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3rd December 2009

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Dear Inspector Davies

RE: PROCEDURES

I endeavour to set out hereunder a broad description of the procedures I follow in carrying out my role as the Independent Commissioner. I hope this will be helpful in our discussions on Friday next.

The receipt of complaints

Most complaints are received directly from persons who have complained they have been sexually abused.

I arrange to meet with the complainant and conduct an interview so as to ascertain the details of the complaint. It is my invariable practice to inform a complainant that if the conduct of which he or she complains might constitute criminal conduct then he/she has a continuing and unfettered right to report the matter to the police, and I appropriately encourage the exercise of that right.

On only a few occasions has this resulted in the complainant forthwith taking their complaint to the police. To some extent, this is a function of the fact that many of the complaints I have received, are in respect of priests who have been convicted in respect of the conduct complained of, or alternatively they are dead.

A number of complainants are most concerned, first to avoid the stress and strain consequent upon reporting the complaint to the police, and being involved in the Court process, and secondly because of the desire for their complaint to remain confidential and to the extent possible anonymous. If there is one feature which has been consistent throughout the years of my appointment, it is a desire on the part of the complainant to keep things as confidential as possible. Albeit, that a complainant can if he or she wishes publish the name of the priest, the fact that he was guilty of abuse, and that they have received compensation for that abuse, the general consensus is to keep it all private.

I conduct an interview with the complainant which is transcribed. I then forward a transcript of the complaint to the complainant inviting amendments and additions. Typically I also forward a letter which subject to the consent of the complainant I will forward to the respondent. That letter contains the

relevant extracts of the transcript in which the complainant details the alleged offence.

In that letter I invite the respondent to respond to the complaint by writing to me or attending upon me accompanied by such person as they wish.

If the respondent denies the offence, then I invite the complainant and the respondent to participate in a confidential hearing which I conduct much the same as a Magistrate would conduct the hearing of an information. In all the contested hearings I have conducted, I have had Counsel Assisting the Commission namely Jeffery Gleeson SC. Sometimes, the complainant is also represented, but if not Counsel Assisting has the responsibility to adduce all the relevant evidence to the Commission.

In all but one of the contested cases the respondent has been legally represented. I attach herewith a copy of the confidentiality agreement and the undertakings which are signed prior to embarking upon the hearing.

Whether via a hearing, or because of my acceptance of the credibility of the complainant in the interview, I can refer the complainant to Carelink which is an agency set up to provide free counselling and psychological support. Sometimes, before making a decision as to the validity of the complaint, and because of the palpable stress that the complainant is suffering, I refer the complainant to Carelink and support is provided. If it turns out that the complaint is not established, and this has only occurred very rarely, there is still no requirement of the complainant to pay for therapeutic fees.

If the respondent was a priest in active practice, then depending upon the seriousness of the allegation, and the potential for risk to other persons, I recommend to the Archbishop that the respondent be placed on administrative leave (ie. his faculties to act as a priest are withdrawn), pending the completion of the police investigation and the proceedings (if any) emanating therefrom.

Likewise if I have conducted a hearing which establishes that sexual abuse has occurred and whether or not I have made a prior recommendation that the priest be placed on administrative leave, I will make a recommendation to the Archbishop as to what action should be taken in respect of the offending priest. I stress that I make a recommendation only and the decision as to what should be done with the priest is exclusively that of the Archbishop. However, the Archbishop has generally adopted my recommendations, and certainly in the case of a priest whom I am satisfied has engaged in paedophilia, that priest no longer acts as a priest.

I have from time to time been approached by the police requesting information in respect of their investigation of allegations of sexual abuse against a priest. In those circumstances I provide whatever information I have, and advise the police to inform the victim that at the end of the police and Court process, the victim has the opportunity of making application under the Archdiocesan process.

There have been some cases in which after I have conducted a hearing and made findings, and regardless of the confidentiality agreement, the complainant reports the offence to the police. There is of course nothing to prevent a complainant from doing this, albeit that I have undertaken that all information received by me will remain confidential unless compelled by law to do so. By way of illustration of what is my procedure in respect of the police requiring me to produce documents, I attach herewith the Decision of Chief Magistrate Adams in respect of a complaint, which I had heard, but which the complainant then reported to the police.

You will note that through Counsel I took the objection that the documents I had were protected by the privilege of public interest immunity. I so took that objection pursuant to my undertaking of confidentiality.

As appears from the Chief Magistrate's decision, he held that public interest immunity did not apply nor were the documents protected because of undertakings of confidentiality, albeit he suggested some restrictions upon the use of the documents to be produced.

Since that decision, when I have been the subject of a subpoena or summons to produce documents, I have formally taken the objection, having referred to the Decision of Chief Magistrate Adams. Judge Rizkilla and Chief Judge Waldron of the County Court have approved the decision of Adams CM.

I mention also that in at least two instances the police having been informed of complaints, required or issued warrants for the production of documents and which resulted in those documents being produced. However because the complainants in each instance specified that they did not wish to involve themselves in Court proceedings there were no prosecutions.

I am presently in a case in which I have been asked by the investigating policewoman to produce further documents, and I have communicated that request to the solicitors for the respondent. I would envisage that I will be authorised to produce the further documents, without the issue of a warrant subject to a confidentiality term similar to that given in the Judgment of Chief Magistrate Adams.

Finally there is the question of my informing the parties to an enquiry that the complaint has been referred to the police and consequently I will for that reason be taking no further steps in my enquiry until the police investigate and proceedings (if any) emanating therefrom.

If a complainant does not wish to report the matter to the police, despite being advised he/she has a continuing and unfettered right to do so, I then conduct an enquiry as to the validity or otherwise of the complaint. Typically, I transmit the complaint to the respondent inviting a response. If the complaint is denied, I invite the parties to participate in a confidential hearing which I conduct in much the same way as a Magistrate would conduct the hearing of an information.

I stress that the vital condition to the above process is that the complainant does not wish to report the matter to the police. That enables me to enquire into and investigate the complaint to determine its validity or not. In doing so, I am doing what the police would do in investigating the complaint, and what a Court would do in determining whether the offence is made out.

If having embarked upon the above process, I become aware that the police are investigating the matter, I cease my process immediately. This is not an option, but a mandatory requirement. To continue my process ie. *"investigate and make findings on matters the same"* as the police and a Court would do would place me potentially and actually in contempt of Court. Obviously the way to cease my process is to advise the parties, that I am taking no further steps in the process until the completion of the police investigation and the proceedings if any emanating therefrom, because the matter is now in the hands of the police.

I point out that if I merely told the parties that I was taking no further step in the matter, the inevitable inference the experienced solicitors for the complainant and the respondent would draw is that the matter has been referred to the police. I stress again that regardless at what point of time I become aware that the police are seized of the matter I would cease my process by advising the parties I would be taking no further step. Even if I had completed a hearing and heard submissions from the parties but the matter then went to the police I would abstain from making any findings.

The two cases mentioned are the only ones in which a complainant part way through my process has had the matter referred to the police, or the police have on their own motion commenced an investigation.

In the most recent case raising this issue (there being one other), when upon being advised that there was a police investigation I advised both parties that I would be taking no further steps. The problem arose because of the complainant changing his/her mind from deciding not to refer the matter to the police, and then doing so. Senior Constable Macdonald stated her disappointment at my having advised the Solicitors for the parties. By email of 18 November, I explained why I had so advised. I attach my email and her reply. I will be pleased to have your views on the matter.

I trust the above discursive remarks will be of assistance in facilitating our meeting.

Kind regards.

Peter J O'Callaghan
Independent Commissioner