How to contact us

Africa medicolegal advice

South Africa, Botswana, Lesotho, Mozambique, Namibia, Swaziland and Zimbabwe

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Tel (27) 083 270 7439 (cell phone)
Email tony.mps@currantxpress.co.za

Dr Liz Meyer, Pretoria
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Kenya – Jacky Keith
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or +254 722 736470
Email mps@africaonline.co.ke

Africa membership enquiries

South Africa, Botswana, Lesotho, Mozambique, Namibia, Swaziland and Zimbabwe
South African Medical Association
Tel 0800 110 256 (toll-free within SA)

South Africa – Ian Middleton
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A guide to MPS membership

AFRICA

PROFESSIONAL SUPPORT AND EXPERT ADVICE
Introduction

This booklet has been written as an introduction to the scope of MPS membership. It provides a short account of MPS history and philosophy, describing how we work and setting out the main benefits and obligations of membership.

We have tried to include everything that a new member might like to know without being overloaded by information. If we have not included a topic you are interested in, or if you would like more detail about certain subjects, you may find it on the MPS website, or simply by giving us a call. The information in the guide was current at the time of going to press, but it may change over time so we strongly suggest that you check the MPS website periodically for up-to-date information.

MPS is a mutual society of healthcare professionals originally formed in 1892 to provide support for doctors facing legal claims and to expose charlatanism and quackery.

Nowadays, MPS comprises more than 245,000 healthcare professionals representing the full spectrum of clinical specialties, from places as far apart as Ireland and New Zealand, Hong Kong and Jamaica.

Services to members have expanded over the years (see page 6) in order to meet the original remit – to protect and safeguard the professional reputations of individual members and the professions to which they belong. This does not mean that we are anti-patient – far from it. We believe that patients who have been harmed through a member’s negligence should receive fair and speedy compensation. We are also committed to educating healthcare professionals, drawing on our experience to alert them to the pitfalls of practice and to keep them informed about the legal and ethical framework in which they work.

MPS is not an insurance company. All the benefits of membership of MPS are discretionary as set out in the Memorandum and Articles of Association.
Who we are

Our forebears’ concerns about quackery are less relevant today, but we still have an important role to play in ensuring that patients receive quality healthcare. In addition to our educational programmes for healthcare professionals, we are active in the political sphere, bringing our influence to bear where it is needed to enhance healthcare delivery or to oppose proposals that we consider to be detrimental.

A commitment to the ethos of mutuality – to serve the individual and common interests of members – makes MPS an entirely service-driven organisation. MPS staff have two overriding objectives – to provide a high-quality personal service and to preserving, through good stewardship, the society’s financial health.

Integrity

Integrity is a core value at the heart of all we do. As an ethical organisation, we place a high value on being moral and fair in our dealings, both with members and external suppliers. We firmly believe in being transparent and open in how we conduct business. All authority ultimately rests with MPS Council, a body elected by the membership. The Council’s obligations and powers (in addition to those imposed on or granted to it by law) are set out in the Memorandum and Articles of Association. A copy of this is sent to members when they join MPS and it is also available on the MPS website.

MPS holds a large fund of money for the benefit of members. This is a responsibility we take very seriously as it is crucial that the money be managed wisely so that sufficient funds are available for assisting members. This means exercising good stewardship to secure the ongoing financial health of MPS and to ensure that the benefits of membership are allocated fairly in accordance with our objectives.

The Combined Code on Corporate Governance sets out best practice for corporate governance and compliance with the Code is mandatory for listed companies. Although MPS is not a listed company, and therefore not obliged to comply with the Code, we have adopted its principles of best practice as far as they apply to us.

Transparency is a key aspect of accountability to which we fully subscribe. We publish clear information about our financial position and the remuneration of executives each year in our Annual Report and Accounts. Members are entitled to an explanation of the reasons behind any decisions Council might make that affect them.
Occurrence-based protection

We believe that occurrence-based indemnity is the gold standard for professional indemnity because it is the simplest and safest means of ensuring that practitioners – and therefore their patients – are not exposed to the risk of gaps in the protection available to medical practitioners. Indemnity protection based on the occurrence of an incident requires only that the indemnity arrangements were in place at the time of the incident. Alternative models usually specify that you have to be paying a premium both at the time of the incident and at the time an ensuing claim is reported.

