EQUITY

Equity submission – Make Work Pay: misuse of non-disclosure agreements (NDAs)

About

Equity is the largest UK creative industries trade union with 50,000 members united in the fight for fair terms and conditions across the performing arts and entertainment. Our members are actors, singers, dancers, designers, directors, models, stage managers, stunt performers, circus performers, puppeteers, comedians, voice artists, supporting artists and variety performers. They work on stage, on TV and film sets, on the catwalk, in film studios, in recording studios, in night clubs and in circus tents.

Contact

For further information about this response please contact Lola Brittain, Policy Officer (Workforce Rights & Research), lbrittain@equity.org.uk

Summary

1. Equity welcomes the new legislation to tackle the misuse of non-disclosure agreements (NDAs) that prevent workers from speaking out about harassment and discrimination.

2. NDAs are common across the creative industries not only in private settlement agreements but also pre-audition and pre-engagement contracts. Equity recognises the legitimate use of NDAs to protect identifiable, valuable and confidential information. However, we have encountered the use of NDAs to prevent workers from speaking out about workplace misconduct that they may want to share to bring attention to injustices. A pertinent example is pregnancy discrimination, which we have encountered in TV and film, whereby the offer of a role will be revoked after the disclosure of pregnancy, without any exploration of reasonable adjustments to facilitate the worker from undertaking the role they have successfully auditioned for.

3. Equity nevertheless believes that it is important to retain the option of an NDA as there are justified instances in which workers will want to maintain confidentiality. This is particularly the case in the creative industries where workers may be concerned about their privacy and reputation, with fears that disclosure affecting their ability to secure work and employment in the future. Ultimately, Equity believes that workers should have maximum discretion over how to handle their experience.

4. However, in relation to maximum worker discretion, it is imperative that robust safeguards are put into place to ensure that, where an NDA is desired by the worker, they are equipped to enter into one with the necessary information, and protected – as much as is possible, considering inherent power imbalances –

against coercion. It is common that workers across the creative industries are placed under duress to sign documents with clauses which impose blanket confidentiality with no time to seek adequate legal advice. Written in tiny print and incomprehensible legalese, which workers have no hope of understanding, the result is a culture of fear. Workers justifiably assume that they will be sued if they disclose anything about the production or engagement, even if it relates to criminal offences.

5. Robust safeguards – such as independent advice, provided in writing and an accessible format, with the cost covered employers and a sufficient review and cooling-off period – are therefore imperative. Given that workers in the creative industry are often required to sign NDAs that impose or imply blanket confidentiality, Equity also believes that there should be a statutory ban on the use of pre-event confidentiality clauses relating to discrimination and harassment. Furthermore, to ensure worker awareness of their rights, measures should be introduced to ensure that pre-event NDAs clearly specify that confidentiality does not extend to harassment and discrimination.

6. In addition, Equity strongly believes that s202A should be extended to a more inclusive definition of worker which includes the genuinely self-employed. A notable proportion of those that Equity represents are contractually engaged as self-employed, such as variety performers, directors, designers and choreographers. The gig-based nature of their work combined with the possibility of lone work, sometimes at night, and amidst audiences, means that many of these working people are particularly vulnerable to harassment and discrimination. Failure to extend s202A to the genuinely self-employed would therefore leave significant sections of the arts and entertainment sector subject to the forms of NDA misuse that have inspired this legislative change.

7. Finally, Equity believes that all proposals outlined in the consultation should apply to both private settlement agreements and Acas COT3 agreements.

Consultation Responses

1.	***Do you agree it should be a condition that a worker has received independent advice on the terms and effect, and the legal limitations of a proposed excepted agreement, before entering into the agreement?***

Yes

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

Yes

This is important to ensure that workers have a clear record of the advice they have received which can easily be referred to at a future date. It will align s202A with s203(3) of the Employment Rights Act 1996 which requires that an individual entering into a settlement agreement receives independent advice ahead of doing so.

To ensure that all workers can fully comprehend the advice received, it should be available on request in any format, for example braille or large print. Should the worker require an audio version, this should be provided in addition to the written advice.

