

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)

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

This claim was made to a county court as a personal injury claim. The claim failed.

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

Tate, believes that the requirement in the Equality Act 2010 for businesses to take reasonable steps to prevent persistent harassment of their staff by third parties is effective, practical and important for creating a productive working environment. It sets out clear rights and responsibilities for employers and employees and sends a strong signal to third parties that abuse of employees will not be tolerated.

Tate takes its responsibilities as an employer very seriously. We have a robust Dignity and Respect at Work policy and have put a number of pragmatic measures in place to protect our employees from harassment from third parties or other members of staff. We would always take these steps, regardless of whether or not they were required by law. Nonetheless, we consider third party harassment provisions to be an important legal principle that can make our employees feel more empowered to report and act on abuse from third parties.

We consider it to be unfair to place the onus to seek redress on the victim of harassment, who may lack the resources or confidence to take effective action, and who may fear being labelled as a complainer. An employer should be expected to take responsibility for creating a safe and supportive working environment where it is clear that any abuse of employees or unwelcome behaviour relating to equality characteristics is totally unacceptable. Third party harassment provisions clarify that an employer does have a role to play in protecting employees from this sort of abuse, and that an employee has nothing to fear from seeking support in these situations.

We suggest that the provisions are already having an impact and that this is why very few cases involving third party harassment claims have been taken. The law is doing exactly what it should – making sure that employers do the right thing, avoiding more costly legal action as a result of failing to comply with the law.

The consultation document suggests that other legislation, such as the Health and Safety at Work Act 1974, already fulfils the purpose of requiring employers to protect employees from third party harassment. We are not convinced that these other regulations are sufficiently strong or clear about the responsibilities of an employer. For example, it would require a strong burden of proof to show that an employee had experienced psychological injury as a result of third party harassment. We consider any harassment of our employees from third parties to be unacceptable, whether or not it results in long term physical or psychological injury. We would be loth to work in an environment where employees felt they had to put up with constant low-level abuse. Removing third party harassment provisions would send out a confusing and disappointing message to our employees.

In conclusion, we consider third party harassment provisions to be useful, practical and meaningful. The provision enables us to take strong measures to protect our employees and gives our employees more confidence to work with us to prevent and respond to any harassment from third parties. There are no benefits to removing this helpful provision.

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

The impact assessment does not take into account the full cost of removing third party harassment provisions. Workplaces where everyone feels comfortable to be themselves with high levels of employee engagement are more productive workplaces. Employees who experience persistent harassment from third parties are less likely to be productive and more likely to go off on long-term sick. This would be exacerbated further if employees did not feel they had sufficient support from their employers to take action to prevent third party harassment.

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

We believe that the impact assessment hugely underestimates the number of instances of harassment in the workplace that are likely to occur if the provisions are repealed. The provisions send out a strong message to third parties, as well as to employees, that harassment will not be tolerated in the workplace.

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

We would not expect any third party harassment cases to be brought at Tate, as we comply with the provisions and take steps to prevent third party harassment.

If the provisions were repealed, we would be concerned that more instances of third party harassment would be likely to take place in workplaces which do not take these steps.

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

A key principle of the Public Sector Equality Duty and of third party harassment provisions is the responsibility of the employer to *anticipate* harassment and take steps to prevent it from taking place. Repealing these provisions would give free rein for third parties to harass employees, with the responsibility to respond fully on the employee's shoulders. We believe that employees with some equality characteristics, including some disabled employees and LGB employees who are not out in the workplace, would be less equipped to act against third party harassment without strong support and preventive action from employers.

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.