



Third Party Harassment response

Equality Law and Better Regulation Unit

Government Equality Office

3<sup>rd</sup> Floor – North East Quarter

2 Marsham Street

London SW1P 4DF

Email: [thirdpartyharassment@geo.gsi.gov.uk](mailto:thirdpartyharassment@geo.gsi.gov.uk)

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**UCU RESPONSE TO THE GOVERNMENT CONSULTATION ON ‘THE EQUALITY ACT – EMPLOYER LIABILITY FOR HARASSMENT OF EMPLOYEES BY THIRD PARTIES’.**

This response is on behalf of the UCU. UCU represents academic and related staff working in post-16 education in the UK. UCU:

- represents over 120,000 academic and academic related staff in further and higher education
- has a membership in further and higher education which includes professors, researchers, lecturers, tutors and academic related staff, librarians and IT professionals.
- UCU has 1400 members who are prison educators

We have experience of representing members who have been discriminated in the workplace.

**Consultation questions**

## Section A

### Questions for those advising or acting for employers/employees

#### Question 3: Have you ever advised or acted for

- a) **An employer who has had allegation of third party harassment claim brought against it; or**
- b) **An employee claiming to have been the subject of conduct which would count as third party harassment**

UCU members have jobs which involve direct contact with the public including students and do experience third party harassment.

As the provision is so new, we cannot provide examples of cases and the requirement for harassment to have occurred three or more times reduces the use of this provision. The Government must also recognise that a UCU member needs to have confidence that the employer will respond appropriately and so may not report harassment. This provision is helping towards creating a culture of disclosing harassment which makes work places safe for all workers. To repeal this provision now does not give enough time to appreciate the wider positive affects this will have on workplace wellbeing.

Our members have also reported discrimination through student surveys and evaluations which can relate to their protected characteristic. The following were received through student evaluations:

- Can you show me your chest hair to compensate for your bald head? He combs his moustache but not his hair. World is at peace when you stop talking.
- Comments about my anatomy particularly "tits and arse" quoted from evaluation forms.
- Cartoon images, references to teeth and fat cheeks etc.
- Requests for sexier lecturers.
- The boring women is crap get rid of her
- The lecturer should not be used until she possibly improves her teaching and communicating skills and possibly her English. The lecturer has no authority in lecturing; getting rid of the lecturer...

Comments on personality and appearance are particularly represented. While they may seem less problematic at first sight, such comments potentially cover prejudice that relate to race, class, gender, disability and sexual orientation.

In November 2008 4,000 UCU members, employed in post-16 education in the UK, including adult, further, higher and prison education (AE, FE, HE and PE respectively), and selected at random from the UCU membership database, were sent an email asking them to respond to an online questionnaire about negative behaviour at work. The questionnaire included the Negative Acts Questionnaire<sup>1</sup>. 679 UCU members responded, on a self-selecting basis, giving a 17%, or one in six, response rate. The UCU sample was representative of the FE teacher and HE teaching-and-research academic staff populations as a whole, but under-representative of the proportions in the FE and HE sectors who were employed on part-time and/or fixed-term contracts

- ❖ 23% of respondents in further education said that over the preceding six months, they had at least 'now and then' received derogatory, personal comments on student course-evaluation forms, compared with 26% of respondents in higher education.
- ❖ 2% of respondents in further education, and 5% in higher education, said that over the preceding six months, they were aware 'now and then' of personally derogatory comments about them on student websites.
- ❖ 3% of respondents in further education, and 13% in higher education, said that over the preceding six months they had received derogatory, offensive or bullying e-mail from students 'now and then'.
- ❖ 5% of respondents in further education, and 3% in higher education, said that over the preceding six months they had received intimidating e-mail from parents of students 'now and then'.
- ❖ 10% of respondents in further education said that over the preceding six months they had experienced violence or physical abuse 'now and then'

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<sup>1</sup> © Einarsen, Raknes, Matthiesen og Hellesøy, 1994; Hoel, 1999  
<http://www.uib.no/rq/bbrg/projects/naq>

and 2% said they had experienced violence or physical abuse monthly. 2% of respondents in higher education said that over the preceding six months they had experienced violence or physical abuse 'now and then'.

