

**The End of Silence? NDAs, Ethics, and Employment Law Reform - A Conversation with  
Zelda Perkins**

**Beth:** Hi there and welcome to this CM Murray podcast. My name is Beth Hale, I'm a Partner and General Counsel at CM Murray and I'm joined today by my Partner Emma Sangeelee. We're absolutely thrilled to be joined by Zelda Perkins who is the founder of UK Can't Buy My Silence. I'm going to let Zelda sort of tell her story and explain why she's here today shortly but just by way of background what this podcast is going to be about. It's going to talk about the recent government proposal to impose a quite broad-brush ban on non-disclosure agreements in employment cases where allegations of discrimination and harassment have been made. We'll drill down to the nitty gritty of that a bit more on what it means and what the implications are. But first I'd like to pass over to Zelda, did you want to tell us sort of why are you here, how did you get here?

**Zelda:** Hi Beth, really nice to see you and Emma. Yes, for those who haven't been hammered by my story, I worked for Harvey Weinstein in my very early 20s and after he sexually assaulted a colleague of mine, ended up in legal proceedings where our only route to any form of apparent justice was a damages agreement which ended up obviously being a very onerous non-disclosure agreement. It was never called a non-disclosure agreement to us but that's what it was. I broke the agreement in 2017, so nearly 20 plus years later when allegations of Weinstein's behaviour started coming out because I felt it was very important that the emphasis wasn't, you know, that the attention didn't completely get lost just on being about a male predator because to me actually the real issue was the system and the ability for justice to be bought and for those in power to exercise their, disparity of power in legal proceedings where victims have so little bargaining equality or right to be heard. And for me, the system was what was the enabling issue rather than the predator themselves. We can't change human nature, but we can improve the law. The law is the sort of ephemeral agreement that we have made to laws that we have made to protect ourselves from ourselves. And I believe that we all have a duty to improve that law and this is an area where I think there is great room for improvement. And so from 2017, I've been campaigning really to change that power disparity in the legal sector and in legislation so that there is more equality in bargaining when it comes to settlement. And I think as with many things, the biggest issue around a lot of these discussions is language. And interestingly, in your introduction, you said, you know, the government are now going to make a broader ban on NDAs. And I think this is often the problem, particularly for the legal sector, is that they become very alarmed when you say you're going to ban something. I think more fastidious language around confidentiality clauses and non-disclosure agreements will help us move forward in the way that is now wonderfully happening in legislation. This is not banning NDAs, what it's doing is stopping the use of confidentiality clauses in an unethical manner and that is when it comes to allegations of misconduct, whether it's around discrimination or harassment. Confidentiality is essential to victims too and hopefully what this new piece of legislation will do, this amendment will do, is just create some more equality in terms of how confidentiality is used and put power back into the hands of the victims rather than only being in the hands of the alleged perpetrator.

**Beth:** I slightly deliberately use broad brush ban as I know that...

**Zelda:** To set me off!

**Beth:** Just to wind you up, Zelda! No, I mean, I think that's absolutely right. It's not it isn't a ban. It's a limitation and a restriction. I think it's really interesting when you talk about language that I think before 2017, UK employment lawyers would not have referred to these kinds of clauses that we see routinely in employment settlement agreements as NDAs. I think we would have all called them just confidentiality clauses. And I think that's a really useful place to sort of start to talk about what has changed and we'll come on to the kind of particular language that they're proposing now to put into the Employment Rights Bill. But I just think thinking about what has changed since 2017 because I have often seen you speak Zelda and you say nothing has changed. And I think I quite often say to you, it has. I think that there has been a huge change in the way these kinds of clauses are used and operated, certainly when they are drafted by lawyers. And we can come on to issues you might see when they're not drafted by lawyers. I think, Emma do you want to talk just briefly about sort of what that has looked like and what you've seen in practice since 2017?