Discretionary indemnity

Your MPS membership does not come with a policy document setting out exactly what you can and can’t claim for, and in what circumstances exclusions may apply. What you do get is a copy of the Memorandum and Articles of Association, which sets out the objectives of the Society and how it is to be run. It specifies that the benefits of membership are to be granted at the discretion of MPS Council.

Discretion allows maximum flexibility, and is a powerful tool as threats to a member’s professional character, interests or affairs may manifest in many different ways, from clinical-negligence claims to disciplinary proceedings. Over time, new threats may emerge, or existing threats may become more likely. As it is not restricted by exclusion clauses invariably found in insurance contracts, discretionary indemnity allows us to accommodate the real needs of members if we consider it appropriate to do so.

Advances in clinical practice, changing social expectations and political agendas all influence the medicolegal environment to varying degrees, and your indemnity arrangements need to be both robust enough to accommodate escalating costs and flexible enough to adjust to new and unusual demands. For over a century, MPS discretionary indemnity has proved
to fulfil just such a need. Because we are not confined by the fixed and rigid terms and conditions of insurance contracts, there have been numerous instances when we have exercised our discretion and assisted members with out-of-the-ordinary problems or responded quickly to emerging issues.

We believe that occurrence-based, discretionary indemnity offers members the best possible professional protection, and therefore the greatest peace of mind. It allows us to exercise our discretion to assist members with problems that may not have been foreseen – and therefore not included in a contract of insurance – at the time of an incident.

**MPS Council**

MPS Council is the company’s board of directors, and most of its members are clinicians elected by the membership. It has the power of discretion which it can exercise in accordance with the purpose for which MPS exists – ie, in the interests of individual members and the membership as a whole. Because Council holds these discretionary powers, it directly considers applications for assistance with cases that lie outside our normal activities. As the majority of Council members are healthcare professionals, members can be assured that their cases will receive an understanding and supportive debate.

**Diversity**

We believe that inclusion and diversity are essential ingredients of a successful professional organisation. MPS serves diverse communities in countries around the world and we aim to employ a workforce that reflects, at every level, the membership we serve.

We treat all people equally and are committed to providing a high-quality service to everyone we deal with irrespective of any personal characteristics, including race, gender, sexual orientation, disability, religion or belief.
What we do

There is a common misconception that MPS deals mostly with clinical negligence claims. While it is true that claims account for by far the largest proportion of annual expenditure, this kind of work represents only about 20% of our caseload.

Core benefits of membership

In addition to clinical-negligence claims, we commonly provide broad-ranging assistance in the following areas:

Medicolegal advice
You may phone us for immediate advice to help resolve everyday dilemmas. Our medicolegal advisers respond to more than 30,000 telephone calls a year.

Help with complaints
We can help you formulate a response to a complaint and, if necessary, arrange for someone to accompany you to a panel hearing.

Report-writing
If you have to write a medicolegal report or a witness statement, we can advise you on the best approach and will check your report for you before you submit it.

Disciplinary and medical council procedures
We can provide advice and legal representation for disciplinary and regulatory council procedures. We can help members from the outset, whether it be drafting a letter in response to a medical council enquiry or providing high-calibre legal representation at a full hearing.

Preparing for inquests
We can help you prepare a report for the coroner and advise you on how to conduct yourself at the inquest. If necessary, we can arrange for legal representation on your behalf.

Handling media intrusions
If you are unfortunate enough to attract adverse publicity, we can issue press statements and act as spokesperson to the media to shield you as far as possible from having to deal directly with the press.

Legal representation in criminal prosecutions arising from clinical practice
If you are prosecuted for a criminal offence such as gross negligence or manslaughter, you can ask us to provide you with legal representation to defend your case.

Sexual offences
You can ask MPS for assistance if you face an allegation of sexual assault arising out of your clinical practice (although it is unlikely that we would provide assistance in connection with allegations arising from your personal conduct).

Indemnity for “good samaritan acts”
The benefits of MPS membership are available to you if you are involved in a claim arising from a...
Good Samaritan Act anywhere in the world. In the unlikely event that legal proceedings follow, you would be entitled to apply for assistance, no matter in which country the legal proceedings are commenced.

