

The AvMA Clinical Negligence Panel Application Pack

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1. Introduction

The AvMA panel was set up soon after the establishment of our charity in 1982. The primary aim of the panel was then and remains as a specialist clinical negligence Clinical Negligence Panel for AvMA's clients. Applicants appointed to our panel are claimant specialists in clinical negligence who have developed their expertise and experience over a number of years. They must be able to demonstrate a commitment to continuing to develop their skills in clinical negligence and a knowledge of the wider issues surrounding medical accidents. In addition to their technical abilities, panel solicitors must also be able to demonstrate the interpersonal and client care skills necessary to assist often distressed victims of clinical negligence both effectively and sympathetically.

A high standard is expected of our panel lawyers as well as a willingness to work closely with our caseworkers in our Advice and Information Department in the best interests of our referred clients. For this reason there is an application process for the AvMA Clinical Negligence Panel that is outlined in this booklet. As we also have a continuing interest in the quality of service provided by lawyers on our panel, there is also on-going monitoring of panel members. Details of this are included in this booklet.

AvMA panel membership normally runs for a period of five years (subject to specific conditions attached to a practitioner's membership) after which the panel member will be required to apply for reaccreditation for a further five year term.

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 look forward to receiving your application and thank you for your interest in our panel.

2. Eligibility and Criteria for Selection onto the AvMA Clinical Negligence Panel

2.1 Eligibility

Those eligible to apply for membership of the AvMA Clinical Negligence Panel will:

- be solicitors holding a current practising certificate and/or
- current Fellows of the Institute of Legal Executives who have passed the Institute's Civil Litigation and Tort papers.

- have a minimum of three years post qualification experience (PQE) in a firm specialising in clinical negligence on behalf of claimants. The applicant must demonstrate that s/he has had conduct of their own clinical negligence caseload throughout this period.
- Applicants cannot be considered within 6 months of any move to a new firm.

2.2 Criteria for selection

In line with AvMA's overriding criteria that the panel member must be capable of serving the victim of a medical accident and given the special skills and expertise that clinical negligence entails, AvMA is looking for specialist clinical negligence lawyers who can demonstrate a commitment to claimant clinical negligence work. They will have acquired the necessary skills, experience and knowledge to be able to provide AvMA's referred clients with the level of expert service expected of AvMA panel membership including a knowledge of the wider issues relating to medical accidents and healthcare policy.

Although membership of the AvMA panel is a gateway to a firm's qualification for a clinical negligence franchise, AvMA's overriding criterion for membership, as a charity for victims of medical accidents, is that the applicant should be able properly to serve such victims. Membership of the panel should therefore not be perceived simply as a gateway to a clinical negligence franchise and applicants will only be accepted who demonstrate they are prepared to work with AvMA and contribute to its aims and objectives.

Applicants must have the following attributes:

2.3 Experience

- (i) Minimum caseload during each of the previous three years of 30 active clinical negligence cases (subject to the firm's policy on caseloads and excluding multiparty actions), this representing a minimum of 60% of the applicants total caseload.
- (ii) Applicants who have represented both defendants and claimants will need to demonstrate a minimum of 18 months as a claimant clinical negligence practitioner in the immediate period prior to the application. During this period they should have been acting exclusively on behalf of claimants and be able to submit the requisite case reports.
- (iii) Be able to demonstrate to the Committee's satisfaction a substantial track record and commitment as a claimant clinical negligence practitioner both in terms of the quality and quantity of clinical negligence work undertaken including maximum severity claims, the range of cases investigated and quantum obtained.

- (iv) Be able to demonstrate to the Committee's satisfaction the applicant's ability to manage his or her caseload both in terms of volume of cases and case mix.
- (v) To demonstrate a high quality of case management and to conduct cases expeditiously in line with current standards and with the client's best interests in mind at all times.
- (vi) An innovative and creative approach in the tactics used in the conduct and resolution of cases and consideration of alternative methods of resolution including mediation.
- (vii) A good understanding of medical and legal issues enabling the applicant to identify at the earliest stage, cases which do not have merit and to advise appropriately on them whilst also ensuring that clients with meritorious cases are not denied access to their rights.

