

RELIGIOUS ORDERS AND THE CRIMINAL RECORDS BUREAU

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Recent scandals in the churches relating to the abuse of children and vulnerable adults have led to a desire to protect those to whom the churches minister by putting in place safeguards which screen out those not suitable to work in this capacity. For the Roman Catholic Church, the implementation of the Nolan Report has been a key part of this process, together with the setting up of the Catholic Office for the Protection of Children and Vulnerable Adults (COPCA). The Conference of Religious (the representative body of priests, sisters and brothers who belong to religious orders)¹ has also been involved in ongoing dialogue with diocesan bishops about how the recommendations of the Nolan Report might best be implemented. At the same time, concerns have been raised about whether some of the measures being implemented compromise important principles of privacy and confidentiality. This discussion looks at this from the particular viewpoint of a nun² who does not work with children or vulnerable adults, and explores whether she is required to undergo checks by the Criminal Records Bureau simply by virtue of being a nun.

INTRODUCTION

The abuse of children and vulnerable adults by people ministering in the Roman Catholic Church has become a contemporary scandal, and has had serious implications for national and diocesan resources in terms of financing compensation, as well as raising concerns about the trustworthiness and reliability of church personnel, whether ordained or lay. This has led to steps being taken to ensure that the abuses of the past are less likely to be perpetrated, with the Church's procedures for recruitment and deployment of personnel becoming more transparent. Within this, however, concerns have emerged as to whether, in seeking to uphold the

¹ Though *A Programme for Action* (2001) (hereafter referred to as 'the Nolan Report') makes use of the term 'order', communities of consecrated men and women are referred to in the Code of Canon Law (1983) as 'institutes'. The terms are used interchangeably in this discussion.

² A note on terminology: in Roman Catholic canon law, the term 'nun' is reserved to those 'who are wholly devoted to the contemplative life' and who observe papal enclosure (cf Canon 667 §3), while the term 'religious' is used in the Code in relation to those who belong to apostolic institutes (cf Canons 662-665). In common parlance, however, both of these groups tend to be subsumed under the term 'nun'. This, therefore, is the shorthand term used in this discussion.

rights of children and vulnerable adults, the protection of the rights of those working within the Church are in danger of being undermined.

It is clear that the Church needs to take steps to protect those who are within its care. Further, as stewards of charitable funds, the various trustee bodies within the Church have a duty to exercise responsible stewardship and to take steps to minimise the risks to which these funds are exposed. However, there is a question about whether some of the steps being advocated are blurring certain boundaries and ignoring certain fundamental principles of canon law. With this in mind, this discussion aims to engage with one part of the wider debate by focusing on a very specific question: whether a nun is required to undergo a check by the Criminal Records Bureau (CRB), if the person in question does not hold a post that involves contact with children or vulnerable adults.

There are specific points of note in relation to this discussion. These are that the individual in question does not hold (and has never held) a formal position that involves work with children and young people, and that she has been a member of the order for more than ten years, is in final profession, and is in good standing in the order.

We will begin by considering the report delivered on child protection arrangements in the Church in England and Wales by Lord Nolan and look at the practical implications of the report, together with the report from the Catholic Office for the Protection of Children and Vulnerable Adults in 2003. We will then consider the canonical implications, with particular regard to the specific issue relating to nuns.

BACKGROUND

In the year 2000, the Archbishop of Westminster, Cormac Murphy-O'Connor, invited Lord Nolan to chair a committee, the terms of reference of which were 'to examine and review arrangements made for child protection and the prevention of abuse within the Catholic Church in England and Wales, and to make recommendations'. The committee issued its final report in September 2001, entitled *A Programme for Action* (though it is more popularly known as 'the Nolan Report'). This report made a number of recommendations to ensure that the policies and practices of the Church protected children and vulnerable adults.

