



# **AvMA Specialist Clinical Negligence Panel**

**Application Booklet for New Applicants  
in Northern Ireland**

**2024**

## Contents

Introduction	3
<b>Section 1 – Standards, eligibility and criteria</b>	
Eligibility	5
Defendant work	5
Criteria	6
Quality Audits	10
Case reports	10
<b>Section 2 – Application Procedure</b>	
Submitting your application	12
AvMA Panel Committee	12
Assessment Procedure	13
Interview	14
Successful applications	15
Rejected applications	15
Change of firm during an application	16
<b>Section 3 – Working with AvMA</b>	
Obligations of an AvMA Clinical Negligence Panel Solicitor	17
Client Complaints	19
Arrangements for panel members who change firms	19
Career breaks	21
Disciplinary Action	21
<b>Appendices</b>	
Appendix 1: Appeals Process	22
Appendix 2: Disciplinary Action	25
Appendix 3: Withdrawal of AvMA Panel Membership	28
Appendix 4: Code of Conduct	29

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## **Introduction**

Action against Medical Accidents (AvMA) was established in 1982. It is the leading UK Charity specialising in advice and support for patients and their families affected by medical accidents. AvMA's work with individual patients underpins our campaigning work to improve patient safety and access to justice for those harmed as a result of their medical treatment. Since its inception, AvMA has provided advice and support to over 100,000 people affected by medical accidents through our casework department and specialist inquest service and succeeded in bringing about significant changes to the way that the legal system deals with clinical negligence and in moving patient safety higher up the agenda in the UK.

AvMA also provides specialist advice and information to lawyers who practise in the field of clinical negligence and healthcare law through AvMA's Lawyers Service. We maintain a database of medical experts experienced in providing medico-legal reports and we support best practice in clinical negligence through our comprehensive programme of medico-legal courses and conferences and providing opportunities for specialist lawyers to network and share expertise

An essential part of AvMA's role is working with healthcare professionals and healthcare organisations and to ensure that lessons are learnt from the experiences of patients to improve patient safety.

## **The AvMA Specialist Clinical Negligence Panel**

AvMA was responsible for pioneering the concept of clinical negligence as a separate specialism within legal practice. The AvMA Panel was set up soon after the charity was established as a referral panel for AvMA's clients. As a patients' organisation, a client focus and safeguarding the interests of patients and their families is fundamental to the operation of the AvMA Panel. The AvMA Panel has come to represent an essential quality mark for those clinical negligence practitioners who place clients at the centre of their practice. AvMA therefore expects not only a high standard of legal service from its panel members but practitioners who are prepared to go that extra distance on behalf of their clients and who share AvMA's broader aims and objectives on patient safety and justice.

AvMA Panel membership normally runs for a period of five years after which the panel member will be required to apply for reaccreditation to extend panel membership for a further five year term. Reaccreditation was introduced to ensure that AvMA Panel members continue to practice in line with current best practice. It also provides an opportunity for panel members to reflect on their practice and that of their team. Although AvMA Panel membership lasts for five years, it may be subject to withdrawal at any time during that five year period if the panel member is found to no longer meet the AvMA Panel criteria or is in breach of the Code of Conduct or obligations of panel membership.

This booklet includes details of the current eligibility and criteria against which applications for AvMA Panel membership will be assessed together with the obligations of panel membership. It is advisable to study the section on the obligations of an AvMA Clinical Negligence Panel member as this will give applicants a clearer indication of the commitment they will be undertaking in becoming an AvMA Panel member as well as AvMA's commitment to maintaining the standards expected of them.

## **AvMA Panel Membership in Northern Ireland**

For the purpose of AvMA Panel selection, AvMA recognises there are some significant jurisdictional differences in relation to Northern Ireland and the practice of clinical negligence. We are aware that developing a specialist practice can be more difficult because of the demographics of Northern Ireland. However for the purposes of AvMA

accreditation, specialisation does remain a fundamental requirement. This is because experience of a broad range of clinical negligence matters is essential in developing the necessary skills and expertise to provide clients with a specialist legal service. However, we will look at different models of service providing that overall we can be confident that a client would be assured of an expert service.

We are always happy to talk through the application process and requirements prior to you preparing your application and to advise on any areas where you believe you may fall short of the criteria. We may be able to offer advice on alternative evidence, whether conditional membership might be offered or how you might address any gaps.

We look forward to receiving your application and thank you for your interest in becoming a member of AvMA's Specialist Clinical Negligence Panel.

## **Section One - Standards, eligibility and criteria**

### **The standards expected of AvMA Panel members**

- 1.1 A high standard is expected of AvMA Panel members as well as a willingness to work with AvMA in the best interests of our referred clients. Applicants must demonstrate the following:
- (i) A high degree of technical ability in clinical negligence litigation
  - (ii) Good interpersonal and client care skills
  - (iii) The ability to research, analyse and evaluate complex medical evidence.
  - (iv) That they maintain their position at the forefront of current practice and new developments in the law and medicine through training, networking and working with experienced experts and counsel.
  - (v) That they use the knowledge and expertise derived from working with their clinical negligence clients to feed into systems for improving patient safety and access to justice.

### **Eligibility for membership of the AvMA Specialist Clinical Negligence Panel**

- 1.2 Those eligible to apply for membership of the AvMA Specialist Clinical Negligence Panel will:
- (i) Be solicitors holding a current practising certificate
  - (ii) Be current Fellows of the Chartered Institute of Legal Executives who have passed the Institute's Civil Litigation and Tort papers (England and Wales).
  - (iii) Be committed to working on behalf of injured patients and their families.
  - (iv) Be working in a firm that has been awarded Lexcel accreditation, the preferred quality mark for AvMA Panel membership, and/or ISO 9001.
  - (v) Be working in firms that are committed to representing patients' interests and to minimise the risks of conflict, not be working within firms that also routinely undertake defendant clinical negligence work (see below).
  - (vi) Have been at their present firm at least six months prior to submitting an application. (This time may be reduced where an applicant has joined an established department with other AvMA accredited panel members.)

### **Defendant Work**

- 1.3 Individuals harmed during the course of medical treatment can often be left feeling vulnerable and therefore in order to avoid the more damaging effects of litigation, it is essential that clients are able to trust and have confidence in their legal advisors. It is also important in enabling clients to achieve a degree of resolution whatever the outcome of their claim. This is one of the primary reasons why AvMA Panel firms are not expected to undertake defendant work where their involvement might bring them into conflict with the interests of their claimant clinical negligence clients or the aims of AvMA.
- 1.4 Such work would include the following (the list is not exhaustive):
- (i) Representing or advising healthcare providers or healthcare professionals in connection with any claim or complaint made by a patient;

- (ii) Representing healthcare organisations or individual healthcare professionals at inquests (in this instance it is not sufficient to ensure the firm is not acting for the family or friends of the deceased as the possibility exists that AvMA will be representing them and that in itself would constitute a conflict);
  - (iii) Representing individual healthcare professionals at professional regulation hearings which involves direct harm to patients (again this is to avoid a situation where AvMA is providing support to the patient complainant).
- 1.5 Such work would not include:
- (i) Acting for a professional healthcare regulator as prosecutor;
  - (ii) Providing legal advice to a healthcare provider (or healthcare professional) relating to a non-clinical matter (i.e. property, contract or employment advice).
- 1.6 For any current AvMA Panel member whose firm is already engaged in defendant healthcare work, whilst this would normally act as a bar to AvMA Panel membership, AvMA may be prepared to consider the particular circumstances following full disclosure of the exact nature and type of work undertaken, how it is organised, how conflicts are avoided, and how their clinical negligence clients are informed.
- 1.7 The onus would be on the AvMA Panel member to demonstrate that this would not result in any form of conflict either real or perceived with their claimant clinical negligence clients or the aims and objectives of AvMA, or detract in any way from the firm's commitment to acting on behalf of patients. The panel member should ensure that the firm is fully transparent with their clinical negligence clients and in their publicity materials about any areas of work that might be considered contentious.

### **Criteria for membership of the AvMA Specialist Clinical Negligence Panel**

- 1.8 Applicants for membership of the AvMA Panel will be assessed against the following criteria:

#### **Experience**

- 1.9 Have a substantial track record and commitment as a specialist claimant clinical negligence practitioner with a minimum of three years PQE having successfully conducted from first instruction to settlement a broad range of cases in terms of medical issues, complexity and quantum including catastrophic injury claims. In most instances with some exceptions, applicants are likely to require at least five years PQE within a specialist practice to meet the application requirements.
- 1.10 Experience of preparing cases for trial.
- 1.11 Demonstrate that they meet panel standards as set out in the criteria, Code of Conduct and Obligations of panel membership and that this is demonstrated in their day to day practice, case management, outcomes and client satisfaction.
- 1.12 Have experience and knowledge to advise clients on inquests. Applicants should have experience of preparing cases for inquests and/or have access to other specialists who can provide this important service.

