

Terms and conditions: personal injury legal support

1. How the BMA offer personal injury support to members

How to contact the BMA to get help and support if you have suffered a personal injury

If you've suffered a personal injury at work or otherwise, the BMA and their independently regulated external legal advisers **BMA Law Ltd** ('BMA Law') are here to help. If you need to access this support please contact BMA Law's team of advisers on **0300 123 2014** between 8.30am and 6pm, Monday to Friday or email personalinjury@bma.org.uk*

The following sections outline the support and assistance the BMA/BMA Law will offer, and the 'eligibility conditions' and 'case handling conditions' applicable to the same. It is crucial to appreciate that the BMA/BMA Law do not give support or assistance in all cases and as such, it is advised that you check first to avoid disappointment or misunderstanding.

Support and assistance in respect of any personal injury that you suffer and any claim made in respect of the same is offered to you on a discretionary basis. Therefore, you do not have an automatic right to such help but you will have your request and case fairly considered in appropriate circumstances. If support is granted it can be withdrawn at any time on reasonable notice. All support must in any event be and remain proportionate to the claim involved.

The BMA/BMA Law reserve the right to amend, vary or withdraw the discretionary support and assistance available to members, including, without limitation, the terms upon which it may be offered, at any time.

Summary of help and support offered

Legal Support

In summary, and subject to the remaining sections of this document, if you suffer a personal injury at work, in a public place or otherwise, you will be able to access legal advice and representation from BMA Law by contacting them on 0300 123 2014 or at personalinjury@bma.org.uk.

Upon receipt of your enquiry, and after successfully passing an initial triage process to ascertain the nature of your injury and the likelihood of you being able to bring a claim, BMA Law will carry out a formal assessment of your case.

Where your case is assessed as being a 'good case' by BMA Law (see section 2) then BMA Law will 'on board' you as a client and provide legal support, advice and representation in bringing a claim (including legal representation at Court).

* All calls made to or from the BMA and/or BMA Law Ltd or its nominated advisers may be recorded for training purposes to ensure the highest standard of service is delivered.



You will be legally responsible for BMA Law's costs and disbursements in providing this support (and indeed any other ancillary disbursements relevant to your case and/or claim) but the BMA will indemnify you against these costs and any costs awards that are made against you if your claim proceeds to Court ('the Indemnity'). The Indemnity will only be provided where all of the following pre-conditions are met and/or satisfied:

- your case is, and for the duration of your case and/or the claim remains, a 'good case' (see section 2 for details)
- you meet, and for the duration of your case and/or the claim continue to meet, the eligibility conditions. (See section 3 for details)
- you comply, and for the duration of your case and/or the claim continue to comply with, the case handling conditions (see section 4 for details).

In addition to the above, the Indemnity is at all times subject to those reserved rights set out in the 'BMA Law's rights' section (see section 5 for details). As such, by pursuing any personal injury claim via BMA Law with the benefit of the Indemnity from the BMA, you acknowledge and agree that the BMA, BMA Law and their nominated advisers (as the case may be) have the benefit of these rights including, without limitation, the right to withdraw the Indemnity in certain specified circumstances, to set financial caps and/or limitations on the Indemnity and/or require other pre-conditions to be met before your case or claim is progressed with the benefit of the Indemnity.

Ancillary Support

In recognition of the wider impact that personal injuries can have on individuals, you may also take advantage of the following additional support which can be accessed by calling 0330 123 1245:

BMA Counselling

A confidential and anonymous telephone counselling service which is staffed by professionals (who are all members of the British Association for Counselling and Psychotherapy) and is available 24/7.

Doctor Advisor Service

A confidential and anonymous service that runs alongside BMA Counselling where members can choose to speak to a fellow doctor.

DocHealth

A confidential psychotherapeutic consultation service for members whereby they can explore personal and professional difficulties with senior clinicians. It is a chargeable service which provides six face-to-face sessions.