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

No

Equity believes that employers should be required to cover the costs of independent advice. This is necessary to ensure that no worker is prevented from meaningfully accessing the advice they need to make an informed decision. The failure to require employers to do so will undermine attempts to tackle the power imbalance between workers and employers, as it will preserve and perpetuate significance distinction in the legal support accessible to the latter in comparison to the former.

As highlighted by Women and Equalities Committee[1], some employers contribute to the cost of independent advice for settlement agreements. Though not required by law, independent advice from a relevant adviser is required to render settlement agreements binding. That some employers are compelled to contribute to fees to ensure compliance, reflects the fact that many workers are unable to afford independent advice in relation to workplace disputes.

However, as emphasised by the Employment Lawyers Association in the inquiry conducted by the Women and Equalities Committee, employer contributions are often too low "to cover the type of complex advice that is typically required where there has been sexual harassment or other types of discrimination".[2] Leaving financial contributions to the discretion of employers will therefore lead to situations in which workers are either un-or underinformed about the implications of excepted agreements.

Requiring employers to cover costs would ensure that all workers can access sufficiently detailed legal advice, irrespective of their personal financial situation. Should employers be required to cover costs, it is imperative that they are prohibited

[1] Ninth Report of Session 2017-2019, HC1720, "The use of non-disclosure agreements in discrimination cases", Women and Equalities Committee

[2] Ninth Report of Session 2017-2019, HC1720, "The use of non-disclosure agreements in discrimination cases", Women and Equalities Committee

from controlling who the worker receives advice from. To ensure that the advice remains truly independent, this decision must be at the discretion of the worker.

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?***

No

5.	***For Acas facilitated COT3 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?***

No

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

No

s203(3) of the Employment Rights Act (1996) sets out relevant independent advisors for the purpose of settlement agreements. They are qualified lawyers; an officer, official, employee or member of a trade union that has been certified in writing as competent to give advice and authorised to do so on behalf of the union; or an individual that workers at an advice centre (whether as an employee or a volunteer) who has similarly been certified and authorised to do so on behalf of the centre.

ACAS conciliators are not included within s203(3) as relevant advisors. Equity believes that this should be maintained for the purpose of s202A. This is because the institutional mandate of ACAS conciliators – the provision of neutral facilitation between employers and workers – would prevent them from providing independent advice in the interest of the worker. Moreover, should ACAS conciliators be included as relevant advisors, this would undermine one of the key objectives underpinning the conditions that are being consulted on: ensuring that workers are "*empowered to decide if the [excepted agreement] is definitely what they want*".

Limiting relevant independent advisors to the list specified in s202(3) would not prevent the extension of sufficient protection to those taking the COT3 settlement route. It would simply require that independent advice is factored into the COT3 process in the case of excepted agreements.

7.	***Should an independent advisor be required to provide other advice in writing to a worker, in addition to those proposed in this section, on:***

	• ***The terms and effect of the proposed NDA; and*** • ***The legal limitations of the NDA.***

Yes

Equity believes that excepted agreements are only acceptable where they are genuinely serving the interests of the worker. We agree that there are instances where workers would want confidentiality – particularly in the creative industries where professional and social networking is a critical aspect of securing future work, and where workers are more likely to be subject to media scrutiny. However, it is imperative that independent advisors should also be required to provide advice as to whether the excepted agreement is reasonable and fair. Providing advice solely about the terms and effects and legal limitations, may leave workers in a situation in which they enter into a harmful excepted agreement.

Furthermore, the provision of this additional advice is important to satisfy a core intention of the conditions that the Government is consulting on to ensure that workers are "empowered to decide if the agreement is definitely what they want". Ensuring that workers are provided with advice on whether the agreement is fair and reasonable this across the board, will increase the consistency of the advice provided ahead entering excepted agreements, as it will ensure that it is not up to the worker to seek additional advice to interpret information relating the terms and effects and legal limitations. As with other elements of the advice, this should also be in writing, accounting for any accessibility requirements, to ensure that workers are able to refer to it, as and when needed.

Workers should be given information on where they can seek additional support and advice, for example, from a trade union, Acas, victim support charities.

