

Bullying and harassment at the workplace and how mediation can be applied in these cases

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Abstract

In recent years the topic of bullying and harassment has become the subject of research by many scholars around the world. The aim of this paper is to present a careful analysis of the history of bullying and harassment and how organizations in Ireland have dealt with the issue in the workplace. Also, presenting the main characteristics of the mediation process and based on the learning of master's students in Dispute resolution understand if mediation can be the appropriate approach to manage conflicts involving bullying and harassment in the workplace. The research was conducted through questioning, where some students were asked to answer questions related to their learning in the mediation course. Based on the students' answers, it was identified that mediation is considered an appropriate approach to deal with conflicts involving this theme since the parties would have the opportunity to deal with the situation in a safe and friendly way.

Key words: Bullying. Harassment. Mediation. Conflicts. Dispute Resolution.

1 Introduction

		Chapter 1 – Introduction
Background to the research		<p>For several decades the increasing number of bullying and harassment cases at workplace have been at the top of concerns by company executives, managers as well as employees. They are more prevalent than thought so. They can ruin people's lives, undermine confidence and self-esteem, create significant stress, discomfort, ill feeling and can negatively affect the psychology of individuals.</p> <p>These cases have led to litigation and both employers and employees have had losses. Besides financial loss, companies also gain bad reputation. Therefore, the need for codes of practice and mediation at the workplace became important practices in order to mitigate and resolve these sensitive issues avoiding litigation.</p>
Reasons for the need for the research.		<p>Both bullying and harassment are sensitive issues that have been discussed for years by professionals from different areas of work.</p> <p>There is not a single definition for bullying, but it suggests offensive, intimidating, malicious or insulting behaviour, the abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure an individual.</p> <p>Harassment refers to offensive and intrusive behaviour with a sexual, racial or physical feature. In other words, it is an unwanted behaviour that undermines an individual's dignity creating an intimidating, hostile, humiliating and unhealthy environment.</p> <p>Consequently, ruining teamwork, reducing quality and quantity of work. It has been clearly one of the most damaging barriers to career success.</p> <p>In 2017 the Irish Mediation Act was signed and the purpose was to consider mediation as an alternative to litigation.</p>
Preliminary information to place the research in context		<p>The Mediation Act 2017 is meant to be a voluntary process however, section 21 of the Act allows the court to have regard to the unreasonable failure of a party to refuse to consider or</p>

		<p>attend mediation when awarding costs, making the Act contradictory.</p> <p>The Act also provides a code of practice with standards and limitations for the conduct of mediators which are extremely important. Among them is the confidentiality of all records and notes regarding the mediation which shall not be disclosed in any proceedings before a court or otherwise.</p> <p>Neutrality of the mediator is also a key principle in mediation but it is not as simple as it seems and has been problematic.</p>
Research aim(s) and objectives or hypothesis		<p>The specific research question is “How has mediation in cases of bullying and harassment at the workplace been applied?</p> <p>. The objectives of this research are:</p> <ol style="list-style-type: none"> 1. Determine whether the mediation processes have been able to avoid litigation? 2. Identify whether the practice and mediation codes have inhibited bullying and harassment 3. Identify the strengths and the gaps in the Mediation Act.
Value of the research		<p>This research aims to analyse and evaluate whether mediation in cases of bullying and harassment at the workplace in Ireland has been an effective tool for both employer and employee in order to prevent litigation through best practices for a positive outcome for all parties concerned.</p>

2 Literature Review

2.1 Introduction

Bullying and harassment in the workplace are not new subjects. The issue has been around for over 30 years and became to the spotlight in the early 1990's, first among European working populations and then among the academic community. It did not take long for the phenomenon to become one of the main research topics of the decade which eventually led to a boom in the publication of studies and books on the issue in European countries and languages.

The subject is complex as it involves harmful behaviours from one or more individuals towards another or more individuals in the workplace environment. Bullying and harassment can involve anyone who is connected to the workplace. They can be colleagues, line workers, customers, suppliers, co-workers, managers, and it can be carried out downward, upward, peer to peer, from groups, or even from the organization.

There is not an exact definition for bullying, however there seems to be a consensus among researchers about the definition. The interest and concern in the issue of bullying in the workplace originated in Scandinavia in the 1980's, somewhat influenced by under way research on bullying among school children (Olweus, 1991, 1994, 2003). It can be defined on a general view as a repeated, offensive, intimidating, malicious or insulting behaviour, the abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure an individual with detrimental and chronic effects on the health and well-being of targets (Malecki et al., 2015, Szabo, Tache, & Somogyi, 2012). Harassment refers to offensive and intrusive behaviour usually with a sexual, racial, physical and or religious feature that also undermines an individual's dignity, wellbeing, intimidating and creating a hostile, humiliating and unhealthy environment.

Some cases of bullying or harassment are so severe with devastating and harmful consequences, that they can spread feelings of powerlessness and fear among employees whom are not direct victims of the abuse. According to the "Australian Human Rights Commission", bullying may have a negative impact on everyone, becoming a problem not only for victims and bullies, but making people who witness it, feel angry, fearful, worried, guilty and as sad and bad as those who are being bullied. Other employees may also become worried it may happen to them, and if is not halted or defied by anyone, it might create an environment where bullying is accepted as a normal behaviour, making people feel powerless to put an end to it. The recipient is isolated, humiliated, and sometimes starts being bullied and harassed by other co-workers. The impact of this behaviour towards the target is unmeasurable and may cause stress, psychological and psychosomatic problems, depression as well as a damaging barrier to career success. The impact of bullying does not affect only the recipient. It can cause serious problems to organizations and the damage and harm are usually expressed in terms of cost, with the growing number of cases which end up in court

disputes. Companies also suffer high turnover of employees, low performance and productivity and high absenteeism.

The phenomenon has become so serious that companies have had to create and incorporate practice codes and policies as an attempt to prevent and mitigate the harm caused to both employees and organizations. These codes of practice have clear and strict rules against bullying and harassment in the workplace addressing employees that they do not accept nor tolerate any type of bullying nor harassment behaviours. Employees whom violate these policies will be disciplined and can even have their contracts terminated.

These Codes of practice address employers and employees of their rights and obligations, they address employers that is their responsibility to provide a safe and healthy environment and that the codes must be displayed and available to all employees. It is also the employee's duty to respect one another and promote a harmonious work environment. Codes of practice protect both employer and employee when they follow the practice and procedures for identifying, preventing, addressing and resolving issues at the workplace.

For years legal disputes have taken place in different spheres, not only in the work environment. For this reason, as an alternative to endless legal disputes, mediation has become vital in today's society. From the workplace to families and communities, mediation has helped individuals settle their differences in a more effective way. It provides quarrelling parties a rare glance into one another's viewpoints, and the clarity brought by mediation is seldom present in court hearings. This approach has been used in different settings and spheres for conflict resolution and has become a viable alternative to facilitate settlements between disputing parties.

Nowadays mediation and mediators are relevant for many reasons that will be discussed in this study. As this study will focus on bullying and harassment in the Irish workplace context, we will go through the Mediation Act 2017, which was enacted in October 2017 and put into force on January 1, 2018. The main goal of the Act is to promote mediation as a viable, effective and efficient alternative to court proceedings, reducing legal costs, speeding up the resolution of disputes and reducing the stress and ill feeling that accompanies court proceedings. Mediation is a collaborative which aims to encourage disputing parties to arrive at their own resolution assisted by a professional mediator.

2.2 Bullying

Mobbing / Bullying dates back to the beginning of times since all living species share a similarity which is a natural survival instinct linked with competition. Herbert Spencer (1864) created the phrase "Survival of the fittest" matching with Charles Darwin's biological theory of natural selection along with his economic theories. According to (Donegan 2012, p.34) survival instincts in aggregation with individual competitive forces "have flowed over into the educational, social, and economic realms" which in capitalist ideological terms is known as "Social Darwinism". Donegan also argues that capitalistic societies, especially the USA seem to hold on to the belief that success and wealth are synonyms, practically stating that wealthy

people are superior, describing bullying as a kind of a survival strategy in a competitive capitalistic society.

