

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.