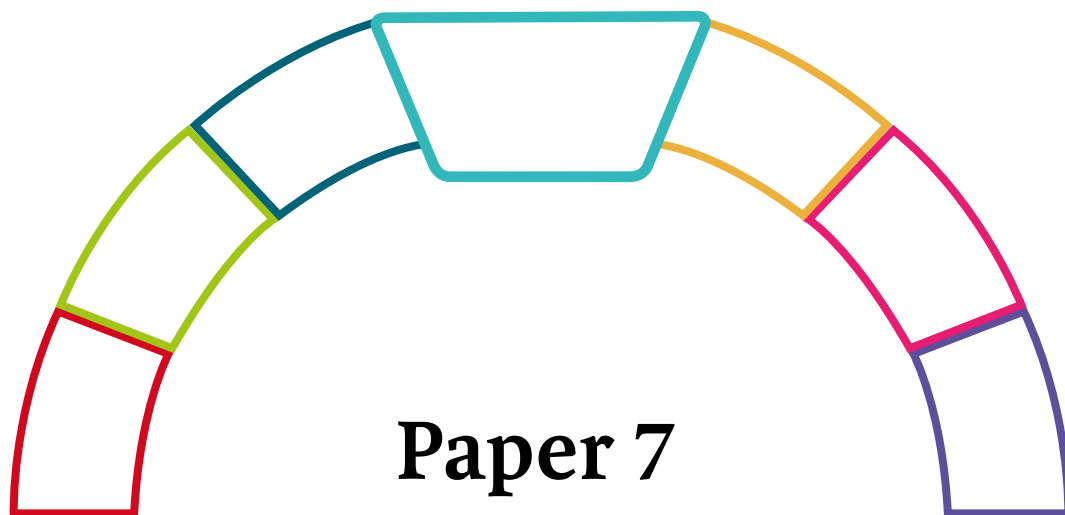


GAP

Guidance, Advice and Practice



Paper 7

Information

Sharing to

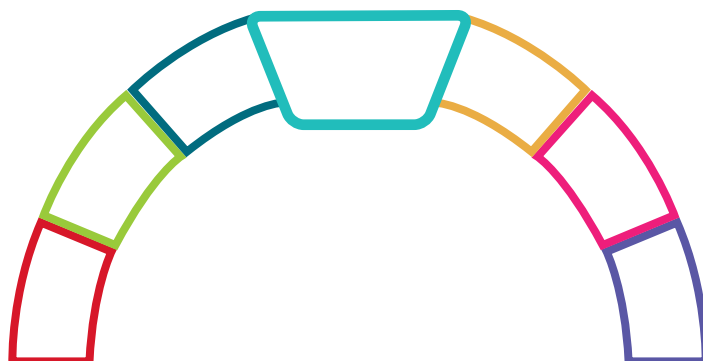
Safeguard Children

October 2020



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

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- Information Sharing in a Child Protection context

A. What do we mean by Information Sharing

Within a child protection context, there has long been criticism that practitioners' failure to share their knowledge and information about adults and children (Laming¹; Hart²; Serious Case Reviews (SCRs) in the UK³; National Board Reviews⁴; Ferns Report⁵ etc.) has resulted in poor assessment of risk to children, with consequent harm to them that might otherwise have been avoided.

It is accepted therefore that in order to protect children, relevant information may be shared with appropriate personnel on a 'need to know' basis across the statutory, voluntary and private sectors; and that collaborative working that focuses on promoting children's wellbeing is a paramount consideration.⁶ However, it is not the only consideration, and there may be tensions between information sharing and data protection.

B. What is Child Safeguarding?

The sharing of information within a Church child safeguarding context relates to the exchange of personal sensitive information with the clear purpose of safeguarding children. In many situations the exchange of information is used with the consent of the data subject in line with the Church body's child safeguarding procedures around the creation and maintenance of safe environments; an example is the safe recruitment of staff and volunteers who work with children and young people. In these circumstances the ability to seek consent enables an open and transparent system whereby safeguards to protect the data of the data subject are in place.

There are other situations where sharing of personal sensitive data is more complex and requires greater clarity. Information relating to allegations, suspicion, concerns or knowledge of abuse must be shared with statutory colleagues who have the legal responsibility to safeguard children. However, reporting alone does not safeguard children from harm and other steps are required to ensure that Church personnel against whom concerns are raised are risk assessed and risk management strategies put in place and monitored in order to prevent abuse. It is in these sensitive situations that it is important to balance a child's right to protection, with an individual's right to confidentiality.

C. Safeguarding and Information Sharing - Church Issues and Tensions

Safeguarding refers to all of the actions that are taken to promote the wellbeing of children and to prevent harm to them. It should be understood that a child is a part of a network made up of parents/carers, family, community, school, parish etc. all of which play a part in ensuring that a child grows up feeling safe and secure, and protected from harm.

In certain situation, statutory agencies become involved in a child's life to provide supportive and protective interventions, and in these circumstances the legal mechanisms for information sharing are quite clear, as these organisations have a statutory basis to rely on when sharing information. For those who work in the Church however, the freedom to share information with relevant members of other Church bodies, (if there is a concern about abuse or risk to children), is indisputable; and there needs to be a clear legal basis for sharing information between non-statutory bodies in child safeguarding situations.

¹ The Lord Laming (2009) *The Protection of Children in England: A Progress Report*. London: HMSO.

² Historical Institutional Abuse Inquiry (2017) *Report, 2017*. Available at www.hiainquiry.org/historical-institutional-abuse-inquiry-report-chapters (Accessed 14 October 2020).

³ Brandon, M. Sidebotham, P., Belderson, P., Cleaver, H., Dickens, J., Garstang, J., Harris, J., Sorensen P. and Wate, R. (2020) *Complexity and challenge: a triennial analysis of SCRs 2014-2017 Final report*. London: HMSO.

⁴ NBSCCCI (2020) Available at www.safeguarding.ie/publications (Accessed 21st October 2020).

⁵ Bishop Accountability (2005) *The Ferns Report*. Available at <https://www.bishop-accountability.org/ferns/> (Accessed 14 October 2020).

