

Policy on the provision of representation services to non-salaried members

June 2013

This document concerns the representation provided by the BDA's Advisory Services department to members with Expert tier membership. It provides guidance on the representation services offered by the Advisory Services team, to whom they are available and when they are available. This policy does not confer any rights upon members of the BDA and representation is provided at the absolute discretion of the BDA in line with the terms of this policy and the Association's Membership Definitions, which can be found at www.bda.org/tsandcs.

This policy complies with the *Code of Practice for the provision of regulated claims management services by trade unions*, developed by the Department for Constitutional Affairs.

Interpretation

“advice”	the services provided by the Association in accordance with our policy on the provision of advice to members, which can be found at www.bda.org/definitions and any reference to “adviser” shall be construed accordingly
“associate”	a dentist in private practice and/or the NHS, whether a contractor and/or performer, who is engaged by a practice owner to provide his or services from the practice, usually under a licence fee arrangement
“association”	the British Dental Association and any references to “we” and “us” and “our” shall be construed accordingly
“BDA”	the British Dental Association and any references to “we” and “us” and “our” shall be construed accordingly
“dental body corporate”	a body corporate carrying on the business of dentistry in line with section 43 of the Dentists Act 1984
“member”	a member of the British Dental Association and any references to “members” and “membership” shall be construed accordingly
“practice owner”	an individual, partnership or dental body corporate which owns a dental practice
“representation”	the services we provide in accordance with this policy
“specialist advice”	any advice we consider it appropriate and necessary to seek in order for us to provide representation
“specialist representation”	the services of a person or persons with appropriate qualifications and experience instructed by us to provide any services we consider necessary

Members to whom representation is available

1. Representation services are reserved for members with Expert tier membership, and access to representation will be provided subject to the terms of the remainder of this policy.
2. We will not provide representation to any person who is not a member with Expert tier membership at the time representation is requested.
3. We will not provide representation to a dental body corporate or a member seeking advice on behalf of a dental body corporate.
4. In relation to access to and the provision of representation services we will not discriminate on the grounds of colour, race, nationality, ethnic or national origin, disability, sex, marital or civil partnership status, sexual orientation, age, religion or belief.

Description of representation services

5. We may represent members in claims presented to employment tribunals in England, Wales and Scotland and the Fair Employment Tribunal and industrial tribunals in Northern Ireland, subject to the following conditions.
6. Representation is offered at our absolute discretion and we may refuse or withdraw representation unless the following conditions have been met:
 - the member sought our advice at an early stage
 - the member has followed our advice
 - we have been provided with all of the relevant and necessary information in a timely manner
 - in our opinion, the member's case has a reasonable chance of success. This means that it has at least a 50 per cent chance of success
 - the member has complied with all reasonable requests we have made
 - the dispute involves employment in the United Kingdom
 - the member agrees and signs our 'Terms of Representation'
7. In addition, the following considerations may affect our decision on whether to offer representation:
 - Whether we consider the action to be the best option in the circumstances of the case
 - Whether the nature of the case is such that the best interests of the wider membership dictate that the case should not be pursued by the Association
 - Whether the nature of the case is such that it is not a good use of BDA member funds and resources

Where decisions are taken not to offer representation on such grounds, they will be at the Association's absolute discretion but a full explanation will be provided.
8. If, in our opinion, the member's case does not have a reasonable chance of success and/or if it is in the member's best interests to settle the claim, we will assist by seeking to negotiate a settlement and drafting a compromise agreement. We will not offer any further representation.
9. Representation may include:
 - drafting and filing a claim or response
 - corresponding with other parties to the proceedings and/or their representatives, ACAS and the employment tribunal
 - attending case management discussions
 - attending pre-hearing reviews
 - negotiating a settlement
 - drafting witness statements and
 - attending hearings
10. Representation does not include assistance with any appeal and/or attendance at an appeal hearing.
11. Representation for an appeal may however be offered in exceptional circumstances, at our absolute discretion, and on terms agreed with the member.

12. We will discuss with members the merits of a case where representation is sought but we cannot guarantee the outcome of a case.
13. We will withdraw representation immediately if:
 - the member ceases to be a member of the BDA or a member of the Expert tier of membership for whatever reason
 - the member does not follow our advice
 - the member fails to provide us with information or documentation we have requested
 - the member fails to comply with any reasonable request we make
 - the member instructs other representation (including solicitors and/or counsel) without our express agreement
 - the member refuses to reach or attempt to reach a settlement, contrary to our advice
 - the member is abusive, or displays threatening or unreasonable behaviour.
14. Representation may be refused or withdrawn where another member (whether or not a member of the Expert tier of membership) is a party to a dispute and we perceive there is or may be a conflict of interest.
15. The Association may, in exceptional circumstances, agree to represent one member against another.
16. Representation is provided by trained and experienced advisers with a sound knowledge and understanding of employment law and associated matters. Not all advisers are qualified lawyers.
17. Members are advised to check whether they have practice legal expenses cover and, if so, to seek advice from its legal helpline. Such policies may cover any award of compensation made against a member as well as legal expenses. It is essential to contact the policy provider at an early stage.
18. In some cases, we may deem it necessary to seek specialist advice or to engage specialist representation. We will seek specialist advice and/or engage specialist representation at our absolute discretion, subject to paragraph 19 below.
19. Members are required to pay any costs we reasonably incur for specialist advice and/or specialist representation. We will endeavour to indicate the approximate cost of specialist advice or specialist representation at the time the member's approval is sought. We may make a contribution towards the cost of specialist advice or specialist representation at our absolute discretion.

Fees and costs of representation

20. We will not charge for representation at Employment Tribunal that is provided by BDA staff, subject to paragraph 23 below.
21. We will not make any deduction from any compensation a member is awarded where we have provided representation, subject to paragraph 23 below.
22. We will not pay or make any contribution towards any compensation, damages or costs a member incurs or is ordered to pay where we have provided representation. Nor will we pay or make any contribution towards any agreed settlement we have helped a member reach.
23. Members are liable to pay any costs we reasonably incur on their behalf in providing representation including but not limited to the cost of specialist advice or specialist representation should this be necessary, any costs a specialist representative reasonably incurs, and any tribunal fees required to be paid. We will endeavour to indicate the approximate cost of specialist advice or specialist representation at the time the member's approval is sought. We may make a contribution towards the cost of specialist advice or specialist representation at our absolute discretion. We will endeavour to seek the member's approval before we incur any other costs.

Member responsibilities and limitations

24. We will ask a member seeking representation for all necessary and relevant information relating to the issue upon which advice and representation is sought before we provide representation. We will decide what is necessary and relevant for the purpose of providing representation.
25. We will not be held liable for any loss or detriment suffered, directly or indirectly, if a member does not provide us with all necessary and relevant information and in a timely manner.
26. We will not be held liable for any loss or detriment suffered, directly or indirectly, if a member does not follow our advice.
27. We will not be held liable for any loss or detriment suffered, directly or indirectly, if a member's claim or defence of a claim, or any aspect of the claim, is unsuccessful

Data protection

28. Any information we obtain in the course of providing advice and/or representation will be processed in accordance with the Data Protection Act 1998.

Complaints

29. Any member who is not entirely satisfied with our advice is encouraged to contact us. A copy of our complaints policy is available by contacting Advisory Services, British Dental Association, 64 Wimpole Street, London W1G 8YS or by calling 020 7935 0875.