Consultation on regulations to prevent the misuse of NDAs in cases of workplace harassment or discrimination: Submission from the Bectu sector of Prospect

July 2026

Bectu, a sector of Prospect trade union, represents around 40,000 workers in non-performing roles across the creative industries, including film, television, theatre, live events, fashion, gaming and cinema. Around half of our members are freelancers.

Through our engagement with members and extensive survey evidence, we know that harassment remains endemic across the creative industries, driven by entrenched power imbalances, insecure freelance working arrangements and significant barriers to reporting. The widespread use of non-disclosure agreements (NDAs) within the sector risks further exacerbating these problems by enabling harmful behaviours to be concealed and discouraging workers from speaking out. We therefore welcome this consultation and its aim of preventing the misuse of NDAs in cases of harassment and discrimination.

However, any reforms must fully protect freelancers and self-employed workers, who are among those most vulnerable to these practices but are often excluded from existing employment protections.

Conditions for an Excepted Agreement

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

Whilst s203(3) of the Employment Rights Act 1996 already requires a worker to have received independent legal advice on the terms and effect of a settlement agreement, we agree that this should be applied to excepted agreements. We also agree with the proposal of who will be regarded as an adviser.

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

Answer: Yes

Having advice in writing means the worker has a record they can look back on and is especially useful during the cooling-off/review period. Getting written advice before signing would make a real difference. Any advice should clearly set out the terms, obligations and exceptions. It should also highlight which disclosures are permissible and to whom, and the consequences of not agreeing to the excepted agreement.

Just explaining what the agreement says and how it affects legal rights is not enough. Workers also need to know what the agreement will mean in practice and be told about other options available to them.

The legal advice must cover: other confidentiality options (like one-sided protection for the victim only) and whistleblowing rights. The worker needs to genuinely understand what they are agreeing to and what alternatives exist, not just receive a simple explanation of the document.

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

Answer: No

Employers should have to help pay for the worker's legal advice – either up to a set amount uprated annually by inflation (for example £2,000) or "reasonable costs" as they do in Ireland.

Workers who have been harassed or discriminated against are often already facing a tough financial situation. Making them pay for their own legal advice before signing something that will silence them risks creating a two-tier system where only better-off workers can afford to access the protections of an 'excepted NDA'.

Where the employer funds costs, the worker should remain free to choose their own legal adviser.

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?

Answer: Yes

We are concerned that Acas-facilitated COT3 agreements are often reached at a late stage, including immediately before a tribunal hearing. If workers are required to obtain independent written advice on NDA provisions, those who do not already have legal representation may be disadvantaged and face delays in reaching a settlement.

There is also uncertainty about the role of Acas. Acas conciliators are neutral advisers and therefore we have concerns about them providing independent legal advice on the terms of an excepted agreement.

This may create an imbalance for unrepresented workers. COT3 agreements are commonly presented directly to workers, and without legal representation some workers may struggle to understand the meaning, effect and limitations of NDA clauses. Requiring independent advice in all cases could therefore make the COT3 process less accessible rather than providing greater protection.

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

Answer: No

Acas conciliators play a neutral role in helping parties reach a settlement and do not represent either side. For that reason, they should not be considered relevant independent advisers for the purposes of providing advice on NDA provisions.

Workers should have access to advice from an adviser who is acting solely in their interests and can explain their rights, the meaning and effect of the agreement, and any alternative options available to them.

Including Acas conciliators as independent advisers could create the impression that workers have received independent advice when, in practice, Acas' role is to facilitate agreement rather than provide worker-focused legal advice. Any independent advice should therefore come from a relevant and suitably qualified legal adviser acting independently of the conciliation process.

If independent advice remains mandatory for COT3 agreements, government should establish a funded mechanism for workers without representation to obtain such advice at short notice.

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

Answer: Yes

Independent advice should go beyond explaining the terms of the agreement. Workers should also be informed about alternative options, and the pros and cons of signing the agreement, so they can make a fully informed decision.

Regulations or guidance should also require a plain-English summary of what the worker can and cannot be prevented from saying; where to access further support (e.g. trade unions, Acas, charities); and a clear statement that the NDA cannot prevent disclosures to the police, regulators or other prescribed bodies listed in Chapter 3. This would improve understanding, help to ensure consistent advice, make the law more effective, and save advisers' time.

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

Whilst we understand that the Government wishes to create further safeguards, we consider this step will add unnecessary burdens to the worker and/or legal adviser. We consider it will be legal advisers who will be tasked with this additional step, creating more work, which for the reasons set out below is not necessary.

