

Workplace Bullying: what's going on?

**The issue of workplace bullying continues to feature in claims brought to the WRC and Labour Court, with recent cases demonstrating that the learning points on how to manage cases of bullying are eluding some workplaces. In the following review of cases by Gerry McMahon\*, it raises a question as to whether the 2020 Code of Practice of Bullying is achieving the desired outcome on guiding the satisfactory internal resolution of workplace bullying.**

Matrix Recruitment's recent Workplace Equality Report reveals that almost 90% of workers in Ireland agree that bullying remains a significant issue, with about one in three claiming that they have personally experienced this malpractice at work.

Even more disconcerting for HR practitioners is the survey's finding that though 55% of respondents have reported the problem, only 20% felt that it was resolved promptly and discreetly. These findings tally with previous surveys on the matter and serve to call into question the effectiveness of the 'Code Of Practice On The Prevention and Resolution Of Bullying At Work', that was introduced in 2020.

*2 years and 8 months "is far too long" for an investigation*

The issue of bullying frequently features in legal proceedings. For example, earlier this year an employee at Galway City Council was awarded €25,000 for a failure to reasonably accommodate his disability - a disability caused by the treatment he was receiving from the bully.

In what was described by a WRC adjudicator as the "one of the worst cases" he had ever seen, it was also pointed out that a "duration of 2 years and 8 months to conduct an investigation to finality is far too long" (ADJ-00049895).

Last year, a shop worker successfully claimed at the WRC that she was subjected to a litany of bullying behaviours by her store manager. She complained that the matter was not dealt with properly, as she returned from sick leave to an 'unsafe' work environment, where she was rostered to work with the same manager, without adequate precautions in place to ensure that she was not exposed to further bullying (ADJ-00045134).

In 2024, a construction company fell foul of the law, when a WRC adjudicator deemed it had unfairly dismissed a probationary worker, after it had "completely ignored" her bullying complaint (ADJ-00043674).

In another case at the WRC last year, a successful claim against a security company hinged on its failure to provide a copy of its bullying and harassment policy, or to confirm that the complainant had signed a 'Blue Book' containing all of the relevant policies (ADJ-00045361).

Likewise, in 2023, a sales manager was awarded €25,000 at the WRC, as the respondent failed to undertake a "meaningful communication" of its workplace dignity policy. Notably, in this instance, the respondent was directed to review the policy and to ensure that it be effectively communicated to staff, alongside the provision of appropriate training at regular intervals (ADJ-00039112).

Failure to adhere to the core principle that the 'punishment fits the crime' proved very costly in 2022, when a sales executive dismissed for breaching the employer's bullying policy was awarded a then record compensation of almost €330,000 at the WRC.

In this instance, it was held that his dismissal was both substantively and procedurally unfair. Whilst the AO was satisfied that the complainant engaged in inappropriate behaviour, his actions ‘fell a long way short of warranting dismissal’. The AO also noted that training had not been provided on the company’s policy during the course of his employment, whilst his treatment showed a ‘lack of decency, humanity and dignity’ (ADJ-00027573).

## **FLAWED INVESTIGATIONS**

Recent case law also reveals that some employers are not conducting investigations in line with prescribed practice. For example, in 2022 this familiar failing featured when a WRC AO compensated an operative due to procedural breaches in the investigation.

The AO found that the investigation failed to meet “the standards required of a fair and proper investigation”, including allowing the accused to be represented by a witness, thus creating the potential for “contamination as well as conflation of evidence”. Furthermore, no plausible explanation was advanced for the protracted nature of the investigation (ADJ-00035638).

In the same year, a WRC adjudicator found against a social media company in respect of a bullying complaint, concluding that the investigation “significantly fails to live up to the stated policy of the company to investigate such matters fairly”. In this instance it was also found that there was “undue haste” in dismissing the complaint and a failure to provide the written report to the worker for comment before finalising a course of action (ADJ-00035724).

Also in 2022, a golf club was directed by a WRC adjudicator to pay its administrator €25,000, as both the investigation and associated appeals process were deemed defective. This decision was also influenced by the fact that employees were deemed to be unfamiliar with the relevant policy and no training had been provided in respect of same. Notably, the AO added that: “unfortunately, [this is] a common occurrence .. employers need to make provision in their annual budgets for ongoing HR training” (ADJ-00028647).

## **LONG WAITS**

In a 2024 case at the WRC, a worker (against whom bullying allegations were made) submitted that he waited nearly five years for an investigation outcome. He was awarded €18,000 at the WRC, due to “inexplicable time delays”, which were aggravated by a failure to establish if he had any objections to extensions of the time limits (as required by the organisation’s policy).

As a result, the AO directed that the employer ensure that their policy meet statutory requirements and that their investigators be made aware of relevant procedures, time frames, responsibilities and be appropriately trained (IR-SC-00001890).

Also in 2024, a Heineken brewery worker – who was the subject of bullying complaints – was awarded €18,000 at the WRC for his summary dismissal for ‘gross misconduct’. In this case the AO held that such were the limits put on the investigation that it, “fundamentally fell short”, as “an investigation into bullying in the workplace must consider the underlying culture that existed because the norms and expectations within a given workplace can significantly impact the prevalence and nature of bullying behaviour”. (ADJ-00043446)

The importance of all parties adhering to procedure featured in a case in 2023, when an employee claimed that he had been subjected to bullying and harassment for 10 years.

He was advised by the WRC AO to take the internal procedures’ route, as he hadn’t exhausted same prior to lodging his complaint. The complainant claimed that despite raising concerns

with local management, nothing was done. However, the AO was satisfied that the employer made every reasonable effort to address the matters raised and that the employee's withdrawal from the investigation process was perplexing, as he should have familiarised himself with the relevant policies and procedures "as he would have been disabused of the notion that an informal "chat" constituted the formal raising of an issue" (ADJ-00039415).

