

STANDARD 2

PROCEDURES FOR RESPONDING TO CHILD PROTECTION SUSPICIONS, CONCERNS, KNOWLEDGE OR ALLEGATIONS GUIDANCE FOR INDICATOR 2.3

2.3A Guidance on Information Sharing

The effective protection of a child often depends on the willingness of people to share and exchange relevant information appropriately. It is critical that there is a clear understanding of the Church authority's professional and legal responsibilities with regard to data protection, confidentiality and the exchange of information.

The deficiencies in both internal and external communication of essential child protection information by various Church authorities has been identified and criticised in a number of statutory reports, including the Ryan Report, the Ferns Report, the Report of the Commission of Investigation into the Catholic Archdiocese of Dublin (the Murphy Report), and the Cloyne Report. It is essential that the lessons from these reports are learned, and that improvements result in the sharing of information.

What is meant by information sharing?

All information regarding child protection concerns (current or historical) should be shared on a need-to-know basis with the statutory authorities, in the interest of the child. **The provision of information to the statutory agencies for the protection of a child is not a breach of confidentiality or data protection.**

The issue of confidentiality should be part of the training given to Church personnel, so that everyone is clear about their legal and ethical responsibilities pertaining to the sharing of information, in good faith with statutory bodies. No undertakings regarding confidentiality can ever be given when considering child protection and safeguarding matters (apart from the Sacrament of Reconciliation) (Guidance 2.1G). Interagency cooperation is as important in the later stages of child protection work as it is at the outset. Therefore, Church personnel involved in a suspected, alleged or confirmed child abuse case should consistently make efforts to remain in contact with the statutory services, and to communicate all relevant information expediently.

Situations when information must be shared

- **Sharing information with the statutory authorities**

All allegations, suspicions concerns or knowledge regarding child abuse that meet the threshold for reporting (apart from those received in the Sacrament of Reconciliation) must be passed to the statutory authorities (Guidance 2.1A). Disclosure should include names, addresses, details of the allegations, and if the respondent has made an admission, where this information is available.

- **Sharing information with the NBSCCCI**

The NBSCCCI, as a data processor to the constituent member, is entitled to full access to the Church authority's files and records for the purposes of analysing all such data in terms of compliance with best child protection practice, and in order to report upon any issues that arise in relation to that investigation.

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The NBSCCCI has entered into data processing deeds with various Church authorities following consultation with the Office of the Data Protection Commissioner to ensure that these arrangements are in compliance with the Data Protection Acts. Once the Church authority has signed the data processing deeds, information must be shared with the NBSCCCI for these three purposes:

- a. The NBSCCCI maintains records of all allegations notified to it for monitoring purposes;
- b. The NBSCCCI retains records relating to advice offered directly or through the NCMC;
- c. The NBSCCCI accesses records for audit function and cannot retain and/or use the personal information accessed during its audit for further purposes.

The NBSCCCI is fully satisfied that it is entitled to receive and examine all such records without there being a loss of privilege or protected confidence pertaining to those records.

Situations when information can be shared

- **As part of an investigation by the statutory authorities**

Sharing information with statutory agencies for child protection purposes, and in particular to assist investigation of potential offences, is permitted under the Data Protection Acts. Additionally, the Protection for Persons Reporting Child Abuse Act 1998 affords protection from civil liability to such persons reporting child protection concerns to statutory authority agencies in good faith.

During the course of an investigation, if the Gardaí/PSNI request information from a file, every effort should be made to cooperate. However, careful consideration should be given to sharing the following without consent:

- Legal advice obtained by the Church authority may be privileged and may not be shared without the consent of the Church authority;
- Assessment reports may require the permission of the author and the respondent.

Sharing information with statutory agencies attracts the protections cited above only insofar as it relates to child protection. Therefore, if the information goes beyond this area, it will not benefit from these exceptions. Case files are stored in the name of the respondent and may hold other information, for example information about third parties, or suspicions, concerns, knowledge or allegations relating to other complainants outside the subject of the statutory investigation.

- **Between Church bodies**

There may be occasions when information between Church bodies is required. Under canon law, faculties to minister as a priest in public can only be granted by a bishop. It is therefore appropriate that information is shared between a provincial of an ordained cleric from a religious order/congregation when an allegation of child abuse is made against that priest, so that the bishop can determine whether or not to withdraw faculties. As each of these situations is unique, the decision whether and what to share with another Church body will be on a case-by-case basis. To assist, the following questions may be used:

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- Does the recipient have a legitimate interest in receiving this information?
- What is the justification for sharing information?
- Is there a risk of harm to an identified or unidentified child if such information is not shared?
- Can permission be obtained from the respondent to share information?
- Should the respondent be informed that the information is being shared?
- Is the respondent in public ministry as a priest and has faculties from the bishop?
- Is the respondent in the public ministry of a Church body?
- Should information about the complainant be redacted?

A summary of the requirements of storage and retention of data, confidentiality and data protection is contained in Appendix B.

Legislation, guidance and case law

This approach is underpinned by the following:

Legislation

- **Data Protection:**

The principles of the relevant data protection legislation should be taken into account when considering whether to share information with persons other than the civil authority agencies (see Appendix B).

- **Data Protection Acts 1988–2003 (ROI)**

Section 2A (1) (d) states:

Personal data shall not be processed by a Data Controller unless Section 2 of this Act (as amended by the Act 2003) is complied with by the Data Controller and that at least one of the following conditions is met:

(d) the processing is necessary for the purposes of the legitimate interests pursued by the Data Controller or by a third party and parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the fundamental rights and freedoms or legitimate interests of the data subject.

