



## The Diocese of Cloyne

# THE GARDA VETTING PROCESS AND APPEALS PROCEDURE IN THE CATHOLIC DIOCESE OF CLOYNE

**Draft document**

**Produced by**

**CLOYNE DIOCESAN SAFEGUARDING CHILDREN COMMITTEE (CDSCC)**

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*The numbering in this document is designed to correspond to that of the revised diocesan safeguarding children policy document, which is due to be published in 2013. If circumstances or regulations change, the process outlined below may be amended.*

### **3.2 Recruitment and selection – garda vetting**

Garda Vetting is one component of ‘a recruitment and selection good practice framework,’ which *inter alia* includes practices such as verification of identity, gathering of personal details, interview and references.

Legal responsibility for employment and duty of care remains with the organization that enters into a contract of employment or engages an applicant in a voluntary capacity.

#### **3.2.1 Who should be vetted?**

Clergy, seminarians and religious within the diocesan setting, full-time or part-time staff and/or volunteers/voluntary lay faithful in diocesan offices, agencies and parishes, and ancillary staff in schools who have direct access to children or vulnerable adults must be vetted.

Within the Catholic Church in Ireland, it is Church Policy for those who have specific roles, where the contact with children is **substantial (part of their normal duties)** and where this may be **unsupervised (in ministry; paid or voluntary)** to be vetted.

#### **3.2.2 What is the definition of ‘substantial and unsupervised access?’**

“When seeking to decide if someone should be asked to undergo Garda vetting, you should be guided in this decision by identifying whether the person will have **substantial, unsupervised access** to children in their role or not.

- If the normal duties of the person involve contact with children, this may be viewed as substantial access. However, if that contact is always supervised, the criteria for vetting are not met.
- The contact must be of a nature to permit the opportunity to exploit access to children to harm them. It must be unsupervised.
- Therefore for vetting purposes, the role must possess the potential for substantial unsupervised access if someone is to be required to undergo Garda vetting.”

#### **3.2.3 Application of ‘substantial and unsupervised’**

Good childcare practice means that as far as possible, management and supervision arrangements are such that substantial, unsupervised access to children is limited.

#### **3.2.4 Garda Vetting -best practice in recruitment and selection**

In accordance with best practice, garda vetting should be sought in respect of each applicant prior to the offer of employment/engagement and approximately every 5 years thereafter, or at any time or times within the said 5 year period as deemed necessary. Applicants should be informed early of the requirement for garda vetting - ideally at the time of advertising. It is recommended that no person should start work or be engaged, until garda vetting procedures have been completed. This is discretionary depending on

whether working with children. For example it may be possible for an applicant to start work, subject to vetting, but not with children (except under supervision) until the vetting process has been completed. However, advice should be sought, and a Garda Vetting Form should be completed before taking up any duty.

### **3.2.5 Best Practice in the vetting process**

Best Practice will be observed in all processes, including observance of best practice relating to communication of the diocesan policy to those involved in the vetting process, the recording and storage of information and confidentiality in accordance with diocesan policy and with Data Protection legislation in the Republic of Ireland, principally with The Data Protection Act 1988 and the Data Protection (Amendment) Act 2003.

### **3.2.6 Responsibility for employment and duty of care.**

Legal responsibility for employment and duty of care remains with the parish that enters into a contract of employment or engages an applicant in a voluntary capacity.

Legal responsibility for employment and duty of care remains with the diocese itself if it enters into a contract of employment or engages an applicant in a voluntary capacity.

### **3.2.7 The Garda Central Vetting Unit**

Vetting is provided to the diocese by the Garda Central Vetting Unit (GCVU) based in Thurles.<sup>1</sup> The Garda Central Vetting Unit (GCVU) is the single point of contact in An Garda Síochána to conduct garda vetting. Vetting forms cannot be sent to the GCVU directly but must be processed at diocesan level by the Diocesan Garda Vetting Signatory – who has been formally enrolled in this task by the GCVU. Garda vetting is not conducted for individual persons on a personal basis.

Within current disclosure policy, the GCVU issues details of all convictions and/or prosecutions, successful or not, pending or completed, in the state or elsewhere as the case may be, to the authorised liaison person in the registered organization i.e. the Diocesan Garda Vetting Signatory.

