies and misdemeanours was that one could be arrested for a felony without a warrant. Furthermore, misprision of felony (referred to above) and compounding a felony (inducing someone not to prosecute a felony in return for a bribe) were two offences that could only occur once a felony had been committed.

5.38 There were some problems with the prospect of such a charge. In the first instance, relatively few of the complaints related to criminal charges that were classified as felonies at the time of the alleged commission of the offence. Furthermore, the distinction between felonies and misdemeanours had been abolished by section 3 of the *Criminal Law Act 1997*.

5.39 In the event, no file was sent to the DPP recommending prosecution for this offence. The charge of misprision of felony was rare in occurrence and one that would have been unlikely to have been previously encountered to any significant degree by the investigating gardaí. There would have been some legal difficulties caused by the abolition of the distinction between felony and misdemeanour. No legal advice was sought on the matter. No recommendation to prosecute anyone within the Archdiocese was made, nor was any file submitted to the DPP recommending prosecution for this offence. Finally, as previously stated, the vast majority of complaints related to alleged offences that were misdemeanours rather than felonies. In all the circumstances, it is considered by the Commission that the misprision of felony investigations were carried out more for the sake of completeness than from any substantial belief that there would ever be such a prosecution.

²¹ That is, behaviour that has always been regarded by the courts as an offence, as opposed to an offence that was created by a statutory provision.

The outcome of the investigations

- 5.40 The garda database established at the incident rooms recorded over 800 incidents of a sexual nature nationwide where the suspect is or was a cleric or connected with a religious community.
- 5.41 By January 2006, the investigation unit had forwarded 40 files regarding clerics to the office of the DPP. Twenty five of those related to the Dublin Archdiocese.
- 5.42 Prior to 2002, complaints into child sexual abuse were handled locally by the Gardaí. Consequently, there was no co-ordinated approach taken by the Gardaí in relation to the investigation of complaints of child sexual abuse by clerics. There is therefore considerable variation in the manner in which those investigations were undertaken and in the results achieved. Some of those garda investigations have been considered as part of the representative sample of cases outlined in this report. To the extent possible from a consideration of the evidence received, comments have been made on the quality of those investigations in the relevant sections of the report.
- 5.43 The garda investigation undertaken into clerical sexual abuse in the Archdiocese of Dublin which commenced in October 2002 was, in the opinion of the Commission, an effective, co-ordinated and comprehensive inquiry. It established a database recording complaints and valuable information which continues to be maintained. The concentration of the investigation in a centrally based team in itself equipped those investigators with the knowledge and skills necessary to properly investigate complaints of child sexual abuse. The Commission would like to note the considerable praise heaped by many of the complainants who came forward to the Commission on members of the specialist unit in the NBCI who carried out individual investigations.

Director of Public Prosecutions

- 5.44 The role of the Director of Public Prosecutions (DPP) is to decide whether or not a person is to be prosecuted in respect of an alleged criminal offence. The DPP makes that decision after receiving a file on the matter from the Gardaí.

5.45 Many victims of child sexual abuse have expressed concern about the failure of the DPP to prosecute in certain cases. During the period covered by this report, the DPP, as a matter of policy, did not explain to the alleged victims his reasons for deciding not to prosecute.²² The DPP's decision is issued to the investigating gardaí. Reasons for the decision are almost invariably given to the gardaí; these reasons are quoted in a number of cases described in this report. The DPP has pointed out to the Commission that these reasons are almost always expressed in legal short-hand because they are being issued to the gardaí and not to the public.

5.46 In examining these cases, the Commission noted that the most frequent reason for deciding not to prosecute was the perceived delay in making the complaints. The Commission also noted that the DPP's approach to the time period that would be regarded as undue delay changed considerably over the period. In the 1980s, a delay of as little as a year might be considered to be a bar to prosecution whereas, in the 2000s, delays of up to 40 years are not considered a bar to prosecutions. The DPP and his Deputy gave evidence to the Commission which explained the evolution of the Office's approach to the question of delay.

5.47 Before examining the issue of delay in child sexual abuse cases, it is important to understand the status of the DPP and the general effect of delay on fair procedures.

Independence

5.48 The office of the DPP was established under the *Prosecutions of Offences Act 1974*. Under section 2 of the Act, the director is independent in the performance of his functions. Because of that independence, neither the Government nor the Garda Síochána nor, indeed, any other person or organisation, can either force the DPP to prosecute a particular case or prevent him from doing so. The DPP is a statutory officer so his actions may be subject to judicial review by the courts. However, where the courts have intervened in the decision making process of the DPP, they have done so

²² The reasons for this policy are explained on the DPP's website. In October 2008, the DPP announced the introduction of a gradual change in that policy: www.dpp.ie.

only when satisfied that there has been a breach of fundamental fairness or a breach of some other constitutionally enshrined principle.

Decision to prosecute

5.49 Once a garda investigation is completed, a file is sent by the investigating garda or his superior officer to the DPP. A legal officer in the office of the DPP considers the file and may recommend that further investigative steps be undertaken by the Gardaí. Alternatively, the legal officer may make a decision to prosecute or not to prosecute or submit the file to a more senior officer for a second opinion. Once a decision to prosecute has been made, the DPP's office also directs what charges are appropriate. Once a direction to prosecute has been issued, the DPP's office is in charge of the prosecution case from then on.

Delay and fair procedures

5.50 It is a firmly established principle of Irish law that fair procedures require that an accused person ought to be brought to court at the earliest opportunity. If there has been a delay in bringing an accused person to court, the accused can, in appropriate cases, apply to the High Court to stop the prosecution. While the Constitution of Ireland does not expressly state that there is a right to a speedy trial, our courts have held that such a right is implicit in Article 38.1 of the Constitution which provides that no person shall be tried on any criminal charge except "*in due course of law*". A trial in due course of law entitles any person charged with a criminal offence to a trial with reasonable expedition. Furthermore, Article 40.3 of the Constitution imposes certain other duties on the State, such as the duty to afford any accused person fair procedures.

5.51 There are essentially two types of delay which can affect the fairness of a criminal trial – complainant delay and prosecutorial delay. Complainant delay means that the alleged victim delayed in making a complaint to the Gardaí. Where a person delays in reporting an alleged crime, valuable evidence relating to the crime may be lost. If this occurs, it may well be unfair to the accused person to put him on trial when important evidence is missing through no fault of his own. Prosecutorial delay is delay by the authorities in either the investigation or the prosecution of offences after a complaint has

been made. Such delays can also result in evidence being lost or mislaid such as to make it unfair to put an accused person on trial.

Complainant delay in child sexual abuse cases

5.52 The DPP explained to the Commission that, prior to the mid 1990s, when considering whether or not there was a delay by a complainant such as to lead to a decision not to prosecute, his office and the courts treated all alleged offences in the same way. In effect, the DPP and the courts applied the same principles to all cases without any special treatment of child sexual abuse cases.

5.53 That policy changed in the mid 1990s when it was accepted by the courts that delay in bringing a complaint of sexual abuse relating to incidents that occurred when the complainant was a child was in a different category to delay in making a complaint in other types of cases.

5.54 The issue of delay by a child sexual abuse complainant was considered by the Supreme Court and a decision was delivered in February 1997.²³ The accused had sought a judicial review seeking to stop the DPP from proceeding further with a criminal prosecution against him. The charges concerned related to alleged sexual abuse by the accused against three of his daughters. The alleged offences occurred in 1963 and the complainants first approached the authorities in 1992.

5.55 The court considered that statute law had put no time limitation on the prosecution of the alleged offences but the Constitution of Ireland did place certain restrictions on a criminal trial in cases where there was unreasonable delay. The court held that it must look at the circumstances in each individual case, including the constitutional issues at stake, in order to determine whether it was appropriate to proceed with a trial. The court indicated that there was no definitive time limit or indeed any exhaustive list of factors that were to be taken into account in reaching a decision on whether or not it was appropriate to allow a prosecution to proceed. Delay and the reasons for it were factors to be taken into account, but so also were the actual prejudice to

²³

B v DPP [1997] 3 IR 140; Supreme Court Decision of Denham J delivered 19 February 1997.

the accused, any special circumstances and the community's right to have offences prosecuted.

5.56 The court held that the key factor in this particular case was the relationship between the accuser and the accused. The court found that the reason for the delay in reporting the alleged crime was the dominion exercised by the accused over his three daughters, and that that dominion existed until the complainant's mother died.

5.57 Following that case, prior to deciding whether or not to prosecute where there had been complainant delay in reporting the alleged offence, the DPP developed a policy of assessing the state of mind of the complainant during the period of delay. The analysis considered whether or not, during that period, there were any factors that existed which prevented the complainant from coming forward.

5.58 That approach remained a significant factor in the deliberations of the DPP in sexual abuse cases until 2006 when the Supreme Court delivered a further judgement on the issue.²⁴ In the 2006 case, the Supreme Court reviewed the extensive case law which had evolved since the mid-1990s around the issue of delay by complainants in reporting child sexual abuse to the Gardaí. In reaching its decision, the court recognised developments in the 1990s which reflected changes in society. The issue of child sexual abuse was discussed widely and openly for the first time. As a result, prosecutions were brought in great numbers in relation to events which had occurred many years previously. The Supreme Court considered, in the context of cases of alleged abuse when the complainant was a child, that there was no longer a necessity to inquire into the reason for the delay in making a complaint. The court took judicial knowledge of the fact that young victims of sexual abuse were reluctant, or found it impossible, to come forward to disclose the abuse to others. The court was satisfied that, in future, it would no longer be necessary to establish the precise reasons for the delay in making the complaint. The issue for a court to determine is whether or not the delay has resulted in prejudice to an accused – that is, whether or not the delay gives rise to a real or serious risk of an unfair trial.

²⁴ *H v DPP* [2000] IESC 55; Supreme Court decision of Murray CJ delivered 31 July 2006.

5.59 The court indicated that the proper test to be applied was “*whether there is a real or serious risk that the applicant, by reason of the delay, would not obtain a fair trial, or that a trial would be unfair as a consequence of the delay. The test is to be applied in light of the circumstances of the case*”.

5.60 Following that case, therefore, the DPP no longer considers the mere fact of delay as a reason that might inhibit a prosecution for child sexual abuse. The Commission was told that the DPP now analyses in each case whether or not there is any prejudice caused to the accused in conducting his defence arising from the delay.

Prosecutorial delay

5.61 Prosecutorial delay can also affect the fairness of a trial. The Supreme Court has stated:²⁵

“[It] ... is not acceptable and in my view is a breach of the defendants’ rights under Article 38.1 of the Constitution for the prosecution authorities to allow unnecessary delay to occur. In a case such as this, involving sexual offences many years ago, the unnecessarily delayed trial is most unfortunate, but it is wholly intolerable that it should be postponed still further due to unnecessary delays on the part of the prosecuting authorities. I’m using this expression ‘prosecuting authorities’ to cover the Director of Public Prosecutions and the Garda Síochána.

...

I think that where there has been a long lapse of time, as in these prosecutions for sexual offences, between the alleged offences and the date of complaint to the Guards, it is of paramount importance, if the accused’s constitutional rights are to be protected that there is no blameworthy delay on the part of either the Guards or the Director of Public Prosecutions. If there is such a delay, the Court should not allow the case to proceed and additional actual prejudice need not be proved.”

²⁵

In *PP v DPP* [2000] 1 IR 403.

5.62 The DPP told the Commission that when an issue of alleged prosecutorial delay is raised, an analysis of the delay and the reasons for it are carried out. The deputy director of the DPP's office stated that it is very difficult to be definitive about the length of time that would be regarded as so excessive that it would lead to a case being stopped. He indicated that it is very difficult to predict what cases would ultimately be stopped by the courts on account of prosecutorial delay.

Other causes of prejudice

5.63 The DPP must also decide before prosecuting whether or not an accused person is prejudiced in his defence for any other reason. An example of this type of prejudice could be where a witness has died or there is some other factor which results in the accused being inhibited in conducting a full defence to the charge brought against him.

5.64 The DPP told the Commission that sometimes it is difficult to make an assessment of actual prejudice as, very often, an accused person does not indicate, when interviewed, what the nature of his defence will be. It is therefore very often the case that the DPP will only become aware of issues of potential prejudice when or if the accused applies to the courts to try and prohibit the trial from taking place.

Change of mind by the DPP

5.65 Depending on the circumstances, it is possible for the DPP to reverse an earlier decision not to prosecute in a particular case. Complainants may ask the DPP to review a previous decision. Ultimately the DPP must decide whether or not it would be fair and in accordance with fair procedures to proceed to charge the accused with an offence in circumstances where the accused may have previously been advised that he would not be so charged. The Commission was told that, in general, it is unlikely that the DPP would change his mind in a particular case in the absence of new evidence.

Chapter 6 Health Authorities

Introduction

- 6.1 Very few of the complaints of clerical child sexual abuse which the Commission has examined were made initially to the health authorities. The vast majority were made, initially, either to the Church authorities or to the Gardaí. The health authorities had relatively little involvement in the complaints which were made prior to the mid 1990s.
- 6.2 They did have an involvement in the 1988 complaint in relation to Fr Thomas Naughton. As is noted in Chapter 29, this is one of the few cases examined by the Commission in which the health board personnel took a proactive role in trying to prevent abuse. Their involvement in subsequent complaints was limited. Other people who were handling complaints, particularly the Archdiocese and the heads of religious orders, were under the impression that the health authorities had a much wider remit than they actually had.
- 6.3 The majority of complaints examined by the Commission were made by adults. This meant that, to a large extent, the role of the health authorities has been limited to offering complainants counselling and support services.
- 6.4 During the 1970s and 1980s, the government was well aware that the law on child protection was inadequate. The delay in devising and implementing amending legislation is quite extraordinary. When new legislation was finally implemented in 1996, it did not make any significant change in the role the health authorities could play in cases of extra-familial child sexual abuse. Guidelines for dealing with child sexual abuse have existed since 1983 but, again, they are not of major relevance to cases of extra-familial abuse or, indeed, to the reporting by adults of childhood abuse.
- 6.5 Major changes to the structure of the health authorities were made in 1970 and again in 2005 when the Health Service Executive (HSE) was established. Child protection services were developed over this period. They were mainly concerned with abuse within families and with trying to prevent children being put into residential care.

6.6 The HSE had considerable difficulties in providing the Commission with information relevant to its remit. This may be explained by the relatively minor role the health authorities played in dealing with clerical child abuse. However, the Commission is concerned that the information available to the HSE is not maintained in a manner which would facilitate a more active role. It is also concerned that other agencies rely on the HSE in circumstances where it does not have the capacity to respond.

