

SETTLEMENT AGREEMENTS AND CONFIDENTIALITY

Background

Settlement Agreements (previously called Compromise Agreements) are legally binding contracts used to resolve employment disputes or end an employment relationship on mutually agreed terms. Typically Settlement Agreements will involve the employee receiving some financial compensation in exchange for agreeing not to bring legal action against the employer. They can also include other provisions such as confidentiality and non-disparagement clauses.

Settlement Agreements are widely used by employers in a variety of different situations including redundancy, long-term sickness absence, or to resolve grievances or disciplinary issues. The Agreements can be offered to employees through a 'Protected Conversation', which is an 'off-the-record' discussion to negotiate a Settlement Agreement. Protected Conversations allow for an open discussion about ending an employment relationship and/ or resolving a dispute, without the conversation being used as evidence in future unfair dismissal claims.

A number of high profile cases of alleged sexual misconduct (notably in connection with Harvey Weinstein) gave rise to concerns about how some Settlement Agreements had been negotiated, and around the inclusion of confidentiality (or 'gagging') clauses. Such clauses can be very wide ranging and could, for example, aim to prevent the employee from disclosing the employer's confidential information, the facts and nature of the dispute being settled, the terms of the Settlement Agreement, and even the fact that the Settlement Agreement existed.

Zelda Perkins was a former assistant to Harvey Weinstein who, in 2017, spoke out about Weinstein's alleged harassment, in breach of a Settlement Agreement that she had signed with her former employer, Miramax. Ms Perkins later gave evidence to the UK Parliament's Women and Equalities Select Committee, describing the pressure she had faced from Miramax's lawyers whilst negotiating the Agreement. She also raised concerns about the wide scope of the confidentiality provisions in the Settlement Agreement – these included an attempt to gag her from discussing her experiences, even with a therapist, or in the context of criminal proceedings.

Following these concerns, both the Law Society and the Solicitors' Regulatory Authority issued guidance reminding lawyers of their regulatory obligations, which include not taking unfair advantage of clients or others, and co-operating with bodies who exercise

regulatory, investigatory or prosecutory functions in the public interest. As a result of that guidance, confidentiality clauses within Settlement Agreements now routinely confirm that, notwithstanding any confidentiality provisions, disclosures may be made in the public interest (e.g. whistleblowing disclosures or reports to the Police or regulators).

Employment Rights Act 2026

Debate has continued about the use of Settlement Agreements and non-disclosure agreements ('**NDA**s') to restrict individuals from sharing experiences of harassment or discrimination in the workplace.

Settlement Agreements can include non-disclosure/ confidentiality clauses, but NDAs can be used in contexts other than the employment relationship.

Zelda Perkins has called for an end to the use of NDAs to '*buy the silence of a victim or whistleblower*'. Her campaign asserts that the misuse of NDAs perpetuates misconduct, protects the perpetrator not the victim, and '*chills the climate*' for anyone wishing to speak up about abuse in the workplace¹. Lending her support to the campaign, the MP Jess Phillips highlighted that women, and particularly Black women, tend to be disproportionately affected by the use of NDAs.

On 8 July 2025, the UK Government announced plans to end the use of NDAs in cases involving harassment and discrimination. The Employment Rights Act 2026 ('**ERA**') includes a new provision which makes void any clause – whether in a contract of employment or Settlement Agreement – which attempts to stop a worker from disclosing information about harassment or discrimination in the workplace. The government is expected to set out Regulations giving further details about the new provision, including any exceptions that might apply. As of February 2026, there is no confirmed date for when those Regulations will come into force.

The ERA's restrictions on the use of NDAs have been somewhat controversial. Although Zelda Perkins and other campaigners welcomed the move, some lawyers have warned that the changes may in fact be an '*own goal*'. It is argued by some that employers may be discouraged from settling disputes if they cannot insist on confidentiality, and that the new laws may make it harder for victims of harassment and discrimination to seek redress. The concern is that victims may be forced into litigation, which is often expensive, stressful and played out in public.

