

Rt Hon Greg Clark MP
Department for Business, Energy and Industrial
Strategy
1 Victoria Street
London
SW1H 0ET



Dear Secretary of State,

CMI RESPONSE TO GOVERNMENT CONSULTATION ON CONFIDENTIALITY CLAUSES¹

CMI welcomes the Government consultation on confidentiality clauses.

CMI

CMI is the chartered professional body for management and leadership. We are dedicated to improving managers' skills and growing the number of qualified managers and leaders across the UK.

With a member community of around 100,000, CMI provides individual students, managers and employers with access to the latest management thinking and practical support to help them embrace change, build high-performing teams and improve individual and organisational performance. We are a UK awarding body for management and leadership qualifications and the only body that awards Chartered Manager – the hallmark of any professional manager.

Our vision is to create better led and managed organisations. This means creating more diverse, balanced and inclusive workplaces.

Background

In July 2017 CMI published *Delivering Diversity²*, in collaboration with the British Academy of Management, looking into race and ethnicity in the management pipeline. While in January 2018 we published *A Blueprint for Balance³* looking into employers' approaches to achieving gender

¹ BEIS (2019), *Confidentiality Clauses: consultation on measures to prevent misuse in situations of workplace harassment or discrimination*

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/783011/confidentiality-clauses-consultation.pdf

² CMI (2017), *Delivering Diversity. Race and Ethnicity in the Management Pipeline*

https://www.managers.org.uk/~media/Files/PDF/Insights/CMI_BAM_Delivering_Diversity_2017_Full_Report_Website_Copy.pdf

³ CMI (2018), *A Blueprint for Balance*

<https://www.managers.org.uk/~media/Files/PDF/Blueprint%20for%20Balance%20Broken%20Windows%20Full%20Report.pdf>

balance in the workplace.

CMI has been advocating gender balance since 1969 when we launched the Women in Management initiative. In 2016, we increased our focus on gender diversity and the benefits that it brings to business by re-launching the Women in Management under the new banner of CMI Women⁴. CMI Women is a network within the CMI. We engaged with members of CMI Women, the CMI Women Committee and our network of Diversity & Inclusion Champions to inform our response.

CMI research has shown the challenges we still face in creating inclusive workplaces. For example, only 54% of HR/diversity managers we surveyed said that senior business leaders are championing Black, Asian and minority ethnic (BAME) diversity⁵. While 81% of managers have witnessed some form of gender discrimination or bias⁶.

Non-disclosure agreements (NDAs)

We believe that the Government should ban the use of non-disclosure agreements (NDAs) and other mechanisms that attempt to hide or conceal discrimination in the workplace. There needs to be a commitment to ensure that those who are responsible for such actions face the consequences.

We also believe that more clarity and guidance on the limitation of confidentiality clauses needs to be provided to workers so that they understand the rights they maintain when signing them. Therefore, confidentiality clauses should be required to clearly highlight the disclosures that they do not prohibit.

However, a change in legislation is just part of the solution. A change in workplace culture is needed to address the root causes of discrimination and harassment. But critically it is the role of senior leaders and managers that changes workplace culture. They play a pivotal role in changing behaviour, creating balanced workplaces and are decisive in the success or failure of efforts to create balance.

Good practice approaches

In order to create balanced and inclusive workplaces, organisations should adopt good practice approaches. This can include:

- balanced recruitment and promotion;
- training on managing diversity and inclusion;
- skills and career development programmes;
- diversity and inclusion resources, such as diversity and inclusion specialists;
- using 360 peer reviews;

⁴ <https://www.managers.org.uk/cmi-women>

⁵ CMI survey of 24 FTSE 100 HR and D&I leaders (*Delivering Diversity*)

⁶ CMI's Creating Balanced Workplaces research completed by 851 managers across the UK in January 2017 (*A Blueprint For Balance*)

- employee voice and representation; and
- mentoring and sponsorship.

These approaches, along with case studies, are set out in more detail in our [Delivering Diversity](#) and [Blueprint for Balance](#) reports.

A culture of transparency and zero tolerance towards bullying, harassment and discrimination should be a basic requirement of all organisations. This culture must be top down lead to be effective and have employees feel they can come forward to report actual or perceived wrong doings.

Organisations should use formal processes for investigating and documenting findings. Moreover, it is important to realise that investigating accusations requires a good understanding of the law with formal processes used to protect both the accused and the accuser. Investigation processes need to allow for insights from more than just the accused and accuser, as gaining insights confidentially from the wider colleague community may help to gain a thorough understanding of the issue.

Our feedback with CMI Women was based on the personal experience of a number of managers. While there has been investigated situations involving genuine bullying, harassment and discrimination, there has also been situations where genuine misunderstanding and misperceptions have occurred. Therefore, the law also needs an effective approach to protect individuals and organisations against vexatious claims and intimidation.

Managers and leaders

The role of senior leaders is crucial when it comes to progressive equality policies. Leaders need to be proactive by championing diversity and building inclusive business cultures. Without the support of a company's leadership, there is little hope for genuine progress.

Line managers play a pivotal role in changing behaviour and creating balanced workplaces. Without progress on the reality of line management behaviours, the rhetoric of senior leaders and policy makers falls flat. Managers need to learn about the behaviours and practices that make a difference. They need to be equipped and empowered to call out any discrimination or harassment and create change, while also being held to account for their impact.

Employers should integrate training on managing diversity and inclusion into management development at all levels to give managers the confidence to address harassment or discrimination.

For example, recent CMI research⁷ has revealed that nearly two thirds of managers have either never received training on managing diversity and inclusion in the workplace or have received no

⁷ CMI [Manager's Voice](#) survey of 940 UK-based members undertaken between 6th November and 4th December 2018

training in the last 12 months. One in four managers had never received any training on managing diversity or inclusion.

CMI has developed a new Diversity, Equality and Inclusion programme⁸ to support organisations in developing and implementing their own diversity strategies. The programme helps organisations to:

- develop their staff;
- accredit their own diversity and inclusion programmes; and
- access and share best practice through CMI communities such as CMI Women.

We look forward to discussing our response with Government in due course.

Kind regards,

Jules Bennington
Policy and Public Affairs Officer

⁸ <https://www.managers.org.uk/employers/management-training-our-services/accreditation>