



WHISTLEBLOWING POLICY

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Reviewed: 8th August 2022

The Irish Baroque Orchestra is committed to artistic excellence for public benefit through an open and inclusive culture which places music first and finds strength in diversity.

The artistic ambitions of the organisation are underpinned by common values of respect, transparency, communication and a commitment to a shared vision for the orchestra.

Introduction

The Protected Disclosures Act 2014, (“the Act”) was commenced on the 16th July 2014. It outlines a standard of international best practice for whistle blowers in Ireland. Public sector organisations are obliged to put in place a whistle blowing policy that meets the requirements of the act and must ensure compliance with any guidance that may be issued by the Minister from time to time, as provided in Part 5 s 21 of the Act. The Act provides safeguards for a wide range of workers including employees, both public and private sector, contractors, trainees, agency staff, former employees and job seekers. The Act is retrospective in effect, i.e. any relevant disclosure made before the date of commencement (July 2014) may be a “protected disclosure”.

Policy Statement

IBO has a duty to conduct its affairs and use its resources with propriety having regard its role as a charity. IBO takes acts of alleged or actual irregularities and the protection of staff who report acts very seriously.

Purpose of the Policy

This policy describes the mechanism for IBO staff to report a “protected disclosure” as defined in the Act, of relevant information relating to suspected misconduct or illegality and sets out how IBO will protect staff should they report such a disclosure to a responsible authority.

Matters to be reported might be in relation to material allegations in the management of IBO or the activities of members of staff, contractors, suppliers or clients, where such activities adversely affect the work of these parties with IBO, or where alleged illegal acts may have been perpetrated. Such material allegations may concern, the commission of an offence, a miscarriage of justice, non-compliance with a legal obligation, health and safety threats, misuse of monies, mismanagement, damage to the environment or concealment or destruction of information relating to any of the foregoing.

IBO takes its obligations seriously under the Act, however this policy does not deal with grievances.

When Whistle Blowing Applies

The existing IBO structure and system of internal controls are the usual mechanisms to assist in the detection of or to draw attention to irregularities. Employees should engage with the appropriate internal person or if necessary to a relevant body or external entity in compliance with the evidential burdens in the Act that must be reached.

Whistle Blower Protection Principles

1. Persons making a “protected disclosure” can be assured that their concerns will be treated seriously and sensitively. IBO will protect the identity of whistle blowers and ensure that any disclosures made are treated confidentially, subject to certain exceptions as set out in the Act.
2. Action to inappropriately deter a member of staff from raising valid concerns about material irregularity or other significant malpractice may result in the invocation of disciplinary procedures up to and including dismissal against the person involved.
3. Allegations raised that are unfounded, unsupported and/or immaterial allegations or repeated allegations previously investigated and found to be false, will also be subject to the invocation of disciplinary procedure action, as this would be viewed as an abuse of the policy.
4. Staff that make a genuine supported material complaint, in ignorance of the fact that the same compliant has already been investigated and proven to be false, will be treated seriously and sensitively.
5. An employee will not be legitimately challenged for making a “protected disclosure” of a suspected serious company law offence
6. In general, a disclosure of information relating to a suspected serious offence, will receive protection, in accordance with the terms of the Act, if it is reported to IBO in order to allow the issue to be addressed and rectified by the organization if that were possible
7. The employee must identify themselves in making a disclosure and the person’s identify would be subject to strict conditions of confidentiality.

Reporting a Protected Disclosure

Disclosures are to be made in the following manner as provided by the Act.

1. Internal Disclosure

An employee may make a “protected disclosure” where she or he reasonably believes that the information shows or tends to show wrongdoing, or if the employee reasonably believes that the wrongdoing relates to the conduct of some person outside the organization, or to something for which some other person has legal responsibility, then the disclosure can be made to that person. It is expected that protected disclosures are made to the organization in the first place, however other options may be availed of as provided in the Act where this is inappropriate or impossible. Where there are allegations about issues such as serious concerns about perceived material irregularities in relation to the running of IBO these should be reported to the Chairperson. These concerns could be regarding the material breach of significant procedures, improper departures from good governance, serious deliberate failure of health and safety management procedures, disclosure of confidential information to outside parties without authority for personal gain, allegations about an individual or groups financial conduct, using IBO assets or facilities for personal use, substantial concerns regarding potential wrongdoing, materially excessive or fraudulent travel or subsistence claims, inappropriate ordering/financial commitments, misappropriation of assets, forgery or alteration of documents, fraudulent reporting of financial matters or inappropriate financial dealings with clients, suppliers or other stakeholders. Where, for any reason, the person making an allegation considers it inappropriate to refer the matter to anyone but the Chairperson, who will decide on what to take regarding the particular circumstances.