Mobbing or bullying are by no means a new phenomenon. Ethologist, Conrad Lorenz used the word mobbing to refer to animal group behaviour, calling the attacks from a group of smaller animals against a larger one “mobbing” (Lorenz, 1991). The term was later used again and/or borrowed by Swedish general physician Peter Paul Heinemann, father of an adopted black son who in 1969, published an article on apartheid in a left-liberal journal which was not centred on racism itself, but on his perception of the exclusion and harassment his son who happened to be a black boy, suffered day after day. Heinemann described the repeated exclusion and harassment his son continuously faced in school. It is not that the fact of his son be black did not matter, because it did. It separated him from his social environment attracting lots of attention and turning him into a target. Obviously, Heinemann was concerned about what his son was going through, but more than that his real concern was with the phenomenon he referred to as “mobbing”, which he depicted as a kind of group violence towards a single individual repeatedly.

His article on the subject was read by lots of people from different fields. After reading his article, two journalists called Anna Maria Hagerfors and Birgitta Nyblom made it their outset for a sequence of articles which during November and December 1969, were published in a large daily Swedish Newspaper called Dagens Nyheter with national coverage. By the end of the series, the word mobbing had become customary in daily speech. The repercussion of the articles gave rise to an avalanche of programmes on television regarding mobbing in Sweden. In 1973, Swedish-Norwegian research professor of psychology Dan Olweus published a book on mobbing, paving the way for further research and a large number of books and articles on the subject in schools among school children, and eventually in the workplace. Olweus is often considered the pioneer in bullying research followed by other scholars whom have had significant roles in this field of research, addressing their concern towards this complex and sensitive phenomenon called bullying. Workplace environment has been a scenario of distress, anxiety, ill feeling and stress to those who have been targets of perpetrators who intentionally intend to denigrate, humiliate and undermine individuals they consider powerless to defend themselves.

2.2.1 Definition and Concepts of Bullying and Harassment

There is a fine line between bullying and harassment and the terms are used mutually by companies, yet there are some significant differences that must be observed and taken into account, mainly if a company is drawing up an anti-bullying policy. Harassment is in general referred to as an offensive and intrusive behaviour with a sexual, racial or physical element. ACAS (Advisory, Conciliation and Arbitration Service) defines harassment as ‘unwanted conduct that violates people’s dignity or creates an intimidating hostile, degrading, humiliating or offensive environment’. Harassment has some strong physical components such as contact, touch, intrusion into personal space, damage to possessions and target’s work. The target is most of the time discriminated because they are competent and popular. Harassment may take place once or repeatedly, yet the target is usually aware that it is

harassment as soon as it starts. It has strong physical elements such as contact, touch, intrusion into one's space, damage to possessions and even sabotage of the target's work. The object of harassment of the perpetrator is usually focused on individual difference such as sex, race and sexuality and it may be performed once or repeatedly, however right from the start the target perceives it as harassment. It is often carried out by offensive vocabulary, threatening behaviour, unwelcome offensive comments, unwanted physical advances and requests for sexual favours, malicious jokes or comments about race or gender. The incidents can take place in public as the aggressor seeks for peer approval or image building and because the harasser also sees the target as easily victimised.

There is not a single definition for bullying, however different authors and scholars seem to have reached some consensus on a general understanding and concept of the behaviour and they have defined it as an offensive, intimidating malicious or insulting behaviour, the abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient. Most authors whom have written papers and books regarding the subject agree that bullying is an intentional and unjustified aggression that involves imbalance of power between the victim and his or her perpetrators.

Olweus (1999) defines bullying as a recurrent exposure to negative acts by one or more students towards a single individual. In the Cambridge Dictionary, the definition for bully is: someone who hurts and frightens someone who is smaller or less powerful than them, often forcing them to do something they do not want to do. The Merriam Webster gives the definition for bully as a person who is habitually cruel, insulting or threatening to others who are weaker, smaller in some way vulnerable. The Oxford Learner's Dictionary gives the following definition: bully is a person who uses their strength or power to frighten or hurt weaker people. The Collins Dictionary defines bully as a person who uses threat or violence in an attempt to harm or intimidate others often repeatedly.

Analysing the definitions, it can be understood that bullying is a repeated aggressive behaviour, often towards a particular individual who cannot defend himself. There are no reasonable explanations for the attack, they are unprovoked and the bully intends to hurt and humiliate the victim. As previously stated, there are many definitions for the term bully and one complements the other.

English lawyer, judge, politician and author Thomas Hughes was the first author to bring the concept of bullying to notability in England in a book he wrote and published in 1857 with the title "Tom Brown's school days". In his book Hughes tells the story of Tom, a young boy who attends a Rugby Boarding School, where Hughes himself studied between 1834 and 1842, based on his real experiences at Rugby School. As soon as Tom starts classes at Rugby School, a classmate named Harry East (Scud), takes him under his wing. Their friendship helps Tom deal with a vicious bully named Flashman and his crew. Flashman is 17 years old and happens to be a big and strong boy which makes Tom's life hard at school turning him and his friends into easy and vulnerable targets

In 1978 Olweus used the term again in his book "Aggression in schools: Bullies and whipping boys", which was the first important scientific work on the topic. Later in his book Bullying at

School (1993), Dan Olweus defines bullying or victimization as the behaviour towards a person who is being bullied or victimized when he or she is exposed, repeatedly and over time to negative actions from one or more people. Such actions can be carried out in different forms. It can be through words, physical contact, obscene gestures, and so forth.

In the late 1980's and early 1990's the phenomenon started to receive more public attention in European countries as well as in Japan, Australia and many other countries across the globe. Later what was believed to be a negative and harmful behaviour only in schools environment towards children who were seen as vulnerable targets, started to be recognised as a problem and concern in the workplace drawing the attention of authors and scholars, which led to research, studies and the publication of lots of literature and papers on the topic giving modern definitions to the word bullying, due to the understanding that bullying was not anymore exclusive to the school context, but had started to be noticed in many other environments such as the workplace. In 2002 amid a legal dispute called The Ruffley Decision, the Irish Supreme Court provided a definition for bullying. The Court accepted the definition of bullying as set out in paragraph 5 of the Industrial Relations Act 1990 (Code of Practice detailing procedures for Addressing Bullying in the Workplace) Declaration Order 2002 (S.I. No. 17/2002).

“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 once off incident, it is not considered to be bullying”

According to the Irish Employment Equality Act 1988, that came into force in October 1999, “Harassment is any unwanted conduct that violates your dignity and creates an intimidating, degrading, humiliating or offensive environment for you”

2.2.2 Types of Bullying and Harassment

There are several kinds of bullying and it comes in various forms and has long been an issue of concern for educators. Long years of research have demonstrated that a significant number of adolescents have been affected by this behaviour in schools all over the world. It is a widespread and very serious problem that has to be addressed (Espelage & Swearer, 2003; Hoover and Oliver, 1996; Nanscl et.al., Olweus, 1993). Different scholars and authors have come to the same conclusion stating that violent physical bullying in schools has without doubt been the focus of research among scientists, psychologists and scholars for decades not only because of the behaviour itself, but due to the negative consequences for victims, bullies, as well as for school atmosphere (Berthold & Hoover, 2000; Olweus; Payne & Gottfredson, 2004). Bullying is a subcategory off aggression which is normally categorized as physical, verbal or relational (Shore, 2005).

There is a general consensus that for a behaviour to be considered bullying, it must have three factors. It must be repetitive, have a difference of power – physical, social or other between the bully and the victim (Olweus 1993). However, physical bullying is prone to gain more attention by school staff as it involves behaviours such as, kicking, hitting, or other forms of violence towards another student. Victims of bullying tend to have lower self-esteem, avoid contact with other students skipping school because they fear for their safety at school, and it also leads to poor school performance and depression (Batsche and Knoff 1994; Bosworth et al. 1999; Olweus, 1994; Smith and Myron Wilson 1998; Smith and Sharp 1994). Verbal bullying involves name calling, insults, teasing, intimidation, homophobic or racial remarks and verbal threats or abuse. It can start as harmless, increasing rapidly to levels that can start affecting the victim. Relational bullying is a form of social isolation which is sometimes harder to recognise and can be carried out behind the bullied person's back. It involves behaviours such as gossiping, intentionally leaving students out of activities, spreading malicious rumours, and other measures that seek to change peer groups (Olweus, 1993). Victims of bullying may suffer from several health problems which range from social isolation to suicidal feelings and depression. Crick and Grotpeter (1995) inferred that relational bullying is related to peer rejection, loneliness, isolation, and depression. The behaviour means to damage the victim's social reputation or relationships.

