



**THE FORUM ON PATRONAGE AND PLURALISM IN THE PRIMARY
SECTOR**

Submission to the Department of Education and Skills

By

One in Four

June 7th, 2011

Submission by One in Four to the Forum on Patronage and Pluralism in the Primary Sector

I. Introduction

One in Four is a charity which provides advocacy support and counselling services to men and women who have experienced sexual abuse in childhood. We support an average of 1,100 clients per annum.

In any given year over 30% of the people who contact One in Four for assistance have been sexually abused within the Catholic Church, either by priests and religious or by those employed by dioceses or congregations. In 2010, 73 such cases concerned people who had been sexually abused in day schools. Unlike those abused by diocesan priests or within residential institutions, many of these clients had neither criminal nor civil remedy available to them.

The publication of the Ferns Report (2005), the Ryan Report (2009) and the Murphy Report (2009) highlighted the extent and prevalence of the sexual abuse of children within Catholic dioceses and in residential institutions managed by Catholic religious congregations. While focusing on the Catholic Church, each of these Reports also highlighted the failures of the Irish state to adequately supervise the safety of children and to investigate allegations of abuse. The Ryan Report in particular was critical of the role played by the Department of Education in failing to adequately monitor conditions in the residential institutions, of failing to enforce rules and regulations and of the deference shown by Department officials towards the Catholic Church.¹

The publication of the Reports in 2009 led to a public outcry. The Government of the day stated that *“Government can and must ensure that all institutions are subject to the laws of the State. Central to those laws must be the protection of children”*². By implication, the State must be responsible for the safety of children in all organisations, including primary schools.

2. Patronage in Irish Primary Schools: The Responsibilities of the Department of Education and Skills

The situation of Irish primary education is unusual in the European context. For historical reasons the majority of Irish primary schools are denominational, with 89.6% of schools being under the patronage of the Catholic Church. Teachers and other school staff are employed directly by the Board of Management of each school.

¹ Commission to Inquire into Child Abuse 2009

² Government Press statement November 26 2011

On the other hand, as enunciated in the Education Act, 1998, the Minister for Education, and by implication the Department, is directly responsible for the determination of national education policy and for the planning and co-ordination of education in recognised schools and centres of education. Moreover, pursuant to Section 7 (2)(B) of the Act, the Minister is directly responsible for the quality, efficiency and effectiveness of the education system provided by the State.

In practical terms, the Minister executes his responsibility by enforcing standards required for the training and registration of teachers and the sanctioning of their appointments; through the provision of inspection of their work; by establishing a national curriculum; by providing funds for the operation of schools and by paying the salaries of teachers employed in primary schools and their pensions upon retirement. However, despite this high level of engagement by the Department with the primary school sector, In Irish law the employer of teachers remains the Patron and the Board of Management of the individual school.

The Department of Education and Skills has also assumed responsibility for the protection of children in schools from abuse by putting in place the Child Protection Guidelines and Procedures for Primary Schools³. The Guidelines lay down the structures to be put in place in each primary school and the procedures to be followed by a Board of Management in the event of an allegation or suspicion of abuse emerging. Furthermore the Child Protection Procedures for Persons Employed by the Department of Education and Science⁴ requests that all allegations of abuse in primary schools be notified to the Department.

The relationship between the Minister of Education and Skills and his Department with the primary school sector is anomalous to say the least.

3. The Louise O’Keefe Case: Implications for Patronage

In 2008 the Supreme Court made a ruling that clarified the question of the employment status of teachers in Irish primary schools and the question of liability in the case of misconduct by a teacher.

Louise O’Keefe, along with 21 other girls, had been sexually abused by the principal of her primary school, Leo Hickey. He was later convicted of these offences. In a civil action, O’Keefe sued Hickey, the Department of Education and the Attorney General claiming the Department had failed in its responsibility to prevent the sexual abuse and

³ Dept of Education and Science Circular 0061/2006

⁴ Dept. of Education and Science Circular 0046/2007

that vicarious liability existed on the part of the Department of Education for the actions of a school principal. In 2006 the High Court ruled⁵ against O’Keefe. In an appeal to the Supreme Court⁶ the High Court Ruling was upheld and it was confirmed that responsibility for the actions of a teacher rested with the Board of Management and Patron of the primary school. However, in a dissenting judgement Mr. Justice Geoghegan found that because of “*the unique triangular relationship...in the case of primary schools which are Church managed but subject to State regulations...the exemption from vicarious liability by the State is not just*”⁷.

Following the Supreme Court judgement The Irish Primary Principals’ Network (IPPN) issued a statement acknowledging that “*the key issue is...that it is each of the 3,300 Boards of Management of primary schools, and not the State, that carries responsibility for the conduct of school employees. This is in spite of the fact that it is the State that pays the salaries and regulates all aspects of the work of teachers and other school employees*”⁸ In the same statement the IPPN went on to say that Boards of Management lacked training in child protection procedures and furthermore were often unaware of their responsibilities in this regard and remarked that “*This situation is unsustainable in the long term*”⁹. It will be very unfortunate for the safety of Irish school children if the warning implicit in the IPPN statement is disregarded.

Louise O’Keefe has since appealed the decision to the European Court of Human Rights (ECHR). The case was communicated to the Irish Government by the ECHR in May 2011 and may progress to a full hearing. The European Court of Human Rights has held on a number of occasions that a State cannot avoid liability through the delegation of its responsibilities to private bodies of individuals.

4. Recommendations

The decision by the Minister for Education and Skills, Ruarai Quinn, T.D, to explore the question of patronage in Irish primary schools presents an ideal opportunity to examine the employment relationship between the Department of Education and Skills and primary school staff, and by so doing to enhance the effectiveness of child protection measures in all primary schools, regardless of their patronage.

- I. One in Four submits that it is in the best interests of children that the Department of Education and Skills should become the legal employer of teachers and other

⁵ 2006 IEHC 393

⁶ 2008 IESC 72

⁷ 2008 IESC 72

⁸ IPPN May 6th 2009

⁹ Ibid

staff, and that the 1998 Education Act should be amended to create this relationship. This could only strengthen the supervisory role of the Department in ensuring that child protection policy and procedures are fully implemented in each school.

Fears that such a development may create a liability for the State in respect of historic cases of sexual abuse perpetrated by primary school employees are unfounded in that the O'Keefe judgement (see above) has effectively closed this avenue to other victims.

2. One in Four further submits that that such a change to the 1998 Education Act is necessary in order to align Irish law with the state's obligations under the European Convention on Human Rights and Fundamental Freedoms as incorporated by the European Human Rights Act, 2003. Specifically, reference is made to Section 3(1) of this Act, which obligates the State to perform its functions in a manner compatible with the Convention. It is likely that the current delegation of responsibility regarding child protection among other matters to a school Patron and Board of Management stands in patent opposition to the State's human rights obligations under the European convention. We suggest that it is far better to address this matter voluntarily before we are forced as a State to do so by an external body such as the European Court of Human Rights.

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