

'Unethical' gagging orders let bosses

Mark Tighe

Richard Grogan, a Dublin employment law specialist, has called on the government to stop employers from forcing workers to sign gagging clauses as part of settlements for sexual harassment and discrimination claims.

In Britain, the prime minister Theresa May has promised a review of the "unethical" use of nondisclosure agreements (NDAs) following revelations that Sir Philip Green, the Topshop boss, had used them in settlements with women who claimed they had been harassed and bullied.

Grogan, a solicitor, said that it was time for Ireland to review how NDAs were used by employers.

"There needs to be a serious discussion about sexual harassment because a lot of this is brushed under the carpet," said Grogan.

"With some organisations, if you bring a claim you

cannot find if there have been previous claims against the person. Some organisations have been good at buying out claims, then leaving the person in situ because they were a senior executive."

Grogan said his firm had advised workers who wanted to speak out about harassment not to break

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bury sex pest claims, says jobs lawyer

NDAs as they risked forfeiting assets. He said that, while confidentiality clauses preventing the release of the amount involved in a settlement were long established, NDAs to prevent discussion of events that led to a settlement were a recent development. "[NDAs] were always used for commercial

transactions, and that is legitimate, but now they are used in employment cases," said Grogan. "NDAs can be used to cover inappropriate behaviour. It's generally used at very senior levels.

"With harassment, sexual or racial discrimination, I think the law should be changed so if an offer to settle

a case is made, it is up to the employee whether an NDA should apply. [A company] can ask for nondisclosure of the amount but that's it."

Grogan said NDAs should be allowed to apply in such cases only at mediation stage as an incentive for employers to settle cases quickly. "If it's at mediation it's legitimate

because mediation is confidential," he said. "In cases before the Workplace Relations Commission or the High Court, it should not be allowed. That would result in more cases getting dealt with quicker. There is a lot of stress in litigation and employers try to delay cases, hoping the employee won't go ahead."