For details of this support and the terms applicable to the same please visit <http://bma.org.uk/yourwellbeing>

2 What is a 'good case'?

At the outset

BMA Law has a duty to exercise sound stewardship of the BMA's assets and to ensure that money is spent appropriately. As a result, the BMA will only consider providing the Indemnity if, in the professional judgement of BMA Law lawyers (or their nominated advisers), you have a 'good case'. This means, in cases of personal injury:

- That your case must have a better than 50 per cent chance of success**
- that the estimated financial expenditure on your case is proportionate to any award of compensation potentially recoverable
- that BMA Law believe that your best interests will be served by pursuing or continuing with your case.

If your case is assessed not to have a better than 50 per cent chance of success, or does not meet the expenditure proportionality requirement, or if BMA Law consider that your best interests will not be served by pursuing or continuing with your case, the BMA will not provide the Indemnity. Any decision you take in pursuing the claim in circumstances where BMA Law consider that your case is not a 'good case' shall be at your sole risk and cost and without the benefit of the Indemnity.

The professional opinion of the lawyers of BMA Law (or their nominated advisers) as to whether you have a 'good case' and/or whether your case remains a 'good case' **is final**.

Ongoing

In the event that the BMA agree to provide the Indemnity in respect of your particular personal injury claim, BMA Law is required to report to the BMA on a regular basis or when requested about the progress of your case and any developments which affect your case.

Your case will be kept under constant review and the BMA reserve the right to withdraw the Indemnity and any financial support towards your legal costs and disbursements at any time in their absolute discretion should your case cease to be a 'good case' (including, for the avoidance of doubt, where the chances of success fall below 51 per cent).

What happens if my case ceases to be a 'good case'?

Providing the same is not caused by your decision, act or omission, any Indemnity that the BMA may have agreed to provide will subsist up until the date that your case, in the opinion of the lawyers of BMA Law (or their nominated advisers), ceases to be a 'good case'. If you decide to proceed with your case after the date it is deemed to no longer constitute a 'good case' then all further legal costs and disbursements (along with any ancillary costs applicable to the case and/or claim) will become your sole responsibility and liability.

If your case ceases to be a 'good case' due to your decision, act or omission (including, without limitation, where you cease to satisfy the eligibility conditions (see section 3 for details) or fail to comply with the case handling conditions (see section 4 for details) or the BMA/BMA Law have reason to believe or suspect that you have ceased to satisfy or failed to comply with the same) any costs and disbursements that have been incurred up to the date your case ceases to be a 'good case' or is suspected to cease to be a 'good case' (as the case may be), any costs or disbursements incurred thereafter will become your sole responsibility and liability. As part of this, where the BMA or BMA Law have incurred costs or disbursements in advance of the date your case ceases to be a 'good case' or is suspected to cease to be a 'good case', the value of such costs and disbursements shall immediately become a debt owing from you to either the BMA or BMA Law (as the case may be) which the BMA may, at their discretion and on such terms as they decide, recover at any time.

** Certain cases may attract a higher threshold (including cases for stress at work). To ascertain what threshold applies to any potential case or claim you may have please telephone BMA Law on 0300 123 2014.

3 Eligibility conditions

You must notify BMA Law as soon as possible after you suffer a personal injury on 0300 123 2014. Failure to do so could adversely affect the outcome of any case and therefore the support both the BMA and BMA Law can provide you.

Any request you make for the BMA to provide the Indemnity in respect of any personal injury claim that you wish to bring will be fairly considered in appropriate cases in line with the following eligibility conditions:

- you **must** be, and for the duration of your case and/or the claim continue to be, a fully paid-up member of the BMA
- your injury **must not** pre-date the date you joined or rejoined the BMA
- unless otherwise agreed in writing by the BMA (and in order to benefit from the Indemnity in respect of your case and/or claim) you **must not** instruct or have instructed, directly or indirectly, any other representative(s) or organisation(s) to advise or to act for you
- you **must not** have issued or responded to any court proceedings without BMA Law's prior agreement. BMA Law will not take over cases where you have chosen to proceed independently
- you **must not** take advice from elsewhere that may conflict with BMA Law's advice (or that of its nominated advisers).

