TUC

Changing the world of work for good

Make Work Pay: Non-disclosure agreements (NDAs)

TUC submission to the consultation on regulations to prevent the misuse of NDAs in cases of workplace harassment or discrimination

The TUC is the voice of Britain at work. We represent more than 5.5 million working people in 47 unions across the economy. We campaign for more and better jobs and a better working life for everyone, and we support trade unions to grow and thrive.

The TUC strongly supports the measures introduced via the Employment Rights Act 2025 to tackle the misuse of non-disclosure agreements (NDAs). We know that NDAs can be used to prevent parties from disclosing information about workplace misconduct. Evidence has emerged in recent years, including through several parliamentary inquiries, about the misuse of NDAs by some employers to silence workers from speaking out on sexual harassment complaints and other misconduct. For example, the Women and Equality Committee, highlighted that:

"Victims with little agency in the process are threatened into silence by organisations seeking to protect their reputation and the perpetrators of abuse who work for them. Victims described to us of being told they would suffer reprisals if they failed to sign what was put in front of them, often without independent counsel."[1]

We agree with the statement in the consultation document that some employers have exploited the inherent power imbalance in the workplace to get NDAs signed, creating a culture of secrecy, leaving perpetrators in place to offend again. NDAs can also have impacts on the health and wellbeing of workers by preventing them from discussing their experiences with others, such as support services, close family and friends.

Unions report widespread, unnecessary and inappropriate use of confidentiality clauses in settlement agreements. In some sectors, confidentiality clauses in settlement agreements are used in almost every single agreement. Trade unions have extensive experience of advising and assisting members who have been asked to enter into NDAs. Trade unions have been involved for many years in significant efforts to establish workplaces free of all types of discrimination and harassment. Unions see appropriate and ethical use of NDAs as an important step towards achieving this goal.

RMT has highlighted the recent use of NDAs by P&O Ferries when that employer unlawfully dismissed and replaced 786 Ratings, Officers, Apprentices and Cadets on 17 March 2022. Shortly after this shocking act, P&O Ferries offered all dismissed employees an ex-gratia payment. This was time limited and conditional on signing a non-disclosure agreement.

The use of NDAs in the P&O Ferries case was particularly corrosive as it effectively denied maritime workers the opportunity to enforce their employment rights, undermined collectively bargained pay and conditions in the ferry sector and brought into question the state's willingness to act quickly to protect maritime workers from unlawful behaviour against them by their employer.

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[1] Second Report of Session 2023–24, HC 129, "Misogyny in Music", Women and Equalities Select Committee.

There was regret amongst some ex-P&O workers that they had signed the NDA but they felt that they had no alternative due to factors including the delays in processing Employment Tribunal cases. But the imposition of the time limit on accepting an ex-gratia payment and waiving the right to claim unfair dismissal also severely restricted RMT members' options. The time-limited offer meant that there was no time for members to receive detailed legal advice on P&O's actions and the prospects of justice. The dismissals and replacements happened on 17 March 2022 and P&O's offer of an ex-gratia payment conditional on signing an NDA expired on 31 March 2022.

Measures resulting from this consultation should include reforms to prevent NDAs from being used to effectively blackmail and harass workers into signing away their rights.

Equity highlights that NDAs are common across the creative industries not only in private settlement agreements but also pre-audition and pre-engagement contracts. Equity recognises the legitimate use of NDAs to protect identifiable, valuable and confidential information. However, it has encountered the use of NDAs to prevent workers from speaking out about workplace misconduct that they may want to share to bring attention to injustices. A pertinent example is pregnancy discrimination encountered in TV and film, whereby the offer of a role will be revoked after the disclosure of pregnancy, without any exploration of reasonable adjustments to facilitate the worker from undertaking the role they have successfully auditioned for. It is common that workers across the creative industries are placed under duress to sign documents with clauses which impose blanket confidentiality with no time to seek adequate legal advice. On top of that, these are often written in tiny print and incomprehensible legalese, which workers have no hope of understanding. The result is a culture of fear.

That's why it is welcome that the government is proposing a new default legal position that any provision in a settlement agreement that seeks to prevent a worker speaking out about the discrimination or harassment that they've suffered, will be void.

