

Bullying and Harassment Complaints

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Welcome

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Investigating complaints of bullying, harassment and sexual harassment

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Bullying and harassment – bad news for employees and employers

- **For the employee:**
 - stress
 - anxiety
 - depression
 - substance abuse
- **For the business:**
 - high levels of absenteeism
 - staff turnover
 - costly legal actions and tribunal proceedings
 - loss of public image if the bullying is revealed publicly

Bullying or Harassment?

They are NOT the same thing

Definition of Bullying

Code of Practice for Employers and Employees on the Prevention and Resolution of Workplace Bullying under the Safety, Health and Welfare at Work Act 2005

‘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 in this definition may be an affront to dignity but as a once-off incident is not considered to be bullying.

Definition of Harassment

any form of unwanted conduct related to any of the discriminatory grounds:

- civil status,
- family status,
- sexual orientation,
- religious belief (or none),
- age,
- disability,
- race, nationality or ethnic or national origin, or
- gender,
- membership of the Traveller community.

Definition of Sexual Harassment

‘any form of unwanted verbal, non-verbal or physical conduct of a sexual nature which has the purpose or effect of violating a person’s dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person’

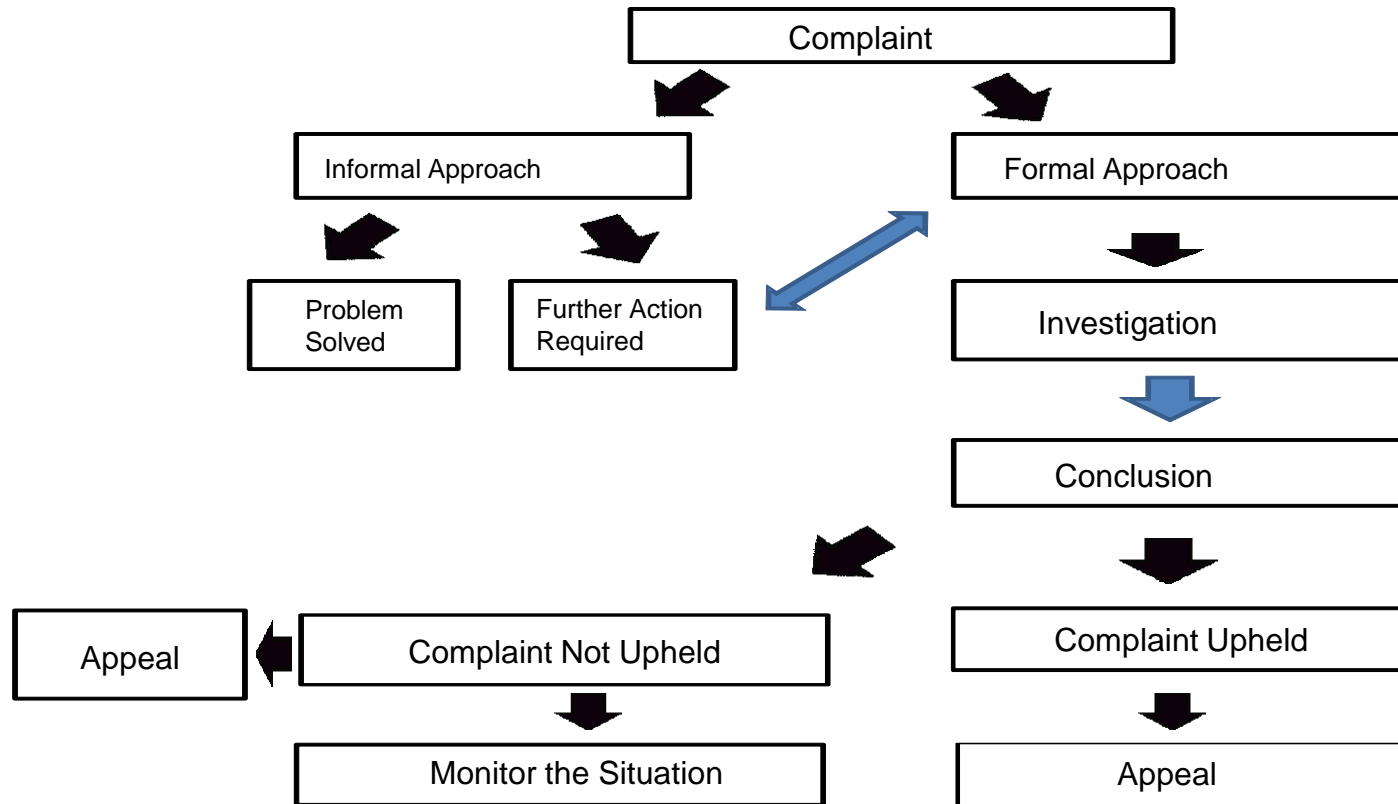
Victimisation

- Unlawful for an employer to penalise an employee for taking a complaint
- Is there a link between the complaint and the alleged penalisation?

