

Commissioning Independent Investigations and Independent Specialist Assessments

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1 Introduction

This policy and procedure applies where it has been decided that is necessary to appoint an independent¹ person to make enquiries, undertake an investigation or undertake a specialist assessment.

For the purpose of this policy and procedure:

‘Independent investigation’ refers to the process of making enquiries into a matter, usually after statutory investigation has taken place, by professionals who are independent of the Church and who are suitably qualified and experienced in this work where there are concerns about a person’s behaviour or risk to children or vulnerable adults.

‘independent specialist assessment’ refers to the process carried out by expert professionals who are independent of the Church and who are suitably qualified and experienced to undertake

¹ In this context independent means autonomous and outside of the authority of the person or body commissioning the investigation or assessment.

assessments which might include, but are not limited to, 'risk assessments' or 'forensic psychological assessments' in relation to sexual behaviour or where relevant, other specific behaviours.

This policy and procedure should be read in conjunction with the National Safeguarding Policies and Procedures in relation to managing allegations.

2 Policy Statement

The Church embraces its role in supporting children to achieve their full potential in an environment where they are protected from exploitation, abuse and maltreatment.

In relation to adults who may be at risk of abuse or maltreatment, the Church is fully committed to:

- Actively promoting the empowerment and well-being of adults through the church;
- Recognising that everyone has the right to live their life free from violence, fear and abuse;
- Recognising that adults have the right to be protected from harm and exploitation;

Scope of this policy and procedure

Where allegations have been made and there is an acquittal, a decision not to prosecute or no further action from statutory agencies and there remains a concern, or following a conviction, or in any context or set of circumstances where there is uncertainty about the level of risk posed to children or adults at risk, the Church will consider what actions need to be taken to protect children and adults at risk from potential harm. This might include making further enquiries or undertaking an investigation or assessment by a suitable professional who is independent of the Church.

Application of the Policy and Procedure

This policy and procedure is applicable to members of the Clergy (bishops, priests and deacons) and Religious (members of Institutes of Consecrated Life and Societies of Apostolic Life) for whom the Church has a specific responsibility in Canon Law.

The Church also has a responsibility towards its employees, which is regulated according to local policies, procedures and employment legislation. Where it is determined by the employer that it is appropriate to commission an independent assessment or independent investigation, this policy and procedure can be applied. It is the responsibility of the employer to refer relevant cases to the DBS and the decision to do so should be taken in consultation with the human resources department where this exists.

The Church has a responsibility for people who volunteer for a variety of tasks within the Church. The Church adopts an approach similar to employment with regard to recruiting and managing volunteers, however this relationship is necessarily distinct and is not one of employer and employee.

When a person who volunteers within the Church is employed elsewhere and their work brings them into contact with children or adults at risk, it is the responsibility of their employer to decide what action should be taken in respect of their employment. Where concerns arise, the Church will decide whether to inform an employer on the advice of the statutory agencies to which the matter has been referred for investigation. A decision must also be made about continuing in the voluntary role.

Canonical considerations

The Bishop or the Major Superior govern the diocese or lead their institute in accordance with Canon Law and the statutes of the relevant institute (cc381, 620, 630). They are bound to foster discipline, promote unity and the common good (c223) whilst protecting the right to a good reputation and privacy (c220).

Although there is no specific requirement in Canon Law for anyone to undergo professional risk assessment, the Bishop or Major Superior are supported by collaborators from among the clergy, religious and lay people. The Bishop or Major Superior in protecting the common good must consider the suitability of any persons engaged in the apostolate either for a specific role or for continuing in a specific role including ecclesiastical office and the way in which any task is undertaken. The Bishop or Major Superior may avail themselves of professional assessments in making such a determination.

Where an individual declines to undergo professional risk assessment the Safeguarding Coordinator will present all the available information to the Safeguarding Commission who will then make recommendations to the Bishop or Major Superior. The Bishop or Major Superior will then make a determination regarding the individual's suitability prioritising the welfare of children and adults at risk as well as the wider community.

