

Expert protocol: AvMA's policy on the recruitment, retention, suspension and removal of experts on the expert database.

1. About AvMA

Action against Medical Accidents (AvMA) is an independent charity which promotes better patient safety and justice for people who have been affected by medical accidents. The service AvMA provides is four-fold:

- Supporting patients following an adverse medical outcome
- Providing a medico-legal resource service to lawyers practising clinical negligence law
- Organising medico-legal conferences and conferences designed for lawyers, clinicians or NHS management
- Working towards safer medical practice through our input into assorted government and non-governmental organisations and agencies.

In addition to the above, we are a campaigning organisation and feed into government policy concerning patient safety issues and work with the Department of Health, Ministry of Justice (MoJ) as well as the Legal Services Commission (LSC).

2. Expert recommendations

2.1: AvMA maintains a database of medical experts in order to ensure there is a pool of experts available for AvMA to recommend to lawyers representing claimants in clinical negligence cases. Occasionally, agencies other than Lawyers Resource Members ("LRS") may need to access expert opinion to help resolve clinical disputes and in certain circumstances AvMA may refer an expert from the database to such an agency. The database comprises of both medically qualified experts who can report on clinical matters and non-medical experts that may report in relation to quantum issues. Medical experts are vetted for their clinical experience and qualifications. All experts are vetted in relation to their experience of producing reports and/or giving expert evidence in court. No expert pays a fee to AvMA in order to gain an entry on the database. This is not a subscription service for experts: Inclusion on to the database and recommendation of any expert is entirely at AvMA's discretion. However, AvMA is bound by the Data Protection Act, and must provide access to individuals about information held about them and its use, if requested.

2.2: AvMA values the work that its experts undertake. The work of the expert witness is crucial in enabling access to justice for people affected by medical

accidents. AvMA believes it crucial that no expert is deemed partisan and AvMA therefore expects those experts included on the database to mostly undertake expert witness work for both sides

2.3:It must be emphasised that entry on our database is not a warranty of specialisation or expertise as a medico-legal expert. It is not a form of accreditation. No expert is permitted on note paper or otherwise to refer to him/herself as an AvMA accredited expert or member of AvMA.

3. Gaining an entry on to the database

Experts may approach AvMA unsolicited. Experts may be approached by AvMA's in-house medico-legal advisors. No expert is placed on the database without the consent of the expert.

4. Criteria for entry on to the database

4.1: The sort of qualities that make someone suitable for an entry on AvMA's database include: the expert's reputation, clarity of medical report, an understanding of medico-legal issues, the speed with which an expert turns around reports or responds to enquiries, proven experience as a witness in court. Most medical experts have to have held an NHS consultancy post for at least 5 years. Further, most medical experts have to currently be in NHS practice. However, retired experts may be considered for recommendation in relation to cases where the alleged negligence occurred several years ago.

4.2.:The following steps take place:

- The expert has to submit a completed form (appendix 1) and submit an anonymised report.
- Report is assessed by AvMA Lawyers' Services team.
- Expert is either accepted or rejected.

5. The referral process

5.1: The expert referral service is funded by annual subscriptions from law firms/chambers. Lawyers request an expert in a particular discipline and AvMA supply a firm with a number of suggestions.

5.2: Once the expert has been accepted onto the database s/he can then be recommended to lawyers. The solicitors then contact the expert(s) with further details of the case. AvMA recommends that lawyers verify with the expert(s) whether there is any conflict in the case and whether the expert has the appropriate expertise for the case. If both are happy the expert prepares a report for the solicitor. This is the sole extent of AvMA involvement between solicitor and expert.

6. Protection of Information held about Medical Experts

6.1: No information held about the individual expert will normally be divulged to third parties save for the purposes set out in this protocol i.e. for assisting lawyers in medico-legal cases to make decisions about the most appropriate expert to use. In some exceptional circumstances (and only following authorisation from the Chief Executive) AvMA may inform other third parties whether or not an expert is on AvMA's database of recommended experts.

6.2: AvMA may also use the information that we retain on experts for the use of sending information to experts about relevant conferences, courses, newsletters and legal updates. Such information is also used to approach experts for voluntary donations or to survey experts.

6.3: If an expert does not wish to have the information divulged for the purposes as set out in paragraph 6.2, an expert may request that the information relating to him/her is not used in this way. A request needs to be communicated to the Legal Director of AvMA in writing to ensure that this request is noted alongside the expert's entry.

6.4: The above is subject to any disclosure which AvMA is required to make by or under any enactment, by any rule of law or by the order of a court or which it is necessary for AvMA to make for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings), or for the purpose of obtaining legal advice or is otherwise necessary for the purposes of establishing, exercising or defending AvMA's legal rights.

7. Monitoring the database

All lawyers who request details of an expert from AvMA, are asked to complete a feedback form. Generally they are asked to complete this following receipt of a

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report. However, reporting back to AvMA is an ongoing feature and there may be other opportunities throughout the duration of the case in which a lawyer may wish to submit feedback. Comments will be recorded against the expert's details. Guidance for lawyers for reporting feedback is published and can be viewed on the AvMA website. The database relies on both positive as well as negative feedback and AvMA encourages lawyers to report both positive and negative comments in order to maintain the balance and integrity of the database.