2. Disclosure to a prescribed person or other responsible person

The Act provides that the Minister may prescribe a wide list of “prescribed persons” which may be in the form of a regulatory body, to receive “protected disclosures”. An employee may contact a designated prescribed person/body to make a protected disclosure relating to any of the wrongdoings in relation to which a disclosure may be made, particularly where the relevant wrongdoing is something for which a person other than the employee’s employer has legal responsibility for. Where an employee elects to make a report outside the organization in this manner, she or he must reasonably believe that the information disclosed, and any allegation contained in it, is substantially true. An employee of the organization may also make a protected disclosure to a Minister of Government on whom any function relating to the organization is conferred or imposed by or under any enactment.

3. Disclosure to a legal advisor

Any protected disclosure made in the course of seeking legal advice from a solicitor, barrister trade union representation or an official of an excepted body is protected.

4. Disclosure into the public domain

It is expected that IBO employees would report protected disclosures to the organization or a prescribed person or body, however the Act does provide that disclosure may be made, in other circumstances into public domain. In order for a disclosure into the public domain to be protected, the employee must:

- a) Reasonably believe that the information disclosed is substantially true
- b) Not make a disclosure that is for personal gain
- c) Ensure that the making of the disclosure is reasonable in all the circumstances.

Additionally the employee, at the time that she or he makes a disclosure in such a manner, must reasonably believe that she or he will be subject to penalization if the disclosure is made within the organization. Furthermore, where there is no prescribed person or regulatory body an employee can make a relevant disclosure of wrongdoing to, she or he must reasonably believe that the evidence related to the wrongdoing will be destroyed or concealed if the disclosure is made to the organization. A disclosure into the public domain will also be deemed protected, where the employee has previously made a disclosure of substantially the same nature either to the organization or a prescribed person or body and no action was taken, and in circumstances where an allegation of wrongdoing is of an exceptionally serious nature.

Factors that will be considered by the organization to determine if it is reasonable in all the circumstances to make a disclosure into the public domain, shall include the identity of the person to whom the disclosure is made, the seriousness of the reported wrongdoing, whether the alleged wrongdoing is continuing or likely to occur in the future and whether such a disclosure is made in a breach of a duty of confidentiality.

It should be noted that a disclosure of information to which s18 of the Act applies, is not a protected disclosure unless it is made in the manner specified in s6(10(a),8,9 or s10 to the Disclosures Recipient. Employees are advised to read s18 of the Act which deals with security, defense, international relations and intelligence.

5. Protection for Employees who make protected disclosures

Any employee who makes a protected disclosure will be protected from dismissal for making such an allegation.

Any employee who makes a protected disclosure will not be penalized or threatened with penalization as a result of making such an allegation.

Any employee who makes a protected disclosure will have civil immunity from action for damages and a qualified privilege under defamation law as provided under the Act.

Any employee who makes a protected disclosure will have a right of action in tort where she or he or a member of their family is subjected to coercion, intimidation, harassment or discrimination by a third party.

Any employee who makes a protected disclosure is entitled to the protection of her or his identity, subject to certain exceptions as set out in s16 of the Act.

It shall not be deemed a criminal offence where an employee makes a protected disclosure under the Act, however, it should be noted that any employee who willfully makes a material statement which she or he knows to be false, or does not believe to be true, commits an offence under the Act.

INVESTIGATION

1. Upon receiving a report of allegation, an investigation team will be set up by the organization.
2. The Chairperson may request that the matter be investigated by appropriate professionals either internally or externally.
3. In all cases, where a material allegation has been made the Chairperson will make a note of its receipt and of the subsequent action taken. If, on preliminary examination, the allegation is judged to be wholly without substance or merit, the allegation may be dismissed. The person making the allegation will be informed.
4. The person making the allegation may appeal the decision to the IBO Board.
5. If the preliminary investigation finds that there is *prima facie* substance to a complaint the matter will:
 - a) Be considered under the appropriate stage of the disciplinary procedure and be subject to a formal investigation.
 - b) Be referred to and outside body including the Garda Siochana.