The commissioning procedure

The need to commission an independent investigation or independent specialist assessment will be identified by the relevant Safeguarding Commission and recommended to the appropriate Bishop or Congregation Leader.

Recommendations by the Commission should be informed by the views of professionals involved in the inter-agency investigation process e.g., the police investigating officer and local authority designated officer. The existence of other investigative/assessment reports and their conclusions and recommendations should also be used to inform the Commission in making any recommendations about commissioning further investigations or assessments.

In making a recommendation, the Commission will have established the scope of the investigation/assessment and the specific questions to be addressed.

Wherever there remains uncertainty as to the level of risk posed, an independent specialist assessment should be commissioned.

It is always helpful at an early stage in the process to liaise with the diocesan or congregation insurers so that they are informed and can consider and advise upon any potential insurance implications².

The following steps are to be followed when it has been agreed by the Bishop or Congregation Leader that an independent investigation or specialist assessment is to be commissioned.

Table 1 below summarises the key steps in the process. More detail relating to each step is contained in the narrative beneath the table.

Table 1 – The commissioning procedure

| Step | Procedure | Responsibility |
|--|---|--|
| 1 – Sourcing investigators or assessors | Consult with CSAS to obtain list of potential investigators and assessors. | Safeguarding Coordinator or Commission Chair |
| 2 – Preliminary meeting/discussion with investigator/assessor | Safeguarding Coordinator discusses scope of the work to be commissioned. | Safeguarding Coordinator |
| 2a – For assessments, meeting, discussions or correspondence involving the subject of the assessment | Meeting, discussions or correspondence between the commissioner (delegated to Safeguarding Coordinator), assessor and subject of the assessment to clarify and agree scope and arrangements | Safeguarding Coordinator |
| 3 – Letter of instruction and Agreement | Letter of instruction from the Bishop/Congregation Leader to the selected investigator/assessor, including the 'Standard contractual agreement for independent investigations and independent specialist assessments commissioned by the Catholic Church in England & Wales' (the Agreement). | Bishop/Congregation Leader or their delegate |

² See information sheet on liaising with insurers when commissioning independent investigations and assessments

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| 4 – Signed Agreement in place before work commences | The Agreement must be signed by the investigator/assessor and the Bishop/Congregation Leader or their delegate. | Facilitated by the Safeguarding Coordinator. Investigator/assessor Bishop/Congregation Leader |
| 5 – For assessments – Written Agreement between assessor and subject of the assessment | There must be a written agreement between the investigator/assessor and the subject which sets out expectations. | Assessor and subject of assessment |

Step 1 – sourcing investigators or assessors

Where it has been agreed that it is necessary to commission an independent person to undertake an investigation or a specialist assessment, CSAS should be consulted and will provide a list of independent persons and organisations which will include biographical details and set out, where these have been provided, the person's/organisation's relevant knowledge, experience and skills. The Diocese or Religious Congregation makes the final decision about who to appoint and is responsible for commissioning and overseeing the work. The same investigator or assessor should not be used repeatedly within a particular diocese or congregation to avoid any potential for the development of impartiality over time.

If it is not possible to commission a person or an organisation from the list held by CSAS, it is the responsibility of the Safeguarding Commission to ensure that the individual or organisation that is appointed provides information about relevant knowledge, experience and skills. Where there are doubts as to the ability of an individual or organisation to meet these requirements CSAS can be consulted before proceeding.

Where an investigator or assessor is appointed and they would like to be considered for inclusion on the list of investigators/assessors held by CSAS, their contact details should be sent to CSAS.

Step 2 – Preliminary meeting or discussion with the selected investigator/assessor

A preliminary meeting or telephone discussion should take place between the Safeguarding Coordinator and the selected investigator/assessor to discuss the scope of the work being commissioned. The Safeguarding Coordinator should maintain confidentiality in terms of the names of the person concerned at this stage but set out the circumstances leading to the need for investigation/assessment, the specific questions that need to be addressed, the range of individuals that will need to be seen or spoken with, the timescale of the work and any other relevant matters.

