

Police Federation  
Of England and Wales



Ffederasiwn Heddlu  
Lloegr a Chymru

Established by Act of Parliament

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GENERAL SECRETARY'S OFFICE

IR/sg

27 July 2012

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

Dear Sir/Madam

**Response to Government Equalities Office Consultation:  
Equality Act 2010 – employer liability for harassment of employees by third parties.**

I am writing on behalf of the Police Federation of England and Wales (the "Police Federation") to respond to the Consultation Paper on the above subject.

The Police Federation is the staff association for all Police Constables, Sergeants, Inspectors and Chief Inspectors in the 43 home office police forces of England and Wales. It was created by the Police Act 1919, with a statutory responsibility to represent and promote the interests and welfare of its members. The Police Federation has approximately 136,000 members and provides support in respect of litigation in accordance with its fund rules.

Our members hold the office of constable and do not have contracts of employment. Police officers are able to utilise services of the Employment Tribunal for limited purposes, including being able to bring discrimination claims under the Equality Act 2010.

The Police Federation consulted its members on the proposed changes through its Equality Sub Committee. The members do not support the removal of the third party

harassment rules which they consider represent a retrograde step in the principle of promoting equality. Further, our members feel there is insufficient evidence or adequate alternative protection to support removing these provisions and have concerns over the arguments used by the Government in this consultation process.

The Government state that only one case of third party harassment has proceeded to a final hearing (*Blake v Pashun Care Homes Ltd*), however while the Government acknowledges at Chapter 3.4 of the consultation that “*the majority of claims ... do not reach the hearing stage*” it has not produced any evidence of the number of third party harassment claims that have been lodged but withdrawn before a final hearing, potentially misrepresenting the extent to which the provisions have been taken up.

*Blake v Pashun Care Homes Ltd* was heard after the Equal Opportunities Review, published in May 2011, and the Police Federation suggest that there are likely to be other third party harassment claims that have yet to reach a final hearing. The Police Federation is currently supporting an officer who has brought a claim of third party harassment against West Mercia Police Force and this case is still on-going. The officer in question alleges that she had been racially abused by detainees on six separate occasions while West Mercia Police had failed to take all reasonable steps to prevent this treatment. The Police Federation expect to see a gradual increase in the number of third party harassment claims as awareness of the provisions, and cases such as that described above, filters down to the 43 separate Federation Offices, its Representatives and members.

The Police Federation considers that the lack of cases to date has less to do with the need for the provision and more to do with a lack of awareness of it and the restricted rules involved in being able to bring such a claim, ie, that harassment must have occurred on at least two previous occasions and the employer must have known and done nothing about it.

We note in particular that other provisions brought in by the Equality Act 2010 have similarly remained unused to date. In particular there have been no reported cases on indirect disability discrimination or on discrimination arising from disability, yet these provisions are recognised as providing important and significant protection for disabled people. The Police Federation would suggest that the rules on third party harassment are equally important.

The Government has stated that there are alternative routes for individuals to bring third party harassment claims, however the Police Federation is concerned that these do not provide adequate protection. An employee cannot bring a free-standing claim for an employer’s failure to comply with its duties under the Health and Safety at Work etc Act 1974. Nor does the Police Federation accept that an individual should have to suffer a physical or psychological injury in order to be able to bring a negligence claim against their employer. Quite apart from the costs of bringing such a claim, the hurdles of foreseeability and causation, which must be got over in order for such claims to succeed, are significant.

The Police Federation objects that an employee, being harassed by a third party in their work-place, should have to leave their job before they can bring a claim. This is not feasible for many employees, particularly in the current labour market, and most employees simply want the harassment to stop. In addition, resigning and claiming

constructive unfair dismissal is not an option open to Police Officers, who are not able to bring such claims.

The Police Federation does not believe that it is appropriate for such claims to be brought under the Protection from Harassment Act 1997 which was enacted to cover quite different types of harassment. Criminal offences under the PHA 1997 require a higher standard of proof while civil claims are arguably only going to be brought if the harasser has the financial resources to make them worth suing, in many situations where police officers are victims of third party harassment, this will not be the case. Further, claims under the PHA 1997 do not address the issue of the harassment having occurred at work so that even successful claims would not act as a future control on such behaviour. The Police Federation notes that the Government has not provided information on cases of third party harassment brought prior to the Sex Discrimination Act 1975 (Amendment) Regulations 2008 which would demonstrate whether the PHA 1997 is a suitable vehicle for such claims.

Finally, and in respect of section 26 of the Equality Act 2010, we note that the consultation document admits only that *"it is possible that section 26...covers acts of conduct covered by section 40(2)-(4) of the 2010 Act."* It is the Government's responsibility to ensure that its legislation is clear and precise. Section 26 of the Act is likely to be provision of choice for most applicants if section 40(2)-(4) is removed and uncertainty over its scope is likely to cause confusion and succeed only in generating expensive litigation. That the government intends to rely on the protection of employees from third party harassment on a provision that it admits may not be effective is short-sighted and unnecessary, particularly when this situation can be avoided by leaving section 40(2)-(4) in place.

Part of the Government's justification for removing these provisions is that it will remove barriers to economic growth and increase individual freedoms. However, the Government has not explained or provided evidence to qualify how reducing protection for employees being harassed by third parties while doing their job will achieve these aims.

The Police Federation suggests that this argument does not in any event apply to many of the employees who benefit most from section 40(2)-(4), eg, those working predominantly with the public, such as hospital staff, local authority employees and police officers.

The Police Federation considers that the right not to be harassed by a third party whilst undertaking ones job should be a clear and unambiguous right. That right already exists in section 40(2)-(4) and in removing this, the Government would be sending the wrong message to employers. The Police Federation feels very strongly that employees should be protected from harassment by third parties while they are at work and that such protection should not be reliant on the assorted provisions that the Government has suggested.

Employers should be required to take all reasonable steps to ensure that its workers can work in a harassment free environment. Given that provisions on third party harassment were incorporated into the Sex Discrimination Act 1975 (Amendment) Regulations 2008 as a result of the judicial review taken against the Secretary of State for Trade and Industry on behalf of the Equal Opportunities Commission in respect of the proper transposition of the amended EU Equal Treatment Directive,

the Police Federation consider that these provisions need to be retained in order to continue to comply with that Directive.

Our view is that to do otherwise could potentially leave employers vulnerable to complying with third party preferences as to who provides goods or services; for example a Police Force should be required to respond appropriately in circumstances where a home owner harasses a black police officer because of his race when answering a call to a property. Currently the law provides employers with the basis on which to respond to such discriminatory situations.

Protection from harassment at work by third parties should remain a provision of the Equality Act 2010, but should be unencumbered by additional statutory rules. The provisions requiring harassment to have happened on two previous occasions should be removed. It should be for a tribunal to establish whether an employee has been harassed within the meaning of the Equality Act and whether the employer has acted reasonably in all the circumstances. This would allow proper access to justice by workers, including police officers, who may be harassed by third parties at work.

In conclusion therefore, and as will be clear from above, the Police Federation does not support the removal of section 40(2)-(4) from the Equality Act 2010.

Yours sincerely

A handwritten signature in blue ink that reads "Ian Rennie". The signature is written in a cursive style with a large initial 'I'.

**IAN RENNIE**  
**General Secretary**