

Written evidence submitted by Can't Buy My Silence

1. HOW ABUSIVE NDAs UNDERPIN SEXISM IN THE CITY

OVERVIEW

- 1.1. The Can't Buy My Silence evidence to the Treasury Select Committee inquiry into Sexism in the City, focuses on how the inappropriate use of non-disclosure agreements (NDAs) has enabled sexism and discrimination to go unchecked in the City. The misuse of NDAs is at the core of misconduct issues and is a significant block to achieving systematic change or addressing the issues this inquiry is focused on – including toxic workplace cultures, gender discrimination, maternity discrimination and women's advancement in City careers.
- 1.2. NDAs have a legitimate and important place in business to protect trade secrets and commercially sensitive information. However, NDAs are regularly misused to conceal complaints of misconduct within otherwise valid settlement agreements forcing cases of sexual harassment, discrimination and abuse underground and fostering an environment of secrecy and abuse. NDAs that are misused in this way silence victims and protect sexual predators, bullies, racists and abusers, enabling the behaviour to continue and toxic, misogynistic work environments to flourish.
- 1.3. The issue of the inappropriate use of NDAs was not addressed in the Women in Finance committee report of June 2018. However since that report there has been increasing evidence of their widespread use to cover up abuse, harassment and discrimination, exemplified by high profile scandals in the City, including most recently at Odey Asset Management as uncovered by the Financial Times.
- 1.4. Many solicitors now see NDAs as a standard part of a settlement agreement, using template clauses. The extent of NDA use has led to the Solicitor's Regulatory Authority issuing warning notices regarding NDAs and is the focus of a Legal Services Board consultation this year. Among the more than 800 respondents (including 74 from the financial sector) to CBMS's survey of individuals harassed and discriminated against in workplaces at large, 25% say they were required to sign an NDA and a further 11% say they "cannot say for legal reasons" – in other words, they have signed an NDA. The total of those signing is 35%. Isolating responses from business, management and consulting, the same statistic is 43%.
- 1.5. In July 2018 the Women and Equalities Select Committee published its report Sexual Harassment in the Workplace, in which it examined the role NDAs play in sexism in the workplace and as a result called for end to "unethical" use of NDAs to silence victims of sexual abuse and harassment. Because NDAs are most easily used by those with the

access and means to engage top lawyers, our work and evidence gathered by our data partner Speak Out Revolution demonstrates the City is one of the sectors where NDAs are most prevalent.

- 1.6. Therefore we believe it is now vital that the Treasury Select Committee include the issue of inappropriate use of NDAs as a part of this inquiry. We also suggest clear recommendations this Committee could make to address this issue, bring the UK in line with other countries who are tackling the issue and in turn see fundamental progress in addressing sexism in the City.
- 1.7. We would welcome the opportunity to appear before the Committee to address these issues in more detail and address any questions the Committee may have on this issue.

2. WHO WE ARE

- 2.1. Can't Buy My Silence is a global not-for-profit campaign founded by Zelda Perkins and Professor Julie Macfarlane after their own personal experiences of the harmful use of NDAs. They are working with regulators and legislators internationally to outlaw the use of NDAs to "buy" the silence of victims. Zelda has been campaigning since 2017 when she was the first woman to break an NDA, signed decades earlier, with Harvey Weinstein. She brought the systematic abuse of NDAs to the attention of the UK government and international press, giving evidence at two parliamentary inquiries, which uncovered an epidemic of misuse, and motivated a public consultation by BEIS in 2019. Zelda also created pressure for a successful investigation by the Solicitors Regulation Authority into magic circle law firm Allen & Overy, who acted for Weinstein in this case, resulting in disciplinary action.
- 2.2. CBMS was launched in 2021 when it became clear that the recommendations made to the government by both the WESC and BEIS were not going to be addressed by the new Johnson government. Since then they have successfully introduced new legislation prohibiting NDAs in employment for anything other than trade secrets in Ireland, Canada and most recently in the UK amending the Higher Education (Freedom of Speech) act to prohibit the use of NDAs between students, staff or visiting speakers in cases of sexual harassment, misconduct, bullying or discrimination. The campaign works closely with victims and journalists helping to facilitate the safe exposure of the misuse of NDAs to cover up abuse and harassment – most recently on the Crispin Odey and David Adjaye cases reported by the Financial Times.
- 2.3. In our submission we refer to statistics collected by our data partners, Speak out Revolution. Speak out Revolution is a not-for-profit, founded in 2020 who have the most comprehensive worldwide survey collecting data and testimony from around the world on bullying and harassment in the workplace

