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Women and Equalities Committee

Oral evidence: [The Use of Non-Disclosure Agreements in Discrimination Cases](#), HC 1720

Wednesday 27 March 2019

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Members present: Mrs Maria Miller (Chair); Angela Crawley; Eddie Hughes; Jess Phillips.

Questions 627–689

Witness

[I](#): Witness E.

Examination of Witness

Witness: Witness E.

Chair: Thank you so much for coming in. Can I first of all apologise for having to have this meeting in this room? It feels incredibly formal, when we wanted this to be a private session that was a little more informal than that, but the House of Commons does not really do informal. It does Pugin interiors and that is about it, and this one is a particularly interesting one.

Thank you so much for coming in. You are very kind to do that. We have a few questions, as I think you know. Shall we introduce the MPs? You have probably not seen a session like this before. Other than four of us, the rest of the people in the room are staff who work for the House of Commons on making sure we have an accurate record of what is said, or are Committee staff who organise the governance of making sure a meeting happens. The four of us are MPs.

Eddie Hughes: I am Eddie Hughes, MP for Walsall North.

Chair: I am Maria Miller. I chair the Committee and I am MP for Basingstoke in Hampshire.

Angela Crawley: I am Angela Crawley, MP for Lanark and Hamilton East.

Jess Phillips: I am Jess Phillips, an MP in Birmingham.

Chair: Brilliant. Jyoti and Luanne work for the House of Commons to administer the team and make sure that we do not do anything we should not do, hopefully. Thank you so much for coming along today. We are going to talk for about 40 minutes, if that is okay. It is a private session. You might see cameras and things around; they are not on. It would say "broadcast" up there if we were on air, but we are taking a record so that we have an accurate record, which can be redacted in any way that we need it to be. That is no problem.

Q627 **Eddie Hughes:** Can you tell us why you wanted to give evidence to the Committee for this inquiry?

Witness E: I feel like the whole system does not work. I do not know what the answers are to make it work. But the reason I raised my grievance in the first place was because it is just so wrong that women or anybody are treated this way in the workplace. I wanted to do it to try to help anybody else who works at [employer], and to try to help the culture there [redacted]. We all need to make changes to make it a better place for everybody. People do not have to suffer these things when they are just going to do a job that they love every day. I feel very bound and gagged by the NDA that I have signed. This, for me, is one way that I am able to share how I feel and, hopefully, make a change for the better.

Q628 **Eddie Hughes:** You mention the NDA. You raised a grievance with your



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employer, which ultimately led to you signing that NDA, so can you just tell us a bit more about that?

Witness E: About the grievance or how I had got there?

Eddie Hughes: Yes.

Witness E: I raised the grievance just after [details of case] They wrote up the notes. I did not feel that the notes reflected what I had said accurately. I tried to go back to them to ask them to be changed but it was quite hard to convey exactly what was not right about them. They just did not capture the mood or the essence of what I was trying to say at all, but most of the words were there, if that makes sense.

After that, I said I did want to appeal. I involved ACAS right at the beginning of the process, because I had taken legal advice by then, when I did the grievance, but [employer] did not know that I had taken legal advice when I submitted my grievance. By reading it, they would have been able to tell that I had, because they had fancied up my words. In fact, they were most of my words. My lawyer said it was written very well but [they] just put it in more legal terminology.

[details of case]

Eddie Hughes: Unbelievable.

Q629 **Chair:** Sorry, that was a conversation with the HR director.

Witness E: Yes, [details of case] I had already been told by my lawyers that doing the appeal would just be going through the motions, because it would not come to anything. There was nothing to answer, if we agreed a settlement.

Q630 **Eddie Hughes:** When the settlement was offered, the NDA was an automatic association.

Witness E: There was never any discussion that there would be a settlement without an NDA. Then the findings of the appeal were that there were no grounds to be answered here. I could go to tribunal, but I already knew at that stage—not through word of mouth, but witnessed it myself, on a daily basis—that every single person in that business would do everything they possibly could to cover up [the] behaviour. [details of case] That is no option for me.

Q631 **Angela Crawley:** Thank you, first of all, for being here. I appreciate you being so honest. I know it is probably quite difficult to have to keep dredging it up time and time again. You have said that you felt you did not really have an option. The settlement came and you had to sign the NDA. You considered the tribunal route but felt that it probably would not have worked for you. What outcome did you want from it? Did you feel that there were any other options available to you at that time?

Witness E: The outcomes I wanted, I knew, were never going to happen.



