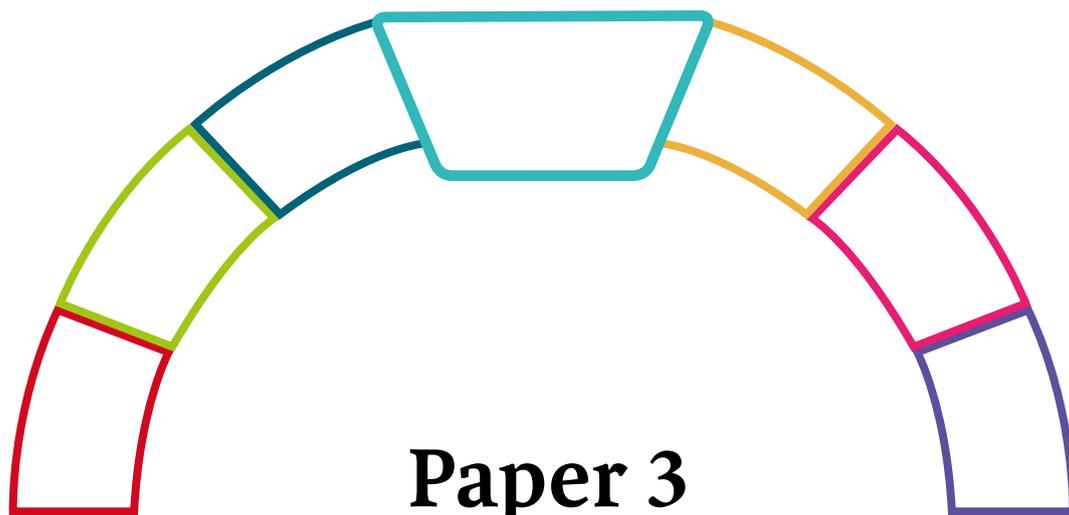


# **GAP**

## **Guidance, Advice and Practice**



### **Paper 3**

### **November 2018**

## **Caring Pastorally and Managing Respondents**



THE NATIONAL BOARD FOR  
**SAFEGUARDING CHILDREN**  
IN THE CATHOLIC CHURCH IN IRELAND



THE NATIONAL BOARD FOR  
**SAFEGUARDING CHILDREN**  
IN THE CATHOLIC CHURCH IN IRELAND

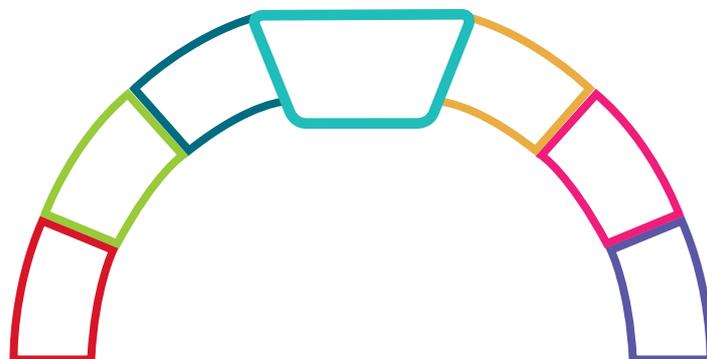
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## About the GAP Papers



The National Board for Safeguarding Children in the Catholic Church in Ireland (NBSCCCI) was established to provide advice, services and assistance in furtherance of the development of the safeguarding of children within the Roman Catholic Church on the island of Ireland. The National Board also monitors compliance with legislation, policy and best practice and to report on these activities annually, all as comprehensively set out in the Memorandum of Association of the Company, Coimirce.

Article 4 (iii) of the Memorandum and Articles of Association of the Company requires the National Board to: “ report and provide, upon request from the Constituents or any Constituent, support, advisory and training services to such Constituents or Constituent on policies and practices relating to safeguarding of children.”

The National Board already provides comprehensive Guidance to support the implementation of Safeguarding Children, Policy and Standards for the Catholic Church in Ireland 2016. These series of Guidance, Advice and Practice (GAP) Papers further complement that detailed guidance on topics of current interest to constituents.

The bridge logo above encapsulates the aim of these GAP papers, each brick represents one of the seven safeguarding standards; the keystone signifies the importance of quality assuring compliance with the standards, which is the responsibility of the Church authority. A major part of quality assurance is becoming aware of new challenges or gaps to safeguarding as they emerge. This series of papers aims to provide the reader with information on guidance, advice and practice, which will assist in developing best practice in safeguarding children, identifying where there are risks and how to minimise these risks. To do this these papers draw on the experiences of the National Board, research and information already available to the reader from other sources.

The GAP papers are not intended to be read as definitive positions on the chosen topic. The National Board does not claim to have inserted all available research and knowledge; nor do we claim to be masters of best practice offering indisputable views. Each of these papers will focus on a particular gap in terms of safeguarding children, and each paper will provide guidance advice and practice to help overcome these gaps, building the reader’s knowledge on the subject and in informing practice, which will be underpinned by the seven safeguarding standards.

Effectively using **G**uidance, **A**dvice and **P**ractice to bridge the **GAP**.

## Contents

<b>1. Introduction</b>	<b>3</b>
<b>2. Management of child sexual abuse with the Catholic Church in Ireland in the past</b>	<b>5</b>
<b>3. What we know about the dynamics of child sexual abuse</b>	<b>9</b>
<b>4. What we know about priests and religious who sexually abuse children</b>	<b>10</b>
<b>5. References in policy and guidance to the needs of respondent priests and religious</b>	<b>14</b>
<b>6. Pastoral care of respondent priests and religious</b>	<b>15</b>
<b>7. Due process for the respondent</b>	<b>21</b>
<b>8. Priests and religious who are believed to have sexually abused children</b>	<b>25</b>
<b>9. Supports for the families of priests and religious who have abused children</b>	<b>28</b>
<b>10. Concluding comments</b>	<b>29</b>



## 1. Introduction

The sexual abuse of children by clergy and religious first came to the attention of Church authorities in Ireland in the 1980's as a significant issue that concerned the whole Church. In 1983 the revised Code of Canon Law was promulgated, which included canon 1395:2, which explicitly named sex with a minor by clerics as a canonical crime. In the same year, the Department of Health guidance provided to health professionals on child abuse in the Republic of Ireland contained a mention of child sexual abuse for the first time. In Northern Ireland, the Protection of Children (Northern Ireland) Order came into effect in 1978, and in 2008 a comprehensive statutory instrument, entitled Sexual Offences (Northern Ireland) Order 2008, defined a number of sexual offences against children

It was in the 1990's that the Catholic Church in Ireland began to see the need to establish an organised system to respond to increasing numbers of adults coming forward to speak about their abuse in childhood at the hands of priests and religious. The Irish Catholic Bishops' Advisory Committee on Child Sexual Abuse by Priests and Religious was convened in March 1994 at the request of the Irish Catholic Bishops' Conference. In 1996, the Catholic Church in Ireland published the document, *Child Sexual Abuse - Framework for a Church Response*.

The Conference of Religious of Ireland (CORI) set up a National Child Protection Office in March 1995 to assist religious congregations to respond to allegations of child sexual abuse against their members. In 2001, an Episcopal Committee on Child Abuse established a Child Protection Office for the Irish Bishops' Conference. In January 2001, The Bishops' Committee on Child Abuse commissioned the Health Services Research Centre of the Royal College of Surgeons to conduct an extensive piece of research on clerical child sexual abuse, and the report of this research was published in December 2003 under the title, *Time to Listen*. Some of the findings of this research will be described later in this paper.

Updated guidance was issued in 2005, under the title *Our Children, Our Church - Child Protection Policies and Procedures for the Catholic Church in Ireland*, by the Irish Bishops' Conference, the Conference of Religious of Ireland and the Irish Missionary Union. This document was not widely implemented as some difficulties were identified with it, but it contains some very wise and helpful counsel.

The National Board for Safeguarding Children in the Catholic Church in Ireland (NBSCCCI) was announced in December 2005 at the launch of *Our Children, Our Church*, and it held its inaugural meeting in May 2006. It was created by the three Sponsoring Bodies, The Irish Episcopal Conference (IEC), The Conference of Religious of Ireland (CORI), and the Irish Missionary Union (IMU) with the intention of developing a coordinated approach to Child Safeguarding across the Irish Catholic Church. The NBSCCCI developed a new and comprehensive guidance which it published in February 2009 under the title, *Safeguarding Children - Standards and guidance document for the Catholic Church in Ireland*. In 2010, the conduct of audits of Child Safeguarding compliance by Church Authorities with the 2009 Standards was begun and this process took five years for the NBSCCCI to complete.

The National Board has now completed Reviews of 142 Church bodies – dioceses and religious congregations – on the island of Ireland; and these are published on its website, at [www.safeguarding.ie/](http://www.safeguarding.ie/) publications. The individual Review Reports are also summarised in a series of Overview Reports, which can also be accessed at the same website address. Among the findings from reviews of Church bodies have been that:

'Past practice sometimes involved a lack of proper management of individuals who were known to be a risk to children. As a consequence there were examples that were discovered where an offender was able to continue their abuse for longer periods than they should have.'<sup>1</sup>

<sup>1</sup> National Board for Safeguarding children in the Catholic Church (2012) *Overview Report for Reports Launched in September 2012*. Available at [https://www.safeguarding.ie/images/Pdfs/Overview\\_Reports/1.%20Overview%20Report%20for%20Reports%20Launched%20in%20September%202012.pdf](https://www.safeguarding.ie/images/Pdfs/Overview_Reports/1.%20Overview%20Report%20for%20Reports%20Launched%20in%20September%202012.pdf) (Accessed on 20th November 2018).

'Canon law processes are not well understood, so there is drift in cases which were not criminally adjudicated on Response to victims is still inconsistent and often not addressed at all.'<sup>2</sup>

'Management plans relating to accused Priests and Brothers and Sisters have improved significantly over time, though there is still room for improvement, in terms of clarity of roles, review of restrictions, and sharing of information. Support for complainants continues to be inconsistent. Contact in many instances was not made directly by the Congregation and the opportunity for pastoral support was missed. This however is an improving picture and the reviewers highlighted instances of compassionate meaningful responses to survivors.'<sup>3</sup>

'Historically there has been an absence of compassionate response to Survivors in some Orders.'

'Management plans relating to accused priests and brothers were variable; often plans were in place but not written.'<sup>4</sup>

'Practice has improved over time, but prior to 2009 there was inconsistent practice in relation to the management of those accused of child abuse. Inconsistent or poor support for complainants.'<sup>5</sup>

While improvements have been noted over the period of the reviews, from August 2010 to the end of 2016, the National Board was concerned that these were neither consistent nor universal, and it was particularly uneasy about how complainants and respondents were faring in some Church bodies. So, in March 2016, the National Board published a revised version of the Standards for the Catholic Church on the island of Ireland,

entitled *Safeguarding Children - Policy and Standards for the Catholic Church in Ireland*. The revised document contains two standards that are new; these are Standard 3, Care and Support for the Complainant, and Standard 4, Care and Management of the Respondent.

From the first round of Reviews, the National Board is aware of **1,291** allegations about **509** diocesan clergy, and **3,027** allegations against **1,092** Religious - priests, Brothers and Sisters. It needs to be borne in mind in reading these figures that (i) they are not confined to alleged sexual abuse; there are a significant number of allegations about physical abuse by members of teaching congregations; (ii) they do not mean that this number of clergy and Religious are proven to have actually abused children; (iii) not all respondents have been clearly identified; and (iv) a significant number of respondents are deceased.

The overall requirement of Standard 4 is that 'The Church authority has in place a fair process for investigating and managing child safeguarding concerns. When the threshold for reporting has been reached, a system of support and monitoring for respondents (cleric or religious) is provided'. The National Board's website contains detailed Guidance on the implementation of Standard 4, which runs to 55 pages. This guidance is procedural in nature and therefore unavoidably somewhat 'clinical' in tone and content. This paper has been written to address the more human considerations that arise for respondents and their families, their friends and colleagues, as well as for their Ordinary and others who have a responsibility to safeguard children.