In the event that you either fail to satisfy any of the eligibility conditions or the BMA/BMA Law have reason to believe that you have failed to satisfy any of the eligibility conditions (an 'eligibility breach') the BMA reserve the right at any time and at their discretion to withhold and/or withdraw the Indemnity.

Where there is an eligibility breach or BMA/BMA Law believe (in their absolute discretion) that there has been an eligibility breach, and unless the BMA or BMA Law agree otherwise in writing, any costs and disbursements that have been incurred up to the date of the breach or any costs or disbursements incurred thereafter will become your sole responsibility and liability.

Where the BMA or BMA Law have incurred costs or disbursements in advance of the eligibility breach or the suspected eligibility breach (as the case may be), the value of such costs and disbursements shall immediately become a debt owing from you to either the BMA or BMA Law (as the case may be) which they may, at their discretion and on such terms as they decide, recover at any time.

4. Case handling conditions

In addition to the eligibility conditions referred to in section 3, any decision to provide the Indemnity will be subject to case handling conditions which must continue to be satisfied throughout the duration of your case and/or claim. These conditions are as follows:

- to benefit from the Indemnity, your case/claim **must**, unless the BMA or BMA Law agree otherwise in writing, only be run by BMA Law (or their nominated advisers) you must fully cooperate at all times with the BMA, BMA Law or any advisers they may (from time to time) nominate
- you **must** provide full and accurate facts relevant to your case at all times
- you **must** supply to the BMA/BMA Law at your own expense copies of all supporting documents requested either by BMA Law or their nominated representatives
- you **must** safeguard any documents which are likely to be required for disclosure during your case
- you **must** provide appropriate instructions personally and in a timely fashion. Only in very exceptional circumstances will instructions be accepted via a friend, relative or other third party
- you **must** become a client of BMA Law and, as part of their 'client onboarding' requirements, provide identification and a signed copy of their terms of engagement. Unless and until you do so, no support can be provided to you
- you **must** act in accordance with BMA Law's terms of engagement
- you **must** seek the BMA's prior written approval for any costs that you are reasonably seeking to have covered by the Indemnity
- you **must not** reject an offer of settlement which the BMA or BMA Law (or their nominated advisers) believe is reasonable
- you **must not** unreasonably, having regard to all relevant circumstances, refuse to the making of a reasonable offer of settlement
- you **must not** unreasonably reject the advice (including advice over settlements) given to you
- you **must not** ask the BMA or BMA Law (or their nominated advisers) to act in an improper or unreasonable manner
- you **must not** deliberately mislead the BMA or BMA Law (or their nominated advisers)
- you **must not** withhold information and/or documentation that could have reasonably been expected to have impacted on the BMA's decision (whether at the outset or at any time thereafter) to financially support your case and/or claim or BMA Law's assessment (whether at the outset or otherwise) of your case and/or claim
- you **must not**, at any stage of your case and/or claim, act fraudulently nor in a fundamentally dishonest manner.

In the event that you either fail to meet any of the case handling conditions, or the BMA/BMA Law have reason to believe that you have failed to meet any of the case handling conditions (a 'case handling breach') they reserve the right at any time, and at their discretion, to withhold and/or withdraw the Indemnity and any financial support towards the costs and disbursements incurred in connection with the legal support provided by BMA Law.

Where there is a case handling breach or the BMA/BMA Law believe (in their absolute discretion) that there has been an case handling breach, and unless the BMA or BMA Law agree otherwise in writing, any costs and disbursements that have been incurred up to the date of the case handling breach or any costs or disbursements incurred thereafter, will become your sole responsibility and liability.

Where the BMA or BMA Law have incurred costs or disbursements in advance of the case handling breach or suspected case handling breach (as the case may be), the value of such costs and disbursements shall immediately become a debt owing from you to the BMA or BMA Law (as the case may be) which they may, at their discretion and on such terms as they decide, recover at any time.

