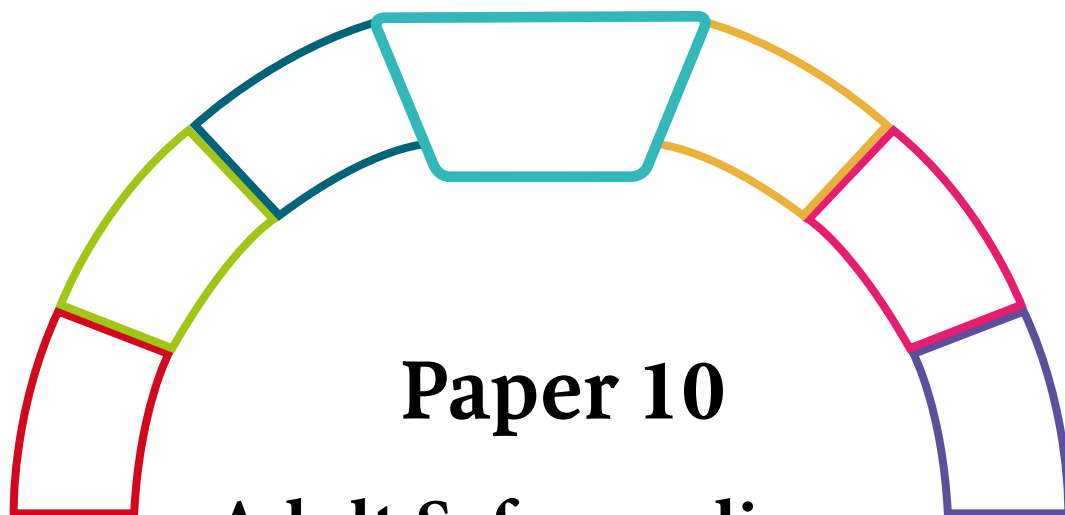


GAP

Guidance, Advice and Practice



Paper 10

Adult Safeguarding: Current Context in the Catholic Church in Ireland

February 2022



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



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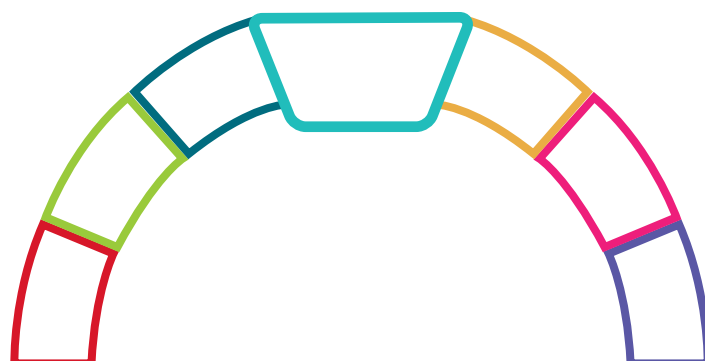
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About the GAP Papers



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

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

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

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

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

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

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1. Introduction: What do we mean by a Vulnerable Adult; and where does Ministry with Vulnerable Adults take place?

In March 2019 Pope Francis outlined the following:

‘The protection of minors and vulnerable persons is an integral part of the Gospel message that the church and all its members are called to proclaim throughout the world...We all have the duty to welcome openheartedly minors and vulnerable persons and to create a safe environment for them, with their interests as a priority. This requires a continuous and profound conversion, in which personal holiness and moral commitment come together to promote the credibility of the Gospel proclamation and to renew the educational mission of the Church.’¹

The theologian Krish Kandiah notes that:

‘Woven throughout Christian Scripture the Holy Trinity commends to God’s people a trinity of God’s special concern: widows, orphans and strangers. There are more direct and indirect references to helping these vulnerable groups than there are to tithing, communion and baptism. In fact, there are over 2,000 references to matters of justice and injustice in the Bible; of which the principles of safeguarding are included. Care for those in distress is included in the Mosaic law in the Old Testament (Exodus 22:21-22), and in the New Testament becomes the definition of authentic religion (James 1.27). Genuine fasting involves sharing food with the hungry and acceptable worship has to include providing shelter for the wanderer (Isaiah 58).

Even more starkly, in Jesus’ parable of the sheep and goats, hospitality towards the vulnerable is the signifier of being saved (Matthew 25:31-46).²

Set against this theological backdrop and the lived experience of the survivors of abuse, *Vos Estis Lux Mundi* (VELM) at Article 2 places an obligation on each episcopal conference to have by 2020 a ‘stable and easily accessible systems for submission of reports...’ of the delicts referred to in VELM, including those against vulnerable persons.

In September 2021, the Irish Bishops’ Conference and AMRI (Associations of Missionary and Religious Leaders in Ireland) asked the National Board to develop a template policy for safeguarding vulnerable adults, with recommendations for further action. This paper provides background information upon which such a template policy will be drafted, and sets out the current context of safeguarding vulnerable adults, as well as key areas that the Church should consider in terms of developing this work further.

VELM defines a vulnerable person as

‘any person in a state of infirmity, physical or mental deficiency, or deprivation of personal liberty which, in fact, even occasionally, limits their ability to understand or to want or otherwise resist the offence’.³

While this definition of vulnerability is relatively new, the Catholic Church in Ireland, and globally has a rich tradition based on Gospel values of caring for those who are vulnerable - a concept that is linked to the idea of justice. This is made clear in the Gospel of Matthew when Jesus states, ‘As you did it to one of these, the least of my brethren, you did it to me’ (Mt 25:40).

1 Pope Francis (2019) Apostolic Letter issued *Motu Proprio* by the Supreme Pontiff Francis on the Protection of Minors and Vulnerable Persons. Available at https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190326_latu-tela-deiminori.html (Accessed 22nd November 2021).

2 Thirty One Eight (2020) On behalf of the Voiceless. Available at <https://thirtyoneeight.org/media/2674/theology-of-safeguarding.pdf> (Accessed 22nd November 2021).

3 Pope Francis (2019) *Vos estis lux mundi*. Vatican City: Libreria Editrice Vaticana, Article 2 (b).

John in his first letter sets out the requirement to help the vulnerable very clearly when he asks: 'how does God's love abide in anyone who has the world's good and sees one in need and refuses to help?' (1 John 3:17-18).

When we consider the Church today, ministry with vulnerable adults happens all of the time. We immediately think of the sacrament of the sick; the important ministry of bringing the Eucharist to the housebound; or pilgrimages to shrines both nationally and internationally with adults who are vulnerable. Other ministries include running hospices and care homes; caring for older members of religious communities; running soup kitchens and hostels; providing important ministries to people who cannot leave their homes; running mental health and outreach services to vulnerable people; or receiving prayer requests from those experiencing mental or physical abuse at home.