**Emma:** Absolutely, I think in terms of the SRA warning notice, the use of these confidentiality restrictions and settlements agreements, you know, would always have, should always have now in the standard carve outs so that people can still speak to the police, regulators, can blow the whistle. Family and confidence is one that that's a sort of routine. Personally, I think that's not wide enough for reasons that I'm sure we'll come on to discuss and you would agree with Zelda. You can speak to your therapist, but there have been some important restrictions, I think, on how those confidentiality provisions are commonly used now in a way that perhaps they weren't when you signed your agreement, Zelda. So there is some acknowledgement, I think, of the issues that you're concerned about, but still, I think, in practical terms for individuals when they are leaving employment under the cloud of these sorts of issues, they are very much still curtailed from owning their story or speaking honestly about what has happened to them. So I think we have gone some way in terms of as a profession, how we are advising on these agreements, but I can see why from your perspective, there's further to go. And it's this question of ethics. I'm quite interested in what you think about that now, given that we have had that direction of travel. What is it now that you think is unethical about how these agreements are reached?

**Zelda:** Well, I do think there has been a big ethical shift since 2017. I think I probably, I mean, I have historically said nothing has changed repetitively, but I probably haven't said that in the last couple of years, because it is clear that things have changed and are moving. But I think for me, the reality of change, it has to be black and white change, as well as social and cultural change. And although the SRA have made numerous, and actually made numerous warning notices, there's not just been one. mean, since 2017, I think there have been four now. And the LSB also did a big public consultation and the SRA did another consultation last year. There's been lots of movement, but the reality is that guidance hasn't changed and up until we changed the higher education freedom of speech, we managed to get an amendment in there, and the victims and prisoners amendment, there hadn't been any legislative change. So yes, the conversation had changed, I think there was a growth in awareness, but what was shocking to me was that even last year in the SRAs industry consultation, they showed that only a third of their members were aware of the warning notices. And I think that shows, you know, why essentially, unless there's black and white change in guidance or legislation, waiting for kind of cultural, educational change is not enough. And I think the other thing that really concerned me was that I was seeing very clearly that over this period of time where the awareness of NDAs and that label has grown, lawyers and HR departments and employers have become aware of that

also so we've been using different mechanisms to essentially silence people which people might not have recognised as NDAs. So non-disparagement clauses which are terribly broad.

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And I was always very concerned that actually victims were in a more vulnerable position now that lawyers were aware that they had to hide the NDA element of an agreement and that confidentiality was a bit more of a dirty word. And that's why I think the legislative and regulatory change is so vital. And the Bar Council did put out a statement over a year ago now saying that they agreed that legislative change needed to come. And in this time that I've been trying to campaign, I've gone from those who create legislation to those who create regulation and each one says, well, we need the, the government was saying we need the law sector to change, law sector is saying, well, we need legislation before we can change guidance. So it's been slightly frustrating waiting for one person to make that step. But also in that time, a huge amount of evidence has grown that shows that the stuff that we were seeing within our campaign is backed up by data and has now been backed up by regulators and legislators. So for me, I understand you're seeing change, but I also on the other side of the table, I'm still having victims coming to me who are being pushed into awful, very restrictive non-disclosure agreements, which are still highly unethical. And often by, which for me, I find very hard, feminist presenting law firms who are still peddling the, if you give, you know, you'll get a much better settlement if you give confidentiality but pretending that they're actually sticking up for the victim. And now that is not helpful in cultural change. And, you know, we can see that Gloria Allred has been really picked up on this in the US and in fact, you know, is going through a case, you know, on the ethics of her behaviour around this. And this is why think it's so important that the correlation between money and silence is just removed completely. And for those lawyers in the States and the US where it has been, their feedback is that this hasn't chilled settlement, this hasn't lessened settlement, it just means that that kind of element of "blackmail", and I'm saying that in inverted commas, has been taken off the table. And in many ways it makes settlements quicker and simpler.

**Emma:** I would agree with you. think for a lot of my senior exec clients, it is that tie between any compensation and absolute compliance with the confidentiality obligations, which causes that sort of ongoing bind, which, they may not appreciate the ongoing impacts of that when they're entering into the agreement. It's not the fate. They just want out. They want to get it resolved. And there is this lasting ongoing impact of it, which I think you're right. You're right to raise.

