

# **STANDARD 4**

## **Care and Management of the Respondent**

### **MERCY GUIDANCE**

**These pieces of guidance are to assist, if necessary,  
with the implementation of Standard 4**

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# Roles of Safeguarding Personnel in Relation to this Standard

## Sisters of Mercy

The role of the Provincial Leader across all the seven standards is outlined in Appendix A. In relation to Standard 4, the Provincial Leader is responsible for:

- Ensuring that a designated liaison person (DLP) is appointed to manage the case, and that an advisor is appointed following consultation with the respondent to support them;
- All liaisons with the Holy See and its congregations in terms of precepts, preliminary enquiries, vota<sup>1</sup> and decrees. As Mercy Sisters liaison with the Holy See is through the Congregational Leader;
- Ensuring that practice and policy on care of the respondent is compliant with statutory and canonical law. This includes:
  - I. Ensuring that appropriate assistance is provided to those who have been accused of child abuse and, as required, to their families;
  - II. Ensuring that counselling, support and information is offered to an adult who has disclosed that they have abused a child.

## Designated Liaison Person

The role of the DLP across all the seven standards is outlined in Appendix A. In relation to Standard 4, the DLP is responsible for:

- Ensuring that all Child Safeguarding concerns are notified to the statutory authorities and to the National Board for Safeguarding Children in the Catholic Church in Ireland (NBSCCCI);
- Ensuring that all appropriate internal and external inquiries are instigated;
- Ensuring that relevant information regarding contact with the respondent is recorded and stored appropriately in the case file;
- Keeping the Provincial Leader updated regarding the respondent, and liaising with the advisor to ensure that support, advice and pastoral care is offered to the respondent;
- Attending the initial meeting with the respondent;
- Monitoring respondents, or, with the Provincial Leader, appointing a suitable person to carry out this role.

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<sup>1</sup> Vota is the plural of votum, which is an authoritative opinion. In forwarding a case to the Congregation for the Doctrine of the Faith (CDF), the Congregational Leader offers her authoritative opinion on the matter addressed in the particular case.

## Advisor

The role of the advisor across Standards 2 and 4 is outlined in Appendix A. In relation to Standard 4, the advisor is, with the agreement of the respondent, responsible for:

- Attending the initial meeting with the respondent, the DLP and the Provincial Leader in order to support them;
- Keeping them informed of the progress of their case;
- Directing them to counselling and support as necessary;
- Helping the respondent access both civil and canon law advice;
- Considering the respondent's wishes in regard to a pastoral response by the Provincial Leader to their family;
- Identifying with the respondent any therapeutic or other needs they have, and suggesting how these may be best met;
- Recording any meetings or contact they have with the respondent and passing on relevant information to the DLP, as appropriate. They will not be responsible for managing the file but will pass on written records to the DLP, as appropriate, during regular meetings with the DLP.

## Advisory Panel

The National Case Management Committee (NCCMC) provides this advisory service for each Province in the Congregation.

## NBSCCCI

The role of the NBSCCCI across all the Seven Standards is outlined in Appendix A. In relation to Standard 4, the NBSCCCI will:

- Be advised of safeguarding, allegations, suspicions or concerns by the DLP, and retain records of this information;
- Offer advice and support to the people in the roles listed on the previous pages, in relation to care and management of the respondent.

## Canon lawyer

A canon lawyer is an appropriately trained and qualified practitioner of canon law. Their role is to advise people about their rights and responsibilities under canon law. 'The job of a canon lawyer is to see that the carefully devised rules of Church order are properly understood and applied.'<sup>2</sup>

If the Provincial Leader is concerned that a Sister under their jurisdiction may have sexually abused a child, they need to respond in accordance with both civil and canon law and therefore would be prudent to seek the advice of a civil and a canon lawyer. Part of the Provincial Leader's responsibility to act in accordance with both sets of laws is to ensure that they do not infringe the rights of any person and that they act justly and fairly.

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<sup>2</sup> Edwards, P., 'What canon lawyers are and aren't', *This Rock* (Nov 1991), 19–22.

If a Sister of Mercy is accused of sexually abusing a child, or is alleged to have done so, or is suspected of having done so, she needs to be assisted to defend herself and her rights, and because both civil and canon law will be involved, she needs to be assisted to engage a civil lawyer and a canon lawyer.

The interests and responsibilities of the Provincial Leader are different from those of the respondent. It is therefore essential that they each have their own civil and canon lawyer.

Depending on the particular type of canonical process involved (an administrative canonical process, a disciplinary canonical process or a canonical trial) and on whom they are representing, a canon lawyer may also be referred to as a canonical advisor or a canonical advocate.

### **NCMC**

The role of the NCMC across Standards 2, 3 and 4 is outlined in Appendix A. In relation to Standard 4, the NCMC will:

- Offer advice and support to Provincial Leader on any issue relating to the care of the respondent;
- Put their advice in writing; these records should then be passed to the DLP who will store them in the third-party information section of the case file (Guidance 2.2B).

## Storage and Retention of Records Associated with this Standard

The table below lists the types of records that need to be stored appropriately and securely as part of this standard, in accordance with best practice in record-keeping (see Appendix B). The templates for the production of each record, which have been included in the guidance for this standard, are listed in the final column.

Type of Record	Where to Store	Template/Guidance Number/Page Number
Dates of Meetings held with Respondent by Advisor	Provincial Office	Guidance 2.2B
Any third-party information	Provincial Office	Guidance 2.2B
Notes of any requests for support or relevant safeguarding concerns made to Advisor by Respondent	Provincial Office	Guidance 2.2B
Documentation relating to Statutory Investigation Process	Provincial Office	Guidance 2.2B
Records of advice from Advisory Panel or NCMC	Provincial Office	Guidance 2.2B
Copies of Risk Assessments	Provincial Office	Guidance 4.2B Template 1 Page 12
Copies of Risk Management Updates	Provincial Office	Guidance 4.2B Template 2 Page 13
Copies of Interim Management Plans	Provincial Office	Guidance 4.2B Template 3 Page 14
Copies of Clinical Risk Assessments	Provincial Office	Guidance 4.4B Page 42
Copies of Permanent Management Plans	Provincial Office	Guidance 4.4A Page 41
Copies of notification to comply with Safeguarding Policies and Procedures	Provincial Office	Guidance 4.2B Template 4 Page 18
Records of Process followed if a respondent is hospitalised	Provincial Office	Guidance 4.3F Page 36 Guidance 2.2B
Records of steps taken if respondent is living in another Religious Community/ Diocese	Provincial House	Guidance 4.4C Page 37 Guidance 2.2B

## **4.1A Guidance on Appropriate Personnel**

Those who have allegations of child abuse made about them should be offered access to appropriate advice and support.

The Provincial Leader must have in place a child safeguarding structure that provides consistent and effective responses to the safeguarding needs of adult respondents under their jurisdiction.

Respondents have a right to a fair process in the investigation and management of any child abuse concerns.

Those recruited to fulfil the roles listed on Pages 3–5 should be selected following clear criteria and in accordance with safe recruitment practices (Guidance 1.1A).

Given the highly sensitive nature of this work, all involved must abide by the highest possible standards of professional conduct in all aspects of their work, including the maintenance of appropriate confidentiality (1.1A Template 5).

Each Provincial Leader should have access to an advisor who is available to those about whom a suspicion, concern or allegation of child abuse has been received.

## 4.1B Guidance on the Role of the Advisor

### The Role

As shown in Appendix A, the role of the advisor is to:

1. Keep the respondent informed of the process of the case;
2. Help direct the respondent to counselling and support;
3. Record any meetings or contact they have with the respondent, and report to the DLP as appropriate;
4. Uphold the seven standards in practice and behaviour.

