Report of the Expert Advisory Group on Workplace Bullying
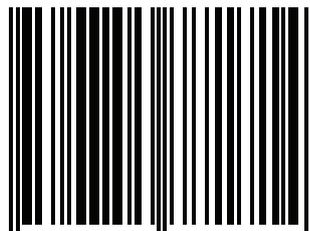
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Contents

Introduction

Chairman's Statement

This document is the result of the deliberations of the expert advisory group on workplace bullying established by the then Minister for Labour Affairs, Mr Frank Fahey TD in September 2004. The Group held 12 plenary sessions commencing on the 16th September, 2004.

The members of the Group were:

Chairman: Mr Paul J Farrell, Partner, Business Consulting Services, IBM Ireland

Members: Mr Brian Montague, Director of Group Human Resources, Eircom Ltd
Ms Maura Harte, Employee Support Manager, HR Department, Western Health Board
Mr Jarleth McInerney, Solicitor
Professor Mona O'Moore, Anti-Bullying Centre, Trinity College Dublin
Ms Barbara Cashen, Equality Authority
Ms Marie Corcoran, HR Consultant
Mr Kevin Walsh, Head of Employee Relations, Diageo Ireland (retired)
Ms Marie Rock, Health and Safety Authority Board Member
Ms Louise O'Donnell, Health and Safety Authority Board Member
Mr Fergus Whelan, Industrial Officer, Irish Congress of Trade Unions
Mr Peter Flood, Assistant Director of Social Policy, Irish Business and Employers Confederation
Ms Patricia Murray, Organisation Psychologist/Inspector, Health and Safety Authority
Mr Seamus Doherty, Labour Relations Commission
Ms Lucy Fallon-Byrne, National Centre for Partnership and Performance
Mr Martin Lynch, Department of Enterprise, Trade and Employment

The Secretary to the Group was Ms Sinéad Quinn, Department of Enterprise, Trade and Employment.

As Chairman of the Group I would like to extend my thanks to all the members of the Group who worked diligently and constructively to complete a report in such challenging timescales. I personally found that the uniform concern for the victims of bullying and the respect demonstrated by the members of the Group for each other's opinions made completing this report a most rewarding experience. While the members articulated the points of view of their respective organisations clearly and cogently the spirit of co-operation and compromise demonstrated by all parties provides a model for future deliberations of this type.

Finally, I would like to extend my thanks, and the thanks of the Group, to Sinéad Quinn who, as Secretary to the Group, provided invaluable support to our work.

Terms of Reference

The Terms of Reference of the Group were to advise and report to the Minister within 3 months on:

◆ The effectiveness of measures relating to the prevention of workplace bullying;

◆ The identification of improvements in procedures; and

◆ How to address the contribution made by bullying to the incidence of workplace stress.

Context of the 2001 Report

The Group have taken as their baseline the work of the 2001 Task Force on the Prevention of Workplace Bullying (hereafter referred to as the 2001 Report). We did not seek to re-examine the research or legal context work of the 2001 Report but rather, in accordance with the terms of reference, focussed on where the intervening experience had demonstrated weaknesses in the current procedures and responses to the challenge of workplace bullying.

The question of commissioning a detailed statistical survey along the lines of the 2001 Report was examined. It proved impossible to have such a report completed within the timescale of the conduct of this review. However it is believed that this has not compromised the validity of the recommendations.

Principles

In the deliberations of the Group a number of key principles emerged which have informed our conclusions and recommendations. These are:

◆ Workplace bullying is unacceptable in all circumstances and therefore our recommendations are intended to underpin this position;
◆ It is the responsibility of management to manage;
◆ The primary responsibility for dispute resolution should remain at the level of the workplace;
◆ In the event of failure to resolve the dispute at the level of the workplace there should be an independent dispute resolution process;
◆ An escalating response, with clear stages to the process, should be employed in all circumstances. It should be effected in a timely fashion with an emphasis on achieving a consensus to restore harmony to the workplace and corrective action for future behaviour; and
◆ As well as the negative impact of bullying on society and individuals there is increasing evidence to suggest that workplace bullying is a "competitive drag" on the economy. This is particularly serious as Ireland makes the transition to a knowledge economy which is more and more dependent on the innovative and creative capacity of all its workers.

Conduct of the Review

The group was asked to conduct its deliberations and prepare a report in a short time frame. The report was to concentrate on producing pragmatic recommendations to address identified weaknesses with the current state. While the group completed its meetings within the three month timescale the drafting of the report required extensive follow up consultation which lengthened the elapsed time for production of the report.

The group considered at length an appropriate working model to deliver on its terms of reference within the allotted timeframe. A model was chosen which was based on:

◆ Frequent meetings – 12 in total – with review between meetings;
◆ Subject matter expertise provided through the experts and the organisations represented by the members of the Group;
◆ External research sourced again through the organisations represented in the Group; and
◆ The knowledge and experience of the practitioners in the area who made up some of the membership of the Group.

