

## 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):

Position in organisation (if appropriate):

Name of organisation (if appropriate):

Address:

Contact phone number:

Contact e-mail address:

Date:

### 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) 

Housing Association
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**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 harassment<sup>1</sup>**

**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

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<sup>1</sup> 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



**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?**

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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 X

Neither agree nor disagree

Don't know

Please use the space below to explain your answer

Stonewall Housing provides housing advice and support to lesbians, gay men, bisexual and transgender people. It believes that it is much too soon to consider repealing any aspects of an Act which is so young, indeed this part of the Act has only be in force since October 2010. Also, the Act has been the subject of a Red Tape Challenge Review during its infancy and some aspects of the Act have yet to be introduced (e.g. age discrimination in goods and services in October 2012). The British Chambers of Commerce states in this consultation that fewer than 10% of employers at a workshop were familiar with the Act. The Act is misunderstood and employers, employees and customers need to be educated further on the Act and its benefits.

Stonewall Housing disputes the assumption that this aspect of the Act concerns third parties over whom organisations 'have no direct control' (page 15). Housing providers may have control over their customers, through tenancy law and anti social behaviour or harassment policies.

One case ruling of third party harassment is mentioned within the consultation and that should be enough to show that there is a need for such a clause in the Act as many other cases may have been settled or withdrawn before tribunal. A thorough investigation should be carried out to establish the full facts upon which to gather views rather than issue a consultation paper that aims to 'test assumptions'. More time should be given to allow employers, employees and customers to familiarise themselves with the Equality Act and to allow the government to gather enough information to draw the necessary conclusions about this aspect of the Act.

Stonewall Housing disagrees that there will be other legal remedies for third party harassment. These have not served LGBT people well in the past, hence the need for the new Equality Act protections in the first place. For example, employees that suffer third party harassment may not be able to evidence proof of injury or they may not be able to challenge the perpetrator themselves for fear of reprisal or if a number of perpetrators have been involved in numerous incidents; therefore they may not be able to use Health and Safety or Harassment Act provisions.

Stonewall Housing recommends that the estimated transitional costs of between £2million and £4.4million for repealing this aspect of the Act (page 17) should be invested in promoting the Equality Act and gathering the evidence to carry out a robust review of this aspect of the Act before public consultation.

**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 this provision is repealed then the Government needs to introduce other safeguards to protect employees against third party harassment at work.

Stonewall Housing disagrees that there will be other legal remedies for third party harassment. These have not served LGBT people well in the past, hence the need for the new Equality Act protections in the first place. For example, employees that suffer third party harassment may not be able to evidence proof of injury or they may not be able to challenge the perpetrator themselves for fear of reprisal or if a number of perpetrators have been involved in numerous incidents; therefore they may not be able to use Health and Safety or Harassment Act provisions.

Therefore, Stonewall Housing believes that the third party harassment protections within the Equality Act should be retained and not be repealed.

**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

Stonewall Housing believes that it is much too soon to consider repealing any aspects of an Act which is so young, indeed this part of the Act has only been in force since October 2010. Also, the Act has been the subject of a Red Tape Challenge Review during its infancy and some aspects of the Act have yet to be introduced (e.g. age discrimination in goods and services in October 2012). The British Chambers of Commerce states in this consultation that fewer than 10% of employers at a workshop were familiar with the Act. The Act is misunderstood and employers, employees and customers need to be educated further on the Act and its benefits.

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

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Number of cases

Please use the space below to explain your answer

Stonewall Housing is unable to answer this question as more time is needed to measure the impact of this aspect of the Equality Act. More time would allow more organisations and groups representing those with protected characteristics to ascertain the benefits of having this relatively new legislation.

**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

Stonewall Housing recommends that the Equality Act should be promoted and a robust evidence-based review of this aspect of the Act be carried out before a better-informed consultation. This would allow time to measure the impact that the third party harassment protections would have on groups with protected characteristics.



**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.*