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 on the proposed agreement?***

Yes – but, as also emphasised in Q9, it is important that a trade union representative or official of the worker's choice is permitted to express the wish of the worker to enter into an excepted agreement with the employer. Having experienced harassment or discrimination, workers may feel more comfortable expressing this via their representative.

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

Yes

Equity agrees that the style and form of a worker's expressed preference need not be strictly prescribed, only that it should be in writing and expressed to the employer. However, workers and their independent advisors – inclusive of trade union representatives – should have a standardised template with minimum requirements to refer to when composing their expression of preference. This template should be included within the statutory code of practice and allow for industry-specific adaptation, for example with square brackets that specify the ability to adapt text as required.

In addition, it is important that a trade union representative or official of the worker's choice is permitted to express the wish of the worker to enter into an excepted agreement with the employer. Having experienced harassment or discrimination, workers may feel more comfortable expressing this via their representative.

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

No

Allowing employers to suggest confidentiality to workers will continue to facilitate scenarios in which workers are pressured into entering into excepted agreements against their wishes and interests.

The workers that Equity represents in the creative industries, who regularly enter into short-term contracts, are already in particularly vulnerable positions due to the heavy weight placed on reputation in the industry. They are consequently at risk of coercion due to fear of reputational damage or losing future work opportunities if they did not enter an excepted agreement on the recommendation of an employer. The requirement for a worker to receive independent advice is not a sufficient mitigation against the very real prospect of employer coercion.

To account for government concerns relating to employers precluding the option of excepted agreements by way of mentioning it in an initial conversation, the statutory code of practice should clearly outline that raising an NDA in conversations after the incident has taken place, even passively, will be construed as suggesting confidentiality, for the avoidance of doubt.

However, given the support and shield provided by trade union representatives, we feel that employers should be able to discuss confidentiality with such representatives during without prejudice negotiations. Furthermore, to ensure that workers are informed of all options available, there should be a duty on employers to inform workers of their rights relating to s202A when they commence engagement or employment, in the same way that they will be informed of their right to join a trade union.

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?***

No

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?***

No

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

Yes

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

Yes

15.	***If no, what length of cooling-off period would you consider appropriate, and why?***

N/A

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

No

Equity agrees with the reasons set out in the TUC's response. We do not see how this proposal would be workable in practice. Although it may be desirable for workers to be able to waive their confidentiality obligations separately from the rest of the agreement, we agree that this is likely to result in overly complex agreements with varying conditionality, dependent on the worker maintaining their confidentiality obligations. Furthermore, there is a risk that employers will offer lower settlements based on an assumption that a worker will withdraw from their confidentiality obligations.

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

No – but with limited exception, see Q18

Including a general provision for workers to be able to waive the cooling-off period leaves workers vulnerable to pressure from the employer to do so, rendering the cooling-off period essentially meaningless. For instance, an employer may offer conditions in a settlement agreement which would see a worker receive a more generous settlement payment so long as they agree to waive the cooling-off period. Whilst we understand the Department's concerns about increasing existing delays in the Employment Tribunal process, this does not balance out real concerns that this would be used as a lever of coercion by employers to settle quickly, without giving sufficient time for a worker to consider the agreement. As such, we agree with the TUC that the Government should follow the New York State model whereby excepted agreements are not effective or enforceable until the cooling-off period has expired. However, as noted below, we believe there should be a specific exemption.

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

Yes

As above, we recognise the Department's concerns about delays in the Employment Tribunal process. We consider there to be a particular risk that, in the case that a settlement is reached shortly before a tribunal hearing, the cooling-off period could create uncertainty and unnecessary costs. In this limited and exceptional circumstance, workers should have the ability to waive the cooling-off period.

Equity also recognises the risk of complications regarding time limits within which a worker can bring a claim to the Employment Tribunal. However, this could be dealt with by allowing for a limited extension in instances where the worker has withdrawn from an excepted agreement. The precedent for handling complexity with regards to time limits is established by the fact that workers are given at least one month to submit a claim to the Employment Tribunal after Acas conciliation ends.

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

As above.