The TUC welcomes the proposal that NDAs could still be used in "excepted agreements" providing relevant conditions are met. These would have vital safeguards to ensure NDAs are used when *workers* want to ensure confidentiality. We believe that providing the right conditions are put in place there will be adequate safeguards for workers who choose to use NDAs to protect their privacy and reach a prompt financial settlement with their employer. Unions recognise that the use of NDAs in cases of harassment and discrimination may sometimes be appropriate. A worker might want to maintain confidentiality as part of a settlement agreement to bring closure to an unpleasant or distressing experience. This is particularly the case in the creative industries where workers may be concerned about their privacy and reputation, with fears that disclosure would affect their ability to secure future work.

We welcome the wider systemic legislative changes that the government has introduced to tackle harassment and discrimination such as introducing new rights for trade union equality representatives and introducing a preventative duty on employers

to stop harassment before it occurs. These sorts of reforms are vital if we are to see a reduction in workplace harassment and discrimination. New rights for unions such as the right to access workplaces, a simplified trade union recognition process and new rights for equality representatives will facilitate greater union organisation, which in turn, should lead to a decrease in incidents of workplace harassment and discrimination.

The TUC also wishes to highlight the unique and valuable role that trade unions play in securing workplaces free of harassment and discrimination, as well as in advising and informing individuals of their rights relating to confidentiality agreements and their use in settlement agreements. Trade unions listen and respond to workers' concerns, provide a mechanism for collective voice and in doing so make a vital contribution to securing safer and fairer working environments. In addition, when members share with their trade union representatives reports of discrimination and harassment, trade unions acquire important insights into individual workplace cultures and can identify workplaces manifesting a pattern of discrimination and harassment. In this manner, trade unions are uniquely placed to work with employers in order to eliminate discriminatory workplace cultures and to do so on a collective basis, rather than exposing individuals to the pressure and stress of individually pursued grievances.

Additional recommendations/proposals not covered by the consultation

In addition to the recommendations we make below in response to the specific consultation questions, we think the government should implement further reforms relating to settlement agreements (including COT3 agreements), including:

- The TUC strongly believes that all the proposals outlined in the consultation should apply to both private settlement agreements and to Acas COT3 agreements. A worker using the conciliation service provided by Acas should not miss out on key safeguards such as a cooling off period and independent advice. Unions report that often Acas simply rubber stamps settlement agreements negotiated between the employer and worker/union. Therefore, these agreements may not be subject to any meaningful oversight by Acas. It's important that robust worker safeguards apply to these agreements as well. Furthermore, the TUC has proposed below that independent advice should be given by someone other than an Acas conciliator. This is because a conciliator will act on behalf of both an employer and worker and potentially seek a compromise position. A worker who is considering signing an excepted agreement, needs an independent advisor who is acting entirely in their interests.
- A legal requirement for a standard form of wording to be included on the front of all settlement agreements, clarifying the application of confidentiality clauses by expressly stating which disclosures can still be made lawfully made in accordance with relevant law. Should additional legislation be put in place to protect disclosures to other groups, these should also be referred to in the statement.

- Effective regulation of the use of excepted agreements/NDAs by way of a statutory code of practice and guidance (produced by the Equality and Human Rights Commission and/or ACAS).
- Enforcement measures to include uplifts to tribunal awards where an employer has failed to follow the statutory code of practice and/or has failed to include a clarifying statement on the front of the agreement, with additional penalties for repeat infringements.
- A requirement for the reciprocity of confidentiality obligations in NDAs. Where an individual accepts confidentiality restrictions, reciprocal obligations on the employer should be written into the agreement. Our affiliates report to us that reciprocity is not always offered by employers and that sometimes individuals are faced with a choice between either accepting a confidentiality clause they are not happy with or losing the choice of a settlement agreement with a termination payment.
- It is important that a trade union representative or official of the worker's choice is permitted to express the wish of the worker to enter into an excepted agreement with the employer. Having experienced harassment or discrimination, workers may feel more comfortable expressing this via their representative.

Chapter 2: Conditions for an Excepted Agreement

The TUC believes that any new measures relating to excepted agreements should ensure confidentiality clauses in settlement agreements are only used in an appropriate, clear and ethical manner. They should protect the right of the individual to freely enter into confidentiality obligations. Workers should fully understand the implications of doings so, by receiving appropriate independent advice to inform their choice.

Independent Advice

Question 1. Do you agree it should be a condition that the worker has received independent advice on the terms and effect, and the legal limitations of a proposed excepted agreement, before entering into the agreement?

Answer: Yes

In accordance with S.203 (3) of the Employment Rights Act 1996, in order for a settlement agreement to be effective, the individual entering into the agreement must have received advice on the terms and effect of the agreement from an independent adviser. Therefore, we consider that there is already an obligation under S.203 for an adviser to provide advice on any confidentiality clauses.

