



LETTER SENT BY E-MAIL ONLY

Audrey Nicoll MSP
Convenor, Criminal Justice Committee
The Scottish Parliament
EDINBURGH
EH99 1SP

31 May 2024

CE/044/2024

Dear Convenor

Non-Disclosure Agreements

I am writing to provide further information to the Criminal Justice Committee regarding the Authority's oversight of Police Scotland's use of Non-Disclosure Agreements. This was raised by Committee members during an evidence session held on Wednesday 22 May 2024, attended by the Scottish Police Authority on the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill.

Our Vice Chair, Fiona McQueen explained during the evidence session that the Scottish Police Authority does not support or use Non-Disclosure Agreements. Police Scotland does use Non-Disclosure Agreements in a very small number of legal settlements. For context, I would highlight that in 2022-23 there were 463 legal settlements, of which 24 included a non-disclosure or confidentiality clause.

For a two-year period, the Authority closely monitored and reviewed Police Scotland's use of Non-Disclosure Agreements to better understand their use, purpose, and prevalence. The Authority has received repeated assurances and data to evidence that NDAs have been used sparingly and in accordance with ACAS guidance. The [ACAS guidance on the use of non-disclosure agreements](#) provides more detailed information on the circumstances in which these agreements might be used. There is also useful information explaining the reasons for using a Non-Disclosure Agreement. These reasons are consistent with Police Scotland's reporting to the Authority that Non-Disclosure Agreements are predominantly used for commercial reasons following legal advice and/or at the request of the other party.

Importantly, Police Scotland has confirmed that it does not use Non-Disclosure Agreements routinely, and never to prevent whistleblowing or the disclosure of discrimination, harassment, or sexual harassment or to cover up inappropriate behaviour or misconduct.

I have appended to this correspondence the wording of Non-Disclosure Agreements used by Police Scotland, specifically the condition relating to a signatory's ability to discuss or share information about their cases. Police Scotland has advised that it does not have a typical style of Non-Disclosure Agreement; however, these are examples of clauses used in two previous cases. Example 1 explicitly states what is not covered in the agreement, Example 2 is from an ACAS generated agreement. These are examples, each case is different and the terms of any agreement may be revised by either party.

I hope this information provides the Criminal Justice Committee with assurance that Police Scotland's use of Non-Disclosure Agreements is not routine, and in line with ACAS guidance which provides that such agreements must not prevent whistleblowing or the disclosure of discrimination, harassment or inappropriate behaviour or misconduct.

Please do not hesitate to contact us if you have further requests.

Yours sincerely

A handwritten signature in black ink that reads "Lynn Brown." The signature is written in a cursive style with a period at the end.

LYNN BROWN OBE
Chief Executive

Appendix A – Non-disclosure clauses

Appendix A

Non-Disclosure clauses

Example 1

The Employee and the Employer undertake that they shall keep the fact of and terms of this Agreement strictly confidential. By her subscription hereof, the Employee accepts that it is a condition of the payment referred to in Clause 6 that she shall keep the terms and conditions of this Settlement Agreement confidential to herself and to her independent advisor referred to in Clause 5 hereof and not breach that obligation of confidentiality to any third party otherwise than, as required by law.

For the avoidance of doubt, nothing in Clause 8 specifically and nothing in this Agreement generally shall prejudice any rights that the Employee has or may have under the Public Interest Disclosure Act 1998.

Example 2

Both parties agree that the settlement and the terms of this Agreement will remain confidential between the parties and will not be revealed to any third party other than the Claimant's immediate family, professional advisers or otherwise as required by law.