### **3.2.8 The Diocesan Garda Vetting Signatory**

The Diocesan Garda Vetting Signatory c/o Cloyne Diocesan Safeguarding Children Office, Mallow Community Youth Centre, New Road, Mallow will deal with processing garda vetting applications, relating to Church personnel, including priests, parish safeguarding representatives diocesan and parish staff, volunteers etc.<sup>2</sup>

The Diocesan Garda Vetting Signatory will only communicate with one named person (usually the Parish Priest on behalf of a parish or the Pastoral Coordinator<sup>3</sup> on behalf of

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<sup>1</sup> Vetting of teachers is facilitated through the Teaching Council.

<sup>2</sup> The inclusion of *etc* is to allow for the vetting by parish or diocese of Church personnel who may not fall within the listed categories.

<sup>3</sup> The Pastoral Coordinator or other person nominated by the Bishop for that role in the garda vetting process.

the diocese) in the organisation<sup>4</sup> who has sought the vetting on behalf of an individual who is being employed or volunteering in a parish/diocese. Correspondence addressed to this named person will be marked ‘Private & Confidential and For Attention of Addressee Only.’

### **3.2.9 The Garda Vetting Form**

Garda Vetting Forms are available from the Diocesan Garda Vetting Signatory. The form which is completed by the applicant gives permission for a Garda check to be obtained and shared with the relevant personnel within the congregation/diocese in line with data protection legislation. The request to obtain Garda vetting must seek the permission of the applicant to share the information with named relevant people – i.e. – the employer and the authorised signatory.

Personnel accessing Garda vetting checks must also observe confidentiality and must be made aware of the consequences of a breach of confidentiality.

Any member of staff of the diocese who breaches confidentiality in the management of vetting information may face disciplinary action up to and including dismissal. Other serious sanctions may apply in respect of non-staff members.

The applicant<sup>5</sup> is responsible for completing the form truthfully and fully and returning it to the organisation i.e. the parish, religious order or church body – including the diocese itself - that has required that Garda Vetting be sought and to which the applicant is directly accountable).

Applicants are required to make a full and complete declaration. Failure to do this may jeopardize the offer of employment/engagement. (Applicants should note that a false declaration will be viewed very seriously and may affect the offer of employment/engagement).

Responsibility for ensuring that the completed forms are returned to the Diocesan Garda Vetting Signatory rests with the Parish Priest on behalf of the parish. In instances where the diocese itself is the organization requesting that vetting to be carried out, it is the responsibility of the Diocesan Pastoral Coordinator to ensure that completed forms are returned to the Signatory.’

The form is forwarded by the Parish Priest or Pastoral Coordinator (as appropriate) to the Diocesan Garda Vetting Signatory who will examine it for any omissions, mistakes or lack of clarity.

An incomplete form is dated and returned to the Parish Priest or Pastoral Coordinator (as appropriate) along with a cover letter requesting the form’s correction and resubmission and a record of this is retained. Changes cannot be made other than by the applicant on the authorised form.

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<sup>4</sup> *Organisation* refers to the parish, religious order or church body – including the diocese itself - which has required that Garda Vetting be sought and to which the applicant is directly accountable.

<sup>5</sup> *Applicant* refers to those individuals applying for Garda Vetting – i.e. clergy, students, staff members and church volunteers.

When the Diocesan Garda Vetting Signatory is satisfied with the form, she/he enters the applicant's details into the Diocesan Database for Garda Vetting in accordance with an agreed Database Format and stored securely in the Cloyne Diocesan Safeguarding Children Office. (See Sections 3.4 – 3.8)

As soon as possible, the Diocesan Garda Vetting Signatory forwards the form to the Garda Central Vetting Unit (GCVU), either singly or in batches.

Forms are returned to the Diocesan Garda Vetting Signatory (usually between 4-6 weeks, but this timescale can vary).

### **3.2.10 Information returned from the Garda Central Vetting Unit**

(i) If the returned form does not contain information relevant to the employment/engagement of the applicant, the Diocesan Garda Vetting Signatory will:

- Using a standardised form, record that the form has been returned from the GCVU, the date on which it has been returned, record the vetting status of the applicant and sign it.
- Inform the Parish Priest or Pastoral Coordinator<sup>6</sup> (as appropriate), of the outcome using a standardized signed and dated letter and keep a record that this has been done.

(ii) When the vetting information is returned, the parish or diocese (as appropriate) will make a decision to offer employment/engagement depending on all of the information that is available including interview, education and qualifications achieved, skills assessment, previous employment history/experience, references and medical checks where appropriate etc.

