Regulating for negative human interaction: an evaluation of anti-bullying regulation(s)

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Introduction

• Various labels:

• Interest reflecting magnitude and negative effects of problem
  – Costs to individuals, organisations and society (Hoel, Sparks and Cooper, 2002)

• Development reflected in the legal arena
  – new legislation/regulation
  – adjustment of H & S legislation
  – applying existing legislation
Structure of paper

• The problem
• Regulatory response in Sweden:
  – An assessment of its effectiveness
• Challenges for regulation
• Limitations of regulation requires a holistic response: combining regulatory development with actions in the workplace, including responding to complaints at a local level
Key defining characteristics

- Negative unwanted behaviour
  - Primarily psychological
  - Active and passive
  - From severe to rather trivial/common acts
- Persistency
- Duration
- Imbalance of power
- Downwards, horizontal, (upwards, outsiders)
- Subjective versus objective
Factors undermining victims’ opportunity for a fair hearing - 1/2

• Encounters in private spaces

• Patterned acts explained as isolated events

• Events cannot be understood in isolation

• Perpetrators acting differently to others
Factors undermining victims’ opportunity for a fair hearing - 2/2

• The powerful/irreplaceable likely to be believed

• Hurt and unstable victims receiving little sympathy

• When bullying is rational to achieve managerial objectives/control – managerial loyalties could/will impact on outcomes
Regulating against bullying: the case of the Sweden

- Ordinance ‘Victimization at Work’ – (AFS 1993:17)
- “This ordinance has language to prevent workplace bullying, protect employees, that tries to address bullying, compensate targets/victims, and penalizes bullies and employers who permit transgression” (Vega & Comer, 2005, p.105)

- Six brief paragraphs (scope and definition, general provisions, routines) plus guidelines

- Bullying in Sweden predominantly horizontal
Assessing the effectiveness of regulation: overall evaluation

• **Strengths**
  – Raising awareness
  – Creating openness

• **Weaknesses**
  – Given rise to false expectations
  – Any violation interpreted as victimisation
  – Lacking sanctions
  – Failed to provide justice and redress

• **Influence of contextual factors**
  – Economic crisis & cuts influencing priorities
  – Balance of power changing in favour of employers
Shortcomings of Swedish approach (Hoel & Einarsen, 2009) – 1/3

• Labour inspectorate
  – Unprepared, lacking competences
  – Roles not clarified
  – Individualising the problem
Shortcomings of Swedish approach (Hoel & Einarsen, 2009) – 2/3

• Employers

  – Not engaging with regulation

  – Sceptical to regulation – ‘not their problem’

  – “It’s like legislating that we should be nice to each other”

  – Cost implications do not focus the mind -
Shortcomings of Swedish approach (Hoel & Einarsen, 2009) – 3/3

• Trade Unions
  – Central – local divide
  – Too little – or too much involved
  – Taking the side of the many against the few
Targets’ opportunity for justice and redress

- Local settlement requires resignation
- Near impossible to get compensation from National Insurance
- Litigation not seen as a viable option
- Rehabilitation linked to place of victimisation – “catch 22”
Some challenges for regulation

• Regulation
  – Clarification of definition and scope
  – Too narrow or too wide

• Enforcement
  – Responding to individual cases? Too little, too late?
  – Treating it as any other organisational hazard?
  – Development of intervention methodologies to support employer action
  – Ensuring employer compliance?
Litigation versus local investigation

- Is litigation worth the costs?
- Local hearing - lower profile
- Lower standard of proof required
  - probability versus ‘beyond reasonable doubt’
- Fully or partially supporting complaint
- Appropriate response and sanctions
- Vehicle for organisational change
- Investigation representing catharsis
An holistic approach: combining regulatory development with local framework for prevention, conflict resolution and redress

- Regulation provides legitimacy

- Organisational response: prevention and intervention (including dispute resolution)

- Development of polices and procedures through broad involvement (role of trade unions)

- Transparent local investigation routines
  - Natural justice, impartiality, non-recrimination
Conclusions

• The case of Sweden demonstrates that negative human interaction at work in the form of bullying is hard, but not impossible to regulate

• Too early to establish which regulatory approach most effective – also national variations.

• Need to be combined with local action aimed at prevention and intervention

• Opportunity for complaint and fair hearings an alternative to litigation with at less costs to everyone involved