

CITY HR ASSOCIATION

Best Practice Guidance: Bullying and Harassment



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Section 1 – Introduction: bullying and harassment in the City

These guidance notes on tackling bullying and harassment are the latest in a series of guidance notes on various topics published by the Best Practice Group of the City HR Association to assist HR professionals deal with the many and varied challenges facing them in today's world. The value of these notes lies in the fact that they have been written by a large group of City specialists highly skilled in HR management, employment law, coaching and counselling, medicine and dispute resolution. The document therefore provides expert assistance in dealing with every aspect of the topic from a variety of different perspectives.

So, if you are an HR professional charged with assessing the risk of bullying and harassment in your organisation, you will find information on how to go about it, as well as suggestions for safeguarding the organisation from this risk. Bullying and harassment can be difficult to identify. The contributors explain the signs to look for and what to do if an instance of bullying or harassment is identified. The many legal angles are explored along with what to do when an employee's health is suffering because of bullying and harassment. A number of contributors explain the distinction between unacceptable behaviour and firm management, and how to respond to an unsubstantiated allegation of bullying or harassment from an underperforming employee whose performance is being managed. There is also some guidance on what to do if you think you are being bullied, which is useful both for the victims and for those coaching or counselling them.

The specialists who have contributed to the guidance notes are members of the City HR Association which has as one of its aims the pooling of expertise within the City HR community. When I, as Chair of the Best Practice Group, announced that the Group would be tackling this topic I was both heartened and disheartened to find so many people volunteering to help with the guidance. Heartened because it showed the City HR Association at its best with members being willing to commit time and effort to sharing their knowledge and experience with others, and disheartened because I suspected that the level of interest shown was a reflection of the prevalence of bullying and harassment within the City. All the contributors to this guidance hope that the advice and knowledge which they are passing on will contribute to a reduction in the incidence of bullying and harassment in the City.

Full details of each of the contributors appear on the following pages together with their contact details. I would like to extend my and the City HR Association's wholehearted thanks to each contributor who voluntarily gave so much time and effort to this project, and to my colleague David Murphy at Fox Williams who spent hours behind the scenes co-ordinating the work of the Group.

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Section 3 - What is bullying?

Carolyn Matheson, employment coach, with assistance from Anne Slade, HR Practitioner, Sheena Gibson, HR Director and Roisin Boyer, HR Manager

Does bullying go on in the City? It is not great to lose your temper but each one of us can be guilty after a busy day or a difficult situation of taking it out on someone. However most of us will stop when we realise the effect that our unacceptable behaviour is having on the other person and most us will take steps to quickly remedy the situation.

Bullying is not:

- An occasional raised voice
- Constructive and fair feedback on individual performance or behaviour at work
- A disagreement that has occurred as a one-off between two people
- Changing targets/objectives to suit the business or reasonable requests to complete work within a short time frame
- Acceptable banter that does not make fun of any individual.

Bullying is any repeated behaviour that hurts, threatens or frightens another person or group of people. It may include physical attacks, swearing, abusive texts or e-mails and insulting comments or deliberately leaving someone out of things. Some bullying is targeted at people because of their differences. This includes a person's family background, religion, race or sexuality, as well as any disability they may have, their style of clothes, their size, hair, eyes, their taste in music or sport. All bullying is serious for the person to whom it is happening. Whatever form it takes, bullying should always be taken seriously and responded to quickly.

There is a fine line between proper management and bullying. Many managers are concerned about the possibility of being accused of bullying when they are required to deal with performance issues. This is not only unhelpful for the manager concerned but may lead to a situation whereby individuals are allowed to behave in ways which are detrimental not only to the organisation but for other individuals working within the manager's area of responsibility. Bullying can happen at peer group level or manager/subordinate level.

The two tables that follow differentiate between appropriate and inappropriate behaviours in different contexts. The first table illustrates the types of behaviour of a good manager and a bullying manager. The second table illustrates the types of behaviour characterised by good team player and a poor team player.

The difference between bullying and proper management.

Good manager	Bullying manager
Aware of staff needs.	Unaware/doesn't care about individuals' needs.
Supportive. Offers praise and constructive	Complains, or criticizes individuals in front of

criticism appropriately.	other people. Deliberately undermines a competent worker.
Sets realistic standards/objectives. Holds regular performance review meetings and gives regular feedback.	Sets tasks that they know are beyond the individual capability. Unfair allocation of work and/or responsibilities. Excessively supervises. Unjustifiable removal of areas of responsibility. Feedback given only at performance review (ie negative feedback comes as a surprise).
Builds a strong team	Breaks team's spirits. Has team favourites. Makes threats or comments about job security without foundation.
Adapts behaviour	Thinks one size fits all.
Sensitive	Teases and makes fun of the differences in people.
Communicates and shares information	Withholds information. Communicates via email or not at all. Excludes individuals from what is happening. Sees knowledge as power.
Makes reasonable requests of staff	Makes unreasonable requests. Refuses holiday requests for no reason. Gives out routine work at the end of the day.
Values the differences in staff	Recognises own traits only and rewards bad behaviour.
Develops all team members and looks for a variety of opportunities to do so	Prevents individuals progressing by intentionally blocking promotion or training and development opportunities.

Note that the behaviours listed under "Bullying Manager" above do not necessarily, in themselves, mean that the person is a bully. He or she may just be a poor manager. However, it is likely that a bullying manager will show some or all of these behaviours.

Good team member	Poor team member
Shares information upwards and downwards	Cliquey; not truthful. Forwards e-mails to others who do not need to know. Doesn't share information with colleagues.
Treats others with respect and in the way they would want to be treated	Uses offensive or derogatory language, refers to a person's private life or sexual behaviour or orientation by innuendo, jokes or remarks. Makes personal comments about appearance, age etc.
Includes all in drinks/social events	Doesn't share invites/plans events that exclude people, has special favourites in team. May press an individual to accept an invitation they

	are uncomfortable in accepting. Individuals sent to “Coventry”.
Takes responsibility	Blames others for mistakes.
Is positive and supportive	Always gloom and doom. Runs down the organisation and colleagues.

These examples are not exhaustive but illustrate the difference between acceptable and poor behaviour in the workplace.

Later sections of the guidance focus on identifying instances of bullying and harassment, assessing the legal, medical and psychological implications and the use of policies and surveys to promote an anti-bullying strategy.

Section 4 - Legal Issues: definitions, types of potential claims and exposure, and related issues

James Warren and Margaret Davis, City employment lawyers, consider the legal minefield posed by bullying and harassment in the workplace

Introduction and definitions

There is no legal definition of bullying and there is no single piece of legislation which has as its specific focus the prevention of harassment or bullying in the workplace. However, behaviour which might be viewed as bullying and harassment could be illegal under a number of different statutes, and in the employment context might also or alternatively amount to a breach of contract or even a breach of a common law duty of care.

In common parlance the terms “bullying” and “harassment” may be used interchangeably, although bullying usually incorporates the idea of a person, the “bully”, utilising his or her strength or strong position to hurt, frighten or tyrannise those who are weaker or in a weak position. The term “harassment” might be viewed as having wider application, meaning any action causing trouble, worry or torment (including bullying), but in particular it is frequently used to describe repeated attacks or a pattern of conduct. However, it is only to a limited, and sometimes misleading, extent that the law recognises and incorporates these terms as legal concepts.

Equal opportunities laws, which prohibit discrimination on specific grounds such as age, race, gender, disability, sexual orientation and religion or belief, also make illegal any harassment related to one or more of those protected grounds. Harassment in these circumstances is defined as engaging in *unwanted conduct* [on one of the protected grounds] *that has the purpose or effect of violating a person’s dignity, or of creating an intimidating, hostile, degrading, humiliating or offensive environment for him or her.*

A standalone definition of and protection from harassment is also established in the Protection from Harassment Act 1997 (the “Act”). This statute creates an offence of harassment, and a right for those who have been harassed to pursue legal claims for the loss caused to them, whether financial loss or distress or anxiety. It was designed to tackle the problem of stalking, but has proved to have more general application, including to the workplace. The Act utilises a somewhat unhelpful and circular definition of harassment which incorporates the concept of repeated unwanted behaviour, outlawing any unreasonable *course of conduct which amounts to harassment of another* and which the person engaging in that conduct *knows or ought to know amounts to harassment of the other*. It states that a person ought to know a course of conduct amounts to or involves harassment if *a reasonable person in possession of the same information would think the course of conduct amounted to or involved harassment of the other*. However, it also provides that harassment includes alarming or causing another person distress.

Furthermore, even in circumstances where employees cannot identify harassing conduct which would fall within one of the legal definitions of harassment, other forms of bullying or harassing behaviour by (or allowed by) their employer may amount to a fundamental breach of their contract of employment. For employees with more than one year’s service this could entitle them to resign and claim constructive unfair dismissal. In addition, if bullying or harassment leads to an employee suffering a personal injury, employers may be liable in negligence if it is found that they are in breach of their general duty of care to the employee. A key point for employers generally is that they may be held vicariously liable for the actions of their employees if they harass their colleagues.

Analysis of potential claims

As set out above, the potential legal causes of action open to employees who consider that they have been subjected to bullying or harassment are dependent on the precise circumstances. Moreover,

the risks and costs for both employees and employers differ markedly between the various options, having regard to whether or not action is pursued in the civil courts, in an employment tribunal, or even as a criminal matter.

(1) Harassment under discrimination legislation

For a number of important reasons this type of claim is the most common and likely head under which an employee will bring proceedings, despite the need for the harassing conduct to be linked to one of the six strands of prohibited discrimination (age, sex, race or ethnic origin, sexual orientation, religion or belief, or disability). First, any claim will be brought in the Employment Tribunal, which is generally cost-free for the claimant, and it is only in very limited circumstances that there is any risk of the claimant being obliged to pay the respondent's costs (e.g. if the claim is misconceived or vexatious).

Secondly, and perhaps most importantly, the burden of proof rules which apply are favourable to claimants. An employee alleging discriminatory harassment need only establish that there are facts from which an Employment Tribunal *could* conclude that there was discrimination, for the respondent employer then to have the burden of proving that their conduct and the reasons for it were non-discriminatory. Essentially, if an employee can raise a prima facie case of discriminatory harassment, the onus is then on the employer to show that it did not occur. This can be difficult if there are poor or insufficient written records and it comes down to one person's word against another.

Thirdly, the amount of any award for loss caused by the discriminatory harassment is potentially unlimited (unlike unfair dismissal claims which are currently capped at £63,000). In addition, employees can also seek compensation for injury to feelings caused by the harassment, with awards likely to range from £500 to £25,000 depending on the seriousness of the conduct.

When deciding whether or not any alleged conduct amounts to discriminatory harassment, the Tribunal will take into account all of the circumstances of the case, including in particular the perception of the employee. The focus is therefore on how the conduct in question is interpreted by the victim, and not on the motivation or intention of the perpetrator. The fact that the perpetrator was "just joking" or "merely being friendly" may provide an explanation, but not an excuse. However, the Tribunal's approach is an objective one to the extent that it must find that it is reasonable for the victim to regard the perpetrator's conduct as being offensive.

Most acts of harassment are carried out by fellow employees, rather than the employer itself. However, it is important to realise that an employer will be vicariously liable under discrimination legislation for acts of harassment committed by its employees during the course of their employment. An employee can therefore claim that his or her employer is liable for the harassing or bullying behaviour carried out by any employee, even if the employer had no knowledge that this behaviour was occurring.

Technically, it is possible for an employer to defend a claim for harassment under discrimination legislation by showing that it took reasonably practicable steps to prevent the harassment occurring. However, the level at which the Employment Tribunal sets the standard for "reasonable steps" is very high and is unlikely to be able to be met by most employers in circumstances where it has been demonstrated that one or more employees have engaged in discriminatory conduct.

There is a three month time limit within which an employee is entitled to bring a discrimination claim (or potentially six months if the statutory grievance procedure applies). In general, an employee will be obliged to raise a written grievance with their employer before the employee will be entitled to bring a claim at the Employment Tribunal, and if the employee wishes to avoid any reduction in the potential compensation, he or she must then follow the grievance procedure to its conclusion. However, it should also be borne in mind that in some circumstances, where an employee considers that engaging in the grievance procedure might subject them to further harassment, there will be no obligation to do so.

(2) Harassment under the Protection from Harassment Act 1997

Claims brought under the Act are much less common than those brought under discrimination legislation, although within the City where those complaining may be high earners they arise with more frequency. This is because such claims must be brought in the County Court or High Court where individuals face the prospect of potentially expensive litigation costs, and the real risk of having to pay a portion of their employer's costs should their claim be unsuccessful. Nonetheless, while employees will generally never be entitled to claim for the same loss twice, it is possible for them to consider bringing claims either under discrimination legislation or the Act or both if they can allege circumstances which amount to harassment under these separate causes of action.

