

PROFORMA FOR THIRD PARTY HARASSMENT CONSULTATION RESPONSES

The consultation closes on 07 August 2012. Please let us have your response by that date.

When responding, it would be helpful if you could provide the following information.

Please fill in your name and address, or that of your organisation if relevant. You may withhold this information if you wish, but we will be unable to add your details to our database for future consultation exercises.

Contact details:

Please supply details of who has completed this response.

Response completed by (name):	Philip Bundy, Samantha Lawrence and Kelvin Scorer
Position in organisation (if appropriate):	Employment Advisers
Name of organisation (if appropriate):	Local Government Association
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Contact e-mail address:	eru@local.gov.uk
Date:	7 August 2012

Consultation confidentiality information

The information you send us may be passed to colleagues within the Home Office, the government or related agencies.

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, among other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances.

I would like my response to remain confidential (please tick if appropriate):

Please say why

An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

You or your organisation

Q(i) In what capacity are you responding?

As an individual (if so, please go to Q1 in the main comments section)

On behalf of an organisation (if so, please go to Q(ii) below)

x

Other (please specify)

This response is submitted by the Workforce Team of the Local Government Association (the LGA). The LGA's role is to support, promote and improve local government and to speak with one voice on behalf of local government. The LGA covers every part of England and Wales and includes county and district councils, metropolitan and unitary councils, London boroughs, Welsh unitary councils, fire, police, national park and passenger transport authorities. The Workforce Team of the LGA offers advice on employment issues and represents local government employer interests to central government, government agencies, trades unions and European institutions.

As many of the questions in this consultation concern individual employers' and therefore individual authorities' experiences of third-party harassment claims, we have not commented on many of the questions. We have also not answered the questions on the impact assessment. However, the LGA has sought comments from authorities on the questions which we have answered in this form.

Q(ii) Is your organisation
(please tick the box that applies to your organisation)

A local authority (including health authority) or local authority organisation

An equality lobby group or body

A statutory body

An organisation representing employers

A professional organisation

A trade union or staff association

A legal organisation

Other (please tick box and specify)

Q(iii) If responding as an employer, how many people do you employ? (select one)

Between 1 and 5 employees

Between 6 and 14 employees

Between 15 and 49 employees

Between 50 and 249 employees

250 employees or more

Q(iv) **If responding as an employer please indicate which sector best describes you (select one):**

Legal services

Construction and/or building design

Communications

Wholesale and retail trade

Leisure – hotels, restaurants, pubs

Leisure – cinemas, theatres, museums

Leisure – other

Distribution/transport

Financial and/or business services

Electricity, gas and water supply

Advice and/or information services

Public administration

Education/training

Health and social work

Charity/voluntary work

Other (please tick box and specify)

Note:

In addition to the completed proforma, you can also send other supporting information if you so wish.

Completed forms should be e-mailed to the following address:-

thirdpartyharassment@geo.gsi.gov.uk

If you are posting the form please send to:-

Third Party Harassment Consultation Responses
Government Equalities Office
Equality Law and Better Regulation Unit
Home Office
3rd Floor Fry, North East Quarter
2 Marsham Street
London SW1P 4DF

Thank you for completing this response form.

Section A: What are your experiences of third party harassment¹

Question 1a: (Question for employees)

Have you experienced conduct that you consider would count as third party harassment at work?

Yes

No

Don't know

Prefer not to say

If you have ticked yes, it would be helpful to understand more about what form of conduct you experienced. Please use the space below to provide further details and go to Question 1b

¹ See Annex 1 for the definition of 'third party harassment' in the 2010 Act

Question 1b: (Question for employees)

You have stated that you have experienced conduct that you consider would count as third party harassment at work. Did you go on to make a claim to an employment tribunal against your employer?

Yes

No

Prefer not to say

If yes, if you are happy to do so, please use the space below to outline what happened to your claim once you lodged it with the employment tribunal

If no, if you are happy to do so, please use the space below to outline your reason for deciding not to bring a claim against your employer

Question 2: (Question for employers)

Has an employee ever made a claim against you because they said they had experienced conduct which would count as third party harassment at work?

Yes

No

Prefer not to say

If yes, if you are happy to do so, please say what happened with the claim

LGA comment: we have not answered this question as the LGA do not get involved in individual claims against authorities.

**Question 3a: (Question for those advising or acting for employers)
Have you ever advised or acted for an employer who has had an allegation of
third party harassment brought against it?**

Yes

No

Prefer not to say

If yes, if you are happy to do so, please give details

LGA comment: we have not answered this question as the LGA do not get involved in individual claims against authorities.

Question 3b: (Question for those advising or acting for employees)

Have you ever advised or acted for someone claiming to have been the subject of conduct which would count as third party harassment?

Yes

No

Prefer not to say

If yes, if you are happy to do so, please give details

LGA comment: we have not answered this question as the LGA do not get involved in individual claims against authorities.

Section B: What might be the impact of repealing this provision? (for all respondents)

Question 4: Do you agree or disagree that the third party harassment provision should be repealed?

Agree x

Disagree

Neither agree nor disagree

Don't know

Please use the space below to explain your answer

Local authorities have not expressed to us any opposition to the repeal of the provision, therefore, on balance the LGA agrees that it should be repealed.

We anticipate that local authorities have not objected to the repeal because they will for some time have had procedures in place to ensure that employees working with third parties are able to raise harassment issues with the employer, thereby allowing the employer to take the appropriate steps to prevent any repeated harassment. Those procedures cover treatment related to any of the protected characteristics. Accordingly we anticipate that most local authority employers consider the provision in the Equality Act 2010 as being unnecessary.

Question 5: If this provision were removed, is there any other action that the Government should take to address third party harassment at work?

Yes

No

Don't know

Please use the space below to provide further details

Third-party harassment, like any form of harassment, remains unacceptable and, therefore, should the Government remove one strand of potential litigation, Government guidance to the Equality Act 2010 should ensure that it highlights how an employer (and the harasser) may still be liable for the acts of third parties other than under the Equality Act (e.g. under the Protection from Harassment Act 1997, health and safety provisions and constructive dismissal claims), signposting further guidance where appropriate. In particular, the Government should publicise the guidance produced jointly by PPE (now CEEP UK), the CBI, the TUC, the HSE and BIS (available on the HSE website), ['Preventing Workplace Harassment and Violence'](#), which implemented the European social partner agreement, the aims of which should still be recognised as important in today's workplace. This provides practical guidance for all employers to tackle third-party harassment.

Question 6a: Do you think that there are further costs and benefits to repealing the third party harassment provision which have not already been included in the impact assessment?

Yes, I think there are further costs to include

Yes, I think there are further benefits to include

No, I think all costs and benefits have been included

Don't know

If yes to further costs, please use the space below to provide detail

If yes to further benefits, please use the space below to provide detail

Question 6b: Please use the space below to provide any comments you have on the assumptions, approach or estimates we have used

Please use the space below to provide detail

Question 7: How many third party harassment cases would you expect to be brought each year if the third party harassment provisions were retained?

Number of cases

Please use the space below to explain your answer

Question 8: Does the consideration of the impact on equality in the impact assessment properly assess the implications for people with each of the protected characteristics?

Yes

No

If no, please use the space below to explain your answer

Question 9: Does the Justice Impact Test in the impact assessment properly assess the implications for the justice system?

Yes

No

If no, please use the space below to explain your answer

Thank you for completing this response form.

Responses will be used to help the Government assess your views on its proposal to repeal the employer liability for third party harassment of their employees provision – section 40(2)-(4) of the Equality Act 2010.