With the advance in technology and access to the internet through digital devices such as computers, cell phones and tablets cyberbullying has also become a usual and rapid form of bullying. It is a unique form of bullying that has drawn the attention of specialists in recent years. It can be defined as an intentional aggressive behaviour, carried out by a group or individual through the use of electronic forms of contact, repeatedly against a victim who might not be able to defend himself. It can be carried out through Text, SMS, apps or online social media or gaming where people can share content, view or participate in. Cyberbullying includes posting, sending or sharing untrue, negative, mean or harmful content about someone else causing humiliation or embarrassment.

Common places where cyberbullying takes place are: Email, online forums, chat rooms and message boards and blogs, social media, such as Instagram, Facebook, Twitter, Snapchat and Tik Tok, text messaging and messaging apps on mobile, computer or tablet devices, instant messaging, direct messaging and online chatting and online gaming communities. The content of media and digital forums, comments, posts, photos and content shared by individuals, may be viewed by acquaintances and strangers. Digital devices immediately and continuously offer the ability to communicate 24 hours a day, making it difficult for the individuals being bullied to find a relief. A great part of the information communicated electronically is public and permanent if not communicated and removed.

The negative reputation for both bullies and bullied may have a strong negative impact in various spheres such as, college admission, employment as well as other areas of life. Personal content, as well as any kind of mean, negative, embarrassing, or hurtful content shared on line by individuals, produces a somewhat permanent public record of their activities, views and behaviour. These public records are known as online reputation, which may be available

to schools, colleges, employers and any others who may be researching an individual currently or in the future.

Harassment can also come in various forms such as, intellectual, sexual, appearance, political, racial or other forms of harassment, which will be mentioned later framed to the workplace. According to a paper published by the PubMed Central on March 27, 2020, Intellectual harassment offends the intellectual power or opinions of people. Sexual harassment is offensive sexual speech 'usually' targeted to females. The harasser often makes vulgar comments about the victim's body as well as mentioning sexual relationships in an aggressive way. Racial harassment, targets race and ethnicity characteristics of a victim such as skin colour, country of origin, culture or religion in an offensive manner. Political harassment is related to a person's political views and political inclined individuals, and politicians may be targeted receiving threatening messages and appearance related harassment uses humiliating language referring to body appearance. Women or girls often receive comments about being fat, and boys or men often receive comments about seeming gay. This is a general view on types of bullying and harassment.

2.2.3 Bullying and Harassment at the Workplace and the Consequences

Over the years there has been a change in the scenario of bullying and harassment. As mentioned previously, the phenomenon was first perceived among school children and youths becoming a serious problem with devastating consequences to those who have been victims of bullying. This does not mean that the phenomenon has stopped in the school context, however it has spread to different spheres such as the workplace, which will be the main focus of this study.

Bullying and harassment in the workplace came to prominence in the 1990's, initially among European working population and the academic community, spreading rapidly to other countries, raising interest and concern among scholars, scientists, university research professors and psychologists. The phenomenon became "the research topic of the 1990s" (Hoel et al., 1999), leading to a large number of academic books and papers on the subject in European languages (e.g., Ege, 1996; Einarsen et al., 1994b; Field, 1996; Leymann, 1993; Niedl, 1995; Rayner et al., 2002).

The issue of bullying in the workplace is complicated as it may come in various shapes and shades, with multiple causes on different levels and diverging views on its nature (Argevoll, 2007). From the year 2000 onward, there was a resonance in research and studies, because of the impact caused to individuals whom are exposed to continuous episodes of bullying and harassment. Generally speaking, it is basically about the systemic mistreatment of a subordinate, a superior or a colleague towards another individual at the workplace, and if the behaviour is continuous and enduring, it may originate serious psychological, social and psychosomatic problems to the victim. According to (Zapf et al., 1996,) the exposure to this kind of treatment was claimed to be more crippling and devastating for employees than any other types of working-related stress put together. For this reason, scholars have continued

to study the behaviour itself and address the harm, distress, and negative effects to all involved with the problem.

As previously mentioned, both bullying and harassment are terms used interchangeably in the working atmosphere, and they must be distinguished. Bullying at work can be understood as repeated actions and practices against one or more individuals, that are unwanted by the target and they may be carried out deliberately or unconsciously, however it causes harm, humiliation, distress and offense to the target and the two main features that can be noticed are that it is not a single event, it is repeated and long-lasting behaviours with the intention of being hostile and/or are discerned as hostile by the target (Olweus, 1991; Leymann, 1990, 1996; Zapf et al., 1996). For a period of time researchers focused only on the negative effects of bullying and harassment on the individual who was targeted. Over the years they started to focus on the negative effects of this behaviour to organisations. Researchers found out that most of the time there is large financial loss for organisations, due to the fact that companies end up having to pay compensations to employees who have been bullied or harassed. However, the problem is not that simple. Apart from costly litigations, organisations experience high turnover of employees, absenteeism increases, there is a decrease in productivity, and also potential, irreparable reputational damage having their public image destroyed and all of these factors interfere directly with enterprises profits.

2.3 Workplace Bullying and Harassment Policies in Ireland

According to Ireland Citizens Information, bullying is “repeated” inappropriate behaviour that undermines your dignity at work. An isolated episode cannot be considered bullying, it normally takes place over a period of time and it can be performed by one or more persons and be aimed at a single individual or a group. The citizens information also states that a behaviour can be considered bullying or harassment, not both.

The Irish law states that, it is the employers’ duty to prevent any kind of improper behaviour or conduct, which includes bullying. The employer should display a noticeably summary of anti-bullying policies in the workplace.

Under the Employment Equality Acts if someone receives different and less favourable treatment to other people because of who they are, they are being discriminated. However, not all forms of discrimination that can occur may be covered by the Employment Equality Acts.

The Employment Equality Act 1998 – 2015 displays a set of nine grounds of discrimination, in other words “prohibited grounds”, addressing citizens that if they are discriminated at work for any of the grounds listed below, they are entitled to take a claim to the Workplace relations Committee (WRC)

- Gender
- Civil status
- Family status (for example as a parent)

- Sexual orientation
- Age
- Disability
- Race
- Religious belief
- Membership of the Traveller community

Gender Ground – Every employee is entitled to equal treatment whether they are a man, a woman or a transgender person. Special protection is provided for pregnant employees and regarding maternity leave.

Civil Status Ground – Whether or not you are single, married, separated, divorced or widowed, in a civil partnership, or formerly in a civil partnership, that has ended by death or been dissolved, you are entitled to equal treatment at work under the Civil Status Ground.

The Family Status Ground – If you are the parent or the person responsible for a child under 18 years old, the main carer or the parent of a person with a disability that requires continuous care and/or the main carer who has to live with the person they are caring for, you are entitled to equal treatment at work under the Family Status Ground.

The sexual orientation Ground – You are entitled to equal treatment whether or not you are gay, lesbian, bisexual or heterosexual.

The Age ground – As long as you are over the legal school-leaving age, no matter whether you are young, middle aged or older, you are entitled to equal treatment at work.

The disability Ground – There are different types of disability. They may be physical disability (e.g. unable to walk, to see, to hear), intellectual or learning disability (e.g. dyslexia, mild mental retardation, autism) If you have any disability you are entitled to equal treatment at work.

The Race Ground – No matter what your race, your skin colour, nationality or ethnic origin is, you are entitled to equal treatment at work.

The Religion Ground: No matter what your religious beliefs are or if you hold no religious beliefs, you are entitled to equal treatment at work.

The traveller Community Ground – You are entitled of equal treatment at work if you are member of the traveller Community.

Under the Employment Equality Acts 1998 – 2011 harassment and sexual harassment of an employee in the workplace are against the law and this includes trainees and agency workers. Regardless harassment and sexual harassment be carried out by employers, clients, customers or any other business contacts of the employer or co-workers.