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Q632 **Angela Crawley:** What would they have been, ideally? **Witness E:** They would have been for the culture to change, for people to acknowledge what had happened, [details of case]

Q633 [Question and answer with details of case removed]

Q634 **Angela Crawley:** Did you just feel that they were trying to shut it down, basically?

Witness E: Yes, they absolutely wanted rid of me. [details of case] if I went to a tribunal, they would have wiped the floor with me. What do I do, leave with nothing? I did not want to sign an NDA. In retrospect—I am sure this forms part of your questions—I hate the fact that I have signed it. I hate not being able to talk about it. To be the sort of person who has gone this far with it and to be in this room, it is a big part of who I am and what makes me the person I am. I am not able to talk about it, to join other women's groups, to help other women and say, "I have been in this position. This is how I handled it. This is the advice I could give to you. Let us not let this happen to anybody else".

Q635 **Angela Crawley:** If you could do that, though, what would be your advice to someone around an NDA?

Witness E: That is the sticking point. If you remove NDAs and you do not allow people to have monetary settlements, this is the situation I would have been left in. My mental health was on the floor, I had massive anxiety, I could not sleep and I was vile at home [details of personal circumstances]. I still do not feel able to work now. Whenever I get into pressured situations, I just feel like I am back in [employer] and living that nightmare again. I could have gone to tribunal and left with nothing, but then how am I supposed to pay my mortgage? And why should I be left with nothing? I worked there for [time period] and I worked my blooming arse off. Why should I be left with nothing? Why should [they] be able to just dispose of me like that?

I do not know what the answer is. The only way I can see it in my head is that every single touchpoint has to be changed and there has to be a huge change in culture. How it changes legally, I do not know because, if you remove the NDAs, what makes a business want to settle with someone and give them a figure, if they can then just go and tell everybody what that person has been up to anyway? Then you say, "HR needs to be supportive", but they were all complicit. They all knew exactly what was going on. [details of case] so I do not know what the answers are. I do not know whether taking that option away from people who are desperate is the right answer either.

Q636 [Qq 636-639, Questions and answers with details of case removed]

Q640 **Jess Phillips:** I had just a quick look over your NDA. Do you feel that you were given the legal advice and support that you needed to make an informed choice about signing your NDA?

Witness E: I was given very good legal advice.



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Q641 **Jess Phillips:** That they paid for. [Details of case]

Witness E: [Employer?]

Jess Phillips: Yes.

Witness E: Yes.

Q642 **Chair:** Were you able to choose the legal advisers?

Witness E: Yes.

Chair: You were.

Witness E: Yes. There was some conversation at the beginning: "If you go into a grievance, you can take somebody with you or somebody from a trade union". I do not know if this is normal.

Q643 **Jess Phillips:** Employment law states you can take another member of staff with you or a trade union representative.

Witness E: Yes. [Details of case]

Q644 **Jess Phillips:** You have already outlined to us that, when you made the choice to make the NDA, you were choiceless. It was a rock and a hard place. In making that choice, do you feel that you were able to access the legal advice and support that you needed?

Witness E: Yes. I had good legal advice. I had the support on that side. I had no support from [employer] whatsoever. All the support they gave me was very "sheep in wolves' clothing": "We are here to support you". Then things they said would be relayed via lawyers, but it was the opposite: "Yes, I will try to get this through as quickly as possible. I can see it is very painful for you", but then nothing would happen.

Q645 **Jess Phillips:** You had legal advice, so were you given any advice about the effect of the NDA on your ability to make protected disclosure under whistleblowing legislation? I recognise that sounds complicated.

Witness E: No. I had no idea, until a piece came out on Radio 4's *World at One* [date]. I can remember I was sat in the car outside the house, and somebody said something like, "People are able to go and speak to a regulatory body or the police". That was the first time I had heard of that.

Q646 **Jess Phillips:** It was not made very clear to you, because it is quite a long document and it is legalese.

Witness E: I read it like this in [details of case]

Q647 **Jess Phillips:** Did you have a lawyer with you at that point?

Witness E: No.

Q648 [Question and answer with details of case removed]

Q649 **Jess Phillips:** With no lawyer present with you. Did they offer that



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before?

Witness E: They did say, "If you want to take it to your lawyer's office and sign it there" or something. There was some conversation about that.

Q650 **Jess Phillips:** So you read it. You were not aware of protected disclosures under whistleblowing legislation or anything like that.

Witness E: No.

Q651 **Jess Phillips:** Were there financial implications of pursuing your complaint? Were the legal costs entirely covered by [employer]?