The law on child protection²⁶

6.7 The need to update the law on child protection was clearly recognised well before the start of the period covered by this Commission, that is, 1975. However, no significant change took place until the 1990s. The delay in devising and implementing appropriate legislation, when the need for that legislation was widely recognised, was extraordinary. In the Commission's view, the law as it stands at present does not provide adequate powers to the health authorities to promote the welfare of children who are abused, or in danger of being abused, by people outside the family and, in particular, by people who have privileged access to children.

Children Act 1908

6.8 Until the *Child Care Act 1991* was fully implemented in 1996, the main legislation dealing with child protection issues was the *Children Act 1908* as amended.²⁷ The Children Acts provided the statutory framework for the industrial and reformatory school system. Under the Acts, the state was responsible for child welfare in cases where the parents or guardians were found not to be providing proper guardianship. This included physical neglect and abuse of children. In 1970, the Committee on Industrial and Reformatory Schools (generally known as the *Kennedy Report*) recommended, among other things, that a new updated Children Act be introduced but this was not done for over 20 years.

6.9 The *Health Act 1970* introduced changes to the structures for the delivery of health and social services but did not make any substantive

²⁶ A comprehensive description of the development of policy in relation to child protection is given in O'Sullivan Eoin, "Residential Child Welfare in Ireland 1965 – 2008" in *Report of the Commission to Inquire into Child Abuse* (Dublin: Stationery Office, 2009) (The Ryan Report).

²⁷ It was amended by the Children Acts of 1910, 1929, 1934, 1941 and 1957.

change to the law on child protection. It did not set out the powers of the health boards in relation to child protection. It was, wrongly, assumed by government and the boards themselves that they had powers to act as 'fit persons' for the purposes of taking children into care. It provided that the health boards were to carry out the functions conferred by the Act and the health functions which were formerly carried out by the local authorities but it did not enumerate these functions or the powers available to carry out such functions.

Attempts to change the law

6.10 The government was conscious of the need to update the law. The then Minister for Health told the Dáil on 23 October 1974 that the government had recently decided that the Minister for Health should have the main responsibility for children's services. He went on:

"I am immediately setting up a full-time task force, to report to me as soon as possible, on the necessary updating and reform of child care legislation and of the child care services. The group will comprise a number of outside experts and representatives from each of the Government Departments concerned with child care— Health, Education and Justice."

6.11 Three years later, that task force had not reported. The Minister for Health, when asked if he intended to amend the *Children Act 1908*, replied on 5 April 1978 that "*The Task Force on Child Care Services will consider the up-dating and modernisation of the law in relation to children. This is likely to lead to new legislation which will involve replacement or amendment of the Children Act, 1908*". The Minister went on to agree that there was a need for a new Act and that there was a degree of urgency about this.

6.12 On 28 June 1978, the Minister for Health said he was not aware that the validity of the 'fit person order' procedure under the *Children Act 1908* was in doubt. The opposition spokesman outlined the difficulty. Even though the problem was recognised, it was not addressed until 1989.

6.13 The task force which had been established in 1974 reported in 1980. Its report was published in 1981.

- 6.14 On 17 December 1981, the Minister for Health acknowledged to the Seanad that “*The Department and the health boards run into difficulties in that the existing legal remedies for protecting children at risk are not entirely satisfactory. We intend to improve this situation under the proposed new children's legislation*”.
- 6.15 A draft Bill was prepared in 1982/3 which, among other things, proposed to give the health boards clear responsibility for the welfare of children but this was never brought before the Oireachtas.
- 6.16 In the 1980s there were two attempts to introduce legislation dealing with child protection. In 1985, the *Children (Care and Protection) Bill* was published. This Bill proposed a clear obligation on health boards to promote the welfare of children in their area. It included sexual abuse as a criterion for care proceedings. This Bill was at committee stage when the government resigned in 1987. The *Child Care Bill 1988* was introduced by the new government. It eventually became the *Child Care Act 1991*. The main parts of this were not implemented until 1996.
- 6.17 While the *Child Care Bill 1988* was before the Oireachtas, the *Children Act 1989* was passed to deal with the consequences of a Supreme Court decision²⁸ in relation to the powers of health boards to act as ‘fit persons’ under the *Children Act 1908* – the issue which had been aired in the Dáil in 1978 but on which no action had been taken. The Minister for Health said that the legal advice available to the Department of Health in 1970 was that health boards could act as ‘fit persons’ for the purpose of taking deprived children into care.²⁹ According to the minister, it was considered that such work formed an integral part of the community care and social work services that were beginning to be built up under the health boards:
- “Increasingly, health boards got involved in dealing with child abuse and neglect, bringing cases before the court and offering themselves as fit persons. This practice has been endorsed by successive Governments to the extent that the health boards are now recognised,*

²⁸ *The State (D and D) v G and others* [1990] IRLM 130.

²⁹ Minister for Health, 2nd stage speech, *Children Bill 1989*; Dáil Reports, 7 November 1989.

*in fact if not in law, as the State's child care and child protection agencies".*³⁰

6.18 The Minister went on to acknowledge that "*doubts were expressed by some lawyers and others about the legal authority of health boards to involve themselves in child care. However, the general view was, and is, that this is essential work which must be done in the interests of the children concerned and that the most appropriate agencies to perform it are the health boards*".

Children in institutional care

6.19 A number of children who were abused by the priests investigated by this Commission lived in children's residential centres. The *Report of the Commission to Inquire into Child Abuse* (The Ryan Report) deals in detail with abuse in such centres. This report is concerned only with a small number of such institutions and the role of the health authorities within them. In 1988, there were 24 residential homes (industrial schools) which were, as the Minister for Health described it, "*subject to certain limited controls*" under the *Children Act 1908* and 17 homes approved under the *Health Act 1953*. The 17 approved homes were not subject to "*specific statutory regulation*".³¹ They did not become subject to statutory regulation until the relevant sections of the *Child Care Act 1991* were implemented in 1996.³²

6.20 This means that, before 1996, the health board social workers had no statutory responsibility for monitoring residential institutions even though they were placing children in these institutions and the health board was paying for their care. The abuse in the institutions which is relevant to this report all occurred in the 1970s and 1980s. Social workers gave evidence to the Commission that they did try to encourage better standards. Their role was accepted and welcomed by some residential institutions but they were effectively excluded by some other institutions. The health boards did have responsibility for placing many of the children in the institutions and were involved to a considerable extent with these children – see Chapters 28 and 41. The health boards' responsibility ended when the child reached the age of 16 but sometimes the social workers remained in contact and helped

³⁰ *Ibid*

³¹ Minister for Health, 2nd Stage speech, *Child Care Bill 1988*; Dáil Reports 14 June 1988

³² Statutory Instrument 397/1996

former residents. The resident managers in the industrial schools and the managers in the other children's homes were responsible for the day to day care and management of the residents.

Child Care Act 1991

6.21 The *Child Care Act 1991* was the first Act to place statutory responsibility on the health boards to promote the welfare of children not receiving adequate care and protection. Its only reference to child sexual abuse was to provide that sexual abuse of children would be among the criteria for seeking court orders.

6.22 The stated purpose of the *Child Care Act 1991* is "*to provide for the care and protection of children and for related matters*". Section 3 of the Act places a statutory duty on health boards to promote the welfare of children who are not receiving adequate care and protection. This section came into effect in December 1992.³³

6.23 The main part of Section 3 is as follows:

"(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 co-ordinate 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 child as the first and paramount consideration, and

(ii) in so far as is practicable, give due consideration, having regard to his age and understanding, to the wishes of the child; and

³³

Statutory Instrument 349/1992

(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.”

6.24 Section 69 provides that “*The Minister may give general directions to a health board in relation to the performance of the functions assigned to it by or under this Act and the health board shall comply with any such direction*”. No such direction has been issued.

6.25 As is pointed out in the *Ferns Report*, this new obligation was not accompanied by new powers to intervene in specific situations. When introducing the Bill in 1988, the Minister for Health talked about the “*imaginative use*” of the new provisions. Legal provisions need to be clear and unambiguous with little scope for, and no requirement to use, imagination.

6.26 As already stated, the *Health Act 1970* did not enumerate all the functions of the health boards. The *Health Act 2004* which established the Health Service Executive (HSE) is drafted in a similar way: it confers on the HSE those functions which were formerly carried out by the health boards. The Commission considers that it would be preferable if there was a clear unambiguous listing of the statutory functions and powers of the HSE so that there could be no doubt about the extent of its power to intervene in child protection issues.

What is the role of the health authorities in relation to clerical child sex abuse?

6.27 Under the *Child Care Act 1991*, the health boards, and now the HSE, have a general duty to promote the welfare of children who are not receiving adequate care and protection. The Commission agrees with the *Ferns Report* analysis of the powers of the health boards. The *Ferns Report* takes the view that the powers conferred on the health boards by the 1991 Act are

designed to protect a child from an abusive family situation. It is the parents or guardians who are responsible for dealing with the matter in cases of third party or extra-familial abuse. The *Ferns Report* also points out that the powers available to the health boards under the 1991 Act are not significantly greater than those available under the 1908 Act.

6.28 Notification to the health board of alleged abuse by priests does not seem to serve any useful purpose if the health boards do not have any power to do anything about it.

6.29 The method by which the boards recorded such notifications, that is, by the name of the child, while appropriate for family abuse, is not appropriate for extra-familial abuse. There is no point in recording alleged abuse by a person who is in a public position, for example, a priest, a teacher, sports coach, by the name of the abused person. This information needs to be recorded by the name of the alleged abuser and by the school, parish, sports club or other relevant body. The Commission is not aware of any legal reason why this information could not be collated and classified in this way by the HSE. For the avoidance of doubt, the Commission considers that the HSE should be given specific statutory power to maintain such a record.

6.30 The Commission is not suggesting that it would be appropriate for the HSE to have the power to intervene where the child is being appropriately cared for by parents or guardians. It is concerned about the lack of clear power to collate and maintain relevant information and to share that information with other relevant authorities.

6.31 In the case of *MQ v Robert Gleeson and others*,³⁴ Mr Justice Barr took the view that health boards had an implied right and duty to communicate information about a possible child abuser if, by failing to do so, the safety of some children might be put at risk. Before making such a communication, the health boards had certain duties to the alleged perpetrator. This judgement has been viewed quite differently by the *Ferns Report* and the health boards/HSE. The *Ferns Report* was clearly concerned about the legislative basis for this wide ranging duty to communicate while the health boards/HSE

³⁴

[1997] IEHE 26

concerns relate to restrictions on their ability to communicate because of the requirements to inform the perpetrator. The *Ferns Report* took the view that the only power available to health boards to inform parties that allegations of child sexual abuse have been made against a particular person is “*one inferred from the wide ranging objective of child protection*” imposed on health boards by the *Child Care Act 1991*. It went on to express the view that the implication of such a duty on health boards without any express legislative powers is an issue which should be carefully considered by the Legislature. The HSE told the Commission that the judgement in this case (generally known as the Barr judgement) had

“significant implication for the management of child sexual abuse cases by the Health Boards/HSE. It provided that the Health Boards/HSE (except in cases where a child is believed to be at immediate risk of suspected child sexual abuse) before passing on any information with regard to a suspected child abuser to a third party, must give the allegations in writing to the alleged perpetrator. The alleged perpetrator must then be given the opportunity to respond in person to the HSE before the HSE makes its decision on whether or not to pass on the information to a third party. Recent legal advice is that the opportunity to appeal the decision of the HSE to pass on information to a third party must also be given to the alleged perpetrator.”

6.32 The Commission considers that the law should be clarified in order to confer on the HSE a duty to communicate to relevant parties, such as schools and sports clubs, concerns about a possible child abuser. The extent of the HSE obligation to notify the alleged perpetrator, if any, should also be clarified.

Structure of health authorities

6.33 The structures for the delivery of health and social services have changed considerably during the period covered by this Commission of Investigation. Prior to the establishment of the health boards in the early 1970s, health and personal social services were the responsibility of the local authorities. In Dublin, the Dublin Health Authority constituted the combined health departments of the then Dublin County Council and Dublin

Corporation. The Dublin Health Authority was dissolved in 1971.³⁵ The *Health Act 1970* provided for the establishment of eight health boards. The Eastern Health Board (EHB) covered the counties of Dublin, Kildare and Wicklow. The Archdiocese of Dublin is largely within the area covered by the EHB. There are small parts of the Archdiocese in the South Eastern Health Board region (in counties Carlow and Wexford) and a small part in the Midland Health Board region (Co Laois).

6.34 In 2000, the Eastern Regional Health Authority (ERHA)³⁶ was established. It was the overarching authority for the three health boards which were formed within the former EHB area. These three boards were the Northern Area Health Board, the East Coast Area Health Board and the South-Western Area Health Board.

6.35 In January 2005, the Health Services Executive (HSE) was established.³⁷ It took over all the functions of all the health boards.

6.36 For most of the cases covered by this report, the relevant health authority was either the Eastern Health Board (EHB) or one of the three health boards under the ERHA structure. Other health boards did have some involvement because some of the abuse occurred outside the Archdiocese and because priests moved to live in other health board areas. In general, we refer to the 'health board' or 'health boards' throughout the report without always identifying the specific board or boards involved.

*Development of Child Protection Services*³⁸

6.37 At the start of the period covered by this report, the statutory duties of health authorities in relation to children were mainly concerned with the provision of a school medical service, adoption services and residential or foster care for those whose parents or guardians were unable or unwilling to care for them.

³⁵ Statutory Instrument 117/1971.

³⁶ *Health (Eastern Regional Health Authority) Act 1999*; Statutory Instrument 68/2000.

³⁷ *Health Act 2004*; the relevant parts came into effect on 1 January 2005.

³⁸ The HSE provided the Commission with a very helpful Report on the *Context of Development and Operation of Social Work Services in Dublin, Kildare and Wicklow*. This description is based on that report and on evidence given to the Commission by a number of social workers.

6.38 Professionally qualified social workers began to be recruited to work in child care and family work in Ireland in the 1970s. The first professional qualification course for social workers in Ireland was introduced in 1968. Some social workers were being employed in voluntary hospitals - they were known as lady almoners.

