Bullying

Making the employer manage the risks

What works and what doesn't

NSW Teachers Federation

Eric Pearson Study Report

Joan Lemaire

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Foreword

Eric Pearson was President of the NSW Teachers Federation from 1974 to 1975. He was also President of the Australian Teachers Federation. He commenced his teaching career in small country schools as a two year trained teacher prior to active service in New Guinea and Borneo during World War 2. He subsequently returned to teaching and further study, and received a PhD from London University. He had a distinguished teaching and lecturing career, and was head of the department of education at Sydney Teachers College. He died on June 8, 1977.

Originally called the Eric Pearson Memorial Travel Grant, the Eric Pearson Study Grant was established as a fitting tribute to his outstanding contribution as a scholar and unionist.

The first award was made in 1980 to Gus Plater, a teacher and activist from Armidale Teachers Association who investigated the social impact of microprocessor technology and its impact on schools and unions.

Areas of investigation since then have covered the range of issues affecting teachers and the role of the union. Examples include the study by Jim Gallagher (1981) of teacher education programs to meet the need of indigenous people in Canada and the United States. Ross Rinehart (1983) examined methods of control of teacher stress in the United States and Canada. Richard Walsham (1984) studied peace education in Europe. Sally Edsall (1986) tackled the role of teacher-librarians and function of school libraries in the United States. Phil O'Neill (1987) looked at the privatisation of public education in western Europe. Gary Rogers (1988) covered rural education issues in the United States. Viv White (1993) considered the restructuring of education and its implications for teachers' work. Patricia Simpson (1994) looked at devolution, schools and collective bargaining. Mary Fogarty (1995) studied the impact of the national curriculum, assessment and testing on teachers' work in Australia, the United States and the United Kingdom. Frank Barnes (1997) surveyed issues affecting lesbian, gay and bisexual teachers and students in western Europe, the United Kingdom and the United States. John Dixon (1998) studied how technology could enhance union campaigning and Gary Zadkovich (1999) developed strategies for union organising. In 2004 we published *Redefining Activism: Gender Perspectives in Union Participation* by Sui-Linn White, in 2005, *Staffing an empty schoolhouse: attracting and retaining teachers in rural, remote and isolated communities* by Phil Roberts, in 2006 *The impact of on-going professional training and development for teachers of students with disabilities* by Vivienne Harling and in 2007 *Comparative study of TAFE NSW teachers and further education lecturers in the United Kingdom, in relation to continuing professional development* by Kerry Barlow. Last year Federation published Dianne Butland's report about global tends in marketisation of public education through accountability testing.

The investigations arising from the Eric Pearson Study Grant have contributed significantly to the work and ongoing development of the NSW Teachers Federation.

John Irving
General Secretary

Introduction

The level of teacher concern about workplace bullying is evident by the fact that it was raised at Federation Annual Conference in 2006 with a proposal that policy be prepared for consideration by 2007 Annual Conference. This Conference endorsed the *Dignity & Respect in the Workplace Charter* which had been developed and endorsed by a tripartite working group including representatives from the NSW Premier's Department, Unions NSW and WorkCover. The charter was underpinned by guidelines developed by the same tripartite approach.

The charter and guidelines called for a risk management approach to preventing and responding to workplace bullying. However, both documents contained very vague statements and limited detail about how this approach could be applied in workplaces.

I was aware that Ireland had both a *Dignity at Work Charter* and a *Code of Practice Detailing Procedures for Addressing Bullying in the Workplace*. This seemed like a good starting place. I was interested in how the Health and Safety Authority, a regulator like WorkCover, provided for education and/or an enforcement approach to workplace bullying.

Interviewing each of the teacher unions in Ireland allowed me to consider how they supported members in terms of both complaints procedures and preventing workplace bullying.

In England, the Health and Safety Executive had developed Management Standards for work-related stress. I believed that this included elements to promote more positive workplaces, particularly because the approach focussed on the six major causes of workplace stress. The Management Standards promote good management in terms of a style which is responsive to employees. This appeared to be a strategy for preventing workplace bullying.

I interviewed various officers at the National Union of Teachers who allowed me to look at their strategies for dealing with workplace stress as well as workplace bullying, and attended a meeting of their Mental Health Working Party.

These regulators and unions had worked on both managing stress and workplace bullying for a number of years. I believed they could offer a model for what works and what doesn't. Each of the people I interviewed was generous with their time, knowledge and practical advice which I believe will help us in developing a risk management approach to workplace bullying.

I have deliberately limited the scope of this study to workplace bullying between colleagues at a workplace. I recognise that students and parents can, and do bully teachers. This behaviour is unacceptable and should also be assessed and controlled as a workplace hazard.

I have noted that some unions include homophobic, sexist and racist harassment in their definition of bullying but many unions don't. The impact of unlawful harassment and discrimination is devastating. Many unions and authorities dealt with complaints of unlawful harassment in the same way as bullying but recognised that there were specific tribunals which were established to address discrimination and harassment on these grounds.

The *Code of Practice* and complaints procedures may offer models for responding to unlawful harassment. However, I have limited the definition of workplace bullying to the terms included in the *Dignity & Respect in the Workplace Charter*.

What is workplace bullying?

The search for an agreed definition

There is almost unanimous agreement that bullying is difficult to define. This is usually the first obstacle in developing strategies to prevent and respond to workplace bullying.

The NSW *Dignity & Respect in the Workplace Charter* was modelled on work undertaken by the Irish Task Force for the Prevention of Workplace Bullying established by Irish Labour, Trade and Consumer Affairs Minister Tom Kitt. The task force included representatives from unions, employer groups, government departments and the Health and Safety Authority (a regulator like WorkCover).

The Irish task force, established in 2001, recommended the following definition of workplace bullying after consideration of international research:

"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 a one off incident, is not considered to be bullying."

In NSW, a working group of unions (including Federation) coordinated by Unions NSW, the Premier's Department and WorkCover, took a number of years to reach agreement on how bullying should be defined in NSW.

The *Dignity & Respect in the Workplace Charter* and *Dignity and Respect — Policy and Guidelines on Preventing and Managing Workplace Bullying* defines bullying as:

"Generally, workplace bullying is any behaviour or series of behaviours that is unreasonable or undesirable at the place or work and/or in the course of or related to employment which intimidates, humiliates and/or undermines a person or a group of people.

"Bullying will generally meet the following four criteria:
"1. It is repeated
"2. It is unwelcome and unsolicited
"3. The recipient/s considers the behaviour to be offensive, intimidating, humiliating or threatening

"4. Based on the available information, the behaviour would be considered offensive, intimidating, humiliating or threatening to the individual it is directed at, or, for that matter, others who are witness to or affected by it.

"Bullying behaviour may be directed upwards or downwards and towards co-workers. There is no finite list of bullying behaviours, however, the following types of behaviour, where repeated or occurring as part of a pattern of behaviour, could be considered bullying:
"•Being subjected to constant ridicule and being put down in front of colleagues
"•Being the victim of loud and abusive, threatening or derogatory language usually when other employees are present
"•Leaving offensive messages on email or by telephone, including offensive messages through the use of SMS and material posted on the internet
"•Being subjected to practical jokes."

One of the most controversial aspects of defining bullying was differentiating between managerial authority and bullying behaviour. This was resolved with the inclusion of the section 'Performance management', which states: "It is important to differentiate between a person's legitimate authority at work, and bullying. All employers have a legal right to direct and control how work is done, and managers have a responsibility to monitor workflow and give feedback and manage performance."

This definition was further, and more appropriately, qualified by the *Dignity and Respect — Policy and Guidelines for Preventing and Managing Workplace Bullying*:

"Feedback or counselling on work performance or behaviour is intended to assist staff improve work performance and/or the standard of their behaviour. If an employee has performance problems, these should be identified and dealt with in a constructive way that is not humiliating or threatening.

"The performance management process requires two way communications that clearly explains the work staff are expected to do. This involves providing constructive feedback to staff on their work performance. Performance management is consistent with the principles and objectives of the Dignity and Respect in the Workplace Framework."

The difference between management and bullying was clearly identified by Jacinta Kitt in her presentation to the Irish National Teachers' Organization (INTO) Equality Conference in 2007.

Applying the definition to schools and colleges in NSW

Federation's 2007 Annual Conference called on the Department of Education and Training (DET) and other employing authorities to endorse and implement the *Dignity & Respect in the Workplace Charter*.

It took almost a year of repeated requests before Director-General Michael Coutts-Trotter finally co-signed the *Dignity & Respect in the Workplace Charter* with Federation General Secretary John Irving and Public Service Association General Secretary John Cahill on March 6, 2008.

