

Volunteer Ireland Submission on the EU Whistleblowing Directive

Volunteer Ireland welcomes this opportunity to make a submission to the Department of Public Expenditure and Reform on the EU Whistleblowing Directive.

Background

Volunteer Ireland is the national volunteer development organisation and a support body for local Volunteer Centres in Ireland. We work to support, promote and celebrate volunteering. As such, this submission is framed in the context of the Directive's impact on volunteers and volunteering in Ireland.

With over 1 million people in Ireland volunteering each year¹, volunteers play a critical role in Irish society delivering vital services within our communities. Individuals volunteer both formally (e.g. with registered charities, community groups and sporting organisations) and informally (e.g. within their own community, helping a neighbour).

While volunteers are not included in current Irish legislation around whistleblowing, they are no less likely to need to make a protected disclosure than a paid employee and should be protected as such. We are aware that volunteers present some challenges in terms of how to address penalisation and relief for protected disclosures, so this submission aims to make workable recommendations in these areas.

Current legislation

We welcome the Directive's scope which includes volunteers and paid or unpaid trainees under the definition of reporting persons. In terms of Irish legislation, volunteers are offered little protection. Volunteers occupy an awkward legal space where they require more protection than general members of the public but less protection than paid employees. Current legislation such as that around bullying and health and safety apply to volunteers in the same way it applies to members of the public. Aside from this, volunteers are not specifically protected in any way by law, other than in the Civil Liability Act 1961.

Volunteering and Voluntary Organisations

It is important that both volunteers and voluntary organisations are defined for the purposes of the Directive. A definition for both currently exists in the Civil Liability Act 1961. In the Act, a volunteer is defined as "a person who does voluntary work that is authorised by a voluntary organisation and does so without expectation of payment (other than reasonable reimbursement for expenses) or other reward." A voluntary organisation is defined as "any body (whether or not incorporated) that is not formed for profit and that authorises the doing of voluntary work, whether or not as the principal purpose of the organisation."

It is our view that both definitions are good starting points but need to be expanded for the purposes of the Directive. For the definition of a volunteer, it should be clearly stated that this

¹ <https://www.cso.ie/en/releasesandpublications/er/q-vwb/qnhsvolunteeringandwellbeingq32013/>

definition includes charity trustees and their comparators in voluntary organisations that are not registered charities.

Similarly, the definition of a voluntary organisation should clearly include those organisations governed by a board of trustees but who undertake no other voluntary activity. It is vital that charity trustees and board members are clearly included in both definitions for the avoidance of doubt.

While much volunteering in Ireland takes place informally, i.e. without attachment to a voluntary organisation, we believe this is outside the scope of this Directive.

Reporting wrongdoing

At the moment the only avenue for a volunteer to report wrongdoing is within their own organisation, provided they are volunteering with a formal organisation that has the appropriate policies and procedures in place. There is currently no external route to report wrongdoing within a voluntary organisation.

As above, volunteers can use avenues that are available to members of the public such as current legislation on bullying and defamation but as they have no legal right to be a volunteer, they cannot be granted reinstatement.

If the organisation that the individual volunteers with is a charity, then complaints can be made to the Charities Regulatory Authority (CRA) but only to address wrongdoing relating to charity law.

Recommendation: Create an Ombudsman for Volunteering whereby volunteers can safely make a protected disclosure in relation to wrongdoing within a voluntary organisation.

Penalisation

According to the Directive, “Effective whistleblower protection implies protecting also categories of persons who, whilst not relying on their work-related activities economically, can nevertheless suffer retaliation for reporting breaches. Retaliation against volunteers and paid or unpaid trainees could take the form of no longer making use of their services, or of giving them a negative employment reference or otherwise damaging their reputation or career prospects.”

We concur with this and believe that although volunteers should not have the same rights as paid employees, they still require a level of protection. As with the examples listed above, there are several ways in which a volunteer can suffer penalisation or retaliation. From our experience, the types of penalisation a volunteer might face were they to report wrongdoing include:

- A volunteer being fired/asked to leave the organisation
- A volunteer being kept on but not given as much to do, or not given as interesting things to do
- A volunteer suffering damage to their reputation within the organisation and their local community
- A volunteer being ostracised and/or harassed by other volunteers and staff making it difficult/uncomfortable for them to remain in their volunteer role.

Although the above might not have direct financial implications, the way losing one’s employment might, it’s important to note that it can still have a very negative impact on the volunteer. For example, if reputation is damaged in a local community it could decrease chances of obtaining employment in the future. Also, it can have a significant negative impact on the volunteer’s mental

health and well-being. Volunteering is known to provide an important social outlet for many people – being denied that can increase isolation.

Relief

For volunteers that currently report wrongdoing, there is no specific course of relief aside from what is already afforded to the public. In terms of what relief a volunteer might expect, it would depend on each individual case and on what the volunteer wants. Some might want to remain as a valued volunteer, others might want a public statement clarifying that they have not done anything wrong, others might want some form of mediation or arbitration to resolve the issue.

In relation to charities specifically, if a complaint is made to the Charity Regulator the person making the complaint gets a set of protections outlined under section 61(1) of the Charities Act. This section states that unless the complainant acted in bad faith, the person shall not be regarded as having committed any breach of duty towards the charitable organisation or any other person, and no person shall have a cause of action against the first-mentioned person in respect of that communication. It is essentially protection from civil liability for persons who report breaches of the Act to the Authority.

Recommendation: This protection should be extended to all forms of whistleblowing to include volunteers making disclosures not relating to the Charities Act.

In addition to this, we believe there should be other routes of relief for volunteers who report wrongdoing. While few volunteers might avail of this option, we believe that suing for damages in court should be a route available to volunteers. It is tempting to sit such a mechanism within the existing structures of the Workplace Relations Commission but we would strongly advise against this as it blurs the lines between work and volunteering, which should be treated differently.

In addition to the suggestion of an Ombudsman for Volunteering, a mediation service could provide a viable route of relief for volunteers. It has the potential to provide a swift and cost effective resolution for volunteers should they suffer penalisation when making a protected disclosure. Such a service, much like an ombudsman, could also be extended to other areas of volunteering such as discrimination.

Recommendation: Create relief mechanisms as outlined above suitable for volunteers reporting wrongdoing.

Conclusion

With thousands of voluntary organisations in Ireland engaging hundreds of thousands of volunteers each year, it is vital that volunteers are protected under whistleblowing legislation. It may prove more difficult to enshrine protection for volunteers in law when there is no legal right to volunteer, however we believe this can be achieved in a nuanced and appropriate way as outlined above.