¹ <https://www.cantbuymysilence.co.uk/>



Other changes

Despite these criticisms, legislation and policy seems to be moving to discourage the use of NDAs. For example:

1. from 1 August 2025, English Higher Education providers were prohibited from entering into NDAs with staff, members, students or visiting speakers in connection with a complaint of sexual abuse, sexual harassment, sexual misconduct, or other bullying or harassment;
2. in October 2025 changes were made through the Victims and Prisoners Act 2024 to confirm that NDAs cannot prevent a victim from reporting a crime to the Police, or sharing details of the crime in order to get confidential advice or support;
3. also in October 2025, the Department for Education (**DfE**) updated the Academy Trust Handbook, which sets out a framework for the financial governance and management of Academy Trusts in England. Academies are state funded, independent schools which are operated via a charitable company known as an Academy Trust:
 - a. the Handbook states that Academy Trusts should ensure that any non-contractual severance payments to an employee under a Settlement Agreement:
 - i. are in the Trust's interests;
 - ii. cannot be regarded as a reward for failure;
 - iii. are approved by the DfE in advance, if they exceed £50,000; and
 - iv. are justified, based on a legal assessment of the Trust's chances of successfully defending the case at an Employment Tribunal;
 - b. the new version of the Handbook from October 2025 describes confidentiality clauses linked to staff severance payments as '*novel, contentious or repercussive*', and states that they should not be used unless the Trust has obtained prior DfE approval. In addition, where confidentiality clauses are included within a Settlement Agreement they should not prevent an individual making a whistleblowing disclosure, or impede the DfE's regulatory role; and
 - c. failure to comply with the new requirements around confidentiality clauses will put a Trust in breach of the Handbook, the penalties for which can



include formal Notices to Improve, intervention, financial penalties, and the removal of Trust boards.

Conclusions

It would seem that the tide is turning against the use of NDAs and confidentiality clauses, and that campaigns by Zelda Perkins and others have been successful in bringing about change.

Whether the provisions of the ERA around NDAs will affect employers' willingness to settle employment disputes remains to be seen. However, the experiences of Academies, who are grappling with the new version of the Academies Handbook, may well be instructive for other employers. This is because the Handbook requires DfE approval for all confidentiality clauses tied to employee severance payments, not just those relating to harassment and discrimination.

In my experience, the new rules have not greatly affected Academies' willingness to offer Settlement Agreements. A number of Academies have proposed Settlement Agreements without any confidentiality restrictions at all, as they do not have the appetite to await DfE approval which can take several weeks.

Even where there is a risk of press attention or negative PR, employers may still feel that Settlement Agreements (notwithstanding any restricted confidentiality clause) may bring a number of advantages:

1. Settlement Agreements bring a degree of certainty – both financial and around the risk of legal action;
2. The changes in the ERA do not go as far as the Academies' Handbook, in that the Act merely restricts the use of confidentiality clauses relating to harassment or discrimination; even then the wording of the ERA suggests that there may be some permitted exceptions. Therefore, it seems likely that, under the ERA, most employers will be able to include non-disclosure provisions relating to the employer's confidential data, aspects of any dispute not relating to harassment or discrimination, or the terms of the Settlement Agreement itself (for example the amount of any financial payment);
3. Employers may still be able to retain some control of the message around the employee's exit. Settlement Agreements often include agreed *'departure announcements'* confirming that an employee has left and why. Whilst employers will not, in future, be able to prevent an employee from disclosing any alleged



harassment or discrimination, agreed departure announcements are an opportunity for employers to put their version of events, and to 'position' the exit in the most favourable way; and

4. a Settlement Agreement with limited confidentiality may well be preferable for employers than defending an Employment Tribunal claim. Aside from the costs and inevitable risks of litigation, Tribunal hearings are usually held in public, and arguably there is less opportunity for employers to manage any negative publicity arising from such hearings, than any press interest following an agreed employee exit.