One of the other things that in terms of movement, the direction of movement legally is that in terms of sexual harassment, there is now this proactive duty on employers to take steps to prevent this and that's looking to be expanded. But this proposed legislation in relation to NDAs isn't just about sexual harassment. I think it's important to remember it's all discrimination. And often I think that the conversation around the sort of risks of, will this undermine settlement and is thinking of maybe some of the most egregious cases of sexual harassment or something. But the reality is post-MeToo, post-Black Lives Matter, I think there is a growing understanding that we live in a society where discrimination and harassment happens and that happens in the workplace. And having this sort cloak of silence that employers throw over this because they want to protect their reputation and manage the issue I think is that's also an important change in the direction of travel where employers are being required to be more proactive in terms of

how they manage their organisations and actually the fact that this sort of conduct shows up shouldn't be something that damages their reputation what matters is how they address it.

**Zelda:** I think this legislation, the NDA amendment goes kind of hand in hand with the Workers Protection Act, which puts that duty on employers. Because what you're doing is you're bringing it all back to root. And if you can deal with stuff at root, it means that you don't get that escalation and the hidden escalation when you use confidentiality. And the reality is now that I think the landscape's changed around people speaking up, which is very much due to the Me Too movement and Black Lives Matter and the awareness around NDAs and the media's understanding of that now is that every scandal that you look at, there's an NDA there. And what that shows is that actually NDAs don't help protect reputation. What they do is they actually grow the problem underground. Businesses end up protecting perpetrators, you end up with more NDAs because staff aren't able to communicate issues or warn other people. And ultimately, you end up in the stratospheric reputational explosion when people start breaking NDAs. Whereas if you had dealt with the problem clearly at the beginning, that wouldn't have grown. And I do think that a lot of businesses are going to be very alarmed by both of these things. And yes, it's not going to be easy. It's not going to be easy. It is going to be difficult, particularly for businesses in that third party situation. You know, it's very hard to protect your and your employees from every kind of scenario that there is. But I think by bringing that awareness to the fact that they have to have better risk assessment around Christmas party where there's going to be a lot of alcohol, you know, that it just means that a lot of those behaviours are going to be nipped in the bud.

And I also genuinely believe that by not having the mechanism of confidentiality to hide misconduct, that will weed out an enormous percentage of people who might have been sailing a bit close to the wind. I think it'll only be the incontinent perpetrators, as I seem to be calling them, who literally cannot help themselves.

**Emma:** I love that.

**Zelda:** Who will continue to perpetrate. Who will continue with those behaviours and it just means that they will get weeded out very quickly. The people who kind of subconsciously or consciously know that maybe what they're doing isn't great but they also know that there is an ability to deal with that down the line if they get called out, they won't take that risk anymore.

**Emma:** There's a lot of subconscious bias and discrimination and behaviours that are played out. And if employers have those mechanisms for early-stage whistleblowing, you know, even on an anonymous basis, this whole part of the risk assessment. Then it gives the context also for learning and repair, which is really in prospect in a majority of these cases.

**Zelda:** Absolutely, I couldn't agree more. And I think there will be an uncomfortable kind of transition stage, but I genuinely genuinely think that, in a few years, people just won't believe that that was what happened in the past. And I genuinely don't think employment lawyers will even be thinking about it once that mechanism is gone. And confidentiality is something that has to come to from the victim, which is the right place for it to come from, and that they have control over that confidentiality, I think things will be so much easier. And when you look at the statistics for vexatious claimants, it's much smaller than the real issues. And I think there is a huge amount of kind of stirring up in the legal sector and in the business sector where they go, God, yes, but you know, you've got to be able to get rid of troublemakers. You can still get rid of troublemakers. If you have clear policy and you've done everything right, that troublemaker can

go and say whatever they like. But if a business can say very clearly, yes, look, they accused us of this. We couldn't, it was a he said, he said, he said, she said situation, we followed our policy, they got a settlement, you know, we've done everything correctly and properly that person who's being a troublemaker will hang themselves. The problem is, is when an issue is not dealt with transparently and well right away. And then when you, when you get into real trouble, when that is doubly hidden under confidentiality because if that confidentiality then gets burst, as an employer, you're taking the risk of not only having not dealt with it properly in the first place, but also having allowed alleged perpetrator turn out to be a real perpetrator.

**Emma:** Also, arguably, the link between the confidentiality and any payment is what encourages troublemakers to think I'm gonna get payment.