Harassment is any form of unwanted conduct related to any of the nine discriminatory grounds. Sexual harassment is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature (Employment and Equality Acts)

2.3.1 Code of Practice for Employers and Employees on the Prevention and Resolution of bullying at work

Harassment or bullying? The interchangeable use of both terms may lead to a misinterpretation of what each one refers to. They are legally different concepts, this means that a behaviour can be considered either bullying or harassment, but not both.

The “WRC Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work” defines workplace bullying as:

“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 be reasonably regarded as undermining the individual’s right to dignity at work”.

As stated above, to be considered bullying in the workplace, there must be repeated misbehaviour, a single incident does not characterize bullying. The Code was prepared by the Health and Safety Authority and the Workplace Relation Commission (WRC), with the purpose of providing guidance for employers, employees and their representatives on good practices and policies for recognising, preventing, communicating and solving matters which refer to workplace bullying. It applies to every employment in Ireland regardless employees work at a fixed location. Home or mobile. The Code was put into force 23 December, 2020 and it revokes and replaces the Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work 2007.

The Code also states workplace bullying must meet some patterns of repeated and continuous series of the accumulation of negative behaviours towards a person or people with the purpose of undermining, humiliating, intimidating, offending, denigrating them. According to the Code, bullying activities include actions and behavioural patterns, direct or indirectly, spoken or written and may also be carried out through the use of cyber or digital means with the intention of bullying:

- Exclusion with negative consequences
- Verbal abuse/insults
- Being treated less favourably than colleagues who perform the same role
- Depreciating an individual’s opinion
- Spreading malicious rumours, gossip or insinuation
- Socially excluding or isolating an individual in the workplace
- Intrusion – persecuting, spying or stalking
- Intimidation/aggressive interactions
- Excessive monitoring of work
- Withholding information necessary for proper performance of a person’s job
- Repeatedly manipulating a person’s job content and targets
- Blaming a person for things beyond their control
- Use of aggressive and obscene language

- Other menacing behaviour

Section 2.4 states that it is not possible to stereotype people who bully. It suggests that individuals who carry out the behaviour may have problems working with others, adjusting to changes or dealing with conflicts, however it is not a rule. Not every person with these characteristics is a bully.

Section 2.5 discourses about the importance of preventing situations that may emerge where bullying is facilitated, because of the negative impacts on performance, productivity, mental health and wellbeing of the targeted person. The negative effects are not limited to individuals who are being bullied, but it may extend to both, the individual who might be involved in a situation of conflict and mistakenly thinks is being bullied and to the employer, because the behaviour results in an unhealthy and unpleasant work environment, low morale as well as exhausting litigation processes.

As a Code of Practice, there must be a clear understanding of what should or not be considered bullying. Employees should understand that in a work environment people share different opinions and point of views, they must learn to receive constructive feedback, and that does not mean only compliments. Managers and supervisors evaluate employee's performance and many times have to take disciplinary actions and these actions do not characterise bullying. Bullying at work can be carried out by individuals who occupy any position, not only manager/ supervisor to employee, it can occur the other way round, and also one employee to another and so forth.

Section 2.8. makes it clear that the effects of bullying do not affect only the person who is being bullied, but colleagues, team members, the individual who is being accused of bullying and the organisation. The target of bullying can develop stress, associated with mental or physical ill feeling, lower productivity and performance that may lead the employee to leave their job even if their decision gets them into financial strains. For the employer the negative effects are as serious as they are to the targeted individual. The effects may include absences of staff, low productivity, high costs, poor morale, lack of respect for supervisors and managers as well as reputational damage. The Code addresses all involved including the party who is accused of bullying, raising awareness of the negative consequences they may face and the seriousness in terms of anxiety, stress, distress, social embarrassment and career damage.

Section 3 highlights the employer's responsibility of promoting a healthy and safe environment in order to prevent any conduct that may put an employee's safety, health or welfare at risk and this includes bullying. Whether a complaint arises, the employer must act reasonably, evaluate a complaint and record actions and prepare an acceptable response based on cases that may arise. It is also the employer's duty to develop a proper and suitable workplace anti-bullying policy in consultation with employees, that ensures a line of action is set up for dealing with complaints of bullying, and when and if it is found out that bullying has occurred, disciplinary actions may be taken.

Early intervention in cases of bullying or alleged bullying is extremely important and can offer the best outcome mainly for restoring workplace relationships. Cases that may arise require

rapid, calm and coherent attention. Different cases must be assessed and treated according to their merit. Matters cannot be prolonged, because the more it takes for employers to take action, the more difficult it becomes to resolve them. Section (4). The Code displays the benefits of considering mediation as a way to resolve issues at an early stage. The process is voluntary and informal. It is conducted by an impartial third party who allows individuals to work through disagreement and dispute and find a form of improving their relationship at work and it may be formal or informal.

The WRC aims to accomplish harmonious working relations between both employers and employees, stimulating discussion and resolution of issues and disputes which may arise in the workplace and it includes cases of alleged bullying. The code is clear as it addresses both employers and employees on procedures and conduct that must be followed or avoided to guarantee a good and safe workplace environment for all. The Code also provides guidelines to organisations on how to prepare an Anti-bullying policy.

This Code of Practice does not address harassment at the workplace, it only addresses bullying, however the Code is clear addressing organisations of their obligation to ensure employees a safe, healthy and welfare environment as well as addressing employees that it is their duty to be respectful towards their co-workers, supervisors and/or manager, no matter the position someone occupies in the organisation in order to conduct their activities in the best way possible.

2.3.2 Code of Practice on Sexual Harassment and Harassment at work

Established in 2014, the Human Rights and Equality Commission ('IHREC') is an independent public body mandated to protect and promote human rights and equality. The functions that the IHREC has absorbed are of the Equality Authority and the Irish Human Rights Commission.

The Code was prepared by IHREC and was approved by the Minister for Children, Equality, Disability, Integration and Youth, subsequent to consultation with pertinent organisations representing equality interests.

The Code aims to give guidance to employers, organisations, trade unions and employees on what employment-related sexual harassment and harassment is meant, the measures to prevent it from happening and also the steps that make sure suitable are already at hand to cope with the issues in order to avoid it from happening again.

The applicability and adaptation of the code is addressed to all employments and employers are meant to follow the directions according to their size and structure. If the organisation is small or medium sized, they may have to make some adaptations to the suggested measures, however, any and all adaptations have to be entirely coherent with the established intentions of the Code. Alleged perpetrators as well as claimants must have their rights respected all the times and must be treated fairly and impartially.

The Code states that unless an employer takes reasonably feasible steps to prevent an employee from suffering harassment or from reverting the effects of it, the employer is legally responsible for the misconduct. Therefore, it is indispensable that employers have accessible and effective policies and procedures to cope with harassment and sexual harassment at the workplace. It is important that these measures are agreed by employers with the respective trade union or employee representatives. Employees are protected from employment-related harassment and sexual harassment by the EEA based on one or more of the other prohibited grounds which are: Civil Status; Family Status; Sexual Orientation; Religion; Age; Disability; Race and Membership of the travellers Community.

The Code claims that harassment and sexual harassment on the eight non-gender prohibited grounds, contaminate the working environment and the effects to health, confidence, morale and performance of people who suffer harassment or sexual harassment can be devastating. People may develop anxiety and stress and may start missing work because of ill feeling and stress and they may even quit their jobs to look for another one at another enterprise. The Code also raises awareness of the damaging impact on employees who are not themselves directly the target of harassment, but equally experience this culture of a place where harassment is treated as a normal conduct threatening the dignity of workers. The negative consequences for the employer are also mentioned in the Code emphasising that when an employee leaves or resigns their job due to the hostile work culture, the enterprise can suffer a direct impact on profits as well as on their economic efficiency.

According to Section 14A (1) Harassment that is based on any of the nine prohibited grounds, is a form of discrimination regarding conditions of employment. It is stated that any unwanted conduct of a sexual nature or other based on sex affecting their dignity of women or men at work is sexual harassment.