There are a number of key legal differences between harassment under the discrimination legislation and under the Act which may well govern the approach employees choose in bringing any claim:

1. Under the Act, no link or connection to any ground of discrimination is required.
2. Unlike under the discrimination legislation, where one incident may well be enough to establish a claim, in order for an employee to bring a successful claim under the Act, there must have been a *course of conduct*. This is defined to mean conduct which must have occurred on at least two separate occasions.
3. The claimant has the burden of proof in demonstrating that there has been harassment which falls within the definition of the Act.
4. A major advantage for employees bringing a claim under the act is that there is a more generous time limit of six years within which the employee may bring his or her claim (as opposed to the discrimination legislation limit of between 3 and 6 months).
5. Employees are also under no obligation to have raised a grievance or to have followed a grievance procedure before bringing a claim.
6. Although under the Act an employer may be held vicariously liable for harassment which occurs in the course of employment in the same way as for discrimination based claims, unlike under the discrimination legislation, there is no specific defence for the employer that it has taken all reasonably practicable steps to prevent the conduct.

The test which the court will apply in determining whether harassment has taken place is also quite separate from that used in discrimination based claims. It is focussed on the harasser's perception of his or her conduct rather than the victim's (as described above), but it is an objective test. The employee must show that there has been conduct which:

- Occurred on at least two occasions;
- Targeted the employee;
- Was calculated in an objective sense to cause distress; and
- Would objectively be judged to be oppressive and unreasonable.

Employers should also be aware that engaging in conduct which amounts to harassment under the Act is a criminal offence. It is open to employees who consider that they have been subjected to harassment to lay a complaint with the police. Indeed, some forms of harassment, particularly of a physical nature, such as sexual or physical assaults, may well amount to criminal offences in which the police will take an interest. Breaches of the statutory duties on employers to provide a safe place and system of work under the Health and Safety at Work Act 1974 which arise from bullying could potentially also create criminal liability.

(3) Constructive unfair dismissal

In circumstances where an employee suffers bullying and/or harassment for which the employer is responsible (or at least vicariously liable), in most cases this is likely to amount to a fundamental breach of the contract of employment by the employer, being a breach by the employer of the implied term of mutual trust and confidence which exists in all employment contracts. Furthermore, bullying or harassing conduct which does not fall within the legal definitions of harassment described above may still amount to a fundamental breach of the contract of employment, either because it is in breach of the mutual duty of trust and confidence, or possibly because it is in breach of the employer's duty to ensure the health and safety of staff.

Claims of constructive unfair dismissal are relatively frequent in bullying and harassment cases, where many employees consider they have little option but to leave if they are to avoid further bullying or harassment. However, by the same token, because such a claim requires the employee to resign before the claim can be lodged (unlike all the other potential claims which can be brought while remaining employed) it is generally only those who truly do consider that there are no other options (at least within their current employer) who bring such claims.

An employee whose contract of employment has been fundamentally breached by the employer is entitled to treat the contract as repudiated and bring it to an end by resigning with immediate effect. In these circumstances the employee will be entitled to contractual damages equal to their period of notice. In addition, if the employee has more than one year's service and thus meets the statutory criteria for bringing an unfair dismissal claim, he or she would normally be able to assert that there has been a constructive unfair dismissal. This is an assertion that the employer's actions (or inaction) left the employee with no option but to resign, effectively amounting to an unfair dismissal by the employer. However, as with discrimination based harassment claims, employees must generally raise a grievance with their employer before they are permitted to pursue a claim of constructive unfair dismissal.

The burden of proof of establishing that there has been a fundamental breach of the contract of employment lies on the party who is asserting that there has been a breach. However, in cases where there is also a discrimination based harassment claim, the employee may effectively shift some of the evidential burden by establishing facts from which harassment could be found by the tribunal, following which the employer must prove that such harassment did not occur. If harassment is established the employee need only demonstrate that in the particular circumstances this amounted to a fundamental breach of the contract of employment.

Compensation for unfair dismissal is currently limited to a basic award calculated in the same way as statutory redundancy payments, and to a compensatory award for any financial loss suffered to a maximum of £63,000.

(4) Negligence

Finally, an employer may be liable for damages for personal injury (physical or mental) resulting from bullying or harassment where it is negligent in that it fails in its general duty of care to its employees, which includes protecting them from foreseeable harm in the workplace. Damages awarded as a result of such negligence can be significant where the employee suffers psychiatric injury as a result of bullying or harassment.

For example, in the case of *Green v DB Group Services* (2006), Helen Green recovered damages for personal injury (including loss of future earnings) amounting to £828,000 from Deutsche Bank following stress and a nervous breakdown held to have been caused by bullying and harassment by her colleagues. In addition to a successful claim under the Protection from Harassment Act, the bank was held to be in breach of its duty of care for effectively closing its eyes to what was going on at its premises.

Conclusion

Although there is no single piece of legislation specifically addressing bullying and harassment in the workplace, a number of potential remedies exist for employees who consider that they may have been bullied or harassed at work. In particular, some claims which can be brought may entitle the aggrieved employee to damages for any and all future financial loss suffered because of harassment, and in the City where high salary and benefit packages are common, the potential cost to the unwary employer can be very significant. City organisations need to be aware of the risks associated with bullying and harassment, and seek to take steps to minimise these by the use of appropriate policies and training, and through considered and proactive responses to any allegations or complaints about bullying or harassment.

Section 5 – Managing grievances and claims about bullying and harassment

Jane Mann and David Murphy, City employment lawyers, use an example scenario to highlight some of the key points to consider when navigating through the minefield posed by grievances and claims about bullying and harassment.

1. You are a HR consultant in an investment bank in the City. One of your employees, Sarah, has worked for the bank for the past five years. Each year she has been given a performance related bonus. It is discretionary on the part of the bank. This year she has received a bonus, but it is lower than in previous years. She is just about to go on maternity leave and comes to see you, complaining about the amount of her bonus. She claims that the performance targets set at the beginning of the year were too high and that her manager's "little chats" with her about her performance figures amounted to serious bullying and harassment and that she thinks it is because she is pregnant, as no-one else has been treated in the same way.
2. At first Sarah says she only wants to raise an "informal complaint" about her bonus and her manager's treatment of her. What should you do?
 - Listen carefully
 - Do not give an immediate answer, investigate
 - Ascertain potential risks: sex discrimination, equal pay, breach of contract
 - Ascertain whether she wishes to submit a formal grievance.
 - Remember documents you created will be disclosable in any later litigation (unless protected by legal advice privilege)
3. Sarah decided to submit a written grievance complaining about her bonus and her manager's treatment of her. She thinks it is linked to her pregnancy and forthcoming maternity leave. The grievance meeting took place today. Sarah refused to be accompanied by any trade union representative/colleague at the meeting and says she "trusts no-one". You are worried that she is tape recording the meeting as she, unusually, did not take notes. What should you do next?
 - Write up your notes of the meeting immediately
 - Stick to the agreed timetable
 - Obtain all relevant documents and give to the person who will investigate the complaint
 - Arrange to interview key people
 - Does Sarah's pregnancy affect the timing of the response?
4. Charles, a senior manager from a different team, conducted the investigation. It seems that, on a comparison of the figures, Sarah has received a slightly lower bonus than her two direct peers, Andrew and Sanjay. Although everyone has a lower bonus this year as the bank is struggling, Sarah's performance has been below par. Her manager said that he tried to deal with her performance informally, but did mention it in her half year appraisal. Unfortunately, her end of year appraisal did not take place as she was off sick and it was never rearranged. Her figures really don't match her peers and her hours have been poor. Charles can find no evidence of bullying or harassment nor that her pregnancy resulted in the lower bonus. He concludes that the reason for the lower bonus was poor performance (both hers and the bank's). What should you do?
 - Follow grievance procedure properly – avoid victimisation complaint
 - Write to Sarah – don't uphold grievance. Reasons – poor figures/hours, bank's performance
 - Refute maternity-related discrimination

- Provide documentation to support the reasons
 - Offer to hold another appraisal
 - Advise her of right to appeal.
5. Sarah appeals against the grievance decision. You appoint James, a director of the bank, to hear the appeal. He has had no previous involvement in the case. Her appeal letter raises new issues, saying that she has been treated less favourably because she did not have an appraisal because she was off sick (pregnancy related) and that her hours are low because of a difficult pregnancy. What should you do?
- No requirement for reinvestigation
 - Investigate the point about lack of appraisal
 - Person hearing the appeal to draw own conclusions
 - Final decision in writing
 - No further right of appeal.
6. James does not uphold Sarah's appeal. Sarah has her baby and you hear nothing until three months later she submits a Data Subject Access request and a Sex Discrimination Act Questionnaire. What should you do?
- Respond to data subject access request within 40 days
 - Consider whether the request goes beyond what she is entitled to
 - Respond to questionnaire fully and within 8 weeks
 - Answer the relevant, but not irrelevant questions
 - Confidentiality – particularly about bonuses. Anonymous information
 - Consistent reasons.
7. Sarah remains in employment and on maternity leave. She submits a claim to the Employment Tribunal five months after the bonus decision. She complains of sex discrimination, breach of contract and also that her manager used to make sexist comments about her, but is vague in the timing as to when these incidents occurred. She never made these complaints about her manager before. What should you do?
- Respond within 28 days of the date the tribunal sent the claim to the bank
 - Check all complaints about manager – no grievance raised
 - Gather evidence relating to the claim now – consider potential witnesses for the bank, take initial witness statements and collate documents
 - Consistent approach
 - Ask for more details of claim if necessary.
8. You read in the press a snippet about a high profile sex discrimination case against the bank in the Evening Standard. Also you have found out that Sarah went out for lunch with a colleague in the Finance Department and told her about her case. It seems that she has now gossiped about it to the whole bank. What can you do?
- Has Sarah breached duties of confidentiality/press policy of the bank?
 - Is she in breach of duty to the bank by talking about a claim?
 - Press release?
9. The tribunal sets a date for a Case Management Discussion (preliminary tribunal hearing) to deal with procedural points and “housekeeping” matters. The Tribunal has indicated that it will deal with the fact that she has not raised a grievance about all of her claims. What should you do?
- Agree a list of issues with her/her solicitors

- Apply for strike out of claim relating to comments from manager
 - Ask for specific dates, times etc
 - Apply to amend your response?
 - Agree directions for disclosure of documents, exchange of witness statements, bundle of documents and schedule of losses
 - Check witness availability for a full hearing (before the Case Management Discussion).
10. One of the directions includes Sarah submitting a schedule of loss. She submits one for nearly £250,000. This far exceeds her bonus claim and any possible sex discrimination claim. What should you do?
- Put her to proof of her sums
 - Consider sending a “without prejudice save as to costs” letter if she proceeds vexatiously
 - Ask for documents supporting the schedule.
11. A date is set for the full hearing. What should you be doing now to prepare for the case?
- Consider documents. What is disclosable? Legally privileged? Disclosure of drafts?
 - Paginated and sufficient copies of bundles
 - Take, produce and exchange witness statements
 - Make sure witnesses prepared
 - Deal with late applications
 - Costs warnings
 - Remember general impression to tribunal of parties’ conduct
 - Settlement discussions?
12. Overall key points about the claim in the tribunal.
- Be proactive
 - Clarify issues at an early stage
 - Prepare in time
 - Sarah remains an employee. Be careful about victimisation. Continue to involve her. Do not allow her to feel isolated.

Section 6 – Business and financial incentives for addressing bullying and harassment

Andrea Eccles provides an HR consultant’s perspective on the commercial reasons why employers should address bullying and harassment in their organisations

Introduction

The effects of bullying and harassment within organisations have far wider consequences than those experienced by the alleged perpetrator and victim. The immediate reaction in reported cases is to consider the impact on the parties involved and to ensure that the appropriate policies and procedures are followed in a thorough, yet sensitive, manner.

Whilst sensitive management of any case must always be the highest priority, there are a number of other reasons - business, financial and psychological – for minimising or eradicating bullying in the workplace.

This section explores the wider implications of bullying and harassment and explains why employers should be “hot” on managing this problem.

Business implications

In a highly competitive market place, where organisations are not only competing for increased profits and market share but also for the best talent, a good reputation and profile is imperative. This applies irrespective of the size of the organisation, but where you have a number of organisations competing in the same business – which in the case of financial and professional services is predominantly the City and Canary Wharf – this becomes even more relative. Not only do customers have a choice, but so do employees.

For the HR Director, explaining the benefits of creating a “low risk” bullying environment to senior management can often be difficult. However, when hard facts are presented looking at three key areas, specifically, the organisation’s finances, business and “psychological contracts” then acting to create such an environment becomes a more compelling argument. Outlined below are the factors that influence these key areas.

Finance

There are significant financial costs associated with employees who are suffering the effects of bullying or harassment. These include:-

- **Staff turnover** as individuals resign to escape an uncomfortable situation, often citing another reason for leaving. This may lead to recruitment fees for a replacement, temporary fees for interim coverage and a time related investment in recruiting and training a successor to full productivity. “The Corporate Leavers Survey” conducted by the Level Playing Field Institute in the United States last year (and highlighted by the Financial Times in August) revealed that workplace unfairness costs US employers an estimated \$64billion annually in employee turnover.
- **Sickness and absenteeism** whereby the victim feels too ill or stressed to attend work resulting in temporary fees to cover the role or overtime for additional hours worked by colleagues. There may also be costs arising from a medical assessment by the company doctor. A survey by the Samaritans in November 2007 found that for one in four people bullying is a weekly or even daily cause of stress. When commenting on their research findings, Joe Ferns of the Samaritans said that some 13 million working days were lost to stress, depression and anxiety in 2005.

