



## Non-Disclosure Agreement (NDA) Policy

Date Approved		Approved By		Title	
Date Effective		Version no.		Date Last Review	
Date for Next Review		Responsible for Review		Date Effective From	
Policy Owned by		Position		Policy Number	

### 1. Purpose of the Policy and Procedures

Non-Disclosure Agreements, Confidentiality Clauses and similar mechanisms (here all referred to as NDAs) have a legitimate and key role to play in protecting the intellectual property and ‘secret sauce’ of a business.

However, it has become apparent more recently that NDAs have also been used to prevent people reporting of misconduct (often sexual misconduct) to law enforcement authorities and regulatory authorities.

The SRA and Law Society have expressed great concern over this as the legal profession plays a key role in the preparation, negotiation and enforcement of such NDAs.

The SRA has [warned](#) that preventing access to justice or reporting to regulatory bodies is contrary to the core [Principles](#) of conduct.

This Policy is in place to manage the risk of working on higher risk NDAs that could cause regulatory and reputational problems. It is not intended to inhibit any person’s right to act on low-risk commercial NDAs.

### 2. Scope of the Policy and Procedures

This Policy applies to all employees, directors, partners, consultants or others working within the Firm, who will collectively be known as ‘staff’.

The Policy comes into effect from the ‘Date Effective’ above and continues until a new version is implemented or the Policy is retired.

Any live matters on the Date Effective, which would have been in scope had they commenced after the Date Effective, will need to be reported to [\[the supervisor/Head of Department\]](#) or [\[the COLP\]](#) for review under section 4 of this Policy.

This Policy applies to all work carried out for our clients or for the Firm itself in relation to NDAs. ‘Work’ includes negotiating, drafting, advising on, enforcing, or being a party to an NDA.

### 3. Applicable Legislation, Regulations and Guidance

- [1. The SRA Warning Notice on Non-Disclosure Agreements 12/11/20.](#)
- [2. The Law Society Non-Disclosure Agreements and Confidentiality Clauses in an Employment Context Practice Note 12/12/19.](#)
- [3. SRA Principles 1 \(Rule of Law\); 2 \(public trust\); 3 \(independence\); 5 \(integrity\).](#)
- [4. SRA Standards and Regulations for Firms, particularly 1.2; 3.2; 3.10 and 3.9](#)



#### 4. Procedures, Controls and Processes

##### a) NDA Risk Assessments

When the [person responsible for conducting a risk assessment e.g. fee earner] conducts a Matter Risk Assessment at the outset, it must be noted if the matter will – or is likely to - include any NDAs.

All matters involving NDAs must be risk assessed by the [fee earner] in the Matter Risk Assessment.

The risk level of risk presented by an NDA depends on many factors. Examples are listed below, but are not exhaustive. If in doubt, speak with the COLP for guidance:

Table 1 - Example features of Low, Medium and High Risk NDAs

Low Risk NDAs	Medium Risk NDAs	High Risk NDAs
Routine commercial NDA, parties not in dispute	The parties to the NDA are in – or likely to come into - dispute	Acrimonious situation, litigation likely – particularly if the NDA relates to an employment situation
Relates to intellectual property only	Relates to a dismissal, potential dismissal or other employment process	Client wishes to prevent/restrict reporting to law enforcement or regulators
Relates to confidentiality of processes and clients	The client wishes to settle a matter quietly that has low prospects of success	Client wishes to quietly settle allegations of misconduct, especially of a sexual nature
No anticipated litigation, employment process or tribunal	Any restrictions on one party, other than very standard confidentiality clauses	NDA is a clear attempt to quietly settle a contentious dispute with employee/agent/supplier/contractor
Does not restrict reporting to law enforcement and Regulators, or access to legal advice	The client is vague about the circumstances surrounding the NDA, or gives little context	NDA seeks to restrict access to lawyers or other professional advisers
The giver and receiver of the NDA have equal bargaining power	The giver and receiver of the NDA have unequal bargaining power, and the weaker party is at risk of being exploited	Client is secretive about the circumstances surrounding the NDA, or presents a Medium-High Risk draft for the Firm’s sign off as a <i>fait accompli</i> .

##### b) Low Risk NDAs

Low Risk NDAs do not display any of the hall marks of risk covered in the SRA Warning Notice. The matter still has the potential to develop Medium or High Risk category characteristics. The [fee earner] must keep the matter under review and report to the [COLP] should the risk profile change.

Low Risk NDAs do not require [COLP or supervisor] approval.

##### c) Medium Risk NDAs

Where a current or potential new matter falls within the Medium Risk category, the [fee earner] must report to the [supervisor/Head of Department] under the Firm’s [Risk Policy] before proceeding. The [supervisor/Head of Department] may instruct the [fee earner] to take steps including:

- Referring the matter to [the COLP]
- Refusing instructions



- Seeking more information from the client
- Proceeding under heightened risk controls e.g.:
  - Regular file and risk reviews,
  - Allocating the matter to a more senior [fee earner]
  - Ensuring the final draft version of the NDA is reviewed by [the supervisor/Head of Department]

#### d) High Risk Matters

Instructions to work on High Risk NDAs should not be accepted without explicit approval of [the COLP].

If a matter becomes High Risk after it has started, the [fee earner] must report to [the COLP] immediately.

[The COLP] will set out what steps must be taken next, which may include terminating the retainer or taking regulatory/legal advice.

#### e) Exception for prior NDAs

Where the NDA falls into the High Risk category but had already been executed before the client instructed the Firm, the [fee earner] should follow this Medium Risk procedure.

#### f) Internal Contracts, Policies and Procedures

All staff must report (to [the COLP]) any internal matters which bear the hallmarks of High Risk NDAs, such as:

- employment contracts - and other agreements containing confidentiality clauses - with staff
- contracts or agreements with third parties
- internal policies or procedures.

## 5. Communication and Training

This Policy will be communicated to all staff via [state method]. Responsibility for this communication lies with [state who].

#### a) Relevant Policies and Procedures

This Policy exists in conjunctions with the following Policies and Procedures:

- [The Risk Policy]
- [The Disciplinary Policy]
- [any other relevant policy and procedures]

#### b) Related Forms or Precedents

- [list any relevant eg matter risk assessment, high risk notification form]

## 6. Consequences of Non-Compliance

Where a member of staff fails to follow the letter or spirit of this Policy, they may face disciplinary procedures. In serious circumstances this may include dismissal and/or referral to the SRA.