



## **CONSULTATION RESPONSE**

### **LAW REFORM COMMISSION CONSULTATION**

**Liability of Clubs, Societies and other**

**Unincorporated Associations**

**15.5.2023**



Dear Law Reform Commission of Ireland,

## Background

Dignity4Patients is a patient support and advocacy organisation. We work with people who have suffered sexual abuse or inappropriate behaviour whilst a patient in a medical or therapeutic setting. We were set up in response to hundreds of complaints by adult survivors of sexual abuse against one perpetrator, a former surgeon, Michael Shine, who worked at our Lady of Lourdes Hospital in Drogheda, and in his private rooms, between 1964 and 1995.<sup>1</sup>

At the time the hospital was under the auspices of the Medical Missionaries of Mary, and the issues of unincorporated associations and historical/non-recent sexual abuse are very much to the fore of the work that we engage with. Due to our small staff and limited funding resources, we are unable to provide the robust and in-depth consultation response this call requires. However, due to the nature of our service and our work with victims and survivors we have some cursory comments to input into any overarching decisions on the best legal route. We thank you for your endeavours as part of your *Fifth Programme of Law Reform*.

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<sup>1</sup> <https://www.dignity4patients.org/>



## Comments in Brief

Dignity4Patients strongly supports the Law Reform Commission's proposals put forth in its consultation paper with the objective of bringing clarity to the law on unincorporated associations and associated objectives.<sup>2</sup>

In particular, we feel that there is a need to address issues relating to liability in clubs, societies, and other unincorporated associations. This reform is long overdue and will result in greater accountability, responsibility, and transparency in these organisations for those who suffer any injustices, or misfortunes, either intentional or unintentional.

The legal situation relating to unincorporated associations is problematic due to significant under-regulation. Members of such bodies may be held liable for the actions of others, even without direct involvement in wrongdoing having been established. This is a clear violation of an individual's rights where they can be unfairly punished for the actions of others. Furthermore, it often proves difficult to take legal action against an unincorporated body, as they have no legal identity of their own and rely on trusts for their existence which creates regulatory issues. This can pose difficulty for those wishing to access justice pathways.

The issue concerning liability for sexual abuse in unincorporated settings is one of the notable concerns having been raised in the Supreme Court case, *Hickey v. McGowan* [2017] IESC 6.<sup>3</sup> Because of this decision survivors of sexual abuse find themselves in a double-edged bind, with nobody to hold accountable for the horrific crimes they have suffered.

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<sup>2</sup> Law Reform Commission CONSULTATION PAPER LIABILITY OF CLUBS, SOCIETIES AND OTHER UNINCORPORATED ASSOCIATIONS, point 2, Law reform objectives in relation to unincorporated associations, p. 109 see <https://www.lawreform.ie/fileupload/consultation%20papers/LRC%20-%20CP%2068%202022%20Full%20Text%20W%20Cover.pdf>

<sup>3</sup> This case addressed allegations of sexual abuse by a member of the Marist Order of Religious Brothers, an unincorporated body. The Supreme Court held that unincorporated associations cannot be held liable for the actions of individual members.



The sad reality is that currently, despite all the promises of both government and religious institutions that they are dealing with non-recent sexual abuse of children and taking it very seriously this is simply not the case. We have seen that time and time again victims and survivors of abuse having no recourse because religious orders refuse to provide a nominee to act on behalf of the congregation.<sup>4</sup>

We support the Commission's proposal to impose an obligation on those in management positions of unincorporated associations to disclose the identity of all members, inclusive of committees and relevant officers on request. The imposition of such an obligation would remove certain access barriers to justice for survivors of sexual abuse.

Notwithstanding, we urge the Law Reform Commission to take into consideration the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse in Australia.<sup>5</sup> We support the Royal Commissions recommendation to abolish the Ellis Defence,<sup>6</sup> and provide legislative reform to remove access barriers to justice for survivors of institutional abuse.

We recommend the introduction of legislation, as in several jurisdictions in Australia, to compel the nomination of an appropriate defendant in cases on non-recent (historical) sexual abuse, and to provide that liabilities will be met from any trust assets if appropriate.

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<sup>4</sup> <https://www.irishtimes.com/ireland/2023/04/05/christian-brothers-mistreating-elderly-members-by-failing-to-appoint-nominee-for-legal-actions/>

<sup>5</sup> Supra 2, Para. [4.174] page 160

<sup>6</sup> *Ibid*, Para. [4.173] page 160.



We welcome the emphasis that the Law Reform Commission has placed on existing solutions such as the Company Limited by Guarantee. Such mechanisms provide protection in terms of limited liability and in offering a distinctive separate legal personality. It is crucial to recognise the need for effective governance within these associations. There must be mechanisms established for the purpose of accountability. An example of successful governance is the Charities Regulator which has been granted the legal power to address wrongdoings in charitable incorporated organisations. Unincorporated bodies lack a similar regulatory oversight which must be rectified.

We hope this small submission is of some benefit and we look forward to the final decision by the Law Reform Commission.

Sincerely,

A handwritten signature in black ink that reads "Adrienne Reilly".

**CEO, Dignity4Patients.**

## **EDITORIAL TEAM**

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