A number of unsolicited submissions were received by the Group along with a large number of representative cases submitted by individuals. The submissions were read and incorporated into the deliberations of the Group over the course of the exercise. It was not possible to undertake a broad consultative exercise or to seek public submissions in the time available. It is believed that the combination of subject matter expertise in the Group, external research and the consideration of submissions received have enabled the Group to achieve significant progress.

Executive Summary

Issues with the Current Environment

The Group have determined that:

Bullying is a real issue which is not adequately addressed through current practices.

- ◆ Workplace bullying is an increasing problem. Whether this is due to an increase in the incidence of bullying or an increasing awareness of the unacceptability of bullying behaviour is not clearly demonstrable. However the end result is the same – increased numbers of complaints, higher levels of workplace stress, greater frustration with a lack of formal channels for resolving such complaints and an increased burden on all parties to resolve disputes.

- ◆ Workplace bullying is not a "normal" industrial relations issue.

- ◆ Existing measures to tackle the problem are insufficient.

- ◆ Responsibility for tackling the problem is diffuse and, as a result, the response has been poor.

- ◆ The impact of bullying on the individual is so severe that strong action on the part of employers and the State is called for.

Recommendations

The Group have produced a number of recommendations to address the problem of workplace bullying. The recommendations are designed to prevent and resolve specific occurrences of workplace bullying. They are not designed to replace existing procedures whereby people, for example, can bring a case for constructive dismissal to the Employment Appeals Tribunal citing bullying as a contributory factor. The key recommendations are:

Our recommended response is pragmatic, direct and, if properly implemented, will be effective.

- ◆ The inclusion of bullying as a risk together with policies and procedures to mitigate that risk should be mandatory in every employer's Safety Statement. The Health and Safety Authority will be charged with ensuring that this is enforced.

- ◆ A formal model for the handling of bullying cases should be published for the guidance of employers in their workplace dispute resolution procedures and should be followed by the State for cases referred out of the workplace.

- ◆ The Labour Relations Commission should be the single State Agency charged with the management of specific allegations of workplace bullying.

- ◆ The Employment Appeals Tribunal or the Labour Court will be the court of appeal for decisions of a Rights Commissioner.

- ◆ The Labour Relations Commission will encourage and promote Alternative Dispute Resolution as the preferred approach to tackling instances of bullying. The Commission will resource its teams and allocate responsibilities accordingly.

◆ Decisions by the Employment Appeals Tribunal or the Labour Court will be binding and legally enforceable through the Courts.

The Irish Business and Employers Confederation (IBEC) does not support the view that decisions of a third party in regard to adjudication on cases of bullying should be legally enforceable. Further, IBEC objects to making it a requirement that an anti bullying policy be part of an employer's Safety Statement.

The detail of these and subsidiary recommendations is included later in this report.

Impact

The Group is of the belief that the impact of these recommendations will be:

The effect of the recommendations should be felt quickly but must be monitored and evaluated on an ongoing basis.

◆ A significant improvement in the overall national response to the issue of workplace bullying;
◆ Clarity of process to resolution for victims;
◆ Transparency of process;
◆ Timeliness;
◆ Higher proportion of cases being resolved without recourse to adversarial processes;
◆ Higher levels of early closure;
◆ Less trauma for victims;
◆ Clear and actionable data on trends and patterns in workplace bullying.

Legislation is required.

The Group believes that new legislation is required to give effect to the implementation of its recommendations.

Current State Assessment

Definition of Workplace Bullying

The 2001 Task Force report defined bullying as:

"Workplace Bullying is repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could reasonably be regarded as undermining the individual's right to dignity at work.

An isolated incident of the behaviour described in this definition may be an affront to dignity at work but as a once off incident is not considered to be bullying"

The diversity of opinions throughout Europe on the definition of workplace bullying was also reflected in the Group. The definition is, as the research below demonstrates, an evolving one. As no consensus was reached the Group decided to accept the 2001 Report definition as the working definition of bullying for this report. It is important that, before enshrining a definition in legislation, the definition be reviewed with the Social Partners in the context of this research.

Scope of the Problem of Workplace Bullying

The issue of bullying is a problem in the workplace with potentially serious effects for both the alleged victim of the bullying and for the employer. For the alleged victim – stress, ill health, low productivity and serious career difficulties are common impacts. For the employer – a dysfunctional workplace, poor morale, industrial relations problems and litigation are all common impacts.

It must be appreciated that, while there are subjective elements to the feeling of being bullied, this does not constitute a basis for failing to tackle the issue, whether at the level of the workplace or by the State.

It is important that the complexity of the issue of workplace bullying be understood. It is not solely a problem of employer on employee bullying. It takes many forms as follows:

◆ Manager to employee
◆ Employee to manager
◆ Peer to peer (or peer group to peer)
◆ Customer to employee
◆ Employee to customer

It is important to respect the fact that, when viewed as a health and safety issue, the problem is unlike any other type of workplace hazard in one key respect, namely that the hazard – the alleged bully – has fundamental legal and human rights. This is at the heart of the problem of treating workplace bullying primarily as the responsibility of the Health and Safety Authority at present.

