

# Bullying and Harassment – Model Procedure and Policy

The aim of this procedure is to ensure incidents of bullying and harassment can be recognized and dealt with. A model policy is given at the end of this.

## **How can bullying and harassment be recognised?**

Behaviour that is considered bullying by one person may be considered firm management by another. Most people will agree on extreme cases of bullying and harassment but it is sometimes the “grey” areas that cause most problems.

Bullying and harassment can often be hard to recognize – they may not be obvious to others, and may be insidious. The recipient may think “perhaps this is normal behaviour for this organisation”. They may be anxious that others will consider them weak, or not up to the job, if they find the actions of others intimidating. They may be accused of “overreacting” and worry that they won’t be believed if they do report incidents.

People being bullied or harassed may sometimes appear to overreact to something that seems relatively trivial but which may be the “last straw” following a series of incidents. There is often fear of retribution if they make a complaint. Colleagues may be reluctant to come forward as witnesses, as they too may fear the consequences to themselves. They may be so relieved not to be the target of the bully that they collude with the bully as a way of avoiding attention.

Bullying and harassment makes someone feel anxious and humiliated. Feelings of anger and frustration at being unable to cope may be triggered. Some people may try to retaliate in some way. Others may become frightened and demotivated. Stress, loss of self confidence and self-esteem caused by harassment or bullying can lead to job insecurity, illness, absence from work, and even resignation. Almost always job performance is affected and relations in the workplace suffer.

### **Why do we need to take action?**

Bullying and harassment are not only unacceptable on moral grounds but may, if unchecked or badly handled, create serious problems:

- Poor morale and poor employee relations
- Loss of respect for managers and supervisors
- Poor performance
- Lost productivity
- Absence
- Resignations
- Damage to organizational reputation
- Tribunal and other court cases and payment of unlimited compensation

### **The legal position**

#### *Discrimination and harassment*

It is not possible to make a direct complaint to a tribunal about bullying. However, employees might be able to bring complaints under laws covering **discrimination and harassment**.

#### *Unfair dismissal*

Employers have a duty of care for all their employees. If the mutual trust and confidence between employer and employee is broken – for example through bullying and harassment at work – then an employee can resign and claim “constructive dismissal on the grounds of breach of contract. Employers are usually responsible in law for the acts of their workers.

Breach of contract may also include the failure to protect an employee’s health and safety at work. Under the Health and Safety

at Work Act 1974 employers are responsible for the health safety and welfare at work of all employees.

The Health and Safety Executive's "Guidance on stress in the workplace" includes the advice that "stress should be treated like any other health hazard" and that employers have a "legal duty to take reasonable care to ensure health is not placed at risk through excessive and sustained levels of stress".

### **Action by Management**

Management should be clear about the standards of behaviour expected, set a good example in their own behaviour and ensure that individuals are fully aware of their responsibilities to others.

#### *Procedures*

Bullying should not be treated as a standard grievance; it is a serious issue and must be treated as such. Complaints of bullying and / or harassment, or information from staff relating to such complaints, must be dealt with fairly and confidentially and sensitively using the general format set out in the organisations grievance procedures.

#### *Investigation*

Complaints must be taken seriously and investigated promptly and objectively. Employees do not normally make serious accusations unless they feel seriously aggrieved. The investigation must be seen to be objective and independent. Decisions can then be made as to what action needs to be taken.

#### *Informal approaches*

In some cases it may be possible to rectify matters informally. Sometimes people are unaware that their behaviour is not welcome and an informal discussion can lead to greater understanding and an agreement that the behaviour will cease. It may be that the individual will choose to do this themselves, or they may need support from a manager, a colleague or an employee representative.

### *Counselling*

Counselling or mediation may be used where appropriate, particularly where investigation shows no cause for disciplinary action, or where doubt is cast on the validity of the complaint. Counseling may be used to resolve the issue or help support the person accused as well as the complainant.

### *Serious misconduct*

In cases which appear to involve serious misconduct, and there is reason to separate the parties, a short period of suspension of the alleged bully/harasser may need to be considered while the case is being investigated. The person making the complaint will not be transferred unless they ask for such a move.

When somebody makes an unfounded allegation of bullying and/or harassment for malicious reasons the case should be investigated and dealt with fairly and objectively under the disciplinary procedure.

