

## Challenging the use of non-disclosure agreements (NDAs)

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### John Palmer, Senior Editor at Acas

John Palmer is Senior Editor at Acas and author of the new Acas guidance on non-disclosure agreements (NDAs). He has spent extensive time researching, debating, speaking and advising on recent developments in workplace confidentiality and NDAs. He has 15 years' experience advising employers and workers on a wide range of workplace issues, including discrimination, bullying and sexual harassment.

One of the most hotly debated issues at the moment is around the use of 'non-disclosure agreements' (NDAs) or 'confidentiality clauses'. Whatever you might call them, they're agreements that restrict someone from telling other people about something.

Having workplace secrets never feels like a good idea, but sometimes, keeping an issue private is perfectly acceptable. For instance:

- to keep sensitive or commercial information confidential
- to protect customer identities
- to help to settle some sort of workplace disagreement where both parties feel the need for privacy

Yet sadly, we've all heard plenty of stories in the news about how some of these agreements have been abused, confusing and misleading. We've even heard about some being used to try to cover up discrimination and sexual harassment.

### The purpose and effect of NDAs

There are legitimate reasons why NDAs might be used. Parties considering proposing an NDA should always carefully consider what they are looking to achieve and whether there might be an alternative solution. And parties signing an NDA should be fully aware of what they are agreeing to.

Whilst it's important to understand that some workplaces, jobs or situations might make it more likely that an NDA is proposed, it's useful to ask:

- do you really need an NDA for this specific situation?

- is the content of the NDA fully understood by all parties?
- is the NDA written in a way that is fair and transparent?
- is the use of NDAs across the organisation being monitored?
- is the use of NDAs affecting the organisation in a positive way?

If the answer to some or all of these is 'no', it's a good time for an organisation to take a closer look at how they are using these agreements and the kind of impact they might be having on the workforce and the wider culture.

Sometimes the impact of NDAs can go beyond the individual agreements: the more an organisation is seen to value excessive secrecy, the more its managers, teams and staff are likely to behave that way themselves. Not only that, but individuals are likely to feel less able to speak up about issues, and trust that fair and effective action will be taken.

## How we can challenge and change the way we use confidentiality

Being open to challenging, monitoring and reviewing NDA use is a good start.

It's useful for employers, workers and any recognised trade unions to work together and agree:

- what confidentiality is and is not needed for
- what is the best way to propose and negotiate NDAs
- how to review and monitor NDA use

This should focus the organisation on using confidentiality to achieve its goals in a careful, consistent and fair way that values openness and transparency.

To find out more about good practice, see [Acas's new guidance on NDAs](#).