

B11 EAT

Summary of Criticisms Made by Board in Lynch Complaint – No. 2

Summary

The Board finds that the complaints in respect of Kevin Lynch deceased were not handled fairly, reasonably and appropriately in the following respects.

- (i) The failure of the school authorities to take reasonable care of students at the school, which is reflected in the assumption made by the diocese and its lawyers that it was more likely than not that a jury would find that the diocese and its employees were negligent, and that there was a significant risk of an award of exemplary damages at least in the case of some students. This assumption was tantamount to a verdict of a jury finding that the diocese and its employees had been negligent.
- (ii) The Head Master erroneously and untenably considered that the complaint of student 1 was vexatious, vindictive and entirely without foundation. This resulted in no investigation or other steps being taken for a period of approximately three months. It was unfair to student 1 to so unjustifiably dismiss his complaint, particularly in the light of it having been accepted by the police in the sense that they had charged Lynch who subsequently suicided.
- (iii) Whilst this was unplanned, the public funeral memorial service in which Lynch was eulogised in generous terms, constituted a failure to handle the complaint fairly, because of the hurt and concern that an abused student, hearing or learning of that service, would feel.
- (iv) The failure to make a prompt public statement and an apology to the effect that:
 - (a) there had been sexual abuse by a teacher of a student or students;
 - (b) the school authorities were aghast and angered at this discovery;
 - (c) the teacher had been charged by the police and subsequently suicided;
 - (d) a thorough investigation is being made to ensure the full extent of what has occurred is known;
 - (e) the school apologises to the students who have been the victims of this unsuspected evil conduct, for the hurt they have suffered, and they can be assured the school will give them every support and assistance.' (15.1)

Staff not informed

Case believed 'that the charges against Lynch were baseless. He did not reveal to his staff that Lynch had been charged or that he had suicided. This was wrong. Regardless of his belief that the charges were false, the staff should have adequately informed.' (4.10)

Cover up - Facts not stated

'In the eulogies [at Lynch's funeral] no reference was made to the fact that the deceased had been charged with offences against a student, nor that he had suicided. The eulogists knew both these facts. The eulogies proceeded as if nothing untoward had occurred. Whilst the eulogists may have known only of one charge, and may have been influenced by Mr Case's belief as to its validity, the many students who had been grossly exploited and inexcusably abused by Lynch, and who heard or learnt of the eulogy epitomised by the statement that Lynch was "*quite simply the most complete and skilful school counsellor that I have known in forty years of teaching*" would have been understandably devastated.' (5.2).

'Wittingly or unwittingly there was concealed from the public generally, and students and parents in particular the true facts. Rightly or wrongly this was seen as a cover up.' (5.3).

'it was regrettable "*the service was held and conducted as it was*". (5.5)

The Board does not suggest there was any intent to cover up, but because of the absence of a public statement when the abuse was first discovered, this was the impression created. Had a measured public statement been made when Lynch's infamous conduct was first discovered to the effect,

- (i) There had been sexual abuse by a teacher of a student or students.
- (ii) The school authorities were aghast and angered at this discovery.
- (iii) The teacher had been charged by the police and subsequently suicided.
- (iv) A thorough investigation is being made to ensure the full extent of what has occurred is known.
- (v) The school apologises to the students who have been the victims of this unsuspected evil conduct for the hurt they have suffered, and they can be assured the school will give them every support and assistance.' (11.2).

'to be able to point out that as soon as the abuse was discovered, it was disclosed, remedial steps taken, and apologies made, prevents the accusation of a cover up.' (11.7)

'It is difficult if not impossible to justify the absence of a carefully drawn public statement. Parents of children at the school particularly should be properly informed of matters, which may vitally affect their children. The absence of a prompt public statement, leaves the field free for speculation, rumour, and innuendo, and the damning accusation of "cover up".' (11.10).

Case's belief in Lynch and disbelief of student(s)

Mr Case's 'untenable assertion to Mr Knox of "*his absolute confidence that the allegations were vindictively motivated and baseless*".' (5.5)

'Mr Case's belief was unreasonable and unjustified. It was based upon troubled school history of Student 1 who had left the school at the end of 1993. At the least, Mr Case should have refrained from forming or expressing this opinion, until he knew the facts upon which the charges were based. To assert Lynch's innocence absent even a vestige of an investigation was misguided loyalty.' (6.3).