#### **Specialisation**

- 1.13 Applicants must be able to demonstrate specialisation in clinical negligence and active involvement in case management by:

- 1.14 Running claimant clinical negligence cases during each of the previous three years. This figure should represent at least 60% of the cases where the applicant has complete day to day conduct, excludes multiparty actions and cases supervised by the applicant although see below for exceptions. [In most circumstances, consultancy posts would not be considered to meet AvMA's criteria for panel membership unless the applicant can demonstrate that they continue to hold an active caseload as set out above.]
- 1.15 AvMA may in exceptional circumstances consider applications for reaccreditation from existing AvMA Panel members of at least ten years standing who may not meet the strict caseload criteria but have a substantial track record in the conduct of clinical negligence claims over a minimum of fifteen years and can demonstrate that clinical negligence continues to represent the majority of their workload in a supervisory role. [For further details, please contact AvMA.]
- 1.16 Be committed to working on behalf of injured patients and their families and to recognise the importance of trust in that professional relationship.

### **Case management**

- 1.17 Applicants must be able to demonstrate:
- 1.18 The ability to manage his or her caseload both in terms of volume of cases and case mix. Applicants should be able to demonstrate that caseloads are being maintained at manageable levels to ensure the quality of legal services provided to the client is not being compromised.
- 1.19 That cases are conducted expeditiously in line with current standards of case management and with the client's best interests in mind at all times.
- 1.20 Where this would be in the client's best interests, an innovative approach to resolving cases both in the conduct and settling of claims and in the use of alternative methods of resolution.
- 1.21 The ability to apply medical and legal knowledge in screening cases in order to identify at the earliest stages, cases which do not have merit and to advise appropriately on alternative courses of action whilst also ensuring that clients with meritorious cases are not denied access to their rights.
- 1.22 Case management which is below current standards including unnecessary or avoidable delays, under-settlement, inappropriate selection or use of experts and counsel, and poor success rates, would be grounds for rejection of an application. This will in particular be assessed through examination of case examples and other outcome data.

### **Knowledge**

- 1.23 Applicants must demonstrate their knowledge in the following areas:
- 1.24 A thorough knowledge of the relevant law relating to clinical negligence and product liability.
- 1.25 An understanding and application of Human Rights law as it applies to cases involving medical care is also expected.

- 1.26 A thorough knowledge of current legal procedure and its appropriate application.
- 1.27 Knowledge and expertise to achieve appropriate and timely settlements on behalf of clients as assessed by comparison with the full range of practice across the AvMA Panel. Applicants should be able to demonstrate a specialist expertise in for example their ability to draw up schedules, assess quantum, make and respond to Part36 offers and negotiate settlements.
- 1.28 Confidence in the critical analysis of medical issues including the ability to read and interpret medical records, and analyse and constructively critique complex medical reports. AvMA considers this an essential attribute of a lawyer undertaking clinical negligence work. The applicant must be able to demonstrate that they are able to put this knowledge into practice in their risk assessment, conduct of claims and their ability to have effective dialogue with experts and counsel.
- 1.29 Applicants must have a good understanding of funding issues and an appreciation of and systematic approach to risk assessment with the best interests of clients in mind at all times.
- 1.30 A good working knowledge of other systems for clients to obtain redress or have concerns investigated or recorded, including NHS and private complaints procedures, inquiry processes including Serious Adverse Incident (SAI) investigations or equivalent processes, fitness to practise procedures, and systems for reporting and investigating patient safety concerns. Applicants should be able to demonstrate the ability and willingness to provide advice and to refer to other bodies where appropriate. AvMA would expect applicants to have a commitment to improving patient safety and, where possible, to using the knowledge and experience gained from casework with this goal in mind.
- 1.31 An understanding of the ethical issues in relation to both clients and other parties such as experts, and to demonstrate that understanding in their day to day practice.

### **Experts and Counsel**

- 1.32 The skills and experience applied to the selection and instruction of experts and counsel can be a critical factor in the outcome of a case. Applicants must therefore demonstrate:
  - 1.33 That they use appropriate experts and that they update their experts' database at regular intervals.
  - 1.34 Best practice in the instruction and employment of experts.
  - 1.35 That they use a selection of specialist counsel as appropriate to the needs of the individual case and client.
  - 1.36 Best practice in the selection and employment of Counsel.

### **Client Care and Monitoring Client Satisfaction**

- 1.37 As a patients' organisation, a high standard of client care is required. By the very nature of clinical negligence, clients are often extremely vulnerable or should be considered as vulnerable. As a clinical negligence specialist, you should always be



mindful of your professional duties in relation to working with vulnerable clients and clients more generally. You should be mindful of potential conflicts to ensure your client's best interests are protected. This includes for example the advice given in relation to funding arrangements, the terms on which a case is to be settled and what effect this will have on any deductions from damages, as well as arrangements for protected parties including advice on deputyships. It is also important to avoid conflicts by maintaining professional boundaries. This includes not entering into a personal relationship with a client. AvMA would always consider this inappropriate and to be avoided. If this situation were to arise, the AvMA Panel solicitor should immediately transfer the matter to another AvMA Panel member and in any event, seek advice from their relevant professional body in terms of the current professional guidance and rules as well as giving full consideration of the potential impact this could have. Applicants should also be able to demonstrate:

- 1.38 That the legitimate needs and interests of clients are given priority and that the individual client can be assured at all times that the practitioner with conduct of their case has the appropriate skills, support and expertise to secure the best achievable outcome. The practitioner must be willing and able to recognise when the client's best interests would be served by transfer of their case.
- 1.39 A high level of client satisfaction by having appropriate systems for gathering and acting on feedback from clients.
- 1.40 A fair and effective process for dealing with client complaints.
- 1.41 That they have a thorough understanding and empathy for the needs of their clinical negligence clients and the impact that legal action can have on the individual and their family and that this is reflected in their management and conduct of cases. In particular, they should be alive to issues such as minimising unnecessary delays, maintaining regular contact, and recognising the particular issues that are likely to present difficulties for that individual client.
- 1.42 That they have a full client care package including client literature and information tailored to those specific needs and that the firm can demonstrate an active commitment to promoting equality and diversity both in the provision of services and within the workplace and in accordance with professional requirements.

### **Costs**

- 1.43 That the firm has policies in place which ensure clients are treated fairly and reasonably at all times with respect to costs. Clients must be provided with information on costs that is accurate, user-friendly and accessible and in compliance with any professional requirements. Where appropriate, the provision of information on costs should be tailored to the needs of the individual client including for example, clients with a specific learning difficulty.
- 1.44 That they have procedures to ensure that their client fully understands the implications of any funding arrangement entered into and that there is complete transparency in relation to any potential deductions from damages or cost liabilities.
- 1.45 That they are alive to potential conflicts particularly in relation to costs such as global offers which are inclusive of costs or where there is a risk of placing the firm's interests before the legitimate interests of the client.

## **Supervision, Training, Resources and Support**

- 1.46 The applicant must demonstrate that there are appropriate and effective supervision arrangements in place within the clinical negligence department and that supervision is performed in accordance with current best practice. In most instances, it would be expected that the clinical negligence work will be overseen by an AvMA accredited lawyer or specific arrangements have been agreed with AvMA.
- 1.47 The supervision arrangements should ensure not only the professional development of practitioners within the department but that the firm's clinical negligence clients can be assured that their case will be conducted to the standard expected of an accredited clinical negligence specialist. In order to achieve this there needs to be an adequate ratio of experienced supervisors (accredited clinical negligence specialists or evidenced as being of an equivalent standard) to supervisees, this being subject to the experience of individual supervisees and the size and complexity of their caseloads. This is key to protecting clients' interests. All offices where clinical negligence work is undertaken should be under the direct supervision of an accredited specialist or equivalent.
- 1.48 That the allocation or delegation of cases or parts of cases is done with the client's best interests in mind at all times and in a way that takes full account of the needs of the client, the complexity of their case, and the experience of the practitioner to whom the case is being delegated. (Please note that sole conduct of AvMA referred cases should not be delegated unless agreed with AvMA first – see obligations of an AvMA Panel Solicitor below.)
- 1.49 If the applicant is responsible for delegating cases and supervising other clinical negligence practitioners or members of the team, that supervision and delegation is performed in accordance with best practice (see 1.46 to 1.48 above). For less experienced members of the team, this might include regular full caseload reviews as part of supervision.
- 1.50 Evidence of continued attendance at relevant training courses in previous three years including courses with a predominantly clinical content. AvMA would expect a minimum of 12 hours per annum of training directly relevant to clinical negligence.
- 1.51 That the applicant has appropriate support mechanisms such as other specialist lawyers undertaking this work, sources of advice to which they can refer, including membership of the AvMA Lawyers Resource Service, and the support of the partnership.
- 1.52 If the applicant is the only practitioner specialising in clinical negligence within their firm, the onus is on applicants to demonstrate that they have compensated for this by establishing external networks of support, advice and experience and through committing themselves to regularly updating their medical and legal knowledge and regular attendance at specialist clinical negligence forums.
- 1.53 Have appropriate resources to assist them in investigating and dealing with the medical and legal issues including ready access to clinical and legal texts, medical advice, and other medical and legal resources.

