

Commission of Investigation

Report into the Catholic Diocese of Cloyne

December 2010

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

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Naming of clerics

This report describes the handling of allegations, complaints, suspicions and concerns about child sexual abuse in respect of 19 clerics. It was not the task of the Commission to establish whether or not child sexual abuse occurred or whether or not there was a basis for the suspicions and concerns which were expressed. In all cases, the Commission has done its utmost to preserve the anonymity of the complainants and those who expressed concerns.

In describing the handling of these cases the Commission has also done as much as it can to preserve the anonymity of the clerics concerned.

The Commission regrets that it has not been possible to report the case involving concerns about Bishop Magee without identifying him. Concerns were expressed about Bishop Magee's interaction with a 17-year old boy. The handling by Church authorities of concerns in relation to a bishop is different from that which applies to priests. There is only one bishop in the diocese of Cloyne. The Commission, being acutely conscious of the potential damage which his identification in its report entails, was concerned about his inclusion in circumstances in which his identity cannot be masked in any way. Having fully considered the matter, the Commission concluded that the proper discharge of its remit required that it investigate and report on the Church and State response to the concerns raised about him.

Chapter 1 Overview

Introduction

- 1.1 The Dublin Archdiocese Commission of Investigation was established in March 2006 to report on the handling by Church and State authorities of a representative sample of allegations and suspicions of child sexual abuse against clerics operating under the aegis of the Archdiocese of Dublin over the period 1975 - 2004. The report of the Commission was published (with some redaction as a result of court orders) in November 2009. Towards the end of its remit, on 31 March 2009, the Government asked the Commission to carry out a similar investigation into the Catholic Diocese of Cloyne.
- 1.2 During the Cloyne investigation the Commission examined all complaints, allegations, concerns and suspicions of child sexual abuse by relevant clerics made to the diocesan and other Catholic Church authorities and public and State authorities in the period 1 January 1996 – 1 February 2009.
- 1.3 This report deals with the outcome of the Cloyne investigation. In Chapters 2 – 8, the report outlines how the Commission conducted the investigation; the organisational structures of the Diocese of Cloyne and the relevant State authorities, that is, the Gardaí, the Director of Public Prosecutions (DPP) and the health authorities; and the general background to the handling of complaints including an outline of the canon law and procedures involved and the financing of the costs involved.
- 1.4 Chapters 9 – 26 describe the cases of 19 clerics about whom there were complaints, allegations or concerns in the period 1 January 1996 – 1 February 2009. Below the Commission gives an overview of what these cases show.

Context of this report

- 1.5 The context of this report differs significantly from the context of the Commission's *Report into the Catholic Archdiocese of Dublin*. It deals with allegations made in the period after 1996, the year in which the Catholic Church in Ireland put in place detailed procedures for dealing with child sexual abuse and two years after the State had been convulsed by the Fr

Brendan Smyth case. This meant that the so-called 'learning curve' which it was claimed excused very poor handling of complaints in other dioceses in the past could not have had any basis or relevance in Cloyne. Both Monsignor Denis O'Callaghan, the vicar general in the diocese charged with investigating complaints of child sexual abuse against priests, and Mr Diarmaid Ó Catháin the solicitor retained by the diocese to deal with any legal implications arising from cases of child sexual abuse, told the Commission that they had followed what was happening in North America in relation to clerical child sexual abuse. Monsignor O'Callaghan told the Commission:

"I suppose we thought that would be out there, you know, that in fact Ireland would be protected from that kind of situation and therefore it was only I'd say in the 1990s that it dawned on us we better get up to speed on this because also another factor, a lot of the priests who were being accused of sex abuse were Irish. A lot of them had been ordained in Ireland and therefore all you had to do was look over the names on the list anywhere and you got that picture, so I suppose that certainly struck us at that stage, it did."

Number of complaints

1.6 It is important to emphasise that it was not the function of the Commission to establish whether or not child sexual abuse actually took place but rather to record the manner in which complaints were dealt with by Church and State authorities.

1.7 The Commission received information about complaints, suspicions, concerns or knowledge of child sexual abuse in respect of 32 named clerics and one unnamed cleric. The Commission concluded that 19 of these clerics were within remit, including the unnamed cleric. The others were not in remit either because they were not connected to the Diocese of Cloyne or because the complaints were made outside the period under remit. Of the 163 clerics listed in the Diocese of Cloyne *Diocesan Directory* for 1996, there have been allegations made or concerns expressed about 12 (7.6%).

1.8 The Commission is aware of some 40 people who may have been affected by clerical child sexual abuse in the Diocese of Cloyne. All but two complaints came from people who were adults at the time the complaint was made; these complaints are usually called 'historical complaints'.

1.9 Of the 19 clerics within remit, there are 12 clerics against whom a single complaint was made. No attempt was made by the Diocese of Cloyne to ascertain if there were others who had complaints to make against these clerics. The Commission itself was able to ascertain that, in the case of Father Rion, (see Chapter 20) at least two complaints of a similar nature had been made against him during his time in Australia.

1.10 Four clerics were dead when the first complaint against them was made. One of the complaints was of abuse which allegedly occurred as far back as the 1930s. There was no attempt made by the Diocese of Cloyne to find out anything about these priests and the complaints were not reported to the civil authorities.

1.11 At least six other clerics were retired or approaching retirement age when the first complaint against them was made. Again, no attempt was made to find out anything further about these clerics and only some of the complaints were reported to the civil authorities. One of these clerics admitted to abusing at least four children during his early years as a priest. No attempt was made by Church authorities or the Gardaí to ascertain if there had been other incidents involving this priest. The Gardaí were not told by the diocese of all the admissions made by this priest.

1.12 One priest from the Diocese of Cloyne has been convicted of child sexual abuse. The DPP decided to prosecute another priest for child sexual abuse but the priest was successful in the Supreme Court in stopping his trial because of his age, his ill health and the delay.

The priests - where they are now

1.13 As already stated, this report describes the handling of allegations made against 19 clerics. Of these, 15 were or are incardinated¹ in the Diocese of Cloyne. One priest was incardinated in the Archdiocese of Brisbane; he is dead. The unknown priest is almost certainly dead – it is not known where he was incardinated but the Commission considers it very likely that he was incardinated in Cloyne. One priest is a member of a religious

¹ See Appendix 3: Glossary of Terms.

order; he is living within his religious order with some restrictions on his ministry. Bishop Magee (who is not incardinated in the diocese) is retired.

1.14 Of the 15 priests who were or are incardinated in the Diocese of Cloyne, eight are dead; two are in ministry in the diocese; three are retired (two of these with restrictions on their ministry); one is out of ministry; and one has left the priesthood but does not seem to have been laicised.

Dealing with allegations of child sexual abuse

1.15 The Commission's main task was to consider whether the response of the Church and State authorities to complaints and allegations of clerical child sexual abuse was "*adequate or appropriate*" and to establish the response to suspicions and concerns about clerical child sexual abuse. In assessing how the diocesan and other Church authorities dealt with complaints, the Commission has judged them by the standards set in their own documents – the *Framework Document* and *Our Children, Our Church*. The *Framework Document* was issued in 1996. *Our Children, Our Church* was issued in 2005. It did not significantly change the procedures set out in the *Framework Document*, in particular, there was no significant change in respect of reporting to the State authorities. Similarly, the Commission has assessed the response of the State authorities by the standards they set for themselves in the 1995 *Notification of Suspected Cases of Child Abuse between Health Boards and Gardaí* and subsequently in *Children First*. The Commission acknowledges that the standards which were adopted by the Church are high standards which, if fully implemented, would afford proper protection to children. The standards set by the State are less precise and more difficult to implement. The Commission's assessment of the health authorities is limited by the fact that, prior to 2008, they were notified of complaints in only two cases – once by the diocese in 1996 and once by the Gardaí in 2005.

The Church procedures for dealing with child sexual abuse

1.16 The document entitled *Child Sexual Abuse: Framework for a Church Response*, generally known as the *Framework Document*, was agreed by the Irish Bishops' Conference in 1996 which was at the start of the period covered by the Cloyne investigation. This document contained a detailed and easy to implement set of procedures for handling allegations, suspicions and concerns about clerical child sexual abuse. Bishop Magee wrote to all the

priests in the Diocese of Cloyne in early 1996 informing them that he had adopted the procedures contained in the *Framework Document*. He stated: *“It is hoped that the enclosed report will serve the purpose of assisting Diocesan and Religious authorities in dealing appropriately with allegations of child sexual abuse which involve Priests or Religious”*.

1.17 Despite Bishop Magee’s stated position on the implementation of the *Framework Document*, the reality is that the guidelines set out in that document were not fully or consistently implemented in the Diocese of Cloyne in the period 1996 to 2009. The primary responsibility for the failure to implement the agreed procedures lies with Bishop Magee. It is a remarkable fact that Bishop Magee took little or no active interest in the management of clerical child sexual abuse cases until 2008, 12 years after the *Framework Document* was adopted. As a result of this vacuum, the diocese’s functions in the matter of clerical child sexual abuse were, by default, exercised by others. The principal person involved was Monsignor O’Callaghan. He did not approve of the procedures set out in the *Framework Document*. In particular, he did not approve of the requirement to report to the civil authorities. He was totally familiar with the reporting requirements set out in the document and he implemented them in the Fr Corin case (see Chapter 10). He did not do so in many other cases.

1.18 The reaction of the Vatican to the *Framework Document* was entirely unhelpful to any bishop who wanted to implement the agreed procedures (see Chapter 4). The Congregation for the Clergy told the bishops of Ireland that the document was *“not an official document of the Episcopal Conference but merely a study document”*. The Congregation further stated that it contained:

“procedures and dispositions which appear contrary to canonical discipline and which, if applied, could invalidate the acts of the same Bishops who are attempting to put a stop to these problems. If such procedures were to be followed by the Bishops and there were cases of eventual hierarchical recourse lodged at the Holy See, the results could be highly embarrassing and detrimental to those same Diocesan authorities.

In particular, the situation of ‘mandatory reporting’ gives rise to serious reservations of both a moral and a canonical nature”.

This effectively gave individual Irish bishops the freedom to ignore the procedures which they had agreed and gave comfort and support to those who, like Monsignor O'Callaghan, dissented from the stated official Irish Church policy.

Bishop Magee's position on the *Framework Document*

1.19 In evidence to the Commission, Bishop Magee said that he was fully committed to the implementation of the *Framework Document* and was shocked to discover in 2008 that it was not being implemented. The Commission considers that this response is totally inadequate. It became clear during the course of this investigation that Bishop Magee had, to a certain extent, detached himself from the day to day management of child sexual abuse cases. Bishop Magee was the head of the diocese and cannot avoid his responsibility by blaming subordinates whom he wholly failed to supervise.

1.20 While Bishop Magee must take ultimate responsibility, in practice the implementation of the *Framework Document* was stymied by Monsignor O'Callaghan. His limited and incomplete compliance with it is described in this report.

Implementing the *Framework Document* in the Diocese of Cloyne

1.21 Contrary to repeated assertions on its part, the Diocese of Cloyne did not implement the procedures set out in the Church protocols for dealing with allegations of child sexual abuse. The main failures were:

- (a) The failure to report all complaints to the Gardaí;
- (b) The failure to report any complaints to the health authorities between 1996 and 2008;
- (c) The failure to appoint support people;
- (d) The failure to operate an independent advisory panel.

(a) Reporting to the Gardaí

1.22 The greatest failure by the Diocese of Cloyne was its failure to report all complaints to the Gardaí. Between 1996 and 2005, there were 15 complaints which very clearly should have been reported by the diocese to the Gardaí. This figure of 15 does not include concerns and does not include

cases where the allegations were already known to the Gardaí (although some of these also ought to have been reported). Of these 15, nine were not reported. The most serious lapse was the failure to report the two cases in which the alleged victims were minors at the time the complaint was made. One of the most unusual and unacceptable aspects of the diocese reporting to the Gardaí was the reporting by Monsignor O'Callaghan of the complainant's name but not the perpetrator's name in the Fr Caden case (see Chapter 21). The attempt by Monsignor O'Callaghan to have a particular garda deal with this case was correctly disregarded by the garda superintendent.

1.23 Monsignor O'Callaghan always had reservations about reporting to the civil authorities. In June 2002, in a letter to a canon lawyer, he stated:

“On the issue of reporting to civil authorities I have always been of your mind and endorse everything you say. I am convinced that reporting should have been left to the complainants. Our role in the whole process has been compromised by taking on direct reporting as part of our remit. Why should we take it on ourselves to report when the complainant does not want it done? This commitment on our part also seriously compromises our relationship with the priest against whom allegations have been made.”

He failed to understand that the requirement to report was for the protection of other children.

Deceased priests

1.24 Prior to 2009 the diocese did not report complaints against deceased priests to the Gardaí or the HSE. Monsignor O'Callaghan told the Commission that the practice of notifying the Gardaí of complaints involving deceased priests did not exist until May 2003. The *Framework Document* requires that all complaints be reported to the Gardaí – it does not specify different arrangements for deceased priests. In any event, Monsignor O'Callaghan, having been informed about best practice, still did not report to the Gardaí or the HSE in cases involving deceased priests after 2003. The Commission considers that reporting in relation to deceased priests is important for a number of reasons but mainly because it may help to validate other complainants.

(b) Failure to report to the health authorities

1.25 In 1996, Monsignor O’Callaghan did report complaints against one priest to the health board. After that, no complaint was reported to the health authorities until 2008. The requirement to report to the health authorities was one which the Church imposed on itself and which the Diocese of Cloyne ought to have implemented in respect of all complaints whether historical or not and whether or not the Church had any confidence that the health authorities would do anything about these complaints. It was the failure to report to the health authorities which set off the sequence of events which led to the Elliott report (see Chapter 6) and ultimately to the establishment of this Commission.

(c) Failure to appoint separate support people

1.26 Given the diocese’s knowledge of clerical child sexual abuse and its effects on complainants it was wrong of the diocese not to put in place a proper support system for complainants independent of the delegate. The Commission accepts that pastoral care was provided for a number of complainants in that counselling was paid for by the diocese. In one case, however, counselling support was withdrawn from a complainant without any notice which only added to the grief of that complainant.

1.27 Monsignor O’Callaghan assumed a number of roles in relation to child sexual abuse in the diocese. At various times he was not only the delegate, but he acted as a support person to some priests and some complainants. This was unsatisfactory and made a number of complainants sceptical about his role within the diocese. A proper system of supports for both complainants and priests, as was mandated by the *Framework Document*, should have been put in place by Bishop Magee. Monsignor O’Callaghan has acknowledged to the Commission that he:

“should have struck a better balance in the ministry of pastoral care. I regret now that I did not intervene to counter the choice of the legal route when just settlements should have been made earlier with survivors. I regret also that I tended to show favour to accused priests vis-à-vis complaints in some cases. I realise now that in some instances I became emotionally drawn to the plight of accused priests and in this way compromised my care of some complainants. I now

realise that the ministry of pastoral care best operates where roles are distinct in dealing with complainants and accused.”

(d) The absence of an independent advisory panel

1.28 One of the principal recommendations in the *Framework Document* was that each diocese should establish an advisory panel or committee which would advise the bishop on what action should be taken when a complaint of child sexual abuse was made.

1.29 The purpose behind the establishment of such panels was that the person investigating the complaint, the delegate, would make a report to this independent group who would then discuss it in the absence of the delegate and make a recommendation for the bishop.

Advisory panel, 1995

1.30 Bishop Magee did ask Monsignor O’Callaghan to establish an advisory panel in 1995, before the coming into force of the *Framework Document*. Monsignor O’Callaghan put together a panel which consisted of himself; the deputy delegate, Archdeacon Chris Twohig; the solicitor who advised the diocese on child sexual abuse claims; a psychologist who occasionally provided professional services to the diocese; and a local solicitor. The psychologist told the Commission that he never sat on the panel and does not recall ever being invited to sit on it. The local solicitor resigned shortly after the formation of the panel. This panel met three times in 1995 and did not meet again after this. Both Monsignor O’Callaghan and Bishop Magee have insisted to the Commission that the panel continued to exist but the evidence shows that it did not function after 1995. If it did function, it can only have involved Monsignor O’Callaghan and Archdeacon Twohig as the only other member, the solicitor who advised the diocese, is clear that it did not meet again after 1995. Archdeacon Twohig died in April 2009. A panel consisting of two senior priests of the diocese is not the sort of independent panel that was envisaged in the *Framework Document*. The minutes of the three meetings in 1995 are available but there are no subsequent minutes.

1.31 In the Commission’s view, it was inappropriate to have the delegate, the deputy delegate and the advising solicitor as members of the panel as

their roles made it virtually impossible for them to give the sort of independent advice which the bishop needed.

Inter-diocesan case management advisory committee, 2005

1.32 In 2005 the Diocese of Cloyne established an inter-diocesan case management advisory committee with the Diocese of Limerick. This was meant to be the advisory panel as envisaged in the *Framework Document*. In principle, it seems to the Commission that it was a good idea to pool resources with a neighbouring diocese in order to provide an independent source of advice. However, this committee was also not appropriately constituted. Both Monsignor O'Callaghan and the Diocese of Limerick delegate were appointed to the committee and, indeed, the Diocese of Limerick delegate was the chairman. Initially the solicitor who advised the Diocese of Cloyne in child abuse cases was not appointed to the committee because it was considered that there would be a conflict of interest since he was the diocese's legal advisor. However, he was subsequently appointed to it.

1.33 Monsignor O'Callaghan and the solicitor each told the Commission that they saw no conflict of interest in their being members of this committee. The Commission does not share their view. Bishop Magee did stand down the Cloyne membership of that committee when the conflicts were pointed out to him by Mr Elliott in 2008.

1.34 The Commission is satisfied that there is now an independent advisory panel for the diocese.

Committee Documentation

1.35 The minutes of the inter-diocesan case management advisory committee meetings were very short and uninformative. There were significant differences between what was recorded in the case management committee minutes and the separate notes kept by Monsignor O'Callaghan about these meetings.

1.36 It does not appear either from the minutes or from Monsignor O'Callaghan's notes that the committee was given full information on the issues they were discussing. While individual members of the committee told

the Commission that issues of child protection were discussed, this does not appear at all in the minutes. In fact, the direct opposite was the case, the concerns about the priest's future and the impact on the diocese seemed to preoccupy the committee to the exclusion of the effects on the complainant and the more general issues of child protection. One member of the committee told the Commission that the proceedings were dominated by the two priest delegates, Monsignor O'Callaghan, the Cloyne delegate, and the Limerick delegate and the solicitor for those two dioceses. According to the witness the three were very dominant on the committee and in his words "*It was not permissible to express a contrary opinion*". Monsignor O'Callaghan insisted to the Commission that the committee was told about all complaints. However, the evidence suggests otherwise. For example, the ongoing concerns about the behaviour and monitoring of Fr Calder (see Chapter 12) were never brought to the attention of the committee. The Commission was informed both by the chairman of the committee and by a lay member that each had only heard about three priests in total and these did not include Fr Calder. One of the most serious failures was the failure to tell the committee of the admissions of abuse made by Fr Caden (see Chapter 21) to the bishop.

The McCoy Report, 2004

1.37 The Diocese of Cloyne was informed in 2004 that it was not implementing the *Framework Document* properly. The diocese had voluntarily agreed to have its procedures and processes examined by an independent expert, Dr Kevin McCoy, in 2003. Dr McCoy's report was completed in 2004. It showed that the diocese was not fully implementing all the procedures set out in the *Framework Document*. While Dr McCoy stated that the diocese had embraced the reporting policies set out in the *Framework Document*, this was not in fact the case. He examined eight cases. The Commission was not able to establish which eight cases he examined or precisely what documentation he received. The Commission has examined ten cases which were known to the diocese at the time of Dr McCoy's investigation. The reporting obligations had been fully complied with in only one case.

1.38 Bishop Magee initially told the Commission that he had not seen Dr McCoy's full report until 2009 but subsequently said that he was mistaken and

did see it at the time it was produced. Clearly, he did not read it then or, if he did, he did not take its message on board or he chose to ignore it. In November 2005, Bishop Magee told the Minister for Children that the *Framework Document* guidelines were “*fully in place and are being fully complied with*”. If he had read the McCoy report, or if he had checked with Monsignor O’Callaghan about his practices, he would have known that this was not so. Bishop Magee answered the HSE questionnaire (see Chapter 6), less Section 5, on behalf of the Diocese of Cloyne in January 2007. Among other things, he said that the diocese reported allegations of child sexual abuse “*to the HSE and/or An Garda Siochana in keeping with Children First*”. This was not true.

1.39 Monsignor O’Callaghan has said that he did not see the full McCoy report until 2009 and had seen only a summary in 2004. The evidence available to the Commission is that he almost certainly was given a copy of the full report in 2004 (see Chapter 4). He also got an oral briefing on the report in 2004. Even if he did not see the full report, the Commission finds it astonishing that, as the person charged with handling allegations of child sexual abuse, he did not look for and get a copy of the full report. It is equally strange that he could use this report, which he says he had not read, as the basis for defending the diocese’s practices when they came under scrutiny in 2008.

1.40 The failure to read and take heed of this report is quite extraordinary. Bishop Magee and Monsignor O’Callaghan then put out the erroneous view that their procedures had been fully endorsed by a report with which neither of them was familiar or which they chose to ignore.

The pastoral approach

1.41 Monsignor O’Callaghan told the Commission that he considered that the *Framework Document* did not provide an adequate pastoral response for those affected by child sexual abuse. He preferred a pastoral approach and felt that what he regarded as the “*rule-led*” procedures of the *Framework Document* interfered with this approach. In conjunction with the solicitor who advised the diocese on child sexual abuse cases he devised a scheme whereby counselling was provided to the complainants in a manner which it was hoped would not attract any legal liability to the diocese.

1.42 The Commission takes the view that the implementation of Church guidelines does not, in any way, preclude a pastoral response. A pastoral response, while good in itself, should be an adjunct to, not a replacement for, the procedures set out in the *Framework Document*. The Commission is satisfied that a number of complainants benefited from the counselling put in place for them. However, the pastoral approach espoused by Monsignor O’Callaghan is not a sufficient response to allegations of child sexual abuse. It does not provide for a proper investigation of the complaints either by the State or the Church authorities.

1.43 Monsignor O’Callaghan’s problems with the *Framework Document* applied equally to *Our Children, Our Church*. In a letter of May 2008 he said that during the discussions prior to its publication, he was:

“more than disappointed at the policy of the Irish Bishops as a whole. They were walking away from the strong positive tradition of Christian Pastoral Care as inspired by the words and actions of Jesus himself. They would surrender all pastoral discretion and would hand over to secular agencies overall responsibility for alleged offending priests who had abused their position of trust and given serious scandal. The Bishops rolled over under pressure from the media. And they expected Rome to endorse the new policy!”

1.44 One of the ironies of Monsignor O’Callaghan’s position was that it was clear from his evidence that, in most cases, he believed the complainants which makes his failure to implement his own Church’s policy all the more surprising. He also displayed some inexplicable failures to recognise child sexual abuse.

Implementation of the *Framework Document* by a religious order

1.45 In contrast to the Diocese of Cloyne, the religious order which received a complaint against one of its members, who was operating under the aegis of the diocese at the time of the alleged abuse, did fully implement the procedures in the *Framework Document* (see Chapter 17). This order, like other religious orders and societies who were members of the Conference of Religious of Ireland had agreed to implement the document. In this case, the order implemented the procedures correctly. The complaint

was reported to both the Gardaí and the health authorities. The order's advisory committee was fully informed.

Documentation supplied by the Diocese of Cloyne

1.46 The Diocese of Cloyne did not properly record and maintain information about complaints of child sexual abuse up to 2008. There was, in the words of Mr Ian Elliott, an “*unacceptable lack of recording*”. In some cases, there was no contemporaneous record of a complaint having been made. In one particular case, the written report of a psychologist is on the files but his more nuanced views which he says were expressed orally are not recorded. The Commission received some important documents from priests against whom complaints were made. Copies of these were not always in the diocesan files.

1.47 It appears that Monsignor O'Callaghan kept all the files relating to complaints of child sexual abuse in his house. About 20% of the documents supplied by the diocese to the Commission were undated. Many of the documents were hand written and difficult to read. If typed versions of written documents were also supplied, they sometimes differed in content from the handwritten document. It is clear that copies of a number of documents were not retained on files as the Commission received documents from witnesses that should also have been in the files provided by the diocese but were not.

1.48 Some of these failures to properly record information about complaints of child sexual abuse could be put down to lack of organisation, lack of resources or human error or they could be due to a deliberate policy. The admission by Bishop Magee that he deliberately created two different accounts of the same meeting with Fr Caden (see Chapter 21) raises very serious issues about the diocese's policy on the creation and retention of documentation. One account of the meeting was created for the diocesan files and the inter-diocesan case management advisory committee while the other was created for the Congregation for the Doctrine of the Faith in Rome. While Bishop Magee contends that he did not intend to mislead, the fact is that he did mislead the advisory committee and subsequently Mr Ian Elliott.

Canonical investigations

1.49 The Diocese of Cloyne did not carry out proper canonical investigations. A canonical investigation under canon 1717 was ordered by Bishop Magee in the cases of five of the 15 diocesan priests against whom allegations were made or concerns expressed. Such an investigation should also have been ordered in at least four other cases. The Commission recognises that canonical investigations are not possible in the cases where the priest is dead at the time of the allegation. It also accepts that canonical investigations are not required in all cases of concerns or suspicions.

1.50 In the five cases where an investigation was ordered, an investigation was commenced but was never completed. No final report was compiled. In one case, an investigation was ordered in 1995 and, in spite of a number of subsequent complaints, was not pursued after the initial inquiries were made. In this case, an allegation in respect of a child was made in 1996 and an allegation of solicitation in the confessional was made in 1997 but no further reference was made to the existing order for a canonical investigation. Bishop Magee accepted that a full canonical investigation was not carried out in this case. The Commission cannot understand why he does not seem to have looked for a progress report or a final report.

1.51 There was a haphazard and sometimes sloppy approach to documenting canonical investigations. In one case, a canonical investigation was ordered in 2002 and, presumably because the first one had been forgotten or the documentation misplaced, it was ordered again in 2004. In another case, the order for the investigation seems to have been wrongly dated. In a third case, no canonical investigation was ordered and, indeed, was not warranted but there is documentation which suggests that such an investigation was actually conducted.

1.52 On the basis of its own laws, the diocese should have ordered a canonical investigation into the cases of Fr Corin, Fr Darian, Fr Flan, and Fr Tarin.

Communication

1.53 There was inadequate communication between Bishop Magee and Monsignor O'Callaghan. Bishop Magee does not seem to have ever checked

that Monsignor O'Callaghan was actually abiding by the requirements of the *Framework Document*. Sometimes, Monsignor O'Callaghan did not tell Bishop Magee about complaints. There were four complaints about which Bishop Magee was not told at the time the complaint was first made known to the diocese or within a reasonable time thereafter.

1.54 The advisory panel/inter-diocesan case management advisory committee did not deal directly with Bishop Magee. All the dealings were routed through Monsignor O'Callaghan. As a result, Bishop Magee did not know what the committee was being told.

1.55 There was no communication with a neighbouring diocese when a priest who had retired because of complaints went to live there.

1.56 The correspondence between Monsignor O'Callaghan and the Archdiocese of Brisbane in relation to Fr Rion appears to have been drafted to avoid asking the relevant question, that is, were there other complaints against Fr Rion and therefore, allow that question to remain unanswered. The Archdiocese of Brisbane's explanation for not giving information about previous complaints is particularly legalistic. In essence, the explanation was that they were not asked the direct question.

Reporting to and by priests

1.57 Some priests of the diocese heard about complaints and did not report them to the diocese. There was one priest who tried to report to Bishop Magee but was discouraged. There were five priests to whom complaints were made or concerns expressed who it appears did not report to the diocesan authorities.

Moving of priests

1.58 There was no case in which the Diocese of Cloyne moved priests against whom allegations had been made to another parish or out of the diocese altogether.

Retiring priests

1.59 A number of priests against whom allegations were made were 'retired'. In some cases, their ministry was restricted but this was not known

to very many people. Before 2008, such restrictions did not include a requirement to cease wearing clerical dress. The existence of restrictions on ministry was made known to a number of parish priests but was not made known to the laity. In one case, a priest was restricted from ministering to schools but the schools were not told this.

- 1.60 When a priest was being stood down from ministry, Bishop Magee usually wrote him a letter setting out what the restrictions were. No formal precepts were issued. This allowed a certain ambiguity to arise about exactly what the priest could or could not do. In some cases, the strictures imposed by Bishop Magee were modified or countermanded by Monsignor O'Callaghan.

Training

- 1.61 One area where the diocese is to be commended is in relation to the effort it has made to train both Church personnel and the laity in the area of child protection. Bishop Magee was responsible for accelerating the training initiative and he and the Child Protection Committee are to be commended for that.

Risk assessment and monitoring

- 1.62 Bishop Magee and Archbishop Clifford are to be commended for recruiting risk assessment specialists in 2009 to review diocesan files and to arrange risk assessments for a number of priests. The Commission is also satisfied that Archbishop Clifford has put in place a monitoring system for those priests still perceived to be a risk to children. The Commission has already noted in its *Report into the Catholic Archdiocese of Dublin* that monitoring of sex abusers is very difficult and that there is greater monitoring of clerical child sex abusers than any other child sex abusers.

The Gardaí

- 1.63 A number of complainants were highly complimentary about the way in which the Gardaí dealt with their complaints. The Commission considers that most of the Gardaí who were involved in investigating the complaints outlined in this report carried out their tasks well and did so while treating the complainants with compassion and dignity.

1.64 However, the Commission was very concerned about the approach adopted by the Gardaí in three cases. In one case, an investigation clearly was not commenced. The senior garda involved insists that an investigation did commence but the evidence demonstrates otherwise. There are no investigation files in existence. The Commission has not been able to establish why an investigation did not take place in this case but it has no doubt that there was no investigation even though there was a complaint (see Chapter 10).

1.65 In another case, it seems that a statement taken from a young man was put in a drawer by a garda who was soon to retire and then forgotten about. In this case, the statement was found when further searches were conducted as a result of inquiries from this Commission. The Gardaí have given three different explanations for what happened in this case; none of them is convincing (see Chapter 9).

1.66 In a third case, the evidence given by a garda to the Commission differed from the statements he had made in two prior garda investigations (see Chapter 12).

1.67 The Commission was also concerned that there was no documentary evidence that, in two cases (see Chapters 15 and 22), the Gardaí assessed whether priests about whom complaints had been made were an ongoing risk to children. Such an assessment was required under the *Children First* guidelines in order to establish whether historical abuse cases should be notified to the health authorities. The Gardaí have told the Commission that they did carry out such an assessment in these cases. The Commission is satisfied that it is now the policy and practice of the Gardaí to report all cases to the HSE.

The health authorities

1.68 As already stated, the health authorities were not informed of complaints of clerical child sexual abuse by the Diocese of Cloyne between 1996 and 2008. Concerns about the welfare of particular children became known to the health authorities in 1996 and in 2008. They dealt properly with these concerns by bringing the risks involved to the attention of the children's parents.

1.69 The Commission considers that the health authorities have limited powers in relation to extra-familial abuse of children. It is clear that there is disagreement between the Office of the Minister for Children and the HSE about the extent of the powers available (see Chapter 6). The Commission recognises that there are difficulties in granting further powers to the HSE but it is concerned that a number of bodies, including the Church, may rely on the HSE to deal with alleged perpetrators of child sexual abuse when the HSE, in reality, does not have the power to do so effectively.

Soft information

1.70 The Commission accepts that in the absence of legislation, such as exists in Northern Ireland, there will continue to be problems with the handling of so called 'soft information'. The Commission recognises that there are particular difficulties in dealing with soft information and the credence to be given to it. There are issues regarding data protection and the rights of individuals to their good name. Equally, in a number of cases, it was obvious that people had great concern about the priest's behaviour before any allegation of child sexual abuse was made. If these concerns could be centrally recorded, whilst protecting the rights of the individuals concerned, they might be of considerable assistance in identifying situations which could give rise to concern. The State has made a number of commitments to legislate in this area but so far this legislation has not materialised.

The adequacy and appropriateness of the reponse

1.71 The response of the Diocese of Cloyne to complaints and allegations of clerical child sexual abuse in the period 1996 to 2008 was inadequate and inappropriate. In 2008, the diocese started to follow the procedures set out in the Church documents.

1.72 The response of the Gardaí was generally adequate and appropriate with a number of exceptions which have been outlined above. The response of the health authorities was adequate and appropriate given the information that was available to them and the limited powers which they have. However, the Commission recognises that the primary responsibility for the protection of children rests with the State and it is not convinced that the State's laws and guidelines are sufficiently strong and clear for this task.

Conclusion

1.73 In its *Report into the Catholic Archdiocese of Dublin*, the Commission stated that it accepted that the current archdiocesan structures and procedures for dealing with clerical child sexual abuse were working well. However, it went on to say that it was concerned that those structures and procedures were heavily dependent on the commitment and effectiveness of two men – the Archbishop and the Director of Child Protection. The Commission warned that “*institutional structures need to be sufficiently embedded to ensure that they survive uncommitted and ineffective personnel*”. The Diocese of Cloyne was unfortunate in that the structures were never embedded because it had an uncommitted delegate/director of child protection and an ineffective bishop for the period 1996 – 2008.

1.74 The principal feature of this report can be simply expressed. The Diocese of Cloyne ostensibly accepted the *Framework Document* and promised to implement it. It did not do so. On the contrary, Bishop Magee appears to have taken little real interest in its implementation for 12 years. He allowed the authority of the diocese in this regard to be exercised for that period by others, in particular Monsignor O’Callaghan. Monsignor O’Callaghan acted in what he perceived to be the best interests of the Church. The Commission accepts that he was personally kind in many respects to some complainants but kindness is not enough when dealing with criminal activity or with people who have been abused.

1.75 He refused to accept the *Framework Document* as a proper ecclesiastical policy. He preferred a ‘pastoral approach’ and felt that the relatively rigid procedures of the *Framework Document* interfered with this approach. He did not appear to accept that the *Framework Document* expressed the standard that the Irish Church had set for itself in relation to child sexual abuse. He frustrated its implementation and was primarily responsible for the limited and incomplete compliance with it described in the report.

1.76 Those who thought like Monsignor O’Callaghan had their positions greatly strengthened by the Vatican’s reaction to the *Framework Document*. This response, discussed in Chapter 4, can only be described as unsupportive especially in relation to reporting to the civil authorities. The

effect was to strengthen the position of those who dissented from the official stated Irish Church policy.

1.77 In the Commission's view, Bishop Magee was responsible for allowing Monsignor O'Callaghan to be in charge of the diocesan policy on child sexual abuse for many years without supervision. The extent of the inertia of the bishop which made these things possible is remarkable. Furthermore his attitude prevented the proper implementation even of canonical procedures. He told the Minister for Children that the *Framework Document* guidelines were fully in place and were being fully complied with. This was false. The same must be said of his assurances to the HSE given in 2007.

1.78 Even though the diocese invited an external examination of its procedures in 2004, nothing happened. This, again, was because of the lack of commitment of the delegate and the ineffectiveness of the bishop. Change did not occur until the uninvited external examination conducted by Mr Elliott forced Bishop Magee to face the reality that his diocese was seriously deficient in its dealing with clerical child sexual abuse. It seems to the Commission that continuing external scrutiny is required to ensure that the improvements which the diocese has made and continues to make will remain in place.

Co-operation by all parties

1.79 The Commission wishes to acknowledge the full co-operation it received from all parties involved in the investigation and their legal advisors. It also wishes to acknowledge the very helpful evidence given by the complainants and it hopes that this report will, in some way, be helpful to them by providing additional information and analysis which might not otherwise be available to them.

Chapter 2 How the Commission conducted its investigation

Introduction

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

Terms of Reference

2.2 The terms of reference of the Commission were to:

- (a) select a representative sample of complaints or allegations of child sexual abuse made to the archdiocesan and other Catholic Church authorities and public and State authorities in the period 1 January 1975 to 1 May 2004 against Catholic clergy operating under the aegis of the Catholic archdiocese of Dublin;

- (b) examine and report on the nature of the response to those sample complaints or allegations on the part of the authorities to which those sample complaints or allegations were reported, including whether there is any evidence of attempts on the part of those authorities to obstruct, prevent or interfere with the proper investigation of such complaints;

- (c) in the case of complaints or allegations being examined, examine and report also on the nature of the response to any other complaints or allegations made by the complainant or against the person in respect of whom those complaints or allegations were made, including any such complaints or allegations made before 1 January 1975;

- (d) select a representative sample of cases where the archdiocesan and other Catholic Church and public and State authorities had in the period 1 January 1975 to 1 May 2004 knowledge of or strong and clear suspicion of or reasonable concern regarding sexual abuse involving Catholic clergy operating under the aegis of the Catholic archdiocese of Dublin;

- (e) establish the response of the archdiocesan and other Catholic Church and public and State authorities to those sample cases;
- (f) establish the levels of communication that prevailed between the archdiocesan and other Catholic Church authorities and public and State authorities with regard to those sample complaints, allegations, knowledge, reasonable concern or strong and clear suspicion;
- (g) examine, following a notification from the Minister for Health and Children that a Catholic diocese in the State may not have established the structures or may not be operating satisfactorily the procedures set out in the Report of the Irish Catholic Bishops' Advisory Committee on Child Sexual Abuse by Priests and Religious, Child Sexual Abuse: Framework for a Church Response (1996) and any subsequent similar document, the position in that diocese;
- (h) examine, following a notification from the Minister for Health and Children that a Catholic diocese in the State may not be implementing satisfactorily the recommendations of the Ferns Report delivered to the Minister for Health and Children on 25 October, 2005, the position in that diocese; and make a report on these matters considered by the Government to be of significant public concern.

2.3 In January 2009, the government decided to refer the Diocese of Cloyne to the Commission under term (g) of the terms of reference. The background to that decision is described in Chapter 6.

2.4 On 24 March 2009, the government amended the Commission's terms of reference by inserting the following subparagraph (f):

- (fa) with respect to the Catholic diocese of Cloyne -
 - (i) select a representative sample of complaints or allegations of child sexual abuse made to the diocesan and other Catholic Church authorities and public and State authorities in the

- period 1 January 1996 to 1 February 2009 against Catholic clergy operating under the aegis of that diocese,
- (ii) consider whether the response to those complaints or allegations was adequate or appropriate,
 - (iii) in the case of complaints or allegations being examined, examine and report also on the nature of the response to any other complaints or allegations made by the complainant or against the person in respect of whom those complaints or allegations were made, including any such complaints or allegations made before 1 January 1996,
 - (iv) select a representative sample of cases where the diocesan and other Catholic Church authorities had in the period 1 January 1996 to 1 February 2009 knowledge of or strong and clear suspicion of or reasonable concern regarding sexual abuse involving Catholic clergy operating under the aegis of that diocese,
 - (v) establish the response of the diocesan and other Catholic Church authorities to those sample cases, and
 - (vi) establish the levels of communication that prevailed between the diocesan and other Catholic Church authorities and public and State authorities with regard to those sample complaints, allegations, knowledge, reasonable concern or strong and clear suspicion.

2.5 The statutory instrument which gave effect to the government's decision is SI 117 of 2009.

2.6 This report deals only with the Commission's investigation into the Diocese of Cloyne.

2.7 The investigation into Cloyne started in April 2009 while the Commission was completing its investigation into the Archdiocese of Dublin. The report into the Archdiocese in Dublin² was submitted to the Minister for

² Commission of Investigation *Report into the Catholic Archdiocese of Dublin* (Dublin: Department of Justice, Equality and Law Reform, 2009); generally known as the *Murphy Report*; www.justice.ie and www.dacoi.ie.

Justice, Equality and Law Reform in July 2009 and the bulk of it was published in November 2009.

Interpretation of the Commission's terms of reference with respect to the Diocese of Cloyne

2.8 Having considered its terms of reference as contained in the Instrument creating it, the Commission took the view that its task in relation to the Diocese of Cloyne was as follows:

- To ascertain the full extent of complaints or allegations of child sexual abuse made to the diocesan and other Catholic Church authorities and public and State authorities in the period 1 January 1996 to 1 February 2009 against Catholic clergy operating under the aegis of that diocese;
- To ascertain all of the cases during the relevant period in which the diocesan and other Church authorities and or public and State authorities:
 - knew of sexual abuse involving Catholic clergy;
 - had strong and clear suspicion of such abuse; or
 - had reasonable concern regarding such abuse.
- Having ascertained the full extent of such complaints, allegations, knowledge, suspicions or concerns of child sexual abuse, to select a representative sample of same for the purpose of examining them in detail in order to report on the nature of the response to them by the diocese and other Church authorities and by public and State authorities and on whether such response was adequate or appropriate. The adequacy or appropriateness of the response would be measured by reference to the prevailing standards and guidelines issued by both Church and State authorities;
- Ancillary to its primary tasks set out above, the Commission was mandated to establish the levels of communication that prevailed between all relevant authorities relating to the sample complaints or allegations of child sexual abuse, incidents of known child sexual abuse, incidents of strong and clear suspicion of child sexual abuse and incidents giving rise to reasonable concern that there may have been sexual abuse.

What is child sexual abuse?

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

“While definitions of child sexual abuse vary according to context, probably the most useful definition and broadest for the purposes of this Report was that which was adopted by the Law Reform Commission in 1990³ and later developed in Children First, National Guidelines for the Protection and Welfare of Children (Department of Health and Children, 1999) which state that ‘child sexual abuse occurs when a child is used by another person for his or her gratification or sexual arousal or that of others’. Examples of child sexual abuse include the following:

- *exposure of the sexual organs or any sexual act intentionally performed in the presence of a child;*
- *intentional touching or molesting of the body of a child whether by person or object for the purpose of sexual arousal or gratification;*
- *masturbation in the presence of the child or the involvement of the child in an act of masturbation;*
- *sexual intercourse with the child whether oral, vaginal or anal;*
- *sexual exploitation of a child which includes inciting, encouraging, propositioning, requiring or permitting a child to solicit for, or to engage in prostitution or other sexual acts. Sexual exploitation also occurs when a child is involved in exhibition, modelling or posing for the purpose of sexual arousal, gratification or sexual act, including its recording (on film, video tape, or other media) or the manipulation for those purposes of the image by computer or other means. It may also include showing sexually explicit material to children which is often a feature of the ‘grooming process’ by perpetrators of abuse.”*

³ This definition was originally proposed by the Western Australia Task Force on Child Sexual Abuse, 1987 and is adopted by the Law Reform Commission (1990) Report on Child Sexual Abuse, p.8. (footnote in original)

Gathering the evidence

Preliminary inquiries

2.10 The Commission first sought to identify all potential sources of information and documentation necessary to the discharge of its remit. Bearing in mind the requirements of Section 10 (2) of the *Commissions of Investigation Act 2004*, that a Commission seek the voluntary co-operation of persons whose evidence is desired, the Commission had a number of meetings and contacts with Church and State authorities as well as individuals whom it considered might have evidence relevant to its work.

Discovery

2.11 The Commission received its terms of reference on 31 March 2009. It immediately sought discovery from personnel in the Cloyne diocese, the Health Service Executive (HSE) operating in the Cloyne area, the Garda authorities operating in the Cloyne area, the Director of Public Prosecutions and the Department of Education and Science.⁴ The Commission also sought discovery from the Catholic Church's National Board for Safeguarding Children, the Department of Health and Children and a number of individuals whom the Commission considered might have information relevant to its work. Apart from the Department of Health and Children and the Department of Education and Skills, the vast bulk of the discovery was completed by August 2009. The discovery from the two departments was completed in mid 2010. The Department of Health and Children claimed privilege over a number of documents. The Commission asked the Papal Nuncio to "*submit to it any information which you have about the matters under investigation*". The Commission has no power to compel the Papal Nuncio. The Papal Nuncio replied that the Nunciature:

"does not determine the handling of cases of sexual abuse in Ireland and therefore is unable to assist you in this matter. In fact, such cases are managed according to the responsibility of local ecclesiastical authorities, in this instance the Diocese of Cloyne. Like all ecclesiastical entities in Ireland, the Diocese of Cloyne is bound to act in accordance with canon law and with all civil laws and regulations of Ireland as may be applicable."

⁴ The department has since been renamed the Department of Education and Skills.

2.12 The Commission acknowledges the full co-operation of Archbishop Clifford, Bishop Magee and their legal advisors in the Diocese of Cloyne in providing all the relevant privileged and non-privileged documentation which was available to them to the Commission. This documentation had been mainly kept by the delegate, Monsignor Denis O'Callaghan, in his home or parish office. Approximately 12,000 documents were provided by the diocese.

2.13 One priest who is a member of a religious order is covered by the terms of reference because he did supply work in the Cloyne diocese. An order for discovery was issued to the Order in question, and a significant volume of documentation was received. The Order did not claim privilege over any of its documentation. This documentation was well presented and comprehensive.

2.14 Both the Gardaí and the HSE for the Cloyne area co-operated fully in providing what documentation they had to the Commission. In one case the Gardaí were unable to provide any documentation in relation to the complaints. The Gardaí told the Commission that these complaints were investigated but the files cannot be found (see Chapter 10).

Complaints of child sexual abuse

2.15 In tandem with its discovery orders, the Commission launched an advertising/information campaign to alert complainants of child sexual abuse of its existence and for the purpose of inviting contributions from those who wished to assist the Commission in its work. The campaign covered the entire geographical area of the Diocese of Cloyne. Advertisements were placed in many local newspapers and a number of national papers together with many local radio stations and RTE Radio 1. Information was also circulated through churches, doctors' surgeries and information centres in order to encourage complainants and those who had relevant information to come forward to assist the Commission.

2.16 The campaign elicited many inquiries. Some of those inquiries related to child sexual abuse in other dioceses or by members of religious orders who had no connection with the Diocese of Cloyne. Some related to child abuse in residential institutions. (A number of the residential institutions which were

covered by the *Ryan Report* were located in or close to the Diocese of Cloyne.) The Commission's staff were happy to assist with those inquiries and spent a good deal of time referring those who contacted the office to the relevant services.

Selection of a representative sample

2.17 The discovery process and the response to the advertising campaign resulted in the Commission receiving information about complaints, suspicions, concerns or knowledge of child sexual abuse in respect of 32 named clerics and one unnamed cleric (who may, of course, also be one of the named clerics). Following an analysis of the information available, the Commission concluded that 19 of these clerics, including the unnamed cleric, were operating under the aegis of the Diocese of Cloyne in the period 1996 – 2009 and were, therefore, within the Commission's remit. The others were not in remit either because they were not involved in the Diocese of Cloyne or because the complaints were made outside the period under remit.

2.18 The terms of reference provide that the Commission investigate a representative sample of complaints. The Commission sought the advice of its statistician, Dr Teresa Brannick, of University College Dublin, on the feasibility of selecting a representative sample. Dr Brannick's view was that the total number involved was too few to successfully extract a representative sample.

2.19 The Commission therefore decided to investigate all clerics who were the subject of allegations, concerns or suspicions that were within remit.

Practice and procedures

2.20 In order to facilitate formal hearings as well as the gathering of evidence generally, the Commission was able to use the procedures and protocols which it had developed for its investigation into the Dublin Archdiocese, for example, those relating to the taking of evidence and the rights of witnesses giving evidence before the Commission. A formal book of procedures was compiled for the Dublin Archdiocese investigation to comply with the terms of the *Commissions of Investigation Act 2004* and the Commission was able to adopt and amend that book where appropriate for the Diocese of Cloyne investigation. Given the sensitive and confidential

nature of much of the information being furnished to it, the Commission devised a memorandum on confidentiality for parties involved in the Commission's work as well as for its own staff.

Formal hearings

2.21 Initially, the Commission heard oral evidence in relation to administrative structures of the Church, public and State authorities within its remit during the relevant period. The focus of these hearings was on how complaints, allegations, suspicions and concerns of child sexual abuse were handled generally by the various authorities throughout the relevant period and on identifying potential sources of evidence within each organisation. The Commission then heard oral evidence on how specific complaints were handled.

2.22 In addition to obtaining oral evidence, the Commission carried out an in-depth analysis of the documentation supplied by all parties. Where gaps in the evidence were apparent the Commission filled them, where appropriate and possible, with questionnaires, follow up interviews and affidavits from relevant parties. Follow up was not always possible because a number of the significant participants were dead or too ill to be interviewed.

2.23 The Commission also heard evidence from experts on the management of those priests identified as a potential risk to children.

2.24 In all, between the initial phase and the hearings into the individual cases, 55 formal hearings took place at the Commission's offices and in other parts of the country. A stenographer recorded all hearings. In addition to the formal hearings a significant number of informal hearings took place.

The Report

2.25 The evidence was gathered mainly in the latter part of 2009 and the first half of 2010. As required by the *Commissions of Investigation Act*, relevant parts of the resulting report were sent to people who are identified or identifiable and who could be contacted. A large number of submissions were received from the relevant parties. These were considered by the Commission and amendments were made as the Commission considered appropriate. The final draft was completed in November 2010.

Costs to date

2.26 The total cost of the Commission's work in relation to the Cloyne diocese to December 2010 was €1.9 million. This does not include third party costs.

2.27 Guidelines on legal costs have been prepared in accordance with Section 23 of the *Commissions of Investigation Act 2004* and given to the relevant parties.

Chapter 3 The Diocese of Cloyne

Introduction

3.1 The Diocese of Cloyne had its beginnings in a monastic settlement established by St Colman in about 560 AD.⁵ Today, the diocese covers much of Co Cork. Cork City itself is part of the Diocese of Cork and Ross whereas the Diocese of Cloyne forms a type of umbrella outside the city covering most of north and east county Cork. Among the towns included in the diocese are Youghal, Midleton, Fermoy, Mallow, Mitchelstown, Charleville and Macroom.

3.2 There are 46 parishes in the diocese. In 2008/9 there were 143 priests attached to the diocese; of these 104 were active in the diocese, 13 had other assignments, 21 were retired and the status of five was unknown. The catholic population of Cloyne was estimated at 164,344.⁶ There were 163 priests incardinated in the diocese in 1996 – the start of the period covered by this investigation; 12 of these came within the remit of the Commission and their cases are described in this report. The Diocese of Cloyne told the Commission that there were 430 priests incardinated there between 1932 (the year in which the oldest priest covered by this report was ordained) and 2010.

3.3 Like the Archdiocese of Dublin, the Diocese of Cloyne engages in many activities. Its main activities are the running of parishes and the patronage of, and provision of services to, primary and post-primary schools. In a report prepared for the diocese in 2004 it was recognised that within the diocese there was “*a variety of ministries and pastoral activities through which children, young people and their families engage with and as Church. These include children’s and family liturgies, choirs, altar servers, youth services and many more*”.⁷

3.4 Like its Dublin counterpart, the Diocese of Cloyne has never become an incorporated entity under the *Companies Acts* or otherwise nor does it have to comply with any regulations or norms that are supervised by the Office of the Director of Corporate Enforcement.

⁵ See www.cloynediocese.ie/history

⁶ *Irish Catholic Directory* (Dublin: Veritas Publications, 2009).

⁷ McCoy Consulting: *Cloyne Diocese Child Protection Project* (August 2004, Unpublished).

3.5 Overall, in the Commission's view, the structure of the Diocese of Cloyne more closely resembles that of the Diocese of Ferns (see the *Ferns Report*) than that of the Archdiocese of Dublin.

Managerial structure of the diocese

3.6 The diocese is headed by the bishop. In the period under investigation the Diocese of Cloyne was headed by Bishop Magee who was appointed Bishop of Cloyne on 17 March 1987. In March 2009, the Pope appointed Archbishop Dermot Clifford, the Archbishop of Cashel and Emly, as the Apostolic Administrator of Cloyne. This meant that the governance of the diocese was transferred to Archbishop Clifford. He had all the powers and duties of the Bishop of Cloyne. Bishop Magee retained the title of Bishop of Cloyne but he could not exercise any of the functions of the bishop.

3.7 On 9 March 2010 Bishop Magee tendered his resignation as Bishop of Cloyne to the Pope and this was accepted on 24 March 2010.

3.8 A bishop in his diocese is autonomous and every bishop is accountable directly to the Holy See. According to canon law, the diocesan bishop governs the particular Church entrusted to him with legislative, executive and judicial power in accordance with the law (canon 391). As long as he operates within the canon law the bishop is free to organise the day to day running of his diocese as he sees fit.

3.9 From the evidence seen by the Commission, the Bishop of Cloyne in the period 1996 – 2009 delegated a great deal of the work in the child protection area to one of his vicars general, Monsignor Denis O'Callaghan. Monsignor O'Callaghan was first appointed a vicar general in 1982 by Bishop John Ahern and was reappointed by Bishop Magee when he became bishop in 1987. Monsignor O'Callaghan remained a vicar general until February 2009.

Bishop Magee

3.10 Bishop Magee told the Commission that he joined the St Patrick's Missionary Society, Kiltegan, Co Wicklow (generally known as the Kiltegan Fathers) in 1954. He spent much of his initial years as a priest in Nigeria

where he was principally involved in education. He got caught up in the Biafran war and was eventually evacuated after he had been injured in the conflict.

3.11 In 1968, he was appointed Procurator General of the Society with the responsibility for liaising between the Congregation that oversaw the missions in the Holy See and his Society, the Kiltegan Fathers. In November 1969, he became an official of the Holy See in the Congregation for the Evangelisation of Peoples with particular responsibility for India, Pakistan, Ceylon (Sri Lanka) and Burma (Myanmar).

3.12 In 1975, he was appointed private secretary to Pope Paul VI and was reappointed by the short lived pope, Pope John Paul I. Subsequent to the death of Pope John Paul I, he was private secretary to Pope John Paul II from 1978 - 1982. In 1982 he was appointed by the Pope to the position of Papal Master of Ceremonies and it was from this position that he was made Bishop of Cloyne.

3.13 He told the Commission that he had spent 24 years in Rome but that he had some familiarity with Cork as he had been a student there. From July 1994 to March 1996, Bishop Magee was Apostolic Administrator of the Diocese of Limerick due to the illness of the then Bishop of Limerick, Bishop Jeremiah Newman.

Auxiliary Bishops

3.14 There were, and are, no auxiliary bishops in Cloyne.

Metropolitan bishop

3.15 In the Roman Catholic hierarchy, the rank of metropolitan archbishop, or simply metropolitan, is accorded to the senior diocesan archbishop of a 'metropolis', that is, the chief city of an old Roman province or a regional capital.

3.16 The Archbishop of Cashel and Emly, Archbishop Dermot Clifford, is a metropolitan archbishop and has some limited canonical authority over the other bishops in his ecclesiastical province, that is, the Bishop of Cloyne, the Bishop of Cork and Ross, the Bishop of Kerry, the Bishop of Killaloe, the

Bishop of Limerick and the Bishop of Waterford and Lismore. These bishops are known as suffragan bishops.

3.17 The supervisory role of a metropolitan archbishop over suffragan bishops has been described by canon lawyers as “*very, very minor*”. As can be seen from the *Ferns Report* and the *Report into the Catholic Archdiocese of Dublin*, there was no evidence that the metropolitan exercised any jurisdiction over any bishops in the running of their dioceses. Archbishop Clifford told the Commission that, according to canon 436, “*the metropolitan has no other power of governance over the suffragan diocese. He can, however, celebrate sacred functions in all churches, provided he just, out of courtesy, tells the local bishop*”. He said that the metropolitan is “*primus inter pares, first among equals and if Rome asks him to investigate something he will do it*”.

3.18 Even though canon law does not accord a significant role to the metropolitan, *Our Children, Our Church* does provide for a role for the metropolitan in cases of allegations against bishops. Archbishop Clifford, as metropolitan, was informed of the concerns about Bishop Magee in accordance with *Our Children, Our Church* (see Chapter 26). The Archbishop was subsequently appointed apostolic administrator of the Diocese of Cloyne.

Apostolic administrator

3.19 According to a statement issued by Bishop Magee, he requested “*the Holy See on the 4th February 2009 to appoint an apostolic administrator for the Diocese of Cloyne*”.

3.20 As already stated, the Pope appointed Archbishop Clifford as apostolic administrator for the diocese. He could have chosen another person although Archbishop Clifford said that, if an administrator is being appointed, it is normally the metropolitan that is appointed. However, there are recent examples of the non-appointment of the metropolitan. For example, when Bishop Comiskey resigned from the diocese of Ferns, Bishop Eamon Walsh, an auxiliary bishop of Dublin, was appointed apostolic administrator. Indeed, as already stated, Bishop Magee was himself

appointed as the apostolic administrator of the diocese of Limerick in the 1990s.

3.21 As apostolic administrator, Archbishop Clifford exercises all the powers and duties of the bishop.

Vicars general

3.22 Vicars general are appointed by the bishop to assist him in the diocese. During the period under review, there were usually two vicars general in the Diocese of Cloyne. As described above, Monsignor Denis O'Callaghan was a vicar general for almost all of the period covered by the Commission. Monsignor Daniel O'Connell was a vicar general until his death in 1997. Monsignor James O'Donnell became a vicar general in November 1998; he resigned this position in February 2009. The authority of vicars general is the same as that of the bishop with some conditions as set out in canon 479 of the code of canon law:

"In virtue of his office, the Vicar general has the same executive power throughout the whole diocese as that which belongs by law to the diocesan Bishop: that is, he can perform all administrative acts, with the exception however of those which the Bishop has reserved to himself, or which by law requires special mandate of the Bishop."

3.23 Monsignor O'Callaghan was the main person involved in dealing with allegations of clerical child sexual abuse in the period covered by the Commission. The Commission has not seen any evidence that Monsignor O'Connell had any involvement in child protection matters. Monsignor O'Donnell was not involved in dealing with allegations of abuse but he was involved in the Child Protection Committee and in training for child protection (see Chapter 8).

Vicars forane

3.24 A number of parishes have been designated as vicariates forane or deaneries. There are five deaneries in the Diocese of Cloyne: Midleton, Buttevant, Fermoy, Coachford and Kanturk. Normally a deanery is presided over by a vicar forane whose job it is to ensure that the clerics in the district lead a life befitting the clerical state. A number of different priests have held the position of vicar forane during the period covered by this report. On the

evidence available to the Commission, they appeared to have little or no active role in, or impact on, the lives lived by many of the priests who are the subject matter of this inquiry.

Parish priests and curates

3.25 Parish priests who are in charge of parishes are subject to the authority of the bishop. A parish priest is appointed by the bishop. The parish priest may be assisted in his parish by an assistant priest or curate, who is appointed by the bishop. The bishop may consult with the parish priest or the vicar forane in relation to such appointments. In Cloyne during the period under review, there was a personnel board which advised the bishop on appointments. This was composed of senior priests of the diocese.

Religious orders

3.26 The Order of Discalced Carmelites, who ran a school at Castlemartyr, Co Cork within the Diocese of Cloyne, was asked by Bishop Magee to take over the parish of Castlemartyr when its school closed down in 2002. Six members of the order ran that parish for a period of five years. As part of a rationalisation process, the order subsequently withdrew from the diocese and the monastery was closed. At present, there is no male religious congregation in the diocese.

Visiting priests

3.27 Bishop Magee told the Commission that, in common with many other dioceses, his diocese had requests from visiting priests to say mass and to fill in for Cloyne priests who were on holidays. He said he was meant to have been informed by the parish priest about the presence of visiting priests but that this was not always done. He said that, in around 2003/4, he had introduced a system whereby all priests incardinated in the diocese were issued with a *celebret* – that is, a card which indicated that the priest was in good standing in the diocese. The card is issued on an annual basis and is withdrawn if the priest is removed from ministry.

Consultative bodies

Council of Priests

3.28 One of the principal consultative bodies is the Council of Priests. The role of the council is to assist the bishop in the governance of the diocese.

The bishop is obliged to consult the council on a range of matters, for example, any changes to parishes, offerings made by the faithful, the building of churches and the use of churches for secular purposes. The council consists of priests selected by their peers as well as those nominated by the bishop. The membership of the council has changed over the period of the Commission's remit. At present, the council is out of office because the diocese is vacant – there is no bishop.

College of Consultors

3.29 The College of Consultors is a body of no fewer than six and no more than 12 priests appointed by the bishop for a term of five years. The college is appointed from the Council of Priests. A bishop is obliged to obtain the consent of this body when making decisions about certain financial matters. Bishop Magee told the Commission that he consulted the college prior to taking out an insurance policy to deal with claims of clerical child sex abuse in 1988. A number of different priests have been members of the college over the period covered by this report.

Chancellor and archives

3.30 The Diocese of Cloyne does not have a full time chancellor. In practice, the role of the chancellor is usually carried out by the bishop's secretary.

3.31 Canon law advice, according to Bishop Magee, was received from Monsignor O'Callaghan and from Fr Gerard Garrett who was attached to the Cork Regional Marriage Tribunal. The Diocese of Cloyne is a constituent member of this tribunal. Fr Garrett was also the first chairman of the Cloyne/Limerick inter-diocesan case management advisory committee which met for the first time in February 2005.

3.32 There is no chancellery as such. Documents in relation to child sexual abuse which ought to have been held in the chancellery or the secret archive were in fact held in a number of different locations, mainly in the home and/or parish office of Monsignor O'Callaghan.

Secret archive

3.33 Bishop Magee told the Commission that, when he became bishop in 1987, there was a filing cabinet in a particular room in his house which he had been told was the secret archive. He said there was very little in it. He said that the issue of child sexual abuse had been discussed at his first meeting of the Irish Bishops' Conference in 1987. He had then checked the secret archive for such complaints but he found nothing.

3.34 In addition to the secret archive there were also 40 boxes of documents which constituted the archive of the diocese. Bishop Magee told the Commission that, in 1988, he modernised the office and put in computers, and then drew up a system for current archives and then for ancient archives as well. Initially it was the responsibility of a priest but he then got a religious sister who was a qualified archivist to begin the work of going through these. That work was still ongoing in 2009.

Responsibility for dealing with child protection

3.35 Bishop Magee told the Commission that, at a meeting of the Irish Bishops' Conference, *"they gave us some directions that we should have somebody appointed who would be responsible for handling any cases that might come forward with regard to child abuse"*. He said he thought that this meeting of the bishops took place in or around 1988 but he could not remember exactly when. He said he had then given Monsignor O'Callaghan the task of being the person to deal with such allegations. He told the Commission he did not formally appoint him as a delegate at this stage but he asked him because he was a canon lawyer and he had been a professor in Maynooth and was, therefore, qualified for the task. Monsignor O'Callaghan was formally appointed as the delegate in 1996. All the priests of the diocese were told of his appointment when Bishop Magee distributed the *Framework Document* to them (see Chapter 4).

3.36 Monsignor O'Callaghan told the Commission that *"it wasn't said in so many words but if it did arise, [prior to 1996] I'd have been the one who would be authorised to investigate because of my position in the diocese generally... [After 1996] I would only have been targeted if a case had come up. The bishop would say 'oh yes, get on to Denis to cover that.' Can I just say...we were a small country diocese and therefore the definition you would find in Dublin [would not apply in Cloyne] ... it was a very flexible kind of*

informal arrangement". When the *Framework Document* was introduced in 1996, Archdeacon Christopher Twohig was appointed deputy delegate. In 2008, Fr William (Bill) Bermingham was appointed delegate (or designated person/child protection officer).⁸ He resigned from this position in mid 2010.

Current child protection officer

3.37 The current (December 2010) formally designated child protection officer is Fr John McCarthy who can be contacted at 086 036 8999. His appointment is temporary. The diocese intends to recruit a lay person to this position.

Advisory panel/Inter-diocesan case management advisory committee

3.38 Immediately prior to the adoption of the *Framework Document*, the Diocese of Cloyne had an advisory panel but it ceased to function very soon afterwards. Bishop Magee told the Commission that he considered that the advisory panel continued to function. Monsignor O'Callaghan also contends that the advisory panel continued to function. The Commission considers that the evidence clearly shows that it did not function after 1995. The records show that the panel consisted of Monsignor O'Callaghan; the deputy delegate, Archdeacon Christopher Twohig; Mr Diarmaid Ó Catháin, the solicitor who later advised the diocese in relation to the handling of cases of child sexual abuse; a psychologist; and another local solicitor. The local solicitor attended one meeting of the panel and then resigned and the psychologist has told the Commission that he never sat on the panel and does not recall ever being invited to sit on it. This panel met three times in 1995 (see Chapter 9) and did not meet again. If this panel continued to function after 1995, it can only have involved Monsignor O'Callaghan and Archdeacon Twohig as the only other member, Mr Ó Catháin, is clear that it did not meet again after 1995. Archdeacon Twohig died in April 2009. A panel consisting of two senior priests of the diocese is not the sort of independent panel that was envisaged in the *Framework Document*. The minutes of the three meetings in 1995 are available but there are no subsequent minutes.

⁸ Fr Bermingham was initially appointed as designated person on 28 September 2007. However, Monsignor O'Callaghan retained responsibility for all complaints reported before that date. Fr Bermingham assumed full responsibilities as designated person on 3 November 2008.

3.39 An inter-diocesan case management advisory committee covering the dioceses of Limerick and Cloyne was established towards the end of 2004. It held its first meeting in late February 2005. In the beginning its Cloyne membership included the delegate, Monsignor O’Callaghan, another priest of the diocese, a retired garda, a psychologist and a parent. Later, Mr Ó Catháin joined the committee. It was disbanded in 2008 when Mr Ian Elliott (see Chapter 6) took over as the advisory panel for the diocese. A new advisory panel was established in 2010. The members of this panel are named on the diocese’s website.

Contact between the Diocese of Cloyne and Rome

3.40 Bishop Magee, prior to his replacement by an administrator, referred a number of cases to the Congregation for the Doctrine of the Faith. A case which expressed concerns about Bishop Magee himself was referred to the Congregation for Bishops by Archbishop Clifford in a timely manner (see Chapter 26). Formal contacts with Rome are made through the office of the Papal Nuncio but a bishop may write directly to the Congregation for Bishops if he so wishes.

The Papal Nuncio

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

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

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

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

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

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

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

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

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

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

- 3.42 The current Papal Nuncio, Dr Guiseppe Leanza, was actively involved in the appointment of Archbishop Clifford as apostolic administrator to the Cloyne diocese (see Chapter 26).

Personnel who dealt with child sexual abuse

3.43 The following are the Church officials who dealt with child sexual abuse cases in the Diocese of Cloyne in the period covered by the Commission:

Bishops

| | |
|---|------------------------------------|
| Bishop John Magee | 1987 – 2009 ⁹ (retired) |
| Archbishop Dermot Clifford, Apostolic Administrator | 2009 to date |

Delegates/Designated Persons/Child Protection Officers

| | |
|---|-----------------------|
| Monsignor Denis O'Callaghan | 1996 – 2008 (retired) |
| (Monsignor O'Callaghan was also the parish priest of Mallow and a vicar general during his time as delegate.) | |
| Fr William (Bill) Bermingham | 2008 – June 2010 |
| (Fr Bermingham was a curate and a parish priest during his time as delegate and is currently a parish priest in the diocese.) | |
| Fr John McCarthy | June 2010 to date |

Deputy Delegate

| | |
|--|------------------------|
| Archdeacon ¹⁰ Christopher Twohig | 1996 – 2009 (deceased) |
| (Archdeacon Twohig was attached to the Cork Regional Marriage Tribunal for all of the time that he was the deputy delegate.) | |
| Fr John McCarthy | 2009 – June 2010 |

Support Person

| | |
|--------------------------------|--------------|
| Dean ¹¹ Eámon Goold | 1996 to date |
|--------------------------------|--------------|

⁹ Bishop Magee stood down as Bishop of Cloyne in March 2009 and so was not responsible for dealing with allegations of child sexual abuse from then on. He resigned as Bishop of Cloyne in March 2010.

¹⁰ Before the Council of Trent (1553), archdeacons had a significant judicial role within the diocese and a supervisory role over priests. Since then, these roles have largely reverted to the bishop and the vicars general of the diocese. At present, an archdeacon may have a ceremonial role in a cathedral. See *Catholic Encyclopedia*: <http://www.newadvent.org/cathen/01693a.htm>

¹¹ A dean originally meant a person having charge of ten others. There are two kinds of deans in the Catholic Church at present, deans of chapters (usually in cathedrals) and deans of districts. A dean of a district may also be called a vicar forane. See *Catholic Encyclopedia*: <http://www.newadvent.org/cathen/04659a.htm>

(It seems that initially Dean Goold was not officially appointed as a support person but he did act as one in some cases. He was formally appointed as a support person in July 2005. Dean Goold is a parish priest.)

Chapter 4 Church child protection procedures and guidelines 1996 – 2009

Introduction

4.1 Throughout the period covered by this report there were clear Church guidelines in place for dealing with complaints of child sexual abuse. There were Irish Church guidelines issued in 1996, 2005 and 2009. Instructions were issued by the Vatican in 2001 and in 2010. The Diocese of Cloyne has consistently emphasised that it followed a ‘pastoral approach’ while implementing the various guidelines.

Prior to 1996

Bishop Magee

4.2 Bishop Magee told the Commission that it was at his very first meeting of the Irish Bishops’ Conference in 1987 that he heard about the issue of clerical child sex abuse. There was a recommendation before the meeting that each diocesan bishop take out an insurance policy in respect of claims relating to clerical child sex abuse. The Dublin Archdiocese had spearheaded this development. He said that, following discussions at the meeting, it was agreed that all dioceses would take out similar policies. The arrangements for insurance cover are described in Chapter 9 of the Commission’s *Report into the Catholic Archdiocese of Dublin*.

4.3 Bishop Magee told the Commission that he informed his diocesan College of Consultors (see Chapter 3) that he was taking out an insurance policy in respect of clerical child sex abuse claims. He said some of the priests seemed very surprised about that step but he told them that it was the decision of the Irish Bishops’ Conference and that nobody knew “*what was lurking in the background*”. He said that he told them “*if anybody had any information to share with me in that regard I would be grateful to receive it*”.

4.4 He received no complaints at that time. He said he had no experience in this area but that when he was studying he had been made aware of the seriousness of molestation of minors. He told the Commission that, on checking the filing cabinet which contained the secret archives, there was nothing relating to clerical child sex abuse and that his predecessor, Bishop John Ahern, had never referred to it.

4.5 He said that if there had been a complaint of clerical child sex abuse he would have dealt with it in accordance with canon law but he said that he never got a complaint in writing nor was he ever told by another priest of any complaint in his early days in Cloyne. He said there was no formal process for dealing with such matters until the adoption by the Irish Bishops' Conference of the *Framework Document* in 1996.

4.6 He told the Commission that he was not aware of the 1922 instruction from Rome on how clerical child abuse complaints were to be handled nor was he aware of the 1962 updated instruction. These instructions are described in Chapter 4 of the Commission's *Report into the Catholic Archdiocese of Dublin*. As is pointed out in that report, very few people were aware of these instructions, particularly the 1962 version. The reason for this became clear when, in 2010, the Vatican explained that copies of the 1922 instruction were given to bishops who had to deal with particular cases, including cases of sexual abuse of children. Copies of the 1962 instruction were meant to be distributed to the bishops attending the Second Vatican Council (1962 – 65). A few copies were handed out to bishops who needed to process cases reserved to the Holy Office but most of the copies were never distributed.¹²

Monsignor O'Callaghan

4.7 Monsignor O'Callaghan told the Commission that he was aware of the 1922 Instruction but that he had no cause to use it. The first allegation of clerical child sex abuse that he had encountered was in 1994 (see Chapter 9). He said that he believed that sometime earlier he had become aware of what was happening in Newfoundland in Canada but he said:

"I suppose we thought that would be out there, you know, that in fact Ireland would be protected from that kind of situation and therefore it was only I'd say in the 1990s that it dawned on us we better get up to speed on this because also another factor, a lot of the priests who were being accused of sex abuse were Irish. A lot of them had been ordained in Ireland and therefore all you had to do was look over the

¹² Congregation for the Doctrine of the Faith: *The Norms of the Motu Proprio "Sacramentorum Sanctitatis Tutela"* Historical Introduction (Rome, 2010) www.vatican.va

names on the list anywhere and you got that picture, so I suppose that certainly struck us at that stage, it did.”

Preparation of guidelines

4.8 Bishop Magee told the Commission that he attended several meetings of the Irish Bishops' Conference at which the need for guidelines for Church policy on incidents or suspicions of child sexual abuse by a priest or religious was identified. In September 1990 the Irish bishops decided that a small group would prepare guidelines about procedures which bishops might follow in particular instances. In practice, it was April 1994 before work on the development of guidelines started in earnest. The background to the publication in 1996 of *Child Sexual Abuse: Framework for a Church Response*, the report of the Irish Catholic Bishops' Advisory Committee on Child Sexual Abuse by Priests and Religious is described in Chapter 7 of the Commission's *Report into the Catholic Archdiocese of Dublin*. This document is commonly referred to as the "1996 Guidelines" or the "Framework Document" or the "Green Book". In this report, we refer to it as the "*Framework Document*".