The definition of workplace bullying has proved contentious. The chosen definition is a pragmatic response.

The scope of the problem is wider than appreciated by most commentators. It is a multi faceted issue and is not amenable to "quick fixes".

While the Group had little hard data on which to make recommendations it is clear from the experience of the participants that the industry, professional ethos and training model (which all contribute to the formation of a workplace culture) do show significant variations in the incidence of bullying.

The State should commission research to determine the incidence of bullying.

The Group were, however, hampered in their determination of the scale of the problem by the scarcity of reliable statistical data on the incidence of workplace bullying. The survey conducted for the 2001 Report and the national survey carried out by the Anti-Bullying Centre (O'Moore, 2000) has provided the main source of information to date. The only State agency that keeps comprehensive and accessible data on cases referred to it is the Health and Safety Authority. This data is, however, incomplete in that it refers only to cases which have been reported to the Anti Bullying Response Unit in the Authority and does not track ultimate disposal of referrals.

It is also clear that workplace culture contributes significantly to the incidence of bullying and we strongly recommend that the State commission research which surveys the incidence of bullying by industry and industry grouping.

Issues with Current Procedures for Dealing with Workplace Bullying

Current Procedures are not effective in preventing or addressing instances or allegations of bullying.

In the review of the current state relating to workplace bullying the Group identified a wide range of issues. These were then combined with issues identified by other agencies and in submissions received. These have been grouped below under three categories:

◆ General Issues (including organisational)
◆ Awareness Issues
◆ Legislative Issues

The issues are not weighted and are not necessarily agreed by all parties.

General Issues

◆ The group perceived a lack of clarity on procedures for processing complaints in many employments;
◆ There is a lack of clarity and an unwieldiness as to current structures, roles and responsibilities in relation to the subject;
◆ The term "repeated" in the current definition of bullying can act to prevent people raising complaints in the first place;
◆ One off incidents of bullying need to be catered for;
◆ There is limited success with the current procedures in preventing cases of bullying;
◆ The rights of three parties need to be considered in any approach; the employer, the alleged victim and the alleged bully;
◆ The Labour Relations Commission has no specific statutory role in relation to bullying other than that laid out in the 1990 Act which sets out the Commission's role in disputes as defined in Section 8;
◆ A large proportion of employees in the Civil/Public Service do not currently have formal access to Labour Relations Commission services;

- Investigation is not formalised as a means of addressing disputes about bullying situations;
- Mediation is not used by the Labour Relations Commission as a specific means of resolving bullying problems;
- If the complaint is against a manager or owner of a company, he/she may investigate him/herself. In-house procedures should provide for the engagement of outside assistance;
- Many workplaces cannot accommodate the operation of mediated solutions by virtue of the environment; and
- There is often a fear of victimisation in the case of supporting a colleague in their complaint.

Awareness Issues

- There is a lack of focussed and consistent external advice/information resources for alleged victims and lack of dedicated State sponsored (or approved) third party resources around mediation;
- There is a serious scarcity of reliable statistical data relating to the subject. This reflects a scarcity of reliable statistical data relating to general workplace activities and behaviour; and
- Prevention of bullying is not stressed at the level of the workplace.

Legislative Issues

A number of weaknesses in this framework have become apparent in the intervening years:

There is no comprehensive State model for dealing with workplace bullying.

- There is no specific State Agency at present where cases can be heard by an independent person in a quasi-judicial role while the parties are still employed. Similarly there is no State Agency which can be accessed by all employees where the findings are binding and enforceable on all parties;
- The Health and Safety Authority has the leading role in co-ordinating the State response as recommended in the 2001 Report. However, the Health and Safety Authority has no legal framework to adjudicate on cases of bullying and does not provide the individual with specific redress. The individual does have redress for claims of stress and injury to health through common law but this can be traumatic and costly;
- Bullying is not comprehensively addressed, if at all, in employers' Safety Statements;
- The Dignity at Work Charter has no statutory effect;
- The Codes of Practice are not legally enforceable although failure to comply with the Codes may be admissible in evidence in a civil court case, before the Labour Court or the Employment Appeals Tribunal;
- Existing legislation does not specifically cover bullying;
- Some categories of employers and employees do not have access to the Labour Court or the Employment Appeals Tribunal;
- Neither the Labour Relations Commission, Employment Appeals Tribunal nor the Labour Court have a specific statutory role in relation to mediation, investigation or adjudication on bullying, other than in the case of the Labour Relations Commission where referrals or complaints are made under the 1990 Act.

These issues were all taken into account when developing the recommendations detailed in the following section of this report.

Best Practice and International Developments

In addition to the examination of the issues above the Group also considered best international practice and research in the area of workplace bullying. The key findings of this review were incorporated in our deliberations and are summarised below. The research is pan European and provides an indication of trends and best practice. The research is not specific to Ireland alone.