**Zelda:** Exactly, I totally agree.

**Beth:** I can just dip in quickly. Two very powerful voices. And look, I don't disagree with what you're saying at all. my two key sort of concerns about a ban, and I'm using that term very loosely, so forgive me. I understand that that's not really, know, a full ban is not what you have ever proposed, but my two concerns about it.

One, the impact on settlement. I think we can, I'll come on to that in a second, because I think I hear your statistics and I think it's really interesting. But I think the UK is slightly different and I'll come on to that in a second. But the other one is just, is just that it's a, it feels to me a blunt tool to deal with situations that are often very nuanced. the vexatious claims, yes, they're few and far between. Really, really false allegations of sexual harassment Also vanishingly rare. I they happen, but they don't happen often. But what happens all the time is that really messy in between, yes, this might have happened. Someone might have misinterpreted. Someone did something they shouldn't have done, but you know, it might have. The kind of grubby, messy situations, which are just not that clear cut and where in some circumstances, the real, like the all anyone wants is to be able to move on and for those issues not to be aired. And I think that does link in, I'm going to come back now, as I said, I went to the settlement issue, but I think the problem in the UK is that the tribunal system that is so lengthy, takes ages, takes two years probably for sexual harassment or a discrimination case to come to tribunal, it's expensive for the claimant and for the respondent, but in circumstances where a claimant might go on and get another job, there will be zero, not quite zero, but very little value in a claim. And so employers may just go, actually, I'm just going to sit this out and let them do that, suck it up, and we'll see what happens. And so do think that there is, that in the UK in a way that is different from America, there may be an impact on settlements and I think that remains to be seen but I do think that is a valid concern that I don't think is totally addressed by what you say about the impact it's had on settlements in the States. But I think my main worry is just the of blunt tool to deal with what is often a really nuanced set of circumstances and I think that's where I think in the current legislation, in the current draft legislation, what we'll need to see is some clarification about circumstances in which you can use confidentiality provisions. And then I think you do get into a complicated set of lawyers trying to work out what that looks like and then a set of circumstances, pieces of legislation which then have to be fought out in the courts and tribunals. So I don't think there is any one magic solution.

**Zelda:** No, I agree, but I would turn your argument slightly back on to you in terms of it being a blunt instrument or blunt tool. I actually think the current setup is a blunt tool for a nuanced situation because basically it's just shutting it down. And this, again, this isn't about stopping confidentiality being available. It's just changing the power imbalance. It's trying to put some

ability for victims to get what they need. And what they need is not money. What they need is the ability to go to group therapy, because not everybody can afford to go to a therapist, to speak to their friends and families. I mean, these are basic issues of human rights, really. Although, we know that no confidentiality should be hiding in equity and no confidentiality clause should be stopping someone from going to the police. The point is, is that unfortunately, and this is the ethics question, is lots of employers, HR departments and lawyers will give the victim the impression that that is the situation. And this also comes down to one of the stipulations which we hope comes through in this legislation that these agreements will be in plain English because it is the impression that the victim is left with that is the powerful one. And, you know, for instance, in my case, we were very clearly given the impression that, and it says we have to use our best endeavours not to speak to the police. Obviously our agreement doesn't stop us from speaking to the police. So as a victim and a client, who is not trained in legalese, we were given the impression that we could not speak to the police. We definitely weren't allowed to speak to the HMRC about our settlement agreement, had to, settlement amount, that had to go via Weinstein's lawyers. We had to give 48 hours warning notice to Miramax and Weinstein, Weinstein's lawyers, if the police or another civil action was taken, we were approached about that. Now these things, and we were told that we couldn't speak to anybody, friends, family, media, therapists, whatever. Now a lot of people say, well, those don't go into agreements anymore, but they still do go into agreements. And even if they don't go into agreements, that is the impression that is given to victims because I speak to victims every day who still now are absolutely terrified and think that they cannot speak to anybody and they don't understand maybe whistleblowing laws and there is already so much burden on a victim that putting the burden, the additional burden on a victim of understanding their exact position in law is very hard. So if the legislation supports solicitors to explain more clearly to victims how confidentiality is used and makes it that it is a request only of the victim to put confidentiality. that, so for instance, Washington state, I think has the best wording around that is that an employer cannot request or suggest confidentiality. So there's no, you know, room for, for so coercion in any way or suggestion. And I genuinely think that settlement is important and confidentiality is important in settlement, but there has to be equality in that field. And at the moment, everything is stacked against the victim in every way.