20.	***Do you agree that there should <u>not</u> be a mandatory statutory review period before an excepted agreement is entered into?***

No

It is not uncommon for the workers that Equity represents to be given pre-event NDAs immediately before starting work, without any time to review the document, placing them under duress to sign something they have not properly reviewed. Equity is concerned that workers could be similarly pressured or coerced into signing an excepted agreement against their interests without a mandatory statutory review period. Implementing such a review period would give workers time to seek and receive advice from their trade union or other relevant representatives before they sign the agreement to avoid them feeling as though they are rushed into making a decision.

In terms of length, the statutory review period should be no shorter than 10 calendar days as recommended in the Acas Code of Practice for consideration of proposed formal written terms of a settlement agreement. We are also aware that similar legislation, such as that recently introduced in New York, provides for 21 days to consider the terms. We agree with the TUC that the Government should consult with unions before determining the appropriate length for a statutory review period.

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

Yes

As set out in our answers to Q17 and Q20. Including these periods as conditions of an excepted agreement increases assurance that a worker has had sufficient time to enter into the agreement fully informed and not under time pressure.

22.	***Do you agree that a written copy of the excepted agreement should be provided to all parties to the agreement?***

Yes

23.	***Do you agree that it should be a requirement that an excepted agreement is made available to the parties in any accessible format they may need?***

Yes

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

Yes

The workers that Equity represents are often required to sign pre-engagement NDAs that are written in incomprehensible legalese that is intimidating and difficult to understand. This has resulted in workers entering into agreements that they are

unable to fully understand. There is a significant risk that this could be replicated within excepted agreements if there is no requirement for plain language. Equity does not believe that independent advice is a sufficient condition to safeguard against this risk alone.

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

No

Equity is concerned that a requirement for excepted agreements to be in plain language, set out in regulations, will create an extra avenue for excepted agreements to be challenged before the Employment Tribunal. This risks a scenario in which tribunals are required to determine what constitutes plain language which could cause issues for workers further down the line.

In the arts and entertainment industries, there may be cases where an excepted agreement requires specialist or industry-specific language, which may be vulnerable to challenge if regulations require language to be plain.

If the Government elects to require plain language in regulations, regulations should be broad enough to allow for industry-specific, technical language to be included where agreed by both parties. We think that the wording as set out in Irish legislation is a reasonable starting point, but a provision to allow for industry-specific terminology would be desirable.

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

Yes

Acas should update its statutory code of practice regarding NDAs and excepted agreements to include guidance on how to ensure that agreements are written in plain language, and practical examples that cover different scenarios such as the need for industry-specific technical language.

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?***

Yes

We strongly agree that an excepted agreement should only be able to be entered into relating to an incident of relevant harassment or discrimination which has already taken place.

Equity's members are often required to sign NDAs in advance of auditions or engagements. The stated purpose is to protect commercially sensitive information about the project that they are working on. Whilst this is a legitimate overarching purpose, Equity has encountered many instances where NDAs impose blanket confidentiality. This understandably leads workers to believe that they cannot speak about anything that occurs whilst working on the project, including harassment and discrimination even if not explicitly stated. It also creates a culture of fear that prevents workers from speaking out about any aspects of their experiences for fear of losing current or future work. This is reflective of the importance of reputation for workers moving between projects within the creative industries.

We support calls from the TUC for there to be a statutory ban on the use of pre-event confidentiality clauses relating to discrimination and harassment to ensure clarity that any use of such clauses is unlawful. There should also be clear communication and awareness raising to ensure that workers are fully aware that any pre-engagement confidentiality agreement that they sign cannot prevent them from speaking out about relevant harassment and discrimination. For example, employers should be required to clearly explain the rights provided by s202A within the pre-engagement confidentiality agreement. This would tackle the culture of fear arising from the wide-ranging terminology used as standard in these agreements, and ensure that workers are aware of their rights, thereby facilitating a meaningful implementation of the legislation.

28.	***Should the confidentiality obligations relating to relevant harassment and discrimination in an excepted agreement be required to be time-limited?***

Equity is in support of a model which reflects current practice in Ireland in which excepted agreements are of unlimited duration, other than where the worker elects otherwise.

