

# VCAS Introduction to Bullying and Harassment

## **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 recognise – 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 de-motivated. 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 organisational 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**. The Equality Act 2010 states that, provided that conduct is unwanted and violates the employee's dignity (as that employee sees it, it is unlawful, unless it would not reasonably be assumed that an employee could be offended by the action complained of. An employer is liable for harassment that occurs at work if no steps were taken to prevent it once it was brought to the employer's attention.

### *Breach of contract*

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.

According to the [Health and Safety Executive](#) (HSE), "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. This should include volunteers, clients, service users, contractors, consultants, freelancers and suppliers, although you are recommended to have separate statements and complaints procedures covering these people, so there is no confusion about their employment status and relationship to the organisation.

Under the Equality Act 2010, employees will have a claim against their employer where a third party (such as a client) harasses an employee on three occasions and the where the employer – having been made aware that the harassment has occurred – fails to take reasonable steps to prevent a recurrence.

### *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. Counselling may be used to resolve the issue or help support the person accused as well as the complainant.

### *Mediation*

Mediation is a process that brings people together in the presence of an impartial third party who assists them in looking at their issues.

The disputants, not the mediator, decide on the terms of this interaction and whether they come to an agreement or not. The mediator does not offer advice or solutions.

Mediation itself is voluntary. It cannot work unless both parties agree to mediate. People cannot be forced to mediate.

### *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 Acas Code of Practice for Disciplinary and Grievance Procedures ([www.acas.org.uk/dgcode2009](http://www.acas.org.uk/dgcode2009)).

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 counselling, mediation 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.

Formal 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.

In all cases the organisation's full disciplinary procedure should be followed.

Information adapted from the LVSC Guide 24.03.11 [www.lvsc.org.uk](http://www.lvsc.org.uk)