European Foundation Research

There is no proven single international model which Ireland can adopt as the template for its response to the issue of workplace bullying.

The European Foundation for the Improvement of Living and Working Conditions has published a major research report on Preventing Violence and Harassment in the Workplace (Di Martino, Vittorio, Helge Hoel and Cary L. Cooper. 2003). It arose from a Resolution of the European Parliament of 20/09/2001, which stressed the need to investigate the growing phenomenon of violence and harassment at work and to propose effective measures to combat the problem throughout the European Union.

There are increasing pressures on workers in a global economy of increased competition for market shares and survival. In this context, pressure could build up in the workplace leading to a source of stress. Violence may also result from a stressful working environment. The report found that psychological violence and harassment, rather than physical violence, represented the greatest threat to most workers. It also found that there was an overall rising trend of harassment on racial, gender, age and sexual orientation grounds across the European Union. (In Ireland this area is dealt with by equality legislation and is outside the scope of the work of the Group, which is looking at the general bullying issue.)

While there was a great disparity between countries, the report commented that progress was being made with regard to intervention in the policy area and in the development of intervention programmes. However, attempts at intervention were often sporadic, frequently lacking a theoretical basis and any means of assessing their effectiveness.

Looking to Legislation

The European Foundation Research found that workplace violence was being addressed as follows:

◆ Belgium, Finland, France, the Netherlands and Sweden had introduced specific new legislation to tackle the problem;
◆ Countries such as Ireland, Germany and the UK continued to use existing criminal and civil legislation;
◆ Denmark and Luxembourg had opted for non-legislative measures such as codes of practice, regulations and collective agreements;
◆ In Italy and Spain, several attempts to legislate specifically to counteract bullying had failed, but the issue was being addressed through local laws, civil court decisions and collective agreements;
◆ In Portugal a specific law had failed in the legislature, and in Austria there had

been reform of occupational safety and health legislation requiring preventive measures for psychological risks in enterprises; and

◆ New EU Directives, within the scope of Article 13 of the EC Treaty, on related areas of equal treatment had recently been introduced (ibid. 49-58).

Research Conclusions

The report commented that while, particularly in central and northern Europe, a number of initiatives had been taken to prevent and reduce the effects of violence, much less effort had been channelled into preventing psychological violence.

However there was no reason to believe that a risk-assessment approach (as had often successfully been applied to hazards of a physical nature, i.e. physical violence) should not be equally applicable to psychological violence. For both types of violence, however, any approach that integrates a focus on prevention, protection and treatment is more likely to be successful where the workforce is fully involved at all stages of the intervention process.

Finally, the authors stressed that there appeared to be considerable resistance to the idea that harassment of a psychological nature, in particular harassment corresponding to the labels 'bullying' and 'mobbing', should be considered work-related hazards, equal in importance to other hazards in the work environment such as physical violence…(ibid. 88).

A European Model

It is clear from the European Foundation Research that there is no single European model to combat workplace bullying. The Member States have developed diverse responses, some enacting specific legislation, others making use of existing legislation and still others favouring codes of practice and collective agreements.

In Ireland, arising from the recommendations in the 2001 Report, it was decided that use should be made of the existing legislation on occupational safety, health and welfare, industrial relations and equality. Codes of practice were developed and given force under the relevant Acts. The Social Partners supported anti bullying policies and subscribed to the Dignity at Work Charter. Effectively, with the exception of not enacting specific legislation on workplace bullying, Ireland adopted responses similar to those in operation in the other European Member States at the time of the research (2002, 2003).

The European Foundation Research on the definition of Workplace Violence and Harassment

The European Foundation report looked at the diversity of definitions around harassment in the workplace and at the cultural factors surrounding the issue. The report states that –

◆ The variety of behaviours that may be covered under the general rubric of 'violence at work' is so large, the borderline with acceptable behaviours is often so vague and the perception in different contexts and cultures of what constitutes 'violence' is so diverse – these issues make it a significant challenge to both describe and define this phenomenon (Di Martino et al 2003, 3).

◆ The first substantial effort towards a common understanding was at an expert meeting organised by the European Commission in Dublin in May 1995, where the following definition was proposed:

> *- Incidents where persons are abused, threatened or assaulted in circumstances related to their work, involved an explicit or implicit challenge to their safety, well-being and health (ibid. 3).*

The report went on to examine different definitions of physical and psychological violence. Of particular interest, perhaps, is the reference to the definition from the 'Opinion on Violence at the Workplace', adopted on 29/11/2001, by the Advisory Committee on Safety, Hygiene and Health Protection at Work of the European Commission, which, in summary, states -

> *- Violence can be defined as a form of negative behaviour or action in the relations between two or more people, characterised by aggressiveness, sometimes repeated, sometimes unexpected, which has harmful effects on the safety, health and well-being of employees at their place of work.*

> *- Aggressiveness may take the form of body language indicating intimidation, contempt or disdain, or of actual physical or verbal violence.*

> *- Violence manifests itself in many ways, ranging from physical aggression to verbal insults, bullying, mobbing and sexual harassment, discrimination on grounds of religion, race, disability, sex or, in any event, difference and may be inflicted by persons both outside and inside the working environment.*

> *- It is important to bear in mind that physical violence can have consequences that are not only physical but also psychological, which can be immediate or delayed (ibid. 4).*

This definition confirms the crucial importance of psychological violence at work and addresses a series of behaviours which have come to be understood as bullying. It stresses that the behaviour can be repeated and/or unexpected, but it does not have to be either.

