

Crack down on misuse of Non-Disclosure Agreements in the workplace

- clarity for victims on disclosing wrongdoing to the police, regulated health and care professionals, and legal professionals
- “We will not tolerate the use of NDAs to silence and intimidate victims to prevent them speaking out”, said Business Minister Kelly Tolhurst
- new legislation through the government’s Good Work Plan to create a fairer workplace for all

NDAs can be used by businesses for a number of legitimate reasons but in a minority of cases they are being abused and those that sign them not made aware of their rights.

Business Minister Kelly Tolhurst today (Sunday 21 July 2019) announced plans for new legislation which will, for the first time, prohibit NDAs being used to prevent individuals from disclosing information to the police, regulated health and care professionals, or legal professionals, such as a doctor, lawyer, or social worker.

The updated legislation will also:

- ensure employers make clear the limitations of a confidentiality clause, in plain English, within a settlement agreement and in a written statement for an employee, so individuals signing them fully understand what they are signing and their rights
- extend current legislation so that individuals signing NDAs will get independent legal advice on the limitations of a confidentiality clause – including making clear that information can still be disclosed to police, regulated health and care professionals, or legal professionals regardless of an NDA
- introduce new enforcement measures to deal with confidentiality clauses that do not comply with legal requirements – for example, an NDA in a settlement agreement that does not follow new legislative requirements will be legally void

Business Minister Kelly Tolhurst said:

The vast majority of businesses comply with the law and use NDAs legitimately – from protecting commercially sensitive information to preventing information being shared with competitors.

As we have seen in the news recently, there are a handful of employers using NDAs to cover-up criminal acts in the workplace, including sexual harassment, assault and racist discrimination.

We will not tolerate the use of NDAs to silence and intimidate victims from speaking out. The new legislation will stamp out

misuse, tackle unacceptable workplace cultures, protect individuals and create a level playing field for businesses that comply with the law.

Women and Equalities Minister, Penny Mordaunt, said:

Sexual harassment is illegal, yet individuals are still reporting abhorrent ordeals in the workplace.

Today's announcement will work alongside the consultation I launched earlier this month setting out further protections for workers against this type of vile behaviour.

Chief Executive of the Equality & Human Rights Commission Rebecca Hilsenrath said:

Harassment and discrimination should never go unanswered and unchallenged just because victims are prevented from speaking out. This new legislation will help to end ambiguity about employees' rights and stop the misuse of NDAs to protect corporate and personal reputations and obstruct justice.

The use of NDAs is only part of the problem of workplace harassment and discrimination, and employers must step up to protect their employees from this appalling behaviour before it happens. We are developing new guidance on NDAs and tackling harassment which will provide further clarity for employers and help them create safe and supportive working environments.

Currently, confidentiality clauses, or NDAs, cannot prevent an individual from reporting wrongdoing in the public interest, known as making a protected disclosure or 'whistleblowing'. These could include a criminal offence, danger to health and safety, or failing to comply with a legal obligation. Confidentiality clauses and NDAs can also not prevent an individual from taking a matter to an employment tribunal.

The current law:

- Confidentiality clauses are provisions which seek to prohibit the disclosure of information. They can serve a useful and legitimate purpose in the workplace in protecting trade secrets and other confidential information pertaining to an employer such as intellectual property, information about how a company operates or its clients.
- In many cases it is a normal part of accepting a role in a company to sign an agreement, usually an employment agreement, which contains a confidentiality clause. Case law has also established that all employment contracts contain an implicit expectation of confidentiality. However, this only extends to information which has a necessary quality

of confidence and cannot be used to cloak immoral or grossly unfair behaviour.

- Settlement agreements can be used to help resolve workplace disputes without the need to escalate matters to an Employment Tribunal. They can cover matters other than harassment and discrimination and can also be used in situations where an employee is leaving a business without acrimony.
- Settlement agreements can bind both parties in a dispute to confidentiality, and help them move on with a clean break, assured that neither party will be able to talk about the circumstances leading to the agreement. Stakeholder organisations say that this confidentiality can help people to gain future employment.

In March 2019, the government launched a [consultation](#) to seek evidence and views of the use of confidentiality clauses in the employment context. This included consulting on a number of proposals to limit the misuse of confidentiality clauses and enhance clarity for individuals on what they should and should not cover.

The reforms to NDAs, or confidentiality clauses, form part of a wider response to sexual harassment in the workplace.

The [government's response to the Women and Equalities Committee's 2018 report on sexual harassment in the workplace](#) sets out our plans to further tackle the issue of sexual harassment.

The government recently launched a [consultation on sexual harassment in the workplace](#), to ensure that laws are operating effectively and that we have the right laws and processes in place to keep people safe.

The Women and Equalities Committee published their inquiry report into the use of confidentiality clauses in June 2019. A number of the Committee's recommendations have been addressed in this consultation response. We will fully respond to the WESC's recommendations in due course.

The [Good Work Plan](#) was announced in December 2018 and formed the government response to the independent [Taylor Review of impact modern working practices](#) (2017). The review found that the strength of the UK's labour market is built on flexibility but that a clearer focus was needed on quality of work as well as the quantity of jobs.