⁶ Department for Education (UK) (2016) *Information sharing to protect vulnerable children and families - A report from the Centre of Excellence for Information Sharing, July 2016*. Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/554128/Information-sharing-to-protect-vulnerable-children-and-families.pdf (Accessed 21st October 2020).

This paper suggests that the legal means do exist, even if they are not always understood or used.

It is not a surprise, given the history of poor management of child abuse allegations within the Catholic Church, that there is now an unequivocal requirement that measures are taken to prevent abuse. Church leaders require information to assist them in ensuring that suspected or identified risk is assessed and managed. To do this while complying with the data protection rights of a respondent is challenging.

One useful way of addressing the tensions between data protection and child safeguarding is to examine these from a rights perspective. While rights are not absolute in every situation, they need to be carefully weighed, with primary consideration given to the welfare of a child, as established in Article 3:1 of the UNCRC.⁷ It would constitute a real failure to ignore the right of a child to be safeguarded while also ignoring an individual's right to privacy,⁸ as both could lead to further abuse and serious injustice being perpetrated. However, by following legislative requirements and guidance it is possible to uphold both sets of rights while achieving the desired outcome of safeguarding children.

This GAP paper examines some of the difficulties of information sharing to safeguard children in the Catholic Church, and highlights guidance from data protection experts that assists in overcoming these. The aim of the paper is to provide a detailed description of the legal requirements and best practice guidelines for safeguarding children, while doing the same with the legal requirements and best practice guidelines for data protection.

2. Part 1 – history, legislation and rights

A. Learning from the Past

Inquiries into the abuse and death of children in the UK and Ireland have consistently reported failings by statutory and voluntary bodies. For example, Lord Laming in his comprehensive and system changing report into the abuse and death of Victoria Climbié⁹ stressed the importance of generating accurate written records, good interagency communication, and effective joint working.

Inquiries into abuse of children in the Catholic Church in Ireland have highlighted many deficiencies, including the failure to report and share information with statutory bodies, and within the Church. Some examples will illustrate this:

(i) The Commission of Investigation into the Catholic Archdiocese of Dublin (Murphy Report)

Inaction and cover-up

'1.35 As can be seen clearly from the case histories, there is no doubt that the reaction of Church authorities to reports of clerical child sexual abuse in the early years of the Commission's remit was to ensure that as few people as possible knew of the individual priest's problem. There was little or no concern for the welfare of the abused child or for the welfare of other children who might come into contact with the priest. Complainants were often met with denial, arrogance and cover-up and with incompetence and incomprehension in some cases. Suspicions were rarely acted on'. (Chapter 58)¹⁰

⁷ United Nations Convention on the Rights of the Child, 1989 (United Nations).

⁸ European Court of Human Rights (2020) *Article 8 Right to respect for private and family life, home and correspondence*. Available at https://www.echr.coe.int/documents/guide_art_8_eng.pdf (Accessed 14 October 2020).

⁹ Lord Laming (2003) *The Victoria Climbié Inquiry*. Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/273183/5730.pdf (Accessed 14 October 2020).

¹⁰ Department of Justice and Equality (2009) *Report by Commission of Investigation into Catholic Archdiocese of Dublin*. Available at <http://www.justice.ie/en/JELR/Pages/PB09000504> (Accessed 14 October 2020).

Communications between Church authorities.

'1.63 The cases examined by the Commission are littered with examples of poor or non-existent communication both internally in the Archdiocese and between it and other Church authorities'.¹¹

Communications with other dioceses

'1.68 In some cases, known abusers were sent to other dioceses with untrue or misleading information about them. It seems likely that bishops communicated problems orally but gave written references which did not refer to these problems'.¹²

Communications between the Archdiocese and Religious Orders

'1.69 Another major gap in communication identified by the Commission is that between the Archbishop of Dublin and the heads of religious orders and societies. There are several cases - especially those of Fr1, Fr 2 and Fr 3 - which illustrate this. It is clearly the case that the major fault here lies with the religious orders'.¹³

(ii) The Historical Institutional Abuse Inquiry (Hart Report)

Failure of several Church bodies to act

'110 As Fr Smyth was able to move around and abuse children for so many years, and because the failings of several organisations and individuals contributed to his ability to abuse children over many years in different places, it was necessary for us to consider whether that abuse could have been stopped in those homes in Northern Ireland.

The events surrounding his abuse of children in different places over many years were so inextricably interlinked that it was impossible to isolate what happened in the four homes in Northern Ireland within our Terms of Reference from the wider picture of his offending outside those homes, and the failures to protect children from him'.¹⁴

The Norbertines

'115 Taking deliberate decisions to withhold information about Fr Smyth's background when he was sent to other dioceses'.¹⁵

(iii) National Board Reviews

The first series of National Board Reviews of safeguarding practices by Church bodies in Ireland verified similar failings concerning reporting and sharing information with statutory agencies, as well as with relevant persons in other Church bodies. These Reviews reflected practice as it had been before statutory mandatory reporting and before the Data Protection Acts 2018. The Reviews nonetheless turned up significant evidence that allegations were not reported to statutory agencies; and that when an allegation was made, the identified priest or religious was often moved to another location in the hope that their abusive behaviour would stop.

Not all situations where there was a failure to share information however was based on a decision to protect the respondent, or indeed to protect the Church; it was often the result of a lack of understanding around the dynamics of child sexual abuse. At times there was a naïve belief that sexual abusers could be 'cured' by removing them from their current location.

11 Department of Justice and Equality (2009) *Report by Commission of Investigation into Catholic Archdiocese of Dublin*. Available at <http://www.justice.ie/en/JELR/DACOI%20Part%201.pdf/Files/DACOI%20Part%201.pdf> (Accessed 20 October 2020), p. 17.

12 Department of Justice and Equality (2009) *Report by Commission of Investigation into Catholic Archdiocese of Dublin*. Available at <http://www.justice.ie/en/JELR/DACOI%20Part%201.pdf/Files/DACOI%20Part%201.pdf> (Accessed 20 October 2020), p. 18.

13 Department of Justice and Equality (2009) *Report by Commission of Investigation into Catholic Archdiocese of Dublin*. Available at <http://www.justice.ie/en/JELR/DACOI%20Part%201.pdf/Files/DACOI%20Part%201.pdf> (Accessed 20 October 2020), p. 18.