4.9 Monsignor O'Callaghan told the Commission that he was involved in the preparation of the *Framework Document* as a representative of the Diocese of Cloyne. He said he was part of an informal group which was consulted by those producing the document. They would run their ideas past this informal group which mostly consisted of delegates appointed by the different bishops from around the country. He said that, between 1987 and the publication of the *Framework Document*, the only time he was called upon to investigate a matter was in 1994.

The *Framework Document*, 1996

4.10 The *Framework 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 are:

- The safety and welfare of children should be the first and paramount consideration following an allegation of child sexual abuse.
- A prompt response should be given to all allegations of child sexual abuse.

- In all instances where it is known or suspected that a priest or religious has sexually abused a child, the matter should be reported to the civil authorities.
- Care should be given to the emotional and spiritual well-being of those who have suffered abuse and their families.
- There should be immediate consideration, following a complaint, of all child protection issues which arise, including whether the accused priest or religious should continue in ministry during the investigation.
- The rights under natural justice, civil law and canon law of an accused priest or religious should be respected.
- An appropriate pastoral response to the parish and wider community should be provided, with due regard to the right of privacy of those directly involved, and to the administration of justice.
- Adequate positive steps should be taken to restore the good name and reputation of a priest or religious who has been wrongly accused of child sexual abuse.

Reporting policy

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

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

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

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

4.13 Unlike the State guidelines (see Chapter 6), reporting of complaints made by adults to the health authorities as well as the Gardaí was required in all cases involving priests working in dioceses as they would have had unsupervised access to children at some stage of their careers. The circumstances in which a child protection issue in cases of complaints by adults is considered to arise are clear in the Church guidelines whereas this is, unfortunately, not always the case in the State guidelines.

Structures and procedures

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

- a **delegate** and deputy delegate to oversee and implement the procedures for handling the allegations. It was specifically mandated that every complaint be recorded and carefully examined. The duty of promoting awareness and understanding of child sexual abuse among the priests of the diocese was expressly conferred on the delegate;
- a **support person** to assist and advise victims or persons who made complaints;
- an **advisor to a priest** accused of sexual abuse;
- an **advisory panel** which should include lay people with relevant qualifications and expertise to offer their advice on a confidential basis collectively and in their respective disciplines to the bishop or religious superior.

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

4.16 The *Framework Document* was launched in January 1996 by the Irish Bishops' Conference and the Conference of Religious of Ireland. The understanding was that each diocese or religious institute would enact its own particular protocol for dealing with complaints.

Implementation of the Framework Document in Cloyne, 1996

4.17 Bishop Magee confirmed to the Commission that, in January 1996, he had sent a copy of the *Framework Document* to all priests in the Diocese of Cloyne, together with a covering letter as follows:

"I enclose a copy of 'Child Sexual Abuse: Framework for a Church Response'. This is the report of the Irish Catholic Bishops Advisory Committee on child sexual abuse by Priests or Religious. The framework presented in this report is intended as a set of guidelines to all Diocesan and Religious Congregations in dealing with allegations of sexual abuse by Priests or Religious.

I commend the contents of this report to your attention. As you know a Delegate, Deputy Delegate and Advisory Committee have already been established in this Diocese. All Priests should note that any relevant allegations reported to them should immediately be brought to the attention of the Diocesan Delegate, Mgr. Denis O'Callaghan, in accordance with the procedures laid down in this report.

It is hoped that the enclosed report will serve the purpose of assisting Diocesan and Religious authorities in dealing appropriately with allegations of child sexual abuse which involve Priests or Religious."

4.18 The bishop told the Commission that, at that time, he had appointed Monsignor Denis O'Callaghan as the delegate and the deputy delegate was Archdeacon Christopher Twohig. He confirmed that he had earlier asked Monsignor O'Callaghan to suggest members of the advisory panel. This he did and the bishop approved the Monsignor's nominations. He said that, at that time, the advisory panel consisted of Monsignor O'Callaghan, the solicitor who advised the diocese in relation to the handling of cases of child sexual abuse and a psychologist whose professional services were on occasion retained by the diocese. This psychologist told the Commission that he does not recall ever being asked to sit on the advisory panel and he never attended

a meeting. Another local solicitor was also included on the initial panel but this person resigned soon afterwards. The records show that Archdeacon Twohig was also a member of the panel.

4.19 In fact, at the time the bishop communicated with his priests in 1996, the advisory panel had ceased to function and had become more in the nature of an ad hoc group, some of whom were consulted by Monsignor O’Callaghan when he considered he needed advice. Bishop Magee told the Commission that he understood that the advisory panel was functioning at this time. A new advisory panel was put in place in 2005 – this was known as the inter-diocesan case management committee.

4.20 Bishop Magee accepted that no support person was put in place for complainants nor was there an advisor put in place for all accused priests under the *Framework Document*. Monsignor O’Callaghan told the Commission that they attempted to put an advisor in place for accused priests at a later date but that the accused priests simply refused to accept any advisor appointed by the diocese and appointed their own advisors. Monsignor O’Callaghan also said that he regarded the availability of a counsellor to each complainant as fulfilling the role of the support people but he accepted that the counsellors were not part of the diocesan system.

The Vatican’s reaction

4.21 The Irish bishops sought recognition¹³ from Rome for the *Framework Document* but it was not forthcoming. Furthermore, almost a year after its introduction, the Papal Nuncio at the time wrote, strictly confidentially, to all the bishops in Ireland in the following terms:

“The Congregation for the Clergy has attentively studied the complex question of sexual abuse of minors by clerics and the document entitled “Child Sexual Abuse: Framework for a Church Response”, published by the Irish Catholic Bishops’ Advisory Committee.

The Congregation wishes to emphasize the need for this document to conform to the canonical norms presently in force.

¹³ Recognition (*‘recognitio’*) from Rome would give the document canon law status.

The text, however, contains 'procedures and dispositions which appear contrary to canonical discipline and which, if applied, could invalidate the acts of the same Bishops who are attempting to put a stop to these problems. If such procedures were to be followed by the Bishops and there were cases of eventual hierarchical recourse lodged at the Holy See, the results could be highly embarrassing and detrimental to those same Diocesan authorities.

In particular, the situation of 'mandatory reporting' gives rise to serious reservations of both a moral and a canonical nature'.

Since the policies on sexual abuse in the English speaking world exhibit many of the same characteristics and procedures, the Congregation is involved in a global study of them. At the appropriate time, with the collaboration of the interested Episcopal Conferences and in dialogue with them, the Congregation will not be remiss in establishing some concrete directives with regard to these Policies.

For these reasons and because the abovementioned text is not an official document of the Episcopal Conference but merely a study document, I am directed to inform the individual Bishops of Ireland of the preoccupations of the Congregation in its regard, underlining that in the sad cases of accusations of sexual abuse by clerics, the procedures established by the Code of Canon Law must be meticulously followed under pain of invalidity of the acts involved if the priest so punished were to make hierarchical recourse against his Bishop."

- 4.22 There can be no doubt that this letter greatly strengthened the position of those in the Church in Ireland who did not approve of the *Framework Document* as it effectively cautioned them against its implementation.

Congregation for the Doctrine of the Faith, 2001

- 4.23 A further instruction came from the Vatican in May 2001 entitled *Sacramentorum Sanctitatis Tutela*. Unlike the 1922 and 1962 documents, this document was made widely available. This provided that all allegations of child sexual abuse, which have reached the threshold of "a semblance of

truth”, should be referred directly to the Congregation for the Doctrine of the Faith in Rome. That body would either elect to deal with the matter itself or would advise the bishop on the appropriate action to take in canon law. The Commission has been informed that this policy was adopted in order to ensure a co-ordinated and uniform response to allegations of child sexual abuse against clergy throughout the Roman Catholic world.

4.24 Monsignor O’Callaghan’s view of the 2001 instruction, as expressed in a letter of April 2002, was that *“the subtext was the need for the procedures in Canon Law which will respect the rights of the accused priest. We [he and Fr Gerard Garrett, a canon lawyer] foresee the requirement of judicial tribunals to be set up where anything in the nature of a penalty comes to be imposed on a priest. This will affect such issues as administrative leave, restricted ministry, withdrawal from ministry”*.

4.25 Bishop Magee reported one case to the Congregation for the Doctrine of the Faith in 2005. The present position is that the four cases where priests have been risk assessed have been reported to Rome; one of these priests has since died; the outcome in the other three cases was not known as this report was being finalised (December 2010).

Guide to Congregation for the Doctrine of the Faith (CDF) procedures

4.26 In April 2010, the Congregation for the Doctrine of the Faith issued a *Guide to Understanding Basic CDF Procedures concerning Sexual Abuse Allegations*.¹⁴ This does not change the canon law or the 2001 procedural rules but does provide a useful summary of the canon law and procedures which apply to allegations of clerical child sexual abuse. It states:

“The applicable law is the Motu Proprio Sacramentorum sanctitatis tutela (MP SST) of 30 April 2001 together with the 1983 Code of Canon Law. This is an introductory guide which may be helpful to lay persons and non-canonists.

A: Preliminary Procedures

The local diocese investigates every allegation of sexual abuse of a minor by a cleric.

¹⁴

http://www.vatican.va/resources/resources_guide-CDF-procedures_en.html

If the allegation has a semblance of truth the case is referred to the CDF. The local bishop transmits all the necessary information to the CDF and expresses his opinion on the procedures to be followed and the measures to be adopted in the short and long term.

Civil law concerning reporting of crimes to the appropriate authorities should always be followed.

During the preliminary stage and until the case is concluded, the bishop may impose precautionary measures to safeguard the community, including the victims. Indeed, the local bishop always retains power to protect children by restricting the activities of any priest in his diocese. This is part of his ordinary authority, which he is encouraged to exercise to whatever extent is necessary to assure that children do not come to harm, and this power can be exercised at the bishop's discretion before, during and after any canonical proceeding.

B: Procedures authorized by the CDF

The CDF studies the case presented by the local bishop and also asks for supplementary information where necessary.

The CDF has a number of options:

B1 Penal Processes

The CDF may authorize the local bishop to conduct a judicial penal trial before a local Church tribunal. Any appeal in such cases would eventually be lodged to a tribunal of the CDF.

The CDF may authorize the local bishop to conduct an administrative penal process before a delegate of the local bishop assisted by two assessors. The accused priest is called to respond to the accusations and to review the evidence. The accused has a right to present recourse to the CDF against a decree condemning him to a canonical penalty. The decision of the Cardinals members of the CDF is final.

Should the cleric be judged guilty, both judicial and administrative penal processes can condemn a cleric to a number of canonical penalties, the most serious of which is dismissal from the clerical state. The question of damages can also be treated directly during these procedures.

B2 Cases referred directly to the Holy Father

In very grave cases where a civil criminal trial has found the cleric guilty of sexual abuse of minors or where the evidence is overwhelming, the CDF may choose to take the case directly to the Holy Father with the request that the Pope issue a decree of "ex officio" dismissal from the clerical state. There is no canonical remedy against such a papal decree.

The CDF also brings to the Holy Father requests by accused priests who, cognizant of their crimes, ask to be dispensed from the obligation of the priesthood and want to return to the lay state. The Holy Father grants these requests for the good of the Church ("pro bono Ecclesiae").

B3 Disciplinary Measures

In cases where the accused priest has admitted to his crimes and has accepted to live a life of prayer and penance, the CDF authorizes the local bishop to issue a decree prohibiting or restricting the public ministry of such a priest. Such decrees are imposed through a penal precept which would entail a canonical penalty for a violation of the conditions of the decree, not excluding dismissal from the clerical state. Administrative recourse to the CDF is possible against such decrees. The decision of the CDF is final.

C. Revision of MP SST

For some time the CDF has undertaken a revision of some of the articles of Motu Proprio Sacramentorum Sanctitatis tutela, in order to update the said Motu Proprio of 2001 in the light of special faculties granted to the CDF by Popes John Paul II and Benedict XVI. The proposed modifications under discussion will not change the above-mentioned procedures (A, B1-B3)."

Revised norms, May 2010

4.27 New norms were published in May 2010.¹⁵

Assessment of Cloyne procedures, 2004

4.28 In 2003, a pilot project was developed by the Child Protection Office¹⁶ of the Irish Bishops' Conference. This project involved two dioceses, one of which was Cloyne, and two archdioceses. Its objective was to review the structures in place in the participating dioceses and to develop a model for the development of a child protection service suitable for the Church in Ireland. As part of this process, the bishop requested Dr Kevin McCoy of McCoy Consulting to carry out a review of the response by the diocese to complaints of clerical child sexual abuse. Dr McCoy had extensive experience in child protection issues. Among other things, he had been Chief Inspector of the Social Services Inspectorate in Northern Ireland and had worked with the Commission to Inquire into Child Abuse.¹⁷ He was also a member of the group which produced *Our Children, Our Church* (see below). Monsignor James O'Donnell, who was a vicar general of the diocese at the time, was appointed the chairman of the steering group which oversaw the project.

4.29 Dr McCoy examined the arrangements in the diocese for responding to all complaints of child abuse and the response of the diocese to these complaints. He also looked at the diocese's role in relation to allegations of abuse in education or diocesan youth work services and examined the training and development strategies in place. His recommendations in relation to training are described in Chapter 8. Here we are concerned only with his examination of the diocesan arrangements for, and response to, complaints of clerical child sexual abuse.

4.30 Dr McCoy's report says that he examined "*all files held by the delegates, solicitors, Bishop and others*" and that he had discussions and consultations with all relevant parties, including the delegate, the solicitor who

¹⁵ *Normae de gravioribus delictis*: http://www.vatican.va/resources/resources_norme_en.html

¹⁶ The Child Protection Office was the forerunner of the National Board for Safeguarding Children (see Chapter 6).

¹⁷ The *Report of the Commission to Inquire into Child Abuse*, generally known as the *Ryan Report* was published in 2009: www.childabusecommission.ie.

dealt with child abuse cases, complainants and accused priests. The Commission considers it unlikely that he was provided with all the files because the first time the relevant files were all brought together was for the purpose of discovery to this Commission in 2009. He said he was told about eight priests against whom complaints had been made. In fact, the Commission has established that there were ten diocesan priests against whom complaints had been made up to 2003 so, clearly, Dr McCoy did not receive files in respect of two of them. Dr McCoy was also clearly not told that a decision had been made in March 2004 to bring criminal charges against one priest (see Chapter 15).

Implementation of Framework Document

4.31 Dr McCoy's report stated that the guidelines in the *Framework Document* were "*only partially adopted by the Diocese*". He noted that as the document was not normative, each bishop was expected to implement as appropriate. He found that there was no local protocol drawn up and promulgated among priests and laity of the Cloyne diocese. He found that the diocese preferred "*to pursue an informal approach with the emphasis on pastoral outreach and the offer of mediation and counselling which was primarily focused on the needs and care of complainants*".

4.32 He noted that a delegate and deputy delegate had been appointed and that they were "*supported by a small group in an ad hoc advisory capacity*". In evidence to the Commission, Dr McCoy said that his understanding was that the advisory panel at the time consisted of Monsignor O'Callaghan, another Monsignor, the solicitor who dealt with child abuse cases and a female employee of the diocese who was an accredited trainer in child protection and was at that time seconded to the Child Protection Office in Maynooth. He said that it was not "*a fully functioning advisory committee*" that would exist if the *Framework Document* was being followed.

4.33 Dr McCoy's report stated:
"There is no strategy for dissemination of information and raising awareness throughout the Diocese and many people remain unaware of the issues involved and the arrangements in the Diocese for responding to complaints. The absence of clear structures means that there is no differentiation of roles and the delegate frequently fills

the roles of support person and priest advisor. This is an unsatisfactory arrangement which can lead to overburdening of individuals, conflicts of interests and does not serve participants well."

Dr McCoy's report stated that the reporting policies outlined in the *Framework Document* were implemented. Based on the evidence set out in this report and, indeed, Bishop Magee's own admission, this was not the case.

Complainants

4.34 Dr McCoy interviewed a small number of complainants. His report noted that the support and counselling which complainants received was welcomed but some felt there should be a choice of a male or female to whom they could make their complaints.

Accused priests

4.35 Dr McCoy interviewed the four living priests against whom complaints had been made. They said that they were in a very difficult position and were being considered guilty until they were proven innocent. They noted that there were no named priest advisors for them and they also perceived that the guidance in the *Framework Document* was not being followed and that there was a need for more consistency in handling complaints.

Result of Dr McCoy's Report

4.36 Dr McCoy's report was completed in August 2004. Dr McCoy told the Commission that, before finalising it, he briefed Bishop Magee, Monsignor O'Callaghan and the ad hoc advisory panel about its contents. He said that he considered that Monsignor O'Callaghan was not happy with the contents of his report.

4.37 The McCoy report was not published and was made available only to a small number of people. The erroneous view that Dr McCoy had approved the manner in which the guidelines were being implemented within the diocese was allowed to circulate. In 2008 and 2009, when the handling of child sexual abuse allegations by the Diocese of Cloyne came in for criticism, Monsignor O'Callaghan gave the impression that the McCoy report had effectively given a clean bill of health to the diocese. For example, in his response to the draft Elliott report (see Chapter 6) in May 2008, he quoted from Dr McCoy's "*Acknowledgements*" section in which the co-operation of

the diocese in facilitating the review is praised but he does not mention the actual findings.

4.38 The Commission initially assumed that a report which had been commissioned by the diocese would have been read by the main parties involved, in particular, by Bishop Magee and Monsignor O'Callaghan. It was, therefore, very surprised to be told by Bishop Magee that he did not see the final version of the report until February 2009. However, he later acknowledged that he had, in fact, been given a copy in 2004. Monsignor O'Callaghan told the Commission that he had seen only the summary of the report in 2004 and not the full report. He said he did not see the full report until 2009. The report had been delivered by Dr McCoy to Monsignor O'Donnell in August 2004 as Monsignor O'Donnell was the chairman of the committee overseeing the project. Monsignor O'Donnell told the Commission that he handed a copy of the report to Bishop Magee at a meeting on 13 September 2004. Monsignor O'Callaghan was present at this meeting as was another person from the Diocese of Cloyne and two people from the diocese of Limerick. Monsignor O'Donnell is "*almost certain*" that he also gave a copy of the report to Monsignor O'Callaghan.

4.39 The Commission finds it extraordinary that Bishop Magee apparently did not read the report. On balance, the Commission considers that it is likely that Monsignor O'Callaghan did receive a copy of the full report. If he did not, it again seems extraordinary that he did not ask to see it. It was either not read by him or he deliberately misrepresented its findings.

4.40 The solicitor member of the advisory panel told the Commission that he did not see a copy of the McCoy report even though he asked Monsignor O'Callaghan for it on three occasions. He was told that it was favourable. The Commission accepts that the solicitor did not see the report.

4.41 Many of the recommendations made by Dr McCoy in his report were subsequently adopted in *Our Children, Our Church*.

Our Children, Our Church, 2005

4.42 In 2005, a new child protection document entitled *Our Children, Our Church* was adopted by the Irish Bishops' Conference, the Conference of

Religious of Ireland (CORI) and the Irish Missionary Union (IMU).¹⁸ Its aim was to provide a more comprehensive and unified approach to child protection across the Catholic Church in Ireland. In particular, by proposing a single national structure for the monitoring and managing of child protection issues, it aimed to bring greater clarity and consistency to the Church's procedures in relation to child protection.

4.43 In its introduction, it states that whereas the *Framework Document* was concerned solely with child sexual abuse, the guidance in *Our Children, Our Church* relates to all forms of abuse, physical, sexual and emotional abuse and neglect. The guidance contained in the document is based on guidelines produced in the interim by various statutory authorities and also based on recommendations which were given to the Irish Bishops' Conference following research carried out by the Royal College of Surgeons.¹⁹

4.44 The procedures for dealing with allegations and suspicions of child sexual abuse outlined in *Our Children, Our Church* were not hugely different from those in the *Framework Document*. There were some differences and there were more detailed guidelines on certain issues.

Director of Child Protection

4.45 As well as recommending the establishment of a national board for child protection (it was established under the name National Board for Safeguarding Children - see Chapter 6) each bishop, religious superior and chairperson of a church organisation was to have available to them a director of child protection. The director of child protection was to be a professionally trained person who was responsible for referring allegations, suspicions and concerns of child abuse involving church personnel to the civil authorities and for implementing the appropriate Church procedures. It was similar to the role of the delegate under the *Framework Document*. In Cloyne, Monsignor O'Callaghan assumed this role and was replaced by Fr William Bermingham in 2008. Fr Bermingham was replaced by Fr John McCarthy in 2010 on a

¹⁸ The Irish Bishops' Conference, The Conference of Religious of Ireland, The Irish Missionary Union: *Our Children, Our Church: Child Protection Policies and Procedures for the Catholic Church in Ireland* (Dublin: Veritas Publications, 2005).

¹⁹ Goode, McGee and O'Boyle, *Time to Listen: Confronting Child Sexual Abuse by Catholic Clergy in Ireland* (Dublin: Liffey Press, 2003).

temporary basis. The Commission understands that the diocese intends to appoint a lay person to the position.

4.46 Each parish (or cluster of parishes) was to nominate a parish child protection representative who would facilitate and support anyone in the parish in bringing an allegation or suspicion of child abuse to the attention of the director of child protection should they wish to have support.

Allegations and suspicions

4.47 One of the main differences between the two documents was that a distinction was made between allegations and suspicions of abuse in *Our Children, Our Church*. An allegation is described as being “*direct, specific and supported by some sort of evidence*”. The term may include the following situations:

- Where a person, either an adult or a child, alleges abuse and they name the alleged perpetrator;
- Where a person alleges abuse but is unable or unwilling to name the perpetrator;
- Where a person alleges abuse but the alleged perpetrator has died;
- Where a person reveals that another person has told them of being abused; or where they themselves have witnessed abuse.

4.48 Suspicions are less direct or specific. The document makes it clear that it is necessary to take action in cases of suspicions as well as in cases where there are allegations.

Responding to allegations of child abuse

4.49 The document states that an allegation must be referred to the director of child protection who then must immediately inform the bishop or superior. After that, the director must inform the bishop or superior of every subsequent action. The allegations and suspicions and subsequent actions should all be recorded in writing.

4.50 The director must determine whether there are “*reasonable grounds for concern*” that child abuse may have occurred. The director then has three

options for action; the bishop or superior must be informed of the option it is proposed to exercise. The options are:

- Report directly to the civil authorities: where it is established that there are reasonable grounds for concern the director of child protection must report to the HSE and the Gardaí immediately.
- Seek further clarification: the director of child protection may need to seek greater clarification in order to determine if reasonable grounds for concern exist.
- Take no further actions against the accused person: this may occur only where the director is satisfied that it would have been impossible for the person complained of to have committed the alleged action or offence, for example if he was out of the country at the time of the alleged abuse.

Responding to suspicions of child abuse

4.51 As already stated, a suspicion is less direct or specific than an allegation. For example, a person might become suspicious because of rumours, anonymous claims or signs of behavioural, emotional or psychological change.

4.52 Once again, a person who encounters suspicions must record the details in writing and refer the matter to the director of child protection who must examine whether there are reasonable grounds for concern.

Historical allegations

4.53 Virtually all of the allegations reported to the Cloyne diocese during the period covered by the Commission were historical allegations. It is recognised in *Our Children, Our Church* that those who have been abused in their childhood may not actually disclose the abuse until many years or even decades later. The guidelines state that it is Church policy to create a caring and responsive atmosphere in which people can disclose child abuse regardless of how long ago it took place.

4.54 The procedures that apply in respect of historical allegations are the same as those for current or recent abuse. Adults who disclose an abusive experience as a child or a young person should be encouraged to report the

matter directly to the civil authorities. Whether or not the person making the allegation wishes to report to the civil authorities it should be explained to them that the director of child protection must nevertheless be informed of the allegation as there may be implications for the current safety of children or young people or for the investigation of historical allegations made by others.

4.55 Similarly, previous allegations of child abuse which were known to Church personnel in the past but were not dealt with at the time should be reported. The procedures outlined above should be used or at least the police authorities should still be informed as there may be implications for the investigation of other cases.

Inappropriate behaviour and misconduct

4.56 *Our Children, Our Church* provides that there may be incidents where, in the judgment of the director of child protection, the complaint does not constitute reasonable grounds for concern that child abuse has occurred but rather indicates inappropriate behaviour, misconduct or a breach of standards on behalf of the person in question. In such instances, it may be necessary for the bishop or superior to take further action and/or implement disciplinary procedures.

Safeguarding Children, 2009

4.57 Following on from the establishment of the National Board for Safeguarding Children, a comprehensive document entitled *Safeguarding Children - Standards and Guidance Document for the Catholic Church in Ireland* was produced under the auspices of the board. It is a document of 96 pages and it represents the independent and considered view of the board on a unified approach to child protection across the Catholic Church in Ireland and how best it can be achieved.

4.58 The document sets out seven standards that it is hoped that all church authorities will aspire to and implement. They are:

- A written policy on keeping children safe;
- Procedures: how to respond to child protection allegations and suspicions;
- Preventing harm to children;

- Training and education;
- Communicating the Church's safeguarding message;
- Access to advice and support;
- Implementing and monitoring the standards.

4.59 Each standard contains a list of indicators that will help decide whether this standard has been met. The document also provides for mechanisms for putting the standards into practice and for evaluation of current activities.

4.60 Mr Ian Elliott, the Chief Executive Officer of the Board, told the Commission that all church authorities were required to sign a contract agreeing to implement these standards and that those refusing to sign will be noted in the board's annual report. This contract was signed by Archbishop Clifford on behalf of the Diocese of Cloyne on 6 April 2009. By 2010, a total of 186 Church authorities including all 26 dioceses had signed up to implementing the standards.²⁰

4.61 The procedures for dealing with allegations and suspicions of child sexual abuse are not significantly changed by this document.

Safeguarding representatives

4.62 The most recent report from the National Board for Safeguarding Children in the Catholic Church noted that 93% of safeguarding representatives in the Diocese of Cloyne had received training in their role. It was also noted that training had been provided for members of the Cloyne advisory panel on their role and function.²¹

Advisory panel

4.63 Following the adoption by the Diocese of Cloyne of *Our Children, Our Church*, an advisory panel which was called the inter-diocesan case management advisory committee was established jointly with the Diocese of Limerick. The delegates/directors of child protection of both dioceses were members of the committee. This was despite Dr McCoy's concerns about

²⁰ National Board for Safeguarding Children *Annual Report 2009* (Maynooth, NBSC: 2010); www.safeguarding.ie

²¹ *Ibid.*

individuals having too many roles and the potential conflicts of interest that might arise. Mr Ian Elliott was critical of the composition of the inter-diocesan case management committee (see Chapter 6).

4.64 Bishop Magee told the Commission that Mr Elliott had told him in 2008 that it was not appropriate to have included on the advisory panel a solicitor who advised the diocese on their child abuse claims or the psychologist who carried out assessments on behalf of the diocese. He said that he had replaced them on receiving that information. In fact the Cloyne members of the committee were all stood down by him in January 2009 and Mr Elliott himself acted as the advisory panel to the Cloyne diocese until recently (see Chapter 6).

4.65 Fr Bermingham, who was the delegate from 2008 to 2010, told the Commission that the new advisory panel/case management advisory committee appointed in 2010, which is solely for the Cloyne diocese, is in line with *Safeguarding Children* (see below). It includes an academic lawyer, a canon lawyer, a psychiatrist, a priest, and a parents' representative. Their names are listed on the Diocese of Cloyne website.

Risk assessment and management

4.66 In January 2009, Bishop Magee asked Mentor Associates²² a safeguarding and child protection organisation, to undertake a review of child protection cases relating to four living priests of the Diocese of Cloyne who had been the subject of allegations of child sexual abuse. Four specialist risk assessment reports were prepared for the bishop. Following the assessments, Mentor was instructed to facilitate the development of safeguarding strategies in relation to each man.

4.67 Mentor provided training for a group of individuals selected by the diocese to perform the functions of the safeguarding co-ordinator and advisor for accused priests and a support person for alleged victims. This work was ongoing at the time of going to press with further training and consultancy of the safeguarding team planned.

²²

Mentor Associates is now called Mentor Forensic Services Ltd and is referred to hereafter as 'Mentor'.

4.68 Mentor also considered the case files of five deceased priests against whom complaints of child sexual abuse were made during the period covered by the remit of the Commission.

4.69 The Commission has had access to the documentation in relation to the risk assessments carried out by Mentor and was satisfied that they were exceptionally thorough and comprehensive.

4.70 The Commission was also satisfied that, if the diocese is determined to retain the priests who were deemed by Mentor to be a current risk to children, even in a restricted capacity, then the issue of monitoring was of particular significance. It was satisfied that Mentor was working on producing a monitoring system that would provide the best opportunity for protecting children.

Monsignor O’Callaghan’s view of Church procedures

The Framework Document

4.71 While Bishop Magee had overall responsibility for the implementation of the Church procedures, Monsignor O’Callaghan, as the delegate, was the principal person in the Diocese of Cloyne dealing with the day to day implementation of the *Framework Document*. It is clear from the diocesan files that he was not happy with the document. His problems with it apply equally to *Our Children, Our Church*. In a letter of May 2008, he said that during the discussions prior to its publication, he was:

“more than disappointed at the policy of the Irish Bishops as a whole. They were walking away from the strong positive tradition of Christian Pastoral Care as inspired by the words and actions of Jesus himself. They would surrender all pastoral discretion and would hand over to secular agencies overall responsibility for alleged offending priests who had abused their position of trust and given serious scandal. The Bishops rolled over under pressure from the media. And they expected Rome to endorse the new policy!”

4.72 Of course, his stance in this respect had been echoed and strongly endorsed by the Papal Nuncio in his letter to the bishops following the publication of the *Framework Document* (see above).

Reporting to the Gardaí

4.73 Earlier, in an exchange with the Gardaí in May 2002, it is very clear that Monsignor O'Callaghan did not approve of the Church's policy on reporting as set out in the *Framework Document* and was seeking backing from the Gardaí for his stance on the matter.

4.74 Monsignor O'Callaghan wrote to a garda superintendent as follows:
"When the guidelines were established by the Bishops in 1996 I, with 25 years of teaching moral and pastoral theology in Maynooth behind me, raised queries about the issue of reporting to Garda and Health Board. I was convinced that the better course was to leave it to the complainants (emphasis in original) to report if they so decided. I did not see that we should undertake the role of reporting to the Garda even though, in my experience, of all the parties the Garda act with discretion and commonsense.

Where there was a risk of further abuse of children which the church itself could not counter report to the Director of Community Care would certainly be in order.

I would welcome an opportunity to sit down and talk with you off the record (emphasis in original) about how you would see a future policy develop. The guidelines are now due for revision. I will take the liberty of ringing you in the near future."

4.75 In reply, the superintendent said:
"Regarding the views you are seeking about the policy of reporting, retrospective disclosures of abuse need to be considered as a means to prevent and identify abuse. The Protection for Persons Reporting Child Abuse Act, 1998 provides for immunity from civil liability to any person who reports child abuse in good faith. Therefore there is no reason, why such retrospective disclosures cannot be made through your body.

Complainants should be advised that An Garda Síochána are the statutory body to investigate all matters of a criminal nature and that the complainants may report such matters direct to their local Garda

Station or have someone e.g. a representative of the Church, report such matters on their behalf.”

4.76 In his reply, Monsignor O’Callaghan specifically endorsed this last paragraph of the superintendent’s letter and went on to say:

“For me that approach to reporting is certainly the preferred option. My reservations focus on the current policy of the Church taking on itself outside its particular remit an obligation to report an allegation, something which may seriously compromise it’s pastoral role by inspiring distrust and resentment on the part of the accused.”

4.77 In June 2002, Monsignor O’Callaghan wrote to the canon lawyer, Fr Gerard Garrett, who was subsequently appointed as chairman of the inter-diocesan case management advisory committee. The letter refers to a letter sent by Fr Garrett to Monsignor O’Callaghan which the Commission has not seen. After expressing some reservation about the policy of reporting allegations of child sexual abuse to the Congregation for the Doctrine of the Faith, Monsignor O’Callaghan went on to say:

“On the issue of reporting to civil authorities I have always been of your mind and endorse everything you say. I am convinced that reporting should have been left to the complainants. Our role in the whole process has been compromised by taking on direct reporting as part of our remit. Why should we take it on ourselves to report when the complainant does not want it done? This commitment on our part also seriously compromises our relationship with the priest against whom allegations have been made.”

The pastoral approach

4.78 Monsignor O’Callaghan considered that the pastoral approach which was applied in the Diocese of Cloyne was not sufficiently understood or appreciated by people who were critical of the diocese’s handling of clerical child sexual abuse, especially Mr Elliott. In April 2008, Monsignor O’Callaghan described the pastoral approach which was followed by the diocese as follows:

“From the beginning the Diocese had in place a proactive Pastoral Care Programme to meet the needs of all those affected in situations of Clerical Sex Abuse. This applied primarily to those who alleged the

abuse. They would be provided with counselling and whatever other assistance was required, such as the help of a Support Person and Legal Advisor. I as Delegate of the Bishop would be always on hand, remaining in contact particularly by telephone. This came readily to me because of my competence and experience of the fine record of Church practice in the sphere of Pastoral Care. In this specific area of CSA the protection of children would always have been the paramount concern. We have never moved on to a new ministry a priest over which a concern had been raised. We have never covered up a complaint which occasioned or should have occasioned concern.”

- 4.79 In a statement to the Commission, Monsignor O’Callaghan said:
“From the start, I was of the conviction that, in the management of clerical sexual abuse, what was required was a policy of principle-led pastoral care rather than just a standard rule-led system. It was accepted by 1996 that theretofore there had been failures and shortcomings in the exercise of the pastoral ministry of the Church as it applied to the protection of children. There was now a risk that Church authorities might conclude that they had substantially fulfilled their role once the standard procedures reporting to the civil authorities had been put in place. This would deprive complainants of the resources which the Church has to hand in its pastoral ministry.

Pastoral care implied to me a proactive comprehensive policy. The prime focus must be on those immediately affected by abuse or left in danger of same. The healing and well-being of the victims/survivors and the protection of children are paramount concerns. However, true pastoral care must, in my view, extend to all those caught up in the horror of sexual abuse of a child. This will include families of both the complainant and the accused. As Christians, difficult as it may be, we may not exclude the perpetrator from our concern and support. Indeed, he may be left in a slough of despondency where no mercy is extended to him no matter what the remorse.”

- 4.80 There is no doubt that Monsignor O’Callaghan was resolutely of the opinion that the correct approach to a priest who was accused of child sexual abuse was a ‘pastoral’ one, and that the guidelines contained in the

Framework Document and any duty which might exist to report these matters to the civil authorities took second place.

Reporting to the health authorities

4.81 The Diocese of Cloyne reported allegations of child sexual abuse in relation to one priest to the health board in 1996 (see Chapter 9) but did not report any allegations of child sexual abuse to the health authorities between 1996 and 2008. The issues involved are discussed in detail in Chapter 6.

Advisory panel/Inter-diocesan case management advisory committee

4.82 It is clear that at least one member of the inter-diocesan case management advisory committee did not approve of the procedures set out in the *Framework Document* or *Our Children, Our Church*. The Cloyne delegate from 2008 to June 2010, Fr Bermingham, told the Commission that he formed the view that the solicitor who was a member of the committee did not agree with the procedures and policies underlying the document.

4.83 The solicitor told the Commission that he was on the original advisory panel which was formed in 1995 and which met approximately three times prior to the introduction of the *Framework Document*. They advised the bishop in relation to one complaint. After that, he said that the panel did not meet again. He said that he regarded himself as a sounding board through which his views were conveyed by Monsignor O'Callaghan to Bishop Magee.

4.84 He told the Commission that he did not believe that the *Framework Document* would deliver support for victims. He also had reservations about the mandatory reporting element in the document but he said the bishops had adopted it despite his expressed views to the contrary. He told the Commission that his understanding was that any case involving allegations of sexual abuse of children was reported to the Gardaí in accordance with the mandatory reporting policy. He said Monsignor O'Callaghan had assured him that it was not necessary to report to both the Gardaí and the health authorities and that reporting to one would be adequate.

4.85 He said if a victim needed help such as counselling then that should be provided but he was wary of the diocese providing it directly. He told the Commission that one thing:

“became clear to me from reading the American cases was that the lawyers in America had blocked any attempt by bishops to help victims on the basis that it would be an admission of liability and I didn’t think that was right. I thought if people needed help, they should be helped and I think other people were trying to explore ways of solving the problem and getting help for people.”

4.86 He said he had always held the view that an independent agency with no connection to any alleged offender or the diocese could pay out money on a charitable basis to provide counselling and that would not compromise the diocese. He accepted that this was the type of model that had been put in place in Cloyne.

4.87 He told the Commission that he saw no conflict of interest in his being a member of the inter-diocesan case management advisory committee while acting as solicitor for the diocese in cases involving child sexual abuse.

Commission’s assessment

4.88 It is clear to the Commission that the Diocese of Cloyne, while ostensibly supportive of the procedures outlined in the *Framework Document*, was never genuinely committed to their implementation. The main person involved, Monsignor O’Callaghan, clearly was not fully supportive of the procedures. It is, therefore, not surprising that the procedures were never properly implemented.

4.89 Bishop Magee must take primary responsibility for the failure to implement the procedures. He adopted a ‘hands off’ approach to cases of clerical child sex abuse. He did not properly monitor what Monsignor O’Callaghan was implementing and as a result Monsignor O’Callaghan implemented the policies and procedures in the *Framework Document* in an ad hoc manner or not at all. He apparently did not read the report of Dr McCoy. If he had, he could have rectified the problems in 2004.

4.90 Bishop Magee strongly disagrees with the assertion that the Diocese of Cloyne was never genuinely committed to the implementation of the *Framework Document*. He told the Commission that he was genuinely committed to its implementation and had directed that it was to be fully

applied. He said that, as far as he was aware, the diocese was operating in compliance with it. He said that he was “*shocked*” to discover, in 2008, that the reporting requirements were not being followed. However, he now accepts that the *Framework Document* was not adhered to in many respects. This non-adherence was not intentional and he regrets that it occurred. He is now of the view that he should have been more directly involved in the management of individual cases in order to ensure that it was fully implemented.

4.91 The fact that the Papal Nuncio wrote to the bishops expressing the Congregation for the Clergy’s reservations about the *Framework Document* was significant. This gave comfort to those, including Monsignor O’Callaghan, who fundamentally disagreed with the policies in the document.

4.92 The Commission considers that Mr Elliott was correct in identifying the conflict of interest that existed for a number of the members of the inter-diocesan case management advisory committee. Bishop Magee should have seen the potential conflict at the time of their appointments. Both the solicitor and psychologist who were members disagree that there was any conflict.

4.93 The Commission acknowledges that Bishop Magee made a very progressive move in employing Mentor in 2009 to assess the risk to children from a number of priests about whom he had concerns.

The policy of pastoral care

4.94 The Commission recognises that counselling was offered to complainants and was arranged by Monsignor O’Callaghan or paid for by him (see Chapter 7). The Commission also acknowledges that Monsignor O’Callaghan put an enormous amount of time and effort into dealing with complainants. He seems to have regarded himself as the support person for all concerned. Support people were not always offered to or provided for complainants. The Commission is aware of only one instance in which a legal advisor was offered to a complainant and, in that case, the complainant was himself a priest and the legal advisor offered was the solicitor who acted for the diocese. This offer was made without the knowledge of the solicitor. The fact is that Monsignor O’Callaghan was trying to fulfil too many roles. He was not implementing the guidelines in relation to the different roles; this was

brought to his attention clearly and unequivocally by Dr McCoy in 2004 and he did nothing to change his practices.

4.95 More importantly, however, the pastoral approach is simply not a sufficient response to a complaint of child sexual abuse. It may provide some healing for the complainants but it cannot ensure that their need for validation is met. It does not provide for a genuine investigation of the complaint. It cannot provide for the protection of other children. The protection of children requires reporting to the civil authorities and ensuring that the alleged offender does not have access to children.

4.96 The 'rule-led' system does not prevent the Church from offering pastoral care to all concerned; the Commission does not understand how reporting to the civil authorities precludes the Church from exercising this role or limits this role in any way.

4.97 The Commission totally accepts that priests against whom allegations are made need pastoral care but that must be provided only in a context where they cannot be in contact with children. The Commission considers that the Diocese of Cloyne put far too much emphasis on the concerns of alleged offenders and Monsignor O'Callaghan now acknowledges that. He told the Commission:

"Looking back over the fifteen years during which I acted as Delegate for the Bishop, I acknowledge with hindsight that I should have struck a better balance in the ministry of pastoral care. I regret now that I did not intervene to counter the choice of the legal route when just settlements should have been made earlier with survivors. I regret also that I tended to show favour to accused priests vis-à-vis complaints in some cases. I realise now that in some instances I became emotionally drawn to the plight of accused priests and in this way compromised my care of some complainants. I now realise that the ministry of pastoral care best operates where roles are distinct in dealing with complainants and accused."

Chapter 5 Investigation and prosecution of child sexual abuse

Introduction

5.1 The law and practice on the investigation and prosecution of criminal offences are described in some detail in Chapter 5 of this Commission's *Report into the Catholic Archdiocese of Dublin*. Allegations of child sexual abuse, like all allegations of breaches of the criminal law, are investigated by An Garda Síochána. The decision to prosecute in child sexual abuse cases is made by the Director of Public Prosecutions (DPP). This chapter gives a brief outline of the practices and procedures involved with an emphasis on developments since the publication of the Commission's Dublin report and the practices in the Diocese of Cloyne.

An Garda Síochána

5.2 The Garda Commissioner as head of An Garda Síochána is responsible to the government through the Minister for Justice and Law Reform. The commissioner has two deputy commissioners. There are ten assistant commissioners; four have responsibility for issues that concern the force on a national basis while each of the remaining six has responsibility for a designated region within the State. One of those regions is the Southern Region in which the Diocese of Cloyne is located.

The southern region

5.3 The Diocese of Cloyne is located within the boundaries of the Cork City, Cork North and Cork West divisions of the Southern Region. The Cork City division has 18 Garda stations within four districts, namely Anglesea Street, Togher, Gurrabraher and Mayfield. The Cork North Division has 26 Garda stations within 4 districts, namely Fermoy, Midleton, Mallow and Cobh. The Cork West Division has 43 Garda stations within five districts, namely Bandon, Clonakilty, Macroom, Kanturk and Bantry. Each district is commanded by a superintendent who is also referred to as the 'district officer'. The district officer is then assisted by a number of inspectors. Those districts within the Diocese of Cloyne are Midleton, Cobh, Fermoy, Mallow, Kanturk, Macroom and Gurrabraher.

Garda vetting

- 5.4 The Garda Vetting Unit provides employment vetting for organisations in Ireland who are registered with that unit. The organisations that may register are those who employ personnel to work with children or vulnerable adults. Each organisation appoints an authorised signatory who is trained by the unit in the management of the process and all communications on vetting are between the vetting unit and this person.
- 5.5 There is a standard vetting form which must be completed by the person whose vetting is sought – the vetting subject. The form requests details of all the vetting subject's addresses (whether in Ireland or elsewhere) from year of birth to the date of application together with personal identification details. This form, when completed and signed by the vetting subject, permits the unit to disclose to the registered organisation details of all prosecutions, successful or not, pending or completed and any convictions recorded in the State or elsewhere. The Garda Vetting Disclosure, which is provided in a standard format, is made directly to the authorised signatory. It makes no recommendation as to the suitability or otherwise of the candidate for employment as this is a matter for the employer.
- 5.6 The Gardaí confirmed to the Commission that checks are conducted on the PULSE system which includes databases on prosecutions, convictions, incidents and intelligence (see below). If the information recorded appears incomplete, the matter is followed up with the investigating Gardaí and checks are conducted with the Courts Service where necessary. If the vetting subject provides addresses in Northern Ireland, checks are made with the Police Service of Northern Ireland (PSNI) but checks are not made with any other police forces. If, however, a conviction has been notified by a foreign police force then that information is provided in the vetting disclosure.
- 5.7 The Commission was also advised by the Gardaí about how 'soft' information is treated in the vetting process. Soft information is information which relates to alleged sexual, physical or emotional abuse of children or matters of child neglect and in respect of which no prosecution has been initiated. Such information is recorded on PULSE. If a child protection concern exists in respect of an alleged perpetrator having ongoing contact

with children, the HSE is notified in accordance with the *Children First* guidelines. Soft information is disclosed only to the HSE and is not provided as part of the vetting disclosure to the registered organisation.

Reporting guidelines

5.8 The *Framework Document* and subsequent Church guidelines contain detailed provisions relating to the manner in which child sexual abuse complaints should be handled by the Church. These are described in Chapter 4. These Church guidelines require, among other things, that allegations of child sexual abuse be reported to the Gardaí.

The HSE and the Gardaí

5.9 The State guidelines on reporting of allegations of child sexual abuse between the Gardaí and the HSE are described in Chapter 6. As is explained there, these guidelines do not necessarily require the Gardaí to report cases of complaints by an adult of abuse as a child – these are generally called ‘historical cases’.

5.10 The Garda Commissioner, in response to the publication of the *Report of the Commission of Inquiry into Child Abuse*²³ and this Commission’s *Report into the Catholic Archdiocese of Dublin*, carried out a review of garda work practices and methodologies for the investigation of sexual abuse cases. Arising from that review, the Commissioner published a policy document in 2010 on the investigation of sexual crime, on crimes against children and on child welfare.²⁴

5.11 This new policy document, which came into effect in 2010 after the period covered in this report, requires that, in historical cases, the Gardaí must establish whether there is any current risk to children who may be in contact with the suspected abuser and if so, make the necessary report to the HSE. The Commission has been told that the Gardaí in North Cork, as a matter of practice, now notify the HSE on the official form every time there is a complaint of child sexual abuse, even where the complainant is at that time an adult.

²³ The *Ryan Report*: www.childabusecommission.ie.

²⁴ This document is available at www.garda.ie.

5.12 The new policy document also stipulates that each district officer is now obliged to appoint a designated district based inspector or sergeant who, along with a social work team leader from the HSE, constitutes the liaison management team. The functions of this team include the consideration of any notifications of suspected child sexual abuse, the assignment of personnel and the review of the progress of the investigation.

5.13 The policy document also gives direction for the approaches to be taken to protect children at risk who may be moving to other jurisdictions and for children coming in from abroad who are potentially at risk.

Training of Gardaí

5.14 Courses are available at the Garda Síochána College in Templemore, Co Tipperary that relate to the investigation of sexual crime and crimes against children. One of these is a specialist victim interviewer training course which focuses on dealing with children. Other courses deal with risks associated with known sex offenders and the management of sex offenders.

Investigation of complaints

5.15 The normal procedure of investigation by the Gardaí of a complaint of child sexual abuse begins once a formal complaint is received by a member of An Garda Síochána.

Commencement of investigation

5.16 A full garda investigation does not take place until the injured party has made a formal statement to the Gardaí that contains an allegation of criminal behaviour on the part of someone else.

5.17 When a complainant makes a statement to the Gardaí, an investigation team is formed to assist in the investigation. That team normally seeks out corroborating evidence to substantiate matters arising from the complainant's statement. During the course of the investigation, the alleged perpetrator is, at some stage, invited for interview or, alternatively, may be arrested and questioned. The voluntary interview may be held in the alleged perpetrator's home or in some other location. A practice is developing of inviting the alleged perpetrator to attend the garda station for questioning in order that the interview may be videotaped. A file is compiled containing the

various statements and any other evidence. This file is, in normal circumstances, reviewed by a superintendent or an inspector acting for a superintendent. Arising from that review, further work might be directed prior to submission of the file to the DPP. Since the introduction of new guidelines in May 2010, the district officer (the superintendent) must oversee all investigations into allegations of child sexual abuse. Ongoing investigations must be discussed at daily meetings in the district. Senior investigating officers must be appointed to oversee more complex sexual abuse investigations.

Referral to DPP

5.18 Prior to 1980, the usual protocol was that a superintendent decided whether or not to refer the file to the DPP. In April 1980, the Garda Commissioner sent a directive to garda officers that in cases of murder, attempted murder, manslaughter and sexual offences, the file **must** be sent to the DPP for directions. This practice remains in operation but has now been put on a statutory footing. Under section 8 of the *Garda Síochána Act 2005*, the DPP may issue general or specific directions to An Garda Síochána in relation to prosecution work. The DPP issued a general direction under this section in January 2007. This general direction provides, among other things, for a continuation of the requirement that decisions on prosecution in cases of sexual offences must be taken by the DPP.²⁵ Once a garda investigation is completed and a file is sent to the DPP, all further action in relation to the criminal investigation and prosecution is done at the direction of the DPP.

2010 policy document

5.19 The 2010 policy document on the investigation of sexual crimes (see above) outlines the procedures that garda members are instructed to adhere to when investigating crimes of a sexual nature and suspected child abuse. The document contains information on the appropriate standards for an investigation, the procedures that are recommended and a summary of legislation. It lays out in clear terms every step that ought to be taken in such an investigation and the standards that apply at every stage of the process.

²⁵

In December 2009, the DPP issued General Direction No 2 which sets out all of the offences in respect of which a decision must be referred to the DPP. These include sexual offences.

5.20 The policy document requires that each district officer (superintendent) take personal responsibility for its implementation. For example, the complaint, once it is known about, must immediately be entered onto the PULSE system (see below). The district officer must also be immediately notified and this officer is then required to monitor the investigation closely. The district officer must also maintain a full quarterly audit of all reports of sexual crimes within his area which records the status of each investigation. That audit must be sent to the divisional officer (chief superintendent) who has a supervisory responsibility to ensure that all investigations are being dealt with as expeditiously as possible. The divisional officer in turn must forward the information to the detective chief superintendent of the National Bureau of Criminal Investigation. In circumstances where the Gardaí learn of a complaint from a referral agency such as the Church or the HSE, members are instructed not to contact any complainants directly but to write to the referring agency asking it to contact the complainants and inform them that a Garda investigation will be carried out if they wish.

5.21 In historical or delayed cases of complaint the document requires the investigating garda to obtain an explanation for the reason for any delay in making the complaint. The investigating garda must also advise the complainant that, because of the delay, there is a possibility the accused may seek a judicial review of a decision to prosecute. The garda must then explain to the complainant what may be involved in defending an action for judicial review.

PULSE

5.22 The computer system known as 'PULSE' electronically records work carried out during the course of an investigation. In June 2006, following the publication of the *Ferns Report*, a directive was issued from garda headquarters requiring that all complaints of child sexual abuse must be recorded on the PULSE system and that the investigation of such cases was to be subject to review and scrutiny by supervisory ranks. The 2010 policy document standardises the entry of information concerning child sexual abuse into the PULSE system. Two entries are required. The first is the entry that relates to the crime itself. A second is necessary for each child in respect of whom a HSE intervention is required.

Domestic violence/sexual assault investigation unit (DVSAIU)

5.23 This unit was established in 1997 and is based in Harcourt Square in Dublin. It is attached to the National Bureau of Criminal Investigation. The unit is supervised by a detective superintendent, managed by a detective inspector and is currently staffed by three detective sergeants and 12 detective gardaí. The Commission has been informed by An Garda Síochána that many of the officers in the unit have been sponsored by the force to complete a diploma in Child Protection and Welfare at Trinity College Dublin.

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

5.25 Within the DVSAIU there are three other units:

- The Paedophile Investigation Unit;
- The Sexual Crime Management Unit (in formation);
- The Sex Offender Management and Intelligence Unit.

Recent developments

5.26 In its *Report into the Catholic Archdiocese of Dublin*, the Commission commented on the praise received from complainants about the professionalism and courtesy which they encountered when making complaints to the Gardaí operating within the specialist child sexual abuse unit at Harcourt Square, Dublin. At that stage, the Commission noted that it was minded to suggest that, because of the expertise that this unit had developed, the unit should have responsibility for investigating all child sexual abuse complaints. However, the Garda Commissioner pointed out that a number of initiatives have been put in place in recent years so as to bring garda practices in line with international best practice and in order to

implement the *Ferns Report*. The Commission indicated that it would look again at the matter when reporting on the Diocese of Cloyne.

Sexual Crime Management Unit

5.27 In March 2010, the Garda Commissioner announced that he was in the process of establishing a Sexual Crime Management Unit within the Domestic Violence and Sexual Assault Investigation Unit. This unit is now in operation and has a staff which includes one detective inspector, two detective sergeants and five detective gardaí.

5.28 This unit will evaluate and monitor a number of investigations of child sexual abuse, child neglect and certain other sexual offences each year in order to review the standards applied during those investigations and to ensure the investigations are dealt with promptly and appropriately. The cases for review and monitor will be selected from the PULSE system. The Commission understands that the unit will be required to assist and advise gardaí in the investigation of such offences and will seek to promote efficient and effective investigative practices.

5.29 The Gardaí have indicated to the Commission that the unit is maintaining a record of all complaints of clerical child sexual abuse. This record will be promoted by requiring the notification of any knowledge of complaints by way of a prescribed form to the Domestic Violence and Sexual Assault Investigation Unit. The Commission has been advised that it will not be a requirement to have a formal complaint from an injured party before notification. The unit will also ensure that protocols are maintained and developed with the various religious organisations regarding reporting and exchange of information concerning any church personnel. The Commission welcomes the establishment of this unit.

National Audit

5.30 Currently, the Commission has been advised by the Gardaí that they are conducting a nationwide audit of all reported clerical child sexual abuse cases.

Director of Public Prosecutions

5.31 A number of complainants were disappointed that their complaints did not result in a decision to prosecute. The role of the Director of Public Prosecutions (DPP) is to decide whether or not a person is to be prosecuted in respect of an alleged criminal offence. The DPP makes that decision after receiving a file on the matter from the Gardaí.

5.32 The office of the DPP was established under the *Prosecutions of Offences Act 1974*. Under section 2 of the Act, the director is independent in the performance of his functions. Because of that independence, neither the Government nor the Garda Síochána nor, indeed, any other person or organisation, can either oblige the DPP to prosecute a particular case or prevent him from doing so. The DPP is a statutory officer so his actions are subject to judicial review by the courts. However, where the courts have intervened in the decision making process of the DPP, they have done so only when satisfied that there has been a breach of fundamental fairness or a breach of some other constitutionally enshrined principle.

5.33 The DPP's decision is issued to the investigating Gardaí. Reasons for the decision are almost invariably given to the Gardaí; these reasons are quoted in a number of cases described in this report.

Decision to Prosecute

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

Delay

5.35 One of the reasons considered by the DPP for deciding not to prosecute was due to difficulties caused by delay. The effect of delay in the prosecution process is outlined in detail in this Commission's *Report into the*

Catholic Archdiocese of Dublin. Delay was a factor which was considered in the case of Fr Drust (see Chapter 15).

Change of mind by the DPP

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

Chapter 6 The health authorities, the Office of the Minister for Children and the National Board for Safeguarding Children

Introduction

6.1 There was minimal contact between the Diocese of Cloyne and the health authorities from 1996 to 2005. However, there was considerable interaction between the Diocese of Cloyne, the health authorities and the National Board for Safeguarding Children in relation to child protection from late 2005 onwards.

Southern Health Board/HSE

6.2 The Diocese of Cloyne is located within the area of the former Southern Health Board (SHB). The Health Service Executive (HSE) was established on 1 January 2005. It took over all the functions of the former health boards.

6.3 The Southern Health Board had five community care areas. These are now known as local health offices and each is managed by a local health manager. The Diocese of Cloyne is mainly within the community care/local health office areas of North Cork and North Lee.

6.4 In its *Report into the Catholic Archdiocese of Dublin*, this Commission was critical of the HSE for the manner in which it went about the discovery of documents to the Commission. The Commission is pleased to note that there were no such problems in respect of the Diocese of Cloyne.

Child protection services

6.5 The development of child protection services within the health boards is outlined in the Commission's *Report into the Catholic Archdiocese of Dublin*. The childcare manager in the North Lee local health office told the Commission that, before the implementation of the *Child Care Act 1991* (its main parts were implemented in 1996), there was a senior social worker and five social workers working in the North Lee community care area. The senior social worker reported to the director of community care.

6.6 More social workers were gradually recruited between 1996 and 2002/3. New management layers were added. Team leaders were

appointed at a level between social workers and senior or principal social workers. Childcare managers were subsequently appointed. In the Southern Health Board area, unlike the Eastern Health Board area, childcare managers have a direct management role. The childcare manager told the Commission that the North Lee area was divided into two teams before he became the manager. He amalgamated the two because he said there were “*slightly different nuances and practices within the one community care area, which didn’t make a lot of sense*”. In 2009, the North Lee local health office had a team of 29 social workers, six team leaders and two principal social workers reporting to the childcare manager. The childcare manager need not be a social worker. For the period covered by this report, the childcare manager in North Lee was a social worker while the childcare manager in North Cork was a psychologist.

6.7 When the HSE was established in January 2005, the local arrangements for child protection services remained the same. The child care manager reported to the local health manager. The national arrangements changed over the period from 2005 – 2009. At present (2010), the HSE has four operational areas. Cloyne is in HSE South area. There is one local health manager with “*lead responsibility*” for childcare in HSE South. All the local health managers report to the Assistant National Director for HSE South. At national level in the HSE, there are a number of assistant national directors with responsibility for specific care groups. One of these is responsible for childcare and family support services. The HSE is in the process of appointing a national director for children and family services.

Office of the Minister for Children

6.8 The Office of the Minister for Children and Youth Affairs is part of the Department of Health and Children. It was created within the department in December 2005, just under a year after the HSE had been established and very soon after the publication of the *Ferns Report*. It is a cross departmental office covering aspects of the Departments of Health and Children; Justice and Law Reform; and Education and Skills. The Minister for Health and Children has delegated responsibility for almost all aspects of children’s issues to the Minister for Children and Youth Affairs.

6.9 The Office of the Minister for Children had some involvement with the Diocese of Cloyne (and with all dioceses in Ireland) from late 2005 when plans were being made to implement the recommendations of the *Ferns Report*.

6.10 The main role of the Office of the Minister for Children is the development of policy. However, there seems to be some confusion about its precise role in areas other than the development of policy. According to one document produced by the office, it has “*responsibility for overall strategic direction and policy in relation to child welfare and protection*”. This “*includes facilitating interagency cooperation and coordination around child protection and having a practical focus on identifying and solving problems between sectors*”.²⁶ However, the office told the Ombudsman for Children that this was a “*general, non-authoritative text*” and this passage “*should not be read in isolation from the established functions*” of the office.²⁷ The office told this Commission that its responsibilities did include “*facilitating inter-agency co-operation and co-ordination around child protection and having a practical focus on identifying and solving problems between sectors*”. In practice, the office was involved in co-ordinating other agencies in the period 2005 – 2009.

The role of the HSE in child protection

6.11 The stated purpose of the *Child Care Act 1991* is “*to provide for the care and protection of children and for related matters*”. Section 3 of the Act places a statutory duty on health boards (now the HSE) to promote the welfare of children who are not receiving adequate care and protection. This section came into effect in December 1992.²⁸

6.12 The main part of Section 3 is as follows:

“(1) It shall be a function of every health board to promote the welfare of children in its area who are not receiving adequate care and protection.

²⁶ Office of the Minister for Children: *National Review of Compliance with Children First: National Guidelines for the Protection and Welfare of Children* (Dublin: Stationery Office, 2008) www.omc.ie.

²⁷ Ombudsman for Children’s Office: *A report based on an investigation into the implementation of Children First National Guidelines for the Protection and Welfare of Children* (Dublin: Ombudsman for Children’s Office, 2010) www.oco.ie.

²⁸ Statutory Instrument 349/1992.

- (2) *In the performance of this function, a health board shall—*
- (a) *take such steps as it considers requisite to identify children who are not receiving adequate care and protection and co-ordinate information from all relevant sources relating to children in its area;*
 - (b) *having regard to the rights and duties of parents, whether under the Constitution or otherwise—*
 - (i) *regard the welfare of the child as the first and paramount consideration, and*
 - (ii) *in so far as is practicable, give due consideration, having regard to his age and understanding, to the wishes of the child; and*
 - (c) *have regard to the principle that it is generally in the best interests of a child to be brought up in his own family.*
- (3) *A health board shall, in addition to any other function assigned to it under this Act or any other enactment, provide child care and family support services, and may provide and maintain premises and make such other provision as it considers necessary or desirable for such purposes, subject to any general directions given by the Minister under section 69.”*

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

6.14 There is no doubt that the *Child Care Act* places a duty on the HSE to promote the welfare of children who are not receiving adequate care and protection. However, it is not clear to the Commission that the HSE has the necessary power to take action in cases of extra-familial abuse. The Office of the Minister for Children and the HSE have different views on the powers available to the HSE in extra-familial cases. This difference has been apparent since 2005 and no action has been taken to address it. The HSE also regards itself as having a limited role in relation to retrospective reporting of abuse.

Extra-familial abuse

6.15 In its *Report into the Catholic Archdiocese of Dublin*, the Commission drew attention to what it considers to be the limited role which the HSE has in relation to extra-familial abuse. The Commission agreed with the *Ferns Report* analysis of the powers which the health authorities have in this respect. The *Ferns Report* takes the view that the powers conferred on the health boards by the 1991 Act are designed to protect a child from an abusive family situation. It is the parents or guardians who are responsible for dealing with the matter in cases of third party or extra-familial abuse.

View of the Office of the Minister for Children

6.16 The Office of the Minister for Children told the Commission that the Attorney General had advised, following the publication of the *Ferns Report*, that the powers of the HSE under Section 3 of the *Child Care Act 1991* were not limited to cases of inter-familial abuse. The Office of the Minister for Children claimed legal privilege over this advice and refused to provide it to the Commission. The Commission notes that, in contrast, the Church authorities provided the Commission with its privileged documents and the Gardaí and the HSE did not claim privilege over any documents.

6.17 The Office of the Minister for Children did provide the Commission with a legal analysis of the powers and functions of the HSE under the *Child Care Act 1991*. This analysis is included in Appendix 2. The Office of the Minister for Children told the Commission that its policy position is that the *Child Care Act 1991* places no limitation on the HSE in relation to its ability to investigate non-familial abuse.

6.18 In 2005, when attempts were being made to establish inter-agency committees (see below) the HSE raised a number of issues with the Department of Health and Children in relation to the role of the HSE in these proposed committees. The department told the HSE, among other things, that it was commissioning a study on “*the remit of the HSE’s powers*” in dealing with extra-familial child sexual abuse. The Office of the Minister for Children told the Commission that this study took the form of a bi-lateral working group established to look at some of the legal issues arising from the *Ferns Report*. The group which was composed of representatives of the Office of the Minister for Children and the HSE met on a number of occasions

in 2006. One of the group's purposes was to carry out an "*in-depth study of third party abuse*" and to review how the provisions of the *Child Care Act 1991* in relation to third party abuse were working. The office said that the group's work was completed in December 2006 and that there was broad acceptance of the Attorney General's advice on the matter. The Commission received some documentation from the Office of the Minister for Children in relation to the group's work but legal privilege was claimed over those documents which involved information on the legal advice received. The documentation which was received does not show any evidence of an "*in-depth*" study. The officials concerned did note that it would be helpful if the HSE's powers were spelt out more clearly in the *Child Care Act 1991*.

View of the HSE

6.19 A principal social worker in the Cloyne area said, in evidence to the Commission, that there were no statutory powers available to the HSE to intervene in non-familial abuse cases. He pointed out that the HSE has no power to require an alleged perpetrator to undergo risk assessment – this is the case whether the abuse is familial or non-familial. In a submission to the Commission, the HSE stated that "*the HSE cannot compel alleged offenders to attend for therapeutic intervention or desist from being in the presence of children*".

The Commission's view

6.20 It is clear to the Commission that the HSE has a statutory duty to promote the welfare of all children. It is also clear from decided cases that the HSE may investigate non-familial abuse although there is no specific statutory basis for this.²⁹ However, what is not clear is what is to happen as a result of any investigation.

6.21 The main powers available to the HSE under the *Child Care Act 1991* are the powers to apply to the courts for supervisory and care orders. In cases of sexual abuse, the main remedy is a care order – this involves the removal of the child from the home, not the removal of the alleged perpetrator from contact with children generally. It does not involve any power to assess

²⁹ *MQ v Gleeson* [1998] 4 IR 85 (the Barr judgment); *PdP v The Board of Management of a Secondary School* [2010] IEHC 189; *I v HSE* [2010] IEHC 159. *I v HSE* is currently under appeal to the Supreme Court.

the risk to other children or to require any action by the alleged perpetrator. In general, care orders are not necessary or appropriate responses where the child is being cared for by his or her family.

6.22 Much of the analysis provided by the Minister for Children relies on a ‘purposive’ interpretation of the law. The analysis relies on a judicial statement that where a relevant statutory authority is tasked to do something, that function will always confer a power to do it.³⁰ However, powers in carrying out any statutory function are always circumscribed by the right of the individual against whom those powers are being exercised to fair procedures. In the case of extra-familial abuse this requires, among other things, that the alleged abuser be made immediately aware of the details of the complaint. It is difficult to see how a social worker who is trying to promote the welfare of a child or children can be expected to be familiar with all the requirements of fair procedures and balance the rights of the alleged victim and the alleged abuser when there are no rules or guidelines available.

6.23 The Commission maintains its view that statutory provisions in relation to dealing with child sexual abuse should be clear and unambiguous and not be dependent on such interpretation. The law should state what the powers are and how they are to be implemented.

6.24 If the alleged abuser does not co-operate with the investigation, the HSE has no power to require him to do so. If he does co-operate and agree to undergo a risk assessment, there is very little that the HSE can do if that assessment shows that he is a risk to children. In *I v the HSE*, the judge said that, if the HSE concludes that there is a risk, it is obliged to report that to an appropriate party. The judge went on to note that this provision of information should be “*minimal and only to the extent necessary to protect children who may be at risk*”. Neither the legislation nor the guidelines clarify who appropriate parties might be (other than the Gardaí). The Commission is of the view that to leave such decisions to the social workers whose duty is to promote the welfare of children is an abdication of the State’s responsibility in this regard. In practice, in two cases covered in this report, the HSE did try to establish if there was a risk to specific children from alleged abusers.

³⁰

McD v The Minister for Education [2008] IEHC 265; see Appendix 2.

6.25 The Commission recognises that there are major legal issues involved in giving powers to the HSE or any other body to assess or monitor alleged perpetrators who have not been convicted of an offence. However, it is concerned that an impression has been created that the HSE has more power than it actually has in such cases. The law should be clarified in order to ensure that the maximum possible protection is provided for children.

Reporting by adults

6.26 The HSE considers that it has a very limited role in relation to allegations made by adults in respect of abuse as children. In January 2009, the HSE, in a letter from one Assistant National Director to another, outlined its role in relation to complaints of child sexual abuse by adults as follows:

“It is important to note that in all matters relating to retrospective allegations of childhood sexual abuse, once information has been received by the Child Protection services, the matter of paramount concern is to ensure that the Child Protection Services are satisfied that appropriate action is taken by the relevant individuals/organizations regarding the management of the alleged perpetrator. The primary concern for the Child Protection Services is that the level of risk is assessed, appropriate action is taken as regarding the reporting of the allegations to the Gardai, and that subject to the outcomes of risk assessment and any Garda investigation, that the alleged perpetrator is appropriately ‘risk managed’.

This action most often involves the removal of the alleged perpetrator from direct contact with children as well as ongoing supervision of the alleged perpetrator. In addition, it is expected that the organisation address any recommendations pertaining to risk assessment, such as attendance at appropriate treatment centres.”

6.27 The Commission recognises that the HSE, in undertaking this role in the manner described, is trying to promote the welfare of children. However, the Commission considers that, in the absence of any express statutory power to engage with organisations in this manner and to insist on risk

assessment and risk management by them, this statement by the HSE of its role must remain an aspiration rather than a reality.

6.28 In relation to how it dealt with the complaint against Fr Caden that was brought to the attention of the HSE in 2007, the HSE said it approached the Diocese of Cloyne in order to:

“seek clarity as to their management of the allegation and of the alleged perpetrator. At no time was it felt necessary to interview adult survivors as the function of the HSE in this regard is not to determine the veracity of their allegations, merely to determine the actions taken by the Diocese with respect to any allegations that had been made.”

6.29 It is clear from this statement that the HSE considered that the onus of risk management of priests against whom allegations were made rests on the diocese and not on the health services. It is to the credit of the diocese that it did engage in risk assessment in 2009. The diocese could not have been compelled by the State to do this.

Reporting to the health authorities

6.30 Church procedures in place during the period covered by this report (1996 – 2009) required that all complaints of clerical child sexual abuse be reported to the health board/HSE (see Chapter 4). It is clear that Monsignor O’Callaghan was aware of this requirement in 1996 (see Chapter 10) and abided by it in that case. However, he did not abide by it in subsequent cases up to 2008.

6.31 In a statement outlining how the Diocese of Cloyne dealt with child sexual abuse cases prepared for Mr Ian Elliott in April 2008, Monsignor O’Callaghan said that he had been in contact with an official of the Southern Health Board who was *“engaged at Mallow in the area of Community Care”* and who had died some years earlier. Other than Monsignor O’Callaghan’s statement, there was no documentary evidence of this contact in either the diocesan files or the files of the health board/HSE. It is clear that it did not involve any formal notification system. Monsignor O’Callaghan said that he had been told by this health board official that it was pointless reporting to the health board in cases where the alleged perpetrator was dead or in situations where a risk to children was not a current concern: *“Outside of that their writ*

did not run. When it came to providing counselling for adult complainants they had very limited resources". Whatever the role of the HSE and its power or capacity to deal effectively with notifications of alleged child sexual abuse, the fact remains that the Church guidelines which the Diocese of Cloyne had adopted required that notification of complaints be made.

The Gardaí and the health authorities

6.32 Bishop Magee told the Commission that he understood that the diocese did report all allegations of child sexual abuse to the health authorities. He told the Commission that he only discovered in 2008 that the diocese did not do so and he was reassured by Monsignor O'Callaghan that this was in accordance with the 1995 protocol between the Gardaí and the health boards (see below). The Commission finds it difficult to understand why Bishop Magee did not check over the period 1996 - 2008 that the procedures were being carried out or how he could be reassured in 2008 given that the Church guidelines are very clear on the requirements.

6.33 The 1995 *Notification of Suspected Cases of Child Abuse between Health Boards and Gardaí* set out the procedures to be followed by the health boards and the Gardaí where there was an allegation of child sexual abuse. These procedures made it obligatory for the health boards to notify the Gardaí of all such cases. It is clear that it was not the intention of the State guidelines that the Gardaí report all allegations to the health authorities because specific exclusions were provided for. The procedure stated:

*"It is **not** (emphasis in original) intended that the Gardaí should notify the Health Board of cases of physical or sexual assaults against children which involve issues of law enforcement only, such as the assault of a child by a stranger, unless such cases give rise to child protection questions; for example, where the suspected abuser has ongoing contact with other children. In cases involving law enforcement only, the Gardaí should continue to contact the Health Services where there is a need for appropriate counselling and other support services for victims of assaults."*

6.34 The *Children First* guidelines³¹ were issued in 1999. While they introduced new notification forms, they did not change the reporting requirements between the health authorities and the Gardaí. The 1999 guidelines repeat the reporting procedure set out in the 1995 guidelines. They also include the following in respect of historical allegations, that is, reporting by adults of abuse as children:

“An Garda Síochána may be involved in investigating a case of child abuse, or a retrospective disclosure of abuse, where the health board are not involved. Where appropriate, they should seek the advice of the health board regarding counselling and other support services for victims.”