(iii) **Where the vetting form returned from the GCVU contains information which might mean that an applicant is unsuitable for the post**, the Diocesan Garda Vetting Signatory will:

- Using a standardised form, record that the form has been returned from the GCVU, the date on which it has been returned, record the vetting status of the applicant and *record that relevant information has been received* and sign it.
- Inform the Parish Priest or Pastoral Coordinator (as appropriate) of the outcome using a standardised, signed and dated letter and keep a record that this has been done.

(iv) **Where the vetting form returned from the GCVU contains information which might mean that an applicant is unsuitable for the post**, the Parish Priest or Pastoral Coordinator (as appropriate) will:

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<sup>6</sup> Pastoral Coordinator or other person appointed by the bishop to that garda vetting role.

- Seek advice from the Diocesan Garda Vetting Adviser<sup>7</sup>, regarding the implications of the vetting check information for the engagement/employment of the applicant - without revealing the identity of the applicant.
- Discuss the vetting check with the applicant to establish firstly that the identity details are correct and secondly, whether the information shared means that the application must not proceed.

If there is disagreement about the disclosure, the applicant must appeal directly to An Garda Siochana. The Church has no role in reviewing the contents of the disclosures.

The Diocesan Garda Vetting Adviser and the Parish Priest or Pastoral Coordinator (as appropriate), having regard *inter alia* to any risk assessment guidelines outlined in Cloyne diocesan policy *Safeguarding Children in the Diocese of Cloyne*, will assess the information returned from an Garda Siochana following which the Parish Priest or Pastoral Coordinator (as appropriate) will decide, if there is any reason not to employ the applicant from a criminal information perspective. If the decision is negative, Parish Priest or Pastoral Coordinator (as appropriate) will:

- (a) Inform the applicant that her/his application cannot proceed based on the information returned through the vetting process.
- (b) Inform the applicant that he/she has the right to appeal.
- (c) Inform the applicant in writing of the process of appeal.
- (d) Advise the applicant to set out in writing the grounds for appeal.

The Parish Priest or Pastoral Coordinator (as appropriate) will notify the Diocesan Garda Vetting Signatory of the decision (whether or not the applicant will be engaged/employed) and the Signatory will record this information in the data base.

If the applicant wishes to appeal the decision the diocese must set up a review panel meeting in accordance with the appeals procedure outlined below.

### **3.3 Appeals against the Church's decision not to employ**

An appeal against the Church's decision not to employ in a paid or unpaid capacity, on the grounds of information shared in the vetting check, can be made by the Applicant within 28 days of receiving the notification that the application cannot proceed. It must be noted that the Church has no role in reviewing the contents of the disclosure by the Gardai. If there is a disagreement about the disclosure, the applicant must appeal directly to An Garda Siochana.

#### **3.3.1 Appeals Process**

If the applicant wishes to appeal the Church decision, the applicant should be informed in writing regarding the process of an appeal.

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<sup>7</sup> The role of Diocesan Garda Vetting Adviser may be combined with, or be part of another role to which s/he has been appointed by the bishop, subject to the provision that there would be no conflict of interest.

Once a request has been received by the Church Authority appealing the Church's decision, an appeals Panel will be established by the Church Authority to hear the appeal.

The applicant will be told that the appeal process will require the information disclosed by An Garda Siochana being shared with the panel members, and that any representations made by him/her may be shared with the statutory authorities. Any detail provided, for example to explain the background to a conviction, will be shared with the Garda Vetting Unit to ensure it is a realistic representation of the facts.

Submission from the applicant will be requested in writing, to offer the opportunity to explain any circumstances in relation to the information received, which might further inform the appeals panel. The panel may permit an oral hearing if that is seen as necessary for the fair and just disposition of the appeal.

### **3.3.2 The Vetting Appeals Panel**

The role of the Appeals panel is to decide if the original decision was unreasonable or irrational. The panel will communicate its view to the Church Authority, in the first instance. The Church Authority should take cognizance of the views of the Appeals Panel. The applicant will then be informed in writing of the final decision following a review by the Church authority, based on the advice of the Appeals panel.

**Constitution of the Appeals Panel:** An appeals panel will be appointed by the Bishop/Diocesan administrator. The following people should be considered as appropriate membership of the panel:

- Chair of the safeguarding committee
- Priest of Religious
- Lay person with child protection experience.

Advice can be sought from:

Representative from HR (if the diocese or religious order has one)

Civil law/canon lawyer and employment lawyer.

**Role of the panel:** To receive and hear requests for review of decision not to appoint on the basis of information received through the vetting process.

- To review the written information provided by the appellant
- To receive oral evidence if deemed appropriate
- To review information provided by the Church authority.