6.39 At that time, child protection was generally considered to be the responsibility of the Irish Society for the Prevention of Cruelty to Children (ISPCC). The ISPCC did not have statutory responsibility for the protection of children. It did have a role in relation to removing children from their families if they were being abused or neglected and it was regarded as 'a fit person' under the *Children Act 1908*. It only started to get state financing in 1963 even though there was statutory provision for such funding at least since the *Public Assistance Act 1939*. In 1968 the ISPCC decided to recruit qualified social workers.

Dublin Health Authority 1960 - 1971

6.40 The Dublin Health Authority had a central Children's Section where two children's officers (qualified nurses) dealt with statutory child care work such as adoption and fostering and, in particular, the physical health of fostered children. In the early 1960s, the work of the Children's Section was broadened in order to address concerns about the number of children being admitted to industrial schools. In 1966, the Dublin Health Authority created a third post of children's officer in its children's section as well as the country's first post of social worker in the statutory health service.

6.41 In 1968, two further social workers were appointed. They were based in the community. By 1971, there were 11 social workers employed but they did not all have professional qualifications. The central Children's Section continued in existence for some time after the establishment of the health boards but the social workers who were employed there were gradually moved to the community care areas as they became established and organised. In 1974 there were just three social workers employed in community services for the EHB area.

Health boards 1972 - 2004

6.42 The *Health Act 1970* provided for the establishment of eight health boards. The operating structure of the health boards was not set out in legislation but was decided after recommendations by management consultants. Each health board had three distinct programmes with a programme manager for each programme. These were the general hospitals programme, the special hospitals programme³⁹ and the community care programme⁴⁰. The community care programme was delivered through community care areas. There were ten community care areas in the EHB – each had a population of approximately 100,000 in 1972. Each community care area was managed by a director of community care/medical officer of health (DCC) who reported to the programme manager, community care. It was a requirement that the DCC be a medical doctor. When the social work service became established, the senior social worker reported to the DCC and managed a team of social workers.

6.43 Between 1974 and 1978 community care teams were established in each of the ten community care areas. As each team became established a senior social worker was appointed and the social workers from the central children's section were decentralised and reported to the senior social worker. Additional social work posts were also created and filled.

6.44 In the mid 1980s, and unrelated to the issuing of the 1987 guidelines (see below), a new structure was introduced in the five largest community care areas. This structure involved social workers reporting to a team leader who, in turn, reported to a head social worker who reported to the DCC. In effect, a new layer of management was added. However, there was not a corresponding increase in the number of social workers.

6.45 In 1995, the EHB⁴¹ appointed two directors of childcare and family support services. They each had a strategic planning role⁴² as well as being

³⁹ This mainly dealt with psychiatric hospitals.

⁴⁰ Community care covered a range of services including child developmental health services, immunisation, school health services, the Public Health Nursing service, Home Helps, community services for older people and people with disabilities as well as social work services.

⁴¹ This did not happen in other health board areas.

⁴² One of the managers told the Commission that, in practice, they spent more time on urgent matters relating to individual cases.

line managers for some specific services. Their appointment did not change the management structure for social workers dealing with child abuse.

6.46 In 1997, the EHB⁴³ appointed a programme manager to deal specifically with children and families. In an unrelated move, the DCC position was phased out, and abolished in 1998, and replaced by general managers who did not have to be doctors.⁴⁴ From there on the reporting relationship was to the newly appointed general managers (a post open to all disciplines, including social workers, although in practice no social worker held such a post). The general manager in turn reported to the assistant chief executive dealing with community care services. The programme manager for children and families became an assistant chief executive and the general managers reported to her in respect of their activities in relation to services for children and families.

6.47 Around this time, the position of childcare manager was created in each community care area. This position could be filled by a social worker but this was not a requirement and, in practice, a number of other professionals were appointed. The role of the childcare manager was to co-ordinate child abuse cases and to develop a more strategic approach to childcare planning at local level. All abuse cases were notified to the childcare manager who then co-ordinated the response. The childcare manager had no supervisory role in relation to the social workers.⁴⁵ The childcare manager reported to the general manager, community care and not to the programme manager/assistant chief executive for children and families.

6.48 There seems to have been a degree of duplication of, or at least lack of clarity about the role of the childcare manager relative to the senior social worker.

6.49 Shortly after the establishment of the ERHA (in 2000) and the three area health boards, an assistant chief executive was appointed in each board with responsibility for services for children and families.

⁴³ This did not happen in other health board areas; child abuse continued to be the responsibility of the programme manager, community care in the other seven health boards.

⁴⁴ This happened throughout the country.

⁴⁵ The Commission understands that the Southern Health Board adopted a different practice; childcare managers there did manage social workers.

6.50 Reporting relationships remained the same within community care areas, with principal social workers reporting to the general manager, who in turn reported to the assistant chief executive.

HSE 2005

6.51 When the HSE was established in January 2005, the former community care offices became local health offices (LHOs). One LHO manager in each HSE region had 'lead responsibility' for childcare.

Development of awareness of child sexual abuse

6.52 Initially, the main activity of the social work service was in the area of child protection – specifically cases of physical abuse and neglect of children within their families. The role of the social workers was mainly to support families with problems with the aim of avoiding placing children in care.

6.53 Social workers told the Commission that awareness and knowledge of child sexual abuse did not emerge in Ireland until about the early 1980s. The HSE told the Commission that *"In the mid 1970s there was no public, professional or Government perception either in Ireland or internationally that child sexual abuse constituted a societal problem or was a major risk to children"*.

6.54 In 1982, some social workers from the EHB area visited California to work with people dealing with sexual abuse there. In 1983 the Irish Association of Social Workers held a conference on child sexual abuse in Dublin. In 1988, child sexual abuse assessment units were established in Our Lady's Hospital for Sick Children, Crumlin (the St Louise Unit) and in Children's University Hospital, Temple Street (the St Claire's Unit).

How complaints of child abuse were dealt with

6.55 From the introduction of the 1983 guidelines, cases of alleged child abuse or neglect were reported to the senior social worker who then allocated the case to a social worker and reported it, in writing, to the director of community care (DCC). There were some standard forms for recording allegations and for reporting to the DCC. A similar but informal arrangement (with possibly more oral than written reports) seems to have applied, at least

in some areas, prior to the introduction of the guidelines. In some cases, senior social workers developed their own forms and their own recording systems. The Department of Health started to collect statistical data on child abuse and neglect from 1978. This data was provided by the various DCCs. The DCC, or a senior medical officer designated by the DCC, might convene a case conference to discuss a particular child or family. In some cases, the DCC appointed one of the senior medical officers to deal with all child abuse issues. A social work file was created and, in some cases, it appears that the DCC might have had another file.

6.56 The EHB conducted a review of child abuse procedures in its area in 1993. Among other things, the review noted that there was considerable variation in how the different community care areas liaised with the Gardaí in relation to child sexual abuse. Confirmed cases were referred to the Gardaí; this was frequently done by the assessment units (St Louise's Unit, Crumlin and St Claire's Unit, Temple Street). These units also notified the community care area of any referrals which came directly to them. Some community care areas notified the Gardaí of suspected cases but Gardaí rarely referred cases to the health board. There were different arrangements for case conferences in the different areas. The report refers to a "*severe shortage of appropriate services*" for victims, families and perpetrators. The emphasis seemed to be on the investigation/validation of an allegation rather than on providing services. There was also a lack of uniformity in data collection and recording.

6.57 The HSE told the Commission that, by the late 1990s, health boards experienced serious difficulties in recruiting enough qualified social workers and child care workers.

"These staff shortages affected the time social workers could spend on training opportunities, the recruitment of foster carers, attending to children in care and court appearances. Social work managers prioritised workloads whereby child protection duties were given top priority."

6.58 This shortage continued into the 2000s and does not seem to have been resolved.

The Commission's dealings with the HSE

6.59 The HSE appointed a senior social worker as the liaison person with the Commission on its establishment in March 2006. The Commission wrote formally to the HSE on 2 May requesting copies of all documents held by the HSE which were relevant to the Commission's work. A number of informal discussions were held in order to clarify the Commission's requirements. The HSE explained that it would have difficulties finding information on clerical child sexual abuse as the social work records were held in the names of the children. The Commission had further correspondence with the HSE's legal advisors in relation to the terms of reference and issues of confidentiality.

6.60 As no documents had been received, the Commission told the HSE, on 4 September 2006, that it intended to issue an Order for Discovery. The HSE legal advisors replied outlining the difficulties being experienced in finding relevant files. The main problems related to:

- the fact that files were kept by the name of the child;
- manual searches were required;
- the size and the various changes in structure of the EHB area;
- the absence of any central filing system, even when files were archived.

6.61 The HSE asked the Commission to provide a list of alleged victims. The Commission could not do this. The Commission saw its task as establishing the totality of the complaints which had been made to the relevant authorities in the period covered by the Commission's remit. Providing the names of alleged victims who were already known to the Commission to the HSE would establish only that the HSE had or had not received a complaint about that victim. The Commission needed to know if the HSE had received complaints from people who were not known to the Commission – people who had not complained to the Archdiocese or the Gardaí or directly to the Commission itself.

6.62 On 14 September 2006, the Commission itemised a number of documents of a general nature which it wished the HSE to provide. On 4

October 2006, the Commission asked the HSE to nominate people to give evidence on the structures of the health board, the role and functions of the personnel involved in childcare issues, training of such personnel, general procedures for dealing with allegations of child sexual abuse and the liaison arrangements with other authorities. On 27 October, the Commission told the HSE that it was willing to further delay the issuing of an Order for Discovery provided substantive proposals including a time scale for the delivery of documents were put before the Commission by 3 November 2006. The HSE informed the Commission on 3 November 2006 that there were 114,000 social work files covering the period of the Commission's remit and that these were in up to 50 different locations. It was estimated that it would take half a day to read and consider each file. The Commission concluded that it would take nearly ten years to complete this process.

6.63 The HSE liaison person gave evidence to the Commission on 21 November 2006 on how the HSE was endeavouring to find the information which the Commission required. She explained that she had met all the then current managers, principal social workers and child care managers in May 2006 to discuss the best approach to gathering information for the Commission. The major difficulty for the HSE was that records in relation to child abuse were held by victim rather than by perpetrator. She asked the relevant people to make every effort to look within their area for records and to speak to former staff about their recollections of dealing with clerical child sexual abuse.

6.64 The Commission formed the impression that the HSE was not adopting a systematic approach to locating records. There was an identifiable group in each community care area dealing with child abuse issues and there was, at this stage, no listing of the relevant people or no written reports on what steps had been taken to try to find files.

6.65 Social workers and managers from the HSE gave evidence to the Commission in late 2006, about health board structures and, in particular, structures for dealing with complaints of child sexual abuse.

6.66 The Commission issued an Order for Discovery in February 2007 and the affidavit of discovery was delivered in March 2007. This was not

complete and further documentation was supplied at later stages as the Commission became aware, through its own investigations, that the health boards had been involved in various cases. Initially, the HSE provided the Commission with documentation in relation to 12 priests in the representative sample. The documentation which had been provided by the Archdiocese of Dublin showed there had been contact with the health boards in relation to eight others. Subsequently, documentation received from the religious orders showed contacts with the health boards in at least three other cases. Some of the documentation received from the HSE was provided as late as 2009 when the Commission forwarded extracts from the draft report to the HSE. Indeed, the Commission heard of a complaint in June 2009 just as this report was being finalised. This complaint was made to the health board in 2002 and reported by the HSE to the Archdiocese in May 2009. The fact of this complaint was not notified by the HSE to the Commission although it was clearly within the Commission's remit.

6.67 In March 2007, the Commission heard evidence from a number of current and former senior social workers about the child protection system generally. From October 2007, they gave evidence in relation to individual cases. The Commission was impressed by the social workers' commitment and concern. They were clearly trying to do the best they could in circumstances where their powers were unclear and their resources limited. The Commission did not inquire in any detailed way into the resources available to social workers but it notes that, until the late 1990s, virtually all their notes were handwritten.

Guidelines for dealing with child sexual abuse

6.68 Over the period covered by the Commission's remit, there have been a number of guidelines issued by the Department of Health and procedures agreed between the health authorities and the Gardaí in relation to suspected child sexual abuse. None of these is legally binding. The Commission examined these guidelines in order to establish how complaints of child sexual abuse were handled and to establish the level of communication that existed between the various authorities. As the *Ferns Report* has noted, 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”.

1977 – 1983: Guidelines on non accidental injury to children

6.69 The Department of Health issued a *Memorandum on Non Accidental Injury to Children* in 1977. This set out the procedures to be followed and provided guidance for social workers and others on the identification, monitoring, management of cases and co-ordination and exchange of information on cases of neglect or non accidental injury to children. It did not mention child sexual abuse. It recommended that the Gardaí be informed in cases where a criminal offence might have been committed.

6.70 In 1980, the 1977 guidelines were replaced by more specific guidelines - *Guidelines on the Identification and Management of Non-Accidental Injury to Children 1980* - but, again, there was no mention of child sexual abuse. The *Guidelines on Procedures for Identification and Investigation on Non-Accidental Injury to Children 1983* do refer to child sexual abuse.

1987 Child Abuse Guidelines

6.71 The *Child Abuse Guidelines* issued in 1987 include a section on child sexual abuse. The guidelines set out procedures for validation and management of allegations of child sexual abuse. Among other things, they provided that, if the Gardaí were not already involved, they should be notified by the director of community care where there were reasonable grounds for suspecting child sexual abuse. They also provided that cases of child sexual abuse which came to the attention of the Gardaí should be reported to the local director of community care.

1995 Notification of Suspected Cases between health boards and Gardaí

6.72 This set out the procedures to be followed by the health boards and the Gardaí in cases of physical and sexual abuse of children. It provided that each was obliged to notify the other of such cases.

1999 Children First Guidelines

6.73 These guidelines set out new definitions for each category of abuse including sexual abuse and provided how different agencies such as health

boards, hospitals, voluntary agencies and the Gardaí should respond to complaints. They provided for specific arrangements for exchange of information between the health boards and the Gardaí.

6.74 The *Children First* guidelines provide for a Child Protection Notification System (CPNS). This is a record of every child about whom, following a preliminary assessment, there is a child protection concern. At present, names are placed on the CPNS list held by the child care manager in each local health area following a multidisciplinary discussion between the principal professionals involved. Names remain on the list with the file marked as open or closed.

6.75 *Our Duty to Care* was published by the Department of Health and Children in 2002. It provides guidance to voluntary and community organisations that offer services to children on the promotion of child welfare and the development of safe practices in work with children. Many of these organisations come under the broad description of Catholic Church authorities.