*“When a disclosure is made by an adult of abuse suffered during their childhood and it comes to the attention of either the health board or An Garda Síochána or other service, serious consideration must be given to the current risk to any child who may be in contact with the alleged abuser. If any risk is deemed to exist, this information must be shared between agencies, following the notification procedures. The need to refer an adult for counselling, treatment and/or other support services for victims of assaults should be considered. **It is essential that all relevant information in relation to any of the above eventualities is carefully collated and that each agency informs the other of any such concerns during an investigation.**”* (emphasis in original)

6.35 All of the allegations reported to the Gardaí in respect of priests of the Diocese of Cloyne in the period under review involved allegations of abuse by strangers (now generally described as extra-familial abuse) and all were historical allegations. There were two allegations involving children and these were not notified to the Gardaí by the diocese. Therefore the Gardaí received no complaints where there was a clear and unambiguous requirement to report to the health authorities. The Commission recognises that the Church guidelines were far more stringent than those adopted by the State in that they required that all allegations against priests operating in a diocese be reported

³¹ Department of Health and Children, *Children First: National Guidelines for the Protection and Welfare of Children* (Dublin: Stationery Office, 1999). Revised guidelines were issued in 2010; these are not yet in effect and, in any event, they do not make any significant changes to the reporting arrangements. www.omcya.ie.

to the health authorities as well as to the Gardaí. Under the State guidelines, the Gardaí were obliged to assess whether or not there was an ongoing risk to children before deciding whether to report to the health authorities or not. There is documentary evidence in a number of cases that the Gardaí did make such an assessment and concluded that the priest in question was not an ongoing risk to children. This assessment was generally based on information from the diocese that the priest was no longer in ministry, the age of the priest, the length of time since the abuse occurred and on the Gardaí's own knowledge of the circumstances of the alleged abuser. There was no documentary evidence that the Gardaí carried out such assessments in two cases but the Gardaí have told the Commission that they did carry out the required assessment in both of these cases. The Commission notes that it is now the policy of the Gardaí to report all allegations to the HSE (see Chapter 5). The *Children First* guidelines continue to allow for exceptions. In order to avoid any ambiguity and to ensure that all relevant information is available to both the HSE and the Gardaí, the Commission considers that there should be no exceptions to the reporting requirements.

Attempts to establish inter-agency committees, 2005

6.36 The report of the inquiry into the handling of allegations of child sexual abuse in the diocese of Ferns (the *Ferns Report*) was published on 25 October 2005. In a letter to the HSE in October 2005, the Minister for Children pointed out that one of the main recommendations in the *Ferns Report* was that the inter-agency review committee which had been operating in the diocese of Ferns should be introduced in all areas. This committee was to be composed of representatives of the diocese, the Gardaí and the HSE and every suspicion or allegation of clerical child sexual abuse would be brought to its attention. The Minister asked the HSE to undertake to convene the meetings of the group and to maintain its records.

6.37 The process of establishing the committees got under way quite quickly but it soon became clear that there were significant legal difficulties in particular in relation to whether or not the members of the committees would have legal protection for sharing information in respect of allegations and suspicions of child sexual abuse.

6.38 The HSE looked for legal advice on the various legal issues arising and the process of forming the committees was put on hold. The HSE received a comprehensive legal opinion in April 2006. This advice has been furnished to the Commission. As a result of this opinion, the HSE took the view that the inter-agency review committees could not be progressed in the manner proposed in the *Ferns Report*. In a letter of 27 April 2006 to the Office of the Minister for Children, the HSE said that:

“Given that the Ferns Report itself drew attention to the statutory constraints applying to the HSE in circumstances where it is dealing with abuses perpetrated by persons outside of the family circle and indeed its view that the local Health Board has acted ultra vires there appears to be a fundamental incongruity in the HSE being called upon to establish committees without changes in the law.”

The Gardaí had also concluded that they could not take part in the committees.

6.39 The Minister wanted the inter-agency review committees to go ahead with parts of their work while awaiting legal advice on the issues which had been raised. In July 2006, the Minister for Children recognised that the inter-agency review committees could not undertake the role in relation to exchanges of information as envisaged for them in the *Ferns Report*. The Commission notes that, although various proposals have been made to introduce legislation to deal with these issues, they had not been resolved by late 2010.

The audit of dioceses, 2005

6.40 As already stated, the report of the inquiry into the handling of allegations of child sexual abuse in the diocese of Ferns (the *Ferns Report*) was published on 25 October 2005. On the same day, the government decided that the Minister for Children should write to the Irish Bishops' Conference *“seeking their confirmation individually and collectively that the Framework Guidelines of 1996 are in place and that the recommendations of the Inquiry will be implemented”*, which he did the following day. The Minister further asked the HSE to *“make contact with the individual bishops as a matter of urgency to commence an audit of child protection practices and compliance with the report's recommendations”* and to report back to him.

6.41 On 8 November 2005 the government decided to set up a Commission of Investigation into the handling of clerical child sexual abuse cases in the Archdiocese of Dublin. The Minister for Children wrote to the HSE informing it of this and pointing out that the terms of reference included the possibility of the referral of other dioceses to the Commission. The letter stated that this provided “*an added urgency and importance to the audit function*” which the government had outlined in its October letter.

6.42 On 23 November 2005, Bishop Magee wrote to the Minister in response to his query about the implementation of the *Ferns Report*. Bishop Magee told the Minister that the *Framework Document* guidelines were “*fully in place and are being fully complied with*”. He outlined the role of the diocesan child protection committee (see Chapter 8) and the inter-diocesan case management advisory committee and described the training which was being carried out in the diocese. Bishop Magee’s emphatically positive reply was issued in spite of the fact that this was clearly not the case.

Design and conduct of the audit

6.43 Draft proposals for the design of the audit of the dioceses were produced by the HSE in March 2006. This proposed that the audit be in the form of a questionnaire. At the request of the HSE, discussions about the design of the audit continued between the Church and the HSE until October 2006. The audit questionnaire was finalised by the HSE in October 2006. It was circulated to 23 bishops³² and 140 provincials of religious congregations in October 2006. What was being proposed was not an audit in the usual sense of that word. An audit is an independent examination of the evidence supporting specific statements in order to enable the auditor to assess whether the statements are accurate. What was proposed here could more accurately be described as a survey or an information collection exercise. There was no provision for the information provided by the dioceses to be subjected to independent verification as would be required in an audit. The Office of the Minister for Children disagreed with the Commission’s characterisation of the 2006 ‘audit’. In December 2009, it was decided to seek further information. The HSE wrote to all the bishops requesting

³² There are 26 dioceses in the island of Ireland; two of these are entirely within Northern Ireland and so the HSE had no jurisdiction to audit them. The Archdiocese of Dublin was excluded because it was being investigated by this Commission.

additional information, including the names of complainants. It is intended that these will be cross referenced with names known to the Gardaí. This most recent exercise has more of the characteristics of an audit.

6.44 It immediately became clear that the bishops had reservations about answering Section 5 of the questionnaire. Section 5 sought statistical details about the numbers of complaints received, numbers reported and related details. It did not ask for names of either complainants or alleged abusers. An accompanying statement said that the responses to the questionnaire would be examined locally by the HSE designated child care manager, the garda superintendent and the bishop – in effect, by an inter-agency review committee. (Discussions were also going on about the establishment of these committees (see above).) The statement confirmed that individual but unidentified cases would be discussed at this meeting and that there would be detailed exploration of the responses to Section 5 if it was considered that there were discrepancies between the information available to the three agencies.

6.45 The Irish Bishops' Conference held a special meeting in November 2006 and a sample draft letter was prepared for reply to the HSE. This, among other things, pointed out that a number of issues required further clarification, in particular the arrangements for confidentiality of the responses given.

6.46 Mr Seamus Mannion of the HSE then suggested that the bishops answer the other elements of the questionnaire. Two bishops answered the full questionnaire, including Section 5. Bishop Magee answered the questionnaire, less Section 5, on behalf of the Diocese of Cloyne in January 2007. Among other things, he said that the diocese reported allegations of child sexual abuse "*to the HSE and/or An Garda Siochana in keeping with Children First*". This, as has now been established, was not true.

6.47 In July 2007, the HSE reported to the Office of the Minister for Children that the HSE was reviewing the answers received from the bishops and would report to the minister by the end of the summer. The HSE would then focus on the religious orders. By December 2007, this had not

happened. The Office of the Minister for Children wrote a stern letter to the HSE seeking a report on the outcome of the audit.

Report of audit, 2008

6.48 A report entitled *Audit of Catholic Church's current Child Protection Policy, Practices and Procedures & compliance with Ferns Report Recommendations* was sent to the Minister for Children on 31 January 2008.

6.49 The replies to the questionnaire all showed that the dioceses had child protection policies in place and gave details of these policies. However, as the report pointed out, because Section 5 had not been answered, there was no information on how these policies were operating in practice.

6.50 The report stated that the "*audit has provided a substantial information base on the Church's child protection policies, practices and procedures*". The Commission cannot understand how this statement could have been made given that the report itself recognises that there was no information provided on the child protection **practices**. Policies and procedures documents were already publicly available and virtually all dioceses had detailed information available on their websites. The report concluded that there was no *prima facie* case of "*serious non-compliance with the Ferns report recommendations*" and, on that basis, the HSE did not recommend that any other diocese be referred to this Commission of Investigation. The report did refer to the HSE's concern about one diocese because it had become aware of a case of non-compliance with child protection procedures. This was the Diocese of Cloyne.

The diocese and the HSE, 2007

6.51 As already stated, the diocese was aware of the requirement to report allegations of child sexual abuse to the health authorities but did not do so between 1996 and 2008. The HSE became aware of a specific case in summer 2007 when the complainant contacted them to establish whether or not the case had been reported to them. In August 2007, the HSE told him that it had not been reported.

6.52 The advocacy organisation, One in Four,³³ wrote to the Department of Health and Children in September 2007 pointing out that the HSE had not been informed by the church authorities or the Gardaí about this complaint and that this failure was a breach of the guidelines in both the *Framework Document* and in *Our Children, Our Church*. One in Four wanted the Minister to consider this in light of the terms of reference of this Commission.

6.53 On 8 October 2007, One in Four's letter was sent by the Office of the Minister for Children to the HSE. Initially it was sent to Mr Mannion, who was the Assistant National Director for Children, Office of the CEO of the HSE, based in Galway. He forwarded it on 16 October to Mr Jim Breslin, the Assistant National Director, Primary, Community and Continuing Care, Dublin Mid-Leinster. He then sent it, on 30 October, to the Local Health Manager, North Cork. Mr Breslin also brought Mr Mannion's attention to the fact that a national issue might be involved and asked for advice on this.

6.54 When the North Cork child care manager, Mr Mike van Aswegen, became aware of the One in Four correspondence, he wrote to Bishop Magee seeking a meeting. He and a principal social worker met the Gardaí and noted that:

"all procedures as regards reporting between the HSE South (North Cork) and the Gardai continue to operate without exception. It is to be noted that with regard to retrospective disclosures the matter of liaison between the Gardai and the HSE is not governed by the same rigours as one would find operant in a case of disclosure regarding a child."

6.55 There was an exchange of correspondence between the bishop and Mr van Aswegen, the child care manager, in the period from October – December 2007. In this correspondence, the bishop explained what the diocese had done in relation to the complaint and said, among other things, that the diocese implemented the *Framework Document* procedures as the complaint was made before the *Our Children Our Church* document was published. He also expressed concern that communication with the State had taken place *"with an outside party with no statutory status"* and looked for all relevant documents. Mr van Aswegen then took advice from a HSE national

³³ One in Four is a voluntary organisation which provides support to victims of child sexual abuse and their families. www.oneinfour.org.

specialist in the office of the assistant national director, children services. In replying to the bishop, he noted that the actions of the diocese were broadly in keeping with the *Framework Document* but that it was only “*partially actioned*” as no report had been made to the HSE. He added: “*It may well have been that this was an oversight on behalf of the Delegate*”. Eventually, after much correspondence, a meeting was arranged for March 2008.

6.56 Meanwhile, Mr Elliott of the National Board for Safeguarding Children became involved in February 2008 (see below).

Meeting between diocese and HSE, March 2008

6.57 In March 2008, Bishop Magee, Monsignor O’Callaghan, Dean Goid, Fr Bermingham and two members of the inter-diocesan case management advisory committee met HSE representatives including the childcare manager, Mr van Aswegen, and the principal social worker. Separate notes of the meeting were made by the HSE, Fr Bermingham and Monsignor O’Callaghan. At this meeting, the diocese explained how it dealt with allegations of child sexual abuse. The HSE then explained its role in relation to historical abuse allegations. The HSE also explained that the Gardaí would not necessarily report all allegations to it. Bishop Magee said that he had understood that the Gardaí did report all allegations to the HSE. He apologised for the “*oversight*” in not reporting the case which had been highlighted by One in Four to the HSE. In his note of the meeting, Monsignor O’Callaghan stated, with reference to the HSE’s suggestion that the failure to report was an oversight: “*When the Bishop put up his hands and agreed with their suggestion their relief was quite palpable. ...I accept that the Bishop spoke in good faith when he agreed with the HSE suggestion of oversight on our part. I was aware that it was not an oversight!*”. Mr van Aswegen told the Commission that he registered surprise, and not relief, at the bishop’s statement. He said he had not expected the bishop to say this and had expected a “*battle*”. He also told the Commission that he was surprised and disappointed when he read in the draft of this report that Monsignor O’Callaghan was fully aware of the reality and that he was not operating in good faith with the HSE.

6.58 The bishop provided the HSE with details of what had happened in the case which gave rise to the meeting and agreed to provide the HSE with a

summary of the assessment carried out by the Granada Institute. The HSE note of the meeting records that the HSE “*do not require the primary document and the only concern is that the individual is managed and the level of risk clarified*”. A few days later, Monsignor O’Callaghan sent the HSE the conclusion of the Granada report and offered to let Mr van Aswegen see the assessment. This offer was accepted.

6.59 In a subsequent letter to Mr van Aswegen, Monsignor O’Callaghan referred to a discussion which they had had in relation to accused priests who had been removed from ministry. Monsignor O’Callaghan said that the treatment of those priests against whom allegations had been made but where the DPP decided not to prosecute was being perceived as discriminatory. “*They are not treated as on a par with members of other associations or with citizens similarly accused.*”

6.60 A week after the meeting with the diocese, Mr van Aswegen sent a *Report relating to the Response of the Diocese of Cloyne Into an Allegation of Child Sexual Abuse* to Mr Breslin, the Assistant National Director, Primary, Community and Continuing Care, HSE Dublin Mid-Leinster, and to the Office of the Minister for Children. This outlines the various communications between the diocese and the HSE in relation to the case. It does not provide any detailed analysis of the actual handling of the complaint. The report was also sent to Mr Elliott.

Involvement of the National Board for Safeguarding Children

6.61 The National Board for Safeguarding Children in the Catholic Church (NBSC) was established in 2006.³⁴ It has three main functions:

- to advise the Irish Bishops’ Conference, the Conference of Religious of Ireland and the Irish Missionary Union on best practice relating to child protection policies and procedures;
- to develop policies and procedures to guide all constituent members of the Church, in the direction of best practice in safeguarding children;
- to monitor practice in the various parts of the Church, through processes of audit and review.

³⁴ For a full description, see www.safeguarding.ie.

- 6.62 The chief executive officer of the board, Mr Ian Elliott, was appointed in July 2007. The Board developed *Safeguarding Children: Standards and Guidance Document for the Catholic Church in Ireland* and promulgated this in 2009 (see Chapter 4).
- 6.63 The National Board for Safeguarding Children's initial involvement with the Diocese of Cloyne occurred in October 2007 when a priest of the diocese expressed his concerns about the actions of another priest and, as he perceived it, the inadequate response by the diocese to his concerns. This case is described in Chapter 23. The National Board for Safeguarding Children was clearly concerned about child protection practices in Cloyne and made its concerns known to another bishop. Archbishop Clifford then became involved and the matter was further investigated in the diocese. Mr Elliott told the Commission that the refusal of Bishop Magee to give him access to the relevant documentation in this case caused him to seek clarification about his role within the Church because he recognised that he could not carry out his role of auditing and monitoring practice without access to relevant documentation.
- 6.64 The more extensive involvement of the National Board for Safeguarding Children with the Diocese of Cloyne began in February 2008 when Mr Elliott had a routine meeting with two officials from the Office of the Minister for Children. They gave him a copy of the complaint made in the case which had come to their attention in September 2007 (see above). Mr Elliott understood from this meeting that he was formally requested by the Office of the Minister for Children to investigate and report on this complaint to the office. The departmental officials, however, did not believe they were doing anything other than informing the appropriate Church body of the existence of a problem.
- 6.65 Within a very short time, Mr Elliott prepared a paper for the National Board for Safeguarding Children. In this, he stated that the information he had seen about this case "*indicates a clear failure to follow the procedures and policies of the Church*". Later in February 2008, Mr Elliott met Bishop Magee to discuss this case. Mr Elliott was concerned that he had not got all the documents in the case.

- 6.66 The Office of the Minister for Children wrote to Mr Elliott on 27 February 2008 referring to previous meetings and asking him to ensure that *“in the context of the HSE audit, concerns in relation to child protection practices in the Diocese of Cloyne or in the Church generally are brought to the attention of the HSE”*. Mr Elliott replied that, having examined the situation, *“if poor or inappropriate practice is brought to light, we will report this fact and ensure that it is addressed”*.
- 6.67 In March 2008, Mr Elliott met senior HSE child care personnel, Mr Mannion and Mr Paul Harrison and *“alerted them to the problems in the diocese of Cloyne”*. According to Mr Elliott, they agreed to pass on his concerns to the *“delivery side”* of the HSE.
- 6.68 There was further correspondence between the diocese and Mr Elliott. The inter-diocesan case management advisory committee invited Mr Elliott to meet them. He was not available because of holidays but he asked for further information about the members and this was supplied.
- 6.69 Mr Elliott wrote to Bishop Magee to arrange for himself and the National Board for Safeguarding Children chairman to spend a day in Cloyne investigating the specific complaint. Bishop Magee replied outlining the meeting he had had with the HSE on 7 March and expressing concern at Mr Elliott’s request to meet him, Monsignor O’Callaghan and Dean Goold separately. Bishop Magee told the Commission that the fact that he and the diocese were under formal investigation at this time was not explained to him by Mr Elliott. Mr Elliott told the Commission that he did inform Bishop Magee at their February 2008 meeting that he was investigating a complaint against the diocese.
- 6.70 In early April 2008, Faoiseamh³⁵ asked the National Board for Safeguarding Children for help in relation to a complaint against another priest of the diocese. Mr Elliott and a member of his staff interviewed the complainant and the parents of another complainant. They then met local representatives of the HSE.

³⁵ Faoiseamh provides counselling for victims of child sexual abuse by priests and religious www.faoiseamh.com.

- 6.71 Later in April 2008, after some lengthy negotiations to find a suitable date, the diocese and the National Board for Safeguarding Children met in order to set out how the board was to undertake a review of the management of complaints of child sexual abuse in the diocese. The “*case papers*” for the two priests then known to the National Board for Safeguarding Children were given to the board.
- 6.72 Having examined the case papers provided, Mr Elliott noted that the files were “*somewhat akin to a jigsaw puzzle*” and it was only when “*all the pieces are analysed that a view could be taken as to whether they are all there or not*”. On the basis of the documents provided, Mr Elliott concluded that “*serious deficits emerge in the stated management of these cases ... The lack of appropriate preventative action by the Diocese on foot of allegations received is the most striking feature of the cases*”. Mr Elliott noted that the response of the diocese to the history of the second priest’s harm to young people had always been slow and inadequate. “*It is incredible to note that serious consideration was being given in May 2000 to return Fr. [second priest] to full ministry in the Diocese.*”
- 6.73 On 25 April, Monsignor O’Callaghan gave Mr Elliott a short note about the diocese’s pastoral care policy (see Chapter 4). This note also records that: “*All relevant files will be made readily available to you apart from those established as confidential and privileged. (Contacts with authorities at the Vatican, with our Legal Advisors, with Psychologists’ assessment of clients)*”.
- 6.74 In late April, Mr Elliott asked for a meeting with the Minister for Children in order to brief him on the National Board for Safeguarding Children’s assessment of the practices in the Diocese of Cloyne. The Office of the Minister for Children replied saying that Mr Elliott would have to meet the HSE and not the Minister and that the HSE would then brief the Minister. At this stage, Mr Elliott had already met the HSE.
- 6.75 In May 2008, Mr Elliott reported to the National Board for Safeguarding Children. His report sets out the matters of concern – the lack of prompt and appropriate responses to the complainant’s disclosure of his abuse. The report described the response of the diocese as “*profoundly unhelpful*”. The case papers did not show evidence of best practice: “*On the*

contrary, they raise significant questions that create a belief that there is either an attempt at a cover up, or an unacceptable lack of recording”.

6.76 The report concluded that there were very serious questions over the diocesan authorities’ view of what responses were expected in cases such as this and whether other cases existed.

6.77 In early May 2008, Mr Elliott and the chairman of the National Board for Safeguarding Children met Bishop Magee and Monsignor O’Callaghan. According to Mr Elliott, the clergymen accepted that their procedures had “*lacunae*”. “*Bishop Magee accepted that these need to be changed urgently. He also accepted that he was the accountable person.*”

The Elliott report and the diocese

6.78 On 15 May, Mr Elliott’s draft report was sent to the diocese with a request that it be checked for any factual inaccuracies. The Elliott report is set out in Appendix 1. Its overall conclusion was that children had been placed at risk of further harm within the Diocese of Cloyne through the inability of that diocese to respond appropriately to allegations and concerns of child sexual abuse. Monsignor O’Callaghan responded saying that this conclusion was absolutely unjustified and seriously defamatory of him personally. The diocese sent a detailed response setting out what it considered to be wrong with the report – this is included in Appendix 1.

6.79 The inter-diocesan case management advisory committee considered the draft report at its meeting on 19 May. Bishop Magee told the chairman of the National Board for Safeguarding Children that he and the members of the inter-diocesan case management advisory committee were very unhappy with the tone and content of the report. A subcommittee of the inter-diocesan case management advisory committee had been asked to draft a reply.

6.80 On 20 June 2008, Mr Elliott and his chairman met Bishop Magee and a member of the inter-diocesan case management advisory committee. Mr Elliott’s note of the meeting records that Bishop Magee expressed his annoyance at the lack of opportunity to describe the many positive developments that had taken place in the diocese; the report focused on the negative and “*as such was inaccurate*”. The note further records that it was

the inter-diocesan case management advisory committee member who had drafted the diocese's response to the draft Elliott report; it was further noted that this person had not read the case files. Bishop Magee said that he had but, according to Mr Elliott, "*his knowledge of the case material was shown to be poor*". The note went on to say that "*Bishop Magee did not convey any acceptance of the basis for the criticism*" that the report contained even though he did repeatedly state that he was fully committed to working with the National Board for Safeguarding Children to resolve any difficulties that it had identified.

6.81 The note of the meeting made by the inter-diocesan case management advisory committee member describes a discussion about, among other things, the composition of the committee and the wearing of clerical dress³⁶ by priests. These notes are quite disjointed so it is probable that they do not provide a complete description of the meeting.

6.82 Monsignor O'Callaghan and the other members of the inter-diocesan case management advisory committee were outraged by Mr Elliott's report. The chair of the committee told the National Board for Safeguarding Children in July 2008 that the report made assertions and assumptions that were false and that it was defamatory of members of the committee. Later on, the committee engaged a public relations consultant and considered taking legal action. Monsignor O'Callaghan wrote to all the bishops setting out the committee's concerns. A mediation process was proposed but before it got underway, Bishop Magee decided to accept the report. He wrote to the National Board for Safeguarding Children in November 2008 stating that he accepted the report and that steps were being taken to implement its recommendations.

³⁶

Canon 284 of the code of canon law states that "*Clerics are to wear suitable ecclesiastical dress, in accordance with the norms established by the Bishops' Conference and legitimate local custom*": Canon Law Society of Great Britain and Ireland *Canon Law: Letter & Spirit: A Practical Guide to the Code of Canon Law* (London: Geoffrey Chapman, 1995). This is the translation into English of the text of the code of canon law as approved by the Bishops' Conferences of Australia, Canada, England and Wales, India, Ireland, New Zealand, Scotland and Southern Africa. The American version translates as "*ecclesiastical garb*" instead of "*ecclesiastical dress*": J Beal et al (eds) *New Commentary on the Code of Canon Law* (New York: Paulist Press, 2000). This is the translation of the text of the code of canon law as approved by the Canon Law Society of America.

6.83 The Elliott report was published by the Diocese of Cloyne in December 2008. Mr Elliott told the Commission that he had never intended that the report be published by the National Board for Safeguarding Children. He did anticipate that it would be published by the diocese even though it was entirely a matter for the diocese itself to decide. His interest was only in ensuring that best practice was applied in the diocese. He was seeking to ensure this in the months between his delivery of his report (July 2008) and its publication (December 2008). In 2009, the inter-diocesan case management advisory committee published its response to the report; this is set out in Appendix 1.

Further involvement by Mr Elliott

6.84 After submitting his report, Mr Elliott was engaging with the diocese to try to ensure the implementation of his recommendations. Over the period August – December 2008, he also became involved in analysing other cases. In January 2009, he became the advisory committee for the diocese after the Cloyne members of the inter-diocesan case management advisory committee were stood down by Bishop Magee. He was involved in putting procedures in place for the full implementation of the Church guidelines. His involvement in specific cases is described in the individual chapters.

The Elliott report and the Office of the Minister for Children

6.85 On 2 July 2008, Mr Elliott sent his final report and the diocesan response to it to the Office of the Minister for Children. He referred to his previous dealings with the office: *“I was requested on behalf of the National Board for Safeguarding Children in the Catholic Church to investigate the circumstances outlined in a complaint made against the Diocese of Cloyne and to report back on my findings”*. He enclosed his report and the diocesan response to it.

6.86 As already stated, the Office of the Minister for Children did not consider that it had asked Mr Elliott to conduct an investigation and report to it. The office wanted Mr Elliott to send the report directly to the HSE.

6.87 Mr Elliott told the Commission that, on 3 July, he was asked by the Office of the Minister for Children to withdraw the report, to agree to shred it

and redirect “*something softer*” to the HSE. Mr Elliott refused and expressed his anger at the suggestion.

6.88 The Office of the Minister for Children official concerned told the Commission that this was a misunderstanding on the part of Mr Elliott and that he did not ask for the report to be shredded or softened. His view was that the report was a matter for the HSE who had statutory responsibilities and powers for dealing with child protection issues. The official said that he did not wish to transgress into an area of responsibility reserved to the HSE. He said that he communicated this to Mr Elliott and suggested that the report be delivered by him to the HSE directly. His recollection was that Mr Elliott considered that he had more legal protection if the report was sent to the Minister’s office. The official himself had concerns about the legal exposure of the Minister if the report were to be published and acted on by the Minister. As a solution, he said that he suggested to Mr Elliott that he might consider rewriting those parts of the report that gave rise to legal concerns and forward it directly to the HSE. Notwithstanding having legal concerns, the official did not take legal advice on whether there were any legal implications in the department receiving the report. Mr Elliott refused to withdraw the report from the Office of the Minister for Children.

6.89 On 10 July, the Office of the Minister for Children wrote to Mr Elliott stating that the HSE had statutory responsibility for child protection and that reports on child protection issues should go directly to the HSE.

6.90 The HSE wrote to Mr Elliott requesting a copy of the report. Eventually the Office of the Minister for Children sent the report to the HSE on 15 August. On 18 August 2008, Mr Elliott wrote to the Office of the Minister for Children saying that his legal advice was to report directly to that office and pointing out that there was no problem in that office giving the report to the HSE. Clearly, he did not know that the report had been given to the HSE at this stage.

6.91 There were further exchanges between the Office of the Minister for Children and Mr Elliott about whether or not the report had been ‘commissioned’ by the office. It is clear to the Commission that there were serious misunderstandings between the office and Mr Elliott.

6.92 It is also clear that the officials in the Office of the Minister for Children had a high opinion of Mr Elliott and were pleased that the Church had appointed “*somebody good*” to deal with child protection matters. The Director General of the office told the Commission that her staff had meetings with Mr Elliott for the purpose of exchanging information. She said that her understanding was that Mr Elliott could access more information from the diocese than the HSE could. She and her staff wanted to get the National Board for Safeguarding Children and the HSE working constructively together. They envisaged that the National Board for Safeguarding Children would share the information they had with the HSE and this would enable the HSE to perform its role better. They were aware that Mr Elliott was already investigating Cloyne and that he could carry out a more effective investigation than the HSE could as he had better access to information from the Church.

6.93 The HSE issued a report on 14 March 2008 (see above). This report recognised that the diocese had failed to report to the HSE but does not address the other issues raised in the case under consideration. The Director General, when asked how she thought this report compared to Mr Elliott’s, while not directly criticising the HSE report, did say that Mr Elliott’s work was of a “*very high standard*”.

6.94 The Commission found it interesting to contrast the investigations carried out by the HSE and that of Mr Elliott on behalf of the National Board for Safeguarding Children in relation to this case. Both investigations had access to the same material. While the HSE dealt only with the question of the failure to report to it, Mr Elliott took a much more robust approach to the inadequacies as he perceived them of the diocesan approach. In the Commission’s view, the National Board for Safeguarding Children and Mr Elliott are to be commended for that.

Review of four cases by HSE, 2008

6.95 After the March 2008 meeting, Monsignor O’Callaghan provided the HSE with information about three other cases. While reviewing these cases, the HSE met Mr Elliott. When the Elliott report was made available to the HSE in August 2008, its analysis was taken on board by the HSE.

6.96 The HSE produced a report entitled *Report on allegations of child sexual abuse in the Diocese of Cloyne and complaints that the investigations of these cases were inadequate* in November 2008. The report notes that Bishop Magee had accepted the recommendations contained in Mr Elliott's report and that these recommendations would be implemented in consultation with the HSE. It noted that the actions taken by the diocese had not been fully compliant with the *Framework Document* in that they failed to notify the HSE in each case. It also referred to the requirements of the Elliott report to develop robust systems of child protection within the diocese. As the diocese had:

- appointed a new delegate;
- accepted in full the recommendations of the NBSC; and
- co-operated fully with the HSE in refining child protection practices,

the report concluded that a referral to this Commission was not warranted and concluded that the HSE would continue to work with the diocese regarding the implementation of all actions agreed and would continue to monitor the position to ensure full compliance with national guidelines.

6.97 The HSE proposed a number of actions to assist the diocese in future matters concerning complaints of child sexual abuse, namely, monthly meetings with the delegate, quarterly meetings with the advisory committee when re-established, assistance in developing a supervision policy and an audit of all allegations made against the clergy dating back to 1996.

Ongoing contacts between the diocese and the HSE

6.98 In the later part of 2008, the diocese and the HSE were in contact about a number of issues but particularly about the development of a supervision/monitoring policy for priests against whom complaints had been made.

Risk assessment, 2009

6.99 Following the publication of the Elliott report, the diocese made major changes to the manner in which child abuse allegations were handled. These changes are described in a number of other chapters of this report.

6.100 In January 2009, the diocese decided to engage a specialist risk

assessment company, Mentor (see Chapter 4). This organisation was recommended to the diocese by the HSE. In January 2009, the HSE wrote to Fr Bermingham saying that they had agreed that the appointment would be a joint one. Later in January, the HSE wrote to Mr Elliott who was now acting as the advisory panel for the diocese. The HSE said that it was engaged in Phase II of its work with the diocese. This involved *“our own audit into allegations against priests within the Diocese as well as examining and establishing effective policies and procedures in the area of monitoring priests against whom allegations have been made”*.

6.101 In March 2009, the HSE wrote to Mr Elliott asking if it was true that he had advised Bishop Magee to *“move away from what was previously an agreed position of jointly commissioning Mentor Associates in the risk assessment process relating to the four priests against whom allegations rest”*. The HSE was concerned that it would not receive the information that was gathered through the assessment process. Mr Elliott replied that his office had no role in this commissioning. Fr Bermingham told the Commission that the HSE had suggested that it and the diocese jointly commission Mentor; this was not agreed by the diocese.

The risk assessment process

6.102 In practice, who exactly had commissioned Mentor turned out to be unimportant because Mentor insists on all information being made available to the statutory authorities.

6.103 When Mentor carries out risk assessments, everyone involved is required to sign an agreement that anything they say is on the record and may be made available to the authorities. The organisation considers that it would be intolerable if it became aware through its work of a risk to children and not be able to report this to the authorities.

6.104 Mentor initially carried out a documentary analysis and then subsequently a risk analysis on the four priests. Later it carried out further analyses of the handling of complaints against deceased priests. The Commission was impressed by the way it carried out its assessments and by the thorough assessment reports provided to the diocese.

6.105 In evidence to the Commission, Mentor pointed out that the Gardaí do not share information with other agencies and they consider that this is a particular problem in Ireland. It means that other agencies do not have access to soft information and it also means that complainants have to go through their evidence again. The Gardaí have pointed out, and the Commission accepts, that there is no statutory basis for the sharing of information gathered by them with any agency other than the HSE. The Commission understands that the law in England and Northern Ireland provides some additional protection for children and vulnerable adults. For example, the *Protection of Children and Vulnerable Adults (NI) Order 2003* obliges the Department of Health, Social Security and Public Safety to maintain a list of individuals who are considered unsuitable to work with children.

The respective roles of the various agencies

The Office of the Minister for Children and the HSE

6.106 The Commission considers that there was an absence of clarity in the Office of the Minister for Children and the HSE about their respective roles in relation to dealing with the outcome of the *Ferns Report* and in child protection generally. In theory, the roles are straightforward – the Office of the Minister for Children is responsible for policy and the HSE is responsible for implementation. The Office of the Minister for Children strongly rejects the assertion that there was an absence of clarity about their respective roles. However, the Commission considers that this chapter shows otherwise. The Commission notes that the government’s organisational review programme also draws attention to the need for the Department of Health and Children “to fully clarify its roles and responsibilities vis-à-vis the HSE, in particular”.³⁷

6.107 There was also a considerable lack of clarity about who was responsible for such issues within the HSE when it was first established in 2005; this continued for some time and it appears to the Commission that it was not addressed until 2009. A large number of officials based in different parts of the country and in different divisions of the HSE dealt with the issues as they arose in Cloyne. The absence of clear responsibility at national level

³⁷ Organisational Review Programme: *ORP Report on the Department of Health and Children* (Dublin: Department of the Taoiseach, 2010). www.orp.ie.

within the HSE became obvious to the Commission as it read the very many communications between various officials of the HSE and between the HSE and the Office of the Minister for Children and other agencies. The HSE does not agree with this assessment by the Commission. The Commission notes that its view was shared by the Director General of the Office of the Minister for Children who told the Commission that, when she took up her position in January 2006, her view of the HSE's child protection services was that "*there was nobody in charge and by someone in charge I mean someone whose job it is to manage and lead on these services. I felt that they were not properly structured*". She said it took four years to get agreement between her office and the HSE to have one person in charge of children's services within the HSE. This happened in November 2009 with the appointment of Mr Phil Garland who had formerly been the Director of Child Protection in the Archdiocese of Dublin and, prior to that, a health board social worker. A review of the services was also carried out and structural changes are still being implemented.

6.108 The Director General told the Commission that, at the time that the issue of child protection in the Diocese of Cloyne was raised with the Office of the Minister for Children (September 2007), there were two Assistant National Directors in the HSE with responsibilities for child protection. One was responsible for "*operational policy*" and the other was in charge of "*implementation*".

The National Board for Safeguarding Children and the other agencies

6.109 The Commission accepts that the Office of the Minister for Children and Mr Elliott, although they misunderstood each other and disagreed in relation to the 'commissioning' of the Elliott report and its delivery, did act in good faith. The Office of the Minister for Children was clearly concerned about the inadequacy of the HSE's capacity in relation to the issues which had arisen and hoped that Mr Elliott's involvement would improve the situation.

6.110 Mr Elliott, in the Commission's view, did indeed greatly improve the situation by compiling a robust report in a very short time and by then pressing for its implementation and, eventually, succeeding in that. The Office of the Minister for Children was overly and unnecessarily concerned

about the delivery of the Elliott report to it in July 2008. The office recognises this. The Director General told the Commission that, if she had realised that the handling of the report would become so controversial, she would herself have physically handed it to the HSE at the time.

The HSE

6.111 The Commission, in its *Report into the Catholic Archdiocese of Dublin* has already drawn attention to the limited role which the HSE can play in relation to extra-familial abuse. A HSE senior social worker in Cloyne, in evidence to the Commission, again drew the Commission's attention to the fact that the HSE considers it has very little power in this area. The Office of the Minister for Children strongly argued that the HSE has sufficient power to deal with these cases. The Commission is not convinced and remains concerned that this issue should be addressed by legislation. It is a matter of particular concern that there is confusion and disagreement between the Office of the Minister for Children and the HSE on the issue. Even if the Commission is incorrect in its assessment, enough doubt has been cast by it, by the *Ferns Report* and by the HSE itself to show that a clarification of the law would be appropriate.

Legal privilege

6.112 The decision to refer the Diocese of Cloyne to this Commission was made by the government at the behest of the Office of the Minister for Children. The Commission regrets that the Minister chose to maintain legal privilege in respect of the advice provided to him in relation to the powers available to the HSE to deal with extra-familial sexual abuse as this issue is central to the Commission's work. All other parties to this investigation either waived or did not assert legal privilege.

Chapter 7 Funding of payments relating to child sexual abuse

Introduction

7.1 In the period under review by the Commission, the Diocese of Cloyne incurred costs in relation to counselling for complainants, contributions to the Stewardship Trust, compensation payments to complainants, legal fees, counselling and treatment of priests and child protection training costs. A total of six complainants have had their counselling costs paid for or reimbursed by the diocese. Its first compensation payment to a claimant was made in 2007. By 2010, it had made compensation payments to a total of four claimants; a number of other claims are currently being processed.

7.2 The manner in which the Diocese of Cloyne funded these costs is complex. The following information was provided by the diocese to the Commission.

The diocesan accounts

7.3 The diocese operates a number of accounts relevant to the remit of the Commission. These are:

The diocese's main operating account: This account is used to pay for the general administration of the diocese, employees' salaries, diocesan levies and the salaries of a small number of priests who hold diocesan rather than parish positions. It gets its funds from the parishes. Each parish is asked to pay 5% of its annual door or offertory collection to the diocese. It also gets some funds from investments and from occasional bequests and donations. A special collection is taken up at all masses on the first Sunday of the month for general diocesan purposes. There are also occasional collections for specific diocesan purposes. The proceeds of these collections also go into this fund.

The No 7 holding account: This is a holding account which is used for collections which are to be subsequently forwarded to outside agencies in full, for example, collections for the missions. It was used as a holding account for the funds being collected for the child protection fund when that fund was being established.

The Child Protection Fund: In December 2007 the diocese established a building society account called the Diocese of Cloyne No 2 account which became more familiarly known as the Child Protection Fund. This account is dealt with in some detail below.

The building society No 1 account: This account was set up from the repayment of loans from individual parishes and some surplus cash. A compensation payment for one complainant was paid from this account.

Counselling for complainants

Payments made by Monsignor O'Callaghan

7.4 Throughout the period of the Commission's remit, complaints of child sexual abuse were mainly handled by Monsignor O'Callaghan. Initially, Monsignor O'Callaghan arranged and/or paid for counselling for some complainants. This was pursuant to the 'pastoral approach' favoured by the diocese (see Chapter 4). Until 2007, the payments were made from the Mallow parish account or were arranged through a local charitable trust. Monsignor O'Callaghan was the parish priest of Mallow. The total sum paid by Monsignor O'Callaghan for counselling in the period 1996 – 2007 came to almost €30,000. Between 2007 and 2009, the parish of Mallow was reimbursed for this expenditure from the child protection fund (see below).

7.5 This €30,000 included payments made by Monsignor O'Callaghan to the charitable trust. The arrangement with the charitable trust arose because of a concern that the direct payment to complainants might be construed as an admission of liability on the part of the diocese. In the cases of two complainants, the charitable trust paid counselling fees of almost €6,000 at the request of Monsignor O'Callaghan. He then made donations to the trust from the Mallow parish funds. It appears that these donations covered the full amount paid out by the trust but this cannot be absolutely established.

7.6 This €30,000 also includes the €14,000 paid from Mallow parish funds to the young man who had been abused by Fr Rion (see Chapter 20). Monsignor O'Callaghan also personally paid €1,000 to this man.

Faoiseamh

7.7 The diocese has contributed almost €12,000 to Faoiseamh, the counselling service set up by the Conference of Religious in Ireland to provide services to victims of child sexual abuse.³⁸

Stewardship Trust

7.8 From 1996 until 2005 the main source of compensation payments to the victims of clerical child sexual abuse in the dioceses of Ireland was the Stewardship Trust. This was established in 1996 by the Irish Bishops' Conference utilising in the first instance monies received under an agreement with the Church's insurance company together with subscriptions from the various dioceses. The details of this arrangement are described in the Commission's *Report into the Catholic Archdiocese of Dublin*.

7.9 The contribution of each diocese to the Stewardship Trust was based on its population. Between 1996 and 2005 the Diocese of Cloyne paid just over €207,000 into the Stewardship Trust; €80,000 of this came from a bank loan and the balance came from the main diocesan operating account. The bank loan was subsequently paid off from the child protection fund in December 2008.

7.10 During this period the Diocese of Cloyne made no claims on the Stewardship Trust. In or about 2005 it became clear that the trust would not have sufficient funds to meet the increasing number of claims from all over Ireland. Accordingly it was decided to cease compensation payments in respect of child sexual abuse and each diocese was to put in place its own fund to deal with such claims.

Compensation payments to complainants

7.11 The attitude of the diocese in respect of compensation for child sexual abuse is probably best set out in a letter of 2006 from the solicitors for the diocese to a solicitor for a complainant. The letter states:

“As your client will be aware, our client is greatly concerned for his welfare and is anxious that your client should have access to therapeutic, professional, pastoral and spiritual help to assist him and

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www.faoiseamh.com

support him. If our client can assist in any way, he wishes to do anything that he can do as a Christian Bishop. Please note that this concern of Bishop Magee for your client is an expression of his Christian ministry as Bishop. As your client through your office has threatened legal proceedings, we are obliged to point out that this is without prejudice to the fact that as a matter of civil law, our client can not in any way be liable for any matter alleged and hereby denies any such liability in law.”

7.12 The Diocese of Cloyne made its first compensation payment to a complainant of clerical child sexual abuse in 2007. In this case, the priest had paid about half of the amount involved to the diocese by the time of his death. Three other complainants received compensation payments in 2009.³⁹ One of these settlements and the associated legal costs was covered by insurance. A second settlement was paid from the Child Protection Fund and the third was paid from the building society No 1 account. The Commission considers that giving information on the total cost to the Diocese of Cloyne is not appropriate as there are only three recipients.

Legal fees

7.13 Between 2001 and 2010 the diocese paid almost €328,000 in legal costs associated with complaints of child sexual abuse. This included legal advice, the legal costs of priests involved in criminal and civil cases and the legal costs of complainants.

Other expenditure on child protection

7.14 As can be seen from the chapter on training procedures (Chapter 8), the diocese spent a considerable amount in employing professionals to deal with all aspects of child protection. The exact figures are not known to the Commission. The Commission recognises the considerable expenditure both financial and in time which went into these procedures.

³⁹ The Commission understands that compensation was paid to a number of other complainants in 2010.

Counselling and treatment for priests

7.15 The diocese also provided counselling and referral services for accused priests and is currently using the services of a risk assessment company. The total costs of these services are not known.

How this expenditure was funded

7.16 As already described, initially, counselling fees were paid by Monsignor O'Callaghan from the Mallow parish account. Other costs, for example, the contributions to the Stewardship Trust were paid from the diocese's main operating account.

Donation from Monsignor O'Callaghan

7.17 In 2001 a communications company with which Monsignor O'Callaghan had worked wished to make a donation to him in respect of his work. The sum was £50,000 (€63,500). Monsignor O'Callaghan asked that the sum be paid directly to the diocese as a gift. Although the correspondence clearly shows that the gift was not designated for any particular purpose, Monsignor O'Callaghan said that he indicated that it was to be used for child protection purposes. The sum was put into the main diocesan operating account.

Formalising arrangements for child protection costs

7.18 In 2005/6, as it was decided that the Stewardship Trust would cease to provide for compensation payments for clerical child sexual abuse and each diocese was expected to make its own arrangements, the Diocese of Cloyne decided to tidy up its rather unorthodox arrangements.

Funding for the Child Protection Fund

7.19 The Diocese of Cloyne decided to set up a Child Protection Fund. In March 2006, it was decided that this would be funded by means of a 6% levy on all property sold by the individual parishes. The Commission is aware of only one property which was sold. The levy on this sale amounted to just over €43,500. This was paid into the main diocesan operating account. This money was used to defray legal costs in one case one month later.

7.20 It was immediately apparent that the levy would not provide sufficient funds to deal with the costs involved in clerical child sexual abuse and

accordingly, in October 2006, it was decided to augment the Child Protection Fund from two other sources.

7.21 The first of these was the return on an investment in North Cork Community Radio made by the individual parishes some years earlier. This was now due to mature and the individual parishes were asked to contribute their return on this investment.

7.22 The second source was the parochial houses upkeep fund. This, as the title suggests, was a fund which was available to be drawn down by parish priests to pay for maintenance of the priests' houses. Half of the contributions to this fund came from parish funds and the other half from individual contributions by the priests. The diocese asked each parish to transfer the balance in this fund to the Child Protection Fund and each did so.

7.23 A total of almost €557,000 was collected from these two sources: over €134,000 from the North Cork Community Radio investment and over €422,000 from the parish houses' upkeep funds.

7.24 The money collected for the Child Protection Fund was initially lodged in the No 7 holding account, that is the holding account used where the money is collected for subsequent transmission onwards.

7.25 In December 2007, all the available monies were transferred into the Child Protection Fund. The final sum transferred was just over €557,000. This did not include the €50,000 donated by Monsignor O'Callaghan in 2001 (see above).

Withdrawals from the Child Protection Fund

7.26 The first major withdrawal from the Child Protection Fund was made in December 2008. It was for almost €194,000. This amount was paid into the main operating account of the diocese. The Commission has been informed that this withdrawal was accounted for as follows:

- a repayment of the €80,000 loan taken out for the Stewardship Trust;
- a repayment of just over €62,000 of legal fees which had been made from the main operating account;

- €20,000 in respect of a portion of a settlement made with a complainant which had been paid directly from the main account;
- €30,000 which was a refund of the monies paid by Monsignor O'Callaghan from the parish of Mallow funds and which are described above.

7.27 Other major withdrawals have since been made for settlement purposes and to defray legal fees.

The Diocesan No 7 Account

7.28 The Commission has been advised that in one particular instance the legal fees of a complainant were paid out of the No 7 account. This account, as set out above, was set up as a holding account for monies collected and to be remitted elsewhere and was used to hold the money that eventually went into the child protection fund. The Commission has been informed that these legal fees were paid from loan repayments made by some individual parishes.

Financial support for priests

7.29 Of the 15 diocesan priests covered in this report, eight are dead. Two are in ministry in the diocese. One has left the priesthood and is not being supported by the diocese. Three are retired and accordingly are paid in the same way as other retired priests. One priest is paid an allowance from the diocese's main operating account.

Chapter 8 Training

Introduction

8.1 As is described in Chapter 4, Bishop Magee told the Commission that he sent the *Framework Document*, with a positive endorsement, to all priests in the Diocese of Cloyne shortly after its publication in 1996. The document included guidelines on training in relation to dealing with child sexual abuse. Its successor, *Our Children, Our Church*, which was published in 2005, also dealt with the issue of training.

Guidelines on training

8.2 The *Framework Document* highlighted the need for priests and religious to receive ongoing education and in-service training on the nature and effects of child sexual abuse. It identified two principal reasons why training was so important - that victims of child sexual abuse would receive appropriate support and that proper training would assist in the safeguarding of children. The document recommended, among other matters:

- the holding of seminars on child sexual abuse (and follow up information) for priests and religious with the objective of providing information about policies and procedures in regard to child sexual abuse both from statutory and Church sources;
- that education in the area of child sexual abuse should be provided during the formation of students;
- that information days should be provided by the Church to teachers and school boards of management in circumstances where the Church held managerial responsibility for schools.

8.3 *Our Children, Our Church*, the later Church guidelines published in 2005, required that all Church personnel should be offered training in child protection policies and procedures.

Training pre 2004

8.4 At the instigation of Bishop Magee, two lay employees of the diocese were trained under the *Keeping Safe Initiative: Training the Trainers* programme by June 2001. This program focused on good practices in the area of child protection for those who work with children. The initial training

was provided by the Volunteer Development Agency⁴⁰ in Northern Ireland. The Volunteer Development Agency is a voluntary organisation that aims to promote good practice in the voluntary and community sector. The organisation provides, among other services, child protection training and accreditation. The trainee is reviewed on a three yearly basis by the agency.

8.5 Once the trainers were trained, the bishop and 13 others from the diocese were among the first to attend an information session by the newly qualified trainers. The two trainers then set about holding a series of two day programmes for the purposes of child protection training in the individual parishes. This training was entitled *Keeping safe: Best Practice for working with young people*. It was aimed at providing practical help in the implementation of child protection at local level and was offered to those whose remit involved working with children. By November 2004, 122 people in the diocese from 21 parishes had completed one of these programmes. (There are 46 parishes in the diocese.)

8.6 Although the training scheme was set up and encouraged by the bishop, and he expressed his wish that all priests attend the training, he did not at this stage make it compulsory for all priests of the diocese to do so.

Bishop's circular, March 2003

8.7 A circular was sent out by Bishop Magee in March 2003 as a response to what he termed "*the present crisis in the Church in regard to child sexual abuse*". The circular heralded a series of meetings to be held for all priests of the diocese at the end of March 2003 to discuss the crisis. The circular referred to the fact that each parish would soon receive a copy of the State's *Children First* guidelines,⁴¹ which had been published in 1999, and a further document also published by the Department of Health and Children in 2002 entitled *Our Duty to Care: The principles of good practice for the protection of children and young people*.⁴² This further document was aimed at community and voluntary organisations that provide services to children. The circular also

⁴⁰ <http://www.volunteering-ni.org/>

⁴¹ Department of Health and Children: *Children First – National Guidelines for the Protection and Welfare of Children* (Dublin: Department of Health and Children, 1999) www.dohc.ie

⁴² Department of Health and Children: *Our Duty to Care: The principles of good practice for the protection of children and young people* (Dublin: Department of Health and Children, 2002) www.dohc.ie

referred to the continuing participation of the diocese in the *Keeping Safe* training programme.

Developing a child protection service

8.8 In 2004, Bishop Magee volunteered that the Diocese of Cloyne would participate in a pilot project developed by the Child Protection Office⁴³ of the Irish Bishops' Conference in Maynooth. The objective of this project, involving two dioceses and two archdioceses, was to review the structures in place in the participating dioceses and to develop a model for the development of a child protection service suitable for the Church in Ireland. Bishop Magee appointed a vicar general, Monsignor James O'Donnell, to chair a steering group to deal with this undertaking. In May 2004, this steering group recommended to the bishop that a child protection committee be established.

8.9 As part of the pilot project, the bishop requested Dr Kevin McCoy of McCoy Consulting to carry out a review of the response by the diocese to complaints of clerical child sexual abuse. Dr McCoy had extensive experience in child protection issues. Among other things, he had been Chief Inspector of the Social Services Inspectorate in Northern Ireland and had worked with the Commission to Inquire into Child Abuse.⁴⁴

8.10 McCoy Consulting produced its report in August 2004. This report dealt in some detail with the extent to which the diocese was complying with the guidelines contained in the *Framework Document* – see Chapter 4. In relation to training, it acknowledged that all staff of the Cloyne Diocese Youth Service⁴⁵ had at that stage undertaken a period of induction training and that two of the staff had attended training as trainers under the *Keeping Safe* programme. These trainers then went on to provide child protection training within the diocese specifically for people working with children. The report recommended that:

⁴³ The Child Protection Office was the forerunner of the National Board for Safeguarding Children (see Chapter 6).

⁴⁴ The *Report of the Commission to Inquire into Child Abuse*, generally known as the *Ryan Report* was published in 2009. www.childabusecommission.ie.

⁴⁵ www.cdys.ie.

- in-service training should be provided for all those with key roles in the area of child protection and proper records of this training should be maintained;
- a child protection policy committee should be established with two distinct sub-committees; one would deal reactively and case manage complaints of child sexual abuse and the other would proactively provide supervision, education and training concerning child sexual abuse (such a committee had also been recommended by the steering group – see above);
- a systematic training needs analysis should be undertaken by the diocesan child protection committee and from that, a training strategy should be developed and implemented.

The diocesan child protection committee

8.11 In November 2004, the bishop established a child protection committee for the Diocese of Cloyne. All members invited to serve on this committee were requested to attend an information session at the Irish Bishops' Conference Child Protection Office before their formal appointment to the committee. The administrative services of the Cloyne Diocesan Youth Centre were placed at the disposal of the committee. This committee is now (December 2010) known as the Cloyne Diocesan Safeguarding Children Committee and is funded by the Diocese of Cloyne and administered by the Cloyne Diocesan Youth Services Limited.

8.12 Fr Brian Boyle was appointed as child protection training co-ordinator. His core functions were identified as the dissemination of information from the *Framework Document* and the putting in place of a strategy to support the parishes in implementing best practice in connection with the ministry to children. He had a steering role in the implementation of diocesan guidelines and was also involved in planning the delivery of training. He was required to report annually on training and development.

8.13 Fr Boyle had initially understood that, in taking up this role, he would have limited parish duties. In practice, he retained full parish duties and was also attempting to fulfil his new role. When he pointed out, in his annual report of January 2009, his earlier understanding that his parish duties would be

lessened, the report discloses that Monsignor O'Callaghan told him that his situation had been "*reviewed and altered*". He recommended to the diocese, in January 2009, that it should appoint a co-ordinator to look after the administrative work and visitation of the various parishes so that he could continue his role as a trainer. This request was acted upon in March 2009 when a lay person was appointed to the position of co-ordinator. Fr Boyle recently stepped down as a member of the Cloyne Diocesan Safeguarding Children Committee.

Parish representatives

8.14 In 2005, a priest and a lay person became accredited trainers for the diocese under the *Keeping Safe Initiative*. There are currently three Volunteer Development Agency accredited trainers in the diocese; two of these are lay people.

8.15 Starting in the autumn of 2005, the child protection committee set about the training of parish representatives in each parish whose function it was to act as the point of contact within the parish for any person with child protection concerns or complaints. The majority of people appointed to this position were lay people. The Commission has been told that all parishes in the diocese now have a trained parish representative in place and that the committee is currently revisiting each parish to update the training of parish representatives.

Priests' training

8.16 Priests were also invited to attend the same two day sessions along with their parish representatives. However, as the training was provided on Friday evenings and all day Saturday, most of the priests had to leave early. Those who did not attend the full course were not given accreditation. To meet the problem, the scheme was re-launched in November 2008 and this time, training was provided in the middle of the week so as to avoid the conflicts with priestly ministry. The Commission notes that the bishop did actively encourage the progress of the training scheme. Between 2006 and 2009, 15 priests were accredited as fully trained. As of January 2010, 51 priests were accredited as trained. By July 2010, 100 of the 104 priests in the diocese in active ministry have been accredited as fully trained, one priest requires part training. There were practical reasons why the other three

priests had not yet been trained and arrangements are in place to complete the training. One priest is an accredited child safeguarding trainer. Fr Bermingham, who held the position of designated person for safeguarding children in the diocese between 2008 and the summer of 2010, also completed child protection training for designated persons by the National Board for Safeguarding Children and also by Mentor Associates.

8.17 As of July 2010, 169 lay people in the diocese have been either partly or fully trained.

Training content

8.18 The training is currently based on guidelines issued to the diocese in 2005 by the Child Protection Office in Maynooth. This model under the *Keeping Safe Initiative* training programme is largely based on the 1999 *Children First* guidelines and on *Our Children, Our Church*. The Commission understands that the training will be amended in September 2010 to take account of any changes required as a result of the publication of *Safeguarding Children*,⁴⁶ the guidelines issued in 2009 by the National Board for Safeguarding Children and that the trainers will receive further training in this regard.

8.19 The training emphasises the necessity of having clear information available on the identity of the person in the parish to contact when complaints or concerns arise and the restoration of confidence in volunteers in the parish by providing safe environments for all church activities. It also stipulates supervision ratios, and provides for the logging of altar servers entry and exit from the sacristy.

8.20 In 2007, the Cloyne Safeguarding Children Training Committee published a booklet *Child Protection in the Diocese of Cloyne*, which contains the following sets of guidelines:

- General guidelines applicable for best practice for ministry with children;
- A diocesan code of good practice supporting the diocesan policy;
- A code of conduct in working with children;

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www.safeguarding.ie

- A code of conduct for children;
- A confidentiality statement;
- Contact information form to be displayed in each church in the diocese which includes the contact details of pastoral care personnel in the diocese, the local HSE contact details, the name of the Church delegate responsible for dealing with complaints;
- Personnel recruitment procedures;
- An explanation of child abuse;
- Supervision ratios for children.

Vetting

8.21 The Church guidelines *Our Children, Our Church* expressly refer to the need for vetting procedures to be undergone once a person has been selected for employment or volunteer work within the diocese. The guidelines stipulate that this applies “*whether the person is clerical, religious, full-time or part time, a lay employee or a volunteer*”. Garda vetting has been available to the Church in Ireland since 2006 through the Garda central vetting unit. The operation of the vetting process is described in Chapter 5. The diocese was one of the first in the country to engage with the Gardaí in the vetting process. The diocese has advised the Commission that 102 out of a total of 104 priests in active ministry in the diocese have completed the vetting process with the remaining two vettings underway in July 2010.

Monitors

8.22 Monitors have been appointed to visit each parish to ensure that every parish in the diocese is complying with diocesan policies on child protection. These visitations were expected to commence in the Autumn of 2010.

Commission’s assessment

8.23 Prior to 2004, the bishop was actively promoting the development of training in child protection within the diocese. Since 2004, the Diocese of Cloyne on the direction of the bishop does appear to have taken considerable measures to put in place a structured training regime. However, satisfactory arrangements for priests to undergo training were not put in place until 2009.

Chapter 9 Fr Ronat⁴⁷

Introduction

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First complainant, ,⁴⁸ 1989

9.5 The first complaint against Fr Ronat was made in 1989 by

⁴⁷ This is a pseudonym.
⁴⁸

9.6 and her mother made the complaint to a priest whom the mother described to the Commission as Fr Ronat's "*superior*". He was, in fact, a more senior curate in the same parish.

He told the parish priest about this but did not know if the parish priest had done anything about it. The parish priest was dead at this stage. The priest did not remember ever talking to Fr Ronat about it.

9.7 There are no written records of this meeting in the diocesan files. There is no evidence that the parish priest did anything about the complaint.

Complaint to bishop, 1995

9.8 Six years later, in January 1995, and her parents met Bishop Magee in January 1995 to tell him of the alleged abuse. In a statement to the Gardaí in 2005, said that Bishop Magee told her he believed her and he was sorry for what had happened to her. Bishop Magee told the Commission that he did not make a record of what was said as the procedures provided that the complainant would be interviewed later by the delegate; he, the bishop, listened. There is, however, a handwritten document which seems to have been dictated by the bishop after the meeting.

9.9

9.10 In March 1995, Bishop Magee appointed Monsignor O'Callaghan as the delegate to carry out a canonical investigation into Fr Ronat under canon 1717.

9.11 In April 1995, was interviewed by Archdeacon Chris Twohig.

Archdeacon Twohig's report does not show any evidence of a genuine investigation. It is not an impartial recording of the facts. It diverges from the record made by Bishop Magee

9.12 described the interview in her 2005 statement to the Gardaí: “*His attitude toward me was deplorable. He could just barely tolerate me being there.*”

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9.13 In June 1995, Monsignor O’Callaghan put the complaint to Fr Ronat who “*strenuously*” denied it. It is not clear why there was a delay of six months from the first notice of the complaint until Fr Ronat was interviewed.

9.14 Monsignor O’Callaghan also spoke to the priest to whom had complained in 1989. Bishop Magee told the Commission that he (the bishop) did not carry out any inquiries as he expected the delegate to do that. The bishop did tell the then parish priest in the parish where Fr Ronat was serving about the complaint. When asked by the Commission about the completeness of the investigation, the bishop accepted that a full canonical investigation was not carried out, despite his written instruction.

Advisory committee

9.15 An advisory committee meeting was convened in July 1995. This was the first such committee in the diocese. It seems that the committee was formed in anticipation of the implementation of the *Framework Document*. (The *Framework Document* was published in early 1996 but Bishop Magee and Monsignor O’Callaghan were involved in discussions about it during 1995.) The members seem to have been chosen by Monsignor O’Callaghan. According to the diocesan records, the members were Monsignor O’Callaghan himself, Archdeacon Twohig, two solicitors, one of whom subsequently advised the diocese on the handling of child sexual abuse

cases, and the other who left the committee after a short time, and the consultant psychologist who assessed both [redacted] and Fr Ronat. The committee considered this case on three occasions – twice in July 1995 and again in November 1995. The psychologist was not present for the first two meetings and would appear not to have been present for the third but there is no list of those present at that meeting. The psychologist told the Commission that he has no memory of being invited to attend or actually attending this committee in 1995 or at all. (He did become a member of the advisory committee which was established in 2005 under the title of the inter-diocesan case management advisory committee.)

9.16 Before the first meeting of the committee, Monsignor O’Callaghan wrote to Bishop Magee about the case (they had been speaking about it the previous day). The letter does not mention the names of either [redacted] or Fr Ronat. The letter outlined the considerations involved in what Monsignor O’Callaghan described as a “*very delicate situation*”.

9.17 At its July meetings, the advisory committee decided on general pastoral grounds “*without prejudice*” that arrangements should be made to have counselling available to [redacted] and to have both her and Fr Ronat assessed. At its November 1995 meeting

⁴⁹ The question of Fr Ronat being appointed as a parish priest was discussed. The committee concluded that an immediate appointment as a parish priest would precipitate into taking some action on the grounds that she had not been believed or taken seriously. In effect, the committee was more concerned about causing scandal than about protecting children. Monsignor O'Callaghan disputes this; he told the Commission that, as a member of the committee, he was always concerned about protecting children and this was a central part of the policy of pastoral care. It is the Commission's view that the actions of the committee in this case do not show concern for the protection of children. The committee recommended that Fr Ronat be directed to take sabbatical leave for a year and qualify in "*some neutral area of pastoral care while having counselling*". This never happened.

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9.19 According to Bishop Magee's statement to the Gardaí in 2005, the committee recommended restricted ministry for Fr Ronat but this does not appear in the note of the meeting made by Monsignor O'Callaghan. There is no evidence of any restriction being placed on him at this time. The bishop said he told Fr Ronat that he would be "*placing him on restricted Ministry*

He remained in restricted and monitored Ministry until his retirement in 2005". The bishop's recollection in 2005 appears to have been mistaken. This occurred in 1997 and not in 1995.

9.20 had a second meeting with Bishop Magee in late July 1995. She understood that Fr Ronat was being stood down and was going for assessment. The Commission cannot now establish why she came to that understanding. Bishop Magee has no recollection of this meeting and believes that this understanding did not come from him.

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9.21 Meanwhile, Monsignor O'Callaghan was in touch with father. It is not clear to the Commission why he contacted her father and not herself. The question of informing the Gardaí does not seem to have been considered. The parents told the Commission that no one in the Church ever suggested to them that the Gardaí should be told. The *Framework Document* was not yet in operation.

Psychological assessment

9.22 In May 1995, was assessed by the consultant psychologist.

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9.24 In September 1995, Fr Ronat also was assessed by the consultant psychologist. Fr Ronat was a reluctant participant in the assessment.

He said that he would welcome an opportunity to develop his observations.

9.25 In February 2009, 13 years later, the consultant psychologist wrote to the diocese outlining his involvement. He explained to the Commission his reasons for doing this. He was contacted by the diocese in late January/early February 2009 about the release of his reports to this Commission. He had destroyed his own copies of the reports and his related notes in the early 2000s. He did this because he had had no further involvement

Fr Ronat after 1995 and it is his practice to destroy such notes and reports after about five years.⁵⁰ He asked the diocese for sight of the reports and these were provided to him together with a copy of his December 1995

⁵⁰ The Commission recognises that it is normal and approved practice for medical and associated professionals to do this.

letter to Monsignor O'Callaghan. He then realised that they did not fully reflect his involvement in the matter and he wanted to ensure that this Commission was aware of his wider involvement.

9.26 In his February 2009 letter to the diocese, the psychologist said that he had explained to Fr Ronat at the time of the assessment that the report of the assessment was for the use of the diocese. Fr Ronat had then reserved the right to see the report in the event of civil litigation. The psychologist said that this "*altered the context*" of his written report. As a result he met Monsignor O'Callaghan shortly afterwards "*to clarify and elaborate on its contents*".

9.27 There is no contemporaneous record in the diocesan files of this elaboration and clarification. The psychologist was surprised by this because he said that Monsignor O'Callaghan regularly took notes of their discussions. Bishop Magee told the Commission that he had no knowledge of any further information imparted by the psychologist to Monsignor O'Callaghan and that he was surprised by the content of the psychologist's letter of February 2009. Monsignor O'Callaghan told the Commission that he has no recollection of the specific conversation referred to by the psychologist in his February 2009 letter. Monsignor O'Callaghan said he did have numerous conversations with the psychologist over the years including within the advisory committee. However, as stated above, the psychologist told the Commission that he has no recollection of attending any advisory committee meetings in 1995 and there is no documentary evidence that he did at any time before 2005.

9.28 Mr Ó Catháin, the solicitor member of the advisory committee, told the Commission that he could not recall whether or not this elaboration of the

psychologist's views was conveyed orally to the advisory committee. He did say, however, that he was very concerned about Fr Ronat and that he expressed this concern to Monsignor O'Callaghan on a number of occasions subsequently. The Commission considers that it is very regrettable that this elaboration and clarification was not put in writing at the time, either by the psychologist or by Monsignor O'Callaghan. The failure to do so meant that, at the very least, there was an inadequate record on file of the nature of the problem.

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Civil legal action, 2000

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9.32 In September 2000, started civil legal proceedings. Mr Ó Catháin replied, on the instructions of the diocese, expressing concern for her but denying any liability. The civil proceedings were not pursued.

9.33 The *Framework Document* was not in place when made her complaint in 1995 but it was in place when the civil proceedings started in 2000. The diocese did not report the complaint to the Gardaí or the health board as was required by the procedures set out in that document. Monsignor O’Callaghan spoke to Archdeacon Twohig in October 2000. He noted that there was no question of going to the Gardaí as did not want publicity of any kind. It is not clear if this reflects Archdeacon Twohig’s dealings with in 1995 or if he had been in touch with her again in 2000.

2002

9.34 Nothing further happened until June 2002 when Monsignor O’Callaghan was asked to “*enquire about Fr [Ronat’s] circumstances and what his intentions were*”. This arose from a meeting about diocesan assignments. Monsignor O’Callaghan asked Fr Ronat to come to meet him but Fr Ronat said he was ill. They spoke on the phone. Monsignor O’Callaghan set out the options which were open to Fr Ronat.

9.35 A few days later, Monsignor O’Callaghan met for the first time. According to his contemporaneous note of the meeting, Monsignor O’Callaghan said she wanted to be assured that Fr Ronat would not make contact with her. He had told her that Bishop Magee had so directed. She

was also concerned about the audit⁵² and Monsignor O’Callaghan “*assured her that the names of complainants would not be revealed*”. According to a statement made to the Gardaí in February 2006, four years later, Monsignor O’Callaghan said that he had assured her that Fr Ronat had “*been instructed not to make contact with her or with her family. At that stage she still did not want a report made to Garda*”. The question of reporting to the Gardaí is not mentioned in the contemporaneous note. In any event, whether she wanted it or not, reporting was required by the procedures in the *Framework Document*.

Report to Gardaí, 2005

9.36 In January 2005, made a complaint to the Gardaí. The Gardaí formally notified the health board of the complaint in accordance with the *Children First* procedures.

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⁵² This was the proposed nationwide audit of clerical child sexual abuse complaints, announced by the Irish Bishops’ Conference in April 2002, which did not proceed because of the government’s announcement that it intended to introduce the legislation which subsequently became the *Commissions of Investigation Act 2004*.

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2003

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9.41 In evidence to the Commission, Monsignor O'Callaghan accepted that Fr Ronat should have been taken out of ministry at this stage. Bishop Magee told the Commission that he did not consider removing Fr Ronat from ministry in 2003 because he did not have concrete proof that anything untoward had happened as he was not in possession of the full facts.

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Garda involvement

9.44 Shortly after their meeting in January 2003, Monsignor O’Callaghan wrote to [redacted] about reporting to the Gardaí. He said that: “*An issue that arises from the church protocol is the question of reporting to Garda. The complainant may make the complaint [redacted] or the diocesan contact may facilitate [redacted] in doing so. Let me know your mind on this*”.

9.45 This, of course, is not a correct reading of the Church protocol. The *Framework Document* requires that the diocese report to the Gardaí. This is not an option to be exercised in accordance with the wishes of a complainant.

9.46 Monsignor O'Callaghan did report this case to the Gardaí in February 2003.

9.47 was interviewed by the Gardaí in March 2003 and made a statement. told the Commission that was surprised that had heard nothing about complaint, either from the Church or the Gardaí, between 2003 and 2009. The Gardaí told the Commission that did not wish to pursue the complaint; simply wanted the Gardaí to be aware of Fr Ronat. The garda who interviewed said that he recorded the incident on the PULSE system (see Chapter 5) in the category which records matters of a non-criminal nature. This clearly indicates that the Gardaí had taken the view that there was no criminal activity disclosed. The documents relating to this case were not furnished to the Commission by the Gardaí in their initial discovery. When their absence was brought to the attention of the Gardaí, further searches were conducted and 's statement was found in the filing cabinet used by the now retired garda who had interviewed The Gardaí also told the Commission that they were continuing to investigate the complaint and it remained an "ongoing investigation". The Commission does not accept that there was any investigation after the initial taking of the statement. When the statement was found, a file was submitted to the DPP in 2010 and the DPP directed that no prosecution be brought.

Becoming a parish priest

9.48 As already stated, the question of Fr Ronat becoming a parish priest was discussed by the advisory committee in November 1995. In a letter of August 1999, Monsignor O'Callaghan said that Bishop Magee offered Fr Ronat appointments as parish priest to two parishes but the offers were declined. It is not clear when exactly the offers were made but it is clear that it was before 's complaint was made .

9.49 Bishop Magee told the Commission that he was put under a lot of pressure by Fr Ronat who threatened to sue him (the bishop) for defamation. His threats to sue the bishop over the failure to make him a parish priest were "self-evidently a bluff" according to Monsignor O'Callaghan. However, it is clear that promotion was offered by the diocesan authorities. Monsignor

O’Callaghan told the Commission it was never going to happen; he implied that Fr Ronat was offered only parishes that the diocese knew he would refuse. He had been offered what Bishop Magee described as an “*insignificant parish*” in the expectation that he would decline it. He did – he said it was too far from his doctor.

9.50 Bishop Magee told the Commission that priests were commenting on why Fr Ronat had been left in the same appointment for such a long time since it was the practice to move priests every six or seven years. The matter had been mentioned by members of the personnel board. This board advised the bishop on appointments. Bishop Magee told the Commission that the members would have known the circumstances. The Commission considers it shocking that members of the board would consider promoting Fr Ronat if they were aware that there were unresolved allegations of child sexual abuse. The question of promotion was considered again in 2005 (see below).

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Bishop Magee told the Commission that there was a meeting of the advisory committee and that they recommended that Fr Ronat be put on “*restrictive ministry*” and should have no contact with young people or with schools. There is no documentary evidence of any such meeting of the advisory committee or of any recommendation made by it. In fact, the evidence available shows that there was no advisory committee functioning at this stage. Bishop Magee disputes the fact that there was no advisory committee functioning at the time. He said he understood that any advice he received from Monsignor O’Callaghan was coming from the committee. Decisions of the advisory committee were communicated to him by Monsignor O’Callaghan. He did not have any direct contact with any other committee members. Monsignor O’Callaghan told the Commission that the advisory committee did have meetings in his house and they “*were unstructured in terms of timing and minute taking*”. The two other surviving members of the committee, the solicitor and the psychologist, say they were not asked to attend any meetings.

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9.56 The bishop and Monsignor O’Callaghan drafted a letter to Fr Ronat and Monsignor O’Callaghan read out the draft to Fr Ronat over the phone. Fr

Ronat asked that the proposed restriction on his access to schools be limited to secondary schools

He did not have any involvement with secondary schools at this time. The bishop and Monsignor O'Callaghan decided not to accede to this request because they considered that would not be in keeping with the guidelines. *"There was the further matter that, if the whole issue became public, as it certainly would if action were taken in the civil court, the Diocese could be pilloried as putting children at risk and could be seen to be in breach of its policies as expressed in the guidelines."*

9.57 The letter which was subsequently sent by Bishop Magee in February 1998 stated that: *"Pending the pastoral decision which I may eventually take in your regard I require that you do not engage in visitation of schools nor have young people under the age of 18 alone in your house"*.

The bishop said that he was advising the parish priest, *"in strict confidence"* of the measures being taken. In a letter in August 1999, Monsignor O'Callaghan said that Fr Ronat's retirement from the board of management *"occasioned no admiratio⁵⁶ – his poor health was seen as the reason"*. Bishop Magee did tell the parish priest of the restrictions being imposed and he said that the parish priest was responsible for the enforcement of the restrictions.