Harassment can be constituted through a variety of behaviours which may include spoken words, gestures or the display of words, pictures or other material. The following list is made up of some possible examples of harassment:

Verbal harassment may include jokes, comments, insults, calling names, criticising or songs;

Written harassment may include graffiti, text messages, sending e-mails with offensive jokes or graphics, about race or religion, social media or internet posts;

Physical harassment may include jostling or any form of assault;

Intimidatory harassment may include threatening poses, gestures, hostile physical posturing and yelling or screaming, intentionally assigning tasks outside your expertise, excessive monitoring at work, isolation or exclusion from social activities and unreasonably changing a persons' job content or targets.

Section 14A (7) of the EEA defines Sexual harassment as any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the intention of violating an individual's dignity and generating an intimidating, shaming, humiliating, hostile or embarrassing environment for the person.

Sexual harassment may be constituted by different forms of behaviour and a single event may constitute sexual harassment. The list that follows includes some behaviours that constitute sexual harassment.

Physical conduct of a sexual nature may include unwanted physical contact, accidentally on purpose brushing up against a person, unnecessary touching, staring or looking at someone's body up and down, following someone around or paying excessive attention, assault and coercive sexual intercourse;

Verbal conduct of a sexual nature may include unwelcome sexual advances, asking someone to go out with you, making inappropriate jokes, remarks, teasing or asking sexual related questions, propositions or pressure for sexual contact, making inappropriate sounds such as kissing sounds, whistling or smacking lips, continued suggestions for social contact outside the workplace after it has been made clear that such suggestions are unwelcoming, sexual emails, notes or letters;

Non-verbal conduct of a sexual nature may include the display of pornographic or sexually suggestive pictures or objects, stalking, making sexual gestures through hands or through body movements, indecent exposure, using facial expressions such as winking, throwing kisses or linking lips;

Gender-based conduct includes conduct that denigrates or is abusive of an employee for reasons related to his or her sex such as derogatory or degrading abuse or insults which are gender-based which may include conduct that insults or degrades an employee because she is pregnant or because he/she is transgender; sexually oriented jokes or innuendoes.

According to the Code, to constitute sexual harassment or harassment at work, the behaviour has to be unwanted or unwelcome. It is the employee who decides whether the attitude of the other is irrespective or abusive or unwelcome. This means that the EEA does not forbid all relations of a sexual or social nature. If an employee has previously acceded to the behaviour, he/she can decide whether it has come unwanted. What distinguishes harassment and sexual harassment is the unwanted nature of the behaviour that must be reciprocal and welcome.

Complaints can be formal or informal. If an individual believes he or she has been a victim of harassment, the first thing he or she should do is raise the issue informally with management. The procedure for informal complaints must provide formal and informal methods of resolving issues to both parties. In the case of an informal procedure, a competent named person shall be available to provide information to both employees and non-employees on the procedure and policy in general as well as to help in the resolution of any issue informally. If an individual finds it difficult to explain that the behaviour in question is unwelcome, that it makes them uncomfortable or offends them, he/she can try an alternative approach by seeking support from a friend, a designated person or trade union representative. The informal process should also offer the choice of mediation.

In the case of formal complaints, the complaints procedure must provide for a formal proceeding when the employee who has made the complaint wishes it to be handled

formally, when the reported harassment or sexual harassment is too serious to be managed informally, when informal efforts have failed or after the informal procedure has been followed, the harassment or sexual harassment continues.

2.4 The Mediation Act 2017

Mediation is a method of conflict resolution between conflicting parties with the participation of a neutral and impartial party called a mediator, who helps the parties resolve a dispute. Mediation cases often involve conflict arising in divorce and child custody issues, issues between family members, neighbours, business partners, landlords and tenants, labour unions and management and workplace issues. As court proceedings are quite costly and time consuming, mediation can bring constructive solutions to disagreements saving time and money.

As previously mentioned, mediation is a flexible dispute resolution process which involves a third neutral party (mediator) who assists two or more disputants to reach a voluntary negotiated settlement of their matters in dispute. The mediator uses many skills in order to help the disputants reach an agreement, however he has no power to make a decision. The parties hold control of both the decision to settle and the terms of resolution, and may choose to draw up a formal signed agreement, that eventually becomes legally binding.

Development of mediation in Ireland became a practice when law firms demonstrated interest in the mediation model and since then it has become usual to find in many contracts a clause that acknowledges that in case of a dispute, before litigation it would be first referred for negotiation between the parties either through mediation or other form of dispute resolution. The Irish Mediation Act 2017, was enacted on 2 October 2017 and it came into force on January 1, 2018. It was intended to pave the place of mediation in the Irish civil justice system. The Act consists of a series of regulatory measures for a comprehensive statutory framework with the intent of promoting the resolution of disputes through mediation.

The main provisions of the Act:

- Introduces an obligation on solicitors and barristers to advise parties in disputes to consider mediation as a means of resolving them;
- Provides that a court may, on its own initiative or after a party request, invite the parties to consider mediation as means of finding a solution to the dispute;
- Contains general principles for the conduct of mediation by qualified mediators;
- Provides that communications between parties during mediation shall be confidential
- Provides for the possible future Establishment of a Mediation Council to oversee the development of the sector
- Provides for the introduction of codes of practice for the conduct of mediation by qualified mediators.

The Irish Mediation Act 2017 was not only introduced as a means of making mediation a more important part of the civil justice system, but also to regulate the practice of mediation as a profession in Ireland.

2.4.1 The principles of the Act

Every Act contains principles and the Irish Mediation act 2017 contains five that will be discussed below:

Voluntary: This principle discusses the mediation process and how it is carried out. First of all, it is a voluntary process, however even if the parties are requested by the court to attend a mediation session, it is the parties' right to give up the mediation session at any time and it is the mediator's duty to remind them of their right to do so. If the parties refuse to accept mediation, because they are allowed to if they wish so, it will not interfere on the court's resolution. Even the parties agree to accept mediation as an attempt to resolve their dispute, it is also their right to choose whether they will continue the mediation process or to cease it and switch to a legal process.

Self-determination: This is a very important principle in mediation practice as the approach is about achieving a consensual outcome, allowing parties to make free and informed decisions concerning the mediation process and the conclusion. Self-determination is the parties right, no matter the stage of the process. They can decide on the mediator choice, the process design, the full engagement in the process or even the withdrawal from it. The mediator has an important and serious role in the process. He/she is a facilitator and it is their obligation to ensure good communication and make all efforts to make sure that parties make their own decisions and determine a resolution that fits them best.

Impartiality: A mediator is expected to act with impartiality, integrity and also make sure that the parties are treated with equal fairness. A mediator shall not under any circumstances be biased or prejudice based by personal qualities, values, beliefs, background and/or behaviours of the parties while the mediation process is in progress. The mediator shall ensure balanced and fair procedures where parties have equal and fair treatment having their views and position equally valued and respected. Mediators shall not provide advice or suggest solutions unless they are required to by disputing parties as they are not advisors.

Neutrality: This principle is equally as important as impartiality. In a generalised form, neutrality can be defined as the absence of any bias regarding either disputing parties. As a facilitator, the mediator must refrain from supporting any party and from seeking to influence the outcome of resolution in disputes. If a conflict of interest emerges from a mediator's link with the issue in dispute or from any kind of relationship between a mediator or any of the parties, whether personal or professional, prior or current, the mediator's impartiality will become doubtful. If a mediator develops any kind of relationship with any of the parties involved in a mediation process in which he/she participated, the mediator should consider important issues like the time elapsed since the mediation process, the nature and type of

relationship developed in order to determine if the relationship may characterise a recognised and real conflict of interest.

Confidentiality: Confidentiality is at the heart of a mediation process and may be vital to a successful resolution. All communication, records and notes relating to mediation must be kept confidential and cannot be disclosed in any proceedings before a court or otherwise. The parties must be assured that if they share sensitive information in order to have their true needs and interests met, they do not have to fear the disclosure of their statements. If the mediator has separate meetings with the parties during the mediation process, the content of the meeting must be kept in privacy. However, there are some applicable confidentiality limitations in mediation proceedings that require the disclosure of records and communication, mainly if there is child abuse involved and if there or whether there is a threat of physical assault or an attempt to commit a crime. It is the mediator's duty to inform the parties of these confidentiality limitations.