2 National Board for Safeguarding children in the Catholic Church (2013) *Overview Report for Reports Launched in December 2013*. Available at [https://www.safeguarding.ie/images/Pdfs/Overview\\_Reports/3.%20Overview%20Report%20for%20Reports%20Launched%20in%20December%202013.pdf](https://www.safeguarding.ie/images/Pdfs/Overview_Reports/3.%20Overview%20Report%20for%20Reports%20Launched%20in%20December%202013.pdf) (Accessed on 20th November 2018).

3 National Board for Safeguarding children in the Catholic Church (2014) *Overview Report for Reports Launched in October 2014*. Available at [https://www.safeguarding.ie/images/Pdfs/Overview\\_Reports/5.%20Overview%20Report%20for%20Reports%20Launched%20in%20October%202014.pdf](https://www.safeguarding.ie/images/Pdfs/Overview_Reports/5.%20Overview%20Report%20for%20Reports%20Launched%20in%20October%202014.pdf) (Accessed on 20th November 2018).

4 National Board for Safeguarding Children (2015) *Overview Report for Reports Launched in September 2015*. Available from [https://www.safeguarding.ie/images/Pdfs/Overview\\_Reports/7.%20Overview%20Report%20for%20Reports%20Launched%20in%20September%202015.pdf](https://www.safeguarding.ie/images/Pdfs/Overview_Reports/7.%20Overview%20Report%20for%20Reports%20Launched%20in%20September%202015.pdf) (Accessed on 20th November 2018).

5 National Board for Safeguarding Children (2016) *Overview Report for Reports Launched in May 2016*. Available from [https://www.safeguarding.ie/images/Pdfs/Overview\\_Reports/Overview%20Report%20for%20Reports%20Launched%20in%20May%202016.pdf](https://www.safeguarding.ie/images/Pdfs/Overview_Reports/Overview%20Report%20for%20Reports%20Launched%20in%20May%202016.pdf) (Accessed on 20th November 2018).

## 2. The management of child sexual abuse within the Catholic Church in Ireland in the past

The National Board has completed Reviews of all Church bodies on the island of Ireland that were eligible for audit, and the knowledge generated through this major exercise can inform a more effective approach to responding to concerns about the abuse of children by priests and religious. The following table sets out examples of poor and dangerous historical practices by Church authorities on the island of Ireland. These are not presented in a particular order of priority or historical occurrence. These are not being listed in order to blame or criticize, but rather to try and ensure that by identifying them, we do not repeat them.

<b>Ineffective and dangerous response identified</b>	<b>Impact or consequence</b>
Denying that any problem existed	A problem can only be addressed if it is first recognised and acknowledged. This can cause significant anxiety and discomfort, but these feelings need to be contained so that clear thinking can be applied. Children First 2011 states at paragraph 2.7.1 that, 'the ability to recognise child abuse can depend as much on a person's willingness to accept the possibility of its existence as it does on their knowledge and information'. And as is declared in the Gospel of John (8:32), And you will know the truth, and the truth will set you free. Covering up is another form of abuse and has been the cause of great hurt and damage within the Catholic Church in Ireland.
Seeing the protection of the Church as the paramount concern	These are opposite sides of the same coin. There is a deep contradiction in denying justice and healing to children who were abused by priests and religious who themselves have promised to serve Christ in the Church. It is no protection for the Church to ignore the cries of the wounded. This notion of needing to protect the Church also shows a lack of faith in the promises made by Christ - as recorded in the Gospel of Matthew - that He will be with the Church for all time. The Holy See ratified the UN Convention on the Rights of the Child on April 20th, 1990
Not seeing the safeguarding of children as the priority, or the welfare of the individual child as paramount	
Considering the Church to be above or outside the jurisdiction of secular (criminal) law	While the Catholic Church has its own Code of Canon Law to organize and govern itself as an intentional community, it exists and functions in sovereign states and must take cognisance of the laws that apply in each of these states. Bishops, priests and religious are all citizens of the state, as well as being ministers within the Catholic Church; while children and their families have a right to the protection of the criminal and civil law as citizens.
Seeing allegations against priests and religious as an attack on the Church, or as a ploy to extract money from it	These perceptions evidenced a particular attitude to the Church as being above criticism, and to complainants being primarily motivated by a desire to damage and by dishonesty. This blinkered and prejudiced standpoint distanced the Church further from those who had been hurt while participating in it.

Simply moving the person about whom a concern had been raised (the respondent) without challenging them or otherwise intervening	This manner of responding showed a lack of understanding of the compulsive nature of child sexual abuse and offered no protection for children or remedy for the respondent's damaging behaviour.
Not reporting allegations to the statutory authorities	By not making reports to the police and statutory child protection services, Church authorities were protecting abusive priests and religious from facing the legal consequences of their actions; and were also denying appropriate follow-up for victims of abuse. They also facilitated abusers to continue to abuse without repercussions, and therefore exposed other children to avoidable risk. The Criminal Justice Act 2006 at section 176 has introduced the criminal offence of reckless endangerment which applies to anyone who fails to take reasonable steps to protect a child from the risk of sexual abuse.
Not using canonical procedures at all, or not applying them properly	The National Board discovered through its Reviews that there was a general lack of awareness among many Church authorities of the provisions within the Code of Canon Law to deal with priests and religious who were suspected of having abused a child. These Church authorities did not have the required knowledge to instigate the application of canon law in these circumstances. In other Church bodies, while canon law had been used, it had not been followed either correctly or thoroughly. The outcome of these omissions was that respondents were not provided with due process and fair procedures.
Not keeping accurate written records	The full and effective response to an allegation of sexual abuse by a priest or religious can be a time consuming process that requires very careful consideration of evidence at a number of stages. The importance of careful analysis and decision making is great; and the potential consequences for both complainants and respondents of a process that is perfunctory, careless or otherwise not methodical are immense. The keeping of accurate, contemporaneous, dated and signed written records is essential in such an important area of work.
Not being aware of what information was already available in case files	Leadership in dioceses and religious congregations change from time to time, and the incoming leader has to be able to rely on the written records of their predecessors. The staff of the National Board is aware of instances where outgoing leaders destroyed records before leaving office. In some situations, written records were maintained in a variety of unrelated files. In many cases it seems that a thorough handover was not undertaken, so that the incoming leader had to find things out for himself / herself; and in some instances, incoming leaders did not conduct a review of historical files to inform themselves of what child safeguarding challenges they had inherited.

<p>Not seeking advice; or ignoring advice received</p>	<p>It is said that child protection is everyone’s responsibility. One way of understanding this statement is to accept that no one individual should believe that it is their sole responsibility to handle a case of suspected child sexual abuse; and that it is wise to seek support and assistance when working in this area. Not seeking the advice of trusted people who have training and expertise deprives a Church authority of additional information which may be essential in reaching the correct decision about required action. Ignoring advice provided is different from considering advice but then choosing to not follow it for a good and explicable reason. The advice not to ordain Brendan Smyth was ignored, with appalling consequences.</p>
<p>Over reliance on legal advice and on a legalistic response; and the failure to develop a pastoral response, to complainants and to respondents</p>	<p>It is understandable that Church authorities sought legal advice from solicitors; they needed to know what the legal consequences were of a member of their diocese or congregation being accused of having sexually abused a child. Where problems arose is when Church authorities then left it to their solicitors to handle all aspects of the matter, and they interposed them and the legal process between themselves and both complainants and respondents. Legalistic relationships were created with these parties, which made it almost impossible to develop a pastoral approach to them.</p>
<p>Not assessing on-going risk to children</p>	<p>This was one consequence of not seeing that the welfare of children was the paramount consideration. Without a truly child-centred view, it was almost impossible for Church authorities to fully grasp their responsibilities to protect all children from dangerous abusers within the Church.</p>
<p>Not assessing the behaviour, mental and physical health and suitability for ministry of the respondent</p>	<p>The juxtaposition of these two responses seems to suggest ‘damned if you do and damned if you don’t’, but that is not what is being intimated here. There was a period of time within which individual Church authorities needed to gain knowledge about child sexual abuse by priests and religious; some have described this as a steep learning curve. While it is clear that the universal Catholic Church had been aware of clerical child sexual abuse for centuries, this did not mean that individual Church authorities in the 20th century in Ireland knew all that they needed to know about effectively responding to the sexual abuse of children in general, and to the particular needs and challenges of men and women in religion who were abusers. They needed the assistance of professional practitioners who could accurately assess these people, and it took time to identify who was competent to do so. The staff of the National Board have seen written assessments of priests and religious which were of poor quality and reliability, and therefore of very limited use. The problem sometimes was that the Church authority was not clear when commissioning an assessment about what exactly they required to be assessed. Another problem was the decision of Church authorities to defer to the recommendations of the professional assessor and not to submit these to a process of consideration and analysis. At times this constituted an abrogation of their particular responsibility by individual Church authorities.</p>
<p>Over reliance on the recommendations of a professional assessor</p>	<p>The juxtaposition of these two responses seems to suggest ‘damned if you do and damned if you don’t’, but that is not what is being intimated here. There was a period of time within which individual Church authorities needed to gain knowledge about child sexual abuse by priests and religious; some have described this as a steep learning curve. While it is clear that the universal Catholic Church had been aware of clerical child sexual abuse for centuries, this did not mean that individual Church authorities in the 20th century in Ireland knew all that they needed to know about effectively responding to the sexual abuse of children in general, and to the particular needs and challenges of men and women in religion who were abusers. They needed the assistance of professional practitioners who could accurately assess these people, and it took time to identify who was competent to do so. The staff of the National Board have seen written assessments of priests and religious which were of poor quality and reliability, and therefore of very limited use. The problem sometimes was that the Church authority was not clear when commissioning an assessment about what exactly they required to be assessed. Another problem was the decision of Church authorities to defer to the recommendations of the professional assessor and not to submit these to a process of consideration and analysis. At times this constituted an abrogation of their particular responsibility by individual Church authorities.</p>

<p>Absence of behaviour management plans; or even when such plans were made, not effectively monitoring or supervising the behaviour of the respondent</p>	<p>The development of effective behaviour management plans is dependent on having good quality and accurate information and advice, as well as having worked through a thorough process with the respondent. In many instances, these prerequisites were not in place. On other occasions, even when they were, the next step of working out how to effectively direct and monitor the behaviour of a priest or religious who was believed to constitute a risk to children was not taken. The contribution of canon law and the role of the statutory services in supporting and assisting this process were often overlooked.</p>
<p>Not providing adequate support to the respondent</p>	<p>An accused person remains innocent unless proven guilty; this is a foundational principle in systems of law, including canon law. It is of note that the percentage of accused priests and religious who are eventually convicted of child sexual abuse is of the order of 6% - calculated from the figures contained in tranches 6, 7, 8, 9 and 10 of published National Board Reviews. (This of course does not mean that the other 94% of these 557 identified individuals did not abuse a child). All accused priests and religious need a variety of supports, including the provision of civil and canon lawyers, accommodation, an income, health services, and emotional and practical personal support, among others; and Church authorities have a duty of care towards them. Unsupported and isolated respondents are at risk of a developing a range of problems; and there is a greater chance that those who have a tendency to abuse children will do so in these circumstances.</p>
<p>Not communicating sufficiently with those who had a need to know about the behaviour of the respondent</p>	<p>There is a real challenge about sharing information while being compliant with Data Protection legislation; and the National Board is working to try and provide clear guidance to Church authorities on this matter. Confidentiality is an important consideration when the good name and reputation of someone can be endangered; but confidentiality is not the same as secrecy. Some people do need to know that a particular priest or religious is a person of concern in relation to the safety of children if they have responsibilities towards them in the community in which they live, or if that person is ministering in their community.</p>
<p>Individual Church authorities being inconsistent in their responses to child safeguarding concerns; and inconsistencies between Church authorities in how they have handled concerns</p>	<p>There are over 180 Church authorities on the island of Ireland, so some inconsistency in approach was to have been expected. However, the Catholic Church believes itself to be one Church, irrespective of geography. The National Board has been working to try and assist in the development of a one-Church approach to Child Safeguarding and to the introduction of much more consistency in how cases are responded to and managed across the Church. It should not be a matter of chance – a postal code lottery - how respondents are related to and dealt with once a complaint about them is received by their Church authority.</p>
<p>When national policies and guidance were made available, Church authorities did not adopt or implement these</p>	<p>It has been a matter of real disappointment to the National Board that despite all of the work that has been invested in developing, refining and updating policies, standards and guidance, some Church authorities have been inexplicably slow in adopting and implementing these.</p>

### 3. What we know about the dynamics of child sexual abuse

The following definition of child sexual abuse catches most of the important elements of the abuser – child relationship:

' Child sexual abuse is a sexual act imposed on a child who lacks emotional, maturational, and cognitive development. The ability to lure a child into a sexual relationship is based upon the all-powerful and dominant position of the adult or older adolescent perpetrator, which is in sharp contrast to the child's age, dependency and subordinate position. Authority and power enable the perpetrator, implicitly or directly, to coerce the child into sexual compliance.<sup>16</sup>

The dynamics of child sexual abuse generally follow a pattern, which is predictable, in that efforts are made to engage the child, sexual activity follows, and the child is bound to secrecy. If disclosure happens, this can be years after the abuse has occurred, which is the situation that often faces Church authorities who have to respond to an allegation about past abuse.