9.58 The parish priest told the Commission that he was told of the restrictions. He was not told the nature of the complaint

because of the nature of the restrictions.

He did all he could to ensure that the restrictions were observed. He told Fr Ronat that he could not visit any of the schools

He also asked Bishop Magee to tell his then curate and all curates appointed in the future about the restrictions and this was done. He told the Commission that he frequently met Bishop Magee and, when he did, the bishop always inquired about Fr Ronat. He had no

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Surprise, astonishment or wonder; the word can also mean admiration but not in this context.

evidence that the restrictions were ever breached by Fr Ronat. Apart from the restrictions in relation to schools, Fr Ronat continued to operate as a priest in the parish and was perceived by the parishioners as a priest in good standing.

9.59 Fr Ronat's solicitor wrote to Bishop Magee to state that he was acting on behalf of the priest. After consultation with Mr Ó Catháin, Monsignor O'Callaghan decided that the diocese should not engage with Fr Ronat's solicitor but should deal directly with Fr Ronat.

Garda investigation

9.60 The Gardaí investigated [redacted]'s complaint and interviewed her, Fr Ronat and [redacted]

[redacted] The Gardaí did not interview Bishop Magee or anyone in authority in the diocese. A garda was in touch with the bishop's office but this was purely in order to locate Fr Ronat. The garda said, in February 1999, that he spoke to the bishop's secretary about this but did not tell the secretary why he wanted to locate Fr Ronat.

[redacted] The Commission finds it surprising that the garda did not ask the diocese about any similar complaints. The garda told the Commission that there was no protocol in place at that time for contacting the diocese. He said that, while he did not go into the details, he did tell the bishop's secretary that he was investigating an incident and he would have expected the bishop's secretary to tell him if there were other incidents. The Commission does not consider it reasonable to expect the bishop's secretary to have done this. Apart from not knowing the nature of the incident being investigated, the bishop's secretary may not have been aware of any other incidents.

9.61 The Gardaí concluded that there was insufficient evidence for a prosecution.

file was sent to the DPP who agreed with the garda assessment.

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Involvement in confirmation ceremonies

9.64 In spite of the restrictions which had been placed on him in respect of involvement with children, it seems that Fr Ronat acted as the master of ceremonies at confirmation ceremonies. Clearly, this was known to Bishop Magee and Monsignor O'Callaghan. In April 2002, Monsignor O'Callaghan wrote to Fr Ronat stating that it "*would seem best that you not be present*" at the confirmation ceremony in his (Fr Ronat's) parish. The letter went on to state that: "*It might just be all that is needed, given the current furore, to be seen to be tempting fate and challenging a response*". At this time, Bishop Brendan Comiskey had resigned as Bishop of Ferns, the Government had just announced the appointment of Mr George Birmingham SC to advise on an inquiry about matters which had arisen in the diocese of Ferns and the Irish Bishops' Conference was holding an emergency meeting to discuss a nationwide audit of clerical child sexual abuse. This letter was not provided to the Commission in the diocesan discovery. Monsignor O'Callaghan

explained that he did not necessarily keep a copy of every individual letter and there was no obligation on him to do so.

Fr Ronat's health

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Inter-diocesan case management advisory committee, September 2005

9.72 Fr Ronat's case was discussed at an extraordinary meeting of the new inter-diocesan case management advisory committee in September 2005. The committee had been established earlier in 2005 and was the advisory panel or committee as outlined in the *Framework Document*.

9.73 There were only four members of the committee present at this meeting, the chairman, Fr Garrett who was the Limerick delegate, Monsignor O'Callaghan, the secretary who was a Cloyne priest and one lay member. There are considerable differences between what is recorded in Monsignor O'Callaghan's note of the meeting and what is recorded in the minutes of the meeting. It is notable that Monsignor O'Callaghan was present at the subsequent meeting when these minutes were approved.

9.74 According to the minutes, cases involving two priests were discussed at this meeting:

"The first involved a priest against whom allegations had been made about 1995. The matter was resolved to the satisfaction of the various parties and the priest is currently in restricted ministry. Recently a religious sister wrote to Mgr. O'Callaghan concerning the priest indicating continuing disquiet The issue under discussion and on which advice was sought from the committee was whether the priest ought to be left in his present ministry or considered for promotion to parish priest. The meeting agreed that the priest ought to remain in his current ministry."

9.75 It is not clear what exactly the members of the committee were told about the complaints.

the fact remains that the minutes of the meeting show that the committee was misinformed about [redacted]'s situation and Monsignor O'Callaghan did not correct this.

9.76 Monsignor O'Callaghan's note of the meeting does not mention the question of promoting Fr Ronat. It says that "*The Committee advises that he continue in his restricted ministry as heretofore*". It also says that the committee agreed that the decision to allow restricted ministry was a benign judgement on the basis of what had emerged.

Removal from ministry, November 2005

9.77 On 25 November 2005, Bishop Magee wrote to Fr Ronat withdrawing his faculties for ministering in the Diocese of Cloyne. The bishop said he was not to engage in any ministry, public or private and he could say mass privately in his house and there only. Fr Ronat told the Commission that he had no recollection of being told that he could say mass only in his house. However, he also told the Commission that he spoke to Monsignor O'Callaghan about the letter so it seems likely that he did receive Bishop Magee's letter.

9.78 Bishop Magee told the Commission that he acted after he knew of complaint because "*the allegation was very clear*."

[redacted]. He said that he immediately removed Fr Ronat from ministry, even before referring the matter to the inter-diocesan case management committee. Bishop Magee said he "*should have*" referred this case to the Congregation for the Doctrine of the Faith (CDF) in Rome but did not because of Fr Ronat's denials. It is not clear to the Commission why Fr Ronat's denial of an allegation should be a factor in a reference to Rome

Bishop Magee told the Commission that Fr Ronat's denials resulted in the slowing down of the investigation. He said an added factor in the delay in referring to Rome was _____ it was decided to conclude the investigation into all complaints against Fr Ronat before referring to Rome.

9.79 When Fr Ronat was stood down from ministry in 2005, he was not asked to stop wearing clerical dress; this was not done until 2008. Bishop Magee said this was not considered in the diocese before that time. He said he had never heard the issue raised at meetings of the Irish Bishops' Conference. No public announcement was made. When asked why, Monsignor O'Callaghan said he disapproved of the policy of making public announcements. This practice ensured that only a small group of people were aware of Fr Ronat's changed status. It also allowed Fr Ronat to continue to present himself to the general public as a priest in good standing.

9.80 A few days later, Fr Ronat contacted Monsignor O'Callaghan and offered to resign on grounds of ill health. In effect, this offer was accepted although there is no formal record of this. Bishop Magee told his parish priest _____ that he was being removed from ministry. The parish priest was asked to monitor Fr Ronat.

9.81

Inter-diocesan case management advisory committee, December 2005

9.82 The inter-diocesan case management advisory committee again considered the case at its December 2005 meeting. The minutes record:

"A priest who had been in limited ministry is now ill and will probably be retired.

9.83 There is no indication that the members of the committee were aware that they had already discussed Fr Ronat at their September meeting.

The minutes suggest that the committee was informed of the imminent retirement . They do not seem to have been informed that he had been removed from ministry. There is no evidence that the committee was asked for its views on the management of the case. Monsignor O’Callaghan told the Commission that the minutes of the meetings are not an account of everything that went on. He said it was agreed that decisions taken would be recorded but not the detail of the discussion.

Garda investigation, 2006

9.84 Meanwhile, the garda investigation in relation to , who had made a complaint to them in January 2005, was continuing. In January 2006, the Gardaí met Monsignor O’Callaghan and told him they wished to interview various diocesan personnel including himself and Bishop Magee.

9.85 Monsignor O’Callaghan took advice from the solicitor and from the retired garda who was a member of the inter-diocesan case management advisory committee about how to deal with these interviews. The advice, as transmitted by Monsignor O’Callaghan to the people concerned, was that *“each should make himself available for interview and on request sign a statement which should be minimal”*. Monsignor O’Callaghan added a handwritten note *“Minimal is the key in any statement”*. (Emphasis in original.) The further advice, also as transmitted by Monsignor O’Callaghan, was that *“The Bishop should admit that the complaint was received, procedures were put in place, even though the allegation was strenuously denied a decision was made to restrict the ministry of [Ronat]. (If the Garda raises the question of possible other complaints the response should be that if he has any evidence we would be concerned to know about it)”*. Monsignor O’Callaghan further said that the ex garda who was a member of the inter-diocesan case management advisory committee *“was concerned that we be seen to co-operate – his hope is that the DPP will act as in [] case”*.

meets Monsignor O'Callaghan, February 2006

9.86 met Monsignor O'Callaghan in February 2006. She told the Commission that, initially, she thought he was quite sympathetic but she later changed her mind.

9.87 .

9.88 Monsignor O'Callaghan told that Fr Ronat was on restricted ministry.

She asked about the monitoring of Fr Ronat and was told he was being monitored by his former parish priest. She pointed out that he was actually in the USA at the time of the meeting.

Inter-diocesan case management advisory committee, February 2006

9.89 The case was discussed again at the inter-diocesan case management advisory committee meeting in February 2006. Fr Ronat was described in the minutes as being "*in limited ministry*"; he was, in fact, supposed to have been removed from ministry in November 2005.

There is no evidence that the committee was asked for or gave any recommendations.

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9.92 In March 2006, Bishop Magee met Fr Ronat at the latter's request. He said that he was in a state of limbo even though nothing had been proven against him.

Bishop Magee told him that he would have to report the allegations to Rome. There was some discussion, but no decision, about his future housing arrangements. Bishop Magee told him that there would have to be a system of control and monitoring wherever he went. Bishop Magee still did not report the case to Rome at this time.

Activity by Gardai

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9.97 In February 2007, the DPP decided not to prosecute in _____'s case.

9.98 In spite of the efforts of his former parish priest, it is clear that Fr Ronat was not being monitored in any meaningful way during 2006. It is also clear that the bishop's control over him was limited. In January 2007, Bishop Magee discovered that Fr Ronat had moved into a vacant parish house in August 2006. He did this against the bishop's express wishes and the specific instructions of the parish priest of the area.

Fr Ronat told the Commission that his former parish priest, who was in charge of monitoring him, knew of the move and did not object. The local parish priest did not know of the reason for his retirement when he moved in. He was told in January 2007 and was asked to be his support priest. Bishop Magee remonstrated with Fr Ronat but allowed him to continue occupying the house. He wanted a caretaker's agreement signed but it is not clear if this occurred. Bishop Magee wrote to Monsignor O'Callaghan saying that it appeared they would have to work with the

situation as it was and that a monitoring system must be put in place. Monsignor O'Callaghan replied saying that the parish priest of his former parish was to continue in his monitoring role and that the parish priest of the area into which he had moved should be asked to fill the role of support priest. The parish priest of his former parish told the Commission that he was more limited in his monitoring of Fr Ronat once he moved away from the parish.

9.99 Monsignor O'Callaghan met Fr Ronat in March 2007 and subsequently wrote to him. The letter dealt with the issue of his behaviour in moving to the new house against the express orders of the bishop. It also stated that the diocese was not required to fund his legal costs. Monsignor O'Callaghan also told Fr Ronat that the civil and canonical processes operated on parallel lines. Monsignor O'Callaghan told Fr Ronat that he had been authorised to proceed with a preliminary investigation under canon 1717. (The Commission notes that an instruction to conduct such an investigation was first issued 12 years earlier in 1995 and was never concluded.) Monsignor O'Callaghan explained to Fr Ronat that this investigation prepares the way for the formal judicial process which the bishop is empowered to put in place under canon 1718. He then added "*...it is best for reasons of expediency to hold over the question of initiating the formal judicial process while the civil law was taking its course*".

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9.101

Inter-diocesan case management advisory committee, September 2007

9.102 Fr Ronat's case was mentioned at the September 2007 meeting of the inter-diocesan case management advisory committee.

There is no evidence of any discussion or recommendations by the committee.

9.103 On Good Friday in 2008, rang Archbishop Dermot Clifford of Cashel and Emly. She told the Commission that she did this because she found her dealings with Bishop Magee and Monsignor O'Callaghan very unsatisfactory so she decided to go to the person who was, in her words, "*next up the pyramid*". Archbishop Clifford told the Commission that she told him that Fr Ronat was turning up at supermarkets and funerals and that he was not being controlled by Bishop Magee and Monsignor O'Callaghan. Archbishop Clifford, although he was concerned about trespassing on Bishop Magee's territory and had no jurisdiction over him, arranged for the diocesan delegate in his diocese to contact her. The Cashel and Emly delegate had a number of conversations with the complainant. The complainant and the delegate each gave the Commission an account of these conversations. The Cashel and Emly delegate told the Commission that his primary concern was to establish if the statutory authorities had been informed and he understood from his conversation with that they had been. 's concern was on what was being done about Fr Ronat. She was under the impression that the Archbishop had some supervisory power over Bishop Magee. This is not the case (see Chapter 3). She thought that they were all covering up for each other. The Commission has not found any evidence of a cover up. The delegate reported to Archbishop Clifford and the Archbishop contacted Monsignor O'Callaghan. Monsignor O'Callaghan told the Archbishop that Fr Ronat was out of ministry but was a most difficult man to control.

9.104 When Archbishop Clifford became Apostolic Administrator (in 2009) said she rang him again. The Archbishop does not recall that telephone call but he did meet in April 2009. At this meeting, castigated him for doing nothing for her. He explained that he had had no power at the time she contacted him in 2008 and told her what he was doing in 2009. He also met Fr Ronat and issued a precept placing further restrictions on him, including an injunction not to wear clerical dress.

2008

9.105 Monsignor O'Callaghan had a telephone conversation with Fr Ronat in January 2008. This was mainly concerned with the civil case being pursued by . Fr Ronat was not very forthcoming but did express the view that the case would not go to court but, as Monsignor O'Callaghan noted, he did not provide any reasons for this opinion. Also in January 2008, Monsignor O'Callaghan informed the HSE about complaint. This had been made to the diocese in November 2005. During 2007, the question of the diocese's failure to report to the health authorities had been raised (see Chapter 6).

9.106 In February 2008, Mr Ian Elliott of the National Board for Safeguarding Children became involved in investigating the handling of child sexual abuse complaints in Cloyne. His general involvement is described in Chapter 6. His involvement resulted in significant changes being made in the handling of complaints against Fr Ronat.

9.107 In September 2008, Monsignor O'Callaghan met the HSE to discuss a number of cases. According to his note of the meeting, he told the HSE that Fr Ronat was being monitored by a parish priest and that he himself remained in constant contact with him. There is no documentary evidence that Monsignor O'Callaghan was in contact with either Fr Ronat or the parish priest. Monsignor O'Callaghan told the Commission that he did maintain contact with the parish priest but accepts that these contacts did not constitute an adequate monitoring of Fr Ronat. The child care manager from the HSE, Mr Mike van Aswegen, told the Commission that he understood that Monsignor O'Callaghan had said that he (the Monsignor) took the monitoring role for all the priests in question. He said that Monsignor O'Callaghan seemed vague about the details of the monitoring. Mr van Aswegen then arranged for Monsignor O'Callaghan to have talks with the HSE team leader about a more structured approach to monitoring.

Change in handling

9.108 In November 2008, made a civil claim against the diocese. The matter was referred to the delegate and the solicitor who was the diocese's legal advisor and a member of the inter-diocesan case management advisory committee. By this stage, Fr Bermingham had been appointed as the delegate. He immediately notified this complaint to the Gardaí and the HSE.

9.109 The solicitor wrote to Fr Bermingham as follows:

"The success of the Diocese of Cloyne in responding to such complaints in the past has been grounded in an immediate pastoral response offering to arrange professional counselling and to have the cost of it defrayed (by an independent, charitable trust). This is very difficult where the first contact is made through a Solicitor but nevertheless, the offer, even if rejected, shows the Christian emphasis at the heart of the Diocesan response.

I need to respond urgently and would be glad if you would reflect on the following and contact me.

The first thing that needs to be clarified is what protocol is operative. If it has not been superseded by enactment of a new protocol, the Green Book is operative. I do not know if "Our Children Our Church" was ever formally approved and made operative. As you will recall, a new draft document in various forms has been in circulation for the last six or eight months, I am not aware that it has been finalised, approved, and made operative."

9.110 The solicitor went on to make other comments on the handling of the case and the difficulties of dealing with Fr Ronat and asked that a meeting of the inter-diocesan case management advisory committee be held. The solicitor also sent this letter to Bishop Magee.

9.111 Fr Bermingham advised Bishop Magee in detail, and accurately, about his (the bishop's) responsibilities under the *Our Children, Our Church* procedures which had been introduced in 2005.

9.112 Among other things, Fr Bermingham told Bishop Magee that he (the bishop) should meet Fr Ronat and direct him not to get in contact with
This direction should be by means of a precept.

9.113 Fr Bermingham went on to say that Mr Ó Catháin had written to him suggesting that the inter-diocesan case management advisory committee be convened to discuss the case. Fr Bermingham made the following points in respect of this request:

- The civil legal response should be kept entirely separate from the following of Church procedures and the canonical investigation.
- The case management committee included people who should not properly be giving such advice, for example, the diocesan solicitor and a psychologist who had assessed the accused in relation to a previous complaint.
- Recent events had given rise to strong feelings among the committee members and any such meeting would provide a forum to vent these rather than deal in a calm manner with the case in hand. This is a reference to the draft report issued by Mr Elliott to which the members of the committee took serious exception (see Chapter 6).
- He (Fr Bermingham) would find it very difficult to work with the committee in such circumstances.
- The National Board for Safeguarding Children had offered to act, through its CEO, Mr Elliott, as the Cloyne diocesan advisory committee pending the establishment of a new committee under

the forthcoming guidance document and Fr Bermingham wanted him to so act.

9.114 Fr Bermingham then reminded Bishop Magee that he had established a canonical investigation under Monsignor O'Callaghan in March 1995 and that this was put in abeyance pending civil proceedings. Fr Bermingham said that, as soon as the current civil proceedings were concluded, the canonical investigation should proceed "*but with personnel who have not had any previous involvement in the cases*".

9.115 Fr Bermingham offered counselling to

9.116 Bishop Magee and Fr Bermingham discussed the issues arising and Bishop Magee decided that changes needed to be made in the way complaints were handled in the diocese. Accordingly he replied to the solicitor as follows:

"I agree wholeheartedly that the response of the diocese should be a pastoral one in accordance with the policies and procedures at present in force.

Having given great consideration to these matters and having received advice from my brother bishops, I find it necessary to make some changes in the manner of dealing with such complaints.

Firstly, I am advised that it is best to keep the areas of pastoral response, canonical investigation and civil proceedings entirely separate. The reporting procedures and pastoral response have already been put in place in this case. The question of liability is the matter on which I wish you to represent me in this and other cases. It is with this intention of keeping these areas of the case separate, that I do not intend to convene a meeting of the Case Management Committee in this case. The case does not provide circumstances which differ from those already occurring.

In view of the forthcoming Standards and Guidance document, a new form of Advisory Panel will need to be formed for the diocese and I will contact the members of the committee regarding this in due course.

Fr. Bermingham is dealing with the reporting issues and, together with Dean Goold, will follow through on the Church guidelines.

*I shall be grateful if you will prepare a response to
in the manner which you replied in other cases regarding liability.”*

9.117 Mr Elliott wrote to Fr Bermingham confirming that he had followed the correct procedures. He added that *“as there seems to be a lack of clarity concerning both the Canonical process and whether any information has been forwarded to the CDF in Rome, in relation to [Ronat], I believe it is appropriate to review and reactivate these two processes”*.

9.118 Bishop Magee then wrote to Fr Ronat informing him of the civil action by . He specifically directed him not to have any contact with her or her family while the proceedings were going on. He also said:

“In view of this further case against you, I wish to restate that you are not to exercise the ministry of a priest in public in any form. This prohibition includes the attendance at any part of Funeral Services in the role of a priest. If you wish to attend any part of funeral or other public liturgies, you may only do so privately as a member of the congregation and you should not place yourself among the clergy. In view of these restrictions on your exercise of the priesthood, I direct also that you do not in future wear clerical dress in public. You may continue to celebrate Mass privately and without the participation of the faithful in your residence and in no other place.”

9.119 These instructions were incorporated in a formal precept soon afterwards. A new supervisor was also appointed as the previous supervisor had retired.

Publication of Elliott report

9.120 In December 2008, the Elliott report was published by the Diocese of Cloyne (see Chapter 6).

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9.125 The government made the decision to refer the Diocese of Cloyne to this Commission in January 2009.

Referral to the Congregation for the Doctrine of the Faith

9.126 At the end of January 2009, Fr Ronat's case was finally referred to the

Congregation for the Doctrine of the Faith in Rome. The bishop's *votum*⁶¹ included a short description of all the allegations then known.

The bishop asked that “*a derogation from prescription be granted so that a penal judicial process may be initiated, or that he be dismissed from the clerical state ex officio et in poenam*”.⁶²

9.127 Fr Bermingham travelled to Rome to meet the Congregation for the Doctrine of the Faith. He was advised that the full files on Fr Ronat (and the other two priests whose cases had also been referred) would need to be sent to Rome. In February 2009, Bishop Magee wrote to the Congregation for the Doctrine of the Faith undertaking to provide the full files as soon as possible. He said that “*as the documentation which we have appears to be as yet incomplete I will send them to you in the coming week...*”.

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⁶¹ Prayer or wish; it is the word used when the bishop applies to the Congregation for the Doctrine of the Faith for some action to be taken.

⁶² Involuntary laicisation approved personally by the Pope.

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9.131 In March 2009, a new supervisor was appointed. The full files on Fr Ronat were sent to the Congregation for the Doctrine of the Faith.

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HSE involvement

9.135 [redacted] was treated by a health board psychologist in the 1990s but there does not appear to have been any social worker involvement then. She was also treated by the health board psychiatric services in the 2000s but, again, there was no social worker involvement. HSE social workers contacted her in 2005 after her sister made them aware of the alleged abuse. A social worker accompanied [redacted] when she made her statement to the Gardaí in April 2005. The Gardaí formally notified the HSE of [redacted] complaint in May 2005 in accordance with the *Children First* procedures. There is no evidence that the HSE made any inquiries about Fr Ronat.

9.136 The HSE was not aware of any other complaints until 2008 because, until then, it was not the practice of the diocese to report complaints to the health authorities. The social workers contacted a family whom Fr Ronat visited in order to ensure that they were aware of the risk to their children.

Commission assessment

Diocese

9.137 This case clearly illustrates the failure by the Diocese of Cloyne to deal properly with allegations of child sexual abuse up to the year 2008. Not only were the procedures, voluntarily agreed by the diocese, not followed but

[redacted] The failure rests mainly on Bishop Magee and Monsignor O'Callaghan. However, at least three priests of the diocese appear to have ignored complaints. Bishop Magee mainly left

the handling of complaints to Monsignor O'Callaghan and did not exercise his authority over Fr Ronat in any effective way.

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9.140 Complaints were not reported to the Gardaí when they should have been. They were not reported to the health board/HSE by the diocese until 2008. The advisory committee/inter-diocesan case management advisory committee was not given adequate information on which to base its advice. In fact, it is not at all clear that it was asked for advice; it appears to be more the case that it was told what had been decided.

9.141 There were no proper Church investigations of the complaints. The canonical process which was ordered in 1995 was effectively stalled for 14 years and does not seem to have been completed.

Restricted ministry

9.142 The term 'restricted ministry' is used to describe the limitations in respect of young people which were placed on Fr Ronat in 1998. The Commission does not accept that there was any real restriction on his ministry. He remained the senior curate in the parish, he carried out all the usual priestly functions, he was involved in confirmation ceremonies and the only people who were aware of the 'restrictions' were himself and the priests of the parish.

Bishop Magee told the Commission that "*In my heart of hearts I was not happy with the restrictive ministry ... It was always a problem to me. How can you monitor a person like that?*". Nevertheless, he continued with it as he said that it was recommended by the advisory committee. The bishop

acknowledged that there were no formal monitoring reports but, whenever he was in the parish, he would speak to the parish priest about it.

9.143 Monsignor O'Callaghan told the Commission that he believed most of the priests of the diocese knew about the restrictions on his ministry: "*any kind of gossip would move around fairly quickly*". It is, however, very clear that the people of the parish were not aware of the restrictions.

Retirement

9.144 While Fr Ronat was removed from ministry , he was allowed to present himself as having retired . He continued to wear clerical dress. This meant that, again, there was no public knowledge of his real situation.

The Gardaí

9.145 The complainants who gave evidence to the Commission were very pleased with the way they were dealt with by the Gardaí. There was considerable praise for Detective Garda Colman Murphy. The Commission considers that he in particular and the other Gardaí involved carried out thorough investigations while being sensitive to the needs of the complainants.

9.146 considered that had been well treated by the Gardaí but was surprised that they did not communicate with after made statement. The Gardaí have given three different explanations of what happened in this case. They said that:

- They did not proceed because the statement did not disclose a criminal offence;
- They did not proceed because did not want to do so, which suggests that it was a criminal matter;
- The investigation was on-going.

The Commission does not accept any of these explanations; the statement seems to have been put in a drawer and forgotten about until raised by this investigation.

9.147 The Commission is surprised that no attempt was made by the Gardaí, when investigating the complaint by _____ to establish with the diocesan authorities if there were any other similar complaints.

The DPP

9.148 The complainants are deeply unhappy that there have been no prosecutions in this case.

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⁶⁶ A full description of the law on sexual offences is in Appendix 2 of this Commission's *Report into the Catholic Archdiocese of Dublin*.

Introduction

10.1 In December 1994, Bishop Laurence Forristal, who was then the Bishop of Ossory telephoned Bishop Magee, the Bishop of Cloyne, to say that he had met a woman from the Diocese of Cloyne who alleged that she had been sexually abused by a priest of that diocese when she was a young child. He urged her to approach her own bishop but she did not wish to do so. Bishop Forristal asked Bishop Magee if he could meet him as soon as possible but, due to a heavy schedule, Bishop Magee was unable to arrange such a meeting. At the time, Bishop Magee was apostolic administrator of the diocese of Limerick as well as being Bishop of Cloyne.

10.2 Bishop Forristal wrote to Bishop Magee outlining the woman's complaints and provided the name of the priest under separate cover. At this stage Bishop Forristal was chairman of the Irish Bishops' Conference Advisory Committee on child sexual abuse by priests and religious.

First complainant, Nia,⁶⁸ 1994

10.3 The complainant, Nia, who wished to remain anonymous at this stage, claimed that Fr Corin had moved to her parish when she was nine or ten years old. Fr Corin had a housekeeper who was in her late teens and he asked the complainant's mother if the complainant could visit the housekeeper for company. When she visited the house he would sit her on his lap and put his hands under her clothes. She had tried to push him away but he was too strong. The abuse continued until he left the parish when she was about 16 years of age. Nia also had memories of being in a room with Fr Corin and being naked but she stressed to Bishop Forristal that she was very vague about that allegation.

10.4 Bishop Forristal wrote to Bishop Magee as follows:

"Report on alleged case of child sexual abuse.

⁶⁷ This is a pseudonym.

⁶⁸ This is a pseudonym.

The lady alleges that as a young girl she was abused sexually by a priest for a number of years. The abuse ceased when she was in her middle teens.

She has some very clear memories of the abuse. Other memories are not so clear. She says these memories have been 'buried' or 'repressed' for years.

She alleges that she remembers him warning her and threatening her not to tell anybody of the abuse.

She alleges that another girl in the National School with her told her he had done similar things with her.

She alleges that he has had friendships with many young girls in various parishes. While she has no evidence of abuse, he was, in her opinion, on occasions very indiscreet and guilty of inappropriate behaviour.

She has always presumed that the priest's housekeeper, who is still with him, was to some extent aware of what was happening at the time.

She alleges that her reason for bringing the allegations to my notice is to ensure that the priest, who has a parochial appointment in your diocese, is not now actively abusing children and should not get the opportunity to do so in the future.

She has been receiving counseling for some time. At first it was on a one-to-one basis, but more recently she has joined a Support Group. She has discussed her visit to me with her group."

10.5 Bishop Magee immediately handed the matter over to Monsignor O'Callaghan to investigate. As it was coming up to Christmas it was decided not to do anything until after the Christmas break.

Meeting with Fr Corin, January 1995

10.6 Monsignor O'Callaghan put the allegations contained in Bishop Forristal's letter to Fr Corin. At this stage, Fr Corin was a parish priest in a different parish and was aged 60. Fr Corin replied that there never was "serious interference". He said "*I can recall fondling of some girl during my time in [two different parishes between 1960 and 1969] but never anything since*". He admitted that there might have been between four and six girls in total. He claimed there had been no interference of any kind since 1969 and that nothing had happened in the further three postings that he had. Fr Corin acknowledged that petting occurred in one case but he was told by his victim to stop and he did.

10.7 Two days after this interview Fr Corin gave a statement to Monsignor O'Callaghan in which he said that he believed that the complainant was a person whom he named. Monsignor O'Callaghan said he could not confirm that because of her desire to remain anonymous but he did confirm with Bishop Forristal that the name given by the priest was indeed Nia.

10.8 In his statement, Fr Corin said that he was very friendly with Nia and her family and that she was about nine years old when she started to visit. Sometimes he petted her and on occasion this went too far. He said that she had never complained and had remained friendly with him and his housekeeper over many years. She used to visit every Christmas until the early 1990s when she ceased visiting.

Investigation result

10.9 In late January 1995, Monsignor O'Callaghan wrote to Bishop Forristal explaining that, because of his experience of work in the Marriage Tribunal and an appreciation of the extent to which denial operates in cases of sex abuse, he was able to conduct a most searching interview with the priest.

10.10 Monsignor O'Callaghan concluded that, "*Apart from what would today be classed as over-familiarity I did not find evidence of sex abuse*". He told Bishop Forristal that he was now depositing the file in a diocesan archive and it would rest there "*until something further emerges*".

10.11 The Commission cannot understand how Monsignor O'Callaghan concluded that no sexual abuse had occurred. Nia, on Fr Corin's own evidence, was only nine years old and he admitted to petting which went too far. He also admitted to fondling between four and six children. The Commission accepts that Monsignor O'Callaghan did not have access to Nia directly as she wished to preserve her anonymity. However, Fr Corin had given a full and frank account of what had happened when he was a young priest. It was clearly and unequivocally child sexual abuse. Monsignor O'Callaghan did not organise any psychological or psychiatric assessment of Fr Corin; his lack of direct access to Nia did not preclude such an assessment.

February 1996

10.12 In February 1996 Nia wrote to Bishop Forristal outlining that nothing had been done about her complaint. She was now prepared to withdraw her anonymity requirement. She asked Bishop Forristal to send the detailed report she had given him in December 1994 to Monsignor O'Callaghan. She was very angry and hurt that Bishop Magee had not made contact with her. She felt that Bishop Magee could have contacted her through Bishop Forristal despite her desire to be anonymous. Bishop Magee told the Commission that he considered that Nia had made it clear that she did not want to be contacted. He thought that it would be inappropriate to contact her in these circumstances.

10.13 Nia acknowledged that Bishop Forristal had been kind and understanding and she was grateful for that. Bishop Forristal wrote to Monsignor O'Callaghan enclosing a copy of the report of the meeting which he had had with Nia in December 1994. He also enclosed a copy of her more recent letter where she had expressed dissatisfaction about lack of progress in her case.

10.14 Monsignor O'Callaghan met Nia and she outlined the nature of her complaints. She alleged that the priest had put his hand under her clothes. She claimed the housekeeper must have seen this because she drilled it into to her that "*you must never tell anyone*".

10.15 She mentioned that there were other girls who frequented his house in her parish. She alleged that one of these had spoken to her about an experience similar to her own and that another had recently made a report to the health board. She also recalled a number of girls frequenting his house in another parish. Monsignor O'Callaghan said he would read her file and get back to her.

Second complainant, Oifa,⁶⁹ 1996

10.16 Shortly after his meeting with Nia Monsignor O'Callaghan had a meeting with a second complainant, Oifa. Oifa was the woman whom Nia had reported as having complained to the health board. Oifa had reported to the health board in whose area she lived - the Mid-Western Health Board - in January 1996. She told the health board that she recalled an incident in the sacristy of the church when she was aged around ten, in the 1960s. She claimed that Fr Corin sat her on his lap "*well back into him*" and put his hands up under her clothes. She was adamant that this had happened on more than one occasion.

10.17 Her principal reason for reporting to the health board was to try to ensure that Fr Corin would not interfere with any other children. She acknowledged that it would be difficult to bring the matter further given that it was 20 years since she had been abused. The health board notified the Gardaí. Oifa had already made a statement to a garda before she met Monsignor O'Callaghan, although, as is outlined below, it is not clear that this arose as a result of the health board notification.

10.18 In March 1996, Monsignor O'Callaghan reported both complaints to the Gardaí. He also reported them to the Southern Health Board. The HSE did not provide a copy of that notification to the Commission and, as is outlined below, the Gardaí have been unable to find any documentation in relation to this case.

⁶⁹ This is a pseudonym.

Complaints put to Fr Corin

- 10.19 Bishop Magee met Fr Corin in early March 1996 and told him of the two allegations. He was given the name of the two complainants and was informed that the civil authorities had been notified.
- 10.20 Fr Corin admitted fondling and touching both children under their clothes but denied some other alleged actions. He also admitted to the bishop that he had done something similar to another young person who was of a similar age (nine or ten years old) to the two complainants.
- 10.21 Fr Corin expressed dismay that Nia could say she was in fear of him because of the fact that she had frequented his house over many years until the early 1990s. The bishop advised him to meet the delegate, Monsignor O'Callaghan, and also advised him about the necessity of having an advisor who would deal with the deep spiritual trauma suffered by him owing to the allegations made.
- 10.22 Fr Corin acknowledged that he was guilty of child sexual abuse. When the bishop proposed that he take a month off in order to facilitate the process of investigation, Fr Corin's reaction was *"why one month? Sure amn't I finished as a priest? ... I may as well resign now and give up my priesthood"*.
- 10.23 He thanked the bishop for talking to him and apologised for the damage that he had done to the Church and the diocese. He recognised that it would become a matter of public interest when he resigned his position as a priest. He felt it would be better if he no longer participated in any of the ceremonies he had planned to do. He told the bishop that he would give serious consideration to resigning from the parish and would be in touch with him.
- 10.24 Later that same evening Fr Corin met Monsignor O'Callaghan. Monsignor O'Callaghan's note of the meeting states that they went over the options for his future: limited ministry or resignation from ministry. He confirmed to Fr Corin that the Gardaí and the health board had been informed of the allegations.

Resignation from ministry

10.25 There is conflicting evidence in the diocesan files about when exactly Fr Corin resigned from his position as parish priest. There is a letter in the diocesan files which states that Fr Corin offered his resignation, and that it was accepted by Bishop Magee, on 20 March 1996. This letter is signed by both men. There is a letter dated 1 April 1996 in which Bishop Magee stated that he intended to announce Fr Corin's resignation to his parishioners on Easter Sunday 1996 (this fell on 7 April 1996). However, there is also a report in the files which states that Monsignor O'Callaghan met Fr Corin on 12 May 1996. According to Monsignor O'Callaghan's note, Fr Corin had taken advice from a solicitor and a canonist and the advice was not to act precipitously as "*the complaints were not of a serious nature and had taken place some 30 years ago*". Monsignor O'Callaghan told Fr Corin that Bishop Magee could not wait indefinitely and would have to act within the guidelines and the canon law. The note also records that Fr Corin telephoned Monsignor O'Callaghan later and inquired about the pension arrangements if he retired. The note then concludes that Fr Corin resigned his ministry subsequent to this. There is a letter dated 13 May from Fr Corin, from a Dublin address, stating that he had had his furniture removed from the parochial house.

10.26 Monsignor O'Callaghan told the Commission that Fr Corin ceased to operate as a priest in his parish following his meetings with Bishop Magee and Monsignor O'Callaghan in early March 1996. The priest who was the curate in the parish in March 1996 told the Commission that Fr Corin did not carry out any form of public ministry from early March 1996. He said that, on a Saturday in early March 1996, Fr Corin told him that he (Fr Corin) had resigned from ministry because of allegations of child sexual abuse. The curate said that he immediately took steps to replace Fr Corin for that evening's mass. He said that he was "*absolutely certain that Fr Corin did not perform any form of public ministry in the parish after this time*". The curate also said that Fr Corin and his housekeeper vacated the parochial house in the latter half of March 1996 and Fr Corin handed over the keys of the house and the church to him. The curate thinks that Fr Corin went into hospital soon after this. The curate said that he announced Fr Corin's resignation at masses on the Easter weekend, 6 and 7 April 1996. However, the local sergeant told the Commission that Fr Corin was still operating as a priest in

the parish until after July 1996. The sergeant said that he called to Fr Corin's house in the parish in July 1996 and spoke to him when making inquiries about a young girl who visited there – see below. The sergeant said that Fr Corin left the parish some time later and the people were told that he was suffering from a serious illness.

10.27 The diocesan records do not show where Fr Corin lived immediately after his resignation or whether or not he was engaged in ministry. He is listed in later diocesan directories as a *Pastor Emeritus*.⁷⁰ Monsignor O'Callaghan told the Commission that he was not involved in Fr Corin's living arrangements. He confirmed that he did not communicate with the Archdiocese of Dublin about his presence in Dublin. It is not clear how long he stayed in Dublin. The current diocesan secretary told the Commission that, to the best of his knowledge, Fr Corin lived in Co Cork just outside the Diocese of Cloyne. This address is the one given in the diocesan directories. The diocesan secretary told the Commission that he did not know if the Bishop of Cork and Ross was informed of Fr Corin's presence there. There is no formal documentation on the matter. The diocesan secretary said that the bishop "*may have been informed on an informal basis at some stage*". The Bishop of Cork and Ross has confirmed to the Commission that neither he nor his predecessor was ever informed that Fr Corin was living in the diocese. Fr Corin died in 2002.

10.28 The diocese paid for counselling for both Nia and Oifa. No civil actions were taken.

Involvement of the Gardaí

10.29 As already stated, Monsignor O'Callaghan reported the complaints to the Gardaí in March 1996. His letter was sent to the superintendent at Macroom Garda Station. The superintendent acknowledged receipt of his report. Monsignor O'Callaghan reported to Bishop Magee that he had spoken to the superintendent on the telephone and had provided the telephone numbers of the complainants.

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Retired parish priest.

10.30 The superintendent, who is now a chief superintendent, was the district officer in Macroom from February to September 1996. He told the Commission that he has no recollection of the case but he contends that a file was opened and that an investigation was commenced. However, there is no evidence that this is so.

10.31 No files in relation to this case have been found by the Gardaí and it is clear that, at minimum, proper procedures in relation to the recording of notifications were not followed.

The Garda files

10.32 Chief Superintendent Tom Hayes had overall responsibility for garda liaison with the Commission and he swore the affidavit of discovery on behalf of the Garda Commissioner. In the case of Fr Corin, the garda discovery produced only two documents. These were documents which had been provided to the Gardaí by the Diocese of Cloyne. One was the letter of Monsignor O'Callaghan notifying the Gardaí of the complaints and the other was the letter of acknowledgement from the Gardaí to Monsignor O'Callaghan.

10.33 Chief Superintendent Hayes described how the Gardaí conducted a search for all documents relating to the Commission's remit. No documents concerning Fr Corin were found. The Gardaí became aware of the complaints against Fr Corin through their liaison with the diocese. Further searches were then made specifically for documents relating to Fr Corin. No documents were found. The Commission accepts that a thorough search was conducted. The relevant Gardaí in Macroom were asked about their possible involvement in the case and none could remember any involvement. The superintendent who had been the district officer in Macroom at the time found two entries in his personal diaries which noted conversations he had had with the first complainant. No other relevant conversations were noted in his diaries.

10.34 Chief Superintendent Hayes described to the Commission what should have happened and what documents should have been created when Monsignor O'Callaghan's notification had been received. He said that, if the normal procedures were applied, the receiving superintendent would direct a

file to the sergeant in the district in which the alleged offence occurred. The sergeant would then ask a garda or a detective garda to investigate. Superintendent Hayes found no record that this was done. He consulted all the relevant sergeants and none had a recollection of such a file in this case. The file would have been allocated a number which would be logged on the file itself and also on the correspondence register. The correspondence register for the relevant period in Macroom was not found. Such registers are normally maintained in the garda station. In 1996, there was also a crime reporting form called a C1. This would be filled out if a crime was disclosed. A copy would be kept in the district office, another in the subdistrict office and a third would be sent to the crime branch in Dublin. Chief Superintendent Hayes said that the C1 should have been filled out when a complainant had been interviewed by the Gardaí. No C1 form was found in this case.

The Limerick Gardaí

10.35 Independently, the Mid-Western Health Board had sent a notification to the Gardaí in respect of Oifa. This was sent, correctly, to a Limerick garda station. The HSE provided the Commission with its copy of the notification but the Gardaí were unable to find this document. The Limerick station's correspondence register, which is available, does not record this notification. The relevant inspectors and the superintendent from Limerick have been asked and they have no recollection of seeing this notification. There is no evidence that the Gardaí initiated an investigation as a result of this notification. Chief Superintendent Hayes accepted that proper procedures were not followed, in particular, the failure to register the health board notification in the Limerick station was a breach of procedures.

10.36 Sometime between January and March 1996, a female garda based in Limerick took a statement from Oifa. This garda told the Commission that she remembers meeting Oifa and taking a statement from her. She recalled this, she said, because she remembers being asked to do so by another garda. It was, and is, normal practice to ask female Gardaí to take statements from women who allege sexual abuse. This garda was not the investigating garda. She told the Commission that she gave the statement to another garda in Limerick – not the garda who had asked her to take it. She thinks that the matter was in some way connected with Mallow Garda station

but she cannot be sure about that. She does not recall seeing a health board notification. The Gardaí have been unable to find this statement.

The Macroom Gardaí

10.37 In his evidence to the Commission, the superintendent who was the district officer in Macroom and who had received and acknowledged Monsignor O'Callaghan's letter telling the Gardaí of the complaints in relation to Fr Corin, said he had no recollection of anything to do with this case. He could not recall whether or not Monsignor O'Callaghan had telephoned him before sending the notification; as already stated, Monsignor O'Callaghan told Bishop Magee at the time that he had done this. The superintendent is adamant that a file would have been created and an investigation started. He had personally conducted some searches in Macroom garda station but had found nothing. He bases his view that an investigation was conducted on the fact that he had found two entries in his personal diary in which he recorded his contacts with Nia, the first complainant. He contacted her twice in April 1996. His diary of 11 April 1996 has the following entry: "*Contacted [Nia] @ [telephone number] and discussed child sexual abuse complaint. Will ring again on Mon/Tues and she will have an answer if she needs to make a written complaint*". His diary of 24 April has this entry: "[Nia] – *will send letter with final decision on or before next Wednesday*". The Commission considers that these entries are indicative of an inquiry as to whether an investigation needed to be commenced, not of an on-going investigation. When asked why he did not contact Oifa, the second complainant, who had already made a statement of complaint to the Gardaí, he surmised that he did not do so because she lived in Limerick. Oifa's complaint was never processed by the Gardaí.

10.38 A detective garda who was a uniformed garda in Macroom garda station in 1996 was asked to search for files in Macroom for this Commission. He told the Commission that he had never heard about the case in 1996; he did not hear about it until he was asked to search for documents. He said that he was surprised that he had not heard of it in 1996 because "*If there was an investigation going on, you would have heard about it...I would have heard it through the grapevine. There would have been some talk about it*". The superintendent who was the district officer in Macroom told the Commission that he would not expect this garda, who was a junior garda at the time, to

know about the investigation. He said that Macroom was a district headquarters station and this was a sensitive matter which would not be discussed amongst all Gardaí. Since giving evidence to the Commission, this garda has told the Commission that he now accepts that an investigation did take place into Nia's allegation, notwithstanding the fact that she never made a formal complaint.

10.39 The detective garda told the Commission of his efforts to find files about this case. He spoke to the office staff. They told him about their extensive searches and that nothing had been found. He decided to contact the two complainants as their telephone numbers were on the referral letter from Monsignor O'Callaghan. Nia, the first complainant, told him that she had spoken to a garda but had declined to make a statement. Oifa, the second complainant, told him that she had been visited by a female garda whose forename she knew and that she had made a statement to her – this is the Limerick garda described above. She told him that she understood that a file had been sent to the DPP and he had directed that there be no prosecution. The garda did not ask who had told her this. When he heard this, he thought that the file could then be retrieved from the DPP's office. He told the Commission that he also helped the superintendent with his search. They found files going back to the 1980s but did not find anything on Fr Corin.

10.40 Later, this garda again spoke to Oifa in order to try to establish who had told her that a file had gone to the DPP. She told him that she did not remember speaking to any other garda after she gave her statement. She assumed that she was told that a file had gone to the DPP but she did not know who told her. She said she had not expected that there would be a prosecution. Her primary motivation in reporting to the health board, the Gardaí and the Church, which she had done in that order, was her concern for the welfare of other children.

10.41 The DPP can find no record of a file having been sent to him. The Commission accepts that no file was, in fact, sent to the DPP.

Further concern expressed by health board

10.42 In June 1996, the Mid-Western Health Board contacted the Southern Health Board to relay its concern about a young child, whose mother had

died, who used to visit Fr Corin's presbytery regularly in the 1990s. The Southern Health Board carried out a full investigation to make sure there had been no inappropriate behaviour by Fr Corin towards this child. They also reported the concern to the Gardaí. As a result of their investigations they were happy that there had been no interference with the child and they informed the Gardaí of this in March 1997.

10.43 The Southern Health Board notification to the Gardaí of this concern is recorded in the correspondence register of Mallow garda station. It was then transmitted to the sub-district garda station in the parish where Fr Corin was serving and this is recorded in the correspondence register there. The case is mentioned a few more times in this correspondence register. A file number was allocated and is used on the register. This file cannot be found.

10.44 The sergeant in charge at the sub-district garda station at the time is now a garda superintendent. He told the Commission that he knew Fr Corin well. His only awareness of the existence of complaints against Fr Corin came when he was asked by the health board to find out about the child who had been visiting the presbytery. His involvement related only to the health board's concern about the child. He had no involvement in or any knowledge of any garda investigation of the complaints which had been made. He called to Fr Corin's house and met him. He told the Commission that he was not investigating a criminal offence. He was making inquiries about the possible risk to the child. As already stated, he told the Commission that Fr Corin was still practicing as a priest at this time – July 1996. In March 1997, he was officially informed by the health board that it considered the file closed. He said the normal practice would be to then return the file to Mallow. The sub-district correspondence register has a record that the file was sent to the superintendent in July 1996.

Commission's assessment

The diocese

10.45 Bishop Forristal, who first received the complaint, acted speedily and with understanding. The Commission, as it has already stated, cannot understand how Monsignor O'Callaghan reached the conclusion that no sexual abuse had occurred when he got the first complaint and particularly so when Fr Corin admitted to such abuse.

10.46 This was the first case that arose in the Diocese of Cloyne after the *Framework Document* came into effect. Monsignor O'Callaghan reported to the civil authorities in accordance with the requirements set out in that document. There was no advisory committee in operation in the diocese at this time.

10.47 There was no attempt to have Fr Corin assessed to see whether or not he was a continuing danger to children. No attempt was made to establish the extent of his abusive behaviour. Had Nia not reactivated her complaint it is clear that no action would have been taken by the diocese in relation to this priest. Monsignor O'Callaghan took it upon himself to decide whether or not the priest was a continuing threat to children. There is no evidence that Fr Corin was restricted from ministering in public. The people of his parish were not informed of the real reason for his resignation. The bishop in whose area he subsequently lived was not informed. There was no monitoring system put in place.

Health authorities

10.48 The health board does not seem to have retained Monsignor O'Callaghan's notification of the complaints. The social workers behaved appropriately in mid 1996 in following up concerns about a child when those concerns were brought to their attention.

The Gardaí

10.49 The Gardaí have insisted to the Commission that a file was opened and that an 'investigation' took place or was started into the complaints which were notified to them. On balance, the Commission does not accept that there was any proper Garda investigation of these complaints. The Commission notes that Nia did not make a complaint to the Gardaí and, accordingly, there could not have been a garda investigation into her complaint of child sexual abuse. Despite the then sitrict officer's assertions, there is no documentary evidence in Macroom garda station, or elsewhere, that a file was opened or that an investigation was started by Macroom Gardaí.

10.50 A statement was taken from Oifa, the second complainant, by Limerick Gardaí but this seems to have vanished. There is no documentary evidence in any location that a file was opened in the Limerick garda station following notification of the complaint to them by the Mid-Western Health Board. The Commission has not received a satisfactory explanation from the Gardaí about the failure to retain an investigation file or to send a file to the DPP. No one has been able to explain exactly what happened in Limerick, why a statement was taken and then nothing further was done or what happened to the health board notification.

10.51 The sergeant in the parish where Fr Corin was living was unaware of any criminal investigation for sexual assault in respect of him. Had there been such an investigation he would have expected to be contacted by the investigators for information on the suspect. The rules for garda investigations in 1996 **required** that in cases of sexual assault the investigation file be sent to the DPP for direction. No file was sent to the DPP in this case.

10.52 The Commission is surprised that the Gardaí persist in maintaining that there was an investigation of Nia's allegations to the Church when she never made a formal complaint to the Gardaí. The Commission is concerned that no proper investigation of Oifa's complaint took place and by the inability of the Gardaí to explain what happened.

Chapter 11 Fr Darian⁷¹

Introduction

11.1 There is very little information in the diocesan files about Fr Darian. He died in 1997 a few months after a complaint had been made about him. The only item in his diocesan file dating from his lifetime is a letter in January 1996 which notes that he had resigned from the Domestic Life Committee.⁷²

Complainant, Rona,⁷³ 1996

11.2 Rona met Monsignor O'Callaghan in 1996 and complained that she had been sexually assaulted by Fr Darian when she was aged about 16. This was in the 1960s. There is no contemporaneous record of this meeting in the diocesan files. Monsignor O'Callaghan referred to it when he was compiling a report of his later meeting with the complainant in 2002.

11.3 In his 2002 report, Monsignor O'Callaghan said that Rona "*was far easier in herself - Her only concern was the protection of other children. She knew that he was seriously ill – he died a few months later. She did not want any reporting of the incident*".

11.4 Nothing was done about Rona's complaint in 1996. There was no report to the Gardaí and no report to the health board. Monsignor O'Callaghan told the Commission that he did not put the complaint to Fr Darian because he was terminally ill at the time and Monsignor O'Callaghan did not want to distress him further. He did not make any other inquiries about Fr Darian. There is no evidence that Bishop Magee was told about the complaint at this time and Monsignor O'Callaghan told the Commission that he does not remember telling Bishop Magee about it. The case was not referred to the advisory committee; there was no advisory committee in operation in 1996.

⁷¹ This is a pseudonym.

⁷² This is a group of priests selected by and from the Council of Priests (see Chapter 3) which supervises the accommodation of priests.

⁷³ This is a pseudonym.

2002

- 11.5 Rona, accompanied by a nun who had been providing her with counselling, met Monsignor O'Callaghan in April 2002. She told Monsignor O'Callaghan that she had been placed in a girls' home in Cork. The Commission has established that this was the laundry which was attached to an industrial school and Fr Darian is named on her record there as having recommended her for admission. She was placed there in 1965. She told Monsignor O'Callaghan that Fr Darian visited her regularly and that he sexually assaulted her on these visits. When she complained about Fr Darian to her mother, her mother considered she was "*mad*" and sent her to an "*asylum*". Monsignor O'Callaghan offered to pay for counselling. He noted that she mentioned the "*need for some form of compensation*". He also noted that he had heard from a third party that her husband had been to see a solicitor.
- 11.6 Monsignor O'Callaghan made inquiries from a local priest who had been supporting Rona. He met Rona and her husband who were accompanied by the nun. He explained that the diocese was not responsible for the actions of Fr Darian and that no compensation would be payable.
- 11.7 In May 2002, Monsignor O'Callaghan wrote to the local priest outlining what he was doing. He explained that the diocese would help with counselling and "*there is a group ready to help with this*". He said that the nun had suggested a further step, that is, that the diocese could provide compensation by paying for the counselling that had already taken place. Monsignor O'Callaghan expressed the view that, in the absence of invoices or receipts, this could be "*incriminating*" and might be seen as compensation by subterfuge.
- 11.8 Again, as in 1996, no reports were made to the statutory authorities. Monsignor O'Callaghan told the Commission that he did not make any inquiries of the girls' home. There is nothing on the diocesan files to indicate that Bishop Magee was aware of the complaint. However, he was aware. The nun told the Commission that she and the complainant discussed the matter with Bishop Magee in April 2002.

11.9 In June 2003, the nun wrote to Monsignor O'Callaghan saying that she was enclosing requests for fees for counselling as agreed in 2002. The requests or invoices are not on file. Monsignor O'Callaghan told the Commission that he paid the counselling fees from the Mallow parish account. The amounts were subsequently refunded to that account (see Chapter 7). The nun told the Commission that she received payments for a number of counselling sessions.

Commission assessment

11.10 The proper procedures were not followed either in 1996 or in 2002. There was no reporting to the civil authorities and no further inquiries were made.

Introduction

12.1 Fr Calder was born in the 1960s and was ordained a priest for the Diocese of Cloyne in the 1980s. Initially he was an assistant priest and then a curate in parish A in north Cork. He served as a curate in parish B in east Cork from 1992 to September 1997. He was then transferred to Parish C which adjoins parish A. He was suspended from ministry in October 1997. Since then, he has remained out of public ministry and has been paid an allowance from the general diocesan operating account (see Chapter 7).

Psychological assessment

12.2 In November 1978, Calder was psychologically assessed as to his suitability for entering the priesthood. The psychological assessment found that he “*seems motivated towards the priesthood for the wrong reasons*”. His personality test results “*were characterised by a high degree of defensiveness and very limited ability for self-criticism. The most significant feature of his results was a very high score on the psychosis scale (97th percentile) and a ‘highish’ score on a scale of general maladjustment (70th percentile)*”. There were also clear indications of “*deep sexual repression and a rigid, inflexible quality to his personality which is likely to make it very difficult to get through to him*”. The psychologist concluded that Calder’s interest and motivation towards the priesthood appeared to be essentially “*escapist and inspired to some extent by prestige or status*”. He was of the view that there were some aspects to Calder’s personality profile that might make it inadvisable for him to continue. He stated that if Calder were to be retained the personality dimension aspect should be kept under review.

12.3 There is nothing in the diocesan files to indicate what view the diocesan authorities took of this psychological report. Despite its content, Fr Calder was ordained a priest in June 1984.

History of concerns and allegations

12.4 The history of concerns and complaints about Fr Calder is very confusing. It is difficult to establish with any degree of certainty what

⁷⁴ This is a pseudonym.

precisely was known, when it was known and by whom it was known. No formal direct complaint of child sexual abuse against Fr Calder has been made to the Diocese of Cloyne. There were no formal complaints of child sexual abuse made to the Gardaí. In spite of the absence of formal complaints, it is clear that there were concerns expressed about Fr Calder's behaviour by his fellow priests, teachers, doctors, gardaí and parishioners almost from the time of his ordination.

Concerns/complaints of young adults

12.5 During Fr Calder's time in parish A, from the mid 1980s to 1992, there were concerns that he was supplying alcoholic drinks, which appeared to be spiked, to young adults. In 1988, a young man told his doctor and solicitor that he had been sexually assaulted by Fr Calder after being supplied with some alcoholic drink. This allegation became known to the Gardaí at the time but the young man did not make a formal complaint. Ten years later, in January 1998, this man and five other men made statements to the Gardaí alleging that Fr Calder had given them drink when they were young adults and the drink had caused them to become weak and/or fall asleep. Three of the six also alleged that they had been sexually assaulted by Fr Calder while they were affected by the drink. Two others said they had fallen asleep in his house and could not remember what had happened; another said he had difficulty getting home as he was so weakened by the drink provided. The Gardaí took statements from all the men who complained and a statement from Fr Calder. Fr Calder accepted that he had provided them with alcohol and that two of them had stayed in his house; he denied that he had sexually assaulted anyone. One file relating to the alleged sexual assault on the young man who had complained to his doctor and solicitor in 1988 was forwarded to the DPP who declined to prosecute because of the delay in making the complaint.

Concerns/complaints about child sexual abuse

12.6 There are three concerns/complaints of child sexual abuse in respect of Fr Calder known to the Commission. Two of these are alleged to have occurred while Fr Calder was in parish A and one while he was in parish B. None of these involved a direct complaint by the allegedly abused person to either the diocese or the Gardaí. As these are all third party expressions of

concern or complaint, it is perhaps not surprising that there are a number of different versions of each alleged incident.

The carnival workers (parish A)

12.7 In the late 1980s, while Fr Calder was serving in parish A, there was a complaint that he had a confrontation with two young people who were working at a summer carnival. No formal complaint was made but the local garda, Garda John,⁷⁵ became aware of the incident from a conversation with a parishioner. According to statements Garda John made in 1997 and 1998, he approached the two workers. He said he could see they were traumatised. He made several attempts to talk to them but the owner of the carnival intervened and the carnival workers declined to make a written statement. Garda John said that the owner of the carnival told him that: *“Neither of those two young fellows will ever set foot in a Church again, I would keep an eye on that Priest if I were you, he is a wrong one”*.

The GP/teacher complaint (parish A)

12.8 When Fr Calder was transferred to parish C in 1997, a mother approached a local GP practice and reported that Fr Calder, while he was in parish A, had been found in bed with her son when he was aged 15½ - 16 years old. The GP told the local school principal about this. As is described below, the GP and the school principal took this complaint very seriously and acted appropriately in respect of it. However, it is an example of the confusion and uncertainty which surrounds the allegations/concerns about Fr Calder. Eight years earlier, in 1989, the mother had told Garda John that her son had been given alcohol by Fr Calder but she did not allege any sexual assault at that time and she declined to make a formal complaint. The son was one of the young men who made a statement to the Gardaí in January 1998. In this statement, he alleged he had been given drink by Fr Calder and that he had difficulty getting home because he was so weakened by it. He did not allege any sexual assault and it is clear that he was a young adult at the time of the alleged occurrence.

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This is a pseudonym.

The Traveller boy (parish B)

12.9 In October 1997 when Monsignor O'Callaghan was making inquiries about Fr Calder, he was told by the Gardaí that they were aware of a complaint from parish B. In January 1998, Garda Luke⁷⁶ prepared a written report on this complaint for the sergeant in charge at parish C. This report seems to have been drawn up as part of the investigations into the allegations made by the young adults. This report recounted that a local businessman had told Garda Luke three years earlier (in or around 1995) about a conversation which the businessman had had with the father of two boys who were members of the Traveller community. The father told the businessman that the boys were driving through parish B with a load of scrap when they ran out of petrol. One boy was aged 15 and his brother was older. The younger boy called to Fr Calder's house looking for the price of a gallon of petrol. According to the boy, Fr Calder brought him into the rear kitchen and offered him a glass of whiskey which he refused. It is then alleged that Fr Calder sexually abused the boy. The boy ran out the front door of the house. His father was reported by the businessman as deciding not to make an official complaint as he felt the boy's word would not be believed over that of the priest. Fr Calder told the Commission that a:

“guy called in the early hours of the morning looking for the price of a gallon of petrol. I told him that I would call the owner of a service station in the village and I think I told him to give the guy ten pounds worth of petrol. At no stage did either of the guys set foot inside the door in so far as I can remember.”

Contemporaneous knowledge of these concerns/complaints

12.10 The concerns and complaints about Fr Calder came to a head when he was appointed to parish C in August 1997. As already stated, parish C adjoins parish A. Bishop Magee is adamant that this was the first time such complaints and concerns came to his attention. However, there is evidence that two of the parish priests in parish A during Fr Calder's time there (mid 1980s – 1992) were aware of concerns. Formal complaints by the young adults were made to the Gardaí in early 1998 but the local garda, Garda John, was aware of concerns from the mid 1980s.

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This is a pseudonym.

Garda John

12.11 Garda John had been stationed in parish A since 1984. When Fr Calder was due to be assigned to parish C in 1997, Garda John was concerned because of his knowledge of previous allegations against Fr Calder and he made a report on Fr Calder's behaviour to his area administrator. In January 1998, he made a formal statement as part of the investigation into the complaints made by the young adults. He also gave evidence to the Commission.

12.12 He was aware of two incidents involving young adults, one in 1988 and another in 1989, and he was directly involved in the potential investigation of the carnival workers incident. Unfortunately, there are significant discrepancies between the three accounts he has provided in relation to the carnival workers.

12.13 In his 1997 report to his superior, Garda John described the carnival workers as "*two young teenagers*". He did not give a date for the incident but the chronology of his report suggests it was in 1988/89. In his 1998 formal statement, he refers to two "*young fellows*" and "*young men*" and states that the incident occurred in either 1989 or 1990. In his evidence to the Commission, he said that the incident occurred in 1986, not 1989/90, and that the two people from the carnival were in their 20s. When asked by the Commission if his knowledge of the alleged assaults gave rise to concerns for the wellbeing of altar boys, he told the Commission that he did not have those concerns at that particular time because "*they were young men around his [Fr Calder's] own age group*".

12.14 While accepting that Garda John was concerned for the safety of young people in his area, the Commission finds the discrepancies between his oral evidence in 2009, the report he made in 1997 and the formal statement he made in 1998 both striking and worrying; he has given three differing accounts of the same event, in which the complainants whom he had personally met are variously described as 'young teenagers' to 'young fellows/young men', to men in their 20s. The reason the Commission finds this disquieting is that in the case of alleged sexual abuse, the age of the complainant is of great significance. What might be a criminal interaction with

a young teenager could be entirely lawful behaviour with an adult in his 20s provided, of course, that the young adult consented.

12.15 Garda John told the Commission that, at the time (1989), he had contacted the parish priest of parish A and told him about the 1989 incident involving the young man and about the incident involving the carnival workers. He told the Commission that his principal concern was that the priest was supplying alcohol to the young men. He said that the parish priest told him that he would inform the bishop. Bishop Magee told the Commission that he is certain that this parish priest did not speak to him about Fr Calder at any time. There is no evidence that any action was taken by the parish priest in relation to Fr Calder at this time.

12.16 Garda John, in his evidence to the Commission, said that he was aware that unfavourable comment persisted in the area towards Fr Calder. He was also aware that parents had withdrawn some altar boys and he believed that a delegation of parents went to see Bishop Magee. Garda John was unable to name any parent involved. Bishop Magee does not recall any delegation of parents coming to see him and he was also not aware that parents were withdrawing altar boys. Fr Calder told the Commission that no parents withdrew altar boys.

*Fr James*⁷⁷

12.17 Fr James was appointed parish priest of parish A in 1989. Fr James gave evidence to the Commission. He is now in his 80s. He had kept notes of his time in parish A and other parishes in which he had served. He told the Commission that he had recently transferred what he regarded as relevant from those notes into a 2009 diary and had then burned the notes. He explained that he had started keeping a diary in 1984. In around 2007, he started summarising the content of the diaries because he was ill and he did not want anyone to read the originals. He extracted some points about Fr Calder's arrival in parish C in 1997. The Commission is concerned that he burned notes in 2009 when this Commission had been established. These notes may well have included relevant information.

⁷⁷

This is a pseudonym.

12.18 In his evidence to the Commission, Fr James said that during the time he was in parish A with Fr Calder (1989 – 1992), he had told a former classmate, Monsignor St John Thornhill, of his concerns regarding Fr Calder’s interactions with young adults. Monsignor Thornhill was a member of the personnel board⁷⁸ for the diocese. He said he was hoping that Monsignor Thornhill would report it to a higher authority but that the Monsignor told him to send it higher himself. He said he did not follow it up nor did he take it up with Fr Calder. He said he thought “*a peaceful existence was the better side of it*” and that what he had heard “*I would say I heard it in gossip*”.

12.19 Monsignor Thornhill is dead so it was not possible for the Commission to confirm if he received the information from Fr James and, if he did, whether or not he passed it on to a higher authority. Bishop Magee has stated that he only heard about the concerns in relation to Fr Calder from Monsignor Thornhill in 1997. Fr James also said in evidence that he had mentioned concerns about Fr Calder to Monsignor O’Callaghan and another priest at a clerical meeting in Mallow. He could not date when he had expressed those concerns. Monsignor O’Callaghan told the Commission that he first heard about these concerns in or around July 1997 and he has no recollection of Fr James speaking to him at any meeting in Mallow in relation to Fr Calder. He was told by either Monsignor Thornhill or another priest that there were concerns expressed after the personnel board had made the recommendation to appoint Fr Calder to parish C. It seems likely that he heard from Monsignor Thornhill as the other priest named by him was not a member of the personnel board at the time. Monsignor O’Callaghan then contacted Fr James. Monsignor O’Callaghan does not remember precisely what he was told by Fr James but he did meet Fr Calder about these concerns on 1 August 1997 (see below).

*Fr Mark*⁷⁹

12.20 Fr Calder was succeeded as curate in parish A by Fr Mark in 1992. Fr Mark told the Commission that the house which he took over stank of drink and other substances and had to be cleaned out. Within a week of arriving in

⁷⁸ The personnel board is the board which advises the bishop on the proposed allocation of priests to parishes and other assignments. It is usually composed of senior priests of the diocese.

⁷⁹ This is a pseudonym.

parish A, Fr Mark stated that he was told by Fr James, the parish priest, that Fr Calder drugged men and got them into bed. Fr James denies that he said that as he claimed that he did not know this at the time. Fr James did agree that improvements had to be made to the house previously occupied by Fr Calder.

12.21 Fr Mark gave evidence that he was also told by a parishioner that the people did not let their children near Fr Calder. Fr James told the Commission that he had no knowledge that people were not letting their children near Fr Calder and, in fact, children did act as altar servers for Fr Calder. Fr Mark stated that he received telephone calls in the house late at night from young men requesting to be picked up from other towns. Fr Mark did not report these conversations to any authorities. He explained to the Commission that he found it a futile exercise to report anything to the Church authorities.

Appointment to parish C

12.22 In July 1997, in the course of planning diocesan appointments, the diocesan authorities decided to appoint Fr Calder as curate in parish C which adjoins parish A.

12.23 When this planned appointment became known, a campaign was mounted, particularly by some members of the local community, including Garda John, seeking the revocation of his appointment.

12.24 In his statement made in 1998 and referred to above, Garda John stated that he visited Fr James, the parish priest in parish A, when he heard of the proposed appointment. He said that he felt that returning Fr Calder to an area close to one where he had been the subject of so many complaints/concerns was unwise. Garda John stated that Fr James told him that he had approached a higher authority but was told the appointment was confirmed. Fr James has confirmed Garda John's account of their meeting to the Commission.

12.25 In his evidence, Fr James told the Commission that the main worry in relation to the appointment of Fr Calder to parish C was that he posed a threat to children. As set out above, he stated that he had reported his

concerns about Fr Calder to Monsignor Thornhill while Fr Calder was still his curate in parish A. He then stated that, when it was proposed to appoint Fr Calder to parish C, Bishop Magee telephoned him about an unrelated matter and he told the bishop of his concerns about Fr Calder's appointment. He said that Bishop Magee said that this was the first he had heard of the matter. Bishop Magee in his evidence stated that, to the best of his knowledge, Fr James did not speak to Monsignor Thornhill (who was a member of the personnel board which advised on diocesan appointments) until he learned of Fr Calder's proposed appointment to parish C. Bishop Magee also stated that he did not speak personally to Fr James about the appointment.

12.26 As already stated, Monsignor O'Callaghan was told of the concerns, probably by Monsignor Thornhill. He contacted Fr James. In a hand written note, Monsignor O'Callaghan recorded that, having discussed certain allegations with Fr James on the telephone, on the instruction of the bishop, he interviewed Fr Calder on or about 1 August 1997. The note does not specify what allegations were discussed with Fr James. Fr James has no recollection of this conversation but accepts that it took place as Monsignor O'Callaghan had made a note of it.

12.27 Monsignor O'Callaghan asked Fr Calder if anything improper had taken place between him and any young person. Fr Calder was "*evidently taken aback at the question*". Fr Calder absolutely denied having done anything improper or having slept with young people. Monsignor O'Callaghan, according to his own note, felt that he was able to reassure the bishop that there was nothing which would give cause for concern.

12.28 Notwithstanding this, the records suggest that the bishop directed a preliminary inquiry under canon law on 21 August 1997 authorising Monsignor O'Callaghan to investigate an allegation of child sexual abuse by Fr Calder in the following terms:

"I hereby appoint you as my delegate to conduct the initial investigation as auditor/procurator into the allegation of child sexual abuse against Rev. [Calder], in accordance with the terms of c.1717 of the Code of Canon Law. The information made available to you is solely for the purposes of any further canonical process which may ensue upon this allegation and must be made to you and be treated

with the strictest confidence. The information obtained will be retained only in the Secret Archive of this Curia, in accordance with c.1719."

12.29 This was apparently signed by Bishop Magee and dated 21 August 1997. In evidence to the Commission, Monsignor O'Callaghan said that the date on that document was wrong as Bishop Magee was on holidays for the month of August. Bishop Magee told the Commission that it is his practice to go on holidays at that time every year but he cannot be certain that he was on holidays in August 1997. This is yet another example of a crucial document which may be wrongly dated and accordingly doubts must arise as to when the decision to have a preliminary investigation was made. Monsignor O'Callaghan told the Commission that the issue surrounding Fr Calder began to resurface in early October and that he commenced his investigation in or around 18 October 1997.

12.30 Despite the local opposition, Fr Calder took up his appointment in parish C in September 1997. Despite the concerns that had been raised about his conduct in the adjoining parish A, he was immediately appointed chairman of the board of management of the local national school.

12.31 The principal of the local boys' national school told the Commission that a local GP had told her that it had been reported to the GP practice that Fr Calder had allegedly been found in bed with a 15½ - 16 year-old boy when he was previously in parish A. The GP's practice had been approached by the boy's mother who had expressed extreme concern over the fact that Fr Calder had returned to the area.

12.32 The school principal was concerned about the safety of children in her school. She was unable to bring the matter to the attention of the board of management because Fr Calder was the chairman of the board and it was he who called the meetings.

12.33 The school principal told the Commission that the practice of boys leaving school daily to serve as altar boys for daily mass had been traditional in the area. When she had been appointed principal she had stopped that practice; this was for educational reasons because the boys were missing too much school time. She told the Commission that Fr Calder, following his

arrival in the parish, requested that that practice be started again. In addition, he wanted to train boys to become altar servers during school time. She refused both requests as she was concerned about the safety of the children. She said that, when she told Fr Calder that she would not allow the boys to take time off school for private confessions and other church duties, he reminded her who was paying her wages.⁸⁰ Fr Calder told the Commission that this conversation never took place but the Commission has no reason to doubt the principal's account. She told the Commission that Fr Calder told the boys that they could visit him at his house. She said she found this somewhat unusual and she discouraged them from doing this.

12.34 The school principal met the local parish priest on 10 October 1997. She said that he told her that Monsignor O'Callaghan was conducting an investigation into an alleged incident. Monsignor O'Callaghan does not believe that he had any direct contact with the parish priest at this time. The school principal said that the parish priest told her that there was local disquiet about the fact that confessions were not being held in the school. He told her that, if she got the parents' permission to have confessions in the school, she would be legally covered but she refused to do this because of her concern for the safety of the children.

The Church's investigation

12.35 Monsignor O'Callaghan continued his investigation by telephoning the school principal on 21 October 1997 and meeting the local GP, the Gardaí and Fr Calder the following day.

School principal

12.36 Monsignor O'Callaghan's note of his telephone conversation with the school principal records that she outlined her concerns about the safety of the children in her school. She told him about her meeting with the parish priest and she said she had consulted a solicitor who advised her not to leave the children unsupervised. Monsignor O'Callaghan's note then records: "*I explained to her that it would be most important to avoid any statements or comments which might prove defamatory in the absence of evidence*". In evidence to the Commission about this telephone call, the principal said that

⁸⁰ He told her that he could refuse to sign her salary form if she was not obeying the *Rules for National Schools* by not complying with his requests as chairman.

she had expressed her concern that Fr Calder had not been asked to step aside while an investigation was going on. She said she pointed out that, if there was an allegation against her, she would have to step aside immediately. She said that Monsignor O'Callaghan said that Fr Calder might be gay and he accused her of being anti-homosexual. She said that Monsignor O'Callaghan became more aggressive in his tone when she persisted in asking about Fr Calder stepping aside.

- 12.37 Monsignor O'Callaghan told the Commission that, at the conclusion of his conversation with the school principal, he was very concerned about the situation.