2.4 Knowledge

- (i) Be able to demonstrate a thorough knowledge of the relevant law.
- (ii) Be able to demonstrate a thorough knowledge of procedure and its appropriate application.
- (iii) Knowledge and ability to achieve appropriate settlements on behalf of clients.
- (iv) Confidence in the critical analysis of medical issues including the ability to read medical records critically, 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 conduct of claims and their ability to have effective dialogue with experts and counsel.
- (v) Applicants must have an understanding of funding issues, the operation of CFA's and an appreciation of and systematic approach to risk assessment.
- (vi) Knowledge and ability to advise as appropriate on complaints procedures including knowledge of hospital complaints procedures, GP complaints, complaints to professional bodies including GMC procedures, the Health Service Commissioner, private healthcare complaints and where clients can obtain specialist advice and support.
- (vii) An understanding of the ethical issues in relation to both clients and other parties such as experts.

2.5 Experts and Counsel

- (i) That they use only appropriate experts and that they update their experts database at regular intervals.
- (ii) That their use of Counsel is appropriate and that only experienced Counsel in this field are instructed.

2.6 Case reports

- (i) In support of the above, applicants must submit documentary evidence of at least 7 completed 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 18 months.
- (ii) The submitted case reports should include 5 cases which have settled for compensation including:
 - a. Two cases settled for damages in excess of £100,000
 - b. At least one case that has been to trial or been prepared for trial
- (iii) Two cases which have been discontinued either after obtaining medical reports or at any stage thereafter. The applicant must submit copies of the relevant medical reports and counsel's opinion if obtained.
- (iv) Case reports are an essential part of the application process and may be grounds for rejection of an application if AvMA is not satisfied that the case examples demonstrate an adequate level of expertise and experience.

2.7 Client Care

- (i) That they recognise the needs of this group of clients and have a full client care package tailored to those specific needs.
- (ii) A thorough understanding of and an empathy with victims of medical accidents and their families. This quality is only often appreciable on direct contact and for this reason AvMA reserves the right to delay deciding on an application until such time as they are satisfied that they have had sufficient contact with the solicitor to be able to gauge this.

2.8 Training, Resources and Support

- (i) Evidence of attendance at relevant training courses in previous two years including courses with a predominantly clinical content. AvMA would expect a minimum of 10 hours per annum of training relevant to clinical negligence.
- (ii) That the applicant has appropriate support mechanisms within their firm such as other solicitors undertaking this work, sources of advice to which they can

refer, including membership of the AvMA Lawyers Resource Service, the support of the partnership etc. If the applicant is the only practitioner conducting clinical negligence within their firm, they must be able to demonstrate that they have compensated for this by establishing external networks of support, advice and experience and through committing themselves to updating their clinical and legal knowledge regularly.

- (iii) Have appropriate resources to assist them in investigating and dealing with the medical and legal issues including ready access to clinical texts, medical advice etc. It is not acceptable for applicants to indicate that such resources will be put in place after attaining panel membership because such resources should already be in place to enable them to effectively investigate and conduct their existing cases.

2.9 Franchise Requirements

- (i) That they have systems sufficient to satisfy any franchising requirements of the Legal Services Commission.
- (ii) If the applicant is not currently within a firm with a clinical negligence franchise, they will be expected to achieve franchise status within a reasonable period following confirmation that their application is of panel standard before full panel membership can be granted. Continued panel membership is conditional on being awarded a clinical negligence franchise.

2.10 Working with AvMA

- (i) Because the AvMA panel is a Clinical Negligence Panel, the applicant must be able to demonstrate both a willingness and a commitment to developing a good working relationship 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), supporting AvMA's work etc.

2.11 Desirable attributes

- (i) The applicant should ideally have experience in preparing cases for inquests (advocacy not essential), and some experience in class/group actions.
- (ii) Medical qualifications and/or medical assistance with cases.

3. Application Procedure

3.1 Submitting your application

Application to the panel is initially made by completing the application questionnaire and submitting the required documentation. In addition the applicant must comply with the following:

- a. Sign the form of declaration
- b. Pay the non-refundable fee of **£450.00 + VAT**.
- c. Submit five case report forms (see 2.6 above) for cases which have settled for compensation in the previous 18 months, including two cases which have settled for over £100,000 and a case which has gone to trial or been prepared for trial.
- d. Submit two case reports on cases which have been discontinued in the previous 18 months together with copies of the relevant medical reports, and counsel's opinion if obtained.