Focus on sequence of minor acts

Although a single incident could suffice, psychological violence often consists of repeated, unwelcome, unreciprocated and imposed actions, which may have a devastating effect on the victim. Various definitions which mention repeated or persistent behaviour were cited in the report (ibid. 5).

Fusion of bullying and mobbing

The earlier distinction between bullying (primarily referring to situations of individual harassment) and mobbing (primarily covering situations of collective harassment) was giving way to a conceptual assimilation of the two terms (ibid. 6).

Focus on dignity

The report commented that the focus of attention was widening from the traditional

areas of health and safety to include the areas of dignity at work, human rights and combating discrimination (ibid.5). These areas are often (as in Ireland) addressed by separate legislation.

Learning from equality legislation

As noted by the report of the European Foundation, referred to above, the focus of attention has been widening to look also at the related areas of dignity at work, human rights and combating discrimination (op. cit.).

In Ireland, the equality legislation prohibits sexual harassment and harassment on any of the listed discriminatory grounds. Harassment is any form of unwanted conduct related to any of the discriminatory grounds, while sexual harassment is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature, where the conduct in either case has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person. In both cases the unwanted conduct may include acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material. With the enactment of amending equality legislation in 2004, a reasonableness test which existed in the 1998 legislation has been removed. However, it is still a defence for the employer to prove that s/he took reasonably practicable steps to prevent the harassment or sexual harassment and to prevent the person being treated differently in the workplace or in the course of employment and to reverse the effects of the discrimination if it occurred (Employment Equality Acts, 1998 and 2004).

The equality legislation does not require a repetition of discrimination in order to constitute an offence. Claims of harassment and sexual harassment are brought on the basis of one off incidents. It is desirable to learn from this legislation in this respect also.

Recommendations

Legislative Framework

We recommend changes in four key areas:

- Legislative force to be given to the requirement that bullying be a mandatory inclusion in all employers' Safety Statements and that appropriate policies and procedures be implemented in every workplace;
- All employees irrespective of employer or employment status would fall within the remit of these recommendations;
- All persons in the workforce, whether permanent employees or those operating under contracts of service, must be made subject to the policies and procedures of the employing organisation in respect of bullying; and
- The decisions of the Employment Appeals Tribunal or the Labour Court in cases of bullying would be binding and enforceable through the courts.

The Expert Group believes that these recommendations are a balanced and measured response to the issue of workplace bullying and that they address the weaknesses in the current regulatory provisions for dealing with the issue in a sensible and collaborative manner. However the Irish Business and Employers Confederation (IBEC) does not support the view that decisions of a third party in regard to adjudication on cases of bullying should be legally enforceable, preferring instead to rely on existing codes of practice, the status of Labour Court findings under the Industrial Relations Acts which are dealt with on appeal from a Rights Commissioner. IBEC also objects to making it a requirement that an anti bullying policy be part of an employer's Safety Statement which IBEC believes would be problematic for SMEs and introduce a condition precedent rather than encouraging such a development as being in line with best practice.

The State response to the issue of bullying needs to be focussed with clear lines of responsibility.

State Response

Three agencies should have responsibility in relation to the prevention of, and response to, workplace bullying:

- The Health and Safety Authority;
- The Labour Relations Commission together with the right of appeal to the Employment Appeals Tribunal or to the Labour Court; and
- The Department of Enterprise, Trade and Employment.

The Health and Safety Authority will:

- Be responsible for the enforcement of a statutory provision that all employers' Safety Statements comply with the requirements to include as mandatory the hazard of workplace bullying with the attendant risk mitigation and handling procedures.

The Labour Relations Commission will be responsible for:

- Providing the option of mediation or investigation and recommendation processes identified in the model outlined below;
- Commissioning surveys to determine the pattern and level of workplace bullying;

◆ Measuring and reporting on the performance of its activities in this area;

◆ Co-ordinating future activities to respond to changes in the pattern of workplace bullying, and

◆ Maintaining and disseminating statistics on the incidence and disposal of all allegations of bullying dealt with.

The Department of Enterprise, Trade and Employment will be responsible for:

◆ The provision of an information service (through online and call centre facilities) to assist both employers and employees in the process of raising an allegation of, and dealing with, workplace bullying; and,

◆ The provision of advice and guidance material on the prevention of workplace bullying.