8. Negative feedback

8.1: Information may come to AvMA's attention which calls into question an expert's suitability for recommendation as an expert. This might be from a variety of sources. These include: feedback from lawyers; feedback from clients or members of the public; media reports etc.

8.2: This policy aims to ensure that when information comes to light which calls into question an expert's suitability to be recommended by AvMA, the matter is reviewed and a decision made in a way which:

- protects the interests of people affected by medical accidents
- protects the reputation of AvMA
- is fair and compliant with the law

9. Investigating negative feedback and complaints

9.1: Where a report is deemed to be unfair a copy will be requested by AvMA medico-legal advisors from the complainant lawyer.

9.2: Initially, an AvMA medical advisor will review the feedback on this expert generally. If there have been other complaints or comments that suggest an expert may not be appropriate to recommend (for example, technical expertise, relationship with client, disagreeable) the medical advisor will request that a review be undertaken by the Legal Director in order to determine whether or not the expert be removed or suspended from the list of experts. In the meantime a caution may be placed against the expert's name. Although, AvMA is not obliged to notify the expert that their suitability for recommendation is being reviewed, AvMA may contact the expert subject to obtaining the necessary prior consent from the client and/or his/her lawyer, for their views if the issue relates to feedback about the expert in his/her capacity as an expert or if the assessor conducting the review judges that this is necessary in order to establish any of the facts. AvMA is not under any obligation to contact the expert to advise

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him/her of any investigation or to inform them as to whether they have been removed from the referral database.

10. The review process

In conducting the review; the Legal Director or Lawyers Service Manager will:

- a) Analyse the information that has come to light, against the criteria below as set out in Section 12. The reviewer may seek further information.¹ If the concerns require further analysis before a decision can be made, the expert will be temporarily suspended from the list pending the outcome of the review. Any person suspended will have the position reviewed on a monthly basis pending final determination. The suspension itself will be recorded on the entry relating to an individual expert.
- b) Consult or involve other members of AvMA staff as appropriate where they have particular experience or knowledge to bring to bear
- c) Make a decision as to whether the expert should remain available for recommendation as a medical expert
- d) Keep the Chief Executive informed of reviews which are being conducted and consult the Chief Executive on decisions which are of a sensitive nature (for example where a decision is being contemplated on the basis of issues other than performance / ability as an expert)

11. Complaints by third parties (non-lawyers)

Sometimes, AvMA receives a very small number of complaints about experts from members of the public. This may derive from their conduct either as an expert witness or in their professional capacity. In the event of a complaint from a third party, the matter will be investigated in accordance with paragraphs 9 and 10 above taking into account the factors as set out in paragraph 12 below.

¹ The review is into whether AvMA should recommend the expert or not according to the factors (set out at paragraph 12). AvMA can only deal with information provided or readily available. AvMA is not resourced to investigate complaints about individual medical experts per se. A decision as to whether or not to recommend an expert is made in accordance with the criteria as set out in this policy and should not be interpreted as anything more. In many cases, particularly those relating to complaints from members of the public, the issue may well be much better dealt with by a disciplinary body such as the GMC. Alternatively, by dealing with the matter as a complaint to the Trust. AvMA is not empowered to undertake detailed investigations when complaints relate to experts acting in their roles as clinicians as opposed to medical experts.

12. Factors which may trigger an investigation and/or suspension and/or the removal of an expert from the 'recommended' list

A decision as to whether an expert should continue to be on the recommended list or not will be based on whether it is in the interests of people affected by medical accidents or AvMA. For example, we seek feedback from lawyers as to whether or not an expert report is fair and thorough. If it is not, it will be investigated. If following investigation the views are not substantiated, this will be recorded. If it is substantiated, this might lead to removal of an expert from the database. Removal/suspension of any expert will be informed by an assessment of whether:

- a) This comprises part of a series of complaints
- b) Inadequate clinical knowledge or expertise is indicated
- c) It is a serious complaint
- d) Poor service is demonstrated (for example, the expert cannot be relied upon to meet deadlines or commitments)
- e) On the face of a report there are inconsistent opinions / poor reasoning /unjustified conclusions/ other service flaws which seriously undermine the credibility and/or evidence value of a report.
- f) credibility as an expert witness is damaged due to adverse publicity, or decisions made by their professional body or criminal conviction
- g) There is suspicion of misconduct
- h) There is evidence of conduct undermining the relationship of trust and confidence with the client such as disagreeable conduct
- i) There is excessive charging
- j) Continued inclusion of the expert on the AvMA list of recommended experts may bring the credibility of AvMA into disrepute on which matter the final decision will rest with the Chief Executive.

13. Actions following a decision

If a decision is taken to suspend or remove an expert from the 'recommended' list, the expert's details will be retained with a record of the decision taken.

The expert will not automatically be notified of a decision, but will have the right to access the information held about them.

If an expert has been suspended from the recommended list s/he will not be approached for donations or invited to events in their capacity as a medical expert.

14. Review of Decision

There is no right of appeal about a decision made by AvMA under this policy. However, AvMA will review a decision where it considers that new information has come to light from any source which has a bearing on its decision. The chief executive will be informed of any request for review or information obtained suggesting a review might be necessary.

AvMA has a complaints procedure which can be used if any party is unhappy with the application of this policy. AvMA's complaints policy can be downloaded from the AvMA website: www.avma.org.uk or a copy can be made available upon request.