6. In all cases, the individual or group against whom an allegation/complaint is made must be presumed to be innocent until evidence suggests otherwise.

INVESTIGATION PROCEDURE

1. On receipt of a claim of fraud the Chairperson will determine what approach should be taken, whether a formal or informal investigation needs to be undertaken.

INFORMAL INVESTIGATION

1. This will consist of discussions with any individuals concerned and a decision will be taken on the results of the discussions by the Chairperson. If it is decided that no further action is required, the parties involved will be communicated with and a record made of the incident to be retained centrally.

FORMAL INVESTIGATION

1. The Chairperson will decide if the claim warrants removal from the vicinity in order for investigations to go un-impeded.
2. The persons will be informed of the reasons and that they have a right to representation.
3. An Investigation team will be put together by the Chairperson. The team will initiate and oversee all investigations and subsequent actions. The team will consist of at least three members. The team should reflect fairness and equity. This should take place within 10 days.
4. As much evidence as possible should be collected based purely on the claim made and where materials are being removed from the place of investigation, these will be recorded for movement and treated in confidence. This should take no longer than 3 weeks.
5. Where individuals are being questioned, they will be informed that the panel are investigating a potential case of relevant wrongdoing as defined under the Act, and that each individual is helping them with their investigations. The confidential nature of the investigations should be highlighted to all participants, and in particular the identity of the whistle must not be disclosed unless required to do so under the exceptions stated in s16 of the Act.
6. Once all information is gathered, the team will compile a written report which states the facts discovered by the investigation. The report will avoid speculation and not make any statement that cannot be supported by facts. There will be a recommendation made as to whether the

findings uncovered irregularities/relevant wrongdoing or not, and what necessary steps need to be taken to manage the situation as well re-instate/dismiss/discipline the suspected individual/s. This report is then presented to a sub-committee of the IBO Board to make a final decision on the recommendations put forward.

7. An individual or individuals suspected have the right to appeal any outcome to the full IBO Board.
8. Where it is recommended that the individual/s needs to make good the loss, legal advice will be sought prior to making recovery.
9. If an individual/s is found to have committed a relevant wrongdoing, the disciplinary procedure will apply and the right of representation will be invoked. In all cases, whatever the outcome, the person/s suspected must be informed about the outcome. At this point the Garda Siochana may need to be appraised of the situation, depending on the seriousness of the offence committed.
10. All materials relating to the investigation and subsequent report should be retained by IBO for 6 years.
11. It should be noted that any person to whom a notice has been given (ref s3(2)O, Schedule 2 of the Act who refuses or willfully neglects to attend, refuses to give evidence or willfully fails to produce any relevant documents commits an offence under the Act.

CONDUCT OF INVESTIGATION

The investigation team and all individuals involved in investigations into allegations must ensure the following:

- Investigations are not to be discussed with anyone else who has not a legitimate right to know
- It is important to uphold confidentiality in order to avoid damaging the reputation of persons suspected, particularly where there has been no substantiated evidence to suggest the person/s has/ have committed an offence.
- Investigations into alleged complaints must be undertaken regardless of length of service or position.
- The organization must act on recommendations of the investigating team and this may mean changes to reporting relationships, procedures and/or processes, to ensure similar wrongdoings will not occur.

GARDA INVOLVEMENT

Where it is necessary for Garda involvement, the internal procedure will still be completed and all information should be shared with the Garda, where requested.

Where original documents are requested, copies should be taken.

The grounds for Gards involvement and possible prosecution will not necessarily be the grounds that justify proceeding with the internal procedure.

In all cases, the investigation team must decide if the case might become high profile and therefore need careful handling.

In all cases, the individual/s against whom an allegation/complaint is made must be presumed innocent until evidence suggests otherwise.

ANNUAL REPORTING

In accordance with the Act, IBO will prepare and publish an annual report which will detail the number of protected disclosures made, the action taken in response to those protected disclosures if any and any information related to those disclosures that may be required. Such reports will not disclose the identity of the persons involved.

