

Michael Mullaney

St Patrick's Pontifical University, Maynooth, Ireland

Child Sexual Abuse Crisis in the Irish Church 1996–2021: Guidelines and Canonical Response

Abstract

When the sexual abuse crisis exploded in the Irish Church, the canonical expertise, experience and the administrative processes for dealing with and managing complaints and suspicions of child sexual abuse by clergy were simply not fit for purpose. Addressing the crisis in the Irish Church required not only a canonical but a multidimensional response involving pastoral supports to victims and other parties, preventative measures, education, guidelines, policies, procedures, training and monitoring. Four sets of guidelines (1996, 2005, 2008, 2016) document the Irish Church's increasingly robust efforts to address this crisis supplemented by the clearer universal norms issued by the Holy See. The article highlights some of the significant developments in the guidelines and canonical legislation: the paramouncy principle; the issue of recognitio and the binding authority of these guidelines. The nature and value of guidelines is that they can never be completely definitive, and are continually evolving to reflect changes in the statutory context, best practice, in canon law or otherwise as these arise.

Keywords

Irish Church, child sexual abuse, canon law, *Sacramentorum sanctitatis tutela*, *Normae de gravioribus delictis*, recognitio, child protection, child safeguarding.

While the evidence suggests that there were problems with clerical abuse of minors dating back to the 1960s in Ireland, in 1994, the Irish Bishops' Conference, partly influenced by events in the Catholic Church in the United States, established an expert Advisory Committee to advise on appropriate Church responses where there was an accusation, suspicion or knowledge of clergy having sexually abused a child. The Committee was also asked to generate guidelines for Church policy with procedures to be followed in responding to complaints. In June of the same year, the issue of clerical sexual abuse exploded into the public domain with the conviction of Fr. Brendan Smyth in Northern Ireland and the later revelation that the Attorney General mishandled the priest's extradition from the Republic of Ireland. This revelation contributed to the collapse of the government some months later, exacerbating the scandal and crisis.

By 1998 a number of scandals had already hit the national headlines and a number of television programmes on sexual abuse in industrial schools run by the Church over the following years¹ (e.g. *States of Fear*, *Dear Daughter*), were followed by the publication of four statutory investigative reports, the Ferns Report (October 2005),² the Ryan Report (May 2009),³ the Dublin Commission of Investigation Report (November 2009),⁴ and the Cloyne Report (July 2011).⁵ All of these reports unveiled shocking details of child sexual abuse by priests and religious in parishes and religious institutions over many decades. The reports were severely critical of the mismanagement of complaints, cover-up and secrecy.

¹ The television documentary *Dear Daughter* (1996) was the story of Christine Buckley who was abandoned at three weeks old in Goldenbridge Orphanage and recounted life there as a child growing up as one of cruelty and abuse; in 1999 a television series called *States of Fear* broadcast the personal accounts of individuals who had experienced child sexual abuse in industrial schools in Ireland; in 2002 a BBC documentary was screened in Ireland entitled *Suing the Pope* which described the experiences of several men who had been sexually abused as children by Fr Sean Fortune, a priest of the diocese of Ferns; later in 2002, a documentary entitled *Cardinal Secrets* focused on the Archdiocese of Dublin and contended that a number of complaints of child sexual abuse had been mismanaged by the diocese.

² <https://www.lenus.ie/bitstream/handle/10147/560434/thefernsreportoctober2005.pdf?sequence=2&isAllowed=y> (5.08.2021).

³ <https://www.gov.ie/en/publication/3c76d0-the-report-of-the-commission-to-inquire-into-child-abuse-the-ryan-re/> (5.08.2021).

⁴ <https://www.gov.ie/en/publication/13804-report-by-commission-of-investigation-into-catholic-archdiocese-of-dublin/> (5.08.2021).

⁵ <https://www.gov.ie/en/publication/db146-report-by-commission-of-investigation-into-catholic-diocese-of-cloyne/> (5.08.2021).

A number of bishops whose dioceses were the focus of these reports resigned. In the same period, there were a number of high profile convictions of priests and religious in the courts in both jurisdictions on the island of Ireland.

The drip-drip effect was corrosive on the moral authority of the Church and tested the patience and credibility of public opinion and of many faithful Catholics. The Church struggled to get ahead of the crisis, to set up an internal investigation under an independent body or to put together a comprehensive response to the crisis.⁶ With no strong or credible leadership from within the Church, the media dragged one skeleton out after another and there were statutory enquiries unequalled in any country.⁷ While it is clear that media pressure forced change on the Church in relation to safeguarding policies and procedures, to assume that it was only media pressure that brought about such changes would obscure an important truth. The voices and narratives of victims and survivors (sometimes through the media) were also influential in motivating bishops to their response patterns by bringing diocesan leaders to understanding the harm done by sexual abuse.⁸

The scale of the abuse and allegations of sexual abuse uncovered in the various statutory reports was immense with some dioceses being particular ‘black spots.’ While not all accused were guilty, most were; and the type and frequency of abuse, as well as the number of victims per abuser varied. It was noted in the Dublin Report that most of the abuse took place in economically disadvantaged areas and mostly during the 1970s and 1980s. There is no obvious explanation for this. Many priests received a strict formation in the seminary, but the more liberal culture of the 1970s and 1980s may have been a factor.

⁶ In April 2002, in a proactive move, the Irish Episcopal Conference announced a nationwide independent audit into the handling of all complaints of child sexual abuse by diocesan priests and religious priests in diocesan appointments dating back to 1940. Judge Gillian Hussey was appointed to chair the audit. This was an important initiative, and judge Hussey appointed a robust committee to help her in such an important undertaking. Had the work of this committee been completed as a forthright attempt to examine and address the extent of the problem, it might have helped restore some credibility to the Bishops. However, the work on this audit ceased suddenly with a statement from Judge Hussey that the work of her committee was terminating because of the government’s intention to conduct a state audit of sexual abuse allegations in the Church. According to Marie Keenan, this was one of the biggest mistakes made by the Catholic Church at this time.

⁷ D. Quinn, *The Church’s Child Sex Abuse Crisis in Retrospect*, “Studies” 102 (2013), pp. 415–416.

⁸ M. Keenan, *Child Sexual Abuse and the Catholic Church*, New York 2011, Oxford University Press, p. 180.

1. Inadequacy of Canon Law until 2001

Until the crisis forced the formulation of new guidelines, policies and procedures on the Church to respond to the handling of complaints, the Code of Canon Law seemed to have gone into abeyance with little expertise and few qualified personnel in the penal and procedural areas of the Code available at that time. While this was in part fuelled by an antinomian attitude in the aftermath of Vatican II, a reaction to the legalism and rigidity of the pre-Vatican II Irish Church. Most canonists were experienced only in dealing with marriage processes. Furthermore, the Code required priests with doctorates in canon law to act as judges, promoters of justices, advocates, etc., in trials concerning priests. There was simply not enough qualified canonists at the time. This *lacuna* in canonical expertise and experience did certainly undermine the Church's capacity to give a coherent and comprehensive response to the management of allegations and prosecute canonical crimes in accordance with the Code of Canon Law.