Witness E: I said that I wanted them to be covered but, if we did not come to a settlement, I would have had to have paid them.

Q652 **Jess Phillips:** If your lawyer and their lawyer had sat down together and thrashed something out, and your lawyer had said, "I do not think it is in my client's best interests to sign this", you would have then been liable for the cost of the lawyers.

Witness E: Yes.

Q653 **Jess Phillips:** Did you make demands that they paid for your legal action?

Witness E: Yes.

Q654 **Jess Phillips:** What made you do that? Did you know that you were entitled to it?

Witness E: No, that was something that my lawyer said: "You can ask for the legal costs to be covered".

Jess Phillips: Good. They have a keen eye on where to get somebody to pay for it.

Q655 **Chair:** Do you think you would have been able to pursue the case if you had not had access to legal advice? Do you think you could have done that?

Witness E: Not on my own. I did not know that you could ask for legal costs to be paid. It was not until my lawyer said, "We could make that a part of your settlement".

Q656 **Angela Crawley:** Would you have done it anyway? If you had had to cover the costs yourself, would you still have pursued it?

Witness E: No. [Details of case]

Q657 **Chair:** Did they cover the entirety of the cost?

Witness E: Yes.

Chair: I do not know if you can answer this, but was it an excessive amount? Somebody mentioned [£ figure] .



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Jess Phillips: It was [£ figure].

Witness E: I do not think the legal costs came to all that.

Jess Phillips: The amount in the agreement that they agreed to was [£ figure] plus VAT.

Witness E: As a cap?

Jess Phillips: As a cap.

Witness E: Yes.

Q658 **Angela Crawley:** You spoke about this briefly but I was interested to understand, from your point of view, what you felt the impact of signing the NDA was. Once you had signed it, you spoke about how you have not necessarily been able to move on with your life as easily as you had imagined, but it helped to cover your mortgage and it supported you to at least move forward with the rest of your life. If you could summarise how it impacted your life, what would you say it did for you to sign it?

Witness E: The positive thing it allowed me to do was to not have to put up with that behaviour, that bullying and that harassment any more. I have the comfort of knowing that there is some money in the bank that means I do not have to go into full-time employment straightaway.

Q659 **Jess Phillips:** Sorry, can I just ask a tiny question about that? There are tax implications of the money that you were paid. Do they take into account that it is going to be your income for X number of years?

Witness E: No.

Q660 **Jess Phillips:** So you just pay on a 45% tax rate for a lump sum. Sorry.

Witness E: No, it is all right. That is the other thing. People look at it and say, "Look, that person has been paid all that money". My settlement was nothing like what some of the others have had. After tax, it amounted to a bit more than [details of settlement]. It does not begin to cover what I have given the business or what I have had to put up with, none of it. It allowed me to leave, at that moment in time. Given that I had raised my grievance in [date] and I left in [date], you can imagine how desperate I was to get out of there by then, having been in there every day.

Q661 [Qq661-666, questions and answers with details of case removed]

Q667 **Chair:** Looking positively at non-disclosure agreements and how they are used in the future, based on your experience, which is quite extensive now, even though you may feel that you are not a qualified lawyer and the rest of it, are there changes you would like to see around the use of NDAs, particularly in discrimination and harassment cases? Is there anything that strikes you as an obvious change that would help?

Witness E: While I was going through it, now I am looking back on it, it felt very much that I had this tunnel vision to this goal at the end, just to get out. I had no idea how bound and gagged it would make me feel.



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Because at the time that I was going through such a huge fight, and I was able to channel the feelings and the anger that I have about how awful this is into the fight with them, I could not really see beyond signing that form. I did not know, when I left, how much it would still be burning in me to be able to continue that fight, not just to [employer] but to all men who behave like that.

Q668 **Chair:** You are saying that the problem you feel you had was not being able to speak out about it, so you think it would be important for people to be able to speak about their experiences.

Witness E: Yes, but that is the difficulty, like I was saying before: why would an employer give someone money if they are then going to go and tell the world what that person has done?

Q669 **Chair:** What would your position be on the idea of banning non-disclosure agreements, like they have in some parts of the States in particular instances of sexual harassment?

Witness E: I suppose, if there is a properly supported process that people can go through to say, "This is what has happened to me", I do not know how this can happen but you have the accused and the accuser. If there was a process that they were able to go through and each was supported to the same degree, so the accuser has as much legal support as the accused, and it felt like it would be an equal process, potentially you would not need NDAs to be there, but I do not know how that could work.