Advisors should be particularly alert to the sense of isolation and vulnerability that a respondent may experience.

### Clarity about the Role

- The advisor is not a counsellor for the respondent and should not act in that role.
- The advisor should not act as spiritual guide for the respondent.
- The advisor is not an advocate for the respondent.
- The advisor does not manage the case file and will not have access to it.

### Frequency of Meetings

The frequency of contact/meetings should be dictated by the respondent and the Provincial Leader, but the advisor needs to keep the communication open and initiate contact at least once a year, unless the respondent states that they do not want any contact.

### Storage of Records

Information regarding meetings between the advisor and the respondent must be stored safely and securely (Appendix B). The following should be used as a guide to information that must be recorded:

- The date and time the meetings took place,
- Any relevant child safeguarding issues that have arisen,
- If the respondent has knowledge of a crime,
- If the respondent is suffering from a mental health condition or is suicidal,
- Any requests for support or representations that the respondent wishes to make to the Provincial Leader.



Information regarding the above points must be forwarded to the DLP for placing in the minutes of meetings section of the case file (Guidance 2.2B). It is advisable to share this record with the respondent prior to sending to the DLP.

### **Support and Supervision**

Regular contact between the advisor and the DLP should take place to enable the DLP to keep up to date with the needs and requests of the respondent.

The DLP should offer the advisor access to appropriate support and supervision, in order to allow the advisor to receive feedback on their role. If necessary or appropriate, external support for the advisor should be used (Guidance 5.6A).

### **Training**

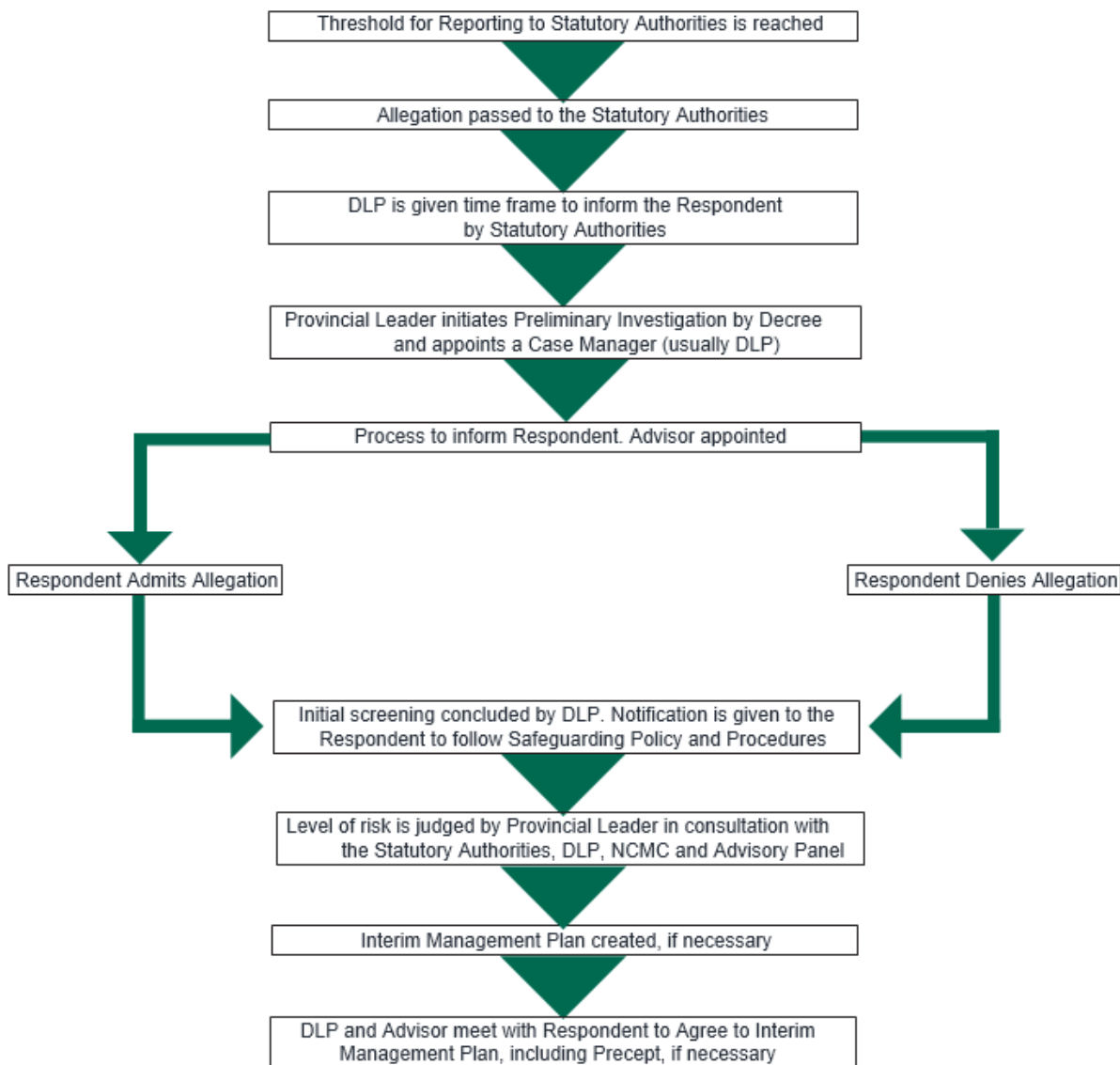
All advisors must attend a local full-day awareness-raising programme (Guidance 5.3A) facilitated by trainers registered with the NBSCCCI. The Provincial should ensure that advisors are given the opportunity to attend training provided by the NBSCCCI, in accordance with the NBSCCCI Training Strategy (Guidance 5.2A). Both of these training needs should be included in the annual training plan, which is produced by the safeguarding committee (Guidance 5.2).

## 4.2A Guidance on Informing the Respondent (Sister) that an Allegation has been Received, and Consideration of an Interim Management Plan

A proper balance should be struck between protecting children and respecting the rights of respondents. Where there is conflict, **the child’s welfare must come first.**

The rights of respondents are important and are given due weight, **once the safety and protection of children has been assured.**

The flow chart below shows the process for informing the respondent who is a Sister of Mercy and should be read alongside the process outlined in Standard 2: Procedures for Responding to Child Protection Suspicions, Concerns, Knowledge or Allegations (Guidance 2.1A).



1. On receiving a complaint, if the threshold for reporting has been reached, the DLP will inform the statutory authorities, whose role it is to investigate the allegation and assess the risk to children (Guidance 4.2B). If there is any uncertainty about whether the suspicion, concern or allegation meets the threshold for reporting, the DLP should consult with the statutory authorities, who will advise on the requirements for notification (Guidance 2.1A).
2. If the threshold for reporting has been reached, a preliminary investigation in accordance with canon law will be initiated by the Provincial Leader (CIC, c. 1717;<sup>3</sup> CCEO, c. 1468<sup>4</sup>). This canonical inquiry will be paused to allow any statutory investigation to take place.
3. The statutory authorities inform the DLP about when they can tell the respondent that a child abuse matter has arisen.
4. Following the approval of the statutory authorities, the Provincial Leader arranges a meeting with the respondent. In arranging this meeting:
  - The Provincial Leader should inform the respondent that they will be accompanied by the DLP;
  - The respondent should be offered the services of an advisor and the role description outlined to them;
  - The respondent should be informed that they can be accompanied by another person at this meeting for their own support.
5. **At the Meeting:**
  - The respondent must be informed of her rights to both canonical and civil legal advice;
  - The respondent must immediately be advised of her right to remain silent –she may admit, deny or decide not to respond at this stage;
  - The respondent needs to be given enough detail about the suspicion, concern or allegation and about the person making it in order to be able to offer a response, if she chooses to do so. However, if a written statement has been given by the complainant, this cannot be given to the respondent, but a summary of its content can be shared.
6. **After the Meeting:**
  - A dated, written record of the meeting is forwarded to the respondent for signing. This record should detail what she has been informed of, and her response (if any);
  - The respondent is given written information about the Sisters of Mercy procedure, so that she is clear about the process that will be followed.