To make a judgement regarding whether the decision not to employ was reasonable:

- Was the decision to refuse based on potential risk to children
- Was the relevance of the specific role taken into consideration.

To report its views to the Church authority for consideration.

### **3.3.3 Timeframe**

An appeal must be lodged with the employer within 28 days of being informed of the decision not to appoint.

The appellant will be asked to provide written representation within 14 days of receipt of correspondence requesting this. Failure to provide this information within the timeframe suggested – or failure to seek an extension will result in the matter being closed and the original decision standing.

The appeals panel will endeavour to review all written information within 14 days of receipt of the same and communicate in writing to the Church authority its views.

## **3.4 Database Format**

**3.4.1** The Diocesan Garda Vetting Signatory will maintain an up to date Garda Vetting database which will be in accordance with the principles of good record keeping outlined in sections 3.5 – 3.9 below, and will *inter alia* contain the following information:

- Name, address, contact details, date of birth of the applicant.
- Name, address and contact details of the organisation including the name of the contact person i.e. Parish Priest or Pastoral Coordinator (as appropriate)
- Role for which the person is applying.
- The date(s) on which the vetting form was received from the organisation.
- The date(s) on which the vetting form was returned to the Parish Priest or Pastoral Coordinator (as appropriate) with a cover letter requesting the form's correction and resubmission.
- The date on which the form was forwarded by the Administrator/Signatory to the GCVU
- The date on which the vetting information was received from the GCVU
- The date on which this information was returned to the organisation.
- The vetting status of Church personnel, including priests, parish safeguarding representatives diocesan and parish staff, volunteers etc - vetted, not vetted, vetting in progress, relevant information returned etc.
- Date for re-vetting (i.e. five years hence), in compliance with diocesan policy *Safeguarding Children in the Diocese of Cloyne*.

**3.4.2** The data base described above will be retained in Cloyne Diocesan Safeguarding Children Office on behalf of the CDSCC in accordance with the principles and guidance in Sections 3.5 – 3.9 below.

## **3.5 Recording, storage, retention and destruction of records**

Storage and record keeping will be in accordance with diocesan policy, with data protection legislation and with the principles of good record keeping.

**Storage of data** must comply with the requirements of the **Data Protection Act 1998 and the Data Protection (Amendment) Act 2003**. The provisions of these Acts in relation to storage are as follows:

It is important that all sensitive or confidential materials are retained in a case file and stored securely in a place designated by the data controller i.e. the bishop.

Files containing sensitive or confidential data should be locked away and access to the relevant fire proof safe(s) or filing cabinets and keys should be strictly controlled.

Access to the files needs to be limited to the people in named roles i.e. the Parish Priest or Pastoral Coordinator (as appropriate) who have responsibility to manage the records/files.

Any information of a sensitive/confidential nature if stored electronically must always be password-protected.

Information regarding the location and storage arrangements will be passed from outgoing data controllers to their successors in accordance with the guidance in the manual provided by the diocese for passing on safeguarding children information.

Other records with identifying personal information, e.g. records on recruitment and vetting; activity attendance records; consent forms; accident forms etc must be stored in a secure locked cabinet in the Parish Priest office or Pastoral Coordinator's office (as appropriate).

**3.5.2 Retention and destruction of records:** Guidance published by the Data Protection Commissioner in relation to compliance with the *Data Protection Acts 1998-200*, is a useful reference for organisations to consider as it represents what can be regarded as best practice. The guidance states, *inter alia*, that:

- Where no legal requirement to retain information beyond the closure of the record exists, the authority will need to establish its own retention periods. Section 2.9 of diocesan policy *Safeguarding Children in the Diocese of Cloyne*, states:
- “The Church should retain all case management files and safeguarding records for a period of 100 years. All other records pertaining to safeguarding should be stored for a period of 20 years. (See ‘Record Keeping’ at the National Board’s website [www.safeguarding.ie](http://www.safeguarding.ie)).”

**3.5.3** Application forms, references and the fact that the vetting checks have been carried out, as well as the full garda record must be stored securely by the Parish Priest or Pastoral Coordinator (as appropriate) in a locked cabinet in their respective office - (Vetting Guidance April 2011 issued by The National Board for Safeguarding Children in the Catholic Church)

The Parish Priest will keep all information returned from the GCVU relating volunteers and local employees in a secure cupboard/document file/safe in the Parish Priest's office and no copies thereof will be retained elsewhere by the Church.