2.4.2 Mediation Process Characteristics

Mediation has a number of characteristics and benefits which distinguish it from other forms of resolution dispute. First, the provisions that regulate mediation operate on two levels. The first level of requirements defines what mediation is and how it works. These provisions are approved by a second level of provisions and the purpose is to develop an overall governance structure for mediation in Ireland. The first set of provisions regarding the practice of mediation is an individual process and the second set of provisions is focused on the wider field.

First there is a preparation for mediation and it is key to the success of the mediation process. It is important to highlight that mediation is a voluntary process. Voluntarism is protected in section 6(2) which states that: "Participation in mediation shall be voluntary at all times". In section 6(3), voluntarism is reinforced and in section 6(4) it states that parties are allowed to withdraw from mediation at any point during the process.

Mediation is also private and confidential, so unless agreed by the parties, any and all conversations discussed during mediation should remain private and confidential. Information cannot be shared and disputants will be required to sign a confidentiality agreement previous to the commencement of the mediation. Unless it is agreed with the other party, any information provided to the mediator in a private meeting with one of the parties, must be kept confidential.

An important characteristic of the mediation process is the change of focus. Unlike legal court litigations, mediation encourages parties to move on from the history and focus on the future and on positive outcomes for both disputants.

Mediation can also be seen as user-friendly. It should not be treated as a nearly judicial process, due to a number of distinct advantages that outweigh legal court process. It is not imposed and can take place at a time and place agreed by the disputants; It provides

alternatives and remedies for resolving disputes that may not be at hand in legal proceedings; It is informal and flexible where parties can decide on joint or individual meetings; All parties participate and have their feelings and needs heard; It is not coloured by legal speak and does not involve enquiries; It is quick to arrange and focused on people; It allows people to open and express their feelings, provide their point of view in a neutral environment personally to each other; It also avoids unnecessary costs which are normally shared because mediation is entered into voluntarily by both parties; It improves the communication as well as understanding between the parties in dispute, therefore preserving relationship; It does not require any of the parties to disclose everything, only what the parties agree to disclose; It is by far less stressful than court proceedings.

Assuming that a settlement is reached between the disputants, the mediator will assist in recording the agreement in a suitable form. It may be a document which only records the settlement reached in plain language or it may be a more complex document which contains a commitment to enter into a legally binding agreement or attain an agreed court order. If the disputants do not reach an agreement, they will have acquired a better understanding of the each other's position.

2.4.3 Types of Mediation

Mediation can be understood as a typical technique or strategy which is used to settle various kinds of disputes, from issues in the classroom to issues in the workplace or other cases.

When parties are involved in disputes and they wish to elude a court fight, there are different types of mediation that may be a practicable alternative. Mediation is a process in which a well-trained mediator makes all efforts to help disputing parties discover common ground, through principles of collaborative, common and mutual-gains negotiation. Mediation forms are thought to be the same, however every mediator follows different methodologies or approaches according to the conflict that is being dealt with. At the moment of choosing a mediator it is important to consider the different styles and types of mediation that are suitable and accessible to assist you resolve your dispute.

There are three main types of mediation: Facilitative; Evaluative and Transformative

1 - Facilitative Mediation: Facilitative mediation is comprehended as the traditional mediation. In this kind of mediation, the role of the mediator is to assist disputing parties assessing their own situation rather than assessing the disputes. The parties participate actively in the problem solving and they have the power to decide the outcome of the settlement. The main mission in this kind of mediation is to clarify and strengthen communication between the parties in order to help them decide what to do. However, a facilitative mediator is not allowed to give advice, cannot provide opinions about the issues within the problem or suggest resolutions and cannot make predictions on the possible outcome of the dispute. Facilitative mediation is predicated upon three basic premises: first, both disputing parties are clever enough and alike to work with each other in a neutral

environment if they have to. Second, after the parties have been suitably advised by their legal practitioners, they are capable of comprehending their issues better than the mediator, and maybe even better than their lawyers. Third, the disputing parties are able to develop better solutions to their issues than a mediator can.

2 - Evaluative Mediation: In Evaluative mediation the mediator will do what the facilitative mediator does not. Evaluative mediators are allowed to give advice, make evaluations, they can propose resolutions to issues, they can also push the parties to accept a particular resolution as well as give opinions. Unlike facilitative mediators, evaluative mediators are allowed to make predictions on the likely outcome. This kind of mediation solution is labelled as: neutral evaluation or early neutral evaluation. It will vary according to the timing, settlement conference as well as the settlement oriented-mediation. Evaluative mediation is predicated upon two fundamental assumptions: Parties do not only want but they need the mediator to provide guidance on the law and their positions and second, the mediator is qualified to give guidance on account of training, skills, experience and objectivity.

3 - Transformative Mediation: In transformative mediation, mediators focus on involving and empowering disputing parties to resolve their issues and encourage them to look at each other's needs and interest. Two keys to Transformative mediation are empowerment and recognition. Unlike the other two types of mediation, transformative approach seeks the empowerment and mutual recognition of disputing parties and not the resolution of the immediate problem.

2.4.4 The role of the Mediator

The role of the appointed Mediator is to assist parties in dispute to explore ways to resolve their dispute by agreement. The process belongs to the parties and it is the mediator's duty to ensure the outcome of the process is decided by mutual agreement.

Before the mediation process starts, section 8(1) states that the mediator shall make appropriate investigation in the circumstances so that he/she can may have any potential or actual conflict of interest, and if after the inquiry the mediator finds out that a conflict exists, he/she shall not act as the mediator in such process. The mediator shall also provide the parties his/her qualifications, training and continuing professional development training that are relevant to mediation as well as provide the copy of any code of practice that has been published under Section (9) to which he or she supports regarding mediation. If during the course of mediation, the mediator finds out that there is any actual or potential conflict of interest he or she comes aware of, it is his/her obligation to declare it to the parties. If the parties do not object to the mediator continuing to act, he shall continue, otherwise the mediator shall immediately cease to act as their mediator.

It is also the mediator's obligation to inform and ensure the parties that all communication and oral statements, records and notes regarding the mediation will remain confidential and will not be disclosed in any proceeding before the court. However, if there are concerns about

physical assault, or psychological prejudice or the intention of a crime, the records can be disclosed in order to avoid such situations, and the mediator shall inform the parties of this.

The mediator shall also define the rules before the mediation commences and according to the Act, the parties and mediator must sign an agreement to mediate. The agreement sets out the formalities of mediation and how the mediation process will be conducted, mentioning its location and costs. The mediator shall also ensure the disputing parties that of their right to seek for independent advice, this includes legal advice before signing any mediation settlement, before signing an agreement to mediate. Section (8)

Impartiality and integrity are vital in a mediation process. The mediator must treat both parties with equal fairness. He/she must listen to both parties and cannot under any circumstances take a side regardless the background of the dispute or of the parties.

The mediator must make it clear that it is for the parties to advance proposals to resolve the dispute, he/she can only advance in making any proposals whether the parties invite him/her to do so, however it is up to the parties whether to accept it or not.

The mediator should conclude the mediation considering the nature of the dispute as well as the necessity of the parties to have enough time to consider the issues.

2.4.5 Limitations

Section 18 of the Act provides that from the date of signing the agreement to mediate, the clock will effectively stop for bringing claims under the Statute of Limitations until 30 days after either a mediation settlement s signed by parties and mediator or the mediation is determined.

2.4.6 Mediation in Practice

The case study below follows the characteristics of the mediation process in a real world situation of bullying and harassment between co-workers, and describes how mediation and its principles were applied in that case.

Two colleagues used to be friends at work, but one day they fell out and consequently this affected their coexistence in the workplace as well as their work. Both claimed they were being bullied by one another, and this was just the beginning of a misunderstanding between two colleagues which could lead to a legal dispute if there was not an early intervention and on behalf of the HR manager who identified that the matter was becoming a real problem.

The two parties who had once been friends fell out and the problem ended up affecting their performance and coexistence at work. Both decided to present a claim to the HR against the other for bullying which bought a cross-claim for bullying and harassment. Under the Organization's Dignity at work policy, they could be offered mediation as a voluntary and

informal process as an attempt to resolve their issues. The HR manager then decided to contact Erwin Mediation Services to show both parties that they could resolve their dispute in an alternative way assisted by a third party, a neutral and trained Mediator who would help them improve their communication so that they could achieve a settlement to their dispute and they agreed to try mediation.