- ❖ Of those in further education that had experienced any form of bullying at work, 69% had not made an official complaint about it, and 31% had. Of that in higher education that had experienced any form of bullying at work, 77% had not made an official complaint about it, and 23% had.
  
- ❖ Of those in further education who reported any form of bullying from individuals employed by their institution, only 26% said the response of their institution to their complaints was fairly or very good; 52% said the response was bad or very bad. Of those in higher education who reported any form of bullying from individuals employed by their institution, only 15% said the response of their institution to their complaints was fairly or very good; 57% said the response was bad or very bad.

Among a wide range of studies assessing the objectivity of students' course evaluations an important number of pieces of work have underlined biases regarding teachers' personality (Clayson and Sheffet 2006), perceived beauty (Hamermesh and Parker, 2005) but also gender, ethnicity, skin colour, age or accent. Thus, several studies showed that in addition to same-gender preferences, women are often rated lower regarding their competence (Burns-Glover and Veith 1995; Benokraitis 1998; Baldwin and Blattner, 2003, p28; McPherson *et al.*, 2009, p44). Furthermore, students expect teachers to fit social stereotypes: female lecturers only receive equal evaluation than their male colleagues if they display a behaviour that is stereotypically feminine – caring, friendly and approachable (Bennett, 1982; Kierstead *et al.*, 1988; Basow, 2000). By contrast, 'Men, irrespective of personal qualities, were rated as more effective than women' (Kierstead *et al.*, 1988, p185).

Similarly, various studies find that ethnic minority lecturers obtain significantly lower ratings (Merritt, 2008; Smith, 2007; Hamermesh and Parker, 2005; DiPietro and Faye cited by Huston, 2005) and are perceived as less credible and intelligible than 'white' lecturers (Rubin and Hendrix cited by Huston, 2005).

Regarding language, ratings of lecturers' effectiveness are systematically lower for those whose first language is not English, all other things being equal (Finegan and Siegfried, 2000; Ogier, 2005). This lower rating is not attributable to less proficiency in English 'but instead, can be accounted for mostly by student perceptions of less class preparation, less enthusiasm for teaching, a less interactive teaching style, looser grading standards, and heavier reliance on multiple choice tests' (Finegan and Siegfried, 2000, p26). In other words, there is a form of discrimination, which also entails negative evaluation of foreigners and their ability to behave in accordance with norms and customs of the host country (Krahe *et al.*, 2005, p265).

So far most studies have been conducted in the United States; nevertheless a research conducted at the LSE underlines the impact of teaching mode combined with gender (Husbands 1996).

These actions are debilitating and impact on a person's mental health and well being. These actions can escalate and our members need the protection of the law to challenge such discrimination. Our members have struggled to get employers to address third party harassment and s.40 provided the legal requirement and certainty. The existence of S.40 means that employers now consider seriously the issue of third party harassment and will be more willing to take proactive steps in addressing this issue.

Employers are able to do this and the following guidance was issued by the Equality Challenge Unit which works with universities:

***Higher education institutions (HEIs) should seek to ensure that all staff are protected from harassment on campus. This includes harassment by other members of staff, agents, visitors and students.***

***HEIs should update their harassment policies in accordance to the new provision. Workers, visitors, clients, suppliers or customers who come into contact with the HEI should be made aware of the policy and that they are expected behave in line with it.***

***A revised policy could include:***

- ***Description of all the protected characteristics under the Equality Act 2010***

- ***Statement reflecting that harassment will not be tolerated, giving examples of acceptable and unacceptable behaviour***
- ***Explanation of the damaging effects of harassment***
- ***Process for how staff should make a complaint (informally as well as formally)***
- ***Description of support available***
- ***Description of training/other resources to spot and stop harassment***
- ***Description of how the policy will be implemented, reviewed and monitored***

***To help ensure that harassment policies are communicated to third parties, HEIs could:***

- ***In induction, inform staff and students of the harassment policy and their rights and responsibilities***
- ***Inform third party agents (e.g. a catering firm) of the harassment policy***
- ***Display signs about policies in public places***
- ***Give all visitors an outline of the policy (e.g. back of security badges)***
- ***Insert a condition in contracts requiring third parties (e.g. contractors) to comply with harassment policies***

UCU members are enthusiastic about their work and the student environment. Most students' behavior is fine but our members need support and protection when there are problems.

