



UK "NDA" debate continues

Blog - By **Darren Isaacs** - 12 June 2019

The current debate over the use of NDAs ("Non-Disclosure Agreements") in the context of sexual harassment claims, does not look like it will die down any time soon.

Most recently, on 11 June 2019 the UK Parliament's Women and Equalities Committee published a report making various recommendations for reform of the use of NDAs in the context of sexual harassment and other discrimination allegations.

A copy of the report can be found [here](#) (the landing page has a neat summary of the Committee's recommendations, if you do not have time to read the full report).

For our part as solicitors, the SRA (the Solicitors Regulation Authority) issued guidance to us back in March 2018, as to what we can and cannot do when drafting settlement agreements in employment disputes. According to the SRA:

We consider that NDAs would be improperly used if you sought to:

- use an NDA as a means of preventing, or seeking to impede or deter, a person from:
 - reporting misconduct, or a serious breach of our regulatory requirements to us, or making an equivalent report to any other body responsible for supervising or regulating the matters in question
 - making a protected disclosure under the Public Interest Disclosure Act 1998
 - reporting an offence to a law enforcement agency
 - co-operating with a criminal investigation or prosecution.
- use an NDA to influence the substance of such a report, disclosure or co-operation
- use an NDA as a means of improperly threatening litigation against, or otherwise seeking improperly to
- influence, an individual in order to prevent or deter or influence a proper disclosure
- prevent someone who has entered into an NDA from keeping or receiving a copy.

Although this all goes without saying, the SRA has very recently taken action against some high-profile employment lawyers who they believe to have breached these requirements, putting the issue back under the spotlight again.

So if you are an HR adviser or BP who needs your solicitors to prepare a settlement agreement in a discrimination or harassment dispute, just be aware that (as well as the current national debate around using these) there are significant restrictions on what your solicitors may or may not be able to include in a draft settlement agreement for you. You are still allowed (for now) to include some sort of confidentiality requirement, but care needs to be taken to ensure any such provision is not considered over-the-top.