Any advice should also include which disclosures are permissible under the regulations, clarifying who a worker can disclose information to without breaching their NDA.

We also highlight the need to consider the use and regulation of confidentiality clauses in COT3 agreements negotiated by ACAS. We emphasise the importance of individuals

receiving independent advice on any confidentiality clauses in a COT3 and suggest that the S.203 requirements highlighted above are expressly extended to use of COT3 agreements.

We agree with the proposal in the consultation of who should be regarded as an adviser.

Question 2. Do you agree that independent advice must be given in writing?

Answer: Yes

Written advice creates a clear and verifiable record that the worker can review. Oral advice can be confusing or forgotten, so a written record for review is helpful for the worker. It ensures the worker can refer back to what they were told about their rights and limitations — particularly important during the cooling-off period (should this be implemented). Unions report that many workers who signed agreements did so without fully understanding the implications. Written advice, delivered before signing, would have made a material difference to many respondents.

Question 3. Do you agree that employers should not have to cover the cost of independent advice?

Answer: No

We recommend that employers should be required to fund the independent advice. This is in line with equivalent legislation in Ireland where employers are expected to cover the "reasonable legal costs and expenses of the legal practitioner who provides the legal advice".[2]

Workers who experience harassment or discrimination are often in economically precarious positions, having been bullied or forced out of employment. Requiring workers to fund their own legal advice risks creating a two-tier system in which only wealthier workers can meaningfully access the confidentiality provisions of an "excepted NDA".

If an employer funds a settlement agreement, a worker must have freedom of choice over which adviser to use.

Question 4. For private settlement agreements, do you have any concerns about requiring the worker to receive independent written advice on the terms and effect, and legal limitations of the NDA?

Answer: No

Question 5. For Acas facilitated COT3 agreements, do you have any concerns about requiring the worker to have received independent advice in writing on the terms and effect, and legal limitations of the NDA?

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[2] https://www.irishstatutebook.ie/eli/2024/act/37/enacted/en/pdf, page 8

Answer: No

Question 6. Should Acas conciliators be included as relevant independent advisers?

Answer: No

All independent advisers should be required to meet the criteria set out in S203, paragraphs 3A and 3B.

Acas conciliators are not mentioned in paragraph 3A as a suitable adviser. Furthermore, an Acas conciliator could have been acting in the matter for both the employer and worker prior to the settlement agreement being discussed. This would contravene the requirements set out in S203, 3B, (a).

The TUC doesn't believe that Acas conciliators could be truly independent as it is their role to seek compromises from both parties to achieve a resolution. They are effectively acting for both the worker and the employer.

Advisers must be truly independent and act in the worker's best interests.

Question 7. Should an independent adviser be required to provide other advice in writing, in addition to those proposed?

Answer: Yes

Information on where the worker can seek additional support (e.g., trade unions, Acas helpline, relevant charities supporting victims).

It's important that the independent advice received by a worker enables them to weigh up the pros and cons of signing an agreement, so that they can take an informed view about whether the terms of the NDA are fair and reasonable.

Worker Preference for an Excepted Agreement

Question 8. Do you agree that it should be a condition in the regulations that the worker has expressed their preference for an excepted agreement in writing following the receipt of independent advice?

Answer: No

We welcome the government's intention to create another key safeguard that would require the worker to take a conscious decision/step to sign up to the excepted agreement. It would give the worker further time and space to reflect before signing up.

However, we feel the importance of this safeguard is overstated and could lead to additional burdens on the worker and their advisors.

If an employer is applying undue pressure on a worker to sign up to an excepted agreement, then the requirement for the worker to activate the excepted agreement process by setting out their preference in writing is unlikely to stop employer pressure. They would simply pressure the worker to write the letter.

Requiring the worker to submit a written preference for an excepted agreement could also place another task/responsibility on a worker who is already in a stressful position. It also places an additional burden on independent advisors, who in practice, will be providing the templates for the letters, and advising the worker through the process. The TUC believes adequate safeguards are already in place. The worker will have received independent advice, had a statutory period of time to reflect on the agreement and would then have to take the step to actually sign the excepted agreement. The TUC believes that a requirement to express their preference in writing for an excepted agreement doesn't add anything to the requirement to sign an agreement.

A statutory review period, or cooling off period; time and space free from employer interference, is more of an effective safeguard.

It is vital that during the statutory review period and/or cooling off period the worker is free from any employer interference/pressure.