Across all of these ministries, the Church provides a vital public and holy service, and yet each comes with specific risks which need to be thought through and managed. It is essential that there is clarity on how this ministry is governed; and it is critical that this ministry is delivered with integrity and dignity.

When we use the term safeguarding, we mean creating safe spaces for people who are engaged in ministry. In relation to children, the rules are clear. In relation to adults - and in particular adults who may be 'vulnerable' - the requirements are not as clear. Legislation in the Republic of Ireland is not as developed as in Northern Ireland, where statute has been in place since 2015. The Catholic Church requires that procedures should be in place for the care of vulnerable people following VELM, but the Catholic Church in Ireland does not have a One-Church approach to this, with many dioceses and Religious Orders developing their own policy and procedures.

This paper sets out what the key issues are that need to be considered when providing safe ministry to people who are vulnerable, namely,

- capacity and consent;
- integrity in ministry; and
- human rights.

It then addresses the challenges around managing risk.

A: Capacity and Consent

Understanding of capacity and consent is significantly different from what pertains in safeguarding children (particularly in relation to reporting allegations) where the law sets out very clearly the necessity of reporting even without the child's consent. Consideration of this aspect of safeguarding vulnerable adults will be split into two parts; the first deals with capacity and consent to ministry, and the second relates to allegations of abuse.

Seeking consent for ministry

In engaging with children's ministry the starting point must always be that consent should be given by them and their parents to take part. This same principle also applies to adults who are vulnerable; they must give their consent to take part in ministry. At times this consent is implicit, for example, by a person attending Mass, or when a request is made for a Eucharistic minister to visit the housebound. In other situations, consent may need to be explicit, for example, when engaging in a pilgrimage. In these situations, consideration should be given to whether written consent (particularly if the vulnerable adult lacks capacity) is sought, as well as to working with the vulnerable person and relevant others to ensure that all the necessary risks are assessed and managed. The important thing to understand about consent is that the vulnerable person's wishes and views must be sought where possible, and at all times they must be kept informed and supported to help them give consent.

Responding to Allegations

In a similar way to seeking consent for ministry, the basic principle for those who have disclosed an allegation, or concern about abuse, is that their consent must be sought before taking any further action, in line with the legislative and regulatory frameworks in the relevant jurisdiction.

Mental Capacity- Northern Ireland

If an adult at risk makes an allegation of abuse and does not want a referral made to the HSC Trust or PSNI, the Adult Safeguarding Champion or appropriate person must consider the following:

- Do they have capacity to make this decision?
- Have they been given full and accurate information in a way which they understand?
 - Are they experiencing undue influence or coercion?
 - Is the person allegedly causing harm a member of staff, a volunteer or someone who only has contact with the adult at risk because they both use the service?
 - Is anyone else at risk from the person allegedly causing harm?
 - Is a crime suspected or alleged?

The Mental Capacity Act (Northern Ireland) 2016⁴ and its accompanying guidance provides Northern Ireland with a detailed framework for dealing with mental capacity issues for people aged 16 and over. It includes:

- Core principles relating to ‘mental capacity’ and ‘best interests’.
- Guidance on establishing when a person lacks capacity in relation to a matter, and who will be able to do this in different situations.
- Guidance on ‘supported decision making’, and on determining a person’s ‘best interests’ where they are found to lack capacity.

- Additional safeguards for certain decisions and interventions, for example second opinions and involvement of Independent Mental Capacity Advocates.

Until the Act is implemented in full, organisations and groups in Northern Ireland need to consider the concepts of mental capacity and best interests, and their impact on practice.

Anyone aged 16 and over has a right to make decisions about their own lives. However, there may be a need to establish whether an adult may lack capacity in relation to a particular decision, act or intervention.

The Mental Capacity Act (NI) will provide a two stage test for determining whether a person lacks capacity in relation to a matter. It will also establish clearly that determinations of capacity need to be ‘decision specific’ and ‘time specific’.

Some determinations of capacity will be able to be made by family carers, support staff etc., but some bigger decisions will require a formal capacity assessment by a trained professional.⁵

Mental Capacity- Republic of Ireland

The law relating to mental capacity focuses on maximising a person’s potential capacity. The Assisted Decision-Making (Capacity) Act 2015 provides a new statutory framework for assisting those who lack capacity to have as great an input as possible into their care and treatment.

The Act is not yet fully commenced, but it makes provisions for assisted decision-making in cases where a person lacks capacity; in particular through the creation of a Decision Support Service, which is expected to commence operations in 2022. This agency will eventually provide codes of practice to assist those in caring roles in understanding their obligations under the Act.

⁴ <https://www.legislation.gov.uk/nia/2016/18/contents/enacted>

⁵ Based on advice from Health and Social Care Board 2016

The Act formalises in law a four-stage test for the determination of mental capacity. It states that a person will lack the capacity to make a decision if they are unable to:

- **understand** all of the information relevant to the decision;
- **retain** the information for long enough to consider it;
- **use** or weigh up that information in their decision-making process;
- **communicate** their decision (by any means, including assistive technology, etc.).

People who have capacity can make decisions that appear unwise to those caring for them, but the law is clear that while a decision may be irrational in appearance, it must still be respected.

The Act is clear that a lack of capacity in one area of a person's life does not automatically mean lack of capacity in another.

In general terms, if someone lacks capacity then according to the Act that person must always be treated in accordance with their 'will and preferences'. This is a slight difference in emphasis to previous case law, which required doctors and those in caring roles to act in the patient's best interests - although in practice these are likely to be closely aligned; and the current Medical Council guidance still uses this term.

The Act has not been formally commenced; and the current HSE policy on consent holds that the consent is only valid if:

1. He/she has the capacity to consent, i.e., he/she can understand and weigh up the information needed to make the decision.
2. Sufficient information has been given to him/her, in an appropriate way, on which to base the decision.
3. Consent has been given on a voluntary basis that is free from coercion or negative influence.

If any of these three factors is absent, consent cannot be considered to be valid.

It is a basic rule at common law that consent must be obtained for medical examination, investigation, treatment, or service. This is well-established in Irish case law and in codes of ethics and practice. The requirement for consent is also recognised in international and European human rights law, and under the Irish Constitution.

In summary then, the approach in both jurisdiction is as follows:

Northern Ireland

- If the allegation relates to an arrestable offence, it can be passed on without consent under the 1967 Act. However, even in these circumstances the vulnerable person who has capacity should give their consent. If they are unwilling to do so it should be explained to them that under the law, the allegation needs to be passed on.
- If the allegation does not relate to an arrestable offence the "Adult at risk" team in Social Services should be consulted as to the best course of action.