Following on from this, the Catholic Office for the Protection of Children and Vulnerable Adults (COPCA) was established by the Catholic Bishops' Conference of England and Wales when the Conference accepted the Nolan Report. The report's recommendations were also accepted by the Conference of Religious (COR) in January 2002. With Eileen Shearer appointed as its director in January 2002, COPCA acts as a registered body for CRB disclosures for all who work with children and vulnerable adults, and is aiming to establish a national database of relevant information. Thus, anyone involved in activities such as youth groups, children's liturgies,

catechesis or confirmation programmes have to be checked to ensure that there is no reason why they should not work with children or vulnerable adults. The role of COPCA then is to ‘conduct meticulous checks on everyone seeking work in the Church that brings them into contact with children’.³

The role of the CRB (which is an executive agency of the Home Office) ‘is to reduce the risk of abuse by ensuring that those who are unsuitable are not able to work with children and vulnerable adults’.⁴ The procedure known as ‘Disclosure’ (of which there are three kinds)⁵ is described in this way:

The Disclosure service offers organisations a means to check the background of job applicants to ensure that they do not have a history that would make them unsuitable for posts they are trying to fill. Disclosures will provide details of a person’s criminal record including convictions, cautions, reprimands and warnings held on the Police National Computer.⁶

The main sources consulted for this discussion are the Nolan Report itself, and the COPCA Annual Report of 2003, which specifies certain post-holders who are required to have enhanced CRB checks, as well as the 1983 Code of Canon Law and related commentaries.

THE ISSUE ITSELF

The issue being explored is whether a female (therefore non-ordained) member of a religious order is required to undergo a check by the Criminal Records Bureau (CRB), if the person in question does not hold a post that involves contact with children or vulnerable persons. It is clear that anyone seeking ordination, or who is already ordained, is more than likely to have contact with people in both categories (whether through schools, care homes or within a parish). However, what is less clear is whether *all* non-ordained members of religious orders are also required to be checked, whether or not they hold positions through which they come into contact with children or vulnerable adults. While it can be argued that Disclosure does not breach civil liberties, as an applicant must consent to making an application in the first instance, there remains a question as to who is required to be checked under the Nolan Report’s recommendations.

One of the main issues revolves around Canon 220: ‘No one may unlawfully harm the good reputation which a person enjoys, or violate the

³ E Curti, ‘Does Nolan go too far?’, *The Tablet*, (25 May 2002), 11–13, 13.

⁴ David Blunkett, on CRB website, <<http://www.crb.gov.uk/>> .

⁵ There are basic, standard and enhanced disclosures, where ‘enhanced disclosures are for posts involving a far greater degree of contact with children or vulnerable adults’. See the CRB website.

⁶ See the CRB website, as above.

right of every person to protect his or her privacy'.⁷ It can be argued that 'privacy' has two aspects. The first is privacy *per se*, about which James Childress writes: 'Much of the modern debate about privacy has focused on access to information about a person. The right of privacy is valued in part because personal control over access to information about oneself is essential for important human relationships'.⁸ Confidentiality might be defined in terms of 'fidelity', where what is at stake is 'keeping faith with those who have confided their secrets on condition that they may not be revealed'. Therefore, 'privacy' concerns what an individual can keep secret about themselves (and what they may be asked to reveal about themselves for the sake of the common good) and how that information, once made available, is to be safeguarded.⁹

The obligation to safeguard privacy proceeds from natural law, rather than from baptism, and is given protection against unlawful invasion which, as we can see can take two forms, by pressuring an individual to disclose something that they have a right to keep secret, and by gaining access to information about another where there is no right to do so. One of the commentaries notes that the Canon 'carries an implied warning to superiors and others that, while observing the criteria laid down by the Church, they must take seriously into account these basic rights of the individual'.¹⁰

However, rights are not exercised in a vacuum, and an individual 'must take account of the common good of the Church'. Moreover, to protect and promote the common good, ecclesiastical authority can regulate the exercise of rights.¹¹ However, this does not allow or justify an arbitrary exercise of authority. A key word in Canon 220 is 'unlawfully', which suggests that there can be lawful disclosure, with due regard for Canon 1717 §2 and Canon 1390 §2,¹² and that it is permissible to bring to light a person's offences 'when the superior good of individuals, of society, and of the Church is at stake'.¹³ Further guidance is given in Canon 18: 'Laws which prescribe a penalty, or restrict the free exercise of rights, or

⁷ Canon 220: '*Nemini licet bonam famam, qua quis gaudet, illegitime laedere, nec ius cuiusque personae ad propriam intimitatem tuendam violare*'.