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

No

See Q28. We are in support of a model that reflects practice in Ireland where agreements are unlimited by default unless a different time-limit is specified by the worker.

30.	***If yes, what should the maximum time-limit be? Please explain why.***

e) No set duration, the worker is able to choose a time-limit if they would like to

As above, we are in support of a model that reflects practice in Ireland where agreements are unlimited by default unless a different time-limit is specified by the worker.

31.	***Are there any other conditions or safeguards that should be required for excepted agreements to help prevent the misuse of NDAs in cases of discrimination and harassment?*** ***Please describe any additional conditions you would recommend and explain how they would help address potential risks or improve protections for individuals.***

Equity supports recommendations made by the TUC and other organisations that excepted agreements should be registered with a central body, such as the Fair Work Agency. This would enable the tracking of employers that are repeatedly signing excepted agreements, whilst still protecting workers who have requested them. To make this an effective measure, employers should have a legal duty to register agreements with the relevant agency and workers should be able to verify whether a claim has been logged. If the Government elects to require employers to log agreements with the Fair Work Agency, it must ensure that the agency is sufficiently resourced and has adequate powers to be able to act as a regulator.

32.	***Do you agree a worker should be able to make disclosures to the individuals and bodies included in the proposal above, when a worker has entered into an excepted agreement?*** ***Please select from the list those individuals and/or bodies which you agree workers should be able to make disclosures to.***

a) Any person who has law enforcement functions

b) A qualified lawyer

c) Any individual who is entitled to practise a regulated profession or a tax advisor

d) Any individual who provides a service to support victims

e) A regulatory body.

f) A trade union representative accompanying workers in grievance and disciplinary cases, a trade union equality representative, or a trade union representative authorised to give advice on settlement agreements.

g) A person who is authorised to receive information on behalf of a person mentioned in all of the above

h) Close family members

33.	***Are there any individuals or organisations <u>not</u> included in the proposal above that you think a worker should be able to make a disclosure to?***

Yes

The inclusion of a trade union representative is welcome. However, Equity is concerned that the present formulation - "*a trade union representative accompanying a worker in a grievance and disciplinary case, a trade union equality representative, or trade union representative authorised to give advice on settlement agreements*" - is overly prescriptive and may not necessarily accurately reflect roles within unions. For example, Equity does not have one specific equality representative, as this is a core aspect of multiple staff roles with other elements. A straightforward solution is the inclusion of any trade union representative or official that is trusted by and authorised to act on behalf of the worker.

In addition, limiting disclosure to close family members, or partners may leave some workers without adequate emotional support. While professional support services can provide support, this is not equivalent to that which can be sought from someone who knows the worker in a personal capacity. Equity supports proposals to allow workers to specify up to two 'nominated individuals' for disclosure. This provision should allow workers to add one or both individuals at a later date, if not specified when the agreement is initially signed. Should a situation occur in which the nominated individual can no longer be relied upon, the worker should be permitted to nominate a replacement. Introducing this provision would bring s202A into closer alignment with the equivalent Irish legislation.

34.	***Should individuals with excepted agreements be able to disclose to prospective employers?***

Yes

This is important to ensure that workers can explain gaps in employment to prospective employers or engagers where these arise from incidents of harassment and/or discrimination. Such incidents may have resulted in the worker losing or leaving employment and taking time away from work to seek support or care for themselves. Workers may also require support as they re-enter the workplace. Allowing workers to choose to disclose this information to prospective employers will enable them to request support, if desired.

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

No – the definition of 'close family' needs updating as we set out below.

Equity has concerns about the need for an intimate personal relationship to be *of "significant duration"*. The inclusion of a duration requirement may lead to inappropriate exclusions, complexity regarding the date at which the relationship began and potential challenges from employers regarding who the worker is able to make a disclosure to. To ensure that the dignity and autonomy of the worker are protected, and to prevent unnecessary complexity, workers should be able to determine for themselves whether the relationship is sufficiently significant to constitute a partnership, without concern that it has not passed an arbitrary time-based threshold.