14 Historical Institutional Abuse Inquiry (2017) *Historical Institutional Abuse Inquiry Report*. Available at <https://www.hiainquiry.org/sites/hiainquiry/files/media-files/Chapter%203%20-%20Findings.pdf> (Accessed 20 October 2020), part 1m Chapter 3, p. 178.

15 Historical Institutional Abuse Inquiry (2017) *Historical Institutional Abuse Inquiry Report*. Available at <https://www.hiainquiry.org/sites/hiainquiry/files/media-files/Chapter%203%20-%20Findings.pdf> (Accessed 20 October 2020), part 1m Chapter 3, p. 179.

As evidence from working with sexual offenders increased across the world, an appreciation developed of the complexities involved in managing offenders, and of sharing the right information with the right people at the right time, which is now considered as fundamental to good practice in safeguarding – see Tusla (2019) *Child Safeguarding: A Guide for Policy, Procedure and Practice*.¹⁶

B. Legislation and Regulation Underpinning Data Protection

The introduction of General Data Protection Regulations (GDPR) and the Data Protection Acts 2018 have caused confusion to many working in safeguarding, between the need to appropriately share information to safeguard children and the need to be compliant with data protection legislation.

Data protection legislation however, should never be a barrier to safeguarding children, and this was probably not the intention of any legislators, either at European or national level. Properly followed, it provides a legal framework for correctly sharing information with those who need to know. An approach of telling everyone, irrespective of their ‘need to know’ transgresses rights and does not safeguard children.

There have been several important pieces of legislation underpinning an individual’s right to privacy when data about them is being shared. Following the introduction of the EU’s General Data Protection Regulations (GDPR), greater clarity about these issues was created. These regulations have general application to the processing of personal data in the EU; they set out more extensive obligations on data controllers and processors; and they provide strengthened protections for data subjects. GDPR was subsequently enshrined in law in the Data Protection Acts (2018) in the Republic of Ireland and in the UK (including Northern Ireland). The relevant legislation is now outlined.

C. General Data Protection Regulation

Sharing personal data is a form of ‘processing’ within the meaning of the data protection legislation. Article 6(1) of the GDPR states that ‘processing shall be lawful only if and to the extent that at least one of the following lawful bases applies:

- the data subject has given consent to the processing of his or her personal data for one or more specified purposes;
- processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
- processing is necessary for compliance with a legal obligation to which the controller is subject;
- processing is necessary in order to protect the vital interests of the data subject or of another natural person;
- processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;
- processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child’.¹⁷

The circumstances in which special categories of personal data (which include personal data revealing a person’s religious or philosophical beliefs, data concerning health or data concerning a person’s sex life) may be processed are more limited than those outlined above.

Such circumstances include where the data subject has consented; or where the processing is necessary for the establishment, exercise or defence of legal claims.

¹⁶ Tusla (2019) *Child Safeguarding: A Guide for Policy, Procedure and Practice - 2nd Edition*. Available at: www.tusla.ie/uploads/content/Tusla_-_Child_Safeguarding_-_A_Guide_for_Policy,_Procedure_and_Practice.pdf (2nd Ed.) (Accessed 21st October 2020).

¹⁷ General Data Protection Regulations, 2018 (European Union).

Article 9 of the GDPR deals with the processing of special categories of personal data; and paragraph 2 (d) allows that when... *'...processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other not-for-profit body with a political, philosophical, religious or trade union aim, and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes, and that the personal data are not disclosed outside that body without the consent of the data subjects...'*, (emphasis added)

...then this data can be processed.

Article 5 of GDPR requires consideration of the following principles prior to making a decision to share information:

- Lawfulness, fairness and transparency: Personal data shall be processed in a manner which is lawful, fair, and transparent;
- Purpose limitation: Personal data shall be collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes;
- Data minimisation: Personal data shall be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed;
- Accuracy: personal data shall be accurate and, where necessary, kept up to date;
- Storage limitation: Securely destroy personal data when it is no longer required;
- Integrity and confidentiality: Have strict access and security controls to ensure the appropriate security of the personal data.

Article 6 of the same Regulations requires that:

- You need to make clear to individuals that their data may be shared and for what purpose;
- You need to be proportionate in terms of their application and the objective(s) to be achieved;
- You are only allowed to share the

minimum amount of data required to achieve the stated public service objective.

It is worthwhile to ask yourself what is your procedure for a data subject requesting access to their personal records?

Children and adults have the same rights over their personal data. These include the rights to access their personal data; request rectification; object to processing; and have their personal data erased.

In summary, Data Protection legislation sets out the following legal basis for sharing information:

1. The consent of the individual concerned.
2. A contractual obligation between you and an individual.
3. To satisfy a legal obligation.
4. To protect the vital interests of an individual.
5. To carry out a task that is in the public interest.
6. For your Church Body's legitimate interests - but only after having checked that the fundamental rights and freedoms of the individual whose data you are processing are not seriously impacted. If the person's rights override your interests, then you cannot process the data.

D. Republic of Ireland

From May 25th, 2018 the key legislative frameworks in the Republic of Ireland are:

- General Data Protection Regulation (GDPR)
- Data Protection Act 2018
- The 'Law Enforcement Directive' (Directive (EU) 2016/680) which has been transposed into Irish law by way of the Data Protection Act 2018
- The Data Protection Acts 1988 and 2003
- The 2011 'e-Privacy Regulations' (S.I. No. 336 of 2011 – the European Communities (Electronic Communications Networks and Services) (Privacy And Electronic Communications) Regulations 2011)

For details on each of these, have a look at the information on the Data Commission website at <https://dbei.gov.ie/en/Data-Protection/#>

While all of the above laws are important in informing and guiding us on the sharing of personal sensitive data, it is important to note that it is the Law Enforcement Directive (2018)¹⁸ which enables authorised persons to process personal data for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties. Church personnel do not fall within the category of *authorised persons*; but they are required to assist statutory agencies in these functions.

In summarising the effects of Data Protection law, there is not a unity of perspectives as to the scope.