Two canonical remedies in the Code of 1917 which gave bishops ways of dealing with problematic, immoral or criminal actions of clergy, including sexual abuse, were not incorporated into the Code of 1983. The first of these was can. 2186 which permitted a non-judicial suspension, known as suspension *ex informata conscientia*, or suspension based on the informed conscience of the bishop. The second remedy existed in can. 2222 for a situation when a bishop strongly suspected or had reason to believe that a cleric had committed a crime, or a certain crime had been committed but that canonical prescription precluded a formal judicial process. This canon stated that a bishop not only had a right but also a duty to prohibit a priest from exercising ministry and to remove him from office; albeit not in perpetuity. In addition, in 1971 the Congregation for the Doctrine of the Faith (CDF) promulgated new norms that permitted a bishop to petition for a priest's laicization without his consent if, after a necessary investigation, the priest was found to have led a 'depraved life.' New norms issued in 1980 made it more difficult if not impossible for a diocesan bishop to administratively laicise a priest.⁹ Just when bishops began to seek ways to canonically suspend or remove priests, the Code of 1983 did not

⁹ Congregation for the Doctrine of the Faith, *Acta Apostolica Sedis* 72 (Oct. 14 1980), pp. 1132–1137.

incorporate three efficient canonical methods by which priests could quickly and effectively remove abusive priests.¹⁰

When the sexual abuse crisis exploded in the Irish Church, and indeed elsewhere, the administrative processes available in the Code for dealing with and managing complaints of child sexual abuse were simply not fit for purpose. Furthermore, bishops in Ireland were unaware that it was possible to send cases to the Congregation for the Doctrine of the Faith where the Pope could impose an involuntary administrative laicization through a little known, if not forgotten, process outlined in an obscure Instruction *Crimen sollicitationis* published by the same Congregation in 1962. In their initial attempts to deal with clergy, bishops were advised to invoke can. 1044 which suspended a priest because he was suffering from a ‘psychic defect’ that made him incapable of exercising ministry, although it did not remove him from priesthood. There was also a lack of clarity of which particular Roman congregations were competent to deal with these cases. While the Congregation for Clergy developed a swift process to dismiss a priest in a very specific case in 1998, this process was not widely known.¹¹

An example of the challenges faced by bishops in dealing with even infamous cases is provided by the notorious Fr Tony Walsh, when an exasperated Cardinal Desmond O’Connell, the Archbishop of Dublin, had to go to Rome to personally request Pope John Paul II to directly intervene and dismiss the priest in 1995.¹² This was a manifest example of the lack of adequate understanding of gravity of the crisis in Ireland, and indeed, elsewhere at the time. Other

¹⁰ J. T. O’Reilly and M. Chalmers, *The Clergy Sexual Abuse Crisis and the Legal Responses*, New York 2014, Oxford University Press, pp. 253–259.

¹¹ J. T. O’Reilly and M. Chalmers, *The Clergy Sexual Abuse Crisis and the Legal Responses*, New York 2014, Oxford University Press, pp. 259–261.

¹² Fr Tony Walsh of Dublin was described by the Dublin Report as “the most notorious sexual abuser” to have come to its notice. One case of sexual abuse was so extreme that the Irish criminal courts in 2010 sentenced him to a total of 123 years of prison (concurrently – 16 years in total). Allegations of his sexual abuse were received by the archdiocese as early as 1978 and he had admitted in 1989 to officials of the archdiocese that he was a child abuser. In 1990, the Archbishop gave him one month to decide whether he would request voluntary laicization or dismissal and also ended his public ministry. In 1991, the diocese began legal proceedings against him and in 1993, the canonical process concluded that he should be dismissed from the clerical state. Walsh appealed the decision to Rome and while his appeal was being considered, he abused other boys. In 1995, Rome bewilderingly upheld Walsh’s appeal, declined his laicization and ordered that he should spend ten years in a monastery. In November, Archbishop Connell petitioned directly to Pope John Paul II to have Walsh dismissed. In January 1996, then Cardinal Ratzinger issued a decree confirming Walsh’s dismissal.

challenges in canon law, included accused priests and their canonical advisors using procedural and canonical technicalities to prevent priests being stepped aside from ministry or to have canonical judgements overturned on technicalities (e.g. prescription).

The reasons that contributed to this perfect storm in canon law were multifaceted and complex, but this did not remove the element of the personal failure in leadership by bishops in the past. Indeed, Pope Benedict XVI, in his *Letter to the Irish* says as much: “It cannot be denied that some of you and your predecessors failed, at times grievously, to apply the long-established norms of canon law to the crime of child abuse. Serious mistakes were made in responding to allegations. I recognize how difficult it was to grasp the extent and complexity of the problem, to obtain reliable information and to make the right decisions in the light of conflicting expert advice. Nevertheless, it must be admitted that grave errors of judgement were made and failures of leadership occurred.”¹³

A watershed moment for canon law in dealing with the crisis and the first decisive intervention of the Holy See came with the *motu proprio Sacramentorum sanctitatis tutela* (30 April 2001).¹⁴ A letter signed by Cardinal Joseph Ratzinger, the Prefect of the Congregation for the Doctrine of the Faith, was sent to all bishops on 18 May 2001, informing them that all cases regarding sexual abuse were to be sent to the Congregation for evaluation if the allegation could not be dismissed for being frivolous or false (art. 13). This finally allowed for a centralised and coherent approach to dealing with one of the most rapidly developing crisis facing the Church worldwide.

The *motu proprio* had the force of law, establishing clear procedures to for bishops in Ireland and elsewhere, to follow. The norms extended the derogation granted to the United States Episcopal Conference in 1994, universally raising the age of a minor from 16 to 18 (art. 4). Another important aspect of the new norms concerned prescription (in civil terms: the statute of limitations). The Code of 1983 stated in can. 1362 that for crimes listed in can. 1395, the accused had to be prosecuted within five years from the last time the violation occurred. The *motu proprio* increased prescription to ten years for the crime of sexual abuse of a minor, beginning when the minor reaches their eighteenth year. Although prescription remains five years for offences committed before the promulgation

¹³ https://www.vatican.va/content/benedict-xvi/en/letters/2010/documents/hf_ben-xvi_let_20100319_church-ireland.html, n. 11 (6.08.2021).

¹⁴ https://www.vatican.va/resources/resources_introd-storica_en.html (7.08.2021).

of the *motu proprio*, because of the gravity of the offence, the wellbeing of the faithful, and the common good of the Church, the Congregation may derogate from prescription on a case-by-case basis. The norms contained in the *motu proprio* along with the norms dealing with sexual abuse in the Code would form an important element of the policies and procedures issued by the Irish bishops for responding to allegations of clerical child sexual abuse.

By 2010, in recognition of the sexual abuse of minors being a global problem, and to address the issues that had been raised during the intervening years, on 21 May 2010, CDF promulgated and updated version of *Normae de gravioribus delictis*.¹⁵ This contained a number of significant changes. Firstly, prescription for sexual abuse of minors was extended to twenty years, with CDF reserving the right to derogate or make an exception that rule on a case-by-case basis (art. 7). Now the abuse of a developmentally disabled person or someone “who habitually lacks the use of reason” was equivalent to the abuse of a minor, that is, a vulnerable person (art. 6). Furthermore, “a cleric’s acquisition, possession or distribution of pornographic images of minors under the age of fourteen, for the purposes of sexual gratification, by whatever means or using whatever technology” (art. 6) is now included among the more serious crimes.

Recognising that bishops’ conferences need to develop procedures and guidelines suitable for assisting the victims of such abuse, and also for educating the ecclesial community concerning the protection of minors, on 3 May 2011, CDF issued a Circular letter addressed to all Episcopal Conferences of the world. These guidelines would include material the key elements identified in the Circular letter and would apply the relevant canon law, taking into account the concrete situations of the various jurisdictions within bishops’ conferences. Any response by bishops was also to make provision for the implementation of the appropriate canon law, and, at the same time, allow for the requirements of civil law.¹⁶ The letter covers such issues as appropriate interaction with and treatment of victims, the proper formation of priests and religious, cooperation with civil authorities, and the procedures governing the preliminary investigation and the referral of the case to CDF. This legislative interventions and guidance provided the framework for the response of the Irish Church. It was anticipated that the guidelines help to facilitate a correct application of the common law of the

¹⁵ https://www.vatican.va/resources/resources_rel-modifiche_en.html (7.08.2021).

