



Ms Frances Malik
CLS Policy
Policy and Planning Directorate
Legal Services Commission
12 Roger Street
London WC1N 2JL

13th October 2005

Dear Ms Malik

Making Legal Rights A Reality - Response To Consultation Paper

AvMA welcomes the opportunity to respond to the Legal Services Commission's strategy for the Community Legal Service.

About AvMA

Action against Medical Accidents (AvMA) was originally established in 1982. It is the UK charity specialising in advice and support for patients and their families affected by medical accidents. Since its inception AvMA has provided advice and support to over 100,000 people affected by medical accidents, and succeeded in bringing about major changes to the way that the legal system deals with clinical negligence cases and in moving patient safety higher up the agenda. The legal reforms of Lord Woolf in the clinical negligence field and the creation of agencies such as the National Patient Safety Agency and the Healthcare Commission have followed after years of campaigning by AvMA.

AvMA is proud of the key role it has played in making clinical negligence a specialism within legal practice. It continues to accredit solicitors for its specialist panel (without membership of AvMA's or the Law Society Panel a law firm is not entitled to a clinical negligence franchise) and promotes good practice through comprehensive services to claimant solicitors.

Accordingly, our insight and experience will be limited to the arena of medical law and clinical negligence and therefore the observations that we make are confined to those areas within our knowledge. Given these parameters our comments comprise an overview of the consultation paper with some specific comments and recommendations rather than a focused response to the consultation questions that deal in the main with

the structure, function and priority areas of the CLS that we feel we can only contribute to in a generalised way.

Overview And Comments

AvMA broadly welcomes and endorses the CLS vision. We positively support the CLS objectives relating to the protection of people's rights and tackling the problems of social exclusion, specifically by increasing awareness and access to legal advice and services to those people and areas most deprived.

The consultation paper identifies three main priorities:

1. Improving accessibility of legal advice.
2. Working with public bodies/companies in relation to policies that give rise to claims in the first place.
3. Informing the public about their legal rights

We will deal with each in turn:

1. IMPROVE ACCESSIBILITY

Telephone Advice

We support the Commission's proposal to expand national telephone advice services in order to widen access to legal and advice services. AvMA currently operates such a telephone helpline. Because of limited funding the helpline is currently available only for prescribed hours of the day. The helpline is busy during its hours of operation: We know that demand will not always be satisfied as not everyone will get through. The AvMA helpline assists members of the public who have experienced medical accidents. Our advisors advise on a range of problems but because of their specialist skills (our advice workers are either legally or medically trained and some have dual qualifications) they are qualified to "diagnose" problems and "triage" accordingly. Clients may be assisted further by our in-house advice and information department that undertakes casework, guiding clients often through the NHS complaints procedure. Where the makings of a legal claim may be apparent, clients are directed to one of AvMA's specialist panel of solicitors. The AvMA referral panel is recognised by the LSC as an accrediting body; no private practice can operate with a LSC clinical negligence franchise without specialist panel membership, either AvMA's or the Law Society. Because of the relationship that AvMA builds with its panel solicitors we are kept informed of events following a referral. With the advent of a new computerised system in-house, AvMA expects to be able to track the outcome of referrals; even now we are confident that only a small percentage of our clients would be referred on to another agency/firm following our referral to a solicitor.

Due to the complexity of clinical claims and the lack of confidence clients often have in the NHS complaints procedure itself, we believe that AvMA's role can be key in assisting clients in their navigation toward the appropriate redress route to follow; whether a complaint to a regulatory disciplinary body, an NHS Trust, social welfare advice, support networks, a legal claim- even mediation in some cases. We know that if clients obtain the wrong advice at these early stages they will feel more inclination to abort their

attempt to seek justice. Accordingly, AvMA would welcome expansion of the current national telephone advice service and would hope that we would be given an opportunity to play a leading role in this so far as clinical negligence matters are concerned, given our existing infrastructure and expertise in this niche area.

Furthermore, AvMA recently submitted an application for a CLS Specialist Quality Mark (we have already achieved the quality standard for General Help). This is being done with a view to AvMA providing a more “holistic” service to members of the public. In particular, for a long time AvMA has been exercised over the problems we experience in referring certain categories of cases to panel members. For this reason, the CLS concern to widen access to socially excluded members of the public chimes very well with our own strategy in placing AvMA in a position to conduct those often difficult or low value cases that many private practices find difficult to take on because of internal commercial pressures. AvMA would also welcome the opportunity to tackle or co-ordinate test cases relating to public bodies in the healthcare/community care arena.

