

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): | Katy Jeffery |
| Position in organisation (if appropriate): | Policy Officer |
| Name of organisation (if appropriate): | Chesterfield Borough Council |
| Address: | Chesterfield Borough Council Town Hall Chesterfield S40 1LP |
| Contact phone number: | 01246 345247 |
| Contact e-mail address: | katy.jeffery@chesterfield.gov.uk |
| Date: | 01/06/12 |

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)

Other (please specify)

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 We have no recent record of this occurring, although we have regular (between 3 and 6 per quarter) occurrences of customers displaying aggressive or threatening behaviour towards employees.

Prefer not to say

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

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

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

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
- Disagree
- Neither agree nor disagree
- Don't know

Please use the space below to explain your answer

We feel that the current arrangements within the Equality Act offer clarity and have harmonised equality law. Should this provision be removed, the alternative existing legislative arrangements do not seem to offer the same protection from third party harassment. There is also a concern that the alternative provisions are confusing and therefore may make it more difficult for an employee to challenge third party harassment. This seems to be contrary to the aim of the Equality Act of harmonising the various pieces of legislation.

There is also concern regarding the cost implications of familiarisation with another change to the legislation, having only recently implemented the Equality Act.

Although there seem to be limited examples of the third party harassment provision being used formally, we do not consider this to be an indication that the provision is not fit for purpose. There is still a practical use for the provision in that it safeguards employees against third party harassment, and should provide the necessary motivation for employers to tackle harassment to ensure that it does not reach a stage where a case is brought against them.

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

If the provision is removed, employers and employees will need to be made aware of the alternative provisions within the existing legislation that offer some level of protection from third party harassment. We feel that employers should be encouraged to protect their employees from third party harassment and should take steps to prevent this from occurring. It does not seem appropriate that an employee should have to claim constructive dismissal in order to gain redress from 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

We are concerned that the data used to analyse the costs and benefits associated with third party harassment are not robust enough to warrant repealing this legislation. Wider considerations including the costs to employers of settling constructive dismissal cases etc and the potential for higher turnover of staff have not been considered.

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

Further consultation is needed with tribunals etc. before decisions regarding the repeal of this legislation should even be considered.

There is not sufficient data to accurately judge the financial impact of this legislation as it has been in place for such a short period of time. It would be our preference to have a review of the legislation in 2015 when case law will have been developed and more accurate information available regarding its impact on both employers and employees.

We also have concerns that the rights within the Equality Act 2010 and in particular third party harassment have not been communicated effectively by the Government to employers and employees. Many employees particularly in the private sector may be unaware of the rights they have and the protection from harassment they should receive.

The financial assessment of repealing this legislation is extremely complicated using relatively advanced statistical analysis. It would be interesting to know how much this analysis cost to produce – it could be more than the repeal of this legislation is expected to save.

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

0

Please use the space below to explain your answer

As an employer, we would strive to protect an employee from harassment, so that it would not get to this stage, and we have policies and procedures in place to this effect. We actively encourage our employees to report any harassment, we monitor any incidences of harassment and take action to protect our employees where necessary.

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

We are concerned about the complexity of the impact assessment. This use of complicated statistical formulas and the mixture of impact assessments rather than a separate people focused equality impact assessment makes it very difficult to work out what the true equality impact is.

The impact assessments are quite vague about the information on which the statistics are based on. There is also some key information missing for instance the impact assessment does not consider the impact of settled cases.

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

We cannot make a judgement on the information available. The legislation has not been allowed the time to truly assess the justice impact.

It may also be useful to provide a plain English guide to the Justice Impact Test to enable consultees to make an informed judgement on what we are being asked to consider.

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.