

Courts take the bullying by the horns

Two important legal victories should serve to make employers more vigilant about allowing a culture of cruelty to develop, writes Nikki Tait

Bullying is back in the spotlight – from the offices of a large international bank to a leading London hospital.

Two events over the past month have underlined the enduring problem of overly aggressive workplace behaviour, and the risks this poses to employers and staff alike.

The first was last week's eye-catching legal victory by Helen Green – a former company secretary who had brought a personal injury claim against Deutsche Bank, after persistent bullying by co-workers drove her to two nervous breakdowns.

A High Court judge found that line managers at the bank's London offices either knew or should have known what was going on, and that there was "culpable want of care" by the human resources department.

Ms Green, whose salary when she stopped working at Deutsche Bank was £45,000, was awarded more than £800,000 – mainly to compensate her for the loss of a City career. Add in legal costs run up during the case and Deutsche's final bill – assuming the judge's decision withstands any appeal – could be nearer £1.5m.

But that result comes only weeks after another significant bullying case, which garnered fewer headlines yet could have a more pervasive effect. William Majrowski, a former clinical auditor coordinator at Guy's and St Thomas' NHS Trust, had claimed to be intimidated by his manager. The treatment,

he suggested, was fuelled by the fact that he was gay.

Unlike Ms Green, Mr Majrowski did not sue for negligence or breach of contract. He brought a claim against the hospital under the 1997 Protection against Harassment Act, which was originally designed as an anti-stalking law.

Application of anti-harassment law to an employment situation was contentious. But last month, the House of Lords ruled that employers could be held vicariously liable for any harassment caused by workers in the course of their employment.

In short, a new legal front opened up in bullying cases.

These two events have left lawyers and victims alike warning that this is an issue on which employers need to focus – and some, at least, seem to be heeding that advice.

"This is a claim that people are going to threaten to bring," says Andrew Chamberlain, partner at Addleshaw Goddard, noting that three inquiries from anxious employers have just landed on his desk.

Quite how pervasive workplace bullying is remains debatable. Anthony Thompson, head of employment policy at the CBI employers' body, has suggested it is a problem but not endemic.

"Official figures indicate fewer than 4 per cent of employees have experienced bullying at work in the past two years," he says, pointing to the Department of Trade and Industry's recent Fair

Treatment at Work survey.

That, though, does mean almost 1m people. Moreover, the research shows a significant difference between men and women: over two years, 4.9 per cent of women, compared with 2.8 per cent of men, had experienced bullying, and among disabled women the rate was 14.4 per cent. Some private surveys, meanwhile, have suggested that overall figures are higher still, with many incidents going unreported.

What is more generally agreed is that employee bullying tends to be related to the broader workplace environment. Ms Green, for example, has little doubt that this is why the amply witnessed situation at Deutsche Bank was allowed to arise and then continue.

"Within such a large organisation you're going to get pockets that are unhealthy," she says, suggesting that the onus is then on the employer – or its

senior managers – to stamp out unwanted behaviour. Failure to do so in her case, she suggests, reflected the hard-charging, internal atmosphere: "It's the culture, it's just driven by cost-benefit analysis."

Ronnie Fox, at Fox Solicitors, agrees that the first step for any organisation is to establish a set of underlying values. "If those become part of the culture, every employee can use them as a reference point," he says.

But he acknowledges that certain sectors are particularly susceptible to workplace bullying – including the City. "The financial services sector has a big problem because it's intensely competitive," he observes.

Others, meanwhile, caution that having well-meaning policies on paper is unlikely to suffice. "Prevention is the only cure. Employers cannot simply pay lip service to the anti-harassment policies which are widely adopted. They need to take positive steps to eradicate the culture of bullying which is still prevalent in many organisations," says Nick Hanning, from Reynolds Williams, who handled Mr Majrowski's case.

Many lawyers, though, point out that Ms Green's case was unusual. In bringing a personal injury-type claim, she had to establish that her psychiatric illness was brought on by the bullying, and also that there was a "foreseeable risk" that this would be the case. Critically,

she had told Deutsche Bank that she had suffered depression relatively recently and so, as the judge put it, was "more vulnerable than the population at large".

Susan Gordon, partner at Nabarro Nathanson, points to the lengthy checklist on liability spelt out in a 2002 appeal court ruling on stress-related cases. "Following that decision, the bar for employees bringing these sorts of claims has been pretty high," she says. "Claims like Helen's are hard to prove," agrees Tony Morton-Hooper, her solicitor at Mishcon de Reya.

But some lawyers think that claims brought under the Protection against Harassment Act – which was invoked but not needed in Ms Green's case – could now become more frequent. They point out that under this legislation it is not necessary for the victim of the harassment to prove they have suffered an injury – although such claims will have to be pursued through the courts rather than employment tribunals, so costs may still be a deterrent.

Ask Ms Green if she worries that the scale of her award may have opened the floodgates to less worthy claims, and she points to the Majrowski decision. Lord Nicholls, she notes, was very clear that the possibility of abuse was no reason for denying rights to genuine victims. She adds: "I think it's a misconception that people will try and freeload – the trauma is considerable."



Helen Green: bullied by Deutsche Bank colleagues

Daniel Lynch