The engagement phase is often referred to as grooming<sup>7</sup>. The adult has access to the child, and he identifies opportunities when he can be alone with them without raising suspicion. While the first encounter may be accidental, the adult begins to plan for subsequent meetings. Many adults who abuse children first build up a relationship with them. Some of these adults can relate easily and comfortably with children, and the characteristics that enable them to get close to children are the very same characteristics that they employ to abuse them.

Sgroi and colleagues describe the way in which relationships are used by the abusive adult, and the consequences of this for their child victim:

'Thus the dynamics of child sexual abuse

most often involve a known adult who is If the perpetrator can satisfy these needs

6 Sgroi, S.M., Canfield Blick, L. and Sarnacki Porter, F. (1982) *A Conceptual Framework for Child Sexual Abuse*, in Sgroi, Suzanne M. *Handbook of Clinical Intervention in Child Sexual Abuse*. Lexington Books: Massachusetts, p. 9.

7 McAlinden, A.(2013) *Grooming and the Sexual Abuse of Children: Implications for Sex Offender Assessment, Treatment and Management*. Sexual Offender Treatment, Volume 8 Issue 1.

8 Sgroi, S.M., Canfield Blick, L. and Sarnacki Porter, F. (1982) *A Conceptual Framework for Child Sexual Abuse*, in Sgroi, Suzanne M. *Handbook of Clinical Intervention in Child Sexual Abuse*. Lexington Books: Massachusetts, p. 13.

in a legitimate power position over a child and who exploits accepted societal patterns of dominance and authority to engage the child in sexual activity. It is impossible to overemphasize the significance of the exploitation and misuse of accepted power relationships when assessing the impact of sexual abuse on the child.<sup>18</sup>

We know that this impact can be devastating and very long lasting.

Various inducements can be used to draw in the child, including the promise of having fun, or some form of bribe or reward. Through their developing relationship with the child, the adult gets to know what they like and therefore what might be used to attract them into engaging in 'special' activities. If necessary, threats are used, but these are often covert and unspoken.

The several stages of sexual interaction can and do vary, depending on a number of factors, but what they have in common is a progression over time, perhaps, for example, from the adult exposing himself, through fondling and kissing towards attempted penetration, and ejaculation may accompany any or all of these steps. If the perpetrator can manage to encourage the child to actively participate, then it becomes more difficult for the child to withdraw themselves from the relationship, and it also provides the adult with leverage to use in imposing secrecy. Sgroi and colleagues well describe the interaction of these factors:

'The primary task for the perpetrator after sexual behaviour has taken place is to impose secrecy. Why? Secrecy eliminates accountability – the perpetrator is unlikely to wish to be caught and held responsible for the sexual abuse. Secrecy also enables repetition of the behaviour. The perpetrator, in all likelihood, is sexually abusing the child to meet nonsexual needs (Groth and Burgess, 1977). Desiring to feel important, powerful, dominant, knowledgeable, admired, wanted – all of these needs are likely to be recurrent.

easily with a readily accessible child who is unlikely to be very demanding and without the necessity of addressing the mutuality required by an adult relationship, he or she may be powerfully motivated to continue the behaviour. Thus secrecy is essential.<sup>9</sup>

There are a number of misperceptions about adult perpetrators of child sexual abuse, and a deal of confusion needs to be dissipated so that accurate decisions can be made about appropriate responses and interventions. Dr Kelly Richards, an Australian law and criminology academic has written a very accessible short paper in which she clarifies a number of issues<sup>10</sup>. In the conclusions section of her paper, Richards states that:

- not all child sex offenders are ‘paedophiles’. That is, child sex offenders are a heterogeneous group with varying offender profiles;
- children are usually abused by someone they know, although data suggest that strangers comprise nearly one in five perpetrators of child sexual abuse against males;
- not all child sex offenders have been victims of sexual abuse themselves and there are complex relationships between being a victim of child sexual abuse and becoming a perpetrator, which require further research. It is important to recognise that while many offenders report a history of being sexually abused, most victims of child sexual abuse do not become perpetrators later in life;
- while not all child sex offenders have high rates of recidivism, a specific subset— those who target extra-familial male children do frequently reoffend; and
- although it is difficult to accurately determine how many children a child sex offender has already offended against by the time he is detected for an offence, this number varies according to offending profiles and is unlikely to be as high as is commonly assumed. There is, however, a subset of

extra-familial male offenders who abuse high numbers of victims.

A paedophile is someone who has a sexual interest in and attraction to pre-pubescent children; but not all paedophiles act on this. Someone who is interested in and attracted to post-pubescent children in early adolescence is sometimes described as being an ephebophile or hebephile. Other child sexual abusers can be equally sexually interested in adults and in children, but they ‘may act out of opportunity rather than an exclusive sexual interest in children’.<sup>11</sup>

#### **4. What we know about priests and religious who sexually abuse children**

Priests who sexually abuse children are men first and priests second. If they have problems from being the men they are, these problems will assert themselves despite their status as an ordained priest; holy orders is no antidote to the pull to abuse a child. The same point can be made for non-ordained religious.

Reference was made earlier to the 2003 publication, *Time to Listen*, a report of research commissioned by the Irish Bishops from the Health Services Research Centre of the Royal College of Surgeons in Ireland<sup>12</sup>. This detailed study was conducted in three phases using three different but interrelated methodologies. In the second phase the researchers conducted face-to-face qualitative interviews with victims of clerical child sexual abuse (7 people) and members of their families (3); with convicted clergy (8), members of their families (5) and colleagues (4), and with non-offending clergy and lay personnel working within the Catholic Church in Ireland (20). The authors caution against over generalisation from the results of this phase of their research due to the low response rates achieved; but they believe that the insights gained are important and valuable nonetheless. Family members of convicted clergy spoke of their difficulty in trying to balance their abhorrence at what their relative had done

9 Sgroi, S.M., Canfield Blick, L. and Sarnacki Porter, F. (1982) *A Conceptual Framework for Child Sexual Abuse*, in Sgroi, Suzanne M. *Handbook of Clinical Intervention in Child Sexual Abuse*. Lexington Books: Massachusetts, pp. 15-16.

10 Richards, K. (2011) *Misperceptions About Child Sex Offenders*. *Trends and Issues in Crime and Criminal Justice* No 429, p. 7.

11 Richards, K. (2011) *Misperceptions About Child Sex Offenders*. *Trends and Issues in Crime and Criminal Justice* No 429, p. 2.

12 Goode, H., McGee, H., and O’Boyle, C. (2003;1) *Time to Listen: Confronting Child Sexual Abuse by Catholic Clergy in Ireland*. The Liffey Press: Dublin.

with their existing relationship with him. Colleagues of the convicted clergy described 'their sense of shame, disillusionment and abandonment'.<sup>13</sup> Convicted clergy all reported being sent for psychological assessment and treatment. While none had been returned to ministry, some were unhappy with what they experienced as a 'business-like' approach adopted by their Ordinaries towards them.

This Irish research did not seek to examine the factors that led to some men abusing children, but it did generate a wide range of recommendations about what the Catholic Church in Ireland could and should do about the problem of clerical child sexual abuse. One of these recommendations is particularly pertinent to the focus of this paper. In their Discussion and Conclusions chapter, the researchers make the following challenging statement:

'Although a universal policy of automatic dismissal from the clerical state for clergy convicted of sexual offences may suit many dioceses and religious orders, in terms of offering a standard and uncomplicated approach to convicted clergy, such an approach has implications for child protection. Some dioceses currently run risk management and relapse prevention programmes for clergy who have been convicted. These mechanisms provide support and on-going rehabilitation for these clergy while potentially reducing the risk of re-offending. A universal policy involving dismissal of convicted clergy could result in social isolation, financial difficulties and possible re-offending. In addition, a universal policy of dismissal does not fit well with the Christian doctrine of forgiveness. Dismissal should not be adopted as a public relations exercise or to limit legal liability. Instead, where convicted clergy are willing to cooperate with their diocese, on-going support and rehabilitation should be facilitated in the interest of child protection. This may constitute a difficult "path" to negotiate with an already untrusting public. The challenge is to demonstrate that on-going Church support of, and association with, convicted clergy is being undertaken in the

spirit of forgiveness of the abuser and wider community protection rather than as a forum for condoning the actions of the abuser as a fellow Church colleague.'<sup>14</sup>

The largest piece of scientific research undertaken on priests who sexually abuse children was conducted by a six-person research team from the John Jay College of Criminal Justice of the City University of New York who had been commissioned by The National Review Board of the United States Conference of Catholic Bishops. The two reports of the research were published in 2004 and in 2011 under the titles, *The Nature and Scope of Sexual Abuse of Minors by Catholic Priests and Deacons in the United States 1950 – 2002*, and *The Causes and Context of Sexual Abuse of Minors by Catholic Priests in the United States, 1950-2010* respectively. These research reports run to a combined 440 pages, so it would be impossible to summarise here all of the information provided by them. However, for the purposes of this paper, two findings are of interest:

'...few of the priest-abusers exhibited serious pathological, developmental, or psychological characteristics or behaviours that could have led to their identification prior to the commission of their abusive acts. Priests who sexually abused minors did not differ significantly from other priests on psychological or intelligence tests but had vulnerabilities, intimacy deficits, and an absence of close personal relationships before and during seminary. A very small percentage of the priests who had allegations of abuse were motivated by pathological disorders such as paedophilia.'

'The majority of priests who had allegations of abuse against minors were trained in national, mainstream seminaries prior to the 1970s. These seminarians had little or no exposure to a curriculum of what is now understood as "human formation"; the training in self-understanding and the development of emotional and psychological competence for a life of celibate chastity was extremely limited. Many abusers educated

13 Goode H., McGee H., O'Boyle, C. (2003;2) *Time to Listen: Confronting Child Sexual Abuse by Catholic Clergy in Ireland - Executive Summary*. The Liffey Press: Dublin, p. 5.

