

Third party harassment - guidance note for BBSRC managers and employees

Background and legislation

The Sex Discrimination Act 1975 (Amendment) Regulations 2008 made employers liable for sexual harassment perpetrated by third parties such as customers, clients, suppliers and contractors. The Equality Act 2010 extends protection to cover harassment by a third party relating to age, disability, gender reassignment, race, religion or belief, sexual orientation (and sex).

Certain business sectors are affected more than others but those with customer facing activities are likely to be more open to third party harassment. BBSRC staff may be subject to third party harassment from a variety of sources such as: applicants for funding, HEI employees, contractors and suppliers.

Guidance on what constitutes harassment can be found in the BBSRC best practice guidance note on harassment and bullying in the workplace.

How the law works

The employer is considered to be subjecting their employee to harassment where:

- a third party subjects the employee to harassment in the course of the employee's employment
- the employer fails to take reasonably practicable steps to protect their employee from that third-party harassment
- the harassment is known to have occurred on at least two previous occasions
- the third-party harasser does not have to be the same individual on each occasion or employed by the same organisation.

For example, separate incidents of harassment against a BBSRC employee may be perpetrated by a contractor's employee and a grant applicant. If a third incident occurs (which may be wholly unrelated to the previous incidents), the BBSRC employee may claim third party harassment, if they consider that BBSRC has not taken reasonable steps to prevent the harassment occurring.

Implications for BBSRC

Given the additional protection afforded to more people by the Act, the potential for third party harassment is likely to increase.

BBSRC would be liable for claims of harassment if a third party (who is not a BBSRC employee) harasses a BBSRC employee on more than 2 occasions, and if BBSRC is aware that it has taken place but has failed to take reasonable steps to prevent it happening again.

In such cases, a BBSRC employee may make a claim of third party harassment against BBSRC. Any claim should be submitted in the form of a grievance in accordance with the Employment Code Section A12c.

Complaints about earlier incidents of harassment should be submitted (also under Section A12c) as a means of notifying BBSRC about the incident and enabling appropriate action to be taken against the third party perpetrator - see also responsibilities and dealing with third party harassment below. It will also demonstrate that BBSRC will not tolerate any form of harassment from either internal or external sources.

Employee responsibilities

Employees should:

- be aware of the BBSRC policy on third party harassment (Employment Code Appendix A3.8)
- inform their line manager of all incidents of third party harassment with details of the incident e.g. their name, date, time, details of the harassment, where it occurred, the name of the third party (if known) and the third party's employer (if applicable and known) - **details should be copied to local HR who will maintain a record of all incidents of third party harassment**
- where practical (and possible) inform the third party that BBSRC does not tolerate inappropriate behaviour or harassment and that their actions will be reported
 - in such cases employees are advised to be courteous throughout - it is not helpful or advisable to argue with the third party
 - if the behaviour / harassment persists explain that the behaviour will not be tolerated and leave / cease the conversation

Managers' responsibilities

Managers should:

- be aware of the BBSRC policy on third party harassment (Employment Code Appendix A3.8)
- encourage staff to report all incidents of third party harassment and liaise with local HR regarding appropriate action to be taken - see dealing with third party harassment below
- where appropriate (e.g. in areas of procurement, project management, grant fund management) inform contractors, suppliers and third parties of BBSRC's policy on equality and diversity and third party harassment - Employment Code Section A3 part 1 and Appendix A3.8
 - This should include providing contractors and suppliers with the following statement or including it in grant application documentation:
Harassment by a third party against any BBSRC employee on the grounds of sex, age, disability, gender reassignment, race, religion or belief and sexual orientation is unlawful and will not be tolerated. All incidents of third party harassment will be recorded and reported.
- If appropriate (and practical) inform the employer of the third party's behaviour and reiterate BBSRC's third party harassment policy. In such cases, it will be the employer's responsibility to take action against their employee.

HR responsibilities

HR should:

- maintain a record of all incidents of third party harassment involving BBSRC employees
- provide advice to managers or employees on dealing with third party harassment
- ensure that third party harassment is integrated into equality and diversity training, including if necessary how employees deal with potentially difficult conversations or situations involving third parties.

Dealing with third party harassment

BBSRC has an obligation to record all incidents of third party harassment.

Follow-up action by HR departments and relevant managers will depend upon the outcome of any investigation and / or the perpetrators of the harassment, their employers (if relevant) and the gravity of the incidents. For example:

- if the perpetrator is an employee of a contractor or supplier, consideration should be given to making a complaint to the contractor or supplier about the incidents and / or removing or banning the individual from the site. Depending on the gravity of the

incidents, the future relationship with the contractor or supplier may also need to be reviewed

- if the third party is a customer (such as a grant applicant) again depending on the gravity of the incident, it may be necessary or seek external legal advice and / or approach the police e.g. if there has been an act of physical violence or unwanted physical contact.
- there may be a number of likely outcomes in cases involving harassment by a customer, such as: a verbal or written warning or, in extreme circumstances, informing the applicant that their application may be withdrawn.
- in all cases, it is imperative that all the relevant facts and evidence is gathered before communicating with the third party, the employer of the third party or the police (as appropriate).