6.76 *Trust in Care* was published in 2005. It is a policy for health service employers on, among other things, managing allegations of abuse against staff. Again, many health service employers are Catholic Church authorities.

Introduction

- 7.1 Under canon law, a bishop has full power of governance in his diocese; ultimately it is he who must take responsibility for the future ministry of all priests under his care. As outlined in Chapter 4, during the time period covered by this report there was considerable confusion over exactly what powers, particularly under canon law, bishops had when it came to disciplining priests against whom credible allegations of clerical child sexual abuse had been made.
- 7.2 According to Monsignor Dolan, the present chancellor, by September 1990 the Irish bishops decided that a small group would prepare guidelines about procedures which bishops might follow in particular instances. The document was to be ready for the March 1991 general meeting of the Irish Catholic Bishops' Conference. Despite a number of meetings, nothing of note happened and in 1993 a re-formed group was asked to investigate the possibility of drawing up a series of draft guidelines for the bishops. This group was known as the Irish Catholic Bishops' Advisory Committee on Child Sexual Abuse by Priests and Religious. It convened for the first time in April 1994 under the chairmanship of Bishop Laurence Forristal.
- 7.3 Cardinal Connell told the Commission that perhaps a major catalyst for developing guidelines for dealing with clerical child sexual abuse was the Fr Brendan Smyth case. Fr Smyth was a Norbertine priest who, in 1994, pleaded guilty to 74 charges of indecent and sexual assault and was sentenced to 12 years in prison. This case caused a major political controversy in Ireland which resulted in a change of government in December 1994. According to research published in 2003⁴⁶: *"The case focused public attention on the relationship between the Catholic Church and the State and on the protection seen to be afforded to the Church when one of its representatives was accused of serious crimes"*.

⁴⁶

Goode, McGee, O'Boyle: *Time To Listen: Confronting Child Sexual Abuse by Catholic Clergy in Ireland* (Dublin: The Liffey Press, 2003)

7.4 Another factor in precipitating action was that Andrew Madden, who had been abused by Fr Payne in 1981, had gone public with details of his abuse – see Chapter 24.

7.5 *Child Sexual Abuse: Framework for a Church Response*, the report of the Advisory Committee, was published in 1996. It is commonly referred to as the “1996 Guidelines” or the “Framework Document” or the “Green Book”. In this report, we refer to it as the “Framework Document”. The document provided a framework within which the bishops could fulfil their canon law obligations but it was not mandatory.

7.6 The *Framework Document* recognised the evils of child sexual abuse and the serious damage it causes. It set out eight guidelines which should underline the response of Church authorities to allegations of child sexual abuse. Those guidelines are:

- The safety and welfare of children should be the first and paramount consideration following an allegation of child sexual abuse.
- A prompt response should be given to all allegations 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.
- Care should be given to the emotional and spiritual well-being of those who have suffered abuse and their families.
- There should be immediate consideration, following a complaint, of all child protection issues which arise, including whether the accused priest or religious should continue in ministry during the investigation.
- The rights under natural justice, civil law and canon law of an accused priest or religious should be respected.
- An appropriate pastoral response to the parish and wider community should be provided, with due regard to the right of privacy of those directly involved, and to the administration of justice.
- Adequate positive steps should be taken to restore the good name and reputation of a priest or religious who has been wrongly accused of child sexual abuse.

Reporting policy

7.7 The *Framework Document* sets out the recommended reporting policy as follows:

“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;

The report should be made without delay to the senior ranking police officer for the area in which the abuse is alleged to have occurred. Where the suspected victim is a child, or where a complaint by an adult gives rise to child protection questions the designated person within the appropriate health board [...] should also be informed. A child protection question arises in the case of a complaint by an adult, where an accused priest or religious holds or has held a position which has afforded him or her unsupervised access to children.”

7.8 The advisory committee recognised that this recommended reporting policy could cause difficulties if people who were complaining of child sexual abuse sought undertakings of confidentiality. It was recognised that some people come forward, not primarily to report their own abuse, but to warn Church authorities of a priest or religious who is a risk to children. Nevertheless, the policy is clear that undertakings of absolute confidentiality should not be given and the information should be received on the basis that only those who need to know would be told.

Structures and procedures

7.9 The *Framework Document* set out in detail the recommended structure and procedures for dealing with allegations of child sexual abuse. Each bishop (or religious superior) should make the following appointments:

- 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;

- a support person to assist and advise victims or persons who made complaints;
- an advisor to a priest accused of sexual abuse;
- an advisory panel would include lay people with relevant qualifications and expertise to offer their advice on a confidential basis to the bishop or religious superior.

7.10 The manner in which each of the people appointed was to carry out his or her task is outlined in detail.

Status of the *Framework Document*

7.11 The *Framework Document* was launched in January 1996 by the Irish Bishops' Conference and the Conference of Religious of Ireland. Meetings were held with priests and details of the document were circulated.

7.12 Training days took place during 1996. Monsignor Dolan told the Commission: "*The personnel involved were at this time trying to learn about child sexual abuse and the process of response; at the same time, they were at the heart of responding to emerging complaints*".

7.13 Monsignor Dolan went on to say that understanding behind the *Framework Document*, was that each diocese or religious institute would enact its own particular protocol for dealing with complaints. This in fact never took place because of the response of Rome to the *Framework Document*. According to Monsignor Stenson, Rome had reservations about its policy of reporting to the civil authorities. The basis of the reservation was that the making of a report put the reputation and good name of a priest at risk. Monsignor Dolan told the Commission that the Congregation for the Clergy in Rome had studied the document in detail and emphasised to the Irish bishops that it must conform to the canonical norms in force. The congregation indicated that "*the text contains procedures and dispositions which are contrary to canonical discipline. In particular 'mandatory reporting' gives rise to serious reservations of both a moral and canonical nature*". Monsignor Dolan said that the congregation regarded the document as "*merely a study document*".

7.14 Monsignor Dolan's view was that this placed the bishops in an invidious position because, if they did seek to operate the *Framework Document*, then any priest against whom disciplinary or penal measures were taken had a right of appeal to Rome and was most likely to succeed. The bishops, on the other hand, were not in a position to strengthen the *Framework Document* by enacting it into law. It was his view that the only way a bishop could properly proceed canonically was with the accused priest's co-operation.

Implementation by the Dublin Archdiocese

7.15 Despite the fact that the *Framework Document* did not receive recognition from Rome, Cardinal Connell told the Commission that he made the guidelines the policy of his Archdiocese. He said that there was no tradition prior to 1995 of the Archdiocese notifying the civil authorities of any complaints of child sexual abuse. He said that the civil authorities, insofar as one could gather, were not in particular instances anxious about receiving this kind of information.

7.16 He said that, in late 1995, he did give the names of 17 priests against whom complaints had been received by the Archdiocese to the Gardaí.

7.17 During the 1996 - 1997 period, the Dublin Archdiocese operated the *Framework Document* mainly through Monsignor Alex Stenson and Monsignor John Dolan. Monsignor Stenson left the positions of chancellor and delegate in the summer of 1997. Monsignor Dolan was subsequently appointed chancellor. He was provided with no full time assistant. Fr Paul Churchill was appointed assistant chancellor and Fr Paddy Gleeson and Fr Cyril Mangan were appointed as part time assistant delegates.

7.18 There were concerns within the chancellery at this time. Monsignor Dolan told the Commission that, in the course of investigating complaints and trying to respect the rights of both the complainant and the accused, it was

inevitable that from time to time tensions and difficulties arose. Victims have told the Commission that they felt very much left out of the whole process and that those to whom they complained failed to understand the nature of their abuse. Both Monsignor Stenson and Monsignor Dolan have acknowledged to this Commission that the Dublin Archdiocese's response to victims was inadequate at this time.

7.19 There was also concern among victims at the potential conflict of roles of the small number of priests who worked within the chancellery. Monsignor Dolan accepts that this was a legitimate concern of victims and has told the Commission that those working within the chancellor's office were also concerned about this conflict of roles. This, he felt, was resolved only with the establishment of the Dublin Archdiocese Child Protection Service in 2002.

7.20 Towards the end of 1999, the Dublin Archdiocese became part of the Faoiseamh Helpline and that became an invaluable source of competent counsellors for the Archdiocese. At times, the Archdiocese provided financial assistance for private counsellors for victims.

The advisory panel

7.21 Cardinal Connell told the Commission that the appointment of an advisory panel for the Dublin Archdiocese was an important innovation from his point of view. The panel's role included advising on how a bishop or religious superior should consider the following:

- the complaint itself;
- the appropriateness of providing help, if needed, to a person making a complaint and the family of the person;
- the appropriateness of the accused priest or religious continuing his or her present pastoral assignment having regard to the paramount need to protect children; care needed to be taken that a decision by a priest or religious to take leave of absence from a ministry would not be construed as denoting guilt on his or her part;
- how the right of the accused priest or religious to a fair trial on any criminal charge could be preserved and his or her good name and reputation appropriately safeguarded;

- whether a specialist professional evaluation of an accused priest or religious should be sought at this stage;
- the needs of a parish or other community where an accused priest or religious has served;
- the needs of the wider community including the appropriateness or timing of any public statement.

7.22 The inaugural meeting of the Dublin Archdiocese's advisory panel took place in April 1996. The Archbishop had invited Mr David Kennedy, a prominent businessman, to chair the panel. The panel included men and women from the psychiatric, social work, legal and business communities. Membership also included three clerical representatives: the assistant chancellor at the time, Fr Paul Churchill, an auxiliary bishop, Bishop Eamonn Walsh and one other. The panel was divided evenly between men and women. The majority of the lay members were parents and all members gave their service on a voluntary basis. The panel met on a monthly basis in 1996 and 1997 and slightly less frequently thereafter, averaging about eight to ten meetings every year.

7.23 Mr Kennedy emphasised, in evidence to the Commission, that the role of the panel was advisory, rather than judicial. He told the Commission that the panel had considered 50 cases by 2007. The panel considered 27 of the cases in the Commission's representative sample.

Advisory panel procedure

7.24 Each case of alleged or suspected child sexual abuse which came to the attention of the Archdiocese was presented to the panel by an official of the diocese who was appointed by the Archbishop to oversee and implement the various protocols recommended in the 1996 guidelines. The panel then reviewed the case and, when necessary, made a written recommendation to the Archbishop on any aspect of the case on which it wished to comment.

7.25 The main principle guiding the panel's recommendations was the safety and welfare of children. The panel was required to strike a balance in forming judgements which would minimise the risk of future offending while at the same time not infringing on the individual's natural rights. To ensure the achievement of this the panel committed itself to the following tasks:

- a prompt investigation of all allegations;
- careful, confidential and professional attention to each case;
- implementation of the guidelines approved by the Bishops' Conference;
- reviewing of diocesan procedures and protocols in relation to the issue of child sexual abuse.

Advisory panel guidelines

- 7.26 As already noted, the Advisory Panel guidelines stated that
“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”.
- 7.27 The identity of the priest against whom an allegation had been made was not made known to the panel members. Mr Kennedy told the Commission that a system of pseudonyms was used as far as practical, to protect the confidentiality both of the priest and the complainant. He said he felt this was also necessary to protect the impartiality and independence of the panel's deliberations.
- 7.28 From the beginning, a protocol was reached with the Archbishop that he would respond formally to every recommendation made by the panel. These recommendations were communicated directly to the Archbishop.
- 7.29 Cardinal Connell said that every case that came to him from 1996 onwards was sent to the panel and that he accepted and implemented every recommendation. The chairman of the panel supported Cardinal Connell's evidence in this respect. The Commission agrees that he did so in respect of the cases it has examined.
- 7.30 Cardinal Connell stated that the way the process worked in practice was that, if a complaint came to his attention, he would refer it to the chancellor whom he had appointed the delegate at that time. The delegate would then prepare a report for the advisory panel. When assistant delegates were appointed, they usually prepared the reports.

7.31 The Archdiocese was slow to let victims know of the existence of the advisory panel or its membership. This was unfortunate as it created a climate of mistrust among victims about its activities. Their complaints and the responses of the accused priests were presented to the panel by a priest delegate. One of the victims who gave evidence to the Commission expressed concerns that the delegate presenting the case to the panel was a member of the panel. In fact that was not the case.

Guidelines for possible re-admission to limited ministry

7.32 The key determining factor in the panel's decision-making process was the potential future risk to children. However, the panel recognised that an important element in the prevention of abuse and the protection of children is a process of renewal and reform of the offender. It advocated that an offender should be supported in whatever efforts he makes to change his behaviour so that he can live a life free of abusive behaviour. The offering of therapeutic help is considered vital in respect of this process.

7.33 The options outlined by the panel for a priest who has offended are: retirement under monitored conditions, laicisation, a penal process with a view to dismissal from the clerical state or assignment to an appointment of limited ministry that does not involve unsupervised contact with children. These options were developed from the following concerns:

- The responsibility for decision making in this area rests solely with the Archbishop, irrespective of the panel's recommendations.
- The panel recognises that there will always be severe practical limitations to any possible return to ministry and despite not adopting an absolute position that no form of ministry can ever be possible for a priest who has offended, the reality is that a return to ministry will not normally be considered as a realistic option by the panel.
- Apart from future risk, the other issues for consideration are the interest of the victim(s), the good of the Church, the good of the priest concerned and the expectations of the faithful.
- In reviewing the possibility of a return to ministry the Advisory Panel must consider the following information: statements of evidence, penalties imposed by the court (if any), any civil

proceedings pending or settled in relation to the offender and, finally, any penalties imposed under canon law.

- A return to ministry will require all of the following conditions to be met:
 - completion of an appropriate investigation of the issues and allegations leading to virtual certainty that all possible allegations are known;
 - psychological assessment that reveals minimal or no risk;
 - full compliance and co-operation on the part of the priest throughout the process;
 - openness on the part of the priest to disclose information to those who need to know including, but not limited to, those in a position of responsibility over him;
 - the passage of sufficient time since the offence occurred, to permit a mature judgment about the priest's disposition;
 - introduction of a constant monitoring programme including an after-care programme as prescribed by a professional adviser.
 - no outstanding criminal charge or period of suspended sentence.
 - the panel must also consider the nature and frequency of any offences, the appropriateness of the offender's response to the allegations, the age of the victim(s), the clinical diagnosis of sexual orientation towards children and whether there are ongoing civil actions.

7.34 A crucial condition for re-admission is a full and comprehensive psychological assessment whose primary focus is risk assessment. Unless such an assessment indicates minimal or no risk, then a priest will never be in a position to exercise publicly any priestly ministry. When such concerns continue to exist the following options are available: retirement, laicisation or dismissal.