Republic of Ireland

- No one can give or withhold consent on behalf of another adult who lacks capacity to make a specific decision at the time. In certain situations, consent or the refusal of consent can be overridden. This is generally done when it is in the interests of the public to do so, for example, the disclosure of information to prevent a crime or a risk to health or life.
- If there are doubts or concerns about whether the consent of a vulnerable person is valid, or whether he/she has the capacity to consent, they should bring this to the attention of the person responsible for adult safeguarding in the Church body, who in turn should consult with the HSE.
- Vulnerable persons are protected against criminal acts in the same way as any other person. Where there is reasonable suspicion that a criminal offence may have occurred, it is the responsibility of An Garda Síochána to investigate and make decisions about what action should be taken. An Garda Síochána should always be consulted about criminal matters.

- The vulnerable person should be assured that his/her wishes concerning a complaint will only be overridden if it is considered essential for his/her own safety or the safety of others, or arising from responsibilities under the law.

B: Integrity in Ministry and Boundaries

Assuming that a person has consented to ministry, we need to ensure that it is delivered in a way that respects the dignity of the person.

In 2001 the Conference of Religious of Ireland (CORI) produced a consultation document regarding standards in pastoral ministry. The document drew on a number of principles for safe and effective pastoral ministry. While a centralised one Church approach to ministry with integrity is not in existence, various Church bodies have produced codes of conduct, and guidance on boundaries. For example, the Society of African Missions has highlighted that there are seven basic principles involved in ministry with integrity, which are:

1. **Prayer:** As a vocation, the missionary apostolate is rooted in faith, at the heart of which is the experience of the Triune God, that is based on baptism and ceaselessly nourished by the sacraments, prayer, meditation and spiritual direction.
2. **Professionalism:** The missionary apostolate professes the values and standards of Jesus the Christ and seeks to bear witness to them at every moment. This involves maintaining the highest standards recognised by all caring professions, including respect for everyone, treating every person with courtesy and sensitivity, and seeking to avoid all forms of discrimination, bullying and harassment.
3. **Responsibility & Dialogue:** The missionary apostolate confers a certain power and brings one into relationship with large numbers of people, many of whom are vulnerable for one reason or another. Hence, it is vital to recognise where those vulnerabilities lie and use the power we possess not to impose our own agenda but in the interests of those we serve. Dialogue and sensitive listening must be central to all pastoral relationships.
4. **Recognition of Boundaries & Self-knowledge:** The missionary apostolate brings the missionary into close relationships with others. This can give rise to intense emotional feelings and lead to the transgression of boundaries if we are not careful.⁶ Hence there is a basic need for self-knowledge on the part of the missionary, involving recognition of emotional needs, desires, fears, dependencies, and vulnerabilities.
5. **Social Analysis:** This is necessary because in every pastoral situation, it is important to identify the different groups with whom we are involved and the relationships between them; the values at stake; potentially troublesome areas; and situations where communication can easily break down, where conflicts of interest may arise, and where harassment or bullying tend to occur.
6. **Supervision, Support & Team Work:** The missionary apostolate cannot be undertaken successfully on one's own. Teamwork, collaboration, communication, are essential. Critical evaluation subsequently is vital to learn from one's pastoral experience as a missionary.

⁶ Appendix A offers a number of specific guidelines on these boundaries for those engaged in pastoral ministry.

7. Self-Discipline: This quality is important for people in all walks of life. But for those engaged in apostolic ministry it is even a greater priority. Self-care first of all is necessary as the missionary/pastoral scene is a busy and demanding one. To make good decisions, to encourage personal care and growth and to enable other people to cultivate self-care, self-discipline is important at all times. Burn out is common today; and self-discipline guards against this. Personal or group support is essential for those engaged in the missionary apostolate and this can address the questions arising around self-discipline quickly and effectively.⁷

Understanding power and the power dynamic involved in working with people, as well as having self-awareness, can assist with developing healthy boundaries and ministering with integrity and dignity. The power differential and abuse of power involved in ministry has been commented on in various statutory reports on the abuse crisis in the Catholic Church in Ireland; and more recently, in relation to the crisis in the Catholic Church in France⁸.

Consideration of both capacity and consent, and integrity in ministry suggest a need to focus on the person behind the ministry rather than on the precise definition. In doing so, it is important to develop preventative strategies through good practice in ministering with integrity and boundaries, and also through having an awareness of the rights of the person.

C: Human Rights based approach

The importance of seeing the person as a rights holder first is a clear duty set out by Pope John XXIII in *Pacem in Terris* in which he states that:

Any well-regulated and productive association of men in society demands the acceptance of one fundamental principle: that each individual man is truly a person. His is a nature, that is, endowed with intelligence and free will. As such he has rights and duties, which together flow as a direct consequence from his nature. These rights and duties are universal and inviolable, and therefore altogether inalienable.⁹

The approach of upholding the human rights of the person, when done correctly, combines the elements of capacity and consent, along with integrity in ministry.

In examining the current legislative landscape in the Republic of Ireland in relation to vulnerable adults, Sarah Donnelly and Marita O'Brien highlighted that 'consideration should be given to the inclusion of guiding principles based on a human rights framework to ensure consistency with new legislation commenced, proposed and to be ratified...'¹⁰

The principles of human rights in Ireland are contained within a number of key pieces of legislation in both jurisdictions. These include:

Republic of Ireland

- The Irish Constitution, 1937.
- The European Convention on Human Rights Act, 2003.
- The Charter of Fundamental Rights of the European Union, 2000.
- The Equal Status Act 2000-2015
- The Irish Human Rights and Equality Commission Act, 2014.

⁷ Society of African Missions (2021) *Integrity in Ministry: A code of ethical standards for members and lay co-workers of SMA Ireland*. Dublin: SMA Ireland.

⁸ For more information, see: NBSCCCI (2021) *Summary of the report independent commission on sexual abuse in the Catholic Church in France*. Available at https://www.safeguarding.ie/images/Pdfs/Briefing_papers/Briefing%20Paper%203.pdf. (Accessed 31 January 2022).

⁹ https://www.vatican.va/content/john-xxiii/en/encyclicals/documents/hf_j-xxiii_enc_11041963_pacem.html

¹⁰ Donnelly, S. & O'Brien, M. (2018) *Speaking Up About Adult Harm: Options for Policy and Practice in the Irish Context*. Dublin: University College Dublin, p.4.