¹⁶ https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20110503_abuso-minori_en.html (7.08.2021).

Church, as this law pertains to the substantive and procedural matters concerning sexual acts carried out with a minors, with sensitivity to the local context.¹⁷

2. Irish Church Response

Child sexual abuse requires a multifaceted response. This includes: a pastoral response in reaching out to the victims of sexual abuse, their families and communities; an educational response in creating awareness of the impact of sexual abuse and appropriate training to create safe environments in the Church spaces for children and vulnerable adults; and a legal response – both civil and canonical – outlining clear procedures for addressing allegations and suspicions of sexual abuse. Guidelines are complementary to and assist in the application of canon law in dealing with complaints. The correct and effective application of the law is an indicator of a credible Church response to this crisis. Indeed, the delict or crime of child sexual abuse in civil and canon law give the guidelines their essential character.¹⁸

The Irish Church's canonical response to dealing with abuse of minors by clergy was embedded in the guidelines addressing how to manage complaints and allegations. The Irish Church's response evolved over four key documents: *The Framework for a Church Response* (1996); *Our Children Our Church* (2005); *Standards and Guidance* (2008) and *Standards and Guidance* (2016). As the canon law referenced in the documents were already universal in character they were already legally binding in Irish dioceses and religious congregations and did not need any further *recognitio* to have canonical effect. The lack of canonical *recognitio*, that is the binding nature of the guidelines, would become a recurring issue of debate and concern in the early stages of the crisis in Ireland as we will see. Let us trace the evolution of the Irish Church response through these four documents in chronological order and also some of the key difficulties encountered by the documents over this period.

¹⁷ J. Poland, *Guidelines Produced in Response to the CDF's Circular Letter 2011 of 3 May 2011 Complementary to Art. 6 §§ 1–2 of the 2010 Normae De Gravioribus Delictis: A Canonical Analysis in Light of the Work of the CDF*, Roma 2021, Pontificia Universita Gregoriana, p. 5.

¹⁸ J. Poland, *Guidelines Produced in Response to the CDF's Circular Letter 2011 of 3 May 2011 Complementary to Art. 6 §§ 1–2 of the 2010 Normae De Gravioribus Delictis: A Canonical Analysis in Light of the Work of the CDF*, Roma 2021, Pontificia Universita Gregoriana, pp. 10–11.

Framework Document (1996)

The Advisory Committee established by the Irish Bishops in 1994 to offer advice and guidelines for the protection of children published the results of their deliberations *Child Sexual Abuse: Framework for a Church Response* (*Framework* document) in January 1996.¹⁹ The guidelines attempted to provide a unified, consistent and clear approach about how to deal with allegations.

The *Framework* document began by acknowledging that any Church response to child sexual abuse by priests and religious must be informed by an understanding of the deep hurt and long-term harm it causes. It must also be based on the recognition of the Church to do all it can towards healing the hurt and repairing the harm. Interestingly, this early document framed sexual abuse as a violation of a child's dignity (not as a violation of a clerical obligation), that is, a violation of their right to bodily integrity and of their right to physical and emotional privacy. It represents an interference in their right to grow and develop in an environment which recognises their inherent dignity and worth.²⁰ This is how the delict is framed in the recent revision of Book VI of Canon Law (2021).

Victims who came forward to Church authorities were to be listened to with respect, heard and have their experiences acknowledged in a caring and sensitive manner. The document stated that: "It is the victims of abuse their families who must have the first call on the Church's pastoral concern."²¹ Victims and their families were to be assisted in accessing counselling and any other professional supports that were appropriate.

The *Framework* document provided eight guidelines to underpin the Church authorities' response to allegations of child sexual abuse, the first of which was: "the safety and welfare of children should be the *first and paramount consideration* following an allegation of child sexual abuse."²² One of the most significant aspects of the guidelines was the obligation to report known or suspected allegations of child abuse to the civil authorities and it stated: "In all instances where it is known or suspected that a child has been, or is being, sexually abused

¹⁹ Irish Catholic Bishops' Advisory Committee on Child Sexual Abuse, *Child Sexual Abuse: Framework for a Church Response*, Dublin 1996, Veritas Publications. <https://www.catholicbishops.ie/wp-content/uploads/images/docs/csaframework.pdf> (16.08.2021).

²⁰ *Ibid.*, p. 11.

²¹ *Ibid.*, p. 13.

²² *Ibid.*, p. 18.

by a priest or religious the matter should be reported to the civil authorities.”²³ The requirement to report allegations, current or historical, without delay to the police and the local health board and / or social services was obligatory.²⁴ This was not even required in civil law at this time.

These requirements presented pastoral and legal concerns. In no case was any assurance of confidentiality to be given (excepting within the seal of confession). In particular, the obligation to report all complaints to the civil authorities could deter people from coming forward to make complaints of abuse that occurred many years earlier and who did not want their families to know about the abuse they experienced.

While the rights of priests were to be respected, this was subject to the paramouncy principle to protect children. There were serious concerns about balancing the priest’s right to his good name, the presumption of innocence and the almost universal requirement, at least in the early years, that a priest or religious be removed or “stepped aside” from ministry when an allegation made against him was being investigated. This caused alarm among clergy who felt vulnerable to false allegations. The requirement to “step-aside” was interpreted as “punitive” and appeared to undermine priests’ presumption of innocence and their rights under natural, civil and canon law. This was addressed in the Circular letter issued by the CDF in May 2011. It recognised the tension between the presumption of innocence and the protection of the common good. The protection of innocence did not relieve the bishop from attending to the duty of the common good in a precautionary manner: the bishop could invite the cleric to temporarily withdraw from public ministry, and he is “always able” to limit the exercise of the cleric’s ministry until the accusations are “clarified”, including by way of imposition of precautionary measures from the outset of the preliminary investigation.²⁵

Unless the state’s Director of Public Prosecution initiated criminal proceedings, priests and religious who protested their innocence found themselves in a legal limbo with no civil or canonical due process in which to vindicate their right to their good name and were still classed as a risk to children. This was also the case when an accuser walked away, or there was only one allegation

²³ Ibid., p. 18.

²⁴ Ibid., p. 21.

²⁵ https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20110503_abuso-minori_en.html, II (16.08.2021).

that dated back many years, or there was no corroboration of an allegation, and the accused denied all wrongdoing. A priest could potentially in this scenario be excluded from ministry indefinitely without a clear canonical process.

Most of the *Framework* document outlined the structures recommended for responding to allegations. In summary, the Framework document recommended that each diocese and religious congregation adopt a protocol for responding to complaints and circulate this protocol to all priests and religious. In addition, each bishop and religious superior was to appoint a number of personnel: a delegate to implement the protocol; a support person who would be available to those who making complaints and their families; a priest advisor for each person accused; and advisory panel to review complaints and offer advice to the bishop/religious superior.²⁶

There was no specific section in the *Framework* document dedicated to canon law. It simply stated: “In the Church, the specific rights and duties of priests or religious are such that where there is a complaint of child sexual abuse against a priest or religious, an enquiry into the complaint under canon law is required. The future co-operation of the complainant will be sought as far as it may be necessary. Care will be taken that such an enquiry will not interfere with or be prejudicial to the administration of justice in any state criminal investigation.”²⁷ Apart from providing references to the Code of Canon Law, commentaries and scholarly articles, no *vademecum* was provided to bishops, religious superiors or canonists about how to progress complaints canonically.