3. HOW NDAs CONTRIBUTE TO SEXISM IN THE CITY

- **NDA's perpetuate the problem.** When NDAs are misused to silence victims of sexual misconduct, abuse or harassment, or other forms of gender-based bullying or discrimination, perpetrators often go on to abuse others. A clear recent example of this is at Odey Asset Management, where NDAs were used to cover up abuse of women by Crispin Odey over five decades.
- **NDA's don't just protect the victim.** Abusive NDAs protect an employer's reputation and the career of the perpetrator, not just the victim who can be protected by a simple one-sided confidentiality clause. Few signatories are offered alternative ways of protecting their own privacy without protecting the rights of their perpetrator.
- **NDA's gag victims permanently.** Few signatories realise at the time of signing that they are signing away their right to talk about their experiences forever, leaving them unable to talk to their family or friends about their experience – or in many cases receive medical, therapeutic or professional help. It makes it impossible to be truthful in job interviews or assessments in the future where past incidents at work are significant. Most signatories feel coerced by the need for a positive reference into signing abusive NDAs.
- **NDA's make victims and third parties lie.** Signing an abusive NDA makes it very difficult, if not impossible, for victims to explain why they left their last position when they left following a settlement or complaint, forcing them to lie about their past. In many documented cases, co-workers are also put into a position of lying or risk being sued for defamation. Most profess to feeling guilty, even complicit, at being unable to warn others as a consequence of their NDA.
- **NDA's chill the climate.** For women wishing to speak up about abuse in the City, NDAs create a chilling effect whereby victims and whistleblowers are discouraged from coming forward to speak about their experiences.
- **NDA's are used to hide maternity discrimination:** As evidenced in our data but also regularly in the media, the use of NDAs are not only related to sexual harassment or assault. NDAs are commonly used to cover up maternity discrimination. A survey by Pregnant Then Screwed in 2022 of 696 women who signed an NDA has shown that 90% of women who signed an NDA after encountering maternity discrimination said signing was their only option, 72% said signing had a negative impact on their mental health, 78.5% believe their employer had used NDAs to hide wrongdoing multiple times and 90% of those who signed said they would have been happy for people to know what had happened to them at that organisation.
- **NDA's prevent Boards and shareholders having an understanding of the issues within their own organisations:** It is not a requisite for shareholders to be made aware funds are being used for settlements including NDAs – and NDAs can even prevent Boards from having a full understanding of what is going on in their business and rooting

out poor culture, in this way they undermine other legitimate attempts to improve working practices and culture for women.

4. KEY STATS

- 4.1. By the very nature of their enforced secrecy collecting data on the use of NDAs is challenging. Speak Out Revolution has been collecting and analysing testimonials, and their data set, although only three years old, looks across many sectors and offers insights into the wider trends within the City. The over 100 anonymous testimonials on our CBMS website gathered in the last two years back this data very clearly.
- 4.2. CBMS works with individuals across all industries who have been gagged by abusive NDAs concealing abuse, harassment, and bullying, and the financial services industry is no exception. In fact, using reporting data obtained from Speak Out Revolution's open-source dashboard, it is clear that the City workers are subjected to harassment and bullying at a remarkable rate and NDAs enable this environment:
- The City has a sexism problem. According to data collected by Speak Out Revolution, 45% of workers working in the financial services industry have encountered sexual harassment in the workplace. The overwhelming majority of victims have been women – but a higher proportion of men in the financial services industry self-report having been sexually harassed than their male equivalents in law, marketing, or human resources.
 - City workers do not feel like they can come forward. 77% of workers that encounter sexual harassment or bullying in the workplace do not formally report it. This is a staggering 17% higher than the rate of non-reportage in other industries – with 50% of those that chose not to report stating that they did not believe anything would be done about their experience.
 - Outcomes are worse for City workers when they do come forward. When workers that encounter sexual harassment or bullying in the workplace do choose to formally report it, they are even less likely to receive resolution than those that informally report it – with 44% of cases becoming worse or much worse as a result of reporting and 56% of cases resulting in the victim leaving.
 - Abusive NDAs are the City's tool of choice to silence victims. Of those victims that would pursue formal reporting, 32% choose not to do so to avoid being made to sign an abusive NDA that would leave them unable to talk about their experiences forever and grant their abusers the anonymity they need to strike again.
 - Repeat offenders act with impunity in the City. 65% of respondents that report having encountered workplace harassment or bullying in the City are aware of multiple people that have suffered at their hands of their abuser – with an astonishing 41% of

respondents being able to identify upwards of five victims who share the same perpetrator as them.