Community Legal and Advice Centres

We endorse the pilot scheme proposed. We agree with the objective in delivering a seamless service. Indeed, AvMA has been taking a lead with our members to develop their existing practises to encompass community care law, education law and social welfare categories generally. Many clients who have suffered serious injury following a medical accident are economically disadvantaged in many ways and find a need to access many social services.

Our main campaigning priority for 2005-6 is a focus on the rights of the elderly. A major conference is planned for January to encompass representatives from other not for profit agencies as well as private practitioners and government bodies. We believe that specialist advice on clinical negligence/healthcare law matters should be made available to the centres by creating a national network of AvMA solicitors/AvMA staff who would be able to attend such centres on a rota basis.

Redress

The publication of the Redress Bill is awaited imminently. AvMA have been lobbying the Department of Health in relation to the provision of independent as well as publicly funded legal advice. We have yet to await the details of the Bill but we are not optimistic that the DoH will support the funding of independent legal advice other than the seeking of legal advice relating to quantum. We note the CLS policy toward the future of clinical negligence claims is to operate a presumption that litigation will not normally be funded until a redress route has been followed.¹ However, the credibility of such a scheme will depend upon independence being built into the system. In many ways our comments with regard to redress link into the third priority area identified by the CLS, namely working with public bodies. We are disappointed that neither the DCA nor the LSC have been effective in representations made to the DOH in relation to the need for funding independent advice and representation. It is well known that initial responses to complaints often fall short of the truth of what and how events transpired. Yet it is precisely through this mechanism that the DOH intend to rely upon in superimposing the compensation element. The strength of the case for independent scrutiny, both in relation to representation for the victim of a medical accident but independent clinical scrutiny as well (that would introduce audit into clinical performance/errors in relation to

¹Making legal rights a reality, Volume 1, appendix one, page 12

any aspect of care delivered by a Trust, thereby feeding into clinical governance) and the opportunities afforded to the NHS in so doing appears to have been lost by the DoH. This has been extremely frustrating and makes us feel a little pessimistic about the weight or influence that the LSC/DCA currently commands with other government departments.

In any event, we are keen to develop a role in advising and representing clients through the redress scheme. We are optimistic that attaining SQM will assist in AvMA's ability to deliver such services on the basis that we are funded and resourced so to do. We know that many private practices will not be willing to undertake this work without adequate funding and this causes huge concern to our organisation.

2. WORK WITH PUBLIC BODIES/ COMMERCIAL ORGANISATIONS

We welcome any dialogue between the consumer and service providers. However, for the reasons highlighted above we have been disappointed by the seeming lack of joined up government, at least so far as the healthcare arena is concerned. Not only have we seen this in relation to redress but also with regard to the interface between complaints and litigation (any intimation that litigation may be pursued automatically bars a complainant from pursuing the NHS complaints procedure). This disjointed approach has also been evidenced by the DCA/LSC on occasion (eg conditional fee agreements and the detrimental effect of costs on the NHS; DCA raising civil court fees, thereby directly impacting upon the CLS budget). We hope (and fully support) the CLS approach to contribute to a dialogue with public bodies, in particular when they prove failing. We hope that with increased clarity regarding the aims and objectives of the CLS and public recognition of such a "body," the CLS will have more sway with other government departments. We also hope that the DCA takes more of a lead regarding the impact of proposed and new legislation upon the CLS budget and succeeds in making the case for increased revenue in the funding of civil claims and to support such legislation.

3. INFORMING THE PUBLIC

AvMA already works closely with the CLS in producing the information booklet relating to clinical negligence claims. Equal opportunities and access to information are objectives that we share and value.

CONCLUSION

We are glad that clinical negligence continues to be recognised by the LSC to be a specialist area of the law that warrants specialist advice. The effects of a medical accident can have devastating consequences for an individual as well as his/her family. Many families become economically dependent on the state and need support in seeking access to state services. Getting to the root of the cause of a medical accident needs expert input both medically and legally. Funding access to justice is increasingly more complicated, elaborate and difficult. The state has a vested interest in knowing where and when the standard of care falls short and addressing the problems to avoid recurrence. Investigating clinical negligence claims serves the wider public interest.

We value our relationship with the LSC, and welcome the opportunity to collaborate further with the CLS in addressing these challenges.

Yours sincerely

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AvMA