7.35 If a priest has been assessed as posing minimal or no risk then this must be verified through the experience of the advisory panel and the delegate, particularly in respect of compliance and co-operation in the

process. He is also required to show compliance with any process prescribed as well as continuing to show a manifest spiritual dimension.

- 7.36 Practical implications of a return to work are broken into three phases:
- Phase 1 - Generally the priest will not have a sacramental ministry of any kind but may be engaged in some administration work on behalf of the diocese;
 - Phase 2 - When there is no pending criminal action then in time the priest may be allowed engage in limited sacramental ministry, such as to a convent of retired nuns;
 - Phase 3 – The priest may be allowed a limited parish chaplaincy or full chaplaincy to a retirement home or nursing home.

7.37 There is an onus on any priest in this situation to find identifiable employment or constructive work. Inability to do so may result in him having to consider laicisation.

7.38 It is essential to ensure that an appropriate monitoring programme is put in place including continued psychological assessment, spiritual support and vigilance on the part of those in a position of responsibility, which will have to continue as long as the priest remains in the clerical state. Victims would also need to be advised of the priest's possible return to ministry.

7.39 Laicised priests should not be in a position to misrepresent their status as a means of relating to young people.

7.40 In the Commission's view, while recognising that the advisory panel was not totally independent in that its members were appointed by the Archbishop, it did a great deal of valuable work. Not only did it advise on what should be done initially following the referral of a complaint but it also sought regular updates on the implementation of its recommendations. What it did not appreciate, and the Commission would not expect it to do so given the voluntary and part-time nature of its role, was that the monitoring system for many of the abusing priests was very poor.

7.41 It was unfortunate, in the view of the Commission, that the panel did not have an opportunity to hear from some of the individual complainants

early on in its activities. While the Commission is satisfied from documents it has seen that support for victims was a major concern of the panel, nevertheless, it seemed to some complainants who gave evidence to the Commission that the whole focus of the panel was on the accused priest with little or no consideration being given to the suffering of victims. An opportunity was given to two complainants to speak at a one-day seminar which the panel members attended and that appeared to be the extent of the panel's involvement with victims. This encounter did not take place until 2003. Mr Kennedy told the Commission that the meeting with victims "*confirmed our views that, insofar as providing an adequate service to victims, there were a number of things that could be done better and should be improved...the diocese was not delivering all that it should under this heading*".

7.42 The Commission is aware that the panel recommended to the Archdiocese that it should avail of the helpline and counselling service provided by Faoiseamh and that its use of Faoiseamh as a referral agency should be publicised in future media briefings.

7.43 Monsignor Dolan's analysis that the establishment of an independent Child Protection Service for the Archdiocese, with a victim support person in place, was a very necessary step in gaining victim confidence was correct. His analysis was supported by the advisory panel who also recommended an independent Child Protection Service for the Archdiocese.

Other initiatives by Church authorities

7.44 During the process of attempting to implement the *Framework Document* a number of other initiatives were undertaken by the Irish Bishops' Conference around the issue of child sexual abuse.

Committee on child abuse

7.45 In 1999, a committee on child abuse was established under the chairmanship of Bishop Eamonn Walsh. Its principal role was to liaise with the government's Commission to Inquire into Child Abuse (the Laffoy Commission, subsequently the Ryan Commission). Members of the committee included representatives from the professions of psychology, canon law, counselling, education, clergy and religious.

Research into child abuse

7.46 In 2001, the committee on child abuse commissioned an independent research study on child sexual abuse by clergy. The Health Services Research Centre of the Department of Psychology, Royal College of Surgeons in Ireland conducted the study.⁴⁷

7.47 The overall aim of the study was twofold. First, since this was an issue with international relevance, an important aim was to extend scientific knowledge about the impact of child sexual abuse by clergy beyond the individual in order to assess its impact on all of those likely to be affected. These range from the family of the abused, convicted members of the clergy and their families and colleagues, clergy and church personnel and the wider church community. Secondly, the broad aim was to understand clerical child sexual abuse in the Irish context: what were the salient factors concerning its occurrence and management and how can this information be used to inform practice in the future. This study was published in December 2003. In the Commission's view this was a very valuable contribution to the debate on child sexual abuse by clergy.

7.48 The Bishops' Conference and two religious orders have also contributed some funding towards research being carried out by UCD university lecturer Marie Keenan into why priests abuse.

Child protection office

7.49 In July 2001 the child protection office of the Irish Bishops' Conference was established. This served all the dioceses of Ireland and is not to be confused with the Dublin Archdiocese's Child Protection Service – see Chapter 3.

Independent audit

7.50 In April 2002, the Irish Bishops' Conference announced a nationwide independent audit into the handling of all complaints of child sexual abuse by diocesan priests or religious in diocesan appointments dating back to 1940. Judge Gillian Hussey was appointed to chair the audit. In December 2002,

⁴⁷ Goode, McGee, O'Boyle: *Time To Listen: Confronting Child Sexual Abuse by Catholic Clergy in Ireland* (Dublin: The Liffey Press, 2003).

Judge Hussey decided to cease work on this audit as the Minister for Justice, Equality and Law Reform had announced that he was preparing legislation which would provide a statutory basis for a new mechanism for investigating matters of significant and urgent public importance and it was his intention that such a scheme would include the handling of clerical sexual abuse. Judge Hussey believed her audit would be duplicating the work of the state.

7.51 The Commission believes that it is unlikely that this initiative by church authorities would have succeeded since some bishops claimed in 2008/9 that, for legal reasons, they were unable to comply with the Health Services Executive audit.

Child protection trainers

7.52 The Bishops' child protection office in conjunction with St Patrick's College, Maynooth commenced a national training initiative. The first 19 graduates received their certificates in December 2005. Following their accreditation they were to act as training facilitators in their own dioceses and provide information and support in developing safe practices and procedures for dealing with young people in parishes. A further group of 25 students were in training during the currency of the Commission. One of the purposes of the training was to prepare for the introduction of *Our Children Our Church* (see below).

New guidelines for dealing with child sexual abuse

7.53 The Framework Document was subsequently reviewed and replaced by a document entitled *Our Children Our Church*.⁴⁸ This was published amid controversy in late 2005. The Committee charged with developing it had been abandoned in 2005 as it failed to reach agreement on the contents of the document. This was because some of the groups who were represented on the committee were unhappy with some proposals being made. Eventually a document was put together by the former chairperson of the Committee with the assistance of two child protection experts.

7.54 The Commission's terms of reference do not extend to examining the application of the policies set out in *Our Children Our Church* by the Dublin

⁴⁸ The Irish Bishops' Conference, The Conference of Religious of Ireland, The Irish Missionary Union: *Our Children, Our Church: Child Protection Policies and Procedures for the Catholic Church in Ireland*; (Dublin: Veritas Publications, 2005)

Archdiocese. The Commission will examine them in the context of its inquiry into the diocese of Cloyne.

7.55 New guidelines were introduced in 2009 by the National Board for Safeguarding Children. This board was set up in 2006 and replaced the bishops' child protection office. Mr Ian Elliot, the chief executive of the National Board which covers all 32 dioceses in the island of Ireland, told the Commission that all dioceses, religious congregations and other parts of the Church that wish to be part of a new child protection policy will have to sign a commitment to implement the policy.

7.56 The names of those church authorities who fail to sign will be made known to the public.

7.57 Again, the Commission will examine these guidelines in the course of its inquiry into the diocese of Cloyne.

Introduction

8.1 The finance secretariat of the Archdiocese deals with two main areas - finance and building. Bishop Desmond Williams was episcopal vicar for finance and pastoral development from 1972 until 1990. During most of that time, he was also head of finance. Fr Patrick Carroll worked with him from 1979 to 1987 and was head of finance from 1985 to 1987. For the bulk of the period under investigation by the Commission, Monsignor John Wilson worked in the finance secretariat. In 1988, he was appointed head of the finance secretariat. From September 1990 he succeeded Bishop Williams under the new title of financial administrator. He left that position in February 2005 and he became a parish priest in 2006. The current financial administrator and most of the staff of the finance secretariat are lay people.

8.2 Fr Carroll and Monsignor Wilson gave evidence to the Commission about those aspects of the finances of the Archdiocese which are relevant to the Commission's terms of reference. The Commission was particularly interested in how the Archdiocese financed the following:

- compensation awards to victims of child sexual abuse;
- support services for victims of child sexual abuse;
- income and other support for those priests who were laicised, dismissed or had their faculties removed as a result of complaints of clerical child sexual abuse.

Compensation to victims

8.3 The first compensation payment which was made directly to a victim of clerical child sexual abuse was made by the Archdiocese in 1998. The payment made to Andrew Madden in 1993 was made directly by Fr Payne with the help of a loan from the Archdiocese – this is described in Chapter 24. Prior to 1998, there were some payments made by individual priests and financed directly by them and not by the Archdiocese. The Archdiocese arranged insurance cover against such claims in the 1980s – the history of this cover is outlined in Chapter 9. As described there, the lump sums paid by the insurance company to the bishops of Ireland under the 1996 and 2001 agreements were placed in the Stewardship Trust. From 1998 until 2005, compensation payments by the Archdiocese to victims of clerical child sexual

abuse were paid from the Curial Trust and partial reimbursement of those payments was received from the Stewardship Trust. A small number of individual priests paid some or all of the compensation personally. Since 2005, the Archdiocese has funded all of such compensation from the Curial Trust unless the claims are covered by the 1996 insurance policy.

8.4 Compensation was paid to a total of 77 complainants in respect of 16 priests in the representative sample. (Of the total of 46 priests in the representative sample, 34 are priests of the Archdiocese, 11 are members of religious orders and one belongs to a UK diocese.) The total paid to the complainants up to July 2008 was just under €7 million. In addition, legal costs were just under €3 million. The net cost to the Archdiocese, taking account of contributions to, and reimbursements from, the Stewardship Trust, was €7 million.

The Stewardship Trust

8.5 The Stewardship Trust was established in 1996 utilising, in the first instance, the lump sum received from the insurance company under the 1996 agreement with the bishops, together with annual subscriptions from each of the dioceses. The proceeds of the 2001 agreement with the insurance company were also placed in the trust. The objects of the trust are:

- to fund and enable protection measures against child sexual abuse in the individual dioceses;
- to assist the health and wellbeing of people who have been the victims of child sexual abuse;
- to assist bishops with the liabilities incurred by their dioceses as a result of child sexual abuse.

8.6 The trustees of the fund are the four archbishops of Ireland.

The Stewardship Trust's interaction with the Archdiocese of Dublin

8.7 Claims by complainants were almost always made against the individual priest, the Archbishop personally and the Archdiocese. The handling of these claims was dealt with by the Archdiocese's solicitors. In the vast majority of cases, the individual priests had no assets with which to meet any claims. When a case was settled, the solicitors presented the case to the claims advisory committee of the trust. That committee then recommended to

the trustees of the Stewardship Trust whether or not to refund the Archdiocese. In every instance known to the Commission, the recommendation was positive. The Stewardship Trust had no role in determining whether or not compensation would be paid to the complainant or the amount of that compensation.

8.8 The Archdiocese of Dublin was both the largest contributor to, and beneficiary of, the Stewardship Trust. The contribution of each diocese to the trust was assessed on the basis of population. The Dublin Archdiocese has, by far, the largest population of any diocese. It also had the greatest number of claims related to child sexual abuse and was also, therefore, the greatest beneficiary of the Stewardship Trust. Between 1997 and 2005, the Archdiocese of Dublin made contributions of approximately €2.5 million to the Stewardship Trust. The Trust reimbursed the Archdiocese almost €5.5 million in order to pay compensation to the victims of child sexual abuse. In most of the cases, it appears that 90% of the compensation and the legal fees associated with individual cases came from the Stewardship Trust. All the money paid by the Archdiocese of Dublin into the Stewardship Trust came from the Curial Trust (see below). The balance of the compensation payments also came from the Curial Trust.

8.9 The existence of the Stewardship Trust did not in general become known to the public until the Archdiocese issued a press release in 2003. It would appear that the bishops were concerned that publicity about the existence of the trust would result in more claims against dioceses.

8.10 From December 2005, the Stewardship Trust ceased to provide financial support to dioceses with their compensation payments. The Archdiocese independently funds claims which arise unless they are covered by insurance (see Chapter 9). The compensation payments are made from the Curial Trust.

Support services for victims

8.11 The Child Protection Service of the Dublin Archdiocese was established in 2002. It is funded from the Pastoral Services Fund which in turn receives its funds through the Share collection. This is one of the collections taken up at Sunday masses throughout the Dublin Archdiocese.

In its first full year of operation, 2003/2004, the expenditure on the Child Protection Service was just over €164,000. It currently costs about €260,000 a year.

8.12 The Curial Trust funds payments for the treatment of victims of child sexual abuse. Between 1996 and 2008, almost €700,000 had been spent on such treatment. This includes the Archdiocese's contribution to Faoiseamh. Faoiseamh is an organisation which provides telephone counselling and a counselling and psychotherapy referral service for people who have been sexually, physically or emotionally abused by priests or religious. It is funded by the Conference of Religious of Ireland (CORI) and by a number of Catholic dioceses including the Archdiocese of Dublin.

Supports for priests

General Income of priests - the Common Fund

8.13 Priests who are working in the Archdiocese receive their individual income (called a common stipend) from the Common Fund. This is a central diocesan fund which was established in 1967 to:

- equalise the incomes of priests who are working in the parishes of the Archdiocese;
- pay priests who hold diocesan appointments but who are not attached to any particular parish;
- assist the Dublin Diocesan Clerical Fund Society which looks after sick and retired priests.

8.14 The fund receives its money from the collections which are made at weekend masses, from Christmas, Easter and other dues, from stole fees (that is, contributions at events such as weddings and funerals) and from other income generated in the parishes. Costs such as the support grant to the Clerical Fund Society, administration and the costs of private health insurance premiums for all the priests are taken into account. The amount which is paid to the individual priest is dependent on the income from all these sources less the costs. Priests are paid the same basic payment with an increment based on years of service. The standard stipend for a curate in 2008 was €27,000.

8.15 Priests are liable to pay tax and PRSI and are eligible for social welfare pensions such as the State Pension (Contributory) in the same way as other residents of Ireland.