**Emma:** I've already seen an impact just in negotiating settlements now with this coming. Obviously, we're going to have to see how it's drafted. I think we all agree there is a there's a place for confidentiality here. But just, a few years ago, I think employers would just insist on the most stringent confidentiality obligations. And now with this in the, in the coming in the coming Bill. It's much easier to negotiate exclusions from that that are very specific to your client and the reality of the situation, you know, in terms of who else knows about it, how likely other people are going to speak about it. Because that's the other thing I think is difficult about these is it's really just the individual who is silenced. It's very rarely any other person involved, which is also an imbalance. So I've seen that employers are more open now to less to them using these obligations less as a blunt tool just because of this coming in. I know if you've observed that Beth at all?

**Beth:** Absolutely, and I think employers are much more open to conversations about whether they need confidentiality at all and what they need confidentiality about. So I'm seeing many more agreements where confidentiality is limited to the value of the settlement and not around the circumstances of the termination of employment or not around the circumstance that led to the settlement being agreed. And just having people apply their minds to that is a big change because I think they just used to go and settlement agreement as a routine. I also think, your

point on plain English, agreements are drafted in the agreements that we see. And obviously I know that the way from where we are sitting in a, in a firm that thinks about this stuff a lot and in a profession that, that has done a lot of kind of soul searching, thinking about this over the last few years. I know that we're not seeing what happens kind of in the kind of stuff that you're seeing. I think we're at different ends of the spectrum on that. And I totally take that. But I think that what we see is now confidentiality provisions in settlement agreements, which are clearly drafted and where the carve outs are longer than the, rightly longer than the confidentiality provision itself. We advise, when we're advising clients, we advise them on the impact of those and what I think the key for me is that sort of plain English clarity. And if you, you know, people need to, if they are signing a confidentiality undertaking, they need to understand what they can and what they can't say and to whom. And that, that for me is the absolute fundamental.

**Zelda:** The plain English part of my agreement, and I know we're going back some time and people think that my agreement was unusual, but sadly, it's not that unusual. And as you say, I'm at the worst end. I only see the really bad stuff, but the really bad stuff still going on. But our lawyer said to myself and my colleague to explain our agreement to us in plain English, they said, just imagine that that entire part of your life is a black hole that you know nothing about. Never speak about anything. Ever again. Now being told and for my colleague who had gone through significant traumatic experience, being told that you have to just imagine that part of your life is a black hole, that is where the damage really happens. And I think that's something that, and again, I don't blame lawyers. Why would a lawyer know? They think they're offering a panacea, you get a lump of money, you know, you can all move on, everything's quiet, no problem. Lawyers haven't seen, don't see, that actually for the victim, that actually is the beginning of a worse form of abuse. And I think that's something that they have understood now much more. And you know, I'm very grateful to the legal sector who have actually embraced having me come and speak at lots and lots of different conferences and consultations because I am just giving a personal experience and also can speak for other people who can't speak in terms of how devastating being essentially abused by an agreement every day for the rest of your life, which is something that we don't think about at that moment of signing. You know, I do think that impact is very hard to quantify when you're sitting on your side, whereas where I'm sitting on my side, at least I can explain that a little bit. I also think, you know, this legislation is helpful in terms of also supporting lawyers, because if you are general counsel in a big firm, you already have a conflict of interest when your firm is saying, you need to protect our reputation and you also want to hold on to your job and you're put in a position where you've got a victim there and you have to make a maybe slightly unethical decision to keep your job and to uphold the reputation of the company you work for. So I think if there was much more clarity about how confidentiality is used, it actually puts solicitors and particularly in-house general counsel into a much easier position.