**Borderline and unusual requests for assistance**

*Unusual circumstances*

Members sometimes come up against problems that are out of the ordinary. We cannot anticipate every possible problem that members may experience, so the above list is not exhaustive. Our guiding ethos is that we are here to help, so do not assume we would be unwilling to help you just because you have encountered a problem that is atypical. Ask us first.

The following are examples of problems that occur infrequently, or that warrant detailed consideration as to whether to exercise the discretion to assist. MPS Council would consider each borderline request for assistance on its merits, balancing the individual member’s needs against their responsibility to use members’ funds wisely and in the interests of the membership as a whole.

*Criminal proceedings arising from non-clinical practice*

We can provide advice and assistance to members with legal problems arising directly from their clinical practice. We can exercise our discretion to assist with criminal allegations, but this does not usually extend to allegations of fraud or theft, on the basis that these offences arise from the business aspects of practice. However, we recognise that there may be rare occasions where the boundaries are not clear-cut and it may be appropriate to help. Each case is assessed on its merits on an individual basis.

It is unlikely that we would pay or reimburse fines following a conviction, but we do assist members with advice and representation before the medical council when a member has been investigated as a result of criminal proceedings.

It is unlikely that we would assist with claims brought for compensation following a conviction for fraud, theft and similar offences, or damages for personal injury following criminal acts outside recognised clinical practice. Members who have been acquitted of a criminal charge may apply to MPS for assistance with any ensuing civil claims, and each case will receive individual attention.

*Allegations of fraud*

It is unlikely that we would provide assistance in connection with allegations of fraud arising from business dealings. Occasionally, allegations of fraud may have arisen from professional life, for example, errors on a CV, or in research. MPS Council considers each such case on its individual merits.

*Assistance for a victim of crime*

If you have been assaulted by a patient or a patient’s representative
during the course of your professional duties, you may seek advice and assistance from MPS. If you are assaulted by a professional colleague, we can provide general advice but are unlikely to provide legal assistance in pursuing a claim for damages or a private prosecution.

Employment issues
We do not generally provide assistance with race, gender and disability discrimination claims against employers and others. Cases relating primarily to discrimination are the province of medical associations/trade unions. We recommend membership of such an organisation for help with contractual disputes and allegations of bullying, harassment or discrimination.

Defamation
If you are the named defendant in a defamation claim, we may assist you if the matter arises from your professional practice. Such assistance may extend to an indemnity for legal costs and disbursements, but is unlikely to extend to the payment of compensation awards.

If defamation proceedings have been brought because of something you have published in a book, journal or newspaper, we would expect the publisher to assume responsibility for defending the case. If you are involved in a radio or television programme, you should ask the producer for an indemnity before you agree to participate.

If you are an official spokesperson for a medical association or college, we would expect that organisation to handle the matter and to provide you with an indemnity for legal costs and damages.

MPS Council may exercise its discretion to assist you in bringing a defamation action if the alleged defamation stems from your professional practice and your professional reputation is likely to suffer serious harm. In this situation we would review each case as it develops, retaining the right to withdraw assistance at any stage, depending upon developments in the case and legal advice received. If, having decided to provide an indemnity in respect of your legal costs, we would normally take responsibility for paying the legal costs incurred, even if the action is unsuccessful or withdrawn.

We are unlikely to support one doctor suing another doctor.

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Additional activities

Education and risk management
We are committed to working in partnership with members to reduce their exposure to risk and, through them, avoidable harm to their patients. We produce a range of educational materials, including Casebook and other medicolegal publications, information leaflets and educational CD-ROMs. The MPS website contains useful advice for reference or download, and printed copies of our publications are also available to members.

MPS medicolegal advisers and consultants also give talks at seminars, conferences and training days. If you would like to discuss this aspect of our service, please contact us.

MPS Risk Consulting Limited is a wholly owned subsidiary of MPS. It specialises in facilitating risk assessments in clinical settings, collaborating with academic institutions to deliver accredited courses in risk management, and offering a range of workshops designed specifically for healthcare professionals. Risk Consulting also provides an intensive programme to help clinicians experiencing difficulties with their interpersonal skills. This plays a crucial role in MPS’s membership-governance programme.