### **Quality audits**

- 1.54 That the department/firm has systems in place sufficient to satisfy external quality audits. AvMA's preferred option is for firms to be Lexcel accredited but if not, ISO 9001 or equivalent. If appropriate, contact AvMA for advice.

### **Working with AvMA**

- 1.55 Because the AvMA Panel continues to act as a referral panel, the applicant must be able to demonstrate an on-going willingness and commitment to working with AvMA in the best interests of referred clients as well as the interests of AvMA as an organisation representing medical accident victims. This would include, for example, an involvement in AvMA activities, Lawyers Support Group meetings (LSG's), attendance at the annual AvMA Panel Meeting, submission of quantum case reports for inclusion in Clinical Risk and contributing to AvMA's policy work.
- 1.56 That the applicant agrees to sign up to and abide by the AvMA Obligations of Panel Membership (3.1 to 3.20) and the Code of Conduct for AvMA Clinical Negligence Panel members (see Appendix 4).

### **Case reports**

- 1.57 In support of the above, applicants must submit documentary evidence of at least 5 completed clinical negligence cases which have been conducted by the applicant personally throughout in a claimant lawyer capacity. All these cases should have reached a final conclusion within the previous two years. Case reports must be submitted using the pro forma case report form.
- 1.58 Case reports are central to the application process. The case examples provide the core evidence to demonstrate that the applicant meets the required standard of clinical negligence practice and that they satisfy the application criteria in terms of their skills, knowledge and experience.
- 1.59 As the case reports provide essential evidence of your skills as a clinical negligence practitioner and litigator, the case reports should generally include no more than 1 pre-issue settlements. If appropriate, contact AvMA for advice.
- 1.60 The case reports alone may form grounds for rejection of an application if AvMA is not satisfied that the case examples demonstrate the standard expected of an experienced specialist clinical negligence practitioner and that will assure clients' of a high standard of legal service.
- 1.61 If the applicant has been on an extended period of leave in the previous two years (health, unemployment, sabbatical or maternity leave), AvMA may consider cases which have concluded outside the two year period or cases which are currently approaching settlement. However, this should be discussed with AvMA prior to submitting an application to confirm whether the selection is likely to satisfy the application requirements and/or whether additional cases will be required.
- 1.62 Case reports must be completed by the applicant. Although it is permitted for the delegation of completing data such as names and dates, these forms must be personally checked by the applicant before signing. A short summary must be provided by the applicant in their own words. Applications that simply refer to an attached document (such as counsel's advice) that has not been written by the applicant will be rejected.

- 1.63 The five submitted case reports should include 4 cases which have settled for compensation and 1 case which has been abandoned. The cases should include:
- (i) Two cases settled for damages in excess of £100,000
  - (ii) At least one case that has been to trial or been prepared for trial
  - (iii) One case which has been discontinued either after obtaining medical reports or at any stage thereafter. For discontinued cases, the applicant must submit copies of the relevant medical reports and counsel's opinion if obtained.
- 1.64 AvMA wants applicants to be in a position to submit cases which best demonstrate the breadth of their specialist practice and their experience. If applicants anticipate difficulties in meeting the case report requirements, they are encouraged to contact AvMA for advice. AvMA may be able to suggest alternative approaches that would be acceptable including submitting cases that may fall outside of the criteria. It would also be helpful when submitting an application for applicants to tell AvMA more about their track record and clinical negligence experience including notable cases they have conducted.
- 1.65 **If you do not have sufficient cases that match the criteria set out above, contact AvMA for advice on whether alternative cases can be submitted.**

## Section Two - Application Procedure

### Submitting your application

- 2.1 Application to the AvMA Panel is initially made by completing the application questionnaire and submitting the required documentation. In addition the applicant must comply with the following:
- (i) Sign the form of declaration
  - (ii) Pay the non-refundable fee of £450.00 + VAT.
  - (iii) Submit four case reports (1.63) on cases which have settled for compensation in the previous two years, including two cases which have settled for over £100,000 and a case which has gone to trial or been prepared for trial.
  - (iv) Submit one case report on a case which has been discontinued in the previous two years together with copies of the relevant medical reports, and counsel's opinion if obtained.
  - (v) Outcome data in the form of a case list for the department on closed and active clinical negligence cases for the past 12 months. This should include date of retainer, nature of case, indication of current status (e.g. open, settled, abandoned), settlement figure and date of settlement. If your data systems do not allow you to easily produce data in this format, you are asked to provide the nearest equivalent and/or to discuss with AvMA.
- 2.2 You should submit two copies of your application: a hard copy and an electronic copy via email.
- 2.3 If you would like to discuss the application process, issues around the selection of case reports or any other matters prior to submitting your application, we would encourage you to contact the panel administrator or a member of the AvMA Panel Committee.

### AvMA Panel Committee

- 2.4 Applications are assessed by members of the AvMA Panel Committee.
- 2.5 The AvMA Panel Committee will include a clinical negligence solicitor who will either be a member of AvMA's staff and/or an external assessor (see 2.6), a senior member of the Advice and Information team, and at least one other senior member of AvMA's staff.
- 2.6 External assessors may be co-opted onto the AvMA Panel Committee to assist with assessments and interviewing applicants and will be accredited (AvMA/Law Society) clinical negligence specialists of at least 10 years standing.

### Timetable and procedure for the preliminary consideration of applications

- 2.7 Applicants requesting an application form for the AvMA Panel should be sent one within one working week. The application packs are also available on AvMA's website.

- 2.8 Applicants should receive an acknowledgment on receipt of their application. If the application is incomplete then the applicant will be advised of this and asked to submit further information. There will be no additional administrative fee for this.
- 2.9 The applicant will be told how long the preliminary consideration should take (this should not normally be longer than two months following receipt of the complete application and any outstanding documents) and that they should maintain contact with AvMA in the intervening period including notification of any change in circumstances.

### **Assessment Procedure**

- 2.10 The assessment procedure comprises two stages, a preliminary assessment (Stage 1) followed where appropriate by an interview (Stage 2).

#### **Stage 1**

- 2.11 The application will be reviewed by at least one internal assessor from the AvMA Panel Committee. The assessor(s) may request further information or clarification in order to complete the preliminary assessment. This may include additional information in support of the case reports e.g. expert reports, counsel's opinion, schedule of damages.
- 2.12 The assessors(s) reviewing the application will complete a form to record whether the applicant complies with the stated criteria for inclusion on the panel and to assess the quality of the application and a recommendation as to what should happen at this stage. This should take place within two months of the complete application being received.
- 2.13 If the initial assessment indicates the application satisfies the basic criteria the applicant will be invited to attend an interview (see Stage 2 below).
- 2.14 If the initial assessment indicates the application fails to satisfy the application requirements and criteria, the application will be considered by at least one additional assessor.
- 2.15 At two month intervals the AvMA Panel Committee will convene and consider individual applications in detail. A record of these discussions will be made for AvMA's use.
- 2.16 If an application is found not to satisfy the application requirements and is rejected following the preliminary consideration, the applicant will be given full reasons for this and which aspect of the requirements has not been attained. The applicant should be informed of the right to appeal.
- 2.17 If the AvMA Panel Committee considers that further information or clarification is required before a decision can be reached, the applicant will be contacted and on receipt of this further information, the matter will be re-submitted to the AvMA Panel Committee. The applicant will be required to respond within the time limit set by the AvMA Panel Committee. Failure to respond within the time limits set by AvMA may result in the application being considered to have been withdrawn and the applicant will have to re-apply after the requisite 12 month period and the payment of the appropriate fee.

- 2.18 It is open to the AvMA Panel Committee to defer any decision for a period not to exceed 12 months. The onus is on the applicant to contact AvMA to request re-consideration prior to expiry of the 12 month period. Should the period exceed 12 months then a fresh application will have to be made and the fee applicable at that time will have to be paid. Unless the delay has been caused by AvMA, any application which has been open for more than 12 months will be deemed withdrawn and the applicant will have to reapply.
- 2.19 Should it be apparent that an applicant requires more time in which to develop his/her skills, the applicant will be invited to re-apply on attaining such experience.