The Ferns Inquiry Report (2005) stated that the *Framework* document’s requirement of mandatory reporting had had the most impact on the Church’s handling of this crisis in the last nine years.²⁸ It also acknowledged the *Framework* document provided a uniform policy and procedure for handling allegations. It acknowledged that these standards were high and if fully implemented would afford proper protection to children. It also stated that the standards set by the State were less precise and more difficult to implement. However, the Ferns Report also observed that there was still room for improvement in the application of the guidelines. The Report noted that the implementation of the

²⁶ Irish Catholic Bishops’ Advisory Committee on Child Sexual Abuse, *Child Sexual Abuse: Framework for a Church Response*, Dublin 1996, Veritas Publications, pp. 23–27.

²⁷ Irish Catholic Bishops’ Advisory Committee on Child Sexual Abuse, *Child Sexual Abuse: Framework for a Church Response*, Dublin 1996, Veritas Publications, p. 31.

²⁸ <https://www.lenus.ie/bitstream/handle/10147/560434/thefernsreportoctober2005.pdf?sequence=2&isAllowed=y>, p. 41 (18.08.2021).

processes set forth in the guidelines in the *Framework* document was still a matter for individual bishops, and as such, the application of the guidelines was very different from diocese to diocese.²⁹ Indeed, the Dublin Report stated that since the implementation of the *Framework* document, the Catholic Church in Ireland had, for the most part, managed allegations of child sexual abuse appropriately with complaints also being communicated to the civil authorities³⁰ (with the exception of Cloyne).

In its foreword to the *Framework* document, the Irish Catholic Bishops' Conference "recommend it [the *Framework* document] to individual dioceses and congregations as a framework for addressing the issue of child sexual abuse by priests and religious." Notwithstanding this recommendation, no *recognitio* was requested from the Holy See and the document was not normative. As a result, it was not binding on individual bishops or in canon law and this was one of the difficulties in the implementation of the guidelines and became a source of controversy, as we will see in subsequent government investigations into the handling of clerical sexual abuse of minors.

While the *Framework* document (and later *Our Children, Our Church* – 2005) fostered a new standard of transparency and provided structures for dealing with complaints, however, the fact that they were guidelines and not strictly binding would become a source of significant controversy in the Cloyne Report (2011) provoking an unprecedented response of the Holy See to the Irish government. The commission stated, incorrectly, that the Irish Bishops had sought *recognitio* for the *Framework* document. Furthermore, it cited a letter from the Papal Nuncio, Archbishop Storero to the Irish Bishops (31 January 1997) concerning the Congregation for the Clergy's response to the *Framework* document. This letter, the commission claimed, effectively gave "individual Irish bishops the freedom to ignore the procedures which they had agreed and gave comfort and support to those who ... dissented from the stated official Church policy". According to the letter, the *Framework* document was "not an official document of the Episcopal Conference but merely a *study document*."³¹

²⁹ <https://www.lenus.ie/bitstream/handle/10147/560434/thefernsreportoctober2005.pdf?sequence=2&isAllowed=y>, p. 28 (20.08.2021).

³⁰ <https://www.gov.ie/en/publication/13804-report-by-commission-of-investigation-into-catholic-archdiocese-of-dublin/> Part 1, p. 26 (20.08.2021).

³¹ <https://www.gov.ie/en/publication/db146-report-by-commission-of-investigation-into-catholic-diocese-of-cloyne/>, p. 51 (20.08.2021).

The Holy See responded to these charges in the Cloyne Report by stating categorically, that the Irish Bishops had never sought *recognitio* for the Framework Document and that the Papal Nuncio's letter had been taken out of context. The response cited the correspondence from the then Chair of the Irish Episcopal Conference, Cardinal Cathal Daly, that *Framework* document was an advisory document of the Advisory Committee on Child Protection to provide a uniform code of practice for Bishops to improve child protection measures and procedures in their dioceses. The *Framework* document was not the final word on the subject and it was open to improvements before being developed into a more legislative and binding document. The Holy See's reply insisted that the lack of *recognitio* did not prevent the application of the *Framework* document in individual Dioceses.³²

Despite the fact that the *Framework* document was not an official publication of the Conference as such, but of the Advisory Committee, and each individual Bishop was free to adopt it as particular law in his Diocese and apply its guidelines, provided these were not contrary to canon law. Since all dioceses had accepted this document and set in place a framework for handling future allegations of child sexual abuse by priests, the Holy See and made it unnecessary for it to intervene further.³³

In the light of the findings of the Cloyne Report, the basic difficulty with regard to child protection in that diocese and others was not due to the lack of *recognitio* for the guidelines of the *Framework* document but from the fact that, while dioceses claimed to follow the guidelines, in reality they did not implement them comprehensively and coherently.

The final part of the *Framework* document focused on the need to facilitate increased awareness and better-informed attitudes regarding the multifaceted issues around child sexual abuse. It proposed that priests and religious receive on-going education and in-service training about the effects of child abuse. Such training such also ensure the proper procedures to ensure a safe environment in the Church for young people. It also recommended that other practitioners from the health authority, the police and other professional bodies contribute to this educational process. Information about policies and

³² https://www.vatican.va/resources/resources_risposta-gilmore_20110903_en.html (6.08.2021).

³³ https://www.vatican.va/resources/resources_risposta-gilmore_20110903_en.html (6.08.2021).

procedures in regard to child protection from statutory and Church sources should be easily accessed, clearly understood and their implications fully appreciated.³⁴

Our Children, Our Church (2005)

In 2005, the Irish Bishops' Conference, the Conference of Religious Institutes and the Irish Missionary Union joined together and commissioned another study into child protection and the handling of abuse complaints, this time to provide a comprehensive and unified approach to child protection across the Catholic Church in Ireland, including dioceses, religious orders and Irish missionary unions. A unified and strong one-Church approach was necessary to deal with the crisis, as the Church leadership knew that they would continually be judged by the behaviour of the weakest link. In particular, there was recognition of the need for a single national structure for the monitoring and the management of child protection issues. Known as the Lynott Committee, the findings were presented in *Our Children, Our Church (OCOC)*³⁵ and this document replaced the *Framework* document as the guiding document on child protection for the Church in Ireland.³⁶

The Circular Letter issued by the CDF in May 2011 outlined areas to be addressed in the any new guidelines. In addition to the pastoral care of victims of sexual abuse, the protection of minors, and the formation of future priests, it also required the inclusion of the legal principle of the right to the presumption of innocence, the right to one's good name, the right of defense and due process, and the right to a just remuneration for accused priests during an investigation. These were clearly stated in *OCOC*.

While the *OCOC* did not receive *recognitio* from the Holy See, these guidelines had to be submitted to CDF for review, in accordance with Circular letter. While the guidelines did not meet the juridically binding criteria of can. 455,

³⁴ Irish Catholic Bishops' Advisory Committee on Child Sexual Abuse, *Child Sexual Abuse: Framework for a Church Response*, Dublin 1996, Veritas Publications, pp. 51–53.

³⁵ The Irish Bishops' Conference, The Conference of Religious Ireland, The Irish Missionary Union, *Our Children, Our Church: Child Protection and Procedures for the Catholic Church in Ireland*, Dublin 2005, Veritas Publications. https://www.catholicbishops.ie/wp-content/uploads/images/stories/cco_publications/Safeguarding/ourchildrenourchurch.pdf (5.08.2021).