- Power imbalance is key to understanding sexism in the City. 65% of respondents who have encountered workplace sexual harassment or bullying in the City were abused by their line manager, with 22% of respondents stating that their abuser was a senior colleague, relative to 14% that identify their abuser as a colleague of equivalent seniority.
- The City provides little support for those that come forward. Whether they reported their sexual harassment or bullying formally or informally, respondents were united in feeling as if their employer did not provide them with adequate support. 46% of formal and 44% of informal reporters felt unsupported relative to 11% and 12%.

5. EXAMPLES OF NDAS IN THE CITY

- 5.1. In July this year the [Financial Times](#) ran a series of reports, detailing accounts from 19 women alleging that financier Crispin Odey sexually assaulted or harassed them. Non disclosure agreements were one of the tools used to cover up the abuse and allow the offending to continue over five decades. In order for the Financial Times to report the story, women had to break their NDAs to speak out, taking serious personal and financial risks to do so.
- 5.2. The whistleblowing case of Sally Masterton in which [Lloyds bank subjected her to not one, but two NDAs](#) (2015/2018) in their efforts to silence her about Halifax Bank of Scotland irregularities should also be reviewed.
- 5.3. Recently, the Dow Jones Financial news identified abusive NDAs as part of the [“systems that silence victims of sexual harassment”](#) in the City – and documented several examples of their misuse across the financial services industry. Due to the nature of NDAs it is very hard to ask victims to speak up.

6. TOWARDS CHANGE

- 6.1. Around the world abusive NDAs are being recognised as a tool that holds women and other minorities back in the workplace and governments are beginning to act. 18 states in America have passed legislation outlawing NDAs for various aspects of workplace misconduct. In December 2022, President Biden signed into law the Speak Out Act banning the use of point of hiring NDAs and non-disparagement agreements. In Canada legalisation is being passed in many provinces and a new law is coming into force in Ireland too.

- 6.2.** The UK was an early leader in calling for the end of abusive NDAs, but progress stalled with changeovers in government. Now the issue is back in prominence and earlier this year the UK government took its first major step introducing a new law to prohibit universities from entering into NDAs with staff members, students or visiting speakers in relation to complaints of sexual misconduct, abuse, bullying, harassment or discrimination. The new law was supported by all the major parties, with government minister Claire Coutinho stating: *“It can never be right to force a victim of sexual misconduct, bullying or harassment to remain silent, denying them the right to talk about what has happened to them even with their family or close friends. This does not come down to politics, in my view; it is about doing what is right.”*
- 6.3.** During the debate, cross party members spoke to the need to broaden this legislation to protect the entire commercial workforce and this attitude is evidenced by two recent private members bills requesting NDA reform.
- 6.4.** Right now, CBMS is working on a business pledge, speaking to business leaders in the finance, consultancy, tech, media and others to work with leaders who want to lead the way and commit to ending the use of abusive NDAs within their organisations.
- 6.5.** Through this investigation the Treasury Select Committee has an opportunity to once again push for progress on this issue and call for change to ensure abusive NDAs are no longer used to cover up abuse, harassment or discrimination against women in the City. In doing so you will remove one of the fundamental tools in our system that protects perpetrators, embeds toxic culture and holds women back. Without the tools to act with impunity or to discriminate there will be a fundamental behaviour change in the City which will lead to a more positive self regulated working environment for workers and a more transparent healthy financial model for shareholders with less risk of the collapse of businesses due to abuse and lack of equality. This is very much exemplified by the work of Ifeoma Ozoma in the U.S.A. California and Washington States passed the Silenced no more act banning the use of NDAs in cases of sexual harassment and discrimination. Using shareholder education Ozoma managed to get Google, Apple and Salesforce to make these protections U.S. wide after shareholders insisted on the change.

7. RECOMMENDATIONS

- 7.1.** We are calling on the government to:
- 1.** Address and investigate the issue of abusive NDAs and their impact on sexism in the City during the inquiry.
 - 2.** Recommend action by the key regulator, the Financial Conduct Authority, to address the use of the NDAs in their guidance to City firms.

3. Bring forward new legislation to bring all workplaces in line with higher education organisations via the expected Employment Bill, by prohibiting businesses from entering into NDAs with employees in relation to complaints of sexual misconduct, abuse, bullying, harassment or discrimination. This brings workplaces into line with higher education institutions who are now prohibited from entering into NDAs via an amendment to the Higher Education (Freedom of Speech) Bill.

REFERENCES

All statistics contained within this briefing note were compiled by Can't Buy My Silence's data partner **Speak Out Revolution**. Speak Out Revolution is a not-for-profit founded in 2020 with the most comprehensive worldwide survey collecting data and testimony from around the world on bullying and harassment in the workplace: <https://www.speakoutrevolution.co.uk/dashboard>

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