Question 9. Do you agree that the regulations should not prescribe the form and style of the worker's preference?

Answer:

A standardised template could benefit workers. A worker going through this stressful process would welcome having a template which would save them time and effort, when they come to write to the employer expressing their wish to enter into an excepted agreement.

Unions have also flagged that having a standardised template would reduce the scope for employers to claim, later on in the process, that the worker failed to give them the requisite information.

Having a template could provide clarity to both worker and employer and avoid disagreement later in the process. In addition, it could prevent employers from pressuring workers into including certain information into a written expression.

The TUC believes that the template wording should be provided in the statutory code of practice.

Question 10. Should an employer be able to suggest confidentiality to their workers?

Answer: No

Given the imbalance of power in the employment relationship there is a risk that allowing employers to suggest confidentiality will further entrench the culture of secrecy around workplace discrimination and harassment. Allowing employers to suggest an "excepted agreement" to a worker, could have a two-fold impact:

- Firstly, employers will continue to routinely use NDAs. Allowing them to suggest confidentiality clauses will see them regularly used. The culture of using NDAs will not be shifted.

- Secondly, employees, particularly where there is an imbalance of powers in the relationship, will feel pressured to sign a confidentiality agreement in order to receive a financial settlement. An employer suggesting a type of agreement to a vulnerable worker and linking this to a financial settlement, will see workers feeling like they have no choice but to use an "excepted agreement".

Question 11. For private settlement agreements, do you have any concerns about requiring a worker to express their preference in writing to enter into the agreement?

Answer:

No, as any worker expressing their preference in writing to enter into an excepted agreement would have received written advice from an independent adviser, so they would be making an informed decision. We don't believe this requirement would place an unreasonable burden on a worker, especially as the intention is to create an addition safeguard.

Question 12. For Acas facilitated COT3 agreements, do you have any concerns about requiring a worker to express their preference in writing to enter into the agreement?

Answer:

No, as any worker expressing their preference in writing to enter into an excepted agreement would have received written advice from an independent adviser, so they would be making an informed decision. We don't believe this requirement would place an unreasonable burden on a worker, especially as the intention is to create an addition safeguard.

Cooling-Off Period

Question 13. Do you agree that an excepted agreement should be required to include a cooling-off period?

Answer: Yes

As the consultation recognises, employers can set short time limits, typically seven days, for a worker to sign an NDA, creating a "general sense of urgency permeating the negotiation process", according to a 2023 NDA review by the Solicitors Regulation Authority.

Workers are often rushed into signing NDAs which restrict their rights.

A cooling off period would give workers valuable time and space to reconsider, if they are having doubts.

Question 14. Do you agree that 14 days is a sufficient length of time for a cooling-off period?

Answer: Yes

This seems a reasonable timeframe that echoes provisions in similar international legislation and consumer protections.

The equivalent Irish legislation, "Maternity Protection, Employment Equality and Preservation of Certain Records Act 2024", states that "the employee has a right, where he or she so elects, to withdraw from the agreement without penalty no later than 14 days from the date on which the agreement is entered into".

For the purchase of most goods or services, customers should be given a cooling-off period of at least 14 days under the Consumer Contracts Regulations.

Question 15. If no to Q14, what length of cooling-off period would you consider appropriate?

N/A

Question 16. Should any required cooling-off period only apply to the confidentiality clauses within an excepted agreement?

Answer: No

No, we don't see how this would work in practice. Unions report that typically decisions about confidentiality are taken in tandem with financial settlement so seems unworkable to separate them out.

Having a cooling off period that only applied to the confidentiality clauses might result in complex agreements where settlement conditions are variable depending on whether the confidentiality agreement is withdrawn or employers offering more conservative agreements in fear that the confidentiality will be withdrawn.

Question 17. Should workers be allowed flexibility to waive the cooling-off period?

Answer: No

Allowing a worker waiver of the cooling off period would enable the employer to apply pressure on the worker to waive the review period, pressuring them to agree NDA settlement terms, without giving the worker the necessary time to review and reflect whether they are happy with the excepted agreement.

Allowing a waiver would undermine the whole purpose of the cooling off period.

New York has recently implemented similar legislation regulating the use of NDAs. Their legislation states that "for a period of at least seven days following the execution of such agreement, the complainant may revoke the agreement, **and the agreement shall not become effective or be enforceable until such revocation period has expired**." This demonstrates that the full cooling off period must be available to the worker.

Question 18. Do you have any concerns about requiring a cooling-off period for private settlement agreements?