14 Goode, H., McGee, H., and O'Boyle, C. (2003;1) *Time to Listen: Confronting Child Sexual Abuse by Catholic Clergy in Ireland*. The Liffey Press: Dublin, p. 5.

in early cohorts had a “confused” sexual identity; however, this was not evident in later cohorts. Social changes paralleled the increase of sexual abuse on all cohorts of priests. The incidence of abuse allegations for all pre-1980s ordination cohorts peaked in the late 1970s.<sup>15</sup>

In 2012, a significant piece of Irish Research was produced by Marie Keenan, published under the title *Child Sexual Abuse and the Catholic Church – Gender, Power and Organisational Culture*. Although a much smaller study than that conducted in the United States by the John Jay College team, Keenan’s research is unique in that it looks at the problem in the Catholic Church in Ireland. Keenan does not make any extraordinary claims for what she discovered from her qualitative interviews with nine clerical perpetrators of child sexual abuse, but she does advance a multi-layered theory as a possible explanation of the development of this problem within the Catholic Church. In summarising her understanding in the penultimate chapter of her book, Keenan states that:

'Despite the allure of simple explanations of child sexual abuse by clergy, such as individual deviance or pathology, the research that is presented and drawn upon in this book suggests the need for a broader lens through which to view the problem, one that includes understanding the complex web of relationships, emotions, and beliefs, power relations, theology of priesthood, and current ecclesiology in which child sexual abuse within the Catholic Church came to be enacted...My analysis suggests the need for multilevel interventions if the problem of sexual abuse within the Catholic Church is to be comprehensively addressed.'

Similar to the John Jay College research, Keenan states clearly that paedophilia is not the simple cause of clerical child sexual abuse. In a 2014 essay<sup>16</sup> which draws on her research, Keenan identifies six interrelated factors which have contributed to clerical child sexual abuse in Ireland:

- a. Sexual abuse is best seen as part of a continuum of sexual behaviour of Catholic clergy...
- b. An inadequate theology of sexuality and the absence of a relational sexual ethics for clergy is also part of the problem of sexual abuse of minors by Catholic clergy...
- c. The Church’s theology of scandal also forms part of the context that enabled the abuse by clergy to continue...
- d. Clericalism can also be identified as having played a significant role in the clergy sexual abuse problem...
- e. The interplay of power and powerlessness contribute to the genesis of the problem of sexual abuse for those clergy who became abuse perpetrators...
- f. Finally, a moral education that is overly intellectualised and technical and focuses mainly or only on theoretical or abstract problems, does not equip its students to make good moral judgements.

*Child Sexual Abuse in the Catholic Church - An Interpretive Review of the Literature and Public Inquiry Reports*<sup>17</sup> is a recent 384-page Australian review of most of the research and investigation of clerical child sexual abuse in the developed world and is a very important addition to the literature. It presents six explanatory theoretical models for clerical child sexual abuse that have been developed and explores each of these, which include the model developed by Marie Keenan. This document is destined to become a ‘go-to’ reference within the Church for those who want to develop a greater understanding of this problem. It is far too detailed to attempt to summarise here, and rather than having an accessible Executive Summary, the report has a Chapter Summary at the end of each of its 11 chapters. The following observation is made in the summary at the end of Chapter 8, *Understanding Child Sexual Abuse in Catholic Settings: Theological and Pastoral Parameters*:

'While there were many similarities with general child sex offenders, the narcissistic distortions, neutralising techniques and denial mechanisms of the priest and religious offenders had a different and additional

15 John Jay College (2011). *The Causes and Context of Sexual Abuse of Minors by Catholic Priests in the United States, 1950-2010*. United States Conference of Catholic Bishops: Washington DC, p. 5.

16 Keenan, M. (2014) *Sexual Abuse and the Catholic Church*, in Inglis, T. (eds.) *Are the Irish Different?* Manchester University Press: Manchester.

17 Cahill, D., Wilkinson, P. (2017) *Child Sexual Abuse in the Catholic Church*. Centre for Global Research: Melbourne.

character resulting from their theological and pastoral training. Aside from their lack of understanding of children and the lasting damage that their abuse was causing, their dismissal and minimisation of the impact on the child were framed within theological principles and pastoral practice in corrupting and trivialising the confessional process. Their misuse of their clerical power and their narcissistic self-absorption generated severe consequences for their celibate calling as men whose intimacy needs were not being met and who were sexually deprived<sup>18</sup>

In the summary of the following chapter (The Priest and Religious Perpetrator: Their Psychological Profile and Ecclesiastical Cultural Context), the researchers describe the stereotypical family milieu in which many priests and religious perpetrators spent their childhoods; their lack of sexual knowledge and experience; their education and formation in single sex institutions; their social isolation and their lack of adult intimacy; their simplistic theological understanding and commitment to obedience; and their emotional exhaustion and vulnerability- all of which they explain contributed to their participation in the abuse of children.

The empirical studies correlated their emotional exhaustion, stress and possible burnout with their offending. This especially occurred in those male and female religious where, according to the several inquiries into Catholic residential care, the physical punishments had a sado-masochistic overtone. The capacity to abuse was facilitated by their easy access to children in orphanages and farm schools. In the parishes, the changing lifestyle of priests with one-priest presbyteries, no resident housekeeper, and after World War II access to cars, increased the situational opportunity to groom and abuse the powerless victims. Unlike the religious priest, the diocesan priest was largely held unaccountable to anyone on a regular or on-going basis, and his autonomy and independence had become greater from the 1940s and 1950s. With the freedom given by the car and the

empty presbytery providing an unmonitored situations, and almost unfettered access to children, the offending priests found it easy to sexually assault young victims in secrecy. The offenders also made use of cognitive distortions, bargaining with an all-seeing, patriarchal God, and availing themselves of the cheap forgiveness of the confessional to assuage the guilty consciences. The historical and psychological evidence indicates that the 'best' of consecrated celibacy may provide too much of a risk to the endangerment of children.<sup>19</sup>

Most of the research conducted has focused on male perpetrators. The staff of the National Board have encountered a small number of concerns and allegations about female religious engaging in the sexual abuse of children. While most of these when investigated were deemed to be unfounded, two were brought before the courts on the direction of the Director of Public Prosecutions. The overriding issues related to female religious highlighted in National Board Reviews have been allegations of physical abuse, emotional abuse and neglect, as well as instances where children in their care were not protected by female religious from abuse by older children or young adults, and by priests. In total, the National Board has established through the Review process that **346** allegations of abuse of all types have been made against **95** Religious Sisters.

There is a small but growing (mostly American) literature on the phenomenon of sexual abuse by female religious. One related 1998 US research study, *A National Survey of the Sexual Trauma Experiences of Catholic Nuns*,<sup>20</sup> suggests that up to 40% of American nuns have themselves been victims of sexual harassment and abuse, by men and women, and in many cases after joining their religious order, with significant impacts reported on their mental health and spirituality. These experiences, if not processed and recovered from, can impact on the ability of these women to empathise with others and to provide children with the level of protection that they require and deserve.

18 Cahill, D., Wilkinson, P. (2017) *Child Sexual Abuse in the Catholic Church*. Centre for Global Research: Melbourne, p.237.

19 Cahill, D., Wilkinson, P. (2017) *Child Sexual Abuse in the Catholic Church*. Centre for Global Research: Melbourne, pp.264-265.

20 Chibnall, J. T., Wolf, A., and Duckro P. N. (1998) *A National Survey of the Sexual Trauma Experiences of Catholic Nuns*. Review of Religious Research. Vol. 40, No. 2: pp. 142-167.

## 5. Reference in policy and guidance to the needs of respondent priests and religious

There have been three guidance documents iterated within the Catholic Church in Ireland in relation to the proper response to concerns, suspicions and allegations of child sexual abuse against priests and religious. In the 1996 document, *Framework for a Church Response*, a very compassionate tone is struck in discussing priests and religious who are accused of child sexual abuse:

'A Church response to an allegation of child sexual abuse against a priest or religious must include respect for the rights of the person who has been accused. In particular, with due regard to the paramount need to protect children, care should be taken that the good name and reputation of a priest or religious who is accused is not unjustly tarnished. The fundamental presumption of innocence must be upheld and respected, unless the contrary has been established.

Careful attention must be given also to the spiritual and emotional wellbeing of the accused person. This must extend throughout the period of the investigation of an allegation and beyond whatever determination is made in regard to it.

Further, if it is found that an accusation is without foundation, extreme care is to be taken that the person wrongly accused is completely reinstated in good standing and that all blot or stain is entirely removed from his or her character and good name.<sup>21</sup>

The 2005 guidance document, *Our Children, Our Church*, emphasises the need to utilise fair procedures and natural justice in dealing with respondents, as well as allowing them the presumption of innocence. In outlining the dual responsibility of the Church to respond to the need to safeguard children and to deal with accused priests and religious, this document says at 8.5 that, *Dealing with the person accused: the Church organisation must ensure that proper procedures are*

followed in relation to the person against whom the complaint has been made, in line with both fair procedures and natural justice. The accused person should be treated as innocent unless the contrary is established. Later, at 9.2.1, *Consultation with civil authorities*, it states that, a person against whom an allegation is made should in natural justice be informed as soon as possible. Further sections of the document deal with the handling of false or mistaken allegations, where the emphasis is rightly on efforts to restore the good name of the wrongly accused person and assisting them to re-enter ministry. In Chapter 13, *Our Children, Our Church* addresses the needs of the accused person, their family members and their colleagues, and does so with clarity and thoughtfulness.

The 2009 *Standards and Guidance* document, while establishing Church-wide standards for the first time, deals with the care of respondents in a relatively procedural manner. It does however emphasise the importance of the Adviser to the Respondent<sup>22</sup> and suggests that they should be particularly alert to the sense of isolation and vulnerability which a respondent may experience following an allegation of this nature. In Resource 15 in the 2009 document, it is strongly stated that: There can be no excuse for a respondent to be left uninformed and 'in limbo' indefinitely. It reiterates the necessity of the presumption of innocence and the right of the respondent to their good name. Finally, it clarifies that Respondents shall receive normal remuneration and other entitlements while they are standing aside. They shall be provided with an appropriate place to live and, where possible, given some suitable activity.

In the Introduction section of the 2016 *Policy and Standards*, there are five commitments made by the Catholic Church in Ireland to keeping children safe through:

1. Mandatory reporting to statutory authorities of suspicions, concerns, knowledge or allegations that a child is being or has been abused;
2. Caring for the welfare of all children involved in Church activities, and of the adults

<sup>21</sup> Irish Catholic's Bishops' Advcosry Committee on Child Sexual Abuse by Priest and Religious (1996) *Framework for a Church Response*. Veritas: Dublin, p.15.

<sup>22</sup> The title of the support person to the respondent is spelled 'Adviser' and 'Advisor' in different documents.

who work with them;

3. Responding appropriately to child protection suspicions, concerns, knowledge or allegations, and to the people who bring these to the attention of Church personnel;
4. Caring pastorally for those who have suffered abuse, and other affected persons;
5. Caring pastorally for those implicated in the perpetration of abuse, and other affected persons.

These are related and not mutually exclusive undertakings; and through their conscientious implementation, Church authorities will make a huge contribution to correcting the mistakes and rectifying the dangerous practices of the past, and to making the Catholic Church in Ireland a safe place for children, their families and their clerical and religious ministers. In the section that explains the Foundations on which the 2016 document is based, there is a paragraph, Caring pastorally for respondents and other affected persons, which gives the following commitments:

This Church body in its response to suspicions, concerns, knowledge or allegations of child sexual abuse will respect the rights under civil law and canon law of an accused cleric or religious or other Church personnel. A legal presumption of innocence will be maintained during the statutory and Church inquiry processes. As the processes develop, additional assessment, therapy and support services may be offered to the respondent.

The Church authority will take responsibility for ensuring that any cleric or religious who is considered to constitute a danger to children is managed according to a risk management plan.

All requisite steps will be taken to restore the good name and reputation of anyone who has been wrongly accused of abusing a child.

Respondents belong to families and diocesan or religious communities. The Church authority will be mindful of the need to provide support to members of families and communities affected by the respondent's changed situation<sup>23</sup>.

This latest document introduces a dedicated Standard 4 on the Care and Management of the Respondent, and it is complemented by the 55-page web-based Guidance to assist with its implementation. Standard 4 has four Indicators of compliance:

4.1 The Church authority has access to appropriately trained personnel – lay, religious or clergy – whose clearly defined roles are to listen to and represent the pastoral needs of the respondent. This is done in consultation with the respondent.