The local GP

- 12.38 On 22 October 1997, Monsignor O'Callaghan, in pursuance of his canonical investigation, met the local GP. According to Monsignor O'Callaghan's note of the meeting, the GP told him that the town was awash with rumours. A mother had told the GP practice that her son had been supplied with some cocktail and had come home in a disturbed manner. The GP had heard of an incident in parish A with two young boys and the incident in parish B with the two Traveller boys. He had also heard of an incident involving an adult who "*got some potion and woke up in bed undressed*". According to Monsignor O'Callaghan's note, the GP said that he had informed the Gardaí and the health board. The GP told the Commission that he had threatened to inform the health board if something was not done but did not actually do so as Fr Calder was removed from the parish.

- 12.39 The GP gave his account of this meeting to the HSE in April 2009 and he confirmed to the Commission that this is an accurate recollection of what happened. His recollection of the meeting is somewhat different from that recorded by Monsignor O'Callaghan: "*Initial relations were amicable as he was gleaning information on what I knew of the case*". However, the GP said that Monsignor O'Callaghan then tried to get him to reverse his approach and that of the school to Fr Calder and that he became hostile when the GP refused to do so. The GP said that he told Monsignor O'Callaghan that the mother who had approached him had written to the then Bishop of Cloyne, Bishop John Ahern, outlining her concerns at the time the incident with her son occurred but she had not got any reply. (Bishop Ahern ceased to be the

Bishop of Cloyne in 1987.) At this point, the GP said that the relationship with Monsignor O'Callaghan deteriorated. The GP said that, in order for him to change his approach, Monsignor O'Callaghan would need to sign a letter guaranteeing that there was no foundation for any of the complaints and that there was no risk to children. The GP said that Monsignor O'Callaghan "*was affronted*" at this suggestion and left in a "*hostile fashion*". Monsignor O'Callaghan told the Commission that he does not recall being aggressive in any way with the GP.

12.40 The GP also said that he did not hear anything further from Monsignor O'Callaghan but he appears to be mistaken in his recollection. Monsignor O'Callaghan produced notes of a number of subsequent telephone conversations between the two men. According to these notes, on 23 October, Monsignor O'Callaghan rang the GP and asked him to approach his patient (the mother who had approached the doctor in connection with her son) to see if she would talk to him. He stated that he also asked the GP to speak to Fr Calder about the situation in the school and about the general situation. According to Monsignor O'Callaghan's note, the GP agreed to both requests. Monsignor O'Callaghan also recorded a note about a telephone conversation on 29 October 1997. This note stated that the GP said that he had spoken to the young man about talking to Monsignor O'Callaghan. The young man "*sought reassurance on the issue of confidentiality, particularly vis-à-vis Fr [Calder]. He was also superstitious – he feared that an accusation might put him under a curse*". The note then stated that Monsignor O'Callaghan explained that total confidentiality was not possible in the context of the inquiry; the priest would need to be told the source of the complaint. The note also stated that the GP thought that the young man might be prepared to meet Monsignor O'Callaghan in his (the GP's) presence and that the GP agreed to report back on this.

Meeting with Gardaí

12.41 Immediately after his meeting with the GP on 22 October 1997, Monsignor O'Callaghan went to a garda station and spoke to Superintendent Michael Murray, the area superintendent. According to Monsignor O'Callaghan's note of the meeting, Superintendent Murray told him that the Gardaí had a two page file relating to Fr Calder's time in parish A. It listed a number of reports about improper behaviour. These were the incidents

involving the carnival boys, the boy whose mother had complained to the GP and an incident involving a young adult. There was nothing on file about the incident involving the Traveller boys (which had allegedly occurred in parish B). The note also recorded that Superintendent Murray confirmed that the existence of a file did not mean that an investigation was underway; the superintendent told Monsignor O'Callaghan that all he had were unproven allegations and that he had no actual complaints.

12.42 Superintendent Murray told the Commission that he was aware of widespread concern in the area about the appointment of Fr Calder. However, he had no recollection of his meeting with Monsignor O'Callaghan, although when shown the memos of the meetings and conversations, he accepted that they had happened. The Commission considers it regrettable that the superintendent did not make a note of the meeting.

Interview with Fr Calder

12.43 On the evening of 22 October 1997, Monsignor O'Callaghan interviewed Fr Calder. Fr Calder denied all the allegations. According to Monsignor O'Callaghan, he was distressed but calm.

Further information from the Gardaí

12.44 The following day, according to Monsignor O'Callaghan's note, Superintendent Murray telephoned him to tell him that he had had a report from a garda in parish B that two 15-year-old Traveller boys had called to Fr Calder's house in parish B. According to the report, he offered them drink and fondled one of them. The boys ran away and told a scrap dealer who reported the matter to the Gardaí but no formal complaint was made. Superintendent Murray told the Commission that he does not recall this conversation with Monsignor O'Callaghan. He stated he could not have given this information to Monsignor O'Callaghan at this time as he was not aware of it until much later in the year. The written statement by Garda Luke in regard to the incident was made in January 1998, three months later, but it did refer to the information coming to him three years prior to that. The Commission has no reason to doubt the accuracy of Monsignor O'Callaghan's contemporaneous note of his conversation with Superintendent Murray. As Superintendent Murray cannot recall his conversation with Monsignor O'Callaghan, it surprises the Commission that he is so certain of when he

heard the report about the Traveller boys. The superintendent had already had experience of dealing with clerical child sexual abuse cases in Dublin so he ought to have been conscious of the issues involved and, in particular, he ought to have made a note of all conversations.

12.45 It would appear that this piece of information about the Traveller boys together with the other information which had been gathered triggered the decision of the diocese to withdraw Fr Calder from parish C.

Withdrawal from parish C

12.46 According to the account compiled for the Granada Institute (see below), Monsignor O'Callaghan telephoned Bishop Magee on 23 October 1997 and reported the information in respect of the Traveller boys in parish B. On 24 October, Bishop Magee met Fr Calder. Bishop Magee went over the various allegations and, according to the account of events compiled for the Granada Institute, when he came to the allegation involving the Traveller boys, Fr Calder's demeanour went from "*determined and confident*" to "*anxious and dejected*". The bishop asked Fr Calder to leave parish C and to go for assessment to the Granada Institute. He told him that, if the assessment was satisfactory, he could return to ministry. It was agreed that Fr Calder would leave parish C the following day. He agreed to live with relatives in the meantime. Fr Calder told the Commission that Bishop Magee did not go into detail about the allegations against him.

Support person

12.47 Monsignor O'Callaghan told the Commission that a priest support person had been assigned to Fr Calder to accompany him to the Granada Institute. Bishop Magee stated in evidence that Fr Calder himself asked for a different support person, a lay woman, and she accompanied him to the Granada Institute on occasions. There is no evidence to show that the priest support person took any role in the management of Fr Calder.

Advisory panel

12.48 There was no advisory panel functioning at this time. The practice appears to have been that Monsignor O'Callaghan would telephone such trusted people as he considered necessary.

Information to parish C

12.49 No announcement was made about the reasons for Fr Calder's removal. On 29 October, Monsignor O'Callaghan told Fr Calder that the only explanation he would give to the school principal was that "*in view of the rumours which had circulated in [parish C], from whatever source, he had agreed to withdraw from the Parish pending an enquiry*". The school principal said that the parish priest had come to the school on the following Monday and said that he would be the chairman of the board of management until such time as a new curate was appointed.

Further inquiries

12.50 Monsignor O'Callaghan recorded that he telephoned the GP again on 13 November 1997 to see if his patient was willing to come forward. His note stated that "*I learnt that the young man appeared to be quite disturbed, that he was in contact with social workers ...*". Monsignor O'Callaghan said that he told the GP that, apart from any legal question of liability, he felt he had a pastoral role and would like to assist with counselling. The GP said he would let the young man know of Monsignor O'Callaghan's concern for him and of his offer of counselling.

12.51 On 21 January 1998, a garda inspector telephoned Monsignor O'Callaghan and told him that he was investigating further complaints against Fr Calder (these were the complaints involving the young adults). The following day, Monsignor O'Callaghan recorded another conversation with the GP. The GP said his patient was not willing to come forward. Monsignor O'Callaghan reminded him of the counselling offer.

Granada Institute

12.52 Between November 1997 and 1999, Fr Calder underwent a lengthy assessment process at the Granada Institute. A comprehensive account of the concerns and allegations was provided to the institute by the diocese. The psychological report referred to above and seminary reports were also provided. Fr Calder was assessed on ten occasions between November 1997 and December 1998. According to Monsignor O'Callaghan's note of a telephone conversation he had with Fr Calder on 7 December 1997, Fr Calder was dismissive of the process. In January 1998, Monsignor O'Callaghan was told by Granada that Fr Calder had not "*opened up on any*

relevant question". Granada thought he should be confronted with the new allegations – those made by the young adults to the Gardaí in January 1998. Monsignor O'Callaghan spoke to Fr Calder who said he had no idea where it was all coming from. At this meeting, Fr Calder's accommodation was discussed (see below). The following day, Monsignor O'Callaghan telephoned him to tell him that he had written to the Gardaí asking them to contact him (the Monsignor) if they wanted to interview Fr Calder. He also reminded Fr Calder that the solicitor who assisted the diocese on these matters would be available to advise him.

12.53 The report from the Granada Institute, to which Fr Calder had been referred in November 1997, was issued in July 1999. It listed a number of factors that made an assessment complex:

- Fr Calder denied all the allegations and he could offer no explanation as to how he became subject to these allegations.
- He displayed a constellation of emotional and personal characteristics which had been found in people who seek to satisfy their unacceptable sexual needs in surreptitious ways.
- It was unlikely that he would respond positively to psychotherapeutic treatment.

12.54 Granada could not recommend that he be returned to pastoral duties and it could not be stated with any degree of certainty that similar allegations would not be made in the future. It was recommended that his living arrangements should be both supportive and supervised. In August 2000, Monsignor O'Callaghan wrote to Granada. In this letter he said that Fr Calder was still living in the old people's home (to which he had moved sometime in 1998 – see below) and asked "*what is the possibility of a limited ministry such as that which de facto he now exercises*" (emphasis in original). In September 2000, Granada told Monsignor O'Callaghan that it would support Fr Calder's ministry with older people and noted that it was "*important that he is supported in this through regular spiritual direction and good living accommodation*".

12.55 Fr Calder told the Commission that the Granada Institute report did not cover all aspects of his dealings with it. He said that he wondered why

Granada had *“omitted some information from its report that could be helpful to me”*. He said that, at one stage, he was asked what he wanted to do. He said that he wanted a house in the diocese and to be able to officiate at marriages or funerals. He said that he distinctly remembers the psychologist in Granada telling him not to limit himself too much. He said that Bishop Magee, Monsignor O’Callaghan and his support person were present at the final meeting in Granada. He remembers the bishop saying that *“he would like to see me like a flower blooming in the new millennium. He also asked the psychologist to arrange one other meeting whereby he could suggest some work that I could possibly do in the Diocese. No such meeting ever took place and no explanation was ever given”*.

Fr Calder’s living arrangements

12.56 In January 1998, Fr Calder told Monsignor O’Callaghan that he could no longer stay where he had been living since his removal from parish C in November 1997. He requested alternative accommodation. Sometime afterwards he was transferred to a home for older people. Fr Calder was aged about 38 at the time. He was not the chaplain to the home and had no specific role there. The superior of the home at that time told the Commission that she was told that allegations had been made against Fr Calder relating to altar boys. The Commission is not aware of any allegations involving altar boys. The superior also told the Commission that Fr Calder said mass for the nuns in their oratory and occasionally said mass in the oratory which was used by the residents and their visitors. She said she was not told of any restrictions on his ministry but she pointed out that any children who visited the home would have been accompanied by adults. Monsignor O’Callaghan told the Commission that he now regrets *“not giving the Mother Superior more specific information, as she was entitled to know the position and it would have lessened the risk to children generally”*.

12.57 Bishop Magee told the Commission that he understood that the superior had been fully informed by Monsignor O’Callaghan. Bishop Magee also understood that Fr Calder was to say mass only for the nuns in the home.

12.58 Fr Calder told the Commission that the superior had asked Monsignor O’Callaghan, without informing him, if she could call on him when necessary

to say mass and anoint the dying. Fr Calder said that Monsignor O'Callaghan gave this permission. It seems from Monsignor O'Callaghan's letter of August 2000 that he had given this permission before the Granada Institute approved it. Fr Calder said that he ministered in the nursing home when he was told to do so.

12.59 Between 1998 and 2003, Fr Calder's life in the home appears to have been uneventful. A number of people from the diocese wrote asking whether he could celebrate masses and funerals and, except for one occasion (a family wedding), permission was refused by the bishop.

12.60 In 2001, his lay support person wrote a letter to Bishop Magee requesting that his ministry be broadened. This letter refers to Fr Calder having concelebrated masses in the support person's diocese in recent years and in the local parish. Fr Calder was also saying mass for the staff, residents and visitors to the home, most of whom were completely unaware of his status. Monsignor O'Callaghan drafted a reply to this letter and it was signed by Bishop Magee. The reply explained that the restriction in ministry was not in any way punitive but was a protective measure. In spite of the fact that the support person's letter clearly showed that Fr Calder was not abiding by the restrictions as imposed by Bishop Magee, no action was taken.

Concerns, 2003

12.61 The superior of the home had some knowledge of the concerns about Fr Calder but the other staff in the home did not. Sometime in mid 2003, Monsignor O'Callaghan received a telephone call from the superior who reported that there was disquiet among the nurses because Fr Calder was using the internet to access pornographic jokes and was seeing young men in his rooms late at night. Ostensibly he was teaching them how to use a computer. She was also concerned that the staff were talking about Fr Calder babysitting for a family. Fr Calder denies using the internet to source pornographic jokes.

12.62 The superior suggested that Fr Calder be removed from his room in the main residence and transferred to a house in the grounds. This house could be seen from the main house but the activities that went on there could not. Fr Calder shared the house with a male employee of the nursing home.

The only contemporaneous reference to these events is a letter from Monsignor O'Callaghan to Fr Calder in August 2003, in which he expressed the hope that the move to the house went well and granted him permission to concelebrate a mass at a family funeral.

Concerns, 2004

12.63 In January 2004, Monsignor O'Callaghan was told by Dr Kevin McCoy, the expert retained to examine the diocese's policies on child sexual abuse, (see Chapter 4) that one of the nurses at the home had concerns about Fr Calder's contact with families with young children. Monsignor O'Callaghan telephoned this nurse. She stated that Fr Calder had befriended families with young children and had offered to take the children out swimming and had offered to baby-sit. She stated that this behaviour occurred prior to his transfer to the house in the grounds. Monsignor O'Callaghan told the Commission that he met Fr Calder after this but there is no record of any action being taken.

12.64 From the time he moved to the house in the grounds in 2003 until 2008, it appears that Fr Calder continued to be unsupervised. The presence of a male employee in the house could not be regarded as supervision. There is no evidence that this employee was told anything about Fr Calder. Monsignor O'Callaghan told the Commission that he was the person charged with supervising Fr Calder and he "*would have called to see him on an intermittent basis*". He said that he had asked another priest to be a support to Fr Calder but that this relationship had broken down and did not continue for any length of time. There is a record in the diocesan files of a proposed visit by Monsignor O'Callaghan in August 2003. The only other records in the files showing contact between the diocese and Fr Calder between then and late 2008 are letters in connection with the payment of Fr Calder's allowance.

12.65 In a memorandum written in reply to queries from Mr Ian Elliott in 2008 (see Chapter 6), Monsignor O'Callaghan stated that the nurses had become hypersensitive to Fr Calder's presence and he was moved to the house in the grounds. Presumably their 'hypersensitivity' was occasioned by the pornographic jokes and the fact that young men were in his room at night. Monsignor O'Callaghan explained to the Commission that he did not use the word 'hypersensitive' in the sense of over-sensitive. He used it in the context

of the staff being “*extremely vigilant*” in their attitude to him. The Commission considers that, if this were so, he should have been retained in the main home and not transferred to a house where there was no one to be vigilant towards him. Monsignor O’Callaghan stated that Fr Calder was of the view that the level of supervision which was being exercised was vexatious and offensive. Fr Calder had made a written complaint in May 2002 about the restrictions imposed on him but his letter was expressed in mild terms.

Review of living arrangements, 2008/9

12.66 In 2008, following the acceptance by Bishop Magee of the findings of the Elliott report, concerns began to be raised by, among others, the new delegate, Fr Bermingham, about Fr Calder’s supervision and accommodation.

12.67 In February 2009, the superior who was then in charge of the home wrote to Bishop Magee saying that she was completely unaware of the reasons for Fr Calder’s residence in the home and that she had not been told anything by the previous superior. She also stated that Fr Calder was saying mass in the large chapel on the grounds for whoever happened to be present.

12.68 Bishop Magee replied in February 2009 stating that he understood the sisters had been fully informed of the situation when Fr Calder went to the home in 1998: “*It has always been my understanding that the situation has been explained to the Superior and that Fr [Calder’s] ministry was restricted to celebrating Mass privately in the Sisters’ Oratory*”. Bishop Magee does not refer to the fact that he was on notice, since he received the support person’s letter in 2001, that Fr Calder was not restricting himself to saying mass for the sisters. Bishop Magee went on to apologise for the failure to keep the current superior informed and he also stated that alternative accommodation arrangements were being considered for Fr Calder.

12.69 In February 2009, Bishop Magee wrote to Fr Calder advising him that a further review of the diocesan practices was being carried out by risk assessment specialists, Mentor (see Chapter 4). This organisation had been engaged by the diocese to review and reassess all aspects of cases involving diocesan personnel who had allegations made against them with regard to children and young people. Bishop Magee reminded Fr Calder that he was restricted to saying mass in private for the sisters in the home. In early March

2009, he wrote to Fr Calder stating that his entire future was now under review.

12.70 On the same date, following a suggestion by Fr Bermingham, the new delegate, Bishop Magee also wrote to two priests in the diocese, asking if they would be prepared to act as supervisor and support person for Fr Calder respectively. These letters refer to Fr Calder having been prohibited from wearing clerical dress in public but none of the letters to Fr Calder refer to this fact. Monsignor O'Callaghan confirmed to the Commission that Fr Calder did wear clerical dress while in the nursing home. Fr Bermingham and the diocesan secretary confirmed to the Commission that he no longer does so.

12.71 Fr Calder now has a supervisor who is a parish priest living about 20 kilometres away and who has received training for his role. He has also been assigned a support person from the parish in which he is now living. While he lives alone and has unsupervised access to his computer, the Commission has been informed by the diocese that Mentor has been given the task of inspecting his computer usage on a regular basis. The Commission recognises that supervision is very difficult and accepts that the diocese is doing the best it can in the circumstances.

Report to Congregation for the Doctrine of the Faith, 2009

12.72 Although Bishop Magee was aware of concerns relating to Fr Calder since 1997 and had a report indicating his unsuitability for ministry, it was not until January 2009 that he reported the matter to the Congregation for the Doctrine of the Faith. Bishop Magee explained to the Commission that he did not report to the Congregation for the Doctrine of the Faith earlier because no complainant had come forward. He said that the obligation to report clerical child sexual abuse cases to the Congregation for the Doctrine of the Faith did not arise until 2002 (see Chapter 4). When two other cases were being referred to the Congregation for the Doctrine of the Faith in January 2009, he decided to refer the Fr Calder case as well. The *votum* was as follows:

“Bishop’s Votum

The first reports of concerns regarding Fr. [Calder] arose in 1997 and refer to a period as much as ten years earlier. Reports from several independent sources, some of which are known to the police but not

the diocese, indicate that there was an ongoing problem in this regard. Fr. [Calder] was assessed by the Granada Institute, Dublin and was deemed unsuitable to return to ministry. For the past twelve years he has resided at [nursing home]. He is permitted to celebrate Mass for the Sisters every morning, but does not exercise any further ministry.

I do not see that Fr [Calder] will ever be regarded as suitable for a return to ministry. He is now 48 years of age and his continued presence in [the nursing home] cannot be guaranteed. Already the Sister Superior has moved him to [a house in the grounds] because of his sending inappropriate material by telephone to the nurses. Other concerns have been raised about his visiting of families with children and about having young men in his room. Fr. [Calder] protests his innocence but makes little effort to deal with the accusations raised against him. I have had recent reports of his contravening the restrictions placed upon his exercise of ministry. I think it would be in his own best interests, as well as in the best interests of the Church, were he to seek dispensation from the obligations of sacred orders. This would allow him to find a new way of life before he is too old to do so. I shall be grateful for the Congregation's direction in this matter."

12.73 The bishop received a reply from the undersecretary of the Congregation for the Doctrine of the Faith acknowledging receipt of the case and stating he would be informed of progress in due course. No decision had been made as this report was being finalised in August 2010.

The health board/HSE

12.74 The HSE was not informed by the diocese about the concerns surrounding Fr Calder until mid 2008.

Advisory panel

12.75 As already stated, there was no advisory panel functioning when the diocese became aware of the concerns in 1997. The ongoing concerns about the behaviour and monitoring of Fr Calder were never brought to the attention of the inter-diocesan case management advisory committee which was formed in 2005 to fulfil the role of the advisory panel. The Commission was informed both by the chairman of the inter-diocesan case management

advisory committee and by another member that they were aware of the existence of complaints against only three priests and these did not include Fr Calder.

Commission's assessment

12.76 The Commission accepts that there was no direct complaint of child sexual abuse made to either the diocese or to the statutory authorities in relation to Fr Calder. What had been received were concerns and allegations from third and fourth parties. However the diocese did have an assessment of Fr Calder's suitability for the priesthood from his student days to which it should have paid more attention. The Granada report initially recommended that he not return to ministry. A year later, Granada accepted that a ministry to older people was appropriate. On each occasion, Granada was concerned about his living arrangements. When the diocese received the Granada report it should have been far more vigilant than it was in allowing Fr Calder to operate as a priest and he should have been prevented from wearing clerical dress. He should also have been more closely monitored.

12.77 When the concerns became known to the diocese in 1997, the diocese failed to properly implement the procedures outlined in the *Framework Document*. It is accepted that such complaints as were known to the diocese were also known to the Gardaí at the time. Neither the diocese nor the Gardaí reported the concerns to the health board.

12.78 It is clear that a number of local people had concerns about Fr Calder being appointed to parish C. These concerns were not initially taken seriously by the diocese. The Commission believes that no steps would have been taken to investigate the matter further if the local doctor and school principal had not complained and made it clear that they would not let the matter drop until their concerns were dealt with. They are to be commended for the principled approach that they took to this matter.

12.79 An advisory committee should have been convened to discuss this case in 1997. The case should have been referred to the inter-diocesan case management advisory committee when it was established in 2005.

12.80 The Commission views the setting in train of a canonical investigation under canon 1717 as a serious matter. To learn at this stage that the document ordering the investigation was probably misdated raises doubts in the minds of the Commission as to its authenticity. The fact that there was no formal report on file of the outcome of the investigation is most unsatisfactory.

12.81 The Commission is also very concerned that, in 2009, Fr James burned notes which may have contained relevant information at a time when their relevance to this Commission was known to him.

12.82 The Commission finds it worrying that Bishop Magee failed to issue a formal precept in relation to Fr Calder despite receiving the Granada report in 1999 which deemed him unsuitable for pastoral ministry.

12.83 The system of supervision in the nursing home was seriously deficient. The superior of the home was not made aware of the extent of the concerns concerning Fr Calder and her successor was not told anything. It appears that, over the years, Fr Calder said mass for the general public in the home and officiated on occasions outside. The bishop was told about this by Fr Calder's support person in 2001 but did not do anything about it. The fact that the only response to the complaints from the nurses about his use of his computer and his seeing young men in his room was to move him to a house in the grounds where there was even less prospect of supervision is again surprising.

Gardaí

12.84 The Gardaí were hampered in their investigations by the failure of anyone to make a formal complaint until 1998, and, even then, the complaints related to adults and not children. The fact that the evidence of Garda John, who was the garda most closely connected to these events, differs considerably from his written reports made many years earlier about the age of particular complainants is a cause of concern to the Commission. The Commission is also concerned about the failure of Superintendent Murray to keep records of his conversations with Monsignor O'Callaghan.

12.85 The information concerning the Traveller boy, although hearsay from a third party, was not acted upon. The businessman who mentioned the matter

to Garda Luke stated that the boy's father thought the boy would not be believed. The information was sufficiently serious and detailed to justify an approach by the Gardaí to the boy's father.

Chapter 13 Fr Moray⁸¹

Introduction

13.1 Fr Moray, who was a priest of the Diocese of Cloyne, died in 1991. A complaint was made against him in 1997.

Complainant, Skyla,⁸² 1997

13.2 The complaint was made by Skyla who alleged that she and her brother, who had subsequently committed suicide, had been sexually abused by Fr Moray. The complaint was made to Monsignor O'Callaghan who met Skyla and her husband. No contemporaneous note was made of the meeting. It is referred to in a note made by Monsignor O'Callaghan in 2002. In that note, Monsignor O'Callaghan stated that he had offered to help if she thought counselling would assist her.

13.3 In May 2000, Skyla's husband was in touch with Monsignor O'Callaghan requesting payment of her counselling fees. The local charitable trust which was used by the diocese to fund counselling (see Chapter 7) sent a cheque for the amount to Monsignor O'Callaghan who, in turn, wrote to Skyla enclosing the cheque and saying that he was available to advise and assist at any time. Monsignor O'Callaghan wrote to the trust sometime later enclosing a donation. There is no copy of this letter in the diocesan files. In December 2000, the trust wrote to Monsignor O'Callaghan to thank him for his letter and enclosure. The trust went on to say "*As you know, the Trust is more than willing to help in cases where discretion is important and, of course, when we have funds available. Your donation therefore, is most acceptable...*".

13.4 In December 2000, a priest from outside Cloyne wrote to Monsignor O'Callaghan to say that he had been contacted by a lay woman "*with regard to a very serious matter that pertains to the diocese of Cloyne, the details of which I would prefer not to commit to writing*". This, in fact, was Skyla. This priest had first met her very briefly in 1995 in a pilgrimage setting. He told the Commission that, when he was contacted by her in 2000, he understood that

⁸¹ This is a pseudonym.

⁸² This is a pseudonym.

she had already made contact with the Diocese of Cloyne and was receiving help with counselling expenses from the diocese.

13.5 The priest was in contact with Monsignor O'Callaghan and had further contacts with Skyla. In October 2001, this priest wrote again requesting further payment of counselling costs. He said that she was very concerned that the matter be dealt with in the strictest confidence and she took exception to the last cheque being paid to her from a charitable source. It was decided to pay the amount using a bank draft and to transmit it via the priest with whom she was dealing. The money came from the same trust as before. Monsignor O'Callaghan clearly sent another contribution to the trust because there is a further acknowledgment but, again, no copy of his letter is in the files and the acknowledgement does not specify the amount of the contribution.

13.6 In June 2002, Monsignor O'Callaghan met the priest who was assisting Skyla. In his note of this meeting, Monsignor O'Callaghan refers to his 1997 meeting with the complainant. She was now looking for compensation. Monsignor O'Callaghan explained that compensation did not arise because the diocese was not in any way liable. Monsignor O'Callaghan showed the priest the relevant parts of the letter written in reply to another civil legal action. In a subsequent letter to the priest he explained that the diocesan policy was to provide for *bona fide* counselling/therapy for a traumatised person, without prejudice. The priest advised Skyla to get a solicitor.

13.7 In November 2002, Skyla sought a meeting with Monsignor O'Callaghan. This was arranged but she cancelled. The diocese provided further help with counselling costs.

13.8 In September 2003, Skyla started a civil legal action. The solicitor for the diocese replied stating that the diocese had no legal liability. The case was not pursued. The priest from outside the diocese told the Commission that he ceased to have contact with Skyla in 2003/4.

13.9 Skyla was availing of HSE psychiatric services and was in touch with the social work services in the 2000s.

Commission assessment

13.10 The procedures were not followed when this complaint was made in 1997. No record was made of the complaint and no investigation was carried out. The complaint was not reported to the civil authorities. Fr Moray had been dead for six years but, nevertheless, the procedures should have been followed. None of the procedures was activated when Skyla came forward again in 2002. Monsignor O'Callaghan told the Commission that the practice of notifying the Gardaí of complaints involving deceased priests did not exist until, at the initiative of the Child Protection Office of the Irish Bishops' Conference in May 2003, a meeting was sought with the Domestic Violence and Sexual Assault Investigating Unit (see Chapter 5) to ascertain its recommendations on good practice. The Commission does not accept that the practice did not exist prior to 2003. It was standard practice in the Archdiocese of Dublin from 1996. The *Framework Document* requires that all complaints be reported to the Gardaí – it does not specify different arrangements for deceased priests.

Introduction

14.1 Fr Flan was born in 1971 and ordained for the Diocese of Cloyne in 1997. A psychological report given to the director of vocations in 1991, when he was a student priest, expressed a concern about “*his ability to establish mature relationships with others, particularly authority figures*”. The student priest proceeded to ordination and he was appointed a curate in Mallow in 1998 where Monsignor O’Callaghan was his parish priest. It was while he was there that complaints about his behaviour began to surface.

14.2 He was involved in a number of relationships with women. In a letter to Bishop Magee in 2004, Monsignor O’Callaghan said that he had been a paternal figure to Fr Flan and had got him “*out of serious trouble on the sexual score on four or five occasions*”. The Commission is aware of one complaint of child sexual abuse against Fr Flan.

Complaint, 2000

14.3 Initially, there were general complaints that Fr Flan was spending time away from the parish, staying outside the parish overnight and commuting in for mass. In June 2000, a nun contacted Monsignor O’Callaghan, expressing concern about Fr Flan’s relationships with a woman and with a teenage girl, Trista.⁸⁴ She did not specify the precise nature of the relationships. She later said that nothing that would qualify as sexual abuse had happened.

14.4 In July 2000, Monsignor O’Callaghan received a complaint from an adult woman who alleged that she had been given drink by Fr Flan and was asked to go away with him for the weekend. She felt manipulated by him. It was her opinion that this was not the first time Fr Flan had attempted to manipulate women.

14.5 Monsignor O’Callaghan immediately spoke to Fr Flan and warned him that he had compromised his priesthood. He also warned that, if the teenager were to make a complaint, there could be a criminal aspect to the

⁸³ This is a pseudonym.

⁸⁴ This is a pseudonym.

case. According to Monsignor O’Callaghan, Fr Flan said little “*except nod his head*”.

14.6 A few days later, the nun who had originally contacted Monsignor O’Callaghan contacted him again claiming that Trista, the teenager to whom she had referred previously, was distressed after some experience of a sexual nature with Fr Flan. She claimed intercourse had not taken place. Later, Trista had gone to confession and reported to a friend that everything was now fine. Trista had also spoken to another priest about the matter. She claimed that this priest had said “*say nothing about it to anyone*”. Trista was aged about 16 at the time. The nun also told Monsignor O’Callaghan that Fr Flan was involved in a sexual relationship with an adult woman.

14.7 A further meeting took place between Monsignor O’Callaghan and Fr Flan. During the course of that meeting, Fr Flan acknowledged his relationship with the adult woman and also his relationship with Trista. He stated that these were the only cases about which Monsignor O’Callaghan should have concerns. Monsignor O’Callaghan laid down conditions regarding Fr Flan’s future conduct and subsequently put these in a letter to him:

- He was to spend the night in his own house unless he had permission to stay away.
- He was to make no contact with either the teenager or the adult woman.
- He was not to be alone with any girl in a house or a car.
- He was not to minister in the youth project of Cloyne or the youth partnership until he was given permission.

14.8 The letter went on to say that: “*These conditions are for your own protection in the current sensitive situation*”.

Meeting with Trista

14.9 A day later, Trista came to meet Monsignor O’Callaghan accompanied by the priest to whom she had revealed her problems. According to Monsignor O’Callaghan’s note, she told him that she had heard a rumour from a person in Cork that she was involved in a “*situation*” with Fr Flan. She

absolutely denied that any such incident had taken place. At no time did Monsignor O'Callaghan tell her that Fr Flan had admitted to a form of relationship with her. He also did not tell her that her distress following an incident with Fr Flan had been reported to him. He appeared happy to accept her denial that anything had taken place. According to his note of the meeting he "*expressed relief at this information. Knowing that she was very involved with the Church and the priests in the [name of church] I advised that she be very careful in view of the sensitivity of the current situation*".

14.10 Monsignor O'Callaghan wrote to Fr Flan stating that Trista came to him to assure him that "*there is no foundation to the story that you were in any way involved with her inappropriately. I know that this is a relief to you as it is to me*". The Commission finds it difficult to understand how Monsignor O'Callaghan could be relieved when Fr Flan had actually admitted that he had had a relationship with Trista.

Further developments

14.11 The files reveal very little happening between July 2000 and February 2002. Monsignor O'Callaghan received a call from an acquaintance of Fr Flan saying that she had discovered that Fr Flan had bought a box of condoms on Ash Wednesday. When interviewed by Monsignor O'Callaghan, he explained he had bought condoms in a moment of weakness.

14.12 Some time later, Fr Flan eloped with a married woman. This action was taken very seriously by the Church and Fr Flan was suspended and a precept issued. An announcement was made at the parish masses at the end of May 2004. Monsignor O'Callaghan told the Commission that, in hindsight, "*I would say it should have gone straight to the Gardaí. Looking back on it now it might have saved [the family of the married woman who were left when he eloped with her]*".

Role of Bishop Magee

14.13 Monsignor O'Callaghan did not tell Bishop Magee about Fr Flan's admission in relation to Trista. Bishop Magee told the Commission that, while he was aware of Fr Flan's elopement with the married woman, Monsignor O'Callaghan did not tell him that there was an allegation of child sexual abuse in this case.

Commission's assessment

14.14 This is one of only two cases covered in this report where a complaint was made concerning a person who was still a child. It is completely inexcusable that no report was made to the Gardaí or the HSE. This case clearly illustrates that the delegate in the Diocese of Cloyne, Monsignor O'Callaghan, had no clear policy in relation to a complaint of child sexual abuse in the year 2000. He had an admission from a priest that he, the priest, had had a relationship with a 16-year-old girl. No proper investigation was carried out by Monsignor O'Callaghan. He did, according to his own note, restrict the priest in his activities but did not tell Bishop Magee about the priest's activities or the restrictions that he had placed on him. He appointed himself the priest's supervisor. There are no reports on file as to the success or otherwise of that supervision.

14.15 It is unacceptable, in the Commission's view, that Monsignor O'Callaghan allowed Trista to come to him in the presence of a priest to whom she had confided and who had advised her to say nothing and then accept her denial that anything had taken place when he knew that not to be the situation.

14.16 The Commission agrees with Monsignor O'Callaghan's view, in hindsight, that he should have gone straight to the Gardaí. He should have done this because he was obliged to do so by the Church's procedures and because it is essential in the interest of the welfare of children. It is impossible to know whether or not this would have saved the family of the woman with whom Fr Flan eloped.

Introduction

15.1 Fr Drust was born in 1920 and died in 2010. He was ordained in June 1946 and took up a temporary position in the UK. In 1948 he was appointed chaplain to a school. From 1959 to 1962, he served with a missionary order in Africa. He returned to Ireland for a brief period and was then appointed to the Archdiocese of Washington. There is no documentation available about his appointments prior to 1962. There is some documentation dealing with his appointment to the Archdiocese of Washington in 1962. The Archbishop of Washington wrote to Bishop John Ahern of Cloyne confirming that he would accept Fr Drust on Bishop Ahern's recommendation. There is no letter of recommendation on file although there is a letter from Bishop Ahern to Fr Drust confirming his appointment. He remained in Washington for two years. There is a letter on file from a doctor living in the Archdiocese of Washington to Bishop Ahern praising his ministry in Washington and particularly his interest in children.

15.2 In 1964, Fr Drust was appointed to a rural parish in Cloyne. Fr Drust had always had a keen interest in music. Within a year, he had created a youth orchestra in the parish and began to give a series of concerts and shows throughout the country. In a statement prepared for the diocese in April 2002, in response to the complaint of child sexual abuse, Fr Drust stated that during this time, he also wrote for various papers, that he gardened on a commercial basis and that he also taught music to a substantial number of children. In December 1968, Fr Drust wrote to Bishop Ahern saying that, although he had caused the bishop "*a good deal of concern from time to time*",⁸⁶ he wished to ask for one further favour, a transfer to another parish because "[f]or quite a long time, I have had a lot of difficulty with groups and individuals in this parish". There is a hand written note on the letter stating that the request was withdrawn in January 1969. He remained in that parish until 1973. He then moved to another parish. He continued his teaching of music. He did this in conjunction with his housekeeper, a young woman to whom he had taught music and who had been a member of the band and was now a qualified music teacher. Fr Drust became a parish priest in 1985.

⁸⁵ This is a pseudonym.

⁸⁶ The Commission has been unable to establish what the concerns were.

15.3 Fr Drust had a difficult relationship with Bishop Magee. He had a dispute with the diocese over the proceeds of the sale of a parish house. In 1995, Fr Drust offered his resignation as all priests are required to do when they reach the age of 75. In accordance with his normal practice, Bishop Magee acknowledged receipt of the resignation letter and asked Fr Drust to remain on until such time as his successor was appointed. In 1997, Bishop Magee accepted the resignation. Fr Drust, however, then refused to move out of the parish house. He continued to live there and he and his housekeeper continued to give music lessons there. He did not actually resign as a parish priest until 2001 and he then remained on as a curate in the same parish and continued to live in the same house.

Complaint to priest of the diocese, 1990

15.4 There is one complaint of child sexual abuse against Fr Drust. The abuse is alleged to have occurred between 1967 and 1971 when Fr Drust was a curate in the rural parish.

15.5 The complainant, Ula,⁸⁷ told the Commission that she first reported the abuse in 1990 to a priest but not to the diocesan authorities. She told the priest of the diocese that she had been abused by Fr Drust but she did not reveal the full extent of the abuse.

15.6 In a statement to the Gardaí in December 2002, the priest to whom Ula made her complaint said that she had spoken to him about Fr Drust in 1989 or 1990. He said *“I don’t remember her words but my impression was that something wrong had happened which had a deep effect on her. The only detail which I can recall her telling was concerning her being on his lap”*. In a statement in 2009, the priest said that he did remember meeting her in 1990 but did not remember much of the detail of what she told him. He said he was left with the impression that she had been greatly affected by something Fr Drust had done to her. He said that, at the time, he regarded what she had told him *“to be of a confidential nature, an unburdening of her soul to the priest”*. This priest told the Commission that he did not view his conversation with Ula as involving the *“reporting”* of a complaint. He felt he

⁸⁷ This is a pseudonym.

was acting as her spiritual advisor or counsellor and that she expected that he would not reveal what she had told him to anyone else. He said that he would like to emphasise that he *“would now approach such a conversation in a completely different manner”*.

15.7 Ula told the Commission that she met this priest again in April 2002 and he raised the subject with her. She said that he told her that he *“wondered if he had done the right thing or not but that he felt that it was under the seal of confession”*. She told the Commission that she was very annoyed by this. She told him that she was intending to complain to the diocese and he insisted that the 1990 complaint was under the seal of the confessional. The priest told the Commission that he did not discourage Ula from reporting to the diocesan authorities. Rather, he offered to go to Bishop Magee with her, or on her behalf, to report it.

Complaint to the diocese, 2002

15.8 Shortly before this meeting, Ula saw a photograph of Fr Drust in a hall where she was attending a course. This upset her greatly. By May 2002, she had contacted the Bishop of Cork and Ross. The Cork and Ross delegate put her in touch with Dean Eámon Goold in Cloyne who was the support person for complainants. (She did not want to meet either Monsignor O’Callaghan or Archdeacon Chris Twohig who were the delegate and deputy delegate respectively.) She knew Dean Goold and she believed him to be an honourable man. At her meeting with Dean Goold, in April 2002, she was asked for and provided a handwritten account of what had occurred. She asked, among other things, for:

- a recognition that what had happened was wrong;
- to be believed;
- the Church’s apology.

15.9 Ula told the Commission that she also wanted to ensure that Fr Drust had no access to children. Dean Goold gave the handwritten account to Bishop Magee.

Nature of the complaint

15.10 Ula is the younger of two daughters of a family with whom Fr Drust appears to have formed a close relationship. She first met Fr Drust when she was aged seven or eight in 1964/65. She said that the sexual abuse began a few months later. Initially the abuse occurred in his car when he put her in his lap. Some time afterwards she started to visit his house at weekends. In her statement to the Gardaí in 2002 she stated that Fr Drust would give her three or four glasses of sherry and she would wake up in bed the following morning. He would then abuse her. Sometimes he would bring her toast in bed. When she was nine he taught her to shave him. She said that Fr Drust referred to her as his “*Lolita*”. Fr Drust, when later questioned by the Gardaí, denied any knowledge of the novel *Lolita* by Vladimir Nabokov.⁸⁸

15.11 In an interview with the Gardaí in 2002, Fr Drust said that he did not realise there was anything improper about the name Lolita until he attended afternoon tea in a local person’s house. He brought Ula with him and, at the end of the event, asked the woman who was hosting the event where was his Lolita. The woman was shocked at the use of the expression and advised him not to use such terms.

15.12 Ula’s elder sister, in a statement to Gardaí in February 2003, described her own relationship with Fr Drust. She said that on one occasion when she was aged about 13, Fr Drust came into her bedroom, ran his tongue down the side of her face and attempted to kiss her. She said she pushed him away. She reported the incident to her mother. When confronted by her mother, Fr Drust stated that he was only preparing the elder sister for what boys would do to her in the future.

15.13 In that same statement, the elder sister said that she remembered Ula sitting in Fr Drust’s lap at their house while he kissed her, stroked her hair and stated that she had soulful eyes. During the period the abuse is alleged to have occurred it is also alleged that Fr Drust took Ula to Cork alone on several occasions. Fr Drust admitted to doing so once only.

⁸⁸ This book was published in 1955 and a film version was released in 1962. It recounts the development of a sexual relationship between a middle aged man and a 12-year-old girl.

15.14 In 2009, as part of a further Church investigation, Ula was referred to a psychologist who has extensive experience in the field of child sexual abuse. During her sessions with this psychologist, she alleged that she had been the subject of much more serious and extensive sexual abuse that she had reported earlier.

15.15 In her evidence to the Commission, Ula said that one day, at the age of 11, (in 1968/9) she reached out to remove some grey hairs from the collar of Fr Drust's coat. He said to her "*you are turning into a woman*" and from that day on the abuse stopped.

Handling of complaint by diocese

15.16 In May 2002, immediately after receiving the complaint, Bishop Magee wrote to Fr Drust removing him from ministry. Fr Drust was forbidden to minister in the Diocese of Cloyne or say mass in public. He was told that no minors were to visit his house and that this referred in particular to those who might come for music lessons. Bishop Magee confirmed that Fr Drust had now officially retired and that he would receive a retirement allowance, equal to the minimum allowance of a parish priest in office.

15.17 Bishop Magee appointed Monsignor O'Callaghan as delegate to conduct a canonical investigation. The parish priest of Fr Drust's parish told the Commission that he first heard that there was a complaint against Fr Drust in September 2002, that is, four months after Fr Drust was removed from ministry. The parish priest said he was told by Bishop Magee that Fr Drust was being removed from ministry because a complaint had been made against him. Bishop Magee told the parish priest that Fr Drust had been accused of "*something quite serious and shocking*" and he, the parish priest, assumed that it had something to do with children as Fr Drust was being removed from ministry.

The diocese's interaction with Ula

15.18 Dean Goold arranged for Ula to meet Bishop Magee in July 2002. Dean Goold was also present at the meeting.

15.19 According to Ula's evidence, Bishop Magee stated that he could now make Fr Drust retire. Ula stated that she wanted him made accountable, but

Bishop Magee did not appear to understand this. She was also concerned about Fr Drust's access to school children. Bishop Magee said he would look into it. Dean Goold does not remember the question of access to children being discussed at all. He does recall that Bishop Magee told Ula that he believed her. Bishop Magee has pointed out that Fr Drust was already retired as he had been removed from ministry in May, so it made no sense for him to have said that he could make Fr Drust retire. After the meeting, Ula wrote to Bishop Magee thanking him for his kindness and sensitivity during the meeting.

15.20 Ula told the Commission that she discovered some months later that Fr Drust had retired. However, she said that there was no physical evidence that Fr Drust had been removed from ministry and no apparent change in his status. She said that he had informed his parishioners that he had retired but he continued to say mass in his house and in houses in the parish. She also said that none of his parishioners was aware that he had been removed from ministry, that he continued to have children in his house for music lessons and continued to have access to the parish primary school which was next door. She said that this continued even after the Gardaí decided to prosecute.

15.21 Bishop Magee contends that there was tangible evidence that Fr Drust was removed from ministry. He had been directed not to say mass in public and Bishop Magee told the Commission that there is no evidence to suggest that Fr Drust continued in public ministry after May 2002. A new curate was appointed in May 2002. He told the Commission that Fr Drust did not say mass in public after that date. However, Fr Drust continued to live in the parochial house, continued to dress as a priest and children continued to attend at his house for music lessons with his housekeeper. He was listed as a *pastor emeritus*⁸⁹ in the 2009 diocesan yearbook.

Interaction with Fr Drust

15.22 In May 2002, Monsignor O'Callaghan met Fr Drust a few days after being appointed as delegate to conduct an official investigation in accordance with canon 1717. Monsignor O'Callaghan's note of the meeting states that Fr

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A retired parish priest.

Drust, who was accompanied by his housekeeper, denied the allegations in the strongest possible terms. Monsignor O'Callaghan told him the suspension was provisional until the matter was resolved. The note also records that he also told Fr Drust, contrary to the instructions issued by Bishop Magee, that the music lessons could continue provided his housekeeper was in charge. Monsignor O'Callaghan told the Commission that he did not have possession of the bishop's letter when he met Fr Drust and he was unaware that Bishop Magee had prohibited Fr Drust from having young people attending his house for music lessons. He said that he was very upset when he later discovered that he had contradicted an instruction given by Bishop Magee. However, Monsignor O'Callaghan's note of the meeting records that he "*explained the implications of the withdrawal from ministry as set out in the Bishop's letter*". While he may not have had physical possession of the letter when he was speaking to Fr Drust, he was aware of its contents.

15.23 Bishop Magee, in his evidence to the Commission, stated that he discovered some time later that Monsignor O'Callaghan had allowed the music lessons to continue. The house was a bungalow. There was a front and back door connected by a hall. Fr Drust lived on one side of the hall and the music lessons were conducted in the other. Bishop Magee decided to let the lessons continue on the basis that he was told by Monsignor O'Callaghan that the house was divided in this way and there was separate access for the music lessons.

15.24 Monsignor O'Callaghan did not attempt to interview Ula or her family. He told the Commission that this was because she had already been interviewed by Dean Goold. He did not make inquiries in the parishes in which Fr Drust had served. There is no evidence that he interviewed any of the many girls who had been part of the orchestra or who had been taught music by Fr Drust over a long period.

The criminal proceedings

15.25 The diocese was made aware of the allegation in May 2002. Monsignor O'Callaghan reported the matter to the Gardaí in writing later that month as was his duty under the *Framework Document*. It is quite clear from the correspondence he had with the Gardaí at this time that he did not

approve of the practice (see Chapter 4). The Gardaí did not report to the health board. There is no documentary evidence that they addressed the question of whether or not there was an ongoing risk to children. However, they told the Commission that this question was addressed. The Gardaí decided that no child protection issues arose as Fr Drust was retired, had no ministerial role and no unsupervised access to children. However, the Gardaí do not appear to have adverted to the fact that children were continuing to go to his house for music lessons with his housekeeper.

The criminal investigation

15.26 The Gardaí contacted Ula in July 2002. They took statements from her and from a number of other relevant people. Fr Drust was interviewed by the Gardaí in December 2002 and he denied the allegations. He subsequently wrote a lengthy statement entitled "*Statement of Fact with regard to certain serious matters of which I have been recently accused*" and provided this to the Gardaí. This included a detailed account of his career and his interaction with Ula's family. In January 2003, he provided another document entitled "*Police Interrogation*" which is a lengthy account of his interview with the Gardaí with various comments. He was interviewed again in April 2003 but did not make any further statement.

15.27 A file was sent to the DPP in July 2003. The DPP looked for further statements, specifically statements about the delay in making the complaint. A further garda report and statements were submitted to the DPP in December 2003.

15.28 Between August and December 2003, the Gardaí interviewed a number of Church personnel. They took statements from Monsignor O'Callaghan and Dean Goold. The Gardaí asked Bishop Magee to make a statement. The solicitor who advised the diocese in relation to child sexual abuse matters told the Commission that he then explained to the garda sergeant that "[i]f a matter was discussed in confidence with a bishop, the bishop could not disclose the confidence without first getting, obtaining, the consent of the person who had reposed the confidence". The solicitor further told the garda sergeant that he believed that "*it was in the interests of the common good that Bishop Magee should not be asked to make a statement*". The garda sergeant met Bishop Magee in the presence of Monsignor

O'Callaghan and a solicitor from the office of the diocesan solicitor. According to the garda report: "*The Bishop assured me in advance of total cooperation. It was not to be the case*". The sergeant wanted a statement from the bishop in relation to his involvement in the case and he wanted a copy of Ula's handwritten account of what had happened. According to the Garda report, the bishop, through his solicitor, declined to make a statement or supply the document in question. The Garda report states that the solicitor said that the document was "*a Church document and hence confidential*". The solicitor also told the sergeant that Bishop Magee would not make a statement "*in consideration for the public good and the maintenance of the confidentiality of the Church*". After further discussion, it was agreed that the sergeant could have a copy of the document if Ula gave her written consent to this. A copy of the document was subsequently provided to the sergeant.

15.29 In March 2004, the DPP issued his decision to prosecute for "*a representative sample of indecent assault charges*". The Gardaí collected further information in order to draft the charges. The Gardaí asked for, and received, the DPP's permission to proceed by way of summons, rather than arrest, because of Fr Drust's age and health. In June 2004, Fr Drust was summonsed to appear at a district court sitting in the area where some of the offences had occurred. It was then decided to charge him in the area where he was living in order to ensure that there was jurisdiction in respect of all charges. In October 2004, Fr Drust was charged with 28 counts of indecent assault and sent forward for trial to Cork Circuit Criminal Court. Fr Drust was remanded on his own bail.

Judicial review

15.30 Fr Drust immediately sought judicial review of the decision to prosecute him. He argued that to allow the trial to go ahead would breach his constitutional right to a speedy trial and his right to fair procedures in the trial process. The main grounds on which he sought the review were his age (he was 84 years old), complainant delay (the lapse of time between the dates of the alleged offences and the return for trial was between 34 and 39 years), and prosecutorial delay (a lapse of over two years from the time the complaint was made until he was charged).

15.31 The High Court decision on the judicial review case was given in March 2006.⁹⁰ The Court held that the delay of 28 months between the time the complaint was made and the charges were brought was unacceptable and that it breached Fr Drust's right to a trial with due expedition. Accordingly, the trial was prohibited.

15.32 The DPP appealed this decision to the Supreme Court which gave its decision on 31 July 2007.⁹¹ The judgment noted that several important decisions in relation to delay had been made since the High Court judgment.⁹² It applied the tests outlined in these decisions. The Supreme Court found that no case of prosecutorial delay had been proven; there was delay but that was not sufficient to prohibit the trial. The Supreme Court then went on to consider whether there were exceptional circumstances where it would be unfair or unjust to put an accused on trial. This had to be considered in the light of the specific facts in this case. The relevant facts were that this was an old case, the age and ill health of Fr Drust. At this stage, he was 87 years old. All these factors combined to create exceptional circumstances and justified the court in making an order restraining the trial. Accordingly a criminal prosecution never took place.

Counselling

15.33 The diocese paid for counselling for Ula. In December 2003, the counsellor advised Monsignor O'Callaghan that counselling would continue for the foreseeable future. The counselling fees were paid using the local charitable trust (see Chapter 7).

15.34 The counselling services went on until August 2005 when Monsignor O'Callaghan wrote to the counsellor as follows:

"We do have in place a pastoral policy to assist through therapy people who claim to be victims of child sex abuse. The assistance is provided without prejudice and is funded from voluntary sources out of Christian goodwill."

⁹⁰ High Court [2005 No. 13 JR]; judgment of Ms Justice Dunne, 21 March 2006.

⁹¹ *P.T. v the DPP*; S.C. No: 129/2006; judgment of Ms Justice Denham.

⁹² See Chapter 5 of this Commission's *Report into the Catholic Archdiocese of Dublin* for a description of the development of the law in relation to the effect of delay in child sexual abuse cases.

The assistance provided to [Ula] has now continued over two years with increasing drawings on the limited resources of the fund. This has amounted to the most onerous demand on the fund. I appreciate your valued work but the fund is unable to continue to finance the assistance. I am sure that [the complainant] will appreciate the situation.”

15.35 Ula first heard of this decision when the therapist showed her the letter. She wrote to Monsignor O’Callaghan in October 2005 asking why there had been no correspondence with her, why Dean Goold had not been informed and why was there no withdrawal period to allow her to put other solutions in place. Monsignor O’Callaghan wrote back immediately stating that he had always corresponded with the counsellor and that she would have been in the best position to communicate with Ula. He stated that he had considered acting through Dean Goold but felt that the counsellor was the better alternative. In hindsight, he agreed that phasing out would have served Ula better.

15.36 There was, however, no offer to continue counselling. Monsignor O’Callaghan told the Commission that he regrets the upset that he caused Ula regarding the manner in which her counselling was handled. Following the publication of the Elliott report (see Chapter 6), Ula was referred to Mentor Associates in 2009 as part of the diocese’s efforts to assist victims and it was only during those sessions that the full extent of the alleged abuse became evident.

Civil proceedings

15.37 Ula instituted civil proceedings against Fr Drust and Bishop Magee in 2003. The proceedings were fully fought both by Fr Drust and the diocese and a full defence was filed.

15.38 Shortly before the case was due to be heard, a settlement was reached in January 2007. Fr Drust personally contributed some of the money involved and paid further instalments later. In total he paid just over half of the settlement amount.

Advisory committee

15.39 Although the advisory committee (known as the inter-diocesan case management advisory committee) was reconstituted in 2005 and met on a number of occasions over the next three years while Fr Drust's judicial review was proceeding, the case was never referred to the committee. Monsignor O'Callaghan told the Commission that the committee was briefed on the case when it received a briefing on all cases in July 2005. However, the chairman of the committee at the time, Fr Garrett, told the Commission that he had never heard of this case. Fr Garrett was present at the July 2005 meeting. While the committee may have been briefed in July 2005, it never actually discussed the case and it was not kept informed of developments. The Commission finds it extraordinary that the only case of alleged clerical child sexual abuse in the diocese in which the DPP directed a prosecution was not known at all to the inter-diocesan case management committee.

HSE involvement

15.40 Monsignor O'Callaghan met the HSE in September 2008. This was the first time the HSE became aware of this case. According to Monsignor O'Callaghan's report of the meeting, four cases were discussed including that of Fr Drust. The report records that Fr Drust was living in his parish residence and that Monsignor O'Callaghan kept in touch with him. "*He is effectively confined to his home where his housekeeper also resides.*" The note goes on to record that the practice of the Catholic Church in removing priests from ministry would be challenged as discriminatory where the DPP did not direct a prosecution. "*Our practice of permanent removal is contrasted with the practice of other professionals – even with HSE employees.*" There is no evidence that the HSE agreed or disagreed with this assessment. The HSE child care manager, Mr Mike van Aswegen, told the Commission that the diocese often commented to him that the practice of the Church was more rigorous and effective than that of many other bodies, including the HSE. He said that he had made a decision not to respond to such statements as it was the practice of the diocese that was under scrutiny and not that of other agencies.

15.41 The HSE record of this complaint notes that the complaint was referred to the Gardaí and "*no prosecution ensued*". This suggests that the HSE was not aware that a prosecution had been directed and initiated but was subsequently prohibited. The HSE has confirmed to the Commission

that it was told by Monsignor O'Callaghan that the DPP did not prosecute in any of the cases.

15.42 Later that month, in reply to a question from Mr Ian Elliott about the supervision of Fr Drust, Monsignor O'Callaghan said that Fr Drust's parish priest "*a very dedicated man, keeps in constant contact with him*". As stated above, the parish priest had been told, in September 2002, that Fr Drust was being removed from ministry. However, he had not been told what the allegation against Fr Drust was and he had not been asked to supervise or monitor him.

15.43 The HSE *Report on allegations of child sexual abuse in the Diocese of Cloyne and complaints that the investigation of these complaints by the diocese was inadequate* (dated 28 November 2008 – see Chapter 6) notes that the DPP had chosen not to prosecute Fr Drust. This is what Monsignor O'Callaghan had told the HSE and is, of course, not correct. It also notes that Fr Drust was under Monsignor O'Callaghan's supervision.

2009

15.44 In February 2009, after Fr Drust had been interviewed by Mentor as part of the risk assessment process (see Chapter 4), the HSE wrote to Monsignor O'Callaghan expressing its disquiet about the fact that music lessons were still taking place in Fr Drust's house. This letter immediately produced a flurry of activity.

15.45 Bishop Magee wrote to Fr Drust's housekeeper expressing surprise that an activity which he had prohibited seven years previously was still taking place. He recognised that Monsignor O'Callaghan had given permission to continue the music lessons. However, he said that "*I regret that this permission was not approved by me and is not in keeping with the instructions I gave to Fr [Drust]*". This letter does not refer to the fact that Bishop Magee, on learning that music lessons were continuing against his specific direction, allowed the practice to continue. Bishop Magee wrote to Fr Drust requesting that he attend Mentor for counselling. (Mentor does not provide counselling for alleged perpetrators of child sexual abuse; it was conducting a risk assessment of Fr Drust.) Bishop Magee also informed Fr Drust that he had notified the Congregation for the Doctrine of the Faith of the complaint.

15.46 Bishop Magee wrote to a priest of the diocese stating that he had instructed Fr Drust that he was prohibited from wearing clerical dress in public and asking if this priest would be his support person in accordance with the guidelines. The Commission has not found any documentary evidence to show that Fr Drust was prohibited from wearing clerical dress. Bishop Magee told the Commission that he had never heard the issue of clerical dress being mentioned until about 2008. When Fr Bermingham was appointed as delegate, they agreed that all priests who were out of ministry would be issued with a precept instructing them not to wear clerical dress. This instruction was issued in late 2008/early 2009. Bishop Magee also wrote to the parish priest in the parish where Fr Drust continued to live asking him to act as Fr Drust's monitor. This parish priest had been informed of the fact that Fr Drust was being removed from ministry in September 2002. He accepted the monitoring role in early 2009. It is clear, and he has confirmed to the Commission, that he was taking it on for the first time. He told the Commission that he was later informed that Fr Drust should not wear clerical dress. He also said that he had received training for his role as monitor.

15.47 Fr Drust's housekeeper confirmed to Bishop Magee that the music lessons were being moved elsewhere and that no one under the age of 18 would attend for lessons at the house.

Interaction with Rome

15.48 The Congregation for the Doctrine of the Faith was not informed of the allegation until January 2009. The *votum* sent to Rome does not give details of the allegations. It states that there is one allegation, that Fr Drust was removed from ministry and confined to saying mass in his house, that "*insofar as I can ascertain, he has not contravened the restrictions which I placed upon his exercise of ministry*" and no further censure would be appropriate. Fr Drust was 88 at the time.

Commission's assessment

The diocese

15.49 In this case, the diocese did immediately, in 2002, report the complaint to the Gardaí even though Monsignor O'Callaghan made it clear that he did not think this an appropriate practice. In the view of the Gardaí, the diocese

did not then co-operate with the investigation. Bishop Magee considers that he did co-operate with the investigation while “*asserting what he understood to be a privilege in respect of an aspect of his own investigation*”. The Commission considers that Bishop Magee did not fully co-operate with the investigation.

15.50 Fr Drust was formally removed from ministry. However, the public perception was that he was a retired priest rather than a priest who had been removed from ministry. His parish priest was informed of his status but the laity was certainly not informed. No one seems to have been told the circumstances and the public perception was that his life did not change in any significant way. Monsignor O’Callaghan was disingenuous in the way in which he allowed the music lessons to continue. Even if he did not have the bishop’s letter in his hand at the time, he was aware of its contents and, in any event, he should have known that it was inappropriate to have children coming to the house. Bishop Magee’s initial instruction that music lessons not be allowed in the house should have been implemented when he discovered that Monsignor O’Callaghan had allowed them to continue.

15.51 Other procedures required by the *Framework Document* were not implemented. The health board was not informed by the diocese and the case was not discussed by the advisory committee. The diocese continued to state that the DPP decided not to prosecute when, in fact, he did decide to prosecute and initiated the prosecution but the prosecution was prohibited because of exceptional circumstances on the application of Fr Drust.

15.52 Monsignor O’Callaghan’s approach to Ula’s counselling was particularly insensitive and, indeed, reflects very poorly on his professed ‘pastoral’ approach to complainants.

The Gardaí

15.53 The Gardaí investigated the complaint thoroughly. It was unfortunate that various delays occurred but it was understandable given the length of time since the alleged offence had occurred.

Chapter 16 Fr Tarin⁹³

Introduction

16.1 Fr Tarin was born in 1922. He was ordained in 1947. He served in a number of parishes in the Diocese of Cloyne. He retired in 1997 when he reached the age of 75 and he died in 2003.

16.2 The Commission is aware of two complaints of child sexual abuse against Fr Tarin.

First complainant, Maille,⁹⁴ 2002

16.3 In early April 2002, Maille had been attending her parish church when the local priest had urged victims of child abuse to come forward. She contacted her cousin and told her she had been abused. The cousin telephoned a priest and she and Maille visited the local priest that evening.

16.4 According to an account given by this local priest in 2009 for the purposes of the Commission's investigation, Maille told him that she had been abused when she was about six years old, in the early 1950s.

16.5 The priest to whom she reported this did not make a written record of the meeting. He said, in 2009, that he was wrong not to do this. He did, however, do the correct thing in arranging for her to meet Monsignor O'Callaghan.

16.6 Monsignor O'Callaghan met Maille and made a detailed note of her complaint. It is clear that he believed her. She told Monsignor O'Callaghan that Fr Tarin had seriously sexually assaulted her in a church. A friend who had been with her came into the church to search for her. She gave the name of the friend.

16.7 According to Monsignor O'Callaghan's note of the meeting, Maille *"insisted that what she required now was an admission from Fr [Tarin] of the wrong which he had done her so as to bring closure for her on that past which had continued to haunt her. She did not want any reporting to Garda or*

⁹³ This is a pseudonym.

⁹⁴ This is a pseudonym.

SHB". The meeting took place in April 2002 and the note has another note inserted which states that her view on reporting to the civil authorities was confirmed in a telephone call in November 2002. At the April meeting, again according to Monsignor O'Callaghan's note, they agreed that the best approach was that Monsignor O'Callaghan would write to Fr Tarin in the hope that he would express regret which Monsignor O'Callaghan would then convey to Maille. He said he would be happy to provide counselling for her. Maille stated that she would pay for counselling herself.

- 16.8 A few days later, Monsignor O'Callaghan wrote to Fr Tarin as follows:
"I hope that this does not come as too much of a shock to you but it is under control and will have no adverse implications, if we manage it correctly.

A [Maille] of [name of town] has spoken to me about an incident which, she says, occurred around the time of her first Communion at age 8 some 50 years ago. I will not go into the details. She has spoken to few people ever about it – just two I gather. One of those people, then a classmate, was waiting for her outside the church on the alleged occasion.

She had intended to approach you directly but was advised by a priest to come to me.

I found her an admirable person. She does not want to be involved in any formal enquiry. Neither does she want to report to any agency. She was happy to be listened to and having her account taken seriously.

It is important that you and I should meet and put closure to this allegation."

- 16.9 Fr Tarin replied the following day stating that he got a shock. He had been *"thinking about the matter since but I am completely at sea still"*. The letter then goes on to discuss arrangements for meeting Monsignor O'Callaghan. Fr Tarin, who was 80 years old at the time, was in poor physical health but was able to drive and was clearly mentally capable.

16.10 Monsignor O'Callaghan met Fr Tarin in May 2002. An undated note of the meeting records that:

"Fr [Tarin] cannot recall any specific incidence of what is alleged. He does not question the sincerity of the person – and genuinely regrets anything that might have happened to distress her.

His attitude is to take her word even though he cannot remember the specific incident."

16.11 Remarkably, Monsignor O'Callaghan did not ask if there were other similar incidents.

16.12 On the same day, Monsignor O'Callaghan wrote to the complainant. The letter states:

"In simple terms his attitude is that he takes your word even though he cannot now remember the specific incident. He does not question your sincerity and asks that I convey to you his regrets for anything that he might have done which has occasioned you distress over the years. He would welcome a meeting with you if he thought that this would be of benefit."

16.13 Monsignor O'Callaghan concluded the letter by asking Maille to get in touch with him if she wished to have a meeting with Fr Tarin.

16.14 Monsignor O'Callaghan wrote to Maille again at the end of May 2002. This letter states:

"At our meeting on 20 April last my memo records that you did not want the incidents complained of to be reported to the Garda or Director of Community Care (S.H. Board). I accepted that at the time but now ask whether I should do so in accordance with the 1996 protocol – of which I enclose a copy. I would be glad to have your views on that. It is current practice."

16.15 There is no record of any written reply to either of these letters. The only other recorded contact with this complainant is the note to which

reference is made above – that she confirmed in November 2002 that she did not want any reporting.

16.16 Fr Tarin died in February 2003.

Second complainant, Michael,⁹⁵ January 2009

16.17 In January 2009, Michael wrote to Fr William Bermingham, who had taken over as diocesan delegate from Monsignor O’Callaghan, alleging that he had been abused by Fr Tarin in the 1960s. He did not give any details of the abuse. Fr Bermingham wrote to him offering to meet him and offering counselling and pastoral support. Fr Bermingham reported the case to the Gardaí and he confirmed that Fr Tarin had been in the relevant parish at the relevant time. He also reported Maille’s case as this had not been reported to the Gardaí at the time. He wrote to Maille and explained to her that he was doing this. The Gardaí did not carry out any investigation as Fr Tarin was dead.

16.18 Michael rejected Fr Bermingham’s offer of support. His letter seems to the Commission to neatly encapsulate the views of many of the complainants:

“In the light of the continuing duplicity of your organisation in its dealings with cases like mine, I prefer to make my own way without your help and find support that I can fully rely on and trust. In the overall context of the behaviour of the church, the support offered in situations such as mine smacks of damage limitation rather than a genuine wish to help unreservedly.

It would however be reassuring to see you actively seeking out other unreported victims of my and other known abusers as I’m sure there are many victims who are still in great need of help and support. Having experienced the difficulty of coming to terms with abuse and knowing that abusers are almost by nature repeat offenders, I’m sure that there are many victims who still need help. This would, to me, be a meaningful response but I can see that, from your point of view, it

⁹⁵ This is a pseudonym.

would be opening the floodgates and it looks like this is not the desired result.”

Commission’s assessment

16.19 This case typifies Monsignor O’Callaghan’s attitude to the reporting of child sexual abuse. He did not follow the Church guidelines which are quite clear on the duty to report to the Gardaí and the health authorities. Though he had evidence of a vicious sexual assault, he decided, in view of the fact that Maille, as was common, merely wanted an apology and did not want to take the matter further, to try and bury the matter. Even though Fr Tarin was 80 years old at the time and may not have been a threat to children, it was still important to report the matter because, if this man had committed an assault of this type, then it was highly likely that he had committed other assaults of this type during his priesthood.

16.20 Fr Tarin was dead when the Gardaí were informed so there was nothing further they could do. There was no health board/HSE involvement in the matter.

Chapter 17 Fr Kael⁹⁶

Introduction

17.1 Fr Kael is a member of a religious order. He was born in 1931 and ordained in 1959. He was based in the Diocese of Cloyne for most of the 1960s, 1970s and 1980s. He now lives outside the Diocese of Cloyne in a house belonging to the religious order.

17.2 The Commission is aware of one allegation of child sexual abuse against Fr Kael. There is also an allegation that he had engaged in a sexual relationship with a nun and this relationship involved solicitation in the confessional. He admitted that this allegation was true.

Complaint, 2002

17.3 In April 2002, the complainant, Airell,⁹⁷ alleged that she had been abused by Fr Kael in August 1966 when she was 11 years old. She wrote initially to Fr Kael.

17.4 Airell said that Fr Kael, who became friendly with her parents while he was doing supply work in their parish, visited her at a school she was attending. During the visit, an incident occurred which caused her to run away in terror. She wrote to Fr Kael asking him to acknowledge the incident, tell her if anything else occurred on that day, and seeking an apology. Fr Kael contacted another member of the order who had been a counsellor to Airell. Fr Kael told this priest that he had no recollection of the incident. This priest met Airell and asked her to write to the provincial of the order detailing the complaint.

17.5 The allegation about improper conduct with a nun in the confessional had been made in November 2001. Fr Kael was undergoing therapy and counselling in respect of this when the allegation of child sexual abuse was made. Fr Kael showed the complainant's letter to the therapy centre. The centre wrote to the head of the order. It wanted to bring the recommended reporting policy of the Irish Bishops' Conference and CORI (the *Framework*

⁹⁶ This is a pseudonym.

⁹⁷ This is a pseudonym.

Document) to the attention of the provincial as Fr Kael had not been clear on the situation with regard to the letter.

17.6 The therapy centre discontinued the treatment once the allegation of child sexual abuse became known. It does not deal with child sexual abuse cases.

17.7 In May 2002, Airell wrote to the head of the order. He replied and said that the order's delegate would contact her. The delegate did contact her in June 2002 and explained the first steps in the process. The delegate met Airell and her husband in July 2002. The slight delay was due to Airell going on holidays. The order facilitated the meeting in every possible way. The head of the order wrote to Airell explaining who would be dealing with the various issues.

17.8 At the meeting, Airell explained what she remembered of the incident. It included Fr Kael trying to kiss her but there was a blank after that. She remembered running away from him. She had told her mother about the incident in 1971 and her mother was relieved that she had run away from him. She had spoken about him with her peers in 1974 and she remembered him being described by others as frequenting the pub, drinking, playing cards, and womanising. She went on to describe the problems she had in later life including a serious problem with intimacy.

Delegate interview with Fr Kael

17.9 Shortly after meeting Airell, the delegate met Fr Kael. He explained that he knew Airell and her family through doing supply work in the parish. He said he could not recall the incident alleged by Airell so he was also unable to confirm if anything else occurred on the day in question. He said that he could not apologise for something that he could not recall. He also said that he had only been to the school in question once and that was for a specific purpose. He made a written statement recording his response to the allegations. Airell was told of Fr Kael's response and that her case had been brought to the order's advisory committee. The advisory committee took the view that it might be possible to get more information to fill out the picture.

Restrictions on ministry

17.10 In response to the allegation of improper conduct in the confessional, the head of the order placed restrictions on Fr Kael's ministry in July 2002. He was ordered not to hear confession except for members of the order, and not to say mass in public. He was required to seek the permission of his superior before visiting any family. The provincial wrote to the bishop in whose area Fr Kael was then living to tell him that an allegation of improper conduct in the confessional had been made against Fr Kael. The provincial informed the bishop that he did not consider Fr Kael suitable to hear confessions and was withdrawing any faculty to hear confession according to canon law.

Order's advisory committee

17.11 The head of the order met Fr Kael and told him about the meeting of the order's advisory committee. The head explained that, during the meeting of the advisory committee, he had been asked if any other complaints had been made against Fr Kael and this had led him to reveal the allegation of sexual abuse in the confessional which was made in November 2001. The advice of the order's advisory committee was based on its knowledge of both allegations. The committee advised that:

- Fr Kael should be withdrawn from public ministry;
- The child sexual abuse allegation should be reported to the Gardaí and the health board;
- Separate support people should be appointed for Airell and Fr Kael (one member of the order was providing support for both; this was not organised by the order);
- Fr Kael should be assessed and treated by the Granada Institute;
- The provincial should contact previous provincials and local superiors to ascertain if there were other allegations against Fr Kael;
- Fr Kael should require the permission of his local superior to leave the house where he lived.

17.12 The head of the order's note of the meeting records that Fr Kael was "*gutted*" and thought that the order's advisory committee was being very harsh.

17.13 In late August 2002, the head of the order notified the Gardaí and the health board in the area where Fr Kael was then living about the allegation of child sexual abuse.

Referral to Granada

17.14 In August 2002, Fr Kael was referred to the Granada Institute. The delegate wrote the referral letter. This described the allegations and asked for a comprehensive assessment in view of both allegations, a particular assessment regarding minors, identification of an appropriate treatment plan and long term risk assessment regarding the practice of ministerial duties.

17.15 Meanwhile, Airell and the order were making further inquiries. The provincial contacted all living provincials and superiors responsible for Fr Kael since he was ordained in 1959 and none reported any allegations against him.

