

News release

Report into how law firms prepare NDAs published

14 August 2023

A report into how non-disclosure agreements (NDAs) are prepared [<https://www.sra.org.uk/sra/research-publications/thematic-review-nda/>] between employers and their staff, and the role of law firms in drafting and agreeing these has been published.

Among issues highlighted are the need for solicitors to be mindful of potential imbalances of power between employers and employees, and not to allow clauses to be included which might deter the reporting of inappropriate behaviour to law enforcement or regulatory bodies.

In 2018, we published a warning notice, making it clear that NDAs must not be used to influence, prevent, impede, or deter, a person from reporting potential misconduct to the police or regulators.

The notice also outlined that solicitors should not apply inappropriate pressure, employ aggressive negotiating tactics or include unenforceable or oppressive clauses when drafting NDAs.

Juliet Oliver, General Counsel of the SRA, said: 'While we found no direct evidence of firms intentionally seeking to suppress the reporting of wrongdoing, we did find examples of concerning trends and practices which may inhibit or deter disclosures.

'From employees having insufficient access to independent legal advice, to employers imposing tight time limits and a sense of urgency to complete settlements, the report also found significant imbalances in power between parties signing NDAs.'

Issues identified in the report included:

- around 10% of firms surveyed reported identifying unenforceable clauses in NDAs prepared by other firms
- the vast majority of firms visited (84%) used generic NDA templates
- only 1 in 8 firms provided staff with specific training on drafting NDAs, and only 64% of fee earners were aware of the SRA's warning notice
- while some employers offer discretionary payments to staff being asked to sign NDAs, in some cases, these only fund the most basic level of legal input

- we found limited records evidencing clear verbal or written advice to employees prior to signing an NDA.

Critically, the review found that the risks and consequences arising from NDAs are routinely underestimated and rarely explored. For example, exactly what the individual terms of an agreement mean to a signatory, and what it may prevent them from doing in future. Firms, and clients, mostly focus on the nature and extent of any possible financial settlement instead.

Following publication of its report, we will run a proactive awareness campaign to review and reinforce the issues and best practice highlighted in its warning notice. It has also responded to the Legal Services Board's consultation on the use of NDAs, and has committed to working with other legal regulators to improve awareness and understanding of the key issues among the public and profession.

In compiling our thematic review [<https://www.sra.org.uk/sra/research-publications/thematic-review-nda/>] we surveyed 150 law firms who provide employment services. We then conducted in depth interviews, on-site visits and file reviews across a representative sample of 25 of those firms most active in this area.