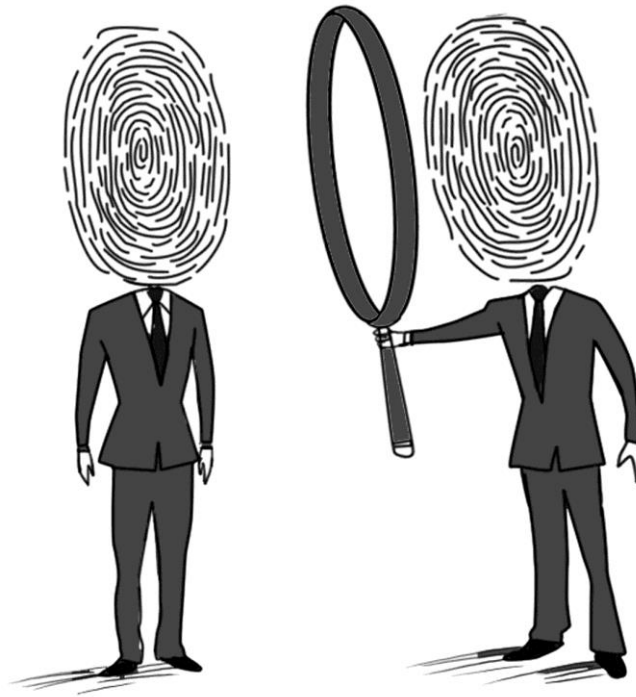
Codes of Practice

1. Health and Safety Authority Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work 2007
2. Industrial Relations Act 1990 (Code of Practice Detailing Procedures for addressing Bullying in the Workplace) (Declaration) Order 2002
3. Employment Equality Act 1998 (Code of Practice) (Harassment) Order 2012

The Process



The Main Pitfall – The Investigator



Top Tips

- Know your policy and use it
- Make sure your employees know about it
- Get the complaint in writing – very difficult to investigate it otherwise
- Appoint a reliable investigator who will stay within the scope of the investigation
- Be prepared for data access requests

Employer Exposure and Case Law

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Avenues of Redress - Statute

- Workplace Relations Commission.
 - Industrial Relations Acts, 1946 -2015
 - Employment Equality Acts, 1998 - 2015
 - » Harassment
 - » Sexual Harassment
 - » Victimisation
 - Unfair Dismissals Acts, 1977 - 2015
 - Safety, Health & Welfare at Work Act, 2005

Avenues of Redress – Common Law

- Civil Courts
 - Negligence
 - Breach of duty of care
 - Breach of contract
 - Express and implied terms
 - Oppressive, unreasonable and/or arbitrary treatment
 - Harassment and Intimidation
 - Breach of trust and confidence
 - Failure to promptly deal with complaints

Avenues of Redress – Common Law

- The employee must show that he or she has suffered;
 - **a recognisable psychiatric injury** –
 - » it must be more than “ordinary occupational stress”; and
 - **that injury attributable to the workplace** –
 - » the behaviour imports a degree of “*calibrated inappropriateness and repetition which differentiates bullying from workplace stress or occupational stress*”; and
 - the injury suffered by the employee was **reasonably foreseeable** in all the circumstances.

Case Law

Quigley –v- Complex Tooling and Moulding Limited

➤ **High Court**

awarded €76,000 approx.

➤ **Supreme Court**

(a) **Bullying did not occur: Rejected**

(b) **No causal link between bullying and the depression suffered: Accepted**

Medical evidence and the Plaintiff did not consider he was affected mentally at the time of the dismissal, it was afterwards.

The PI did not discharge the burden of proof that his depression was caused by his treatment during his employment

Una Ruffley -v- The Board of Management of St. Anne's School

➤ **High Court**

- No investigation and No disciplinary hearing
- Issued with Final Written Warning
- Appeal dismissed without being given opportunity to put forward her case
- Appeal heard by same people that issued the warning
- *“It is hard to understand how an educated, sophisticated person, such as Ms. Dempsey, could arrive at such conclusions without an element of bad faith”*
- Treatment throughout the disciplinary process was “severe” and inappropriate within the meaning of the definition of “bullying in the workplace”.
- Awarded €255,000

Case Law - Una Ruffley contd.

Court of Appeal

1. No causal link between behaviour and illness – failed.
2. Bullying did not occur, it was simply a flawed disciplinary process - Successful
 - “the mere fact that a superior puts an allegation to an employee does not mean s/he is bullying them”;
 - Stretching the meaning of “repeated” to regard a continuing process of discipline in pursuit of legitimate concerns, even if actually mistaken or unfair, as “repeated behaviour”;
 - Process was excessive, mistaken, exaggerated and contrary to fair procedures, but it does seem to be entirely genuine;
 - Communications not published or events not witnessed cannot be considered to undermine a person’s dignity;
 - Ms. Dempsey arrived at a “bizarre decision”

Case Law - Una Ruffley contd.

Court of Appeal

- Not bullying because:
 - *Motive was genuine (child protection);*
 - *Substantial mitigation but not a full defence;*
 - *Disciplinary process was honestly pursued;*
 - *No sustained malicious campaign to humiliate;*
 - *“a botched disciplinary process.....not a case of repeated offensive behaviour intended to destroy the Plaintiff’s dignity at work”*
 - *The definition of bullying is “stretched beyond breaking point to fit the case”;*

Case Law - Una Ruffley contd.

Supreme Court

- (a) Whether and unfairly carried out disciplinary process resulting in psychiatric injury is, in itself, capable of being actionable in damages on the basis that it amounts to workplace bullying without evidence of malicious intent on the part of the employer.

- (b) Whether behaviour not witnessed by other persons in the workplace is capable of undermining the dignity of an employee.

Q & A

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