Lobbying and media work
We play an active role in the health-policy sphere, exercising our influence to ensure that legislation and government policy decisions take into account the views and interests of members. This takes the form of lobbying individual members of parliament, responding to consultation documents, hosting conferences and collaborating with other healthcare organisations.

Our communications department also assists individual members unfortunate enough to attract unwanted press attention. We shield members as far as possible from press intrusions by acting as their spokesperson where appropriate.

How we work
MPS is a discretionary mutual society, not an insurance company. You can ask us for advice or assistance with any medicolegal problem arising from your clinical practice and requesting help is as simple as picking up the phone or writing us a letter or email.

There are no bureaucratic claim forms to fill in, and you will always receive a personal service from a real human being. We do not use automated telephone menus and will never bombard you with irrelevant mailings. When you contact us, we will do our utmost to be helpful by responding to your request professionally and effectively.

If you call us for advice, you will be put through to a knowledgeable medicolegal adviser – a doctor with legal training. If we are dealing with a legal or other case on your behalf, it will be assigned to a named
individual – either a medicolegal adviser or one of our in-house lawyers – who will take personal responsibility for handling the case and keeping you informed of developments. Feedback from members is always welcome, whether it be in the form of a complaint about our service, praise for meeting or exceeding expectations or suggestions for further improving our service.

**Our complaints procedure**

If you feel MPS could have done better or there is something you believe we should be doing differently, we would like to hear from you. Our aim is to resolve concerns to your satisfaction and learn any lessons from your complaint in order to improve our service in the future.

Whenever possible, we will try to resolve your complaint by the close of business on the next working day. If your complaint is more complex, we will send you an acknowledgement within three working days, with a commitment to give you a full response within four weeks. If, for any reason, this timetable cannot be met, we will explain why.

If you feel able to, please address your complaint directly to the individual member of staff you have been dealing with. The staff member will attempt to resolve the complaint to your satisfaction quickly and fairly. If you would prefer not to do this, you can raise your concern in writing or by telephone to the head of the department concerned.

All complaints will be treated seriously, fairly and in confidence, regardless of whether they are made in person, by telephone or in writing.

**Data protection**

Because of the nature of our work, we hold a great deal of sensitive personal information and we take the security of this information very seriously. Our computer systems and paper records are physically protected at all times; staff only have access to information on a need-to-know basis, and they are all subject to a stringent confidentiality policy.

We will not give out personal information about you to third parties without your consent.

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Your responsibilities as a member

The terms of your membership are contained in the Articles of Association and associated policy documents, and it is important to be aware of them. We ask that you pay particular attention to the following:

- Pay the correct subscription and let us know in writing of any changes in your professional life that may have a bearing on your subscription rate – number of hours worked, change of specialty, increase or decrease in private practice or any other income, work abroad, new appointments, etc.
- Notify us if you change your address. We need to know your current home or business address so that we can contact you if necessary.
- Pay your subscription promptly.
- Contact us before undertaking work outside the scope of your normal practice.

We may exercise our discretion to withhold certain benefits of membership if you do not comply with the Articles of Association and, in certain circumstances, your membership may be terminated.

Do not incur legal expenses regarding a complaint, claim or other circumstance without our prior approval. You will be personally liable for any such expenses and this may well affect our decision as to whether we should provide assistance or not. Similarly, you should not agree to pay compensation to a claimant or complainant without discussing it with us first.

Report adverse incidents and claims

When things seem to have gone wrong or you are in need of advice or assistance, it is helpful for us to know the circumstances sooner rather than later. Talking about a difficulty can help clarify issues and alleviate anxiety and there might be some pre-emptive action we can recommend or take on your behalf.

If you are involved in an adverse incident, set down the details in writing. It can take many years for an adverse incident to give rise to a complaint or claim against you, so it makes sense to record the salient facts in the form of an incident report while they are fresh in your mind. Moreover, you may have retired, gone to live abroad, died or become incapacitated by the time legal action is taken. The patient’s medical records may not be available by then.

A report made contemporaneously will be invaluable.
Your report should

- be factual and prepared as soon as possible after the event
- be written as a plain narrative statement in the first person (e.g., "I examined the patient")
- contain the facts, avoiding comment, opinion or speculation
- be comprehensive, setting out all details of the history, examination and full management.

Keep a copy of the report in a secure personal file – not with the patient’s clinical notes.

