



Supporting you against discrimination in the workplace

1. Introduction

The BMA is committed to fighting against all forms of unlawful discrimination, harassment and bullying in the workplace.

We believe it is the right of all doctors to be able to carry out their duties at work and raise concerns without the fear of discrimination, harassment or victimisation. As your union the BMA will support, advise and where necessary represent you where you suffer detriment of this kind at work. We know that facing any kind of discrimination or harassment is hugely stressful for you and the aim of this booklet is to clearly set out the ways in which we can support you and to outline the steps that we recommend any member who finds themselves in this situation should take in raising these concerns.

There are many routes to resolving concerns and we encourage members to consider all the options available and to discuss them with their BMA representative. These include informal resolutions, formal employer procedures or possible legal action. Where a wider pattern of discriminatory behaviour is evident a collective approach may result in a better outcome for members.

Time limits

Please note that there are strict time limits for starting an employment tribunal claim. These are usually 3 months less one day from the date of the act/omission complained or the last in a series of acts/omissions. It will also run from the date a reasonable adjustment should have been put in place in disability cases. The time limit will continue to run during any internal processes.

What you need to know about the law

The Equality Act 2010 or the Northern Ireland Act 1998 protects a person from discrimination where it is based on one of the worker's protected characteristics. These are as follows:

- age
- gender reassignment
- disability
- marriage or being in a civil partnership

- pregnancy or maternity leave
- race
- religion or belief
- sex
- sexual orientation

2. Types of discrimination

The legislation defines a number of ways unlawful discrimination can occur:

Direct discrimination – this occurs when someone is treated less favourably than another person **because** they have a protected characteristic

Indirect discrimination – this occurs when a policy, criteria or practice is applied to everyone, however it has **the effect** of disadvantaging people with a particular characteristic. There is a defence to this type of discrimination if the employer can justify the approach as necessary to meet a legitimate objective.

Harassment – unwanted conduct relating to a protected characteristic which has **the purpose or effect** of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment

Victimisation – this occurs where a person is treated badly **because** they have made a complaint in relation to the Equality Act or supported a person in such a claim, such as being a witness. However the legislation may not provide protection if the complaint is originally made maliciously, falsely or knowing it was untrue.

Failure to make reasonable adjustments-this occurs where a person has a disability as defined by the Equality Act which is known to the employer and they fail to make reasonable adjustments where there is

- a provision, criteria or practice
- a physical feature of the workplace, or
- a failure to provide an auxiliary aid

which puts the disabled worker at a substantial disadvantage compared to a worker who is not disabled. This is to ensure a level playing field for disabled workers. This may mean that a disabled person is treated differently and more favourably.

Discrimination arising from a disability-an example of this might be where an employer dismisses an employee because of their sickness record which is due to the member's disability. The employer has a defence if the actions were a proportionate means of achieving a legitimate aim

Maternity and pregnancy related discrimination- see further details in [Appendix 2](#)

The BMA website has a helpful guide which provides further details and examples of discrimination here:

<https://www.bma.org.uk/advice-and-support/equality-and-diversity-guidance/discrimination-guidance/discrimination-advice-for-doctors>

3. Initial checklist: what to do if you feel you are being subjected to unlawful discrimination

If you feel you are being subject to unlawful discrimination it is important to take action and access support as soon as possible.

We recommend that you take the steps below before you contact the BMA. If you reach a dead end at any point or need our support, you should contact our trade union advice service to register the issue at

<https://www.bma.org.uk/about-us/contact-us/bma-employment-advice-form>

You may wish to speak to your local BMA representative, friends, family or trusted colleagues to clarify your thoughts and discuss the possible approaches you might wish to take. If you have a formal mentor or educational supervisor you may wish to seek their initial views about the discrimination you believe you are facing at work.

1. You should consider collecting information in a diary format ([see appendix 1](#)) so that you can provide this as evidence should more formal or legal processes be required. This is especially important where harassment has taken place. You should make notes as close to the event as possible and note down any possible witnesses. Patient names should not be included and we recommend using colleague's initials in the diary. You may also wish to keep a written summary of what has happened.
2. Discrimination can also cause significant hurt and injury to feeling and leave employees feeling lonely and isolated so the BMA provides a Wellbeing Service – separate from our trade union advice service - to help with any emotional support that is required and this can be accessed at [Your wellbeing \(bma.org.uk\)](#)

4. What outcome do you want?

It is important at the outset to try to decide what you want as an outcome to the situation in which you find yourself. There are many avenues open to workers which do not necessarily lead to litigation. Not all of the options will be appropriate in all circumstances however the list below is intended to assist members to decide how they might wish to resolve the situation in which they find themselves without the need for legal action.

Speak directly to the other person

In some circumstances it may be appropriate to speak directly to the other person either on your own or with a colleague present to explain what they have done and, more importantly, how it has made you feel. It may be that the other person does not realise the effect of their actions and has acted unintentionally. If you opt for this approach you should speak in a calm but firm manner and note down the details of the conversation immediately afterwards.