<sup>3</sup> Preliminary Investigation, Canon 1717 §1: Whenever the Provincial Leader receives information, which has at least the semblance of truth, about an offence, she is to enquire carefully, either personally or through some suitable person, about the facts and circumstances, and about the imputability of the offence, unless this enquiry would appear to be entirely superfluous.

<sup>4</sup> Canon 695 (1): 'A member must be dismissed for the delicts mentioned in Canon 1397, 1398 and 1395, unless in the delicts mentioned in Canon 1395 (2) the superior decides that dismissal is not completely necessary and that correction of the member, restitution of justice, and reparation of scandal can be resolved sufficiently in another way.'

7. The Provincial Leader will judge the level of risk in consultation with the statutory authorities, DLP, NCMC, advisory panel and advisor (Guidance 4.2B). A decision will be made at this stage as to whether an interim management plan is required (4.2B Template 2), which may include restrictions to ministry (Guidance 4.2C).
8. A written reminder is given to the respondent from the Provincial Leader to advise her to continue following the child safeguarding policies and procedures (4.2B Template 4).
9. If required, the DLP and advisor will meet the respondent and present her with the interim management plan, which the respondent will be asked to agree to and sign.

## 4.2B Guidance on the Risk Assessment for Sisters to Produce an Interim Management Plan

At the conclusion of the process outlined in Figure 4.2A1, there are two levels of risk assessment that will have been completed:

1. **Initial Enquiry to Establish if the Threshold for Reporting has been Reached**
  - On receipt of an allegation, the DLP should ensure that a child protection referral form is completed by the person who initially heard the allegation (Guidance 2.1A, Template 1).
  - The DLP will then conduct an internal inquiry to establish if the threshold for reporting to the statutory authorities has been reached. This will involve:
    - Establishing the name of the complainant, the nature of the allegation and the name of the respondent;
    - Checking if the respondent was in the reported location at the time of the alleged abuse.
  - The DLP will conclude this stage by informing the statutory authorities. If there is any uncertainty about whether the suspicion, concern or allegation meets the threshold for reporting, the DLP should consult with the statutory authorities who will advise on the requirements for notification (Guidance 2.1A).
2. **Initial assessment of risk, which results in notification to comply with the child safeguarding policies and procedures, or an interim management plan**
  - At the conclusion of the process of informing the respondent (Guidance 4.2A), the DLP will provide an initial assessment of risk (4.2B Template 1) for the Provincial Leader, to help them to judge the level of risk. The DLP may advise on restrictions to the respondent's ministry, if appropriate (Guidance 4.2C).
  - The assessment of risk is used to complete the risk management update tool (4.2B Template 2). This form is used to give a brief overview of the risks associated with the case. It must be regularly updated as required.
  - This assessment of risk is used to develop an interim management plan if required (that can be initiated by precept if necessary), which the respondent is asked to sign and date (4.2B Template 3).

## 4.2B Template 1: Example Risk Assessment Framework

This template is an example of one that can be used to help the Provincial Leader assess risk. It is not an accredited clinical risk assessment framework (Guidance 4.4B).

<b>Subject of Assessment</b>
<b>Contact Details</b>
<b>Province</b>
<b>Provincial Leader</b>
<b>Contact Details</b>
<b>Allegation Details</b> <ul style="list-style-type: none"> <li>• Summary of the nature and circumstances of allegation.</li> <li>• Respondent's response during initial screening.</li> <li>• Complainant's views of offence(s).</li> </ul>
<b>Ministry with Children</b>
<b>Issues to be Considered when Assessing Risk</b> <ul style="list-style-type: none"> <li>• Is the allegation recent or of a historical nature?</li> <li>• Has the allegation continued over a significant period of time? What is the frequency and severity of the alleged offence(s)?</li> <li>• What is the number, gender and age range of complainants?</li> <li>• Have there been any other previous complaints?</li> <li>• Is there any evidence to support complaints?</li> <li>• What is the respondent's attitude to the allegations/complainants?</li> <li>• What is the respondent's role in the Mercy Province?</li> <li>• Does the respondent have access to children? Can they continue to work in public? Detail what they can/cannot do.</li> <li>• Are there other contributory factors that may increase risk (e.g. alcohol, single accommodation, refusing to comply with safeguarding process, etc.)?</li> <li>• Are there any issues with the respondent's accommodation?</li> <li>• Who has the respondent shared information about the allegations with?</li> <li>• What action has the respondent taken to protect herself or others?</li> </ul>
<b>Positive Factors</b> <ul style="list-style-type: none"> <li>• What internal strengths does the respondent have?</li> <li>• What external supports has she put in place for herself (personal/environmental)?</li> </ul>
<b>Restrictions on Ministry Required</b>

Completed by: \_\_\_\_\_ Role: \_\_\_\_\_

Date: \_\_\_\_\_

## 4.2B Template 2: Example Risk Management Update Tool

This form should be completed following the risk assessment framework (4.2B Template 1), and is used to provide an overview of the case. This should be easily accessed when storing information, and must be regularly updated throughout the case management process.

<b>Details of Respondent</b>	
<b>Nature of Allegation</b> Dates/age/gender/degree of harm/ frequency/number, etc.	
<b>Response to Allegation</b> Where is the allegation on the denial–full responsibility continuum?	
<b>Legal Status</b> <ul style="list-style-type: none"> <li>• Convictions</li> <li>• Investigation in process</li> <li>• Awaiting DPP/CPS decision</li> <li>• No complaint to Gardaí/PSNI</li> <li>• Outcome of investigation by Tusla/ HSCT</li> </ul>	
<b>Status of Ministry</b>	
<b>Sex Offender Registration</b> <ul style="list-style-type: none"> <li>• Yes/no</li> <li>• Duration</li> <li>• Conditions</li> </ul>	
<b>Agencies Involved in Management and Support and Probation</b>	
<b>Monitoring Arrangements</b> <ul style="list-style-type: none"> <li>• Frequency</li> <li>• By whom</li> </ul>	
<b>Review Date</b>	

## 4.2B Template 3: Example Interim Management Plan

Using the information from the initial assessment of risk carried out – and following the risk assessment framework (4.2B Template 1) – an interim management plan is drawn up, if deemed appropriate, based on the level of risk assessed by the Provincial Leader and the DLP. The purpose of a management plan is primarily to safeguard children, but it should also include support for the respondent. At a minimum, a management plan should include the restrictions that have been put in place regarding:

- ✧ Status of public ministry;
- ✧ Contact with children;
- ✧ Religious Dress
- ✧ Residency;
- ✧ Monitoring requirements.

