

# Submission

## Joint Committee Finance, Public Expenditure and Reform

Elaine Byrne<sup>1</sup>

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<sup>1</sup> Dr Elaine Byrne is an adjutant lecturer in politics at Trinity College Dublin. Co-author of the Transparency International National Integrity Study of Ireland. Consultant for the United Nations Office on Drugs and Crime with responsibility for the Technical Guide on the Implementation of the United Nations Convention against Corruption. Consultant for the World Bank and Global Integrity on governance. Member of the Global Integrity Group.

*United Nations Convention Against Corruption*

*Article 33*

*Protection of reporting persons*

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

Purpose of legislation – internal and external

1. Whistleblowers should be able to report their concerns within the organisation they work for such as external oversight bodies or immediate supervisors.
2. Whistleblowers should also be able to report to another institution if their disclosures to their institution have not been appropriately satisfied.

## Whistleblowing and Ireland

- Failings not confined to any one institution.
- Requires not just legislative change but cultural change.

For some time past I have been receiving complaint from parents having children in Greenmount Ind[ustrial] Schools... They look cold and miserable looking... Now I am a particular friend of the Bros' in Greenmount and have no wish to do any injury to them and their good work... I do hope this matter will be treated in confidence as I do not wish it to be known that it was I brought this matter to notice.

This letter from a Garda to the Department of Education in 1949, about his concerns regarding St. Joseph's Industrial School, is instructive of the implicit rules by which Irish society operated within. Although questions were asked, they were not asked. Instead, a subservient mindset accepted a culture of secrecy which blindly embraced perverse notions of superiority.

The common misperception regarding child abuse by the religious is that there were no whistleblowers. Somehow this narrative has acted as a comfort blanket for wider Irish society- rocked by revelations that have undermined our naïve assumptions of righteous authority. The Ryan and Murphy reports have exposed an uncomfortable history of how power was defined in Ireland since the foundation of the State where the absolute authority of the Catholic Church rested on the assumption that it is was above reproach, without question and beyond criticism.

Alcoholism is a psychological disease which has an embedded defence mechanism called denial which instinctively punishes those who seek to challenge such behaviour. It is easier to avoid than to acknowledge. To ignore than to confront. Eventually, it grows into the large white elephant in the small room that everybody walks around and kneels under while at the same time pretending that everything is perfectly normal. This deviant, debased and cancerous definition of normality incarcerated generations of Irish children.

Nonetheless, a functioning alcoholic can only survive if facilitated and enabled by those around the alcohol abuser. Because the enablers and facilitators subconsciously accept this behaviour, they inevitably become responsible for it. They are part of the problem. The absolute refusal to recognise the rudimentary difference between right and wrong ultimately poisons every life infected by the disease that begins each time with a choice. Excuses for the alcoholic's behaviour are often made out of a misguided concern driven by the desire to protect a reputation.

Enablers and facilitators of the abuse become obsessed about 'the maintenance of secrecy, the avoidance of scandal, the protection of the reputation...' All other considerations are subordinated to these priorities. This enabling phenomenon has many forms but has the same outcome, it facilitates the alcoholic to avoid the consequences of their actions and prolongs the destructive behaviour.

**The Murphy report**, for instance, outlined the context in which Fr Donal Gallagher, from the Dublin parish of St Peter's in Phibsboro, was able to continue his 20-year career of paedophilia unchecked.

When girls from St Mary's School for the Deaf complained that Gallagher kissed them during Confession, the school principal "felt that perhaps Fr Gallagher's approach reflected the newer approach to the sacrament of reconciliation [Confession] and took the matter no further". Ten years later, separate allegations by children from that same school evoked this written response by a Garda sergeant, "Fr Gallagher is a professional man and strikes me as a sincere and genuine individual. I can see no useful purpose to be gained by the prosecution of Fr Gallagher at this late stage".

Those in positions of authority, Garda Síochána, teachers, civil servants, judiciary and politicians, were deliberately deaf to those who desperately wanted someone to listen.

For example, former social worker Frank Crummey has written of threats of physical violence and the social obstetrician his family endured when he first spoke up about child abuse by the Christian Brothers some 40 years ago.

**The Ryan report** found that the Department of Education's attitude to the repeated complaints by victim Tim O'Rourke "was not about how to investigate his complaint, but about what to do about a troublemaker who had complained". As O'Rourke told Prime Time : "I felt I was being totally ignored, that I had no rights whatever, that children who were being sexually abused at the time counted for nothing . . . five years passed, 10 years passed and it's now 27 years.'

Michael O'Brien's extraordinary five-minute outburst on the May 2009 edition of Questions and Answers was a turning point in the public response to the Ryan report. In a controlled rage, this elderly man from rural Ireland, articulated a sense of deep pain and anguish that 2,600 ugly pages of a report could never capture.

Eight of us from the one family, dragged by the ISPCC cruelty man. Put in to two cars, brought to the court in Clonmel. Left standing there without food or anything, and the fella in the long black frock and the white collar came along and he put us in to a van . . . Two nights later I was raped.

Yet, perhaps more revealing was O'Brien's response to the follow up question put by the presenter, John Bowman, as to why he didn't report the abuse in later life. "Because I would have been made an outcast."

Attitudes towards whistleblowers have traditionally been hostile, and informing has been perceived as having traitorous qualities within Irish culture. "Informers" are regarded as weak of integrity and character. Those that did complain have traditionally been condemned as informers by Irish society, rather than commended for their acts of citizenship. The implications of revealing such truths can be professionally and personally costly.