5. BMA and BMA Law's rights

General case management rights

As a pre-condition of the Indemnity that the BMA may provide in connection with your personal injury claim, BMA Law will have the following rights in connection with the handling of your case:

- BMA Law, or their nominated advisers, **will have the right** to determine how your case will be progressed
- BMA Law **will have the right** to determine who will, from time to time, be your specific lawyer and/or adviser
- BMA Law, or their nominated advisers, **will have the right** to enter into discussions and correspondence with other parties they consider appropriate to explore the possibility of resolving your case including by way of settlement.

Rights to introduce higher thresholds, caps, limitations and pre-conditions

In order to protect the financial and reputational interests of the BMA, BMA Law may at any time (whether before or during your claim) set and/or introduce i) a higher threshold of success which your case must be perceived to be to constitute a good case, ii) financial caps on the extent of the Indemnity, ii) limitations on the costs and expenses that will be covered by the Indemnity, and iii) pre-conditions that must be satisfied (as the case may be) before your case and/or claim is progressed further with the benefit of the Indemnity.

One pre-condition that BMA Law may insist upon at their sole discretion is the need for 'after the event' insurance to be available, put in place and the premium costs to be ultimately recoverable (see the 'Recovery of 'after the event' insurance costs' section below for details). This is to mitigate their exposure to financial liability in supporting your case and/or claim.

The decision over the introduction of heightened thresholds, financial caps, limitations or pre-conditions shall at all times be at BMA Law's sole discretion and will depend on the particular circumstances surrounding your particular case and/or claim. Albeit not the only example of a situation where a higher threshold and an additional pre-condition will be introduced, they will insist on i) your case being assessed as having a better than 60 per cent chance of success and ii) 'after the event' insurance being in place, before they support and run any claim for injuries that are alleged to have arisen due to stress at work. This reflects the fact that these claims are notoriously difficult to prove and may not lead to a successful conclusion.

For details of other ancillary support offered by the BMA in situations where you may be suffering from stress please visit <http://bma.org.uk/yourwellbeing>

Rights to withhold or withdraw our indemnity

Without prejudice to the BMA's rights to withhold or withdraw the Indemnity where i) your case is not or ceases to be a 'good case', ii) you fail to satisfy the 'eligibility conditions', and/or iii) you fail to satisfy the case handling conditions, the BMA reserve the right at any time at our discretion to withhold or withdraw the Indemnity in any of the following circumstances (which are sub divided into fault and non-fault reasons):

Non-fault reasons

- there is **insufficient evidence** to support the incident giving rise to the injury
- there is **insufficient evidence** of the injury suffered
- the potential claim is **less than six months** away from being time barred under the Limitation Act 1980 (as amended)
- the potential claim relates to an injury incurred **outside of the European Union**
- a **conflict of interests** arises between your individual interests and the collective interests of the wider BMA membership.

Fault reasons

- your claim and/or case becomes abortive due to **an act or omission** on your part (including, without limitation, if you decide not to proceed with the claim and/or case)
- you **reject an offer of settlement** which the BMA or BMA Law (or their nominated advisers) believe is reasonable or if you will not agree to the making of a reasonable offer of settlement
- you **reject the advice** (including advice over settlements) given to you or there is a dispute between you and BMA Law over such advice
- you **do not** fully cooperate with BMA Law or their nominated advisers
- you do or the BMA/BMA Law have reason to suspect that you have **behaved inappropriately** towards any member of BMA or BMA Law staff or their nominated advisers.

Where the BMA withdraw or withhold the Indemnity due to a 'fault reason', or the BMA/BMA Law believe (in their absolute discretion) that there has been a fault that falls within one of the 'fault reasons' (and for the avoidance of doubt, the Indemnity will automatically be deemed to be withdrawn and/or withheld in circumstances where your claim and/or case becomes abortive due to your decision not to proceed or an act or omission on your part) any costs and disbursements that have been incurred up to the date of the fault or suspected fault or any costs or disbursements incurred thereafter will become your sole responsibility and liability.