3.2 AvMA Panel Committee

Applications will be submitted for assessment to the AvMA Panel Committee (PC). The PC will comprise a minimum of three people, which will include the manager responsible for overseeing our client services (Advice and Information Manager) and at least two other senior members of AvMA's staff, one with legal qualifications. Applications will be assessed on the basis of the stated criteria set out in 2.1 to 2.11.

3.3 Timetable and procedure for the preliminary consideration of applications

- (i) Applicants requesting an application form for the AvMA panel should be sent one within one working week.
- (ii) Applicants should receive an acknowledgment that their application is complete for our purpose within two weeks of receipt by AvMA. 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.
- (iii) The applicant will be told how long the preliminary consideration should take (this should not normally be longer than three months) and that they should maintain contact with AvMA in the intervening period including notification of any change in circumstances.

- (iv) The application will be reviewed by one member of the Panel Committee (PC). The person 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 three months of the application.
- (v) At two month intervals the AvMA Panel Committee will convene and consider individual applications in detail and whether an interview will be required or whether a decision can be made on the basis of the paperwork. A record of these discussions will be made for AvMA's use.
- (vi) If an application is rejected at this stage, the solicitor 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.
- (vii) If the AvMA PC 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 PC at the next meeting. The applicant will be required to respond within the time limit set by the AvMA PC. Failure to respond within the time limit will 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.
- (viii) It is open to the AvMA PC to defer any decision for a period not to exceed 6 months. The onus is on the applicant to contact AvMA to request re-consideration prior to expiry of the 6 month period. Should the period exceed six 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.
- (ix) 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.

3.4 Interview

- (i) Applicants who appear to satisfy the basic criteria for panel membership will be invited to attend an interview. AvMA will not re-imburse for any expenses incurred for attending the interview whether the applicant is successful or not.

- (ii) 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.
- (iii) 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
 - 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
- (iv) Even when an applicant appears to satisfy all the criteria, they will still be invited to interview. This is because as a Clinical Negligence panel, it is important that AvMA gets to know the applicant in person.
- (v) At interview, the applicant will be seen by members of the AvMA PC that should include at least one member who considered the original application. The applicant can expect that they will be asked about cases that they have had conduct of.

3.5 Successful applications

- (i) Following interview, the application and interview notes will be referred back to the AvMA PC for consideration. If the application is accepted by the Committee, the applicant will be informed by letter and sent two copies of the obligations of an AvMA Clinical Negligence Panel member and will be asked to sign one and return one copy to AvMA and retain a copy for themselves. The applicant should make any assistants or others dealing with AvMA cases aware of these obligations.
- (ii) The panel member will receive a certificate of membership of the AvMA Clinical Negligence Panel confirming the date of acceptance to the panel and its expiry in due course.
- (iii) 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 panel members who change firms. AvMA would ask that the senior partner give an undertaking that they accept the obligations as set out and will ensure

that AvMA referred clients who wish to move with the panel solicitor or wish to be referred to another panel solicitor are able to do so without hindrance.

3.6 Re-accreditation

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.

3.7 Change of firm during the application process

(i) In the event that the applicant changes firm while an application is pending, the application will be deferred for a period of six months. Prior to consideration of the application the 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 have to re-apply.

4. Rejected applications

4.1 Notification of rejection

If the application is rejected either after consideration of the documentation alone or following interview, full reasons will be given in terms of the criteria which the applicant has failed to meet. The applicant will be given notice of their right to appeal.

5. Appeal's process

5.1 Time Limit

The applicant has the right within 20 working days of notification of rejection of their application to appeal. Notice of intention to appeal must be given in writing to the panel administrator giving full written reasons for the appeal and including any supporting statements or documentation.

5.2 Grounds for Appeal

Any breach of natural justice or unreasonableness in the decision or the process by which the decision was made or alleged failure to adhere to our published procedures can form the basis of appeal.

5.3 References

References from other practitioners or barristers cannot be accepted.

5.4 Fee

The administrative fee for an appeal is £200 plus VAT.