Termination payments

8.16 A number of priests who have left the priesthood have received a lump sum termination payment from the Common Fund. At present (2009), the amount of the lump sum is calculated on the basis of a number of weeks' income per year of service; this is similar to the statutory redundancy payments scheme. Such payments are not confined to priests who leave for reasons associated with child sexual abuse.

8.17 Three priests in the representative sample (two of whom were convicted of clerical child sex abuse) received lump sums from the Common Fund. The Common Fund has been reimbursed from the Curial Trust in respect of the two convicted priests.

Dublin Diocesan Clerical Fund Society

8.18 The Dublin Diocesan Clerical Fund Society was established in 1861 to support priests who are unable to hold an appointment due to illness and priests who are retired. As already stated, it receives a support grant from the Common Fund and it also has income from some investments. It pays ill and retired priests a monthly grant which is equivalent to the stipend paid to curates in active service. As already noted, the Archdiocese also pays private health insurance premiums for its priests. Any priest who incurs medical costs of a significant nature not covered by private health insurance is supported by the Clerical Fund in meeting the costs involved.

8.19 The Clerical Fund Society has also supported priests who are accused of child sexual abuse. When such a priest was removed from office and/or was undergoing treatment, the income support payments to him were in general made from the Clerical Fund Society. The amount paid was broadly similar to the income of active priests.

8.20 The costs of treatment courses undertaken by priests who were accused or convicted of child sexual abuse were also paid by the Clerical

Fund Society. Eight priests in the representative sample are currently being supported by this fund; three of these are convicted child sexual abusers.

8.21 In November 2007, Archbishop Martin asked the management committee of this fund to examine the grants being given to priests who had been convicted of child sexual abuse or who had admitted to such behaviour. The committee expressed concern that priests in this category were receiving the same charitable grant as priests in good standing. It was agreed that such individuals would be approached by a competent assessor and someone who knew their child sexual abuse history to invite them to make a contribution to ameliorate the damage caused to the Archdiocese. If they had the means, the assessor could determine that a reduced amount should be paid to them in future.

The Curial Trust

8.22 The Curial Trust resulted from a merger in 1986 of the Archbishop McQuaid Curial Trust, the Archbishop McQuaid Charitable Trust, the Archbishop Walsh Charitable Trust, the General Charities Fund and the Education Fund. This trust receives funding from a number of sources, including from individual archbishops, but in the main is composed of bequests and donations which were or are given to the Church, not for a specified purpose, but for the general charitable purposes of the diocese and charitable purposes at the Archbishop's discretion.

8.23 The Archdiocesan contribution to the Stewardship Trust came from the Curial Trust. This trust also funded the part of the compensation payments to victims which was not financed by the Stewardship Trust. In addition, this trust was used to make payments to individual priests in order to enable them to reintegrate into society after laicisation. The Curial Trust also funded payments for the treatment of victims of child sexual abuse.

8.24 It was from this fund that the loan to Fr Payne was made in 1993 (see Chapter 24).

8.25 Two convicted clerical sex abusers are currently being supported from this fund.

The Poor of Dublin Fund

8.26 The Poor of Dublin Fund is a fund accumulated from bequests to Archbishops of Dublin for relief of the poor of the diocese. It was used to provide an income for Fr Ivan Payne when he was laicised in 2004. The fund has now been reimbursed from the Curial Trust – see Chapter 24 for details.

The Post Graduate Fund

8.27 The Post Graduate Fund was established for the purposes of paying the fees and expenses incurred by priests in undertaking further courses of study. It has been diocesan policy that, if it is considered likely to be beneficial, priests who resign from ministry are offered the possibility of the diocese paying the fees of courses that they may wish to undertake in order to prepare them for transition to lay life.

8.28 This policy has also been applied to priests accused of or convicted of child sexual abuse. Such opportunities are funded by the Post Graduate Fund.

8.29 Ten diocesan priests in the representative sample received money from the Post Graduate Trust. Most of the amounts were modest; the highest was just over €18,000 but most were between €1,000 and €3,000. One priest also received €10,000 from the Clerical Fund for educational purposes.

Legal fees

8.30 Priests who are accused of child sexual abuse have legal representation of their choice. Legal fees were paid on behalf of 16 diocesan priests by the Archdiocese. The total cost of this to July 2008 was just over €77,000. It is the policy of the Archdiocese that priests pay their own legal fees if they are charged with an offence. Some priests were granted criminal legal aid by the courts.

Treatment costs

8.31 The Archdiocese spent almost €564,000 on the treatment of diocesan priests. Up to July 2008, over €340,000 of this was spent on the 34 diocesan priests in the representative sample. In some cases where the Archdiocese referred priests for treatment, the Archdiocese did not receive bills – it could be that these were paid by way of private health insurance or were paid

directly by the priests themselves. The amount spent on each priest varied hugely. It is difficult to provide meaningful comparisons as the value of money changed considerably over the time period covered. The largest amount, in absolute terms, was the €85,000 spent on Fr Guido*⁴⁹ between 2003 and 2005. The largest, in real terms, was probably the £29,000 (€37,000) spent on Fr between 1981 and 1987.

Summary of current financial provisions for priests in the representative sample

There are 46 priests in the representative sample. The following is the position as of July 2008:

Eleven are or were members of religious orders; four of these are dead; the others are being supported by their orders. One priest belongs to a UK diocese.

Of the 34 priests from the Dublin Archdiocese:

- ten are dead;
- eight are supported by the Clerical Fund Society; three of these are convicted child sex abusers. One, Fr Naughton, is not being directly supported; a payment is made to St Patrick's Missionary Society in respect of him (see Chapter 29);
- two are supported by the Curial Trust; both have been laicised and both are convicted child sex abusers;
- nine are not supported by the Archdiocese and are not in ministry; five of these are laicised; two are convicted child abusers;
- five are supported by the Common Fund; four are in ministry in parishes and one is not in ministry.

⁴⁹

* Names marked with an asterisk are pseudonyms.

Introduction

9.1 The principal insurers for the Archdiocese of Dublin and most, if not all, parishes and Catholic schools in Ireland during the period under investigation by this Commission was Church & General Insurance Company. The company was originally formed principally to provide insurance cover for parishes, religious orders and Catholic schools. It was initially named the Irish Catholic Property Insurance Company Limited and was founded by the Catholic Hierarchy in 1902. The business of the company developed so that, by the 1960s, it had begun to underwrite mainstream general insurance business. In order to accommodate this development, the company changed its name to Church & General Insurance Company (in this report referred to as Church & General). In 1998, the company became part of the Allianz Group.

The need for insurance

9.2 The evidence reviewed by the Commission suggests that serious consideration was first given in 1986 to obtaining specific insurance cover for the benefit of the Archdiocese of Dublin for any potential liability falling upon it arising out of child sexual abuse by a priest of the Archdiocese. The timing is significant because the date of seeking insurance cover is clearly a date by which the Archdiocese had developed a realisation that child sexual abuse was a serious problem for it.

9.3 A central consideration in determining the necessity for obtaining such cover was an exploration by the Archdiocese of its potential vicarious liability for the actions of its priests. A legal opinion on the law of Ireland at the time was obtained by the Archdiocese from a senior counsel.

9.4 Following a brief period of consultation, an approach was made on behalf of the Archdiocese to Church & General with a view to securing insurance cover for liability arising out of claims against the Archdiocese alleging child sexual abuse by priests. Church & General understood that the impetus for this approach came from a visit by Archbishop Kevin McNamara to the USA where he learned of difficulties in an American diocese arising from allegations of sexual abuse by priests of that diocese. It need hardly be

pointed out by this Commission that the Archbishop's understanding of the need for insurance came from events much closer to home than the USA. At this time, the Archdiocese had knowledge of approximately 20 priests against whom allegations of child sexual abuse had been made, or about whom there were suspicions or concerns.

9.5 At that time, consideration was also given to obtaining a policy that would provide insurance cover for criminal defence costs arising from the prosecution of priests for alleged child sexual abuse. In the end, this additional cover was not sought.

The first special policy

9.6 On 2 March 1987, Church & General issued a policy for the benefit of the Archdiocese of Dublin (in this report referred to as 'the special policy'). The stated insured was Archbishop McNamara and "*his predecessors or successors in that office*". The initial premium was £515, with a limit on any single claim of £50,000. There was a stated limit of aggregate cover of £200,000 for all claims during the period of cover. The first period of cover was between 2 March 1987 and 1 March 1988. The then general insurance manager in Church & General told the Commission that he did not believe that he would have offered this type of cover to the general market at the time.

9.7 The policy mandated that immediately the insured (the Archbishop) became aware of a priest behaving in such a way as would be likely to give rise to a claim under the policy, or immediately an investigation revealed substantial grounds for believing that a priest was behaving in such a way as would be likely to give rise to a claim under the policy, the Archbishop was required to:

- remove that priest from the duty in the course of which the misconduct occurred and from all other duties as appropriate having regard to the misconduct;
- arrange for medical treatment;
- not permit such an individual to resume duty without professional opinion that the resumption was appropriate and timely.

9.8 The former general manager told the Commission that no proposal form was completed by the Archdiocese of Dublin before the inception of this policy. There was no questionnaire completed nor was any form of risk assessment undertaken by Church & General of the possible financial exposure that such a policy might bring. The evidence given to the Commission was that there was no indication given by the Archdiocese during the negotiations for the policy of any facts that would indicate that the Archdiocese had any prior experience of allegations of child sexual abuse by priests. The former general manager stated that he had no specific recollection of asking the Archdiocese specific questions about its knowledge of the possibility of such claims against it. He did indicate that he would have been interested in receiving *“any information which would have had relevance to the policy”*.

9.9 The indemnity was provided by Church & General was on the basis of ‘claims made’ and/or ‘claims notified’ during the period of insurance cover. This was the first policy written by Church & General on a ‘claims made’ basis. This meant that the insurance cover was provided for the date when the claim was made to the Archdiocese and notified to Church & General rather than for the date of the alleged occurrence of the abuse. An exclusion clause provided that cover would not extend to: *“any claim arising from circumstances which at the inception of the policy were known to the Insured and might reasonably be expected to give rise to a claim”*.

9.10 The former general manager told the Commission that the decision to insure on a ‘claims made’ basis was his and did not arise out of any request by the Archdiocese.

Information known to the Archdiocese

9.11 At the time of the inception of the policy, the authorities within the Archdiocese were aware of child abuse allegations involving about 20 priests. Information such as this would undoubtedly have led to difficulties in seeking to recover funds by way of indemnity from Church & General with respect to some of these cases, arising from the wording of the exclusion clause previously referred to.

Policy limits and wording

9.12 On the first renewal of the policy, the limit of liability cover on any one claim was increased from £50,000 to £125,000, with an annual aggregate cover not exceeding £250,000. The annual premium was increased to £800. The special policy was made available to all dioceses in Ireland. All but one of the dioceses purchased special policy cover. Premiums in the range of £35,000 - £40,000 were collected by Church & General from dioceses in 1989 and 1990 with respect to special policies. After 1990, no renewal notices were issued and no premiums were collected.

The parish protection policies

9.13 Church & General, prior to offering the various dioceses the special policy, had for a considerable period of time looked after the public liability requirements of most of the parishes in Ireland by way of a 'general' insurance policy known as the 'parish protection policies'. These policies provided that "*in the event of any accident happening*" the insured was indemnified "*against liability at law for damages in respect of accidental bodily injury or illness to any person*". There was no mention of child abuse in this policy.

9.14 Shortly after the inception of the first special policy for the Archdiocese of Dublin, Church & General was contemplating a specific exclusion of liability for sexual abuse from the general parish protection policies. This was not pursued by Church & General, at least in part because of a fear that such an action might raise the profile of the issue and might "*innocently or maliciously be construed as a response to a proliferation of claims*". However, without mentioning child sexual abuse, an amendment was made in 1989 to the parish protection policies by way of the incorporation of criminal act exclusion. The effect of this exclusion was such that Church & General was protected against the possibility of any liability to indemnify parishes arising from the criminal acts of priests. As child sexual abuse is punishable under the criminal laws, this exclusion operated to insulate Church & General from liability under the parish protection policies from 1989 onwards with respect to any claims arising from child sexual abuse.

9.15 In 1989, Church & General issued a circular to the bishops in Ireland (other than Dublin) which, firstly, warned that then existing parish insurances

did not provide cover for child molestation by a priest and, secondly, announced the availability of a special policy that provided that type of indemnity. The circular cautioned that the existence of such a policy ought to be revealed only on a need to know basis lest its existence give rise to a proliferation of claims.

9.16 Church & General did not collect premiums due from the Archdiocese of Dublin in the years 1991 or 1992, apparently because of an internal review by Church & General into the nature of the cover that it would continue to provide. The Chancellor of the Archdiocese, Monsignor Alex Stenson, did, however, seek and obtain an assurance from the company that cover was still in place during this period of review in the absence of payment.

Church & General reassessment

9.17 By 1993, the position of Church & General regarding exclusions in the wording of policies was becoming more robust. An internal memorandum recommended:

“In the past we have stood back from issuing ‘excluding’ endorsements on all liability policies and sections, except in the case of the parish protection policy which, when drafted and reissued in 1989, included what Senior Counsel believes to be an effective exclusion without actually mentioning sexual abuse. At this stage, I think it is imperative and probably ‘politically’ acceptable to add specific exclusion to all liability policies/sections. In issuing endorsements for attachment to existing covers, we probably need to make the point that the introduction of endorsement does not imply that coverage previously existed.”

9.18 The evidence suggests that, by 1994, Church & General was becoming concerned about its financial exposure arising from civil claims against the various dioceses by people alleging child abuse by priests.

9.19 In February 1995, Church & General prepared a discussion paper which was used for the purposes of negotiating, without prejudice to the legal rights of Church & General, the extent of the liability of Church & General to indemnify the Church for child sexual abuse claims. The document proposed the establishment by the bishops of a global fund that would meet any such

claims and, among other things, that Church & General would contribute a “sizable opening contribution”. The discussion paper contained the following paragraph:

“One option open to the Company is to specifically exclude all cover for future claims arising from sexual abuse and to deny any entitlement to indemnity in respect of claims arising out of past events. However we do not believe that such an action would be in the interests of the Company or its policyholders. Since its foundation in 1902 the Company has forged close working relationships with ‘the Church’ and is universally recognised as the ‘Church Insurer’. Over the years we have developed products matching the unique insurance needs of a Diocese. The current crisis presents a new challenge which we are totally committed to meeting. However we can only do so on terms which reflect the exposure. In an effort to assist you we have looked at every possible alternative and we feel the setting up of a fund in the manner suggested hereafter will help to resolve your past and future problems in dealing with the issue of sexual abuse and it will also remove the uncertainty and potential cover disputes in many individual cases. That being said it will be appreciated that insurance cannot provide the total answer to the problems which a Diocese faces in the area under review”.