Where the BMA or BMA Law have incurred costs or disbursements in advance of the date the fault occurs or is suspected to have occurred (as the case may be), the value of such costs and disbursements shall immediately become a debt owing from you to either the BMA or BMA Law (as the case may be) which they may, at their discretion and on such terms as they decide, recover at any time.

Right to recover legal costs and disbursements

Recovery from the 'other side'

Without prejudice to the BMA/BMA Law's rights to recover legal costs and disbursements from you in circumstances provided for in sections 2, 3, 4 and 5, any professional fees, disbursements or reimbursements made to you or incurred in connection with your personal injury case and/or claim (collectively referred to in this section as '**legal costs**') will be recoverable from you in the following circumstances:

- **If your claim settles**, BMA Law (or their nominated advisers) will seek to recover the legal costs from the other side to the claim. Where the legal costs are in whole or part recovered from the other side (whether as an addition to any settlement sum or otherwise and whether that is paid by the other sides insurance or otherwise) you agree to reimburse the recovered element of the legal costs to the BMA or BMA Law (as the case may be) and/or provide such instructions as are necessary to facilitate the same.
- **If your claim proceeds to Court**, BMA Law (or their nominated advisers) will seek to recover the legal costs from the other side. Where the legal costs are paid in whole or part by the other side (whether as an addition to compensation awarded by a Court or otherwise and whether that is paid by the other sides insurance or otherwise), you agree to reimburse the recovered element of the legal costs to the BMA or BMA Law (as the case may be) and/or provide such instructions as are necessary to facilitate the same.

Write offs/waivers

To the extent that the legal costs are not wholly recovered from the other side, and subject always to:

- the BMA/BMA Law's rights to recover legal costs in circumstances provided for within sections 2, 3 4 and 5
- you satisfying the 'eligibility conditions' (see section 3)
- you complying with the case handling conditions (see section 4, in particular those concerning the acceptance of proposed settlements)
- the fact that **the cost that the BMA or BMA Law may incur in obtaining any 'after the event' insurance as a pre-condition of running your claim shall**, to the extent that the same is not recoverable from the other side, **remain recoverable from you**, the BMA or BMA Law (as the case may be) will write off the balance of the legal costs that they incur in connection with your case and/or claim and will not seek to recover the same from you.

Recovery of 'after the event' insurance costs

Where either the BMA or BMA Law require, as a pre-condition of them providing the Indemnity in respect of any personal injury claim that you bring, 'after the event' insurance (AEI) to be put in place to cover the financial exposure of running your case and/or claim:

- the costs of such AEI shall initially be borne by the BMA or (in circumstances where they agree) BMA Law and shall be treated as an advance by the BMA or BMA Law (as the case may be) to you
- in circumstances where the BMA withdraw or withhold the Indemnity pursuant to sections 2, 3, 4 or 5 and are entitled to recover costs and disbursements that have been incurred, the costs of the AEI shall immediately become a debt owing from you to either the BMA or BMA Law (as the case may be) which they may, at their discretion and on such terms as they decide, recover at any time
- unless the BMA/BMA Law agree otherwise in writing, in all other circumstances, and to the extent that the AEI is not recovered from the other side as part of any settlement or costs award, the costs of the AEI shall be recovered from any settlement or compensation award that you receive and you shall, upon receipt of such settlement and/or award, immediately repay the AEI costs or provide such instructions as are necessary to facilitate the same.

6. General

Conflicts

In the unlikely event that BMA Law is unable to act for you in connection with your personal injury claim due to a conflict of interests, then the BMA will use reasonable endeavours to arrange for alternate advice and representation to be provided. In circumstances where an alternate provider is sourced, the provisions and terms noted in this document shall apply to their involvement (and indeed the BMA's Indemnity) and any reference to BMA Law shall be replaced with a reference to the name of the alternate provider.