In 2005 the then Director-General, Andrew Cappie-Wood, had issued the *Prevention of Bullying in the Workplace Policy* in 2005. Both the Policy and Charter have a similar definition of workplace bullying and a requirement to adopt a procedure to prevent and effectively respond to bullying. DET has failed to provide training, support and guidance to address workplace bullying.

Federation General Secretary John Irving (right) signing the *Dignity & Respect in the Workplace Charter* with (left) Director-General Michael Coutts-Trotter and Public Service Association General Secretary John Cahill.

Recognising and reporting bullying

The Rebecca scenario is based on a number of stories I heard in Ireland.

The definition of bullying in the *Dignity & Respect in the Workplace Charter* would include "shunning" as repeated unreasonable or undesirable behaviour. Rebecca, like many teachers, was reluctant to make a complaint because she was not sure whether it would

Rebecca

"I had taught casually for two years and was appointed permanently to a new school.

"The majority of staff had been there from at least five to 20 years, except for the principal, who had been appointed in the previous year.

"There was a lot of division in the school: one clique with the principal, another clique led by Anne who had unsuccessfully applied for the principal's job, and a few staff who were not aligned.

"Anne was a motherly sort of person and was the first to come up to me and offer help. The school was very hierarchical, there wasn't much discussion at staff meetings and every time I made a comment about trying something different, the response, while polite, inferred that I didn't know anything because I had only been teaching a short time.

"This upset me and when I spoke about it to Anne, she seemed to encourage me to be negative and talk about my grievances against the principal to her and with the rest of the group. Margaret was around my age and also part of this group.

"Anne and Margaret had a major row. Anne expected me to take her side and so did Margaret. I told them it was their business and wouldn't take sides. Neither of them spoke to me. Anne's clique shunned Margaret, turning their backs when she came near. I said their behaviour was wrong and was shunned in return. Margaret left the school, I stayed. I went from always being invited to gatherings to being ostracised.

"I didn't complain about the treatment because if you complain, you're branded as a trouble maker and no one will employ you. I wasn't really confident that the principal would have been able to deal with the situation anyway.

"I didn't think of it as bullying because I thought bullying was being abused and threatened.

"The students were great and I was respected by parents, but I felt I had to leave. I applied for a job in another school and got it. In retrospect it was the right decision. I feel more confident and valued now."

be considered bullying or if any good would come out of the process. Her fear was that by complaining, she would be labelled as a troublemaker. In a system where all teachers are employed locally, she believed she would end up unemployable.

Both the Irish National Teachers' Organization (INTO) covering primary teachers and Association of Secondary Teachers Ireland have conducted surveys of their members. Some of the comments included:

•"Bullying can be so subtle that it is not noticed by the rest of staff. Difficult to confront — don't want to be accused of paranoia — or being menopausal."

•"Subtle forms of bullying/low level aggression, etc. may not be named as they are difficult to prove. It's a complex issue."

•"The staff were afraid of the then Principal and did not want to be seen speaking to me. There was huge isolation and bullying from senior staff who saw me as an 'easy target' because I was not in good standing with management."

•"While there have been some incidents of students being abusive. There seems to be an attitude of 'Ah sure — she's got it tough at home', meaning you just have to put up with it."

•"I was in a situation which I would now describe as bullying. I didn't call it that at the time because I didn't see myself as a person who could be bullied, I felt I was a strong person."

The complexity of applying the definition of bullying to a workplace situation is first recognising it and then proving it took place.

Harassment, Bullying and Violence at Work: A practical guide to combating employees abuse by Angela Ishmael with Bunmi Alemorn (published by the Industrial Society 1999, reprinted 2001) is a useful resource in terms of exploring aspects of bullying behaviour and provides guidance on investigating complaints of bullying. It states:

"Not recognising that you are being harassed can add to the pain, reinforcing a sense of powerlessness. Recognition is the first step to empowerment, and can help raise personal levels of confidence and give a sense of control when dealing with the situation."

Many people report their fear that if they say they have been bullied, then it suggests they are weak, have personality flaws or brought the behaviour on themselves. Once perceived as a victim, there is the feeling that the person will be further victimised.

Ishmael and Alemorn differentiate between a victim and a target: "A victim (in the context of harassment and bullying) can be described as someone who does not use their internal power or identifiable resources to prevent abuse. Victims quite often find it difficult to take personal responsibility for their behaviour, and sometimes (through lack of skills) don't know how to deal with such personally difficult situations as harassment."

Ishmael suggests that victims may look for a "rescuer" to solve their problems. She argues that the "rescuer" is another type of bully who may confirm the victim's belief that "I can't cope on my own."

If a "rescuer" solves the problem, the victim still remains powerless.

The scenario for Rebecca suggests she was a target.

Ishmael and Alemorn state: "Targets often have the resources to deal with abusive behaviour, but find it difficult to exercise them because of the external pressures placed on them. It is possible, however, for targets to be victimised by perpetrators who abuse their position of power and relationship with power."

Rebecca was not certain whether what was happening to her could be described in terms of bullying. The cliques, hierarchical nature of the school, being a young teacher and the fact there was some level of bullying of the principal made it difficult to raise her concerns. This was despite the fact that there was a Code of Practice by the regulator (the Health and Safety Executive) requiring that a risk management approach be adopted for workplace bullying, and having a detailed definition of behaviours which constitute bullying.

Primary principal and member of the INTO Equality Committee Nora Hamill said that one of the obstacles faced in addressing workplace bullying was overcoming the view by many members that bullying wasn't really a problem or that it was exaggerated. She said that they had organised a conference on workplace bullying in 2006 and conducted a survey to raise awareness and empower members to challenge bullying.

Irish National Teachers' Organization Equality Committee member Nora Hamill… overcoming the view that bullying wasn't really a problem.

What can be done if it's so hard to define?

Researchers Dr K McIvor and Professor C Rayner from the University of Portsmouth Business School were part of the "Dignity at Work Partnership". They conducted focus groups of employers, employees, union representatives and 'experts'. The groups agreed "that

the experience of bullying and harassment is affected by perception, and the reactions to it are feelings of powerlessness, intimidation and fear". Some thought that "bullying could be defined by the reaction of the target rather than individual behaviours". Other argued specifying behaviours would make it clear that these behaviours must change. The majority agreed that "good training helps understanding of the policy definitions by providing real life bullying scenarios. Where training or awareness raising do not occur, a definition is not present".

In terms of both Rebecca's story and the comments from the surveys, the failure to discuss how workplace bullying is defined and provide training made it difficult to address the bullying behaviour.

The role of leadership in terms of workplace bullying was also seen as crucial by Rayner and McIvor: "While everyone is responsible for their own behaviour, cues from senior management act in two ways: they make bad behaviour appear acceptable and they infer everyone acting against such behaviour will be unsupported. This is not to say either is true, but it is how the social reality of the workplace becomes constructed."

If members of senior management demonstrate bullying behaviour, then it appears pointless to attempt to confront the behaviour.

The need for training should be followed up within schools and colleges to directly involve employees in developing realistic scenarios which may show examples of what bullying is and examples of what isn't bullying. This is consistent with what Rayner and McIvor found to be best practice.

Developing an agreed definition by discussing this may help in preventing bullying by ensuring there is a shared understanding of unacceptable behaviour. It may also help in recognising and reporting bullying at an early stage.

What if it isn't bullying, it is just conflict?

Sometimes there is conflict between people and both parties may display unacceptable behaviour.

Even if the behaviour does not constitute bullying, it must be addressed at an early stage.

This may mean that people agree to a process for dealing with issues. A common example is holding a meeting at an agreed time with a support person present to identify and deal with the issues causing concern. Agreement should be reached on how the issues will be resolved.

If I document the behaviour will it prove bullying?

It is important to record incidents of workplace bullying, however, these records do not prove bullying took place. They represent the individual's perspective about the behaviour.

Having these records will assist in making a complaint so that the person making the complaint can be specific about times, dates and behaviour. If a particular incident causes distress or some other harm it should be reported as a workplace injury.

Keeping diaries and recording incidents will not address bullying. The documentation should be used to approach the alleged bully and request that the behaviour cease.

Identifying the risk of bullying

WorkCover NSW chief executive officer John Blackwell said in his foreword to *Dignity and Respect — Policy and Guidelines on Preventing and Managing Workplace Bullying*: "Bullying comprises a significant threat to the safety and wellbeing of the workers, and can impact on the harmony of the workplace environment. Although it may appear a daunting issue to address, the risk of bullying can be reduced and managed in much the same way as other workplace hazards."

Bullying behaviour is a health and safety hazard. The impact of the behaviour poses a risk that the person or persons exposed to it may be physically or psychologically injured. The risk that employees may be exposed to bullying behaviour in the workplace must be identified, assessed and risk management plans must be put in place.

