



Government
Equalities Office

Consultation on Sexual Harassment in the Workplace:

Template for responses

Legal protections under the Equality Act 2010

This consultation begins on 11 July 2019
This consultation ends on 2 October 2019

About this consultation

Duration: From 11 July 2019 to 2 October 2019

Enquiries (including requests for the paper in an alternative format) to: Bridget West
Government Equalities Office
Sanctuary Buildings
20, Great Smith Street
London
SW1P 3BT

Email: workplaceharassment@geo.gov.uk

How to respond: Please send your response by 2 October to:
Bridget West
Government Equalities Office
Sanctuary Buildings
20, Great Smith Street
London
SW1P 3BT

Email: workplaceharassment@geo.gov.uk

The full consultation can be found online at:
<https://www.gov.uk/government/consultations/consultation-on-sexual-harassment-in-the-workplace>

Pre-consultation questions

1. Name:

Leigh Thompson

2. Job Title:

Head of Policy

3. Are you responding on behalf of an organisation or as an individual?

Organisation

4. If you are responding on behalf of an organisation, what is the name of the organisation?

Sport and Recreation Alliance

5. Are you happy for us to publish your organisation's response to this consultation in full? [Yes/No]

Yes

If no, please explain why not, referring to specific sections where relevant. Please note, this does guarantee that we won't publish your response.

6. Is your organisation responding as an employer, or as a representative body?

Representative body

7. If your organisation is responding as an employer, how many employees does it have?

These questions cannot be answered without reference to the full Consultation on Sexual Harassment in the workplace; please read it before completing this template.

The consultation can be downloaded from:

<https://www.gov.uk/government/consultations/consultation-on-sexual-harassment-in-the-workplace>

Consultation questions

Q1. If a preventative duty were introduced, do you agree with our proposed approach?

[Yes/No/Don't know]

Please explain your answer

Q2. Would a new duty to prevent harassment prompt employers to prioritise prevention?

[Yes/No/Don't know]

Please explain your answer, drawing on any evidence you have.

Q3. Do you agree that dual-enforcement by the EHRC and individuals would be appropriate?

[Yes/No/Don't know]

If 'No', please explain your answer.

Q4. If individuals can bring a claim on the basis of breach of the duty should the compensatory model mirror the existing TUPE provisions and allow for up to 13 weeks' gross pay in compensation?

[Yes/No/Don't know]

If 'no', can you suggest any alternatives?

Q5. Are there any alternative or supporting requirements that would be effective in incentivising employers to put measures in place to prevent sexual harassment?

Please provide evidence to support your view.

Q6. Do you agree that employer liability for third party harassment should be triggered without the need for an incident?

[Yes/No/Don't know]

Please explain your answer, drawing on any evidence you have.

Q7. Do you agree that the defence of having taken ‘all reasonable steps’ to prevent harassment should apply to cases of third party harassment?

[Yes/No/Don't know]

Please explain your answer, drawing on any evidence you have.

Q8. Do you agree that sexual harassment should be treated the same as other unlawful behaviours under the Equality Act, when considering protections for volunteers and interns?

[Yes/No/Don't Know]

If 'no', please explain your answer.

Sport and recreation relies on volunteers to function. Currently over 6 million people volunteer in sport and recreation across a wide variety of organisations and roles and indeed many organisations – particularly at grassroots level – are entirely volunteer-led. These volunteers support the delivery of grassroots sport in hundreds of thousands of clubs and organisations up and down the country for the benefit of their local communities.

Our starting point is that all our volunteers should be able to give their time without fear of sexual harassment. However, while we recognise the intent behind the consultation, we are concerned that extending the Equality Act sexual harassment protections in the manner proposed does not fully reflect the work taking place within the sector to protect volunteers and could impact upon volunteering in the sport and recreation sector more broadly.