If the incident relates to a minor, make sure that the case notes are retained until the patient is at least 25 years old. If necessary, ask the medical-records officer to mark them as not to be destroyed until a certain date.

Apologies to patients

In our experience, many complaints arise from poor communication. Once you have established the facts, we advocate a policy of full and open communication. An explanation may be all that is needed to reassure a patient and avoid any escalation. A wall of silence after an adverse incident can provoke formal complaints and legal action.

If it is clear that something has gone wrong, an apology is called for, and it should be forthcoming. Contrary to popular belief, apologies tend to prevent formal complaints rather than the reverse. We can advise you on how to handle such a situation if you are concerned.

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Cosmetic/aesthetic practice

MPS defines cosmetic/aesthetic procedures as those which have as their primary purpose the alteration of the non-pathological external appearance of a patient. Unless you are an accredited plastic surgeon, you must contact membership services before undertaking such work.

Complementary/alternative medicine

We recognise that complementary medicine can be beneficial to patients and do not wish to inhibit members from providing recognised treatments.

However, if you offer patients complementary treatments, you should only undertake procedures that are in the patient’s best interests and for which you have the requisite skills, training and facilities. In the event of a claim, complaint or other legal challenge, you must be able to demonstrate that you were acting in accordance with recognised medical practice, and that experts in the field would support that form of management.

If you offer alternative forms of medicine, you should notify us of the technique employed within your practice and answer any supplementary questions. If you withhold information or provide false or misleading answers, this may adversely affect your entitlement to the benefits of membership.
Vicarious liability

Vicarious liability is an important legal concept. It is the liability you may have for the acts and omissions of an employee or some other individual for whose conduct you are legally responsible.

Your membership of MPS entitles you to seek indemnity only in relation to your own acts and omissions. Your subscription is set at a level that reflects this “personal” risk.

If you employ a number of staff, you could be vicariously liable for their acts and omissions. It is important to understand that your membership of MPS may not protect you financially if a negligence claim is made against you for the acts and omissions of these staff. Clearly, it would be inequitable for MPS – in effect your fellow members – to bear such additional costs in return for only one subscription.

It is in your interests to ensure that any employee or independent contractor working in your practice subscribes to an indemnity or insurance scheme in their own right. This includes, by way of example (but the list is not exhaustive) locums, deputies, radiographers, nurses, audiologists, physiotherapists, counsellors and laboratory scientists. Moreover, a patient may choose to sue a member of your staff personally for negligence. Clearly this reinforces the need for them to arrange their own protection.

Although your MPS membership does not extend to an indemnity for your liability for your staff in general, we may use our discretion to make an exception in the case of claims of negligence against certain employees, such as secretaries and properly qualified and appropriately registered nurses, provided they were acting under your personal instructions and within the scope of their defined duties and professional expertise when the incident occurred. Please ensure that they do act at all times within the scope of their employment, since we are unlikely to exercise our discretion to provide assistance in connection with any wider activity.

Vicarious liability and the legal status of your practice

Many doctors now form companies, or work within a group practice structure. If we have agreed to extend your indemnity to one of your employed staff, as described above, the legal status of your practice may affect the apportionment of liability and, consequently, the contribution that we may make towards a financial settlement.
Treating nationals from the USA and Canada

Although we offer worldwide indemnity for claims arising from Good Samaritan Acts (including in the USA and Canada), we are unlikely to exercise our discretion to assist with other legal proceedings brought under US or Canadian law. In most cases, legal proceedings are started in the country where the alleged negligence occurred, which is usually in the country in which the patient was treated. In all cases where the alleged negligence gives rise to proceedings by the patient in courts outside the USA or Canada, you can apply for assistance in the usual way.

Accordingly, you may provide professional services to patients from the USA or Canada in the country in which you are registered to practise, in the knowledge that you can apply for assistance should legal proceedings ensue in the country in which you practise.

However, there is a possibility that a claim arising from treatment provided to a US or Canadian citizen may be made in the courts of the USA or Canada, and we do not provide assistance in these circumstances.

