

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

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LEGAL AND MANAGERIAL STRUCTURES

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

3.1 THE CATHOLIC CHURCH

The Church as an Organisation

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

Hierarchical Structure

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

The Pope³² is the Supreme Legislator for the Catholic Church and all of its members; only he can create and change law on a universal (or worldwide) level. Many of these laws are found in legal codes or in papal decrees.³³

³¹ These arrangements and the circumstances in which each organisation will share such information with an employer or diocesan authority are discussed in further detail at Chapter 3 under the sections dealing with the structure of the South Eastern Health Board and An Garda Síochána.

³² Canon 331: The office uniquely committed by the Lord to Peter, the first of the Apostles, and to be transmitted to his successors, abides in the Bishop of the Church of Rome. He is the head of the College of Bishops, the Vicar of Christ and the Pastor of the universal Church here on earth. Consequently, by virtue of his office, he has supreme, full, immediate and universal ordinary power in the Church, and he can always freely exercise this power.

³³ Canon 333.1: By virtue of his office, the Roman Pontiff not only has power over the universal Church, but also has pre-eminent ordinary power over all particular Churches and their groupings. This reinforces and defends the proper, ordinary and immediate power that the Bishops have in the particular Churches entrusted to their care.

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

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

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

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

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

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

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

³⁴ Canon 391.2

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

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

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

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

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

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

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

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

³⁵ Canon 545.1

Overview of the Diocese of Ferns

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

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

Administration in the Diocese.

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

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

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

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

Management of the Diocese

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

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

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

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

³⁶ See p 42

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

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

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

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

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

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

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

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

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

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

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

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

St Peter's College

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

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

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

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

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

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

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

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

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

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

Seminary Admission and Formation

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

A former dean of St Peter's seminary told the Inquiry that most clerical students were sent to St Peter's by the Bishop of Ferns, the Bishop of Down and Connor and a few by Bishops of other dioceses. Where referred by a Bishop, a candidate was not vetted before admission. Two priests described to the Inquiry that they entered the seminary in Maynooth in 1961 with absolutely no preliminary screening at all. Candidates were admitted on the basis that they had an interest in becoming a priest and their suitability was reviewed in the course of seminary training. In "Time to Listen", a lack of seminary training on the issue of sexual abuse of children by priests was particularly identified as a failing³⁷ and this has been confirmed by a number of clerical witnesses who came before this Inquiry.

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

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

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

³⁷ "Time to Listen" p61

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

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

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

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

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

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

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

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

Current Selection Procedures for Maynooth Seminary

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

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

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

With regard to sexual history the following issues are addressed:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Canon law

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

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

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

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

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

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

The Removal of a Priest under Canon Law

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

The most appropriate response to an allegation which gives rise to a reasonable suspicion of child sexual abuse against any employee or volunteer is the removal of that employee or volunteer from unsupervised access to children either immediately or within days of its receipt by the employer, until the allegation or suspicion has been fully and properly investigated. In the case of a diocesan priest, removal from access to children appears to entail suspension or standing aside from active ministry. In other professions or occupations, a less dramatic course may provide adequate protection. In his report⁴⁰, "Child Sexual Abuse in Swimming", Mr. Roderick Murphy SC recommended this course of action in the case of swimming coaches against whom allegations of child sexual abuse were made and used the phrase "stand down" to describe this procedure. The action is taken without any admission or imputation of guilt and is temporary in its nature. In a legal opinion provided to the Dublin Archdiocese in 1986, such a procedure was also recommended for a bishop dealing with allegations of child sexual abuse from a civil liability perspective where it had been shown after investigation that there was a basis for the complaint. The Inquiry sought to establish whether such a procedure was available under Canon law.

In the Code of Canon law, the procedures available to a bishop for dealing with an allegation of an offence are dealt with. Where a Bishop receives information, "*which has at least the semblance of truth*", that an offence has been committed he must set up a preliminary and purely administrative investigation about the facts and circumstances of the case (Can. 1717.1-3). If, after this preliminary investigation (which after 1996 is conducted according to the Framework Document⁴¹), the Bishop believes that the facts warrant a penal process, he must then determine whether this would be expedient having due regard to Canon law. "*Care must be taken that this investigation does not call into question anyone's good name*" (Can. 1717.2). This rule is described by one commentary on this canon as being of "*fundamental and vital importance*". Under Canon 1722, the bishop can, at any stage of either a judicial or extra-judicial process "*prohibit the accused from the exercise of the sacred ministry*

³⁹ O'Callaghan v O'Sullivan 1925 IR 90

⁴⁰ 1998

⁴¹ See below p39.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Framework Document

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Whilst the Statute of Limitations can be lifted in civil litigation cases involving allegations of child sexual abuse at Civil law, Canon law does impose a ten year prescription period from the victim’s eighteenth birthday⁴⁵. *Sacramentorum Sanctitatis Tutela* provided for a dispensation from that prescription at the discretion of the Holy See.

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

⁴⁴ See page 12

⁴⁵ This period was extended from five years in 1996.

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

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

The Inter-Agency Review Committee

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

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

Application of Canon Law Procedures by Bishop Walsh and Bishop Comiskey

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

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

In his address the bishop is recorded as saying:-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Insurance

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

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

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

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

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

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

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

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

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

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