News

NDAs warning notice updated

06 August 2024

We have updated our warning notice on the use of non-disclosure agreements (NDAs).

The warning notice was first published in March 2018 in light of evidence heard by the Women & Equalities Select Committee, where settlement agreements included clauses that appeared to interfere with the reporting of alleged crimes to the police. We reminded you of your obligations when drawing up such agreements as laid out in common law.

The notice was updated in November 2020, and further amendments have now been made to include further advice in the light of the findings of our thematic review into the use of NDAs [https://referral.sra.org.uk/sra/research-publications/thematic-review-nda/] . That found that agreements are often legitimately used to protect commercial interests, reputation, and confidentiality and can be beneficial to both parties.

Most NDAs that we looked at complied with our requirements, whether drafted on behalf of clients or entered into by law firms with their employees. However, the review identified some common shortcomings too and these are addressed in the updated warning notice.

These included:

- a lack of specific training for staff on NDAs.
- over reliance on precedents and templates.
- failures to 'push back' on unreasonable time limits which restricted the opportunity for an employee to obtain the required support and advice and to make informed decisions.
- The general imbalance of power between employer and employee inherent in the settlement process.

Read the updated warning notice [https://referral.sra.org.uk/solicitors/guidance/non-disclosure-agreements-ndas/] .

As well as the thematic review, published in August 2023, the Legal Services Board carried out its own look at the issue of NDAs [https://legalservicesboard.org.uk/research/misuse-of-non-disclosure-agreements-ndas-summary-of-evidence-report] , which it published in February.