Northern Ireland

- The Disability Discrimination Act, 1995
- The Northern Ireland Act, 1998
- The Human Rights Act, 1998

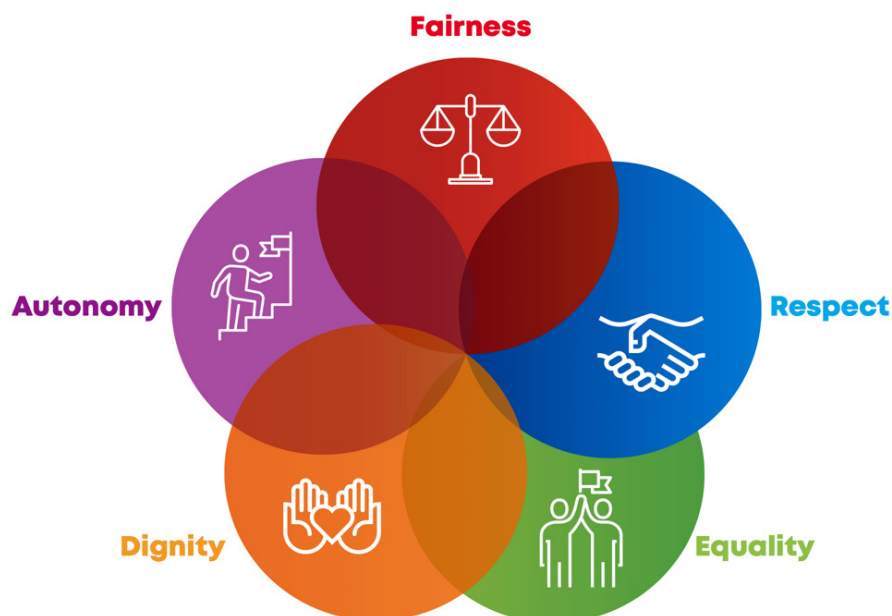
Internationally, both Ireland and Northern Ireland (as part of the United Kingdom) are signatories to two important human rights conventions relevant to adult safeguarding. These are the European Convention on Human Rights (ECHR) and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). While all of the articles in these conventions are interlinked and interdependent, a number of key articles are important to consider in relation to adult safeguarding:

- Right to life - Article 2 ECHR, and Article 10 UNCRPD.
- Prohibition of and free from torture or inhuman or degrading treatment - Article 3 ECHR, and Articles 15 and 16 UNCRPD.
- Right to liberty and security - Article 5 ECHR, and Article 14 UNCRPD.

- Right to a fair trial and access to justice - Article 6 ECHR, and Article 13 UNCRPD
- Right to respect for private and family life - Article 8 ECHR, and Articles 19, 22 and 23 UNCRPD.
- Right to freedom of thought, conscience, religion, expression and opinion - Articles 9 and 10 ECHR, and Articles 3 and 21 UNCRPD.
- Prohibition of discrimination - Article 14 ECHR, and Articles 3, 5, 17 and 25 UNCRPD
- Protection of property - Article 1 protocol 1 ECHR, and Article 12 UNCRPD.

While each of these documents have important articles which must be considered. It is perhaps more useful to look at them as providing a set of overarching principles - as suggested by Donnelly and O'Brien¹¹ in the quote above.

Safeguarding Ireland and the Health Information and Quality Authority (HIQA) use a diagram to illustrate the internationally recognised FREDA framework of five principles through which human rights can be considered.¹²



¹¹ Donnelly, S. & O'Brien, M. (2018) Speaking Up About Adult Harm: Options for Policy and Practice in the Irish Context. Dublin: University College Dublin, p.4.

¹² Safeguarding Ireland and HIQA (2019) Guidance on a Human Rights- based Approach in Health and Social Care Services. Dublin: HIQA p.

Fairness

'Fairness means ensuring that when a decision is made with a person using a service about their care and support, that the person is at the centre of the decision-making process. The person's views are sought, listened to and weighed alongside other factors relevant to the decision. It is important that decisions are made in a way that is clear and fair, to allow others to know how they might be treated in similar circumstances. If a decision interferes with a person's human rights, this must be legally justified, proportionate and only taken when all other alternatives have been considered.'¹³

In relation to safeguarding, this principle touches on recognising and responding to abuse, as well as gaining consent for Church related activities. The important principle here is that adults can give or withhold their consent freely and without pressure.

Respect

'Respect is the objective, unbiased consideration and regard for the rights, values, beliefs and property of other people. Respect applies to the person as well as their value systems.'¹⁴

Closely linked to the first principle of fairness, respect requires that people should be communicated with, listened to, and respected, regardless of their impairment or loss of capacity.

Equality

'Equality means people having equal opportunities and being treated no less favourably than other people on the grounds set out in legislation. In an Irish context, these grounds are: age; civil status; disability; family status; gender; membership of the Traveller community; race, colour or nationality; religion or sexual orientation.'¹⁵

In treating people with respect, their equality status must also be recognised; and all safeguarding actions and interventions must ensure that people are not discriminated against based on any of the grounds listed above.

Dignity

'Dignity means treating people with compassion and in a way that values them as human beings and supports their self-respect, even if their wishes are not known at the time.'¹⁶

A sphere of practice in need of continued development in safeguarding children in Ireland is responding pastorally to complainants. Indeed, this has been highlighted in recent communications from Pope Francis as an area that needs constant work. By upholding human dignity, damaging practices are restricted - such as perpetuating unhelpful attitudes and stereotypes, breaching privacy and personal data unnecessarily, and causing complainants to feel let down by safeguarding systems and processes supposed to protect.

Autonomy

'Autonomy is the ability of a person to direct how they live on a day-to-day basis according to personal values, beliefs and preferences. In a health and social care setting, autonomy involves the person using a service making informed decisions about their care, support or treatment.'¹⁷

Linked closely to the principle of fairness, is the understanding that in terms of adult safeguarding, the individual is presumed from the outset to have capacity - even if their decision may seem unwise to others. If a person is deemed to lack capacity, any action taken must still be done so in a way that limits the impact on their human rights.

13 Safeguarding Ireland and HQIA (2019) Guidance on a Human Rights- based Approach in Health and Social Care Services. Dublin: HQIA p. 14.

14 Safeguarding Ireland and HQIA (2019) Guidance on a Human Rights- based Approach in Health and Social Care Services. Dublin: HQIA p. 24.

15 Safeguarding Ireland and HQIA (2019) Guidance on a Human Rights- based Approach in Health and Social Care Services. Dublin: HQIA p. 32.

16 Safeguarding Ireland and HQIA (2019) Guidance on a Human Rights- based Approach in Health and Social Care Services. Dublin: HQIA p. 38.

17 Safeguarding Ireland and HQIA (2019) Guidance on a Human Rights- based Approach in Health and Social Care Services. Dublin: HQIA p. 46.