9.20 Representatives of Church & General met a special sub-committee of the Irish hierarchy’s finance and general purposes committee which was established in March 1995. The view within Church & General in September 1995 was that *“a number of the high profile cases are not covered by the special policy because of prior knowledge on the part of the diocese concerned”*. This comment is not confined to the Archdiocese of Dublin but it did have a number of high profile cases at the time.

9.21 Church & General was trying to introduce a new version of the special policy that would be more restricted in its cover. Due to delays in reaching an agreement with the sub-committee, Church & General told the Archdiocese of Dublin that it would formally cancel the special policy from 31 January 1996. The proposed cancellation date was subsequently extended while negotiations proceeded between representatives of the bishops and Church &

General. Those negotiations centred on the establishment of a central fund to cater for civil claims arising out of child molestation by priests throughout the island of Ireland. It was envisaged that the money to be paid into the proposed central fund was to come from both Church funds and Church & General.

Lump sum agreement

9.22 Eventually an agreement was reached and executed on 2 July 1996, whereby Church & General agreed to pay to the Archbishops and Bishops of Ireland the sum of £3.4 million in settlement of any indemnity under any of its policies throughout the island of Ireland for all child sexual abuse claims arising from instances of abuse prior to 1996. The essential terms of the agreement are summarised as follows:

- All outstanding premiums were waived.
- Church & General agreed to provide a claims advisory service for all child sexual abuse cases for a period of five years, free of charge, which service would exclude the provision of legal services.
- Church & General would have no further liability under the special policy or under the general parish protection policies in respect of child sexual abuse by priests.
- Disputes under the agreement would be resolved by an arbitrator appointed by the President of the Law Society.
- A confidentiality provision stated: *“the contents of this agreement shall be confidential as between the parties hereto and none of the parties shall disclose the existence of or the contents hereof to any third party save as may be required by law.”*

9.23 Arising from the resolution of issues with Church & General, any civil claim for damages against any of the dioceses that relate to incidences of child abuse (as defined in that agreement) which occurred prior to 1996 would be satisfied out of this new central fund which was managed by the Church, without recourse to Church & General.

Negotiations reopened

9.24 Claims for compensation for child sexual abuse started to be received by the Archdiocese in the mid 1990s. There was considerable publicity about the loan provided by Archbishop Connell to Fr Ivan Payne to facilitate a settlement with Andrew Madden – see Chapter 24. Clearly, the Archdiocese of Dublin and the other dioceses were concerned about future liabilities.

9.25 In March 1999, the Archdiocese’s legal representatives sought to reopen negotiations with Church & General based on perceived differences between a memorandum furnished to bishops in 1995 by the former general manager of Church & General and an earlier memorandum also produced by him to the bishops in 1987 which, it was claimed, affected the agreement concluded in 1996. The 1987 memorandum was important in that it had been circulated to the Irish bishops in the Episcopal Conference of 1987 and was stated by the Church advisors to be contradictory to the subsequent one of 1995 in terms of the understanding as to the liability of Church & General to indemnify the various dioceses under the parish protection policies. The 1987 memorandum stated:

“It is not the intention of the policy to deny an insured indemnity for deliberate acts by a person for whose actions the insured might be responsible.

Without a specific ‘sexual abuse exclusion’ our policies provide indemnity to the employer/principal...for claims arising out of actions committed by employees or agents”.

9.26 That 1987 memorandum went on to consider whether, in the provision of certain policies, liability arising from sexual abuse by the insured’s employees ought to be specifically excluded. The 1987 memorandum also noted that in the USA, there was a specific exclusion of such cover, because no reinsurance cover was available in that jurisdiction. As previously mentioned in this chapter, the suggested specific exclusion of indemnity cover for liability arising as a result of sexual abuse by priests was not, as events transpired, incorporated into the parish protection policies at that time.

9.27 In a letter from the Archdiocese’s solicitors to Church & General, the writer put the matter as follows:

“Our clients were not aware of the 1987 memorandum when considering your 1995 memorandum. They were not aware of the 1987 memorandum when instructing this firm and others about the request from Church & General to them to enter negotiations about the totality of the insurance arrangements then in place against the risk of child sexual abuse claims. Had they been aware of the 1987 memorandum our clients would not have commenced negotiations about the parish policies and would not have entered the 1996 Agreement.”

9.28 Church & General strongly countered any suggestion that they had misrepresented, innocently or otherwise, matters in the 1995 memorandum. The solicitors for Church & General wrote:

“We do not know how you can assert this proposition on behalf of your clients. The fact is that the July 1987 memorandum was addressed to your clients, was circulated at the Episcopal Conference in November 1987 and was therefore at all material times known to your clients. It is absurd to suggest that your clients only learned of something in 1998 when in fact they have had the 1987 Memorandum since July 1987.

Secondly, your letter states that had the 1987 memorandum not defined the extent of the cover under the parish protection policies, your clients would have put in place insurance cover against the risk. The fact is that your clients did put in place special policies dealing with these risks because of the doubt and confusion concerning the extent of the cover provided by the Parish Protection Policies.

Thirdly, your letter overlooks the fact that the specific purpose of the 1996 Agreement was to compromise the parties’ assertions in relation to their respective rights and liabilities pursuant to the 1996 Agreement. Indeed, the record of the negotiations leading up to the 1996 agreement demonstrates that your clients asserted that they had very significant entitlements under the Parish Protection Policies”.

9.29 Despite the strong position adopted in this correspondence, negotiations were reopened between the bishops and Church & General.

These negotiations resulted in a further agreement between the bishops and Church & General which was executed in July 2000. There is no doubt that commercial forces played a significant role in the outcome of those negotiations as Church & General was anxious to ensure that it retained as much of the general Church insurance business as it could.

- 9.30 The main provisions of this second agreement were as follows:
- The claims advisory service was extended for a further period of ten years from April 2001.
 - The liabilities of Church & General were crystallized so that, if the aggregate cost of child sexual abuse claims (including legal and other costs) was greater than £7.5 million, Church & General would contribute 50% of the costs between £7.5 million and £13.5 million and 33.33% of the costs between £13.5 million and £19.5 million.
 - The payments between the limits of £7.5 million and £13.5 million were conditional on Church & General retaining all of the general insurance business of the Church (excluding motor insurance) between 2001 and 2004. The payments in excess of the £13.5 million threshold were conditional on Church & General retaining 50% of the general insurance business of the Church.
 - Three ‘donations’ of £120,000, £60,000 and £60,000 were made by Church & General to “*A Trust nominated by the Archbishops and Bishops*”. The Commission considers that the word ‘donations’ is a misnomer as the three payments were negotiated as a payback to the Church arising from profits made by Church & General from premiums collected from Church-related policies.
- 9.31 The bulk of the money received from Church & General was placed in a trust fund called the Stewardship Trust. The trustees of the Stewardship Trust were the four Archbishops of Ireland. The manner of operation and funding of the Stewardship Trust is considered in more detail in Chapter 8.
- 9.32 Church & General was under no illusion at the time of this second agreement that it would be called upon to pay its contribution on the band between £13.5 million and £19 million. A former claims director of Church & General told the Commission: “*We had resigned ourselves and the money*

was set aside in our accounts from the time of the agreement...it was just a question of when it was going to be paid after that”.

Cover for liability arising from 1996 onwards

9.33 Following the conclusion of negotiations between Church & General and the bishops in Ireland, each diocese sought its own policy of insurance with respect to liability in law arising for damages caused by incidents of child sexual abuse occurring after 1996 perpetrated by priests about whom the insured had no knowledge or suspicion of such wrongdoing prior to the incident giving rise to the claim. It is understood by the Commission that the premiums payable with respect to this policy were substantially greater than the premium payable for the first policy. The premium currently (2009) paid by the Archdiocese is €53,371.

9.34 Following the settlement with the Church in 1996, Church & General shredded all of its files relating to the notification of claims in order to ensure that confidentiality was preserved and to avoid the possibility of any leaking of information into the public domain. Church & General had no further need to refer to the material contained in those files by virtue of the terms of the settlement.

The Commission’s assessment

9.35 The early consideration by the Archdiocese of Dublin in 1986 of the matter of obtaining insurance indemnity signalled a significant realisation at that time of the potential exposure of the Archdiocese to civil claims arising from the abuse of children by priests. At that stage, there were no actual claims, but there was knowledge within the Archdiocese of about 20 priests against whom child abuse allegations had been made or about whom there were suspicions or concerns.

9.36 The Archdiocese of Dublin and Church & General agreed a policy of insurance in 1987 (the ‘special policy’) without most of the normal commercial requirements for insurance policies – there was no proposal form nor risk assessment and the policy was on a ‘claims made’ basis. This policy was subsequently made available to the other dioceses on the same basis. No renewal notices were issued in respect of this policy after 1990 and no premiums were paid. This policy, and the subsequent agreements in 1996

and 2000, proved to be extraordinarily good value for the Church. In return for trivial premiums amounting to £40,000 (approximately €50,800) the dioceses of Ireland received approximately €12.9 million by way of indemnity.

9.37 Church & General's actual liability under the 1987 insurance policy was reduced because the Archdiocese had, at the time of the inception of the policy, significant information concerning the actions of certain priests. That information, in certain cases, would have been sufficient to permit Church & General to deny liability to indemnify the Archdiocese under the special policy with respect to certain claims arising from child sexual abuse by priests of the Archdiocese.

9.38 Notwithstanding the above, Church & General still had potentially significant exposure to the various dioceses in Ireland, including the Archdiocese of Dublin, under its parish protection policy, because of the absence of an exclusion of indemnity for sexual abuse by priests, together with significant exposure under the terms of the special policy agreed in 1987.

9.39 The Catholic Church in Ireland, including the Archdiocese of Dublin, is a major client of Church & General. Church & General representatives told the Commission that it was a commercial decision to extend this level of indemnity, having regard to the overall value of the Church's business.

Introduction

10.1 The principal college for the education of diocesan priests, or what the Church itself calls “formation”, in the Archdiocese of Dublin during the period under investigation by the Commission, was Holy Cross College, situated at Clonliffe Road in Drumcondra, Dublin and generally known as Clonliffe College. There were a number of alternatives to Clonliffe as a means of achieving admission to diocesan ministry during this period, namely, St Patrick’s College, Maynooth, Co Kildare; the Irish College in Rome and the Propaganda College in Rome. Clonliffe College was founded in 1859 and ceased operating as a seminary in June 2000. It had two boards, the college council and the college finance committee. The college council was made up of priests appointed to the staff of the college by the Archbishop of Dublin and this council was responsible for advising the college president with regard to policy and its implementation. The college finance committee was made up of the college president, the vice-president, the director of formation, the college bursar, the diocesan financial administrator and a number of other priests of the diocese appointed by the Archbishop. The function of that committee was to advise the college president on financial policy, its implementation and oversight.

10.2 From the 1960s, the programme for a candidate attending Clonliffe consisted of seven years training. The first three years were typically taken up with philosophical studies at University College Dublin, at the conclusion of which the successful student would obtain a Bachelor of Arts degree. The remaining four years of training were taken up with theological studies in Clonliffe College itself. It was also possible to complete the first phase of training in philosophical studies at the Milltown Institute of Theology and Philosophy, initially by way of the award of a National Diploma in Humanities recognised by the National Council for Education Awards (now the Higher Education and Training Awards Council - HETAC) and, later, by a Bachelor of Arts in philosophy.

Eligibility and application

10.3 Canon 241 of the code of canon law states: *“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.”

10.4 Canon 1041 excludes from formation as a priest those suffering from “*insanity and psychological infirmity*”, where such infirmity results in the priest being incapable of properly fulfilling his ministry. The faithful are obliged by canon 1043 to reveal to their priest or bishop any irregularities in the make-up of a candidate, so that those irregularities may be properly investigated. Even if those irregularities are discovered after the process of formation commences in a seminary, the bishop retains the discretion to exclude the candidate from continuing his formation for the priesthood.

10.5 A minimum requirement for entry into Clonliffe College was that the candidate had passed the Leaving Certificate and/or Matriculation.

10.6 An application form was completed by the candidate, supported by a letter of recommendation from his parish priest. Clonliffe College then dispatched a questionnaire directly to the parish priest, which sought information on certain aspects of the candidate’s personality and background, such as his mental health, any history of crime, his general suitability for the priesthood and whether or not he was under any undue influence that led him to his application. At this stage, the director of vocations of the college decided whether or not a candidate was suitable for further assessment by the college.

10.7 The candidate then underwent a medical examination. The next step was an in-depth interview between the candidate and a member of the college staff.

Psychological assessment

10.8 Sometime around the early 1970s, psychological assessments of candidates began. The psychological assessment would typically address such areas as personal background, social background, general intelligence, special aptitudes, vocation interests, personality and sexuality.

10.9 Following the initial assessment, the candidate met his assessors who would provide the candidate with feedback on the outcome of his assessment. The assessors in turn typically met the president of Clonliffe College, the director of formation and the director of vocations, before a final decision was taken on admittance. Monsignor Peter Briscoe, who was first appointed to the college in 1978 and was president from 1989 until its closure in 2000, indicated to the Commission that he had no specific recollection that anyone was ever excluded as a result of concerns arising from the psychological assessment about sexual predilections involving children. Most of the priests in the representative sample had completed their formation before this time period.

Garda vetting

10.10 There was apparently no process whereby potential candidates for the priesthood were vetted by An Garda Síochána. In December 2000, the then director of vocations for the Archdiocese of Dublin, Fr Kevin Doran, commenced correspondence with An Garda Síochána in an attempt to open an avenue to allow the director to have potential candidates screened for any police history. At that time, Fr Doran was informed by An Garda Síochána that it dealt with clearance applications only with respect to prospective full-time employees of certain designated organisations operating within the health board areas, where such employees would have access to children and vulnerable adults. As of 2002, the Catholic Church was not one of those designated agencies. In August 2002, the National Child Protection Office of the Irish Bishops' Conference lobbied the then Minister for Justice, Equality and Law Reform, seeking to have the Church designated as a body that could seek vetting of prospective priests through a priests-clearance procedure. The Commission understands that the current position is that the prospective candidate supplies the diocese with a written authority to An Garda Síochána authorising them to supply the diocese with a note of any criminal convictions recorded against him.