### Example Interim Management Plan

I, \_\_\_\_\_ (Provincial Leader ) withdraw from you

\_\_\_\_\_ (Respondent) Specific Ministries and hereby issue the following instructions to you:

- Live at/with \_\_\_\_\_;
- Agree in writing with the Local Leader any time (including destination and accommodation details) they are away from this address, e.g. overnight/holidays. Any unforeseen time away from this address will be notified immediately to the Provincial Leader;
- Avoid being alone with children, and take responsibility for behaving appropriately and removing herself immediately from any such situations, unforeseen or otherwise;
- Must not have any contact with the complainant or their family;
- Discuss any activities or social functions with child safeguarding personnel, and attend only with the agreement of the Provincial Leader.

This written agreement sets out the parameters of the expected conduct that has been established to ensure the ongoing safeguarding of children (and vulnerable adults – add if required).



**Support Offered**

I have asked: \_\_\_\_\_ to act as your Advisor.

**Their Role is to:**

- ✧ Keep you informed of the process of the case;
- ✧ Help direct you to counselling and support;
- ✧ Record the dates and times that they have met or been in contact with you. They will report this to the DLP. Should any relevant child safeguarding issue arise during the meetings you have with the advisor, they must report these to the DLP.

**The Advisor will not:**

- ✧ Act as your counsellor;
- ✧ Act as your spiritual guide;
- ✧ Manage or have access to your case file.

**Monitoring Arrangements**

Who monitors
Frequency of visits
Consultation with statutory authorities
Information sharing

**Review of Interim Plan**

When
By whom
Shared with

Signed and Dated: \_\_\_\_\_ Respondent

Signed and Dated: \_\_\_\_\_ Provincial Leader

Signed and Dated: \_\_\_\_\_ DLP

## 4.2B Template 4: Example Notification to Follow Child Safeguarding Policy and Procedures

Dear \_\_\_\_\_,

As you are aware, a recent allegation has been made against you in relation to child abuse. The matter has been notified to the statutory authorities for their inquiries. Following conclusion of those inquiries, I will initiate a canonical inquiry.

While I appreciate this is very difficult for you, I must take the allegation seriously and have to address any potential risk to children. At this stage it is not my intention to restrict your ministry; however, in the interests of safeguarding children, and as required of all Sisters, I require that you fully observe the Child Safeguarding Policy and Procedures of the Congregation.

In Particular:

- ✧ I require that at no time will you have unsupervised contact with children or young people;
- ✧ Any contact you have with children must be open, in the presence of other adults, and involve absolutely no physical contact.

During the statutory authority investigation, and any subsequent Church inquiry, I will appoint an advisor to support you. You are also entitled to the services of both a canon and a civil lawyer.

Please contact me to confirm that you agree with these arrangements, and let me know if you wish to avail of the services of an advisor.

Following this, I will ask the designated liaison person to draft the above into a written agreement, which I will ask you to sign.

It goes without saying that while this is a serious allegation that must be investigated, the matter will only be shared on a need-to-know basis with appropriate Church and statutory personnel. I have, as I am required to do, informed the National Board for Safeguarding Children in the Catholic Church in Ireland of this allegation.

I appreciate this is a difficult time for you, and hope you recognise that we all have a responsibility to ensure the safety of children in our care.

Please be assured of my prayers during this time.

Yours,

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## 4.2C Guidance on Leave from Ministry

Among the actions that may be necessary during both a statutory investigation and a Church inquiry is the restriction of a respondent's exercise of their office and ministry. A respondent may be asked to withdraw from a particular office, ministry/apostolate in the course of any statutory – as well as Church and canonical investigation. The respondent may also be required to cease from wearing religious dress.

There are two factors that will determine the Provincial Leader's action in this regard:

- A. The threshold for reporting to the statutory authorities has been reached;
- B. An initial assessment of the potential risk to children has been conducted.

Prior to deciding how to respond, advice may be sought on either or both of these issues from the NCMC, NBSCCCI or from the statutory authorities.

Each case will have to be considered on its own merits. The advice provided to the Provincial Leader should specifically include an assessment of the credibility of the allegation, and the potential risk arising as a consequence.

If a decision has been made by the Provincial Leader that it is necessary and appropriate to ask that a period of leave from ministry be initiated, the following procedure must be employed.

This procedure outlines the processes to be engaged when leave and restriction from ministry/apostolate are required. It should be read in conjunction with the process outlined in Standard 2: Procedures for Responding to Child Protection Suspicions, Concerns, Knowledge or Allegations (Guidance 2.1A), which sets out in detail actions to be taken following receipt of an allegation.

All actions should be confirmed in writing and a date of review of actions set. The process of leave for ministry begins at Point 7 in Guidance 4.2A:

7. The Provincial Leader will judge the level of risk and may be assisted in doing so by the statutory authorities, DLP, NCMC, NBSCCCI and advisor (Guidance 4.2B). A decision will be made at this stage as to whether an interim management plan is required (4.2B Template 2), which may include restrictions to ministry (Guidance 4.2C).
8. A written reminder is given to the respondent from the Provincial Leader to advise them to continue following the child safeguarding policies and procedures (4.2B Template 4).
9. If required, the DLP and advisor will meet the respondent and present them with the interim management plan, which the respondent will be asked to agree to and sign. During this meeting, the respondent must be advised that the canonical process, which has been paused, will resume following conclusion of any statutory authority enquiries (Guidance 4.3A).

- a. While the allegations are being investigated, the presumption of innocence applies. Leave from ministry is therefore a precautionary measure. It does not impute guilt, nor should the action (of leave from ministry) per se prejudice any statutory or canon law process.
  - b. If the respondent is in a role that involves contact with children and young people, and if it is in the interests of safeguarding children and young people, then the respondent should be invited to request leave from ministry and for the course of the statutory and/or canonical investigations. Where this is agreed, there should be clarity regarding what the restrictions on ministry are.
  - c. Limitations to ministry are made in accordance with canon law, and should be considered by the Provincial Leader. If the respondent declines to request leave from ministry, and if continuing ministry would constitute a risk to children, advice may be sought from the statutory authorities, or NCMC. The Provincial Leader should also take canonical advice on how to proceed in each case. The Provincial Leader can issue a decree or precept outlining, at least in summary form, their decision, and outlining the respondent's restrictions on the exercise of their ministry.<sup>5</sup>
  - d. Agreement should be reached, if possible, between the Provincial Leader and the respondent in relation to the following:
    - How to bring to completion the transfer of any unfinished tasks, in relation to the respondent's ministry, that do not involve access to children and young people;
    - Residency of the respondent: consideration may be given to allowing the respondent to continue to reside in their current accommodation if it is perceived not to present any risk to children, and where alternative accommodation is available for any replacement. This should be agreed with the respondent, together with a reasonable time frame for vacating the current residence (if considered necessary). The Provincial Leader should also ensure that reasonable costs incurred in obtaining suitable alternative accommodation are met;
    - If possible, the respondent should be supported to engage in other work/study during the period of leave from ministry, as long as it does not involve ministry or contact with children;
    - If the respondent is engaged in ministry in Northern Ireland, there is a legal requirement to refer the respondent to the Independent Safeguarding Authority (ISA) if the respondent has been invited to take administrative leave for causing harm, and if it is judged that there is the risk of harm to a child or vulnerable adult.
10. During this meeting, the respondent should be advised of the canonical process that will be initiated following conclusion of any statutory authority enquiries

<sup>5</sup> The right to the respondent's reputation, privacy, financial support, accommodation and advisor; restrictions on public exercise of ministry and possible prohibition regarding contact with children.

