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IICSA Response
Tackling Child Sexual Abuse Unit
Home Office
2 Marsham Street
London
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Sent by email only

Dear Consultation Team,

The Catholic Union of Great Britain welcomes the opportunity to respond to this Home Office consultation on mandatory reporting of child sexual abuse.

The Catholic Union is a membership organisation that seeks to represent the views and interests of the lay Catholic community in Great Britain and to advance the common good. We are a non-party political NGO, founded in 1870, and we have consultative status with the Catholic Bishops' Conference of England and Wales. We regularly make submissions to Government and to Parliament and also have an extensive programme of public educational activities.

Preventing child sexual abuse is something that the Catholic Union, and the wider Catholic Church, takes extremely seriously. For the purposes of this consultation, we will limit our comments to matters concerning Catholic clergy and the Sacrament of Reconciliation (also known as Confession). I hope that you will accept this letter as our written evidence to this consultation.

Background and the Seal of Confession

The Independent Inquiry into Child Sexual Abuse (IICSA) highlighted a number of safeguarding concerns with institutions in this country, including the Catholic Church in England and Wales. As stated by the Catholic Bishops' Conference of England and Wales, the Catholic Church recognises its past failings in the area of safeguarding and apologises to those who have suffered abuse within the Church.

The failure of the Church to protect children within our own community, and wider society, is a source of deep sadness and regret to Catholics in this country. This is why we want to engage in this consultation to make sure we have the most effective safeguarding legislation in place going forwards.

We note that Recommendation 13 from the final IICSA report recommends that the Government make it a legal requirement for certain people to report child sexual abuse. It is not clear from the wording of that Recommendation whether Catholic priests participating in the sacrament of confession would be within its scope. However, we make this submission on the basis that such priests may be within its scope or that the Government might choose to legislate with a wider scope.

While we support the principle that those who are informed of, witness, or observe recognised indicators of, child sexual abuse should report this, we have a particular concern about the impact of introducing a mandatory reporting requirement if that requirement were to extend to a Catholic priest hearing a confession and so being bound by the "seal of confession" in the Catholic tradition.

The Catholic Union of Great Britain: The Voice of Catholics in Public Life

President: Sir Edward Leigh, MP

Vice-Presidents: Mike Kane MP, Baroness Hollins, Baroness Hooper, Professor Ruth Kelly, Professor John Haldane, Dr Terence Morris, Mr John Deighan KSG, Dr Anthony Cole KCSG, Mr John Barrie KCSG, Mr Michael Henderson KSG KCHS

The Sacrament of Reconciliation is one of the seven sacraments of the Church and is a core aspect of the Catholic faith. The particular requirements of this sacrament are part of the teaching of the Church, and are specified under Canon Law. Fundamental to this is the seal of confession which requires that confessions are heard in private and are absolutely confidential. A priest who hears confessions “is bound under very severe penalties to keep absolute secrecy regarding the sins that his penitents have confessed to him. He can make no use of knowledge that confession gives him about penitents’ lives. This secret, which admits of no exceptions, is called the “sacramental seal” because what the penitent has made known to the priest is “sealed” by the sacrament” (Catechism of the Catholic Church, para.1467). A priest who directly violates the sacramental seal incurs automatic excommunication (Code of Canon Law, canon 1388).

A mandatory reporting obligation which required breaking the seal of confession would undermine the Sacrament of Reconciliation and present legal difficulties for Catholic clergy as well as having unintended consequences around preventing and reporting child sexual abuse. The seal of confession is distinct and well defined in Catholic tradition and practice and does not extend to any other private conversation.

This is clearly a sensitive and complicated area, which we believe would benefit from more detailed consideration before any new safeguarding legislation is introduced which might impinge on these matters. We urge the Government to allow further study of the points we raise below, if necessary through the creation of a Working Group.

Points for consideration

Evidence base

It is vital that any new safeguarding legislation is evidence based. The section of the IICSA report on the Roman Catholic Church did not cover the seal of confession in any detail. In the 154-page report, comments relating to the “The seal of confession” amounted to less than three pages.ⁱ

The report referenced a study of interviews with “a small sample” of perpetrators from the Roman Catholic Church in Ireland, as well as the Australian Royal Commission which reported “some evidence” of perpetrators confessing during confession, but there was very little evidence presented from England and Wales.ⁱⁱ Indeed, the witness evidence provided by senior Catholic clergy to IICSA found that none of them had personally experienced a perpetrator confessing to acts of child sexual abuse during confession.ⁱⁱⁱ The Inquiry concluded that confession was “*likely to be one of the less common ways in which the Church becomes aware of abuse*”.