**Beth:** Yes, I guess one of my concerns about the drafting as it currently is, which maybe we can just do it briefly, because it covers discrimination and harassment, it feels very broad to me. Now, false allegations of discrimination in a world where we have a cap on unfair dismissal compensation and therefore people are always looking for ways to lift that cap. Allegations of discrimination which are spurious are used day in day out and I don't

don't know if you disagree with me Emma, I do. think those are, know, really false allegations of sexual harassment don't happen very often. Allegations of discrimination where there was very little to see happen all the time. Having a false allegation like that made against you and then spoken about, even if you are free to speak and speak against it, the kind of no smoke without

fire can be incredibly, could be incredibly damaging to people. So you can really see why someone against whom a false allegation of discrimination is made would want confidentiality and the victim would not ask for it probably in those circumstances and therefore you're left with this. And that's kind of what I mean by a very nuanced situation not being, I just feel like there is scope for really difficult situations.

**Emma:** You're right that often, aside from being spurious, often people don't know if they've been discriminated against or not, and they might just have a suspicion and they raise it and that's legitimate. And I think that with silence comes shame, doesn't it? And I think that organisations feel this pressure to sort of suggest that there's no discrimination in their organisation and that if an allegation is raised, it needs to be silenced and because of, you know, some of the awkwardness around the conversation that you've identified and difficulties with proving it and what have you. But actually, I think that we need to acknowledge that this stuff does go on and it is an issue and there should be transparency over talking about it. I appreciate it's awful to be wrongly accused, but the fact is these things do happen and sometimes, you know, a lot of the time discrimination it doesn't have to be conscious.

And think there should be more room for raising these issues, talking about them, people learning and repairing relationships. And I do think that not having that focus silence is an important part of that and just moving the conversation on in terms of discrimination more generally, which is what I meant really, rather than just thinking about, you know, the Harvey Weinstein's and the most egregious examples of sexual harassment. I also think there is a sort of public policy role for this in wider discrimination terms.

**Beth:** Yeah, just for the avoidance of doubt, I'm not suggesting that discrimination doesn't happen.

**Emma:** Hahaha!

**Zelda:** No, but it is, it is, I agree. mean, it is, is, it is more complex, but actually, again, I think that the more light is shone on it and if people can talk about it without fear of being silenced or I think the problem is, is there's so much fear around raising, raising issues on both sides. And actually if people start to feel that they can raise issues, exactly, I agree with Emma, this is how people learn. Like you learn, is that discriminatory? Isn't that discriminatory? If those conversations aren't open and there isn't a bit of light shone on it. Nobody really learns, everything just gets shut down. And I think, you know, I mean, this is a broader, it's not really a legal point, it's a broader point, but in workplaces, people should be able to, and I think this is the bystander issue, people should call stuff out straight away, not dramatically. If somebody says something that you don't think is right, you should be able to say, "that makes me feel uncomfortable". Whether it's discriminatory or not is kind of beside the point. If people feel they can say that without going immediately going, I'm going to go to HR and then HR are going to tell me whether it's discriminatory or not. And HR probably are just going to try and shut it down. So you kind of hit stratospheric straight away. Whereas if you say to a colleague and even if it's not the person, it's not been said to me, but I hear somebody say it someone else and I go, "that makes me feel uncomfortable. I don't think you should say that". That conversation is then there, open, public, and people will learn and think at that level, rather than this awful kind of immediate secrecy where someone's going, okay, I'm gonna write down what they said to me. And this is what they tell people. It's like, take record. So they wait until they get to the kind of tipping point of stratospheric, then they go to HR and then everything becomes a drama. If it had been spoken about right away, the person who was saying the wrong thing also has a chance to

modify their behaviour and go, you know what, I'm sorry, I didn't realize that that made you feel uncomfortable.

**Beth:** I totally agree with that, the speaking up. think, it's a really relevant point to this whole discussion, absolutely. And I think, I mean, I should just, I'm not here to speak for the SRA, but I should just say that what they have imposed this positive duty on managers, so partners and law firms to challenge behaviour, which doesn't comply with, which doesn't, where colleagues are not treating colleagues with respect and where there might be discriminatory language or other kind of bullying behaviour and I think that's a probably under recognised real step in the right direction towards that actually you should be expected to call out that behaviour but also and this is what I thought we talked clients about quite a lot is you have to be able to receive that kind of challenge, it's not just about a workplace encouraging people to speak up. It's about people in that workplace being prepared to be spoken up to. I think that's so important. And I think that is a really important part of the conversation. And actually just being able to say, look, I got that wrong.