The 31st amendment of the Irish Constitution which is now Article 42A states:-

Article 42A

1. The State recognises and affirms the natural and imprescriptible rights of all children and shall as far as practicable, by its laws protect and vindicate those rights.
2. In exceptional cases, where the parents.... fail in their duty towards their children to such an extent that their safety and welfare.....is likely to be prejudicially affected, the State as guardian of the common good shall, by proportionate means as provided by law, endeavour to supply the place of the parents, but always with due regard to the natural and imprescriptible rights of the child.
3. (Next subsection clause 3 deals with adoption).
4. (1) Provision shall be made by law that in the resolution of all proceedings-
 - brought by the State, as guardian of the common good, for the purposes of preventing the safety and welfare of any child being prejudicially affected or

- concerning the adoption, guardianship or custody of, or access to any child, the best interests of the child shall be paramount consideration.

So if the State brings proceedings concerning child protection the test is child- centric. In practice, however, TUSLA on behalf of the State takes proceedings on behalf of individual children.

If the Data Commissioner were to take a case by way of sanction under GDPR legislation against any party, it may well be open to any such party to raise a defence that, relying on Article 42A, the interests of the child are paramount and that children have an imprescriptible right to be protected. In other words, the party relies on the Constitution as a reason to provide specific information.

Section 42A 4 (1) states that 'provision shall be made by law where child protection is an issue. This posits the possibility of enactment of a statute amending the Data Protection Act providing that;-

'any bona fide information supplied by the State or any person or corporation stated to be in the interest of child safety and welfare shall be exempt.'¹⁸ (A further provision could be added to allow the Commissioner to challenge information perceived to be not in good faith).

E. Data Protection Act 2018 (UK, including Northern Ireland)

The Data Protection Act 2018 replaces the 1998 Data Protection Act (UK and Northern Ireland) and follows the same obligations as the Data Protection Act 2018 (ROI). The requirement to conduct a privacy impact assessment prior to sharing information with a third party (non-statutory) applies in Northern Ireland, using the same format as detailed above.

¹⁸ Data Protection Commission (2018) *Law Enforcement Directive - Guidance on Competent Authorities and Scope*. Available at www.dataprotection.ie/en/organisations/law-enforcement-directive#:~:text=The%20Law%20Enforcement%20Directive%2C%20or,the%20scope%20of%20the%20GDPR (Accessed 14 October 2020).

The Northern Ireland Information Commissioner has produced a very helpful Code of Practice¹⁹ relating to data sharing (note this is yet to be updated in line with the Data Protection Act 2018; but a draft revised code was put out for consultation in August 2018); however it is a useful tool to follow and can be accessed at https://ico.org.uk/media/for-organisations/documents/1068/data_sharing_code_of_practice.pdf

This code states:

‘The legal framework that applies to private and third sector organisations differs from that which applies to public sector organisations, which may only act within their statutory powers. However, all bodies must comply fully with the data protection principles.

In some private sector contexts there are legal constraints on the disclosure of personal data. However, most private and third sector organisations have a general ability to share information provided this does not breach the DPA or any other law. It is advisable for a company to check its constitutional documents, such as its memorandum and articles of association, to make sure there are no restrictions that would prevent it from sharing personal data in a particular context.

Private and third sector organisations should have regard to any industry-specific regulation or guidance about handling individuals’ information as this may affect the organisation’s ability to share information. They should also be aware of the legal issues that can arise when sharing personal data with public sector bodies. This becomes more of an issue as private and third sector bodies are carrying out a wider range of traditionally public sector functions’.²⁰

F. Information sharing - an international Context

(i) European Union

Countries within the European Union are all governed by GDPR. Therefore, in principle and where GDPR has been enshrined in domestic legislation, , the sharing of personal data within and across these member states should follow the same rules.

(ii) The Holy See

The Vatican City state is outside of the EU, and therefore there are challenges around sharing information of a personal nature with relevant dicasteries.²¹ The Catholic Church is not a PLC, a single entity, and so the relationship between the Holy See and Church leaders in other countries requires some careful consideration. In 2018, Pope Francis issued a motu proprio – *Vos estis lux mundi*²²(see www.safeguarding.ie/publications for the National Board’s critique). This apostolic letter was written, in part in response to his concerns and to criticisms about the management of child abuse allegations. As has already been noted in the Introduction, the failure to share information between Church authorities undoubtedly placed other children at risk of abuse. Pope Francis therefore is seeking to require the exchange of relevant information to ensure that those who need to know are informed about allegations in order that risk can be assessed and managed. He comments significantly on matters relating to information sharing within *Vos estis lux mundi*, as for example,

Article 7 - Competent Dicastery

Outlines the dicasteries involved in the relevant delicts²³ outlined in canonical norms.

19 Information Commissioner’s Office (2018) *Data Sharing Code of Practice*. Available at https://ico.org.uk/media/for-organisations/documents/1068/data_sharing_code_of_practice.pdf (Accessed 21st October 2020).

20 Information Commissioner’s Office (2018) *Data Sharing Code of Practice*. Available at https://ico.org.uk/media/for-organisations/documents/1068/data_sharing_code_of_practice.pdf (Accessed 15 October 2020).

21 CatholicCulture.org Available at www.catholicculture.org/culture/library/dictionary/index.cfm?id=33080 (Accessed 15 October 2020).

22 Pope Francis (2019) *Vos estis lux mundi*. Vatican City: Libreria Editrice Vaticana.

23Vatican.va (2020) *Glossary of Terms*. Available at http://www.vatican.va/resources/resources_glossary-terms_en.html (Accessed 15 October 2020).

Article 8 - Procedure applicable in the event of a report concerning a Bishop of the Latin Church

§1. The Authority that receives a report transmits it both to the Holy See and to the Metropolitan of the Ecclesiastical Province where the person reported is domiciled.

§2. If the report concerns the Metropolitan, or the Metropolitan See is vacant, it shall be forwarded to the Holy See, as well as to the senior Suffragan Bishop by promotion, to whom, if such is the case, the following provisions regarding the Metropolitan apply.

§3. In the event that the report concerns a Papal Legate, it shall be transmitted directly to the Secretariat of State.