This would appear to be a permissive condition and contemplates that the processing of data is not just for one's own legitimate interest, but also the legitimate interest of third parties to whom that data is disclosed.

The investigation of allegations of abuse should be deemed to be a most legitimate interest of the relevant Church body in question, and indeed also a legitimate interest of the NBSCCCI.

Church bodies should determine whether it is in their legitimate interest to disclose the information to a third party. A key determinate is, if the disclosure were made, whether or not the processing is necessary to prevent injury or other damage to the health of the data subject or

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another person, or serious loss in respect of, or damage to, property or otherwise to protect the vital interests of the data subject or of another person. It is also a requirement in this context that the consent to the processing cannot be given by or on behalf of the data subject, or the data controller cannot reasonably be expected to obtain such consent, or it has been unreasonably withheld.

- **Data Protection Act 1998 (UK, including Northern Ireland)**

The Data Protection Act recognises that you may have legitimate reasons for processing personal data that the other conditions for processing do not specifically deal with. The 'legitimate interests' condition is intended to permit such processing, provided you meet certain requirements:

- The first requirement is that you need to process the information for the purposes of your legitimate interests, or for those of a third party to whom you disclose it;
- The second requirement, once the first has been established, is that these interests should be balanced against the interests of the individual(s) concerned. The 'legitimate interests' condition will not be met if the processing is unwarranted because of its prejudicial effect on the rights and freedoms, or legitimate interests, of the individual. Your legitimate interests do not need to be in harmony with those of the individual for the condition to be met. However, where there is a serious mismatch between competing interests, the individual's legitimate interests will come first;
- Finally, the processing of information under the legitimate interests condition must be fair and lawful, and must comply with all the data protection principles.

- **Children First Act 2015 (enacted but not yet commenced)**

Section 17 of the Children First Act 2015 (not yet commenced) effectively prevents the disclosure of details of child sexual abuse against a member of that Church authority to a third party, in circumstances where details of that child sexual abuse allegation have been made known to the relevant Church authority by Tusla in the course of carrying out an assessment arising from a mandatory report to that agency, without the explicit permission of Tusla to share that information.

- **Protection of Persons Reporting Abuse Act 1998**

This affords protection from civil liability to persons who report allegations of child abuse in good faith to an 'appropriate person', namely the designated officer of Tusla or a member of An Garda Síochána, thereby exempting them from liability for defamation as a result of such reportage.

- **Safeguarding Board for Northern Ireland (SBNI): Information Sharing Agreement for Safeguarding Children (Draft) (June 2015)**

This agreement establishes clarity on procedures for the lawful, secure and effective exchange of relevant information between all partners, recognising that it is only when relevant information from a number of sources is put together that it becomes clear that a child is at risk, or is suffering significant harm, or is in need of support.

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Guidance

There is statutory guidance on interagency cooperation in both jurisdictions on the island of Ireland. In Northern Ireland this is *Co-operating to Safeguard Children and Young People in Northern Ireland*. In the Republic of Ireland the relevant guidance is *Children First: National Guidance for the Protection and Welfare of Children 2011*.

At Section 8.1 on Interagency Collaboration, the Northern Ireland guidance document states that:

Effective safeguarding requires strong multiagency collaboration, underpinned by effective communication and information sharing. All professionals, volunteers and agencies involved in child safeguarding must have an understanding of each other's roles, duties, powers, responsibilities and values. They must work collaboratively on an interagency basis, and make best use of resources appropriately, in the best interests of children, young people and their families. (Page 71)

This paragraph is followed by guidance on information management and on information sharing. It is further stated that '... the DHSSPS will publish more detailed guidance relating to information sharing for child protection purposes ...'.

The *Children First* guidance in the Republic of Ireland devotes its Chapter 4 to Interagency Cooperation. At Section 4.3: Benefits of Interagency Cooperation and Exchange of Information in Relation to Child Protection and Welfare, the following two paragraphs outline the positives of interagency cooperation and information sharing:

4.3.1 Effective interagency cooperation has a number of benefits, including:

- I. ensuring provision of a comprehensive response to all concerns about children. This includes the pooling of resources and skills at all stages of intervention, from initial enquiry to assessment and case management, including early identification and prevention;
- II. avoiding gaps in the service response, especially in cases where information might otherwise remain concealed or unknown;
- III. providing mutual support for professionals in complex cases.

4.3.2 The effectiveness and usefulness of interagency and interprofessional cooperation and coordination is influenced by certain conditions that should be addressed specifically in training programmes. These conditions include:

- I. dissemination on a regular basis of procedures, guidelines and policies;
- II. clear contractual arrangements between statutory and non-statutory bodies;
- III. an understanding and acceptance by all professionals working with children of their responsibilities and roles in the promotion of child welfare;
- IV. mutual trust in the sharing of information;
- V. agreement on common goals with regard to a child's safety and welfare;
- VI. willingness of professionals to respect the contributions made by each other, irrespective of status and position within agencies and organisations;

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VII. awareness of the potential for interprofessional tensions, defensiveness, prejudices, rivalries and polarity of views, which may, from time to time, prevent the needs of children from taking precedence. (Page 18)

The Catholic Church on the island of Ireland is expected to embrace best practice standards in child safeguarding, including those on information management, information sharing and interagency cooperation as it functions.

High court judgments

The high court in Northern Ireland in case *JR57/2013*, in a judgment delivered by Mr Justice Horner on 11 March 2013, is instructive in this regard and provides very useful consideration around Circular *HSCC3/96*. In this case, the court also approved of sharing of information with a third party on the basis that there was a risk of a child suffering harm.