(Guidance 4.3D for non-ordained religious). After this meeting – if the respondent has been removed from ministry – the following should be considered:

- a. When an allegation has been received and the Sister is taking leave from ministry, the Provincial Leader is responsible for what is communicated about this change, to whom, and how this is communicated. The preferred approach is for any public communication to be agreed with the respondent, where the presumption of innocence should be emphasised;
- b. Great care needs to be taken not to prejudice the outcome of any civil, criminal or canonical investigation, and consultation with relevant statutory authorities may assist in this regard;
- c. Consideration may also be given to the inclusion in any public communication, if one is to be made, of information regarding how people affected can access pastoral support.

### **Appeals**

Where restrictions to ministry have been directed through a decree or precept, there is the possibility of an appeal in accordance with canon law.

### 4.3A Guidance on the Process for Sisters of Mercy Following the Conclusion of Any Investigation by the Statutory Authorities

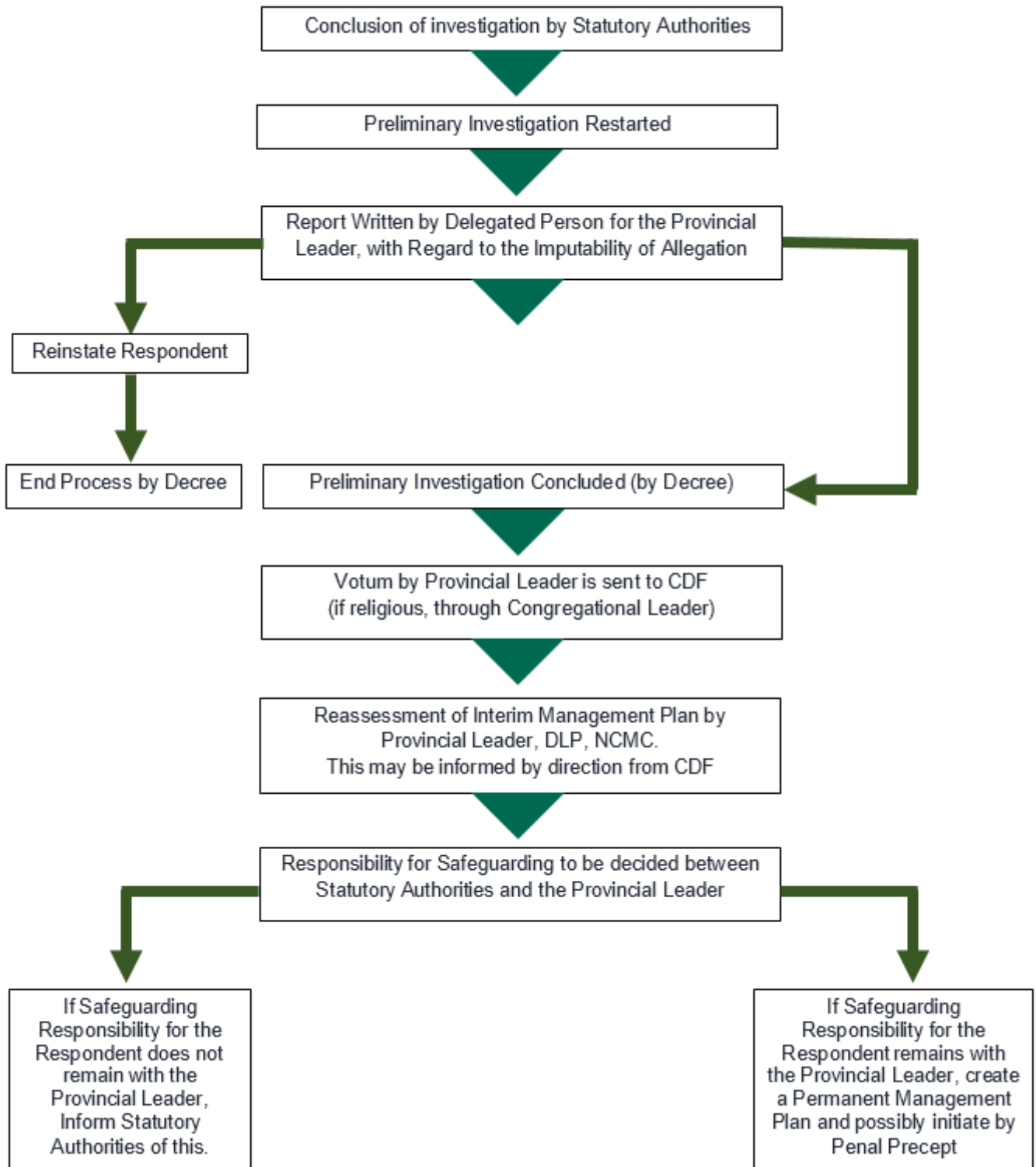


Figure 4.3A1

Figure 4.3A1 shows the process for after the process outlined in Guidance 4.2A has been concluded. The following should be read alongside the processes outlined in Guidance 2.1A and Guidance 4.2A.

1. Following the conclusion of the statutory investigation, the preliminary investigation under canon law – which was opened by decree by the Provincial Leader – is restarted.
2. A person is appointed by the Provincial Leader (delegated person) to conduct the preliminary investigation, which is recorded on the decree. This can be the DLP, with the support of a canon lawyer, but other suitable personnel may be appointed to conduct this task at the prerogative of the Provincial Leader.
3. The delegated person should produce a written investigation report, which includes:
  - A summary of the allegations, which will contain the following information:
    - Dates, venues of allegation;
    - Age(s) of complainant(s) at time of allegation;
    - When the allegation was notified to the Province
    - Age of respondent at the time of the alleged abuse, and their age now;
    - When the allegation was reported, any action taken by the statutory authorities, and any outcomes from those actions;
    - A statement (if not already taken) should be received from the complainant, including as much detail as possible, e.g. the name(s) of any witnesses, or existence of corroborative evidence. If any statements have been made to the statutory authorities, a copy of these should also be obtained;
    - A statement detailing the response of the respondent to the allegation should be taken following the initial screening (Guidance 4.2A);
    - Include any relevant information about any previous allegations;
    - Information on where the respondent was at the time of the allegation, and any other relevant information or corroborative evidence presented by the respondent;
    - The respondent's knowledge of and attitude to the complainant at the initial screening meeting;
    - The respondent's attitude to the Sisters of Mercy process and to taking leave from ministry;
    - Third-party information: any corroborating evidence that could prove or disprove the allegation;
    - The views of any other relevant people, statutory authorities, other Sisters/ Brothers/ priests/ or anyone else who may have been aware of the allegation, bearing in mind issues of confidentiality and data protection requirements (Appendix B);

- Consider any assessment reports, including clinical risk assessments, the initial risk assessment (4.2B Template 1) and the risk management tool (4.2B Template 2) used to complete the interim management plan (4.2B Template 3).
  - An assessment of findings that will include a clear statement on whether there is a case to answer, and that the case is not manifestly false or frivolous.
4. Conclusion of this report should enable the Provincial Leader to assist in deciding whether there is a case to answer, and that the case it is not manifestly false or frivolous.
  5. **At this Point there are Two Possible Outcomes:**
    - a. If the preliminary investigation finds there is no case to answer or the allegations are manifestly false or frivolous, the respondent should be returned to ministry (Guidance 4.3B). The preliminary investigation is ended by decree;
    - b. If the preliminary investigation finds there is a case to answer or the allegation is not manifestly false or frivolous, the preliminary investigation is ended by decree.
  6. **At this Point there are Two Options:**
    - a. In circumstances where an allegation has been substantiated within the statutory forum, in terms of a criminal prosecution, this information must be incorporated into a report that is forwarded with the Provincial Leader's votum to the CDF through the Congregational Leader, using 4.3C Template 1;
    - b. If the allegation is unsubstantiated within the statutory forum, but where there continues to be reasonable grounds for concern regarding a reserved delict,<sup>6</sup> 4.3C Template 1, along with the votum of the Provincial Leader should be compiled and forwarded through the Congregational Leader to the CDF.
  7. The CDF, after reviewing the acts of the preliminary investigation and the votum of the Provincial Leader, will authorise the appropriate canonical process to be followed (e.g. a judicial penal process, an administrative penal process, confirm precept, etc.).
  8. While advice from the CDF is being awaited, the interim management plan (Guidance 4.2B, Template 3) should be reassessed using the risk assessment framework (4.2B Template 1), and if changes are required a new copy should be signed and dated by the respondent and the Provincial Leader. The risk management tool should be updated with this information (4.2B Template 2).
  9. Upon receiving a decision from the CDF, a decision has to be made by the Provincial Leader, with the statutory authorities, as to where the responsibility for safeguarding lies in relation to the respondent.
 