Article 10 - Initial duties of the Metropolitan

The Metropolitan requests that he be assigned to investigate the allegation, unless it is manifestly unfounded, and if so the Metropolitan will inform the Pontifical Representative. The dicastery then must respond with a decision as to what happens next within 30 days.

Article 11 - Entrusting the investigation to a person other than the Metropolitan

If the dicastery decide to appoint someone other than the Metropolitan to investigate, the Metropolitan must deliver the documents associated with the case to the person appointed to investigate.

Art. 19 – Compliance with state laws

These norms apply without prejudice to the rights and obligations established in each place by state laws, particularly those concerning any reporting obligations to the competent civil authorities.

(iii) USA

In USA where data protection legislation would appear to be very different, many bishops place the names of accused clergy on their websites, in an attempt at being transparent. Article 7 of their Charter for the Protection of Children and Young People states:

‘Dioceses/eparchies are to be open and transparent in communicating with the public about sexual abuse of minors by clergy within the confines of respect for the privacy and the reputation of the individuals involved. This is especially so with regard to informing parish and other church communities directly affected by sexual abuse of a minor. For example, the Archdiocese of Chicago has a section on its website entitled “Clergy with Substantiated Allegations of Sexual Misconduct with Minors”, where it lists names of clergy and their current status following allegations of abuse’.²⁴

An independently funded and organised website - BishopAccountability.org²⁵ - has among its detailed pages a link entitled *Abuse tracker*. In this and in other parts of the website it lists names of priests and Religious accused of child abuse, including ninety three from Ireland. The names are taken from public information, review reports, newspaper articles etc. Not all of the accused who are listed have been through criminal or civil investigations and therefore their guilt or innocence has not been established.

There remain questions, therefore over whether such publication is a breach of privacy of the accused; but the U.S. Constitution First Amendment freedom of speech provision may apply here.

G. Rights Perspectives

(i) Rights of Children

The Republic of Ireland, the UK (including Northern Ireland) and the Holy See have all signed and ratified the United Nations Convention on the Rights of the Child. In doing so, they have made a legally binding promise to bring the rights of the Convention within the law of their own country.²⁶

²⁴ United States Conference of Catholic Bishops (2018) *Charter for the Protection of Children and Young People*. Available at <https://www.usccb.org/offices/child-and-youth-protection/charter-protection-children-and-young-people> (Accessed 15 October 2020).

²⁵ For more information see <http://www.bishop-accountability.org/>.

²⁶ There are a number of caveats to this, in terms of reservations.

The approach taken to enshrine the Convention in law varies across the state parties who have ratified the Convention. In the Republic of Ireland whilst a number of pieces of legislation and policy include some of the rights contained in the UNCRC, perhaps most significantly - Article 42A was added to the Constitution in 2015.

‘It affirms children’s natural and imprescriptible rights and the State’s duty to uphold these rights. Children have the right for their best interests to be of paramount consideration where the State seeks to intervene to protect their safety and welfare’.²⁷

This right applies in all court proceedings concerning adoption, guardianship, custody, and access. In these proceedings, children also have the right to have their views ascertained and considered by the courts. The courts are to have regard to a child’s age and maturity when considering their views in accordance with this right.

In Northern Ireland there is no written Constitution; however, significant steps to uphold the principles of the Convention have been taken through various pieces of legislation, including the Children NI Order.²⁸ In preparation for the next Report to the Committee on the Rights of the Child (Fifth Periodic Review), the Committee asked the UK Government,

‘In the light of the Convention not being incorporated into the domestic law of the State party, please explain what progress has been made to give full effect to the Convention in the State party and its devolved jurisdictions, including measures taken to guarantee domestic remedies for the breaches of the principles and rights provided under the Convention’.²⁹

(ii) Human Rights

Human rights in Ireland are protected under the Irish Constitution and the European Convention on Human Rights³⁰ provisions. Since 2014, the Irish Human Rights and Equality Commission³¹ has had statutory responsibility to protect and promote human rights in the Republic. The Commission works to eliminate child abuse, and human trafficking, as well as discrimination against people based on ability-disability, race and culture, and employment status, or indeed on any other criterion. The corresponding agency in Northern Ireland is the Northern Ireland Human Rights Commission³²; both were established following the signing of the Good Friday Agreement in 1998 and the subsequent incorporation by both the British and Irish Governments of the European Convention on Human Rights into national laws.

‘The European Convention on Human Rights protects the right to respect for private life, the home and correspondence. This includes protecting the privacy of messages, phone calls, and emails’.³³

These rights can only be set aside when to do so ‘...is specifically allowed by law, and done for a good reason – like national security or public safety’.³⁴

These rights include:

Article 7 - No punishment without law; Article 8 - Right to respect for private and family life; and Article 13 - Right to an effective remedy.

27 Citizensinformation.ie (2018) *Fundamental rights under the Irish Constitution*. Available at www.citizensinformation.ie/en/government_in_ireland/irish_constitution_1/constitution_fundamental_rights.html (Accessed 15 October 2020).

28 The Children (Northern Ireland) Order, 1995 (Northern Ireland).

29 Queens University Belfast (2020) <https://www.qub.ac.uk/research-centres/advancing-childrens-rights/Filestore/Fileupload,549882,en.doc> (Accessed 15 October 2020).

30 The Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (European Union).

31 For more information see www.ihrec.ie.

32 For more information see www.nihrc.org.

33 Council of Europe (2020) *Impact of the European Convention on Human Right*. Available at www.coe.int/en/web/impact-convention-human-rights/privacy (Accessed 21st October 2020).

34 Council of Europe (2020) *Impact of the European Convention on Human Right*. Available at www.coe.int/en/web/impact-convention-human-rights/privacy (Accessed 21st October 2020).