DET has typically dealt with complaints of bullying as interpersonal problems, rather than as an occupational health and safety issues.

The *Prevention of Bullying in the Workplace Policy* requires senior executive and workplace managers to "ensure staff are consulted in developing risk management strategies and procedures with respect to prevention of bullying in the workplace". No support or guidance was provided in how this might be done. Similarly, the *Dignity & Respect in the Workplace Charter* states: "The risk management approach to bullying focuses on creating a work environment that eliminates or controls the circumstances that can lead to bullying. In this context risk management is about eliminating or reducing the risk of injuries and illness associated with bullying and identifying the factors that may lead to bullying."

Identifying the risk in individual workplaces

British public service union UNISON National Officers Denise Bertuchi and Robert Baughn discussed their approach to workplace bullying. One strategy is to provide support for members to identify bullying by using a survey at the workplace level.

UNISON National Officer Denise Bertuchi.

UNISON survey

This survey was developed by UNISON, the largest public sector union in Britain to identify the risk of bullying in individual workplaces.

1. Is bullying at work:	(Tick those relevant)	
A very serious problem?	Yes ☐	No ☐
A serious problem?	Yes ☐	No ☐
A minor problem?	Yes ☐	No ☐
A non-existent problem?	Yes ☐	No ☐
Have you ever been bullied at this place of work?	Yes ☐	No ☐
Are you currently being bullied?	Yes ☐	No ☐
If yes, when did the bullying start?		

2. What are the main sources of bullying?	(Tick those relevant)	
From your line managers	Yes ☐	No ☐
From senior managers	Yes ☐	No ☐
From colleagues	Yes ☐	No ☐
From the public (clients, patients, customers and so on)	Yes ☐	No ☐
From visitors	Yes ☐	No ☐
From contractors' staff	Yes ☐	No ☐
Other (please state)		

3. What form does the bullying take?(Tick those relevant)		
Shouting	Yes ☐	No ☐
Threats	Yes ☐	No ☐
Abuse	Yes ☐	No ☐
Intimidation	Yes ☐	No ☐
Humiliation	Yes ☐	No ☐
Excessive criticism	Yes ☐	No ☐
Setting unrealistic targets or deadlines	Yes ☐	No ☐
Altering targets, deadlines and so on	Yes ☐	No ☐
Excessive work monitoring	Yes ☐	No ☐
Undermining your work	Yes ☐	No ☐
Keeping you out of things	Yes ☐	No ☐
Victimising you	Yes ☐	No ☐
Malicious lies or rumour	Yes ☐	No ☐
Refusing reasonable requests, such as for leave	Yes ☐	No ☐
Other (please state)		

4. How often does the bullying happen? (Tick those relevant)		
Daily	Yes ☐	No ☐
Weekly	Yes ☐	No ☐
Monthly	Yes ☐	No ☐
Less than monthly	Yes ☐	No ☐
Have you or other staff in your area ever had time off work because of bullying?	Yes ☐	No ☐
Have any staff left their job because of bullying at work in your area?	Yes ☐	No ☐
If yes, how many?		

5. What do you think causes bullying?	(Tick those relevant)	
Stressed managers	Yes ☐	No ☐
Stressed colleagues	Yes ☐	No ☐
Excessive workloads	Yes ☐	No ☐
Pressure to meet deadlines	Yes ☐	No ☐
Staff shortages	Yes ☐	No ☐
Pressure not to take sick leave	Yes ☐	No ☐
Inadequate training for managers	Yes ☐	No ☐
Inadequate training for staff	Yes ☐	No ☐
Poor management	Yes ☐	No ☐
Performance approach	Yes ☐	No ☐
Other reasons (please state what they are)		

6. What measures would you like to see to reduce bullying?		
Have you got access to counselling service?	Yes ☐	No ☐
If yes, how effective is it?	Yes ☐	No ☐
Very effective	Yes ☐	No ☐
Sometimes effective	Yes ☐	No ☐
Useless	Yes ☐	No ☐

6. Any other comments

What can we learn?

Identifying the risk factors in this way also provides the opportunity for members to discuss how bullying behaviour can be defined.

DET's *Prevention of Bullying in the Workplace Policy* 4.1 states "The Director-General…will ensure that systems are in place for the prevention of and response to workplace bullying." This means there is a responsibility to provide appropriate training resources and support.

Conducting a survey using the UNISON model may allow members to use the results to demand that DET provide resources to allow staff to consult in assessing the risk of bullying and developing risk management strategies. This might include training using realistic scenarios of bullying and how to deal with it. The success of the strategies could be reviewed by conducting a further survey. This should indicate whether the strategies are successful.

Even if the survey indicates only a small number of people feel bullied, there still needs to be a risk management plan.

System level surveys

Association of Secondary Teachers Ireland Assistant General Secretary Moira Leydon discussed the results of their October 2007 survey conducted by research company Milliward Brown IMS.

The survey found that 61 per cent of members surveyed reported that they had experienced workplace bullying as defined by the Health and Safety Authority. This included bullying by parents and students as well as colleagues.

Members reported that they had "been abused through a position of authority": 38 per cent of males and 26 per cent of females reported bullying by their principal, seven per cent of males and 14 per cent of females by a deputy principal, 20 per cent of males and 26 per cent of females by a teacher post holder (for example, head teacher) and three per cent of males and four per cent of females by a member of the board of management.

Association of Secondary Teachers Ireland Assistant General Secretary Moira Leydon…61 per cent of members reported that they had experienced workplace bullying.

The INTO survey in 2007 was conducted on the basis of providing the survey to members at meetings and contained different questions. More than 44 per cent of members reported they had been bullied in the past three years.

UNISON Regional Women's Officer Linda Durrant directed me to a study, *Bullying at work: the experience of managers* (November 2008), written by Patrick Woodman and Dr Vidal Kumar, commissioned by the Chartered Management Institute.

The research found: "42 per cent of managers reported that they had been bullied in the workplace in the last three years — a small increase from 34 per cent in 2005."

A similar survey in 2005 separated out levels of management and summarised the findings:

"Bullying affects individuals at all management levels. Middle managers appear slightly more likely to be affected, with 49 per cent reporting having been bullied in the past three years. This may reflect the phenomenon known as management squeeze: where middle managers can be subjected to particular pressures if they are required to implement unpopular policies as a result of decisions having been taken at more senior levels. Directors were least likely to have been bullied, but 29 per cent still reported experiences over the previous three years of having been bullied."

More women reported being bullied than men. In both surveys, the managers were asked to indicate if they had "behaved in a manner which may have been perceived as bullying". Twelve per cent of the managers in 2005 and 11 percent in 2008 admitted that this was the case.

It is interesting to note: "38 per cent of the managers who reported that they had been bullied themselves in the past three years said that no action whatsoever was taken in relation to their situation… 29 per cent of respondents stated that formal or informal procedures they were involved in to resolve a bullying incident were ineffective, whilst 13 per cent reported that it actually made the situation worse." (2008 report)

One of the comments from the managers: "The organisation is hypocritical in that whilst it has anti-bullying policies, the culture of senior managers is to bully other managers….Any managers complaining about bullying are thereafter treated with suspicion and distrust."

Identifying organisational risks

The *Dignity & Respect in the Workplace Charter* states that it is expected that a number of approaches should be adopted in its implementation including "the identification of organisational risk in relation to bullying behaviour". This would require an examination of the culture of DET and its management systems.

British National Union of Teachers (NUT) President in 2007 Baljeet Ghale said: "Bullying comes up at many of our conferences and meetings. It appears more directed at the policies and initiatives of the Government so the leadership team feel that they have to make sure the policies are working then have to push that down to teachers." She pointed to the fact that although the use of the word "initiatives" suggested positive change, league tables, competition between schools, performance pay and Office for Standards in Education (Ofsted) inspections were not designed to benefit staff or students.

NUT President in 2007 Baljeet Ghale…bullying comes up at many conferences and meetings.

Ofsted carries out inspections of schools every three years and gives only two days notice prior to the inspection. The Ofsted website (*www.ofsted. gov.uk*) indicates that inspectors speak to senior managers, pupils, parents and other stakeholders. There is no mention of talking to teachers but their lessons are observed and assessed. Baljeet said that being found unsatisfactory in the Ofsted inspections could result in the closure of schools. She believed it was part of a push for privatisation, closing public schools and turning them into academies.

One teacher, who did not want to be named, described the Ofsted process at his school in April 2008:

"Although you are only given two days notice, our school was put on red alert that there would be an inspection since last July. We started preparation, everyone was already working hard but the pressure was on. On Thursday 24 April we were told that the inspection would be in the next week. My head teacher [principal] panicked. He opened the school from 7am to 9pm and told all staff he would be there. Teachers panicked too and felt they had to come in, most spent the entire weekend at school and the evenings of Thursday and Friday.

