



By email to: thirdpartyharassment@geo.gsi.gov.uk

25th July 2012

Government consultation on employer liability for harassment of employees by third parties under the Equality Act 2010

I write on behalf the Association of Scottish Police Superintendents (ASPS) regarding the proposal to repeal an employer's liability for harassment of its employees by third parties. We consulted our members through our Equality and Diversity Business Area and Members and Partners considered that the proposal was derogating from the principle of advancing equality and were concerned at the evidence used in support of removing the provision from the legislation.

Although only one case has proceeded to an employment tribunal (*Blake v Pashun Care Home*) since the provision was enacted, we consider that this has less to do with the need for the provision and more to do with the restricted rules surrounding a claim; i.e. **that harassment should have occurred on at least two previous occasions and the employer has known but done nothing about it.**

We note that other provisions brought in by the Equality Act 2010 have similarly lain unused to date. In particular there have been no reported cases on Indirect Disability Discrimination or on Discrimination Arising from a Disability, yet these provisions are recognised as providing important and significant protection for disabled people.

We consider that the provisions on third party harassment that were incorporated into the Sex Discrimination Act 1975 (Amendment) Regulations 2008 as a result of the judicial review taken against the Secretary of State for Trade and Industry on behalf of the Equal Opportunities Commission in respect of the proper transposition of the amended EU Equal Treatment Directive needs to be retained in order to comply with the Directive.

We do not consider that adequate redress is available through other procedures. We do not believe that action should only be possible when an individual has suffered a physical or psychological injury as would be required in respect of an action under health and safety legislation; neither do we believe that an individual should be forced to leave their job in order to make a claim. **This would be of particular concern in respect of police officers who have no access to employment tribunals in cases of constructive dismissal.**

We do not believe that such claims are appropriate to be taken under the Protection from Harassment Act, which was designed for quite different types of harassment between people not in an employment relationship. In any event, claims under criminal

proceedings need to satisfy a higher standard of proof than that operated in an employment tribunal and a claimant would not have an automatic right to compensation. We think that this offers lesser protection for individuals.

We consider that the right not to be harassed by a third party whilst undertaking one's job should be a clear unambiguous right. An employer should be required to take all reasonable steps to ensure that his or her workers can work in a harassment-free environment. To do otherwise could leave employers vulnerable to complying with third party preferences as to who provides goods or services; for example, a Force should be required to respond appropriately in circumstances where a home-owner harasses a black police officer because of his race when answering a call to a property. Currently the law provides employers with the basis on which to respond to such discriminatory requests.

Protection from harassment at work by third parties should remain a provision of the Equality Act 2010, but should be unencumbered by additional statutory rules. The provisions requiring harassment to have happened on two previous occasions should be removed. It should be for a tribunal to establish whether an employee has been harassed within the meaning of the Equality Act and whether the employer had acted reasonably in all the circumstances.

This would allow proper access to justice by workers, including police officers, who may be harassed by third parties whilst at work.

I hope you find these comments of assistance.

Yours sincerely

Carol Forfar

Carol Forfar
General Secretary