

## Written evidence from Can't Buy My Silence [MiM0056]

### 1. HOW ABUSIVE NDAs SILENCE VICTIMS IN THE MUSIC INDUSTRY

#### OVERVIEW

- 1.1. The Can't Buy My Silence evidence to the Women & Equalities Select Committee inquiry into the use of non-disclosure agreements (NDAs) in the music industry focuses on the inappropriate use of NDAs to silence victims of gender discrimination, sexual harassment, abuse, and bullying. In particular, it will investigate how the inappropriate use of NDAs in these instances serves to perpetuate a culture of sexism and discrimination within the music industry wherein victims are prevented from coming forward or sharing details of their experiences.
- 1.2. There is a legitimate and important role for NDAs to play in ensuring that IP, trade secrets and commercially-sensitive information remain protected. However, it has sadly become commonplace across all industries for NDAs to be inserted into otherwise valid settlement agreements or engagement contracts resulting in cases of gender discrimination, sexual harassment, abuse, and bullying being forced underground and toxic workplace and performance environments going unchecked. When NDAs are misused in this way, victims find themselves silenced and sexual predators, bullies, racists and abusers go unpunished, allowing their behaviour to continue.
- 1.3. The use of NDAs as a standard part of a settlement has become widespread, with many solicitors using template clauses that include them as a default. The proliferation in the use of NDAs has resulted in action from legal bodies such as the Solicitors Regulation Authority (SRA), who have issued two warning notices regarding their usage, and prompted the Legal Services Board (LSB) to launch a consultation which concluded there was "cause for concern" in the way they were being used and is now analysing how to reform practise. Amongst the nearly 1000 respondents to the CBMS survey of individuals harassed and discriminated against in workplaces across the UK, 25% said they had been made to sign an NDA with a further 11% declining to say for "legal reasons" – meaning, in other words, they have signed an NDA thus making the total 36%.
- 1.4. 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 disproportionately used in precarious industries, where freelance contracts exacerbate existing power dynamics, our work and evidence gathered by our data partner Speak Out Revolution demonstrates that the music and creative industries is one of the sectors where NDAs are most prevalent.

- 1.5. We believe that the Women and Equalities Select Committee’s inquiry into the use of NDAs into the music industry could prove to be a watershed moment for the industry. We shall suggest clear recommendations for the committee to tackle the use of abusive NDAs, help to bring the UK in line with other countries taking action on the use of abusive NDAs, and take a decisive step towards ensuring victims are never silenced again.
- 1.6. 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.
- 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 UPHOLD A CULTURE OF SILENCE

- **NDAs 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.

- **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 could 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 about bad practice, dangerous individuals or unethical contracts for the rest of their careers. Most signatories feel coerced into signing abusive or unethical NDAs by the need to protect their desire to work in their industry of choice but one where the power imbalance is weighted heavily in favour of managers, labels and the need to uphold their industry reputation to work and for commercial security.
- **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 or other artists 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 music industry, 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..

#### 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 music industry. 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 music industry is no exception. In fact, using reporting data obtained from Speak Out Revolution's open-source dashboard, it is clear that musicians are subjected to harassment and bullying at a remarkable rate and NDAs enable this environment:

- The music industry has a huge sexism problem. According to data collected by Speak Out Revolution, 45% of musicians have encountered sexual harassment in the workplace, with the overwhelmingly majority of victims being women.
- Musicians do not feel like they can come forward. 72% of workers that encounter sexual harassment or bullying in the workplace do not formally report it. This is a staggering 12% higher than the rate of non-reportage in other industries – with 83% of those that chose not to report stating that they did not believe anything would be done about their experience.
- Outcomes are worse for musicians 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 music industry'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 music industry. 74% of respondents that report having encountered workplace harassment or bullying in the music industry are aware of multiple people that have suffered at their hands of their abuser – with an astonishing 39% 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 music industry. 83% of respondents who have encountered workplace sexual harassment or bullying in the

music industry were abused by a manager or a senior colleague, relative to 13% that identify their abuser as a colleague of equivalent seniority.

- The music industry 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 – with 63% of formal and 67% of informal reporters left feeling unsupported after their experiences.

## **5. TOWARDS CHANGE**

- 5.1.** 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 landmark amendment to the Employment Equality Bill is coming into force in Ireland in the next 18 months prohibiting NDAs in cases of abuse..
- 5.2.** 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.”*
- 5.3.** 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 and a well attended Westminster Hall Debate requesting NDA reform.
- 5.4.** Right now, CBMS is working on a business pledge, speaking to business leaders in the creative industry, financial, consultancy, tech and other sectors to encourage organisations to lead the way and commit to ending the use of abusive NDAs within their individual areas.
- 5.5.** Through this investigation the Women and Equalities 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 music industry. 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 music industry 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 pressure Ozoma managed to get Google, Apple and Salesforce to make these protections U.S. wide after shareholders insisted on the change.

## **6. RECOMMENDATIONS**

**6.1.** We are calling on the government to:

1. Address and investigate the issue of abusive NDAs and their impact on the music industry during the inquiry.
2. Recommend the new Creative Industries Independent Standard Authority (CIISA) work with the industry and partners to end the misuse of NDAs.
3. Bring forward new legislation to bring all sectors in line with higher education organisations by prohibiting NDA's to be used in relation to complaints of sexual misconduct, abuse, bullying, harassment or discrimination.
- 4.

### **FOR MORE INFORMATION**

Please contact Zelda Perkins at: [zelda@cantbuymysilence.com](mailto:zelda@cantbuymysilence.com)

### **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>

December 2023