17.16 Airell made inquiries from the school; most of the relevant people were dead. She asked the order for the names and qualifications of the order's advisory committee. In November 2002, the provincial wrote to her. He provided her with information about the order's advisory committee, confirmed to her that hers was the only child sexual abuse complaint against Fr Kael and that Fr Kael had denied the allegation. He explained that the order's advisory committee was there to advise; he had to make the decisions. He assured her that her complaint was being viewed with the utmost seriousness but pointed out that information could not be gathered to corroborate her allegation. He said it was not open to him to meet her financial request.

17.17 It is not clear to the Commission that Airell had made any specific financial request. The costs of her counselling and medical treatments had been mentioned at her meeting with the delegate in July 2002. In late 2002 and early 2003, the provincial was speaking to the investigating garda who suggested that a payment towards the counselling and medical costs might be acceptable to Airell. The garda told the Commission that he had been asked by Airell to bring this to the attention of the order. The provincial indicated that this might be seen as an admission of guilt and that more money could then be asked for later.

Granada report

17.18 In April 2003, the Granada Institute issued its report. Part of this report concerns the sexual relationship with the nun which Fr Kael had admitted.

17.19 The report states that Fr Kael had consistently denied any memory of the incident alleged by Airell. It records that no evidence of previous allegations was uncovered by the Church's investigation which contacted all of Fr Kael's previous superiors and the education establishments with which he was involved. Taking all this into account, the report found that Fr Kael had no difficulty maintaining appropriate boundaries in his interactions with children. Granada recommended a return to limited ministry should the DPP indicate that no prosecution was warranted. However, he should not minister to vulnerable people (on account of his relationship with the nun). The provincial, on behalf of the order's advisory committee, looked for clarification of the recommendation that Fr Kael should not minister to vulnerable people. The committee wanted to know if this meant all vulnerable people or just vulnerable women. Granada clarified that Fr Kael should not minister on a one-to-one basis to people made vulnerable through acute psychiatric disorder, intellectual disability or similar condition. He would be unsuited to hospital chaplaincy or any position where he would be responsible for people with acute needs.

17.20 In June 2003, the DPP decided not to prosecute. The Gardaí had not recommended prosecution because of the "*minor nature of the incident, the delay in reporting same and the lack of corroborative evidence*".

17.21 In September 2003, the delegate updated the order's advisory committee on developments. It was noted that there had been no response from Airell to the provincial's last letter – the letter of November 2002. The committee considered that a renewal of contact was not justified. The committee remained concerned about the violation of the confessional.

17.22 The provincial then informed the local bishop that the allegation against Fr Kael had been fully dealt with and there was no longer any reason to withhold faculties from him. He asked that the bishop restore his faculties to hear confession. A mentor was appointed for Fr Kael and the provincial

told him that he was free to participate in all ministry except hearing the confession of nuns.

17.23 The provincial updated the health board on the outcome of the order's investigation and the findings of the Granada report.

Commission assessment

17.24 The handling of this case stands in sharp contrast to almost all the other cases described in this report. The order, unlike the Diocese of Cloyne in most of the other cases, dealt properly with this complaint. It followed the procedures correctly. It was sensitive to the complainant. A proper investigation was conducted by the head of the order. The order's advisory committee was properly and fully informed. The head of the order correctly recognised that he had to make the decisions. As is often the case with child sexual abuse complaints, where there is a credible complaint and a credible denial, there is, unfortunately, no resolution.

17.25 The Gardaí dealt appropriately with the case.

Chapter 18 Fr Baird⁹⁸

Introduction

18.1 Fr Baird was born in 1960 and died in 2004 following a serious illness. He was a teacher at a diocesan college for a number of years before taking up parish work.

18.2 In 1997 a fellow teacher made an anonymous complaint to Bishop Magee about Fr Baird's behaviour. The fellow teacher complained that he was far too close to the students and had a habit of socialising and drinking with them until the early hours of the morning. He particularised a number of nights on which these drinking sessions took place which usually coincided with graduations or sporting triumphs.

18.3 The letter stated that, on leaving certificate graduation night, Fr Baird had a crate of beer and some spirits in his room in the college and invited several young men (some under and some over 18 years of age) with their female companions, some as young as 16, to his room where they stayed drinking until 4am. Two other incidents of drinking were also cited. The teacher who made these complaints to Bishop Magee did not reveal his own identity. There was no allegation in his complaint of any sexual impropriety on the part of Fr Baird. Bishop Magee told the Commission that he immediately removed Fr Baird from the school and appointed him to a parish. Bishop Magee said he told Fr Baird that, in view of the seriousness of the matter and the involvement of alcohol, he could not have him continue in a secondary school, especially a boarding school.

18.4 There is one complaint of child sexual abuse against Fr Baird.

Complaint of child sexual abuse, 2002

18.5 In August 2002, a complaint of child sexual abuse was made to the principal of the diocesan college through a firm of solicitors. A psychological report on the complainant, Peter,⁹⁹ was also included. The solicitor told the principal that the local Garda Superintendent had been informed by him of the complaint but that Peter himself had not made a statement to the Gardaí.

⁹⁸ This is a pseudonym.

⁹⁹ This is a pseudonym.

18.6 Peter was a young man who claimed that in the early 1990s, when he was a student in the college and aged 14/15, Fr Baird had sexually abused him. Peter claimed that this abuse took place in Fr Baird's room and that a record of the Pet Shop Boys was playing on the stereo. He alleged that the abuse took place on a number of occasions. He claimed that Fr Baird told him he did not want anything bad to happen to him and advised him to keep his mouth shut for his own sake so that he would not upset his parents.

Handling the complaint

18.7 The principal of the college gave the complaint and associated documentation to Monsignor O'Callaghan who immediately met Fr Baird and showed him the details. Fr Baird, according to Monsignor O'Callaghan's record of the meeting, "*absolutely rejected the allegations and denied that anything of a sexual nature had ever taken place with this student or with any other student*". He stated he had a clear memory of Peter and was of the view that, from the start, Peter had had a personality problem. He said that he had been concerned to build up Peter's self esteem and to protect him from the jibes of his fellow students who were apparently harassing him. He told Monsignor O'Callaghan that he had arranged to have Peter removed from the area where he was being bullied into another room, sharing with a boy who was of a better disposition. He also said that Peter, as a young student, had issues relating to self harm.

18.8 Fr Baird did admit that he frequently had the stereo on in his room and that he had had the Pet Shop Boys record in his possession.

18.9 As Peter had a solicitor, it was recommended to Fr Baird that he also should have a solicitor. A support person was also recommended. In September 2002, Monsignor O'Callaghan met the diocesan solicitor who was handling the civil case on behalf of the diocese. The solicitor wrote to Peter's solicitor proposing a meeting with his client and offering help with therapy. There was no reply to this letter.

18.10 Bishop Magee, on hearing of this complaint in 2002, passed on the 1997 anonymous letter from the teacher in the college to Monsignor

O'Callaghan. At the request of Monsignor O'Callaghan, the bishop also initiated a canon law investigation under canon 1717:

"I, John Magee, Bishop of the Diocese of Cloyne, hereby appoint you, Monsignor Denis O'Callaghan, Vicar General, as my Delegate to conduct the initial investigation as procurator into the allegation of child sexual abuse against Father [Baird], in accordance with the terms of c.1717 of the Code of Canon Law. This appointment is in keeping with my original appointment of you as my Delegate for all matters dealing with allegations of child sexual abuse by the Priests of the Diocese of Cloyne.

The information made available to you is solely for the purposes of any further canonical process which may ensue upon this allegation, and must be made to you and be treated with the strictest confidence. The information obtained will be retained only in the Secret Archives of this Curia, in accordance with c.1719 of the Code of Canon Law."

The investigation

18.11 Monsignor O'Callaghan interviewed the priest who had been president of the college while Peter was a student there. According to Monsignor O'Callaghan's note of the meeting, the former president remembered Peter well. He said that Peter had been in the college for one year; he had not settled in and had been sick for a good deal of the time. He was very disturbed by the end of the year. The former president opined that, if there had been the alleged abuse, then that could have accounted for Peter's disturbed state. The former president confirmed to Monsignor O'Callaghan that he could accept the picture set out in the anonymous letter that had been forwarded to Bishop Magee in 1997. He also stated, according to Monsignor O'Callaghan, that if "*Father [Baird] was to pick a student to bring him into trouble [Peter] qualified - if a student aimed to target a priest Fr [Baird] was readymade. His style of life and appearance compromised him - even though he was a superb teacher and always ready to help in response to any request*". The former president gave Monsignor O'Callaghan the names of fellow students who might be able to assist in the investigation.

18.12 The former president's recollection of his meeting with Monsignor O'Callaghan does not fully accord with Monsignor O'Callaghan's note of the

meeting. The former president told the Commission that he is certain that Peter had been a student in the college for two years and that he could not have told Monsignor O'Callaghan that he was there for one year. He also told the Commission that he had told Monsignor O'Callaghan that Peter had been very disturbed during the second year.

Meeting with Bishop Magee

18.13 Bishop Magee tried to meet Fr Baird but he was initially unwilling to meet the bishop alone. Nevertheless, a meeting was arranged in October 2002. At this meeting Bishop Magee told Fr Baird that he had to follow the protocol for dealing with child sexual abuse complaints as outlined in the *Framework Document* and, in that context, he was required to remove him from his present ministry. Fr Baird agreed to this but asked that it be postponed until some activities which he had started in the parish could be completed. He and the bishop agreed that his removal from ministry would take effect from 4 November 2002 and was subject to him avoiding contact with young people. If he were unavoidably in the presence of young people, then he was required to ensure that there was also another adult present.

18.14 At this meeting, Fr Baird told Bishop Magee that the allegations were completely false and he said that he was consulting his solicitor about lodging a counter claim for defamation.

Church notification to Gardaí

18.15 In late October 2002, Monsignor O'Callaghan, in his capacity as delegate, formally notified the Gardaí of the complaint. He gave the Gardaí the names of both the complainant and the priest. He did not inform the health authorities.

Withdrawal of faculties

18.16 On 1 November 2002, Bishop Magee wrote to Fr Baird informing him that he would be on administrative leave from 4 November 2002 and acknowledging the fact that he would be pursuing further studies. The letter also confirmed that the bishop was withdrawing his faculties to minister as a priest in the diocese and that he was entitled to arrange to celebrate mass in the privacy of his residence. He was also told to keep in contact with Monsignor O'Callaghan and was assured that everything possible would be

done to assist him. He was required to move from his accommodation and was informed that his parish priest would be told of the reason for his removal.

Civil legal action

18.17 The diocese sent a further letter to Peter's solicitor seeking to meet Peter but there was no response. Peter told the Commission that he had no intention of engaging with the Church after what had happened to him. In February 2003, a letter from Peter's solicitor was forwarded to the diocesan solicitors indicating that proceedings were about to be drafted.

18.18 In December 2002, the Gardaí had written to Peter inviting him to make contact with them so that their procedures could be outlined in case he wished to make a complaint. Peter never made a formal complaint to the Gardaí but, in February 2003, his solicitor sent in a statement which Peter had compiled. The Gardaí were never able to progress their investigation because no formal complaint had been made to them by Peter. Peter told the Commission that he did not participate in the criminal process because of concerns that it would be detrimental to his well-being.

Continuing investigations

18.19 In the meantime, Monsignor O'Callaghan was conducting his own investigations. He interviewed the matron of the college who described Fr Baird as childish and indiscreet and confirmed that he had had students in and out of his room constantly and that she was concerned about the drink situation. She also recalled that Peter was in the sick bay quite a lot and she confirmed that there was evidence that he may have engaged in an incident of self harm. She stated that he had never made an allegation of sexual abuse to her.

18.20 A formal statement of claim on Peter's behalf was delivered by his solicitor to the relevant parties in June 2003. Both the bishop and the president of the college were named as defendants in the proceedings together with Fr Baird. The allegations were denied by both the diocese and the college.

18.21 In November 2003, Fr Baird was taken ill and was admitted to hospital for tests. Monsignor O'Callaghan gave him the name of a canon lawyer. Fr Baird wrote to Monsignor O'Callaghan expressing sadness at the lack of progress in the matter and inquiring whether there had been a court date set for the civil action and whether he had heard anything from the Gardaí. He expressed the view *"there surely has to be a better way than this to deal with accusations against people"*.

18.22 Over the next few months letters and medical reports were exchanged between the solicitors on both sides but nothing was resolved in regard to the civil proceedings.

Canon law process

18.23 Despite the existence of the September 2002 instruction to carry out a canon law investigation, nothing more of significance occurred until July 2004 when Bishop Magee wrote to Monsignor O'Callaghan:

"In regard to the present canonical situation of the Rev [Baird], a priest of the Diocese of Cloyne, who is presently on 'administrative leave' and given the gravity of his present medical condition, I wish now to proceed formally with the establishment of a preliminary investigation of his case. This should be done in accordance with cc.1717-1719 of the Code of Canon Law and should be done expeditiously."

18.24 The Commission considered this odd because, as outlined above, a similar investigation was directed by Bishop Magee almost two years previously. It appeared that this latest initiative came about as a result of the intervention of a canon lawyer, who had been appointed advocate for Fr Baird. In a letter to Bishop Magee in June 2004 the advocate stated:

"I was under the mistaken impression that a preliminary investigation had already been initiated. Msgr Denis O'Callaghan, the Diocesan Delegate for Cloyne, has just been in contact with me to say that this is not yet the case and that I might write to you, as Fr [Baird's] advocate, to offer some guidelines about how to proceed."

18.25 The letter goes on to say:

"After speaking to Fr [Baird] and Msgr.O'Callaghan, I contacted Msgr. Charles Scicluna, Promoter of Justice at the Congregation for the

Doctrine of the Faith to explain to him the situation. He advised me to ask you to initiate a preliminary investigation following cc. 1717-1719, and to apply c. 1726 ex analogia, that is, if at any stage of the investigation it becomes quiet (sic) evident that the offence has not been committed by the accused, the judge, in this case the Bishop, must declare this and reinstate the falsely accused priest. An investigation will help you in assessing the veracity of the allegation and determine what course of action you must take.”

18.26 As part of this more recently instigated preliminary investigation, Monsignor O’Callaghan wrote to Peter asking him to meet him. He had a reply from Peter’s parents saying that he was abroad and they asked “*when will this gratuitous and drip fed persecution of our son end?*”.

18.27 Monsignor O’Callaghan also contacted a fellow pupil, who was described as a close acquaintance, if not exactly a friend, of Peter’s.

18.28 This acquaintance claimed, according to Monsignor O’Callaghan’s note, that there was a lot of bullying in the college and that it was not a congenial place. The staff members were authoritarian and oppressive. He did not like Fr Baird but he said he had never heard any mention of sexual abuse in regard to him while he was at the college.

18.29 Monsignor O’Callaghan also contacted a priest of the diocese who knew Peter’s family but not Peter himself. The priest said that they were a very reserved and private family. They were regular mass goers. The mother had spoken to him once about how Peter had lost his way in life and dropped out of college and had become quite difficult. She had told him that Peter had been abused by a teacher in his school.

18.30 This priest told the Commission that Peter’s mother had spoken to him a considerable time prior to 2004 but he could not recall the exact date. He said that the mother had not mentioned that the teacher was a priest and that he himself had never met Peter. He said he did not know that Peter had attended the college in question; he thought he had attended a different school. He told the Commission that, from his knowledge of Peter’s parents, Peter “*came from a very supportive family*” and that “*his family were*

financially secure and therefore the complaint made against the priest should not be seen as an attempt at financial gain but rather as genuinely seeking justice in relation to a wrong that had happened to their son”.

18.31 Peter himself never engaged with the canon law investigation. He told the Commission that this was because of his distrust of the Church.

Revocation of administrative leave decision

18.32 In August 2004, Bishop Magee wrote to Fr Baird as follows:

“On the 1st November 2002 last I wrote you a letter informing you I was putting you on ‘administrative leave’ following on serious allegations made against you.

Now, almost two years later, given the unacceptable delay in proceeding with the case and taking into consideration your present health condition, I am herewith revoking that decision communicated to you on the 1st November 2002.

Trusting that this may enable you to fight the battle to get well again and wishing you every blessing in the Lord...”.

Death of Fr Baird

18.33 Fr Baird died later in August 2004. The canon law process was halted. No formal complaint had been received by the Gardaí from Peter and, as the alleged perpetrator was now dead, there could be no prosecution. They did not, therefore, investigate the matter any further.

18.34 The civil claim continued against the bishop, the estate of Fr Baird and the college. The proceedings were finally resolved in 2009. The actual details of the settlement remain confidential. Peter told the Commission that, from his point of view, the settlement was extremely important as it gave him closure. In a text message to his mother he said: *“It’ll go a long way for closure for all of us. And we can put this whole unpleasantness to bed”.*

Commission’s assessment

18.35 This was a very difficult case for all concerned. There was a credible allegation of child sexual abuse from a former student which Fr Baird

vehemently denied. Peter did not make a complaint to the Gardaí and he did not agree to be interviewed as part of the canon law process so it was difficult to get any resolution. The diocese investigated the complaint as well as it could although the Commission found it somewhat perplexing that a canon law process was started in September 2002 and, without it concluding, another started in July 2004. The Commission found it strange that Monsignor O'Callaghan, who had been appointed delegate to conduct the 2002 investigation and who took a number of steps in that regard, told Fr Baird's canon lawyer in 2004 that no such process had commenced.

18.36 The complaint was properly reported to the Gardaí by the diocese and Fr Baird was placed on administrative leave.

18.37 The canon law process was somewhat unusual. Fr Baird had died before it could be resolved. The only proceedings left were the civil proceedings and they had to be resolved in the absence of the alleged abuser.

18.38 When it became obvious to Bishop Magee that Fr Baird was dying, he restored his priestly faculties to him. This, in the Commission's view, was a humane decision particularly in view of the fact that Fr Baird could not then have been a threat to children.

18.39 The case was not reported to the HSE by the diocese until 2008. As Fr Baird was dead, there was no child protection issue at this stage so they had no involvement. The Gardaí did not receive a formal complaint so they could not report to the health authorities.

Chapter 19 Unknown priest

Introduction

19.1 In January 2003, a resident of a nursing home in the Diocese of Cloyne, Paul,¹⁰⁰ wrote to Cardinal Desmond Connell, Archbishop of Dublin to say that he had been abused by a priest in the Diocese of Cloyne when he was a young boy. Paul gave little detail but did say that the abuse occurred in the priest's house after confession. He also said that he "*had to go to confession because I would get 4 slaps if I didn't*". He said he could provide more details. Paul had had a stroke and explained that he had to write the letter with his left hand.

Investigation

19.2 Cardinal Connell wrote to Paul and told him that he had forwarded the letter to Bishop Magee. Bishop Magee asked Monsignor O'Callaghan to "*make preliminary contacts and investigation*". Monsignor O'Callaghan subsequently reported to Bishop Magee that he had visited Paul in the nursing home and "*I hope, put his mind at ease*". He said that the media debate about child sexual abuse had brought back memories to Paul of "*his experiences of long past which he had buried over the years*". Monsignor O'Callaghan said he intended to keep in contact with Paul.

19.3 Monsignor O'Callaghan told the Commission that he asked Paul for the name of the priest but Paul was unable to tell him. He said that Paul wanted to get the matter off his mind and Monsignor O'Callaghan did not want to distress him. Paul has since died.

Commission's assessment

19.4 The Commission considers that Monsignor O'Callaghan should have made a greater effort to find the name of the priest or at least the parish in which the alleged abuse occurred. Paul had gone to considerable trouble to contact the Church. Cardinal Connell had properly referred his letter to the Diocese of Cloyne. The diocesan authorities ought to have gone to some trouble to find out more about his complaint.

¹⁰⁰ This is a pseudonym.

Chapter 20 Fr Rion¹⁰¹

Introduction

20.1 Fr Rion was born in Ireland in 1908 and ordained in 1933 for the Archdiocese of Brisbane. He retired to live in the Diocese of Cloyne in about 1971 apparently on the grounds of ill health. At the request of the then Archbishop of Brisbane, he was granted permission by the then Bishop of Cloyne, Bishop John Ahern, in 1975 to say mass in his house. He died in 1976.

Complaint, 2005

20.2 There is one known complaint of abuse against Fr Rion in respect of his time in the Diocese of Cloyne. It was made in January 2005 and related to abuse in the 1970s. The complainant, Andrew,¹⁰² was from the Diocese of Cloyne but had emigrated to Australia. An Australian advocacy organisation working on Andrew's behalf initially contacted the Child Protection Office of the Irish Bishops' Conference in Maynooth. The Child Protection Office sent the information to Monsignor O'Callaghan with a covering note saying: "*You might want to inform Bishop Magee as they have his email address*". It also sent the advocacy organisation information on the procedures in place in the Irish dioceses.

20.3 In February 2005, the advocacy organisation wrote to Monsignor O'Callaghan explaining its own role in relation to the case and asking about funding for pastoral care and counselling. It pointed out that the alleged abuser was almost certainly not still alive. At this stage neither Andrew's name nor that of the alleged abuser was known to the diocese. The place where the alleged abuse took place was known. Monsignor O'Callaghan made inquiries about the priests who had served in the parish in question.

Identification of alleged abuser

20.4 In late February 2005, the name of the alleged abuser was revealed to Monsignor O'Callaghan by the advocacy organisation. The circumstances in which the abuse occurred were also revealed. Andrew used to attend Fr Rion's house as an altar boy to serve mass. There was a roster of altar boys

¹⁰¹ This is a pseudonym.

¹⁰² This is a pseudonym.

for this purpose and the arrangements were made by the local school principal. Monsignor O'Callaghan was gradually gathering information about Fr Rion and, as he did, he made it available to the advocacy organisation. He wrote to the advocacy organisation confirming that Fr Rion was dead but that he did not yet know to which diocese he had belonged. He also confirmed that the diocese had not had any other complaints in relation to Fr Rion and that the diocese's pastoral response applied in cases even where the alleged perpetrator was dead. By March 2005, Monsignor O'Callaghan had established Fr Rion's date of birth and death and that he was incardinated in the Archdiocese of Brisbane. He said that Fr Rion retired to Cloyne in 1975 but subsequent information suggests that he retired there in about 1971. He suggested that Andrew contact the Archdiocese of Brisbane.

Identification of complainant

20.5 In May 2005, Andrew provided a statement to Monsignor O'Callaghan. This identified himself and gave details of the alleged abuse. His statement also identified other boys who had been altar servers in Fr Rion's house. He said that he did not remember Fr Rion ever saying mass in the parish church but he did remember him visiting the school. Monsignor O'Callaghan did not make any further inquiries as a result of this information. He did not contact the school principal or any of the other boys named.

20.6 The advocacy organisation contacted the Archdiocese of Brisbane. The advocacy organisation told Monsignor O'Callaghan that Brisbane would not confirm if there had been any complaints made against Fr Rion while he was ministering there. It also told him that the Archdiocese of Brisbane considered that responsibility would be with the Diocese of Cloyne and suggested a series of questions that should be addressed to the Cloyne diocese. These related to Fr Rion's involvement in parish life and in schools and to whether he was engaged in supply work. They were the sort of questions which would establish whether or not he was operating under the aegis of the Diocese of Cloyne when the alleged abuse occurred. Monsignor O'Callaghan replied to these questions and to other questions put by the advocate about the precise arrangements surrounding Fr Rion in the diocese at the time. He said that Fr Rion was not involved in the parish, did not do supply work and had no connection with the schools. He explained that the circumstances in which Fr Rion, whom he assumed was not in good health,

said mass in his own home and had local boys as altar servers were not unusual at the time.

20.7 In July 2005, Andrew visited Ireland. He was accompanied by his advocate. They met Monsignor O'Callaghan and Dean Eámon Goold. Monsignor O'Callaghan had told them that they could not meet Bishop Magee because the bishop was ill. He had also explained to them that “[a]nyway apart from cases where a diocesan priest is involved he has entrusted other situations to me as Delegate and Canon Eamon Goold as contact/support person”. Monsignor O'Callaghan agreed with the parish priest of the parish in which Fr Rion had lived and where the alleged abuse occurred to “leave Diocese in background” and have any gesture towards counselling or therapy channelled through the parish.

20.8 Just before their visit, the advocate wrote asking a number of questions and requesting Monsignor O'Callaghan to contact his equivalent in Brisbane. In his reply, Monsignor O'Callaghan said that he had hoped that the advocate would have received information about Fr Rion's history in Brisbane. He said that he would not have the right to receive such information on request and that he could not compel Brisbane to supply the documentation. In a subsequent letter he advised the advocate to leave the question of liability aside and look for a substantial contribution from Brisbane towards pastoral care. He said that “an approach from our side” through the Australian bishops' child protection office would “likely lead to bureaucratic exchanges that would achieve little or nothing”. It is not clear why he did not simply approach the Archdiocese of Brisbane directly.

20.9 During the visit, Monsignor O'Callaghan accompanied the complainant and the advocate to Fr Rion's grave where they held a healing ceremony.

Counselling costs

20.10 Monsignor O'Callaghan told the Commission that this was the most traumatic case he had dealt with and he recognised that Andrew needed help. It is clear that he had considerable regard for the advocate in the case. Monsignor O'Callaghan agreed to pay €5,000 as an *ex gratia* payment towards Andrew's counselling costs and to provide counselling for his family in Ireland. In his first direct contact with the Archdiocese of Brisbane,

Monsignor O'Callaghan wrote suggesting that it take a similar course of action. In this letter he also stated that the Diocese of Cloyne had concerns that there might be other victims in Cloyne. He did not ask directly about Fr Rion's history in Brisbane but did say that he "*may have had a history before retirement but, in the absence of the principles of good practice currently in place, that would not necessarily have been communicated to Cloyne*".

20.11 Meanwhile the advocate continued to correspond with the Archdiocese of Brisbane. In this correspondence, the advocate was very complimentary of Monsignor O'Callaghan's and Dean Goold's kindness to, and support for, Andrew and his family. The advocate also continued to ask Monsignor O'Callaghan to make further inquiries in the place where the abuse allegedly occurred. She was in touch with members of Andrew's family and they had reported various rumours.

Information from Brisbane

20.12 In early August 2005, the auxiliary bishop of Brisbane replied to Monsignor O'Callaghan. The information in the letter was said to be "*intended for you and your immediate advisors only*".

20.13 The auxiliary bishop made it clear that the Archdiocese of Brisbane did not have confidence in the advocate and the lawyer being used by Andrew. He explained that, in Australia, allegations of sexual abuse against clergy and religious were processed under a nationally accepted procedure entitled *Towards Healing*.¹⁰³

20.14 The bishop said that they had a "*range of options to respond to a complaint, including counselling, therapy and some modest financial assistance to rebuild a life. We are avoiding the American path of large financial payments, which do not seem to assist in any real inner healing*".

20.15 He went on to describe the content of the files on Fr Rion. These showed that Fr Rion had gone on sick leave in 1971. He "*apparently spent some time with a family member in New York before moving to Ireland*".

¹⁰³

This is available at: <http://www.catholic.org.au>. The advocacy organisation had been told in July 2005 that this document did not apply in this case as the alleged abuse had not taken place in Australia.

Reports from medical practitioners based in Cloyne were received in 1971 and 1974. In October 1974 Fr Rion had written to the then Archbishop of Brisbane resigning from his parish. In accepting his resignation the Archbishop had praised his “*priestly example and apostolic zeal*”. In August 1975, Bishop Ahern of Cloyne, on the suggestion of Fr Rion, had written a letter granting permission for him to say mass in his house – a copy of this letter was provided to the Diocese of Cloyne by the auxiliary bishop of Brisbane. In January 1976, the Brisbane diocesan secretary had written to a bank to say that Fr Rion had died on 1 January 1976.

20.16 The auxiliary bishop asked if any investigation had been carried out to verify the facts. He pointed out that Andrew had claimed that the abuse happened in 1976 whereas Fr Rion had died on the first day of that year. In fact, Andrew had said that the abuse occurred in the school year 1975/6.

20.17 The auxiliary bishop considered that Andrew saw the Church in Ireland as having the primary responsibility “[w]hile not wishing to absolve ourselves from some responsibility in the healing of [Andrew]”. He also expressed his view that having altar boys serve mass in a priest’s private house was “*an extraordinary practice, even in bygone days ... It seems to be extending matters beyond reasonable limits for anyone to claim that the Brisbane Archdiocese bears responsibility for outcomes from such a procedure, which would seem to have been organised by the Principal of [Andrew’s] school*”.

20.18 It is notable that the only document provided by Brisbane to Cloyne was the letter from Bishop Ahern and that there is no statement that there were no complaints against Fr Rion. In fact, the Archdiocese of Brisbane was aware of complaints about Fr Rion.

20.19 In his reply to this letter, Monsignor O’Callaghan thanked the auxiliary bishop for a copy of the file and said that it answered a major concern of the advisory committee as to whether or not there were previous complaints in Brisbane. Given the extent of Monsignor O’Callaghan’s experience in 2005, it must have been clear to him that the letter did not address the issue of previous complaints. The Commission asked the Archdiocese of Brisbane if there were any previous complaints. The archdiocese told the Commission

that there was “*no evidence that the Archdiocese knew of any such issues surrounding Fr [Rion] when he returned to Ireland in 1971 or prior to his death*”. However, prior to the complaint in the Diocese of Cloyne, it had received two complaints against Fr Rion. One had been made in 2002 and related to alleged abuse in the period 1937 – 1944 and the other had been made in 2003 and related to alleged abuse in 1950 – 1955. The alleged abuse involved altar boys and was similar to that alleged by Andrew, the complainant in Cloyne. The Archdiocese of Brisbane explained to the Commission that, in writing to the Diocese of Cloyne in 2005, it had not mentioned these two complaints because:

- The Diocese of Cloyne “*never asked*” if there were any other complaints about Fr Rion;
- The complaints related to a period 20 – 30 years prior to the Cloyne complaint;
- The complaints had never been fully investigated; and
- The Diocese of Cloyne had already been fully convinced of the genuine nature of the complaint which it had received.

20.20 The archdiocese said that it did not see how passing on the information about these two complaints would change or improve anything for Andrew.

20.21 There is no record of the advisory committee (then known as the inter-diocesan case management advisory committee) having discussed this case at this time. Monsignor O’Callaghan told the Commission that the committee did discuss the case at this time. He said that the minutes of the June 2006 meeting (see below) note that he “*updated*” the meeting about this case and this proves that it was discussed at a previous meeting.

20.22 Having received what was less than complete information from Brisbane, Monsignor O’Callaghan told Andrew’s advocate: “*I accept now that all the evidence on file shows that in Brisbane no suspicion attached to Fr [Rion]*”. Nevertheless he said that there was a case for an *ex gratia* gesture to be made by Brisbane.

- 20.23 Monsignor O’Callaghan sent €5,000 (about AUD\$8,000) to Andrew. He later described this as having come from the “*discretionary fund*”. The advocate continued to write to Brisbane looking for further help.
- 20.24 In December 2005, the auxiliary bishop of Brisbane wrote to Monsignor O’Callaghan saying that the archdiocese did not intend to get involved in pastoral support for Andrew because that support had been provided by Cloyne. The archdiocese was prepared to match Cloyne’s financial contribution but did not want to negotiate with Andrew and his advocate.
- 20.25 The Archdiocese of Brisbane explained to the advocate that, while it acknowledged that Fr Rion was incardinated in its archdiocese, the pastoral process had been put in place by Cloyne and it should be continued by Cloyne. Among other things, this meant that the Archdiocese of Brisbane did not see any point in meeting Andrew.
- 20.26 In February 2006, Monsignor O’Callaghan wrote to the Archdiocese of Brisbane and suggested that it would pay two or three times the contribution made by Cloyne.
- 20.27 The advocate seems to have suggested bringing Bishop Magee into the negotiations in order to put pressure on Brisbane. Monsignor O’Callaghan said there was no point in doing this. He did not offer any explanation why he thought this.
- 20.28 The advocate prepared extensive submissions to both dioceses setting out the requirements for “*restitution and other assistance*” for Andrew.
- 20.29 After a number of letters from Monsignor O’Callaghan, the auxiliary bishop of Brisbane replied in April 2006 enclosing a letter of apology and a cheque for AUD\$20,000 for Andrew. Monsignor O’Callaghan told the Commission that he considered that the auxiliary bishop “*overwrote his canonist and civil advisors*” to do this. Monsignor O’Callaghan told the auxiliary bishop that he would approach the inter-diocesan case management advisory committee to see if it would support raising Cloyne’s contribution to a similar level. The case was mentioned at the June 2006 meeting of the inter-

diocesan case management advisory committee. The record of the meeting states: “*Msgr. O’Callaghan updated the meeting on the case of a man now in his forties who alleges abuse by a priest who retired to the Cloyne Diocese but was not incardinated in it. Cloyne has provided pastoral support*”. There is nothing to suggest that the issue of financial support was discussed.

20.30 The advocate was not happy with a process in which there was no consultation by the Archdiocese of Brisbane with Andrew and his advocate. Monsignor O’Callaghan tried to convince her that the response from Brisbane was as good as could be expected. In July 2006, he told the advocate that the inter-diocesan case management advisory committee in Cloyne, “*particularly priest members*” supported his view that substantial assistance should be given to Andrew. He said that he would discuss the matter with “*some hand-on members of the Committee*”. There is no documentary evidence of any such discussions. One member of the committee told the Commission that he had no knowledge of the financial arrangements at the time but he did learn of them subsequently. The advocate wrote a detailed letter to the inter-diocesan case management advisory committee in late July 2006. This was sent via Monsignor O’Callaghan. There is no evidence that the other members of the committee ever saw this letter. Monsignor O’Callaghan told the Commission that it is quite likely that he did not bring this letter to the attention of the committee. He said that the “*figure that was ultimately paid to [Andrew] had been discussed at earlier committee meetings*”. There was no meeting of the committee before Monsignor O’Callaghan sent further money.

20.31 Monsignor O’Callaghan sent €10,000 (approximately AUD\$16,000) to Andrew. He said that “*the Good Samaritan Pastoral Care Fund trustees demurred at the amount*”. The Commission does not understand this reference as the money was actually paid from the Mallow parish account and the Commission has not been provided with any information about the Good Samaritan fund. He went on to say that, to meet the reservations of the committee members, he personally contributed €1,000. He also sent a formal letter of apology on behalf of the diocese.

20.32 Monsignor O’Callaghan stayed in touch with Andrew. He told the Commission that Andrew had visited him in 2008, was doing well and has

been reconciled with the Church. Monsignor O'Callaghan described this case and its outcome to the Commission: "...say this was pastoral care, call it restorative, call it therapeutic, call it healing, whatnot, but it's a supreme example and I would keep that if at all possible as my model..."

Bishop Magee's involvement

20.33 Bishop Magee told the Commission that he had no involvement in this case and that he did not find out the details until Monsignor O'Callaghan ceased to be the delegate (in 2008). He described the situation as follows:

"I was aware that Monsignor O'Callaghan said to me a number of times that there was a case which was being dealt with by the Bishop of Brisbane, of a priest incardinated in the Archdiocese of Brisbane who had retired and was living in the Diocese of Cloyne and that there was an allegation against him but he said that doesn't worry you because he said we are dealing with it directly through the office of child protection in the Archdiocese of Brisbane and directly with the bishop involved. So he never sent me any documents or any file with regard to [Fr Rion] and I got the file when Monsignor O'Callaghan passed on the files to Fr Bill Bermingham who became the delegate and designated person. [...] But I was never involved, I was never informed and when I opened the file and read all the correspondence from [the advocate] and the amount of e-mailing that was going back and forward daily, I was astonished. But Monsignor O'Callaghan only told me that there was a case which was being dealt with by him directly with the Bishop of Brisbane and the office of the bishop or the diocese."

20.34 When asked if he was surprised about the amount of money expended in this case, the bishop replied: "Yes, Monsignor O'Callaghan had an arrangement with the [a charitable trust] to help out in these cases ... I was never asked, I never paid, I never signed a cheque of any sort in regard to this case".

20.35 The bishop said the money did not come from diocesan funds. "He paid some of it from funds that he had in the parish in Mallow but I was completely unaware of this case apart from hearing that there was a case which related to the Archdiocese of Brisbane". While the money did not

initially come from diocesan funds, the diocese did subsequently refund the amount involved to the Mallow parish (see Chapter 7).

20.36 The Commission asked the bishop why he did not ask Monsignor O'Callaghan what the case was about. He replied: *"Well, since he told me that it was a complicated case and that it was being dealt with by the office of the Archdiocese of Brisbane and directly with the Auxiliary Bishop of Brisbane, I felt that it was in good hands"*.

Commission's assessment

20.37 Monsignor O'Callaghan was very kind to the complainant in this case – both personally and financially.

20.38 However, none of the procedures was followed. The Gardaí were not informed. The fact that the priest was dead does not mean that reporting should not take place. (The complainant had contacted the Gardaí but did not make a formal complaint.) No attempt was made to establish if there were any other possible complaints. It would have been easy to establish which boys served mass in Fr Rion's house and to make inquiries of the school principal. Monsignor O'Callaghan insists that the case, including the financial arrangements, was discussed by the inter-diocesan case management advisory committee but another member disputes this. Bishop Magee was not told the details and he did not ask for any.

20.39 The Commission is astonished that the Archdiocese of Brisbane did not tell the Diocese of Cloyne or Andrew about the two earlier complaints. It is, however, true that Monsignor O'Callaghan never asked the direct question.

Introduction

21.1 Fr Caden was born in the 1930s. He served in various parishes in the Diocese of Cloyne. He was its vocations director for a lengthy period. It was in this capacity, during a vocations workshop, that Fr Caden abused the complainant, Patrick,¹⁰⁵ for the first time.

Complaint, 2004

21.2 Patrick alleged that he was abused by Fr Caden in the early 1980s. The abuse started when Patrick was 16 or just below that age and was attending a vocations workshop. The alleged abuse initially involved fondling but moved on to penetration and oral sex. Patrick later became a priest of the Diocese of Cloyne. Fr Caden and Patrick remained in contact until around 1999, according to Patrick and until 2004 according to Fr Caden; Fr Caden's view is supported by another priest who knew both men.

21.3 In December 2004, following encouragement from a priest in whom he had confided, Patrick told Bishop Magee that a priest of the diocese had abused him as a young man. Patrick declined to reveal Fr Caden's identity on this occasion. Patrick told the Commission that, on first reporting, there was no discussion about the child protection procedures operated within the diocese. He himself was not aware of the detail of the guidelines which were in place. He told the Commission that there probably were training days for priests in the diocese but he did not want to go. The Commission recognises that the *Framework Document* was sent to all the priests of the diocese (see Chapter 4) and that training was in place (see Chapter 8).

21.4 Privately, in January 2005, Patrick revealed the name of his alleged abuser to a friend who was also a priest in the diocese (not the priest in whom he had first confided). Patrick expressly forbade his friend to tell the bishop the identity of his abuser. Notwithstanding this, his friend raised the matter with the bishop. He was aware that Fr Caden was involved with vulnerable children in his ministry and that he was chairman of a board of management of a school. Furthermore, he considered that Fr Caden should not remain in

¹⁰⁴ This is a pseudonym.

¹⁰⁵ This is a pseudonym.

ministry in the face of what he considered serious allegations. He told the bishop that he was aware of the identity of the priest accused of abusing Patrick. He told the bishop that, even though Patrick had forbidden him to reveal the information, he was concerned that he ought to, and may well be obliged to, reveal this information. He sought the direction of Bishop Magee. The bishop told him that he would revert to him. During a regular meeting in March, the bishop told him that Monsignor O'Callaghan had advised that he had no obligation to reveal the information. Unhappy with this approach, the priest friend tried to contact a child abuse expert. He then contacted the Catholic Church's national child protection office in Maynooth in March 2005. There, he was advised that Monsignor O'Callaghan's advice was incorrect and that he ought to reveal the name of the alleged abuser to the bishop. He went back to Patrick and urged him to reveal the name to the bishop. Patrick was not ready to do this and again forbade his friend to reveal it to the bishop. Patrick considered that it was a matter for him to reveal when he was able to do so. The priest friend told the Commission that he considered the approach taken by Bishop Magee and Monsignor O'Callaghan on this issue was not what he had expected and that the bishop had compromised his role and his authority. Bishop Magee told the Commission that he did not seek further detail from the friend due to his concern that forcing the situation might be prejudicial to Patrick's wellbeing.

Name of alleged abuser revealed, May 2005

21.5 Eventually, in May 2005, the complainant revealed to the diocesan authorities the identity of his alleged abuser when he met Dean Eámon Goold. He also gave Dean Goold a copy of a letter that Fr Caden had sent to him. In this letter Fr Caden stated:

*"You mentioned my dark secret. Yes you are right I have a dark secret that gnaws away inside of me like a cancer, with little or no respite day or night. It colours and controls all my waking hours and decisions. I am slow to plan for the future and I cannot explain why to people. I know I owe you a huge debt of gratitude that I will never be able to repay. You could take away all that I am...
...I only hope and pray that one day you will be able to forgive me and maybe then I will begin to find peace again."*

21.6 Dean Goold immediately informed Monsignor O’Callaghan of Fr Caden’s identity. The diocesan records show that Bishop Magee was notified of the identity of Fr Caden approximately a week later. The delay was due to the fact that the bishop had spent a brief period in hospital at that time.

21.7 In June 2005, Dean Goold wrote to Patrick. He told him that he had seen the bishop before he left Ireland for a pilgrimage to Lourdes and he had also spoken to Monsignor Denis O’Callaghan. Dean Goold, the bishop and Patrick all went on the pilgrimage. Dean Goold said he tried to have a meeting with Patrick about the matter during the pilgrimage but did not succeed.

21.8 Patrick and Monsignor O’Callaghan met on 2 September 2005. According to Monsignor O’Callaghan’s handwritten note of the meeting, Patrick said that he had had a serious sexual relationship with Fr Caden. The note does not record the details of the relationship. According to the same note, Monsignor O’Callaghan told Patrick that he would submit the complaint to the inter-diocesan case management advisory committee which would then advise Bishop Magee *“on further action such as withdrawal from ministry of Fr. [Caden] and report to Garda”*. Again, according to Monsignor O’Callaghan’s note, Patrick said that he wanted closure *“ideally through reconciliation with Fr [Caden]. He was not prepared to meet the Garda”*. In 2008, a document purporting to be a time line of the events in the handling of this case was prepared by the diocese under the direction of Monsignor O’Callaghan. This states that, at the meeting of 2 September between Patrick and Monsignor O’Callaghan, Patrick was advised *“of the need for the matter to be taken properly in hand and action taken in response to his complaint but that the diocese would do its utmost to respect the pace at which he (the complainant) wished to proceed”*. This is not in the contemporaneous handwritten note of the meeting.

21.9 On 8 September, Monsignor O’Callaghan received from Patrick a copy of the letter from Fr Caden to Patrick which mentioned the ‘dark secret’.

Patrick’s meeting with Bishop Magee

21.10 Meanwhile, Patrick met Bishop Magee on 7 September 2005. According to the bishop’s note of this meeting, Patrick indicated that he was

frustrated at not getting an adequate response from the diocese in respect of his complaint. Patrick told the Commission that he was very angry with the bishop for not removing Fr Caden from ministry. According to Bishop Magee's note of the meeting, Patrick also told him that he was dissatisfied with his meeting with Monsignor O'Callaghan. Patrick gave details of the abuse to the bishop; he told him that the abuse had involved masturbation, oral sex and penetration.

Inter-diocesan case management advisory committee meeting

21.11 An extraordinary meeting of the inter-diocesan case management advisory committee was held on 21 September 2005. There is no record of what the committee was told. The outcome of that meeting was recorded in two different contemporaneous documents. A handwritten note was made by Monsignor O'Callaghan. This note recorded that the inter-diocesan case management advisory committee had advised that the bishop meet Fr Caden for the purposes of notifying him of the complaint and of the existence of the letter that he had sent to Patrick. It further recorded that the bishop ought to recommend that *"the most satisfactory solution"* would be that Fr Caden resign from ministry *"given his history of ill-health and the opportunity provided on the occasion of realignment of diocesan personnel"*. If this proposal was not accepted, the note recorded that the canonical procedure under canon 1717 should be put in train with the referral of the matter to the Congregation for the Doctrine of the Faith (CDF) in which case Fr Caden would also be asked to withdraw from ministry. Patrick was to be asked for a signed statement and for an indication as to whether or not he was prepared to co-operate with a garda inquiry. The note further recorded that the inter-diocesan case management advisory committee did not consider that an allegation by Patrick of delay on the part of the bishop in acting on the matter was well founded and that any delay in proceeding with the matter was due to Patrick. The note recorded in this respect: *"it would not be advisable to allow a wrong impression to remain on the record if documentation goes to the CDF"*.

21.12 The second contemporaneous record of this meeting is contained in the minutes of the meeting. These record that:

"[Patrick] has stated that he does not wish to involve the Gardaí but wishes to be reconciled with the accused. The meeting agreed that a

signed statement from the accuser is desirable. It could then be presented to the accused who, having been advised of his right to seek canonical and secular legal advice, may wish to respond. If, on completion of Mgr. O'Callaghan's preliminary inquiries, the Bishop forms the view that there is substance to the allegation, he will inform the CDF and will consider the question of leave for the accused bearing in mind that there has been no other complaint about him or any suspicion during his many years of ministry. The option of retirement might be suggested to the accused if appropriate."

21.13 The time line compiled in 2008 gives a somewhat different version of what occurred at the meeting in relation to the issue of reporting to the Gardaí. It states: "*The Committee also notes the fact that the complainant does not want the matter reported to the Guards however, they recommend that this be confirmed in writing as there is a concern to report but a desire not to distress the complainant*".

The bishop's meeting with Fr Caden, 22 September 2005

21.14 Bishop Magee met Fr Caden in September 2005. Bishop Magee compiled and signed two different accounts of this meeting. One describes the meeting as having occurred on 15 September while the other describes it as having occurred on 22 September. The Commission is satisfied that there was only one meeting around this time and that it occurred on 22 September. This was the day after the inter-diocesan case management advisory committee meeting to which reference is made above. Apart from the confusion about the date, the two accounts are very different.

21.15 In evidence to the Commission, Fr Caden said that neither of Bishop Magee's accounts is entirely accurate or complete. He said that he wrote an account of the meeting on the following day and he provided this account to the Commission. He also gave an account of this meeting to his canon lawyer in 2007.

Bishop Magee's note of meeting dated 15 September

21.16 Bishop Magee's signature appears on a note of a meeting which wrongly bears the date 15 September 2005. The note stated that the meeting was held at 4pm in the parochial house where Fr Caden lived. Bishop Magee

put the allegations made by the complainant to Fr Caden. The note then records that:

“He admitted immediately the detail, with the exception of the detail as indicated as “penetration”. This he said never happened...

...He had a very close relationship with [Patrick] and, in his weakness, his relationship became very sexual.

...He immediately offered his resignation from the Office of Parish Priest and from all ministry in the Diocese. I told him to put that in writing to me.

...

The meeting ended at 5.00pm.”

Bishop Magee’s note of meeting dated 22 September

21.17 Bishop Magee’s signature also appears on a note of a meeting with Fr Caden which bears the date 22 September 2005. The meeting is stated to have taken place at 4pm in the parochial house where Fr Caden lived. The note recorded:

“I told him that an allegation of child sexual abuse had been made against him by another Priest of the Diocese, the Reverend [Patrick]. I explained to him the detail of the allegation as had been given me by [Patrick].

Father [Caden] appeared most shocked and immediately denied the allegation.

I told him that, according to the Protocols holding in the diocese, I had to ask him to step down from the position of Parish Priest and that I would have to remove him from all Priestly Ministry in the Diocese of Cloyne. This I did.

...

I left the Parochial House in [...] at 4.30.”

21.18 When asked by the Commission to explain the two very different accounts and different dates of what was clearly the same meeting, Bishop Magee explained that the note dated 15 September 2005 was created for the Congregation for the Doctrine of the Faith while the note dated 22 September was created for the diocesan records and the inter-diocesan case management advisory committee. The bishop explained to the Commission:

“Yes, it was written later, the reason being that I went to Fr.[Caden] on the 22nd and when I gave him the detail of the allegation that was made against him, he immediately showed himself to be shocked and denied the allegation. I remember it clearly, he denied the allegation. However, I had in my pocket also the letter that he had written to [Patrick] earlier in, which I mentioned, where he mentions this dark secret and when he calmed down I just asked him, I said "... how do you explain this?" and I showed him the letter and he recalled the letter. He said to me "Bishop, can I talk to you as bishop and priest in a confidential manner?" and I said "certainly".

...

Now, he had spoken to me as he said in a bishop/priest relationship of confidentiality which was a privileged position that we had. Now, when I came home I wrote a statement signed on 22nd September in which I stated that Fr. [Caden] had denied the allegation, which he did immediately on my presenting it to him, he said no. Now, later on when the time came for me to submit the case to Rome, I felt in conscience that I should share with Rome what had been said confidentially.

...

I had inquired from Monsignor O'Callaghan and from my lawyer, Diarmaid Ó Catháin, in regard to correspondence with the Holy See and I was assured that it was a privileged relationship and that documentation that would be sent to Rome would not be discoverable and so I felt that in conscience I had to tell what had been told to me in confidence in the relationship between a bishop and his priest. I recognise now that that was wrong, that all documentation was discoverable and so those two documents have come forward and they are clashing and that's my explanation of the situation."

- 21.19 Mr Ó Catháin, Bishop Magee's solicitor, told the Commission that he has no recollection of Bishop Magee consulting him directly about this issue and, in particular, about the issue of correspondence with the Holy See. He said he did not give advice to Bishop Magee that documentation that would be sent to Rome would not be discoverable. He said that any conversation he had had on the question of privilege was with Monsignor O'Callaghan and that was concerned only with discovery in relation to civil proceedings.

21.20 The manner in which the account dated 22 September was constructed is interesting. For example, the sentence “*Father [Caden] appeared most shocked and immediately denied the allegation*”. The inclusion of the word “*immediately*” would, on a close analysis, appear to be strictly speaking correct as the evidence of Bishop Magee to the Commission was that Fr Caden initially denied the allegation. It is obvious though, that the failure to qualify this statement by referring to Fr Caden’s later admission during the same encounter creates a deliberately misleading version of events. The manner of construction used bears all of the hall marks of mental reservation. The document is carefully created not to reveal too much information. It contains no reference to the letter written by Fr Caden that refers to his ‘*dark secret*’ or to the response by Fr Caden to being confronted with this letter. The finishing time of the meeting on the note dated 22 September is stated to be 4.30pm while the note dated 15 September and sent to Rome has a later finishing time of 5pm. It may be that that time difference was also of some assistance in performing the mental gymnastics of mental reservation in the manner of recording the details of the meeting.

21.21 Bishop Magee told the Commission that it was not his intention to deceive anyone in relation to his meeting with Fr Caden. While that may not have been his intention, the compilation of two different accounts clearly had that effect. Furthermore, other than in his evidence to the Commission, he did not mention or make any record of the confidential nature of the discussion.

Timing of the compilation of these accounts

21.22 As described, Bishop Magee told the Commission that he compiled the account dated 22 September when he returned from the meeting with Fr Caden and that he compiled the account dated 15 September when the time came to send the documents to the Congregation for the Doctrine of the Faith. Bishop Magee’s letter to the Congregation for the Doctrine of the Faith is dated 1 December 2005. The acknowledgement from the congregation is dated 2 September 2006. Fr Caden told the Commission that he received a telephone call from Monsignor O’Callaghan in Holy Week 2006. He said that Monsignor O’Callaghan asked him what exactly was said by him and by the bishop at their meeting of 22 September 2005. Fr Caden asked why he wanted this information and Monsignor O’Callaghan said that the bishop

wanted to bring his notes up to date. Fr Caden suspects that the documentation for the Congregation for the Doctrine of the Faith was being compiled around this time. The Commission cannot find any evidence that this is so. The delay by the Congregation for the Doctrine of the Faith in acknowledging Bishop Magee's initial letter and in dealing with the issue is not unusual.

Fr Caden's account of the meeting

21.23 As already stated, Fr Caden told the Commission that neither of Bishop Magee's accounts of their meeting of 22 September is entirely accurate or complete. He said that the account dated 22 September is accurate in respect of his denial of the allegations but not in respect of his removal from ministry. He said that the bishop told him that Patrick had alleged that there had been masturbation, oral sex and penetration and that he had denied all of these allegations. He said that Bishop Magee had then told him that the inter-diocesan case management advisory committee had recommended that he should resign his position as a parish priest. Fr Caden said that Bishop Magee had said that he would be "*retiring from the office, not from ministry*". Bishop Magee had then said that if he did not resign voluntarily, he (the bishop) would go to Rome and have him removed as he had done with another priest. Bishop Magee disputes Fr Caden's account of the meeting. In particular, Bishop Magee asserts that he would never have used the phrase quoted and points out that his subsequent letter to Fr Caden (see below) makes clear that Fr Caden was being removed from ministry.

21.24 On the crucial issue of whether or not Fr Caden admitted any of the allegations, his account to his canon lawyer in 2007 stated that, after the discussion about resigning, the bishop:

"...asked me straight out if I had a relationship with [Patrick] and I told him exactly what happened, that in 1983 I had a sinful relationship with [Patrick] for about six months. It had ended then, at my instigation and that nothing else sinful or wrong had ever happened between us since then...When the original events had occurred [Patrick] had been well over 16 years of age."

21.25 In evidence to the Commission, Fr Caden explained that he had told the bishop that he and Patrick had become very friendly. One day, they

hugged and kissed each other and this occurred again over a six month period. He had been at a low ebb at the time. Fr Caden was afraid that this would be regarded as homosexual activity. He said that this was the 'dark secret' and that it was the extent of the 'sinful relationship'. Fr Caden also said that Bishop Magee had said there was no question of child protection being involved.

Was there an admission?

21.26 The Commission has no remit to establish whether or not child sexual abuse occurred; it is concerned only with the handling of allegations. However, whether or not the alleged abuser admits to any abuse is a crucial factor in how the allegation is handled. While the fact that Bishop Magee accepts that he compiled two different accounts of the meeting raises questions about the credibility of either account, the Commission finds it difficult to understand why he would record precisely those elements of the allegations which were admitted if there had been no such admission.

Monsignor O'Callaghan's meeting with Fr Caden

21.27 Monsignor O'Callaghan also met Fr Caden on 22 September 2005 after the bishop had met him. There are three different versions of this meeting in the diocesan files. Monsignor O'Callaghan's hand written note of that meeting states that Fr Caden "*repeated that the allegation was inexplicable in view of his close relationship with [Patrick] over 20 years*". There are two further notes of this meeting. Each is typed, dated 22 September and signed by Monsignor O'Callaghan. One of these states: "*He repeated that the allegation was inexplicable in view of his close relationship with [Patrick] over 20 years. He explained this friendship at some length. At no time was there sex abuse such as that alleged by [Patrick]*". This apparent denial is not included in the handwritten version. The second typed note includes a different version again. This states that Fr Caden "*responded that the allegation was inexplicable in view of his close relationship with [Patrick] over 20 years. That relationship also extended to the whole [Patrick] family*". This note then records that Fr Caden denied that there were vocations workshops of the kind described by Patrick or that he had influenced Patrick to become a priest. The Commission finds this quite perplexing as the existence or otherwise of vocations workshops would be a matter of record. There were, in fact, vocations workshops of the kind

described by Patrick. Fr Caden acknowledged to the Commission that he may have been wrong about this.

21.28 Fr Caden told the Commission that Monsignor O'Callaghan also stressed that there was no question of child protection in this case and that he was retiring from office and not from ministry. According to Fr Caden, Monsignor O'Callaghan named the parish in which he could assist after his retirement. Fr Caden said in his statement to his canon lawyer in 2007 that Monsignor O'Callaghan had also said at this meeting that there was no need to have a statement read in the parish which he was leaving. Bishop Magee told the Commission that he was entirely unaware of any of this and he could not have stood over the representations which were allegedly made by Monsignor O'Callaghan.

21.29 Bishop Magee told Monsignor O'Callaghan of the admission which he considered that Fr Caden had made to him. Monsignor O'Callaghan's knowledge of it is evident from a letter he sent to Bishop Magee the following day (23 September) which stated:

"The Committee found it difficult to understand what [Patrick] is about - asking for action from Diocese, which would evidently lead to taking a fellow priest out of ministry, while professing his wish for reconciliation, without appreciating that his action will render his own position in the Diocese untenable where fellow priests are concerned.

...

*We need to tread warily. The case is more fraught than that of [Fr Corin], even though that caused a lot of grief ... In the case of [Caden] we have a priest who has provided outstanding and exemplary ministry to parish and diocese. **He has readily admitted the wrongdoing and expressed unconditional regret to the complainant.** (Emphasis added)*

...

It will take the wisdom of Solomon to forestall a negative fall-out - more problematic than in the case of [Fr Corin] for the protection of the Diocese under all aspects of liability or otherwise we are fortunate to have the protection of the Interdiocesan Case Management Committee.

Personally I was devastated that a priest would act to remove another from ministry while that other expressed his sorrow for the past and effectively pleaded for mercy. It would of course be different if there was an ongoing protection of children issue... I unreservedly appreciate his generous service in Ministry and this motivates a sense of justice - or rather a sense of the injustice of it ending in this fashion."

Informing Patrick

21.30 Patrick told the Commission that, on 29 September 2005, Dean Goold told him that the bishop had put his complaint to Fr Caden and that Fr Caden had admitted the allegation and had apologised. Dean Goold also told him that Fr Caden would resign his position as parish priest. Clearly, Dean Goold had been given this information by the bishop or Monsignor O'Callaghan because he did not have any interaction with Fr Caden at this time. Patrick said:

"So that was an apology and acceptance, but that was the only time I ever heard that apology and acceptance. It was a verbal, it was verbally communicated between myself and Ned Goold. So I was really happy. There is a great sense of relief that something had happened."

21.31 Dean Goold asked Patrick did he want to report to the Gardaí. Patrick said no, he could not cope with that. Dean Goold then said he needed to put that in writing. Patrick then wrote and signed a note to the effect that he did not wish to have the matter referred to the Gardaí. Patrick told the Commission that Dean Goold did not pressurise him: *"he is not that kind of man"*. However, he went on to say that, looking back, he should have been advised to go away and think about it or get some advice about it.

Resignation and restriction of ministry, October 2005

21.32 On 23 September 2005, the day after his meeting with Bishop Magee, Fr Caden offered his resignation on health grounds. On 25 October 2005, the bishop wrote to Fr Caden accepting his resignation which was to take effect from 5 November 2005. The letter restricted Fr Caden from celebrating mass or engaging in priestly ministry in public. If he was asked to celebrate a close family event, he was to consult the bishop. A support person who was a

senior priest of the diocese was appointed. Fr Caden told the Commission that this was not his understanding of what he had agreed with Bishop Magee on 22 September or of what Monsignor O'Callaghan had said to him on the same date. He telephoned Monsignor O'Callaghan about the bishop's letter but did not get to speak to him. Monsignor O'Callaghan wrote to him on 2 November 2005. This letter is one of a number in this case which were not in the diocesan discovery but were provided to the Commission by Fr Caden. The letter is vague on the issue of ministry: "*I would not have known how to advise on reading Bishop's letter. It would depend on what you were comfortable with – I would have hoped you would have been able for it*". The letter went on to offer counselling to Fr Caden and this offer was accepted.

Inter-diocesan case management advisory committee meeting, 4 October 2005

21.33 The inter-diocesan case management advisory committee met on 4 October 2005. The minutes of the meeting do not refer at all to this case. However, in a letter to Bishop Magee dated 2 November 2005, Monsignor O'Callaghan said that the case was discussed at the 4 October meeting. He said that he had explained at this meeting that the matter of reporting to the Gardaí was "*occasioning anxiety*" for the bishop. He proposed that the chairman and secretary visit the bishop to explain the committee's mind. He was then asked by the committee to send Dean Goold an agreed note to keep Patrick informed. Patrick told the Commission that Dean Goold did contact him.

Report to Gardaí

21.34 It is clear from Monsignor O'Callaghan's letter of 2 November 2005 that Bishop Magee continued to be concerned about the issue of reporting to the Gardaí during November 2005. Monsignor O'Callaghan told the bishop that he had contacted Dean Goold on 1 November to ask that he contact Patrick and explain the reporting policy. He said that he and Dean Goold "*agreed that if there were any issue of child protection a report would be peremptory and immediate*". Monsignor O'Callaghan said that he had also been in touch with the diocesan solicitor who "*echoed our concern that you trust the procedures in place and work through them – rather than expose yourself*". The letter went on to say "[t]hank God for the work done in putting

so effective and pastoral a system in place. It can stand any enquiry or audit”.

21.35 Patrick told the Commission that he contacted Dean Goold around this time because he had been troubled by the publication of the *Ferns Report*.¹⁰⁶ On 6 November, Patrick told Dean Goold that he wanted to make a complaint to the Gardaí. Dean Goold told him that the diocese would do that. On 7 November 2005, Dean Goold wrote to Monsignor O’Callaghan informing him that Patrick now wished to have the matter reported to the Gardaí. Monsignor O’Callaghan wrote to the local garda superintendent on 19 November 2005 telling him of the complaint and naming Patrick but not the alleged abuser. On 21 November, he wrote again telling the superintendent who Fr Caden’s support person was. He also said: “*May I suggest that [a specific sergeant] conduct any interview. He has dealt sensitively with similar situations. The accused is not in good health*”.

21.36 The garda superintendent, in evidence to the Commission, said that he considered the letter unusual in that the alleged abuser was not named while the complainant was. He also thought it was unusual to have a suggestion that a specific garda be asked to conduct the investigation. He said that this did not influence him in any way; in any event, the specific garda was not part of his district team so the question of asking him to conduct the investigation did not arise.

21.37 Bishop Magee told the Commission that the reason that the alleged abuser’s name was not given to the Gardaí was in case Patrick decided not to proceed to make a statement of complaint. He said that Monsignor O’Callaghan told him that the name was not included because the Gardaí had told him that they did not want the name of a person kept on file if the complainant did not come forward. There is no evidence that this was ever suggested by the Gardaí. It was not Monsignor O’Callaghan’s practice in the other cases examined by the Commission to omit the name of the alleged abuser when reporting to the Gardaí. The Gardaí told the Commission that the omission of the name of an alleged abuser is not and never has been the policy, practice or procedure adopted or recommended by them.

¹⁰⁶ It was published in October 2005.

21.38 Patrick telephoned Monsignor O'Callaghan on 6 December to find out if he had reported to the Gardaí. He was annoyed when he discovered that his name had been given while Fr Caden's had not been. He telephoned the Gardaí and he said that they told him the name of Fr Caden's support person. He was further annoyed by this as he had not been allocated a support person. In evidence to the Commission, Bishop Magee indicated that the diocese regarded Dean Goold as Patrick's support person. Patrick regarded him as the assistant delegate/designated person. Dean Goold said that he regarded himself as Patrick's support person but he accepts that Patrick saw him differently.

Canonical procedures

21.39 On 5 November 2005, Bishop Magee wrote to Monsignor O'Callaghan and requested that he conduct a preliminary investigation under canons 1717-1719 of the code of canon law.

21.40 The bishop wrote to the Congregation for the Doctrine of the Faith on 1 December 2005. The letter stated that the bishop had met Fr Caden, *"a well known and respected Parish Priest, who immediately admitted the offence.*

...

Having met with both [Patrick] and Father [Caden], I have formed the view that this has been the only relationship of this nature in which Father [Caden] has engaged in. There has not been any other complaint against Father [Caden]."

21.41 The bishop urged an administrative response, under canon 1720 and canons 1342 – 1350, rather than a judicial one, in view of Fr Caden's age, the absence of any other complaints and the fact that he was no longer in active ministry. Significantly, he enclosed the note of his meeting with Fr Caden dated 15 September 2005 referred to above. This is the note in which he had recorded that Fr Caden had admitted all the allegations except for penetration. As already stated, the bishop, in evidence to the Commission, confirmed that the note was created for the benefit of the Congregation for the Doctrine of the Faith and canonical proceedings only.

21.42 Of further interest is that a first draft of the letter to the Congregation for the Doctrine of the Faith was composed by Fr Gerard Garrett, a canon lawyer and the chairman of the inter-diocesan case management advisory committee. He gave evidence to the Commission that, when he drafted the letter, he had understood that the accused priest had denied the abuse. As a member of the inter-diocesan case management advisory committee, he was not made aware of the admission as recorded by Bishop Magee or of the letter sent by him to Patrick referring to his 'dark secret'. He was further surprised when presented by the Commission with a copy of the letter that was actually sent to the Congregation for the Doctrine of the Faith which contained a clear statement regarding the admission as recorded by Bishop Magee. Fr Garrett told the Commission that he accepted that there was little point in an advisory committee whose purpose was to advise the bishop on a course of action if information such as an admission was kept from that committee.

Patrick and Monsignor O'Callaghan

21.43 Patrick had been dissatisfied by Monsignor O'Callaghan's handling of his complaint from the beginning. His first complaint related to Monsignor O'Callaghan's perceived informality and lack of regard for the complainant when they first met to discuss the complaint. He complained of having been received in the conservatory which was located at the front of Monsignor O'Callaghan's house and under the gaze of any passers-by. He was very annoyed when he discovered that the Gardaí were not advised of the identity of the accused priest but were advised of his identity. He was further annoyed when he discovered that Fr Caden had a support person allocated by the diocese and he did not. He considered that Monsignor O'Callaghan did not have the requisite skills to counsel someone who had been abused. He was suspicious of him and considered that he was a friend of Fr Caden's.

21.44 Patrick told the Commission that he met Bishop Magee on 11 March 2006 and told him that he did not want to have anything further to do with Monsignor O'Callaghan as he did not trust him. In June 2006, a female member of the inter-diocesan case management advisory committee was appointed as the designated person in the diocese for Patrick. Patrick met her once; he told the Commission that they had had a nice meeting but he had told her that he did not trust anyone from the diocese.

21.45 Monsignor O’Callaghan was helpful to Fr Caden. He offered to provide help with Fr Caden’s legal costs. He has pointed out to the Commission that he was required to do so by *Our Children, Our Church*. *Our Children, Our Church* states that the bishop is obliged to tell an accused cleric that he has a right to legal representation; it does not explicitly state that the diocese must offer to pay for that representation. Fr Caden later said that he did not get help with his legal costs.

21.46 On 23 June 2006 Monsignor O’Callaghan wrote to Fr Caden: *“I recall that we discussed those vocational day dates. I have checked files in Cobh and enclosed what is relevant – in case of later ambush. I still hope that we may have a good resolution. [Patrick] is getting good advice.”*

Garda investigation

21.47 The garda investigation got under way in November 2005. Patrick made a statement to the Gardaí on 13 January 2006. The Gardaí did not report the case to the HSE. They made an assessment of the risk to children as required under the *Children First* guidelines when complaints of abuse as children are made by adults (see Chapter 6). The superintendent in charge of the investigation told the Commission that it was decided that this case did not require reporting to the HSE for a number of reasons. It was a case of historical abuse, the alleged incidents had occurred 23 years earlier and Fr Caden had resigned from his position. He said that the Gardaí were aware of Fr Caden’s address and that he had no direct contact with children. They were also aware that the diocese had a monitoring process in place. The local Gardaí were aware of Fr Caden’s situation. The complainant was already receiving counselling.

21.48 Bishop Magee made a statement to the Gardaí on 15 September 2006. Before doing so, he sought legal advice. In a letter to Bishop Magee, Monsignor O’Callaghan said: *“I have just spoken with Diarmaid Ó Catháin. He agreed that you should not provide a statement to Garda. ... you stay with the principle of a Bishop’s duty to preserve as confidential any communication between him and individual priests. (in any case I hold all files)”*.

21.49 Mr Ó Catháin told the Commission that this is not an accurate account of his advice. He said he advised that, if Bishop Magee made a statement to the Gardaí, he could be called as a witness in a criminal trial and if Bishop Magee was concerned to protect the confidentiality of a particular communication, he should not provide a statement about that communication to the Gardaí.

21.50 The bishop did not disclose the content of the conversation that he had had with Fr Caden to the Gardaí on the basis that it was a confidential conversation between a priest and his bishop. Patrick, who had been told of the admission as recorded by Bishop Magee, told the Commission that he later learned of this claim of privilege by the bishop. He considered this a significant betrayal. Bishop Magee considers that he co-operated with the Gardaí in accordance with their requests of him, subject to the privilege in law which he believed, at that time, to exist. Having taken further advice, he made a statement to the Gardaí in 2010 in which he gave a full account of the meeting with Fr Caden.

21.51 Fr Caden was interviewed by the Gardaí on 17 October 2006. He admitted that he had kissed and hugged the complainant during what he termed a very mixed up stage in his life, but was adamant that it went no further.

21.52 Patrick had given the Gardaí two letters which had been written to him by Fr Caden. The first letter was a reply to a letter sent by Patrick to Fr Caden following a holiday in 1999. During this holiday, Patrick had become upset during a dinner one evening attended by himself, Fr Caden and a third party. He told the Commission that this was because of certain remarks made by Fr Caden about child abuse and the Church. On his return to Ireland, Patrick wrote the first letter to Fr Caden denouncing him for his hypocrisy and his insensitivity. He signalled that he did not wish to have any further contact with him. The response by Fr Caden referred in veiled terms to what had transpired between them. It also stated: "*Then things began to go wrong. I became desperate. I knew what I was doing was morally wrong, but I never realised at all that it could be criminal.*" He referred to the fact that he "*lived with terrible remorse and fear for years*".

21.53 During Garda questioning which challenged Fr Caden about what he meant by these remarks, Fr Caden stated: *“I was kissing him and I was hugging him. I thought it would be seen as gay activity”*.

21.54 The second letter had been written by Fr Caden to Patrick in response to a text message. This is the letter in which Fr Caden made reference to a ‘dark secret’ (see above). Fr Caden explained to the Gardaí that this was a reference to his *“tendency to homosexuality at the time”*.

21.55 On conclusion of the investigation the Gardaí recommended that Fr Caden be prosecuted on three specific counts of gross indecency contrary to section 11 of the *Criminal Law Amendment Act 1885* and for buggery under section 61 of the *Offences against the Person Act 1861*. The state solicitor supported the garda recommendation. A decision was made by the DPP in March 2007 not to prosecute. The DPP officer considered that a charge of indecent assault could not be supported because there was apparent consent to the activity concerned. With regard to the other possible charges of buggery and gross indecency, he was of a view that, because of the length of time since occurrence, the absence of supporting evidence and difficulties that would arise from the complainant’s evidence, there was no reasonable prospect of a conviction.

Inter-diocesan case management advisory committee, February 2006

21.56 The case was discussed at the inter-diocesan case management advisory committee meeting in February 2006. The minutes record that it was suggested that a risk assessment be carried out by an independent person. This suggestion almost certainly came from Monsignor O’Callaghan as he had written to Fr Caden in late January 2006 saying that he had written to the psychologist who was a member of the inter-diocesan case management advisory committee, asking him to carry out the assessment. (This letter was not in the diocesan discovery.) In a letter to Bishop Magee a few days after the inter-diocesan case management advisory committee meeting, Monsignor O’Callaghan said that at the meeting, it was *“accepted that while the established procedures had been followed in regard to processing the complaint submitted by [Patrick] the wider role of pastoral care required more. It was in this context that you were seen as the best person to*

mediate in the hope of achieving a genuine pastoral outcome to a situation which seems out of our control”.

21.57 In March 2006, Monsignor O’Callaghan again wrote to Bishop Magee. He told the bishop that Fr Caden was to be assessed by the Granada Institute. It was now ten months since the complaint had been made and the alleged abuser named. Monsignor O’Callaghan also said that the psychologist who was a member of the inter-diocesan case management advisory committee was prepared to carry out the assessment but the committee considered that this might compromise him. The psychologist told the Commission that he was asked by Monsignor O’Callaghan to carry out the assessment but he was not prepared to do so because he was a member of the inter-diocesan case management advisory committee. He said he recommended the referral to the Granada Institute.

Civil claim

21.58 In April 2006, Patrick’s solicitor wrote a letter of claim to the diocese seeking compensation for the damage arising from the alleged abuse. On instructions from the diocese the diocesan solicitor responded in May 2006 in the following terms: *“The third party you named was never under the employment or jurisdiction and/or legal control of our client under the laws of Ireland. The relationship between priest and bishop is not one of civil law but rather a spiritual relationship only. Civil legal liability could not in any circumstances arise”.*

21.59 The letter went on to point out that, while the diocese had *“the utmost pastoral concern”* for the claimant, the diocese had no legal liability and would defend any proceedings issued. Eventually, the diocesan solicitor was instructed to settle the claim and compensation was paid in 2009.

Patrick leaves priesthood

21.60 Patrick tendered his resignation from the priesthood to the diocese in September 2006. He was advised that he would have a year within which to change his mind and that during that year he would be paid a subvention of €12,000 in twelve monthly instalments. He did not return to the priesthood.