"Our head teacher and management team are generally supportive, but everyone felt compelled to stay at school. Without a supportive team, this situation would be appalling. What was really frustrating was at the end of the inspection, they told us we were doing a good job. We already knew that, we were subjected to the fear and intimidation Ofsted creates and I could see no benefit."

Hazards Magazine (January–March 2008) reported on two teacher suicides in England which inquests found were related to Ofsted inspections:

"Highly regarded primary school teacher Keith Waller felt 'singled out' by [a] report from schools standards body Ofsted. Severely stressed, he couldn't sleep and became depressed.

"Keith, 35, tried to put things right, resigning from the senior management team at St Lawrence Church of England Primary School in Essex and starting an unsuccessful search for a new job. A November 2007 inquest heard he was found hanged in his home on 2 May that year. A letter to his union NASUWT, said he had been 'treated unfairly and victimised', adding: 'what started out as an issue about marking somehow became manipulated to become issues concerning every single aspect of my performance.'

"Within weeks a December 2007 inquest had heard how Peterborough head teacher Jed Holmes killed himself prompted by fears over an Ofsted inspection of his primary school the following day."

Rather than supporting schools, Ofsted inspections increased workload in what was considered to be 'bureaucratic administrivia' and created a climate of fear, forcing schools to adopt policies and initiatives which do nothing for the students.

NUT Conditions of Service/Health and Safety Principal Officers Rachel Baxter and Sarah Lyons assisted my study by providing further examples of an organisational culture in Britain which encourages bullying. They provided me with a copy of a report commissioned by the NUT in 2008, *Pressure and Professionalism: The Impact of Recent and Present Government Policies on the Working Lives of Teachers* by John MacBeath and

Maurice Galton with Susan Steward and Charlotte Pase (March 2008). This report followed a similar one commissioned in 2004.

NUT Conditions of Service/Health and Safety Principal Officers Rachel Baxter and Sarah Lyons…government policy and initiatives undermine teachers' professional judgement.

The report indicates that teachers in primary and secondary schools believe that government policy and initiatives in education undermine their professional judgement. This process of undermining has demoralised teachers. Even worse, some schools who fail to meet the requirements of Ofsted are actually labelled "failing schools".

A curriculum manager with 10 years experience was reported saying: "We are also much more observed and kept an eye on by senior staff and we in turn have to keep an eye on other people. Ever since Ofsted we are doing much more monitoring."

The report noted: "While peer observation and mentoring were welcomed and performance management was of itself not seen as a problem, it was the straitjacket which monitoring imposed, a constant need to fit into a prescribed lesson format and the readiness to demonstrate that formulaic approach when the door opened to admit what was described as the 'policy police'. In practice, performance management tended to be seen as demoralising for teaching staff and, in the opinion of senior managers, involved considerable amounts of extra work for what were seen as having limited benefits."

"Every single training day is chocka with new initiatives and people talking at us and there's no time for departments to sit down and talk about how things are going, how kids are getting on, if there's any problems, could we do this differently. It's all about we've got to get this done, we've got to get that done, we've got to get the other done — so there's no time for that sort of reflection."

This suggests a climate conducive to workplace bullying — feeling undervalued by the system and driven to complete bureaucratic tasks which many teachers felt were irrelevant.

Current Australian Federal Government pronouncements about Teach for Australia and transparency are based on many of the United Kingdom "initiatives" and are aimed at underpinning or ignoring the professional voice of teachers.

NUT response

The constant pressure and demands on schools have been dealt with by a number of National Union of Teachers (NUT) policies and campaigns, particularly around workload. They have also used occupational health and safety legislation to focus on stress caused by the excessive workload arising from a flood of government policies and initiatives.

The NUT Mental Health Working Party met during my stay in England and I was fortunate enough to be invited to attend one of their meetings concerning the release of their publication *Preventing Work-Related Mental Health Conditions by Tackling Stress: Guidance for Head Teachers*.

NUT Mental Health Working Party...assisting principals to adapt a risk management approach.

The guide was developed with other unions to assist head teachers (principals) to adopt a risk management approach to workplace stress and provide support for staff with existing mental health conditions. The guide describes good mental health as being about "positive well being, about feeling in control of one's life, valued at home and work, and generally relaxed and positive". Importantly, it notes: "Head teachers are, of course, no less vulnerable to mental health conditions than any other teachers….In many cases — workload, league tables, performance management and inspection — the pressures on head teachers are even more acute. As a head teacher you must have regard for your own health and well being, for your own good and those around you. It should also be borne in mind that head teachers who exhibit signs of stress, can frequently pass this on to staff in school, who can suffer stress related symptoms as a result." The guide urges head teachers to implement the Health and Safety Executive's Stress

Management Standards by adopting strategies to identify, assess and control workplace stress.

This complements the *Taking Action on Stress: A Resource Pack for NUT Divisions and Associations*, a training module for workplace representatives. The NUT's teacher stress survey uses the Health and Safety Executive Management Standards and shapes the questions around these standards to assess the level of stress.

Many of the survey statements also point to various forms of workplace bullying including:

•Demand: "Unreasonable deadlines and time pressures are too often placed on me."
•Control: "I lack support from my managers."
•Relationships: "I am subject to personal harassment in the form of unkind words and behaviour."
•Role: "I feel under-valued."
•Change: "Changes are not accompanied by appropriate support and training."

Former NUT President John Illingworth from the Mental Health Working Party reported that even where the Management Standards had been adopted it was not possible to change the major workload stressors.

What can this mean for us?

There has been no training or support on how to conduct risk assessments in relation to workplace stress in NSW schools or colleges.

The NUT resources, including the guidelines and training pack, provide a model for Federation to develop resources and training which can help our members address some aspects of workplace stress. It is clear that one stressor is bullying behaviour and this type of teacher stress survey can indicate how bullying may be interrelated with other factors, including unreasonable workloads imposed by DET.

What can regulators do about workplace stress?

Strategies to control workplace stress

The Health and Safety Executive is the regulator of occupational health and safety in the United Kingdom. It is the equivalent of WorkCover in NSW. I met with Health and Safety Executive higher occupational health psychologist Peter Kelly to discuss the Management Standards and approaches to bullying. He said that the issue of bullying was dealt with by the Department of Trade and Industry and provided me with the copies of *Beat Bullying in the Workplace* which was funded by the United Kingdom Department of Trade and Industry and was based on a partnership between unions and employers. One booklet from the series provides the research conducted by McIvor and Rayner.
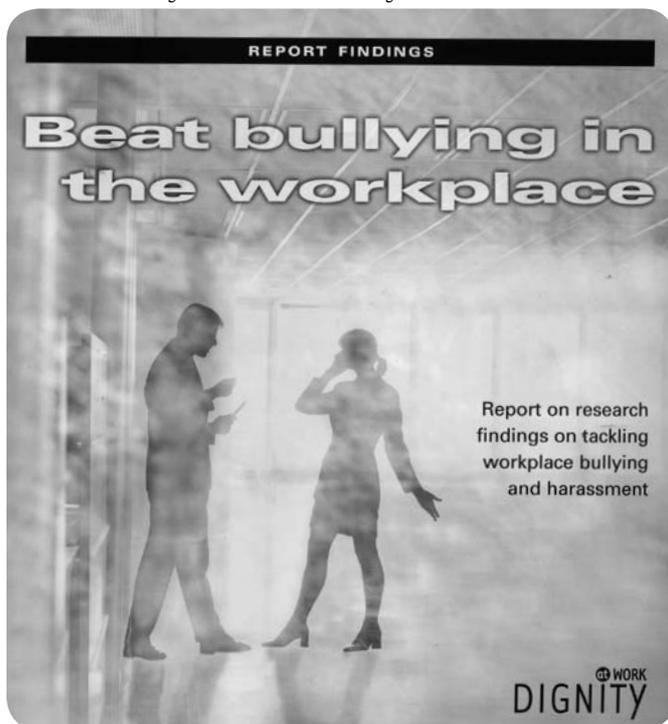
Peter said that until the 1990s, most of the focus on stress had been around how people cope. The strategies included assertiveness training, encouraging exercise, healthy eating habits and relaxation techniques. He believed these failed because they were not focussed on the primary causes of stress.

Federation was also critical of attempt to focus on the individual response to stress rather than issues including workload, lack of resources, training and support which create stressful work environments.

Peter was involved in the development of the Management Standards approach to workplace stress. The Management Standards focussed on competencies of managers. The aim was to establish a work environment where people were encouraged to feel good. Peter said: "The key issue was to invest in people and a style of management which 'brings people along'."