5.5 Appeals Procedure

- (i) There is a right of appeal against refusal, deferral or removal of membership of the panel.
- (ii) Appeals will be considered by adjudicators drawn from an external Appeals Panel comprising practitioners nominated both by the Chief Assessor of the Law Society Panel and practitioners nominated by the AvMA Clinical Negligence Panel. The adjudicators will have a minimum of 10 years clinical negligence experience.
- (iii) The notice of appeal, the original application, grounds for rejection and correspondence between AvMA and the applicant, will then be submitted to the adjudicators for consideration.
- (iv) The adjudicators may be prepared to consider further evidence submitted by the applicant on the matter complained of originally.
- (v) The Adjudicators will have the power to:
 - (a) Ask the AVMA PC to reconsider the matter if it is felt that they have overlooked some point;
 - (b) Overturn the decision of the AVMA PC and to appoint the appellant to the panel giving reasons why this has been done;
 - (c) Recommend deferral of an applicant;
 - (d) Reject the appeal;
 - (e) Ask for further information/request an interview.
- (vi) If the adjudicators reject the appeal, this will represent the completion of the appeals process.
- (vii) The adjudicators reserve the right to request an interview with the applicant if this is deemed necessary in order to assist them in consideration of the applicant's appeal or where there is a dispute as to fact.
- (viii) Appellant's expenses will not be re-imbursed for the cost of attending the interview or incidental expenses.
- (ix) In circumstances where an applicant does not elect for an appeal then s/he may not re-apply for membership until 12 months have elapsed from the date of refusal.

6. The Obligations of an AvMA Clinical Negligence Panel Solicitor

Having been selected for the panel, the following obligations will be a condition of panel membership:

1. You will be obliged to personally conduct cases referred to you and not to pass sole conduct to another member of the firm who is not a member of AvMA's Clinical Negligence panel. Transfer of a case to another member must be agreed with AvMA beforehand.
2. If cases are conducted by non-panel members under the panel member's supervision, to discuss this with AvMA beforehand. The panel member must retain responsibility for the case and exercise close supervision including regular review to ensure that the case is handled at the standard to be expected from a panel solicitor. The panel member should have sufficient contact with the case to be able to discuss it with the client or AvMA.
3. Ensure that any member of the firm acting in relation to AvMA cases is made aware of these obligations.
4. Report in short form or for the AvMA journal/newsetter details of settlements obtained. In any event to notify AvMA of settlement of cases giving as much detail as the client allows on the breakdown of awards. 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.
5. In the event of departure from the firm to notify AvMA at least two months before the departure or if not practicable as soon as departure is known. The panel member must provide AvMA with the names and addresses of all 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.
6. To inform AvMA of any significant change in their practice which might affect their ability to accept Clinical Negligences. Where a solicitor is no longer predominantly undertaking claimant clinical negligence work and informs the AvMA PC of this then they will automatically be removed from the panel. In other circumstances the matter will be referred to the AvMA PC and the 'show cause' procedure instituted with a view to removal from the AvMA Clinical Negligence panel.

7. To acknowledge receipt of Clinical Negligence and to complete report forms on each case three months after receipt and thereafter, every six months.
8. To contact AvMA with full details if any serious problems affecting the conduct of the case arises, particularly any of the matters listed in the section on removal from the panel.
9. To provide any information that AvMA requires about the case including copies of documents.
10. Except in extraordinary circumstances, which must be discussed with AvMA beforehand, not to make any charges to clients for supplying information to AvMA.
11. Not to discontinue cases or apply for discharge of a public funding certificate without first reporting to AvMA.
12. To remind AvMA clients regularly 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.
13. In addition to any regular reporting to notify AvMA if any of the following events arise in a matter referred by AvMA:
 14. A part 36 offer is made by either side or payment in
 15. Any application is made to strike out the case
 16. Three months before trial or mediation
17. To make every effort to attend AvMA LSG meetings and utilise networking opportunities
18. To attend any Clinical Negligence Panel meetings organised by AvMA.
19. Training: members are expected to attend training courses relevant to clinical negligence. In any event in order to be eligible for re-accreditation members are expected to undertake 12 hours training per annum in courses relevant to clinical negligence including courses with a wholly medical content.
20. Maintaining contact with AvMA: AvMA is committed to maintaining the standards of our Clinical Negligence panel and an essential part of this is being in a position to continually monitor panel solicitors. It is therefore important that solicitors maintain regular contact with AvMA, regardless of whether they have received any Clinical Negligences, so that we are in a position to assess that their present practice still meets our panel criteria. Staying in touch by, for example, informing AvMA of settled cases, is an important means of allowing AvMA to update their knowledge of a member's current practice and areas of expertise. It also allows AvMA to identify the most appropriate practitioner for difficult or unusual cases. Staying in touch may also involve contributing to the Lawyer's Service Newsletter, giving ideas for conferences and courses.