- **Reduced productivity** and the cost of errors as the parties and their team become drawn into the dispute and difficulties between the victim and alleged perpetrator.
- **Recruitment fees** – as stated earlier – may be incurred in the hiring of a replacement.
- **Training costs** are likely to be incurred to get a new recruit up-to-speed.
- **Counselling** may be required by both the victim and the alleged aggressor which initially may be a time-related cost of having HR support both individuals through any investigation and findings, but might later transpire into medical or coaching support for either individual.
- **Legal fees** may arise if there is a dispute between the parties and HR have been unable to resolve an allegation to everyone's satisfaction. Whilst mediation is one possible option, often the employee resigns and claims constructive dismissal. Even if a Court or Employment Tribunal finds in favour of the employer, the preparation stages for Tribunal hearings require considerable time and money. If the Court or Employment Tribunal finds against the employer and, in the High Court, this may include the employee's legal fees.
- **A compromise agreement** may be considered as a way of settling a bullying or harassment claim. In many cases, this is offered to the victim who feels unable to return to work upon completion of the investigation and is unlikely to be medically fit to do so in the near future. This can have the benefit of helping all parties to move on, but is likely to include an ex-gratia sum, notice pay and some of the employee's legal fees.
- **Outplacement** may also be factored in to any compromise agreement to help with the rehabilitation and redeployment of a former employee.

At the end of this section, there is a hypothetical scenario which includes some of these costs in Cost Illustration Case A.

Business

This is all about company reputation, brand and perception and is more about lost opportunities than hard cash, but clearly has hidden costs associated with adverse publicity arising from bullying and harassment within the organisation. The issues to consider here are:-

- **Customer choice** in that sales may be lost as customers steer away from an organisation that is considered to have an over macho style and is known to have an aggressive environment. This is even more prevalent as cases that are not managed effectively often end up in the courts or Employment Tribunal and get reported in the press. This can be particularly off-putting to investors or any company considering an acquisition of the organisation – or part of its business – as there may be on-going liability with regard to employee claims.
- **Attraction of talent** will be impeded as individuals decide that an oppressive environment does not fit culturally with their aspirations. This may lead the prospective candidate to choose a competitor whose style is more in keeping with their own.
- **Employer of choice** status becomes less of an option as individuals are deterred by the company's reputation. Engagement surveys increasingly show that employees like working for a company that is well respected in its field.
- **The company's brand** may become affected which will deter investors, clients and business tender opportunities.
- **Procurement** exercises may screen out the organisation for the provision of specific services and a bullying culture or harassment claims make the respondent at odds with the procurer's ethics.

Company ethics, diversity and the environment in general are becoming a major part of procurement and a question that is often asked is “does your organisation have any litigation outstanding with suppliers, competitors or employees?”.

- **Employee morale** can fall where bullying is part of the workplace as colleagues become unwittingly embroiled in the situation and low employee engagement may prevail. At this point, errors may occur in the transacting of business, or deadlines missed as employees feel unable to go “the extra mile” to overcome business challenges. Fines or penalties may be incurred by the organisation by way of a remedy to the affected customer.

At the end of this section, there is a hypothetical scenario which includes some of these costs in Cost Illustration Case B.

Psychological Contract

There is a psychological contract between the employer and the employee. This can break-down in instances where the employee believes that the employer has behaved inappropriately. Weak management, poor communication, workplace redundancies affecting colleagues and ignoring or promoting bullying behaviour all play a part in causing the employee to pull-back in the employment relationship.

As with poor morale, this leads to staff disengagement, reduced interest in work, perhaps putting in shorter hours and a general malaise which exists until something stimulates a return to confidence on the part of the employee. In the meantime, the company receives less value and lower productivity from the employee and may have to supplement the employee’s activities with overtime from other staff or external support.

HYPOTHETICAL CASES – COST ILLUSTRATION

CASE A	
Sarah is a Dealing Room Assistant who feels she is regularly undermined and publicly berated by Bruce, Head of Sales, leaving her humiliated, stressed and tearful. Bruce is considered by the Sales Team to have a macho management style, is highly opinionated and shouts orders at everyone. Sarah complains of bullying to Human Resources, but before the investigation can commence she goes off sick with stress. HR identifies the following costs to the organisation:	
Sarah’s salary is £40,000 per annum and she has 6 years’ service	
	£
6 weeks’ sick leave	4615.00
6 weeks’ temporary coverage	5048.00
Independent medical opinion	500.00
Compromise Agreement/severance	20000.00*
Legal fees (company and Sarah)	4000.00
20% Recruitment fee/successor	8000.00

Management Skills Training – Bruce	3000.00
	<hr/>
COST TO ORGANISATION	45,163.00
	<hr/>
* 1 MONTH SALARY PER YEAR OF SERVICE	
RESULT	
<p>HR was unable to conclude an investigation into the bullying allegation as Sarah went on sick leave and was unable to return. Bruce was spoken to informally by the Head of Sales and Trading, and denied he had a bullying style but – nonetheless – agreed to attend a management skills course. Bruce’s replacement for Sarah resigned 14 months later due to incompatibility of styles. HR now insists on training for all line managers.</p>	

CASE B	
<p>Geraldine is the Deputy Head of Foreign Exchange Settlements, a position she has occupied for 18 years. She is a hard task master but enjoys developing her young team. When John – who has 16 years’ service - is transferred from another department, Geraldine feels threatened. She sets him impossible deadlines, fails to communicate with him, constantly criticises him and finds every opportunity to undermine him in front of the team. A bad atmosphere develops in the department as people take sides, and the team becomes de-motivated. Important deadlines are missed, people start clock watching. John complains to HR of bullying. The following costs transpire:-</p>	
	£
Reduction in team productivity	Unknown
“Without Blame” reimbursement to client for late FX settlement	10000.00
Cost of mediation between Geraldine and John	2000.00
John transferred to another dept	0
Recruitment fee for John’s replacement	20,000.00
External coach for Geraldine	6000.00
Reputational damage for late settlement and inefficiency	Unknown
	<hr/>
COST TO ORGANISATION	38,000.00
	<hr/>

RESULT

Investigation finds that Geraldine has exhibited bullying behaviour. She is given a verbal warning and receives a low bonus award. She is provided with an external coach to help her re-motivate her team and to moderate her management style. Four members of staff leave, citing career progression. John is transferred to another department and a replacement is hired.

SUMMARY

In an ideal world, bullying and harassment would not exist within organisations, but sadly at times it will. However, in addition to the discomfort experienced by the victim, the alleged perpetrator and their colleagues, there are a number of other sound reasons to ensure that any risk of such behaviour is minimised.

This section has shown that there are major commercial incentives to be derived from a finance, business and psychological perspective in having a robust policy and stance on bullying and harassment. The tangible costs are transparent: recruitment, training, temporary fees, overtime, medical costs, severance pay and litigation, to mention just a few. However, the intangible costs such as damage to the organisation's reputation and brand, the consequent inability to attract top talent and low employee morale can be just as dangerous and perhaps more likely to result in paid damages or compensation to third parties as a result of inefficiency.

The message from HR to senior management must be that bullying has no place in the workplace, it is detrimental to the organisation's business and is likely to lead to unanticipated losses (both profits and bonuses) if a zero tolerance strategy is not implemented.

Section 7 – Managing the risk: Part 1

Faith Jenner, HR consultant, Anne Slade, HR practitioner, and Glynis Hatch, HR Manager, provide practical guidance on how employers can identify bullying and harassment

It is not always easy to identify the signs that bullying or harassment is taking place within the organisation. Often, the first indication is when a formal or informal complaint is made to HR or management about the behaviour of another member of staff, or negative comments are made by those exiting the organisation. However, by implementing the appropriate policies and procedures, there are a number of interventions that the HR practitioner can use, to assist and support senior management to minimise the existence of such behaviour.

This chapter explores how employers can identify instances of potential bullying and harassment.

WHOSE RESPONSIBILITY?

Whilst HR will traditionally take the lead in developing an anti-bullying strategy, this clearly needs to have the support of senior management. Top down commitment is needed in setting company standards for the benefits of the customers, the shareholders/investors and the employees. HR should therefore involve senior management in creating a culture free from bullying and harassment. All employees then have a responsibility to behave in accordance with that culture and strategy.

Similarly, the role of the HR function is to: -

- Produce policies to prevent bullying and harassment
- Develop procedures to ensure that any cases are handled in a sensitive way and that such procedures comply with latest employment law and dovetail with other company procedures
- Ensure that senior management and employees understand what constitutes bullying (and the difference between that and proper management)
- Offer/run training to help senior management and employees know what is expected of them
- Try to identify if such behaviour exists and then
- Ensure that senior management take the appropriate steps to deal with it.

This chapter examines the tools available to HR and senior management in identifying or preventing poor and unacceptable behaviour in the workplace.

CASE STUDY

Does this situation look familiar?

Consider the case of a City HR manager who only became aware of a problem of bullying behaviour by a member of her senior management team when she conducted the exit interview of a member of his team. When a second person from the same team left citing similar bullying behaviour as a contributory factor in his decision to leave, the HR manager decided to act. She felt frustrated that this behaviour had been going on for a long time undetected by herself and by other members of the senior management team. The perpetrator's team had tolerated it, as they viewed him as too senior and powerful to attempt to get him to change his behaviour.

When considering this case study, two possible scenarios emerge:

- It is probably true that most people who bully are not fully aware of the dire effect their behaviour has on those affected by it.

Or

- There are a few really nasty people who deliberately set out to bully, but they are probably not the majority.

To quote Robert Sutton from his book *“The No Asshole Rule, Building a Civilised Workplace and Surviving One That Isn’t”*:

“People who loudly shout and belittle their underlings and rivals are easier to catch and discipline. Two-faced backstabbers, those who have enough skill and emotional control to save their dirty work for moments when they can’t get caught, are tougher to stop – even though they may do as much damage as a raging maniac.”

We should also bear in mind that acts of bullying and harassment can be committed by colleagues, team members and even subordinates, as well as by those senior to the individual concerned.

WAYS IN WHICH HR CAN IDENTIFY BULLYING AND HARASSMENT

There are a number of ways that the HR department can monitor organisational activities to try to ensure that it has its finger on the pulse of the organisation enabling early identification of any issues which may arise.

The remainder of this section discusses each of these interventions in turn.

1. Use Employee Attitude Surveys to include questions relating to bullying and harassment

Surveys can be a useful tool for understanding organisational culture and behaviour. Some City organisations have included questions relating to bullying and harassment within their regular employee survey, others may choose to have a separate survey specifically targeted at this subject.

One organisation conducts a biennial employee attitude survey. It tries to ask the same questions so that they can analyse results over time. The results are analysed organisation-wide and then broken down by Department/Division (unless there are too few people to maintain anonymity). Its survey is broken down into sections with a series of statements under each heading with which employees can agree or disagree to varying extents. (See the end of this section for examples.)

Finally, City HR professionals may also find it helpful to look at the work undertaken by the University of Bergen and Glamorgan Business School concerning the Negative Acts Questionnaire. (See Bibliography).

2. Carefully review employee comments on 360-degree feedback and performance appraisal forms

HR managers can review the outcome of 360-degree feedback to gauge management style, team and individual behaviour and effectiveness.

Most City organisations have some form of employee performance appraisal system. The HR department should review and monitor these for trends, which could indicate incidences of bullying or harassment. For example, be alert to

- any trend of favouritism in the appraising of staff. Statistical analysis can be helpful, as can monitoring of objective setting, to check for consistency.
- extreme comments made by the appraiser or the employee.
- any comments documented by employees on their own performance appraisals, which may indicate areas of dissatisfaction and concern.

3. Conduct thorough and independent exit interviews for all leavers and follow up on matters as they arise

When staff resign from an organisation they tend to be more prepared to be open about how they feel about their employer.

Exit interviews can provide realistic and timely insights into behaviour and the culture of the organisation and provide useful management information concerning areas of dissatisfaction and concern.

When more than one member of a team leaves citing the behaviour of their manager (or their colleagues) as a contributory cause to their resignation, the HR manager should carefully consider what needs to be done and make appropriate recommendations to senior management.

4. Identify trend data in employee attrition statistics, departmental performance, incidence of grievance cases by department and absentee statistics

HR metrics can provide useful insight into morale and employee satisfaction. They can identify where the culture within a team needs addressing.

For example, where one department has higher staff turnover than others within the organisation, this may be due to external pull factors, but equally it may be due to issues within the department, such as management style.

Where there is a marked change in these trend data over time, the HR manager should seek to understand the reasons for the change.

It is well recognised that staff who are being bullied or harassed often have higher levels of illness or absence than others.

If a particular department has a higher incidence of grievances raised, or higher illness/absentee levels than others, this can be an indicator that there are management issues, which need to be understood and addressed.

5. Ensure that employee grievances are followed up and resolved

When a member of staff raises a formal grievance it is usually as a result of a serious concern as they are often reluctant to do so for fear of victimisation and being labelled as a troublemaker.

Where the grievance relates to concerns about bullying or harassment, the human resources function must ensure that the grievance is properly explored and resolved using the organisation's procedures to ensure fairness.