**Zelda:** Yes, not being afraid to say that.

**Beth:** And that doesn't mean that I now have to go through two years of tribunal proceedings in order to fix that. Just being able to find ways. I think that, you there's a whole nother, I'm conscious of time because we're talking about a lot, but there's a whole nother discussion to be had around what do you do then once, you know, how do you fix that? How do you fix those kinds of, you know, relationships in the workplace that have gone wrong because of the sort of cloak of secrecy? I think that's a really big discussion to be had.

**Emma:** And what employers need to remember is that it has to be perfect. They just have to be reasonable. Yeah. And you know, that's where we as lawyers, I think, have a real, you know, position to help and to guide as to how do you manage these disputes in a reasonable way, acknowledging that that it's arisen is not a point of shame for you as an organisation.

**Zelda:** But I think that's why, you know, I this is about cultural change as well. And I think it's about empowering, it's about empowering the legal sector to help the business sector, to help employers. And it's about empowering, you know, those who have no power, who are reliant on their employer for their livelihood, to be able to feel that they can raise things without being seen as a troublemaker or, you know, doing something wrong.

And for those people who aren't the incontinent, you know, perpetrators, to be able to go, okay, yes, I'm sorry, I didn't realize that happened. But to me, part of the key to that is removing the mechanisms that creates the cloak of silence, because the cloak of silence is what stops all those things from happening. The one thing that I've learned, and you know, in the last seven years of suddenly swimming much more in the kind of legal sea of legal minds is that you guys know how to make this work you just have to change the direction that you're looking and once this direction is changed you will find nuanced, ethical, healthy ways to deal with this and actually removing a toxic tool is not the issue removing a toxic tool is going to be helpful to you practicing better law.

**Beth:** I think where we can definitely agree is that if this is going to be introduced, it falls on all of us to make it work and to help the legislators come up with a way of implementing the, I'm going to call it a ban again Zelda, in a way which works for claimants, for respondents, for employees, for victims, for everybody. And I think that that is really important.

**Zelda:** Yes and it's yet to be done. mean the face of the Bill, what's on the face of the Bill is pretty broad but actually the regulations that are going to be implemented have yet to be designed and agreed and there's going to be a long consultation period I imagine and you know the legal sector is obviously going to have a huge voice in that.

And again, I'm conscious of time, but I think it's just worth saying that there are lots of NDAs where lawyers are not involved. And I think that having that, we need to make sure that the changes that we have seen in the legal profession over the last few years keep changing and also are implemented by non-legal people drafting NDAs, which I think where a lot of the problematic ones are now coming from, although not all, I'm sure.

We're recording this on the 10th of September in the midst of a sort of government, well just after a government reshuffle, I was about to call it a government meltdown, I'm not sure I'd go quite that far, but certainly just following a reshuffle where all the key proponents of the Employment Rights Bill are no longer in government and do have any thoughts on how that's going to impact this whole discussion?

**Zelda:** I was pretty alarmed, initially, and I have learnt to be a bit more sanguine over the last many years of campaigning, because it has been a particularly turbulent time in terms of government and with COVID in the middle, that you can never really rest on your laurels, and when you think something's happened, that's when it genuinely probably hasn't happened. So I was pretty concerned but I think from the feedback that I've been getting from certainly you know the TUC Conference has just taken place and the government has been very very quick to assure the unions and those who concerned with employment rights that the Bill is going to go forward because this is what distinguishes them from reform and the Conservative Party and I think a lot, as we discussed a bit earlier, a lot of this was manifesto promises. So I think in terms of the Bill getting royal assent and being passed at this stage, it's pretty safe. But as we were just saying, I think there's going to be quite a lot of work to be done in the kind of secondary and the implementation of regulations and how it's put together and we shall see without the kind of main architect of it how easy or challenging that will be going forward.

**Zelda:** So thanks so much, Zelda, for joining us. We're really grateful for your time. And thanks, Emma. And I hope you enjoyed listening.