We consider that by providing a worker with written legal advice, a copy of the excepted agreement in plain English and a statutory cooling off/review period, the worker will have sufficient time to fully consider the excepted agreement and its terms. ensuring the necessary protection for the worker.

With settlement agreements, the worker must sign the agreement for it to be effective; requiring them to also send a written letter confirming they agree to the process adds nothing. With Acas COT3 agreements, the worker has to provide their consent to Acas, an independent conciliator, that they agree to the terms. Again, making the worker also send a letter adds nothing.

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

Answer: Yes

We consider that a template could help ease any additional burdens placed on the worker/legal adviser, as highlighted above. A standardised template is less open to challenge and ensures certainty in the process. We consider this could be provided in the Code of Practice rather than Regulations.

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

Answer: No, with a caveat

If confidentiality is intended to protect workers, the decision to request it should rest with the worker, not the employer. Allowing employers to suggest confidentiality risks reinforcing the power imbalances these reforms are designed to address. Even where presented as a suggestion, workers may feel pressure to agree, particularly where settlement payments, references or continued employment are involved.

The link between financial compensation and confidentiality should be broken, so that workers do not feel they must give up their right to speak about their experiences in order to receive a settlement.

However, we recognise the practical reality that completely prohibiting employers from raising confidentiality may discourage some employers from settling claims or engaging in early resolution. If employers are permitted to raise the issue, this should be subject to clear safeguards to ensure that any confidentiality provision is genuinely requested or accepted by the worker following independent advice, rather than driven by the employer's interests.

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: Yes

Requiring a worker to express their preference in writing may help demonstrate that confidentiality was their choice rather than the employer's. However, we are concerned that this could become an additional administrative step in the settlement process, particularly where workers are already receiving independent legal advice and are required to confirm their instructions through their representative.

See also comments in question 8 above.

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: Yes

Similar concerns apply as for private settlement agreements. While a written expression of preference may provide evidence that confidentiality was the worker's choice, there is a risk that it becomes an additional procedural requirement without providing meaningful additional protection.

This is particularly relevant for COT3 agreements, which are often reached at a late stage and are intended to provide a straightforward route to settlement. Requiring separate written confirmation from the worker could add delay and complexity, especially where the worker is not legally represented.

A more proportionate approach may be for Acas to record the worker's preference as part of the conciliation process and confirm that any confidentiality provision reflects the worker's informed and voluntary choice. The focus should be on genuine consent rather than creating additional administrative steps.

Cooling-Off Period

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

Answer: Qualified yes

A cooling-off period can provide an important safeguard by giving workers time to reflect on the agreement and the implications of any confidentiality provisions.

However, we have concerns about how a mandatory cooling-off period would operate in practice. Employers want certainty once an agreement is signed. Whilst parallels have been drawn with consumer rights, consumers do not receive independent legal advice before entering into contracts. Workers will have received independent legal advice before signing any agreement.

Further, settlement agreements, particularly COT3 agreements, are often reached shortly before an Employment Tribunal hearing or in other time-sensitive circumstances. Requiring a fixed cooling-off period in every case could create uncertainty, delay settlements, or even prevent agreements from being reached. A more workable approach would be to require a review period as the default, while allowing workers to waive it after receiving independent advice, or where

there are exceptional circumstances such as an imminent tribunal hearing or limitation date. This would preserve protection for workers without creating unnecessary barriers to settlement.

However, if a review period is not an option, then we consider that a cooling-off period should be implemented to give workers the necessary safeguards and time to consider their options when they have entered into excepted agreements.

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

Answer: Yes

Fourteen days strikes a reasonable balance between giving workers sufficient time to consider the agreement and avoiding unnecessary delays to settlement. It is also broadly consistent with existing practice and guidance, including the Acas recommendation that employees should normally be given at least 10 calendar days to consider a settlement agreement.

However, any cooling-off period should be flexible enough to accommodate cases where there is insufficient time, such as where a settlement is reached shortly before an Employment Tribunal hearing or limitation date. In those circumstances, workers should be able to waive the cooling-off period following independent advice if they wish to proceed immediately.

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

Answer: N/A

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

Answer: No

We have concerns about applying a cooling-off period only to the confidentiality provisions of an excepted agreement. In practice, settlement agreements are negotiated as a whole package, with the terms often reflecting compromises made by both parties. It may therefore be difficult to separate confidentiality clauses from the wider agreement.

