

National Board Critique of Vademecum issued July 2020

Background

The global Meeting of the Presidents of the Episcopal Conferences on the Protection of Minors held in the Vatican in February 2019 resulted, to date in a number of follow-up actions and publications including:

1. The Production and publication of Vatican Norms:
 - Vatican Law No. CCXCVII On the protection of minors and vulnerable persons;
 - The Motu Proprio On the protection of minors and vulnerable persons;
 - The Guidelines of the Vicariate of Vatican City on the protection of minors and vulnerable person
2. The Motu Proprio – Vos estis lux mundi
3. The Rescript "On the confidentiality of legal proceedings" lifting the "pontifical secret" in the cases relating to: violence or abuse of authority in forcing sexual acts, sexual abuse of minors or vulnerable persons, crimes of paedophilia involving children under 18 years of age or with incapacitated subjects and the concealment of those conducts from ecclesiastical or civil inquiries.
4. The creation of 'task forces' to help dioceses around the world that may need help in implementing the appropriate measures to protect minors
5. CDF production and publication of Vademecum (Guide or Handbook) an "instruction manual", a step-by-step guide primarily for Ordinaries and other personnel needing to apply the canonical norms governing cases of the sexual abuse of minors by clerics. The manual is meant to serve as a handbook for those charged with ascertaining the truth in such criminal cases, leading them step-by-step from the *notitia criminis* to the definitive conclusion of the case. This document provides an overview of the Vademecum and cross references against National Board guidance as well as highlighting where further guidance needs to be developed.

It is important to note that the language and meaning cited below is that of the Vademecum, which in itself is not Canon law, but provides a guide to those responsible for managing these particular cases.

Church authorities are bound by the Child Safeguarding Policy of the Catholic Church in Ireland, the indicators of which are based on Canon law.

The Vademecum is an international document and written for countries that are at various stages in the child safeguarding journey. For this reason and because of experience and canon law advice, and for clarity it has been necessary in some instances as noted below, for the National Board to adapt the guidance in the Vademecum and we recommend Church authorities in Ireland follow National Board guidance.

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Introduction

Substantially the *Vademecum* provides precise responses to what can be called the most frequently asked questions. It is an instruction manual which, in a bit more than 30 pages and 9 chapters, responds to the main questions to several procedural steps regarding how cases of the sexual abuse of minors committed by members of the clergy should be handled. It is not, however, a normative text. Nor does it introduce new legislation on the subject. Rather, it is a tool designed to help Ordinaries *Hierarchs* and legal professionals who need to apply canonical norms to actual cases regarding the *delicta graviora* (more serious delict or crime).

The delicts or crimes against children are listed in art. 6 of the *Normae* promulgated by the Motu Proprio *Sacramentorum Sanctitatis Tutela*, (SST) – updated - 2010, Reserved Norms; well as to the more recent Motu proprio *Vos estis lux mundi*, issued by Pope Francis in 2019.

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I. What constitutes a delict?

- The delict in question includes every external offence against the sixth commandment of the Decalogue committed by a cleric with a minor (cf can. 1395 § 2; art. 6 § 1, 1* SST).
- The delict can include :
 - a) sexual relations (consensual and non-consensual)
 - b) physical contact for sexual gratification
 - c) exhibitionism
 - d) masturbation
 - e) the production of pornography (cf n. 7 below)
 - f) inducement to prostitution
 - g) conversations and/or propositions of a sexual nature carried out through various means of communication.
- SST introduced (cf. art. 6 § 1, 2º SST) three new delicts involving minors, i.e., the acquisition, possession (even temporary) or distribution by a cleric of pornographic images of minors under the age of 14 (as of 1 January 2020, under the age of 18) for purposes of sexual gratification by whatever means or using whatever technology.

No Change required to National Board Guidance

Definition of a minor according to canon law

In considering whether a delict has occurred, the age definitions at the time of the alleged offence must be considered

- There had been a change in the Vatican definition of a minor; prior to 30th April 2001 a 'minor' was a person aged under 16 years. After the promulgation of SST, 2001, a 'minor' in canon law was identified as someone under 18 years.