(iii) Constitutional Rights to Privacy ROI

The Irish Constitution³⁵ sets out the guaranteed fundamental rights that adults and children living in the Republic of Ireland have. Not every fundamental right is covered in the Constitution, but the document is an evolving one. Since it was adopted in 1937 it has been amended on 31 occasions as matters have arisen that needed to be considered by the citizens of the State and voted on in referendums; and on six further occasions, proposed amendments to the Constitution were rejected by voters. The Constitution is also interpreted by the Courts, and case law has allowed certain personal rights to be clarified and recognised. For example, the Constitution does not specifically state a right to privacy; however, as explained on its website, the Irish Council for Civil Liberties states that:

‘The right to privacy is protected by the Irish Constitution and by European and international human rights instruments. The Irish courts have held that the right to privacy is one of the unenumerated rights which flow from Article 40.3 of the Constitution’.³⁶

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which was written in 1953, came into force in the Republic of Ireland in 2003 through the European Convention of Human Rights Act and in the UK, including Northern Ireland through the Human Rights Act 1998 and Northern Ireland Act 1998. The implementation of this legislation ensures that everyone within the jurisdiction of the Republic of Ireland and Northern Ireland has the rights and freedoms contained in the ECHR. The Council of Europe has produced a 129-page guide on Article 8, the *Right to respect for private and family life*.³⁷

³⁵ The Constitution of Ireland, 1937 (Republic of Ireland).

³⁶ Irish Council for Civil Liberties (2020) *Her right to privacy*. Available at www.iccl.ie/her-rights/privacy (Accessed 21 October 2020).

³⁷ Council of Europe/European Court of Human Rights (2019) *Guide on Article 8 of the European Convention on Human Rights - Right to respect for private and family life, home and correspondence*. Available at https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf (Accessed 21 October 2020).

³⁸ The Free Dictionary (2020) *Definition of nemo iudex in causa sua*. Available at <https://encyclopedia.thefreedictionary.com/nemo+iudex+in+causa+sua> (Accessed 21 October 2020).

³⁹ The Free Dictionary (2020) *Definition of audi alteram partem*. Available at <https://encyclopedia.thefreedictionary.com/audi+alteram+partem> (Accessed 21 October 2020).

⁴⁰ HSE (2017) *Fair Procedures and Natural Justice - Guidance for Consultation*. Available at www.hse.ie/eng/about/qavd/protected-disclosures/incident-management-framework/fair-procedures-and-natural-justice-guidance.pdf (Accessed 20 October 2020).

⁴¹ European Convention on Human Rights Act 2003, (Republic of Ireland) Section 1, Schedule 1, Article 8: 2.

Although the UK has signalled during the Brexit negotiations that it will remain a signatory to the ECHR, it is unclear what the impact of the UK leaving the EU will have.

(iv) Natural Justice and Fair Procedures

Natural Justice outlines that the courts, and all other bodies or persons making decisions about someone must treat that individual justly and fairly. There are two principles developed by the ancient Romans by which Natural Justice is supported:

- The first is known as *nemo iudex in causa sua*, and it means that no person can judge a case in which they have an interest; so, the person making the decision that affects you should not be biased or appear to be biased.³⁸
- The second, *audi alteram partem* requires that both sides must be heard, which principle establishes that nobody should be judged without a fair hearing in which each party is given the opportunity to respond to the evidence against them.³⁹

‘The principles of natural justice represent the basic requirements of fair procedure’.⁴⁰ While the basic principle of human rights outlined in the preamble to the ECHR is that they are indivisible, equal and inalienable, there are certain conditions in which fundamental rights do not remain absolute. They can be limited or restricted by the Oireachtas for certain reasons, for example, for the common good or public order.⁴¹ Every constitutional right has the same status and value. If there is a conflict between the constitutional rights of individuals, the courts will look at all the circumstances and weigh all of the factors to decide which constitutional right is more important in that particular case.

3. Part 2 - why share information to protect children?

A. How to 'Square the Circle'

The challenge we face is how to uphold children's right to be safeguarded from harm on one hand, while also respecting an identified person's right to privacy. This has to be done whilst honouring the Irish Constitution in ROI, and children's legislation in the Republic of Ireland and Northern Ireland, as well as human rights and data protection legislation in both jurisdictions.

It is important to highlight that data protection legislation does not prevent sharing of personal sensitive data; rather it provides a framework to share such information legally. However, there does need to be careful consideration given to who needs to know the information in order to safeguard children.

The National Board is aware, for example, of a case involving a respondent in another EU country whose identifying and highly sensitive information had been shared between 10 different bodies - some statutory and some Church - before the respondent himself was informed.

(i) International References

Australian Royal Commission

Research conducted by the Royal Commission in Australia suggests that there are ways to balance an individual's right to privacy with a child's right to be protected from abuse.

'It is possible to share information about child sexual abuse in institutional contexts in ways that are consistent with the right to privacy.

The right to privacy is not absolute and should not prevent the sharing of information necessary to identify, prevent and respond to institutional child sexual abuse. Privacy regulation is not designed or intended to prevent the timely sharing of personal information where necessary and appropriate. Indeed, privacy regulation is intended to provide a framework within which information can flow because it is properly handled and adequately protected'.⁴²

Munro's Review of Child Protection

In June 2010, the Secretary of State for Education, asked Professor Eileen Munro to conduct an independent review of child protection in England. Her findings are contained in three reports that she subsequently issued.⁴³

Professor Munro's review of child protection concluded the need to move towards a child protection system with less central prescription and interference. She suggested that greater trust and responsibility should be placed on skilled practitioners at the frontline. Her views are well summarised in a UK Government Report of July 2018, in which it is stated in a section on Sharing Information that:

'...those skilled practitioners are in the best position to use their professional judgement about when to share information with colleagues working within the same organisation, as well as with those working within other organisations, in order to provide effective early help, to promote their welfare, and to keep children safe from harm'.⁴⁴

⁴² Adams, C., Lee-Jones, K. (2016) *A study into the legislative and related key policy and operational frameworks for sharing information relating to child sexual abuse in institutional contexts*. Available at <https://www.childabuseroyalcommission.gov.au/sites/default/files/file-list/Research%20Report%20-%20Legislative%20and%20related%20of%20frameworks%20for%20information%20sharing%20-%20Government%20responses.pdf> (Accessed 15 October 2020).

⁴³ Department for Education (2010) *The Munro Review of Child Protection Part One: A Systems Analysis Department for Education (Feb. 2011)* and *The Munro Review of Child Protection Interim Report: The Child's Journey Department for Education (May 2011)* and *The Munro Review of Child Protection: Final Report A child-centred system*. Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/175391/Munro-Review.pdf (Accessed 15 October 2020).

