

# Crowe Ireland's Summary of Findings and Recommendations from their Report

## 8.1 Summary of Findings

A summary of the main findings we have reached is as follows:

- A. **Statutory frameworks applicable to the Abbey Theatre** and the application of same in these matters: this review has found that the organisation has complied with its statutory obligations.
- B. **Unclear governance framework:** The question of whether, and to what extent, the Abbey Theatre complies with the DPER Code of Practice for the Governance of State Bodies is an issue which the Abbey Theatre Board needs to resolve on an urgent basis.
- C. **Appointment of Board Members:** The Abbey Theatre failed to adhere to its own Constitution with regard to the re-appointment of a Board member. This individual played an important role in the committee dealing with the complaints, for a period of more than one year, whilst he was no longer a member of the Board.
- D. **Record-keeping:** There was a significant failure by the committees dealing with the complaints to keep adequate records of meetings regarding the investigation. No notes of the business of the two committees set up to deal with these matters were kept by the Abbey Theatre, and the notes prepared by legal advisers for their own files were not a substitute for the records which the Abbey should have maintained. Similarly, it was not appropriate for the Abbey Theatre to rely on emails to document its business during the period of the investigation, an approach which was not in keeping with good governance standards.
- E. **Establishment of Committees:** The Board established two committees to deal with the matters arising from the complaints. The first committee had no terms of reference agreed, no recording of its discussions or decisions in writing, and no effective means of keeping members of the Board fully informed. The role of the second committee was described in a brief document submitted to the Board, and its three meetings were minuted, with the minutes held by a member of the committee who left the Board shortly thereafter (no records were retained by the Abbey Theatre). The Company Secretary / Director of Finance and Operations was not informed by the Board of the existence of the first committee, but – as the senior executive with lead responsibility for governance matters – he should have been informed, and should have been satisfied by the Board that governance measures were in place for the committee. The governance arrangements for the two committees, and the means by which they operated, were not in accordance with either the Abbey's constitution or with good governance practice.
- F. **Involvement of the Chair:** the involvement of the Chair of the Abbey's Board in both of these committees left the Board with no independent final arbiter.
- G. **Delays in the investigation:** the original timescale for the investigations into the complaints was eight weeks, but the overall process took more than two years to complete. The Board did not contribute to the delay of the investigations and any such delay was a making of the parties involved. Some of the delay was Covid-related, and the sickness absence of more than one individual involved in the process was also a factor. Timelines were not reviewed and a revised plan was not put in place when it was realised that the original timelines for the investigation would not be met.
- H. **Method of the investigation:** we believe that the method of implementing the investigation was done in accordance with fair procedures and employment law principles. The engagement of lawyers by the Abbey Theatre to advise on the conduct of the investigation and the issues arising was prudent. There is no evidence to support the allegation that the Abbey Theatre instigated the complaints. The fact that the investigation was unable to conclude or make finding does not amount to non-compliance with employment law or good governance principles by the Abbey Theatre.
- I. **Employer Practices Liability Insurance cover:** No single individual appears to have been responsible for dealing with this, and there was considerable confusion as to what cover was in place. Bearing this in mind, it was, in our view, remiss of the Board not to have sought to explore the extent of the cover in so far as it might have covered some or all of the costs of the investigation and the legal advice costs. To not have clarity on what insurance policies were or are in place is unusual. To blame confidentiality as a reason for not availing of cover in place is also unusual and, in our view, an unwarranted concern.

- J. **Engagement with Insurers:** One former senior member of the executive was still responsible for engaging with the insurance broker for at least nine months after he had left the employment of the Abbey Theatre; this responsibility does not appear to have been handed over to his successor, for reasons which are unclear. It is not in line with good governance practice for responsibility for insurance matters (an executive duty) to be handled by an ex-employee. The level of confusion generally regarding insurance cover is not surprising, given that no single individual member of the executive seems to have been responsible for it.
- K. **Issues regarding legal advice on redundancy:** The Abbey Theatre received legal advice from Byrne Wallace to the effect that there was no “redundancy” within the meaning of the Acts, in respect of the contracts of the Joint CEOs. What is not in dispute is that Byrne Wallace advised the Abbey Theatre that there was no “redundancy” within the meaning of the Acts, and that the Board ultimately decided that it would in fact pay redundancy costs. What is disputed is who received that advice within the Abbey Theatre, and whether it was ultimately conveyed to the Board. We have not seen or been provided with any evidence of advice from another law firm which contradicts the advice given by Byrne Wallace. We are also of the view that for the Board not to be in receipt of the legal advice from its own legal advisers, and relying on additional legal advice but not requesting such advice in writing, is not in compliance with good governance.
- L. **Taxation Issues Relating to Termination Payments:** the Board received advice in 2021 in relation to the tax treatment of any termination payments. It transpired subsequently that this advice may have been flawed. In 2022, the Revenue Commissioners began raising queries in respect of the termination payments reported by the Abbey in 2020 and 2021, and found that certain tax liabilities needed to be met. The Abbey sought further advice from a new tax consultant, who recommended that the tax on the settlement payments be treated as CGT rather than income tax liability, and that the legal fees were not taxable. The Abbey subsequently advised the Revenue Commissioners to that effect, and the Revenue Commissioners responded and agreed to close the matter.

## 8.2 Recommendations

This review has made a range of findings, summarised above, which relate to various events which primarily occurred during the period 2019 to 2021.

We are conscious that many of the individuals (both within the Board and on the Abbey Theatre Executive) who were involved in dealing with the investigation into the complaints, and the issues arising from the investigation, are no longer involved with the Theatre, and also that there are new people on both the Board and the Executive who were not involved in these matters.

Nevertheless, the Board will of course wish to reflect carefully on our findings, and to consider what actions might be taken in response. We would recommend that consideration be given to the following:

- i **Compliance with the DPER Code of Practice for the Governance of State Bodies:** the Board should reach a speedy resolution on this issue, which has been under consideration for some time. Our view is that the Abbey Theatre should develop a set of governance policies and protocols which match the requirements of the Code; should ensure their implementation within a short period of time; and should provide training for all Board members and staff to ensure adherence.
- ii **Board records:** there is no reason for the Board of a publicly-funded body not to keep adequate records of its discussions, decisions and other business, whether or not executive staff are in attendance. Concerns regarding confidentiality and the security of records can be dealt with by appropriate measures and protocols. The Abbey Theatre should ensure that all Board business is properly documented.
- iii **Governance structures:** there should be no circumstances in which a subset of the Board (irrespective of what it is called) is established to conduct Board business outside normal governance structures. Good governance, clear accountability and accurate record-keeping are all facets of best practice within publicly-funded bodies and charities, and there should be no exemptions to compliance with the relevant codes.
- iv **Employer Practices Liability Insurance cover:** this has been a matter of considerable confusion. Given the issues which the Abbey Theatre has faced since 2019, we strongly recommend that such cover be in place, in line with the governance policies proposed above, and that there is a clear line on whose responsibility it is to engage with insurers.
- v **Governance Culture:** we found whilst the Board sought to adhere to the division of tasks within the organisation in line with good governance standards, it felt it necessary on occasions to become more involved in management issues than it would otherwise have wished. We recommend that an independent audit of Board culture be conducted to determine whether these issues persist (given that there has been turnover of personnel at both Board and Executive levels), and if so what actions might be taken to ensure compliance with good governance practice.
- vi **Relationship with the Arts Council:** we recommend that the Abbey Theatre and the Arts Council consider collectively the findings we have made in this report, and work together to ensure that there is a positive and constructive working relationship between the two organisations.