Model to deal with workplace bullying

A formal, pragmatic model is proposed by which a complaint of bullying is handled firstly in the workplace and only when this fails will the State intervene.

The Group examined a range of options for responding to the issues identified under the current-state assessment. We considered models ranging from highly interventionist through to minor amendments to the current state. The two models considered in detail were an Ombudsman model and a model based on increasing the role of an existing agency. Following discussion it was decided to adopt the latter model primarily to ensure a reduction in the complexity identified as a significant weakness in the current state. While an Ombudsman model does have advantages in respect of an advocacy role on behalf of a claimant, it is believed that the emphasis which we have placed on the mediation role in reaching consensus in the workplace will compensate for this.

In determining the appropriate organisational and legislative response to the weaknesses in the current approach to dealing with workplace bullying the Group agreed a model for a 'best practice' process to formalise the approach for responding to an allegation of bullying. The model is based on the three elements of prevention, intervention and resolution. It is in two phases –

(1) at the workplace level; and
(2) at adjudication level.

The model should be used by employers and the State to refine and implement consistent and coherent responses to allegations of bullying.

The model is depicted graphically in Annex A to the report.

The model consists of a series of progressively more formal stages within these phases as follows:

◆ An allegation of bullying is made by an employee or an agent acting on their behalf;

◆ The employer applies internal procedures to determine the validity and gravity of the allegation;

◆ The employer, where the case is suitable for internal disposal, offers an internal mediation option, by an independent and impartial person, to the complainant;

◆ The complainant and/or the alleged perpetrator are not obliged to accept internal mediation;

◆ If the offer of internal mediation is not accepted the case will proceed to a formal internal investigation under the company's normal dispute resolution procedures;

◆ If internal mediation does take place and the recommended actions from this stage are accepted by all parties then these will be implemented and reviewed within a period of months. If they have been effective then the case is resolved;

◆ If the recommended actions are not agreed, or where they have not been implemented/successful then the case proceeds to a formal internal investigation under the company's normal dispute resolution procedures;

◆ The findings of the formal internal investigation will then be documented and implemented, where possible. If they are successful then the case is closed;

◆ If the internal procedures are unsuccessful, the matter is referred to the Labour Relations Commission (LRC). Agreed records of all internal proceedings (mediation and investigation) should be furnished to the LRC at point of referral;

◆ If, in the view of the LRC, further efforts at resolving the dispute should be made at local level, then the LRC will refer the matter back for further local level engagement. Otherwise the LRC will determine an appropriate course of action which may include either mediation, facilitated by an Officer of the LRC, or investigation and recommendation by a Rights Commissioner;

◆ If the case proceeds to LRC mediation, the mediator will seek to achieve consensus among the parties with a view to restoring harmony to the workplace.

◆ If LRC mediation is not successful then the case will be referred by the LRC to a Rights Commissioner for investigation and recommendation;

◆ The Rights Commissioner will investigate the matter and produce a set of recommendations;

◆ If the recommendations are accepted by all parties, they will be passed back to the employer for implementation in the workplace;

◆ If the recommendations are not accepted by either or both parties, the case is referred to the Employment Appeals Tribunal/Labour Court for a determination.

The implementation of this model requires new legislation.

The Department of Enterprise, Trade and Employment representative is of the view that the final appeal should be to the Employment Appeals Tribunal whose decision should be final and enforceable.

Features of the Model

◆ A Labour Relations Commission mediator or a Rights Commissioner may refer a case back to the internal procedures if, in his/her opinion, these procedures were not properly followed;

◆ The actions agreed by all parties during the internal mediation will be reviewed after an appropriate period of time to determine if they have been successful. If they have not, then the case may be resumed at the next stage of the process;

◆ In the mediation stage of the internal process the key objective is to achieve a consensus among all parties. This stage must not be used to provide a short cut

to sweep the incident under the carpet. While these stages are non adversarial and informal they are not casual. They should be conducted by skilled individuals;

◆ When an internal investigation results in findings which are not agreed by one or other of the parties then the company level appeals procedure (as defined in the company's anti bullying procedures) will apply;

◆ The progress from the internal to the external stage must be carefully controlled so as to prevent unfounded allegations proceeding to the Labour Relations Commission and hence consuming undue amounts of both the Labour Relations Commission and employer resources;

◆ If a case proceeds to the Employment Appeals Tribunal or the Labour Court then the decisions must be final and binding. To this end it is recommended that the decisions of these bodies must be enforceable through the Circuit Court. This does not exclude the right of a party to a case to institute judicial review proceedings in the High Court.

Active measures in the workplace are essential to prevent bullying.

Preventative Actions

It is recommended that workplace preventative actions be extended to cover both active and passive prevention. In this context it should be noted that we have taken prevention to cover both prevention of bullying and early intervention to modify behaviours which might lead to bullying. Passive prevention includes such approaches as education and training, public awareness and documentation. Active prevention includes early intervention by management, the role of the employer's Safety Statement to identify and codify company responses to bullying and the role of structures within the company.