⁴⁴ HM Government (2018) *Information sharing Advice for practitioners providing safeguarding services to children, young people, parents and carers*. Available at www.gov.uk/government/publications (Accessed 15 October 2020), p. 6.

Lord Laming

Lord Laming conducted the very high-profile Victoria Climbié Inquiry in 2003. He was later requested by the House of Commons to produce a report on progress towards an effective child protection system in the UK. He produced *The Protection of Children in England: A Progress Report* in 2009.⁴⁵ Similar to the Munro Review, Lord Laming's findings about information sharing are also summarised in the aforementioned UK Government Report of July 2018 in which it is written that he...

'...emphasised that the safety and welfare of children was of paramount importance and he highlighted the importance of practitioners feeling confident about when and how information can be legally shared. He recommended that all staff in every service, from frontline practitioners to managers in statutory services and the voluntary sector should understand the circumstances in which they may lawfully share information, and that it is in the public interest to prioritise the safety and welfare of children'.⁴⁶

UK Working Together to Safeguard Children

The newest edition of 'Working Together to Safeguard Children'⁴⁷ includes a succinct 'Myth busting' page on information sharing, where five misunderstandings (myths) are listed, each of which is followed by an explanation. The five are that:

- Data protection legislation is a barrier to sharing information
- Consent is always needed to share personal information

- Personal information collected by one organisation/agency cannot be disclosed to another
- The common law duty of confidence and the Human Rights Act 1998 prevent the sharing of personal information
- IT Systems are often a barrier to effective information sharing

Without replicating a full page from this guidance, which can be accessed on the Internet, the first misunderstanding only is reproduced here:

'Data protection legislation is a barrier to sharing information: No – the Data Protection Act 2018 and GDPR do not prohibit the collection and sharing of personal information, but rather provide a framework to ensure that personal information is shared appropriately. In particular, the Data Protection Act 2018 balances the rights of the information subject (the individual whom the information is about) and the possible need to share information about them'.⁴⁸

(ii) Irish Research

In 2013, the Department of Children and Youth Affairs in the Republic of Ireland published the research of Dr Helen Buckley and Dr Caroline O'Nolan into the recommendations of five Irish child abuse inquiry reports – Kilkenny Incest Investigation (McGuinness, 1993); Kelly – A Child is Dead (Joint Committee on the Family, 1996); West of Ireland Farmer Case (Bruton, 1998); Monageer Inquiry (Brosnan, 2009); and the Roscommon Child Care Case (Gibbons, 2010).⁴⁹

45 The Lord Laming (2009) *The Protection of Children in England: A Progress Report*. Available at https://dera.ioe.ac.uk/8646/1/12_03_09_children.pdf (Accessed 15 October 2020).

46 HM Government (2018) *Information sharing Advice for practitioners providing safeguarding services to children, young people, parents and carers*. Available at www.gov.uk/government/publications (Accessed 15 October 2020), p. 6.

47 HM Government (2019) *Working Together to Safeguard Children - A guide to inter-agency working to safeguard and promote the welfare of children*. Available at <https://www.gov.uk/government/publications/working-together-to-safeguard-children--2> (Accessed 15 October 2020)

48 www.irishstatutebook.ie (2018) *Data Protection Act 2018*. Available at <http://www.irishstatutebook.ie/eli/2018/act/7/enacted/en/print.html> (Accessed 20 October 2020), p. 20.

49 Minister for Children and Youth Affairs (2013) *An examination of recommendations from inquiries into events in families and their interactions with State services, and their impact on policy and practice*. Dublin: Government Publications Office.

In the Executive Summary of this unique research, the authors state that:

‘Recurrent themes in the recommendations were identified. These included the need for improved vigilance and identification of children at risk; better interagency cooperation, record-keeping and exchange of information; and protocols for child protection conferences’.⁵⁰

It is of note that the recommendations of the Kilkenny Incest Investigation relating to the sharing of information have not been fully implemented 27 years later, which could be more an indication of how challenging this is to do, than of any particular institutional resistance to implementation.

B. Statutory Guidance

(i) Republic of Ireland

Within the Republic of Ireland, the Child and Family Agency (Tusla) has statutory responsibility to assess risk and put in place actions to safeguard children. Legislation mandates certain people with information about possible risk to children to report that information to Tusla, and to assist as required by Tusla to support any child protection plan. There is no dispute therefore that information can and must be shared with this statutory body. Tusla states in its Web Portal Privacy Statement that:

‘6.1.1 Tusla have a statutory obligation under the Child Care Act (1991), the Child and Family Agency Act (2013) and Children First Act (2015) to promote the welfare of children who are at risk of not receiving adequate care and protection.

Tusla therefore has an obligation to receive information about 1) any child who is not receiving adequate care and/or protection, 2) about any adult who alleges child abuse that took place during their childhood and there is a possible ongoing risk to children from the person against whom there is an allegation and 3) about any adult who may have abused a child. Tusla ask for Personal Data and Sensitive Personal Data of the Data Subjects to assist it in screening the Report, assessing the level of risk to a child and when necessary in assigning a priority status to the case, or identifying the type of support services required.’⁵¹

Similarly, if a crime is suspected, all information should be shared with An Garda Síochána; and there is protection in law for reporting suspected crimes (Protections For Persons Reporting Child Abuse Act, 1998).⁵²

(ii) Northern Ireland

Co-operating to Safeguard Children and Young People in Northern Ireland (Version 2.0 August 2017)⁵³ refers to Information Management as:

‘...a key part of effective inter-agency, inter-disciplinary working in relation to safeguarding and child protection. Failure to record information, understand its significance, share it in an appropriate, purposeful and timely manner and then take appropriate action can hamper the work of those tasked with keeping children safe. Information obtained by organisations in the exercise of their safeguarding and child protection duties may be personal information about a particular child, young person or adult, and therefore is governed by the common law duty of confidentiality and the Data Protection Act 1998 (the DPA).’⁵⁴

50 Minister for Children and Youth Affairs (2013) *An examination of recommendations from inquiries into events in families and their interactions with State services, and their impact on policy and practice*. Dublin: Government Publications Office, p. 3.