Failure to investigate abuse between January – April 1997

'Until April 1997 the Headmaster and the School Council proceeded virtually as if nothing had happened. The charging of Lynch and his suicide did not cause as might be expected, a thorough investigation by the School authorities of all relevant facts and circumstances. There seems to have been no review of child protection policy with regard to the safety of students or the reporting of abuse. Nothing was done, and apparently nothing would have been done, had it not been for other students coming forward in April.' (6.1)

'Mr Case has stated,

"Nothing had happened about the Lynch matter between January 1997 and April 1997 because I did not believe he had sexually abused students". (6.2)

'Mr Case, and the School Council did not act fairly, reasonably and appropriately in the handling of Student 1's complaint in the period up to April 1997. The School Council and Mr Case were in charge of the day to day operations of the School. Notwithstanding as Mr Case's solicitors have said that he was constrained by advice from the solicitors for the Diocesan's insurers, to effectively dismiss the significance of Student 1 having complained, the consequent charging of Lynch, and his subsequent suicide was quite unjustified.' (7.1)

'... Ms Palmer ... paints a substantially accurate picture of the plight of Student 2, and thus of other students. Her criticisms appear reasonable and justified.

..."

I am aware that response to these issues within the Church generally is still very much a pioneering process and that your Protocol was only being formulated and adopted during the years this abuse occurred. However there appears to have been no attempt since to apply the protocol to this situation,

....

significant failures have occurred in the way this situation has been responded to. ... My concerns fall in 3 main areas.

The nature of the response

... the significance and serious nature of Mr Lynch's mode of operation has not been fully appreciated.

.... this perpetrator was:

- *A highly skilled operator who used his professional skills and knowledge including hypnosis in a way that exploited his young victims' lack of knowledge, placing them completely in his power.*
- *Conducted the abuse by means of a carefully planned, premeditated process which maximised their exposure to him, for increasing periods of time.*
- *Made use of strategies that could leave his victims vulnerable well into the future, eg.*
 - *An as yet unidentified hypnotic trigger that immobilises the victims;*

- Use of a relaxation tape with a female voice to accompany his sexual activity which had implications for their future marital relationships/sexual orientation;
- Gave them instructions and materials to encourage sexual activity with peers.

From the evidence that is known, it is highly likely that there are as yet other unidentified victims at St Paul's and among its past pupils. Student 2 also has expressed concern that pupils at other schools where Mr Lynch was employed have also been abused. The number is likely to be greater than what is currently known. Research evidence suggests that victims identified early in an investigation are often just the tip of an iceberg. There can be hundreds. My own concern is that if these victims are not identified and assisted through a recovery process, the likelihood that they in turn become perpetrators increases.

The role of Mr Case, Principal in the School Response

Student 2 and his friend first reported their concerns regarding lack of confidentiality and disclosure of personal details (penis size) to Mr Case in mid 1995. His statement gives his own account of this event and the outcome. Student 2 has had concerns about the headmaster's involvement and handling of the situation from this point on because of an understanding gained at school that Mr Case was a close friend of Mr Lynch having been at school together. If this information is correct then his involvement in managing the school process has been a conflict of interest from the beginning.

Of particular concern to Student 2 and his family have been that:

- *The parents were not informed of these initial allegations.*
- *These revelations didn't lead to at least some enquiry as to how Mr Lynch could have knowledge of those personal details, considering his role in the school.*
- *The boys didn't know that it wasn't standard practice to undress for the therapist.*
- *This failure to respond resulted in further sessions of abuse and ultimately denied Student 2 (of) the opportunity to see his perpetrator brought to justice and to receive justice himself.*
- *Since the allegations have been revealed in detail, Student 2 has felt a level of animosity against him and has reported several instances where assurances he was given by the Headmaster have been untrue. There have also been further breaches of confidentiality to Mr Case of information from his counselling with Mrs Thompson.*

.....