⁸ J Childress, 'Privacy', in *A New Dictionary of Christian Ethics* (London, SCM, 1993), p 498. See also the Canons relating to an individual's disclosure of something about themselves to another: Canon 240 §1, and Canon 630 §§1 and 5.

⁹ See Canons 209, 223; rights are exercised within the Church as *communio*, and individuals may act to protect the common good, even if it means harming someone's reputation.

¹⁰ See G Sheehy et al, *The Canon Law: Letter and Spirit*, (London, Geoffrey Chapman, 1996), p 124. This mentions a number of Canons in this regard: Canon 483 §2, Canon 1352 §2, Canon 1361 §3, Canon 1390 §2, Canon 1455 §1, and Canon 1598 §1.

¹¹ Canon 223.

¹² Canon 1717 §2: 'Care is to be taken that this investigation does not call into question anyone's good name'; Canon 1390 §2: 'A person who calumniously denounces an offence to an ecclesiastical Superior, or otherwise injures the good name of another, can be punished with a just penalty, not excluding a censure'.

¹³ E Caparros and H Aubé (eds) *Code of Canon Law Annotated* (Wilson & Lafleur, Montreal, 2004), p 177.

contain an exception to the law, are to be interpreted strictly'. Given that the Nolan Report is a key document in this discussion, the issue might be framed in terms of its relation to canon law, and how the report may be interpreted and used by ecclesiastical authority to justify the restriction of the right to privacy under Canon 220.

THE NOLAN REPORT AND THE COPCA ANNUAL REPORT 2003

It has to be said at the outset that it is not clear what is the canonical status (if any) of the Nolan Report. The report itself states the belief 'that for the most part our recommendations are compatible with canon law', but does not develop this statement (section 2.3.1). This raises a question as to how it is to be interpreted, and invites the comment that even if it had canonical status, Canon 18 would also have to be borne in mind, given that the provisions of the report might well restrict the right to privacy.

Near the beginning, the report acknowledges that many religious orders in the Catholic Church in England and Wales are formally independent of the bishop (section 2.6.2). However, it goes on to develop a point from the First (Nolan) Report, where it said that 'it was essential that religious orders that have contact with children should appoint Child Protection Co-ordinators', and says:

...[W]e should make it clear that we consider that all religious orders, whether or not their work normally brings them directly into contact with children, *should have child protection arrangements, including CPCs*. This is because there can never be a guarantee that members of any religious order will not have contact with children and their particular status will make that a privileged relationship (section 2.6.2).

However, this does not in itself say that nuns are required to be CRB checked; the requirement is that there should be established child protection arrangements. These are specified in the report and include the recommendation that each religious superior should appoint a Child Protection Co-ordinator who will ensure that the order has implemented the national policies, principles and practices through guidelines based on the Home Office document, *Safe From Harm* to prevent abuse. There also ought to be regular reviews of performance and oversight of arrangements for responding to allegations and for risk assessment. Further, for all posts, paid and voluntary, which involve work with children there should be clear job descriptions and effective supervision, and candidates for posts involving work with children should be CRB checked. This also extends to existing staff. Further, the names of prospective candidates for ordained ministry should be placed on a national database (section 2.9.12).

The Nolan Report acknowledges that religious orders are governed by their own specific laws and constitutions, and that diocesan bishops have no capacity to intervene in the internal affairs of the order (section 3.1.11). Nevertheless, canonically, a bishop does have a certain authority

over individual members of those orders to whom he has given permission to exercise a pastoral ministry in his diocese. Canon 678 §1 outlines that scope as ‘matters concerning the care of souls, the public exercise of divine worship, and other works of the apostolate’. It is this last aspect that is of particular relevance here. In the Nolan Report, the phrase ‘works of the apostolate’ appears to be defined in terms of a ‘contracted’ ministry as it continues by saying that individuals ‘will be subject to the policies and arrangements of dioceses to which they are seconded’ (section 3.2.6). This suggests that the interpretation cannot be stretched to incorporate nuns simply *living* in the diocese.