Expectations to be addressed in the discussion/meeting and finalised in the Agreement include:

- Any requests by the investigator or assessor for legal advice to inform enquiries, investigation or assessment must be made via the Safeguarding Coordinator who will refer the matter to the Safeguarding Commission and/or the Bishop/Congregation Leader.
- All the relevant files held within the Diocese or Religious Congregation will be available for scrutiny. Where the Safeguarding Coordinator is unsure about any aspect of information-sharing from a data protection perspective, legal advice must be sought.
- The Safeguarding Coordinator will approach the statutory agencies with a view to disclosure of all relevant documents in their possession, where these have not already contributed to the body of information already known about a case.
- Survivors/victims should not be routinely re-interviewed but should be given the opportunity to be interviewed as part of the investigatory process. The independent person should only interview the accused, victim, complainant and witnesses to gather information that has not already been gathered. If it is necessary to undertake an investigation involving interviewing the accused person, the victim, complainant and witnesses, insurers should be consulted³ and the independent person must be advised that all information from these sources contained within their report must be shared with the individuals concerned before the report is finalised. Any representations from the individuals concerned must be submitted in writing to the Safeguarding Commission along with the report.
- The independent person must always issue anyone providing information for the purposes of their enquiries with an appropriate Privacy Notice to address matters of data protection before obtaining any information from them.
- Where information cannot be gathered to inform further enquiries, an investigation or an assessment, this must be noted in the report along with an analysis of the implications of this information being absent.

Once it is established that the investigator/assessor can fulfil what is required, the Safeguarding Coordinator should establish whether there is any conflict of interest e.g. the person concerned is known to the assessor. If any conflict is found and is considered to undermine the independence and suitability of the investigator/assessor the process is repeated to find another suitable investigator/assessor. Once it is established that there is no conflict of interest a letter of instruction and a draft Agreement should be sent by the Bishop/Congregation Leader or their delegate.

Step 2a – Formal agreement with assessor/investigator, subject and other relevant parties

For specialist assessments, the scope and purpose should be finalised in a meeting, via discussions or correspondence between the commissioner, assessor and subject of the assessment. During this process, ownership of records (including audio recordings) and reports, confidentiality, information sharing and terms of engagement should be agreed. A copy of the letter of instruction should be

³ See information sheet on liaising with insurers when commissioning independent investigations and assessments

provided to the subject of the assessment along with details of the scope of the assessment as set out in the Agreement.

For investigations, if a meeting is set up with the person concerned it should be to explain to the process but not be used as an opportunity for the person concerned to influence the terms or the scope of the investigation.

If the person concerned refuses to participate in the investigative process or to undergo specialist assessment, the matter should be referred to the Commission via the Coordinator. The Commission will make recommendations to the Bishop/Congregation leader as to next steps.

See section 5 in respect of canonical considerations in relation to assessment.

Step 3 – Sending the letter of instruction and the ‘Agreement’ (Form IR2)

Once an investigator or assessor has been identified by the diocese or congregation, a letter of instruction from the Bishop or Congregation Leader is to be made including a copy of the ‘Standard contractual agreement for independent investigations and independent specialist assessments commissioned by the Catholic Church in England & Wales’ (the Agreement).

The letter of instruction should refer the investigator/assessor to the Agreement which should include a detailed brief for the independent person explaining the circumstances leading to the need for investigation/assessment, the nature of the enquiry to be undertaken, the scope of the work including key people to see and documents to be accessed and the specific questions to be addressed. The investigator should be advised that they are not being asked to assess the credibility of an allegation; rather to consider risk based on the available information. The Agreement also specifies the timescale, cost and processes for dispute resolution.

If the ‘Standard contractual agreement for independent investigations and independent specialist assessments commissioned by the Catholic Church in England & Wales’ (the Agreement) is not used, the letter of instruction must specify the circumstances leading to the need for investigation/assessment, the nature of the enquiry to be undertaken, the scope of the work including key people to see and documents to be accessed and the specific questions to be addressed. It is recommended that the Agreement also addresses the headings used in the standard Agreement.