Granada assessment, March 2007

21.61 The Granada Institute issued its report to the diocese in March 2007. The report noted that *“Fr [Caden] acknowledged that he was involved in sexually abusive behaviour with a 16 year old boy in 1983 when he was 47 years old”*. The assessment was that Fr Caden’s risk of committing a sexual offence in the future was regarded as low and that he had taken full responsibility for his actions and expressed regret. Granada recommended that Fr Caden undergo a *“discrete piece of therapeutic work”* to enable him to better appreciate the vulnerability of the teenage boy in question at the time the offences took place. It subsequently became known that the full version of the Granada report had not been given to the diocese (see below).

Congregation for the Doctrine of the Faith decision, April 2007

21.62 As already stated, the Congregation for the Doctrine of the Faith had acknowledged Bishop Magee’s letter in September 2006. This letter also sought a summary of the case set out in a specific format. Bishop Magee provided this in January 2007. The Congregation for the Doctrine of the Faith gave its decision on 17 April 2007. This decision referred to the fact that Fr Caden had admitted *“an act of sexual abuse with a minor”* and confirmed the disciplinary measures proposed by the bishop *“which have been accepted by the Reverend [Caden]. He is, therefore, not allowed to exercise priestly ministry”*. The decision went on to say:

“It is also the determination of the Congregation that Your Lordship is to place a penal precept on Reverend [Caden] imposing the observance of these disciplinary measures, and warning him that a failure to abide by these measures may result in reconsideration of this case and the imposition of a penalty. In addition the cleric should be aware that a repetition of the abusive behaviour which has caused these measures to be placed would be construed with due severity. The ensuing penalty could be dismissal from the clerical state. You are kindly asked to inform Reverend [Caden] of this decision.”

21.63 Fr Caden was not aware that his case had been referred to the Congregation for the Doctrine of the Faith or of its outcome until late May 2007. Monsignor O’Callaghan met Fr Caden on 28 May 2007 following a letter from Fr Caden’s solicitor. This was about six weeks after the decision had been made. There is no note of this meeting in the diocesan files. Fr

Caden gave the Commission an account of the meeting and Monsignor O'Callaghan wrote to Fr Caden on 30 May about the meeting. Fr Caden said that Monsignor O'Callaghan told him that he had not been informed of the referral to Rome because it would have been "*too traumatic*" for him. Fr Caden said he asked what documentation had been given to Rome and he was told that he had no right to see it. He was then told that the letter to Patrick mentioning the 'dark secret' had been sent. Monsignor O'Callaghan then read out part of the decision letter from the Congregation for the Doctrine of the Faith but would not give him a copy. Fr Caden was then told that it was too late to appeal the decision.

21.64 Monsignor O'Callaghan's letter stated that he had intended that he and the bishop would meet Fr Caden in order to tell him about the Congregation for the Doctrine of the Faith's decision but he had decided to meet Fr Caden immediately after he had received the letter from his solicitor. It does not explain why they had allowed six weeks to elapse before meeting Fr Caden even though the Congregation for the Doctrine of the Faith decision is quite clear that the bishop was obliged to inform Fr Caden. Monsignor O'Callaghan's letter referred to the difficulties involved when a priest who has restricted ministry wanted to celebrate mass on family occasions such as weddings and funerals and explained that, in cases where there were restrictions on priestly ministry, the bishop had always employed "*a measure of pastoral discretion*". This pastoral discretion, the letter stated, had not been affected by the Congregation for the Doctrine of the Faith's confirmation of the disciplinary arrangements.

The HSE and the diocese

21.65 In August 2007, it became clear that the HSE had not been informed of the complaint against Fr Caden as was required by the procedures in the *Framework Document* and *Our Children, Our Church*. On 8 August 2007, the HSE confirmed to Patrick that the North Cork childcare protection team had not received notification of a complaint either from the Gardaí or from any ecclesiastical authority in relation to Fr Caden. This precipitated a series of events which led to the involvement of the HSE, the Department of Health and Children and the Catholic Church's National Board for Safeguarding Children in examining the child protection practices in the Diocese of Cloyne. The involvement of these organisations is examined in detail in Chapter 6.

21.66 In November 2007, the child care manager with the HSE in North Cork, Mr Mike van Aswegen, wrote to Bishop Magee asking for a meeting to discuss, among other things, the complaint against Fr Caden. Bishop Magee wrote to the HSE in December and said that there had been no breach of what he termed “*the voluntary codes*”, namely the *Framework Document* or *Our Children, Our Church* in relation to the complaint. The bishop pointed out that, in circumstances where the State authorities did not proceed against the accused priest by prosecuting him, he had in fact proceeded with a canonical process that had ensured that the priest concerned was removed from ministry. His letter also stated:

“The voluntary protocols and extensive Child Protection Training processes that I and my fellow Bishops have implemented demonstrate our commitment to appropriate and constructive cooperation between all agencies for the benefit of children. These voluntary initiatives have taken place although, as you are aware, there is no obligation under the laws of Ireland in such matters.

...

I am most anxious that the highest standards of pastoral care should be available to anyone in the Diocese who has been affected by child sexual abuse, in particular where the accused is one of the clergy. The Diocese may not dispense itself from this duty of pastoral care above all where children may be at risk. The Diocese will be glad to collaborate with other bodies in promising more effective care.”

21.67 There were a number of meetings between the diocese and the HSE during 2008. The HSE’s note of a meeting on 7 March 2008 records Bishop Magee as having taken the opportunity to:

“advise that in relation to this particular case and during the course of the afternoon discussion it would become apparent that there are structures and protocols in place, which are described by Bishop Magee as ‘second to none’ put in place to ensure best practice in safeguarding children within the diocese.”

21.68 The HSE note also records that the bishop took the opportunity “to highlight the delicateness and uniqueness¹⁰⁷ of the particular case i.e. priest v priest and that every case is a learning process”.

21.69 Bishop Magee and Monsignor O’Callaghan both understood the requirement under the *Framework Document* and *Our Children, Our Church* to formally notify the HSE. Nevertheless, this was not done. Both seem to have considered it the responsibility of the Gardaí to notify the HSE. At the 7 March 2008 meeting with the HSE, Bishop Magee accepted full responsibility for the failure to inform the HSE. The HSE explained at the meeting that the existing protocol between the Gardaí and the HSE in Cork was that the Gardaí only referred cases of abuse that concerned a victim who was a child at the time of the complaint. The Gardaí have pointed out to the Commission that this is not accurate. They reported to the HSE in accordance with the *Children First* guidelines (see Chapter 6). In this case, as described above, they made the necessary assessment of whether or not a child protection issue arose.

21.70 Following engagement with the HSE in relation to the matter, the official notification by the diocese to the HSE was made on 18 March 2008 by which time the notification was clearly a matter of formality. Monsignor O’Callaghan provided the HSE with a summary of the Granada Institute findings.

21.71 The HSE’s subsequent involvement is described in Chapter 6.

The National Board for Safeguarding Children

21.72 In February 2008, Mr Ian Elliott of the National Board for Safeguarding Children became involved in the Diocese of Cloyne. The background to his involvement and the subsequent publication of his report are set out in Chapter 6.

¹⁰⁷ Bishop Magee told the Commission that he thought this might be the first case in Ireland of a priest alleging sexual abuse by another priest. The Commission is aware of at least three such cases which were reported earlier in the Archdiocese of Dublin; two of these are included in its *Report into the Catholic Archdiocese of Dublin*. Bishop Magee was aware of the case described in this report (Chapter 24) in which an ex-priest alleged he had been abused by a priest.

21.73 Mr Elliott met Bishop Magee on 20 February 2008 in order to find out about the Fr Caden case. Mr Elliott's minute of the meeting recorded: *"I asked the question as to whether the accused had admitted to the offences when questioned by the Bishop or to the Dean or Monsignor. Bishop Magee said that he had not admitted the offences to him and he was unclear as to what had been said to the others"*. Bishop Magee told the Commission that, in his meeting with Mr Elliott, he was torn between what he considered his duty of confidentiality to Fr Caden and to Rome and the question Mr Elliott had put to him. He said he felt obliged to preserve the confidence.

21.74 Mr Elliott confirmed to the Commission that he was informed by the bishop, at this meeting, and by Monsignor O'Callaghan subsequently that Fr Caden had not made any admission of guilt. He also stated that he was also told that he had been given all papers concerning the complaint. Mr Elliott was not completely convinced that he had all the documents however and followed the matter up with the diocese. On 3 March 2008, Monsignor O'Callaghan wrote to Mr Elliott and suggested that the documentation furnished a month earlier was only *"by way of general background"*. Although additional documentation was later furnished to Mr Elliott, Monsignor O'Callaghan indicated that files which were confidential and privileged would not be furnished to the National Board for Safeguarding Children. No documents recording the admission on the part of the accused priest were ever furnished to Mr Elliott.

21.75 In response to the Elliott report, Monsignor O'Callaghan protested that neither he nor the bishop had been advised prior to the meeting of 20 February 2008 that the purpose behind the meeting related solely to the Fr Caden complaint and accordingly, he only brought a small part of the file in relation to that matter. However he subsequently confirmed to Mr Elliott that Congregation for the Doctrine of the Faith documents were privileged within the Church. In a letter to Bishop Magee in February 2009 in relation to preparations for this Commission, Monsignor O'Callaghan said that he would retrieve the Congregation for the Doctrine of the Faith documentation: *"I do recall extracting it before I let Ian Elliott have the file"*.

21.76 Mr Elliott confirmed to the Commission that he was aware that, according to canon law, he was not entitled to have access to any

documentation that is sent to the Congregation for the Doctrine of the Faith as this information is privileged within the Church. He advised the Commission that any access to this information would only arise if the bishop concerned considered that the privilege did not apply to the communication.

21.77 Bishop Magee, in evidence to the Commission in July 2009, said that he had only recently discovered that Mr Elliott did not receive copies of the documents that had been sent to the Congregation for the Doctrine of the Faith. The Commission cannot accept that this is so. It is clear from the report, a draft of which Bishop Magee first had in May 2008, that Mr Elliott had not seen the Congregation for the Doctrine of the Faith documents. This is self-evident from the reference in the Elliott report that it was not clear from the file that Fr Caden had ever admitted the alleged abuse. Having seen this draft report, Bishop Magee could have provided Mr Elliott with the documents and Mr Elliott's report would then have reflected this knowledge.

21.78 A document purporting to be a time line of events within the diocese in relation to this case was prepared in response to Mr Elliott's inquiries. The document was prepared principally at the direction of Monsignor O'Callaghan. Reference has already been made to some of the contents of this document. The document does not provide an accurate account of what happened. For example, it records that, in September 2005, Patrick was unable to provide any details "*as regards the offences and as a consequence, Bishop Magee was ...unable to speak to the alleged perpetrator in order to remove him from ministry at that time*". However, the bishop's own note of his meeting with the complainant on 7 September 2005 refers to the abuse involving "*oral sex, penetration and masturbation*".

21.79 In May 2008, Mr Elliott sent a copy of his draft report to the diocese with a request to return to him if it was considered that there were any factual inaccuracies. A response was sent by Bishop Magee on 27 May 2008. In relation to this case, one of the responses was patently false. It said that Fr Caden "*never at any time admitted to the alleged abuse to the Bishop or any other diocesan personnel*". So, not only did the diocese not provide Mr Elliott with full documentation, it positively lied when asked to address the issues in his report. The Commission is satisfied that both Bishop Magee and Monsignor O'Callaghan positively misled Mr Elliott on the question of the

existence of an admission of abuse. Bishop Magee told the Commission that he regrets that, although acting to preserve the confidentiality of his conversation with Fr Caden, he misled Mr Elliott about the true position. He said he was acting to preserve a principle rather than to conceal the truth.

The Elliott report

21.80 Mr Elliott compiled his report in May 2008. The report was published by the diocese in December 2008.

21.81 In the Elliott report, Mr Elliott sets out the matters of concern in relation to the handling of this complaint. The concerns included:

- failure to convey the allegations to the Gardaí and HSE quickly and fully. He pointed out that the attitude of the complainant to the issue of reporting to the Gardaí was not an appropriate matter for consideration in the notification process;
- delay in conveying the allegations to the alleged abuser;
- delay in removing the alleged abuser from ministry;
- lack of clarity in diocesan records as to the response to the allegations;
- the absence of appropriate consideration being given to the current risk to young people;
- the fact that only one member of the inter-diocesan case management committee which discussed the case on 21 September 2005 was not a member of the clergy;
- that no attempt was made to determine if there were any other victims, given the position of the accused priest as vocations director.

Fr Caden and the diocese

21.82 Fr Caden was unhappy with how he had been treated by the diocese. He engaged a solicitor. He complained that he should have been advised by the diocese to refrain from giving an immediate response when first confronted with the allegation. He also considered that he ought to have been told of the Congregation for the Doctrine of the Faith's referral and the opportunity to present a response to the matter. He was annoyed that the assessment from the Granada Institute had been given to other people without his permission. He told the Commission that he entered into the

assessment process on the basis that it would be utterly confidential and would not be seen by anyone unless he gave written permission. He was angry when the Elliott report was published and the Granada assessment was included in it. He told the Commission that he telephoned Bishop Magee about this in January 2009 and Bishop Magee said that he did not know how it had become available. He was also critical of the process of assessment conducted by Mentor (see below).

21.83 Fr Caden's solicitor wrote to the Congregation for the Doctrine of the Faith in May 2009 requesting a review of the decision by the congregation to confirm the decision taken by Bishop Magee to restrict Fr Caden's ministry. The letter referred to a "*denial*" that Fr Caden had made an admission in the manner suggested by the bishop to the Congregation for the Doctrine of the Faith.

21.84 The diocese did try to exercise some monitoring and supervision of Fr Caden but it also gave him mixed messages. He was initially told in November 2007 that he could officiate at the wedding of a family member but this decision was reversed in March 2008. This was the point at which Mr Elliott had begun his investigation. Fr Caden was rebuked in December 2007 by Bishop Magee for leading a pilgrimage and saying mass in a nursing home. Fr Caden told the Commission that he had been given permission by Monsignor O'Callaghan to say mass in the nursing home. He said that he had not led pilgrimages but had taken part in some. He received a further rebuke in January 2009 for publicly celebrating a mass outside the diocese. Fr Caden provided Bishop Magee with a detailed explanation of the unusual circumstances that gave rise to this. Fr Caden had formerly been a chaplain to a local school. When the bishop heard that he had visited the school, Monsignor O'Callaghan made inquiries with the school directly and advised that he should not be permitted to visit the school as there had been concerns about him. The school authorities expressed their annoyance at not having been told about those concerns at an earlier opportunity. It is very clear that the people associated with the school all thought that Fr Caden had simply retired in 2005 and were not aware that he was restricted in his ministry.

Mentor risk assessment

21.85 In January 2009, Mentor was engaged by the diocese to review and re-assess cases where child sexual abuse allegations had been made against diocesan priests (see Chapter 4). Fr Caden was one of the priests asked by the bishop to participate in a risk assessment. Fr Caden told the Commission that he was told by Bishop Magee that a decision on any return to ministry would depend on the outcome of this assessment. He took part in the assessment on that basis. At that stage he knew that the Congregation for the Doctrine of the Faith had made a decision to confirm the disciplinary measures imposed by the bishop but had not seen the full decision. He was shown this by Archbishop Clifford in May 2009 and he then realised that there could be no question of his return to ministry. Archbishop Clifford had made it clear to him that there was no possibility of any return to ministry. Fr Caden considered that he had been misled by Bishop Magee into taking part in the assessment.

21.86 Mentor issued a preliminary report in February 2009. The assessment process involved consideration by the practitioners from Mentor of the Granada Institute risk assessment and other documents together with a number of meetings with Fr Caden. During these sessions, certain admissions were made by Fr Caden:

“During the preliminary meeting Fr [Caden] acknowledged that he sexually abused [Patrick] when he was aged sixteen, on a number of occasions over a period of approximately six months. He stated that this included getting [Patrick] to expose himself, remove his clothes, mutual masturbation to ejaculation, kissing and sexual touching. Fr [Caden] stated that this happened in the Sacristy and on walks in remote areas.”

21.87 The Mentor assessment went on to note:

“There is a discrepancy between Fr [Caden’s] account and that of [Patrick]. [Patrick] alleged that Fr [Caden] sexually abused him when he was aged 15½ and continued to do so for approximately two years between 1982 and 1984. He alleged that this abuse included oral sex, anal penetration and masturbation.”

21.88 The assessment stated that: *“Given [Fr Caden’s] admissions to sexually abusing a child it should be assumed that he represents a risk of sexual harm to children”*. The report highlighted that, as Fr Caden had had regular access to children, it was likely that he would have been aroused on other occasions and may have acted upon that. An earlier file review had stated: *“Any investigation should bear this in mind and be open to the possibility of further allegations. In particular, any soft information/concerns relating to the vocations workshops run by Fr [Caden]; including those of a non sexual nature, need to be highlighted”*.

21.89 The assessment noted that there had been breaches of the restrictions imposed on him and suggested that a comprehensive exploration of these breaches be undertaken which would include a clear account of who was present on those occasions. Mentor considered that Fr Caden was not taking his restrictions seriously enough. He was choosing to interpret the restrictions as permitting *“discrete ministry, as defined by him”*. The report refers to his contact with vulnerable children and adults, of trips to Knock with this group and of saying mass with them. Mentor was of the view that additional monitoring was required in addressing the risks associated with Fr Caden.

21.90 In the course of the assessment, Fr Caden told Mentor that there were two versions of the Granada Institute report. He said that Granada had agreed to give the diocese an edited version of its report because he had objected to the inclusion of some personal details in the report for the diocese. Mentor point out that this was a strange arrangement given that the diocese had commissioned and paid for the report. Fr Caden then provided Mentor with a full copy – this was five pages longer than the version supplied to the diocese. The Granada Institute has confirmed to the Commission *“with regret”* that there were two versions. Granada told the Commission: *“Though the conclusion and recommendations remain the same in the shorter version of the full report, we wish to state that the creation of two versions of a report should not have occurred and to reassure you that this is inconsistent with the policy of the Granada Institute.”*

The Commission's assessment

21.91 The Elliott report has already highlighted the many ways in which this case was very badly handled by the Diocese of Cloyne. The Commission agrees with Mr Elliott's conclusions.¹⁰⁸ The further information available to the Commission and not available to Mr Elliott makes it clear that the handling was even worse than was thought in 2008. Not only were the diocesan records of poor quality and unclear, some were deliberately misleading. Bishop Magee has admitted that he created two versions of his 22 September 2005 meeting with Fr Caden. Other documents do not record the full truth. Mr Elliott and the Catholic Church's National Board for Safeguarding Children were deliberately misled about the facts as known to Bishop Magee. Mr Elliott asked the right questions but he was not told the full truth.

21.92 Not only was the reporting to the Gardaí delayed and lacking in basic information, Bishop Magee and Monsignor O'Callaghan did not co-operate with the garda investigation in 2006. Bishop Magee considers he did co-operate with the Gardaí subject to the privilege in law which he believed to exist. The inter-diocesan case management advisory committee was not given the information it required in order to give informed advice. It is clear to the Commission that it was being used purely for the purposes of seeming to adhere to the Church guidelines. Monsignor O'Callaghan disputes this assessment and says that the advice of the inter-diocesan case management advisory committee was sought, received and acted upon.

21.93 Bishop Magee and Monsignor O'Callaghan seem to have immediately come to the opinion in 2005 that Fr Caden did not constitute any continuing threat to children. They had no basis for this. No inquiries of any kind were carried out to try to establish if there ever had been any other concerns about Fr Caden. Bishop Magee disputes the suggestion that he immediately came

¹⁰⁸ Dean Goold has pointed out to the Commission that, while he does not disagree with Mr Elliott's findings, he is concerned about a reference to him in the Elliott report. He recognises that this does not impact on the report's conclusions. He is concerned about the statement in the report that the review was records based but was supplemented by interviews with Bishop Magee, Monsignor O'Callaghan and Dean Goold. Dean Goold said that he was not interviewed by Mr Elliott. He did not attend the meeting with Mr Elliott in February 2008 and did not know about it. He was present at a meeting with Mr Elliott in April 2008 but he said that he did not take much part as it was mainly concerned with matters about which he knew little. He had no further involvement. He did not see Mr Elliott's report when it was made available to the diocese in May 2008; he was not involved in any discussions about it. He first saw the report when it was published on the website of the Diocese of Cloyne in December 2008.

to the opinion that Fr Caden did not constitute any continuing threat to children. He pointed out that he sent him for assessment and that this showed him to be of low risk. There were no other complaints and Fr Caden was 70 years of age and in poor health at this stage.

21.94 The view that Fr Caden presented a low risk to children was upheld in 2007 by the Granada Institute assessment. It is noteworthy that Mentor came to a different conclusion in 2009. Granada has told the Commission that, following the publication of the Commission's *Report into the Catholic Archdiocese of Dublin* and in keeping with good governance standards, an independent review of the work of the Granada Institute is being carried out. The Commission welcomes this development.

21.95 While Fr Caden's ministry was restricted, he was effectively allowed to 'retire'. It is clear that this is how the public viewed him. Bishop Magee has pointed out that he was not allowed to minister in public which a retired priest would normally do. However, while the diocesan authorities knew the real situation, there can be little doubt that the public perception was that he was retired.

21.96 The Commission is of the view that, because the complainant in this case was a priest, both Bishop Magee and Monsignor O'Callaghan hoped that reconciliation would take place between him and his alleged abuser. They hoped that the complaint could be managed within the Church without the involvement of the state authorities. This view coloured their approach to the handling of this complaint from the start and effectively guaranteed non-compliance with the child protection measures that were purportedly applied in the Diocese of Cloyne. It is clear that their concern was for the institution of the church, the diocese and the accused priest. There was no concern shown for the protection of children. Monsignor O'Callaghan agrees that he hoped for a reconciliation between Patrick and Fr Caden. He rejected the suggestion that this meant that he did not comply with child protection measures. He pointed out that he advised Bishop Magee to remove Fr Caden from ministry and that he arranged for assessment at the Granada Institute. Bishop Magee also hoped for a reconciliation but he does not accept that this meant the exclusion of the civil authorities. Bishop Magee said that the delay in reporting to the Gardaí troubled him at the time. The

Commission accepts that this is so but considers that he did not exercise his authority to ensure that it was speedily reported. Bishop Magee also rejects the suggestion that he was not concerned for the welfare of children.

Postscript

Alleged reckless endangerment

21.97 In January 2009, a member of the public made a complaint to the Gardaí that Bishop Magee had put children at risk by withholding information from the Gardaí. In effect he alleged that Bishop Magee had recklessly endangered children:¹⁰⁹

"I am alleging that Bishop Magee is responsible for the failure of the Diocese to convey all appropriate information to the Gardaí and other relevant authorities. I feel that the withholding of this information has put the safety of children at risk. I feel that Bishop John Magee should be asked to account for his failure to provide the relevant files under his control which I believe that he has possession and authority over at his residence in Cobh. My complaint does not relate to any specific case or priest but relates to the whole administrative process undertaken from Cobh."

21.98 The Gardaí investigated and came to the conclusion that there was documentation being held by the Diocese of Cloyne that had not been made available to them when they conducted their original investigation into the Fr Caden case. In December 2009, the diocese, through its solicitors, provided the Gardaí with all the diocesan documents. The Gardaí identified several documents in which Fr Caden and Bishop Magee both acknowledged Fr Caden's sexually abusive behaviour. Bishop Magee made a full statement to the Gardaí.

21.99 In December 2009 the Gardaí sought advice from the DPP on whether or not Bishop Magee was in breach of criminal law by failing to disclose these documents during the period of the original investigation. The DPP advised the Gardaí that no criminal offences were disclosed. The DPP noted that the offence of reckless endangerment was enacted subsequent to the events in question.

¹⁰⁹ See the Glossary of Terms for a definition of the crime of reckless endangerment under the *Criminal Justice Act 2006*.

Prosecution and conviction of Fr Caden

21.100 Fr Caden was prosecuted in 2010. In November 2010, just as this report was being finalised, he was charged with three counts of gross indecency. He pleaded guilty to one count and received an 18-month suspended sentence. The prosecuting garda gave evidence that Fr Caden had admitted to mutual masturbation on six or seven occasions in 1983.

Chapter 22 Two priest teachers in a diocesan college

Introduction

22.1 In May 2002, a man, Thomas,¹¹⁰ made a complaint to the Gardaí that he had been physically and sexually abused by two priest teachers while he was a student in a diocesan college in the late 1960s and early 1970s. The diocesan college had boarding and day pupils at the time.

Garda investigation

22.2 The Gardaí conducted a thorough investigation. They interviewed a number of Thomas's classmates. All of the classmates interviewed confirmed that, while there was severe physical punishment, none of them had ever experienced any kind of sexual abuse. One classmate said that Thomas was "*certainly at the end of a lot of physical punishment*". They also confirmed that no other pupil of the school, including Thomas, had ever indicated to them that sexual abuse had taken place.

22.3 In the course of his statement to the Gardaí, Thomas had stated that, in 1979, he had complained to a married couple whom he knew well that the abuse had taken place. The Gardaí interviewed the couple who categorically denied that Thomas had told them about any sexual abuse. During his late teens Thomas had attended a psychiatric hospital and the Gardaí received confirmation from his attending doctor that Thomas had never complained of sexual abuse. The Gardaí interviewed Thomas's brother and sister. They confirmed that there had never been any mention within the family of Thomas having been abused. Thomas's parents were dead.

22.4 The Gardaí then interviewed the two priests. Each resolutely denied the abuse. One of the priests subsequently wrote a detailed letter to the investigating garda pointing out errors of fact in Thomas's statement. The Gardaí prepared a full file for the DPP. This stated the garda view that there was not sufficient corroborating evidence to support a prosecution. In May 2003, the DPP agreed with this assessment. The DPP's office complimented the garda sergeant on his comprehensive report.

¹¹⁰ This is a pseudonym.

Diocesan knowledge

22.5 There was no written communication between the Gardaí and the diocesan authorities in relation to this case while the garda investigation was taking place. Monsignor O’Callaghan told the Commission that the Gardaí did not give him the details of the alleged abuse. There is no evidence that Bishop Magee was aware of the complaint at this stage.

Civil proceedings, 2004

22.6 In July 2004, a firm of solicitors issued Circuit Court proceedings on behalf of Thomas alleging physical abuse by both priests and sexual abuse by one of them. The description of the alleged abuse was different to that given to the Gardaí. The abuse was alleged to have occurred when Thomas was a student in the diocesan college in the late 1960s and early 1970s. These proceedings were issued against the Minister for Education and Science, Ireland, the Attorney General, the Provincial Superior of the Congregation of the Christian Brothers, and the two priest teachers. The Christian Brothers were described in the civil bill as a religious order that owned and/or operated the diocesan college. The priest teachers were described as being “*affiliated*” to the Christian Brothers. In fact, the Christian Brothers never had any connection with the diocesan college and the two priest teachers were priests of the Diocese of Cloyne and had no connection with the Christian Brothers.

22.7 The Department of Education and Science,¹¹¹ although requested to discover all documents relating to complaints against priests in the Diocese of Cloyne during the relevant period, did not initially provide any documentation to the Commission in relation to this claim. The department explained to the Commission that, when the relevant section of the department was examining documentation with a view to providing relevant documents to the Commission, it decided that this documentation was not relevant as it related to alleged abuse in the late 1960s/early 1970s. This decision was based on the erroneous belief that the Commission was investigating abuse which occurred in the period 1996 to 2009. Clearly, the department did not read the Commission’s terms of reference or its explanation of those terms as it is abundantly clear that the Commission was investigating complaints which

¹¹¹ The Department has since been renamed the Department of Education and Skills.

were made in the period 1996 to 2009. The department then provided the relevant documentation.

Diocesan involvement

22.8 The Christian Brothers wrote to Thomas's solicitors in July 2004 pointing out that they had no connection with the diocesan college. Nine months later, in April 2005, Thomas's solicitors wrote to the pastoral co-ordinator of the Cloyne diocese confirming that their client was a pupil at the diocesan college in the relevant period and stating that the school was at the relevant time owned and managed by the Catholic Diocese of Cloyne and requesting that admission of liability for the alleged abuse be made. Monsignor O'Callaghan wrote to the solicitors offering counselling and stating that he was available to meet Thomas. This is the first time that the diocese was formally notified of this complaint.

22.9 On instructions from the diocese, the solicitors for the diocese wrote to Thomas's solicitors informing them that the Diocese of Cloyne would be glad to make arrangements for counselling but that it had no liability for the matters alleged. The letter further stated that the diocese was not a legal entity and that any wrongdoing was "*a matter between the person making the allegation and the person against whom the allegation was made*".

22.10 There is no evidence in the diocesan files that the complaints were put to the priests or that there was any diocesan investigation. One of the priests confirmed in 2009 that the complaint had not been put to him by the diocese (see below). In a note made in May 2009, Monsignor O'Callaghan said that "*when the complaint was forwarded to me I put our procedures in place*". He said that one of the priests had responded to his letter enclosing the complaint from the solicitor. There is no such letter from him on the files. Monsignor O'Callaghan told the Commission that he wrote to both priests when he received the civil bill but did not retain a copy of these letters. The Commission finds this surprising as there is no evidence that the civil bill was ever served on the diocese. Monsignor O'Callaghan must have received a copy of the civil bill from one of the priests.

22.11 There is a letter on the diocesan files from one of the priests (this priest has since died). It is dated July 2004 but the '4' in 2004 is crossed out

by hand and changed to 5. This is the case in both the handwritten and typed versions of the letter. In this he draws attention to the civil bill references to the Christian Brothers and suggests that it is “*an effort to claim something from the Redress Fund*”.¹¹² It is more than likely that this letter was actually sent in July 2004 as this is when the civil bill mentioning the Christian Brothers was issued and it is more than likely that this priest provided a copy of the civil bill to Monsignor O’Callaghan.

22.12 Monsignor O’Callaghan’s 2009 note goes on to say, in reference to 2005, that he understood that the solicitor had made a complaint to the Gardaí, that interviews were held and no charges were made. This had happened in 2002/2003. His note goes on to state that the two priests dealt with the allegations without further recourse to the diocese. He was “*satisfied in any case that the charges did not have the ‘semblance of truth’*”.

22.13 Both priests continued to resolutely deny the allegations. Civil proceedings were never started against the diocese and the proceedings against the named priests were formally discontinued by Thomas in 2007.

22.14 In 2009, Archbishop Clifford wrote to one of the priests (the other was dead at this stage) saying that there was no response in the diocesan files to the allegations made against him. The priest was clearly annoyed by this letter as he had already been the subject of a garda investigation and the civil proceedings against him had been discontinued. He pointed out, in reply, that he was never asked for a response by the diocese. He, again, emphatically denied that there had been any abuse.

Commission’s assessment

22.15 This complaint was first made to the Gardaí in 2002 and they carried out a thorough investigation. No formal complaint was made to the diocese until 2005 but it is probable that Monsignor O’Callaghan was made aware of the civil proceedings by one of the priests in 2004. Far from putting the procedures in place, he did nothing. The Commission considers it unlikely that he asked the two priests about the case. His conclusion that the

¹¹² The Residential Institutions Redress Act 2002 provided for claims of redress by former residents of industrial schools and orphanages some of which were run by the Christian Brothers.

allegations did not have a semblance of truth may be reasonable but there is no evidence that he came to this conclusion in a reasonable manner. He seems to have made no inquiries at all.

22.16 The Commission is very concerned that the Department of Education and Science could have misunderstood the terms of reference in the manner described.

22.17 There was no health board/HSE involvement. Neither the Gardaí nor the diocese notified the health board of the complaint. There is no documentary evidence that the Gardaí considered whether or not there was an ongoing risk to children as required under *Children First*. However, the Gardaí have told the Commission that they did assess the risk to children and concluded that reporting to the health board was not required in view of the circumstances of the priests in question.

Chapter 23 Fr Naal¹¹³

Introduction

23.1 There is no complaint of child sexual abuse against Fr Naal. Concerns have been expressed about his involvement with children by a married couple and by his former parish priest.

Concerns, 2005

23.2 In August 2005, a married couple wrote to Bishop Magee to say that they considered that Fr Naal was putting himself and the parish in a “*precarious situation*”. They said that Fr Naal did not want any adults in the sacristy “*only children around 10 – 14 of them*”. They further said that he took children on field trips by himself, that he visited the national school three times a week and that no other adult was allowed to go with him. They said that they realised that Fr Naal had got written permission from the parents for such trips.

23.3 There is no record in the diocesan files of any response to this letter. No action seems to have been taken by the bishop.

23.4 In November 2005, a parish priest of the Diocese of Cloyne wrote to Bishop Magee expressing a concern about the behaviour of Fr Naal who had worked with the parish priest as a curate. There does not seem to be any connection between this and the letter from the couple to which reference is made above. This concern related to Fr Naal’s dealings with children but there was no allegation of sexual abuse.

23.5 The parish priest’s concerns may be summarised as follows: that Fr Naal had what the parish priest considered to be an obsessive interest in children; that he was giving altar servers money; that he brought children from school to an isolated church to practice for various Church ceremonies and he then drove them home – this meant that he was left alone with one child at the end of the journey.

¹¹³ This is a pseudonym.

23.6 The parish priest expressly stated in his initial letter (in November 2005) to Bishop Magee that there was no allegation of sexual abuse of children. He considered that the behaviour of Fr Naal, if innocent, could be misconstrued. When asked by the Commission to characterise his concern, the parish priest said that it was just a concern he had and that no element of his concern was of a sexual nature. He told the Commission that he felt obligated to report the matter following the publication of the *Ferns Report*. (The *Ferns Report* was published in October 2005.)

Correspondence with the bishop

23.7 A week after his first letter, the parish priest wrote a further letter to Bishop Magee. This letter warned the bishop that, should anything improper come to light in the future, he would be making both his initial letter of concern and the second letter public. A short time later, he sent a third letter referring to similar concerns which had been expressed to him by an unnamed former parishioner who came to see him. The parish priest sent a further letter to the bishop in July 2006. This stated that he had been told by a former unnamed parishioner that he had heard that Fr Naal had “*given an envelope to an individual server*”. The parish priest considered that the practice of giving altar servers money could be misconstrued and “*that at worst it could be seen as an inducement for any purpose; in this day and age such an excuse should be ‘avoided like the plague’*”.

23.8 Bishop Magee acknowledged receipt of the letters and assured the parish priest that the matter would be dealt with. There is no evidence that Bishop Magee did anything at this stage. Bishop Magee told the Commission that there was a history of acrimony between the parish priest and priests with whom he had worked, including Fr Naal, and between the parish priest and the bishop and that this explains why more regard was not paid to the parish priest’s letters in 2005. This, of course, does not explain the failure to address the concerns expressed by the married couple.

23.9 In September 2007, almost two years after he had first expressed concern, the parish priest inquired why he had not been interviewed by the delegate from the diocese. He warned that if he did not get a satisfactory response that he would take “*further steps to protect myself in view of the fact that I was Parish Priest of that parish*”.

23.10 Bishop Magee met Fr Naal in October 2007. According to the bishop's note of the meeting, he put the issues which had been raised by the parish priest to Fr Naal and he got what he deemed to be satisfactory answers. He noted, in particular, that Fr Naal said he had ceased to bring children in his car for the past three years. Bishop Magee concluded that he had no reason to disbelieve or reprimand Fr Naal. Bishop Magee then replied to the parish priest indicating that the matters concerned were shared with the delegate, Monsignor O'Callaghan, and that the bishop had personally spoken to Fr Naal.

National Board for Safeguarding Children (NBSC)

23.11 The parish priest was unhappy with this response because he felt that all the issues he raised had not been dealt with. In October 2007, he copied all of his relevant correspondence to Mr Ian Elliott of the National Board for Safeguarding Children. Mr Elliott arranged a meeting with the parish priest. Mr Elliott then contacted the bishop who told him that he had spoken to Fr Naal. Fr Naal had stated that the matters raised were not true and the bishop said that Fr Naal was an excellent priest. Mr Elliott offered to review the papers held by the diocese on Fr Naal but, according to Mr Elliott, Bishop Magee deemed this unnecessary as he considered that he had dealt with the matter in an appropriate way.

23.12 Mr Elliott told the parish priest what Bishop Magee had said and informed him that there was nothing else he could do in the matter. According to Mr Elliott, the parish priest agreed and thanked him for his intervention.

23.13 It is clear, however, that the National Board for Safeguarding Children was not satisfied with the situation. The issue was raised by the chairman of the board with another bishop. This bishop contacted Archbishop Clifford who expressed his concerns to Bishop Magee.

Investigation by diocese

23.14 Following Archbishop Clifford's intervention, Monsignor O'Callaghan and Fr William Bermingham met the parish priest in February 2008 and put a series of questions to him. A handwritten account of the meeting was compiled by Fr Bermingham. This was read to the parish priest and he

signed it. A typed list of the questions, which had been prepared by Monsignor O'Callaghan, states that the interview was being conducted in the context of a preliminary investigation under canons 1717 – 1728. Bishop Magee told the Commission that he did not order a preliminary investigation in this case. He pointed out that canon 1717 is triggered only if there is a suspicion that a crime has been committed which was not the case in this instance. The purpose of the interviews was to establish whether there was any substance to the parish priest's concerns; if any such substance was established, Bishop Magee said he would then have ordered a preliminary investigation. Monsignor O'Callaghan told the Commission that the reference to canon 1717 was included in error. The Commission finds this surprising as a canonical investigation is mentioned a number of times in other documents as well. Fr Bermingham told the Commission that he prepared the typescript of the interview. He said he copied the introductory paragraph relating to a canonical investigation from Monsignor O'Callaghan's list of questions. He had not seen any documentation establishing such an investigation but he had no reason to doubt that one had been established in this case. In response to the question "*how would you describe his behaviour – sex abuse, inappropriate behaviour?*", the parish priest responded "*Definitely not as sex abuse. I would describe his behaviour as foolish, inappropriate and wrong*".

23.15 Monsignor O'Callaghan and Fr Bermingham then met Fr Naal and asked him a series of questions. He repeated that he had not had children in his car for several years. He agreed that he did give altar servers some small rewards (related to the number of attendances) for serving but said this was an old tradition in the Church.

The Gardaí

23.16 The parish priest referred the matter to the Gardaí in late October 2007. He met the Gardaí and gave them copies of the correspondence between himself and the bishop. The Gardaí were satisfied that no criminal offence was disclosed nor was there any specific allegation of sexual abuse nor any specified injured person. A garda superintendent wrote to the parish priest in November 2007 and advised him that no criminal offence was disclosed but that he had arranged for a local sergeant to speak to the school principal in the parish and to also refer his concerns to the HSE. In January

2008, a garda contacted the school to discuss the parish priest's concerns with the principal. The garda was satisfied that there was no cause for concern.

Inter-diocesan case management advisory committee

23.17 The inter-diocesan case management advisory committee considered the matter in March 2008 and, according to Monsignor O'Callaghan, *"concluded that the complaints lacked substance. The Committee expressed concern at what [Fr Naal] had suffered both in terms of reputation and peace of mind"*. The minutes of the inter-diocesan case management committee record that the parish priest *"would be informed of the conclusions of the preliminary canonical enquiry"*. Clearly, the advisory committee understood there was a canonical inquiry. Notwithstanding this, both Bishop Magee and Monsignor O'Callaghan told the Commission, as already stated, that no such inquiry was ordered.

23.18 The parish priest was unhappy with this response and raised further queries on the handling of his concerns. He was unhappy that he had not been able to deal directly with the inter-diocesan case management advisory committee. He wrote a series of letters to the bishop, Monsignor O'Callaghan and the secretary of the inter-diocesan case management advisory committee asking for answers to his various questions. He again wrote to the National Board for Safeguarding Children in October 2008 seeking its assistance in obtaining answers to his questions. At this stage, Mr Elliott and the National Board for Safeguarding Children were deeply involved in the handling of child abuse cases by the Diocese of Cloyne (see Chapter 6).

The Department of Education and Science

23.19 Initially, the parish priest approached the school which had been attended by the children who were being trained for ceremonies. The school principal assured the parish priest that there would be no repetition of having children from the school attend ceremonies unaccompanied.

23.20 The parish priest then referred the matter to the Minister for Education and Science in October 2007. The department did not have any record of the receipt of this letter although it acknowledged that it received a copy of the letter in April 2008 from the parish priest. In August 2008, the department

asked the board of management to confirm that the school was implementing child protection guidelines. The school replied by confirming that “*child protection guidelines have been implemented in the school*”. By January 2009, after further correspondence from the parish priest, the department records refer to having been in further contact with the school to ensure that it operated “*best practice regarding child protection*”. The principal confirmed that the board of management had decided that all future practice for church ceremonies would take place in the school. The board confirmed that the incident of practice in a remote church with a number of children occurred on only one occasion when the practice ran over time and as the children were likely to miss the school bus, Fr Naal dropped them home. The school amended their child protection guidelines to anticipate suitable arrangements for the transportation of children in a number of circumstances.

The HSE

23.21 The Department of Education and Science contacted the HSE in January 2009 and provided copies of the correspondence it had had with the parish priest. The HSE met the parish priest in January 2009 and subsequently sought and received information from the diocese about how it had dealt with the concerns expressed. The HSE compiled a report in which it noted that: “*It was clear that he had no specific information indicating that [Fr Naal] had behaved in an inappropriate or abusive manner with any child with whom he had contact. Furthermore [the parish priest] had no information or evidence relating to either a specific incidence of child sexual abuse or to the identification of a specific victim, neither did he make any allegations about [Fr Naal]. He gave evidence of various practices [Fr Naal] that raised a sense of unease*”.

23.22 The HSE considered the correspondence with the Department of Education and Science and noted that the school principal had confirmed that the practices that were the source of concern to the parish priest were no longer permitted. The fact of garda intervention in advising the school on safe practices was also noted. The HSE also reviewed the diocesan response to the concerns and was provided with transcripts of the interviews with the parish priest.

23.23 The local health manager reported on behalf of the child protection services in North Cork that she was satisfied that:

- No identifiable child protection issues existed.
- No allegation or suspicion existed that Fr Naal had acted in an inappropriate or abusive manner toward any child with whom he was in contact.
- The school's policies in relation to the transportation of children did not reflect best practice but that the matter had been addressed by the school.
- It was a matter for the Board of Management of the school concerned to ensure that the best practices of *Children First* guidelines are followed within the school. That is not a matter directly the responsibility of the HSE.
- The diocese had taken steps to ensure that diocesan personnel were aware of best practice in relation to the safe transportation of children.

23.24 This report was sent to the Department of Education and Science in April 2009.

Commission's assessment

23.25 While there was no allegation of child sexual abuse in this case, or indeed evidence to support any such allegation, the concerns expressed independently by the couple and the parish priest certainly indicated that Fr Naal may have behaved in a manner which could give rise to child protection concerns. As such, the concerns raised should have been investigated in 2005 and, if necessary, Fr Naal given instructions as to his future behaviour. Despite four letters from the parish priest, no inquiries were made until 2007. Bishop Magee then met Fr Naal and was satisfied by his answers. This, however, was not a proper inquiry. There were no inquiries made from the couple, the parish priest or the school. The failure to carry out a proper inquiry was wrong from a child protection point of view. It was also unfair to Fr Naal. The failure to properly inquire meant that he still had these concerns hanging over him for several years without any resolution.

Chapter 24 Fr Kelven¹¹⁴

Introduction

24.1 This is a case where a complainant in his 70s, Philip,¹¹⁵ simply wanted to tell what had happened to him many years earlier. Fr Kelven, his alleged abuser, had been dead for a number of years.

Complaint, 2002

24.2 In March 2002, Philip wrote to Bishop Magee to tell him that he had been abused by Fr Kelven when he was aged about 12 (in about 1936). Philip had become a priest for an American diocese and had left the priesthood in 1970. He subsequently had quite a successful professional career and a good marriage. He was writing at this stage because he just wanted to “*close it out of my mind and hopefully out of my memory*”. He clearly stated that he did not consider that the Bishop of Cloyne was responsible for what had happened.

24.3 The letter was passed on to Monsignor O’Callaghan who advised Bishop Magee that “*this is the kind of letter to which you yourself will provide the ideal response*”. He proceeded to advise on the content of the letter. He told the bishop that Fr Kelven had died in 1988.

24.4 Bishop Magee wrote a warm letter to Philip. He said that he had officiated at Fr Kelven’s funeral. He apologised for the harm done and complimented Philip on the way he had managed to deal with the matter.

24.5 Nothing further was done. No reports were made to either the Gardaí or the HSE. Monsignor O’Callaghan told the Commission that he did not make any inquiries about Fr Kelven’s ministry.

Commission’s assessment

24.6 None of the procedures was put in place in this case. Fr Kelven had been dead for about 14 years when this complaint was made so, clearly, only limited useful information could have been discovered. Nevertheless, such

¹¹⁴ This is a pseudonym.

¹¹⁵ This is a pseudonym.

information as was available should have been collated in case any other complainant emerged at a later stage.

Chapter 25 Fr Zephan¹¹⁶

Introduction

25.1 Fr Zephan is a serving priest of the Diocese of Cloyne. There is one expression of concern/suspicion in relation to him.

Abuse suspicion 2007

25.2 In January 2007, a sacristan reported to a priest that she had concerns about the behaviour of Fr Zephan. She told the priest that one day many years earlier, when she was going into the church, Fr Zephan was coming out of the altar servers' room and became very flustered when he saw her. She also saw a child appear from the room distressed and embarrassed. She reported this to the parish priest at the time. The sacristan could not remember the precise year in which this occurred; the parish priest to whom she spoke at the time was dead when she took the matter up again in 2007. The priest to whom she spoke in 2007 reported this to Monsignor O'Callaghan. Bishop Magee spoke to Fr Zephan and told him that he could not promise confidentiality because of the procedures in place for dealing with such matters. Fr Zephan emphatically denied that any incident occurred. Monsignor O'Callaghan asked the priest to whom the sacristan had spoken in 2007 to try to speak to the altar boy concerned.

25.3 When asked by the Commission, this priest said that the sacristan did not tell him the exact age of the child; she described him as a "*young fella*". He presumed that the boy was of mass serving age. The sacristan told him where the boy used to live but, at this stage, he was an adult and was living abroad. This priest reckoned that the incident occurred around 1990. He told the Commission that, when asked by Monsignor O'Callaghan, he made a number of efforts to contact the young man but failed. He said he reported this to Monsignor O'Callaghan who told him that there was nothing more he could do. Sometime later he made some local inquiries to try to establish if there had been any references to sexual abuse in the area but he did not find any. Monsignor O'Callaghan did not make a record of this priest's efforts.

¹¹⁶

This is a pseudonym.

25.4 Monsignor O'Callaghan then told Fr Zephan that the matter had been put to rest. There is no indication in the files as to why this happened. When asked by the Commission, Monsignor O'Callaghan said that he regarded the matter as closed because of Fr Zephan's denial and with the benefit of his own knowledge of Fr Zephan "*who was known to be highly eccentric in the exercise of his ministry and in his behaviour*".

Reports to civil authorities

25.5 In 2009, the diocese reported this case to the HSE.

Commission's assessment

25.6 It appears that the parish priest did nothing about the sacristan's concerns when first reported. The priest to whom the sacristan reported in 2007 did report properly. However, Monsignor O'Callaghan did not report to the civil authorities. The Commission recognises that there was no allegation of child sexual abuse but there was a basis for concern and that should have been reported to the Gardaí and the HSE.

Chapter 26 Bishop John Magee

Introduction

26.1 On 30 December 2008, while the fallout from the recent publication of the Elliott report (see Chapter 6) was still reverberating throughout the Diocese of Cloyne and indeed beyond, the diocesan delegate, Fr Bermingham, received a telephone call from Joseph.¹¹⁷ Prompted by the contents of the Elliott report, Joseph had reviewed his own interactions with Bishop John Magee during a period when he had been contemplating entering the priesthood. He was concerned that the behaviour of the bishop towards him, which had not perturbed him at the time, was, on reflection, disquieting.

Meeting with Fr Bermingham

26.2 After a number of telephone calls, Fr Bermingham arranged to meet Joseph on 2 January 2009. This was an awkward assignment for Fr Bermingham as the report concerned his bishop, to whom he owed respect and obedience. Fr Bermingham told the Commission that he was apprehensive about having to deal with the matter as none of the procedures in either the *Framework Document* (1996) or *Our Children, Our Church* (2005) set out how a delegate is to deal with a complaint against his bishop or a superior despite the fact that experience in other countries suggests that complaints against bishops are not unheard of.

26.3 At the meeting, which was also attended by Joseph's father, Joseph gave a history of continuous involvement with the Church throughout his youth, first as an altar boy, then as a reader and latterly as an aspirant priest. In all of these capacities he had encountered Bishop Magee. He had attended annual vocations' meetings organised by the bishop in the period under review when he was aged between 15 and 17. Following assessment, Joseph was accepted as a candidate for the priesthood for the Diocese of Cloyne. He was approximately 17½ years old at that time but could not take up his place in the seminary until he was aged 18. By this stage, Bishop Magee and Joseph had each other's mobile telephone numbers. If either

¹¹⁷ This is a pseudonym.

wished to speak to the other, texting was usually used to arrange the appointments.

26.4 Later, because of changed family circumstances, Joseph decided not to take up his place in the seminary. Just before the start of the seminary year he met Bishop Magee to notify him of his decision. The meeting took place in the reception room at the bishop's residence. It was the first time that Joseph had spent time alone with Bishop Magee. According to Joseph, that meeting marked a change in the bishop's behaviour towards him, both in word and deed. Joseph reported to Fr Bermingham and has told the Commission that, in the course of this particular meeting, the bishop embraced him tightly and at the same time inquired of him as to whether that "*felt good*". Joseph reported that this embrace was protracted; it lasted for approximately one minute. He stated that the bishop also kissed him on the forehead. Joseph had a number of further meetings alone with the bishop, some when he was under 18 and some when he was over 18. In the course of those meetings there were similar prolonged tight embraces and kisses on the forehead. There is some ambiguity about the precise age Joseph was when some of the alleged behaviour occurred. According to Joseph, the bishop declared that he loved him and told him that he had dreamt about him – this may have happened before he was 18 or soon thereafter.

26.5 It is important to note that Joseph's contemporaneous reaction to the bishop's behaviour was that his words and actions were "*paternal*". Neither the words nor the gestures had made him feel uneasy at the time. As already stated, it was the publicity surrounding the publication of the Elliott report that had caused Joseph to review his interactions with the bishop. Following that publication, Joseph had read in the newspapers general details about the kind of inappropriate behaviour that a boy had experienced at the hands of an unnamed priest before he was abused by that priest. Joseph told the Commission that he began "*to interpret what had happened between us from a fresh perspective and I began to think that maybe it wasn't as innocent as I originally thought or assumed it was*".

26.6 Joseph was anxious to know how Fr Bermingham viewed the behaviour and the words which he had described. Fr Bermingham's response was that, given the actual details revealed and Joseph's age at the

time, the behaviour described did not constitute an allegation of child sexual abuse. He did express the view to Joseph that the behaviour described was inappropriate to the occasion and to the relationship. He assured Joseph and his father that Church procedures in relation to these matters would be followed and that he would keep them advised as to developments.

Involvement of Mr Elliott

26.7 Following the meeting on 2 January 2009, Fr Bermingham telephoned Mr Ian Elliott of the Catholic Church's National Board for Safeguarding Children, who was temporarily acting as the advisory panel for the Diocese of Cloyne, to notify him of the concerns raised by Joseph and to seek his advice in the matter. Mr Elliott agreed with Fr Bermingham's assessment that what had occurred was not child abuse and was accordingly not reportable either to the HSE or the Gardaí under the guidelines set out in *Our Children, Our Church*. He also agreed with Fr Bermingham's assessment that what had occurred amounted to a boundary infringement and constituted inappropriate behaviour as outlined in paragraph 8.9 of *Our Children, Our Church*:

"Inappropriate Behaviour and Misconduct

There may be instances where, in the judgement of the Director of Child Protection, the complaint does not constitute 'reasonable grounds for concern' that child abuse has occurred, but rather indicates inappropriate behaviour, misconduct, or a breach of standards on the part of the person in question. In such instances, it may be necessary for the bishop, religious superior or chairperson of the Church organisation to take further action and/or implement disciplinary procedures. Such action might include obtaining a professional assessment of fitness to carry out duties; advice and counselling; a requirement to undertake special training or seek specialised assistance."

26.8 Mr Elliott and Fr Bermingham agreed that the guidelines required that Joseph be informed that the matter would not be reported to the civil authorities and further that he be informed of the reason for this decision. They also agreed that procedures required that the person complained about, Bishop Magee, and his superior be informed of the fact and detail of the complaint. This placed Fr Bermingham in the awkward and unenviable

position of having to confront his own bishop with an allegation of inappropriate behaviour.

26.9 On the following morning Fr Bermingham sent an e-mail to Mr Elliott containing the text which he proposed to read to Bishop Magee and sought his approval for that course.

Fr Bermingham meets Bishop Magee

26.10 On 3 January, Fr Bermingham met Bishop Magee. According to Fr Bermingham, he told the bishop that he had a very difficult task to perform and that he was going to read a text to the bishop. He told the Commission that he first of all cautioned Bishop Magee that he did not need to make any response to what was going to be read out.

26.11 Fr Bermingham told the Commission that, following the reading of the statement which contained details of Joseph's concerns and of Fr Bermingham's meeting with him, Bishop Magee stated words to the effect that he would never harm that young man. Fr Bermingham noted that the bishop was shocked at the interpretation placed on his actions.

Involvement of Archbishop Clifford

26.12 Following his brief meeting with the bishop, Fr Bermingham telephoned Archbishop Dermot Clifford, Bishop of Cashel and Emly, who was the metropolitan archbishop¹¹⁸ for the Diocese of Cloyne.

26.13 Later that same day, Archbishop Clifford met Fr Bermingham. Fr Bermingham gave Archbishop Clifford a copy of the written account which he had read out to Bishop Magee. He also told him that he had been in touch with and taken advice from Mr Elliott. Archbishop Clifford inquired about Bishop Magee's reaction and was told that Bishop Magee had admitted to the gestures but had not said whether or not he had uttered the words as written down.

¹¹⁸ See Chapter 3 for an explanation of the status of the metropolitan archbishop. As is explained there, under canon law, the metropolitan has virtually no authority over a suffragan bishop. However, *Our Children, Our Church* provides that the metropolitan has a role in relation to concerns or allegations of child sexual abuse against a suffragan bishop.

26.14 On Monday 5 January 2009, Fr Bermingham wrote to Joseph informing him that he had reported the matter to Archbishop Clifford, that he had sought the advice of Mr Elliott, and that, on the basis of the information supplied, the interaction between him and Bishop Magee did not constitute child sexual abuse. Joseph was invited to contact Archbishop Clifford if he wished to follow up his concerns further and he was also told of his option to bring his concerns to the civil authorities. The letter concluded:

“I should add that Bishop Magee, on being informed of your concerns, wishes to assure you that any words or actions of his were never intended to hurt, embarrass or injure you in any way and he continues to wish you well in your studies and in your future career.”

26.15 In the same week Archbishop Clifford contacted Mr Elliott seeking advice about the discharge of his obligations under paragraph 8.9 of *Our Children, Our Church*. He also asked Mr Elliott to recommend an expert on boundary issues to whom he could ask Bishop Magee to go for instruction. Also that same week, the Government decided to refer the issue of the handling of complaints of child sexual abuse in the Cloyne diocese to this Commission.

Informing Papal Nuncio and Cardinal Brady

26.16 On 7 January, Archbishop Clifford telephoned Cardinal Sean Brady, Archbishop of Armagh, to tell him of the complaint. He also told Cardinal Brady that Mr Elliott considered the behaviour to be inappropriate but that it was not reportable to the civil authorities. He then sent a copy of Fr Bermingham’s report about the complaint, the actions he had taken and the views of Mr Elliott, by fax, to Cardinal Brady. At the end of that week, on 11 January 2009, Archbishop Clifford went to see the Papal Nuncio, Archbishop Leanza. Archbishop Clifford told the Commission that he gave the Papal Nuncio a copy of the young man’s complaint as recorded by Fr Bermingham. The Nuncio advised him that he would forward the details of the complaint to the prefect of the Congregation for Bishops in Rome, Cardinal Re.

26.17 On 13 January 2009, Cardinal Brady gave an interview to RTÉ Radio in which, among other things, the problems in the Diocese of Cloyne were discussed. Cardinal Brady accepted that public trust had been damaged by the revelations in the Elliott report and he went on to describe the steps

needed to rebuild that trust. When asked specifically about the position of Bishop Magee, he said that he was heartened that the bishop had accepted responsibility for what had happened, had apologised and had committed himself to changing the structures and eliminating the deficiencies in the diocese. He said that he accepted the word of the National Board for Safeguarding Children that great strides had been made in Cloyne. He said that, in his view, Bishop Magee should not resign but should stay in order to ensure that the safeguarding of children was a total priority in the Diocese of Cloyne. Cardinal Brady was, as already described, aware of the complaint of inappropriate behaviour against Bishop Magee. He told the Commission that he had noted and accepted the statement in Fr Bermingham's report that Mr Elliott had judged that the conduct in question was not sexual abuse and was not reportable to the civil authorities.

26.18 On 15 January, Mr Elliott wrote to Archbishop Clifford recommending a specialist in "*boundary issues*" who might be willing to advise Bishop Magee on appropriate behaviour in pastoral ministry.

Archbishop Clifford meets Bishop Magee

26.19 Around this time, Archbishop Clifford spoke to Bishop Magee about the complaint. Fr Bermingham had already told Archbishop Clifford that Bishop Magee had earlier admitted the gestures. Archbishop Clifford told the Commission that he asked Bishop Magee whether he had said the words attributed to him by Joseph and, if so, what he meant by them. Archbishop Clifford also told the Commission that, in that interview, Bishop Magee denied that he had kissed Joseph on the forehead but stated that he had made the sign of the cross on his forehead. He admitted that he had stated to Joseph that he dreamt of him and explained this by saying that he dreamt of him as a lovely priest. According to Archbishop Clifford, Bishop Magee acknowledged that he had told Joseph that he loved him but, at this meeting, he did not explain or elaborate on why he said it. Archbishop Clifford explained to the Commission that he "*felt it would not be wise to say any more because I wasn't in an investigative role*". Later, in April 2009, Bishop Magee explained to Archbishop Clifford that his intention, in saying that he loved Joseph, was to comfort the young man who was upset by family problems.

Joseph contacts Mr Elliott

26.20 On 21 January 2009, Joseph forwarded details of his concerns directly to Mr Elliott. This e-mail contained more detail of the interaction between Joseph and Bishop Magee than had been noted in the report of Fr Bermingham. The purpose of the e-mail was to ask Mr Elliott's view as to whether the behaviour of the bishop amounted to sexual abuse and whether the Gardaí should be notified.

26.21 Having forwarded the e-mail to Archbishop Clifford, Mr Elliott responded to Joseph's e-mail on 23 January. He offered counselling to the young man and then addressed his questions stating:

"With the regard to the incidents that you describe, the critical issue is how they made you feel then and afterwards. If I am right in my assessment, you were a young adult when they happened and you did not communicate your discomfort to the Bishop when you were in the situation. You viewed what happened as you described it, as a breach of proper boundaries and social relationships. This breach would not be abusive in itself and therefore would not be a matter that you would need to report to the Gardai. The assessment that I have offered to you is based on the information contained in your e-mail."

Contact with boundary counsellor

26.22 On 22 January 2009, Archbishop Clifford contacted the boundary counsellor who had been recommended by Mr Elliott. Archbishop Clifford raised concerns about Bishop Magee's behaviour and requested that the boundary expert meet him. According to Archbishop Clifford, the expert was willing to meet Bishop Magee as a pastoral supervisor rather than as a therapist. He saw his role as being to inform Bishop Magee about what constituted appropriate boundaries in dealing with matters relating to touch in personal relationships. According to a note of the conversation between Archbishop Clifford and the expert, Archbishop Clifford expressed concerns that Bishop Magee might at some future date infringe these boundaries again because he appeared to be in a vulnerable state. The expert was sent the e-mail from Joseph to which reference is made above. Bishop Magee was asked to make contact with the boundary counsellor.

Joseph goes to solicitor and Gardaí

26.23 Meanwhile, not being fully satisfied with the response of Mr Elliott and being concerned that Mr Elliott was acting on behalf of the Catholic Church, Joseph brought his account, together with Mr Elliott's response and the letter of 5 January from Fr Bermingham, to a solicitor for the purpose of seeking advice as to whether Mr Elliott was right in his assessment of what had happened. According to Joseph's evidence to the Commission, the solicitor advised him that the bishop's behaviour was "*weird*" and that if he wanted to pursue it further he should either speak to a garda that he knew, off the record, or he should bring it to the attention of a barrister. Joseph's father arranged for him to meet a detective garda. Joseph met the detective garda on a number of occasions throughout the month of February and early March 2009. The detective garda, according to Joseph's account to the Commission, sought the opinion of other Gardaí experienced in the area of child sexual abuse and all came to the same conclusion, that is, that the behaviour of Bishop Magee was unprofessional and inappropriate but that it was not sexually abusive.

26.24 Joseph said that, during the course of his meetings with the Gardaí, inquiries were made of him about the steps being taken by the Church in relation to his complaint. Having being assured by the Gardaí that there was no criminal offence involved, he reverted to the Church authorities to inquire what had been done on foot of his complaint. He had heard nothing from the Church authorities since the e-mail from Mr Elliott on 23 January 2009. Unknown to him, Church authorities had taken certain steps in relation to his complaint.

Bishops' meeting, January 2009

26.25 At the end of January 2009, there was an extraordinary general meeting of the Irish Bishops' Conference in Maynooth. It was called for the purpose of discussing child protection issues. There were more than 20 bishops present including Bishop Magee, Archbishop Clifford and Cardinal Brady who chaired the meeting. The minutes of the meeting do not record this but, during the course of the day, an informal meeting took place at which there was a general discussion as to whether or not Bishop Magee should resign in the context of the revelations contained in the Elliott report and in light of the referral of the Cloyne diocese to this Commission of Investigation.

Archbishop Clifford and Cardinal Brady each gave accounts of this part of the meeting to the Commission. As already described, each was aware of the complaint of inappropriate behaviour against Bishop Magee. The Episcopal Secretary has confirmed that Joseph's complaint was not discussed at either the formal or the informal meeting.

26.26 Archbishop Clifford told the Commission that Bishop Magee outlined the fall-out from the Elliott report and described the stress under which he had been living since its publication. He told the other bishops that he had received a death threat on Christmas Eve. Archbishop Clifford said that there were strong opinions on both sides. The stronger arguments in favour of resignation were made by Archbishop Martin and three or four others. Archbishop Clifford's own view at the time was that, as the HSE and Mr Elliott had expressed the view that they were satisfied that complaints were being handled correctly in the Diocese of Cloyne, there was no need for Bishop Magee to resign. He also told the Commission that he had subsequently changed his initial view that Bishop Magee should not resign and had come to agree with Archbishop Martin.

26.27 Cardinal Brady told the Commission that Bishop Magee raised the Elliott report at the meeting, commented on it from his perspective and then offered to absent himself from the meeting to allow the issues to be discussed. He said that the bishops who were present were "*not at all of one view on what Bishop Magee should do next*". Cardinal Brady said that his position at that stage was that there was an interim position between resignation and maintenance of the *status quo*. Cardinal Brady said he was not, at that point, in favour of the continuance of the *status quo* – this was because of the Elliott report and not because of Joseph's complaint of inappropriate behaviour by Bishop Magee. He told the Commission that he was concerned that child safeguarding practice in Cloyne be prioritised and implemented and considered that Bishop Magee should be available to fully assist this Commission. After the Bishops' Conference had concluded, Cardinal Brady convened a meeting with Bishop Magee and two other bishops, Bishop John McAreavey of Dromore and Bishop Colm O'Reilly of Ardagh and Clonmacnois. They discussed the position and asked Bishop Magee to consider various options including standing aside as bishop to allow an administrator to take over. Bishop Magee agreed to think about this.

26.28 The Papal Nuncio who, as described above, was aware of the complaint was at the meeting and had a private session with Bishop Magee while the other bishops were having their informal meeting. The Commission does not know what was said at that meeting but it appears, from a later letter from Bishop Magee to the Papal Nuncio, that the Papal Nuncio also suggested to Bishop Magee that he should step down as Bishop of Cloyne for the duration of this Commission's work. Four days later, on 4 February 2009, Bishop Magee requested the Pope to appoint an apostolic administrator to the Diocese of Cloyne. In his letter, Bishop Magee suggested four possible candidates; two of these were priests and two were bishops; none of those suggested was ultimately appointed.

Changes to Cloyne practices

26.29 There was considerable activity relating to the issue of child sexual abuse and child protection in the Diocese of Cloyne in late January/early February 2009. This is documented in more detail in other chapters of this report. On 27 January, Bishop Magee stood down the Cloyne members of the inter-diocesan case management committee. On 31 January, the diocese retained specialists in child protection, Mentor (see Chapter 4) to review four cases relating to priests of the diocese about whom there had been allegations of child sexual abuse. On 8 February, Bishop Magee submitted files on three priests to the Congregation for the Doctrine of the Faith in Rome. On 18 February, he asked Monsignor Denis O'Callaghan and Monsignor James O'Donnell to step down as vicars general of the Diocese of Cloyne which they readily agreed to do. On 19 February, Bishop Magee attended a meeting of several agencies whose purpose was to review all matters touching on child protection in the diocese. In attendance were representatives from the diocese, the National Board for Safeguarding Children, the HSE, the Gardaí and the child protection specialists. On the same day, Bishop Magee wrote to the boundary expert seeking an appointment for a consultation. Due to the illness of the expert, that consultation did not take place until 3 April 2009.

Archbishop Clifford takes charge of Cloyne

26.30 On 28 February, Archbishop Clifford received a telephone call from the Papal Nuncio inviting him to accept the position of Apostolic Administrator

of the Cloyne diocese. Archbishop Clifford agreed to the request. Having allowed Bishop Magee a week to forewarn his priests about the imminent appointment, Archbishop Clifford was named as apostolic administrator on 7 March 2009. The official reason given was the need for Bishop Magee to devote himself to preparing for and co-operating fully with this Commission's investigation.

26.31 Soon after his appointment, Archbishop Clifford met the five Vicars Forane (see Chapter 3) in Cloyne. He told the Commission that he informed them of the complaint against Bishop Magee and that, in response, "*they all stayed stony silent*"; none made any comment in relation to the matter. Archbishop Clifford also notified the pastoral co-ordinator of the fact of the complaint. He stated that he informed the pastoral co-ordinator because he was the person in daily contact with the bishop.

26.32 Within days of his appointment as apostolic administrator, Archbishop Clifford received a letter from Joseph who had heard nothing from the Church authorities since 23 January. Joseph's letter of 10 March 2009 repeated the substance of the behaviour about which he had made complaint and concluded with a request for "*An account of all the efforts you made to investigate this serious issue*". Archbishop Clifford responded on 16 March setting out the various steps that he had taken:

- he had taken the advice of Mr Elliott when he had first learned of the complaint;
- he was aware that Joseph had been offered the support of a member of Mr Elliott's staff should he consider that helpful;
- as metropolitan of the ecclesiastical province of Cashel, he had met Bishop Magee and informed him of the complaint; and finally
- following his appointment as apostolic administrator of the Diocese of Cloyne, he had requested Fr Bermingham, the diocesan delegate, to report his concerns to the civil authorities.

Joseph has pointed out that he was not informed of one very significant fact – that the matter had been referred to Rome.

26.33 Fr Bermingham reported Joseph's concerns to the HSE and the local garda superintendent on 14 March 2009. The notification to the civil

authorities was done following further consultation with Mr Elliott. Having concluded in January that the complaint made by Joseph did not amount to a disclosure of sexual abuse and was therefore not reportable, Archbishop Clifford and Mr Elliott decided that the better course was actually to report. Archbishop Clifford told the Commission that he accepted that, on one view of the behaviour, it could be considered as grooming: *“One interpretation could be that it was grooming, another could be that he felt very sorry for him”*. He accepted that it was inappropriate behaviour.

26.34 At this stage, Archbishop Clifford had notified the details of Joseph’s complaint to the Papal Nuncio who, he was told, reported it to the Congregation for Bishops; to the vicars forane in the Diocese of Cloyne; to Cardinal Brady; to the HSE; and to the Gardaí. He told the Commission that his purpose in doing so was to ensure that the substance of the complaint would be on file should any further complaints or concerns arise in relation to Bishop Magee.

Archbishop Clifford meets Joseph

26.35 Archbishop Clifford met Joseph on 21 March 2009. Fr Bermingham was also in attendance. Joseph’s perception of the meeting was that both Archbishop Clifford and Fr Bermingham *“put a lot of energy into defending the Bishop’s actions. They said that the embrace was an Italianate gesture, that the Bishop served for many years in Rome and these are habits that he picked up in Rome”*. Joseph was not impressed with this explanation and pointed out that Bishop Magee had been living in Cobh for 22 years and was therefore familiar with how people in Ireland behaved. According to him, he also pointed out to Fr Bermingham and Archbishop Clifford that he had seen the manner in which Italian men embraced and that what he had experienced was different. His recollection is that he pointed out to them that *“Bishop Magee held me close to him. It wasn’t a hug. It was a full embrace. ... I think it was peculiar and it really can’t be explained away as something as innocent ... as something he picked up in the Vatican”*. Archbishop Clifford denies that either he or Fr Bermingham put a lot of energy into defending the bishop’s actions. He informed Joseph of Bishop Magee’s response. He considered the bishop’s actions to be inappropriate and always dealt with them as such.

26.36 Archbishop Clifford's recollection of the meeting is that Joseph was "a very nice young man, you would take to him. He is pleasant". Archbishop Clifford was particularly impressed that Joseph never added anything to his written account of what transpired between himself and Bishop Magee: "I mean he could have put this over a boundary, he didn't. And even though he did say he spoke to the Guards, he didn't give a statement and he wanted this solved within the Church".

26.37 All parties are agreed that, during the course of the meeting, there was a discussion on how the matter might be resolved within the Church. Joseph sought some sort of acknowledgement from Bishop Magee as to the fact of the behaviour complained of and its inappropriateness. Archbishop Clifford did not consider that to be feasible as it might constitute an admission and by that time in any event he thought that Bishop Magee had retained a solicitor. A meeting with Bishop Magee was offered but declined by Joseph. Joseph was informed of the notification of the complaint to the civil and Church authorities but was not given any details as to what was to happen with Bishop Magee. He was told however the effect of the appointment of an apostolic administrator. An account of the meeting was prepared by Fr Bermingham. It was submitted to Joseph for his agreement as to the veracity of the contents. After two further drafts, the account was signed by Fr Bermingham and Joseph.

The HSE

26.38 Fr Bermingham wrote to the childcare manager for North Cork, on 14 March, notifying him of Joseph's complaint. Following this, a meeting was held on 20 March 2009 between Fr Bermingham, the principal social worker and the childcare manager. This was the day before the Archbishop's meeting with Joseph. The HSE note records:

"Bishop Magee has not disputed the actions described to Bill Birmingham on the 03/01/09. Delegate liaised further with Ian Elliott who suggested that Bishop Magee should be seen by a counsellor in [...]. He has agreed. Purpose – to be advised about boundaries. He made no reply to the version of events where certain statements were attributed to him. Bill has been to AGS¹¹⁹ to discuss – [named garda],

¹¹⁹

An Garda Síochána.

[Joseph] *has already gone to the AGS but would not make a signed statement and therefore AGS would not proceed.*

Bishop told Delegate that the Pope often greeted in this fashion and that the Italians were a very demonstrative culture.

[Joseph] *has been in touch with Ian Elliott. Ian offered to meet him but as yet he has not taken this up.*

Bishop has always had a keen interest in promoting vocations, holding of parties with candidates around Christmas time. [Joseph] attended these which was quite unusual. He had access to Bishop Magee sometimes texting him on way home arranging to visit Diocesan Centre.”

26.39 On 23 March 2009, the principal social worker wrote to Joseph inviting him to meet *“in order to establish if any further safeguarding action is required to be undertaken by the HSE in relations (sic) to the concerns you raised and to discuss whether you wish to attend for counselling or psychological support as a result of your experiences”.*

26.40 The childcare manager prepared a memo for an assistant national director, entitled *“Significant events report”* setting out what was then known by the HSE and that it was intended to meet Joseph.