The term ‘post’ is used frequently throughout the Nolan Report.¹⁴ Recommendation 27 speaks of the need for job descriptions, which suggests that there is a clear purpose seen in the activities and fulfilment of a particular post (whether paid or voluntary). However, it is clear from the text that such a post involves work with children or vulnerable adults,¹⁵ and that a CRB check is undertaken before such a post is taken up. This suggests, then, that a nun is only required to undergo a CRB check if she is taking up a post (paid or voluntary) with a job description, which involves work with children or vulnerable adults. This would also apply if a nun was moving to a new diocese to undertake such work,¹⁶ or if she is already in such a post where she is working with children or vulnerable adults.¹⁷

There are some exceptions to this. One of these relates to those who are *applying* for priesthood or religious life. Recommendations on checking ‘should be strictly applied when candidates are being considered for ordination’¹⁸ and it is recommended that ‘a single national database of information on all applicant *candidates* for ordained priesthood, the permanent diaconate, and male and female applicants for the religious life...’ should be set up [italics added].¹⁹ This is reiterated in the COPCA Annual Report of 2003, which outlines the priority for CRB checks.

¹⁴ Cf the Nolan Report, Recommendations 28 (on supervision); 29 (on obtaining references); 30 (non-appointment); 32 (probationary period); 39 (regarding checks on those already working with children); 41 (on candidates from other countries); 43 (on new posts outside the diocese).

¹⁵ Cf Recommendation 28, which speaks of the need for supervision as a means of protecting children for all posts (paid or voluntary). See also Recommendation 29 on the need to obtain references for any potential post-holder.

¹⁶ Cf Recommendation 38: ‘dioceses and religious orders should themselves maintain checks and references on prospective staff and volunteers for the diocese or order, and such records should be consulted by others dioceses and orders as necessary’.

¹⁷ Cf Recommendation 39: paid workers and volunteers who are already in posts working with children should now be CRB checked.

¹⁸ Recommendation 34.

¹⁹ Recommendation 37. This is not of itself contentious as canon law requires that careful enquiry is to be made of candidates for priesthood and religious life as regards their suitability. See Canon 241 §1, and Canons 642, 1029, 1051. There is also a body of literature on this including the following in the journal *Human Development*: see eg T Costello, ‘Psychological Evaluation of Vocations’ 6/4 (1985) 37–41; J Greer, ‘Vocational Assessment’ 20/2 (1999) 28–35; GD Coleman and RL Freed, ‘Assessing Seminary Candidates’ 21/2 (1999) 14–20.

Included in the list for enhanced checks are the following: 'All new clergy and religious brothers/sisters in active ministry', defined as 'those clergy and religious (both men and women) who are currently *working* with members of the general public in any capacity whatsoever, whether *paid or voluntary*'.²⁰ This appears to conflate two issues: (a) checks done on new applicants; (b) checks done in respect of a particular role being undertaken. It is also noteworthy that here there is an extension in the Nolan Report, from posts involving work with children to posts involving work with the general public. However, it can be argued that this is an adaptation of CRB requirements on disclosures for new entrants who will be working in professions which involve positions of trust. In this instance, the Church may be seeing itself as an 'associated professional body' which is 'entitled to request a higher-level Disclosure when a candidate is seeking entry to the profession'.²¹ However, given the issue of the unresolved canonical status of the Nolan Report and its implementation, it could be argued that there is potentially a conflict here with Canon 597.²²

Enhanced checks are also required for certain post-holders, including bishops, Religious Provincials, and Religious Councils, as well as individuals holding certain posts such as Diocesan and Religious Child Protection Officers and Representatives and Child Protection Management Teams. Further, 'checks on *existing* clergy, religious and lay volunteers *working with children and vulnerable adults* will be undertaken on a phased basis over a

²⁰ COPCA Annual Report 2003, p 18.

²¹ Among these are listed medicine, nursing, dentistry, accountancy and the law.