**At this point there are two options:**

    - a. If the respondent is not the responsibility of the Provincial Leader, the Provincial Leader must inform the statutory authorities, and the process of involvement in relation to safeguarding ends;
    - b. If the respondent continues to be the responsibility of the Provincial Leader, a permanent management plan is created, including the provision of monitoring (Guidance 4.4A).

<sup>6</sup>The more grave delicts against morals, which are reserved to the CDF.



## 4.3B Guidance When Preliminary Investigation Finds there is no Case to Answer or that the Allegation is Manifestly False or Frivolous (Return to Ministry)

Following the initial investigation report prepared by the delegated person (Guidance 4.3A), if the respondent denies the allegation and there is insufficient evidence that there is a case to answer, and the statutory authorities are not taking any further action, then the preliminary investigation must be concluded and the respondent should be confirmed as being 'in good standing'. When an accusation is shown to be false (malicious/unfounded),<sup>7</sup> the respondent should be returned to ministry. To do this, the following should serve as a guide to the steps that may be taken:

1. Once it has been established that there is no case to answer, and that all state authority investigations or prosecutions are concluded, the Provincial Leader should meet with the respondent to consider how and when a return to ministry can be achieved;
2. It is important that all outstanding matters are addressed prior to any return to ministry. Therefore, in preparation, the respondent should be provided with counselling and support to assist them to deal with any residual anger/distress. This preparation for a return to ministry should include spiritual direction, reflection and discussions with the Provincial Leader. It is understandable that the respondent may be angry at the process, but this anger should be addressed appropriately so as not to interfere with future ministry;
3. Following counselling, spiritual direction and reflection, the Provincial Leader should meet the respondent to agree what ministry they will undertake. If the ministry involves a return to a previous community/ministry, an agreement should be reached about how to communicate the return.
4. The respondent should continue to be provided with support for an agreed period after the return to ministry;
5. The respondent should be reminded of the child safeguarding policy and procedures and code of behaviour when ministering to children, and should agree to working within these procedures. At any stage of this process, the Provincial Leader can consult the NCMC.

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<sup>7</sup>Words such as 'false', 'unfounded', 'unsubstantiated' and 'malicious' are often used in the same context when describing an allegation. However, the meanings are different. The term 'false' can be broken down into two categories: 1) malicious – this implies a deliberate act to deceive. For an allegation to be malicious, it will be necessary to have evidence that proves this intention; 2) unfounded – this indicates that the complainant misinterpreted the incident or was mistaken about what they saw. For an allegation to be classified as unfounded, it will be necessary to have evidence to disprove the allegation. An unsubstantiated allegation is where there is insufficient identifiable evidence to prove or disprove the allegation. The term does not imply guilt or innocence.

### 4.3C Guidance When Preliminary Investigation Finds there is a Case to Answer and that the Allegation is Not Manifestly False or Frivolous Against a Sister of Mercy

#### Delicts

One of the delicts against morals that is reserved to the CDF is the delict against the Sixth Commandment committed by a Sister of Mercy with a minor below the age of eighteen years.

This delict includes:

- The acquisition, possession or distribution by a sister of pornographic images of minors under the age of fourteen, for purposes of sexual gratification, by whatever means or using whatever technology, cf. Normae de gravioribus delictis (Art. 6) CDF May 2010;

#### Burdens of Proof

In the canonical process there are three different stages, with three different levels of proof. These are referred to by three different terms:

1. *Semblance of Truth* – the lowest level of proof; this is what is required for the Provincial Leader to begin the preliminary investigation;
2. *Probability* that a delict did or did not occur – a threshold that is a little higher than the semblance of truth. This is what the preliminary investigation looks for. The word ‘probable’ is used here in the literal sense, i.e. the possibility of proving a delict in a canonical trial;
3. *Moral Certainty* – what a canonical trial looks for.

#### When are the CDF Notified?

Although the CDF can be consulted at any stage during the case management process, the formal notification begins at Point 5 in Guidance 4.3A.

- In circumstances where an allegation has been substantiated within the statutory forum, in terms of a criminal prosecution, this information must be incorporated into a report that is forwarded with the Provincial Leader’s votum to the CDF, using 4.3C Template 1.
- If the allegation is unsubstantiated within the statutory forum, but where there continue to be reasonable grounds for concern regarding a reserved delict,<sup>9</sup> 4.3C Template 1 – along with the votum of the Provincial Leader – should be compiled and forwarded either directly to the CDF through the Congregational Leader

The CDF will investigate using the burdens of proof outlined on the previous page, and will make a determination on the status of the respondent based on the facts presented, affording all canonical rights and entitlements to the respondent.

<sup>9</sup>The more grave delicts against morals, which are reserved to the CDF.

A respondent who has received a conviction for an offence against a child, or who has been found guilty under canon law, may be requested to seek excommunication. If they refuse, a process of dismissal, in accordance with the norms of canon law, may be initiated. Once it has been established, by whatever means, that sexual abuse has occurred, the respondent should not be permitted to return to ministry and the statutory authorities are informed.

In circumstances where a decision has been made to allow the respondent to remain a Sister, a permanent management plan must be put in place (Guidance 4.4A). This requires that, among other things, the respondent refrains from having any unsupervised contact with children, does not wear religious dress and does not exercise any form of public ministry, and that they remain under supervision. Specific measures are determined by the Provincial Leader with advice from NCMC. Compliance is monitored by the DLP or other properly appointed personnel. The DLP is responsible for putting in place a system of monitoring by taking on this responsibility or appointing someone else to do so.

Those who remain a member of the province and who are 'out of ministry' should be provided with support and encouraged to rebuild their lives in a spirit of repentance and reparation. Any new concerns must be reported to the statutory services, in accordance with the procedure outlined in Standard 2 (Guidance 2.1A). In certain circumstances, such concerns are also notified to the CDF.

If the CDF inquiries are inconclusive and further inquiries are required, an appropriate interim management plan should remain in place, proportionate to the level of risk to children, whilst the advice of NCMC and the statutory authorities is sought.