### **Stage 2 – Interview**

- 2.20 Where an applicant is deemed to satisfy the basic requirements as assessed from the documentation, the applicant will be invited to attend an interview. The interview is integral to the assessment process. Please note that AvMA will not reimburse for any expenses incurred for attending the interview whether the applicant is successful or not.
- 2.21 AvMA may also select to invite applicants to interview who are considered on paper to be below the stated criteria but where it is felt that an interview may give the applicant the opportunity to present their case more fully.
- 2.22 The purpose of the interview is to explore the application further and to address potential weaknesses either apparent from the applicant's response to the questionnaire or other issues arising for example:
- Further clarification of the applicant's experience is required
  - There are questions over the applicant's understanding of the medical issues
  - There are concerns as to the quality of client care provided
  - The applicant has less than one year's contact with AvMA through the Lawyers Resource Service
  - There are issues arising from the submitted case reports
  - The application is a re-application either from a previous AvMA Panel member who has been removed for any reason or from an applicant whose application has previously been rejected
- 2.23 Even where an applicant appears to fully satisfy the criteria on paper, the applicant will still be invited to interview. AvMA believes it is important to develop a good working relationship with all our panel members and an interview to explore their practice in more detail is considered an important first step. It also enables the prospective panel member to learn more about AvMA.
- 2.24 At interview, the applicant will be seen by members of the AvMA Panel Committee and/or by external assessors that should include at least one member who considered the original application. The applicant can expect that they will be asked about the submitted case reports as well as past and present cases. The latter is to understand more about the applicant's track record and experience as a claimant clinical negligence specialist.

- 2.25 Interviews will also include an assessment of an applicant's medical knowledge and understanding. This may be achieved either through the discussion of the applicant's cases or in some instances, in the form of a verbal or written test of basic medical knowledge and understanding.

### **Successful applications**

- 2.26 Following interview, the application and interview notes together with any additional information submitted by the applicant following interview will be referred back to the AvMA Panel Committee for consideration.
- 2.27 If the application is accepted by the AvMA Panel Committee, the applicant will be informed by letter and sent a copy of the Code of Conduct and the Obligations of panel membership. The panel applicant will be asked to confirm that they agree to abide by the Code and Obligations together with any conditions attached to panel membership. The applicant should make any assistants or others assisting with AvMA cases aware of the Code of Conduct and Obligations of AvMA Panel membership.
- 2.28 AvMA reserves the right to attach conditions to panel membership where it is considered there are matters that the panel member needs to address e.g. training, support, caseloads, and to limit the period for which the certificate of membership is valid, subject to a successful formal review when a further certificate will be issued for the remainder of the five year term.
- 2.29 The newly appointed panel member will receive a certificate of panel membership confirming the date of acceptance to the AvMA Clinical Negligence Panel and its expiry.
- 2.30 The senior partner (or appropriate person) at the firm, should be made aware of the obligations of panel membership and, in particular, the obligations in relation to referred cases and AvMA Panel members who change firms.

### **Re-accreditation**

- 2.31 Re-accreditation is every five years for an additional five year period. The relevant application fee applicable at the time of re-application is payable.

### **Rejected applications**

- 2.1 If the application is rejected either after consideration of the documentation at Stage 1 or following interview at Stage 2, reasons will be given in terms of the stated standards, eligibility or criteria that the applicant has failed to meet. The applicant will be given notice of their right to appeal. Appeals must be lodged within 20 working days of notification of rejection of their application for reaccreditation. See Appendix 1 for details of the appeals procedure.
- 2.32 In circumstances where an applicant does not elect for an appeal then s/he may not re-apply for panel membership until 12 months have elapsed from the date of refusal.



**Change of firm during the application process**

- 2.33 In the event that the applicant changes firm while an application for AvMA Panel membership is pending, the application will be deferred for a period of four months.
- 2.34 Prior to re-consideration of the application the AvMA Panel Committee will require the applicant to re-submit Part 2 of the questionnaire. If the deferment results in the application pending for more than 12 months then the applicant will in most instances have to re-apply with the payment of the relevant fee.

## **Section Three – Working with AvMA**

### **Obligations of AvMA Panel Membership**

- 3.1 As a member of the AvMA Specialist Clinical Negligence Panel, you agree to abide by the Obligations of AvMA Panel Membership as set out below (3.2 to 3.21):

#### **Code of Conduct**

- 3.2 You will abide by the Code of Conduct for AvMA Panel solicitors.

#### **Referrals and reporting requirements**

- 3.3 In general you will be obliged to have personal conduct of cases formally referred to you by AvMA and not to pass sole conduct of such cases to another fee earner without agreement. Transfer of a client to another panel member or fee earner must be agreed with AvMA beforehand.
- 3.4 If referred cases or cases signposted to you via AvMA's helpline are conducted by non-panel members, the AvMA Panel member must retain responsibility for the case and exercise close supervision including regular review to ensure that the case is handled to the standard to be expected from an accredited AvMA Panel solicitor. The panel member should have sufficient direct involvement with the case to be able to discuss it with the client or AvMA.
- 3.5 To acknowledge receipt of formal referrals and to comply with AvMA's reporting requirements for referred cases.
- 3.6 To contact AvMA with full details if any serious problems affecting the conduct of the case arises, particularly any of the matters listed in Appendix 2, paragraph A2.3.
- 3.7 With the client's consent, to provide any information that AvMA requires about the referred case including copies of documents. Except in extraordinary circumstances, which must be discussed with AvMA beforehand, not to make any charges to clients for supplying information to AvMA.
- 3.8 Not to discontinue AvMA referred cases or apply for discharge of a public funding certificate without first reporting to AvMA.
- 3.9 To remind AvMA clients of the facility to contact AvMA if they are undecided or troubled by any aspect of the case, or require support services that the AvMA Support Network can provide.
- 3.10 Ensure that any member of the firm acting in relation to AvMA referred cases is made aware of these obligations.
- 3.11 Report details of settlements including breakdown of awards obtained giving as much detail as the AvMA referred client allows. It is in keeping with the spirit of AvMA that lawyers exchange information that will benefit others who represent victims of medical accidents when they can.

### **Funding and costs**

- 3.12 To act at all times with integrity with respect to funding arrangements and costs and in the client's best interests. To be alive to any potential conflict of interest with your client in relation to costs. To ensure that fees and charges are fair and reasonable.
- 3.13 It is AvMA's expectation that AvMA Panel firms will minimise deductions from damages in relation to costs unless these are clearly justified and in line with what a client might reasonably expect in relation to current funding arrangements.

### **Reporting changes to your practice**

- 3.14 In the event of departure from the firm, to give AvMA two months' notice or, if not practicable, as soon as possible. If there are no other AvMA Panel members at the firm, to supply AvMA with details of all AvMA referred clients for whom the panel member is acting so as to enable AvMA to offer clients the choice of: remaining with the firm, going with the panel member or being referred to another panel member.
- 3.15 To inform AvMA of any significant change in their practice that might affect their ability to accept referrals. Failure to inform AvMA may lead to withdrawal of panel membership. Where a solicitor is no longer predominantly undertaking claimant clinical negligence work, their panel membership may be withdrawn. Consultancy posts would not generally meet AvMA's criteria for new or recently appointed applicants to the panel. For existing AvMA panel members of at least 10 years standing, consultancy posts may meet AvMA's criteria for continued panel membership providing the panel member can demonstrate that they continue to practise as a clinical negligence specialist which would include hands on involvement in cases and in supervision. Panel members should approach AvMA for guidance.

### **Training and networking**

- 3.16 To make every effort to attend AvMA Lawyers Support Group meetings and utilise other opportunities to network and share expertise with other claimant clinical negligence practitioners.
- 3.17 Members are expected to attend training courses relevant to clinical negligence. In any event, in order to be eligible for reaccreditation members are expected to undertake a minimum of 12 hours training per annum in courses relevant to clinical negligence including courses with a predominantly medical content.

### **Maintaining contact with AvMA**

- 3.18 AvMA is committed to maintaining the standards of the AvMA Specialist Clinical Negligence Panel. It is essential that AvMA has up to date information about AvMA Panel members and their firms. It is therefore important that AvMA Panel members maintain regular contact with AvMA, regardless of whether they have received any referrals. Maintaining contact, for example by informing AvMA of settled cases, is an important means of allowing AvMA to update their knowledge of a panel member's current practice and areas of expertise. It also allows AvMA to identify the most appropriate practitioner for cases requiring a particular expertise. Staying in touch could also involve contributing to the Lawyer's Service Newsletter and the AvMA Medical and Legal Journal (Clinical Risk), suggesting ideas for conferences and courses as well as contributing to AvMA's policy work.