Training and Education

We believe that education and training of both managers and employees is critical to the elimination or a very substantial reduction of workplace bullying. It is the responsibility of management, unions and professional and other representative bodies to provide such training both in the workplace and as part of general vocational and professional training. Management training should include awareness of the problem as well as training in the Codes of Practice and the recommended approaches to dealing with allegations of workplace bullying.

Awareness

All parties involved in the workplace have a responsibility to raise awareness of both the issue and its unacceptability in the workplace. It is recommended that the Department of Enterprise, Trade and Employment would have the primary responsibility for co-ordinating the relevant agencies in raising public awareness of both the issue and the new remedies available.

Unions should play their part in raising awareness among their members.

The Health and Safety Authority will have primary responsibility for raising awareness of workplace bullying as a hazard in the workplace and of an employer's new responsibilities in relation to the Safety Statement.

Management are responsible for promoting awareness of the issue and the procedures for raising and handling complaints of bullying in their respective workplaces. Unions and other representative bodies are responsible for raising awareness among their members.

Remedial Actions

A consistent thread in our review of the weaknesses of the current state lies in the matter of closure. The Group believes that closure is never achieved for many alleged victims of workplace bullying. This is partially a factor of the disjointed mechanisms that presently pertain and partially a reflection of the extended time scales which apply in treating cases of bullying under current procedures.

We recommend that this situation be addressed by:

◆ Focussing early resolution actions on achieving an internal approach to resolving the problem;
◆ Making Employment Appeals Tribunal/Labour Court decisions binding and enforceable; and
◆ Placing an emphasis on timeliness at each stage of the process.

It is important to note that these recommendations are qualified as follows:

◆ The further into the process the parties proceed the more adversarial it becomes. It is the experience of practitioners in the field that an adversarial process, while it might succeed in apportioning blame, rarely results in the restoration of a harmonious workplace. Quite often the polarisation of positions that occurs in such a process creates a more divided workplace and makes it even more difficult for the alleged victim to return to normal working;
◆ Creative and inventive approaches to the resolution of the problem are best implemented at the early stages of the process as the further into the process one proceeds the more difficult it becomes to adopt such approaches to the problem; and
◆ This report has not set out definitive time periods for each stage of the process. This is because it has been identified that alleged victims of bullying are often in a traumatised state and may be medically incapable of participating in the process. Arbitrary timescales may therefore act against the best interests of the alleged victim. However, it is vital that the process be implemented in a timely and efficient manner.

Implementation

It is recognised in our recommendations that the successful implementation of the actions proposed depends in no small measure on their usability in the Small and Medium Enterprise (SME) sector. In addition it is recommended that the Department of Enterprise, Trade and Employment would provide supports such as promotional material, template policies and procedures and guidance documents.

Additional Recommendation

It is recommended that a follow up survey on workplace bullying, similar to that commissioned for the 2001 Report, be conducted as soon as practicable to establish a baseline from which the effectiveness of the new structures and processes would be measured.

Impact of the Recommendations

Procedural

The procedural impact of the recommendations will be:

◆ Clarity in relation to the procedures to be adopted by employers when faced with an allegation of bullying;

◆ Clarity in relation to the procedures to be adopted by those making allegations of bullying;

◆ Clarity in relation to the procedural responsibilities of the various State agencies; and

◆ Uniformity of procedures for all categories of employees across all occupations whether private or public sector.

Organisational Impact

The Labour Relations Commission needs to be adequately resourced.

The impact of these recommendations will be significant. The Labour Relations Commission will require additional resources and a revised organisational structure to deliver the services above. While the Group have left the detail of these changes to the Labour Relations Commission it is vital that the appropriate resources be provided.

In addition, it is critical that the resources be deployed and managed so as to ensure that no possible conflict of interests can occur. Personnel employed in mediation, investigation and adjudication must be seen to be fair and impartial if these recommendations are to be successful.

It is believed that the implementation of these organisational changes, in concert with the appropriate legislative changes, will have the following benefits:

◆ Clarity of process to resolution for victims;
◆ Transparency of process;
◆ Timeliness;
◆ Higher proportion of cases being resolved without recourse to adversarial processes;
◆ Higher levels of early closure;
◆ Less trauma for victims; and
◆ Clear and actionable data on trends and patterns in workplace bullying.

Legislative

New legislation is required.

The Group believe that new legislation is required in order to give full and effective implementation of its recommendations.

Workplace Stress

Contribution of Bullying to Workplace Stress

Bullying is associated with a negative impact on health.

In accordance with our terms of reference we discuss in this chapter the contribution made by bullying to the incidence of workplace stress.

There is an overwhelming body of evidence which convincingly demonstrates an association between stress and ill-health outcomes. The causes remain ill defined. Identifying a particular work factor with a particular health effect is difficult.