### **Imposing penalties**

Where the complaint is found to be justified any action taken against those responsible should be dealt with under the organisation's disciplinary policy and must comply with the statutory minimum procedure.

The action to be taken must be reasonable in the light of the facts. In some cases it may be concluded that a penalty is unnecessary nor that counseling or training is preferable – the individual may now be more able to accept the need to change their behaviour.

Where a penalty is to be imposed, all the circumstances should be considered including: the employee's disciplinary and general record; whether the procedure points to the likely penalty; action taken in previous cases; any explanations and circumstances to be considered and whether the penalty is reasonable.

Oral or written warnings, suspension or transfer of the bully/harasser are examples of disciplinary penalties that might be imposed in a proven case. Suspension or transfer (unless provided for in the employee's contract or agreed by the employee), could breach the employee's contract if they suffer a detriment by it, for

instance a transfer to a different location which means additional expense or a less responsible job. Any such breach could lead to a claim of constructive dismissal by the affected employee.

Where bullying or harassment amounts to gross misconduct, dismissal without notice may be appropriate.

# Bullying and Harassment Model Policy

Everyone will be treated with dignity and respect at this organisation. Bullying and harassment of any kind are in no-one's interest and will not be tolerated in the workplace; this includes bullying or harassment of staff by visitors to this organisation.

This policy applies to all staff on and off the premises, including those working away from their main office, place of work. Bullying and harassment will be treated as disciplinary offences.

## What are bullying and harassment?

**Harassment**, in general terms is unwanted conduct affecting the dignity of men and women in the workplace, where actions or comments are viewed as demeaning and unacceptable to the recipient.

It may be related to age, gender, race, disability, religion, belief, sexuality, nationality or any personal characteristic of the individual, and may be persistent or an isolated incident.

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

Bullying or harassment may be by an individual against an individual or involve groups of people. It may be obvious or it may be insidious. It may be face to face, or in written communications, electronic (e)mail, phone. Whatever form it takes, it is unwarranted and unwelcome to the individual. It may take place in private or in public.

Examples of bullying/harassing behaviour include:

- spreading malicious rumours, or insulting someone by word or behaviour (particularly on the grounds of race, sex, disability, sexual orientation and religion or belief)
- copying memos that are critical about someone to others who do not need to know
- ridiculing or demeaning someone - picking on them or setting them up to fail

- exclusion or victimisation
- unfair treatment
- overbearing supervision or other misuse of power or position
- unwelcome sexual advances - touching, standing too close, the display of offensive materials
- making threats or comments about job security without foundation
- deliberately undermining a competent worker by overloading and constant criticism
- preventing individuals progressing by intentionally blocking promotion or training opportunities.

Legitimate, constructive and fair criticism of an employee's performance or behaviour at work is not bullying. An occasional raised voice or argument is not bullying.

## **Procedures**

Complaints of bullying and/or harassment, or information from staff relating to such complaints, will be dealt with fairly and confidentially and sensitively using the general format set out in the organisation's grievance procedures. However bullying or harassment will not be treated as a standard grievance; it is a serious issue and will be treated as such.

Where complaints of bullying or harassment involve your line manager approaches should be made to another appropriate manager.

## **Investigation**

Complaints will be taken seriously and investigated promptly, objectively and independently. Decisions can then be made as to what action needs to be taken.

## **Informal action**

If appropriate, the matter will be dealt with informally; sometimes people are not aware that their behaviour is unwelcome and an

informal discussion can lead to greater understanding and an agreement that the behaviour will cease.

### **Formal action**

More serious cases of bullying or harassment will be dealt with under the organisation's disciplinary procedures.

Where bullying or harassment amounts to gross misconduct, dismissal without notice may be appropriate.

The person making the complaint will not be moved unless they ask for such a move.

### **Counselling and Mediation**

Counselling or mediation may be considered, particularly where investigation shows no cause for disciplinary action, or where it may be useful to help resolve the issue or help support the person accused as well as the complainant.

### **Unfounded allegations**

Employees lodging a complaint will not be disciplined for doing so unless somebody makes an unfounded allegation of bullying and/or harassment **for malicious reasons**. The case will then be investigated and dealt with fairly and objectively under the disciplinary procedure.

### **PEACe, March 2007**

### **LVSC's Personnel, Employment Advice and Conciliation Service**

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