### 4.3C Template 1: CDF Form

<b>Province:</b>				
<b>Provincial Leader:</b>				
<b>CDF Protocol No.:</b>				
<b>Name of Sister:</b>				
<b>Personal details of Sister</b>	<b>Date of Birth:</b>		<b>Age:</b>	
	<b>Date of 1st Profession:</b>		<b>Years of Ministry:</b>	
<b>Date of Final Profession:</b>				
<b>Contact Address of the Sister:</b>				
<b>Procurator (attach original signed mandate):</b>				
<b>Contact Address of the Procurator:</b>				

<b>Assignments</b>			
<b>Year</b>	<b>Community</b>	<b>Location</b>	<b>Appointment</b>

<b>Accusations Against the Sister</b>				
<b>Year</b>	<b>Name of Complainant</b>	<b>Age of Complainant</b>	<b>Imputable acts</b>	<b>Denunciation</b>

<b>Criminal Proceedings against the Sister</b>			
<b>Year</b>	<b>Type of case</b>	<b>Conviction (or other outcome)</b>	<b>Sentence (attach copies of any relevant court documents)</b>
<b>Measures Adopted by the Province</b>			
<b>Year</b>	<b>Measures</b>		
<b>Sustenance Provided by the Diocese to the Sister</b>			

<b>Response/Recourse made by the Sister</b>	
<b>Year</b>	<b>Response/Recourse</b>
<b>Provincial Leader's votum</b>	

<b>Congregational Leader Signature:</b>	<b>Date</b>
<b>Witness signature:</b>	<b>Date</b>

### 4.3D Guidance on the Process for Non-Ordained Religious, Following the Conclusion of Any Investigation by the Statutory Authorities

The flow chart below shows the process of inquiry for religious after the conclusion of the process outlined in Figure 4.2A1, and should be read alongside that process and Guidance 2.1A.

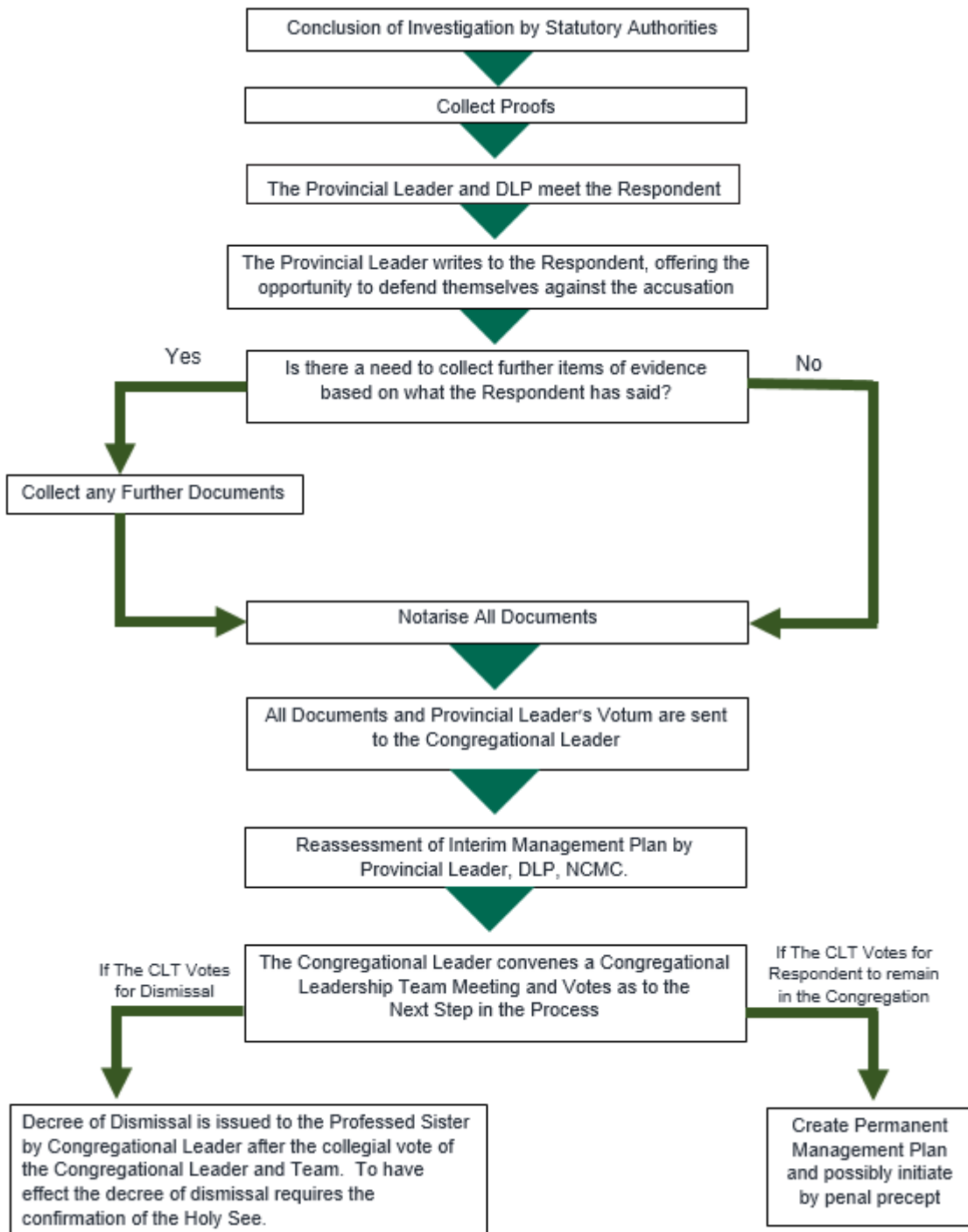


Figure 4.3D1



1. Following the conclusion of the statutory investigation, the Provincial Leader, or their delegate, will seek to collect any available information to prove the existence of the facts alleged and the possible imputability of the respondent. Though not stated here explicitly, by analogy with Canon 1717, what is needed to initiate such a collection of proofs is a *semblance of truth*, meaning that the threshold in terms of certainty is low. The proofs to be gathered are not yet meant to be exhaustive demonstrations of the facts, but something that supports the allegation and would merit taking the next step. Unlike the norms of CDF for clerics, there is no need to seek authorisation from any other authority, e.g. the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life (CICLS). The Congregational Leader has the power to act at once.
2. In accordance with Canon 695, the respondent is to be confronted with the accusation and with the proofs gathered to sustain it. This must not be done informally in a private meeting, as once the process has been initiated, all contacts between the Provincial and the respondent must be formal, i.e. they must be minuted, and there must be at least one other person present when the meeting takes place. This communication of information is consistent with the principles of natural justice (a requirement that ensures procedural fairness).
3. Having informed the respondent of what has been alleged, and of the proofs collected heretofore, the Provincial offers her the opportunity for defence. The communication of this offer is best done in writing, since the copy of the letter handed over or posted will serve as proof of whether or not this has been done in an adequate and satisfactory manner. If the offer of defence is made personally, there must be at least one other witness present who will be able to testify to what is said or done. In this circumstance, the Provincial is to bear in mind the principles and rights outlined in Canons 630 §5 and 1728 §2. Any breach of these rights could invalidate the whole procedure. Any defence presented by the respondent must be signed and dated by her. As with all documents in this kind of formal process, an email is neither sufficient nor satisfactory.
4. In light of what the respondent has to say, the Provincial may seek further items of evidence, e.g. statements, letters, etc. When all these have been obtained, they must put them all in order, with the pages numbered and each of them notarised. To ensure that no accusation is ever brought that a document was withdrawn or inserted illicitly, the documents must be bound and accompanied by an index.
5. Once all of the documents have been notarised, the Provincial should present the material to their council, along with an explanation of the situation and an outline of what steps have and will be taken. Having heard their opinion or obtained their consent – in accordance with the proper law of the institute – the Provincial must send all the material to the Congregational Leader along with a votum in which they express a personal opinion and communicate the opinion of the Provincial Leadership Team concerning their preferred outcome for the individual sister in question. At this point, the process at provincial level is finished.