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Competent Dicasteries

- From 1 June to 31 December 2019, the acquisition, possession, or distribution of pornographic material involving minors between 14 and 18 years of age by clerics or by members of Institutes of Consecrated Life or Societies of Apostolic Life are delicts for which other Dicasteries are competent (cf. arts. 1 and 7 VELM).
- From 1 January 2020, the CDF is competent for these delicts if committed by clerics.
- For Religious cf. canons 695ff. CIC, the delict mentioned above can also entail dismissal from a religious institute:
 - a) Such a dismissal is not a penalty, but rather an administrative act of the Supreme Moderator (General Minister in Rome)
 - b) To issue a decree of dismissal, the relevant procedure described in canons 695 § 2, 699 and 700 CIC must be carefully followed
 - c) Confirmation of the decree of dismissal demanded by canon 700 CIC must be requested from the CDF
 - d) Dismissal from the Institute entails the loss of membership in the Institute and the cessation of vows and obligations deriving from profession (cf. canon 701, CIC), as well as the prohibition of exercising any sacred orders received until the conditions referred to in canon 701, CIC are met.

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II. What to do when information about a possible delict is received

a) What is meant by the term *notitia de delicto*?

- A *notitia de delicto* (cf. canon 1717 § 1 CIC; canon 1468 § 1 CCEO; art. 16 SST; ART. 3 VELM), sometimes called *notitia criminis*, consists of any information about a possible delict that in any way come to the attention of the Church Authority. It need not be a formal complaint.
- This *notitia* can be disclosed to the Church Authority in any variety of ways.
- The *notitia* can reach the CA anonymously through unidentifiable sources. (The process of anonymous referrals is in line with the already established in Guidance 2.1D) For this reason it should not be regarded automatically as false, but should be treated with great caution.
- Similarly, if for any reason doubt can be cast on the source of the disclosure, it should not be dismissed as false.
- Even though the *delicto* may be vague and lacking in detail, it should not be disregarded out of hand, but laid aside for future reference if need be.
- If a *delictum gravius* is received under the seal of confession it cannot be disclosed to anyone. (cf. canon 983 § 1 CIC; canon 733 § 1 CCEO; art. 4 § 1 5* SST). The confessor should try to convince to the penitent to disclose the *delicto* outside the confession so that the appropriate authorities can take action to safeguard children.
- The CA should be vigilant as to the possibility that offences of this kind occur among those under his charge.

No Change required to National Board Guidance

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b) What actions should be taken upon receiving a *notitia de delicto*?

- Art. 16 SST (cf. also canons 1717 CIC and 1468 CCEO) states that, when a *notitia de delicto* is received, a preliminary investigation should ensue, provided that the report is "*saltem verisimilis*" (semblance of truth). The standard of proof required to ascertain if there is a "semblance of truth" is low, meaning that the Ordinary or Hierarch must be satisfied that the allegation on its face is not in conflict with known facts or otherwise demonstrably and clearly lacking credibility. Where the semblance of truth is present, and in this regard great care must be taken to avoid reacting to an allegation as false, a preliminary investigation must be initiated. This investigation is independent of all state investigations and should proceed accordingly. However, there must be consultation with the relevant State Authorities, to ensure that there is no interference with the investigations carried out by State Authorities and due deference given to any requests made by State Authorities, so as not to interfere with their investigations.
- Good records should be maintained, even where there is no case to answer.
- Reasons for not proceeding with a preliminary investigation should be communicated to CDF
- The allegation must be reported to the statutory authorities
- Responsibility for assessing whether any risk is presented by the respondent rests with the statutory authorities. However only the Ordinary or Hierarch can canonically remove faculties from the respondent if necessary. Therefore to effectively manage risk the Church authority is responsible for making an initial judgement about whether the respondent can remain in ministry during investigations or whether, in the interests of children, restrictions need to be imposed.
- Even where a case is not proven, should it prove necessary to protect the common good and to avoid scandal, the Ordinary or Hierarch is competent to take other administrative provisions with regard to the person accused (for example, restrictions on his ministry), or to impose the penal remedies mentioned in canon 1339 CIC for the purpose of preventing delicts (cf. canon 1312 § 3 CIC) or to give the public reprimand referred to in canon 1427 CCEO. In the case of delicts that are *non graviora*, the Ordinary or Hierarch should employ the juridical means appropriate to the particular circumstances.
- Responsibility for determining whether to initiate a preliminary investigation rests with the Ordinary or Hierarch; failure in exercising this responsibility could in itself be considered a delict subject to a canonical procedure in line with the Code of Canon Law and the Motu Proprio "Come una madre amorevole", as well as art. 1 § 1, b VELM.