³⁶ M. Keenan, *Child Sexual Abuse and the Catholic Church*, New York 2011, Oxford University Press, p. 184.

the demands of safeguarding children called for a united action among bishops for the sake of the common good and demanded a level of robustness that was not met by simple moral obligation. United action, grounded in the demands of the common good, bound bishops to follow guidelines produced by the bishops conference – following a “placet” letter from the CDF – in a way that is more than simply moral, but is less than strictly juridical. In other words, it would require a grave reason for a bishop or religious superior not to follow the guidelines.³⁷

Whereas the *Framework* document focused solely on child sexual abuse, *OCOC* contained policies and procedures that included all forms of abuse: sexual, physical, emotional and neglect. This was consistent with the evolving civil guidelines in relation to child protection. The guiding principles of the document were drawn from the Gospel, international law and principles of Irish domestic legislation, echoing a fundamental principle of the *Framework* document: giving “central importance to the principle that the welfare of child should be a first and paramount consideration. This means that all decisions made and actions taken in response to suspicions and allegations of child abuse, ‘the child’s welfare must always be paramount and this overrides all other conditions.’”³⁸

The paramouncy principle which guided *OCOC* was taken from Irish civil law. A recent doctorate by John Poland citing a publication by William Richardson,³⁹ questions if this principle was taken out of context and used as a principle as a method of regulating rights. In Irish law, the principle was first formulated in the Child Care Act of 1991, a non-criminal context: the promotion by health boards of the welfare of children who are not receiving adequate care and attention. It is argued that this principle should place the child’s welfare centre stage, rather than the regulation of all other rights being overridden by the welfare right of children. This would allow in the extreme, a bishop to place a cleric facing an allegation or suspicion of sexual abuse potentially

³⁷ J. Poland, *Guidelines Produced in Response to the CDF’s Circular Letter 2011 of 3 May 2011 Complementary to Art. 6 §§ 1–2 of the 2010 Normae De Gravioribus Delictis: A Canonical Analysis in Light of the Work of the CDF*, Roma 2021, Pontificia Universita Gregoriana, p. 53.

³⁸ https://www.catholicbishops.ie/wp-content/uploads/images/stories/cco_publications/Safeguarding/ourchildrenourchurch.pdf, 7 (5.08.2021).

³⁹ W. Richardson, *The Presumption of Innocence in Canonical Trials of Clerics Accused of Child Sexual Abuse*, Leuven 2011, Peeters.

under an indefinite temporary limitation on the exercise of his ministry. The common good is served only if the rights of all parties are respected equally.⁴⁰

The paramountcy principle from CDF – that the protection of children is paramount – should be understood in light of the United Nations use of “primary” and the principle of criminal law in England and Wales that a court should have “regard” for a child’s welfare. It should not be read in the light of the paramountcy principle as derived from civil (non-criminal) law and used only uncritically in the canonical context. This is for two main reasons. Firstly, it can lead to the call to lower the burden of proof to balance of probabilities which is insufficient in canon law for conviction. Secondly, it can lead to the regulation of rights through the lens of paramountcy. Can. 223 allows the ecclesiastical authority to regulate the exercise of rights which belong to the faithful in the interests of the common good. John Poland states that rights always hang in the balance, and paramountcy would dictate that this regulation would take place with all other rights being overridden by the welfare right of the child. Such an interpretation or application of the principle could potentially lead to unjust outcomes. He concludes that the common good is served if the rights of the accused and the rights of the complainant are treated with equal import.⁴¹ However, there is no evidence to show that this interpretation was communicated to the Irish bishops, hence the disputed paramountcy principle as understood in Irish legislation and OCOC was the interpretation applied.

One of the significant innovations contained in OCOC was the establishment in Ireland of a *National Board for Child Protection* to be autonomous from the Irish Episcopal Conference with overall responsibility for ensuring that Church guidelines, policies and procedures for child protection were implemented, monitored and published. The membership of the Board was to include professionals from childcare, psychology, law, education, business and parents. The Board was to liaise with civil agencies responsible for child protection, as well as review and audit the implementation of policies and procedures. In addition, the *National Office for Child Protection* and a *Professional Practice Committee*

⁴⁰ John Poland, *Guidelines Produced in Response to the CDF’s Circular Letter 2011 of 3 May 2011 Complementary to Art. 6 §§ 1–2 of the 2010 Normae De Gravioribus Delictis: A Canonical Analysis in Light of the Work of the CDF*, Roma 2021, Pontificia Universita Gregoriana, pp. 85–88.

⁴¹ John Poland, *Guidelines Produced in Response to the CDF’s Circular Letter 2011 of 3 May 2011 Complementary to Art. 6 §§ 1–2 of the 2010 Normae De Gravioribus Delictis: A Canonical Analysis in Light of the Work of the CDF*, Roma 2021, Pontificia Universita Gregoriana, p. 88.

were set up. The latter advised and supported bishops and religious superiors in deciding the future of Church personnel where there has been a conviction for child abuse or where such abuse had been admitted or established but there was no conviction.⁴²

The guidelines stressed the need and the importance of ongoing training for all bishops, priests, religious, employees and volunteers ministering and working in the Church. This was particularly important for those who dealt with child protection issues. All organisations and groups working with children and young people in the Church were to draw up *Codes of Best Practice* for ministering or working with children.⁴³ Besides ensuring the safety of children and young people, it would also enhance the work practices of Church personnel and reassure parents, as well as children themselves, that there was a commitment to best practice. In addition, all recruitment was to include police background checks, verifying references and qualifications and previous records of employment.

The document dedicated a chapter to the proper selection and formation of those who present themselves for priesthood and religious life. Those accepted for formal training for the priesthood and religious life were required to have a sufficient level of maturity, particularly reflective and emotional maturity, in order to allow them to engage with and to benefit from the programmes of formation. Human formation was highlighted, drawing on the human sciences it is “particularly important that the process of formation fosters growth and integration of the affective life of the individual, including his or her sexuality in the context of a celibate lifestyle.”⁴⁴

Each bishop and religious superior was to have a *Director of Child Protection* who acts on his behalf and who provides professional expertise, advice and support in relation to child protection. He or she is to be professionally trained and has the responsibility of referring to the civil authorities all child allegations and suspicions of child abuse involving Church personnel and implementing appropriate procedures. Each parish or cluster of parishes would have a nominated *Parish Child Protection Representative*.⁴⁵ Historical complaints with child protection implications were to be treated with the same urgency, as there may be a continuing risk to children.

⁴² OCOC, pp. 11–12.

⁴³ OCOC, pp. 20–21.

⁴⁴ OCOC, pp. 33–35.

⁴⁵ OCOC, p. 16.

OCOC strengthened the level of engagement with the Church and civil authorities in the management of allegations or suspicion of sexual abuse. In addition to reporting allegations or suspicions to the civil authorities, the Director of Child Protection of the diocese or religious institute had to meet with the civil authorities to evaluate any child protection issues arising from the allegation or suspicion. The evaluation was to consider if any further protective or other proportionate measures were necessary. The meeting was also to agree the time of communicating the allegation or suspicion to the accused, ideally, as soon as possible.

As with the previous *Framework* document, an important feature of the guidelines was the pastoral response to victims which had to take account of the profound effects of child abuse, the devastating impact it may have had on the life of the victim and the reality that, in some instances, he or she will have been living with the pain of their abuse for many years before reporting. Furthermore, for most people, the process of disclosing abuse was an emotionally distressing experience. In particular, the possibility that they might not be believed caused huge anxiety for many. For this reason, the guidelines insisted that those who made allegations in good faith were to be assured that they had done the right thing in disclosing the abuse. All were to be offered pastoral help. Some because of anger or depression rejected such offers, others were open to it. Among the most important pastoral needs of victims and their families were: the need to be listened to and respected; to know that they were believed; for their suffering and pain to be acknowledged; to be kept informed; to have access to pastoral supports and professional counselling. Among the recommended steps in the guidelines was that the bishop should offer to meet the victim, acknowledging the allegation and offer support.⁴⁶

OCOC – Canonical Procedures

The *OCOC* contains a number of references to canon law, but it is not a legislative text. The document, in as much as it is possible, availed of those remedies for dealing with allegations of child abuse which were already in universal law, thereby avoiding the need to create particular, local ecclesiastical law with all its attendant difficulties.