The sport and recreation sector has put in place various measures to ensure that all who take part – either as participants or volunteers – can do so in a safe environment. Many sports bodies, grassroots clubs and organisations have codes of conduct and policies in place to address harm or harassment and have mechanisms through which individuals can raise concerns. These policies are supplemented by disciplinary procedures to address misconduct when it arises.

More broadly, we are concerned that extending the law in the way proposed could lead to changes in the nature of volunteering, making it more akin to a formal employment relationship rather than, as now, an individual giving their time of their own volition. This could have knock on consequences in terms of making it harder to recruit and retain volunteers.

We believe consideration should be given to other, non-legislative measures which could deliver the same outcome in terms of protecting volunteers from harassment. This would include awareness raising and making available improved training and education to the whole voluntary sector including sport and recreation (not just charities).

Ultimately, further discussion with the voluntary sector is needed to understand the current landscape, evidence and any potential gaps before any changes to the law are considered. This consultation should include sport and recreation organisations as well as volunteers themselves and would also be consistent with the recognition (at para 3.3) that a better understanding of the volunteer experience is needed before deciding on the best approach.

We have outlined some further concerns with extending the protections in the Equality Act in more detail in our answer to Q10 below.

Q9. Do you know of any interns that do not meet the statutory criteria for workplace protections of the Equality Act?

[Yes/No/Don't know]

If 'yes', how could this group be clearly captured in law?

Q10. Would you foresee any negative consequences to expanding the Equality Act's workplace protections to cover all volunteers, e.g. for charity employers, volunteer-led organisations, or businesses?

[Yes/No/Don't Know]

Please explain your answer, drawing on any evidence you have.

Further to our answer in Q8, we would have the following concerns regarding extending the protections to cover volunteers:

- Changes to the legal position of volunteers and obligations on grassroots organisations, as well as the organisations which manage and support them, could make it more difficult to recruit and retain volunteers. This, in turn, would impact upon the ability of sport and recreation organisations to run activities which deliver huge social value to local communities.
- Linked to this, if the proposed extension of protections were to include access to employment tribunals, the financial and administrative burden for volunteer-led grassroots organisations would be significant and in some cases could lead to provision being scaled back or stopped altogether.
- Volunteers can be far removed from the organisation engaging them and often operate with limited direct control. In this context, what might be considered 'reasonable steps' to prevent harassment either by or of employees may not be practicable when applied to volunteers.
- It is unclear how the obligations in relation to harassment by third parties would work in the grassroots sport context. Sports volunteers typically come into contact with a wide range of third parties in the course of their activity and it is difficult to see how a grassroots organisation could be expected to manage effectively the risks associated with this contact when it has little to no control over the third parties in question.

Q11. If the Equality Act's workplace protections are expanded to cover volunteers, should all volunteers be included?

[Yes/No/Don't know]

If 'no', which groups should be excluded and why?

See answers to Q8 and 10.

While we recognise there is ostensibly some attraction in seeking to differentiate between formal and ad hoc types of volunteering, we are of the view that the sheer diversity of volunteering roles within the sport and recreation sector (and beyond) does not lend itself easily to these two distinct groups.

As in our previous answers, if a definition of 'volunteer' were to be developed to support the extension of Equality Act protections, this would need to be done in close consultation with the sport and recreation and other voluntary sectors.

As previously indicated, we believe further consideration should first be given to understanding the current landscape and the potential for other, non-legislative options to prevent volunteers from harassment.

Q12. Is a three-month time limit sufficient for bringing an Equality Act claim to an Employment Tribunal?

[Yes/No]

Please explain your answer, drawing on evidence you have.

Q13. Are there grounds for establishing a different time limit for particular types of claim under the Equality Act, such as sexual harassment or pregnancy and maternity discrimination?

[Yes/No]

Please explain your answer, drawing on any evidence you have.

Q14. If time limits are extended for Equality Act claims under the jurisdiction of the Employment Tribunal, what should the new limit be?

[6 months/More than 6 months]

Q15. Are there any further interventions the Government should consider to address the problem of workplace sexual harassment?