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- The CDF may be contacted for help; other experts, including canon lawyers may be consulted. Care should be taken in information sharing so as not to prejudice other investigations, or prejudge the outcome of the investigation.
- Silence cannot be imposed on the person making the allegation
- Prescription is determined by SST, but the Ordinary may decide on derogations
- Art. 2 § 3 VELM, requires information to be shared between Ordinaries as appropriate

Change required to National Board Guidance:

CDF to be informed in all cases, including decision not to proceed with PI and irrespective of outcome of PI

Need to add into Guidance that failure in exercising duty could in itself be considered a delict

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III – Process of preliminary investigation

a) How does the preliminary investigation take place

- In line with SST
- The PI is not a trial, nor does it seek moral certitude about whether the offence occurred. It serves: a/ to gather data useful for a more detailed examination of the *notitia de delicto*; and b/ to determine the plausibility of the report, that is, to determine that which is called *fumus delicti*, namely the sufficient basis both in law and in fact so as to consider whether the respondent has a case to answer
- The PI should gather detailed information about the allegation with regard to:
 - i. Facts
 - ii. Circumstances
 - iii. Imputability

No need at this stage to assemble complete elements of proof:

- i. Testaments
- ii. Expert opinions

Such procedures are to be left to a later penal procedure.

The PI attempts to reconstruct:

- i. The facts on which the accusation is based
 - ii. The number of the criminal acts committed
 - iii. The year, month, day, time the acts were perpetrated
 - iv. The circumstances in which they took place
 - v. The general details about the alleged victims
 - vi. A preliminary evaluation of the physical, psychological and moral harm inflicted.
- Care should also be taken care to determine any possible relation to the sacramental internal forum (in this regard, however, account must be taken of the prescriptions of art. 24 SST^[2]).
 - Any other delict can be included
 - The results obtained from a civil investigation can make a PI unnecessary.
 - The admission of guilt on the part of the respondent can also make a PI unnecessary.

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b) Juridical acts that must be carried out to initiate the preliminary investigation.

- Using the criteria indicated by canon 1428 §§ 1-2 CIC, the Provincial can select someone other than himself to conduct the PI.
- A decree opens the process
- A priest may also be appointed to assist as notary

c) What complementary acts can or must be carried out during the preliminary investigation?

- The person who conducts the PI should take special care to protect the good names of the respondent, complainant and witnesses.
- However, if it is in the common good, the release of information about the existence of an accusation does not necessarily constitute a violation of one's good name. However great care needs to be taken with any public statements
- State laws relating to reporting must be observed. Victims should be encouraged to report also to the civil authorities
- When the laws of the State require the Provincial to report an allegation, he must do so (even where the statute of limitations has expired).
- Whenever the civil judicial authorities issue a legitimate executive order requiring the surrender of documents regarding cases, the Ordinary must cooperate with the civil authorities.
- Care must be taken if the testimony of a child needs to be heard and this should be done in conjunction with civil authorities
- Consideration should be given to when the accused is informed; in line with civil and canonical inquiries; an advocate of accused's choice may be considered
- Support for victim and family, including counselling should be offered
- In the PI both alleged victim and the respondent are to be treated with respect. "avoid giving the impression of wishing to anticipate the results of the process"
- Precautionary measures may be imposed

d) How are precautionary measures imposed?

- Not a penalty – but an administrative act which can be revoked and re-imposed
- The term to be used is "Prohibition from the exercise of ministry" which is imposed by a singular precept, legitimately made known. (canons 49ff and 1319 CIC).
- Revocation is by Decree
- An accused should not be transferred to another place as a means of solving the problem

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e) What must be done to conclude the preliminary investigation?

