

**HALF-DAY BRIEFING**

09.00 – 13.00

**London** 02 April 2019  
**Leeds** 17 April 2019  
**Nottingham** 25 April 2019

**Manchester** 14 May 2019  
**Birmingham** 22 May 2019  
**London** 31 May 2019

**£275**  
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TO 20 DELEGATES

# Using non-disclosure agreements

## Secrets at work?

A non-disclosure agreement is designed to keep confidences but it is not signed in secret. HR, leaders and legal advisors know about them and so do the people involved. NDAs can be used to protect proprietary information and IP. They can be a useful tool for all sides in a dispute, preventing long-running, painful and costly battles and enabling swift settlement. Incorrectly or improperly drafted, they may reflect a power imbalance between an employer and an employee. They are controversial when perceived to silence allegations of serious misconduct like harassment and unlawful if they silence whistleblowers.

Media fury over 'gagging clauses' has put added pressure on the Government to act and they have promised to consult on their use. This briefing will update you on the legitimate use of secrecy and confidentiality at work. We provide a reminder on how privilege arises and is preserved and the tension between the public interest and privacy.



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## Who should attend?

HR and in-house lawyers who advise on employment disputes, confidentiality and privacy issues.

## The briefing will cover:

- the impact of #MeToo
- Government concern about unethical use of NDAs and recommendations
- allegations of wrongdoing and confidentiality clauses: what can be 'compromised'?
- privacy injunctions
- protected conversations and pre-termination negotiations
- reminder of settlement options, including ACAS conciliation and COT 3

## Speakers

### Helen Rice-Birchall

Principal Associate

EVERSHEDS  
SUTHERLAND

Helen advises on all aspects of contentious and non-contentious employment law. She has worked closely with organisations like the CBI and Acas on policy development. Helen sits as an Employment Judge in the Manchester region.

### Jug Sahota

Senior Advisor, Conciliator  
and D&I Specialist

acas

Jug has thirty years of experience dealing with employment tribunals, mainstreaming equalities and as a mediator working to resolve workplace disputes.

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## Programme

09.00 registration and coffee, 09.30 start

### Ending an employment relationship

- reminder of implied and express contractual terms
- pre-termination negotiations ('protected conversations') and 'without prejudice' discussions: limitations and extent
- fair process (alternative options?)
- consistency of treatment, respect and dignity

### Settlement alternatives to court

- use of COT 3 (ACAS conciliation)
- reaching a fair compromise: can there be undue pressure when independent legal advice is provided?
- public and private sector differences

### Types of silence

- IP, confidential, or proprietary information
- payment for confidentiality: selling silence?
- compromising harassment
- public interest vs confidentiality
- personal disagreements: 'he said she said'

### Use of privilege in employment disputes

- establishing and preserving privilege
- X vs Y and ENRC judgments

### New developments

- Women's & Equalities Select Committee report and recommendations
- NDAs/confidentiality clauses: expect greater scrutiny
- SRA and solicitor professional standards
- privacy injunctions in the employment context
- human rights considerations

### Handling allegations of serious misconduct

- refute or suppress?
- when payment is interpreted as guilt
- references: what can be said?

13.00 close, followed by lunch