Please provide evidence to support your proposal.

As in our previous answers, we believe further discussion with the voluntary sector is needed to understand the current landscape, evidence and any potential gaps before any changes to the law are considered.

This should include consideration of other, non-legislative measures which could deliver the same outcome in terms of protecting volunteers from harassment such as awareness raising and improved training and education.

Annex A – Privacy Notice for Cabinet Office consultations

This notice sets out how we will use your personal data, and your rights. It is made under Articles 13 and/or 14 of the General Data Protection Regulation (GDPR).

YOUR DATA

Purpose

The purpose for which we are processing your personal data is to obtain the opinions of members of the public, parliamentarians and representatives of organisations and companies about departmental policies, proposals, or generally to obtain public opinion data on an issue of public interest.

The data

We will process the following personal data: name, address, email address, job title (where given), and employer (where given), as well as opinions.

We will also process additional biographical information about respondents or third parties where it is volunteered.

Legal basis of processing

The legal basis for processing your personal data is that it is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the data controller. In this case that is consulting on departmental policies or proposals, or obtaining opinion data, in order to develop good effective policies.

Sensitive personal data is personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation.

The legal basis for processing your sensitive personal data, or data about criminal convictions (where you volunteer it), is that it is necessary for reasons of substantial public interest for the exercise of a function of the Crown, a Minister of the Crown, or a government department. The function is consulting on departmental policies or proposals, or obtaining opinion data, in order to develop good effective policies.

Recipients

Where individuals submit responses, we may publish their responses, but we will not publicly identify them. We will endeavour to remove any information that may lead to individuals being identified.

Responses submitted by organisations or representatives of organisations may be published in full.

Where information about responses is not published, it may be shared with officials within other public bodies in order to help develop policy.

If you respond your personal data will be stored on our IT infrastructure and will be shared with our data processors who provide email, and document management and storage services.

Your data will also be shared with a third party provider who will carry out analysis and summarisation of responses for us.

We may share your personal data where required to be law, for example in relation to a request made under the Freedom of Information Act 2000.

Retention

Published information will generally be retained indefinitely on the basis that the information is of historic value. This would include, for example, personal data about representatives of organisations.

Responses from individuals will be retained in identifiable form for three calendar years after the consultation has concluded.

Where personal data have not been obtained from you

Your personal data were obtained by us from a respondent to a consultation.

YOUR RIGHTS

You have the right to request information about how your personal data are processed, and to request a copy of that personal data.

You have the right to request that any inaccuracies in your personal data are rectified without delay.

You have the right to request that any incomplete personal data are completed, including by means of a supplementary statement.

You have the right to request that your personal data are erased if there is no longer a justification for them to be processed.

You have the right in certain circumstances (for example, where accuracy is contested) to request that the processing of your personal data is restricted.

You have the right to object to the processing of your personal data where it is processed for direct marketing purposes.

You have the right to object to the processing of your personal data.

INTERNATIONAL TRANSFERS

As your personal data is stored on our IT infrastructure, and shared with our data processors, it may be transferred and stored securely outside the European Union. Where that is the case it will be subject to equivalent legal protection through the use of Model Contract Clauses.

CONTACT DETAILS

The data controller for your personal data is the Cabinet Office. The contact details for the data controller are: Cabinet Office, 70 Whitehall, London, SW1A 2AS, or 0207 276 1234, or publiccorrespondence@cabinetoffice.gov.uk.

The contact details for the data controller's Data Protection Officer are: Data Protection Officer, Cabinet Office, 70 Whitehall, London, SW1A 2AS, or dpo@cabinetoffice.gov.uk.

The Data Protection Officer provides independent advice and monitoring of Cabinet Office's use of personal information.

COMPLAINTS

If you consider that your personal data has been misused or mishandled, you may make a complaint to the Information Commissioner, who is an independent regulator. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF, or 0303 123 1113, or casework@ico.org.uk. Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.