The individual who raises the grievance must be assured that they will not suffer as a consequence of raising the grievance and the situation should be monitored by HR.

Where more than one such grievance is raised within a team, the HR manager would wish to seek to understand fully the culture and behaviour within the team, as well as the actual grievance itself.

6. Be alert to all forms of employee feedback, both formal and informal

Senior managers and HR managers often receive informal feedback (which could be from individuals or, where applicable, staff counsellors, employee assistance programmes, occupational health or union representatives) as well as information from more formal sources.

Where there are rumours and comments about bullying and harassment or instances of inappropriate banter, these should always be treated seriously and investigated.

7. Observing bullying behaviour or acts of harassment

On rare occasions HR Managers may observe incidences of bullying or harassment first hand. If this happens it is the HR Manager's responsibility to consider carefully how to follow up and to decide what action to take concerning the incident. Others too, may be involved, either as independent witnesses or innocent bystanders, and it is important that they know how to deal with such a situation.

An article in the Guardian newspaper "*Innocent bystanders?*" reported on 3rd November 2007 that:

"A project by Portsmouth Business School last year found that witnesses to bullying often suffered stress and became frightened and insecure in their job. A survey of more than 5,000 workers from 70 organisations carried out by the authors of Workplace Bullying : What We Know, Who Is to Blame and What Can We Do? (Taylor & Francis) suggests that one in five witnesses of bullying leaves the company."

CONCLUSION

This chapter has explored the methods that HR and senior management can use to identify the potential for bullying and harassment in the workplace. By HR working closely with senior management on setting standards and then monitoring the workplace through employee attitude surveys and other HR tools and metrics now at the disposal of the HR professional, it is hoped that bullying and harassment can be eradicated, or at least mitigated, within the organisation.

EXAMPLES OF QUESTIONS ASKED IN AN EMPLOYEE ATTITUDE SURVEY

Communication:

- *I can express my views openly within the organisation*
- *My immediate manager is usually receptive to my ideas and suggestions for improvements to our work*
- *My immediate manager makes it clear what he/she expects of me*

Resources and training:

- *Information relevant to my work is readily accessible to me*
- *People in the organisation readily share their knowledge and experience when requested*
- *I have been provided with enough training and development opportunities to*
 - (a) *help me do my work effectively*
 - (b) *improve or refresh my skills*
- *My immediate manager helps me develop my skills and abilities*
- *I feel I have too much work*

Your current job:

- *I have a clear idea of my job responsibilities*

- *My work gives me a sense of personal accomplishment*
- *My job provides me with chances to grow and develop*
- *My immediate manager supports me in dealing with difficult problems*
- *I am given sufficient authority to do my job well*
- *My immediate manager delegates effectively*
- *I feel I have adequate involvement in decisions that affect my work*

Career development:

- *The organisation has been honest with me about my career prospects*
- *The most competent people are promoted*
- *The most talented people are being retained*
- *I get support from the organisation in developing my career*

Pay and benefits:

- *I think I am paid fairly compared with others here in similar positions*
- *The bonus schemes are administered fairly*
- *My rank adequately reflects the responsibilities of my job*
- *The organisation currently does a good job of rewarding individual performance*

Work environment and atmosphere:

- *There is good co-operation between groups in my division*
- *There is a friendly atmosphere in my division*
- *My immediate manager encourages teamwork*
- *Senior management delegates effectively*

How the organisation treats its staff:

- *As an organisation we show genuine care and concern for our staff*
- *My immediate manager would try to help if I had a personal emergency*
- *I am supported in achieving a balance between my home life and my work life*
- *Overall I feel staff are treated fairly*
- *The way policies are implemented is fair*
- *Management supports diversity for all staff*
- *From my perspective the organisation values its staff*
- *The organisation rewards good performers*
- *The organisation is too lenient with staff who perform poorly*
- *My last performance review*
 - (a) *was carried out fairly*
 - (b) *provided honest feedback on my performance*
 - (c) *helped me identify training and development needs*
- *Senior management is good at managing change*
- *Senior management takes staff issues seriously*
- *Staff are treated with respect, regardless of their position*

Attitudes towards the organisation:

- *I believe the organisation deserves my loyalty*

- *I feel highly motivated to do my job well*
- *The organisation has strong capable senior management*
- *The organisation has very high standards in terms of ethics*

Another City bank has focused one of its surveys explicitly on bullying and harassment:

- *I work in an environment that is free from discrimination*
- *I work in an environment that is free of harassment or bullying*
- *My line manager treats me with respect*
- *My line manager treats all his/her employees without favouritism*
- *The actions of senior management members are consistent with the messages they deliver*
- *I feel comfortable offering my views to members of senior management*
- *senior management proactively seeks employee feedback*
- *senior management acts on the feedback it receives from employees*
- *Are there any other comments that you would like to make?*

Section 8 - Managing the risk: Part 2

David Whincup, head of the London Human Capital Department of Hammonds, CEDR accredited mediator and regular speaker and writer on employment-related matters (0870 839 1132 and 07802 860 759 and david.whincup@hammonds.com).

There are as many ways of dealing with bullying and harassment as there are ways to bully and harass. Consequently no publication of this sort can hope to provide an exhaustive guide suitable for every occasion. That said, there are some basic pointers which should provide a decent steer in most cases.

Identifying the particular problem

Although feeling bullied or harassed is to some extent a state of mind, ultimately that behaviour can only manifest itself by individual acts or omissions. Some of these may be defensible and others not. In any formal context at least, therefore, the accused individual has a right to be made aware of the specifics of the allegations against him so that he can admit, deny or explain separately each of the incidents which is said to constitute the bullying or harassment complained of.

It is important that the complainant is pressed to provide those specifics, ideally in writing, at or in advance of the investigatory meeting – “What exactly did he say/write/do, how did he behave, when was it, who else saw/might have seen it?” etc. While the employer cannot make the provision of those details a condition of hearing the grievance, the answers are often telling. They may give the employer something concrete to put to the accused individual, but equally the process of reducing his concerns to paper can sometimes highlight their essential triviality to the employee, leading to a narrowing or withdrawal of the grievance. We have, for example, a bullying allegation against a client which when finally committed to paper by the employee reads: “She leant across the table, eyes flashing”. Not an easy one to investigate!

Depth of investigation

Many bullying and harassment grievances relate to an extended course of conduct, sometimes coming to a head after months or years without prior comment. How far back must the employer go in its investigation? Every incident referred to, no matter how long ago or how petty? Recent authority suggests that the employer’s conduct of the grievance investigation will not be criticised by the Employment Tribunal if it falls “within the range of reasonable responses” to the grievance circumstances. This may allow an employer to form a reasoned view that there is nothing to be gained from looking at particular allegations, for example because they are too long ago, there is now no effective remedy available even if upheld, the others involved have left or there is enough evidence one way or another on the point to make more unnecessary.

Where the employer does decide not to pursue certain allegations or avenues of enquiry suggested by the employee, it is probably sensible to make a brief file note as to why this decision has been taken. There is a good argument also for notifying the employee in writing of that proposal – “I do not think it is necessary to investigate x because y – do you agree?”. While the employer is not bound by the employee’s response, it can at least then say that it has made its decision about how to conduct the enquiry on an informed basis.

Anonymous complaints

However, this assumes that the employee is willing to be identified in the course of his bullying or harassment grievance. If he genuinely feels himself to be bullied by X then he will need to be very

confident in his employer's ability and willingness to deal with X before putting his head over the parapet by complaining. What if he complains either anonymously or on condition of anonymity?

Breaching the employee's confidence is likely to risk a constructive dismissal claim, especially if there are any actual adverse repercussions for him. Wherever the closed stance taken by the employee significantly limits the employer's ability to investigate the complaint or to take action against X, this should be made clear to the employee at the time and his views on any alternative way forward should be sought. Who else might be prepared to corroborate his story, are there any incidents which could be used without allowing X to identify him, etc? If the employer cannot meaningfully pursue the investigation (for fear of being identified by X), the complainant has still supplied no recognisable examples, then it has a choice – either do nothing, or explain receipt of the complaint to X, indicate in broad terms the behaviour complained of (even if unable to provide specifics) and ask X to bear it in mind going forward. X should not need the details to understand the message about his underlying behaviours. Obviously the allegation relied upon here is unproven and effectively unparticularised. That would make it quite inappropriate as the basis for formal disciplinary action of any kind, or for use to knock down appraisal scores or discretionary bonuses. However, the doing nothing option is not recommended, especially where the allegation contains any suggestions of unlawful discrimination in X's conduct.

Absences

Characteristic of grievances relating to bullying or harassment is the seeming probability that one or both protagonists will go off sick with "stress" at some point in the process. How far does/should this affect the employer's position? Whether the employer believes the absence to be genuine is generally irrelevant. The ease with which doctors' certificates are available for this sort of thing makes the absence hard for it to challenge meaningfully. But being too sick to work, if that is the case, does not automatically make one too sick to talk about the matter at the root of the sickness in the first place. Unless and until it is addressed, that shadow does not go away and the employee, whether harasser or harassee, will struggle to come back to work.

Statistically the chances of a successful return from stress absence drop markedly after six weeks or more. This makes speed in addressing the issue vital, over and above the employer's obligation to progress the matter within a reasonable period. The absent party should therefore be chased in writing to attend any necessary investigatory or disciplinary meeting, with the threat that if he is unable to do so within a reasonable time, a decision on the grievance will have to be made in his absence. The employer should express itself prepared to meet him off the premises or to accept representations in writing from him or a third party in lieu of a face-to-face meeting if that would assist.

Reciprocal allegations

The investigatory and/or disciplinary hearing may lead to counter-allegations by the employee accused. These may be either that the complainant was indeed being leant on but fully deserved it because of his performance or conduct, or alternatively that the employee was only reacting in kind to similar treatment afforded to him by the alleged victim. The employer's response must depend on the circumstances. If some degree of less favourable treatment is admitted, then it becomes important to show that there is some objective reason for it so as to displace any suggestion that it is the product of unlawful discrimination or retaliation for whistleblowing. On the other hand, if the harassment or bullying appears to be reciprocal (what used to be called a personality clash before lawyers became involved!) then there is a good argument for not even trying to get to the bottom of who is more at fault or who started it. Instead, there is sometimes a case for a simple banging of heads together by a more senior manager – "You do not have to like each other but you do have to work together in a civil and professional manner and if I find any further evidence that you are not, there will be trouble". At low level in particular, the parties to this sort of playground spat often do not realise that others are aware of it and the knowledge that they have inadvertently put themselves on senior management's radar can by itself be sufficient to end the problem.

Action against the bully

Subject to that, should your action against a bully or harasser be formal or informal? Bear in mind the possibility that the employee or manager may not know how the way he behaves is perceived, or that he has genuinely confused being a strong manager and leading from the front with an excessively aggressive or hands-on approach. Perhaps he is letting his own insecurities and the pressure he is under from above taint his approach to his subordinates? In such circumstances, especially where he is otherwise valuable to the employer, there is sometimes much to be said initially for a quiet “word to the wise” without any formal proceedings or consequent risk of embarrassment or loss of face for the employee. Make a written note for the file, but put nothing in writing to the employee at that stage.

If that is ineffective or inappropriate, perhaps because the behaviour is more overt or includes elements of discrimination, then more formal steps will be necessary. Consider then whether these should be by way of disciplinary action or formal training. Is he behaving this way even knowing it to be wrong (especially if he has previously had the “quiet word” referred to), or does he genuinely not know how to manage effectively? Where the bullying or harassment is believed by the employer to contain any element of deliberation or any discriminatory component, it will generally be appropriate to consider disciplinary proceedings in priority to counselling.

Disciplinary action

But disciplinary proceedings at what level? The degree of upset claimed by the complainant is relevant here, but not determinative. Certainly the complainant does not have the right to dictate that disciplinary action is taken, either at all or at any particular level. It is well established that a manager’s difficult personality alone can in time constitute grounds for dismissal if he does not respond to earlier warnings or counselling, but it will still generally only be right to dismiss for a first offence of bullying or harassment if it is particularly gross or deliberate in nature, or overtly discriminatory. Where a dismissal or a warning is proposed, however, the employer will still need some evidential basis for that, and it is partly for that reason that it is important to press the complainant for specifics of his allegations at an early stage.

At the end of the investigatory process the employer will usually be in a position to form a view about what has happened. In most cases it will be one of these:-

- (i) The bullying or harassment allegation is deliberately false, designed to obstruct the legitimate management of that employee or to create difficulties for the employee accused.
- (ii) The employee genuinely believes that he is being bullied or harassed, but in fact is being treated legitimately having regard to his own performance or conduct.
- (iii) The employee’s complaints do indicate that the manager may inadvertently have overstepped the mark to some limited extent.
- (iv) The manager has clearly overstepped the mark and his behaviour, though unintentional, is not acceptable to the organisation.
- (v) The manager has deliberately bullied or harassed the employee, whether or not on some discriminatory ground.