6. While advice from the Congregational Leader is being awaited, the interim management plan (4.2B Template 3) should be reassessed using the risk assessment framework (4.2B Template 1). If changes are required, a new copy should be signed and dated by the respondent and the Provincial Leader. The risk management tool must be updated with this information (4.2B Template 2).
7. As soon as the Congregational Leader receives the documentation, she should call a meeting of the Congregational Leadership Team, which should be composed of at least four members (not including the Congregational Leader). Together, all must seriously and attentively study the material with a view to verifying the existence of the offence, the imputability of the respondent, the impact on the one abused (justice), and the impact on the wider community (scandal). After weighing up all these dimensions, the CLT must vote collegially. For dismissal, an absolute majority of those voting is required and sufficient.
8. The Congregational Leader, along with the CLT, may vote in the following ways:
  - a. If the respondent is dismissed and the Congregation retains no responsibility for her, the decree of dismissal must then be drawn up in accordance with Canon 700 and communicated at once to the CICLS. It is only at this point that the Holy See becomes formally involved in the process. Of course, if there are doubts or anxieties at any stage of the procedure, the congregation may be consulted, but, unlike the case for clerics, there is no authorisation needed to initiate this process.
  - b. If the respondent remains a part of the Congregation of the Sisters of Mercy, a permanent management plan is created, including the provision of monitoring (Guidance 4.4A).

## 4.3E Guidance on the Funerals of Sisters against whom there is a Case to Answer

Pastoral concern for complainants must be considered in the situation where a Sister dies following receipt of a credible allegation. However, consideration must also be given to the family and friends of the Sister when deciding how to conduct the funeral and interment.

Careful thought should be given by the Provincial to the way the requiem liturgy and interment is conducted. Publicly praising the respondent's qualities as a Sister could have a seriously detrimental impact on complainants. Although each case is different, consideration should be given to the following which is a guide to help the Provincial Leader deal as sensitively as possible with this situation.

### 1. Who will take responsibility for the funeral arrangements? If the Provincial is responsible, consider the following issues:

- The appropriateness of a death notice from the Provincial in public communications;
- Whether to inform complainants of the respondent's death, and whether they should be made aware of the funeral
- The role other Sisters / priests of the diocese/members of the religious community play in the funeral Mass.

### 2. Give consideration to how the requiem Mass should be conducted:

- Discuss whether the location and timing of the funeral Mass would have a negative impact on the complainants;
- Carefully choose the readings;
- Ensure that the homily does not negatively affect the complainants;
- Balance the needs of the complainants with the deceased's family members.

### 3. How should interment be conducted?

- Consider which burial site is most appropriate;
- Address what an appropriate inscription on the headstone should be.

## **4.3F Guidance on Hospitalisation of Sisters against whom there is a Case to Answer**

When a respondent requires hospitalisation or a stay in a convalescence home, a number of steps should be taken:

1. The DLP should be informed that the respondent has been hospitalised;
2. The DLP should contact the child safeguarding officer in the hospital and inform them of the allegations so that the social worker can assess if there is any risk to children posed by the incoming patient;
3. The social worker should be asked to consider who should be informed of the respondent's circumstances, and to take responsibility for sharing this information;
4. The steps taken should be recorded and sent to the hospital social worker for confirmation of receipt and acceptance of their role;
5. The Provincial Leader should be informed of the steps taken by the social worker to protect children;
6. The respondent must be informed that the restrictions, already imposed, remain in place when in hospital or in a convalescent home;
7. The childcare manager in the Tusla area where the respondent normally resides will be informed of the respondent's hospitalisation and the steps taken to ensure the safeguarding of children;
8. Documentation of these steps should be recorded in the respondent's case file.

Advice on information sharing is on a case-by-case basis and should be sought from Tusla/HSCT (Health and Social Care Trust).

## 4.4A Guidance on Monitoring of Sisters Following the Conclusion of the Canonical Investigation

In circumstances where a decision has been made to allow the respondent to remain a Sister, a further risk assessment (4.2B Template 1) should be carried out. This may include the commissioning of a clinical risk assessment report on the respondent (Guidance 4.4B), and amending the risk management update tool (4.2B Template 1). These forms should then be used to create a permanent management plan that should be put in place (Guidance 4.4A). This will take the same format as the interim management plan (4.2B Template 3), but it will also include more detail regarding the permanent monitoring of the respondent.

The DLP is responsible for putting in place a system of monitoring by either taking on this responsibility or appointing someone to take on this role.

### The Monitoring Role Involves:

- Meeting with the respondent on a regular basis, as per the permanent management plan;
- Assessing the support needs of the respondent and putting in place care and management mechanisms to ensure that their spiritual, psychological, health and social needs are addressed and met;
- Assessing whether or not the plan is being adhered to;
- Advising the respondent and the DLP (if the DLP is not the person in the monitoring role) where there is evidence of non-compliance. The DLP will advise the Provincial Leader of this;
- Keeping records of all contact made with the respondent, and recording any issues emerging in relation to child safeguarding matters and passing them to the DLP (if the DLP is not the person in the monitoring role);
- Passing on all child safeguarding concerns to the DLP (if the DLP is not the person in the monitoring role);
- Reviewing the permanent management plan at regular intervals (depending on the assessed needs and the level of risk), in conjunction with other child safeguarding personnel;
- Liaising with the respondent's family members, as required;
- Maintaining professional links with the statutory authorities and preparing reports, as required;
- Liaising with the Provincial Leader and the NBSCCCI, where appropriate;
- Liaising with child safeguarding personnel, e.g. advisors, where appropriate.

The services of an advisor should be available to the respondent throughout the entire process, should the respondent wish. The advisor will provide a vital service in ensuring that the support needs of the respondent are heard and met during this time.

## 4.4B Guidance on Clinical Risk Assessments

At this point in the process, if the credibility of the allegation has been established, a clinical risk assessment may be required to predict future risk and inform a permanent management plan (Guidance 4.4A).

If the Provincial Leader believes this to be necessary, they can commission such an assessment from an expert in the area of professional practice.

In outlining what the risk assessment being commissioned should address, the Provincial Leader should ensure the following:

- That the assessment is being conducted by a specialist with relevant qualifications;
- That a recognised, up-to-date framework for assessment is being used;
- That a letter of instruction, setting out the reasons for the referral and the expected outcomes of the assessment, is sent;
- That the risk assessment report should include:
  - The personal history of the respondent and of their religious vocation;
  - The respondent's sexual history;
  - The history of the respondent's offending behaviour;
  - A clear statement about the credibility of the allegation;
  - The respondent's attitude to the complainant(s), including evidence of empathy;
  - The respondent's attitude to the Mercy Congregation in developing a safety plan;
  - The methodology or clinical framework used to assess the level of risk of the respondent abusing in the future;
  - Guidance on an appropriate management plan.

#### 4.4C Guidance for those who Accommodate Sisters who Remain the Responsibility of a Different Church Authority

- ❖ In circumstances where a decision has been made to allow the respondent to remain a Sister, but where it has been decided to allow them to live in a different province/religious order additional consideration should be given to the following, alongside the guidance outlined in 4.4A:
  - ❖ Information sharing: how should information regarding the complaint be shared with people in the province in which the respondent will live? Consultation should be sought with the statutory authorities regarding this, bearing in mind the principles of data protection, privacy and confidentiality;
  - ❖ Management plan: how is the management plan set up by the DLP (see Guidance 4.4A) monitored and reviewed?
  - ❖ Record-keeping: which records should be maintained by the receiving province/religious order and which should be maintained by the DLP?
  - ❖ Support: how is support offered to the respondent in the receiving province/religious order?