26.41 The meeting took place on 6 April 2009. According to Joseph, the principal social worker’s general opinion of the incident complained of was very much the same as that of Mr Elliott and of the Gardaí to whom he had spoken, namely, that Bishop Magee acted inappropriately but was not sexually abusive and that no safeguarding action was required. Joseph stated that he was pleased with the overall handling of the meeting. He pointed out that he was pretty keen to avoid anything that would bring attention on himself and he was therefore happy that the HSE view was that there would be no need to go further with this. Joseph remarked that, during the course of the meeting, the principal social worker told him that he worked with many children around the Cork area and that, if he had behaved in such a way towards them, he would be suspended. Joseph considered this to be

an acknowledgement of the inappropriateness of what he had experienced and the propriety of his complaint about it. Approximately three weeks later, at a meeting between the HSE and the diocese on 1 May 2009, attended by Archbishop Clifford, Fr Bermingham, the childcare manager and the principal social worker, Joseph's complaint was on the agenda. The HSE note of the meeting states:

"The HSE has enquired into the matters raised by [Joseph] and has concluded in respect of Bishop Magee there is no complaint of child sexual abuse or of acting in a sexually inappropriate manner. However he clearly breached both personal and professional boundaries in his conduct towards [Joseph]. HSE will not be interviewing Bishop Magee as he has

- 1 Admitted his actions*
- 2 Acceptance that they were inappropriate*
- 3 Co-operation with Church officials*
- 4 Remedy is in place through attendance at [boundary expert]."*

26.42 At the same meeting, the principal social worker advised that there would be no further action from the HSE on foot of the information received in meeting directly with Joseph.

Boundary counselling

26.43 When Archbishop Clifford received details of Joseph's complaint he had a number of options under paragraph 8.9 of *Our Children, Our Church* (quoted above). These options included obtaining a professional assessment of fitness to carry out duties, advice on counselling, a requirement to undertake special training or seek specialised assistance. As described above, having discussed the matter with Mr Elliott and having taken his advice, Archbishop Clifford contacted the boundary counsellor personally to ask him to advise Bishop Magee in relation to appropriate pastoral boundaries. Because of an intervening illness, the boundary counsellor did not meet Bishop Magee until early April 2009. Following the meeting, Archbishop Clifford telephoned him for a report. Archbishop Clifford noted what he said in his diary:

"Bishop Magee had not contested the substance of [Joseph's] complaint but he stated that his intention was purely to comfort a

young man who was distraught at [the family problems] and his consequent decision to abandon his plans to enter the seminary and to study for the priesthood. [...] He advised Bishop Magee to be extremely careful to avoid the kind of behaviour which had led to the present difficulties for him and for the young man. He said that he had told Bishop Magee that he should be careful that his words and actions might be construed as satisfying his own personal needs, as much as to console the distraught young man, the bishop accepted the advice.”

26.44 In a brief written report provided at the request of Archbishop Clifford for the benefit of this Commission, the counsellor said:

“... initially I clarified to Bishop Magee how I saw my role as a pastoral supervisor. In line with that role I had instructed Bishop Magee as to what constituted good practise in the area of touch in the context of pastoral relationship. I said that I would also supply him with reading material on this topic. Bishop Magee communicated to me his willingness to abide by these guidelines in all future pastoral contact. He seemed to be under a great amount of stress and I recommend that he should avail of counselling. I expressed a willingness to meet with him again if he thought it would be helpful.”

26.45 Nothing further is proposed by the local Church authorities in relation to this matter. As a bishop, Bishop Magee is answerable to the authorities in Rome who have been notified. Bishop Magee resigned as Bishop of Cloyne in March 2010. The civil authorities have been notified and the details of the complaint are on Church files should anything further emerge. The senior priests in the diocese and the pastoral co-ordinator have also been notified of the fact and substance of the complaint.

The Gardaí

26.46 Joseph’s complaint was formally notified to the Gardaí by the diocese on 14 March 2009. Of course the local Gardaí were already aware of the matter as Joseph had been in contact with them from late January and they had already advised him that the complaint did not amount to a criminal offence.

26.47 On 11 May, Joseph made the following statement to the Gardai:
“I have met with Detective Garda [...] of [...] Garda Station more than once and informed him of my concerns regarding inappropriate actions and words directed towards me by Bishop John Magee. Subsequent to our meetings I requested that an internal investigation be held by the Church authorities. Due to this, I do not want the Gardai to get involved or to investigate this matter.”

26.48 The garda file was forwarded to the DPP who directed that there be no prosecution as no criminal offence was disclosed.

Commission’s assessment

26.49 The Commission considers that this case was dealt with appropriately. In general, the case raises issues about soft information, who is to receive it, where it is to be filed, when is it to be accessed, and who has access to it. The Commission understands that this issue is to be addressed in the proposed Bill dealing with vetting.

26.50 The Commission recognises the difficulties this case presented for Fr Bermingham and considers that he dealt with it very well. However, as Fr Bermingham himself pointed out to the Commission, it illustrates the need to have a clear mechanism for dealing with complaints against bishops and the desirability of having a person independent of the diocese as the designated person/child protection officer.

Chapter 27 Complainants

Introduction

27.1 The Commission is very grateful to the complainants who came forward to give evidence. In reporting how complaints were handled, the effects on the lives of those who were abused and their family circle are not directly addressed. The Commission considers that it is both important and appropriate to refer to some of the experiences recounted to it during the course of its investigation.

27.2 One complainant described the effect of the abuse on her in the following terms: *“He destroyed my trust. He destroyed my normal way of living. The abnormal becomes so normal for me.”* Another complainant said: *“They have robbed my faith. They have robbed my safe haven”.*

Revealing the abuse

27.3 The complainants in Cloyne all experienced great difficulty in revealing the abuse. It is notable that this report does not include a single instance of contemporaneous reporting of abuse by the abused person. All were adults at the time of disclosure. In some cases, the abuse was disclosed only when it became public knowledge that others had been abused.

27.4 Most complainants continued to live in the small towns and parishes in which they were reared and in which the abuse occurred. Their difficulties were compounded by the fact that the alleged abuser was usually still in the area and still held in high regard by their families and the community. This was a powerful inhibitor on the complainants revealing the abuse. Even after the abuse stopped, the abusers continued to officiate at family weddings and funerals and, in one case, at the complainant’s own wedding. The psychological effect on an abused person of watching the abuser performing a religious ceremony before the admiring gaze of the family is extremely difficult to imagine.

27.5 Many complainants simply considered that they would not be believed. One complainant stated that she had to wait until her father was dead for fear he would kill the abuser. Another stated:

“this was killing me inside, it was hurting me inside so much and who was going to believe me. It was 1990. There was no such thing out at that time about abuse cases or priests abusing or anything like that, who was going to believe me. And I carried it and carried it for a few months and I subsequently, when the girls would be gone home at the weekends or whatever, I would drink and tried to block out the pain. And I subsequently, I suppose it was a cry for help, tried to kill myself one night.”

27.6 Many complainants thought that there were no other people abused by their abuser. Even when they did report the abuse as adults, they continued to be under this impression because they were never told by the diocese that there were other complaints about the same alleged abuser.

Stated effects of abuse

27.7 Two of the complainants had attempted suicide. One complainant mentioned a friend who had committed suicide. Other problems identified by the complainants included difficulty managing anger, self-destructive behaviour, depression, isolation and poor self-esteem. One complainant stated: *“It actually, I'm so angry, I've just been to such levels of anger you wouldn't believe it”*.

27.8 A complainant described the only incident of abuse that she could remember, its immediate effect and how it continued to affect her:

“I figure that was a Thursday night because mum would have been at work. And I know I had a horrific day at school on Friday. I was panicky, upset and I was afraid I was going to be sick. Saturday was much the same. Sunday mum gave me a sleeping tablet or something because I just got the shakes and I was, I don't know, I lost it. On Monday she got the doctor for me and he put me on Valium and to this day I still am afraid of choking. I am afraid of, and I have been on tablets since then. I don't leave home and I don't leave my comfort zone.”

27.9 This complainant had been abused when she was 13 years old. She did not reveal the abuse until she was 56 years old and then only after the identity of one of the priests investigated in the Elliott report became generally

known in the locality. She stated: “[a]nd it was only then that day when I spoke to mum I told her that is why I am afraid of choking. You know, she reared five children, how did she get one so different. I am like a shadow”.

27.10 Another described her emotions in vivid terms when she first revealed the abuse some 30 years later:

“I remember an evening when I first began to relay the events that had happened to me with a friend, the feeling of revulsion that swept over me, the constant need to put my hand over my mouth in case I'd get sick. The feeling that there were golf balls stuck in my throat and we both laughed at the irony and we both cried with the pain. I kept rubbing my fingers to my hand as if to try to remove the stickiness I felt in simply discussing it. I remember holding my stomach to suppress the need to throw up. I remember feeling haunted by music in the background, the sound of his voice directly in my ear, even though neither of those things were actually happening.

I remember the smell of incense, the bible, the open confessions, the removal of his collar when he wanted to touch me more intimately. Nightmares, waking up with a sense of him standing by my bed and my head at his hips. Feverish nightmares, glimpse at events that had taken place but never enough to get a full picture. Separate instances. They all mulch into one, one long brain turning, nauseating role of events. My head being pushed down, my body being invaded, the weight of his body on me.

He was so big and so overpowering. In my mind I have wanted to run so many times but I can't.

I am trapped because wherever I go the nightmares haunt me.”

27.11 Some of the complainants were left with the feeling that they were complicit in the abuse, such was their esteem for the priest. One complainant stated: *“I mean what was so awful about all of this all of my life is I felt that I was the one who did something dreadful, that I was the one so isolated in shame until I knew better, you know, and that is exactly what he wanted”.*

27.12 This complainant went on to say:
“My daughter got very sick [...] and I was so devastated by that. I thought this was my -- I actually remember thinking this is your punishment for everything I did. I mean your thinking would be completely deranged like and I remember thinking: Oh, my God, this is what God is doing to me like for what I have done.”

27.13 Another, when speaking about the fact that she had discovered there were other complainants, said: *“I suppose when you knew there was others it wasn't all your fault anyway, you know. I am through wondering what I did wrong”.*

Difficulties in relationships

27.14 Almost all of the complainants had great difficulty in establishing and maintaining personal relationships. A number had married but some of the marriages were not successful. One complainant told the Commission: *“All my relationships have been one disaster after another really.”*

27.15 Another complainant stated:
“I mean I went through years of counselling. I mean, like it didn't stop that I just went for counselling, I had trouble having relationships. I had trouble with men. I found it very hard to form, you know, I was late in my life before, I mean well in my 30s before I had any contact like that with a man. I mean that was just, that was years of going back for counselling.”

27.16 Yet another said:
“My teenage years became obsessed with a feeling there was something evil in me. I used to think if people really knew me they wouldn't approve. I believed no man would ever be interested in me for my mind because I think too much. A man would only ever see me as a sexual object. I used to pray so hard for protection from evil. It was sometimes how I fell asleep at night”.

The effect on the families

27.17 One complainant said:

“You have no idea of the implications of something like this to a family, to a child. There is no way you can go home and talk to your parents about something like this when you are a child ... I really tried to leave this behind me to a very, very large extent. So bringing all of this back up again has been very hard and it is something I never wanted to do while my parents were alive.”

27.18 Another stated:

“I just want to say that the damage that that has done, that it has done to my life really, that the ramifications of, you know, that teenage abuse is kind of being felt still today, you know. And that kind of through my life, you know, my kind of developed, it kind of threw me off course and caused me a lot of personal pain and just in terms of relationships and just my family, it just really, really hurt me a lot and I think at the time when it was happening I didn't know really, you know, the repercussions or the damage or how this would affect me into my adult life, you know.”

27.19 Another stated: *“just in terms of relationships and just my family, it just really, really hurt me a lot”.*

27.20 A parent stated: *“I was concerned for [...] because she was in depression and certainly not able to deal with life and people you know”.*

Effect on religious belief

27.21 Many of the complainants were deeply involved in Church activities when they met their abusers. This made the betrayal of trust even more insidious. A substantial number of the complainants and their families, while paying lip service to Catholicism and officially bringing their children up as Catholics, had long since ceased to have any belief in the Catholic religion. One witness stated:

“The only thing I have to say about the Church is that when [...] came to [...], I was very staunchly Catholic, had an absolutely brilliant faith in it and he ruined that for me ... Like, my children are now growing up, we have brought them up as catholic because the schools they go to

are catholic but there is no other emphasis on the faith besides that and I think that that is one of the main things besides taking the innocence of a child obviously but that is one of the main things that I hold against them, that they ruined that for me. And it wasn't just the priests involved, it was the whole hierarchy and the way these priests were handled when it was known at the time that they were abusing children and they were just passed on to new places for them to find new victims."¹²⁰

27.22 A number of the complainants paid tribute to individual priests and nuns who had helped them through the difficulties they experienced after they revealed the abuse. However, without exception, they felt that they had been let down by the institutional Church. They were all of the opinion that in their meetings with higher Church officials, the sole concern was the protection of the institution rather than the wellbeing of children. Their difficulties were compounded by the fact that their abusers appeared to have suffered no sanctions after their abuse had been revealed.

Responsibility

27.23 The priests who abused are primarily responsible for any wrong done to the complainants. However, in many cases, that wrong was compounded by the acknowledged failure of the diocesan authorities when they failed to deal properly with their complaints. No action can totally alleviate the anger and hurt suffered by the complainants but the Commission hopes that this acknowledgement, and the publication of this report may, in some measure, assuage the hurt and anger justifiably felt by them.

¹²⁰

This complainant was speaking about the Church in general. The Commission did not find any evidence that priests against whom complaints were made were moved around by the Diocese of Cloyne.

Appendix 1 The Elliott report and responses to it

Part 1: The Elliott report

The following is the final Elliott report which was published on the Diocese of Cloyne website in December 2008.

“The Elliott Report

Strictly Confidential

Report on the Management of Two Child Protection Cases in the Diocese of Cloyne

Executive Summary

This report presents the findings of a review of two child protection cases which arose within the Diocese of Cloyne. The review was primarily records based but was supplemented by interviews with Bishop Magee, his delegate Monsignor O’Callaghan, and Dean Goold. Each case involved members of the clergy as the alleged perpetrators. Child protection practice was examined through the case records provided by the Diocese of Cloyne and found to be inadequate and in some respects dangerous. There was no evidence that risk had been appropriately identified or managed, thereby potentially exposing vulnerable young people to further harm. Deficits in practice are identified and recommendations listed to address these.

Please note that the allegations referred to in this report are not proven and this report makes no determination as to their veracity.

The Identification of the Two Cases

1. On the 15 February 2008, the Chief Executive Officer of the National Board for Safeguarding Children in the Catholic Church (NBSC) met with two senior officials within the Department of Health and Children. The purpose of the meeting was to update the Department on the ongoing initiatives that the NBSC had embarked upon in order to embed best practice in the field of safeguarding children within the Church.
2. At the conclusion of that meeting, the CEO was informed that a complaint had been made to the Minister regarding the practice of the Diocese of Cloyne in a

particular case. A copy of the correspondence was given to the CEO and he was asked to investigate the circumstances outlined in the complaint, and to report back his findings.

3. The complaint came from an adult man who alleged that he had been abused when a young boy by a priest, whom will referred to as Father A, and that this matter had not been properly dealt with by the Diocese, and particularly by the Bishop. The victim had grown up and had joined the priesthood.

4. Contact was made with the Bishop and the CEO travelled to the Diocese on 20 February 2008, to establish directly from those involved in the case of Father A, as to whether the complaint was justified or ill founded.

5. The visit failed to provide sufficient information to enable the CEO to make a fair assessment of what had happened. A selection of case papers were provided for review, but these were incomplete and insufficient for the purpose of forming a fair judgement as to what had happened in this case.

6. Correspondence was sent to the Bishop requesting access to the full case records and expressing concern at the fact that the complete documentation had not been made available for review by the NBSC.

7. On 7 April, the NBSC were contacted by Faoiseamh, the child protection helpline for the Congregations of the Religious of Ireland, (CORI). They were seeking help in responding to a distressed client, a woman, who they were uncertain of how to best meet her needs. The CEO spoke by phone to the lady who lived within the Diocese of Cloyne, and arranged to interview her.

8. The following day the CEO and Sister Colette Stephenson visited the lady in her own home. She described an alleged serious sexual abuse that she said she had been subject to from a priest within the Diocese of Cloyne, Father B. This was alleged to have gone on for approximately five and a half years. It was alleged that she was raped by a priest at the age of thirteen. We took a chronology from her of the abuse and of the contacts that she had had with the Bishop, and Monsignor O'Callaghan, in which she had detailed to them the alleged abusive behaviour of Father B.

9. As a consequence of these circumstances and within a relatively short period of time, two serious cases of sexual abuse had been reported to the NBSC on a completely unsolicited basis. Each complaint, alleged a lack of any adequate response being taken by the Diocese. They reported a perceived lack of willingness to follow any appropriate child protection procedures. In the case of the lady whom we visited, we formed the view that significant additional trauma had been generated for her through this perceived lack of acceptance and support.

10. Given the remit of the NBSC, it was decided that both cases should be fully investigated and that the Diocese should be asked to make all the relevant documents available for review, as a matter of priority.

11. On 21 April 2008, a meeting took place in the Columba Centre, St Patrick's College, Maynooth. The meeting was attended by Bishop Magee, Monsignor O'Callaghan, and Dean Goold, from the Diocese of Cloyne. Mr Aidan Canavan, the chair of the NBSC and the CEO were also present. Ms Ann Doyle took the minutes of the meeting. The case papers for the Father A and Father B complaints were handed over to the NBSC for review.

The Case of Priest A

1. The case papers furnished for Father A amount to eight folders into which relevant papers are placed. Although not required, there is no narrative recording of actions taken or decisions made. This makes it difficult to follow clearly the development of the case. The eight folders have the following headings:- Report to Civil Authorities, Fr. G and his contacts with XY, One in Four letter to the Minister, Relevant Minutes of Case Management Committee, Interview with XY, Correspondence with support person NT, Correspondence setting out implications of withdrawal from ministry for A, Interview with A.

2. In the correspondence supplied by the Department, the complainant had listed an alleged chronology of the case. This proved to be very useful as a template against which the case papers could be reviewed.

3. The complainant XY, a priest of the Diocese, first reported that he had been abused in December 2004. He spoke to the Bishop but he did not at that time identify who the alleged perpetrator was. Support for him was organised by the Bishop and he entered into counselling early in February of the following year.

4. In May of 2005, XY met with Dean Goold and disclosed to him that A was the priest who he alleged had abused him when he had been a young boy. In September of the same year and four months after XY had revealed who had allegedly abused him, Bishop Magee met with A on the foot of these allegations and following this meeting A decided to resign from his post as parish priest.

5. On 19 November 2005, six months after the identity of the accused was disclosed to the diocesan authority by the complainant, a letter was sent by Monsignor O'Callaghan to Superintendent McPollin of the Gardai, informing him that a complaint has been received against a priest in the Diocese. It names only the victim but does not identify the alleged perpetrator. It does state that he is another priest of the Diocese.

6. Two important points should be noted. Firstly, the delay in reporting was supposedly justified in the view of the Diocese, by the unwillingness of the complainant to talk to the Gardai. In short, the attitude of the complainant was seen as the determining factor as to whether a complaint was reported or not. This is an obvious and concerning misunderstanding of what good child protection practice dictates.

7. Secondly, the failure to name the alleged perpetrator to the Gardai was not exceptional. Indeed, it is described as "their normal practice" by the Bishop in a signed minute of a meeting which took place on 25 May 2006 involving the Bishop, XY and his parents. (The minute was produced by the Bishop himself.)

8. Throughout the case papers for priest A, references are made to the pastoral care policy of the Diocese and the need for reconciliation. It is not clear as to what is meant by these references. However, what are glaringly absent are any references to the need to protect vulnerable young people and to act in a timely and effective way to achieve this end. This is illustrated by the minutes of the Case Management Committee that met on 21 September 2005 to discuss the A case. Current risk to young people is not referred to at all. The suggestion is noted that the option of retirement to the accused might be offered if appropriate. (This is, in fact, what happened when the Bishop met the accused later in the month, when he decided to offer to retire from his post.)

9. What is also significant about the Case Management Committee that met to discuss this case was its composition. There was only one person who was not a member of the clergy present. It is not clear as to whether this is unusual or not. However it does raise issues about the objectivity of the advice that this group offered.

10. It should be noted that A held a role in the Diocese which would afford him opportunity for contact with young people. Through this he would have had frequent contact with young people of a similar age to that of XY. There is no evidence in the case papers that any attempt was made to identify any other possible victims amongst those young people.

11. A was sent for assessment to the Granada Institute where it was determined that he had no erotic interest in young people and represented a low risk for further abuse. It is not clear, nor is it stated anywhere in the file, as to whether A ever admitted to the alleged abuse. However, his legal representative has raised as an issue with the Diocese their failure to caution A about making an immediate response to the allegations when these were put to him by the Bishop.

The Case of Father B

1. The case papers for B comprise eight folders into which different items of correspondence and notes are placed. They have been given the following headings:- Further Complaints, NM. law case, NM. notes, Complaint PSP, DB Complaint, Concern re ZW. and her son V, B House, Withdrawal from Ministry.

2. There is no narrative recording in the file which makes it very difficult to sequence accurately the many significant events that took place in this complex case. Correspondence is combined with notes of telephone calls, meetings, and observations. Some are undated which adds further to the difficulty of interpreting accurately what happened.

3. The first noted complaint against B was received in early 1995. PSP and her father, informed the Bishop that B had sexually abused her. On 30th March, Bishop Magee directed Monsignor O'Callaghan to conduct an investigation. It is stated in the files reviewed that the papers on completion of the investigation were to be placed in the secret archive maintained by the Diocese. (The reference to this is dated 7/10/00).

4. The matter was submitted to the Diocesan Child Protection Management Committee on the 4th July 1995. It was further discussed on 17th July and again on 14th November of that year. It is noted in the recording of these discussions that the Committee raised doubts about the "quality of the alleged abuse" and the victim's age. It was also noted that the victim did not want to report the matter to the Gardai and no report was made by the Diocese.

5. A further complaint was received by the Diocese on 4th September 1996. ZW, who is an adult woman, expressed her concern about the relationship that B had with her fourteen year old son, V. Father B was described as overly affectionate to him and would give him expensive gifts. He was observed kissing him on one occasion. Also, V and B would kiss each other goodnight. ZW. also reports that she had a sexual relationship with B for about a year which gave B frequent access to her house.

6. On 9th December 1997, DB, a new complainant, wrote to the Bishop and alleged that B sexually abused her during a young people's retreat at St. Dominic's in Ennismore. She alleged that the abuse took place during the hearing of her confession which was conducted in a bedroom at the retreat house. She was instructed to lie on the bed for her confession to be heard. B then abused her.

7. On 14th February 1998, Bishop Magee directed a letter to B in which he states that "pending the pastoral decision which I may eventually take in your regard, I require you do not engage in the visitation of schools or have young people under the age of eighteen alone in your house." B was a careers guidance teacher in a local convent school.

8. B was placed on restricted ministry following the letter from the Bishop in early 1998. He was able to continue to wear priest's clothing. On 16th May 2002, Monsignor O'Callaghan sought advice with regard to B's future. He raised the possibility of a return to "full ministry" for B. This would involve an approach to complainants to secure their agreement.

9. A telephone conversation is noted in the file as taking place on 4th June 2002 between Monsignor O'Callaghan and B in which a number of alternatives are raised including retiring on sick leave, or taking action to clear his name. The option of

transferring to a Diocese in America was considered not viable because of the allegations.

10. In January 2003, ZW and her son V, who was then twenty one years old, returned again to complain about B. Further detail is noted of the alleged abusive sexual relationship between B and V. The matter was referred to the Gardai for the first time for investigation. Consideration was given and noted in the file to the possible withdrawal from ministry of B.

11. On 17th November 2005 NM, a new complainant made contact with the Diocese and alleged serious sexual abuse by B. She alleged that the abuse began when she was thirteen years of age and involved full sexual intercourse. She also alleged that the abuse lasted until she was eighteen years of age and B was frequently seen by the victim in the community wearing priest's clothes. The matter was reported to the Gardai for investigation.

12. On 13th 2006, Monsignor O'Callaghan wrote to Bishop Magee regarding how he might respond to the request from the Gardai investigating the complaints against B. It is clear from the papers contained in the file that the policy of the Diocese in their contacts with the Gardai was to give "minimal" information. In particular, it is indicated that no information was to be volunteered in respect of any previous complaints involving this priest.

Interview with Bishop Magee and Monsignor O'Callaghan

1. On 6th May 2008, the Chairman and CEO of the NBSC met with Bishop Magee and Monsignor O'Callaghan to address questions to them arising from the review of the case papers. Eight questions had been identified for discussion. These comprised:-

- What is the reporting policy for Child Abuse in the Diocese of Cloyne?
- How many priests are currently living in the Diocese against whom a child protection allegation has been made?
- What information would normally be given to the Gardai or the HSE when making a child protection referral?
- What preventative actions would normally be taken when information comes to light that a priest is accused of causing harm to a child or young person?

- What role does the informant's consent play in deciding whether or not a referral is made to the Gardai or to the HSE, of alleged abuse?
- What is meant by the term "a pastoral care policy for responding to child abuse cases in the Diocese of Cloyne"?
- What sources of advice are available to you in deciding how to respond to a child abuse allegation within the Diocese?
- On reflection, what would be your view of the actions that were taken to protect children from further harm from alleged abusers in the Diocese of Cloyne?

2. The information given by the Bishop and the Monsignor in interview has been taken account of in the analysis and recommendations section of this report. To summarise their position, they accept fully that "lacunae" existed in their child protection policies and practice. They recognise the need to ensure that all information relating to an allegation of abuse is conveyed to the appropriate authorities fully and in a timely way. They accept also that this has not happened in these two cases.

3. Although it was confirmed to the NBSC at the meeting that a substantial and radical re-appraisal of child protection policies and practice in the Diocese had taken place, it had not yet resulted in any new approach being committed to paper. However, this was accepted by the Bishop as something that urgently needed to happen.

Assessment of Child Protection Practice

1. These two cases provide sufficient evidence to form an accurate judgement on the adequacy of child protection practice in this Diocese. It is significantly deficient in a number of respects. Most alarmingly, it fails to focus on the needs of the vulnerable child and the requirement to take preventative actions quickly and effectively to secure their wellbeing.

2. Good child protection practice involves working openly and in a collaborative manner with those agencies that hold the statutory powers to investigate child abuse and to intervene to protect children. The very essence of this relationship is a willingness to share information with those who hold the responsibility to take actions.

3. In these cases, information sharing was always limited and approached on a reluctant basis. The term "minimal" is used in the case papers to describe what is aimed for. This position appears to be endorsed by certain persons who provide advice for the Bishop which raises serious questions about the quality of that advice.

4. Any meetings that were convened by the Diocese, such as the Child Protection Management Committee, are apparently focused on the needs of the accused priest. There is no documentary evidence that the ongoing risk to vulnerable children was discussed or considered at any time by them. Again, this raises serious doubts about the ability of those groups to perform effectively in this role.

5. There appears to be no understanding or appreciation of the nature of the issues that they were dealing with. Individuals who sexually harm children do not reform easily. It is always dangerous and often irresponsible to assume that an individual who once harmed a child, has achieved a position of low risk, through this being asserted by someone who is seen as expert in the field. Behaviour of this nature is often deeply entrenched and is not easily eliminated.

6. The Bishop is the responsible person in these matters. He holds the authority and the responsibility to ensure that actions are taken and children are protected. In these cases, this did not happen in the way that it should have. Actions when taken, were inappropriately delayed and were minimal in content. The responsibility to take action and to make decisions can not be delegated from the Bishop to other bodies, regardless of what level of expertise it is assumed they hold. This appears not to have been properly understood in both of these cases. There is a very clear difference between an advisory role and a decision making one.

7. There is no appreciation evident from the records or from the interviews that it was realised that by allowing individuals against whom an allegation has been made, to continue to wear the vestments of a priest may facilitate further abuse of young people. Priests occupy a position of trust and respect in communities. This profile is useful for a predatory abuser who happens also to be a priest, who can then utilise his position as a means of securing new victims. The Diocese is vulnerable to be seen as complicit in this by not taking action to remove these people from the priesthood.

8. The issues that these two cases deal with are very serious. The potential for long lasting hurt as a result of mishandling a complaint is real. Given the serious nature of what is involved, it is surprising to find case papers that lack coherent content. A higher standard of recording practice is urgently required.

9. There is a failure evident in both cases, to distinguish between what is termed "historic abuse" and "current risk". The disclosure of child sexual abuse occurs most often after a significant passage of time has elapsed. Adults disclose, often incrementally, about the abuse that they endured as a child. This pattern of disclosure is not uncommon but appears to fail to lead to the assessment of current risk. This contributed to a failure to take appropriate preventative actions to protect children in both these cases.

Conclusions

1. The Board is satisfied that it received all relevant and available files from the Diocesan authority in relation to its investigation and that the relevant diocesan personnel did make themselves available to meet with the CEO.

2. Children have been placed at risk of harm within the Diocese of Cloyne through the inability of that Diocese to respond appropriately to the information that came to it regarding child protection concerns involving the clergy. It failed to act effectively to limit the access to children by individuals against whom a credible complaint of child sexual abuse was made.

3. The competence of those involved in this area of work in the Diocese has to be questioned. Risk has not been recognised and responded to appropriately.

4. Put simply, the responses of the Diocese could be described as ill advised, and too little, too late. However, the events that these cases focus on are very significant to those involved.

5. In going forward, the Church as a whole seeks to demonstrate best practice in the field of safeguarding children. It aims to enhance the lives of those that it has contact with. It wants to eliminate preventable harm and suffering. In each of these cases, it has failed to do so. It is of vital importance that the learning from the review of these two cases is immediately and comprehensively addressed by the Diocese of Cloyne and anywhere else within the Church where it may be relevant.

Recommendations

1. The Diocese of Cloyne adopts immediately a safeguarding policy for children that meets the standards expected of it within the Church as a whole.
2. One of the essential elements of this safeguarding policy will be the sharing of all information held on any alleged abuser within the Diocese with the appropriate statutory authorities, in a timely way.
3. The development of an open and collaborative working relationship with the key statutory agencies in the area should be seen as a priority. This should be based on a sound understanding of the role and remit given to each body under the legislation that applies in this country.
4. The current child safeguarding structure within the Diocese is reviewed to confirm that it can provide high quality safeguarding advice that appropriately recognises the need for protecting the vulnerable child, rather than concentrating on the management of the accused.
5. Any other cases that have been identified within the Diocese should be urgently reviewed to establish if current risk has been adequately assessed. This should be progressed independent of the Diocese until confidence is restored in the ability of those involved to take required actions.
6. Preventative actions should be reviewed and implemented in all cases that are known to the Diocese to protect other children from potential further abuse. (These should include addressing the question as to whether a person should be placed on administrative leave or stood aside from active ministry and the strictures that should be imposed pending investigation and whether the priest remain in the priesthood at all. Such action must be taken at the earliest opportunity.)
7. Child protection training should be sourced and provided for those involved in child protection in the Diocese, to improve their ability to recognise risk and to record their practice appropriately.

8. All present and future safeguarding practice in the Diocese should be recorded in case files that allow for the easy retrieval of key information on actions taken and decisions made.

These recommendations represent the key areas for immediate change in the area of child protection practice within the Diocese of Cloyne. The adoption of each should give rise to an action plan for their implementation which will include a timescale for their completion. This should be shared widely within the Diocese so that the fact that change has taken place will be comprehensively understood. Failure to atke such action will place children at risk, and set back the positive developmental work that the Church as a whole has embarked upon.

Signed

Ian Elliott

Chief Executive Officer
National Safeguarding Board for Children
Catholic Church in Ireland

30th June 2008”

Part 2: Diocese of Cloyne response to the Elliott Report

In May 2008, the draft Elliott report was sent to the Diocese of Cloyne with a request that it be checked for any factual inaccuracies. The following is the response of the diocese. The response follows the format of the draft report and refers to the headings and numbers in that report. The final Elliott report had some changes from the draft. The Commission has adapted [by bracketing] the reference numbers in the diocesan response in order to ensure that they refer to the final report.

“FACTUAL INACCURACIES IN REPORT.

THE IDENTIFICATION OF TWO CASES.

6. Before that first meeting in Cobh, in the absence of a prior agenda, a request had not been conveyed to the Diocese that complete documentation should be provided.

8. The complaint about rape had not been made to the Diocese. Evidently it was made at the meeting with CEO and Sister Colette Stevenson.

9. The Diocese in the context of its Pastoral Care Policy, without exception, always accepted the good faith of complainants. It immediately provided counselling and whatever other assistance was needed. A Support Person would be selected and the Designated Person would be constantly in contact with complainant and, where acceptable, with the family.

The Case of Father [Caden]

1 & 2 Perhaps NBSC overlooked the Diocesan time-line provided in the file beside that provided in the correspondence provided to the Department.

4. This resignation was not voluntary. It followed on the Bishop's direction communicated to him, that he would be removed from ministry. The delay in communicating to [Caden] the decision to remove him from ministry was due to his hospitalisation. This reflected the direction in Children First 4.6.1.

5. At that time, to our knowledge, the complainant still maintained the option of reconciliation with the alleged perpetrator. Through his Support Person the Diocese had been communicating to the complainant that he should accept that a report would be made to the Garda. Our Children; Our Church directs that in natural justice "The accused person should be treated as innocent unless the contrary is established" (8.5).

[6]. The complainant, who was then quite disturbed in mind, would have been further distressed if the report were made at that time. That would have been a contributing factor in holding off with the report, particularly in a case where ongoing risk to children was not perceived.

[7]. The Bishop would have intended to ease the prevailing anger of the complainant in this particular situation. In all other cases the report to Garda contained names of complainant and accused.

[8]. The Pastoral Care policy of the Diocese is well developed and is the context in which complaints of clerical sex abuse are managed, as in all other areas of pastoral concern. This Pastoral Care policy is motivated by Gospel values and human sensitivity. At the heart of it would be listening and responding to the complainant in an ongoing process. This was the only case where the wish for reconciliation with an accused was expressed.

[9]. This was a meeting held at short notice. There would generally be four or five of the non-clerical members present at meetings of the Committee.

[10]. The role of Director of Vocations would not then have involved ongoing contact with candidates for priesthood. In this case there was a close relationship between the families of complainant and accused.

[11]. [Caden] never admitted to the alleged abuse. At interview he described the complaint as "inexplicable". The perception of [Caden] as being "very dangerous" by the complainant is not borne out by the Granada assessment nor anywhere to the knowledge of the Diocese.

THE CASE OF

2. The request for this file was at very short notice. Otherwise a time-line would have been provided. This was admitted on the handing over of the file.
4. The victim's age at 18 was a factor but that did not affect the Pastoral Care Policy being put in place.
6. This complaint was certainly a cause of concern to the Diocese as totally inappropriate in the context of a sacrament. It did not matter whether or not that amounted to formal sex abuse in terms of age or otherwise. The complainant was seriously disturbed by the memory. Following on report to the Garda the DPP did not proceed.
8. []'s solicitor was constantly and aggressively pressing for his return to full ministry. The Case Management Committee discussed the context on how to answer this in a way that would make sense to the solicitor. *No One* in the Committee regarded return to full ministry as an acceptable option.
9. These options had been raised by [] himself - He was particularly keen on transferring to an American Diocese where he had priest friends.
10. All this referred back to the situation described above at n.5.
12. Legal advice was to the effect that the Diocese, a party to civil proceedings, was not obliged to incriminate itself.

Interview with Bishop Magee and Monsignor O'Callaghan.

[Paragraph not in final report]. The minutes of the Committee barely mention the names of members and are expressed in summary form. The members were well qualified in their various disciplines and had a wealth of experience. They all engaged actively in the discussion of cases.

[3]. The letter forwarded to CEO by Bishops Magee and Murray on 2 November 2007 accepted that this was a pressing need. In that letter they requested guidance on how to proceed with meeting the concerns.

ASSESSMENT OF CHILD PROTECTION PRACTICE.

1. The [] case has been far and away the most troubling in the Diocese, dating back to 1995 before the *Framework for a Church Response* was published. In ongoing discussions with HSE we are seeking guidance on how best practice operates in this context. It is evident that the particular circumstances of each case rules.
2. Our meetings with HSE and Garda in recent times have proved most helpful and informative. We have committed ourselves to an active partnership in meeting all issues of common concern.
4. As noted above the minutes do not provide a full picture of the discussions at committee meetings. For instance, the measures taken about removal from ministry and ongoing supervision of the accused would have focussed on the protection of children.
5. That is well understood by us and here we will depend on HSE experience for guidance.
6. The distinction between the advisory role of the Committee and the decision making role of the Bishop was well understood. The Committee, typically through the Designated Person, would revert to him when decisions needed to be taken.
9. The level of "preventative actions" is taken account of in 4 and 5 above.

CONCLUSIONS.

[2]. This perception should be put in the context of the measures taken by the Diocese in regard to removal from ministry, supervision of accused, appointment of Support Person and notification to the particular parish priest. This last intervention would have been most effective in our circumstances.

[3 & 4] We have already provided background in terms of the qualifications and levels of relevant experience of Committee members. We have explained above the standard procedures in place for minimising risk.

[5]. The Diocese will certainly take account of all that has been said in this Report and will work in close partnership with HSE and Garda to the purpose of eliminating preventable harm.

RECOMMENDATIONS.

1. "The Diocese of Cloyne adopts immediately a safeguarding policy for children that meets the standards expected of it within the Church as a whole".

Response: Already the Diocese has set in course a system of active partnership with HSE and Garda.

2. "One of the essential elements of this safeguarding policy will be the sharing of all information held on any alleged abuser within the Diocese with the appropriate statutory authorities, in a timely way".

Response: This is at the core of that commitment to partnership.

3. "The development of an open and collaborative working relationship with the key statutory bodies in the area will be seen as a priority. This will be based on a sound understanding of the role and remit given to each body under the legislation that applies in this country".

Response: This sets the context for the system of partnership now in place.

4. "The current child safeguarding structure within the Diocese is replaced with one that comprises individuals who have the competence to provide high quality safeguarding advice that appropriately recognises the need for protecting the vulnerable child, rather than concentrating on the management of the accused".

Response: The Diocese in the Introductory Letter has had the opportunity to set out the relevant qualifications and levels of experience of the Case Management Committee. We would accept any suggestions on whom else to add to that panel. The minutes of Committee meetings do not detail the quality of the interventions by various members.

5. "Any other cases that have been identified within the Diocese, are urgently reviewed to establish if current risk has been adequately assessed. This should be progressed independent of the Diocese until confidence is restored in the ability of those involved to take required actions".

Response: In 2004 Dr. Kevin McCoy undertook a comprehensive review of child protection policy in the Diocese of Cloyne in operation up to that time. He prefaces his Report: "The findings reported here flow from the review of files of complaints' received, interviews with complainants and accused persons, discussions with key personnel, analysis of the confidential questionnaires returned by priests and the discussions in the joint consultations with priests and laity. The analysis contained in this report would not have been possible without the ready co-operation of the Diocese in making its files available, the willingness of complainants and accused to talk about their experiences, the high level of participation in the consultations the return of questionnaires by priests, the willingness of key personnel to share their experiences to date and their views on the way ahead. All of this has made our task more manageable and all the co-operation and goodwill shown to us in much appreciated".

6. "Preventative acts should be reviewed and implemented in all cases that are known to the Diocese to protect other children from potential further abuse. (These should include addressing the question as to whether a person should remain in the priesthood at all)".

Response: The suggestion that a person should be removed from the priesthood is indeed accepted as an option in Canon Law. The Pope has authorised this on occasion in cases of very serious crimes. The problem with sex abusers is that this allows them to be at liberty without any control or supervision.

7. "Child protection training should be sourced and provided for those involved in child protection in the Diocese, to improve their ability to recognise risk and to record their practice appropriately".

Response: This the Diocese is committed to providing on an on-going basis through collaboration with HSE.

THE WAY FORWARD.

The Diocese commits itself to a comprehensive programme of Pastoral Care which extends to all persons and families who have suffered or may suffer as a result of Child Sex Abuse. Having conducted personal interviews and having arranged counselling and psychological assessment, where required, there would be continuing contact with affected parties.

In order to alert people to the risks of sex abuse taking place in areas where it has responsibility the Diocese has introduced the Stay Safe Programme in its primary schools. The Diocese has established in the parishes a system of training for personnel who will see that appropriate procedures operate where there is evidence or suspicion of child sexual abuse.

It is in this context that the Diocese commits itself to working in partnership with the statutory agencies, particularly Garda and HSE, to minimise the risk to children. To this purpose it hosted a meeting in Cobh on 7 March 2008 where the members of the Interdiocesan Case Management Committee met with the HSE North Cork Child Care Manager and Principal Social Worker. This was a productive meeting in clarifying proper child protection procedures for the Diocese.

This was followed up by a meeting on 19 May in Mallow where the same HSE personnel and representatives of the Garda met with the full membership of the Interdiocesan Case Management Committee to chart a way forward so as to work in partnership on child protection in the area of child sex abuse or risk of such abuse. The fact that in advance of that meeting Bishop Magee had the National Board's Report to hand made it possible to focus on your concerns. This was an extremely valuable meeting of minds with a commitment to work in close partnership on implementing all proper procedures into the future.

It is in that regard that, following your meeting with members of the Interdiocesan Case Management Committee at Cobh, Bishops John Magee and Donal Murray sent on 2 November 2007 a letter to Mr. Ian Elliott. That letter is still very relevant because it detailed many concerns on which direction is still required. To progress understanding of some of those pressing concerns the recent meetings

with HSE and Garda were most valuable. Many of the concerns expressed in that letter of 2 November still need to be addressed as a matter of urgency.

At Maynooth on 21 April representatives of the Diocese of Cloyne met with Mr. Aidan Canavan and Mr. Ian Elliott. On that occasion Bishop John Magee and Mr. Ian Canavan signed a statement to the following effect: "We have mutually agreed to an ongoing working relationship with a shared commitment to the safeguarding of children within the Church". The Diocese is totally committed to building this working relationship with the National Board and with the statutory authorities.

At a meeting on 22 May 2008 with HSE Child Care Manager for North Cork area a programme for regular quarterly meetings between the relevant representatives of Diocese and HSE was established. These meetings will review the on-going files and assess actions taken or to be taken, particularly in regard to preventable risk to children. This programme has been established as a result of the meeting with Garda and HSE in Parish Centre at Mallow on 19 May 2008."

Part 3: The response of the Inter-diocesan case management advisory committee to the Elliott report

The response of the inter-diocesan case management advisory committee was in the form of a letter to Mr Aidan Canavan, the chairman of the National Board for Safeguarding Children, dated 9 July 2008. The letter was signed by the chairman of the committee, Fr Gerard Garrett for and on behalf of all the members of the committee, including those members from the diocese of Limerick. The letter was copied to Bishop Magee and Cardinal Brady.

“Dear Mr. Canavan,

Bishop John Magee of Cloyne has repeatedly advised you that he wishes to work in the closest collaboration with the National Safeguarding Board for Children.

Bishop Magee made available to us a document entitled: *Report on the Management of Two Child Protection Cases in the Diocese of Cloyne*, signed by Ian Elliott, Chief Executive Officer, National Safeguarding Board for Children, Catholic Church in Ireland. The report was written in the name of the members of the Board. Bishop Magee made the report available to us because it makes reference to the *Interdiocesan Case Management Advisory Committee* of which we are members and in which therefore we have an interest.

One of the tenets of your report is that "Good child protection practice involves working openly and in a collaborative manner with those agencies who hold the statutory powers to investigate child abuse and to protect children." The officials of the Diocese of Cloyne have for some time enjoyed a very good working relationship with the senior officers of the HSE and the Gardaí in their area and appreciate greatly their essential and important roles. However, it must be acknowledged that because of the constraints of the Constitution and statute and the principle of subsidiarity contained in them, these statutory authorities are limited in the extent and quality of the response available to them in the area of child protection.

Furthermore, the HSE is limited in resources especially in the care of those involved in so called *historic cases*. Any analysis of the evil of child sexual abuse that does not recognise this reality is seriously flawed. In the Diocese of Cloyne, a compassionate and comprehensive pastoral response has been available for many

years to all affected by clerical child sexual abuse. It is important to note that the fundamental function of the Church is to respond as Pastor. The Church, and its essential pastoral role, is not an optional participant in society but an integral part thereof as designed and mandated by Almighty God. Far from being in conflict with each other, the roles of the Church and the statutory agencies of the state are complementary.

Your report makes assertions and assumptions that are false and it makes attributions that are defamatory of the members of *Interdiocesan Case Management Advisory Committee*. It also makes very serious omissions which further distort the truth.

Most seriously, your report asserts that: "Children have been placed at risk within the Diocese of Cloyne through the inability of that Diocese to respond appropriately to the information that came to it regarding child protection concerns involving the clergy. It failed to act effectively to limit the access to children that individuals against whom credible allegations of child sexual abuse had been made." What is your evidence for these assertions? What evidence does the Board have to demonstrate that children have been put at risk?

Your report also asserts: "The competence of those involved in this area of work in the Diocese has to be questioned." To whom does this refer and what questions need to be posed? Mr. Elliott, Chief Executive of your Board, was twice (28th February & 7th March, 2008) invited to meet with the *Interdiocesan Case Management Advisory Committee* in order that he might be introduced to the members and be given an explanation of how it functions. He did not avail himself of the opportunity. His failure to attend occasioned his failure to note the experience and qualifications of the members of the committee and acquaint himself with the nature and extent of their deliberations which extend far beyond issues of child protection.

Your report further asserts: "Any meetings that were convened by the Diocese, such as the Child Protection Management Committee, are apparently focussed on the needs of the accused priest." This is not true. It goes on: "There is no documentary evidence that the risk to vulnerable children was discussed or considered at any time by them." It was discussed repeatedly and was a primary concern. The report continues: "Again, this raises serious doubts about the ability of

these groups to perform effectively in this role." What evidence does the Board have for this damning assertion?

All your Board's assumptions are based on the perusal of two case files. The invitation to members of your Board to peruse a comprehensive review of the handling of all cases in the Diocese of Cloyne, compiled by Dr. Kevin McCoy, was not taken up.

Your report states that "two serious cases of sexual abuse had been reported to the NSBC on a completely unsolicited basis." Unsolicited they may have been but they are not unconnected. Both complainants are currently pursuing civil cases against the Bishop of Cloyne. Both are represented by the same firm of solicitors. That firm of solicitors appears to be connected with many of the cases supported by the private organization which made the complaint "to the Minister regarding the practice of the Diocese of Cloyne in a particular case." Surely the Board is not so naive as to expect the litigants in these two cases to speak well of the pastoral initiatives undertaken in their regard or even to advert to them. It could seem that the Board is being manipulated.

The Board's report makes a most serious omission in neglecting to mention that in the case of Father A, the Gardaí undertook an investigation of the complaint made against him but no prosecution was brought. An even more serious omission in the Board's report concerns Father B. The report inexplicably omitted to state that in his case he was investigated three times by the Gardaí and on each occasion the DPP failed to prosecute. Furthermore, he has at all times vigorously denied any wrongdoing and has repeatedly threatened the bishop and complainants, personally and through his solicitors, over a period of many years and is strenuously contesting the High Court proceedings brought against him in which the Bishop is caught up. Both priests are relying on their constitutional right to their good name and the presumption of innocence. What does the Board believe that the HSE can do in these circumstances which the Bishop has not done already? In its assertion that priests against whom accusations are made can be stood down from ministry, is the Board asserting that the bishop can violate canon law and act against a priest's constitutional rights?

Under the heading of Recommendations, your report suggests that the Diocese of Cloyne immediately adopt a safeguarding policy for children. Enclosed for

your information is a copy of the Diocese's policy of which you are evidently not aware.

Your report also recommends that child protection training should be sourced and provided for those in the Diocese who work in child protection. It has already been sourced and provided and continues to be provided.

We, members of the *Interdiocesan Case Management Advisory Committee*, extend an invitation to all the members of your Board to meet with us urgently. If you choose not to do so we will have to consider whether this is not a further expression of recklessness and indifference and disregard for the truth which could be considered as malice as it is known to the law.

Your report seriously wrongs the Diocese of Cloyne and our Committee. Therefore, if you issue this report in its present form or include its distortions in your forthcoming annual report, we shall have no choice but to seek remedies in either ecclesiastical or secular courts or both.”

Appendix 2: The Minister for Children’s view of the powers of the HSE under the *Child Care Act 1991*

The following memorandum was provided by the Minister for Children as part of his evidence to the Commission. It outlines his view of the powers of the HSE under the Child Care Act 1991 (see Chapter 6).

“MEMORANDUM

Re: The powers of the HSE to deal with extra familial child abuse under the Child Care Act 1991.

INTRODUCTION

The purpose of this Memorandum is to analyse the legal position in regard to the powers of the HSE to deal with extra familial child sexual abuse under the Child Care Act 1991. The context in which the Memorandum is prepared is that the Minister for Children and Youth Affairs has been asked to indicate his view in regard to such powers to the Commission of Investigation into the Diocese of Cloyne. The Memorandum has been prepared on the basis that a copy of same will be supplied to the Commission.

THE PROVISIONS OF THE CHILD CARE ACT 1991:

The Child Care Act 1991 is a remedial social statute which was introduced to protect and safeguard children. Its purpose is reflected in the long title thereto which describes it as “*an Act to provide for the care and the protection of children*”. Central to the scheme of the Act is section 3 which provides that:

- “(1) It shall be a function of every health board to promote the welfare of children in its area who are not receiving adequate care and protection.

- (2) In the performance of this function, a health board shall—
 - (a) take such steps as it considers requisite to identify children who are not receiving adequate care and protection and co-ordinate information from all relevant sources relating to children in its area;

- (b) having regard to the rights and duties of parents, whether under the Constitution or otherwise—
 - (i) regard the welfare of the child as the first and paramount consideration, and
 - (ii) in so far as is practicable, give due consideration, having regard to his age and understanding, to the wishes of the child; and
- (c) have regard to the principle that it is generally in the best interests of a child to be brought up in his own family.”

It is a truism of administrative law that the conferral of a statutory function or duty upon a body must also invest that body with the power to carry it out. This was confirmed by O’Neill J. in **McD. V. The Minister for Education** [2008] IEHC 265 where he observed that:

“Manifestly, where the (relevant statutory authority) is tasked to do something that function will always confer a power to do it.”

It follows from this approach that since the HSE has been given the function to promote the welfare of children in its area who are not receiving adequate care and protection, it is also given the powers to take such steps as are necessary to carry out this task. This approach is particularly apposite in the context of the conferring of functions on the HSE pursuant to the provisions of the Child Care Act 1991 in that section 2 provides that *“functions’ includes powers and duties”*.

The functions of health boards under the Child Care Act 1991 were transferred to the HSE by section 59 of the Health Act 2004. Section 3 therefore confers a duty and power on the HSE to promote the welfare of children who are not receiving adequate care and protection.

The positive character of the obligation to *“promote”* means that this is an active rather than a passive function. A power to actively promote a child or children’s welfare would naturally include a power to take steps to conduct inquiries on foot of information which raises a child protection concern and to take necessary steps to

address risks which may be found. A body which lacked the power to conduct inquiries into information received would be unable, in many if not most situations, to effectively discharge its statutory functions. As was observed in **Maquire v. Ardagh** [2002] 1 I.R. 385 (at 498), the proposition that a power to act must include a power to conduct preliminary inquiries is “*is so self-evident as to be almost bana*”. The Court added:

“The Oireachtas, like any other body or person in the country, is entitled to keep itself informed and, for that purpose, to initiate inquiries, provided that, in so doing, it does not infringe the law.”

Accordingly, on any ordinary interpretation of section 3 (1), the HSE’s functions must include, inter alia, a power to conduct inquiries into child protection concerns and to take the steps necessary to protect children arising from such inquiries.

The reference in section 3 (2) to the taking of steps to identify children and to the co-ordination of information from relevant sources underlines the fact that the Oireachtas intended the powers conferred by section 3 to be exercised in a proactive manner. As part of its duty to “promote” the welfare of children under section 3 (1), the HSE is directed to, inter alia, look at information from “all relevant sources” and take steps to identify children to whom this section might apply. The function is not limited to situations where it is formally aware that a specific child is not receiving adequate care or protection. The section permits the HSE to gather information from different sources, to consider the information gathered, to make assessments in relation to it, and to take such action as may be necessary to protect a child or children, subject to such action being reasonable and proportionate to the risk which is found. Such an interpretation is consistent with the broad language of the words used in section 3.

PURPOSIVE INTERPRETATION:

This understanding of the powers of the HSE is also supported by a purposive interpretation of section 3. The relevant statute and case law suggests that such a purposive approach to interpretation is particularly appropriate in regard to the provisions of the Child Care Act 1991.

Section 5 (1) of the Interpretation Act 2005 states, inter alia, that:

“In construing a provision of any Act (other than a provision that relates to the imposition of a penal or other sanction)—

(b) that on a literal interpretation would be absurd or would fail to reflect the plain intention of ... the Oireachtas...

the provision shall be given a construction that reflects the plain intention of the Oireachtas ... where that intention can be ascertained from the Act as a whole.”

As already set out, the long title of the 1991 Act makes it clear that the purpose of the Act is to provide for the care and protection of children. This demonstrates that the primary objective of the Oireachtas in enacting this legislation was to ensure that children receive adequate care and protection. This is reflected in the general requirement in sections 3 and 24 that the welfare of the child must be “the first and paramount consideration” in the exercise of the various powers conferred under the Act. The intention of the Oireachtas in enacting the 1991 Act, in general, and section 3 in particular, was to “promote” the welfare of children who were not receiving adequate care and protection as part of this general commitment to the “first and paramount consideration of a child’s welfare”.

It would be contrary to the “plain intention of ...the Oireachtas” for the power to conduct inquiries on foot of information received, and to act as necessary to protect children from identified risks, to be excluded from the broad powers conferred on the HSE under section 3. Further, the proposition that the provisions of the Child Care Act 1991 should be interpreted in such a broad and expansive manner has been accepted and confirmed by the High Court in a number of different cases.

THE RELEVANT CASE LAW:

The general principle that social and remedial statutes should be construed as widely and liberally as can fairly be done was accepted by the Supreme Court, per Walsh J., in **Bank of Ireland .v. Purcell** [1989] IR 327 at 333. This approach has been specifically applied to the provisions of the Child Care Act 1991 by the Supreme Court in **Western Health Board v. KM** [2002] 2 IR 493 at 510 where McGuinness J. stated:

“There can be no doubt that [the Child Care Act 1991] is a remedial social statute and was seen to be such by all who were affected by its

provisions. Its social and remedial importance was accepted by all, including this court and more particularly the District Court, which for many years had striven to operate the provisions of the Children Act 1908 in a way which made sense in the latter part of the twentieth century I would therefore accept the submission of the respondent that the construction of the Act of 1991, as a whole, should be approached in a purposive manner and that the Act, as stated by Walsh J., should be construed as widely and liberally as fairly can be done.”

This approach has been expressly followed by McMahon J. in **English v. H.S.E.** [2008] IEHC 398 and by O’Neill J. in **P.d.P. v. Board of Management of a Secondary School** (May 20th, 2010).

Of particular interest is the recent judgment of O’Neill J. in **P.d.P.** where it was held:

“[T]he power to intervene and investigate under section 3 (1) should not be confined to those situations where the person suspected as being a danger to children has a particular access or relationship with identified or identifiable children. Persons who have a tendency to abuse children in this way can and do develop many varied and often insidious means of access to children. It would be contrary to the obvious purpose and objective of section 3 (1) ... to confine the power given ... to those situations in which the person suspected had already an established access to a child or children.”

O’Neill J.’s decision was similar to that in the earlier decision in **M.Q. v. Gleeson** [1998] 4 I.R. 85, where Barr J. also rejected the arguments that the exercise by the relevant authorities of their section 3 powers should be subject to satisfying restrictive conditions precedent. Barr J held that:

“I have no doubt that in the exercise of their statutory function to promote the welfare of children, health boards are not confined to acting in the interest of specific identified or identifiable children who are already at risk of abuse and require immediate care and protection, but that their duty extends also to children not yet identifiable who may be at risk in the

future by reason of a specific potential hazard to them which a board reasonably suspects may come about in the future.”

SITUATIONS OF EXTRA FAMILIAL ABUSE:

The application of the required broad purposive construction of the provisions of the 1991 Act, and in particular section 3, suggests that the functions and powers of the HSE extend not only to situations of familial abuse but also to situations of non-familial abuse. There is nothing in the provisions of the statute which suggest that the protection to be extended to children by the HSE pursuant to the provisions thereof is intended to be confined to circumstances where children are abused, or are at risk of abuse, within families. Such an interpretation would appear to be both inconsistent with the purpose of the 1991 Act and the language used therein. In particular, such an interpretation would appear to be inconsistent with the obligation on the HSE pursuant to section 3 (2) to proactively identify children who are not receiving adequate care and protection.

Further, the relevant case law to date supports the view that the functions and powers of the HSE pursuant to section 3 of the 1991 Act extends to both situations of familial and extra familial abuse. The case of **M.Q. v Gleeson** concerned a possible threat to children by a person who was not a member of their family and the decision of Barr J confirms that the then Health Board was not only entitled, but obliged to investigate the possible threat and to take appropriate action to protect children from such threat.

Equally, the case of **P.d.P v. Board of Management of a Secondary School** concerned a possible threat to children from a person who was not a member of their family. O’Neill J. did not indicate or express any doubt that the HSE was entitled to intervene in such a situation and to take appropriate steps to protect children. However he was of the view that it was obliged in taking such steps to comply with the rules of constitutional and natural justice.

This view of the scope of the functions and powers of the HSE in a situation of a possible risk to children from a non family member is supported by the recent judgment of Hedigan J. in the recent case of **M.I. v. HSE**. Having extensively cited from the judgment of Barr J. in **M.Q. v. Gleeson**, Mr. Justice Hedigan stated as follows at paragraph 4 and 5 of his judgment:

- “4. It seems to me that the judgment of Mr. Justice Barr in that case is a judgment of great common sense and also soundly grounded in the law. No adequate grounds have been raised before me today that would suggest that I should in any way disregard or should disagree with that judgment and I do not propose to do so. I note also that the principles established in that particular case have become known as the “Barr principles”.
5. As applicable here it seems to me that those principles are as follows:-
- (1) The respondent herein has a duty to investigate in the circumstances here. There may be a risk and that risk must be assessed.
 - (2) The respondent must afford the applicant fair procedures.
 - (3) If the respondent comes to the conclusion that there is a risk, it is under a duty to communicate that to an appropriate party.
 - (4) The respondent’s role in conducting this investigation is not an administration of justice. It does not make any determination of guilt or innocence. Its role is quite distinct from that of the Director of Public Prosecutions. Its role is the protection of vulnerable children. The Director of Public Prosecution’s role is the detection and conviction of criminals, including child abusers.”

It is interesting to note that near the conclusion of his judgment, at paragraph 7, Mr. Justice Hedigan refers to the question of dissemination of information to third parties and states:

“.. . clearly any such dissemination should be minimal and only to the extent necessary to protect children who may be at risk.”

The judgment of Mr. Justice Hedigan in **M.I. v. HSE** is the subject of an appeal which is presently pending before the Supreme Court. It is probable that the decision of the Supreme Court on such appeal will give further guidance in regard to

the question of the proper interpretation of the provisions of the 1991 Act, and in particular section 3 thereof.

THE NECESSITY FOR FLEXIBILITY IN THE AREA OF CHILD PROTECTION:

The Oireachtas' decision to describe the powers conferred by section 3 in broad and non-specific terms reflects the necessity for flexibility in this area. Child protection issues can arise in many different contexts. The circumstances of the child or children in question, the character and seriousness of the risk posed and the nature of the measures required to address that risk can all vary significantly from case to case. It is impossible to foresee all of the situations which may give rise to child protection concerns. This means that it is also impossible to identify in advance the most appropriate or effective means of responding to such concerns.

This has been recognised by the European Court of Human Rights. The Court has emphasised the importance of allowing the relevant authorities sufficient flexibility and discretion to effectively respond to the care needs of individual children. As the Court observed in **R v UK** [1988] 2 FLR 445 at 465 (at paragraph 68):

“The court recognises that, in reaching decisions in so sensitive an area, local authorities are faced with a task that is extremely difficult. To require them to follow on each occasion an inflexible procedure would only add to their problems. They must therefore be allowed a measure of discretion in this respect.”

For this reason, it would be ineffective, and arguably contrary to the State's obligations in that regard under the Constitution and Convention, to confer a restricted suite of powers on the HSE when such limited powers might be inadequate to defend the rights and interests of a child in a particular case.

THE EXTENT OF THE POWERS OF THE HSE:

In general terms, the required broad purposive interpretation of the provisions of the Child Care Act 1991 would suggest that the Act imposes functions and confers powers on the HSE to receive information in regard to the possible abuse of children by both family and non family members, to carry out investigations and inquiries on foot of such information and to take necessary and proportionate action to protect a child or children from such risks as may be found. However, in exercising such

powers, the HSE must have regard to the principles and policies set out in the 1991 Act, for example in section 3 (2).

Furthermore, the extent of the HSE's powers are dependent upon the particular circumstances of an individual case. Where a course of action proposed by the HSE may impact upon the rights of third parties under the Constitution and Convention, the HSE will be required to have regard to those rights in exercising its statutory powers. In particular, this means that the HSE may adopt measures which impact on such rights only where those measures are necessary and proportionate in the circumstances of the case, and where the course of action proposed complies with the requirements of fair procedures and natural and constitutional justice (on this point see, for example, the decisions of the High Court in **Gleeson** and **P. de P.**).

In such circumstances, this means, for example, that the HSE may only adopt measures where it has relevant and sufficient reasons to do so (**Olsson v Sweden** (1988) 11 EHRR 259; **L. v. Finland** [2000] 2 FLR 118). Any measures adopted should strike a proper balance between the rights of a third party and the best interests of the child or children in question (**T. v. Norway** [2008] ECHR 26664/03), and should be proportionate in the circumstances of the case. However, it should be noted that the European Court of Human Rights has recognised that authorities responsible for child protection issues enjoy a wide margin of appreciation in dealing with situations where a child may be at risk.

The principles applicable under the Convention were discussed in some detail in the recent decision of the Court in **AD v. U.K.** [2010] ECHR 28680/06 where it held (at para.s 80-84) that:

“[T]he removal of the second applicant from the first applicant's care constituted an interference with the applicants' right to respect for their family life within the meaning of the first paragraph of art 8. It therefore remains to be determined whether the interference was justified under the second paragraph of art 8 of the Convention: namely, whether it was in accordance with the law, whether it had a legitimate aim and whether it could be regarded as necessary in a democratic society.

Without question, the challenged measures conformed to the requirements of domestic law and pursued the legitimate aim of protecting the rights of others, namely those of the second applicant.

The Court reiterates that the question whether an interference was 'necessary in a democratic society' requires consideration of whether, in the light of the case as a whole, the reasons adduced to justify the measures were 'relevant and sufficient' and whether the decision-making process was fair and afforded due respect to the applicants' rights under art 8 of the Convention.

In considering the reasons adduced to justify the measures, and in assessing the decision-making process, the Court will give due account to the fact that the national authorities had the benefit of direct contact with all of the persons concerned. It is not the Court's task to substitute itself for the domestic authorities in the exercise of their responsibilities regarding custody and access issues. The Court reiterates that the authorities enjoy a wide margin of appreciation when assessing the necessity of taking a child into care. A stricter scrutiny is called for, however, in respect of any further limitations, such as restrictions placed by those authorities on parental rights of access (see, for example, *T.P. and K.M. v UK* [2001] ECHR 28945/95, paras 71 - 72 (extracts)).

The Court further reiterates that mistaken judgments or assessments by professionals do not per se render childcare measures incompatible with the requirements of art 8 of the Convention. The authorities, both medical and social, have duties to protect children and cannot be held liable every time genuine and reasonably held concerns about the safety of children vis-à-vis members of their family are proved, retrospectively, to have been misguided (*R.K. and A.K.*, cited above, para 36)."

THE IMPLICATIONS OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS ACT 2003:

Finally, it should be mentioned that the provisions of the Child Care Act 1991 must now be interpreted and construed in accordance with the provisions of the

European Convention on Human Rights Act 2003. Section 2 of the 2003 Act states that:

“A court shall, insofar as it is possible, subject to the rules of law relating to such interpretation and application, do so in a manner compatible with the State’s obligations under the Convention provisions.”

Contracting States have a positive obligation under Article 3 of the Convention to protect children against inhuman and degrading treatment (**A. v. United Kingdom** (1999) 27 E.H.R.R. 611), and this obligation extends to the taking of preventative measures in appropriate cases. In **Z v. U.K.** (2002) 34 E.H.R.R. 3, the Commission held (in a finding which was not contested by the U.K. before the Court) that there had been a breach of Article 3:

“The Court has held that the obligation on High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment, including such ill-treatment administered by private individuals. In the aforementioned case, **A v. United Kingdom**, it was held that children in particular were entitled to effective protection, in the form of effective deterrence, against such serious breaches of personal integrity. The Commission considers that the protection of children who by reason of their age and vulnerability are not capable of protecting themselves requires not merely that the criminal law provides protection against Article 3 treatment but that, additionally, this provision will in appropriate circumstances imply a positive obligation on the authorities to take preventive measures to protect a child who is at risk from another individual.”

Under section 2 of the 2003 Act, the 1991 Act should be interpreted as far as possible in a manner compatible with the obligation of the State under the Convention to provide for the possibility, where appropriate, of preventative measures being taken to protect children. This interpretative obligation provides further support for both the literal and purposive interpretation of section 3 (1) as

encompassing a power to investigate allegations of child abuse, both familial and extra familial, and to take such action as may be necessary and appropriate to protect a child or children from the risk of such abuse. Further it must be borne in mind that section 3 of the 2003 Act, obliges every organ of the State, including the HSE, to perform its functions in a manner compatible with the State's obligations under the Convention provisions.

The provisions of this Memorandum are based upon a review of the relevant sections of the Child Care Act 1991 and an examination and analysis of the relevant case law to date in regard to the provisions of the said Act. Of course subsequent case law may give further guidance in regard to such interpretation, for example in the case of **M.I. v. HSE** which is at present on appeal to the Supreme Court.

4th November 2010”

Appendix 3: Glossary of Terms

Administrative leave: A procedure whereby a priest accused of sexual abuse steps aside, without any admission of guilt, from his responsibilities, including any parish commitment, while an investigation takes place.

Advisory panel/advisory committee/advisory group: A panel set up by bishops and heads of religious orders to advise them in dealing with allegations of clerical child sexual abuse. The functions of the panel were set out in the *Framework Document* (see Chapter 4). The advisory panel is sometimes called the advisory group or the advisory committee but the functions are the same. In Cloyne, the advisory panel which was established in 2005 was known as the inter-diocesan case management advisory committee.

Allegation: In this report, an allegation is a report from any person to any appropriate authority of child sexual abuse or a suspicion of or concern about possible child sexual abuse.

Apostolic administrator: A bishop or priest appointed to administer a diocese when a bishop is unable to act or when a bishop has retired and a new bishop has not yet been appointed.

Canon Law: The body of law by which the Catholic Church is governed.

Child: A person who has not yet reached his or her 18th birthday.

Children First: The current State guidelines in relation to child sexual abuse issued in 1999 by the Department of Health (see Chapter 6).

Child sexual abuse: Child sexual abuse occurs when a child is used by another person for his or her gratification or sexual arousal or that of others.

Church: The Catholic Church.

Church Penal Process: This is the canon law judicial process to investigate an allegation of an offence and to determine whether or not to impose or declare a penalty for that offence.

Clergy: Bishops, priests and deacons.

Conference of Bishops/Episcopal Conference: The gathering of all bishops in a defined area. The Irish Bishops' Conference is the single conference of bishops for the island of Ireland.

Congregation for the Doctrine of the Faith (CDF): This is one of the offices which assists the Pope in governing the universal Church. It was originally founded in 1542 as the Congregation of the Sacred Inquisition. Its main function now is to promote and safeguard the doctrine on faith and morals throughout the Catholic world: everything which in any way touches such matters falls within its remit. It deals with cases of child sexual abuse against clerics.

Curia: The Roman curia consists of the departments and ministries that assist the Pope in the government of the universal Church. A diocesan curia is composed of those people who assist a bishop to govern his diocese.

Delegate: In canon law, the person appointed by a bishop or head of a religious order to conduct the preliminary investigation into an allegation of clerical child sexual abuse; in the *Framework Document*, the delegate is the person appointed to oversee and implement the procedures for handling allegations of clerical child sexual abuse.

Discovery: The legal term to describe the provision of documents by one party to another in legal proceedings.

Faoiseamh: An organisation which provides telephone counselling and a counselling and psychotherapy referral service for people who have been sexually, physically or emotionally abused by priests or religious. It is funded by the Conference of Religious of Ireland (CORI) and by a number of Catholic dioceses including the diocese of Cloyne.

Ferns Report: The report into the handling of complaints and allegations of clerical child sexual abuse in the diocese of Ferns was published in October 2005.

Framework Document: Report and Recommendation of the Irish Catholic Bishops' Advisory Committee on Child Sexual Abuse by Priests and Religious. Also known as

the Green Book. It was issued in 1996 and replaced by *Our Children, Our Church* in 2005.

Fr Brendan Smyth: He was a Norbertine priest who received widespread media coverage in 1994 when he pleaded guilty to 74 cases of child abuse in Ireland. He was sentenced to 12 years imprisonment and he died in prison. The perceived failure to extradite him to Northern Ireland to face similar charges created political controversy and led to the fall of the Fianna Fáil/Labour coalition government in late 1994.

Holy See: The universal government of the Catholic Church of which the Pope is the ruler. The term Apostolic See is sometimes used.

Incardinated: Diocesan priests who are ordained for the service of a diocese are said to be incardinated in that diocese.

Laicisation: This is a term used to describe the situation where a priest successfully applies to be relieved of his priestly duties or is dismissed from the clerical state.

Norms: Rules or procedures

Ordinary: This is a term used in canon law to describe bishops.

Our Children, Our Church: Child Protection Policies and Procedures for the Catholic Church in Ireland - the follow up to the *Framework Document*, issued in 2005.

Papal Nuncio: The Ambassador of the Holy See to Ireland (see Chapter 3).

Precept: An order from a bishop to a priest – usually restricting him in carrying out some or all of his priestly functions.

Reckless endangerment: In response to a recommendation in the *Ferns Report*, the offence of reckless endangerment was introduced by Section 176 of the *Criminal Justice Act 2006*. It applies to the activities or omissions of those in authority which cause or permit a child to be left in a situation of substantial risk of serious harm or sexual abuse and criminalises such actions or omissions. In addition, the section also stipulates that it is an offence to fail to take reasonable steps in that regard to ensure

that children, as defined under the *Criminal Justice Act 2006*, under their care or authority are free from sexual abuse or serious harm. The penalty for such an offence is a maximum term of ten years imprisonment.

Risk assessment: The process of determining whether a person presents a degree of risk to a child.

Safeguarding Children – Standards and Guidance Document for the Catholic Church in Ireland: The document produced by the National Board for Safeguarding Children in 2009 which Church authorities have signed up to implement (see Chapter 4).

Secret archives: This is a safe or cabinet where documents which are of great sensitivity need to be kept in conditions of maximum security. Examples of such documents include documents relating to clerical child sexual abuse.

State Agencies: The Gardaí, the Health Service Executive (HSE), the Department of Health and Children, the Department of Education and Skills.

Supply work: This is the term which is used where a priest asks another priest (not necessarily from the same diocese) to carry out his parish duties while he is away for whatever reason. Supply work may be carried out by members of religious orders and societies. It may also be carried out by, for example, priests who are visiting from abroad.

Suspension: A penalty available under canon law which debars a priest from exercising his priestly ministry for a limited period.

Votum: Prayer or wish; it is the word used when the bishop applies to the Congregation for the Doctrine of the Faith for some action to be taken.

Appendix 4

Commission Personnel 2009 - 2010

Chairperson

Judge Yvonne Murphy

Commissioners

Ms Ita Mangan

Mr Hugh O'Neill

Legal Team

Ms Maeve Doherty Solicitor

Ms Deirdre Murphy SC

Mr Donal McGuinness Barrister

Administration

Ms Nóra Ní Dhomhnaill

(Commission Manager)

Mr Oisín Russell-Conway (to March 2010)

Mr Brian Farrell (from March 2010)

Ms Bernie McAdam

Ms Tara Brennan

Ms Edel Murray

Mr John Byrne (to November 2009)

Mr Pat Preston (from November 2009)

Legal Researchers

Ms Karina O'Leary

Ms Veronica Buckley

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*Note: Names in **bold** indicate the clerics about whom complaints were made or concerns expressed.*

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