Answer: Yes

The only justified exception to a cooling off period is where a settlement is reached very close to a Tribunal hearing date. In such circumstances, delaying implementation of the agreement could create unnecessary costs and uncertainty for both parties. It would be unclear to both parties whether the tribunal needed to proceed or not.

A waiver of the cooling off period should be limited to this exceptional circumstance.

We also recognise the potential issues around ET time limits highlighted in the consultation document:

"A mandatory cooling off period could also introduce complications for calculating the time limits within which a worker can bring a claim to an Employment Tribunal. When a worker notifies Acas of their intention to bring a tribunal claim, employment tribunal time limits are paused for up to 12 weeks under section 207B of the Employment Rights Act 1996. This provides time for the parties to engage in conciliation if they wish, or they may pursue a private settlement agreement during this time. Introducing a cooling off period could create uncertainty for parties if a worker withdraws from an excepted agreement made while the statutory pause is in effect - whether it was concluded privately or via an Acas COT3 agreement. These interactions may cause difficulty for parties in accurately calculating time limits. This may lead to additional administrative disputes over the calculation of time limits, either during subsequent settlement discussions or as part of litigation at tribunal."

However, we don't believe the answer to this potential complication is to allow a worker waiver for the cooling off period, because of the risks of undue pressure from an employer eager to cover up workplace harassment and discrimination.

Question 19. Do you have any concerns about requiring a cooling-off period in an Acas facilitated COT3 agreement?

Same as above.

Question 20. Do you agree that there should not be a mandatory statutory review period before an excepted agreement is entered into?

Answer: No

The TUC believes there should be a statutory review period.

The TUC believes that a statutory review period, giving a worker time and space to consider an excepted agreement, prior to signing, would be an extra safeguard giving workers time to consider the independent advice and ramifications of signing an excepted agreement. This would prevent employers rushing workers into signing an NDA.

The relevant Acas code of practice[3] already states that "as a general rule, a minimum period of 10 calendar days should be allowed to consider the proposed formal written terms of a settlement agreement".

Similar legislation, recently introduced in New York, states that "the complainant shall have up to twenty-one days to consider such term or condition".[4]

The TUC believes the government should consult with unions before determining the appropriate length for the statutory review period.

Question 21. Should both a review and cooling-off period be conditions of an excepted agreement?

Answer: Yes.

Written Copy and Plain Language

Question 22. Do you agree that a written copy of the excepted agreement should be provided to all parties to the agreement?

Answer: Yes

As the consultation has highlighted some workers do not receive a written copy of the settlement agreement. Because of this common practice there should be a legal requirement for workers to receive a copy of something they've signed.

Question 23. Do you agree it should be a requirement that an excepted agreement is made available to the parties in any accessible format they may need?

Answer: Yes

Disability is a significant factor in many workplace harassment cases. TUC polling found that seven out of 10 (68 per cent) disabled women had experienced sexual harassment in the workplace, higher than women in general.[5]

An accessible copy of the agreement is vital to make sure disabled workers aren't put at a further disadvantage when it comes to understanding what they're signing.

Question 24. Should an excepted agreement be written in plain language?

Answer: Yes

Legalese often makes it hard for workers to understand their rights and what they're agreeing to.

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[3] https://www.Acas.org.uk/Acas-code-of-practice-settlement-agreements/html

[4] https://law.justia.com/codes/new-york/gob/article-5/title-3/5-336/

[5] https://www.tuc.org.uk/research-analysis/reports/sexual-harassment-disabled-women-workplace

Plain language is essential to make sure the protections in these agreements are actually meaningful.

The government should act on advice given by The Solicitors Regulation Authority published a warning notice on the use of NDAs, most recently updated in August 2024, which encourages the use of standard, plain English by solicitors.

Question 25. Should regulations require an excepted agreement to be in plain language?

Answer: No

We agree with the concerns raised in the consultation that by stipulating that excepted agreements should be written in plain English might create some unintended consequences and trigger a surge tribunal cases. Challenges could be made to the validity of the NDA on the grounds that an NDA was not considered to be in 'standard, plain language'. For example, this could lead to the Employment Tribunals having to make decisions around what constitutes "plain English" or "easy to understand language" which could undermine the NDA agreed between the parties and cause uncertainty for others entering into NDAs with similar language."

In some circumstances, the use of technical language may be required, for example, if an NDA covers matters related to the company that are technical in nature or complex.