4.2 The Church authority has arrangements in place to inform the respondent that an allegation has been received about them, and has a procedure for deciding whether an interim management plan needs to be put in place for the respondent.

4.3 When statutory authority investigations and assessments have been completed, the Church authority resumes the preliminary investigation/collecting the proofs as provided for in Canon 1717 (1)-(3) (cleric) and Canon 695 (non-ordained religious).

4.4 The Church authority has in place suitable arrangements for the monitoring of a respondent, where there is a case to answer, until (and if) the Church authority no longer has responsibility for monitoring the respondent.<sup>24</sup>

<sup>23</sup> NBSCCCI (2016) *Safeguarding Children: Policy and Standards for the Catholic Church in Ireland*. Veritas: Dublin, p. 11.

<sup>24</sup> NBSCCCI (2016) *Safeguarding Children: Policy and Standards for the Catholic Church in Ireland*. Veritas: Dublin, p. 17.

## 6. Pastoral care of respondent priests and religious

It is not necessary to reproduce in this paper all of the detail contained in the 2016 Policy and Standards, and the accompanying web-based Guidance (these can be readily accessed at [www.safeguarding.ie/images/Pdfs/Standards/Safeguarding%20Children%20Policy.pdf](http://www.safeguarding.ie/images/Pdfs/Standards/Safeguarding%20Children%20Policy.pdf) and [www.safeguarding.ie/images/Pdfs/Standards/Standard%204.pdf](http://www.safeguarding.ie/images/Pdfs/Standards/Standard%204.pdf)), although some of this will be referenced and expanded on.

The literature reviewed earlier in this paper has tended to speak about priests and religious who are proven to be guilty of or who have been convicted of the sexual abuse of a child. In one sense, such cases may in fact be the most straightforward to deal with procedurally, while also acknowledging that all such cases are emotionally challenging for those within the Church who are charged to manage them. In reality however, most concerns, suspicions and allegations of child sexual abuse by priests and religious do not result in a clear finding of guilt or in a criminal conviction, at least in civil law. It is necessary for the Church authority to tailor her/his response to each individual case, knowing that no two cases are the same, that no case is in any way 'easy', and that written procedures, while providing guidance, do not release them from their personal responsibility to reach a determination.

The expectation is that all concerns, suspicions and allegations will be notified on behalf of the Church authority by the DLP (with the mandated person) to the police and the statutory child protection services under the terms of current legislation in both jurisdictions on the island of Ireland. This does not always result in a police investigation and/or a child protection assessment being conducted; the two statutory agencies make their own decisions in this regard, so Church personnel are not required and should not attempt to conduct an investigation and/or assessment prior to making the notification.

The priest or religious who is the person of concern – the respondent - has the right to know what has been asserted about them, and that a notification has been made to the

statutory authorities, as these can affect their good name and reputation. They need to have every opportunity to make the best possible case in reply to what has been asserted about them; and they have a right in natural justice to the assurance that all procedures will be followed in a fair and impartial (unbiased) manner.

The Church authority needs to establish as quickly as possible whether the relevant police force has any objection to the respondent being informed of what has been said about them, in order to avoid inadvertently interfering with the criminal investigation.

Because two legal systems, civil criminal law and Church canon law, have to be employed, it is essential to apply the correct criteria and definitions under each. It is also essential that both legal systems are utilised in a consistent manner by Church authorities. The Reviews conducted by the National Board have well illustrated the unjust and unsatisfactory outcomes for complainants, respondents, and indeed for the Church itself, of failures to understand and to initiate proper criminal and canon law procedures at the right time and in the correct manner. Both systems are founded on the principles of due process, and if they are not used, due process is denied to those who are entitled to enjoy the benefits of it.

Children First, 2017 (ROI), states in Chapter 2 that reasonable grounds for a child protection or welfare concern include any concern about possible sexual abuse. While Chapter 3 of the same guidance sets out clearly the grounds for a mandated report; but to simplify matters, it is probably best to take account of the following guidance on page 15 of Chapter 2:

'If you have a concern about a child, you should make a decision as to whether the concern meets the threshold for a mandated report under the Act or not. If you are satisfied that this threshold has been reached, you should clearly identify on the report that it is a mandated report made under the Children First Act 2015. Concerns that do not reach the threshold for mandated reporting should still be reported under this Guidance,

if a reasonable concern about the welfare or protection of a child exists.<sup>125</sup>

In Northern Ireland the relevant guidance document is *Co-operating to Safeguard Children and Young People in Northern Ireland, 2017*, and this describes in Chapter 6 the process of raising a concern:

Anyone with an immediate concern about the safety or welfare of a child or young person should contact the PSNI without delay so that an emergency protective response can be made. A referral may also be made directly to the PSNI where a crime is alleged or suspected.

Anyone with a concern about the safety or welfare of a child or young person in circumstances other than an emergency should contact the HSCT Gateway Service in the relevant HSCT. This includes parents or family members seeking help, concerned friends and neighbours, professionals and individuals from statutory or voluntary organisations. Even where individuals are unsure about whether a concern needs to be referred, they can contact the HSCT to obtain advice. Advice can also be obtained from the NSPCC helpline. Referrals outside normal working hours should be made to the Regional Emergency Social Work Service (RESWS)<sup>26</sup>

In canon law, the criterion for initiating an investigative process is whether the information obtained has a semblance of truth, that it at least seems true; this is taken to mean that it has basic credibility and requires a closer look, and that it is not manifestly false or frivolous. It is most likely that any matter notified to the statutory authorities has a semblance of truth. Once the Church authority is satisfied that this first threshold is met, and if the person of concern is a priest, then he/she initiates by written decree a preliminary investigation in accordance with c. 1717<sup>27</sup> and appoints a suitable person to establish the facts and circumstances, and the imputability of the offence. If the person of concern is a non-ordained religious, a different canon,

c. 695<sup>28</sup> is utilised where the procedure is initiated by written decree by the Church authority (Provincial) and is one of collecting the evidence concerning the facts and the imputability of the offence. Whichever canon is being used, the Church authority by written decree immediately pauses or suspends the canonical inquiry to allow any statutory investigation to take place.

To illustrate how complex the follow-up of concerns, suspicions and allegations of clerical and religious child sexual abuse is, the table on page 17 sets out most of the range of possibilities that can arise; but these can be in numerous combinations

<b>Complainant</b>	Known	Unknown	
<b>Respondent</b>	Named	Unnamed	
<b>Complainant and Church body engagement</b>	Wants engagement	Does not want engagement	
<b>Complainant and Police involvement</b>	No	Yes-but no statement	Yes and statement
<b>Complainant and Social Services involvement</b>	No	Yes	No
<b>Criminal court case (which may not reach a conclusion)</b>	No	Yes-no conviction	Yes-conviction
<b>Civil Court case (which may not reach a conclusion)</b>	No	Yes-no award	Yes-award
<b>Canonical process Where the complainant...</b>	Will assist	Will not assist	

For instance, and dealing only with respondents who are identified and who are still alive at the time of reporting, the following (not exhaustive) combinations of circumstances are possible:

25 Department of Children and Youth Affairs (2017) *Children First National Guidance for the Protection and Welfare of Children*. Government Publications: Dublin.

26 Department of Health (2017) *Co-Operating to Safeguard Children and Young People in Northern Ireland*. Department of Health: Belfast.

27 Canon Law Society Trust (1983) *The Code of Canon Law*. Canon Law Society Trust: Vatican City.

28 Canon Law Society Trust (1983) *The Code of Canon Law*. Canon Law Society Trust: Vatican City.

- An allegation is made against a named living priest / religious by someone who will not identify themselves;
- An allegation is made against a named living priest / religious by someone who identifies themselves, but who states that they do not wish to pursue the matter in any way, either through the Church body, or through the statutory services, or through the Courts;
- An allegation is made against a named living priest / religious by someone who identifies themselves, and who is prepared to engage with the Church body, but who states that they do not wish to be interviewed by the police or to be involved with the statutory social services;
- An allegation is made against a named living priest / religious by someone who identifies themselves, and who is not prepared to engage with the Church body, but who states that they wish to be interviewed by the police, but who then refuse to make a signed statement to the police, and does want to be involved with the statutory social services;
- An allegation is made against a named living priest / religious by someone who identifies themselves, and who is not prepared to engage with the Church body or with the statutory services, but who states that they will pursue the matter through taking a civil case against the priest / religious and the Church body;

In none of these five circumstances is it possible to conduct a criminal investigation, and in only one is a complainant a possible participant in a Preliminary Investigation. But in all of these same circumstances, as well as in all of the other possible circumstances that can arise, the rights of the named respondent have to be protected.

The respondent needs to be invited to attend a meeting with their Church authority, and for it to be explained to them that the DLP would also be in attendance. This invitation should be extended personally by the Church authority, in a sensitive and supportive manner. The respondent is likely to become quite anxious to receive such an invitation 'out of the blue', and so there should not be a long wait to meet once it is received. They

should be informed before the meeting that they can be accompanied to it by another person for their own support. They need to be offered the services of a canon lawyer and their right to access civil law advice, if there is to be a criminal investigation or civil action; and they need to be offered the services of an Advisor whose role description is outlined to them. All of these supports should be offered to the respondent before he/she is met by their Church authority, as they can be unfairly disadvantaged without their availability.

At the meeting once arranged, a number of matters have to be clearly explained to the respondent. These include that they have the right to remain silent and not to risk incriminating themselves. The Church authority has to ensure that the emotional vulnerability of the respondent is not manipulated to elicit a startled and ill-considered admission of guilt. This right to silence is paralleled in constitutional and criminal law:

'The right to silence which includes a privilege against self-incrimination is closely related to the presumption of innocence. If it is the role of the prosecution to prove that an offence has been committed then flowing from that it should not be the responsibility of the accused person to facilitate the prosecution by being forced to speak.'<sup>29</sup>

This meeting is about breaking bad and unwelcome news to the respondent, something which medical practitioners have developed guidance about <sup>30</sup>they often have to tell a patient about a poor prognosis or a relative about the death of a loved one. The following points are important:

- The Church authority needs to remember that the communication of bad news, in this case an allegation, is more than the communication of matters of fact; it has life altering implications;
- Sensitivity to the unique circumstances of the respondent is important. The need and availability of support from colleagues and/or others should be assessed and identified; and
- The emotional labour of breaking bad news

<sup>29</sup> McAlee, C. (2017) *Fundamental Principles and Concepts of Criminal Law*. Available at [www.ibat.ie/downloads/Sample\\_notes/Legal%20Studies/Criminal%20Law%20-%20Clodna%20McAlee.pdf](http://www.ibat.ie/downloads/Sample_notes/Legal%20Studies/Criminal%20Law%20-%20Clodna%20McAlee.pdf) (Accessed on 20th November 2018).

<sup>30</sup> Dean, A. and Willis, S. (2016). *The use of protocol in breaking bad news: evidence and ethos*. *International Journal of Palliative Nursing* 22 (6), 265-271.

should be recognized by the Church authority and by the Catholic Church in Ireland in general. Every Church authority should have training in relation to communicating bad news, and psychosocial support for them should be considered, and be available if needed.<sup>31</sup>

At this meeting, the respondent needs to be given, verbally, enough detail about the suspicion, concern or allegation and about the person making it in order to be able to offer a response, if they choose to do so. The meeting should be minuted by the DLP, or another designated scribe whose attendance had been notified in advance to the respondent.

After the meeting, a dated, written record of the meeting should be forwarded to the respondent for signing. This record should detail what they have been informed of, and any response they may have given to this at the meeting. They should also receive written information about the Church procedures that will be followed by the Church authority and the child safeguarding personnel until the matter is resolved. While the respondent will have been offered the support of an Advisor prior to the meeting with the Church authority, time can be given following the meeting to discuss in more detail who they would find acceptable to act in this role, and what their functions would be.