Speak to your line manager (or another manager if necessary)

Sometimes issues can be resolved by speaking directly to your line manager, perhaps with a colleague present, to explain the situation. It may be that the manager can then speak to the other person informally to try to resolve the concerns. Those in formal training programmes may wish to speak to their educational supervisor.

Mediation

Most employers will have a bullying and harassment/dignity at work/grievance policy where concerns about discrimination can be raised under a formal procedure. Many of these policies will offer mediation as a possible resolution to an issue prior to any formal investigation. It is also possible for an employer to offer mediation even if it isn't set out in a policy.

Where mediation takes place an independent mediator will be appointed to discuss the concerns with both or all the parties concerned with a view to all parties reaching a satisfactory outcome. No person can be forced to enter into mediation as it is a purely voluntary process however it can often be a quicker and more suitable alternative to a formal investigation process where views can become entrenched and future working relationships damaged.

Formal process

If the above steps have been exhausted or are deemed not to be appropriate the next step would be to raise the concerns in accordance with the employers formal procedure.

You should make the BMA aware of the issue BEFORE you enter a formal process so we can advise you about the best way to approach your case.

Normally an investigator will be appointed from within the employer to carry out an investigation. You will be interviewed as part of the process and you can typically be accompanied by a BMA representative. The investigator will speak to the other party as well as any other witnesses before providing a final report and recommendations. There is often a right of appeal under these procedures.

Legal Action

The Equality Act provides for a right to submit claims for discrimination to an Employment Tribunal. Members should bear in mind that there are strict time limits involved in making such a claim which is why it is important that before you get involved in any formal process you contact the BMA as your trade union for advice.

Ordinarily a claim needs to be lodged within n3 months even if you are awaiting the outcome of an internal process, your BMA adviser can give further advice on this.. The time limits are very strict and unfortunately Employment Tribunals (the Courts which look at discrimination at work) will not wait for the outcome of an internal process if it takes longer than the three months although they may keep the case on hold (stayed) once it has been lodged if an internal process is still running.

Things you should know about legal action

There are a number of points which a member must bear in mind before embarking on litigation:

- employment law in the UK is heavily slanted towards the employer and proving discrimination or other detriment to the satisfaction of a Court can be very challenging even where the member clearly feels they have suffered a detriment
- employers are likely to instruct solicitors and barristers to defend a claim
- the process is very focused on points of law and always links directly to the legislation
- cases can take between one and two years to come to a hearing after they have been lodged due to the significant backlog in the Employment Tribunal system
- the hearing is in public and the final decision will be made public on the government website
- the remedy where granted is normally a financial one based on your injury to feelings and loss of earnings
- you and other witnesses will normally need to give evidence on oath
- the tribunal will look at both sides of the case and you will be cross examined
- most members find the process very stressful
- BMA legal support, in common with all trade union, is subject to our terms and conditions – see below

We have won significant victories in Court on behalf of members. However, you should be aware that the success rate in discrimination claims is very low (around 5%) due to the difficulty in providing sufficient evidence to prove a case which is why the initial diary evidence mentioned above is so important. The amount of damages awarded by a tribunal may not be as high as you might think. For example the average award for race discrimination in 2022/23 was around £23,000. We also set out below other evidence which may assist both you and the BMA put a successful case together.

Supporting members to take legal action is a vital part of what the BMA does. However, for the reasons set out above, we also focus our efforts on achieving collective change at employer or system level with the aim that doctors as a whole have better protection from discrimination and other detriments. We would therefore urge you to get involved in your local BMA by contacting your local negotiating committee to also raise concerns you have if you feel your treatment has been made worse by poor local policies, their implementation or wider issues of poor culture. For example is your employer failing to take account of your disability related absences in their attendance policy?

5. How the BMA can support you

We take incidents of discrimination very seriously and our aim is to assist members to reach a satisfactory outcome. Where you have concerns it is therefore important that you speak either to a local BMA representative or a BMA adviser so that they can advise you on a solution that is right for you. It is important that you talk through all the options before deciding on the way forward.

In addition to providing advice they will be able to accompany you to meetings with your employer and advise of your options. Every case will be different and we recognise that what might be right for one member may not be right for another.

BMA Legal Support

The BMA provides legal support for employment tribunal claims through one of our legal partners. In employment disputes it is important that members do not unilaterally refer matters straight to lawyers – doing so without our agreement may affect your right to BMA support. In addition, this is not normally conducive to a long term resolution at your place of work. Many cases can be resolved through negotiations and local advocacy by our representatives and advisers.

If you wish to consider a legal solution to your issue you should first discuss this with a BMA adviser who will discuss what options are open to you and what is involved in a legal claim.

However you should always bear in mind the three month time limit for such claims mentioned above.