Sharing of information

In providing support in a manner envisaged by this document both the BMA and BMA Law (and their nominated advisers) will share information regarding your case and/or claim. The sharing of information may include, without limitation:

- your name
- your BMA membership number
- details of your claim and/or case
- the merits assessment that was carried out
- documents and information relevant to your case and/or claim
- the progress of your case and/or claim
- any attempts made to settle the case and/or claim
- the quantum of any settlement and/or any award made in respect of your case and/or claim

In addition to the above the BMA/BMA Law may i) record the fact that you have used this member benefit and the outcome of your case and/or claim on their case management system (WeEngage) which is accessible by all BMA staff, contractors and workers, and ii) in an anonymised fashion, and so as to ensure that you are not identifiable, use your claim and/or case in promotional material to highlight the benefits of membership to other actual or potential members of the BMA.

Resolving concerns

The BMA/BMA Law want your case to progress to completion to your entire satisfaction and they are pleased to say that this happens in the vast majority of cases. Your case will be run by BMA Law, being an independently regulated law firm, any concerns over the handling of your case should be directed to BMA Law who operate their own complaints handling policy a copy of which is available on their website www.bmalaw.co.uk.

If you remain unhappy with how your case is handled or have concerns over the BMA's decision to exercise their rights to withdraw or withhold the Indemnity, you can make them aware of this through their feedback procedure. You can leave feedback by calling 0300 123 1233, emailing hrs@bma.org.uk or by visiting bma.org.uk/complaints.

Dealings with BMA and/or BMA Law staff

The BMA, along with BMA Law, have a duty and legal obligation to ensure the wellbeing of their respective staff, including protecting them from harassment, bullying and discrimination. The BMA and BMA Law take this responsibility very seriously and while they fully understand that members may be under stress while pursuing cases, all BMA and BMA Law staff are here to help you and they therefore expect to be treated with courtesy at all times.

Harassment can include unwanted conduct, which has the purpose or effect of violating another person's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment. It should be noted that it is the impact on the individual rather than the perpetrator's intention which determines whether harassment or bullying has occurred. The BMA/BMA Law believe that all forms of harassment, bullying and discrimination are totally unacceptable.

BMA equal opportunities statement

The BMA are committed to equality in the provision of services to their members and stakeholders. This ensures that all members, those applying for membership, and other service users will receive the highest possible standards of service from the BMA, irrespective of race, ethnicity, gender, sexual orientation, marital status, civil partnership status, age, disability, chronic illness, religion or belief.

The BMA's equality and inclusion policy has been developed to ensure that members and staff are fully aware of their commitment to provide equality of opportunity in all functions and support the inclusion of their members. The BMA will monitor the implementation and application of their equality and inclusion policy and ensure that it reflects and meets the requirements of the increasingly diverse membership which they seek to serve.

The BMA continually monitor legislation and good practice relating to equal opportunities, anti-discrimination, equality and inclusion and periodically update their resources for members to reflect current knowledge. Their work on equality and inclusion is coordinated by the Equality and Inclusion Unit. It works to promote equality of opportunity for the medical workforce, and break down barriers to career progression.

The BMA will:

- look at ways to enhance the accessibility of their information and services
- further develop their resources which provide information on managing equality and inclusion of their members
- continue to work with BMA committee secretariats to ensure that the representational structures of the BMA are representative of the BMA membership.

Waiver

In order to acknowledge the fact that many of the rights, powers or remedies noted in these terms which benefit the BMA and/or BMA Law are discretionary (such as the recovery of costs and disbursements in the event of an eligibility breach) it is stressed that:

- no failure, delay or omission by the BMA or BMA Law in exercising any right, power or remedy provided by law or under these terms shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
- no single or partial exercise of any right, power or remedy provided by law or under these terms by the BMA or BMA Law shall prevent any future exercise of it or the exercise of any other right, power or remedy by the BMA or BMA Law.

Having regard to the above no waiver of any term, provision, condition or breach of these terms by the BMA or BMA Law shall only be effective if given in writing and signed by either the BMA or BMA Law, and then only in the instance and for the purpose for which it is given.