The mediation process followed three steps:

1 - The Pre mediation

To start with, both parties were met separately for pre mediation meetings. Both parties' meetings were confidential, they addressed their issues and feelings, however none of them were informed of what the other party had said, due to the confidentiality of the process. The mediation process and how it worked was explained to both parties so that they could be aware of how the process would be conducted. After the explanation a draft Agreement to mediate was elaborated.

2 - The Mediation

The mediation meeting took place in a hotel room starting in the morning. Prior to the mediation both parties and mediator signed the Agreement to Mediate, and the mediator initiated the process with the disputing parties. Both parties were given the chance to tell their stories, how they felt and how they had been affected by the incident. The first party told their story and without being interrupted and explained their matters the way they saw them up to the moment they had a fallen out with their co-worker. The second party was equally given the opportunity to tell their story and also be heard. After the disputing parties told their stories and heard each other's side, it was clear that there had been a misunderstanding between the parties.

Whenever there are misunderstandings between partners or colleagues, emotions run high, mainly when they try to express their feelings and how they were affected by the situation and also the challenge to the truth of the other parties' versions of events, and it was not different for the parties who were taking part in the mediation. However, after both parties had told their stories, they realised that there was no point to continuing the dispute. Their misunderstanding was the reason their performance at work was being affected and was also causing problems to the organisation which was being affected by their dispute and tired of their dispute.

3 - The Outcome

With the mediator's assistance, the parties agreed they had to move on and leave their issues behind. Also, they agreed on a plan of action on how to continue working together without resentment or bitterness towards each other. They accorded that within three months of the settlement agreement they made, it would be reviewed to find out whether it was or not working. The mediator was asked by the HR manager to contact the organisation to inform them that the issue had been resolved and that the file could be closed, and the mediator did so. After the three months which had been stipulated, a review meeting was not necessary because the mediation process had resolved the problems between the parties.

This short summary of a study case was withdrawn from EMS Erwin Mediation Services Website. Karen Erwin is the Founder and Principal of Erwin Mediation Services. She founded her firm in 2004, and is a qualified solicitor, professional mediator and facilitator, specialised in workplace in conflict resolution with emphasis on Workplace, Employment and Commercial mediation. She is one of the most experienced Mediators in Ireland and has over 600 hours of Mediation experience. Karen has a broad experience of workplace disputes involving employment and management and more frequently the disputes involve intercultural issues. Most of the issues that present at workplace mediation are related to reported bullying, harassment and performance. Karen has a flexible style of mediation. She focuses and concentrates on the wishes of the parties in dispute to come to an agreement and during mediation she always employs all her skills depending on the parties, their chemistry, their issues to assist them reach an agreement.

3 Research Methodology

3.3.1 Introduction

The research aimed to discuss the principles of mediation, how strategies and approaches can be used to make people aware of their rights and duties within a workplace. Understand that mediation is not about judging who is right or wrong, it is about facilitating communication where it has been broken and it seeks to assist disputing parties to reach a resolution to their issues and possibly agree on working together in the future. It is easier, quicker and less formal, flexible, voluntary, confidential, convenient, supportive and not legal binding. It can help mend relationships and there are many benefits in doing so, whereas every individual has the choice to accept it or not.

3.3.2 Approaches

Throughout this paper, the main discussion regarded the application of mediation in cases of bullying and harassment at the workplace and analyse its effectiveness. The approach was inductive as it was analysed based on existing theories and we will gather data throughout literature review and look for patterns and topics which helped to draw a conclusion.

3.3.3 Strategies

The strategies that were used in this research include analysing and interpreting the mediation Act 2017. How the mediation process works, connecting its principles to cases and the role of the mediator in the process whom has to follow various principles in order to assist

both parties settle an agreement to resolve their dispute. The mediator must be neutral, impartial, fair and also committed to keep the process confidential. Discussions among recently graduated in a Master's Degree in Dispute Resolution and students in semester two of a Master of Arts in Dispute Resolution in 2022, were held and helped to gather more data about the subject, and how the students perceived its application.

3.3.4 Choices

For the research example, a qualitative method was chosen, a mini survey was carried out through a questionnaire upon Discussions among recently graduated in a Master's Degree in Dispute Resolution and students in semester two of a Master of Arts in Dispute Resolution in 2022 collecting data about their knowledge of mediation, whether they believe it is an alternative and valid method to avoid litigation and whether they would be willing to try mediation.

The research was carried out through a questionnaire aimed at a few students of a Master of Arts in Dispute Resolution according to the policy of the college. An average age was not established as harassment can be linked to various distinct factors. The questionnaire included questions as whether students based on their learning throughout the course believe mediation is an effective method to settle an agreement, assisted by a professional mediator, who's role is to improve communication between the parties involved in bullying and harassment situations.

3.3.5 Data Collection and Analysis

Our research population is all over 21 years old students of a Master of Arts in Dispute Resolution. It is a diverse although small group, so it is not possible to identify every element within the chosen target, this means we cannot use probability sampling. Therefore, it was used a non-probability sampling and select a sample of a few students from different ages as harassment can be associated to sex, race, beliefs, gender reassignment, disability, religion and so forth regardless the age. Also, it was considered students attending different semesters of the master's degree in dispute resolution in order to try to perceive the knowledge acquired by students who are not my directly classmates.

A few students were asked to answers two questions and in order to answer them, they had to self-assess their learnings about mediation throughout the course and its principles, and based on their acquired knowledge and perception, if they consider mediation an appropriate approach to dealing with conflicts involving bullying and harassment in the work environment. The students were also encouraged to justify their answers in order to understand why they consider the mediation process appropriate to deal with such cases.

And in the case of not considering mediation as an appropriate approach, they were encouraged to answer which method they would choose as an alternative.

1. Considering the knowledge obtained during the MA in Dispute Resolution, would you choose Mediation as approach to manage and try to solve conflicts involving Bullying and Harassment at your Workplace?

5 responses

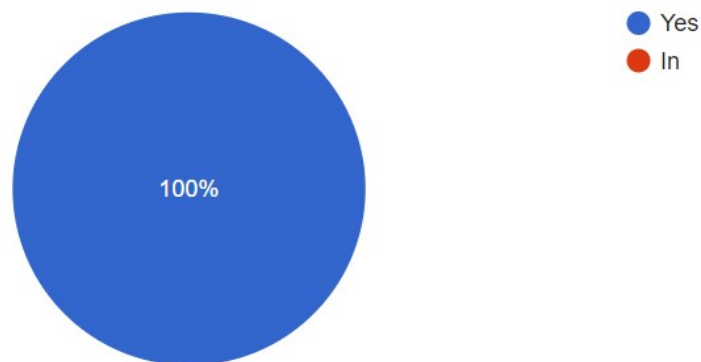


Figure 1. Questionnaire Chart

According to their answers, all the students who contributed with their answers to the survey considered that mediation is the friendliest approach to dealing with this type of conflict because it allows the parties involved to expose their perceptions about the situation and with the support of the mediator, understand and manage the feelings that such issues arouse.

3.3.6 Research Limitations

When using non-probability sampling methodology, the results cannot be profiled over the whole of the population. The subjects of the research have been chosen for their convenience in the case of the questionnaire and by self-selection in the case of the questionnaires. These selections may not reflect the views, understanding, nor the acceptance of all recently graduated students or the students attending to semester two and three of Master of Arts in Dispute Resolution.

In parallel, an interpretivist ontology has been chosen as the most appropriate approach because of the nature of the research. It should be highlighted that this research method is context bound and it may apply to related contexts, for this reason it cannot be applied to all students of the course as a whole.

Something that was also taken into account was that as mediation is a confidential process, it was difficult to gather information about processes that have been carried out and the outcomes. The same difficulty is applied in relation to information about litigation outcomes.

