

GUIDANCE TO HE PROVIDERS THAT HAVE SIGNED THE PLEDGE

Implementing the Higher Education NDA pledge

Jointly provided by the Department for Education and *Can't Buy My Silence*

Getting started

Now that your university or college has committed to avoid the use Non-Disclosure Agreements in cases of sexual harassment, bullying and other misconduct, this guide will help you to put some simple measures in place to ensure that students and staff can thrive in an NDA-free environment.

It contains practical steps to ensure that your commitment to the Pledge is a success. It is designed to help to make your campus one that's safe and free of silencing. You may wish to enhance these steps with some ideas of your own.

What the Pledge means in practical terms

For clarification (since these questions have been raised with us), your commitment to the Pledge means that you will neither require nor recommend that an NDA is signed

- Before committing to an investigation of a non-academic complaint or a mediation (but note that confidentiality for the duration of the process is not an NDA, which is indefinite). Some universities and colleges have historically asked students to sign indefinite confidentiality undertakings at the beginning of an investigation or mediation. These should be replaced by confidentiality that covers only the period of the investigation or mediation.
- Before access to what your university or college shares with the complainant regarding a decision/outcome following a complaint brought by a staff member or a student.
- Upon the resolution of a complaint as part of that resolution.

Stopping using NDAs includes the elimination of any requirement in your non-academic complaints process that prevent students from posting on social media, speaking with one another, or talking about their experience with counsellors or therapists. However, it may be appropriate to advise staff and students of the personal risks they may incur if they use social media or other fora to make statements that they may be unable to prove are true.

Please review any staff and student guidance to see where confidentiality is mentioned, to ensure that the term is only used for the protection of intellectual property or compliance with GBDP.

Communications

- Signing the Pledge should be followed up with a communications exercise to make staff, students, members and prospective students are aware that the commitment that has

been made. This will help to embed the long-term commitment to honour the pledge within the institution.

Top tip: Make sure that your communications include:

- All departments
- Students' unions
- Constituent colleges (where applicable)

- Reaffirm your institution's intention to avoid using NDAs by communicating your commitment to the Pledge to staff and students at regular intervals. This should be done every year to ensure that new members of staff and students are aware of the commitment

- It is crucial to ensure that key staff members involved with student and staff wellbeing, such as the Human Resources (HR) team, are aware of the detail of the Pledge as a cornerstone of the institution's commitment to safeguarding, well being and mental health. That could be done by ensuring that they have a copy of this guidance.

- We recommend that you include a prominent statement, shown as a permanent commitment, by displaying the logo below on the homepage.

[insert image of CBMS/DfE joint logo]

- You can also use your website to help alleviate any potential confusion around recognising NDAs. It would be helpful to provide clarification to students via your website - for example, by publishing this guidance, and linking to the informational resources on the CBMS website (<https://cantbuymysilence.com/recognizing-and-understanding-an-nda/>)

- You may wish to review all of your promotional materials and collateral and include references to your support of the Pledge wherever there is an opportunity.

Monitoring and review

This is critical to ensure the efficacy of the Pledge. We recommend

- You establish a process to review and renew the commitment to the Pledge each year. This could be combined with existing process reviews to make it more efficient; for example, it could be done at the same time as you review your safeguarding or misconduct processes.

- You can set up regular dates for reviewing the effectiveness of the changes you have made (perhaps each semester or term). This might include meeting with the Vice Chancellor and with staff and student representatives, evaluating whether the changes are enabling students and staff to feel safer raising complaints, whether more can be done, and whether anything needs to be done differently. Keeping the issue of NDAs on the agenda at the most senior levels will serve to help embed or maintain a culture that is free of NDAs.

Cultural change

The best way to avoid situations where NDAs may have arisen in the past is to make sure that your processes and procedures minimise the chances of exposing your staff and students to situations where misconduct can occur in the first place. This is where changes to culture and processes can have a significant positive impact.

- We encourage universities and colleges to work towards a more open and transparent culture in handling non-academic complaints that avoids falling back on informal alternatives to NDAs; for example conversations that warn students not to speak to others (outside the confidentiality of a set procedure which is time-limited, see above 'what the Pledge means in practical terms')
- Consider appointing an NDA Champion, who would ensure that the guidance provided in this document is implemented. This need not be a wholly dedicated role, but could simply be an additional aspect of an existing role; for example, combining the role with other roles in student support/ student services.

Set up an NDA amnesty

In order to demonstrate your intent and honour the spirit of the Pledge, we recommend wherever possible

- cancellation of existing NDAs, together with notifying signatories that the NDA(s) has been cancelled.
- withdrawing from any NDA-related legal action currently underway.

We wish you every success with your commitment to the Pledge and thank you for your support.