Only (i) allows the employer to take any action against the employee. In all other cases it risks creating a fresh victimisation/harassment claim. The burden of proving bad faith on the part of the complainant is on the employer and is not to be challenged lightly – particularly in discrimination cases there is a serious risk that this will simply compound the injury to feelings suffered by the employee. A finding of (ii) probably means that further counselling of the complainant is necessary to reinforce or back up the issues relied upon as justifying the manager’s conduct. It may be that the manager also needs to be pressed to make his reservations clearer than has previously been the

case. If (iii) applies then the manager needs either training and/or a fairly low level disciplinary warning. A more serious warning would be justified by (iv), but the inadvertent nature of the conduct would not support a fair dismissal unless there were a prior history of similar incidents.

Where intention is established, as in (v), then grounds to dismiss summarily will probably exist. As a minimum it would be hard to impose anything less than a final written warning. Especially at senior level or for key performers, this can be a difficult question. Do you lose (or alienate) the highly profitable X because he has upset the relatively insignificant Y, and so show the whole company that this sort of behaviour will not be tolerated? Alternatively, do you sacrifice Y at relatively limited cost in order to protect X as the golden goose? A matter for managerial consciences rather than legal advice, perhaps, but it will be clear that allowing profitable performers to believe themselves invulnerable carries significant potential risks in terms both of their own behaviours and the attraction and retention of others.

Section 9 – Helping the bullied to help themselves: top tips and the role coaching can play

Carolyn Matheson, employment coach, provides her top tips to victims of bullying and harassment

Just like the playground bully, the workplace bully is often aware of the effect of their behaviour on you, but it is always much more subtle than tripping you up or pulling your hair, so you may not spot it nearly so quickly. Many people are afraid to speak out against bullying at work because they don't know what to do or because they fear repercussions. However, if you do nothing, the bullying will continue and may even get worse. People often hope the situation will go away and so they say nothing. It may be hard but it is essential for you to decide that you will not allow the bullying to continue.

Bullying is bad for business. You may be a good performer now, but if you are being bullied your performance will suffer. There is an increasing awareness of the need to tackle bullying. Bullying thrives on silence and secrecy. You are letting them do what they want if you stay silent, so don't.

Here are some ideas about how you can deal with bullying. Think about your situation and what options might be best for you.

1. Check your organisation's anti-bullying policy.
2. Don't ignore bullying – it rarely goes away on its own.
3. Keep records. Dates, times, witnesses, what was said or done and how it affected you. All of this information can be used as evidence. Save any unpleasant texts or emails. Document incidents, including teasing, sarcasm and unhelpful criticism, unreasonable performance targets, being blocked for promotion or being left out of social events. As you start to make notes you may start to see a pattern emerge. Keep them in a secure place.
4. Don't let yourself get isolated; it is just what the bully wants. Find people in other teams to have lunch with but don't sit at your desk on your own.
5. Be careful with your personal information (family, friends, hobbies, interests and religion) - information about you is power.
6. It may not be wise to confront the person directly. Meet with HR or if you have an external counseling service or call one of the specialist numbers recommended in section 18 in this booklet to talk through your concerns.
7. A facilitated three-way meeting can sometimes be a useful way for you to resolve many of the issues. Often the bully needs help and whilst there may be discipline issues that need to be addressed with the bully, there are often underlying issues that your organisation might be able to support the bully with.
8. It is important not to let the bullying take over your life although you will probably find it consumes every waking hour and wakes you up at night, try and find time to do things that you enjoy whether it is spending time with friends and family, going to the gym, visiting a museum or burying yourself in a book. If you are a little more refreshed when you return to work you mind find you can deal with things in a different way.
9. If you lead a team take a pro-active role in dealing with bullying. At one of your team meetings, be open about what as a team you will not tolerate and what each individual will do

if bullying is observed. A team approach to dealing with bullying is more immediate and more effective and will ultimately lead to zero tolerance on bullying.

10. Read the “When Assholes Reign Supreme: Tips for Surviving Nasty People and Workplaces” chapter in Robert Sutton’s book, “The No Asshole Rule”.

Section 10 – The role of policies/procedures and statements of behaviour

David Whincup, City employment lawyer, explores the use of policies/procedures and statements of behaviour in combating bullying harassment in the workplace

In many ways, a written statement of acceptable behaviours in the workplace should be unnecessary. Surely everyone knows what is acceptable and what is not in that respect? Sadly experience shows this not to be the case, with the consequence that City employers do often seek to reduce to paper the generic behaviours which they regard as improper.

This is not without its risks, as touched upon below, but most of these can be avoided by careful drafting of the policy/statement and those risks are in any case significantly outweighed by the plus points of maintaining a decent anti-bullying/harassment policy.

Role of written policies

- (a) To show employees that bullying and harassment are matters on senior management's mind and that they will not be accepted.
- (b) To help show a Court or Tribunal that reasonable steps were taken by the employer to prevent employees acting towards each other or third parties in ways which potentially create legal liabilities, including but not limited to unlawful discrimination.
- (c) In some cases, to provide clarification for managers and staff who are genuinely unsure of the behavioural parameters of their role. This may be particularly relevant in a multi-cultural environment where management or staff may have come from a working environment overseas where there are different approaches and expectations in the workplace.
- (d) To manage the expectations of staff, i.e. to clarify the difference between bullying/harassment on the one hand and legitimate disciplinary proceedings or action on the other. This may have the side-effect of empowering line managers who may otherwise fear grievances against them for taking such action or expressing negative but genuinely-held beliefs in staff appraisals.
- (e) To manage expectations also in making it clear that mere unhappiness at work, though obviously not to be encouraged, is not necessarily someone else's fault. As part and parcel of this, to note at the same time that the complainant's management and colleagues are human too and so just as prone to "off days", fatigue, stress or illness as he is. Employers are entitled to expect a certain degree of resilience from their staff to the ordinary knocks and reversals of City life, and that must include some degree of tolerance at an individual level for inadvertent and unrepresentative behaviours which, though not ideal, are both trivial and inevitable from time to time.
- (f) To warn employees of the consequences of alleging bullying/harassment in bad faith.
- (g) To support the taking of disciplinary action, possibly including dismissal, against those found guilty of unacceptable behaviours towards their colleagues and subordinates.
- (h) To lay down at least an outline procedure and timescale for the investigation of bullying/harassment grievances so that all parties know roughly what will happen consequent upon a complaint.

- (i) To manage expectations as to the practical remedies which may be available, the burden upon a complainant to back up his grievance with examples, and the limits which his making his complaint anonymously may place upon the employer's ability to pursue it.
- (j) To cross-refer a complainant to existing grievance and/or equal opportunities policies as appropriate.
- (k) To warn employees that bullying or harassment could expose them personally to civil action by the employee and even to criminal proceedings in serious cases.

Drafting errors in written policies

Care must be taken in the drafting of any policy to avoid so far as practicable a number of possible pitfalls:

- (a) Do not make the policy contractual – just like a disciplinary or grievance procedure, it should be stated to be an expression of usual practice only and without contractual force.
- (b) Even then, it should not be so complex or prescriptive that there becomes a real chance of the employer failing to follow it. Aspirational policies referring to speedy turn-arounds and lots of scope to challenge the outcome look good on paper, but the allegation will inevitably be made that any failure to comply fully with it, whether contractual or not, is evidence of further discrimination or bullying.
- (c) Bearing in mind that bullying is in the eye of the beholder to some extent, the policy should not effectively legitimise complaints by categorising as bullying or harassment behaviours which may have a legitimate role in the office. These might include pressurising someone to perform, reprimanding them when they do not, not inviting them to meetings at which they actually have no role or simply not getting on with them. In other words, there should be no suggestion that the employer will act just because the employee discovers the hard way that his perception of his own popularity, intelligence or seniority is not widely shared.
- (d) The policy should avoid any suggestion that disciplinary action at any particular level will necessarily be taken against someone found at fault. There may be good grounds, legal or commercial, for not throwing the book at someone in a particular case. If this is stated as the likely or inevitable outcome, then the complainant could seek to use any departure from that as compounding his distress and the employer's failure to take proper steps to prevent it.

Implementation of written policies

Producing the policy is of course only half the work. It must then be properly introduced and implemented. Consider in particular these questions:-

- (a) Launching the policy (and publicising updates or amendments to it) in such a way that all the employees can see it and access it if and when they need to.
- (b) Making it clear that the policy has senior management backing, ideally involving them in its launch and any associated training.

- (c) Ensuring that reference to the policy is included in staff induction sessions or other management training. The CIPD's 2004 Managing Conflict at Work Survey set out how organisations rank the effectiveness of various measures in tackling bullying/harassment at work. Over 50% of the respondents pointed to managerial behaviours, leading by example, as the most effective. Time spent on improving managers' inter-personal skills will therefore rarely be wasted, and the policy may form a useful focus for this.
- (d) Ensuring that the policy is seen to be applied – taking harassment/bullying grievances seriously, doing proper investigations and taking any necessary formal action as a result.
- (e) Where timetables slip, telling the complainant of this in writing and explaining why. This should both keep his temperature down and satisfy the statutory dispute resolution procedures obligation to hear and respond to grievances within a reasonable time.
- (f) Giving one employee, probably someone senior in HR, express responsibility to monitor the "performance" of the policy in the light of experience and/or external changes in law or practice.
- (g) Applying the policy not just to employees but also to temps, contractors and consultants.

MODEL POLICY

Model Bullying and Harassment Policy

1. Policy

Everyone has a right to be treated with a reasonable degree of dignity and respect at work and accordingly, this Company will not tolerate any forms of bullying or harassment by managers and staff whether on or off office premises or during work time. The policy applies to all managers, staff, consultants and contract workers of the Company. It creates a set of principles but as each case depends to some extent on its own facts, it cannot lay down an exhaustive set of rules for dealing with these matters.

2. Definitions

Bullying and harassment can often be hard to recognise, not least because behaviour which is considered inappropriate by one person may be viewed as no more than firm management by another. Certainly nothing in the policy takes away from the Company any right to manage, direct and monitor the conduct and performance of its staff, managers and contractors. Bullying or harassment may be experienced during face to face meetings, by unacceptable written communications, from e-mail abuse (flame-mail), by inappropriate telephone usage or because of overbearing monitoring of conduct and performance. Forms of bullying and harassment are most likely to be persistent unacceptable behaviours towards a group or individual, but may also relate to an isolated incident.

You should also not forget that your behaviour and sense of what is proper may be affected by external factors such as pressure at work, fatigue or alcohol - you must be particularly careful about what you say or do in these circumstances. As a "victim" you should be prepared to treat a little less seriously unrepresentative one-off conduct which you know to be the result of such factors.

2.1 Bullying

Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient.

2.2 Harassment

Harassment, in general terms, is unwanted conduct affecting the dignity of men and women in the workplace. It may be related to the sex, race, disability, age, religion, sexual orientation or nationality of an individual or group, or it may have no underlying motivation and simply be unacceptable in its own right.

2.3 Discriminatory harassment

Given the obvious sensitivities associated with complaints about sexual, sexual orientation, racial, age, religious beliefs and disability harassment, section 4 of this policy document looks exclusively at the issue of harassment on those unlawful grounds.

2.4 Forms of harassment and bullying

The following are examples of forms of behaviour will not be tolerated within the Company

- i. spreading malicious rumours, or insulting someone (particularly in front of others)
- ii. copying memos that are critical about someone to others who do not need to know
- iii. ridiculing or demeaning someone — picking on them or setting them up to fail
- iv. exclusion (sending to Coventry) or victimisation following earlier complaints (see section 7 below)
- v. overbearing supervision or other misuse of power or position
- vi. making threats or comments about job security without foundation
- vii deliberately undermining a competent worker by overloading and/or constant criticism
- viii preventing deserving individuals from progressing by intentionally and unjustifiably blocking promotion, salary reviews or training opportunities.

3. Procedure

All complaints will be taken seriously and fully investigated. A member of the HR team will be asked to conduct the investigation to ensure objectivity and independence. The complaint will be dealt with confidentially and sensitively. Any disclosure of details of the complaint will only occur in the interests of a fair investigation and with the prior written permission of the complainant. Please note the comments in 3.2 below should you prefer to bring the complaint without allowing the Company to disclose your identity in the course of investigating it.

3.1 Informal procedure

In some cases it may be possible to rectify matters informally. In most cases it is desirable to try this route first. A member of HR will help to facilitate an informal resolution of a complaint where it is appropriate and possible to do so. This may mean a meeting with the other party or some form of mediation process.

3.2 Formal procedure

Where it is not possible or appropriate to deal with the matter informally, the individual should take up the matter with a member of HR, their immediate manager or the Head of Department, stating the reason(s) for the complaint. The individual should produce a letter or email containing an account of the issues which have given rise to the complaint, relevant examples, details of any witnesses and confirmation of the redress which is being sought. In addition the individual should note any elements of the complaint which must be kept confidential.

All complaints will be investigated before any decisions are taken. Where appropriate the wishes of the complainant regarding the way the investigation is carried out will be complied with. If this is not appropriate for any reason the individual will be advised and be given a chance to decide whether he/she still wishes the investigation to proceed. In the course of any meeting held to consider your grievance you are entitled to be accompanied by a colleague or trade union official. The more detail you give the more easily and thoroughly your complaint can be investigated.