Arguments against mandatory reporting

We note the suggestion that the sacrament of confession might offer a safe place for survivors of abuse to disclose what has happened to them as the confessor could often be a survivor’s only person of trust. This is in part because survivors often report feelings of shame about their abuse. In those circumstances the confessor should encourage them to pass that information on to the appropriate authorities. A mandatory reporting obligation may inhibit survivors making disclosures in this way.

We also note that the sacrament of confession can be the first step in a perpetrator who is worried about their own criminal behaviour being able to seek help to acknowledge wrongdoing and ultimately accept responsibility by reporting their own actions or allowing someone else to report them. The penitent is unlikely to go to a priest in confession if the priest is under an obligation to report and if the penitent is afraid that the priest might know their identity. The risk with mandatory reporting in this context is that it would close off this opportunity of being able to prevent further abuse.

Within the sacrament of confession a priest has the freedom to urge an abuser to speak to him or someone else outside that forum so as to be able to bring it to the relevant authorities within both the criminal justice system and in clinical therapeutic services. Outside of actual confession, priests are not bound by confidentiality and may be able to find ways to get a perpetrator to share this information

outside the context of confession so that they would then be in a position to act on it without breaking the seal of confession.

This is an area where there need to be clear guidelines, adequate training and active supervision for priests, so that they know what to do in cases when someone confesses to an act of abuse under the seal of confession. In certain circumstances when a serious crime is confessed by a penitent, a priest may withhold granting absolution to a perpetrator pending evidence of any potential harm being removed and evidence of reparation. This would include involving civil authorities. These considerations need to be properly assessed before pushing ahead with any new safeguarding legislation

Best practice

As well as the evidence base, it is vital that any new safeguarding legislation takes account of existing best practice and procedures in the Church. The IICSA report on the Roman Catholic Church was published in November 2020, and further progress has been made since then on safeguarding measures. It is not clear that the Government has taken this into account in this consultation.

In particular, we are concerned that this consultation does not take account of the work of the Catholic Safeguarding Standards Agency (CSSA), which was set up by the Catholic Bishops' Conference of England and Wales in response to the recommendations of the IICSA report on the Roman Catholic Church.

CSSA builds on many other initiatives from the Catholic Bishops' Conference of England and Wales, as well as individual parishes, communities, and groups to improve safeguarding. It is vital that the views of lay Catholics are listened to as part of moves to introduce any new safeguarding legislation to ensure this does not conflict with existing best practice.

Human Rights law: Proportionality assessment

Depending on how any new safeguarding legislation is drafted, it risks undermining the sacrament of confession and making it a possible criminal offence for Catholic clergy to act in accordance with their religious beliefs and adherence to the requirements of Canon Law. Such legislation would arguably contravene Article 9 of the European Convention on Human Rights as incorporated in the Human Rights Act 1988.

Freedom of thought, religion and conscience as enshrined in Article 9 of the Convention represents one of the foundations of a "democratic society" within the meaning of the Convention. Mandatory reporting which covered a priest bound by the seal of confession would constitute an interference with Article 9 which could be justified only in accordance with the restrictions permitted in Article 9(2). In order to be justified, any restriction must be subject to a rigorous proportionality assessment which considers the four questions identified by Lord Reed JSC at paragraph 74 Bank Mellat v HM Treasury (No 2) [2014] AC 700: (i) is the objective of the measure sufficiently important to justify the limitation of a protected right; (ii) is the measure rationally connected to the objective, (iii) could a less intrusive measure have been used without unacceptably compromising the achievement of the objective, and (iv) whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter.

The Government should consider carefully the risk that the blunt imposition of a mandatory reporting obligation applying to the sacrament of confession is disproportionate to the objective of preventing abuse, given the likelihood that persons will not admit to abuse in that context. The effect of introducing a mandatory reporting requirement is likely to be the opposite of that which its proponents might wish. Its only practical effects will be likely to be to close off an environment which some victims might feel is the only place where they can talk about their experiences and some perpetrators *might* be willing to seek help to address their behaviours and, if assisted properly, prevent further crimes.

A less intrusive measure may be the promotion of training, supervision and good practice so that a confessor can encourage a person who confesses to abuse to recognise the seriousness of the

wrong and the harm that they have done to their victim and to report themselves, or allow the priest outside the confessional to report them, to the relevant authorities.

We hope that in introducing any new safeguarding legislation, the Government will seek to work with the Catholic Church to find the best possible outcome. The Catholic Union stands ready to help in any way we can.

Thank you for considering our submission.

A handwritten signature in black ink, appearing to read 'N. Parker', with a large, sweeping flourish underneath.

Nigel Parker, Director

For and on behalf of the Catholic Union of Great Britain

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ⁱ <https://www.iicsa.org.uk/reports-recommendations/publications/investigation/roman-catholic-church.html> | 1.4: The seal of the confessional, pp.89-92.

ⁱⁱ Ibid, p. 90

ⁱⁱⁱ Ibid, p. 90