## **CONSTRUCTIVE DISMISSAL**

It is also notable that in some recent cases the bullying theme has surfaced in the context of either the victim or accused party resigning and subsequently submitting claims of constructive dismissal.

For example, in 2024, the Labour Court rejected an appeal by an SSE Airtricity employee, who maintained that she was constructively dismissed. The claimant alleged that she was subjected to "exclusion and bullying" by team members and that she was "ignored" when she brought the matter to the attention of her line manager.

In this instance, the Court reminded parties that there is a high burden on a person bringing a claim for constructive dismissal, as one is obliged to demonstrate that their resignation arose because of a repudiatory breach of contract or unreasonable behaviour on the respondent's part.

However, in this case the respondent was able to show that they had a formal procedure in place to deal with such allegations. Notably, the appellant confirmed that she had access to them, but didn't use them. This failure enabled the Court to conclude that a claimant is obliged to meet the 'reasonableness' test, as the employer didn't behave in a manner that warranted the employee's resignation (UDD2446).

Similarly, in 2022, a tutor failed to sustain her bullying allegations when bringing a claim of constructive dismissal at the WRC. The fact that the tutor didn't use the relevant procedure – and also failed to establish that her employer's conduct was such as to leave her with no option but to resign – meant that she came up short in making the constructive dismissal claim.

The AO focused on the failure of the complainant to raise her bullying allegations internally, even though the alleged bullying incident had taken place 10 months prior to her resignation. (ADJ-00025369).

## **INTERNAL PROCEDURES**

In 2023, a WRC adjudicator deemed that a pregnant worker was not constructively dismissed following her complaints of bullying, as the issues that she raised did not satisfy the accepted standards of bullying (i.e. repeated actions over a period of time etc.) (ADJ-00033642).

Last year, chocolate manufacturer Lily O'Brien was exonerated when an AO concluded that the complainant was aware of the respondent's bullying and harassment procedures, but "did not exhaust, or even commence, internal procedure before resigning" (ADJ-00045849).

However, in 2023, a financial controller was awarded €27,000 following her resignation (or constructive dismissal), stemming from frustration at her employer's failure to deal with her bullying and harassment complaints.

The AO noted that though the respondent had a bullying policy, it "circumvented its own procedure" in failing to engage with the complainant "in a meaningful manner" (ADJ-00033717).

Likewise, in 2022, a WRC AO ruled that a Tesco employee was justified in resigning his post, following a sustained campaign of bullying by his manager. It concluded that the bullying behaviour was “sufficiently intolerable and injurious to his health as to constitute a significant breach of the employment contract”.

Awarding the complainant €15,000, it was held that the claimant met both of the constructive dismissal tests of ‘contract’ and ‘reasonableness’ (ADJ-00034404).

## **OVERLAP**

On occasion, constructive dismissal claims have been provoked by dissatisfaction with the manner in which the bullying investigation was conducted.

For example, in 2022, a woman won her constructive dismissal claim at the WRC, when an AO found that the appointment of the chairman of the board to conduct an appeal of an external investigation into her bullying grievance was “inappropriate”.

The AO found that the relevant appeals process was “quite calamitous” and “inappropriate”, given that the appeal officer had an association with those involved in the complainant’s grievance. Notably, the AO also pointed out that even if the appeal officer wasn’t biased, the “perception of bias” attached to the relevant party was still problematic (ADJ-00029418).

In the same year another such overlap gave rise to a €7,000 award, in respect of an employee who had made and was also subject to bullying complaints. In this instance, an energy firm’s refusal of representation by his trade union was deemed unreasonable behaviour and an “ongoing and persistent procedural flaw”.

The employee was denied representation rights, disciplined and then resigned, citing the respondent’s failure to afford him fair procedures alongside ‘ongoing mistreatment’ (ADJ-00028021).

In another claim at the WRC, involving a warehouse operative, it was held that an employer had failed to adhere to the provisions of the aforementioned Code of Practice. The complainant won his action for constructive dismissal after claiming that he was bullied and harassed subsequent to making a complaint about a safety issue.

The WRC AO’s decision focused on the Code’s requirement that an employer act reasonably in assessing complaints and then putting in place suitable responses. However, in this case the WRC concluded that the employer failed to comply with the Code and awarded €6,000 to the complainant (ADJ-00033100).

## **KEY PROVISIONS**

A similar overlap surfaced in 2023, when a WRC adjudicator held that Fingal Partnership had constructively dismissed a senior employee, as its CEO formalised issues by invoking the organisation’s bullying policy.

In this case, the respondent had upgraded a fellow employee’s grievance to a formal complaint under the bullying policy. However, the AO concluded that initiating a formal investigation into what was an informal grievance was “inflammatory”. Hence, the complainant didn’t act unreasonably when she resigned and was awarded almost €9,000 in compensation (ADJ-00037674).

The key provisions associated with bullying prevention and effective investigations have already been outlined in IRN (see [Workplace Investigations in IRN 09/2024](#)), [Bullying and Harassment in IRN 11/2021](#), and [Feature in IRN 33/2021](#)), together with the principles, precedents and prescriptions associated with constructive dismissal (see [Legal Feature in IRN 07/2022](#)).

However, both national survey and case law lessons indicate that the 'penny hasn't dropped' in many workplaces.

***\*Dr. Gerry McMahon is a former lecturer at TUD and Adjudicator at the WRC. He is the MD at Productive Personnel Ltd., specialising in H.R./Employee Relations consultancy and training assignments. Email: [ppl1gerry@gmail.com](mailto:ppl1gerry@gmail.com).***