All complaints of bullying or harassment can be made to HR in strict confidence. If you wish to preserve your anonymity then we will attempt, so far as practicable, to pursue the matter without disclosing your identity. However a proper investigation of your allegation must in fairness to the other person give the alleged harasser an opportunity to give his or her own version of events in response to specific allegations. This may be impossible to achieve without your identity being revealed. There may therefore unfortunately be circumstances in which the Company will be unable to pursue your complaint properly unless you are prepared to forfeit your anonymity. This is particularly true in cases where the grievance reveals circumstances warranting possible disciplinary action against the other person.

Where practicable a response (not necessarily the full outcome of the investigation) will be provided within ten working days. This may not always be possible in which case a response will be provided as soon as possible. The outcome of the investigation will also be provided as soon as possible. The individual will be advised at the outset of how long the investigation is likely to take, and again if that timescale slips materially for any reason.

3.3 Findings and appeals

Where the outcome of the investigation identifies a potential disciplinary matter the disciplinary procedure should be followed.

Counselling may be offered as an alternative or where the investigation shows no cause for disciplinary action, or where doubt is cast on the validity of the complaint. Counselling may resolve the issue or help support the person accused as well as the complainant.

If the individual is not happy with the outcome of the complaint s/he may, within five working days of receiving the response, request a meeting with the next level of management (usually a more senior manager). The appropriate person will then hear the complaint, normally within ten working days and advise the employee of the outcome as soon as practicable after the meeting.

This is the last stage of the complaints procedure and as such the decision is final.

4. Sexual, sexual orientation, racial, age, religious beliefs and disability harassment and bullying

The policy of the Company in relation to unlawful harassment on these grounds is designed to reduce, so far as possible, the distress which such harassment allegations may cause, both to the victim or the alleged harasser. The Company will treat deliberate harassment on any of these grounds very seriously.

The Company will generally apply the following principles in relation to sexual, sexual orientation racial, age, religious beliefs or disability harassment allegations. However, it must be appreciated that each case will need to be looked at on its own merits and different treatment may be warranted for different cases. Similarly, please note that while this policy concentrates mostly on sexual harassment for the sake of brevity, all the principles within it apply equally to bullying and harassment on sexual orientation, race, age, religious belief and disability grounds too.

4.1 What is sexual harassment?

While most people recognise sexual harassment as such, it is a difficult concept to define. We therefore rely on the common sense of all staff knowing what conduct to avoid and/or when the way they are treated is genuinely sexual harassment and not something else. Conduct to avoid is that based on the gender of the recipient which is uninvited, unreasonable and offensive to that person or which creates an intimidating, hostile or humiliating work environment for the recipient. We stress that "based on the gender of the recipient" component because it is inevitable from time to time that staff will have action taken against them, whether by colleagues or superiors, which is unwanted and which they feel humiliates or intimidates them. If that conduct is not based on gender then it is not sexual harassment.

4.2 Responsibilities

All staff, but particularly those employed in supervisory or managerial capacities, are responsible for ensuring that their conduct towards colleagues is not open to misinterpretation. The Company will not be impressed by "It was only a bit of fun" or similar defences to allegations of harassment.

5. Getting help and advice

If you feel that you are a victim of harassment then you are encouraged to bring this to the attention of HR at the earliest opportunity. Often a swift approach to the problem may stop it developing into something more serious. You should tell HR of any witnesses to the harassment and of any other details that may be used to aid the investigation into the complaint. The Company may need to interview those people to increase its understanding of what happened. Depending upon the gravity of the case and the personalities involved, you may initially be encouraged to try to resolve the matter on an informal basis, either by yourself or by asking a colleague to have a quiet word with the person involved. Alternatively, mediation may resolve the issue.

If you do not feel that an informal resolution is appropriate, (or you have tried it and failed) then you are invited to bring a grievance under our normal grievance procedure. If the grievance procedure suggests that your grievance should be brought in the first place to the person you are complaining about, then you should make the complaint instead to HR who will make arrangements for the hearing of your grievance by someone else. In the hearing of any grievance you will have the right to be accompanied by a colleague or union official.

6. Disciplinary matters

If disciplinary proceedings are brought against you as a result of an allegation of bullying or harassment against you (or following an allegation made by you in what is believed to be bad faith), then our normal disciplinary procedures will apply. In brief, you will have the opportunity to be accompanied by a colleague, will be notified in advance (normally in writing) of the allegation against you and will be given an opportunity to make any representations you wish before a final decision is made.

If we reasonably believe after a proper investigation that there has been deliberate harassment or victimisation, whether or not on race, age, sex, religious belief, orientation or disability grounds, then this may result in the harasser being summarily dismissed. The same applies to anyone making allegations in bad faith.

7. Victimisation

You should not be penalised or otherwise treated less favourably as a result of your bringing a good faith complaint of bullying or harassment against someone in the Company. Equally, once that complaint has been dealt with it is the expectation of the Company that both parties will generally be able to put matters behind them and move on.

Section 11 - Resolving workplace disputes: mediation

David Whincup, City employment lawyer and accredited mediator, explains how mediation can be used to resolve workplace disputes

Mediation explained

The CIPD's Conflict at Work Survey in 2004 considered the most effective means to tackle bullying and harassment in the workplace. The results indicated that the requirements of the law in bullying and harassment cases are potentially very much at odds with effective dispute resolution in these cases. Only a minuscule 0.8% of respondents thought that disputes were best resolved by a formal approach, and yet it is into that method that employers are forced by the law (the Statutory Dispute Resolution Procedures and the threat of litigation in particular) and often encouraged by lawyers, to pour most of their resources.

The changes to the Statutory Dispute Resolution Procedures proposed by the Gibbons Review, increasing pressure from the judiciary and the common sense knowledge that disputes are better resolved by agreement than by an imposed solution all point in the same direction: part of any City employer's toolkit in handling harassment and bullying grievances should be mediation. In this chapter we will explain how the mediation process does and does not work, and (in outline) what it entails.

What mediation is

- (i) voluntary – either party can refuse to participate, either at all or beyond a certain point.
- (ii) confidential, both as to outcome and anything said or proposed by either party in the course of the mediation process.
- (iii) focussed on solutions rather than blame or legal liability.
- (iv) unlimited in the range of possible outcomes.
- (v) effective – according to the Centre for Effective Dispute Resolution (“CEDR”), over 80% of employment mediations lead to an agreement between the parties. Moreover, because those solutions are agreed rather than imposed, the chances of their sticking are obviously much greater.
- (vi) quick – the availability of commercial mediators more or less on demand through organisations like CEDR, other specialist dispute resolution companies and the mediation practices of barristers and firms of solicitors means that the parties can often side-step the delays inherent in tribunal proceedings. It is obvious that the sooner a bullying/harassment dispute is resolved, the better – the relationship stands a better chance of surviving, legal and management time costs are significantly reduced and the parties have not yet taken up the entrenched and opposing postures which otherwise inevitably come with time and legal threats.
- (vii) cheap – a relative term, obviously, but since the mediation is focussed on the solution, not the problem, much of the preparatory work associated with formal tribunal proceedings can be avoided, especially witness statements. In addition, the vast majority of mediations take place over one day only, while any bullying/harassment claim of substance will inevitably take longer.

- (viii) available at any stage of the dispute, from as soon as the complaint is made to HR to just short of the full Tribunal hearing.

What mediation is not

- (i) compulsory, even when built into an employer's internal grievance rules.
- (ii) a finding or remedy imposed by a third party or by arbitration.
- (iii) public.
- (iv) based on technical legal analysis.
- (v) a cure-all – it will not work in every case and there can be good grounds for an employer declining to participate (see below).
- (vi) an admission of liability by the employer or of weakness by the employee.
- (vii) easy – to make the most of the process the employer will need to engage fully in it, with an open mind and a willingness to be challenged and if necessary to look outside traditional positions of right and wrong, vindication and “fairness”.

How mediation works

In broad terms, the mediation process recognises that both parties to a dispute (including a grievance arising from bullying or harassment) usually want it resolved. There are exceptions, for example, where the party is driven by emotion or principle or the need to establish a precedent, but when reality is allowed to intrude, a solution is generally better than none. As a rule also, both parties accept within themselves that there may have to be some degree of compromise and that the solution they would ultimately swallow may be less than their ideal. There is much truth behind the old line that a good settlement is one which makes both parties equally unhappy.

The role of the mediator is to encourage each party to consider more consciously the attractions of a solution on some terms or other as against the alternatives if no solution is reached. The main alternatives in a bullying/harassment case are obvious. For the employee, possible loss of employment, stress, expense, publicity, fear of losing the claim, having to relive the circumstances under cross-examination, fear of humiliation if the grievance is withdrawn or rejected, etc. For the individual manager accused, the distraction, adverse publicity, fear of criticism by a tribunal, the disapproval of his employer, legal costs or even an award against him personally. For the employer, the effective loss of the two employees and part of the HR function while the proceedings continue, adverse PR, the possibility of vicarious liability for the bullying/harassment, legal costs (win or lose) and the discovery at the end of tribunal proceedings that the allegedly bullied employee is still there but is now (dependent on the outcome) either terminally embittered or unmanageably smug.

In considering alternatives, the mediator will also encourage the parties to look at remedies or solutions which would not be available to them through formal tribunal proceedings, things which may be emotionally or professionally more valuable to them than mere cash. For example, a mediation agreement could include provision for an apology, training, contractual changes, internal transfer, promotion, agreed severance, references or announcements, etc, none of which are in the gift of the Employment Tribunal. The parties will be pushed hard to think about what they need, rather than what they want, but it always remains their decision to settle or not in the end.

Meeting the parties initially together and then separately (there is no fixed procedure) the mediator will explore with each what room there is to move towards the other's position. He/she will also provide an opportunity for the venting of some emotion and some frank, even heated, exchange of views.

Once the victim of alleged bullying/harassment has had a chance to talk back, uninterrupted and out of the office context, then some of the heat can often be taken out of the dispute and the emotional obstacles to a reasoned discussion of the way forward are to some extent removed. There is usually a series of meetings with each party, the mediator shuttling between the two. Sometimes he/she may recommend a face-to-face meeting if it is thought helpful to bridge a last gap, but this cannot be compelled.

Of course, this can only work against some very clear ground rules. Otherwise the parties will be too constrained in what they will think or be advised to say for fear of prejudicing their legal position. Consequently they will be required first to sign a mediation agreement, which confirms in particular that:-

- (i) any agreement reached is confidential between them;
- (ii) nothing said in the mediation can be used outside it, whether or not settlement is reached;
- (iii) information provided to the mediator for settlement purposes will not be disclosed to the other party without the giver's prior consent;
- (iv) the parties present have the authority to settle the dispute there and then; and
- (v) they will have no claims against the mediator and will be unable to call him/her as a witness if the process does not reach a settlement.

Settlement by mediation

If the mediation is successful then the parties will be asked to reduce their agreement to writing there and then. There is generally very little scope for "going away and thinking about it", hence the need for the employer's representatives to have secured in advance the internal authorities necessary to conclude an agreement.

The mediator will not generally assist in the drafting of the agreement in order to preserve his/her independence. Therefore any errors or omissions in the written agreement will be the responsibility of the parties themselves. For that reason, although lawyers are not required to attend mediations, there are good reasons to have them present, at least towards the end of the day. What form the mediation agreement takes is not that important, so long as it deals with the issues in dispute. It may be no more than a memorandum of understanding concerning the respective future conduct of the manager and employee, or it could constitute a full-blown Compromise Agreement if the employee had already left or the agreement ends up including terms for his doing so. Once the agreement is reached it becomes open and binding, so far as its terms permit, and may be relied upon and enforced like any other contract.

Section 12 – Resolving workplace disputes: the role ACAS can play

Henicka Uddin, a Senior Adviser at ACAS, explains the role that her organisation can play in resolving workplace disputes, such as those arising from bullying and harassment

Who we are and what we do

ACAS is an independent organisation funded by the taxpayer. It is our job to help organisations become more efficient and improve working life through better employment relations. We are here to help you find real solutions to everyday problems and throw light on legislation.

How we can help

There are a variety of ways we can help you.

Helpline

Every year thousands of employers ring our helpline regarding issues and problems in the workplace. Our helpline is there to give you independent, impartial and practical advice for dealing with everyday problems. Whether it's knowing how to deal with a bully, updating your own policies, understanding current legislation or problems with addressing a bullying culture, the ACAS helpline is an excellent step to seeking immediate advice.

Mediation

The use of mediation is an effective tool in addressing the breakdown of relationships between individuals. Its aim is to maintain the employment relationship. ACAS mediators are both independent and impartial. Through mediation, we help parties find a solution that both sides are able to agree and is aimed at sorting out the problem or improving the differences. Alternatively, the mediator can recommend a way forward if both sides want this and are unable to find their own solution. The process is confidential and quick. It can be far cheaper and less stressful than going to, or preparing for tribunal and is generally most effective at the early stages of conflict.

Certificate in Internal Workplace Mediation

This 5 day course is run by ACAS advisers and is accredited by OCR, one of the main awarding bodies in the UK. The units covered are:

- Understanding Conflict and Mediation In The Workplace
- Introducing the Parties to Mediation
- Moving Through the Mediation Process
- Skills and Strategies for Managing the Mediation Process
- Practising Mediation Skills.