The TUC believes that Acas should update its statutory code of practice to provide guidance for all parties about best practice NDAs/excepted agreements. This should include guidance on how to ensure agreements are written in plain English, the advantages of doing so and practical examples.

Question 26. Should guidance, rather than regulations, set out that an excepted agreement should be written in plain language?

Answer: Yes

The TUC believes that Acas should update its statutory code of practice to provide guidance for all parties about best practice NDAs/excepted agreements. This should include guidance on how to ensure agreements are written in plain English, the advantages of doing so and practical examples.

Pre-Existing Incidents Only

Question 27. Do you agree it should be a condition that an excepted agreement can only be entered into where it would prevent a worker speaking out about an incident of relevant harassment or discrimination which has already taken place?

Answer: Yes, we do not believe that an excepted agreement should be used to prevent a worker from speaking out about harassment and discrimination that may occur in the future.

Pre-event confidentiality clauses

Pre-engagement confidentiality agreements are very common for some of our affiliates and their members. These agreements are not necessarily specific to harassment and discrimination, but they may state blanket confidentiality, with clauses that are understandably interpreted by workers as prohibiting the discussion of anything that happens.

Although it is strongly arguable that any confidentiality clauses relating to discrimination and harassment used in such a context are in any event unenforceable, the TUC is of the view that there should be a statutory ban on the use of pre-event confidentiality clauses relating to discrimination and harassment. This would ensure absolute clarity for workers that such clauses are unlawful and should never be used. If backed up with suitable enforcement measures, such a measure should also act as an effective deterrent to organisations considering use of such agreements. In addition, the TUC consider it important that individuals are provided with statutory protection against detrimental treatment suffered as a result of refusing to enter into any such pre-event confidentiality agreements.

There should also be clear communication and awareness raising to ensure that workers are fully aware that any pre-engagement confidentiality agreement that they sign cannot prevent them from speaking out about relevant harassment and discrimination. For example, employers should be required to clearly explain the rights provided by s202A of the Employment Rights Act 1996 within the pre-engagement confidentiality agreement. This would tackle the culture of fear arising from the wide-ranging terminology used as standard in these agreements, and ensure that workers are aware of their rights, thereby facilitating a meaningful implementation of the legislation.

Time Limits

Question 28. Should the confidentiality obligations relating to relevant harassment and discrimination in an excepted agreement be required to be time-limited?

Answer: Yes, the worker should choose if they can be time limited

We agree with the consultation that enabling a time-limit for confidentiality obligations in an excepted agreement could help prevent long-term secrecy; for example, reducing the chance that perpetrators remain hidden and are able to continue harmful behaviour. In addition, it could support transparency and accountability in the workplace by discouraging organisations from using confidentiality agreements as a tool to protect reputations at the expense of individual victims and workplace safety.

The TUC believes that the government should follow the precedent set in the equivalent Irish legislation. In Ireland, excepted agreements must be "of unlimited duration, other than where the employee elects otherwise". These approaches help ensure that the worker can choose a timeframe that works for them.

This also takes into consideration that workers may prefer permanent confidentiality.

Question 29. If a time-limit is required, should government stipulate a maximum time-limit?

Answer: No

The TUC believes that the government should follow the precedent set in the equivalent Irish legislation. In Ireland, excepted agreements must be "of unlimited duration, other than where the employee elects otherwise". These approaches help ensure that the worker can choose a timeframe that works for them.

Question 30. If yes, what should the maximum time-limit be?

N/A

Question 31. Are there any other conditions or safeguards that should be required for excepted agreements?

Excepted agreements should either be registered with a central confidential body like the Fair Work Agency or the EHRC, or employers should be legally required to keep a record of how many they've issued. This would help identify organisations that are repeatedly using these agreements, even if the details stay confidential. The employer should have a legal duty to lodge the agreement with the relevant authority. A worker should be able to verify whether their excepted agreement has been lodged. Any financial sanctions for non-compliance should be paid to the affected worker. This central repository would enable the government to collect useful data relating to workplace harassment and discrimination.

Chapter 3: Permitted Disclosures

The TUC strongly believes that no confidentiality clause should seek to limit an individual's right to disclose information in order to obtain any form of professional advice and assistance. For example, from a legal adviser, accountant, therapist, counsellor or trade union officials and representatives. Confidentiality clauses restricting the right of individuals to speak about experiences relating to discrimination and harassment to their immediate family and close friends and colleagues are also of concern to the TUC, unless it is clear that the individual does not object to this restriction. Where an individual wishes to retain the right to discuss the circumstances and background with a friend or family member or colleague, we feel it is important they can do so. Affiliate unions report that confidentiality restrictions of this nature can have a negative psychological impact on the individuals and employer involved, hindering change, improvements, learning and perpetuating feelings of oppression and power imbalance.