Whilst these principles were developed primarily for application within health services, they provide a useful and important foundation on which to develop Church policies and practice. Basing practice on these principles not only upholds and advocates for human rights, but also ensures that future policy and practice will be compliant with new and emerging legislation in the area.

D. Identifying and Managing Risk

For effectively managing risk in each activity or engagement with vulnerable adults, the principles above should be considered. Starting from the point of respecting human rights, (including consent and capacity) allows ministry to take place with integrity, while upholding the dignity of the person being ministered to.

Some of the areas that need to be considered to minimise risk include the following:

Generally, consent should be from the person at the centre of the ministry. Where that person does not have the capacity to consent, this should be provided by a family member or carer who has the responsibility to give consent on their behalf.

- Venues where ministry take place should be suited to the needs of the adults who are being ministered to.
- Staff and volunteers should be recruited appropriately and trained in adult safeguarding.
- Correct supervision ratios should be established and maintained
- Codes of behaviour for adults who are delivering the ministry should be developed, including specific information relevant to the particular ministry; for example, clear guidance on not accepting money when visiting the housebound.

- Where appropriate, relevant medical requirements should be discussed with the adult being ministered to, in consultation with relevant family members or care providers where necessary, to ensure the ministry is safe for the participant.
- Clear definitions and roles for those ministering with vulnerable adults need to be created - this is particularly important for Religious Orders that are canonically responsible for vulnerable members, but who are also practically responsible for their care. This situation can result in blurred boundaries, and careful guidance and consideration needs to be given to how to manage these particular situations.
- Whistleblowing and complaints policies and procedures are required.

The preventative measures listed above are some examples of the types of areas which need to be reflected on: And each ministry will have unique contexts and circumstances to be considered; and staff have to be trained in the procedures and processes put in place to manage identified risks.

2. Legislative and Policy Framework

The legislative and policy framework for safeguarding of adults in both jurisdictions of Ireland is not consistent. Definitions and terminology differ; and Church canon law complicates this further. This section will set out the definitions and relevant legislation in Northern Ireland, the Republic of Ireland and Canon law.

A. Northern Ireland - Definition and Types of Abuse

Adult Safeguarding Prevention and Protection in Partnership published in 2015 provides the current definitions relevant to adult safeguarding. These are:

‘An ‘Adult at risk of harm’ is a person aged 18 or over, whose exposure to harm through abuse, exploitation or neglect may be increased by their:

- a) personal characteristics AND/OR
- b) life circumstances

Personal characteristics may include, but are not limited to, age, disability, special educational needs, illness, mental or physical frailty or impairment of, or disturbance in, the functioning of the mind or brain. Life circumstances may include, but are not limited to, isolation, socio-economic factors and environmental living conditions.

An ‘Adult in need of protection’ is a person aged 18 or over, whose exposure to harm through abuse, exploitation or neglect may be increased by their:

- a) personal characteristics AND/OR
- b) life circumstances AND
- c) who is unable to protect their own well-being, property, assets, rights or other interests AND
- d) where the action or inaction of another person or persons is causing, or is likely to cause, him/her to be harmed.

In order to meet the definition of an ‘adult in need of protection’ either (a) or (b) must be present, in addition to both elements (c), and (d).¹⁸

Additionally, the Adult Safeguarding Operational Procedures¹⁹ list the following as the categories of abuse associated with Adults at risk of harm, and Adults in need of protection (for full definitions see footnote).

- Physical abuse
- Sexual violence and abuse
- Psychological/emotional abuse
- Financial abuse
- Institutional abuse
- Neglect
- Exploitation

B. Republic of Ireland - Definitions and Types of Abuse

In the Republic of Ireland, the focus of current legislation is on defining vulnerable adults based on physical or mental disability. The definition is provided in two pieces of legislation, with very subtle differences existing between the two.

The National Vetting Bureau (Children and Vulnerable Persons) Acts 2012-2016 defines a vulnerable person as:

‘A person other than a child who:

- (a) is suffering from a disorder of the mind, whether as a result of mental illness or dementia,
- (b) has an intellectual disability,
- (c) is suffering from a physical impairment, whether as a result of injury, illness or age, or
- (d) has a physical disability, which is of such a nature or degree—
 - (i) as to restrict the capacity of the person to guard himself or herself against harm by another person, or
 - (ii) that results in the person requiring assistance with the activities of daily living including dressing, eating, walking, washing and bathing.’²⁰

18 DHSSPS (2015) *Adult Safeguarding Prevention and Protection in Partnership*. Available at <https://www.health-ni.gov.uk/sites/default/files/publications/dhssps/adult-safeguarding-policy.pdf> (Accessed 22nd November 2021), p. 10.

19 Health and Social Care Board (2016) *Adult Safeguarding Operational Procedures*. Available at <http://www.hscboard.hscni.net/download/PUBLICATIONS/safeguard-vulnerable-adults/niasp-publications/Adult-Safeguarding-Operational-Procedures.pdf> (Accessed 22nd November 2021), pp. 7-10.

20 National Vetting Bureau (Children and Vulnerable Persons) Acts, 2012-2016, Republic of Ireland, Article 2.

A similar definition is put forward in the Criminal Justice (Withholding of Information of Offences Against Children and Vulnerable Persons) Act 2012:

‘A person (including, insofar as the offences specified at paragraph 8 of Schedule 2 are concerned, a child aged 17 years old) -

(a) Who-

- I. is suffering from a disorder of the mind, whether as a result of mental illness or dementia, or
- II. has an intellectual disability.

Which is of such a nature or degree as to severely restrict the capacity of the person to guard himself or herself against serious exploitation or abuse, whether physical or sexual, by another person, or

(b) who is suffering from an enduring physical impairment or injury which is of such a nature or degree as to severely restrict the capacity of the person to guard himself or herself against serious exploitation or abuse, whether physical or sexual, by another person or to report such exploitation or abuse to the Garda Síochána or both.’²¹

The definitions put forward in these two Acts are slightly different. Both focus on the idea of physical and mental impairment or disability which limit the person’s capacity to guard themselves against harm.

However, from here the two acts differ: The National Vetting Bureau Act includes a link between being vulnerable and requiring assistance with the activities of daily living; while the Criminal Justice Act does not include such a link, but it places an emphasis on guarding against harm, further defining this as ‘serious exploitation or abuse whether physical or sexual’, and then linking this to the restricted capacity of the person to report this to the Garda Síochána.