21. AvMA panel members are therefore expected to attend the annual Clinical Negligence panel meeting (held in London during the Autumn). Should a member not attend for two consecutive meetings (without giving good reason) the panel member may not be considered for re-accreditation after the five year membership period expires.
22. Where there has been no contact with a panel member for a period of six months or more, AvMA may require a formal review of the member's current practice. Where the period exceeds one year, the matter will be referred to the AVMA PC, for consideration. The AVMA PC may require the member to provide details of their current practice. The 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 PC may revoke membership.

7. Disciplinary action in relation to the AvMA Clinical Negligence Panel

7.1

- (i) Membership of the Clinical Negligence panel runs for a five year period. Nevertheless ongoing 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.
- (ii) Serious concerns about the performance of any Clinical Negligence panel member should be brought in the first place to a member of the AVMA PC and this will be investigated by him/her together with another member of the AVMA PC. There are two categories of serious concern but there may be areas of overlap.

7.2 Category One – Immediate 'show cause notice'

These will be cases of the utmost severity including:

- (iii) Where the solicitor has had any cases struck out for want of prosecution where this appears to be due to the solicitor's fault such as unreasonable delay in prosecuting the case
- (iv) Solicitor being subject to disciplinary action by the Office for the Supervision of Solicitors/Legal Executive being subject to disciplinary action by the Institute of Legal Executives and/or where issues of misconduct have been brought to our attention.
- (v) Evidence of any fee sharing arrangements or other allegation of serious professional misconduct.

- (vi) Failure to comply with the 'Obligations of a Clinical Negligence Panel Lawyer', for instance, not ensuring that AvMA have been notified of a change of firm.
- (vii) Complaint by a client of a very serious failure in the service provided.
- (viii) Lawyer is no longer specialising/practising in clinical negligence law (i.e. it only represents a small proportion of his/her workload) or has failed to maintain contact with AvMA by failing to attend Lawyers Service Group meetings (LSG'S), losing contact with Lawyers Service or the Advice and Information Service department for a period of one year or more.

7.3 The AVMA PC member will then report to the Committee and a meeting will be held to decide on the action to be taken. The AVMA PC may:

- Decide to monitor the situation further
- Request a meeting with the solicitor to discuss the concerns
- Institute the 'show cause' procedure by formal notification to the solicitor putting the allegations to them and inviting them to give reasons why membership should continue. The Legal Services Commission will be informed at this stage.

7.4 The notice to show cause will include sufficient detail to enable the respondent to identify and respond to the matter complained of. This will include where appropriate and subject to the client's written authority, copies of documents and correspondence relating to the complaint. The respondent has 28 days to reply.

7.5 On receipt of any reply, an emergency meeting of the AVMA PC to include at least one legally qualified member will take place to consider this response. The AVMA PC can decide to:

- allow the panel membership to continue on accepting the explanation offered
- make recommendations as to the future conduct of the member
- place the member on probation in relation to panel membership
- suspend panel membership for a fixed period, membership only being reinstated subject to the panel member undertaking corrective action as set out by the AVMA PC.
- remove panel membership (reasons being formally given to the member).

The member may be asked to attend an interview at this stage.

7.6 If no response is made to the 'Notice to Show Cause' within 28 working days, this will lead to the automatic removal from the Clinical Negligence panel

from the date specified in the notice to show cause. A right of appeal as set out in sections 5.5 and 10 remains.

7.7 Extraordinary circumstances will have to exist for revoking the decision to remove such as family bereavement or medical problems for which a report from a treating doctor may be required as evidence.

7.8 *Suspension following institution of show cause procedure*

Membership of the Clinical Negligence panel will be suspended with the effect that no new cases will be sent to the solicitor by AvMA if an event occurs where an immediate show cause (Category One case) occurs. The effect of such suspension is that no further cases can be referred to that solicitor (publicly funded or otherwise) and the solicitor will not be able to apply for preferential insurance schemes. AvMA will notify the Legal Services Commission of the action taken.

7.9 AvMA may also refer the matter to the Office for the Supervision of Solicitors/Institute of Legal Executives for investigation. The respondent can appeal against the suspension and can lodge an appeal within 20 working days in accordance with the appeal procedure as set out in sections 5.5 and 10.