TUC unions have also flagged that non-disclosure agreements should not prevent someone from raising a serious safeguarding concern about a vulnerable adult or a child. Workers should be able to make permitted disclosures on such matters.

Trade unions also routinely receive draft settlement agreements from employers that appear to be a precedent document produced by a law firm, containing much that is irrelevant and inappropriate to the particular circumstances. Unions may also be unable to publicise a case which would be of public interest. The TUC has received reports of employers inserting confidentiality clauses intended to restrict individuals who are not party to the settlement agreement, such as trade union representatives, from discussing the background to the agreement.

Question 32. Do you agree a worker should be able to make disclosures to the individuals and bodies included in the proposal?

Answer: Yes

- "Any person who has law enforcement functions."

Yes, all disclosures to police should be clearly excluded from confidentiality clauses. In relation to confidentiality clauses in settlement agreements, although confidentiality clauses seeking to restrict disclosures to the police will almost certainly be unenforceable, the TUC believes all disclosures to the police should be clearly excluded from the ambit of any confidentiality clause. The reason we support this proposal is to provide absolute clarity for individuals entering into a confidentiality clause. The application of whistleblowing law is complex and protection under the Public Interest Disclosure Act 1998 is not an automatic right, with not all disclosures relating to discrimination and harassment meeting the test of a "qualifying disclosure". Further, in order to assert any rights under the Act, an individual would be required to institute legal proceedings, with all the financial and time cost that this would entail. Therefore, it is important that the position is clarified for individuals from the outset so that they are not left in any doubt as to their rights and are not required to pursue legal proceedings in order to establish their rights beyond doubt. Where there is any doubt in an individual's mind about the applicability of a confidentiality clause, this may suffice to put them off reporting matters to the police. It is vital that potential victims of crime are not prevented in any way from reporting the crime to the police. Clearly, for reasons of public interest and protection of both the individual and society at large, it is important for acts of a criminal nature to be reported to the police. However, we highlight the importance of avoiding the legitimacy of a disclosure to the police being challenged on the basis that it does not result in conviction for a crime. It is important that individuals are clear that they are free to make all disclosures to the police relating to discrimination and harassment, regardless of whether these ultimately prove to amount to a crime. We emphasise the importance of the legislation being drafted in such a way to make this clear.

Positive consequences should include a higher reporting rate to the police and therefore, increased likelihood of harassment and discriminatory behaviour being uncovered and perpetrators apprehended. In addition, a higher conviction rate would hopefully act as a deterrent to this type of behaviour and contribute towards the elimination of discrimination and harassment from the workplace. However, to avoid the potential negative consequence of individuals being subjected to a detriment as

result of reporting matters to the police, it is important that there is clear statutory protection against any detrimental acts and that this applies to all disclosures relating to discrimination and harassment made to the police (see para above).

The TUC also believes that a worker should be able to make a permitted disclosure to the Fair Work Agency and the Equality and Human Rights Commission. Workers may want to report an infringement of employment law to the relevant employment rights enforcement bodies so they can take action. Workers should feel safe in reporting issues to the relevant regulators.

- "A trade union representative accompanying workers in grievance and disciplinary cases, a trade union equality representative or a trade union representative authorised to give advice on settlement agreements."

The TUC believes this category should be broadened out so that all trade union reps are covered (not just those participating in the disciplinary and grievance process) and union officials are also included within the scope of permitted disclosures. Trade union reps are a trusted source of advice for workers. Workers may have struck up a trusted relationship with a particular rep or official that they want to confide in.

Question 33. Are there any individuals or organisations not included in the proposal that you think a worker should be able to make a disclosure to?

Answer: Yes

- Mental health and trauma specialists not covered by 'regulated professions'.
- Community or religious leaders where these form part of a worker's established support network.

Question 34. Should individuals with excepted agreements be able to disclose to prospective employers?

Answer: Yes

Many workers lose or leave their job because of what has happened to them, resulting in gaps in their employment history. They should be able to disclose their experiences to prospective employers to help explain these gaps and flag any additional support they might need going forward.

Question 35. Should individuals with excepted agreements be able to disclose to close family, as defined above?

Answer: No

The TUC believes that individuals with excepted agreements should be able to disclose to close family. However, we believe the definition of close family needs to be amended.