The Pastoral Coordinator will securely retain all information returned from the GCVU in relation to priests of the diocese and any diocesan employees and volunteers and any visiting priests, missionaries etc. if they have been vetted by the diocese and no copies thereof will be retained elsewhere by the Church.

All personal details which are stored electronically must be protected by secure password.

### **3.6 Principles of Good Record Keeping**

All records should be legible, preferably typed or word processed.

All entries should be signed. In the case of written records, the person's name and job title should be printed alongside the entry.

All records should be dated and timed. This should be in real time and chronological order.

A narrative should be constructed which sets out a chronology of events and references any correspondence.

Records should be accurate and presented in such a way that the meaning is clear.

Records should be factual and not include unnecessary abbreviations, jargon, opinion or irrelevant speculation

### **3.7 Data protection**

Information on the vetting outcomes must be:

- stored securely – in a locked cabinet in the Priest's Office in cases where the parish is the organization requiring the garda vetting to be done and in the Pastoral Coordinator's office in cases where the diocese is the organization requiring the vetting to be done.
- retained in line with data protection laws
- retained only for as long as is reasonably necessary

#### **3.7.1 Data Protection Legislation**

The principal legislation of the Republic of Ireland dealing with data protection is the Data Protection Act 1988. The 1988 Act was amended by the Data Protection Act (Amendment) 2003.

The Data Protection Acts (1988 – 2003) set out eight principles which define the conditions under which processing (including recording, storage manipulation and transmission) of personal data can be determined to be legally acceptable or otherwise. The Acts also identifies the sensitive nature of health information and the particular needs of health professionals to communicate that information between them. The Act gives data subjects rights of access to their records and this applies to electronic and paper based record systems.

**3.7.2** The eight principles state that the data should be:

- (i) Fairly and lawfully processed
- (ii) Processed for limited purposes
- (iii) Adequate, relevant and not excessive
- (iv) Accurate
- (v) Not kept for longer than is necessary
- (vi) Processed in line with subject's rights
- (vii) Secure
- (viii) Not transferred to countries without adequate protection

### **3.8 Sharing information**

**3.8.1** "All information passed to other appropriate and relevant staff must only be done on a basis required by the recruitment process and in keeping with confidentiality requirements of diocesan policy and legislation.

Any member of staff of the diocese who breaches confidentiality in the management of vetting information may face disciplinary action up to and including dismissal. Other serious sanctions may apply in respect of non-staff members. All organisations that avail of this service from the diocese are required to be vigilant about confidentiality and will be expected to treat breaches of confidentiality on the part of any member of their staff in similar fashion to the diocese" - *Safeguarding Children in the Diocese of Cloyne*.

Information on the data base regarding the *vetting status* of parish staff/volunteers will be shared as required with the Parish Priest.

Information on the data base regarding the *vetting status* of diocesan staff/volunteers will be shared as required with the Pastoral Coordinator in the Diocesan Office in Cobh.

**3.8.2** The handing over of securely held information to the successor of the Parish Priest, Pastoral Coordinator or other Data Protection Controllers will be in accordance with the manual provided by the diocese for passing on safeguarding children information.

### **3.8.3 Access to information by the data subject**

People have a right to know what personal information is held about them, by whom it is held and for what purpose. However, these rights do not mean that in certain circumstances such information can't be shared with others.

The data subject must be made aware of the creation of a safeguarding record and permission must be sought to share appropriate information with those who need to know in order to safeguard children. If the data subject is unwilling to give consent to sharing the information and if this information is necessary to protect children, the data subject's consent can be over-ridden only in limited circumstances. (Specific advice and guidance must be sought from the data protection officer(s).)

### 3.9 Confidentiality

All information passed to other appropriate and relevant staff must only be done on a basis required by the recruitment process.

Any member of staff of the diocese who breaches confidentiality in the management of vetting information may face disciplinary action up to and including dismissal. Other serious sanctions may apply in respect of non-staff members.

All organisations that avail of this service from the diocese are required to be vigilant about confidentiality and will be expected to treat breaches of confidentiality on the part of any member of their staff in similar fashion to the diocese.

### 3.10 Definitions

**Data** means information.

**Personal data** is data that relates to a living individual who can be identified from those data.

**A Data Controller** refers to the person or persons who determines the purpose for which and the manner in which personal data is processed.

**A Data Processor** is a person who processes data on behalf of a Data Controller.

**A Data Subject** is an individual who is the subject of the personal data which is being processed.

**A Data Protection Officer** is the designated person within an organization to take responsibility for training of staff to enable them to meet their responsibilities under legislation.

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