

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 it’s policyholders. Since it’s 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.