8. Category Two – Persistent failure to reach an acceptable standard

All AvMA panel members are subject to ongoing monitoring and if over a period of six months, there is a persistent failure to ensure reporting back on referred cases or a failure to handle cases in a satisfactory manner, for example, not conducting cases expeditiously, poor client care or any matter that constitutes a breach of the obligations of a Clinical Negligence Panel member, this will lead to an investigation by a member of the AVMA PC, if necessary along with another member of the Committee. They will investigate the allegations and if necessary, will ask to meet the panel member to discuss the problems and request a written proposal as to how the problems identified are being addressed. There will be a review after six months of the problem having been identified with the panel member. If, after initial review, the matter is considered to fall into Category One, the matter will then be considered under that procedure.

9. Client Complaints

(i) If a client complains to AvMA about the conduct of an AvMA panel solicitor, the matter will be referred to a member of the AVMA PC who will investigate the complaint by reviewing the relevant papers and, if necessary, discussing the matter with the complainant and the panel member. 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, then the investigator will attempt to resolve the matter without the need to resort to the formal disciplinary process.

- (ii) If the matter is more serious such as several messages or letters going unanswered or allegations of rudeness, then the complaint will be considered under the Category Two process.
- (iii) If the matter concerns very serious allegations, such as excessive fees, undue delay or failure to carry out a client's reasonable instructions or shows the solicitor to be in breach of the panel obligations, then the matter will be regarded as a complaint that falls under the provisions of Category One

10. Appeal against removal from the AvMA Clinical Negligence Panel

(see also section 5.5 above)

- 10.1 A member can appeal against the decision to remove in accordance with the appeals procedures as set out at section 5.5 above. Whilst an appeal is pending, the solicitor's membership of the panel will be considered suspended in accordance with the procedures set out in section 7.8.
- 10.2 The adjudicators will have access to the documentation which led to the show cause and will have the power to:
 - ask the AVMA PC to reconsider the matter,
 - to overturn the decision and grounds for removal,
 - to ask for further information
 - to reject the appeal
- 10.3 In extraordinary circumstances the adjudicator(s) may ask for the appellant to attend an interview if there is a dispute as to fact at which the appellant has the right to appear.
- 10.4 If the AVMA PC's decision is upheld the notice of rejection will state the date on which membership of the panel terminates as the date of the original decision to remove the former panel member.

11. Removal from the panel

- (i) On removal, if no appeal is lodged, panel membership terminates from the date the member is notified of removal.
- (ii) Following receipt of written notice of termination the former 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 panel lawyer. The former member must provide AvMA with a list of clients referred to them by AvMA.

- (iii) If clients want the struck off member to continue to represent them and for AvMA's continued involvement, the former member must continue to report to AvMA on the progress of the case every six months. Failure to do so, will lead to our directly contacting the client.
- (iv) Following removal, the former member must remove any reference to AvMA panel membership from publicity and other materials. Lawyers removed from the panel may not re-apply for 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 prevent a recurrence (e.g. increase in staffing resources/qualifications further training etc.).
- (v) When a member is suspended or removed from the panel a copy of the final reasons will be submitted to the Legal Services Commission.

12. Solicitors who move firms: suspension arrangements and re-selection

- 12. 1 In the event that an existing 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 has to undergo re-selection for the balance of the original five year term.
- 12. 2 Panel membership including referrals will be suspended for a period of six months pending re-selection and or removal from the panel. (Please refer to the Obligations of Panel Solicitors with respect to existing AvMA referred cases.)
- 12. 3 AvMA must be satisfied that the new firm will provide the resources, support and backup to enable the panel solicitor to continue to provide the standard of service expected of panel membership.
- 12. 4 If the panel member moves to a firm (or an office) without an existing AvMA panel member, the panel member will be required to complete and submit Part Two of the application questionnaire within six months of commencing at the new firm.
- 12. 5 If the panel member moves to an established clinical negligence department with other AvMA panel members, AvMA may require the member to complete Part Two of the application questionnaire if there has been limited recent contact with that particular firm or department or if AvMA believes that it would be beneficial for the purposes of referrals to have full up to date details on the firm. If AvMA is satisfied that through regular contact with that firm, or through a recent application at that firm that they do not require a full update on the firm, the member will be required to complete Part Three of the application questionnaire. The panel member will be advised accordingly.
- 12. 6 Failure to submit this information within a year of moving firms will result in removal from the panel and the Legal Services Commission being informed accordingly.
- 12. 7 AvMA must be satisfied that the arrangements at the new firm meet our 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 with the arrangements within the new firm or the panel member has not reported to AvMA, then the member may be refused re-selection. The member has a right to appeal the decision in accordance with the procedures set out at paragraphs 5.5 and 10 above. Any re-selection will run for the currency remaining on the original five year term. No additional fee is payable for the remaining membership period.