3. Apparent failure of the school system

From Student 2's evidence, it is clear that his abuse occurred regularly, often with long absence from classes, for several years without detection. Concerns that were raised in reports by his teachers about frequent absences from class and failing grades, did not appear to lead to any suspicion or internal investigation into his need for ongoing counselling. The appearance is that Mr Lynch had no one to whom he was accountable for his practices and was able to conduct his work with semi-naked boys lying exposed for long periods without fear of interruption. Since my own involvement, I have been concerned about an apparent lack of understanding of the ongoing impact this abuse is likely to have on Student 2 and a lack of sensitivity, that resulted in him and his peers being counselled by the new counsellor in the very room where the abuse had originally occurred. In my discussions with Mrs Thompson and communication from Mr Case I have gained a strong impression that Student 2 is considered to be malingering and a trouble maker. However from my own experience in the field, it is evident that Student 2 is still suffering symptoms of Post Traumatic Stress. He is frequently triggered in the school environment by reminders of the abuser and the lack of an appropriate resolution from a school perspective.”(10.3)

Lateness of apology

A letter conveying ‘a genuine apology ... without admitting that the Diocese had a legal liability arising from Lynch’s conduct ... ought to have been conveyed at the outset, namely, regardless of whether or not the Diocese is liable for the acts of Lynch, those acts are deplored, and the Diocese apologises to the victims for the fact that they have occurred. ... A criticism which might be made is that the apology should have been more strongly expressed. A victim of sexual abuse justly wants an acknowledgement of the abuse, the assurance that he/she was not to blame, and that the School (in this case) deplores which has occurred, and apologises.’ (10.6)

A letter like that sent to past students in June 2000 is ‘a useful example of what could have been written much earlier. For instance, the letter does not admit liability, and it could easily be expanded to include a full and unconditional apology to those students who had been abused.’ (11.5).

‘apologies were long in coming, and were made as part of the settlement of a claim. The Board considers a general and unconditional apology should be made once it is established that students have been sexually abused. The reason why apologies were not forthcoming in the Toowoomba cases, the St Paul’s and other cases was at least in part because of the constraints imposed by the legal advisers, who were concerned that an apology would constitute an admission, and may void relevant insurance policies.’ (13.4)

But there are ways and means competent lawyers can compose an apology which preserves the legal position of Diocese and the School. Additionally, to the moral requirement that victims of abuse should promptly receive an apology and at least the offer to provide counselling, there is a likely practical benefit. Students whose complaints are readily accepted, and apologised for, will generally be better able to cope with the consequences of the abuse, and be less likely to bring proceedings, and if they do, and succeed, damages will probably be less. (13.5).

Inadequate attempt to identify other victims

‘it appears there was legal advice that it was unwise to seek to discover victims. All these problems could have been overcome by a public statement of the sort referred

in para 11.2. Not only does such a statement have the effect of informing victims of their entitlements, but it demonstrates that the school has taken appropriate and reasonable action to deal with the ongoing situation. If the previous conduct of the School Authorities is later claimed in court proceedings as negligent, the making of public statement acknowledging the facts of the abuse having been perpetrated by a teacher, will not prejudice a defence denying negligence. (11.9)

Responsibility of School vs Diocese unclear

Lack of clarity about what the school council and what Diocesan authorities were responsible for respectively (12.1) 'Mr Knox states that the Council was frustrated at being effectively excluded from the process of dealing with the claims, and of not being kept informed by management of what was happening with the Lynch matter. Because of this, and also because of the stated desires of some students to keep matters confidential, it was decided not to make any public statement. Mr Knox continues the frustration.

- *The tenor of the discussions at these meetings was that Council members were anxious to make a public statement just as soon as we felt confident that the benefits of doing so would be greater than any potential downside for students known to have been affected.*
- *The School Council felt enormously frustrated by its exclusion (for all practical purposes) from the process of dealing with the Lynch matters from April 1997 onwards, to the point where a number of members of Council expressed anger that we were in the position where our students had been affected by Lynch's conduct and we were unable to be publicly or privately responsive to our School community. Council's hands seemed to be tied in terms of our ability to respond to the affected students while the Diocese and its insurers dealt with the matter.*
- *The School Council's strong preference after April 1997 was to have been able to make some public statement to the effect that there had been a number of complaints about Lynch's conduct but Council felt unable to do so on the basis of the request for confidentiality by some of the affected students and the Diocese having taken over handling of the matter to the point where the Council was uninformed as to what had been discovered and what was being done about it." (12.2).*

Criticisms corrected or refuted in the report

'media reports that Mr Case spoke at the funeral, and told the gathering that Lynch had died of a heart attack, appear to have been false.' (5.5)