

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) Higher Education Institution

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
- Neither agree nor disagree
- Don't know

Please use the space below to explain your answer

The purpose of the proposed repeal is stated as removing ‘unnecessary and constantly increasing regulation’. We support the principle of removing unnecessary regulation, but we urge the Government to balance this need with the need to protect individuals from discrimination. We do not share the view that there is increasing regulation in this area of equality law. The Equality Act has simplified and increased coherence and consistency of equality regulations.

While economic growth and equality of opportunity are sometimes presented as conflicting ideals, it is our view that taking action to support employers to tackle discrimination effectively will create more inclusive working environments, leading to stronger businesses. We do not consider the provision as being a barrier to economic growth in any way.

As the Government has identified only one case where an employment tribunal has ruled on third party harassment, we can see no justification for proposing to remove this provision at this time.

The Government has stated that most businesses do everything they can to ensure their employees can work in an environment free from harassment, whatever its source. They do this because it is the right thing to do and because a happier workforce is a more productive workforce. We strongly agree with this view. The third party harassment provision can therefore be seen as a deterrent for the small proportion of employers who do not recognise this benefit and who do not act to protect employees where situations arise or become known. The majority of businesses therefore have nothing to fear from the regulations.

The Government has stated that employers have no direct control over third parties, such as customers and suppliers. While employers might not have direct control, that does not mean they cannot exert influence or instigate sanctions or terminate relationships where necessary. Organisations can sometimes exert significant influence and promote values and behaviours that have positive business benefits.

The Government states that the introduction of the provision has given rise to concern that businesses, especially small businesses, would find it difficult to comply. On the contrary, small businesses tend to operate in such a way that the most senior managers are often on first name terms with the most junior staff given the scale of operations and relative flatness of structures. In such environments, senior managers are likely to be more aware of the experience of their employees and can usually act faster to resolve issues. It is often more challenging for larger organisations with distributed staffing responsibilities to know whether their employees are being subjected to harassment. In these cases, employers rely more on clear policy and line management training/briefings.

The Government has provided information about tribunal cases with respect to evidence of the need for, and effectiveness of, the provisions. The questions in the consultation also focus on 'cases'. However, this is a small part of the overall picture. The provision places a duty on employers and they subsequently act according to that duty. The majority of actions arising from the duty will take place in workplaces, with issues being addressed, or not, according to regard for the regulations and potential consequences. The vast majority of situations never become cases, and the regulations may be effective, regardless of the number of cases taken under them.

The Government has cited a number of other legal remedies available to individuals. However, the regulation is not in conflict with these in any way. As the harassment in question is in relation to the protected characteristics, it is appropriate that the Equality Act provides protection for that specific type of behaviour. Harassment per se is also unlawful under a number of legal statutes, but this has not stopped it featuring specifically in the Equality Act.

Introducing changes at this stage will affect business negatively as good employers have introduced changes to policy and communicated the requirements of the Equality Act widely, and will need to communicate any changes arising from this proposal. The Equality Act is still a relatively new piece of legislation and it is not feasible to draw on sufficient evidence to propose significant changes at this early stage. We would prefer a longer period of time before changes are considered.

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 Government can act as a role model by taking action to prevent and address third party harassment in central and local Government. It can provide information to staff to tell them how to respond to, and report, third party harassment.

The Government can request information about discrimination and harassment cases from suppliers of products and services through its procurement activity and therefore influence the behaviour of senior staff in private businesses.

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

Additional costs to employers to amend policies and procedures, and inform people about the changes. Good employers have worked hard to communicate relatively recent changes to equality law. The changes will add an additional management burden in relation to staff communication and training. The Equality Act is still a relatively new piece of legislation and it is not feasible to draw on sufficient evidence to propose significant changes at this early stage. We would prefer a longer period of time before changes are considered.

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

While economic growth and equality of opportunity are sometimes presented as conflicting ideals, it is our view that taking action to support employers to tackle discrimination effectively will create more inclusive working environments, leading to stronger businesses.

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

25

Please use the space below to explain your answer

This is very difficult to estimate.

We suggest that the total number of cases will be small.

If the provisions are retained, it will encourage employers to ensure adequate protection and support is in place for employees, and this will keep the number of cases low.

A small number of cases will be evidence of the effectiveness of the provision rather than a sign of its failure.

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

With respect to Option 2 outlined on page 42 of the Equality Impact Assessment, which proposes the complete removal of the provision, the Government concludes that ‘This option will reduce confusion for employers and employees about their respective responsibilities and rights in this respect and make it clear that employees have the same rights in this respect for all the protected characteristics’.

We do not consider this an accurate assessment of the likely impact. While there are alternative provisions in place to seek legal remedy for third party harassment, removal of this provision from the Equality Act will send mixed signals to employers and employees, therefore creating more confusion rather than reducing it.

This question asks us to comment on the assessment in relation to protected characteristics, but we can see no analysis in relation to individual protected characteristics in the Impact Assessment.

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.