

Telford Deanery Synod Motion for the establishment of a register of the use of Non-Disclosure Agreements

That this Synod requests General Synod:

- a) Condemn and discourage the use of Non-Disclosure Agreements (NDAs) and reiterate that the use of Non-Disclosure Agreements is inappropriate in any HR and Safeguarding situation and
- b) Request Archbishop's Council and the National Safeguarding Team to bring forward proposals for national guidelines on the use of NDAs and establish mechanisms for the reporting of NDAs and
- c) Require any Church of England institution, organisation or body to report on and register the existence and use of NDAs relating to HR and Safeguarding matters and
- d) Request Archbishop's Council and the National Safeguarding Team to develop appropriate guidance and mechanisms to enable existing NDAs relating to HR and Safeguarding matters to be monitored and where possible to be retracted and replaced with appropriate support.

Background

Legality and Enforceability

Non-Disclosure Agreements (NDAs) also referred to as Confidentiality Agreements or Confidential Disclosure Agreements, have the basic underpinning: that parties who have signed an agreement cannot discuss any information the agreement covers with a non-authorised party.

NDAs are not illegal.

Confidentiality agreements can be used legitimately by an employer or organisation to protect its confidential information – for example customer contact lists, intellectual property, trade secrets or other sensitive commercial information. Such agreements may appear in a worker's terms and conditions of employment or as part of an agreement between a worker and their employer to settle an employment related dispute.

Whilst not illegal the use of NDAs in discrimination, harassment, victimisation or other HR or Safeguarding situations can have ramifications both legally and negatively on the health and wellbeing of those involved. Therefore, they should be used with extreme care and avoided if at all possible.

Enforceability

NDAs are enforceable once signed, provided they have been drafted and executed properly. An NDA could be unenforceable if it is too broad, is not for a defined time period, covers information that is not confidential, or asks for illegal conduct.

Confidentiality agreements that seek to prevent lawful whistleblowing, reporting criminal activity or making other disclosures required by law would also be unenforceable.

Health and Wellbeing impact

There are many reasons why people may not feel able to speak up about discrimination, victimisation or other HR or Safeguarding issues. These reasons include the belief that a complaint will not be taken seriously, fear of being victimised, fear that the alleged perpetrator will be protected and the lack of appropriate reporting procedures. It is also clear that confidentiality agreements are a significant part of the problem by restricting the ability of those covered by the NDA to report discrimination, harassment, victimisation or other HR or Safeguarding issues.

In addition to the legal ramifications the NDA can have a devastating impact on the health and wellbeing of those covered by the agreement. Often there is a sense of helplessness by being silenced and feeling isolated from being able to access appropriate support or pastoral care networks and this brings associated stress.

If people do not feel they can speak up, this can mask systemic discrimination and can have a detrimental bearing on their health and well-being and the ability to pursue the rights of those covered by the NDA.

This motion

This motion is concerned only with confidentiality agreements that could prohibit a worker or other person involved with a Church of England institution or organisation speaking about any act of discrimination, harassment, victimisation or other HR or Safeguarding matter.

The motion originated from a PCC motion from All Saints, Wellington with St Catherine's Eyton and endorsed by the Telford Deanery.

In April 2021 Archbishop Justin spoke out against the use of NDAs saying, "I have said many times that I am totally against NDAs. NDAs are unacceptable."

At that time, it was reported that ++Justin and ++ Stephen had written to senior members of the Church discouraging the use of NDAs.

In March 2024 I was approached by a member of my congregation who was concerned about the situation that a friend of hers in another diocese had been put in by an NDA that was a condition of the settlement of an employment dispute. The terms of this NDA had cut her off from pastoral support and she felt manipulated and abused by the process. My parishioner wanted this to be raised as a safeguarding issue, but was concerned that doing so would trigger the penalty clauses of the NDA, and that her friend would end up worse off.

This is one of the insidious powers of NDAs.

Following some discussion about the best way forward, I anonymised the source of the complaint, and forwarded it to the National Safeguarding Team and the Lichfield Safeguarding Team.

Whilst I do not know that this reporting contributed to the final outcome, my understanding is that since this happened the Bishop of the diocese has apologised to the person involved, and agreed to remove restrictions so that they can seek appropriate pastoral support.

Current Policies and Procedures

There do not appear to be any national guidelines or reporting requirements on the use of NDAs by church institutions, or effective constraints on their use. Whilst it remains open to people to raise a safeguarding concern about the use of NDAs, this can only happen if people are aware of them, and the nature of NDAs means that this awareness can be limited, and those who are aware may be afraid of the consequences of raising a concern.

This motion seeks establish guidelines on the use of NDAs and to introduce some transparency into the extent of their use by church institutions, organisation or bodies It is expected the prospect of having to report the use of NDAs will prove to be a check on their use.

The Rev'd Tim Carter
Telford Deanery Synod

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