My discussion with a principal in Ireland, Nora Hamill, pointed to the same thing. She said: "If you become too task-oriented, you forget about people. You cannot run schools without people with you. There are times when you have to make a decision and the buck stops with you. But you should collaborate as much as you can and involve people. A principal has to accept people will express their own opinions. If you always feel that everybody's expression of opinion is a criticism, it's very difficult to communicate and it will wear you down."

Peter described working with one utility company which adopted the Management Standards. They introduced a strategy where all of the managers had to spend more time talking to the workers. The managers had to wear a badge with their name on it and "be here now". The aim was to demonstrate that they valued the workers and what they had to say. The strategy resulted in a significant improvement in employee morale and the level of absence for sick leave decreased.

He argued that in setting up the Management Standards approach it was necessary to take on small things first, gain commitment from all the players and consult about the interventions. Then it was necessary to monitor and review the success of the intervention.

The Health and Safety Executive invested considerable time and money in setting up the Management Standards as the initial focus was to raise awareness and promote good practice by supporting a number of employers to set up the standards.

The Health and Safety Executive developed an "indicator tool" in the form of a survey to be filled in by employers. The outcome of the survey identifies where a workplace fits in terms of the Management

Standards. It identifies standards which need to be addressed, promoting consultation on the strategies needed to achieve the standard.

The Management Standards approach was endorsed by the Trade Union Congress in the United Kingdom and by many unions. However, many unionists I spoke to were critical that in introducing the standards, the Health and Safety Executive did not adopt an effective tripartite approach (that is, unions, management and the Health and Safety Executive).

Health and Safety Executive higher occupational health psychologist Peter Kelly was involved in the development of the Management Standards approach to workplace stress.

What can we learn?

The focus on creating a management style which is judged by how employees feel in relation to how the workplace is managed is positive. Hierarchical structures and top down management style can promote bullying and stressful work environments.

The Management Standards may provide a tool to confront both organisational and interpersonal bullying.

The Management Standards model and the work undertaken by the Health and Safety Executive in the United Kingdom will support Federation in its dealings with WorkCover in identifying and dealing with stress as a workplace hazard.

What can regulators do about workplace bullying?

Responding to workplace bullying

The Irish Government has shown its commitment to establishing and enforcing systems to address workplace bullying by not only developing the *Dignity at Work Charter* but establishing codes of practice which operate under both the Safety, Health and Welfare at Work Act 2005 and the Employment Equality Act.

In 2001 a unit was established in the Health and Safety Authority specifically to deal with complaints of workplace bullying.

The taskforce reviewed the progress in 2005 and made further recommendations including:
"•that each workplace's safety statement includes bullying as a risk and the policies and procedures in place to control the risk
"•that a formal model for handling bullying cases be published to guide employers
"•that the Labour Relations Commission be charged with the management of specific allegations of workplace bullying, and to encourage and promote 'Alternative Dispute Resolution' as the preferred approach to tackling instances of bullying."
I spoke with Health and Safety Authority (Ireland) inspector Patricia Murray.

The Irish Code of Practice provides a definition and a range of examples of behaviours associated with bullying at work. It identifies situations and factors which may signal bullying at work, then describes processes which should be used to develop a bullying prevention policy.

It sets out informal and formal procedures which should be used for resolving complaints of workplace bullying. The code can be found on the Health and Safety Authority website (*www.hsa.ie*). I discussed with Patricia her experiences as an inspector dealing with workplace bullying. She said: "Not everyone who complains of bulling is bullied. They may genuinely feel they have been bullied, but it may just be that they can't deal with criticism. Some people may even make up a complaint to cause mischief."

The Code of Practice offers guidance to employers but is not legally enforceable. Any prosecution by the Health and Safety Authority would relate to a breach of the obligations placed on employers by the Occupational Health and Safety Act, not the Code of Practice. A prosecution would not determine whether or not bullying had occurred. It would determine whether the obligations under the Act had been breached. Patricia has issued improvement notices on employers in relation to workplace bullying and described an example in a small business.

The business had a policy to deal with workplace bullying. The manager had attempted an informal resolution. When it failed, he investigated the complaint. He failed to keep records and only investigated what happened prior to the attempted informal resolution. The improvement notice was simple. The business was told that the controls for addressing workplace bullying had to be improved in line with the relevant section in the Safety, Health and Welfare at Work Act 2005.

Patricia also included a letter which set out the following matters. She said the informal and formal procedures were correct, but records must be kept. There was no resolution of the complaint. The investigation needed to consider not only the matters complained of before the informal procedure, but all complaints. She said she would return to the workplace later in the year to check whether the procedures had been improved. Patricia advised that it is not the job of the Health and Safety Authority to determine whether bullying took place. The role is to determine whether the risk has been assessed and controlled as required by Section 19 of the Act.

I asked Patricia that if an investigation of a complaint resulted in the finding that a person had bullied the complainant, would that mean that there should be a risk assessment conducted on the behaviour of that person and a risk management plan put in place to address his/her behaviour.

She said there had been a case where there was a complaint that the manager who was second in charge of the organisation had bullied and discriminated against a woman on the basis of her sex. The company had called in an independent investigator. The investigator provided a report which found that the bullying and discrimination had occurred. There

was nothing wrong in terms of how the complaint was dealt with, but the woman who complained (and had been injured by the behaviour) said she could not deal with the manager directly and her doctor agreed. It was a small organisation and there was no ability to transfer her.

Patricia said that she told the employer that a prohibition notice might have to be served in relation to this manager unless they could show steps were taken to ensure that the bullying wouldn't happen again. This might include sending the manager to training and proving to Health and Safety Authority that these steps had been taken.

Patricia explained that the Labour Relations Commission also deals with bullying. If a complaint is made and nothing happens or if an investigation is carried out and a person wishes to complain about the finding or outcome, they can contact a Rights Commissioner. The Commissioners have the power to conduct mediation, arbitration and further investigation.

Irish Health and Safety Authority inspector Patricia Murray…it is not the job of the Health and Safety Authority to determine whether bullying took place. The role is to determine whether the risk has been assessed and controlled.

How can we use this in NSW?

Federation has already supported the concept of a Code of Practice to set a standard in addressing workplace bullying. It has been pursued through Unions NSW with WorkCover but there has been no agreement from WorkCover to develop such a code. A working group of WorkCover representatives and a number of union representatives, including myself, has been established. The initial aim is to discuss how WorkCover inspectors should address complaints concerning workplace bullying. The present practice appears to be that inspectors simply determine whether the employer's policy and procedures are followed. In a number of cases inspectors did not even speak to the person who made the complaint.

In schools and colleges at least two improvement notices have been issued by WorkCover inspectors about workplace bullying. They related to implementing policies and procedures to prevent and respond to workplace bullying within the particular school or college.

Federation will continue to work with other unions and Unions NSW to put pressure on WorkCover to treat bullying like any other hazard, requiring that it be controlled and/or eliminated.

# Preventing bullying by creating a positive workplace

The Irish National Teachers Union (INTO) believed it was necessary to establish a statement of agreed principles for good staff relations, seeing this as a tool to prevent bullying.

In the forward of *Working Together — Procedures and Policies for Positive Staff Relations*, which can be found at *www.into-ie*, INTO General Secretary Senator Joe O'Toole said:

"The challenge to any staff of promoting positive staff relations and resolving difficulties can be quite considerable, particularly when one takes into account the reality that in most disputes both sides consider themselves to be 'in the right' and that generally, neither side will be fully satisfied with a brokered or mediated outcome.

"Workable solutions can rarely be found until the protagonists want one and are prepared to make it work despite some misgivings. There is no magic formula for solving interpersonal problems but we each have a responsibility to try and create a positive working environment. This publication will be helpful as a recipe to good staff relations but to be effective it needs the additional ingredient of staff support and goodwill."
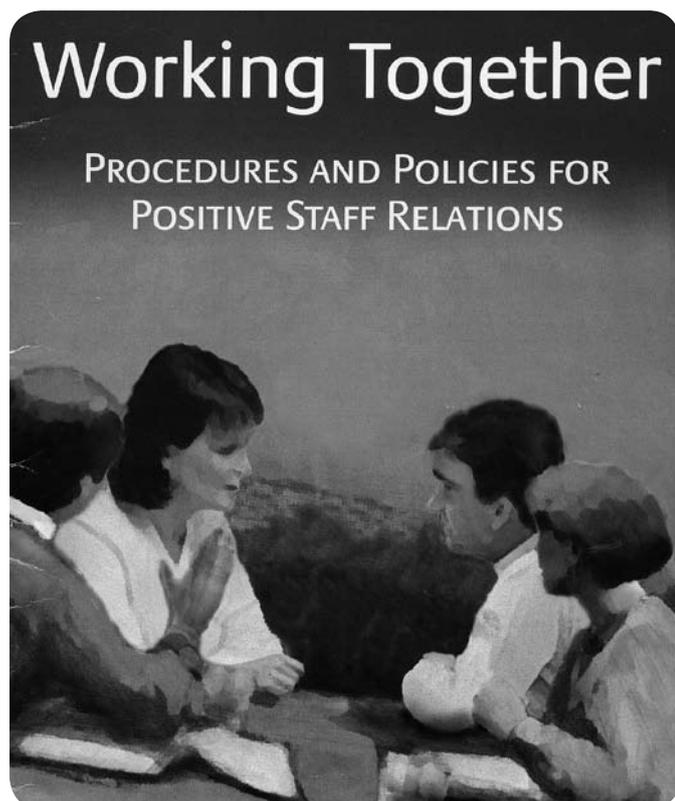
The booklet contains a statement titled "Recommended good practice", agreed between Irish National Teachers Union and the management bodies. The statement addresses the following headings: Internal communication, Processes of decision making, Effective school policies and procedures, Mutual respect, A sense of fairness, Unacceptable behaviour and Conflict resolution.