Advisers

ACAS can help you if you want to address issues around bullying and harassment on a larger scale. Our advisers can work with you to identify underlying problems through focus groups or by drawing out qualitative data from staff who have been bullied. We will develop a tailored session, enabling

delegates to identify concerns, rebuild relationships, provide options or come up with actions and solutions. Employers have found it particularly useful to work with advisers when sensitive and difficult issues need to be addressed in an impartial and independent manner.

Training

In addition to the above, our trainers can provide practical help for managers on bullying and harassment in the workplace. These sessions will not only broaden your understanding on the subject, but in addition address good practice in dealing with bullying and harassment.

Equality services

If you feel that issues around bullying and harassment are based around aspects of diversity – sex, disability, religion or belief, sexual orientation and age, our Equality team can help. This ranges from working with you on developing equal opportunity policies, running training programmes to formulating ethnic and other monitoring systems.

Contact details for ACAS can be found in section 18.

Section 13 – The experience of a medical practitioner: the case for early involvement of specialists

Mark Harvey, Occupational Health specialist, considers the medical problems caused by bullying and harassment in the workplace and explores how these can be addressed

INTRODUCTION

Alleged bullying or harassment is now a common element in the array of issues discussed in a typical occupational health consultation. Individuals are often referred on the basis of performance concerns or as a result of management addressing poor attendance and it is not unusual for the first mention of alleged bullying to be made in the safety (i.e. confidentiality) of a medical consultation. The clinician can be in a difficult position where the employee shares this information in confidence but is not ready for the issue to be disclosed to the employer. It is recommended that even the slightest suspicion of bullying be discussed before referral for a medical opinion and that any information be included on the referral document. Early referral offers the best chance of effective support before the cumulative effects of bullying over a long period make the problem insoluble or nearly so.

HEALTH EFFECTS OF BULLYING & HARASSMENT

Bullying and harassment do not necessarily lead to medical problems. Where they do, the effects will be non specific and subject to enormous individual variation. The common pathway leading to health problems is that of the human response to stress. In other words there may be physical manifestations most often in the form of muscular and abdominal symptoms in addition to the expected effect on mental health. Occupational Physicians find the following to be most prevalent in patients being bullied or harassed and, whilst they are not specific to bullying, they may indicate stress that needs further discussion with the employee.

Physical symptoms	Mental health symptoms
Headaches, 'sinus' problems, visual disturbance	Anxiety and depression, insomnia, increased use of alcohol, nicotine or drugs
Pain in neck/shoulder region, low back pain, 'RSI' (Work Related Upper Limb Disorder)	Poor concentration, poor memory
'Chest infections', breathing problems	'Stress', 'PTSD'
'Sickness', nausea/vomiting, 'tummy upset', abdominal pain/IBS, loss of weight, menstrual problems	Exhaustion, Chronic Fatigue Syndrome

INDIVIDUAL VULNERABILITY & RISK FACTORS

We are not born equal. Just as our resistance to illness varies for such things as cancer and heart disease to name but two, our genetic make-up and our life experience and expectations also have a huge influence on our susceptibility to bullying behaviours. We know from endless studies of schoolchildren that both bully and victim behaviours tend to persist in individuals so there is clearly something about our personality that makes some more vulnerable than others. The victim is identified by the bully on the basis of a perceived 'difference' from the organisational norm (race, ethnicity, class, physical features, shyness etc). These are the high risk employees in whom there should be a low threshold for suspecting possible workplace bullying. Any indication of an employee

having been bullied in previous employment (or in a young person, at school) should prompt an additional duty of care and extra measures to detect and deal with any suspicion of bullying in an organisation. A history of mental ill-health is not in itself a specific risk factor although it may make the individual less able to cope if bullying were to occur.

DETECTION OF AFFECTED EMPLOYEES – THE WARNING SIGNS

The signal-to-noise ratio is low making detection difficult. All Occupational Physicians will report that many of the cases we see are characterised by the ‘nobody took me seriously’ syndrome. This is, beyond the damage done by the bullying, a very powerful part of reinforcing the negativity felt by the victim and to be avoided at all costs. We recognise the increasing trend in such allegations and that many may eventually turn out to be spurious but, listening sympathetically and investigating promptly is perhaps the single most important employer intervention that can be offered. From an occupational health perspective, the list below reflects the signs in the workplace that might prompt further enquiry:

- an increase in sickness absence levels (particularly repeated short-term absences) in an employee with a previously reasonable record;
- medical certificates citing stress as the ‘diagnosis’;
- reduced work performance - especially apparent lack of initiative, commitment/morale, reduced attention to detail, poor customer feedback/complaints;
- forgetfulness and increased errors, poor timekeeping;
- behaviour change – especially uncharacteristic displays of anger, uncooperative attitude; and
- requests for job change/redeployment and even resignation.

THE ROLE OF OCCUPATIONAL HEALTH

The employer’s occupational health advisors have an important role in:

- assessing the potential link between reported bullying and the symptoms displayed;
- reviewing the medical history in detail;
- assessing the employee’s risk factors and coping strategies;
- assessing the most appropriate medical management/treatment;
- advising both employer and employee on next steps in relation to fitness for work, recommended adjustments and prognosis;
- making medical referrals for specialist assessment and treatment where appropriate and/or liaising with the individual’s own doctors; and
- monitoring the situation and updating advice depending on progress.

The occupational health advisor will not specifically treat the employee since this is unquestionably the role of the individual’s GP. However, the advisor will have specific experience in managing such cases and so is likely to have a network of experienced specialists available to offer prompt and treatment with the best chance of early resolution. The OH advisor will need to be able to rely upon

the employer investigating the allegations since, if any investigation does not progress, treatment will be, at best, of only limited value.

MEDICAL MANAGEMENT

If medical treatment is considered appropriate and it will not be needed in some cases, rapid return of full health should not be expected and so a potentially prolonged absence can be anticipated. All steps will be taken to consider appropriate ways to enable the employee to remain in work with adjustments if at all possible and encouragement offered to employers to support this. Any significant period away from work may well compound the problem as the employee will become increasingly anxious about returning and in most cases the employee becomes increasingly resentful of the negative impact that the workplace bullying is having on their lives. In terms of treatment, there is overwhelming evidence that a combination of medication and 'talking treatment' delivers the best results in employees with a mental health problem. This approach will be used in most cases, although if there is reluctance regarding medication, Cognitive Behavioural Therapy (CBT) may be offered alone. Medication takes 2-4 weeks to begin to be effective and gradual improvement would be expected over the next 6-8 weeks. CBT is likely to be offered on the basis of a weekly 1 hour session over 8-10 weeks.

OUTCOMES

The best outcomes are, not surprisingly, in those who have the courage and support to report their problems early and who receive prompt specialist medical treatment. Recovery sufficient to enable a supported phased return to work may take at least a couple of months. In those cases where the employee is considered to be seriously ill at presentation, the absence is likely to be much longer and recovery to the point where a return to the same employer is realistic may even be an impossible expectation.

CONCLUSIONS

The key is to take all reasonable steps to prevent bullying by organisational means. When it does occur, and it will, prompt sympathetic attention is vital, and employers should resist the temptation to regard the allegation as spurious. Any concerns around the employee's fitness for work should prompt early referral to occupational health for specialised medical management. Recovery, as a result of the cumulative nature of the cause, is generally rather slow and prolonged absence is likely. Active support from the employer and close liaison with occupational health throughout treatment is vital if the employee is to return to the organisation.

Section 14 – The Psychotherapist's view

Sarah Briggs draws on her experience as a psychotherapist and organisation development consultant to explore why bullies act in the way that they do

Healthy adult relationships are based on mutual respect therefore equal status.

Bullying relies on inappropriate emotional and/or physical intimidation which upsets that equal balance, giving the bully a more powerful position, leaving the other person in an inferior position.

Ironically, the bully wishes to be seen as a powerful figure, yet bullying often stems from the bully's feelings of insecurity. The bully lacks the confidence to be liked for who they are intrinsically, lacking self-worth. A bully lacks the communication skills necessary to meet their needs through collaboration and negotiation. (Confidence, mutual respect, collaboration and negotiation are attributes of well-functioning adults.)

Alarmingly, bullies may be acting out onto others the very behaviour they themselves have experienced from parents, older siblings or other children at school. One reaction to their painful humiliating experience is to adopt the bully position in future as older children or in adulthood, so that they are giving out to others the behaviour they received in the past or now fear happening to them again at work or socially.

Most excessively dominant people are usually bullies. Bullies are deep-down very insecure people. They dominate because they are too insecure to allow other people to have responsibility and influence, and this behaviour is generally conditioned from childhood for one reason or another. The dominant bullying behaviour is effectively reinforced by the response given by 'secure' and 'non-assertive' people to bullying. The bully gets his or her own way. The bullying dominant behaviour is rewarded, and so it persists.

Dominant, bullying people, usually from a very young age, become positively conditioned to bullying behaviour, because in their own terms it works. Their own terms are generally concerned with satisfying their ego and selfish drives to get their own way, to control, to achieve status (often implanted by insecure ambitious parents), to manipulate, make decisions, build empires, to collect material signs of achievement, monetary wealth, and particularly to establish protective mechanisms, such as 'yes-men' followers ('body-guards'), immunity from challenge and interference, scrutiny, judgement, etc. Early childhood experiences play an important part in creating bullies. Bullies are victims as well as aggressors. Although it's a tough challenge for anyone on the receiving end of their behaviour they actually deserve sympathy.

Non-assertive people do not normally actually aspire to being excessively dominant people, and they certainly don't normally want to become bullies. When most people talk about wanting to be more assertive, what they really mean is 'I'd like to be more able to resist the pressure and dominance of excessively dominant people.' Doing this is not really so hard, and using simple techniques it can even be quite enjoyable and fulfilling.

Importantly, the non-assertive person should understand where they really are - a true starting point: non-assertive behaviour is a sign of strength usually, not weakness, and often it is the most appropriate behaviour for most situations - don't be fooled into thinking that you always have to be more assertive.

For people who are not naturally assertive, it is possible to achieve a perfectly suitable level of assertiveness through certain simple methods and techniques, rather than trying to adopt a generally more assertive personal style (which could be counter-productive and stressful, because it would not be natural). Coaching and therapy can be helpful in this regard.

Section 15 – FAQs: eg dealing with bullying related grievances

Charissa Gooch, City employment lawyer, explores some of the questions about bullying and harassment that are frequently asked of HR professionals and employment lawyers

QUESTION ONE

What is the difference between bullying and harassment?

Answer

“Harassment” is defined by statute in the discrimination legislation. The legislation provides that harassment takes place where, on one of the protected grounds (ie race, sex, disability, religion or belief, sexual orientation or age) A engages in unwanted conduct which has the purpose or effect of violating B’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for B. “Harassment” is slightly different in the Protection from Harassment Act, under which harassment takes place if the actions are “alarming” or cause “distress” to the individual. This is arguably a lower threshold than under the discrimination legislation.

Bullying, however, is not defined and there is no specific case law on what the concept covers. It is not possible to make a direct complaint to a tribunal of “bullying”, but such behaviour may lead to complaints under discrimination legislation, constructive dismissal, breach of the employer’s obligation to provide a safe place of work, or breach of the employer’s duty of mutual trust and confidence.

ACAS recommend that it is good practice for employers to provide examples of what is unacceptable behaviour in their organisation. This may include: spreading malicious rumours, insulting someone, ridiculing or demeaning them, picking on an individual or setting them up to fail.

QUESTION TWO

Sometimes I need to be tough with my employees to get the best out of them. Recently my HR Manager said that I should be a bit more “sensitive”, but surely I am allowed to manage my staff as I see fit?

Answer

Unfortunately people react in different ways to pressure. For some, firm management is the right approach, while for others it may leave them feeling bullied, or “picked on”. Assessing who is “right” in such a situation is a difficult and unenviable task. Whilst a manager should have some flexibility in the way he/she manages staff, it is the responsibility of the employer to take reasonable care for the safety of its staff. Unrealistic targets, belittling comments and aggressive management may lead to a breach of that duty. However, this should not inhibit proper management; see section 2 for guidance on the distinction between bullying and proper management.

QUESTION THREE

How do I know if I’ve overstepped the mark?

Answer

Consider seeking feedback in your own appraisals or via 360-degree reviews and see section 7 for other tips on how to identify bullying and harassment. However, you should be aware that legal

liabilities can arise in the absence of intention. For example, the statutory definition of “harassment” requires that the conduct in question has “the purpose or effect” of harassing the complainant on one of the prohibited grounds of discrimination. This means that generally, if conduct has the **effect** of harassing, it is unlawful regardless of whether that is the intention of the individual. As a result, an individual’s actions may overstep the mark before they realise.

There is however a qualifying provision that action will only have the effect of violating dignity, or creating an intimidating environment if it should “reasonably be considered as having that effect”. This therefore excludes liability if the individual is “hypersensitive” and unreasonably takes offence.

QUESTION FOUR

Is it only the company that is liable? What about the individual responsible for the harassment?

Answer

If an employee feels the harassment was inflicted by one employee in particular, they can bring a claim against both the employer and the individual employee who committed the actual act of harassment. Under the discrimination legislation, a claim against an individual employee will only succeed if that employee has “knowingly aided” the employer in committing the act (it does not have to have been the employee’s intention or their motive; it is sufficient that discrimination as a probable outcome was in his mind at the time). So, if the employee has harassed another employee, but *not* in the course of employment, the individual harasser will not be liable and neither will the employer. However, the individual harasser may be at risk of a claim against him under the Protection from Harassment Act, depending on the circumstances.

