

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

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 importance of 3rd party harassment stems from one of the main aims of introducing the Equality Act in the first place, which was around being able to influence change on societal views towards the protected areas. Public bodies and employers have laws in place to support and protect employees, what the 3rd party harassment provision does is provide employers with an additional tool to protect staff from public discriminating against them. In addition it provides further protection in the areas of stalking and domestic abuse. Which considering this is something the government is committed to tackling, it seems unusual that a provision to provide additional support in this area is being discussed as needing to be removed.

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

There is no point in identifying any other action when this is already in place. If anything the government should be supporting this provision.

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 staff feel they are not supported in the workforce against discriminatory harassment, then they will leave, which has cost implications on an employer. Tools such as exit interviews etc may not pick up on these issues as both parties, the employer and the employee may not recognise the 3rd party implications. Similar to disability where a person may not identify themselves as disabled. There is still a lot of awareness and promotion to the general public not just the public sector on the provisions and protection under the Equality Act 2010.

With regards domestic abuse, which the 3rd party harassment also provides protection, it is well known that the cost on UK businesses is approx 32.7 Billion. Yes there is already existing provisions for protection, but this is an additional one, which via training sessions within our organisation staff are aware of. The issue is that this training is not provided or recognised everywhere.

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

The comment has been made within the consultation document that since 3rd party provisions were introduced that there has been only one claim made. One of the main issues has in fact been the lack of information and awareness of this area of protection, for the general public as well as within the legal field, so that it would be better used. A similar example is in the area of hate crime, and underreporting. It was through awareness campaigns and confidence in the systems that more people came forward and we saw an increase in incidents reported. A similar campaign is needed around all the areas of protection, not just aimed at public bodies. This also links to the consultation on the repeal of the two enforcement provisions, in particular the power to make wider recommendations in discrimination cases. In that my removing these areas of protection the aim of future proofing anti discrimination legislation, but providing strengths to influence change, societal change, then society will not improve at a pace that is needed to support and protect people.

The consultation document states that small business will find it difficult to comply with the current provisions. I would like to argue what is the evidence to this assumption, when the consultation document states only one case has been made. I would argue that the duty of care of an employer to its employee should apply to all.

In addition, the impact on small businesses was an argument that was made to prevent disability legislation to come into force, it has since been recognised that adjustments to buildings etc are not as expensive as the fear of businesses expected.

I would also like to point out here, as this is the only suitable area to make further comments, that the actual consultation process for this area was not well publicised, especially within Wales. I only discovered this by default and then informed my colleagues within the Welsh NHS. I would therefore be interested to know how many responses are made.

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

As mentioned in previous comment, due to the lack of awareness there is a lack of use of this provision. There is an argument, why remove, as any legislation that seeks to provide protection against discrimination is beneficial. Internal equality training within our Trust includes 3rd Part harassment. Staff feel reassured that it is there, even if not used. A comparator would be that we also run an employee assistance Programme, which is not accessed by every member of staff. But staff surveys have told us that they feel reassured that the service is there. Therefore if you simply wanted to look at stats of usage and make decisions to keep or remove a service, this would not be a true reflection on the cost benefit of having that service or provision. Instead you should be identifying the importance of having the provision as being preventative and supportive even if not used itself.

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

The objective of this consultation is to remove the burden on business. This is the wrong approach when looking at equality. As the disability argument proved. The aim of the equality Act was to future proof equality, irradiate discrimination and provide support to everyone. There cannot be a 'get out' clause for small business, this would not demonstrate an understanding of equality or be fair.

Everyone has a role to play in ensuring he dignity and respect to another person or group of people. This is not nor should it be a burden, financial or otherwise.

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

Due to the points already made.

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.