UCU welcomed the inclusion in the Equality Act for all protected characteristics and would prefer that the three strikes rule be repealed rather than the whole provision.

Section B what might be the impact of repealing this provision?

**Question 4: Do you agree or disagree that the third party harassment provision should be repealed? Please explain your answer:**

UCU strongly believes that this provision should not be repealed, it is workable and there is a real need for it to remain. The Government has asserted that the requirement asks employers to do something that is beyond their control but it requires employers to take steps that are 'reasonable and practicable'. This is simply demonstrated by many employers displaying posters or union

posters stating all forms of harassment are not tolerated within the workplace by any person. This will include students in our sector.

In the newly agreed joint agreement on guidance on equality in employment in further education colleges it states 'if an employee reports allegations of harassment by a third party, the College must investigate the allegation and take action where the allegation is upheld'. This is signed by the Association of Colleges as well as the trade unions ACM, ATL, GMB, UCU, UNISON and UNITE.

The one reported case (Blake versus Pushun Care Homes Ltd) 2011 EqLR 1293 shows there are steps employers can take to influence or control third parties behavior and that S.40 is workable. The alternative legal remedies that the Government suggests will protect workers will not be adequate and will not encourage employers to tackle third party harassment. For example, constructive dismissal is a very inadequate remedy as it requires a worker to resign from their job in order to get redress. The Protection of Harassment Act would require an individual to make a claim against the perpetrator and has never been used for third party harassment. Health and Safety legislation is not directly enforceable by the employee.

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

UCU would want the EHRC, Acas and HSE to provide guidance and good practice to cover legal liability for third party harassment. UCU would also want the education employers' organisations to be tasked with developing guidance and strategies in partnership with the trade unions to deal with third party harassment including students.

### **Assessment on the impact on justice**

**Question 6 A) can you provide further data or examples of costs and benefits which have not already been included in the impact assessment? B) Do you have any comments on the assumptions, approach or estimates we have used?**

The Government does not address the cost of increased discrimination in the workplace. If employers are not held to account for failure to address third

party harassment, there will be the impact of absence from work due to the severe impact on a workers mental health and confidence to attend work. The provision has only existed for a short time and so there will be immediate costs for agencies tasked with advising on equality in dealing with third party harassment through the proposed other channels. There will be costs to the courts and organisations in ascertaining whether the Protection from Harassment Act 1997 is an appropriate mechanism for dealing with third party harassment at work. The Government has also wrongly stated that there have been no reported cases under this provision when there has been *Blake*.

**Question 7: How many third party harassment cases would you expect to be brought each year if the third party harassment provisions were retained? Please explain your answer.**

There have been few cases but as awareness of this important provision grows, there could be a growth in cases. If employers are properly advised about their duties, which has so far been lacking, then we would hope to see this issue addressed before coming to a tribunal.

**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? If not please explain why?**

The Equality Impact Assessment does not demonstrate 'due regard' to the need to address the impact of the removal of this provision on those with a protected characteristic. Our information from our members is that disabled members, black members, lgbt members, women members and older members are more likely to experience third party harassment. The Government states that the repeal of S.40 will reduce confusion but this can only increase as both employers and employees become uncertain what the legal remedies are and what their rights and responsibilities are in terms of third party harassment.

UCU urges the Government to rethink this proposal and to allow more time for the provision to demonstrate its effectiveness in supporting healthy and safe workplaces.

End



