

## 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):

CLAIRE NISBET

Position in organisation (if appropriate):

TREASURER

Name of organisation (if appropriate):

SCOTTISH DISCRIMINATION LAW  
ASSOCIATION

Address:

c/o Equality and Human Rights Commission  
The Optima Building  
58 Robertson Street  
Glasgow  
G2 8DU

Contact phone number:

01312287143

Contact e-mail address:

CZN@MMS.CO.UK

Date:

2 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)

**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 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

Experience of one of our members who has acted for a trade union member in a third party harassment case. His client worked for a public body who was working on a project alongside another public body. Short of a constructive dismissal claim which was not considered viable the claimant would have had no remedy but for a third party harassment claim. The claim is ongoing so we cannot discuss further.

**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

Whilst the current "three strikes" provision is flawed, our view is that the purpose of this provision – protecting employees from harassment by third parties in the workplace – still has an important place in discrimination legislation. We do not agree there is an “unworkable requirement in the Equality Act for businesses to take reasonable steps to prevent persistent harassment of staff by third parties as they have no direct control over it”.

If a business is aware of harassment then steps can be taken to prevent further harassment perhaps by training staff or third parties such as suppliers and contractors on-site, or the employer removing the contact with that third party altogether. It is unlikely that a business will be unable to do *anything* to prevent third party harassment from customers or clients (bearing in mind these were the third parties the government had in mind when the provisions came into force).

However, the current provision that the three "events" complained of can concern different third parties is without a doubt unsatisfactory for all concerned.

The government in its consultation paper points to other routes to remedy for a harassed employee. However, it should be remembered that bringing an action under the Protection from Harassment Act 1997 or a personal injury claim in the civil court is much more expensive than redress through an employment tribunal (at least for now) and carries with it the risk of having to pay the defender's fees if unsuccessful (a huge deterrent). Another potential remedy suggested by the government when faced with harassment by a third party is for the employee to resign and claim constructive dismissal - surely not an option for many employees, not least in the current economic climate.

Our view is that employees must remain protected against third party harassment. We recognise that the provisions do require amendment to take account of the extent to which the employer has control over the third party. In essence we agree that the provisions cannot remain in their current form; but should not be axed as being "unnecessary".

We are of the view that the abolition of these provisions is not proportionate and inconsistent with other pronouncements made by the government. The provisions should be amended, not repealed.

**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

The provisions should be amended so that employees remain protected against 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?**

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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?**

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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

The justice impact test only considers there having been one claim brought in the Tribunals. This does not consider claims which have been conciliated on or have been settled prior to a claim being lodged.

There would be an impact on other court procedures which would be more than minimal.

*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.*