36.	***Should individuals with excepted agreements be able to disclose to any other individuals for example wider family members, friends or anyone else?***

Yes

37.	***If you answered yes to Question 36, how would you define the wider group of individuals?***

See Q33

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

Yes

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

a) Agency workers

b) Secondment workers

c) Others - See answer to Q42.

40.	***Should section 202A apply to individuals not covered by the usual definition of "worker" in Section 230(3) of the Employment Rights Act 1996?***

Yes

41.	***If yes, what additional individuals should be covered? Please explain why.***

a) Work experience placement

b) Nurses and Midwives in training

c) NHS worker

d) Other. Please state: Work experience internship

Equity believes that the right contained in s202A should be extended to each of the listed groups. However, we are particularly concerned about the potential exclusion of those on work experience placements, in addition to those on shorter term internships – both paid and unpaid.

As highlighted by the Sutton Trust, work experience placements and internships are a common route into the creative industries, with those seeking to enter the creative industries often undertaking multiple unpaid short-term positions to build experience and develop connections.[3] Notwithstanding significant issues around the lack of payment, work experience internships and placements have the potential to have a profound impact on professional development and career trajectory. However, as Equity has witnessed through its work with those training in higher education settings, students on work experience placements are vulnerable to poor treatment, including harassment and discrimination. This reflects the reality that they are at the mercy of an even greater workplace power imbalance than that which exists between formal workers and their employers.

In view of this, it is imperative to create an equal playing field regarding the right to speak out about harassment and discrimination. Affording this right to formal workers and not to those doing work experience placements or internships would create a significant loophole. Furthermore, preventing them from speaking out about harmful experiences could also lead to a situation in which students, or those in training, are repeatedly placed in dangerous training settings with perpetrators who have been protected through NDA misuse.

As of September 2024, the Office for Students has prohibited universities from using NDAs where they prevent students from disclosing information about harassment and sexual misconduct. This has established significant precedent for extension of s202A to those on work experience, internships and placements.

42.	***Are there any specific groups of self-employed individuals that should be covered by section 202A that have not been outlined in this section?***

Yes

[3] Holt-White, E., et al (2024) A Class Act: Social Mobility and the Creative Industries, Sutton Trust.

Of the 50,000 members that Equity represents across the performing arts and entertainment sectors, a notable proportion fall outside of the definition of "worker" in s230(3) of the Employment Rights Act 1996. This includes theatre directors and designers, choreographers and variety performers, such as comedians, drag artists, cabaret and circus performers, burlesque dancers, DJs and story tellers. These workers are often engaged as genuinely self-employed but are operating within the context of inherently unequal bargaining relationships, with high levels of reputational dependency. They do not have a fixed workplace, and are often working alone, including at night, without written employment particulars or full access to health and safety protection.

The nature of their work leaves these groups of working people vulnerable to harassment and discrimination. This arises not simply from the organisation engaging them to provide work and services but also third parties, such as audiences. As demonstrated by an Equity survey (2025) about the conditions of variety performers in London's nightlife economy, sexual harassment is a systematic feature of the industry that is increasingly anticipated as something that may be experienced. Furthermore, forms of harassment and discrimination considered "relevant" under s202A are rising, with variety performers commonly describing an increase in transphobia, misogyny, homophobia and racism, in their working lives. Given the importance of maintaining relationships in gig and project-based work in the arts and entertainment sectors, the genuinely self-employed are also vulnerable to NDA misuse. The exclusion of the genuinely self-employed that fall outside of the definition of "worker" within s230(3) will therefore create a significant loophole that endangers a highly precarious group of working people.

Equity is also concerned about the exclusion of the bogus self-employed. A notable group is platform workers operating in the gig economy. However, this also includes workers within the arts and entertainment sectors, specifically those working in the videogames sector and those engaged in low-paid theatre positions. To address this risk, s202A should be extended to the inclusive definition of "worker" within s244(5) of the Trade Union and Labour Relations Consolidation Act 1992. This will ensure that the legislation is sufficiently inclusive of those providing work or services that are vulnerable to NDA misuse in the context of unequal bargaining relationships. There is precedent for this broader inclusion, with equivalent legislation in New York State having been extended to independent contractors in November 2023.