Evaluation during formation

10.11 Bishop Eamonn Walsh was Dean of Clonliffe College from 1977 to 1985. He told the Commission that the college council evaluated the students on an ongoing basis. Monsignor Alex Stenson, who was a member of the staff at Clonliffe College for 25 years, told the Commission that evaluation

meetings would occur approximately once a month. The Commission was unable to obtain any records of any evaluations carried out on any of the priests in the representative sample. The absence of this information was in part explained by Bishop Walsh:

"I always recall ... Brendan Houlihan, as President saying to me when a priest is ordained he should leave the college with a clean record. If we have approved him for ordination, he should start from scratch and maybe that accounts for the attitude towards records, that once you promoted the person for ordination then he is a graduate and let the file begin from that day forward".

Pastoral placement

- 10.12 During each year of formation, a student was assigned a pastoral placement. In addition, the student was placed in a group which was formed for the purposes of considering the pastoral, social and theological aspects of the placement. These pastoral reflection groups were led either by the director of formation of the college or by someone else with specialist qualifications in this area within the College staff. The student was expected to write a half-yearly report of his progress in the pastoral setting, which would be presented to the director of formation and to his own supervisor.
- 10.13 Monsignor Briscoe outlined to the Commission the type of pastoral experience that a candidate was likely to attain during his period at Clonliffe College. In his first two years in the seminary, he would typically visit poor and disadvantaged people in special centres. The third year involved youth work and in years four and five, respectively, the candidate would be assigned to work with seriously ill people and in prison chaplaincy. In the final two years at the college, the student was placed in a parish and was usually maintained in the same parish.
- 10.14 During the first six years in the seminary, pastoral experience typically took place during an afternoon or an evening each week. In his final year, the student would normally be ordained as a deacon and it was also normal for him to spend an extended period of his summer vacation working in a parish in the south of England.

Spiritual director

10.15 Once admitted to the College, all candidates were required to have a spiritual director. It was a matter for the candidate himself to choose his spiritual director, but his choice was subject to ratification by staff at the College. The role of the spiritual director is as a spiritual mentor and as a confessor.

10.16 Canon 246-4 states: *“The students are to become accustomed to approach the sacrament of penance frequently. It is recommended that each should have a director of spiritual life, freely chosen, to whom he can trustfully reveal his conscience.”*

Canon 240 states: *“Besides ordinary confessors, other confessors are to come regularly to the seminary; while maintaining seminary discipline, the students are always free to approach any confessor, whether inside or outside the seminary...in deciding about the admission to orders, or their dismissal from the seminary the vote of the spiritual director and the confessors may never be sought.”*

10.17 This canon enshrines a principle in canon law that whatever discussions the candidate has with his spiritual director are absolutely confidential and may not be revealed to anyone other than the candidate. Monsignor Briscoe told the Commission that the spiritual director’s function was to work exclusively with the students, so that the students gained discernment as to whether they were suitable for a life in the priesthood or not. He confirmed that the work was entirely confidential and that the spiritual director could not breach that seal of confidentiality.

Sexuality, celibacy and child sexual abuse

10.18 Evidence received by the Commission confirmed that during the formation process there was some training in the demands of celibacy. The matter was usually addressed in courses and talks organised by the college. Some of those courses and talks also addressed the issue of sexuality. Monsignor Briscoe indicated to the Commission that the issues of a student’s own sexuality and celibacy were matters for the student to deal with in conjunction with his spiritual director. From the 1980s onwards, there was a series of sexuality seminars held on an annual basis. The Commission was

advised that the purpose behind the seminars was largely to emphasise the importance of the issue of sexuality and to provide a means for the students to reflect upon, and to become aware of, personal issues that they needed to address in this area. The seminars were provided by personnel who were trained as counsellors with expertise in the psycho-sexual area. An extra emphasis was placed on the understanding of celibacy in the final years leading up to ordination.

Training on the issue of child sexual abuse

10.19 The Commission has concluded, on the basis of its investigations, that in the years 1970-1995, there was no structured training on matters concerning child sexual abuse by priests or others. It is not apparent that the issue of child sexual abuse was a matter within the contemplation of the psychological assessors during that time.

10.20 The evidence suggests that the issue of child sexual abuse as a relevant factor in the screening and training of priests became a matter of some relevance in the mid-1990s. The document *Child Sexual Abuse: Framework for a Church Response* (generally referred to in this report as the *Framework Document* – see Chapter 7) was published in 1996. The Commission is of the view that this publication reflected a marked awareness of the existence of the problem of child sexual abuse and, in many ways, was a positive attempt to identify ways in which this problem could be addressed.

10.21 Chapter 8 of the *Framework Document* deals specifically with the selection and formation for the diocesan priesthood and for religious life. It recommends the screening of candidates, including a full psychological assessment by an experienced psychologist who is well versed in the Church's expectations of the candidates, with particular attention to celibacy. Paragraph 8.2.2 of the document states:

“Formation is progressive, and must be evenly balanced between the human, spiritual, intellectual and pastoral. The whole process of formation of candidates for the priesthood and religious life should foster an integration of human sexuality and the development of healthy human relationships within the context of celibate living.”

- 10.22 Chapter 8 goes on to recommend that lay men and women should be involved in the training of priests and religious and that those in formation should have reasonable access to counsellors. It cautions that in the pastoral placement of students, the candidates must expect and receive the same formal supervision as other trainee staff in those pastoral settings.
- 10.23 At paragraph 8.2.6, it is stated:
“Since candidates for priesthood and the religious life are being prepared for ministries in which they will be in a position of sacred trust in regard to children, they must be made aware of what are appropriate boundaries in relating to children and of the absolute importance of respecting these boundaries.”
- 10.24 At paragraph 8.3.1, it is stated:
“Since a genuine spirituality is central to all personal life, good spiritual direction and counseling are invaluable for priests and religious. Serious personal inadequacies can hide behind questionable spirituality. Ongoing education promoting psycho-sexual maturity, healthy living and human wholeness is essential. Good practice guidelines should be developed in order to promote awareness of the need for appropriate pastoral boundaries.”
- 10.25 In chapter 9, paragraph 9.2.1 states:
“Priests and religious should receive ongoing education and in-service training in regard to the nature and effect of child sexual abuse. This is necessary to ensure that they reach out with competence and compassion to all victims of child sexual abuse whom they may encounter in the course of their ministry. Furthermore, such education and training should help towards ensuring that proper procedures for the protection of children are put in place in respect of all institutions that they are involved in managing – schools, youth facilities, for example.”
- 10.26 At paragraph 9.2.2 it is recommended that:
“Information days or seminars on child sexual abuse continue to be arranged for priests and religious. These information days and seminars should be followed up by the provision of new and additional

information as and when it becomes available. It would be particularly appropriate if practitioners from the health authorities, the police, and other professional bodies were contributors to this educational process.”

10.27 Paragraph 9.2.4 states: *“Education in the area of child sexual abuse needs to be provided on an ongoing basis to all involved in the formation of students to the priesthood and religious life.”*

10.28 Paragraph 9.2.5 states:
“Candidates for the priesthood and religious life need to continue to be made aware of the nature of child sexual abuse and its effects on victims and their families. In the course of their future ministry they may well come across situations of child sexual abuse, and so it is important to help them gain knowledge as to how to respond properly to these. Particular attention should be paid to the issue of child sexual abuse by priests and religious. Candidates should be made aware of the implications and consequences of this in civil law and canon law and of the procedures for dealing with it.”

10.29 The document *Our Children, Our Church* was published in 2005. The purpose of *Our Children, Our Church* was stated to be the provision of a set of policies and procedures for those who have responsibility for the protection of children and young people in the life of the Catholic Church in Ireland. In its introduction, it is stated that this document is intended to provide a more comprehensive and unified approach to child protection across the Catholic Church in Ireland than was previously indicated in the *Framework Document*. Its aim was to bring greater clarity and consistency to the Church’s procedures in relation to child protection.

10.30 Chapter 5 of *Our Children Our Church* deals with the selection and formation of candidates for the priesthood and religious life. It recommends that formation personnel are satisfied that the future priest or religious can relate appropriately both to children and adults before presenting him/her for ordination or final vows.

10.31 It is also recommended that those engaged in formation provide comprehensive training in safe and best practice in working with children and young people. There was a recommendation that during formation, essential matters to be addressed should include:

- the absolute importance of respecting appropriate boundaries in the interaction with children;
- knowledge of the theories associated with sexual abuse;
- how abusers operate and the elements of treatment for abusers;
- Awareness of the immediate and long term impact of abuse of all kinds;
- The pastoral needs of all those affected by child abuse.

Current position

10.32 Since 2000, Clonliffe College has ceased to operate as a seminary. At present, candidates for the diocesan priesthood in Ireland may attend St Patrick's College, Maynooth; St Malachy's College, Belfast and the Pontifical Irish College in Rome. Today, the sexual history of a candidate is relevant in his assessment for admission to the seminary. The *Ferns Report*, which was published in 2005, identified areas of sexual history that the Church at that time regarded as necessary to consider when assessing the suitability of seminarians. For convenience, the section of the *Ferns Report* is reproduced below:

“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 of 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.”

The *Ferns Report* concluded:

“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.”

“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 subject to the same level of assessment as has been undertaken by seminaries such as Maynooth.”

10.33 Archbishop Martin confirmed to the Commission that the rector of the Irish College in Rome reports annually to the bishops in Ireland. He confirmed that issues of training and sexuality are managed in a similar way to the current approach in St Patrick’s College, Maynooth. The Archbishop also receives from St Patrick’s College twice yearly reports on each student from the Archdiocese of Dublin. Archbishop Martin confirmed to the Commission that a final psychological assessment is carried out on all students in the later part of their studies before ordination.

10.34 This practice and previous psychological testing requirements in Ireland appear to have been adopted independently of any formal directions from Rome on the issue of mandatory testing. The position of the universal Church was clarified on 30 October 2008, when the Congregation for Catholic Education for Seminaries and Educational Institutions (a congregation of the Roman Curia with responsibility, among other matters, for the regulation of seminaries) presented a document entitled *Guidelines for the use of psychology in the admission and formation of candidates for the priesthood*. This document advises that the early detection of “*sometimes pathological*” psychological defects of men before they become priests would help avoid tragic experiences. The document recommends that seminary rectors and other officials should use outside experts if they cannot handle the screening

themselves. The testing is to be directed at areas of immaturity in development. It states:

"Such areas of immaturity would include strong affective dependencies; notable lack of freedom in relations; excessive rigidity of character; lack of loyalty; uncertain sexual identity; deep-seated homosexual tendencies, etc. If this should be the case, the path of formation will have to be interrupted."

10.35 Vatican officials, when introducing the document to the press, said that the tests would not be obligatory, but would be decided on a case-by-case basis when seminary rectors wanted to be sure that a man was qualified for the priesthood.

The views of others

10.36 Fr Desmond O' Donnell, a psychologist who is a diagnostic tester for admission to ministry for the Church of Ireland and the Catholic Church, gave expert evidence to the Commission. He has been carrying out such testing in Ireland for more than ten years. He suggested to the Commission that a practice adopted by the Church of Ireland, in having prospective candidates carry out ministry work in their own parish for a period of three years before application and professional assessment, is a good way of identifying those candidates with personalities inconsistent with ministry.

10.37 Dr Marie Keenan, a lecturer and psychotherapist, who has a particular interest in therapeutic work with victims and perpetrators of sexual abuse, gave expert evidence to the Commission. She believes the system of training currently in place at Maynooth does not achieve openness on the part of seminarians on issues of sexuality. The principal reason why this arises, she articulates, is fear of expulsion arising from disclosures which might be regarded as inconsistent with life in the priesthood. Dr Keenan told the Commission that her experience is that seminarians believe that any disclosures about homosexual ideation would result in the student being required to leave the seminary. Dr Keenan wanted to stress that there are some exceptional bishops and church leaders in the Catholic Church in Ireland who foster opportunities for a true spirit of openness and honesty among their priests by providing true mentoring and honest leadership, despite what she considers to be a closed clerical culture that operates within

the Catholic Church on the issues of sexuality and celibacy. Dr Keenan argues that, at the very least, the seminary structure and programme content are in need of serious independent review if the aim is to produce emotionally and sexually healthy men, ready for the challenges involved in the life of dedicated priesthood.

10.38 Monsignor Connolly, the President of St Patrick's College, Maynooth is of the view that Dr Keenan's assertion that disclosures about homosexual ideation would lead to expulsion is too terse and un-nuanced. He considers that the issue is neither ideation nor orientation but rather is of a tendency to a particular form of sexual behaviour. He points out that the position of the Holy See represents a much more differentiated position than that summarised by Dr Keenan. He describes the approach of the College in the following terms:

"When a candidate is selected as a seminarian for a Diocese, he enters a process of formation at a seminary or a propaedeutic⁵⁰ course of formation elsewhere. In keeping with the Church's vision of candidates in this process, the seminary is a formation community where 'the candidate himself is a necessary and irreplaceable agent of his own formation. Nobody can replace the responsible freedom of individual persons' (Pastores dabo vobis no. 69)⁵¹. An aim of seminary formation is that the student, by the time he will be ordained for ministry, will have a secure sense of his human and priestly identity; able to hold the ambiguities and complexities of his life in a wholesome tension with Gospel and ministerial values.

The formation staff at St. Patrick's College Maynooth endeavours to facilitate an environment where that goal can be achieved and the concomitant level of responsibility in the individual can be supported and promoted. In the course of formation, there are a number of fora where, in a confidential way, the seminarian can explore and arrive at a satisfactory resolution of those areas of his life that he discovers present as inconsistent with priestly ministry.

⁵⁰ Providing preparatory or introductory teaching.

⁵¹ *Apostolic Exhortation on the Formation of Priests in the Circumstances of the Present Day* promulgated in March 1992 by Pope John Paul II.

Throughout the entire process of formation for ministry, the Church is moved by two concerns: to safeguard the good of her own mission, and at the same time, the good of the candidates. To this end, one of the necessary aspects of the process of formation is the on-going evaluation of the human and ministerial identity as it takes shape in the candidate. This includes the suitability of a candidate for ministry in an increasingly demanding culture.

The seminarian is fully engaged in this process with his Formation Director and any decisions taken in this regard are made with his cooperative collaboration. A man who is wholesome, aware of his strengths and limitations and able to support his commitment with a solid spiritual life is always the best prospect for a fulfilled and effective priestly ministry.”

Part 2