**Fr Gerard McGinnity** was removed as senior dean at St Patrick's College Maynooth in 1984 when he tried to draw the attention of its bishop trustees to seminarians' concerns about the behaviour of then college vice-president Micheál Ledwith.

But it was not just the Murphy and Ryan reports into the abuse of children in the Dublin diocese and in State institutions that have exposed the dysfunctional nature of power in Ireland. So too have Morris tribunal into Garda corruption and the McCracken, Mahon and Moriarty tribunals into political corruption. Moreover, the Finlay, Lindsay, Laffoy, Lourdes, Ferns, Barr, Dunne, Madden and other inquires and tribunals sponsored by the State. The moral bankruptcy of our financial institutions and professions also now lies bare.

**Sheenagh McMahan** experienced devastating personal repercussions when she revealed in 1999 that her husband, Det Garda Noel McMahan, had planted homemade explosives, later claiming them as significant IRA explosives finds. This led to the establishment of the Morris tribunal.

**Judge Maureen Harding Clark** noted in her 2006 Lourdes Hospital Inquiry Report the resentment towards the four nurses who exposed the systemic wrongs in Drogheda: "We heard of comments to the effect that the whistleblowers would never get a job in Ireland, that they would be sued for defamation and would generally come to a bad end." Judge Harding Clark listed 11 categories of people who did not complain about Dr Neary's actions and remarked, "No one made a formal complaint and no one questioned openly."

Reacting to the 2004 **Morris tribunal** findings, the then minister for justice Michael McDowell described Garda non-co-operation as a "hedgehog culture", where Gardai feel loyalty primarily to their colleagues and co-operation is withheld from internal Garda inquiries. "The way to survive, in other words, was simply to put your head down and be uncooperative." McDowell believed that this was encouraged in part by a management culture that was very stern on anyone who admitted any fault.

A **1946 Dáil exchange** between the Taoiseach, Éamon de Valera, and Eamonn Coogan TD, Fine Gael, on the establishment of the Ward corruption Tribunal, perfectly illustrates the long-held perception of whistleblower by Irish people.

Coogan — I have information which might perpetrate another crisis in this House.

de Valera — If that is so the Deputy should give it to me.

Coogan — If, again, I can get immunity for some of the people who may speak. If the Taoiseach presses me perhaps I can interview certain individuals.

de Valera — I do not press the matter. It is your simple duty.

Coogan — I do not want to become a common informer.

**International organisations:** Over the last decade, the Organisation for Economic Cooperation and Development (OECD) and the Council of Europe body, the Group of States against Corruption (Greco), have criticised the Government's failure to introduce legislation which would protect public officials and private sector workers who report wrongdoing. The Financial Action Task Force (FATF), the European Commission and the Comptroller and Auditor General have all highlighted various shortcomings in corporate governance structures in Ireland throughout the 2000s. Whistleblowing legislation and a culture which welcomed such actions, would perhaps have checked the excesses of corporate failures throughout the Celtic Tiger years.

In response to the findings of the 2004 reports on the facilitation of tax evasion at National Irish Bank and Allied Irish Banks (AIB), the Irish Financial Services Regulatory Authority advocated for a change in cultural practice regarding hostile attitudes to whistleblowing. No action was taken. Some three years later in May 2008, as the economic crisis was preparing to hit Ireland, the Director of Corporate Enforcement, Paul Appleby, drew attention to the absence of legislative provisions to facilitate whistleblowers within company law.

However, legislation facilitating whistleblowing within the public, private and political spheres is one thing. **A cultural mind-set** which accepts and embraces the exposure of wrongdoing is another entirely. The key whistleblowers whose actions contributed largely to establishing the Tribunals lived outside the state. It was 'outsiders', living outside the consensus of an enabling culture, that told the truth. Research has shown that legislation is not sufficient to encourage whistleblowers to come forward. Whistleblowers are often in a vulnerable position and need not only legal advice but counselling.

**Eugene McErlean**, from Northern Ireland, was the former head of AIB internal audit, blew the whistle in mid 2000s on fraudulent practices within the financial sector. A junior English midwife exposed the irregular obstetric practices of Dr Michael Neary which led to the Lourdes hospital inquiry in 2006.

**Patrick McGuinness**, the former senior accountant for the beef baron Larry Goodman was a key witness for the Beef Tribunal between 1991-94. McGuinness was living in Canada and went to considerable pains to ensure his legal representation were from outside the Irish state. Mr. Justice Liam Hamilton noted that 'counsel on behalf of the Goodman group of companies took the unusual course of making submission regarding the credibility of Mr McGuinness' who they described as a 'sub-class of witness.'

The producer for the World in Action documentary, Susan O'Keefe, was employed by ITV and living in Britain. In 1995 she was prosecuted for refusing to name her sources to the Beef Tribunal. O'Keefe was subsequently acquitted and was the only person, apart from two low-ranking Goodman employees, brought before the courts as a result of the Tribunal. In February 1989, some two years prior to the ITV documentary, two RTÉ journalists ran a television story stating that an unnamed Irish company 'has become involved in a meat fraud investigation' in Iraq and that 'the Government's export credit insurance facilities may have been abused' by using it to cover non-Irish meat. Pádraig Mannion, presenter of the Daily Farm Diary and Joe Murray, boss of all agricultural programming on TV and radio, were brought before an internal RTÉ disciplinary hearing and found guilty of negligence and incompetence, thereby damaging their professional reputations.

A fear and deference towards authority and a corrosive culture of secrecy has dominated every structure of this State. The same moral equivocation responsible for child abuse by the religious was churned out for corruption in Irish institutions and professions.