²² Canon 597 §1: 'Every Catholic with a right intention and the qualities required by universal law and the institute's own law, and who is without impediment, may be admitted to an institute of consecrated life'. The qualities required by universal law are listed in Canons 641–645, and include requirements relating to age, health, disposition and maturity, as well as a consideration of other ties (such as a marriage bond, being bound to some other institute, or having unmet debts). Canon 645 also allows for an institute's own laws demanding further proof as to suitability (§ 3), or the superior to seek other information if it seems necessary (§ 4). Given the fledgling nature of COPCA and the recency of developments in Child Protection, it is unlikely that any CRB provisions have been written into an institute's positive law. However, it is Canon 645 § 4 which is of particular interest: 'Superiors can seek other information, even under secrecy, if this seems necessary to them'. This does not entitle a superior to seek secret information, but rather relates to the method of gathering the information, that is, 'without making known the fact or the circumstances of the enquiry'. See JP Beal, J Coriden, TJ Green (eds), *New Commentary on the Code of Canon Law* (Paulist Press, New York, 2000) p 812. This means that 'the candidate is unaware that the superior is seeking the information' (J Hite, 'Admission of Candidates and Formation of Members: Canons 641–661', in J Hite, S Holland, D Ward (eds) *A Handbook on Canons 573–746* (Liturgical Press, Collegeville, Minn 1985), pp 115–168, p 131. However, the CRB website makes it clear that Disclosure is a 'fully consensual process, with the applicant agreeing to an applying for the check' <<http://www/crb.gov.uk/>>. This being the case, it is not possible to obtain further information from the CRB 'under secrecy', therefore the practice as proposed by COPCA is not strictly in line with this part of the canon. Further, Hite believes that in such cases where further information is sought, 'the superior should be motivated by a sufficient cause' (p 131), which suggests that such information is not looked for as a matter of course, in contradiction to the COPCA requirement which advocates it for all new applicants to priesthood and religious life.

period yet to be agreed, depending on the numbers involved' [*italics added*]. Given this, and based on the provision of Canon 18, an interpretation of this text as it stands is that those who have been in religious life for some time *and* who are not working with children or vulnerable adults are *not required* to be checked by the CRB.

Objections may be made to this conclusion in terms of the understanding of what it means to be a nun and the relationship between a diocese and a religious order. Both of these will be considered from a canonical perspective.

DOES SIMPLY BEING A NUN CONSTITUTE A 'POST'?

There is no doubt that many nuns today have job descriptions and specifications that spell out what is required of them in their role, whether as teacher, nurse, social worker, administrator, probation officer, parish worker, prison chaplain or pastoral assistant. Many of these posts which involve work with children or vulnerable adults will have required an individual to have had a CRB check, even if it involves voluntary work.²³ A post implies that there are terms and conditions of employment, that the post may be terminated either by mutual agreement, or by one party giving notice, and that there are specified tasks. Examples of such job descriptions are given at the end of the Nolan Report, and these specify job title and purpose, lines of accountability, the main responsibilities, and a person specification.²⁴

However, it can be argued that being a nun does not constitute holding a 'post' in the normal use of the term, as nothing above can be said to apply. Those who profess the evangelical counsels through vows 'are consecrated to God in their own special way and promote the salvific mission of the Church'.²⁵ This manner of life is 'freely' assumed 'in institutes of consecrated life which are canonically established by the competent ecclesiastical authority'.²⁶ This 'stable form of living'²⁷ refers to the fact 'that the state of consecrated life is meant to be a permanent choice or state in life'.²⁸ It can be argued then, that being a nun is not a 'job' or a 'post' as defined in the Nolan Report, as it involves a permanent state of 'being' rather than a contractual post which can be terminated.

What needs to be ensured, though, is that every nun who holds a post (whether part-time or full-time, paid or voluntary) or is in a ministry

²³ Volunteering organisations where regular duties include working with, caring for, supervising, training, or being in sole charge of children or vulnerable adults. The key term here is 'regular'.

²⁴ See Nolan Report, Annex F.

²⁵ Canon 207 §2.

²⁶ Canon 573 §2.

²⁷ Canon 573 §1.

²⁸ E O'Hara, 'Norms Common to All Institutes of Consecrated Life: Canons 573–606' in J Hite, S Holland, D Ward (eds) *A Handbook on Canons 573–746* (Liturgical Press, Collegeville, Minn 1985), pp 31–58, 33.

(contractual or ‘freelance’), and who works with children or vulnerable adults, has the necessary CRB check. Since the Second Vatican Council, many nuns no longer work in traditional institutional ministries, such as their own schools, hospitals or care homes. Many have diversified into a range of occupations such as probation work, prison and hospital chaplaincy, counselling, spiritual direction, or who work with a range of charitable bodies (who may be involved in famine relief, development work, work with the homeless, and those on the margins of society). Each of these organisations will have their own procedures for CRB checks. What may fall through the net is any nun who does ‘freelance’ work (for example, counselling or spiritual direction), and which may bring her into contact with children or vulnerable adults. This is perhaps the reason for those who may be seeking to have all nuns checked by the CRB. However, it can be argued that superiors ought to deal with their own members on a case-by-case basis, rather than seeking a blanket CRB check on all members, with the danger of unnecessarily and unlawfully infringing Canon 220.