Q670 **Chair:** Some employers have decided not to use non-disclosure agreements because they are concerned about the way they conceal behaviour. It differs between different sorts of organisations. I suppose it might be easier to do that in certain organisations and very difficult in an organisation like the one you worked for, which was [details of employer] It is very difficult to make generalisations.

Witness E: That is where I come unstuck: in many sectors and businesses, I can see the kinds of businesses that would say, "We will not do those any more". They are probably not the sort of businesses that would end up using them in the same way that [employer] does.

Q671 **Chair:** Take it from us: they all use them. We have heard in public evidence from organisations like the Civil Service saying that they are now not going to use them. They were but they are not going to be using them. Some universities, such as UCL, have decided not to use non-disclosure agreements. It is very difficult when you have an organisation that is [details of organisation]

Can I go back to something you talked about with regard to the personnel department? To be able to take a tribunal case, there would be a need to have gathered evidence of behaviour, and that you had gone through the right processes. I felt that, when you were talking about the HR department, you were raising questions as to what process they had



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followed. Do you want to elaborate on that? To be able to take a tribunal case, you would need the HR department to have gone through proper due process, to then go to the tribunal to say, "I have all this evidence of the behaviour that happened". Do you feel that that evidence was gathered?

Witness E: No. [Details of case]

Q672 **Chair:** Is there anything obvious to you that would help people in your situation to gather evidence or to be able to evidence the case that they have? I can imagine that it must be quite difficult, if you are within an organisation, to be able to gather evidence.

Witness E: In hindsight, I wish that I had recorded some conversations and taken photographs. I was so close to recording conversations on so many occasions, but I was just really scared my phone would make a silly noise or something, and someone would realise. Again, you could say, "If you are in a situation like this, we advise that you try to gather as much evidence as possible", but even though I was living it, and knew that I should try to get evidence like that, I was too scared. [Redacted]

Q673 **Jess Phillips:** Also, recorded evidence is not submittable in court, unfortunately.

Q674 *[Question and answer with details of case redacted]*

Q675 **Chair:** Other witnesses who have talked to us about their experiences have talked about how it has made it very difficult to get into employment afterwards, not only because of the need to explain why you left an organisation—"Why did you leave that organisation?"; it can be quite difficult—or there may have been a gap in the CV that was difficult to explain, particularly if you are leaving quite a prestigious organisation, but because individuals might make it difficult to get another job by picking up the phone. Have you anything to add to that experience?

Witness E: I have not sought full-time employment because I do not feel I am able to. I would not put it past [employer] to pick up the phone. On the other hand, I would not want to work for any company that [redacted] I would find it extremely difficult to go to a new business and for them to ask me why I left and not be able to say. I would feel like I was doing myself and [others] a disservice.

Q676 **Jess Phillips:** Is that discussed in the process, the thing about what you would say when trying to get another job?

Witness E: There was something that formed part of the NDA. There are pages and pages in there saying, "You cannot say this about [employer]. You cannot say that. You cannot do this. You cannot do that". Then there is something to say, "We will write you a good reference".

Q677 **Jess Phillips:** It does not help you if somebody just says openly, in an interview, "Why is it that you left [employer] after [time period] ? What made you want to leave?" It is a perfectly reasonable question.



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Witness E: Yes. Of course, there are other things that I could say: I was disillusioned with the [employer] or I did not like the way it was being run.

Q678 **Jess Phillips:** I suppose you could lie and say, "I just fancied a change".

Witness E: There are ways you can hint at these things. Yes, I signed it, but why should I?

Q679 [Qq679-687, questions and answers with details of case removed]

Q688 [Details of case]

Jess Phillips: You have been really helpful.

Chair: Thank you so much for your time today, and for your frankness and for the insight you have given us into the experiences you have had. We found it was quite difficult, to start with, to get people to come and talk to us. To be honest, as a Committee we were quite nervous because we did not want to place people into difficult situations that we could not then support them with. But we are finding it incredibly helpful to speak to victims because it gives us an insight that is unique, and nobody else has ever really done this. It is really invaluable and we cannot thank you enough.

Jess Phillips: Yes, it is really brave.

Chair: I am sorry to have taken so much of your time and I hope it was not too horrible for you, but it is really valuable. As I say, a report will come out, probably around June. We really want to see significant change. The Government have launched a consultation on the future of non-disclosure agreements, so they are showing a willingness to listen, but we want to make sure that that goes as far as it can. Thank you very much.

Witness E: Thank you. [redacted – details of case]

Q689 [Question and answer with details of case redacted]