

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)

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)

Research Organisation

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

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

The general definition of harassment may well be wide enough to cover some instances where an employer has knowingly failed to protect an employee from discrimination, be it colleagues or third parties, so I do not see the removal being a major problem, albeit the advantage of the law which the government wants to repeal is that it is less complex and gives an unambiguous statement to employers about what their duties are.

However, reflecting a number of employment law commentators, organisations will still need to have in place measures to prevent third-party harassment if the provisions are repealed as there may still potential for employers to be liable where an employee is harassed by a third party, e.g. where the employer has control over the third party or the employee makes a personal injury claim. Regardless, if the requirement is removed, I would suggest we should still retain means for employees to raise concerns about third-party harassment and raise awareness among third parties that we will not tolerate harassment of their employees.

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

Organisations will still need to have in place measures to prevent third-party harassment if the provisions are repealed as there may still potential for employers to be liable where an employee is harassed by a third party, e.g. where the employer has control over the third party or the employee makes a personal injury claim.

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?

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?

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

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.