The process of determining what factors are essential in promoting a positive work environment and positive staff relations is part of managing the risk of work place bullying.

In NSW, DET simply imposed a code of conduct with only tokenistic consultation with Federation. The DET *Code of Conduct* covers a wide variety of matters and is often seen by teachers as a threat, in that they can face disciplinary charges for breaching the code.

Despite this, certain elements of the *Code of Conduct* can be used in a similar way to "recommended good practice". Some sections of the *Code of Conduct Procedures* can be used to demand acceptable and professional behaviour including being "courteous and sensitive to the needs of others", "consultative decision-making practices should be used" and "staff, irrespective of status or position, are to conduct themselves in a manner which will promote cooperation and harmonious relations among colleagues".

A control strategy aimed at preventing workplace bullying would be to encourage staff to develop a statement on how section 17 of the *Code of Conduct* should apply within the workplace, including practical examples.

Better still, rather than DET imposing a *Code of Conduct* a statement of "good practice or acceptable behaviour" should be determined by teachers. This could include some aspects of the Management Standards approach.

Informal procedures for responding to workplace bullying

DET's procedures

DET requires all complaints to be managed under the *Complaints Handling Policy Guidelines*. This policy replaced the *Responding to Suggestions, Allegations and Complaints* policy and guidelines.

The new policy has been implemented with little or no training or support for teachers and/or principals. The policy and guidelines can be found on DET's website via *https://www.det.nsw.edu.au/policies/index.shtml*.

While I acknowledge that some complaints may have been successfully resolved in a timely fashion, many which aren't are referred to Federation.

Often members raise concerns about workplace bullying with Federation Officers but are unwilling to make a complaint because:
•they fear victimisation
•they have seen colleagues complain and believe they were victimised or that the procedure was unfair, biased and so drawn out that it made the situation worse
•their complaint was not dealt with or resolved in that they only received the response of the alleged harasser to their complaint and nothing further happened.
These concerns point to a number of flaws in DET's policy and guidelines and/or how they are implemented.

Informal resolution

Informal resolution, particularly at an early stage, has the potential to address the risk of repeated bullying behaviour. The problem is that where the "target" of the behaviour feels there is a power imbalance, in particular where the alleged harasser is in a supervisory position, it can be very difficult to make a complaint.

DET's *Complaints Handling Policy Guidelines* state: "While line managers have specific responsibilities for handling and attempting to resolve such matters, the complainant and the respondent also have a responsibility to resolve the problem to seek and accept realistic outcomes."

This terminology implies that line managers are not considered by DET as potential respondents to a complaint of bullying, signalling to many that it is pointless making a complaint.

The whole tone of the section suggests "the problem" or "difficulties" belong equally to each of the parties in the complaint and that the problem is shared. If someone has been bullied, then it is the bully who must accept responsibility to change the behaviour.

If the behaviour is bullying, as defined in the charter, it would be inappropriate for both parties "to be prepared to be conciliatory and recognise that resolution may require compromise on both sides" as required by DET's guidelines. On the other hand, if it is a situation of conflict then compromise may provide a way forward.

DET fails to differentiate between the procedure used for a complaint of bullying and that used for other complaints.

Each of the teacher unions in Ireland seeks to separate bullying and harassment from other issues such as breakdown in communication, poor management, interpersonal conflicts which may not necessarily constitute bullying, and grievances over industrial relations issues. This is also the case in the Health and Safety Authority's *Code of Practice*.

Irish National Teachers' Organization (INTO) Senior Official Deirdre O'Connor explained they had three procedures:
1. to address staff relations difficulties. These matters deal with breakdown in communication, poor management and generally things not working well
2. to address adult bullying/harassment including sexual harassment and other forms of discriminatory harassment
3. grievance procedure allowing a principal and/or a teacher to raise a grievance against:
a) the board of management in relation to the exercise of any of its responsibilities
b) the chairperson of the board in an individual capacity.
At the INTO Equality Conference in 2007 General Secretary Senator Joe O'Toole said while not advocating that there should be a multitude of procedures there should be no expectation that a person should com-

promise and accept bullying behaviour. The difficulty is in determining whether it is bullying behaviour.

In order to support the process of informal resolution, some of the unions I visited provided draft letters to assist members raise their complaints.

The aim is to identify the behaviours which are causing concern at an early stage and ask for the behaviour to cease.

I have used the *Code of Conduct* as the basis for a model letter which could be used to identify behaviours and to request that the behaviour ceases.

Draft letter

Dear

I have been distressed by a number of incidents where

I found your behaviour to be undermining, intimidating, humiliating, insulting (pick the appropriate description). I note that section 17.1 of the Code of Conduct requires staff to be courteous and sensitive to the needs of others. (Set out a particular date or dates and describe incidents where you believe the other person did not do this).

Further, section 17.2 states that "consultative decision making practices should be used". (Set out instances or incidents including dates where this was not the case. You may indicate that you considered this approach as an attempt to undermine you.)

Section 17.3 states that "staff, irrespective of status or position are to conduct themselves in a manner which will promote cooperative and harmonious relations". (Set out incidents and dates where you believe this didn't happen.)

I ask that you agree that you will behave in a manner consistent with section 17.2–17.3 of the Code of Conduct. If this does not occur then I will lodge a formal complaint.

This letter avoids the necessity to prove that bullying took place. It identifies behaviours which don't comply with the code and asks that the person agrees to comply. Agreement does not have to be that the person behaved in this way, only that they will comply with the code, as required by DET. In effect, this agreement becomes a risk management plan to address the concern about the risk of bullying.

DET's procedures say "apologise for any behaviour that may have distressed the other party".

INTO Senior Official Deirdre O'Connor said that demanding an apology may set the bar too high and be rejected by the respondent. She agreed that an apology doesn't mean the behaviour won't be repeated. The real focus must be on resolving the problem and on reaching agreement on acceptable conduct. In order to do this both parties may agree to behave in certain ways.

INTO 2008 Vice President Declan Kelleher and Senior Official Deirdre O'Connor.

Supporting informal resolution

Teachers Union Ireland represents teachers in vocational education workplaces.

Teachers Union Ireland Assistant General Secretary Declan Glynn discussed the *Code of Practice for Dealing with Complaints of Bullying and Harassment in VEC [Vocational Education Committees] workplaces* which Teachers Union Ireland developed and was endorsed by the employing authorities (*www.tui.ie*).

This code uses the elements of the Health and Safety Authority Code of Practice and makes it specific to vocational education workplaces. Teachers Union Ireland's code differentiates workplace conflict and reasonable management and industrial relations from bullying. It recognises that informal resolution of complaints may need to be facilitated by trained personnel.

Declan advised that the code had been revised twice since 2000 and was undergoing a third revision when I spoke to him.

The procedure provides that if a person feels unable to raise their concern they can speak to a resolution facilitator. The resolution facilitators have been trained in mediation skills and the complaints process.

There are four types of resolution facilitator:
1. a teacher to deal with complaints between teachers
2. a member of clerical/administrative staff of education authority
3. non-teacher working in an adult educational setting
4. non-teacher working in support services, for example cleaner.

These four types of resolution facilitators are in each local educational authority.

Declan said: "The RFs [resolution facilitators] are once removed from the particular workplace. So the person chooses a RF working for the local education authority but not in his/her school. This allows a bit of distance to bridge the power differential if a complaint

is made about someone in a supervisory position.

"If a teacher wishes to put forward a complaint about a principal teacher and wishes not go through the informal process then it goes straight to an investigation.