⁴⁶ OCOC, pp. 71–75.

The OCOC elaborated step-by-step the distinct canonical procedures required when responding to allegations or suspicions against a priest, religious, ordinary or a lay employee. If a cleric, religious or lay employee posed a risk to the welfare of children, the bishop and the religious superior, for the common good (can. 223), had the authority to restrict the ministry of the cleric as long as such a situation prevailed.⁴⁷ By means of canonical precept, the cleric was informed that he was not to have any contact with the person who made the allegation or their family. The Ordinary would then convene a meeting of the Child Protection Committee of the diocese as soon as possible to assist him in the management of the allegation.⁴⁸

Any allegation against a cleric which had at least the semblance of truth, from the Director of Child Protection or any other source, followed what was required in can. 1717, §1. If there was a case to be answered, then the Ordinary had to refer the case to the Congregation for the Doctrine of the Faith.⁴⁹ The canonical investigation was to be paused while a civil or criminal investigation was underway.

One of the most contentious elements of OCOC, was the requirement of the cleric to voluntarily refrain from the exercise of their ecclesiastical office, and from other forms of public ministry, including the public celebration of the sacraments, for the duration of the investigation of the allegation. If he could not be persuaded to do so, the ministry of the accused cleric was to be limited for the good of the Church (*pro bono ecclesia*). If he declined to do so, the Ordinary could proceed by taking disciplinary action (cann. 192–193, 1740–44, 552) and / or decree the removal of the cleric's faculties for the duration of the investigation. Where necessary, the Ordinary could issue the cleric with a penal precept requiring him to stand aside from ministry on the pain of incurring a determined penalty (can. 1319, §2).⁵⁰ In the case of a religious cleric, the major religious superior, in accordance with the constitutions of each institute, would require the accused cleric to take leave from public ministry. Where necessary, a diocesan bishop would be required to remove a religious from a position in accordance with can. 682, §2.⁵¹

⁴⁷ OCOC, p. 55.

⁴⁸ OCOC, p. 56.

⁴⁹ OCOC, p. 57.

⁵⁰ OCOC, p. 58.

⁵¹ OCOC, p. 58.

Any accused cleric who was asked to take leave from ministry was still entitled to his rightful income and his right to be provided with a residence.⁵² Any deprivation of these would be considered punitive, undermine the presumption of innocence and could be subject to canonical recourse to the Congregation of the Doctrine of the Faith. Furthermore, any medical or psychological evaluation had to be voluntarily agreed by the accused cleric and carried out by an accredited professional and a contract about its future use agreed.⁵³

For members of a religious institute, society of apostolic life or secular institute who is not ordained, the major religious superior was required to collect the evidence concerning the facts and the imputability of the offence. The accusation and the evidence were to be presented to the accused religious, who was to be given the opportunity to present a defence. All the acts of evidence, signed by the religious superior and the notary, were to be forwarded, together with the written replies of the accused religious, to the superior general (can. 695, §2).⁵⁴ A religious against whom an allegation of child abuse had been made could be removed from ministry at the discretion of the authority (e.g. the bishop) who made the appointment, with prior notice being given to the religious superior, or vice versa. Neither required each other's consent (can. 682, §2).

There was no universal legislation at this time on how to deal with an allegation made against a bishop. *OCOC* stated the bishop was immediately to inform the Holy See if the allegation was made against himself. If he failed to do so, the document looked to parallel situations: cann. 436, §1, 2° and 415 to draw up a protocol whereby the Metropolitan was to refer the matter at once to the Holy See. If there was no Metropolitan, or if he was the person against whom the allegation or report of suspicion was being made, the senior suffragan by promotion was to refer the matter. In the case of a major religious superior, the matter was to be referred immediately to the superior general.⁵⁵ This is addressed in the more recent universal legislation, as we shall see shortly.

OCOC outlined for the first time procedures for dealing with allegations of non-sexual abuse (physical, emotional or neglect). If after an investigation and having consulted his Child Protection Committee, the bishop concludes that the ministry of the accused priest continues to pose a risk to children and

⁵² *OCOC*, p. 54.

⁵³ *OCOC*, p. 58.

⁵⁴ *OCOC*, p. 60.

⁵⁵ *OCOC*, p. 61.

young people or is a cause of scandal to the faithful, the ministry of the accused cleric was to be limited for the good of the Church by the appropriate disciplinary action, such as a precept (cann. 48–58). If his continuing in ministry was judged harmful or at least ineffective, the diocesan bishop could, in accordance with cann. 1740–1747, remove a parish priest or in accordance with can. 552, remove a curate from office. In the case of a religious or a member of a society of apostolic life, the religious superior was to collect the evidence and consult with his or her council about how to proceed (cann. 696–699).⁵⁶

After the publication of *OCOC*, there were widespread concerns and fears that any accusation or suspicion would be deemed credible unless manifestly groundless, so even anonymous, spurious or frivolous claims could lead to a cleric being stepped aside with the potential for a serious injustice to the cleric or religious and leaving their reputation in tatters. Further anxieties were expressed that the canonical procedures lack the principle of proportionality and the danger of geographical injustices in the application of canonical procedures. In other words, the application of the canonical procedures could vary from between dioceses, religious institutes and the personality of the ordinary. The new policies and procedures outlined in *OCOC* did have the effect of undermining the “father-son” relationship between bishops and priests and damaging the trust between them.⁵⁷

Standards and Guidance 2008 and 2016

Significant progress was made after the publication and implementation of the Framework and *OCOC* and with the establishment of the National Board in developing a more effective and accountable safeguarding environment for children across many Irish dioceses and religious congregations. One of the key findings of the National Board was that over the years, most dioceses and religious orders produced and implemented their own policies and procedures, largely in isolation from each other. The result was a multiplicity of guidance containing different interpretations of what represented best practice in the

⁵⁶ *OCOC*, pp. 61–62.

⁵⁷ P. Connolly, *Priest and Bishop – Implications of the Abuse Crisis*, “The Furrow” 57 (2006) 1, pp. 131–141; B. Cosgrove, *Clerical Sex Abuse in the Church*, “The Furrow” 57 (2006) 4, pp. 195–206; P. Connolly, E. Conway, E. Duffy, E. Lyons, *Accused but Innocent – What Should a Priest Do?*, “The Furrow” 57 (2006) 4, pp. 207–220; M. Mullaney, *Balancing Rights and Responsibilities in Our Children, Our Church*, “The Furrow” 57 (2006) 7, pp. 263–273.

Church and this development weakened a one-Church approach. In 2008, the National Board developed the first *Safeguarding Children, Standards and Guidance (S&G)*⁵⁸ for the Catholic Church in Ireland, which sought to address this situation by reiterating and developing further the core principles outlined in *OCOC*. The *S&G* replaced *OCOC*.

The core principles were drawn from Gospel values and mirrored civil legislation and policy. They were expressed in seven standards that represented, in the Board's view, the best practice in the area of safeguarding and protecting children. Each standard contained a list of criteria and indicators to help decide whether this standard was being met.

While one of the standards addressed how to respond to child protection allegations and suspicions, many of the standards focused on preventative measures to create a safe environment for children: training and education; communicating the Church's message on safeguarding; ensure appropriate advice and support; and implementing and monitoring the standards.⁵⁹

The preventative criteria included: policies and procedures for recruiting Church personnel and assessing their suitability to work with children; all those who have the opportunity for regular contact with children, or who were in positions of trust, complete a form declaring any previous court convictions and undergo other checks as required by legislation and guidance and this information is then properly assessed and recorded; the Church organisation provided codes of behaviour giving guidance on appropriate/ expected standards of behaviour of adults towards children.⁶⁰

All Church personnel were required to participate in appropriate training in child protection to maintain high standards and good practice with regular opportunities to update their skills and knowledge. Training was to be provided to those with additional responsibilities such as recruiting and selecting staff, dealing with complaints, disciplinary processes, managing risk, acting as designated person. All training programmes were to be approved by National Board for Safeguarding Children and updated in line with current legislation, guidance and best practice.⁶¹

⁵⁸ https://www.safeguarding.ie/images/Article_Images/Standards-and-Guidance8.pdf (5.08.2021).