There are individual differences in perception of different sources of stress as well as differences in ability to cope with stressors, whether bullying-related stressors or task-related stressors or one of the many other sources of stress whether emanating from work or otherwise.

Stress is a complex topic and involves a non-linear causal relationship so that identifying a remedy for one stressful event may not be generalisable to another similar event or to other populations. Similarly, what works to remediate one situation, may not work at a different time, as all other factors cannot be controlled from a human systems perspective.

Bullying has been associated with negative health effects in many studies and while there are various other potential sources of stress at work, bullying, being rooted in conflicting human interaction, is the only source, which this chapter deals with. It should be kept in mind, however, that there are many other sources of stress emanating from within work and from outside work, and there are interaction effects between these sources.

In the context of stress theory, bullying is a severe form of social stress at work. In the context of conflict theory, bullying brings about a high level of escalation of unresolved emotion and often an imbalance of power/loss of power.

We propose that the literature supports an approach that aims to move organisational reactions to more desired ones – outlined within this report - which will reduce the resultant stress and thereafter ill-health effects on individuals from the experience of being bullied as well as from the experience of having been wrongly accused of engaging in bullying behaviour.

There are many reports and studies into the topic, a number of which have been utilised recently by the Health and Safety Executive in the UK for their recently published Management Standards (HSE 2004). These standards have been incorporated into their workplace stress tool, Work Positive, in partnership with the Health and Safety Authority, Ireland (HSA/HSE 2005).

Most studies looking at mental health effects and stress behaviours of victims of bullying report that victims become hostile to their surroundings and suspicious and nervous of others, often compulsive accounting of their fate and hypersensitivity with regard to injustices generally and specifically, along with a chronic inability to experience joy and a risk of abuse, alienation and at worst suicidal.

An Irish study (O'Moore, Seigne, McGuire & Smith, 1998) found 80 per cent of those bullied had symptoms such as irritability, angry thoughts, crying, depression and feelings of paranoia. Victims of bullying have been found to display after-the-fact increased negative views of themselves, others and the world. The stress-related effects of bullying are both cognitive and emotional in that there are effects on the person in terms of how they feel and how they think and therefore, how they work. These results were confirmed by the national survey carried out by the Anti-Bullying Centre (O'Moore, 2000).

When considering the stress caused by bullying, we are dealing with one of many causes. For this report, bullying is accepted as a hazard, which can cause stress. It is accepted that stress in itself is not an illness and can be dealt with both at individual and organisational level in order to prevent it becoming an illness. It is also accepted that where stress levels are not addressed, they can escalate and can result in an illness, either physical or psychological or psychiatric or an amalgam of all three. This also has consequences for organisations, the State and the health system nationally.

There are transparent procedures which can to some extent be brought to bear on situations where bullying is alleged, thus eliminating much of the fall-out, and there are other remedial actions which can also be instigated by the organisation and by the individual(s) concerned which can help in the rehabilitative process if that is required, with the ultimate aim of reducing – if not eliminating – the ill-health effects of bullying at work.

Recommendations

Every workplace should be required to have an anti bullying procedure, which is clearly defined and accessible.

As already outlined in preceding chapters, we propose that in order to address the issue of prevention and reduction, Anti Bullying Policies be mandatory in all organisations. This policy approach should play a part in highlighting the issue as well as highlighting to all that procedures are in place should bullying occur, and should be a preventive as well as operational tool.

A large body of research has been done into social support within organisations and also into coping patterns and options of individuals and how organisational culture and the appraisal of the individual regarding fairness and transparency of systems influence the latter.

In this regard, training of managers and supervisors in terms both of adequate communication style, effective feedback and correction and motivational leadership should be aimed at. Training in dealing with bullying issues and complaints should also be prioritised. Internal investigators should always be impartial and not connected to either party and follow a set systematic approach outlined within the Anti Bullying Policy and in line with the Codes of Practice already in existence on the topic.

Should such competent persons not be available in-house, the organisation's leadership should consult appropriately and engage the services, if appropriate, of outside expertise. This recommendation is made in order to address the considerable stress that not reacting in a timely fashion has on the individuals concerned. A substantial portion of stress due to bullying comes from the lengthy drawn-out procedural reaction or the lack of a reaction, at organisational level.

Timely intervention is absolutely essential.

Timeliness is a crucial factor for the ill-health effects because the individual's coping ability declines over time after a bullying experience. When a considerable amount of time has passed, the person's stress levels are so high and coping skill-set so low that, often regardless of further action, the ill-health effects are already evidenced and are more difficult to remedy at that stage. Our recommendations in relation to timely and effective intervention are designed to address this stress factor.

Annex A - Procedural Model

The model is based on the three elements of prevention, intervention and resolution. It is in two phases –

    (1) at the workplace level which is depicted by the blue section in the diagram and

    (2) at adjudication level which is depicted by the red section.

Procedural Model for Intervention:

Notes: