

**THE MOST SERIOUS FINANCIAL SCANDAL OF MODERN TIMES****20. LLOYDS' MIS-USE OF NON-DISCLOSURE AGREEMENTS**

Lloyds Bank has made extensive use of non-disclosure agreements (NDAs) to cover up serious professional misconduct and criminal fraud by its own officers or its professional agents. It has been doing so for many years.

By using an NDA in circumstances where they have engaged in criminal misconduct, the bank and its agents have effectively used further criminality to cover up their original wrongdoing. That the legal system has allowed such widespread abuse of process to persist provides additional evidence that Lloyds has been treated as above the law.

**NDAs and their mis-use by Lloyds Bank**

- Confidentiality or “gagging” clauses (NDAs) are provisions in a legal agreement, which seek to prohibit the disclosure of information. They can serve a legitimate purpose.
- However, they have frequently been mis-used by companies and wealthy individuals in situations where they enjoy overwhelming strength of position. They are secret agreements, which are negotiated behind closed doors often with powerful firms of lawyers representing the proponent of the NDA.
- They have sometimes been used to keep allegations of criminal conduct out of the press and to prevent investigation into the wrongdoing.
- Since they constitute, or are written into, a signed contract which is legally binding, they have been highly successful in intimidating whistleblowers and victims of banking misconduct from speaking out.
- Lloyds Bank has routinely used NDAs to cover up serious professional misconduct and criminal fraud, undertaken by the bank and its professional agents. <sup>1</sup> Sometimes, the bank’s agents have added “no comeback” clauses.<sup>2</sup>
- NDA’s, which have been used to cover up criminal conduct, are likely to prove invalid in court but many whistleblowers and victims of banking misconduct, many of whom have already been severely mistreated, rarely have the courage to challenge the bank in court and so normally choose to remain silent. Section 4 of the Fraud Act 2006 covers the abuse of position.

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<sup>1</sup> Press release 19.

<sup>2</sup> Evidence available on request.

- Lloyds Bank has also required the buyers of its distressed debt, which has been repackaged into so-called “Projects”, to sign NDAs. The debt has often only become distressed owing to the improper and frequently criminal conduct of the officers of its Business Support Units and their professional agents. It would therefore be convenient to maintain complete secrecy over such wrongdoing.

#### **Sally Masterton – subjected to two NDAs by Lloyds**

The case of the Lloyds’ manager and author of the Project Lord Turnbull report, Sally Masterton, who whistleblow over serious irregularities concerning HBoS, its management and accounts, represents a prime example. In their determination to silence her, Lloyds Bank subjected her not to one but two NDAs, in April 2015 and November 2018 respectively. These decisions would have been authorised at executive board level. Ms. Masterton still would not have been compensated appropriately by Lloyds Bank, had it not been for the intervention of the Police & Crime Commissioner for Thames Valley, Mr Anthony Stansfeld and other influential figures.

#### **Government has dragged its feet over reforming NDAs**

- When Theresa May was Prime Minister, she undertook to look into NDAs and later in July 2019, the Business Minister, Kelly Tolhurst announced plans for new legislation to tighten up on their use.<sup>3</sup>
- However, the Government has dragged its feet over the issue. One reason perhaps is that since 2013, House of Commons authorities have spent £2.4 million on NDA’s with 53 departing members of staff to resolve employment disputes.
- Almost three years since the Weinstein scandal broke, the Government has yet to introduce such legislation and we question whether under pressure from large corporates, including banks such as Lloyds, the matter of additional legislation on NDAs, which might also draw attention to their past mis-use, will be quietly forgotten.

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<sup>3</sup> <https://www.gov.uk/government/news/crack-down-on-misuse-of-non-disclosure-agreements-in-the-workplace>