⁵⁹ *Ibid.*, p. 11.

⁶⁰ *Ibid.*, 16–17.

⁶¹ *Ibid.*, 18.

The intention of this document was to provide a practical mechanism by which everyone in the Church in Ireland could reach a uniform standard of best practice in safeguarding based on the core principles established in *OCOC*. It was also fully compliant with civil legislation in this area.

The processes for responding to allegations of abuse were compliant with both civil and canon law.⁶² The Child Protection Committee established by a bishop or a religious superior in *OCOC* to advise them in the management of allegations was now referred to as a consultative Advisory Panel. It had the same remit, to assist at all stages of the investigative process into alleged abuse. This included advising whether it was suitable for the priest or religious to continue in their pastoral assignment, ensuring at all times that the safety and welfare of children remained paramount. Where an investigation concerned a cleric or religious, the specific requirements of canon law were to be observed.⁶³

In light of developments in civil legislation, policy and guidance following the publication of the *S&G* (2008) alongside learnings from reviews of safeguarding practice in the dioceses and religious institutes carried out by the National Board, the National Board led a process of revising the *Standards and Guidance* in 2016. A revised seventh standard supports a more structured process to quality assure compliance with the other six standards listed in the 2008 document.⁶⁴

These four guidelines and documents (1996, 2005, 2008, 2016) contributed to a sea-change in attitudes, understanding, culture, accountability and transparency within the Irish Church around sexual abuse of minors and creating safeguarding structures for children. Through training and education, Church personnel developed a wealth of experience and expertise in this area. With mandatory reporting and the paramouncy principle well established, the guidance and standards documents enable the Church to continue to focus and deliver on caring for children involved in Church activities and offering appropriate pastoral care to all those who have suffered abuse and those implicated in the perpetration of abuse. The nature of these types of document is that they can never be completely definitive, and will need to be continually revised by the National Board when with changes in the statutory context or otherwise as these arise.

⁶² Ibid., pp. 87–88.

⁶³ Ibid., p. 86.

⁶⁴ <https://www.safeguarding.ie/images/Pdfs/Standards/Safeguarding%20Children%20Policy.pdf> (5.08.2021).

3. Recent Universal Canonical Legislation

The four safeguarding documents issued in Ireland since 1996 were primarily guidelines in handling allegations or suspicions of abuse by priests and religious to ensure these conformed with civil law and best practice. These documents were not canonical texts and were complementary to and included existing universal norms in the Code or in other documents of the Holy See when referring to the appropriate canonical response to allegations against a priest or a religious. The most significant sources of universal norms cited in these documents over this period were the *motu proprio Sacramentorum Sanctitatis Tutela* (SST) (2001) (cf. footnote 14), the revised norms of the *motu proprio SST, Normae de Gravioribus Delictis* (NGD) (2010) (cf. footnote 15) and the apostolic letter *motu proprio As a Loving Mother* (2016).⁶⁵ The more recently published the Apostolic Letter *motu proprio Vos estis lux mundi* (VELM) (2019)⁶⁶ and the revised Book VI of the Code of Canon Law (2021)⁶⁷ incorporate the previous canonical legislation issued by the Holy See, as well as some local particular laws and best practice which have evolved over the course of the last two torturous decades in local Churches. The new legislation replaces supersedes any universal norms in these documents and later revisions will have to adopt.

Overall, the norms contained in *VELM* mark a significant modification in the universal law of the Church with regard to the abuse of minors and vulnerable persons. The *motu proprio* set minimum standards, structures, procedures and attitudes that must be in place throughout the whole Church. These can be strengthened, reinforced and made more concrete by the local Church, religious institutes or other ecclesial bodies.⁶⁸ This *motu proprio* provides a welcome procedural clarity and a degree of transparency to reassure the faithful and the general public that bishops were not exempt from censure when there has been negligence or cover-up when dealing with allegations or suspicions of abuse

⁶⁵ https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20160604_come-una-madre-amorevole.html (25.08.2021).

⁶⁶ https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html (25.08.2021).

⁶⁷ <https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2021/06/01/210601b.html> (25.08.2021).

⁶⁸ Aidan McGrath, *Vos Estis Lux Mundi: A canonist reads the motu proprio of Pope Francis*, “The Canon Law Society of Great Britain and Ireland Newsletter”, 197 (2020), p. 5.

made against priests or religious.⁶⁹ This is a new law and therefore not retroactive, but a canonical penal action could be taken against an office holder for actions and omissions that pre-date 1 June 2019 on the basis of can. 1389 or can. 1399.⁷⁰

The *motu proprio* (Art. 1, §1) expands the norms to apply to all clerics (deacons, priests and bishops) and also members of Institutes of Consecrated Life and Societies of Apostolic Life. This norm is also reflected in can. 1398 § 2 in the new revised Book VI. The standards apply equally to crimes described as sexual abuse of minors and to the crimes seeking to avoid or interfere with civil and canonical procedures taken to investigate such crimes.

A major innovation of the apostolic letter is the more detailed specification of what a “delict against the sixth commandment of the Decalogue” means. Art 1. §1 expands the understanding of the term considerably compared to previous legislation by stating that the delict is committed by anyone of those mentioned who: firstly, by abusing their authority, by the use of violence or threats, forces someone (not necessarily a minor) to submit to sexual acts; secondly, performs sexual acts “with a minor or a vulnerable person”; thirdly, produces, exhibits, possesses or distributes child pornography (Can. 1398, §2, revised Book VI).

Another development is the inclusion of vulnerable persons: art. 1 §2 defines a minor as someone under eighteen or considered by the law to be equivalent to a minor. A vulnerable person is understood to be a person whose capacity to make a free and informed choice has been seriously compromised. Furthermore, the pornographic representation of any minor means anyone under the age of eighteen. This is a strengthening of the understanding of minor in *NGD* understood this to mean fourteen.

Some of the standards contained in the new legislation have already been operative in Ireland. An example is, art. 2 which requires the establishment of some kind of system that is stable, public and easily accessible for the reception of reports or complaints and for these complaints to be dealt with as quickly as possible. The establishment of the National Safeguarding Board and the National Office for Safeguarding since 2005 have co-ordinated and implemented the policies, procedures, structures and training of personnel to ensure the

⁶⁹ G. Read, *Apostolic Letter issued Motu Proprio: “As a Loving Mother” Commentary*, “The Canon Law Society of Great Britain and Ireland Newsletter”, 188 (2016), pp. 15–19.

⁷⁰ A. McGrath, *Vos Estis Lux Mundi: A canonist reads the motu proprio of Pope Francis*, “The Canon Law Society of Great Britain and Ireland Newsletter”, 197 (2020), p. 8.

appropriate response to and management of complaints and suspicions of abuse. These were outlined comprehensively in the documents identified above.

Another key requirement of the new legislation has long been established in Irish child protection documents: the reporting of complaints to the civil authorities and suspending canonical processes until the civil authorities have completed their investigations. Article 19 is clear that the application of these norms is not intended in any way to interfere with, interrupt or avoid the obligations and rights arising out of the law of the State. The *motu proprio* specifically stresses the obligations concerning reporting the behaviours mentioned in art. 1 to the competent authorities. Wherever there exists an obligation to report any matter to the State, the ecclesiastical authority should take great care to suspend any definitive action or procedure until the State has concluded its own investigations and deliberations.