Step 4 – Signed Agreement

The Agreement must be signed by the investigator/assessor and the Bishop/Congregation Leader or their delegate before the work commences.

The Agreement should set out arrangements for meeting to review progress or resolve issues that arise during the course of the investigation/assessment.

Step 5 - The Agreement between the service provider and the subject of the assessment

There must be a written agreement between the investigator/assessor and the subject which sets out:

- The reason for and scope of the assessment;
- The methods that will be used by the assessor e.g. interviews, psychometric tests, polygraph, video recording;
- When and how a support person can be included in meetings;
- How specific needs will be addressed e.g. interpretation, translation;
- The expectation that the person being interviewed will engage actively and honestly in sharing information;
- The expectation that the interviewer will explore and challenge beliefs and attitudes as part of the process;
- That the interviewer will take account of and report on all behaviours and attitudes demonstrated throughout the process;
- Any child or adult protection monitoring arrangements in place;
- Actions that will be taken if abuse is disclosed during the course of assessment;
- Practical arrangements for sessions;
- Access to recording and case file and the assessor's Data Protection policy;
- Confidentiality and sharing the report;
- Review of the work;
- Complaints procedure;
- Actions the assessor will take if the subject does not complete the assessment process.

Before the report is finalised, the investigator/assessor will appraise the subject of its contents in a face to face meeting and note any factual inaccuracies or objections. The subject will also receive a copy of the final report.

Conflict resolution

The process described in the standard contractual agreement should be used to deal with any dissatisfaction with the quality of the work undertaken by the independent investigator/assessor. In the first instance, concerns should be raised in writing with the investigator/assessor.

CSAS should be advised when there are concerns about the practices or quality of work produced by an independent investigator/assessor for the purpose of maintenance of the central register of investigators/assessors.

The Director of CSAS should be contacted by the commissioner of the investigation or assessment if a second opinion is required on the work produced by the investigator/assessor.

Appendix 1

Assessors

Independent assessors and organisations conducting assessments must fulfil the following criteria:

- Be trained in and experienced in the assessment and treatment of sex offenders/individuals against whom allegations of sexual abuse have been made; who have been convicted of abuse or the specific type of assessment required
- Have clear arrangements for professional supervision of staff in place
- Be able to demonstrate effective links to statutory safeguarding systems
- Have experience in working co-operatively with statutory safeguarding agencies in England & Wales
- Demonstrate commitment to continuous professional development & appropriate professional networks, for example by Membership of NOTA (the National Organisation for the Treatment of Abusers)
- Be able to identify and address potential conflicts of interest.
- Be able to demonstrate victim awareness
- Have adequate professional indemnity insurance
- Demonstrate competence in or have experience in the presentation of evidence to Courts
- Have provided such services to more than one commissioning organisation
- Be able to provide references from professional sources

Appendix 2

Independent Investigators

Independent investigators must fulfil the following criteria:

- A professional background which includes training and experience in investigative work and/or
- A professional background which includes training and experience in conducting the type of assessment required e.g. assessment of risk in people against whom allegations of abuse are made and those convicted of relevant offences; forensic psychological assessment
- Contemporary knowledge and experience of statutory safeguarding systems in England and Wales
- Knowledge and understanding of the key National Safeguarding Policies and Procedures in the Catholic Church in England and Wales including how the Church relates to victims and survivors of abuse
- Ability to practice in a way that respects the dignity of the subject and a concern for Christian morals.
- Arrangements for and evidence of regular professional supervision, mentoring or consultation in relation to their own and their employees or sub-contractors practice
- A biography of having undertaken this type of work for various service commissioners
- Demonstrable commitment to continuous professional development and membership of or access to relevant professional networks, for example by Membership of NOTA (the National Organisation for the Treatment of Abusers);
- Agreement to work under the terms of the 'Standard contractual agreement for independent investigations and independent assessments commissioned by the catholic church in England & Wales' (Form IR2)
- Professional indemnity insurance in accordance with the 'Standard contractual agreement for independent investigations and independent assessments commissioned by the catholic church in England & Wales' (Form IR2)
- Experience in producing evidence based reports to inform decision making