"If a person feels unable to raise his/her concern directly with the alleged harasser, as recommended in step 1, then he/she moves to step 2. In this step the complaint meets with the RF to discuss the complaint and the RF outlines the complaints procedure.

The RF may then meet with the alleged harasser and may attempt to resolve the matter.

"If it is not resolved it proceeds to Stage 3 which allows external mediators who are accredited to attempt mediation.

"If either party [is] not willing to mediate the process goes to the formal procedure which requires investigation."

Declan said that one of the most important changes in the latest revision of the code was the ability to bypass any attempt at informal resolution and go straight to the investigation. In his view many of the informal procedures had been used to drag out the process which caused stress and/or distress for those complaining of bullying, and those responding to the complaints.

Teachers Union Ireland Assistant General Secretary Declan Glynn believes informal procedures cause stress.

INTO procedures

The Irish National Teachers' Organization procedures for informal resolution or mediation was supported by an agreement that there would be a panel of 20 mediators acceptable to both parties. Most were teachers and they were provided with 20 hours accredited mediation training. Deirdre reported that there was a good deal of success with mediators resolving complaints. The cost of the mediation was shared between INTO and the managing boards.

How may this help us?

Under the NSW Department of Education's grievance procedures in the 1980s a staff member in a school would volunteer to become a harassment officer. They were given no support and little or no training. It was very difficult for the complainant and the harassment officer when the complaint was about a supervisor.

Under the Teachers Union Ireland model there is specific training, release time and the resolution facilitator is outside the school or college. This is helpful in demonstrating independence and prevents the resolution facilitator being perceived to take sides or be bullied.

Alternatively, having agreed independent accredited or trained mediators rather than school education directors or departmental officers may assist in informal resolution of complaints. Mediation should only occur on a voluntary basis, if it is not possible, then there should be an investigation.

Formal complaints procedures

DET's procedures

DET's *Complaints Handling Policy Guidelines* set out two formal procedures: negotiation and investigation.

Complaints of workplace bullying are dealt with through the process of negotiation. The negotiation process is used for all complaints which are not protected disclosures, criminal conduct, corrupt conduct, child protection allegations or complaints that individuals have committed a serious breach of legislation, policy, procedure or contract.

There is no definition of what constitutes a serious breach.

Some members are given the impression, or in some cases have been told, their complaints will be investigated but generally the negotiation process is used.

DET describes the negotiation process as "developing a solution or agreement through discussion or correspondence with another person or persons" which is facilitated by a "delegate". This can be a school education director.

If agreement cannot be reached or either party refuses to negotiate then the delegate responsible for conducting the negotiation must make a decision. He or she may uphold the complaint and implement specific action or "determine both parties are at fault and implement action to address the behaviour of both parties". Many members are unaware that they have a right to seek a review of the decision by a more senior person in DET.

A flawed process

This procedure does not allow an investigation by the delegate as to whether bullying took place. He or she can only consider the complaint, the response and perhaps any material either the complainant or respondent can provide to support their case.

Essentially this is a situation of one person's word against another.

The negotiator attempts to force mediation between the parties. If a person doesn't agree to negotiate, then a decision is made. If a review of the decision is sought, there is still no investigation of the complaint of bullying.

Without an investigation, it will be very difficult to uphold a complaint unless the alleged bully has admitted his/her behaviour. This means that generally both parties will be deemed to be "at fault" without considering any evidence that this is the case.

Members have reported that they have accepted negotiated outcomes, even though they believe they are inadequate or unfair because they are exhausted and stressed by the process.

DET's guidelines specifically exclude the possibility of the complainant determining how his or her complaint should be managed. This means even if a teacher requests investigation it won't happen.

Formal procedures in the UK

NUT Regional Secretary Roger King provided a copy of the formal procedures used by the Local Education Authority in Birmingham. The procedures distinguished between complaints of bullying between staff at the same level and complaints concerning the head teacher (equivalent to our principals).

Complaints between teachers and between teachers and their immediate supervisor were dealt with by the head teacher. If a formal complaint is made and it cannot be resolved informally then it has to be investigated by the head teacher or his/her delegate.

If either party wishes to appeal the decision, it is referred to the governing body or management board of the school. These boards usually have community representation.

A formal process is conducted which allows the person making the complaint to state their case and question both the head teacher and the person responding to the complaint. The head teacher presents the reasons for his/her decision and may question the other parties. The person responding to the complaint also makes their case and can question others.

The Birmingham City Council policy creates specific procedures relating to head teachers. The procedure for the head teacher to make a complaint of harassment is formal. If it is about a governor or a teacher the complaint will be investigated. The investigation and appeal procedures are the same as for other staff:

"An employee wishing to make a formal complaint against a head teacher should put it in writing to the chair of governors. However, if an employee is reluctant to complain to the chair of governors about the head teacher, he or she may take the complaint in confidence directly to a Schools Support Manager, but before doing so is recommended to seek advice from his or her trade union or professional association. The Schools Support Manager will interview the complainant with a view to assessing whether the complaint merits further investigation before advising the complainant that no steps can be taken without naming him or her. The chair of governors will refer a formal complaint about the head teacher to an appropriate Schools Support Manager who will arrange for the matter to be investigated."

This procedure specifically notes that the power imbalance may make a teacher reluctant to complain. There can be no formal investigation without a complaint as this does not afford procedural fairness to the alleged harasser.

The investigation procedures are exactly the same except that the chair of the governing board commissions an investigation.

NUT Regional Secretary (Leeds) Tim Hale described his experience of a similar process where nine complaints had been made against a principal. Tim assisted each member by taking nine statements about what he considered was "appalling behaviour" by the head teacher. In Tim's view the investigating officer from the Local Education Authority had accepted what the head teacher said and the governing board did the same. The complaints were dismissed.

Roger had negotiated an additional step in the complaints procedure to include an independent review body consisting of a union nominee and a nominee of the Local Education Authority.

The role of the independent review body is to consider the basis of the person making the appeals case to determine whether there is "a valid claim that the investigation was flawed, whether new evidence has emerged, or if the conclusions reached were perverse". The independent review body may determine there is no basis for a review, it may interview the investigator and others, or conduct a new investigation.

The independent review body has no power to impose disciplinary sanctions but it can make recommendations to the Local Education Authority or governing body.

Roger said that the independent review body process was a definite improvement on the direct appeal to the governing body. However, nominees on the independent review body are not necessarily released from other duties, which slows down the process. The final outcomes of this complaints process are:
1. to take no further action
2. to acknowledge the gap between the perceptions of each party and re-affirm the school or governing boards expectations
3. institute disciplinary proceedings.

A different approach

UNISON Regional Women's Officer Linda Durrant provided me with many resources. Our discussion focussed on investigation. Linda said that UNISON had negotiated an agreement with some employers in terms of dealing with complaints. The agreement requires that any person conducting an investigation is trained and that UNISON conducts the training. The investigators are not from the same department as the person making the complaint.

Linda devised a training course which covers planning an investigation, procedural fairness, taking evidence and preparing a report. The participants are required to put theory into practice by conducting an investigation of a complaint scenario. The final investigation reports are considered by a union representative and an employer representative who provide feedback.

UNISON Regional Women's Officer Linda Durrant devised a training course which covers planning an investigation, procedural fairness, taking evidence and preparing a report.

INTO formal complaints procedures

The formal complaints procedures for the Irish National Teachers' Organization requires that with any complaint there be an attempt at informally dealing with the complaint first. This can include mediation. If the mediation fails then an investigation is carried out by the principal, or if the complaint is against the principal, by the board of management.

This contrasts with DET's complaints procedure which requires a decision to be made (usually by the school education director) after the negotiation, without conducting an investigation.

The INTO investigation procedure requires that the investigator:
"•obtain background details, including what occurred at the previous stage;
"•consider the pattern of the behaviour and the timescale;
"•hear the parties and seek to resolve the matter."
Including a specific reference to the pattern of behaviour and the timescale is important because it recognises that bullying is repeated behaviour.

In many complaints it seems that DET deals with each individual issue rather than looking at the impact of the repeated behaviours. A focus on individual incidents in isolation can suggest that the complaint may be over a trivial matter rather than considering the cumulative impact of a range of bullying behaviours.

INTO Senior Legal Officer Deirdre O'Connor said that one of the problems with formal investigations is that the board of management is made up of volunteer community members and in religious schools is made up of community members and religious orders. They are not trained in investigation procedures and have usually chosen the principal. This was also a problem pointed to in the United Kingdom.

Deirdre advised that in reviewing the procedures the INTO Senior Legal Officer was going to include a provision for investigations to be conducted by independent external investigators. She noted that this would not be possible in the majority of schools as the board of management would not have sufficient funds to pay for an investigator.