4 Conclusion

Bullying and harassment in the workplace are issues that will remain at the heart of studies and discussions among researchers, professors, psychologists and specialists on health and workforce related issues as long as there is a working population. Nonetheless there is no tabu anymore and the subject is now discussed more openly. Scholars now have a broader view towards the issue and how it affects negatively all who are directly or indirectly involved. Papers, literature and discussions on television programs and other means of communication called for the need of the elaboration and regulation of Codes of Practice as a form to raise awareness of the harm caused not only to individuals whom are exposed to this behaviour, but to organisations or any team members, as well as to those whom who bully and harass others at work. These Codes also provide sets of rights and duties regarding employers and employees, clarifying what can or cannot be considered bullying and harassment at the workplace. They aim to inhibit and prevent this behaviour in the work environment. They also include mediation as a first choice before legal proceedings.

These endless tiring, stressful, costly and long legal proceedings led professionals to seek for a different approach in which parties would be able to address their issues, express their feelings and needs voluntarily through mediation. In workplace mediation, a trained, neutral, independent mediator whom is non-judgemental, assists the parties so that they can come to a settlement through a collaborative, informal and flexible approach.

Workplace mediation in cases of bullying and harassment, or any other work-related issues may be used as a preventive intervention early in a conflict avoiding unsolved issues to escalate. It is a collaborative and confidential process that allows parties to address their issues. It improves communication addressing outstanding issues, reduces emotions and spotlights areas of agreement. According to MII (The Mediators institute of Ireland), research shows that over 80% of mediated cases are successfully resolved at the mediation or short after. Therefore, in cases where parties agree to mediate it can be considered effective.

A mini survey was carried out among students who are attending the second and last semester of the Master of Art Dispute Resolution course and according to their answers they consider mediation a good and satisfactory approach to resolve issues and disputes regarding bullying and harassment in the workplace, due to the flexibility of the process, the opportunity of being heard and express their feelings and needs, as well as hearing the other party's version, which can help them understand each other's point of view and lead them to a settlement to their dispute.

It cannot be said that mediation is fully effective or that the Mediation Act 2017 is perfect, however the practice is becoming each time usual and there are more positive than negative outcomes when parties agree to mediate. Therefore, the main objectives of the Act have been achieved. Updates and new provisions always aim to improve and correct flaws and gaps that may be present in these statutes.

5 Reflexion

Considering the research conducted throughout this work, it was possible to understand more clearly the history related to bullying and harassment around the world and to follow the relevance and importance directed to the theme over the decades. Through the literature reviews, it was possible to observe how much the terms bullying and harassment were associated with the school environment, without the theme being observed considering other scenarios, such as the work environment for example.

As scholars delved into the subject, definitions for bullying and harassment began to emerge, determining almost unanimously as a derogatory and violent behaviour that can cause serious harm, not only physical, but also psychological to the victims. Also, scholars began to observe that bullying and harassment are not present only in the school environment and that it does not involve only children and adolescents, and what was once considered an evil share on the part of students, begins to obtain due attention. With the increase in research on the subject, and with definitions for bullying and harassment increasingly defined, the theme starts to be addressed more broadly not only by schools but also by organizations in order to protect their employees and provide a safe and free work environment of bullying and harassment.

Even though this issue is currently being treated seriously and that bullying and harassment prevention policies are being implemented in organizations, employees may still have to face this type of problem in the workplace. This being the case, mediation of conflict may be the solution for those who choose to resolve such conflicts away from the courts.

Before I joined this Master of Arts in Dispute Resolution, I had no knowledge about mediation, its process and principles. My first assumption was that even though mediation was a facilitative process, it would not be applied outside the law field which would imply a very formal and restrict procedure taking place in court with the assistance of lawyers. However, after having learned about the main characteristics of the mediation process, I understand that mediation is actually present in many situations in our lives. Considering that, the objective of this paper was to present a careful analysis on the subject of bullying and harassment, like these themes with the mediation process in cases where the resolution of such conflicts is necessary.

Bullying and harassment are sensitive topics, and are often difficult to be addressed as they tend to bring shame and cause fear to the victims. Alike me, many of my classmates would choose to resolve conflicts involving a topic as delicate as this one in the courts, although with the learning acquired throughout this course and with the preparation of this research, mediation seems to be an alternative to resolve not only these types of conflicts, but many others safely without facing all the bureaucracy of a judicial process.

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7 Appendix

Form A: Application for Ethical Approval

Undergraduate/Taught Postgraduate Research

This form should be submitted to the module leader for the relevant initial proposal and/or the relevant supervisor is the proposal has already been accepted.

Please save this file as *STUDENT NUMBER_AEA_FormA.docx*

Title of Project	Bullying and Harassment at the Workplace in Ireland
Name of Learner	Gabriella de Oliveira
Student Number	51713977
Name of Supervisor/Tutor	Nadia Bhatti

Check the relevant boxes. All questions must be answered before submitting to the relevant lecturer / supervisor. Note: only one box per row should be selected.

Item	Question	Yes	No	NA
1	Will you describe the main research procedures to participants in advance, so that they are informed about what to expect?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
2	Will you tell participants that their participation is voluntary?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
3	Will you obtain written consent for participation (through a signed or 'ticked' consent form)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
4	If the research is observational, will you ask participants for their consent to being observed.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5	Will you tell participants that they may withdraw from the research at any time and for any reason?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
6	Will you give participants the option of not answering any question they do not want to answer?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7	Will you ensure that participant data will be treated with full confidentiality and anonymity and, if published, will not be identifiable as any individual or group?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
8	Will you debrief participants at the end of their participation (i.e., give them a brief explanation of the study)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
9	If your study involves people between 16 and 18 years, will you ensure that passive consent is obtained from parents/guardians, with active consent obtained from both the child and their school/organisation?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
10	If your study involves people less than 16 years, will you ensure that <u>active</u> consent is obtained from parents/guardians <u>and</u> that a parent/guardian or their nominee (such as a teacher) will be present throughout the data collection period?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11	If your study requires evaluation by an ethics committee/board at an external agency, will you wait until you have approval from both the Independent College Dublin and the external ethics committee before starting data collection.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Item	Question	Yes	No	NA
12	If you are in a position of authority over your participants (for example, if you are their instructor/tutor/manager/examiner etc.) will you inform participants in writing that their grades and/or evaluation will be in no way affected by their participation (or lack thereof) in your research?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
13	If you are in a position of authority over your participants (for example, if you are their instructor/tutor/manager/examiner etc.), does your study involve asking participants about their academic or professional achievements, motivations, abilities or philosophies? (please note that this does not apply to QA1 or QA3 forms, or questionnaires limited to market research, that do not require ethical approval from the IREC)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
14	Will your project involve deliberately misleading participants in any way?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
15	Is there any realistic risk of any participants experiencing either physical or psychological distress or discomfort?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
16	Does your project involve work with animals?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
17	Do you plan to give individual feedback to participants regarding their scores on any task or scale?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
18	Does your study examine any sensitive topics (such as, but not limited to, religion, sexuality, alcohol, crime, drugs, mental health, physical health, etc.)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
19	Is your study designed to change the mental state of participants in any negative way (such as inducing aggression, frustration, etc?)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
20	Does your study involve an external agency (e.g. for recruitment)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
21	Do your participants fall into any of the following special groups? <i>(except where one or more individuals with such characteristics may naturally occur within a general population, such as a sample of students)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	

<p>If you have ticked any of the shaded boxes above, you should consult with your module leader / supervisor immediately. You will need to fill in Form B Ethical Approval and submit it to the Research & Ethics Committee instead of this form.</p> <p>There is an obligation on the researcher to bring to the attention of the Research & Ethics Committee any issues with ethical implications not clearly covered by the above checklist.</p>	
<p>I consider that this project has no significant ethical implications to be brought before the relevant Research & Ethics Committee. I have read and understood the specific guidelines for completion of Ethics Application Forms. I am familiar with the codes of professional ethics relevant to my discipline (and have discussed them with my supervisor).</p>	<input checked="" type="checkbox"/>
Name of Learner	Gabriella de Oliveira
Student Number	51713977
Date	11/05/2022
<p>I have discussed this project with the learner in question, and I agree that it has no significant ethical implications to be brought before the Research & Ethics Committee.</p>	<input checked="" type="checkbox"/>
Name of Supervisor/Lecturer	Nadia Bhatti
Date	12/05/2022