UNDERMINING SUBSIDIARITY

Recommendation 3 in the Nolan Report seeks to have the whole Church in England and Wales, through the individual bishops and religious superiors, commit itself to a single set of policies, principles and practices. This is a laudable attempt to ensure that the protection of children and vulnerable adults is as comprehensive as it can be. Nevertheless, there is a danger that, in failing to make adequate differentiation of the components that make up the Church, boundaries are blurred and important principles—such as subsidiarity—undermined.

As Brian Sweeney notes, the principle of subsidiarity formed part of the discussion of the revision of the Code of Canon Law in relation to institutes of consecrated life.²⁹ While its application in the Church has been contested,³⁰ it was used in various contexts in the process of revising the Code. Thomas J Green notes that the concept generally referred to ‘the reshaping of relationships between church authorities and more specifically the movement toward decentralised governance patterns in the legislative, administrative and juridical areas’.³¹ Emphasising this principle was an attempt to avoid what had been seen as an excessive ‘levelling’ of institutes (imposed by the requirements of the 1917 Code), where there was an attempt at regulation by the imposition of uniform norms.³²

²⁹ BJ Sweeney, *The Patrimony of an Institute in the Code of Canon Law: A Study of Canon 578*, (unpublished dissertation, Pontificia Studiorum Universitas A S. Thoma Aq, in Urbe, Roma, 1995).

³⁰ See JA Komonchak, ‘Subsidiarity in the Church: The State of the Question’ (1988) 48 *The Jurist* 298–349.

³¹ TJ Green, ‘Subsidiarity during the Code Revision Process: Some Initial Reflections’ (1988) 48 *The Jurist*, 48, 771–799, 797.

³² Sweeney, p 91.

While Sweeney's discussion relates to law at the general level, we can draw on his study to make some observations. The 1983 Code makes clear that the bishop has obligations and responsibilities within his diocese.³³ At the same time, he is not to interfere in the internal governance of an institute,³⁴ and is obliged to respect the autonomy of the institute in terms of their external works,³⁵ though nuns are subject to the bishop in terms of 'works of the apostolate'.³⁶ Here we see the potential problem in relation to governance and subsidiarity. The Nolan Report recognises some of the distinctions in governance between the diocese and religious order (section 3.1.11); however, a crucial question can be raised over the interpretation of what it means for the bishop to 'have a certain authority over individual members of those orders ... whom he has given permission to exercise a pastoral ministry in his diocese'. If it is interpreted to mean that all nuns *living* in his diocese are subject to CRB checks, then it could well be argued that this is undermining the principle of subsidiarity. (The same argument could be made if the Conference of Religious attempted the same thing for all nuns living in England and Wales). However, key words and phrases here are 'certain authority' and 'individual'. On a strict interpretation, it could not be argued from this basis that a bishop has the authority to require that all nuns living within a diocese must be CRB checked. The most that he could do is to ensure that each order, through COR, is taking appropriate action as recommended by the Nolan Report.

CONCLUSION

Based on the above, we can conclude that a nun who has no formal post which involves contact with children or vulnerable adults is not required to be CRB checked. It is clear, though, that we live in a time when allegations can be made, even though they may be false. It may be prudent for individuals engaged in any kind of church activity (even though not involving children or vulnerable adults) to consider appropriate measures for protecting their own reputation and that of the Church. These may range from joining professional associations or trade unions, seeking professional indemnity insurance (if engaged in counselling or spiritual direction), or simply being aware of the possibilities of situations that could be considered compromising. CRB checks will give some measure of assurance, but a blanket approach (which may give a 'belt and braces' reassurance) should not be done at the expense of fundamental principles such as privacy.

³³ Cf Canons 383, 391.

³⁴ Canon 586.

³⁵ Canon 681 §1 and Canon 683 §1.

³⁶ Canon 678. See also Canon 756 §2.