The TUC has concerns about the need for an intimate personal relationship to be of "significant duration". The inclusion of a duration requirement may lead to inappropriate exclusions, complexity regarding the date at which the relationship began and potential challenges from employers regarding who the worker is able to

make a disclosure to. To ensure that the dignity and autonomy of the worker are protected, and to prevent unnecessary complexity, workers should be able to determine for themselves whether the relationship is sufficiently significant to constitute a partnership, without concern that it has not passed an arbitrary time-based threshold.

Question 36. Should individuals with excepted agreements be able to disclose to any other individuals, for example wider family members, friends or anyone else?

Answer: Yes

Question 37. If yes to Q36, how would you define the wider group of individuals?

Answer: Yes

A worker should be able to specify up to two 'nominated individuals' – people chosen by the worker and written into the agreement to ensure that workers without conventional close family structures are equally protected.

There should be provision for a person to change a named person or add someone at a later date if they don't specify a nominated individual at the time of making the agreement. This is unlikely to be used regularly but for agreements that last a long time these might be needed to reflect the fact that people's relationships change. It would also be appropriate for circumstances where the worker is subjected to domestic abuse and wants to change their nominated individual.

This approach would also echo the Irish legislation which enables a worker to make a disclosure to *"(b) such individual, or a member of such class of individuals, as may be specified in the agreement as a person to whom a relevant disclosure may be made by the employee."*

Chapter 4: Application to Other Individuals

Question 38. Should section 202A apply to individuals who work for someone other than their employer?

Answer: Yes

Section 202A should also apply to the self-employed, those who work under tripartite employment relationships, such as agency workers, and unpaid workers such as interns, volunteers, work experience. Some workers may also create their own personal service companies and provide their work services as an employee of these personal service companies. These types of business arrangements which often distort the true nature of the employment relationship should be fall within scope of the protections.

TUC polling shows that unpaid workers are also at risk of harassment. Our latest polling found that 24 per cent of young people have been bullied, verbally abused or sexually harassed during their most recent 'work experience' type activity (this includes paid and

unpaid experiences).[6] The rate is the same for those who were just 16-18 when they started, showing that these problems begin right at the start of young people's working lives.

Question 39. If yes, what additional individuals should be covered?

Answer: Yes

Agency workers and workers on secondment should also be covered by the Regulations.

In addition, platform workers, workers employed by umbrella companies and other labour market intermediaries should also be covered by the Regulations.

Question 40. Should section 202A apply to individuals not covered by the usual definition of 'worker' in Section 230(3)?

Answer: Yes

We agree with the list set out at the top of page 40 covering NHS workers, people on work experience placements and nurses and midwives in training.

Question 41. If yes, what additional individuals should be covered?

Interns, people on work trials, work experience, training placements and volunteers.

Question 42. Are there any specific groups of self-employed individuals that should be covered by section 202A?

Answer: Yes

Protections should cover all self-employed workers.

<u>Freelancers</u>

Protections should explicitly cover freelancers, who may be self-employed individuals but may be engaged on very short contracts or be working through a mix of employment statuses. Therefore, protections should cover all self-employed workers as well as freelancers, contractors, trainees, interns, and others in non-standard working arrangements.

In sectors such as the creative industries, freelancers make up a significant proportion of the workforce and are often among the most exposed to harassment and discrimination, yet the least protected. Freelance working arrangements, combined with project-based employment, informal hiring practices, and strong power imbalances,

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[6] Unpublished TUC polling of 2,000 young people aged 16-24, weighted to be representative of the UK 16-24 population on age, gender, region, working status and ethnicity. Field dates 27 September to 6 October 2025. Work experience includes internships, placements as part of higher or further education, work placement or government scheme, work trials and work shadowing. This does not include volunteering for a charity or social enterprise.

create acute barriers to reporting, including fear of losing future work and reputational damage. These risks are compounded by the widespread use of NDAs, with evidence from Bectu members showing that a majority of freelancers having signed them, contributing to a culture where harmful behaviours can persist unchecked.

Without clear inclusion of freelancers, section 202A would fail to protect a large and particularly vulnerable segment of the workforce, undermining the effectiveness of the legislation. The Government should therefore ensure that freelancers are fully within scope, rather than relying on narrow employment definitions that exclude them in practice. Given the scale of freelance work across sectors, priority should be given to their coverage from the outset, alongside a commitment to review the legislation within two years to ensure it is delivering meaningful protection.