51 Tusla(2020) *Tusla Web Portal Privacy Statement*. Available at www.tusla.ie/children-first/tusla-web-portal-privacy-statement (Accessed 15 October 2020)

52 Protection for Persons Reporting Child Abuse Act, 1998 (Republic of Ireland).

53 Department of Health (2017) *Co-operating to Safeguard Children and Young People in Northern Ireland*. Available at www.health-ni.gov.uk/publications/co-operating-safeguard-children-and-young-people-northern-ireland (Accessed 15 October 2020).

54 *Data Protection Act, 2018 (Republic of Ireland)*, p. 72.

As with requirements in Republic of Ireland, there is a statutory obligation to report child protection allegations to Health and Social Services and to the PSNI in Northern Ireland.

What is more challenging is sharing of information with non-statutory bodies. This next section seeks to address the principles and approaches to sharing information with other Church bodies and organisations, including the National Board.

“Co-operating to Safeguard Children” makes a very clear statement about sharing information in the interests of safeguarding children as follows:

‘Organisations must have procedures for staff and volunteers on how to share information in compliance with the DPA and the ICO Code of Practice. Organisations who need to share information on a regular basis for child safeguarding and child protection purposes must develop good working relationships and effective channels of communication, where necessary, to identify key members of staff and contact points within the organisation through which information can be channelled, including out of normal working hours. Health and Social Services Trusts (HSCTs) must include information sharing arrangements within all contracts and service commissioning arrangements with third party organisations, e.g. with organisations commissioned to provide family support services. This must include how information is managed by the third party organisation in compliance with the DPA and Human Rights Act 1998’.⁵⁵

The key is to ensure that there is clarity between organisations and Church bodies about why the information needs to be shared. Both the ROI Data Commissioner and the NI Information Commissioner have each produced data sharing codes of practice which assist organisations to comply with the legislation.

C. Data Protection Principles that should be Followed

Children’s safety and well-being is at the core of this work that we are engaged in, in the Church. Amongst the many lessons, the failure to appropriately share information undoubtedly led to further abuse of children. However, often the most personal sensitive data relates to adults not children, but it is in accessing such information and considering whether and how to share it that we can safeguard children. It is critical therefore that each Church authority has in place clear procedures for accessing, storing and sharing information.

Do you have clear notices advising of your reporting obligations if a disclosure is made?

On a case-by-case basis, consideration needs to be given to the rationale for sharing information between Church personnel. It is desirable to obtain consent to share information, but it is also accepted that it is not always possible or desirable to obtain consent. The National Board has produced guidance for internal use on conducting a privacy impact assessment within a Church context, in situations where consent cannot be obtained and where there is a need to share information.⁵⁶

⁵⁵ Data Protection Act, 2018 (Republic of Ireland), pp. 73-74 and Human Rights Act, 1998 (United Kingdom).

⁵⁶ NBSCCCI (2019) 2.3A *Guidance on Information Sharing*. Available at www.safeguarding.ie/images/Pdfs/Standards/Standard%202.pdf (Accessed 21 October 2020), pp. 65-66.

Start your deliberations by using this checklist:

Item to check	✓ Check
Ensure that the information you intend sharing is necessary for the purpose for which you are sharing it.	
Ensure you share only with those individuals who need to have it.	
Check the accuracy of the information before sharing	
Ensure the information is current and up-to-date and that you intend sharing it in a timely fashion.	
Ensure the transmission of the data is secure – use password protection and security encryption.	

D. The following questions should be considered before making and recording a decision to share information within the Church.

Question	Recorded response
What are the facts of the case, upon which you will make a judgement to share information?	
Is sharing the information likely to support the safeguarding and protection of an identifiable child?	
Is there a risk of harm to an identified or unidentified child/person if such information is not shared?	
<p>Do the records you hold comply with the data protection principles?</p> <p>In particular, fairness should be central to all of your processing of personal data.</p>	
<p>What is the lawful basis for processing personal data?</p> <p>Consent is one possible lawful basis for processing, but it is not the only option. Sometimes using an alternative basis is more appropriate and provides better protection for the child. Consent cannot always be obtained, especially when sharing information about an alleged abuser with a third party that does not have statutory responsibility.</p>	

<p>What is the legal basis for sharing the information with a non-statutory body?</p> <p>The Data Protection Acts 2018 allow you to share information without consent if, in your judgement, there is a lawful basis to do so, such as where safety may be at risk.</p>	
<p>Does the recipient have a legitimate interest in receiving this information?</p> <p>You do not need consent to share information with Police or Social Services. It may be wise to inform data subjects that you have shared such information. In the case of someone making a complaint or allegation, you must always inform them of your legal responsibility to pass this on.</p> <p>Informing an alleged abuser that you are reporting an allegation requires more careful consideration; and matters to consider include whether you might interfere with a criminal investigation if you do alert a respondent.</p>	
<p>Can permission be obtained from the respondent to share information?</p>	
<p>Should the respondent be informed that the information is being shared?</p>	
<p>Do you need consent from a child and parent?</p> <p>For children, you will also need to get consent from whoever holds parental responsibility for the child.</p>	
<p>Do the records you hold comply with the data protection principles?</p> <p>In particular, fairness should be central to all of your processing of personal data.</p>	
<p>Is the respondent in public ministry as a priest and has faculties from the bishop?</p>	
<p>Is the respondent in the public ministry of a Church body?</p>	
<p>Should information about the complainant be redacted?</p>	

Always record how you have come to a decision to share or not to share information; also record what you have shared, with whom, and for what purpose.

4. Conclusion

Every Church body should have in place a Data Protection Policy which includes guidance on information sharing. If you require assistance with developing a Data Protection Policy, click on the relevant link <https://www.safeguarding.ie/images/Pdfs/Standards/Appendix%20B.pdf>

Each Church body, in line with data protection legislation should have an identified Data Protection Officer who can guide practice, and support assessments of whether and how to share information.

This paper has set out the historical context, legislative framework and guidance around how to share information in the interests of safeguarding children. In spite of the challenges around information sharing, we are in no doubt that the safeguarding of children can be achieved by following clear procedures and best practice.

