

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 x
- 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 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 x

Neither agree nor disagree

Don't know

Please use the space below to explain your answer

The Bristol Disability Equality Forum (BDEF) feels that the Equality Act represents important legislation that helps prevent unfair working practice and discrimination for all protected characteristics.

BDEF has a vested interest in ensuring that Disabled People have every opportunity for sustainable employment and career development, if paid, providing financial opportunity as well as purpose, recognition, value and an escape from 'the benefit trap'.

The Equality Act is one of few pieces of legislation in this country that protects Disabled Employees from discrimination in the workplace we do not want see it weakened in favour of employers.

You have cited - *'consult to remove the unworkable requirement in the Equality Act [2010] for businesses to take reasonable steps to prevent persistent harassment of their staff by third parties as they have no direct control over it, which would save £0.3 million'*.

Part of a report from the Equality Human Rights Commission (EHRC) states:

'Analysis by the Social Market Foundation found that bringing disabled people's skills up to average levels by 2020 would add £13 billion to the UK economy - equivalent to 6 months economic growth - so there is a clear incentive to act' and '2.6 million people remain impoverished on incapacity benefit, at a direct cost to the taxpayer £7 billion a year. There are more disabled people living in relative poverty today than a decade ago. The indirect social and economic costs are enormous.' [1]

[1] See EHRC speeches from compensation to capability - disabled people work and well-being www.equalityhumanrights.com/uploaded_files/speeches/from_compensation_to_capability_-_disabled_people_work_and_well-being

Supporting Disabled People in work makes financial sense, trying to save 0.3 million and weakening the Equality Act certainly doesn't.

The current job situation is an employer's market. There needs to be more engagement with employers to ensure good working practice. You have recognised that all employers have a duty of care but not all employers understand what that means in practice and will only refer to any form of employment legislation when they are facing a tribunal.

81 % of The Confederation of British Industry (CBI) feel believe that the current level of employment law creates a more litigious workplace. Part of your rationale for repealing third party harassment at work is to support small businesses but it will do nothing to help bring the private sector in line with the public and third sector that have required compliance with equality duties.

In regards to the clause below:

2. 4 The Government is aware of only one case of the third party harassment provisions having been ruled on by an employment tribunal. The Government is also aware that the introduction of this provision has given rise to concern that business, especially small businesses, would find it difficult to comply with. Given these uncertainties, in March 2011, the Chancellor announced the Government's intention to consult on repealing this provision. Repealing it would also be in line with the Government's commitment to reducing the stock of unnecessary regulation

Employers and employees alike can find the definitions of direct discrimination and harassment confusing, third party harassment equally confusing. This may account for the low numbers reaching employment tribunals. In the past a fast foot fall from organisations has been an indicator to managers that employees may not be treated fairly, the opportunity for disabled employees to move from one employer to another is becoming more difficult in the current job market and they are tending to stay in an unhealthy and unsupported working environment, reluctant or unable to report discriminatory practice. This factor may also account for cases not reaching employment tribunals.

The BDEF ask you not to repeal the third party harassment provision, do not weaken the Equality Act. Provide employers with clear guidance regarding employment law, case studies of good practice and robust policy templates, giving employers the tools to move forward in an ever increasing diverse society.

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

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 employee's provision – section 40(2)-(4) of the Equality Act 2010.