- 3.19 AvMA Panel members are expected to attend the annual AvMA Panel meeting. Should a member not attend for two consecutive meetings (without giving good reason) this may mean an application for re-accreditation will be refused.
- 3.20 Where there has been no contact with a panel member for a period of twelve months or more, AvMA may require a formal review of the member's current practice. The matter may be referred to the AvMA Panel Committee, for consideration. The AvMA Panel Committee may require the member to provide details of their current practice and the panel member may be required to attend an interview for this purpose. In extreme cases, where there has been no contact for an extended period, the AvMA Panel Committee may revoke panel membership.

### **Client Complaints**

- 3.21 If a client complains to AvMA about the conduct of an AvMA panel solicitor, the matter will initially be considered by a senior advisor from the Medico-Legal Department in consultation with a member(s) of the AvMA Panel Committee. If the complaint is found to be of a minor nature, such as a failure to attend to a non-urgent telephone call or letter, the advisor will seek to resolve the matter without the need to resort to formal procedures.
- 3.22 For more serious matters or where the client has raised a number of concerns about the conduct of their case, AvMA will in most instances advise the client to make a complaint to the firm and to then report back the outcome to AvMA including supplying copies of the complaints correspondence and other relevant documents. Members of the AvMA Panel Committee will then review the complaints documentation to determine whether the matter should be referred for consideration under AvMA's disciplinary procedures as either:
- (i) Category One: this includes the most serious allegations including excessive fees, excessive delay, matters of personal and professional conduct, action by the professional regulator and any other matters that could result in removal from the AvMA panel (appendix 2).
  - (ii) Category Two: this might include matters such as a persistent failure to meet panel standards in specific areas or matters that might warrant conditions being attached to panel membership (appendix 3).
- 3.23 If when a client first reports a complaint to AvMA, it is considered to be of a very serious nature, the AvMA Panel Committee may decide that immediate action is warranted under AvMA's disciplinary procedures. This may include taking steps to immediately suspend AvMA Panel membership pending further investigation. Subject to the nature of the complaint, AvMA may also advise the client to report their concerns to the relevant professional regulator.

### **Changing firms**

#### **Suspension from the active referral list**

- 3.24 In the event that an existing AvMA Panel solicitor moves to a new firm or the panel member's firm merges or splits during the five year period of membership, the panel member may be subject to an interim suspension from AvMA's active referral list and eligibility for an AvMA website listing. AvMA must be satisfied that the new firm and/or new arrangements will provide the resources, support and backup to enable

the panel solicitor to continue to provide the standard of service expected of AvMA Panel membership. AvMA Panel members are therefore required to apply for reinstatement following a change of firms. Different arrangements will apply subject to whether there are other AvMA Panel members within the clinical negligence department that the panel member will be joining.

### **Move to an AvMA Panel Firm**

- 3.25 If the AvMA Panel member moves to a firm where there are other AvMA Panel members but there has been limited recent contact with that particular firm or department, AvMA may require the panel member to complete a change of firm questionnaire as part of their application for reinstatement.
- 3.26 If AvMA is satisfied that through regular contact with that firm, or through a recent application from that firm that they do not require a detailed update, the member will be required to either complete an abridged questionnaire or write to AvMA setting out any changes arising from their change of firm either to the department they are joining or to their practice and any change to their role. The panel member will be advised accordingly. Once the panel member has provided the relevant information and AvMA is satisfied that this meets the requirements for continued panel membership, their panel membership will be reinstated and a new certificate of panel membership will be issued for the remainder of the five year term of membership.

### **Move to a firm or office that where there are no AvMA Panel members**

- 3.27 If the panel member moves to a firm (or a new office/department of a current AvMA firm) without an existing AvMA Panel member, the panel member will be required to complete either a change of firm questionnaire or Part Two of the application questionnaire as required by AvMA within six months of commencing at the new firm.
- 3.28 The panel member will normally be subject to a suspension from AvMA's active referral list and entitlement to a website listing for a period of up to six months. (Please refer to the Obligations of Panel Solicitors with respect to existing referral cases in paragraphs 3.2-3.20.)
- 3.29 AvMA must be satisfied that the arrangements at the new firm meet AvMA's criteria for continued panel membership. The panel member may be required to attend an interview to discuss the new arrangements. If after the six month period AvMA is not satisfied that the arrangements meet AvMA's panel criteria then panel membership may be withdrawn. The member has a right to appeal the decision in accordance with the procedures set out in Appendix 1.
- 3.30 Failure to advise AvMA of a change of firm or failure to submit this information within six months of moving firms without good cause may result in withdrawal of AvMA panel membership.

### **Suspension and AvMA referred cases**

- 3.31 In all cases of suspension from the active referral list whether as a result of a move of firms, disciplinary action, a review of practice, or during a career break, no new cases will be referred or signposted to the AvMA Panel member.
- 3.32 Should the AvMA Panel member be absent from the office for an extended period of time (e.g. on maternity leave, sabbatical, long-term illness or unemployment) then the

panel member will retain their AvMA Panel membership but will be suspended for the purposes of referrals and an AvMA website listing and any previously referred cases must be transferred to another AvMA Panel member in the firm. If there is no other panel member in the firm then the onus is on the panel member to ensure there are appropriate arrangements in the firm and to advise AvMA accordingly.

### **Career Breaks**

- 3.33 In the event that a panel member takes an extended break due to maternity leave, long illness, sabbatical or unemployment, the panel member must provide AvMA with details of their plans. AvMA must whenever possible be informed at least two months before the start of the career break. The AvMA Panel Committee will decide whether suspension for the purposes of referrals and a website listing is appropriate for the period of the break (in any event not to exceed 12 months). Should the break exceed 12 months, AvMA Panel membership will normally be withdrawn and the panel member will be required to re-apply for panel membership but you should contact AvMA for further advice.
- 3.34 In the event that a prospective AvMA Panel member or an AvMA Panel member applying for reaccreditation finds difficulty in compliance with the criteria due to a career break then the AvMA Panel Committee will consider relevant experience attained both prior and subsequent to the career break provided that the career break period does not exceed 12 months.
- 3.35 Should a panel member be due to apply for re-accreditation during the career break or extended leave (because the five year period of membership has expired) then an application must be completed immediately after the panel member's return to practice.

### **Disciplinary action in relation to the AvMA Clinical Negligence Panel**

- 3.36 Membership of the AvMA Specialist Clinical Negligence Panel runs for a five year period. However, AvMA Panel membership is contingent upon continued provision of a specialist clinical negligence service and compliance with the obligations of panel membership as set out in this booklet.
- 3.37 Where serious concerns about the performance of any AvMA Clinical Negligence Panel member have been identified, this will be considered under AvMA's disciplinary procedures as set out in appendix 2.
- 3.38 In the event that AvMA decides the matter does not warrant formal action under the disciplinary procedures but where it is recommended that the panel member takes corrective action, conditions may be attached to panel membership.

## **APPENDIX 1**

### **Review Procedure in relation to rejection of an application for membership/reaccreditation of the AvMA Specialist Clinical Negligence Panel**

#### **Right of Review**

- A1.1** There is a right of review in relation to:
- a) Rejection of an application for membership of the AvMA Specialist Clinical Negligence Panel;
  - b) Rejection of an application for reaccreditation for the AvMA Specialist Clinical Negligence Panel leading to withdrawal of panel membership;
  - c) Rejection of an application for reaccreditation for the AvMA Specialist Clinical Negligence Panel following a change of firm, leading to a withdrawal of panel membership;
  - d) Any conditions imposed on the acceptance of membership or reaccreditation of membership of the AvMA Specialist Clinical Negligence Panel;
  - e) Where a Panel member has been removed from the Panel, following a show cause letter, on the basis that he/ she no longer satisfies the criteria for membership of the Panel.

#### **Time Limit and Fee for request for review**

- A1.2.1** The Panel member or applicant for panel membership has the right to request a review within 40 working days of notification of:
- a) rejection of their application for membership; or
  - b) rejection of their application for reaccreditation; or
  - c) notification being given of conditions being imposed on their membership; or
  - d) notification being given of their removal from the Panel on the basis that they no longer meet the criteria for membership.

The request must be made in writing to the Panel Administrator, giving full reasons for the request and including any supporting statements/ documentation.

- A1.2.2** A fee of £250 plus VAT must be paid. If an application for a review is successful AvMA will have discretion to return this fee to the Appellant, depending on the circumstances of the case.

#### **Initial consideration of the request for review**

- A1.3.2** Any request for a review will initially be considered by the Panel Administrator to check whether the request has been made in time. If the request appears to be out of time, the Panel Administrator will write to the Appellant asking for an explanation as to the reasons for lateness. The Appellant must respond within 10 working days of the letter being sent.
- A1.3.5** The Panel Committee will consider any explanation received as to why the request was late and decide whether good reason for the late request has been shown. If so, the review will be allowed to proceed.
- A1.3.6** The Panel Administrator will write to the Appellant to confirm the decision of the Panel Committee on whether the review can go ahead.