QUESTION FIVE

As an employer, what can I do to protect the company against such claims?

Answer

Under the discrimination legislation, an employer has a defence to a claim of discrimination or harassment brought on the basis of an act done by an employee if he can prove that he took such steps as were “reasonably practicable” to prevent the employee from doing that act (see section 4). So what does an employer have to show? In assessing whether an employer will be able to rely on the “reasonable steps” defence, a tribunal will look at whether the employer took any steps at all and then, having identified the steps, consider whether there were any further, reasonably practicable, steps the employer could have taken.

If there is no reason why the employer should be aware of a risk of inappropriate behaviour by a particular employee, then it may be sufficient to have a policy in place, provided that the policy is properly brought to the attention of all the employees. It is not sufficient merely to have a policy in place if the employees are not generally aware of it. Employers should, however, consider taking steps to identify and prevent bullying and harassment in their organisations. See sections 7 and 8 for tips on how to do so.

QUESTION SIX

If an employee makes inappropriate comments outside work, is this the responsibility of the employer?

Answer

For the purposes of the discrimination legislation, anything done by a person “in the course” of their employment, whether or not it was done with the employer’s knowledge or approval, is treated as also being done by the employer. What this means in relation to work related social events is that inappropriate behaviour or comments at such an event may be construed as *in the course of employment* in some circumstances.

For example, a tribunal has found that comments at a colleagues’ leaving party and comments made when at a drink after work with colleagues could both be *in the course of employment* for the purposes of the legislation. This demonstrates that even where the inappropriate behaviour takes place outside work, the employer may still be liable.

QUESTION SEVEN

Why does the Protection from Harassment Act protect employees, I thought it was aimed at stalkers?

Answer

The legislation was initially designed as a measure to tackle stalking, but has since been found by the courts to have wider application. There are some advantages for a claimant taking this route as it covers any form of harassment and not just harassment on one of the prohibited grounds as under the discrimination legislation. A hurdle to overcome, however, is that a one-off incident of bullying or harassment, no matter how serious, is not sufficient for a claim under the PHA. A drawback for the claimant of bringing this type of claim is the risk of having to pay the employer’s costs if he loses.

Also, the PHA does not allow for a “reasonable steps” defence for the employer. The employer may therefore find itself vicariously liable for the actions of its’ employees, regardless of what steps it took to prevent harassment.

Section 16 – City specific case studies

Anonymous members of the Best Practice Group have kindly provided these real life case studies

CASE STUDY 1

Background and introduction

It was alleged that Brian, a senior Director of the company, made sexual advances to two colleagues - Susan and Ruth - at separate work functions. This was reported to Philip, the Managing Director of the department.

Details of the problem

Allegation 1

It was brought to the company's attention by Philip that at a team building event/function Brian made sexual advances to Susan.

This allegedly happened after dinner and drinks at the close of the team building event. Brian had consumed copious amounts of alcohol and had not eaten much for dinner and therefore had become severely under the influence of alcohol.

Susan approached Philip to say that Brian had come up to her and said that he wanted to have sexual intercourse with her. The actual words used to her were graphically put. Had Philip asked Susan if she was absolutely sure if this was the case. She said that she was and that she felt that this type of dialogue from a colleague was unacceptable. Philip and Susan agreed that Philip would speak to Brian about this but she did not want to start any formal process such as a grievance. Susan had left the team event upset.

Philip made a note to speak to Human Resources for guidance on how to deal with this situation. He decided he would do so after returning from the various business trips he was due to undertake in the next few weeks as Susan did not want any formal action to be taken.

Allegation 2

When abroad in America, at another team event two weeks later, Brian attended a BBQ at the end of the team event. Again, Brian had consumed much alcohol and had not eaten much. It was alleged that Brian had said to an American female colleague, Ruth, that he wanted to perform oral sex acts upon her. Again, the words Brian used were graphic to the point that Ruth was stunned by both the language used and the nature of what was said. She complained to her line manager who advised Philip of the situation. Ruth did not want to raise a grievance due to the fact that she is unlikely to come into contact with Brian again, however she said she would be happy to assist in any process the Company decided to undertake.

What was done and why

Philip met with his Human Resources Business Partner Scott to advise of the situation. Scott explained to Philip that the company had a duty of care to each employee and although neither Susan or Ruth wanted to lodge a grievance, the company would undertake an independent investigation into this matter.

Scott met with Susan to listen to her side of events. She confirmed the allegation but again confirmed that she did not want to be involved at all in any formal process.

Scott has asked a HR colleague in the New York office to meet with Ruth for Ruth's side of events in terms of allegation 2. Ruth again confirmed her side of the story but didn't want to cause a fuss, although was happy to assist the company.

Scott decided that even though neither Susan or Ruth wanted to instigate a formal process, the allegations were of such a severity that Scott invited Brian to attend a meeting to alert him to the allegations. Present in this meeting were Brian, Scott and another Managing Director from outside the department in which Brian worked.

Scott advised Brian of the allegations. Brian could not recall either of the incidents. He said that he could not confirm nor deny that he had done this. Brian asked if he could have the names of the people who had made the allegations. This request was denied as it had been explained to him that neither party wanted to bring a formal process to him. Brian said he needed to know who the parties were so he could apologise, however, this request was still denied. Brian then asked why this meeting was being held as there was no proof. It was explained to Brian that the company has a responsibility for all staff in terms of the workplace and regardless of employees making a complaint, the company takes allegations such as these very seriously and will always act upon them, regardless of the wishes of the individuals who make the complaints and therefore a decision will be reached in terms of any sanction.

How it ended/concluded

It was decided that as the company had received two independent claims from different geographies in terms of inappropriate behaviour it warranted sanction. It was decided to give Brian a final written warning in terms of the company's view that he had committed two counts of sexual harassment.

It was also decided that the head of employee relations should deliver a 1 to 1 training session on dignity at work, covering all kinds of harassment, including sexual harassment. Although the company views this kind of behaviour as gross misconduct, as neither woman wanted to officially raise a grievance, and due to the long standing, exemplary behaviour Brian had shown whilst in the company's employ, it was decided a final written warning would be the correct measure of sanction to take.

It was also agreed that Brian should limit his consumption of alcohol whilst attending functions with colleagues.

This was made clear to Brian and he was advised that this warning would be removed from his file after 1 year.

Brian did not appeal this decision and attended his 1 to 1 training session.

What we learned to do/not do in the future

To do

The company is rolling out dignity at work training to all staff and will be designing a specific module for managers on how to spot bullying and harassment in the work place.

Not to do

Not to ensure the confidentiality of staff who raise very serious claims as this caused Brian distress as he did not know who made the claims. Managers have been prepped to come to HR as soon as a situation like the above arises in the future.

CASE STUDY 2

Ms J is an experienced structured finance analyst in a small investment bank. When authorised to search email archives pertaining to a certain project, she uncovered email correspondence between several male colleagues which undermined and victimised her on a personal and professional level.

She presented several hundred pages of these emails to her manager and HR.

The company's response was:

- To discipline the individuals responsible still employed by the company;
- To assure Ms J that she would not be required to work alongside any of those identified as participants in the email abuse against her;
- To decline her request to move desks to a position further on the floor from the participants.

Ms J sought coaching which she funded personally, to address issues outstanding from this traumatising experience.

She subsequently challenged her manager and secured a desk position away from the participants. She also challenged her manager and HR on the basis for awarding performance bonuses to those participants relating to the period when the email abuse was occurring. This challenge was successful in that the participants' bonuses were reduced and the reason of unprofessional behaviour was cited in their reviews.

Those participants have now left the organisation voluntarily and Ms J has been promoted.

CASE STUDY 3

Allegation

A senior member of staff in a small and newly formed department had been asked, along with other team members, if he would like to come for a drink after work. The member of staff who had organised the after work drinks was a trainee in the department. The senior member of staff did not respond to the offer and did not attend the drinks. A couple of weeks later, the same trainee invited team members for a drink. Again the senior member of staff did not respond and did not attend. Another couple of weeks later, when the trainee again arranged drinks after work, the senior member of staff shouted across the open plan office that he wanted to see the trainee in a meeting room 'NOW'.

Once in the meeting room, the senior staff member began shouting and using expletives to the trainee telling him that basically he was too senior to drink with the trainee and that the trainee should know his place in the company and that basically how dare he even consider that he (the senior staff member) would want to drink with him in his lowly position within the company.

The senior staff member went on to say that the trainee was too stupid to work in the company and that he should be embarrassed about the low-level questions that he asks his superiors. The trainee was told that he should sit quietly and work it out for himself.

Following this occurrence, the senior staff member has given the trainee unrealistic deadlines in which to meet tasks. Deadlines being set at 5.25pm for a midnight turn around, when clearly the senior member of staff would not be working and therefore needing the information.

Also, it was alleged that the senior staff member 'mocks' the trainee in regards to his 'party' life style and sex life.

What did / will the Company do?

This is a current situation, so no outcome has been determined, however, the situation came to the company's attention as a result of an exit interview that HR held with another employee. That employee said that they believed there was an issue between the trainee and the senior member of staff. The exiting employee outlined some of the issue. This gave great concern to the HR team member who reported it to the Business Partner (BP) for that business unit and Employee Relations Specialist (ERS). Both the BP and ERS met with the exiting employee to ensure clarity of the allegation and the exiting employee put his concerns in writing. He was told that the allegations were of a serious nature and that HR would be looking into it.

HR then met with the trainee to see if the allegations were true. The trainee confirmed they were and had said he had not reported them for fear of his job.

The ERS reminded the trainee that he had attended 'Dignity at Work' session upon joining the Company and he was aware of the company's view on this kind of behaviour. The trainee again said he feared for his job so did not want to come forward.

The BP and ERS told the employee of the options which were available: mediation (as the ERS is an ACAS trained mediator); the BP and the Managing Director of the group talking to the senior member of staff and reminding him that such behaviour is not acceptable (regardless of him doing it or not); or the formal grievance route which would follow a formal and set procedure. The trainee has told the Company that now he feels supported to present his case and he will be submitting a formal grievance.

Outcome

This is hard to forward think as the case is not proven. However, if the case is proven as presented above, then it would be logical to assume that a final written warning would be issued along with specific dignity at work training to be given to the senior member of staff on a one to one basis.

Section 17 – Bibliography

Bullying in Adulthood: Assessing the Bullies and Their Victims by Peter Randall

Bully in Sight: How to Predict, Resist, Challenge and Combat Workplace Bullying - Overcoming the Silence and Denial by Which Abuse Thrives by Tim Field

Dignity at Work: Eliminate Bullying and Create a Positive Working Environment by Pauline Rennie Peyton

Five steps to Risk Assessment The Health & Safety Executive (www.hse.gov.uk)

Managing Conflict at Work CIPD (www.cipd.co.uk)

Managing workplace stress Susan Cartwright and Cary L Cooper Sage Publications ISBN 0-7619-0193-0

On Management – The Marks and Spencer Way Marcus Sieff Weidenfeld and Nicholson ISBN 0-297-81019-7

Organizational Stress Jane Cranwell-Ward and Alyssa Abbey Palgrave/MacMillan ISBN 1-4039-4501-2

Stressed Out: a study of public experience of stress at work The Samaritans (www.samaritans.org)

The No Asshole Rule *Building a Civilised Workplace and Surviving One That Isn't* Robert Sutton Sphere ISBN 978-1-84744-000-6

Workplace Bullying: What Do We Know, Who Is to Blame and What Can We Do? by Charlotte Rayner, Professor of HR Portsmouth Business School, Helge Hoel, Cary L Cooper, published by Taylor and Francis

University of Bergen developed a Negative Acts Questionnaire to identify Bullying and Harassment at work. It has subsequently been used by academics in other countries to compare workplace bullying in their environment.

Professor Duncan Lewis ACAS Professor of Workplace Futures at Glamorgan Business School is currently undertaking research in this area and developing an Anglicised version of the Negative Acts Questionnaire.

Section 18 – Useful contacts, organisations and websites

ACAS

020 7396 0022 (general enquiries)

08457 474747 (helpline)

www.acas.org.uk

Andrea Adams Trust (charity dedicated to tackling workplace bullying)

Helpline: 01273 704 900 (Mon-Fri 10am-4pm)

E-mail: mail@andreaadamstrust.org

Website: www.andreaadamstrust.org

Bully OnLine

www.bullyonline.org

Samaritans

www.samaritans.org

UK National Work-Stress Network

www.workstress.net

Work Doctor

www.workdoctor.com

Workplace Bullying

www.workplacebullying.com

Workplace Bullying

www.workplacebullying.co.uk

Organisations which can help to develop relevant questions for inclusion in employee attitude surveys include:

BMRB, Lynne McClymont : 020 8433 4319 (direct) 020 8433 4000 (switchboard)
email lynne.mcclymont@bmr.co.uk
www.bmr.co.uk

Digital Opinion : 020 8546 7243
email enquiries@digitalopinion.co.uk

The Andrea Adams Trust : 01273 704 900
www.andreaadamstrust.org