Allowing a worker to withdraw from confidentiality provisions without affecting the rest of the agreement could create uncertainty, as confidentiality may have been an important factor in the employer's decision to enter into the settlement or agree particular terms.

A cooling-off period that applies only to confidentiality clauses may therefore be difficult to operate in practice and could undermine the certainty that settlement agreements are intended to provide. Any cooling-off arrangements should take account of the fact that confidentiality provisions are often negotiated as part of the overall settlement package.

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

Answer: Yes

Workers should be able to waive the cooling-off period but only where they have received independent legal advice on this and are fully aware of the consequences of waiving their rights.

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

Answer: Yes

A 14-day cooling-off period could cause problems when agreements are reached close to an Employment Tribunal hearing or limitation period. Options include: having clear rules that only allow waiver in those specific situations, so it does not penalise workers who settle late; or banning excepted NDAs entirely in agreements made within 14 days of a final hearing – which might actually encourage employers to think about settlement earlier.

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

Answer: Yes

See answer to Question 18.

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

Answer: Yes, provided workers receive independent written legal advice and have adequate time to consider the agreement.

The focus should be on ensuring workers have access to high-quality advice and sufficient time to reflect on any confidentiality provisions, rather than introducing additional procedural requirements. Any safeguards should also be flexible enough to accommodate time-sensitive settlements, such as those reached shortly before an Employment Tribunal hearing or limitation date. Giving the worker written legal advice, a plain-English agreement and 14 days to consider their position before agreeing to the term would be a more workable approach than a cooling-off period.

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

Answer: No

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

All parties should receive a written copy of the agreement. It is important that workers have a clear record of the terms they have agreed to, including any confidentiality provisions, their scope and any applicable exceptions. Providing a copy should be a basic requirement and helps promote transparency, certainty and informed decision-making.

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

Agreements should be made available in any accessible format required by the parties. This is particularly important where a worker has a disability or other accessibility needs that could affect their ability to understand the agreement.

Providing documents in accessible formats, such as large print, electronic versions or other appropriate formats, helps ensure that all workers can properly review and understand the terms they are being asked to agree to and are not placed at a disadvantage during the process.

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

Answer: Yes

Legal language often makes it hard for workers to understand their rights and what they are agreeing to. Plain language is essential to make sure the protections in these agreements are actually meaningful.

However, where legal language is required, the worker will have protection in that they will receive independent legal advice in writing on the terms and effect of the agreement.

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

Answer: Yes, with some flexibility

Excepted agreements should be drafted in clear and accessible language wherever possible so that workers can understand the rights and obligations they are agreeing to, particularly in relation to confidentiality provisions.

However, regulations should recognise that some legal or technical language may be necessary to ensure precision and legal certainty. Rather than prescribing a specific readability standard, the requirement should be that agreements are written as clearly as possible for their intended audience, with any complex legal terms explained in plain language where appropriate.

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

Answer: Yes

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

It is essential that excepted agreements can only be entered into after an incident of harassment or discrimination has taken place. Pre-dispute NDAs are particularly harmful because they silence workers before anything has gone wrong and before they can understand what rights they may be signing away. Given that harassment often develops over months or years, these agreements risk enabling patterns of abuse to continue unchecked and contribute to cultures where misconduct is hidden rather than addressed.

This risk is especially evident in the creative industries, where the Bectu sector of Prospect represents around 40,000 workers, many of whom are freelancers operating in highly hierarchical and precarious environments. Evidence from our members shows that harassment is widespread, alongside significant barriers to reporting driven by fear of career harm and loss of work. NDAs are highly normalised in this context. A 2024 survey of our members found over half of creative industry workers have signed one, contributing to a culture in which they can be used to suppress complaints and protect those in positions of power.

NDAs can be used to cover up misconduct, discourage reporting, and shift blame onto victims. Restricting NDAs to post-incident use would help ensure individuals are making informed decisions and reduce their misuse as a pre-emptive silencing tool. It is also vital that these protections extend to freelancers and self-employed workers, who are among the most exposed to both harassment and the misuse of NDAs, to ensure the policy is effective in practice.

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

Confidentiality obligations in excepted agreements should be time-limited, as open-ended NDAs can undermine both individual wellbeing and wider public safety. Indefinite restrictions risk protecting perpetrators by keeping allegations hidden and preventing victims from speaking out or warning others, allowing patterns of abuse to persist unchecked.