## **Determination of the Review**

### **External Adjudicators**

- A1.4.1** The review will be carried out by two “external adjudicators” drawn from a panel of external assessors who will be practitioners with a minimum of 10 years of clinical negligence experience and who are members of the AvMA and/ or the Law Society Clinical Negligence Panel.

### **Documentation**

- A1.5.1** The following documentation will be submitted to the External Adjudicators for consideration:
- The request for review;
  - Any correspondence in connection with the request;
  - Any documentation or other evidence submitted in support of the request;
  - The original application for membership or reaccreditation;
  - Any evidence submitted by the Appellant in connection with the original application;
  - The grounds for rejection or imposition of conditions on membership;
  - Any correspondence between AvMA and the Applicant;
  - A note of any meeting/ interview that took place with the Appellant prior to the decision being made about their membership of the Panel.

### **Interview**

- A1.6.1** The External Adjudicators or Appellant can ask for an interview to take place before a decision is made.
- A1.6.2** If the Appellant requires an interview this should be requested at the same time as sending in the application for a review.



- A1.6.3** If the External Adjudicators require an interview this should be requested within 20 working days of the papers being sent to them.
- A1.6.4** The Appellant can make representations to the External Adjudicators at any interview which takes place. These representations should deal with the reasons given for refusal of the application for membership or reaccreditation as a member of the AvMA Specialist Clinical Negligence Panel.
- A1.6.5** The External Adjudicators can raise questions with the Appellant about the reasons given for refusal or about any other issues that they consider relevant to the Appellant's potential membership of the Panel.
- A1.6.6** If at all possible, any interview should take place within 60 working days of a request by the Appellant or 40 working days of a request by the External Adjudicators, whichever is the later.
- A1.6.7** A record shall be prepared of any interview that does take place so that this can be considered when a final decision is made on the review.

### **Recommendations of the External Adjudicators**

- A1.7.1** If at all possible, the External Adjudicators will decide the review within 80 working days of the documentation being sent to them or within 20 working days of an interview with the Appellant, whichever is the later.
- A1.7.2** The External Adjudicators will make recommendations to the Panel Committee to:
- a) Confirm the original decision to reject the application or reaccreditation application for membership of the Panel; or
  - b) Confirm the decision to withdraw AvMA Panel membership where the Panel member no longer satisfies the criteria for membership of the Panel
  - c) To change the decision and to grant membership of the Panel with or without conditions; or
  - d) To remove or alter conditions attached to membership.
- A1.7.3** The External Adjudicators will give brief reasons for their recommendations.

### **Decision of the Panel Committee following a review**

- A1.8.1** The recommendations of the External Adjudicators will be considered at the next meeting of the Panel Committee, when the decision about the Appellant's membership of the Panel or any conditions attached to membership will be reconsidered.
- A1.8.2** The Panel Administrator will send the decision made following the review to the Appellant within 10 working days of this being made by the Panel Committee.

## **Final Right of Appeal**

- A1.9.1** The Appellant will have a final right of appeal against the review decision of the Panel Committee in accordance with the procedure and limited to the grounds set out in Appendix 3.

## **Further Application for Panel Membership**

- A1.10.1** AvMA will write to the Appellant within 20 working days of the original decision to reject an application for panel membership or reaccreditation or to remove a member from the Panel to confirm the date on which membership is refused or the date upon which membership of the panel terminates. A further application for panel membership cannot be made until 12 months have elapsed from the date of the original decision.
- A1.10.2** If the decision of AvMA to reject an application for panel membership or reaccreditation, or to terminate membership of the Panel is reviewed and the original decision made by AvMA is upheld on review, then a further application for AvMA panel membership cannot be made until 12 months have elapsed from the date of the last decision in the review process.

## APPENDIX 2

### Disciplinary Procedure

#### Complaints that will be investigated

- A2.1.1** AvMA does not have the resources to investigate every complaint that is made by a client. There are other schemes that a client can use to ask for the way that their case has been dealt with to be looked at. Information is available on the AvMA website about how to make a complaint if a client is not happy about the way that their case has been handled.
- A2.1.2** The only sanction that AvMA has is to remove a solicitor from the Panel or to add conditions to their membership. **AvMA will therefore only investigate cases where it appears that disciplinary action may be needed against a Panel member.**
- A2.1.3** In cases where the outcome of the case or way that it has been dealt with is in question, the client will normally be advised to follow the complaints procedure of the solicitors' firm and, if appropriate, to make a complaint to the Legal Ombudsman, Solicitors' Regulation Authority or CILEx Regulation.
- A2.1.4** The client will be asked to send the outcome of any external complaint investigation to AvMA in order that AvMA can determine whether there will be grounds for action under AvMA's disciplinary process.
- A2.1.5** Complaints which raise serious concerns about the performance or conduct of any AvMA panel member which may lead to disciplinary action will be investigated. These will be cases where the panel member is in serious breach of the obligations of panel membership or is deemed to have brought the panel into disrepute. This might include, for example:
- Complaint by a client of a very serious failure in the service provided, or a series of complaints by clients of failures in the service provided which raise wider issues about the solicitor's membership of the Panel.
  - Where the panel member has had any cases struck out for want of prosecution where this appears to be the fault of the panel member, such as unreasonable delay in prosecuting the case.
  - The panel member being subject to disciplinary action by the Solicitors Regulation Authority (SRA)/Legal Executive being subject to disciplinary action by CILEx Regulation and/or where issues of misconduct have been brought to the attention of AvMA.
  - Other allegation of serious professional misconduct.
  - Any serious breaches in complying with the 'Obligations of AvMA Panel Membership' or the 'Code of Conduct'.
  - Unacceptable advertising or marketing practices.

- Where serious concerns have been raised about the panel member's suitability to remain on the panel because of personal or professional conduct.

**A2.1.6** The Panel Administrator will send any client who makes a complaint a copy of the Disciplinary Procedure so that the client is aware of the circumstances in which the Disciplinary Procedure will apply, the steps that will be followed, the appeal process and the time limits which may apply.

**A2.1.7** The client must be informed that any relevant documentation and other evidence sent in support of their complaint which is to be included in the documentation to be considered by the Disciplinary Committee, will also be sent to the AvMA panel solicitor.

### **Time limit for complaints**

**A2.2.1** To help ensure the effectiveness of any investigation, a complaint should be made in writing to the Panel Administrator as soon as possible and normally within two years of the conduct/ matters being complained about or within 2 years of the conclusion of any investigation by external or professional bodies or the client becoming aware that there were grounds for complaint.

**A2.2.2** In cases where the client has gone through the firm's complaints procedure or to the Legal Ombudsman, or to the Solicitors' Regulation Authority (SRA)/Solicitors' Disciplinary Tribunal or CILEx Regulation, the time limit is normally two years after conclusion of the investigation of the client's complaint or 2 years of the client becoming aware that there were grounds for complaint, whichever is the later.

**A2.2.3** If the complaint is made outside the time periods set out in A2.2.1-2.2.2, the Panel Administrator will write to the client within 10 working days to ask why the complaint was not reported to AvMA previously and why it should be considered outside the normal time limits.

**A2.2.4** The client will have 20 working days from the date of the letter to give any reasons that he/ she wishes to rely on to explain why the complaint has been brought outside the normal time limits.

**A2.2.5** The Panel Committee will consider any explanation received as to why the complaint was not reported to AvMA previously and will decide whether good reason for the late complaint has been shown. If so, the complaint will be considered as set out below.

**A2.2.6** Where the Panel Committee is deciding whether to exercise discretion to allow an investigation of the complaint or other notification to be investigated outside of the normal time limits, the Panel Committee will consider:

- a) the circumstances of the case,
- b) the seriousness of the issues raised,
- c) whether it is still possible to have an effective investigation,

- d) whether the client would have realised that a complaint against a Panel member could be made, and
- e) any other factors that the Panel Committee considers are relevant to its decision.

**A2.2.7** The Panel Administrator will write to the client to confirm the decision of the Panel Committee within 10 working days of a decision being made.

### **Initial Consideration of whether the threshold for investigation is met**

**A2.3.1** The Panel Administrator or the Panel Administrator and another member of the Panel Committee, if the Panel Administrator considers this necessary, will consider the complaint to decide whether it raises any issues that may mean that disciplinary action against a Panel member is likely to be necessary. The person making the complaint may be asked to provide further information or documentation at this stage where the Panel Administrator considers this will assist in that determination.