In the HSE’s final draft policy for safeguarding adults they propose a new definition of an adult at risk as follows:

‘A person over 18 years of age who is:

- At risk of experiencing abuse, neglect, or exploitation by a third party, and
- Lacks mental or physical capacity to protect themselves from harm at this time in their lives.’²²

It is interesting that this definition moves away from the concept of vulnerability and physical or mental impairment (present in the cited legislation) and focuses much more on the capacity of the person involved. In taking this approach, the draft policy notes that

‘a distinction should be made between an adult who is unable to safeguard him or herself, and one who is deemed to have the skill, means or opportunity to keep him or herself safe, but chooses not to do so.’²³

²¹ Criminal Justice (withholding of Information of Offences Against Children and Vulnerable Persons), 2012, Republic of Ireland, Article 1.

²² HSE (2019) Safeguarding Adults National Policy Final Draft. Dublin: HSE, p. 10.

²³ HSE (2019) Safeguarding Adults National Policy Final Draft. Dublin: HSE, p. 10.

In terms of a typology of abuse, the most up to date guidance is contained in the draft HSE policy on vulnerable adults²⁴ which lists the following as the categories of abuse:

- Physical abuse
- Sexual abuse
- Emotional / Psychological (including bullying and harassment)
- Financial / Material
- Organisational
- Neglect
- Discriminatory
- Online or digital abuse
- Human Trafficking / Modern slavery

The current state of law in the Republic of Ireland is under review, and the Irish Association of Social Workers (IASW) provides a useful summary charting the developments in adult safeguarding since 2007, with two ongoing review processes being carried out by the HSE and the Department of Health.²⁵ IASW argues that there hasn't been significant enough progress in relation to adult safeguarding, putting the most vulnerable in society at risk.

C. Canon Law - Definitions and Types of Abuse

The substantive norms issued as part of *Sacramentorum Sanctitatis Tutela* (SST) are perhaps a good starting point in terms of the consideration of crimes against vulnerable people. While the term vulnerable person is not used in the document, it sets out in Article 6 that a person who 'habitually has the imperfect use of reason is to be considered equivalent to a minor'²⁶.

The approach taken here bears similarities to the linking of vulnerability to physical or mental incapacity.

Vos Estis lux mundi expands on this definition for the delicts contained within it, and for the first time uses the phrase vulnerable person, which it defines as:

'Any person in a state of infirmity, physical or mental deficiency, or deprivation of personal liberty which, in fact, even occasionally, limits their ability to understand or to want or otherwise resist the offence'.²⁷

(It should be understood that the definition of vulnerable person is derived from the English translation of VELM, and that the English translation can be interpreted as suggesting that the vulnerable person could 'want' an 'offence' to occur. This is clearly not the intention, and it is perhaps best to consider 'consent' as a more appropriate term in this definition).

This definition is much wider than that contained in the norms associated with SST, and suggests the idea of capacity not being a 'one size fits all' concept, but that it can be occasionally or incidentally limited rather than just habitually or continuously so. This approach is more aligned with the Northern Ireland one of recognising temporary vulnerability. Both of these canon law definitions within SST and VELM exist concurrently.

The *Vademecum on Certain Points of Procedure in Treating Cases of Sexual Abuse of Minors Committed by Clerics* deals with this very point when it states:

'The revision of the *Motu Proprio* SST, promulgated on 21 May 2010, states that a person who habitually has the imperfect use of reason is to be considered equivalent to a minor (cf. art. 6 § 1, 1^o SST). With regard to the use of the term "vulnerable adult", elsewhere described as "any person in a state of infirmity, physical or mental deficiency, or deprivation of personal liberty which, in fact, even occasionally limits their ability to understand or to want or otherwise resist the offence" (cf. art. 1 § 2, b VELM),

24 HSE (2019) Safeguarding Adults National Policy Final Draft. Dublin: HSE.

25 Irish Association of Social Workers (2020) Position Paper on Adult Safeguarding Legislation, Policy and Practice. Dublin: IASW, p. 4.

26 Congregation for the Doctrine of the Faith (2010) Substantive Norms of *Sacramentorum Sanctitatis Tutela*. Vatican City: Libreria Editrice Vaticana, Article 6.

27 Pope Francis (2019) *Vos estis lux mundi*. Vatican City: Libreria Editrice Vaticana, Article 2 (b).

it should be noted that this definition includes other situations than those pertaining to the competence of the CDF, which remains limited to minors under eighteen years of age and to those who “habitually have an imperfect use of reason”. Other situations outside of these cases are handled by the competent dicasteries (cf. art. 7 § 1 VELM).²⁸

As a result the most recent revision of the Code of Canon Law does not use the definition put forward in *Vos estis lux mundi* but continues to use the definition put forward in the substantive norms of SST for those situations associated with the CDF.²⁹

In terms of types of abuse, *Vos estis lux mundi* sets out the delicts which relate to sexual abuse of vulnerable persons and acts or omissions as follows:

§1. These norms apply to reports regarding clerics or members of Institutes of Consecrated Life or Societies of Apostolic Life and concerning:

- a) delicts against the sixth commandment of the Decalogue consisting of:
 - i. forcing someone, by violence or threat or through abuse of authority, to perform or submit to sexual acts;
 - ii. performing sexual acts with a minor or a vulnerable person;
 - iii. the production, exhibition, possession or distribution, including by electronic means, of child pornography, as well as by the recruitment of or inducement of a minor or a vulnerable person to participate in pornographic exhibitions;

- b) conduct carried out by the subjects referred to in article 6, consisting of actions or omissions intended to interfere with or avoid civil investigations or canonical investigations, whether administrative or penal, against a cleric or a religious regarding the delicts referred to in letter a) of this paragraph.³⁰

It is important to note in terms of delicts above that the

‘...first category of offences is not restricted to minors or to vulnerable adults. The person persuaded into engaging in sexual activity is simply described as “someone”. Therefore, any cleric (deacon, priest, or bishop), any member of an Institute of Consecrated Life or a Society of Apostolic Life who constrains another person into performing or submitting to sexual acts “by violence or threat or abuse of authority” must be dealt with in accordance with the norms of the *Motu Proprio*.’³¹

The inclusion of the word ‘someone’ suggests a focus away from categorising abuse by type, but instead seems to suggest the wider goal of making the Church a safe place for everyone, regardless of their status or perceived vulnerability.

Interestingly, this *Motu Proprio* includes a new offence in canon law which is not explicitly categorised in the same way in civil legislation of either Northern Ireland or the Republic of Ireland; and that is the offence of seeking to avoid or interfere with civil investigations into allegations of misconduct against the categories of people outlined in Article 1, by acts or omissions of bishops or their equivalents.³²

²⁸ Congregation for the Doctrine of the Faith (2020) *Vademecum on certain points of procedure in treating cases of sexual abuse of minors committed by clerics*. Vatican City: Libreria Editrice Vaticana, Article 5.

²⁹ For more information, see Canon 1398 Article 1 in the revision of Book six.

