

The relationship between Towards Healing and civil legal action

Civil legal actions in relation to abuse

It is open to any complainant to go to a solicitor and to initiate or threaten legal action in pursuit of a claim for compensation. Many such claims are communicated to Church authorities in this way. The difficulties in pursuing this course of action are immense if the Church authority defends the matter on all available bases as it is entitled to do. The issues are fairly similar all over the country, and may be summarised as follows.

The Limitation problem: If, as is usually the case, the complainant is outside of the period laid down in the Statute of Limitations, (which is usually within three years after turning 18 or otherwise becoming aware of the 'injury') then he or she must first seek the Court's dispensation to commence such proceedings outside the limitation period. This is a significant obstacle.

The correct defendant problem: It can sometimes be a very complex matter to determine which Church authority to sue. If a diocese is not incorporated, then the action needs to be taken against the relevant Bishop personally. This option is not open if the Bishop has died. Another problem is that the assets of a Church authority might all be bound up in trusts, but there is no point in suing the trustees, as they had no connection to the abuse.

The liability problem: The only sure ground on which to bring a claim for negligence is if it can be shown that the church leader knew of the offender's propensity to abuse, failed to take action to address it, and the plaintiff was abused *after* the church leader had an opportunity to prevent the harm and failed to do so. The issue of vicarious liability for the actions of staff is an issue before the High Court at the moment in relation to schools, but at present, there is not general vicarious liability for the actions of abusive priests and religious.

The evidential problem: The plaintiff must prove both the fact of abuse and that the claimed harm was a consequence of the abuse. Proving abuse is not at all easy without corroboration, and the causal connection between proven incidents of abuse and problems in adult life may be far from easy to establish.

Resolving disputes without litigation

For these reasons, and also other factors involved in the difficulties of pursuing litigation, it is in the interests both of the Church authority and most complainants to try to resolve grievances, address needs and respond to the pain of abuse without being locked in an adversarial process of litigation. That is what *Towards Healing* is all about. It is a pastoral response as an alternative to the more conflictual approach and compensation focus of litigation. If the Church authority reacts defensively to a complaint of abuse and sees the complainant as an adversary rather than as a hurt person in need of help, then a downward spiral of the relationship is inevitable. The Church does not want to be in an adversarial relationship with genuine victims of abuse for whom Christ died. It wants to offer a reconciliatory and compassionate response while not admitting legal liability.

Responding to a threat of litigation

How then should the Church authority respond to a letter, perhaps from a lawyer, perhaps from the complainant directly, seeking compensation for past abuse? The response ought to be a polite but simple one, in which the Church authority offers the processes of *Towards Healing* as an alternative to litigation. The process could be briefly explained in a standard letter, and the complainant invited to pursue the matter under *Towards Healing*. The letter would need to explain that if the complainant wishes to pursue civil action, then he is of course entitled to do so, but the Church authority will also be entitled to invoke the relevant legal defences to such a claim.

Of course, if the complainant does decline to pursue the *Towards Healing* process, and does commence or threaten to commence, civil legal proceedings, then the lawyers for the Church authority will need to make a risk assessment of the chances of losing the civil action if it does proceed to trial, as they would in any case involving actual or threatened litigation. Offers of settlement may well be made on risk assessment grounds, but otherwise, all complaints whether specifically naming compensation or not, should be referred to the *Towards Healing* process unless the complainant indicates that the offer of such a process is being declined and that he or she wishes to pursue the action as a legal claim.

Prof. Patrick Parkinson