Our Children, Our Church was very instructive in identifying the needs of the accused cleric or religious:

'A person who has been accused of child abuse will require emotional, spiritual and practical support. They may be subject to a range of feelings including fear, isolation, guilt, anger, depression and denial. They may have particular concerns in regard to practical issues such as future income and accommodation. For these reasons, it is important that the person accused receives reassurance that the necessary emotional, spiritual and legal supports will be provided... This includes the offer of a Support Person and access to professional counselling, if requested...'<sup>32</sup>

At this stage of the process, the Church authority is dependent to a degree on the decisions and actions of the police and statutory child protection services. However, experience tells us that there can be very significant delays in these non-Church civil processes, amounting to years in some cases. The old adage that Justice delayed is Justice denied applies to the respondent as well as to the complainant, and it is quite proper for the Church authority to maintain pressure on the statutory agencies to give individual cases attention and to reach a decision, sooner rather than later. In this regard, the Church authority needs to be proactive rather than passively waiting for a determination by others; this is an expression of their duty of care to the respondent.

In the past, Church authorities moved respondents to a different geographical location in the hope that this would resolve the problem. At the other end of the spectrum, and following some very painful experiences, many Church authorities have too quickly removed respondents from ministry without sufficient factual evidence of wrongdoing having been adduced. Care has to be taken that an automatic following of procedures does not preclude the use of (professional) judgement by the Church authority, with the advice and guidance of their DLP, and of whatever advisory group they use. Once it has been established that a semblance of truth exists, there are a number of decisions that the Church authority needs to make concerning the respondent while the statutory agencies are conducting their investigation (police) and assessment (child protection services) work. The Church authority has to make their own initial assessment of risk and of need, with the best advice and guidance available to them; they should establish whether there is any likelihood that the respondent poses a risk or threat to the welfare of vulnerable people, including children. The Guidance for indicator 4.2 available on the National Board's website – (including 4.2B Template 1: Example Risk Assessment Framework; and 4.2B Template 2: Example Risk Management Update Tool) - can be used to give a brief overview of the risks associated with the case. The decision

31 McCarthy J, Donnelly M, Dooley D, Campbell L, Smith D (2010). *An Ethical Framework for End-of- Life Care, Module 2*. Irish Hospice Foundation: Dublin.

32 Irish Catholic Bishops' Conference (2005) *Our Children Our Church*, Vertias: Dublin, p. 75.

following this brief assessment may be that no change in the respondent's situation is required; stepping aside from ministry should not be seen as the only and inevitable decision to be reached. Indeed, the National Case Management Committee of the National Board has considered a number of cases where it appeared to it that the respondent was stepped aside from ministry too soon, in situations where no particular risk had been established. Church authorities themselves need to be assisted to develop a tolerance of some risk. Without this ability, it is much less likely that the Church authority will be able to carefully weigh up, promote and support the rights and needs of respondents.

This initial Risk Assessment can lead to the creation of an Interim Management Plan, if appropriate. Essentially, if the initial Risk Assessment has identified a level of risk that has to be managed by the application of some level of restriction on the respondent, then the following areas should be considered; whether the respondent remains in their public ministry; whether they can have contact with children; whether they can wear clothing that marks them out as a cleric or religious; whether they can remain living in the same accommodation; and whether someone should be given the responsibility to monitor their movements and behaviour. It is often stated that the respondent should have no contact with the complainant or their family. Such restrictions can be applied by a Church authority as administrative acts in canon law (canons 35 through 47) and as such are not considered to be a punishment for an offence. An example of such a plan is provided in the Guidance for indicator 4.2 on the National Board's website as 4.2B Template 3: Example Interim Management Plan. Interim Management Plans have to be reviewed at agreed intervals, specified in the document. Under canon 48, the Interim Management Plan can be issued by decree, but this is not always necessary.

If it has been decided that the respondent should step aside from their ministry, the guidance for how this should be managed is available in the Guidance for indicator 4.2 on the National Board's website as [Template 4.2C Guidance on Leave from Sacred Ministry](#).

<sup>33</sup> NBSCCCI (2018) *Guidance for Standard 4*. Available at [www.safeguarding.ie/images/Pdfs/Standards/Standard%204.pdf](http://www.safeguarding.ie/images/Pdfs/Standards/Standard%204.pdf) (Accessed 20th November 2018), p. 21.

This is a carefully worded and detailed piece of guidance that if followed can be of great assistance to a Church authority who is contemplating such a decision in relation to a respondent. The presumption of innocence is still employed at this stage of the process:

' While the allegations are being investigated, the presumption of innocence applies. Leave from sacred ministry is therefore a precautionary measure. It does not impute guilt, nor should the action (of leave from ministry) per se prejudice any statutory or canon law process.<sup>133</sup>

Whether the respondent is subject to restrictions or not, and whether they are a priest or a religious, they will need varying degrees of support, depending on the impact of the allegation(s) on them. The responsible Church authority in exercising their duty of care needs to consider whether the respondent could benefit from counselling, medical intervention and/or additional personal and/or financial support. They should maintain contact with their DLP concerning the needs of the respondent, as the DLP is the person who maintains the link between the Advisor and the respondent and therefore would be expected to have this information.

There has been some confusion within the Church about the importance and merit of professional assessment of respondents, often in a residential setting in other jurisdictions such as the UK, USA and Canada. Such an assessment may indeed have something of particular value to offer to the management of a case, but the commissioning of such a potentially intrusive measure should be very carefully considered. The respondent must give explicit, informed and absolutely free consent before undergoing psychological investigation. A specialist assessment will not be able to provide any information on the credibility of the allegations made by the complainant; so, for instance, an assessment of credibility needs to focus on the complainant and corroborative evidence, not on the respondent, as far as the responsibilities of the Church are concerned. Or, if an assessment of risk posed by the respondent to children in the future is what

is contemplated, this cannot be effectively undertaken if the respondent denies that they have harmed a child in the past or where the evidence does not conclude in a finding of fact. Or, asking an assessment service to give a conclusive statement as to whether a referred respondent is a paedophile may result in a negative finding, but that respondent may well pose a future risk to a teenage girl.

The Church authority needs to seek advice from their DLP and advisory group about whether an assessment is required, for what purpose, and at what stage in the process. The Church authority may for instance wish to obtain a general psychological assessment of a respondent's cognitive functioning; or a specific mental health assessment to determine whether the respondent has a psychiatric illness or condition, or has an addiction; or a neurological examination to establish whether the respondent has damage to their nervous system, which might explain a noticeable change in their behaviour; or an assessment of a respondent's suitability for future ministry. All such assessments are legitimate professional procedures when sought in the right circumstances for good reason from a suitably qualified practitioner; and it is very unlikely that one particular service or individual can provide all of them. In seeking such an assessment, the Church Authority must be mindful of the respondent's rights and his good name and that he remains innocent until proven guilty.

In discussing the potential need for a specialist assessment, the Church authority has to consider the ethical issues of informed consent, respecting the individual rights and autonomy of the respondent, and the ownership of written assessment reports; data protection issues also arise in relation to written documentation, both that supplied by the Church authority to the assessment service, and that which comes to the Church authority from the assessment service.

Respondents can be invited to participate in an assessment, but they cannot be compelled to do so; and their refusal to undergo an assessment cannot be cited as evidence that 'they have something to hide'. The right to

refuse to take part in a procedure is not the only way in which the respondent's right to autonomy can be asserted; they also have the positive right to be involved in decisions about their treatment; and great care also needs to be taken in relation to any decision that can lead to a respondent's status being converted into that of a vulnerable patient.

## **7. Due Process for the Respondent**

The criminal laws in both jurisdictions in Ireland have well-established and long cherished procedures for investigation, prosecution and court determination of allegations against individuals, which are based on the twin principles of Due Process and Natural Justice. These essentially require that the procedures used are objectively fair; that they are free from bias and partiality, and that no person should be judged without a fair hearing in which they are given the opportunity to respond to the evidence against them. Respondents should have the assistance of a solicitor, paid for by their Church body, to protect their interests in the criminal process. This civil legal assistance is perhaps more readily available to members of religious orders than it is to diocesan priests, but it should be offered to all respondents by their Church authority.

As has been referred to earlier, only a very small percentage of allegations of criminal behaviour against clerical and religious respondents related to the sexual abuse of children lead to a criminal conviction; and not all criminal convictions lead to imprisonment.

Evidence from cases to date would conclude that the following outcomes are more usual

- If a complainant does not make a written statement of complaint, the allegation cannot be investigated in full and a prosecution of the respondent is therefore highly unlikely.
- A decision for 'No further action' may be reached, which either means that the police do not believe that there is sufficient evidence to show that a crime has been committed by the respondent, and so do not forward an investigative file to the relevant state prosecution service; or the state prosecution

service believes that there is not enough evidence to secure a criminal conviction against the respondent.

- A criminal prosecution is pursued, where the state prosecution service believes that there is enough evidence to secure a conviction and directs that a criminal case is presented in court. However, having considered the case presented, the Judge can decide not to proceed to the making of a final judgement; or the Judge (or jury in a higher court) can conclude that the person charged is 'not guilty', and they are free to go.

At any stage in this process, a respondent may make an application to a higher court for a Judicial Review, and if a finding is made in their favour, this may result in a discontinuance of the criminal process.

Respondents have constitutional and legal rights, and so is not guilty of any crime unless they are found to be guilty by a court; or unless they admit to having carried out the abuse, also an infrequent occurrence. Until or unless this happens, they cannot be presumed to be guilty.

A lot of respondents believe and contend that because they have not been convicted of a criminal offence and have not admitted to a criminal offence, therefore they have a right to be allowed to continue with their life and ministry as these had been before the allegation had been received. While this attitude is understandable, there are three other processes that also have to be concluded before determining a respondent's right to continuing in ministry, although the sequencing of these does not have to be consecutive.

Statutory Risk Assessment: It is the responsibility of the statutory child protection services to assess whether a risk of harm to children is posed by an identified person. This is one reason why Church authorities are expected to notify the relevant statutory child protection service of an allegation against a (named) respondent. The Church authority needs to ascertain whether the statutory service intends to conduct such an assessment – they often decline to do so for a variety of reasons – and, if so, when this

process will be concluded. The Child and Family Agency, Tusla defines Risk Assessment as an assessment focused on the risk of harm to a child, carried out using validated actuarial tools to assist professional judgement<sup>34</sup>. The Tusla September 2014 document, Policy & Procedures for Responding to Allegations of Child Abuse & Neglect<sup>35</sup>, explains the very many protections for respondents that are maintained by that agency in its engagement with alleged abusers (pages 22 to 34 inclusive). An extremely careful procedure is followed to ensure that the constitutional rights of respondents are not impaired in any way.

In Northern Ireland the Public Protection Arrangements Northern Ireland (PPANI) through the network of Local area Public Protection Panels (LAPPP) conducts the statutory risk assessment. Each LAPPP has core representatives from the police, probation and social services; and in individual cases there can be representatives from any of the other agencies who have a contribution to make.

Civil Litigation: The third non-Church process in which a respondent may be required to participate is when a complainant chooses to sue them through the lodging of a civil claim against them. While the judgement of the court in such instances cannot be one of criminal conviction, a finding can be made that the respondent is liable for injuries suffered by the complainant, on the basis of which an award of financial damages can be made to the complainant to be paid for by the respondent. Quite often the Church body is informed that such a civil claim has been lodged against it, its Church authority, the respondent, and sometimes others, such as the Primate of All Ireland; but it is very difficult to either estimate how long such proceedings might take, or to apply pressure to expedite them. There are a significant (but not computed) number of clerical and religious respondents on the island of Ireland who are awaiting the conclusion of civil litigation and whose lives and ministries are being affected by this state of affairs. Similar to the criminal law, civil law, including Tort law, attempts to balance the interests of the plaintiff (complainant) and those of the defendant (respondent), both of whom have legal representation to protect their interests.