³⁰ Pope Francis (2019) *Vos estis lux mundi*. Vatican City: Libreria Editrice Vaticana, Article 1.

³¹ McGrath, A. (2019) *A Canonist Reads the Motu Proprio of Pope Francis*. p. 4.

³² Pope Francis (2019) *Vos estis lux mundi*. Vatican City: Libreria Editrice Vaticana, Article 1.1 (b).

D: Spiritual Abuse

Alongside the categories mentioned in legislation and in canon law, there is a growing area of literature and practice highlighting what has been termed ‘spiritual abuse’.

Spiritual abuse is a relatively new term used to describe harmful behaviours carried out by Church personnel, which behaviours may exist by themselves, or as part of other forms of abuse. A precise definition of these harmful behaviours is yet to be formally established³³ and doesn’t exist in current legislation in either jurisdiction in Ireland.

Dr Lisa Oakley and Dr Kathryn Kinmond who have conducted research in the area of spiritual abuse, put forward the following as a working definition: Spiritual abuse is

‘...coercion and control of one individual by another in a spiritual context. The target experiences spiritual abuse as a deeply emotional personal attack. This abuse may include: manipulation and exploitation, enforced accountability, censorship or decision making, requirements for secrecy and silence, pressure to conform, misuse of scripture or the pulpit to control behaviour, requirement of obedience to the abuser, the suggestion that the abuser has a ‘divine’ position, isolation from others especially those external to the abusive context.’³⁴

The authors go on to outline how Churches have begun to include spiritual abuse as a matter of safeguarding policy; indeed, some of the vulnerable adults’ policies provided to the National Board by Catholic Church bodies in Ireland (see section on current context) have listed spiritual abuse as a form of abuse which needs to be recognised and reported.

In a recent news conference Archbishop Jose Rodriguez Carballo, secretary of the Vatican Congregation for the Institutes of Consecrated Life and Societies of Apostolic Life commented that spiritual abuse or abuse of conscience...

“...is usually more common than you might think. Pope Francis defines it as spiritual harassment, manipulation of consciences, brainwashing. This type of abuse usually occurs in the sphere of spiritual direction or within a community, especially when the internal forum is not distinguished from the external form.”

He noted that ‘this type of abuse is rooted in clericalism which affects not just clergy but any man or woman with authority.’³⁵

The lack of a clear definition in both civil and Church law contributes to a lack of understanding and acceptance of this type of abuse as distinct from others, which in turn makes a meaningful and compassionate response to victims hard to achieve. On this point Oakley and Kinmond outline a number of issues that must be understood in relation to an understanding of spiritual abuse. Firstly, it can exist as a form of psychological and emotional abuse devoid of sexual contact. Secondly, it is often perpetrated against adults; and thirdly, as it isn’t defined in legislation or policy, it is unclear how statutory authorities might be able to act on referrals of abuse of this kind.³⁶

33 Parish- West, P. (2009) *Spiritual Abuse within the Judaeo Christian Tradition: implications for practice*. Derby: University of Derby; Oakley, L. and Kinmond, K. (2013) *Breaking the Silence on Spiritual Abuse*. Basingstoke: Palgrave Macmillan.

34 L. and Kinmond, K. (2013) *Breaking the Silence on Spiritual Abuse*. Basingstoke: Palgrave Macmillan, p. 25.

35 National Catholic Reporter (2021) *Spiritual Abuse Occurs More Frequently than Believed, Vatican Official Says*. Available at: <https://www.ncronline.org/news/accountability/spiritual-abuse-occurs-more-frequently-believed-vatican-official-says> (Accessed 19th January 2022).

36 Oakley and Kinmond (2014) *Developing Safeguarding policy and practice for spiritual abuse*. *The Journal of Adult Protection* vol. 16 no. 2 (pp. 87-95)

In a 2018 case in England, a Church of England vicar in Oxfordshire was convicted by a Church tribunal of spiritually abusing a teen-age boy. It was held that the victim was put under unacceptable pressure during one-to-one Bible study sessions in his bedroom over an 18-month period. The Bishop who acted as judge in the case is reported to have found the perpetrator to have ‘under the guise of his authority, sought to control by the use of admonition, scripture, prayer and revealed prophecy, the life of the victim and his relationship with his girlfriend.’³⁷

Many of the aspects in the definitions and the research relating to spiritual abuse are already captured in the definitions of adult abuse put forward in existing civil legislation, such as emotional abuse, financial abuse, exploitation and coercive control. Canon law also recognises the danger of abuse of authority, and various aspects of VELM deal with the importance of ensuring that complainants are not silenced or have their allegations minimised or brushed aside by those in authority. What sets spiritual abuse apart is the manner in which spirituality and religious teaching are used to control and abuse, such control being a pattern identified in various statutory reviews in Ireland and across the world, most recently in France.³⁸

To truly care and support victims, it is necessary to understand the impact on them of this form of abuse, whether it is defined as a separate category or as part of other forms of abuse. The work of Towards Healing and Towards Peace has provided support in this regard; but further consideration should be given to how best to support those ministering to vulnerable adults, to understand boundary and integrity in ministry issues so as to prevent this type of abuse occurring. Consideration also needs to be given to victims of spiritual abuse who are already suffering, and to how best to support them in a pastoral and caring way.

What is very clear from this brief examination of the wide range of definitions in both jurisdictions in Ireland, there is an inconsistency, and a lack of precision and agreement in how vulnerable adults are to be defined. There is a recognition in the Republic of Ireland of the need to move away from the concept of vulnerability to one which focuses on capacity and consent. The definitions put forward by the Holy See in VELM align closer to those in the North of Ireland, which again move in the direction of understanding that vulnerability is not a fixed and continuous state, but one that changes depending on circumstances and time.

It is therefore clear that the task of defining what constitutes a ‘vulnerable adult’ is not straightforward. The changing nature of the law means that even if a definition were to be developed specifically for the Catholic Church, this would need to be amenable to change subject to the final version of the law that is introduced in the Republic of Ireland. In the meantime, the emphasis within the Catholic Church should be on equipping people with the necessary knowledge and skills to understand where to go if they are worried or concerned about adult safeguarding; whereas defining whether the person is a vulnerable adult or not, is a role for the statutory authorities.