Working in another country

If you plan to work overseas you must check with Membership Services to ensure that you have appropriate indemnity arrangements. This is particularly important because some countries – for example, Australia and Germany – have made it a requirement that all healthcare practitioners have insurance-based indemnity.
Frequently asked questions

**What should I do if I want to work overseas?**

MPS is the world’s largest mutual medical protection organisation working internationally. We operate in more than 40 countries around the world. If you are planning to work overseas you may well be able to continue your membership with us. Please use the details on the back of this booklet to contact your local membership office to discuss your circumstances.

**I am planning my elective and the hospital is asking for proof of indemnity. Can you provide this?**

Hospitals around the world recognise MPS membership as offering appropriate indemnity provision. For student electives this is free. If the hospital or university are asking for some evidence, please write to Membership Services at the following address, who will be happy to provide this for you:

Medical Protection Society
Granary Wharf House
Leeds
LS11 5PY
United Kingdom

Alternatively you can telephone on +44 113 241 6436 or send an email to member.help@mps.org.uk

**Does my membership of MPS apply to Good Samaritan Acts?**

Yes. In the unlikely event that you are sued as a result of a Good Samaritan Act, you can apply for assistance from MPS, no matter where in the world the action is brought.

**I will be taking a career break/on maternity leave/retiring soon. How does this affect my membership?**

You can become a retired/deferred member if you are already an MPS member, and voluntarily stop practising medicine, either temporarily or permanently, excluding holidays. As a retired/deferred member, you pay no subscription, still receive the MPS journal, Casebook, and our Annual Report and Accounts, and can apply for MPS assistance with any medicolegal problems arising from a Good Samaritan Act. However, you must tell us as before you resume practice.

**As a GP registrar, can I be reimbursed for the cost of my subscription?**

Generally yes, your Trust or practice should reimburse the difference between the relevant subscription for a twelve-month period and the annual hospital subscription rate. If you call our Membership Helpline on +44 113 241 6436 we can advise you what this should be, and provide a letter to help seek the reimbursement.
I am not sure of the amount I expect to earn from private practice this year. Can I let you know at the end of the year?

Yes. Simply tell us how much you think you will earn. If, at the end of the year, you discover that you have earned more or less than you expected, please let us know. We will then adjust your subscription accordingly and a payment supplement may be required.

I have lost my membership certificate. Do you charge for sending out a duplicate?

No. Please use the details on the back of this booklet to contact your membership office to discuss your requirements.

Am I protected in the future for incidents that took place while I was an MPS member?

Yes. Providing you were paying your subscription at the time, you can apply for assistance with any medicolegal problems arising from your time as an MPS member, even after you have retired or ceased to be a member of MPS.

Do you charge interest if I pay by direct debit?

No.

I act as an expert witness. How does this affect my membership?

MPS regards providing an expert opinion as an integral part of professional practice. As with all aspects of professional practice it is essential that you act within the limits of your own expertise.

MPS has assisted many members with claims arising out of the provision of an expert opinion and considers these in the same way as any other claim in negligence against a member.

As a provider of discretionary indemnity, MPS is able to offer a flexibility not found in insurance policies. Numerous examples can be provided to illustrate how discretion has been used to extend help to a member where a contract of insurance would have meant a refusal.

Please use the details on the back of this booklet to contact your local membership office to check that you are paying the correct subscription to reflect your medicolegal practice.
The MPS group of companies

The Medical Protection Society is the world’s leading indemnifier of health professionals. As a not-for-profit mutual organisation, MPS offers support to members with legal and ethical problems that arise from their professional practice. The MPS group includes the following subsidiary companies:

- **Dental Protection Limited**
  professional indemnity for dental practitioners.

- **MPS Risk Consulting Limited**
  clinical risk-management assessments and education.

MPS is not an insurance company. All the benefits of membership of MPS are discretionary as set out in the Memorandum and Articles of Association.
MPS membership offers peace of mind to more than 245,000 health professionals and their patients worldwide. Members commonly seek help with clinical negligence claims, complaints, medical council inquiries, legal and ethical dilemmas, disciplinary procedures, inquests and fatal accident inquiries. They have access to expert advice from a 24-hour emergency helpline and, where appropriate, legal assistance and compensation for patients who have been harmed through negligent treatment.

We also run risk-management and education programmes to reduce adverse incidents and promote safer practice.

MPS is not an insurance company. All the benefits of membership of MPS are discretionary as set out in the Memorandum and Articles of Association.