However, fixed timeframes that are too long, for example, two years, risk defeating this purpose, as they may still prevent disclosure at a point when it is most necessary to expose ongoing or repeated harmful behaviour.

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

Answer: Yes – but only with a worker-controlled model

Government should set a clear maximum time limit to provide safeguards against the misuse of confidentiality clauses. Without a statutory cap, the existing power imbalance between employers and workers creates a real risk that individuals will feel pressured to accept excessively long confidentiality periods that do not reflect their own interests or wellbeing. A maximum limit would therefore provide consistency and help prevent exploitative practices.

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

Answer:

We do not have a preferred statutory maximum at this stage. However, any maximum should be relatively short and should operate as a safeguard against indefinite restrictions rather than encourage routine use of lengthy confidentiality periods.

We support a worker-centred approach, similar to the Irish model, where the worker can choose the duration of confidentiality following independent advice. Workers should also have the right to waive confidentiality at a later date if they subsequently decide they want to speak about their experiences.

We are cautious about setting lengthy maximum time limits. A confidentiality period of several years could prevent victims from warning others or disclosing information about ongoing misconduct at a point when such disclosures may be most important. This risks allowing patterns of harmful behaviour to remain hidden.

If a statutory maximum is introduced, it should act as a safeguard against indefinite confidentiality rather than encourage the routine use of lengthy restrictions. Any framework should ensure that workers retain meaningful control over confidentiality and have a clear mechanism for lifting it in the future should they wish to do so.

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

Answer: Yes

There should be mechanisms to monitor the use of excepted agreements and identify potential patterns of misuse. One option would be for agreements to be reported to a central body, such as the Fair Work Agency or the EHRC, on a confidential basis. Alternatively, employers could be required to maintain records of the number of excepted agreements they enter into.

The purpose would not be to disclose the details of individual cases, but to provide oversight and help identify organisations that are using these agreements repeatedly. This would act as an important check on employer behaviour and support compliance with the intended purpose of the legislation.

Chapter 3: Permitted Disclosures

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

Answer: Yes

In addition, the worker should be permitted to raise concerns to other workers whom they reasonably believe are at imminent risk of harassment, particularly sexual harassment, where the issue is most prevalent. Whilst an employer now has a statutory duty to prevent sexual harassment in the workplace, settlement agreements are more commonly offered to the victim to

leave, rather than the accused, with the victim having little or no knowledge of what is being done to protect other workers.

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

The list of permitted disclosures should be broad enough to reflect the different ways in which workers access support. In particular, consideration should be given to ensuring that disclosures can be made to mental health and trauma specialists, peer-support groups, survivor networks, and other trusted support services where discussions take place in a confidential setting.

We also recommend recognising that a worker's support network may extend beyond traditional family relationships. Rather than specifying a set number of additional individuals, the regulations should allow workers to disclose information to trusted members of their personal support network where this is necessary for emotional or practical support. This would better reflect the diverse circumstances and relationships that workers may rely upon following experiences of harassment or discrimination.

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 happened to them, and then have to find a new job while unable to explain gaps in their CV or why they left. This causes real, lasting harm. We support allowing workers to disclose to prospective employers, but the regulations should be clear that it’s the worker – not the employer – who decides what to share and how.

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

Answer: Yes.

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?

Rather than attempting to define a broad category such as "friends", the regulations should allow disclosures to trusted individuals who form part of the worker's personal support network. This recognises that support networks vary considerably between individuals and may include close friends, wider family members, community figures, or others who provide emotional or practical support.

The aim should be to ensure workers can seek support from the people they trust most, rather than limiting disclosures to narrowly defined family relationships or imposing arbitrary limits on who those individuals can be. This would better reflect the diverse support networks that workers may rely on following experiences of harassment or discrimination.

Chapter 4: Application to Other Individuals

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

Answer: Yes

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

Answer:

Agency workers, secondment workers, gig economy workers, and platform workers, self-employed workers, including freelance workers.

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

Answer: Yes

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

All of the categories proposed should be included, such as those on work experience placements. In addition, coverage should be extended to volunteers, unpaid interns, and self-employed individuals, to ensure the legislation reflects the full range of modern working arrangements.

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

Answer: Yes

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, 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 have signed them. NDAs in film and TV are used to legally prevent cast, crew, contractors, and partners from disclosing confidential information such as scripts, plot details, production plans, and release schedules. However, their normalisation alongside these other factors contributes 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.