3. Current context of Vulnerable Adults Policies and Practice in the Catholic Church in Ireland

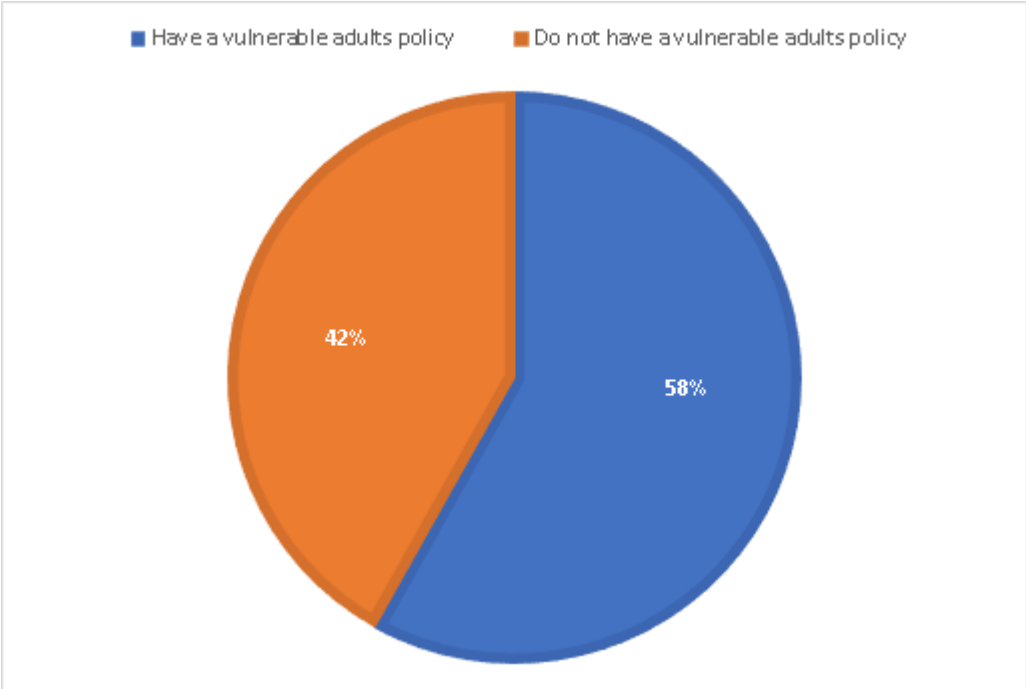
To establish a baseline and a level of understanding of the current context of vulnerable adults’ work, the National Board wrote to all 136 Religious Orders and 26 dioceses seeking a copy of their Vulnerable Adults Policy, if one currently exists. This section of the GAP paper deals with the findings of this survey.

³⁷ The Guardian (2018) Church of England find Vicar Guilty of Spiritual Abuse of 15-Year-Old Boy. Available at <https://www.theguardian.com/world/2018/jan/08/church-of-england-finds-vicar-guilty-of-spiritual-abuse-of-15-year-old-boy>. (Accessed on 19th January 2022).

³⁸ For more information, see: NBSCCCI (2021) Summary of the report independent commission on sexual abuse in the Catholic Church in France. Available at https://www.safeguarding.ie/images/Pdfs/Briefing_papers/Briefing%20Paper%203.pdf. (Accessed 31 January 2022).

A. Religious Critique of Policies

At the time of writing (January 2022) of the 136 religious orders contacted, the graph below shows the percentage split between those that have a policy and those that do not.



Of the Religious Orders that have a policy, 58 provided it to National Board to be reviewed. From those that were dated (54), 62% (34) were developed or revised between 2020 and 2021, the other 20 policies varied were dated between 2010-2019.

B. Diocesan Critique of Policies

At the time of writing, 96% (25) of the dioceses have a policy (only one does not). These are made up of 14 distinct documents, as some dioceses have combined to have one policy for a geographical area.

Of the diocesan policies shared with the National Board, 62% were developed or revised between 2017-2021, and 38% were developed or revised in the 2020-2021 period.

C: Comparisons between the diocesan and Religious Order policies

The content of the current policies varies significantly, perhaps reflecting the changing law and practice in this area. Some important areas to note include:

- Definitions of vulnerable adults and of types of abuse are drawn from a range of sources, including pieces of canon law, legislation and policy, which are not consistently referenced when comparing across the documents.
- In terms of the incorporation of canon law into policies, of the diocesan policies received, 39% included reference to canon law, in particular to VELM.
- Of the Religious Order policies received, 35% include canon law references, again mostly VELM.
- Most of the policies have included reporting processes, and the vast majority refer concerns to a DLP, who in turn makes the notification to the statutory authorities.
- The quality of guidance accompanying the policies also varies significantly; and where it does exist it often lacks specificity in terms of practice within a Church context. Some common guidance included within the procedures accompanying the policies include intimate care; recruitment; codes of conduct; consent and capacity; external groups; confidentiality; record keeping; and whistleblowing.

From the analysis carried out of the diocesan and Religious Orders policies and procedures, it is clear that there are inconsistencies, which is understandable given the changing landscape of civil legislation and policy as it relates to vulnerable adults. While all of the policies given to the National Board reference civil law requirements, just over a third of the diocesan (39%) and religious order (35%) policies have incorporated canon law into the policy itself. This is an important consideration in light of the requirements set out by the Holy See in VELM.

Where guidance is provided, it is not consistent and often lacks the specificity needed to assist Church personnel to implement the procedures on the ground, when compared with the current practice in relation to safeguarding children.

4. Recommendations for Action

This paper sets out the current context of vulnerable adults in legislation and policy in both jurisdictions in Ireland, alongside current practice in the Catholic Church in Ireland.

From this brief examination of current policy, legislation and practice, it is important that in the development of its approach to vulnerable adults, the Church considers a number of matters:

- The Current context of a review of the child safeguarding policy, alongside the ongoing strategic review of the safeguarding structure across the Church, presents a unique opportunity to take the learning from both of these reviews and incorporate it into a One-Church approach to vulnerable adults.
- Considering the changing legislative and policy landscapes, a Church template and approach produced should be developed in a way that can incorporate these changes.
- The Church should consider adapting a human rights based approach towards individuals, rather than focusing solely on definitions
- The policy template should be accompanied by guidance to assist Church bodies in managing the practical ministry associated with vulnerable adults. This includes among others, guidance to support safe ministry; guidance on responding to allegations; guidance on managing allegations of spiritual abuse; and risk assessment.
- A One-Church approach should be accompanied by governance frameworks to ensure that Church authorities are informed and assured that all relevant policies and procedures in relation to vulnerable adults are effective.

Consideration of the above will assist the Church in developing a pastoral and compassionate approach to vulnerable adults to meet its obligations under civil and canon law and move towards ‘...collective conversion, the humility of learning, listening, assisting and protecting the most vulnerable’.³⁹

³⁹ Pope Francis (2019) Meeting ‘The Protection of Minors in the Church’. Available at https://www.vatican.va/content/francesco/en/speeches/2019/february/documents/papa-francesco_20190224_incontro-protezioneminori-chiusura.html (Accessed on 19th January 2022).