34 HSE (2011) *Child Protection and Welfare Practice Handbook*. Health Service Executive: Dublin, p. 4.

35 Tusla (2014) *Policy and Procedures for Responding to Allegations of Child Abuse and Neglect*. Government Publications: Dublin.

Depending on their circumstances, clerical and religious respondents often have their legal costs met by their Church body.

Canonical Process: The Code of Canon Law is quite specific about the need to follow fair procedures, at canons 220 and 221 and to protect the good name and reputation of all of Christ's faithful. Canon 281 §1 states that:

'Since clerics dedicate themselves to the ecclesiastical ministry, they deserve the remuneration that befits their condition, taking into account both the nature of their office and the conditions of time and place. It is to be such that it provides for the necessities of their life and for the just remuneration of those whose services they need.'<sup>36</sup>

Canon 619, in setting out the responsibilities of Superiors of Religious Institutes states, among other things that they are to give the members opportune assistance in their personal needs. Respondents therefore are entitled to the protection of their good name and to their livelihood during the canonical processes that have to be initiated by their Church authority, once a semblance of truth has been accepted regarding the concern, suspicion or allegation that has been received.

If an allegation has been proven to be true, either through the admission of the respondent or through a finding of a criminal court, then the Church authority will already have sufficient information to notify to the Congregation for the Doctrine of the Faith in Rome. He/she incorporates this information into a written report to the CDF, and authors their votum; and these are sent together to the CDF. The National Board's Guidance for indicator 4.3 has at 4.3C Template 1 a pro-forma for the Church authority's submission to the CDF. No additional Preliminary Investigation (clerics) or collection of evidence (religious) is needed in such situations.

Once the Church authority has satisfied themselves that proceeding canonically will not interfere with or in any way compromise the investigative and assessment work of the

statutory agencies, they should decree that a Preliminary Investigation will be conducted, in the case of a cleric (canon 1717), or that evidence will be collected, in the case of a religious (canon 695 §2). The purpose of these activities is to establish whether a delict (a canonical offense or crime) has likely been committed, and whether this can be ascribed to the respondent – imputability. The respondent has the right of defence in such a process, which includes the right to know what the allegations are that have been made and who has made them; the right to identify potential witnesses; the right to present other relevant evidence; and the right to offer or not offer their own testimony.<sup>37</sup> The Church authority has to decide with the information made available to them whether the respondent has a case to answer (this is not a canon law term, but it accurately conveys the core of what the Church authority has to decide).

If this local investigative process does not establish that the respondent has a case to answer, or finds that the case is manifestly false and/or frivolous, then no other canonical process is required or allowed. The Church authority then closes the preliminary process by written decree, and they inform the respondent that they remain in good standing. If the respondent has been out of ministry during the process, they have to be reinstated. This may not happen immediately, but the Church authority has to have very good reason to considerably delay reinstatement. It is understandable that the respondent would want to quickly put the distress of the allegation and subsequent investigation behind them, but there are some matters that may have to be carefully considered, as set out in Guidance for indicator 4.3 at 4.3B Guidance When Preliminary Investigation Finds there is no Case to Answer or that the Allegation is Manifestly False or Frivolous (Return to Ministry):

1. Once it has been established that there is no case to answer, and that all state authority investigations or prosecutions are concluded,

<sup>36</sup> Canon Law Society Trust (1983) *The Code of Canon Law*. Canon Law Society Trust: Vatican City.

<sup>37</sup> DiNardo, L. A., (2010) *Canonical Penal Procedures*. Available at [https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwjw9ajZ7ePeAhVP\\_KQKHRAqAT4QFjAAegQlChAC&url=https%3A%2F%2Fwww.dioslc.org%2Fdocuments%2Fdiocesan-tribunal%2Farticles-1%2F278-usccb-canon-law-seminar-2010-dinardo%2Ffile&usq=AOvVaw1UKdmgTYMPgyBTZIsBzQ0G](https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwjw9ajZ7ePeAhVP_KQKHRAqAT4QFjAAegQlChAC&url=https%3A%2F%2Fwww.dioslc.org%2Fdocuments%2Fdiocesan-tribunal%2Farticles-1%2F278-usccb-canon-law-seminar-2010-dinardo%2Ffile&usq=AOvVaw1UKdmgTYMPgyBTZIsBzQ0G) (Accessed on 20th November 2018), p. 5.

the Church authority should meet with the respondent to consider how and when a return to ministry can be achieved;

2. It is important that all outstanding matters are addressed prior to any return to ministry. Therefore, in preparation, the respondent should be provided with counselling and support to assist them to deal with any residual anger/distress. This preparation for a return to ministry should include spiritual direction, reflection and discussions with the Church authority. It is understandable that the respondent may be angry at the process, but this anger should be addressed appropriately so as not to interfere with future ministry;

3. Following counselling, spiritual direction and reflection, the Church authority should meet the respondent to agree what ministry they will undertake. If the ministry involves a return to a previous community/parish/service, agreement should be reached about how to communicate the return.

Consideration should be given to the Church authority accompanying the respondent to the first liturgy, where a statement can be made about the respondent being a priest/religious in good standing;

4. The respondent should continue to be provided with support for an agreed period after the return to ministry;

5. The respondent should be reminded of the child safeguarding policy and procedures and code of behaviour when ministering to children, and should agree to working within these procedures.<sup>38</sup>

If the Church authority decides on the basis of the information provided through the Preliminary Investigation (cleric) or collection of evidence (religious) that there may well be some substance to what has been alleged, they then have to formally close this initial process by written decree, and then initiate a further canon law procedure; and they need to inform the respondent that this will be done. In the case of a cleric, the Church

authority has to send notification to the Congregation for the Doctrine of the Faith (CDF) in Rome. According to DiNardo,

'When the prior investigation phase is concluded and sufficient evidence has been gathered which leads the diocesan bishop to determine that the sexual abuse of a minor has occurred, the Congregation for the Doctrine of the Faith is to be informed and the Acts of the case are to be forwarded to them for further action. The diocesan bishop can offer a recommendation to the Congregation for the Doctrine of the Faith as to whether the case should be taken for hearing by the Congregation or remanded back to the diocese for either an Administrative or Judicial process or that some non-penal remedy be confirmed. At this time, the bishop is to apply the precautions outlined in canon 1722 which means that the cleric is removed from any public ministry until the final resolution of the case.'<sup>39</sup>

If the respondent is a non-ordained religious, their Provincial or Superior informs the congregation's Superior General (supreme Moderator in canon 695 §2); All the acts, signed by the major Superior and the notary, are to be forwarded, together with the written and signed replies of the member, to the supreme Moderator. The supreme Moderator is required to notify CDF. The supreme Moderator, in accordance with canon 699 §1, convenes their Council to decide in a collegial manner what is to be done with their religious member in terms of remedy, including dismissing them: But no decree of dismissal has an effect unless it is confirmed by the Holy See, to whom the decree and all the acts are to be forwarded (canon 700)<sup>40</sup>.

These steps are described in flow chart form in the Guidance for indicator 4.3 on the National Board's website at 4.3A Guidance on the Process for Clerics Following the Conclusion of Any Investigation by the Statutory Authorities, and in the subsequent explanatory text; and at 4.3D Guidance on the

38 NBSCCCI (2018) *Guidance for Standard 4*. Available at [www.safeguarding.ie/images/Pdfs/Standards/Standard%204.pdf](http://www.safeguarding.ie/images/Pdfs/Standards/Standard%204.pdf) (Accessed 20th November 2018), p. 32.

39 DiNardo, L. A., (2010) *Canonical Penal Procedures*. Available at [https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEWjw9ajZ7ePeAhVP\\_KQKHRAqAT4QFjAAegQlChAC&url=https%3A%2F%2Fwww.dioslc.org%2Fdocuments%2Fdiocesan-tribunal%2Farticles-1%2F278-uscbb-canon-law-seminar-2010-dinardo%2Ffile&usq=AOvVaw1UKdmgTYMPgyBTZIsBzQ0G](https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEWjw9ajZ7ePeAhVP_KQKHRAqAT4QFjAAegQlChAC&url=https%3A%2F%2Fwww.dioslc.org%2Fdocuments%2Fdiocesan-tribunal%2Farticles-1%2F278-uscbb-canon-law-seminar-2010-dinardo%2Ffile&usq=AOvVaw1UKdmgTYMPgyBTZIsBzQ0G) (Accessed on 20th November 2018).

40 Canon Law Society Trust (1983) *The Code of Canon Law*. Canon Law Society Trust: Vatican City.

Process for Non-Ordained Religious, Following the Conclusion of Any Investigation by the Statutory Authorities, and in the subsequent explanatory text.

The votum of the Church authority plays a significant role in the CDF's determination of whether or not further canonical action is warranted and, if so, what that action might be.

Given the likely delays in cases being processed by the CDF, it is best for the Church authority to pro-actively pursue the CDF for a decision rather than waiting passively for a response. The written response of the CDF may provide the Church authority with a signpost for the next steps to be taken.

There are four possible actions that will be recommended by CDF. The CDF will review the acts of the Preliminary Investigation and will consider the votum of the diocesan bishop; thereafter, it will typically respond in one of the following ways, each of which will be treated below:

- 1) CDF may remand the case to the diocesan bishop to be processed in a judicial trial in the diocesan tribunal (perhaps with some directives on how to proceed further); or
- 2) CDF may try the case in a judicial process in its own tribunal; or
- 3) CDF may direct the diocesan bishop to treat the matter through an administrative (extrajudicial or summary) penal process (CIC, c.1720); or
- 4) The particular congress (Feria VI) of the CDF may recommend to the Roman Pontiff that ex officio dismissal be imposed.<sup>41</sup>

The CDF will never know the case as well as the referring Church authority, so it takes account the recommendations contained in the Church authority's votum:

'While the decision to follow one of these four options rests exclusively with the CDF,

the Congregation will give most serious consideration to the votum of the diocesan bishop. Moreover, it may happen that the CDF will respond by requesting further information or clarification on the data already submitted. The CDF might also suggest a solution other than one of the four options listed above.<sup>42</sup>

## **8. Priests and religious who are believed to have sexually abused children**

On September 21st, 2017, Pope Francis met with the Pontifical Commission for the Protection of Minors in Rome, at which meeting he stated that there can be no place in the priesthood for those who harm children. He has made it clear that he has 'zero tolerance' for clerical and religious sexual abuse of children and for those who commit this 'horrible sin'.

Priests and religious are believed to have sexually abused children if they have themselves admitted to doing so; or if they are found guilty of child sexual abuse in a civil criminal court; or if they are found guilty of a crime against a minor under canon 1395 §2 -'A cleric who has offended in other ways against the sixth commandment of the Decalogue, if the crime was committed by force, or by threats, or in public, or 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.'<sup>43</sup>

It would appear therefore that Pope Francis intends that any priest or religious in such circumstances would never again have any ministry in the Catholic Church. This however does not mean that the responsible Church authorities have no immediate or on-going duty of care towards them.

A minority of priests and religious receive terms of imprisonment. Their basic physical needs of food, clothing and accommodation

41 Author Unknown (Year Unknown) *A Manual for Canonical Processes for the Resolution of Complaints of Clerical Sexual Abuse of Minors*. Available at <http://www.bishop-accountability.org/resources/resource-files/churchdocs/ManualForCanonicalProcesses.pdf> (Accessed on 20th November 2018).

42 Author Unknown (Year Unknown) *A Manual for Canonical Processes for the Resolution of Complaints of Clerical Sexual Abuse of Minors*. Available at <http://www.bishop-accountability.org/resources/resource-files/churchdocs/ManualForCanonicalProcesses.pdf> (Accessed on 20th November 2018).