**A2.3.2** If a decision is made that investigation is not appropriate, the Panel Administrator will write to the client within 20 working days to explain the reasons why. If appropriate, the client will be asked to send the outcome of any external complaint investigation to AvMA in accordance with paragraph A2.1.4.

**A2.3.3** If the person making the complaint disagrees with the Panel Administrator's decision not to investigate, they can make a complaint to AvMA and ask for this decision to be reviewed. The Panel Administrator should provide details of the AvMA complaints procedure.

### **Initial Investigations**

**A2.4.1** The Panel Administrator, and another member of the Panel Committee will decide what possible disciplinary issues arise from the complaint and will write to the Panel member within 20 working days of the conclusion being reached that the threshold for the investigation of disciplinary issues has been met.

**A2.4.2** This letter will set out details of the allegations made and the possible disciplinary issues that arise. Any documentation relevant to the possible disciplinary issues will be sent to the Panel member at the same time. The Panel Administrator will have the right to put questions to or to request additional documentation/ comments from the Panel Member.

**A2.4.3** The Panel member being investigated will have 40 working days to:

- a) send in any representations and evidence that he/ she wants to rely on in connection with the possible disciplinary issues; and
- b) to respond to any additional questions raised, and
- c) to provide any additional documentation requested.

- A2.4.4** Any representations and any documentation received from the Panel Member may be sent to the client for comment if this is considered appropriate by those investigating possible disciplinary issues. If documentation is sent to the client, he/ she has the right to send in comments on these representations and documentation within 20 working days of these being sent.
- A2.4.5** If a decision is made to investigate possible disciplinary action, the Panel Administrator and other member of the Panel Committee must consider whether immediate suspension from the Panel is necessary, considering the seriousness of the allegations raised.

### **Decision whether to move to Disciplinary Action**

- A2.5.1** If at all possible, the investigation to decide on whether disciplinary action should be pursued will be concluded within 60 working days of the letter sent to a Panel member notifying him/ her of the possibility of disciplinary action in accordance with paragraph A2.4.1.
- A2.5.2** Those investigating the complaint will decide whether the complaint has reached the threshold for disciplinary action to be taken against the Panel member.
- A2.5.3** The Panel member will be notified of the decision within 10 working days of the decision being made. A short report will be prepared by those who have investigated the complaint, confirming the documentation they have relied upon, the decision that they have made and the reasons for that decision.
- A2.5.4** Where AvMA is notified or becomes aware of serious issues as set out in paragraph A2.1.5 rather than a complaint being made, the issue(s) will still be investigated in accordance with the procedure set out in paragraphs A2.1.6 to A2.5.3.
- A2.5.5** If a decision is made that disciplinary action should be considered, a decision must also be made about whether the complaint or other notification raises issues that are so serious that the Panel member should be suspended from the Panel pending the outcome of disciplinary action. The effect of such suspension is that no further cases can be signposted or referred by AvMA to that solicitor (publicly funded or otherwise) and their entitlement to a listing on AvMA's 'Find a Solicitor' website may be suspended. In the most serious cases, the Panel member may be asked to remove reference to their AvMA Panel membership from their firm's publicity materials, pending the outcome of disciplinary action.

### **Disciplinary Action**

- A2.6.1** The Panel Administrator will prepare a bundle of documentation containing all the documents set out in paragraph A2.7.1 and the report set out in paragraph A2.5.3.

## Documentation

### A2.7.1 The bundle should include:

- The letter sent to the Panel member notifying them that an investigation leading to disciplinary action is being considered in accordance with paragraph A2.4.1;
- The reply and any documentation received from the Panel member in accordance with paragraph A2.4.3;
- Any other correspondence with the Panel member that has been relied upon in reaching the decision to move to disciplinary action;
- Any representations, documentation, correspondence or other evidence that has been relied upon in reaching the decision to move to disciplinary action;
- Any correspondence about the timing of an initial complaint if this is the way that issues were notified to AvMA.
- The report prepared by those investigating whether the threshold for disciplinary action was met in accordance with paragraph A2.5.3.

## Disciplinary Committee

**A2.8.1** An External Adjudicator, as defined in paragraph A1.4.1, and two members of the Panel Committee will be nominated by the Panel Administrator to take part in the disciplinary process.

**A2.8.2** A copy of the bundle of documentation will be provided to:

- a) The Panel member;
- b) The External Adjudicator;
- c) The two members of the Panel Committee who have been nominated to take part in the disciplinary process.

**A2.8.3** The decision on whether disciplinary action should be taken will be made by the External Adjudicator and two members of the Panel Committee and must not include the Panel Administrator or any Panel Committee members who took part in investigating the complaint.

**A2.8.4** The Panel member must be given a copy of all documents considered by the Disciplinary Committee and must be given the opportunity to comment on these documents.

## The Hearing

**A2.9.1** The Panel member will have the right to request a hearing before a decision on disciplinary action is made. Those deciding whether there should be disciplinary

action (as set out in paragraph *A2.8.1 above*) also have the right to ask the Panel member to attend a hearing.

- A2.9.2** If the Panel member wishes to attend a hearing, he must notify the Panel Administrator in writing. This notification must be given within 20 working days of notification of a decision to move to consideration of disciplinary action in accordance with paragraph *A2.5.3*.
- A2.9.3** If the Panel member confirms that he/ she would like a hearing, if possible, a date will be arranged no later than 40 working days after the request has been made in accordance with paragraph *A2.9.2* above.
- A2.9.4** If the Disciplinary Committee confirms that it would like a hearing, if possible, a date will be arranged no later than 40 working days after the request has been made in accordance with paragraph *A2.9.1* above.
- A2.9.5** On occasions it may not be possible to comply with the time limits set out in in Appendices 1-3. This should be the exception rather than the rule.
- A2.9.6** The Panel member will have the right to make representations at the hearing.
- A2.9.7** Members of the Disciplinary Committee can put additional questions to the Panel member at the hearing.
- A2.9.8** The Panel Administrator and any members of the Panel Committee who investigated the complaint and made the decision to proceed to disciplinary action shall take no part in the hearing other than to answer questions from the Disciplinary Committee. They should also not be present or take part in any discussion before the hearing or after the hearing before a decision is made and will have no voting rights in relation to the decision made on disciplinary action.
- A2.9.9** The panel member is entitled to have legal representation at the hearing at his/ her own cost.
- A2.9.10** There is no entitlement to costs from AvMA.
- A2.9.11** A full note shall be taken of any evidence given and/ or representations made at a hearing, but not of any discussion before the hearing or after the hearing before a decision is made.
- A2.9.12** The External Adjudicator will chair any hearing that does take place.

### **Decision without a hearing**

- A2.10.1** If the panel member does not request a hearing or does not attend a hearing requested by the Disciplinary Committee, a decision will be made based on the documentation before the Disciplinary Committee.
- A2.10.2** The Disciplinary Committee will still have the right to request clarification from those who investigated the complaint and made the decision to proceed to disciplinary action.



**A2.10.3** Where no hearing is requested by the Panel member or Disciplinary Committee, a decision on disciplinary action should be made no later than 40 working days after the expiry of the time limit for the Panel member to request a hearing in accordance with paragraph A2.9.2 above.

### **Decision of the Disciplinary Committee**

**A2.11.1** The Disciplinary Committee will have the power to:

- a) Dismiss the allegations against the Panel member and to decide that no disciplinary action should be taken;
- b) Find that some or all the allegations have been proved, and that conditions should be placed on the Panel member's membership of the AvMA Specialist Clinical Negligence Panel. This could include conditions such as additional monitoring of the solicitor's cases or undergoing additional training;
- c) Find that some or all the allegations have been proved and make recommendations as to the future conduct of the Panel member;
- d) Find that some or all the allegations have been proved, and place the Panel Member on probation in relation to panel membership;
- e) Find that some or all the allegations have been proved, and that the Panel member should be suspended from the AvMA Specialist Clinical Negligence Panel for a period, membership only being reinstated subject to the Panel member undertaking corrective action;
- f) Find that some or all allegations have been proved and that the Panel member should be removed from the AvMA Specialist Clinical Negligence Panel.

**A2.11.2** The panel member will be notified of the decision within 10 working days of the decision being made. The notification to the panel member will confirm:

- a) Any facts found by the Disciplinary Committee;
- b) The decision made; and
- c) The reasons for that decision.

**A2.11.3** If the Panel member resigns from the AvMA Panel prior to the conclusion of any disciplinary action, the Disciplinary Committee will reach a decision on disciplinary action based on the evidence before them. The former Panel member will be advised of the outcome of that decision.