The provisions in Title II deal with bishops and their equivalents. In the *motu proprio, As a Loving Mother* (2016), Pope Francis stated clearly that bishops and their equivalents must be held responsible and accountable for the protection of the weakest entrusted to their spiritual and pastoral care. Canon law already provides for the possibility of removal from ecclesiastical office “for grave reasons” and this pertains to diocesan Bishops and Eparchs as well, and those who are by law equal to them (cf. can. 193 § 1 CIC; can. 975 § 1 CCEO). Among the aforesaid “grave reasons” is the negligence of a bishop in relation to cases of sexual abuse inflicted on minors and vulnerable adults in the exercise of his office.

After reporting the complaint against an “authority” outlined in art. 6 to the competent dicastery which will appoint the Metropolitan or another suitable person to conduct the investigation. Article 15 outlines the procedure for the investigation and the possibility of the Metropolitan asking the competent dicastery to adopt provisions or precautionary measures with regard to the person under investigation. These may include those foreseen in can. 1722, that is, suspending sacred ministry, suspension from office, or the requirement to reside in another place, etc.

Finally, one of the most significant developments of the revision of Book VI, has been the recontextualising of the delict of sexual abuse from can. 1395 under crimes against special obligations, that is, the obligation of chaste celibacy on the part of priests, to an offence against the dignity of the human life, dignity and liberty (can. 1398). The dignity of the minor and the rights which flow from this deserve special protection on account of their immaturity and vulnerability. The sexual abuse of a minor is an attack on the dignity of that person, made in the

image of God, and their right to bodily integrity, the right to proper growth and human development, and the right to respect. This was how the abuse of a minor was presented in the Irish *Framework* document (1996).

This requires the appropriate penalties to be imposed on those who would harm, in the name of the Church, minors and the most vulnerable in society, harming justice and creating scandal. The recontextualising of the delict as an offense against the dignity of the human person, means that the delict is no longer reserved only to clerics but also includes lay persons.

4. Conclusion

The Irish Church had to face the child abuse crisis earlier than most other European countries. Without much canonical expertise, experience or jurisprudence to draw on, its guidelines were robust even farseeing insisting on mandatory reporting of all allegations, co-operation with civil authorities, the paramountcy principle and the requirement of accused stepping aside from ministry or office. While the Irish guidelines addressed the multifaceted pastoral and educational response to child sexual abuse by priests and religious, they also had a significant legal focus, ensuring that bishops and religious superiors understood their obligations and responsibilities in relation to the civil and canon law. While initially allowing for diocesan bishops and religious to implement them in their own diocese or religious congregation, in time the documents reflected the strength and value of a more united and uniform one-Church approach.

When the circular letter issued by the CDF on 3 May 2011 required episcopal conferences throughout the world to draw up and issue guidelines and submit them to the congregation for review, the Irish bishops had already published a comprehensive response in the *Framework* document (1996). A number of the key legal principles outlined in the circular letter of 2011 were already embedded in the *Framework* document and *OCOC*: the right to the presumption of innocence; the right to due process; right to defence; the right to a just and fit remuneration during an investigation; co-operation with civil authorities, even before this was obligatory in Irish civil law. From the beginning, the Irish guidelines and policies strived to comply with universal law and these elements strived to ensure a greater balance of rights and avoided potential injustices against clergy. The Circular letter, however, demonstrated the importance of canonical and objective guidance from the Holy See to ensure that local guidelines

and the application of the law avoid potential injustices for priests and ensure justice and healing for victims.

While the Irish guidelines did not receive a formal “*recognitio*” as understood in can. 455, they were reviewed and received a “*placet*” from CDF. This confirmed that guidelines could be published because they were in conformity with the requirements of CDF circular letter and the universal law. The Irish Episcopal Conference retained full ownership of the guidelines and were responsible, as part of their pastoral collaboration and communion, for the implementation of the guidelines in their respective dioceses. The “*placet*” of the CDF gives a binding nature to the guidelines that was not strictly juridical but was more than merely moral. This ownership of the guidelines allows the local Church to continually revise and develop them. The nature of guidelines is that they can never be completely definitive, and are continually evolving to reflect changes in the statutory context, best practice, in canon law or otherwise as these arise.

The recent universal legislation better equips the Church to deal with the crime of sexual abuse and the crime of cover-up by guaranteeing a greater degree of transparency to reassure the faithful and the public. The recent canonical legislation ensures that no one who has committed this delict against a minor or a vulnerable person or has been negligent when dealing with allegations or suspicions of abuse is above the law. The new norms now apply also to bishops and laity. The Irish guidelines and universal norms were always complementary and therefore any changes in the universal norms are immediately effective.

Addressing the Meeting on The Protection of Minors in the Church (24 February 2019), Pope Francis concluded affirming “the need for bishops to be united in the application of parameters that serve as rules and not simply indications. . . . No abuse should ever be covered up (as was often the case in the past) or not taken sufficiently seriously, since the covering up of abuses favours the spread of evil and adds a further level of scandal. Also and in particular, developing new and effective approaches for prevention in all institutions and in every sphere of ecclesial activity.”⁷¹ This work continues both at a local and universal level.

⁷¹ https://www.vatican.va/content/francesco/en/speeches/2019/february/documents/papa-francesco_20190224_incontro-protezioneminori-chiusura.html, n. 5 (30.08.2021).

Bibliography

Irish Guidelines

- Irish Catholic Bishops' Advisory Committee on Child Sexual Abuse, *Child Sexual Abuse: Framework for a Church Response*, Dublin 1996, Veritas Publications.
- The Irish Bishops' Conference, The Conference of Religious Ireland, The Irish Missionary Union, *Our Children, Our Church: Child Protection and Procedures for the Catholic Church in Ireland*, Dublin 2005, Veritas Publications.
- National Board for Safeguarding Children, *Safeguarding Children: Standards and Guidance Document for the Catholic Church in Ireland (2008)*, https://www.safeguarding.ie/images/Article_Images/Standards-and-Guidance8.pdf (31.8.2021).
- National Board for Safeguarding Children, *Safeguarding Children: Policy and Guidance Document for the Catholic Church in Ireland (2016)*, <https://www.safeguarding.ie/policy-guidance/view-all-the-guidance> (31.8.2021).

Books

- Keenan M., *Child Sexual Abuse and the Catholic Church*, New York 2011, Oxford University Press.
- Miller V., *Child Sexual Abuse Inquiries and the Catholic Church: Reassessing the Evidence*, Firenze 2021, Firenze University Press (forthcoming).
- Poland J., *Guidelines Produced in Response to the CDF's Circular Letter 2011 of 3 May 2011 Complementary to Art. 6 §§ 1–2 of the 2010 Normae De Gravioribus Delictis: A Canonical Analysis in Light of the Work of the CDF*, Roma 2021, Pontificia Università Gregoriana.
- O'Reilly J.T. and Chalmers M., *The Clergy Sexual Abuse Crisis and the Legal Responses*, New York 2014, Oxford University Press.

Articles

- Connolly P., *Priest and Bishop – Implications of the Abuse Crisis*, "The Furrow" 57 (2006).
- Connolly P., Conway E., Duffy E., Lyons E., *Accused but Innocent – What Should a Priest Do?*, "The Furrow" 57 (2006).
- Cosgrove B., *Clerical Sex Abuse in the Church*, "The Furrow" 57 (2006).
- Mullaney M., *Balancing Rights and Responsibilities in Our Children, Our Church*, "The Furrow" 57 (2006).
- Quinn D., *The Church's Child Sex Abuse Crisis in Retrospect*, "Studies" 102 (2013).