

## Written evidence from Zelda Perkins, Co-found, Can't Buy My Silence [MiM0004]

### Why further legislation Needed

Non-Disclosure Agreements (NDAs) were originally designed to protect trade secrets, but they are routinely used to silence victims of workplace misconduct, harassment, discrimination and malpractice. Shareholders and taxpayers money is often used to make settlements hiding abuse, often without their knowledge. The individual harms to victims on a personal, professional and cultural level is significant and is ultimately breaking down trust and performance in all sectors. Amending legislation to ensure NDAs can no longer be weaponised to conceal wrongdoing yet allowing confidentiality at the victim's request would maintain legitimate protection of trade secrets without protecting perpetrators of abuse.

### Key Statistics

- 93% of those signing an NDA report mental health consequences
- Five times as many women have signed an NDA as men.
- Significantly higher numbers of Black women (55% of the survey) have signed NDAs compared to White women (40%).
- 34% of respondents report that they did not file a formal complaint, because they anticipated being asked to sign an NDA, and did not want to.

### Music-related Statistics

- 45% of musicians have encountered sexual harassment in the workplace, with the overwhelmingly majority of victims being women.
- 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.

### Key Legislative Context in UK

- **Higher Education (Freedom of Speech) Act (2023):** Bans NDAs in higher education institutions between students, staff, and visiting speakers, in cases of sexual misconduct, discrimination, or bullying. This principle should extend to ALL employees not just those in HE.
- **Victims and Prisoners Act (2024):** Clarifies that no confidentiality agreement can prevent victims from reporting crimes or seeking support from relevant authorities. Although this has now been clarified in legislation, unless it is made clear in agreements, victims are not aware of its protections.
- **Workers Protection Act (2024):** Strengthens employer duties to prevent workplace sexual harassment, including by third parties. Further legislation outlawing the incorrect use of NDA's in these cases would be hugely beneficial to all employees & organisations.

### The Impact of reforming NDA use

Aligning the UK with international legislation (US, Canada, Ireland) and best practice (Canadian and US Bar), would ensure that NDAs cannot:

- Prohibit disclosure of harassment, discrimination, or workplace misconduct.
- Be imposed without the persons fully informed consent and clear understanding of their options, i.e. one-sided confidentiality.
- Be forced upon employees as a condition of legitimate settlement.
- Prevent disclosures to law enforcement, regulators, legal/therapeutic support, or trusted individuals when outside of criminal conduct.

- Be indefinite: any NDA relating to misconduct must have a time limitation  
Adversely affect the future health or safety of a third party or public interest
- **ROI Amendment to the Employment Equality Act (pages 7-11)**

Data gathered over the last three years from the US Employment Equality Opportunity Commission (EEOC) clearly shows that before there was NDA legislation, the settlement rate at the EEOC was **81%**. However after 9 states, which constitutes 27% of US population, had passed legislation forbidding NDAs for sexual harassment disputes in 2022, **there was a settlement rate of 92.1%** This clearly debunks the most commonly raised concern; that by removing NDAs, settlement rates would be chilled which would be bad for victims.

Crucially, reforming legislation would not prevent victims from requesting confidentiality if they choose. Nor would it stop parties from settling workplace disputes, it simply ensures that blanket confidentiality cannot be imposed as a condition of settlement to silence victims, preserving the right to resolution while preventing coercive confidentiality agreements.

Equally this would not interfere with NDAs used for their legitimate purpose, including protecting trade secrets, intellectual property, client confidentiality, or other non-harmful terms of a settlement agreement.

### **Why Now?**

This issue has been subject to extensive scrutiny and recommendations encouraging legislative reform in the UK since 2018:

- Women & Equalities Select Committee inquiries; 2018, 2019 and 2023 (Misogyny in Music)
- BEIS consultation on NDA misuse; 2019
- Westminster Hall Debate on misuse of NDAs in the Workplace; 2023
- Solicitors Regulation Authority(SRA) warnings 2018, 2020 and 2024
- Treasury Select Committee report on Sexism in the City; 2024
- Legal Services Board and SRA public consultation and report 2023 and 2024
- Bar Council call for legislative reform on NDAs; 2024

This Committee, as well as others, has already identified the harmful effects of NDA misuse in previous inquiries. With cross-party support and legal regulators calling for reform, this is a critical moment to address the issue through the Employment Rights Bill.

**Please see our amendment being considered by the Bill committee in the accompanying document.**

### **REFERENCES**

All statistics contained within this briefing note were compiled by Can't Buy My Silence and their 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>

Additional statistics were from the campaign group Pregnant then Screwed survey.

To move the following Clause -

“Non-disclosure agreements: harassment, sexual misconduct, retaliation and discrimination

(1) Any provision in an agreement to which this section applies is void insofar as it purports to preclude the worker from making a relevant disclosure.

(2) This section applies to any agreement between a worker and the worker's employer

(whether a worker's contract or not), including any proceedings for breach of contract.

(3) In this section, a "relevant disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, shows that harassment (including sexual harassment and misconduct) retaliation or discrimination has been committed, is being committed or is likely to be committed, by a fellow worker or a client of the employer.

(4) In this section, "harassment" means any act of harassment as defined by section 26 of the Equality Act 2010; "discrimination" means any act of discrimination (both direct and indirect) as defined by section 26 of the Equality Act 2010; "retaliation" means any act of victimisation as defined by section 27 of the Equality Act"

(5) An exempted non-disclosure agreement is permitted at the specific request of the worker, with their fully informed consent having been provided with independent legal action that explains alternative approaches to protect worker confidentiality. An exempted non-disclosure agreement must also

(i) not harm any third party in the future or the public interest;

(ii) include a waiver that enables the worker to withdraw from the non-disclosure agreement at any time;

(iii) be of a time duration not exceeding three years;

(iv) be written in plain English.(6) Any exempted non-disclosure agreement must always allow the worker to speak with: a lawyer, physician, psychologist or psychological associate; a registered nurse or nurse

practitioner, or registered social worker; a community elder, spiritual counsellor or counsellor who is providing culturally specific services to the complainant; an Ombudsman; a friend, a family member or personal supporter.

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