### **Test to be applied**

**A2.12.1** Where factual issues are determined, these should be decided on the balance of probability.

## **Effect of withdrawal of AvMA Panel membership**

- A2.13.1** If AvMA panel membership is withdrawn following disciplinary action and no appeal has been lodged, panel membership will terminate from the date the member was notified of his/ her removal from the Panel.
- A2.13.2** Where the Panel member unsuccessfully appeals the decision in accordance with *Appendix 3*, panel membership will terminate from the date the member was notified of the decision made on appeal.
- A2.13.3** Following receipt of written notice of termination the former Panel member must contact all his/her AvMA referred clients to inform them of removal from the Panel and advise them to contact AvMA if they wish to have their case referred to another member of the AvMA Specialist Clinical Negligence Panel. The former member must provide AvMA with a list of clients referred to them by AvMA.
- A2.13.4** If a client wants the AvMA Panel member to continue to represent them, and for AvMA's continued involvement, the former Panel member will be expected to continue to report to AvMA on the progress of the case. Failure to comply will be reported to the client.
- A2.13.5** Following removal, the former Panel member must remove any reference to AvMA Panel membership from publicity and other materials.
- A2.13.6** Members removed from the Panel may not re-apply for AvMA Panel membership until twelve months have elapsed from the date of the final decision to remove. The applicant will have to demonstrate that systems have been instituted to remedy the issues that led to Panel membership being withdrawn (e.g. increase in staffing resources/qualifications further training etc.).
- A2.13.7** When a member is removed from the AvMA Panel, the Legal Aid Agency (LAA) and the Chief Assessor of the Law Society Clinical Negligence accreditation scheme will be notified and where appropriate, the LAA/ Law Society will be supplied with a copy of the final reasons for removal.

## APPENDIX 3

### Appeal Procedure against decision in Disciplinary Proceedings or rejection of an application for membership/reaccreditation or removal from the AvMA Specialist Clinical Negligence Panel

#### Right of appeal and time limit for appeal

##### Right of Appeal

- A3.1.1** There is a right of appeal in relation to any decision made under paragraph *A1.8.1 of Appendix 1 or A2.9.1 of Appendix 2*.
- A3.1.2** The panel member must appeal within 20 working days of notification of the decision being sent by writing to the Panel Administrator. Full grounds for the appeal must be given.
- A3.1.3** A fee of £250 plus VAT must be paid. In the event of a successful appeal the Trustees have the discretion to decide that this fee should be repaid to the Appellant, depending on the circumstances of the case.

#### Grounds for appeal and initial consideration of the appeal

- A3.2.1** An appeal can be made on one or more of the following grounds:
- a) Breach of Natural Justice; or
  - b) The decision is so unreasonable that no reasonable body could have reached the same decision; or
  - c) Failure to comply with the procedure set out in Appendix 1 or 2; or
  - d) Error of Law.
- A3.2.2** Any appeal received will initially be considered by a Trustee with legal knowledge/ experience, or, if there is no Trustee with legal knowledge/ experience, by an External Adjudicator (as defined in paragraph *A1.4.1*), to consider whether the appeal has been made in time and whether a valid ground for appeal has been received. The Trustee can seek external legal advice if he/ she feels that this is necessary.
- A3.2.3** If an appeal appears to be out of time or does not set out a valid ground for appeal, the Panel Administrator will notify the Appellant within 10 working days that the appeal does not comply with paragraph *A3.1.2 and/ or A3.2.1* above.
- A3.2.4** Where a valid ground for appeal has not been made, the Appellant will have 10 working days from the date of the notification to provide valid grounds for appeal

in writing. If valid grounds for appeal are not supplied within this time limit, the appeal cannot proceed.

- A3.2.5** Where the appeal appears to be out of time, the Appellant will have 10 working days from the date of the notification to provide any representations and evidence that he/ she wishes to rely on to establish that the appeal has been made in time or that there are exceptional grounds to allow the appeal to proceed outside the time limit.
- A3.2.6** Within 15 working days of receiving further grounds for appeal and/or representations and evidence in relation to the timing of the appeal, the Trustee/ External Adjudicator will decide whether the appeal has been made in time or exceptional grounds shown to allow the appeal to proceed out of time and/ or whether a valid ground for appeal has been made.
- A3.2.7** The Appellant will be notified of the decision on whether the appeal can proceed within 10 working days. There will be no right of appeal against this decision. If the Appellant alleges that the procedure set out in Appendix 3 has not been followed, he/ she can make a complaint under the AvMA Complaint's Procedure.

### **Determination of the Appeal**

- A3.3.1** The appeal will be considered by two Trustees from the AvMA Board of Trustees.
- A3.3.2** The only exception to this is where this will lead to a delay of more than 40 working days in considering the appeal, when subject to the Appellant's written agreement, one Trustee can be appointed.
- A3.3.3** The Trustees can seek external legal advice if they feel that this is necessary.

### **Documentation**

- A3.4.1** The following documentation will be submitted to the Trustees for consideration:
- The Grounds for Appeal;
  - Any correspondence in connection with the grounds for appeal;
  - Any revised Grounds for appeal;
  - Any correspondence, documentation or other evidence in connection with the time limit to appeal;
  - All documentation seen by the Panel Committee/ Disciplinary Committee which reached the decision being appealed;
  - Any correspondence between AvMA and the Panel member in connection with the decision being appealed;
  - Notes relating to any hearing that took place.

- A3.4.2** New documentation from the Appellant or AvMA will only be considered in exceptional circumstances when the party can show that there is good reason why the documentation was not available when the decision under appeal was made, that it is relevant to the decision under appeal and in the interests of justice for it to be considered.
- A3.4.3** For the avoidance of doubt the Appellant is entitled to see any documentation sent to the Trustees of which he/ she does not already have copies.
- A3.4.4** The Appellant has the right to send in comments on any documentation that he/ she has not previously seen within 20 working days of the documentation being sent. Any comments will be sent to the Trustees within 10 working days of receipt.

### **The Decision**

- A3.5.1** The appeal shall be considered on the papers unless the Trustees feel that a further hearing is essential to properly deal with the appeal.
- A3.5.2** The Trustees will decide the appeal within 56 working days of documentation being sent to them in accordance with paragraph A3.4.1 or within 56 working days of any further comments being received from the Appellant in accordance with paragraph A3.4.4, whichever is the later.
- A3.5.3** The Trustees must also decide any factual issues on the balance of probability.
- A3.5.4** The Trustees have the power to:
- a) Dismiss the appeal; or
  - b) Allow the appeal and substitute their own decision; or
  - c) Allow the appeal and send the case back to the Panel Committee and External Adjudicator for further consideration.
- A3.5.5** The Panel Administrator will notify the Appellant of the decision within 10 working days of the decision being made. The notification will confirm the decision made and the reasons given by the Trustees for that decision.
- A3.5.6** The decision of the Trustees is final unless the case is referred to the Panel Committee and External Adjudicator for further consideration.

### **Further Application for Panel Membership**

- A3.6.1** The Panel Administrator will write to a Panel member within 10 working days of a decision to remove them from the Panel to confirm the date on which membership of the panel terminates. A further application for panel membership cannot be made until 12 months have elapsed from the date of that decision.

**A3.6.2** If the decision of AvMA to remove a solicitor from the Panel is unsuccessfully appealed, then a further application for AvMA panel membership cannot be made until 12 months have elapsed from the date of the last decision in the appeal process

## Appendix 4 – Code of Conduct



### CODE OF CONDUCT

Lawyers who are approved as members of AvMA's Specialist Clinical Negligence Panel share the values and principles of AvMA – a patient centred charity. As well as having demonstrated the experience and expertise necessary to represent clients in clinical negligence cases, every member of AvMA's panel has committed to this Code of Conduct.

- To be sensitive and supportive of the needs of people affected by medical accidents or negligence; to recognise clients' wider needs in addition to, where appropriate, pursuing litigation or obtaining compensation.
- To work with AvMA in seeking improvements to patient safety and access to justice for people affected by medical accidents; to share lessons learnt (whilst respecting confidentiality) from the cases they deal with.
- To keep up-to-date with developments in clinical negligence and other relevant areas of law and policy; to attend AvMA events and, as far as practical, network and share knowledge and experience with other specialists.
- To be open and honest with clients and potential clients from the start about chances of success in legal action offering alternatives to litigation where appropriate.
- To charge reasonable fees, explaining charging policies and means of funding in away clients can understand and is in their best interests.
- To put the client or potential client's interests first, even if this means advising clients that another solicitor may be better equipped to meet their particular needs.
- To obtain appropriate damages and recovery of costs for clients where appropriate.
- To comply with the Professional Code of Conduct of the Law Society, and to conduct legal work in a professional and timely manner on behalf of their client.
- To maintain the high standards expected of AvMA panel solicitors and safeguard the reputation of the panel; to avoid advertising, marketing or other activity likely to bring the panel into disrepute.