Formal procedures — Teachers Union Ireland

Teachers Union Ireland Assistant Secretary Declan Glynn said that the most recent review of their Code of Practice was a response to complaints from members about the inadequacy of the complaint procedure. The review report said members were concerned that there was a lack of objectivity, that there didn't seem to be a possibility of real redress and that almost all complaints were funnelled into an informal process of facilitation and mediation which was a cul de sac.

Declan said that the revised procedures now include a statement of words to the effect that whilst a complainant, or would-be complainant, is encouraged to consider informal means of resolving the complaints, there is a straightforward right to move directly to the formal procedure and an investigation. In particular, where the complaint is about a principal it goes straight to an investigation.

If the complaint is not against the principal it is investigated by the principal or his/her nominee.

The investigations of complaints about principals are carried out by an investigator chosen from a panel of 12 independent investigators chosen by joint agreement between the employer and Teachers Union Ireland. Generally the investigators are barristers who have worked in education. Declan said this has meant Teachers Union Ireland was completely satisfied with the independence of the investigator.

The decision of the investigator, either the principal or one of the panel, can be appealed to the Complaints Consideration Committee. This committee has three people, a nominee of management, a nominee of the relevant union and an independent chairperson agreed between management and union. If more than one union is involved each union nominates a person, except that there will be equal numbers of management and union nominees. The Complaints Consideration Committee considers the report of the investigation and all documentation. The documentation is provided to the person making the complaint and the person responding to the complaint. Each party is invited to formally present their appeal and/or response. The Complaints Consideration Committee will consider any new evidence and then make a decision. The Complaints Consideration Committee then conveys its findings to both parties.

The Complaints Consideration Committee does not have the power to impose disciplinary sanctions. It makes recommendations which are referred to management to implement. The recommendations may be that disciplinary action should be taken: "In this context, certain types of bullying/harassment (including e.g. bullying/harassment of a violent/abusive nature, false or malicious allegations of bullying/harassment, victimisation of complainants or intimidation of witnesses) will be

investigated and [may] become grounds for disciplinary action." (*Code of Practice for Dealing with Complaints of Bullying and Harassment in VEC Workplaces*)

Counter complaints are dealt with as a separate procedure.

If a member wishes to appeal against any decision following these internal processes there is a right of appeal to an independent third party. Declan advised that the Labour Relations Commission would consider these appeals. At that time no one had referred an appeal to the Labour Relations Commission. In Declan's view this is a significant improvement because the employer has a vested interest in safeguarding liability and safeguarding particular persons which can impact on the willingness to take disciplinary action.

He said another new element of the procedure was that any employee in any category of employment could make a complaint against the entire pinnacle of the organisation up to and including the chief executive officer, so nobody was immune from being complained of and nobody had a means of evading external independent and professional analysis of a complaint.

Conclusion and recommendations

Defining workplace bullying

Federation has endorsed the definition of workplace bullying in the *Dignity & Respect in the Workplace Charter*. The union has provided some training about the charter and DET's *Prevention of Bullying in the Workplace Policy* to schools and Associations.

However, it is DET's responsibility as an employer to meet its obligations under the Occupational Health and Safety Act to provide information, training and support so that our members in all workplaces have the opportunity to discuss workplace bullying, and understand the policy definitions by using real life scenarios as suggested by the researchers Rayner and McIvor.

Discussing acceptable and unacceptable behaviours will commence a process of awareness-raising and help in identifying the risk of workplace bullying.

Federation should continue to pursue DET to meet its obligations in this area, in negotiations and by supporting members to demand appropriate training.

Identifying the risk of workplace bullying

It is DET's responsibility to identify the risks of workplace bullying.

Federation can assist members to put pressure on DET to take action by developing surveys based on the UNISON model to identify risks in particular workplaces.

System-wide surveys such as those used by the Irish National Teachers' Organization and Association of Secondary Teachers Ireland point to the nature and extent of workplace bullying. Federation is investigating commissioning independent research which the union can use to assist it in its demands on DET to take more effective action to control workplace bullying.

It is important in identifying the risks of bullying to consider the organisational culture of DET and the demands placed on schools by DET, politicians, media and the community.

Managing organisational risks

The Management Standards approach by the Health and Safety Executive and the training materials and resources of the British National Union of Teachers on workload and stress will assist Federation in developing its own approach to confronting organisational stressors.

Federation should use these resources as a model for developing similar materials relevant to our own system.

The Management Standards approach should be considered by WorkCover and DET in terms of promoting leadership styles which are supportive and responsive. This has the potential to reduce stress and bullying. Federation should continue to meet with other unions and WorkCover to seek a more proactive approach by WorkCover in dealing with psychological hazards.

Managing risks posed by workplace bullying

The role of the regulator

The Irish Government has identified workplace bullying as a hazard. The Code of Practice underpinning their Safety, Health and Welfare at Work Act 2005 provides a model for employers to adopt in terms of a framework for informal and formal resolution of complaints. This is supported by the Health and Safety Authority having an inspector responsible for dealing with complaints of bullying as well as promoting positive workplaces through their "well being" initiatives.

Federation should use this model in its dealings with WorkCover to demonstrate that it can adopt an approach which is more interventionist in dealing with complaints of bullying.

Positive workplaces

DET's *Code of Conduct* was imposed on teachers. The Irish National Teachers' Organization's strategy of developing "recommended good practice" in terms of communication, decision making, mutual respect and resolving conflict which is endorsed by management is more empowering for teachers because it is "owned" by them.

Schools and colleges should be encouraged to consider statements such as these strategies to prevent workplace bullying. The Management Standards can also assist in this process.

Informal procedures

The Irish National Teachers' Organization and Teachers Union Ireland have effectively used mediation to informally resolve complaints of workplace bullying. They reported that having independent mediators assisted members to develop confidence in the process. None of the procedures looked at in England or Ireland forced members to mediate. If mediation

failed or the members were unwilling to mediate an investigation was conducted.

DET's negotiation procedure, in my view, attempts to force mediation. If members are unwilling to mediate, or agreement cannot be reached on a way forward, DET requires a decision to be made without a proper investigation.

In my experience making a decision based on limited information and then requiring one or both parties to comply with directions is not only unfair but does little to resolve the conflict and re-establish working relationships.

Federation should encourage the use of trained and independent mediators, where individuals are prepared to mediate. There should be separation between mediation and investigation so that any decision is based on all the facts, not just the complaint and response.

Formal investigation procedures

Procedures which required principals and/or boards of management to investigate complaints with no training or support were not effective.

UNISON's model of seeking agreement from the employer on a training package for investigators and a requirement that the investigators are not working in the same department may be a strategy that could be used.

The cases where a complaint is made against a principal or workplace manager in the Teachers Union Ireland model provides for an independent barrister agreed by employer and the union. This creates confidence in the process, and shows that such complaints will be treated fairly.

Federation should pursue changes to the DET *Complaints Handling Policy Guidelines* to allow complaints of workplace bullying to be investigated at the request of either the person complaining or responding to the complaint.

The investigation procedure should by carried out by properly trained and independent investigators.

The investigator should be able to recommend disciplinary action against either party or else remedial action to assist both parties. The employer should be responsible for implementing the recommendations through established disciplinary or other procedures.

These procedures must include appropriate appeal mechanisms.

Federation should continue to pursue a Code of Practice in relation to workplace bullying from WorkCover which recommends specific procedures for formal investigation, appeals and timely resolution of complaints.

Putting it all together

McIvor and Rayner's conclusion to their report *Beat bullying in the workplace* sums up a risk management approach to workplace bullying:

"Successful initiatives need commitment both from the top of an organisation and the wider workforce. Unless the leadership demonstrates zero tolerance to bullying and harassment, it is unlikely that managers and employees will consider the issue to be important.

"Policies alone will not secure a harassment-free working environment. Employees need to be involved in creating and implementing initiatives, which lead to ownership both of the problem and their part in the solution.

"For effective individual support, there has to be awareness raising and training to enable employees to recognise bullying and harassment behaviour in themselves and others.

"Zero tolerance is a straightforward approach with the expectation of civil behaviour consistently applying across the organisation.

"No one, whatever their status, would be free from censure if they failed to treat others with dignity and respect. In other words tackling bullying and harassment in the workplace requires a partnership based on trust and a culture that values the individual."

It is unfortunate that DET has thus far failed to accept the concept of working together with Federation to develop agreed procedures for preventing and responding to workplace bullying.

Imposing policy and procedures with only limited consultation with Federation is a major factor in what I believe is the DET's failure to prevent and effectively respond to workplace bullying. I hope that showing how other employers and unions have worked together to develop agreed policies and procedures which work will help Federation in its endeavours.

Acknowledgements

Bullying

Making the employer manage the risks