43 Canon Law Society Trust (1983) *The Code of Canon Law*. Canon Law Society Trust: Vatican City.

are met while they are in prison. Their health care, physical and psychological / mental may not be sufficient, and their Church authority may need to be prepared to advocate on their behalf if this is the case. The respondent in such a situation will predictably have significant emotional needs and may also benefit from spiritual supports while in prison. The Church authority will need to consider what role they themselves can play in terms of providing supports to their priest or religious, through correspondence and visiting in person. They can also consult with the respondent's Advisor, prison chaplaincy services and whatever case management Advisory Committee they have access to. Justice needs to be tempered by mercy and compassion in such circumstances.

The Church authority needs to engage in planning for the future welfare of the imprisoned respondent, even though they are very unlikely to be returning to undertake any role in the diocese or religious order following their release from prison. The Probation Service, the Public Protection (PPANI) arrangements in Northern Ireland, the HSE, TUSLA, HSCT and various voluntary and community agencies may be able to assist in this planning process, and in follow-up support and supervision. The respondent will need a place to live, an income, health services, emotional support and some form of occupation. Depending on their readiness to accept and face the reality of their abusive behaviour, they might be willing to take part in some form of rehabilitative counselling and/or group work.

On Thursday 20th October, 2016, RTE television screened a documentary 'Beyond Redemption?' by Mick Peelo, which looked at the responsibility that society has to work with and attempt to rehabilitate sexual abusers rather than demonising and isolating them. Peelo highlighted the sex offenders' treatment programme in Arbour Hill Prison in Dublin, and he then examined the community-based Circles of Support and Accountability (CoSA) model, which has been

developed in Canada and the US by pastors and members of the Mennonite and Quaker faiths. This model is being piloted by the Probation Service in the Republic of Ireland; but there is no obstacle to it being taken up by the Catholic Church in both jurisdictions.

'A "Circle" consists of a group of four to six volunteers with the offender as the "Core Member". Appropriately trained volunteers support and hold to account the core member, who has to volunteer to be part of the scheme, by providing them with social contact and practical support while at the same time maintaining links to statutory agencies alerting them of any risk issues.'<sup>44</sup>

Initial research on the efficacy of this restorative justice model of rehabilitation and support suggests that it can be very effective in reducing the risk of recidivism among the abusers who have been accepted onto a programme.<sup>45 46</sup>

Different models of support have already been developed within the Catholic Church in Ireland. The Diocese of Cork and Ross has been operating a Relapse Prevention Group since 1993. The Group, which meets once per month, is directed by a qualified Counsellor and works with priests who have been convicted or who have admitted abuse.

The Support Group for Priests and Religious Out of Ministry has been active for at least five years. It is facilitated by trained psychotherapists and it is overseen by an Advisory Board of seven professional practitioners with relevant knowledge and expertise.<sup>47</sup>

In his Opening Address at the National Board's Safeguarding Conference in Tullamore, Co Offaly in October 2016, Archbishop Eamon Martin identified the challenge inherent in the Catholic Church actively working to assist priests and religious who have offended against children:

'The Church's response to those found guilty

44 Wilson, C. Bates, A. and Völlm, B. (2010) *Circles of Support and Accountability: An Innovative Approach to Manage High-Risk Sex Offenders in the Community*. The Open Criminology Journal, 2010, 3, 48-57.

45 McCartan, K et al. (2014) *Circles of Support and Accountability (CoSA): A Case File Review of Two Pilots*. Ministry of Justice: London..

46 Northcutt Bohmert, M. Duwe, G., and Kroovand Hipple, N. (2016) *Evaluating Restorative Justice Circles of Support and Accountability: Can Social Support Overcome Structural Barriers?* International Journal of Offender Therapy and Comparative Criminology, 2016, 1-20.

47 Advisory Board for The Support Group for Priests and Religious Out of Ministry, (2017) *Second Activity Report, 2014 - 2016*. Diocese of Cork and Ross: Cork.

is one of the most delicate and controversial issues in safeguarding. In a society which demonises and clamours for permanent exclusion of such offenders one wonders how to strike the balance between mercy and justice, seeking redemption for the offender while always being careful not to compound the lifelong trauma of survivors. Whilst we must be mindful of the view that when offenders are ostracised and cut off from support there is a greater danger of reoffending, it is widely recognised now that those found guilty of sexual abuse of minors cannot minister again as priests. As Pope John Paul II said in 2002: 'There is no place in the priesthood for those who would harm the young.'<sup>48</sup>

The US Conference of Catholic Bishops has produced a simple guidance document in 2012 entitled, *Questions and Answers Regarding the Canonical Process for the Resolution of Allegations of Sexual Abuse of Minors by Priests and Deacons*, in which they explain the idea of a life of prayer and penance, which is sometimes the punishment for priests and religious who are found to have sexually abused children:

'...there might be cases where a priest or deacon has either admitted to a past act of abuse or has been found guilty of one, but dismissal from the clerical state does not occur. This could happen, for instance, when a priest is seriously ill or of advanced age. So a life of prayer and penance is imposed on the priest instead. In these cases, too, he is forbidden from all public ministry and from otherwise presenting himself as a priest. He is expected to dedicate his life to praying for victims and repenting of his past offenses. In this way, the Church seeks even here to prevent any future abuse and to repair the injustice that has already taken place.'<sup>49</sup>

Some larger dioceses in the United States (e.g. Chicago and Philadelphia) have attempted to develop residential centres for priests who have been sentenced to lives of prayer and penance, with mixed results. Religious

congregations may have better resources to provide for members sentenced to a life of prayer and penance, in that they generally have community houses within which these people can live and be provided for, while also being supervised by nominated members or confreres; but this 'solution' is becoming less likely with the reduction in the size of religious communities, coupled with growing resistance to having to take responsibility for supervising another community member.

Those clerics and religious who have harmed children have significant and on-going needs that if successfully addressed enable them to participate in a meaningful and worthwhile life, while at the same time safeguarding children by reducing the risk of recidivism. Some offending priests will be dismissed from the clerical state (laicised), and some religious will be dismissed from their congregations, but whether they remain or leave, there is a responsibility on the Church to provide for them. In meeting this responsibility however, the individual Church authority can cooperate effectively with statutory and voluntary treatment and support services to ensure that a long-term or permanent management plan is developed and implemented. This is addressed in the National Board's Guidance on Standard 4, at 4.4A Guidance on Monitoring of Clerics and Non-Ordained Religious Following the Conclusion of the Canonical Investigation. While the title of this piece of guidance emphasises the monitoring role and responsibility of the relevant DLP, the guidance itself is more comprehensive and emphasises the importance of the support from the Advisor, as well as liaising with services and also with members of the respondent's family, as appropriate. A comprehensive plan will include the provision of suitable accommodation, sufficient income, health and other services, personal and emotional supports, spiritual guidance, social engagement and, if possible, meaningful occupation.

48 Archbishop Eamon Martin (2016) *Opening Address at National Safeguarding Conference 2016*. Available at [https://www.safeguarding.ie/images/Opening\\_address\\_by\\_Archbishop\\_Eamon\\_Martin\\_at\\_the\\_National\\_Safeguarding\\_Conference.pdf](https://www.safeguarding.ie/images/Opening_address_by_Archbishop_Eamon_Martin_at_the_National_Safeguarding_Conference.pdf) (Accessed on 20th November 2018).

49 USCCB (2012) *Questions and Answers Regarding the Canonical Process for the Resolution of Allegations of Sexual Abuse of Minors by Priests and Deacons*. Available from <http://www.usccb.org/upload/FAQs-canonical-process-sexual-abuse.pdf> (Accessed on 20th November 2018).

## 9. Supports for the families of priests and religious who have abused children

Respondents' family members are caught in a bind. They have not perpetrated any wrong, but they are affected by what their son or daughter, uncle or aunt, niece or nephew is alleged to have done to a child. They are not primary victims in the sense that they have not been abused; but they are secondary victims in that they have 'suffered as a result of someone else's actions or beliefs or as a result of unpleasant circumstances'<sup>50</sup>, which suffering may often involve a sense of being stigmatised by the abusive behaviour of their close relative.

In preparing this paper, the National Board had the opportunity to hear from a sibling of a priest who has been imprisoned for sexual crimes against minors. This person spoke very clearly about their own sense of shame, guilt and loss when they discovered what their brother had done. They had not been aware of his being charged, tried and sentenced, as this had happened in another jurisdiction, so when they were contacted by their brother from prison, they had the enormous challenge of having to very quickly come to terms with a new reality and to review their relationship with their brother. They spoke of not knowing where they could receive any information, advice and support for themselves. They talked of how difficult they experienced being innocently asked by friends and neighbours "how is Fr. X keeping?" Their loyalties were significantly split, in that they had a desire to be supportive of a valued brother, while at the same time being horrified and angered by what he had done to children.

National Board reviewers have spoken with some Advisors in the course of conducting Reviews who have taken on the additional responsibility of providing support to parents of respondents, especially in the event of their son being imprisoned; but this has generally not been identified as one of the tasks of Advisors. The Chaplaincy Service to Irish Prisons and the Irish Council for Prisoners Overseas are two readily available sources of information on how appropriate

50 Collins (2018) *Definition of a victim*. Available from <https://www.collinsdictionary.com/dictionary/english/victim> (Accessed on 20th November 2018).

supports can be provided to families of convicted persons. While the vast majority of respondents are never convicted of a crime (c. 94%), for those that are, Church authorities need to consider what their duty of care is to their family members.

The Church has to make it clear that child abuse will not be tolerated, do all it can to prevent abuse and offer care and support to those who have been harmed. In addition in order to prevent further abuse, care must also be provided to those who have caused the harm, if they remain the responsibility of the Catholic Church, to do less would be to expose Children further to harm.

## 10. Concluding comments

In concluding this paper there are a number of suggestions which should be factored into how the Church responds to those who have been accused of child abuse:

There must be a fair and just process of managing allegations which include:

- Notification of all allegations to the civil authorities
- Allowing the civil authority investigations to proceed prior to any church inquiry
- Conducting initial assessment to ensure that children are safeguarded
- Providing the respondent with information in line with guidance from civil authority agencies
- Advising the respondent of his right to access civil and canon law advice
- Offering an Advisor to the respondent who can offer support and can communicate his needs to the Church Authority

Practical Care and Support should be offered

- This should include a place to live, financial support so that the respondent can live (this can include a stipend or support in accessing benefits)
- Therapy and Counselling

A written plan setting out the restrictions (If Required) on the respondents ministry

- Such a plan should be reviewed and amended according to identified risk on a regular basis

Upon conclusion of civil authority investigations canon law processes must be initiated and concluded within a reasonable timeframe

- If civil or canon law inquiries result in a finding of guilt, an appropriate management plan should be agreed. This may include therapeutic support and care to reduce the likelihood of further harm to children, should the respondent remain within the remit of the Church authority.
- If the respondent is laicised or dismissed, an agreement about future care, support and monitoring should be agreed in consultation with the civil authority agencies.
- If the civil and canonical inquiries result in no case to answer all steps must be taken

<sup>51</sup> Dalai Lama (2013) *Tweet*. Available from <https://twitter.com/dalailama/status/332790603966476288?lang=en> (Accessed on 5th december 2018).

to restore the respondent's good name. He should be provided with support to resume his ministry if appropriate.

Consideration should be given to the support needs of the respondent's family.

- In consultation with the respondent an agreement should be reached about what information can be shared
- If there are children in the family circle an assessment should be made in consultation with the civil authorities about contact between the respondent so as to minimise risk to the children
- Pastoral support should be offered through an agreed appropriate person

The reception of a report by a Church authority suggesting that a priest or religious member of her/his Church body has harmed a child is always unwelcome, distressing and challenging. While their response to the complainant needs to be compassionate and effective, the Church authority also has to acknowledge through their actions that the respondent warrants just and merciful treatment, as does their family members. As the Dalai Lama said in a tweet, 'Just as ripples spread out when a single pebble is dropped into water, the actions of individuals can have far-reaching effects'<sup>51</sup>. It is never possible to quantify in advance how far reaching a child abuse case will be, or what the demands it will make of a Church authority.