- Care taken to avoid delay
- The person appointed should gather all the facts and present a personal opinion to the Ordinary
- PI is closed by Decree
- The Ordinary must send all information and his Votem to CDF/Supreme Moderator
- Ordinary must share the results of the investigation with relevant others in the Church

No Change required to National Board Guidance

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IV. CDF action

- After attentively examining the acts, the CDF can then choose to act in a variety of ways:
 - it can archive the case;
 - request a more thorough preliminary investigation;
 - impose non-penal disciplinary measures, ordinarily by a penal precept;
 - impose penal remedies or penances, or warnings or rebukes;
 - initiate a penal process;
 - identify other means of pastoral response.
 - The decision, once made, is then communicated to the Ordinary with suitable instructions for its execution.
- a) non-penal disciplinary measures are singular administrative acts which require the accused to do or refrain from doing something. These are not seen as penalties but acts of governance in the interest of the common good and to avoid scandal.
- b) penal precept - canon 1319 § 1 CIC and 1406 § 1 CCEO. Canon 1406 § 2 CCEO states that a warning containing the threat of penalty is equivalent to a penal precept.
- c) penal remedies, penances and public rebukes - canons 1339 and 1340 § 1 CIC and canon 1427 CCEO

V – Decisions of penal process:

- *conviction (“constat”)*, finding of guilt on the basis of moral certainty. The decision must state the type of canonical sanction imposed.
- *acquittal (“constat de non”)*, establishment of innocence, on the basis of moral certainty.
- *dismissal (“non constat”)*, where it is not possible to attain moral certainty with regard to the guilt of the accused, due to lack of evidence or to insufficient or conflicting evidence.

VI – Possible penal procedures

- a judicial penal process – judicial penal process can be carried out within the CDF or can be entrusted to a lower tribunal. With regard to the decision rendered, a specific letter of execution is sent to all interested parties.
- an extrajudicial penal process - sometimes called an *administrative process*, is a type of penal process that abbreviates the formalities called for in the judicial process, for the sake of expediting the course of justice without eliminating the procedural guarantees demanded by a fair trial. The Ordinary or his delegate invites the two

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assessors to provide, within a certain reasonable time limit, their evaluation of the proofs and the arguments of the defence, in accordance with canon 1720, 2º CIC.

- the procedure introduced by article 21 § 2, 2º SST. - The Congregation for the Doctrine of the Faith may: ... 2º present the most grave cases to the decision of the Roman Pontiff with regard to dismissal from the clerical state or deposition, together with dispensation from the law of celibacy, when it is manifestly evident that the delict was committed and after having given the guilty party the possibility of defending himself.

VII. What can happen once a penal procedure ends?

- a penal judicial process, the possibility of a legal challenge exists, namely, a complaint of nullity, *restitutio in integrum*, or appeal.
- an extrajudicial penal process, recourse can be made against the decree that concluded it, within the terms provided by law, namely, by canons 1734ff. CIC and 1487 CCEO (cf. Section VIII).
- 21 § 2, 2º SST, inasmuch as it concerns an act of the Roman Pontiff, no appeal or recourse is admitted

VIII. What should be done in case of recourse against a penal decree?

- CIC Procedures - seek revocation or emendation from the author (the Ordinary or his delegate) within ten days. The author, within thirty days after receiving the petition, can respond by amending his own decree (but before proceeding in this case, it is best to consult the CDF immediately), or by rejecting the petition. He also has the faculty of not responding at all. Against an emended decree, the rejection of the petition, or the silence of its author, the one making recourse can apply to the CDF directly or through the author of the decree (cf. canon 1737 § 1 CIC) or through a procurator, within fifteen days
- CCEO procedures - recourse be sent to the CDF within ten days.

IX. Other matters to consider

- the accused has the right to present a petition to be dispensed from all the obligations connected with the clerical state, including celibacy, and, concurrently, from any religious vows
- in the case of concerns against a deceased cleric, no type of penal procedure can be initiated

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- If an accused dies during the preliminary investigation, it is possible to open a subsequent penal procedure. In any case, it is recommended that the Ordinary or Hierarch inform the CDF all the same.
- If an accused cleric dies during the penal process, this fact should be communicated to the CDF.
- the competent ecclesiastical authority (Ordinary or Hierarch) should keep the complainant and respondent informed of proceedings and outcome.

Consider drafting this penal process into guidance on CDF procedures

Translation came from the following website

http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20200716_vademecum-casi-abuso_en.html