Our legal support is discretionary and is provided subject to our terms and conditions <https://www.bma.org.uk/terms-and-conditions> which include a requirement that a case has a better than 50% chance of success. This is because in supporting legal cases we are spending members' money and must ensure that we support those cases with the best chance of success. Should a referral to our external lawyers be agreed they will provide an assessment of your chances of success.

Please bear in mind that during litigation:

- Any settlement or progress to a hearing can depend upon the stance of the employer and the backlog of cases within the employment tribunal service. Patience is often required both by us and you, frustrating though this can be.
- You should be prepared to provide significant detail about your claim given that a tribunal will examine the facts thoroughly
- You will be questioned by the employer's lawyer during the hearing which some members can find difficult
- Our solicitors will always act in your best interests and should be seen as part of your team who are experts in their field
- Litigation is never free of risk either for you or the BMA
- You must provide details of all document and correspondence to our solicitors even if they might not be helpful

Collecting evidence

Before referring a case to either a formal process with your employer or to an Employment Tribunal collecting evidence is vital. Think about how you are going to prove your case. Set out below are suggestions of the type of evidence which might be useful:

- Evidence of comments or actions which relate to a protected characteristic and which could be seen as overly hostile or have a tendency to stereotype people
- An explanation by the employer which lacks credibility
- A lack of equal opportunities training by the employer
- A failure to apply policies or procedures relating to equal opportunities
- Consider what the practice, criteria or policy is for indirect discrimination claims. How does the employer seek to justify it?
- Do you have any statistics which might be helpful? For example around recruitment patterns
- Are there witnesses to the behaviour you are complaining about and what could they say? Consider if they are willing to provide a statement and what will they say
- In disability cases what is your disability and how does it affect your ability to carry out day to day activities. Do you have any medical evidence eg letters or reports from GP, Hospital or Occupational Health?
- What reasonable adjustment should have been made to alleviate the disadvantage you face and when. What is the employer's excuse?
- What documentation do you have?
- Is there a colleague who does not have your protected characteristic who has been treated more favourably in similar circumstances?
- In disability cases what is your disability and how does it affect your ability to carry out day to day activities. Do you have any medical evidence eg letters or reports from GP, Hospital or Occupational Health?
- Are you aware of similar complaints made by other staff members

6. Regional and National Forum for Racial and Ethnic Equality (FREE)

Each region and nation of the BMA has a FREE committee which is designed to explore and highlight relevant issues and experiences faced by Black, Asian and minority ethnic doctors and medical students in their places of work and study. Further details of the work of the committees and how to contact them can be found [here](#)

7. Final checklist?

- Keep a diary
- Ensure you look after your wellbeing
- Consider what resolution you are seeking ?
- Are you able to achieve this by discussing the problem with your employer eg line manager or HR
- Consider whether a BMA rep or colleague might be able to assist
- Would mediation prove a quicker and longer lasting route to a solution?
- Do you have a copy your employers formal process eg grievance, dignity at work, bullying and harassment etc
- Have you got all the facts and kept a diary where necessary
- Contact the BMA for support if you are intending to pursue a formal complaint with your employer or considering legal action. Bear in mind any employment tribunal time limits

8. Contact details and further information

- BMA support

<https://www.bma.org.uk/about-us/contact-us/get-in-touch/contact-us>

- Further information from our Equality and Diversity team

[BMA Equality and Diversity advice](#)

- BMA FREE fora

<https://www.bma.org.uk/about-us/equality-diversity-and-inclusion/edi/bma-free>

- BMA Wellbeing

[Your wellbeing \(bma.org.uk\)](#)

- ACAS

ACAS guidance on [discrimination and bullying](#)

- General Medical Council

GMC ethical hub <https://www.gmc-uk.org/professional-standards/ethical-hub>

- Equality and Human rights Commission

<https://www.equalityhumanrights.com/guidance>



APPENDIX 1

Example Bullying and Harassment Diary

Please complete a separate page for each incident

When?	
What has happened?	
Who was involved? Were there any witnesses?	
Where did this happen?	
How did this make you feel?	
What steps did you take afterwards? Did you tell anyone what happened, if so when was this and who was involved?	

Appendix 2

Pregnancy and maternity related discrimination

Under the Equality Act an employer must not discriminate against someone because of:

- your pregnancy
- an illness related to your pregnancy, including related time off
- maternity pay or leave you take, or plan to take
- the consequences of pregnancy
- an intention to get pregnant

Discrimination could include:

- dismissing you
- not offering you a job
- changing your pay or other terms
- forcing you to work while on maternity leave
- stopping you returning to work because you're breastfeeding
- refusing to make changes which have been recommended to your role because of your pregnancy
- discrimination relating to miscarriages and the intention to get pregnant

The law covers the person during the 'protected period'. This is the period of time from the point they become pregnant until either:

- your maternity leave ends
- you return to work
- you leave your job

Treating someone unfavourably outside the protected period might still be discrimination if it's connected to your pregnancy or maternity.

As with other types of discrimination you have 3 months to bring a claim in the employment tribunal beginning with the date of any act or omission by your employer.

