



RESPONSE TO

**CIVIL JUSTICE COUNCIL
CONSULTATION PAPER
ON**

GUIDANCE FOR THE INSTRUCTION OF CARE EXPERTS

Link to consultation; <http://www.civiljusticecouncil.gov.uk/1253.htm>

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About AvMA

Action against Medical Accidents (AvMA) was originally established in 1982. It is a UK charity campaigning for patient safety and justice. AvMA specialises in advice and support for patients and their families affected by medical accidents, via its Help-Line and through individual case work. 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. . AvMA also maintains a register of expert witnesses and supports solicitors who act for claimants in clinical negligence claims, providing education, advice and panel accreditation. The contribution that AvMA makes in responding to this consultation is confined to AvMA's specific expertise in clinical negligence and healthcare law.

Best Practice Guidance Notes

We have no specific criticism about the Best Practice Guidance. The guidance has been drafted in a neutral and reasonable way and we have no further comment on this document.

Care Information Schedule

On the whole, we believe that the information in this schedule is helpful and will promote a clear understanding of the claimant's circumstances and a basis on which to assess the claimant's care needs. The details provided relating to individuals or organisations who provide medical and therapy support, social care and private sector provision will save time for the expert when making his or her assessment.

We also endorse the provision of details on welfare benefits, housing, education and training. We believe that storing all this information together in one document will help the expert in providing an opinion and the parties in comparing their respective expert's reports.

With regard to past, present and future and care, while we endorse the provision of details of the claimant's carers and any difficulties the care providers themselves have, we do not support the provision of details of care needs, past, present and future in this document.

It is for the experts assessing the claimant's needs to enquire in the course of the interview and provide details of types of care and hours spent, both past, present and future in their reports. A claimant, or those that speak for the claimant (in the case of the severely disabled and children) often underestimate the care they provide. Provision of this information in a document that is intended to be circulated to all parties may lead to unnecessary disputes in the future if the description of care needs varies in the expert's reports from that stated in the care information schedule.

Draft Letter for Instruction of a Care Expert

Overall, we endorse the drafting of this letter. The standardisation of a care expert's instructions will enable the parties to the litigation better to compare like for like when identifying areas in dispute between the various parties' experts. Instructing the experts to provide their assessment with reference to standard age bands is of particular help in that regard.

In the introduction to the draft letter, while it might be useful to provide details of the other parties' experts in this field, this information is rarely available.

In paragraph 3 "Summary of the Claim" we do not think it is appropriate to ask the care expert to confirm whether a claimant suffered from a pre-existing condition. This is a matter for the condition and prognosis experts instructed in the case.

There are some items in the letter, in particular in the latter half of section 8, beginning “Please identify whether the future care...” that we believe would routinely be provided by most experts. However, we do not object to its inclusion.

We do object to Sections (c) and (d) of Section 8 where the letter requests the expert to anticipate future benefits from the local authority, health authority, voluntary sector or state benefits. The expert should not be asked to provide details of future benefits when they are beyond the control of the claimant or the expert. State provision in its various forms changes with such rapidity that a statement regarding future benefits from various statutory and voluntary organisations is likely to be out of date very quickly.

Care Report Template

The template, which largely follows the draft letter of instruction, provides for a logical. Assessment of the claimant’s needs. However, save for providing details of past and present state benefits, we re-affirm our comments in the section above regarding predictions of future receipts.

Catherine Hopkins

Legal Director

5 March 2010