13. Career Breaks

- 13.1 In the event that a panel member takes an extended break due to maternity leave, long illness or unemployment the panel member must provide AvMA with details of the member's plans. AvMA must be informed at least two months before the start of the career break. The AVMA PC will decide whether suspension is appropriate for the period of the break (in any event not to exceed 12 months). Should the break exceed 12 months panel membership will be revoked.
- 13.2 In the event that a prospective panel member finds difficulty in compliance with the criteria due to a career break then the AVMA PC will consider relevant experience attained both prior and subsequent to the career break provided that the career break period does not exceed 12 months.
- 13.3 Should a panel member need to apply for re-selection during the period of suspension (because the five year period of membership has expired) then an application must be completed immediately after the member's return to practice.

14. Suspension and AvMA referred cases

- 14.1 Whilst a panel member is suspended, either as a result of a move of firms or during a career break, no new cases will be referred to the panel member. Should the panel member be absent from the office (e.g. on maternity leave/long-term sickness) then during the period of suspension previously referred cases must be transferred to another panel member in the firm. If there is no other panel member in the firm then the onus is on the member to ensure there are appropriate arrangements in the firm and to advise AvMA accordingly.

APPLICATION QUESTIONNAIRE

Applications should be submitted in a ring binder without staples and single-sided to facilitate photocopying.

There are two separate parts to the questionnaire, the first relating to your personal practice and the second relating to your firm. Please note that in order to ensure that you are able to provide as much information as possible please provide answers to each section on separate sheets ensuring that you clearly label the answers by reference to the letter and number (i.e. A1). [It is helpful but not essential if you can also include the question. To make this easier, we can email you the questionnaire in Word 6 format.]

Part One

A. Your clinical negligence practice

- A. 1 How long have you been at your present firm?
- A. 2 Please provide details of the firms you have worked at in the previous ten years and your main areas of work e.g. personal injury, clinical negligence, other?
- A. 3 Are you a member of the Law Society Clinical Negligence Panel?
- A. 4 How many years in total have you spent dealing with claimant clinical negligence matters and at what stage did clinical negligence represent over 50% of your caseload?
- A. 5 How many clinical negligence cases have you handled over the past 12 months (excluding cases you are supervising)?
- A. 6 How many of these were successful?
- A. 7 How many were abandoned?
- A. 8 What has been your average active clinical negligence caseload over the past three years?
- A. 9 What is your present clinical negligence caseload and what percentage do these cases presently represent in your caseload? What other matters do you deal with?
- A. 10 What percentage of your cases over the past year were:
 - (a) Cases of maximum severity?
 - (b) Valued at under £30,000
 - (c) Concerned a person under a disability or an infant?

- A. 11 How many clinical negligence cases have you settled in the last year
 - (a) Before proceedings commenced?
 - (b) After proceedings commenced?
- A. 12 What is the average time scale from initial instruction by the client to the first case management conference?
- A. 13 What is the average time from first interview to settlement of a claim for damages:
 - a) Maximum severity claim
 - b) Other claims
- A. 14 Give the total number of cases in the last year where you were involved in a supervisory capacity in clinical negligence cases? Please give details of your supervisory responsibilities.
- A. 15 How many CFAs have you run in the past year?

B. Initial Assessment of Clinical Negligence Cases

- B. 1 Please describe your assessment process when clients first make contact with you and the steps you would take in order to prepare and application for public funding.
- B. 2 When do you arrange the first interview?
- B. 3 At what stage do you take a formal statement from the client?
- B. 4 If following initial contact with the client you feel a case has little chance of success, how do you proceed?
- B. 5 What other agencies have you referred clients to in the last year?
- B. 6 Do you assist clients with the clinical complaints procedure?
- B. 7 What form does this assistance take?

C. Disposal of cases with no reasonable prospect of success

- C. 1 How long on average does it take to be in a position to assess whether there is a viable claim?
- C. 2 If a claim is not viable, please describe the steps that you take with the client to explain the situation?
- C. 3 If a client is not happy at this stage, what advice do you give?

D. Medical Records

- D. 1 At what stage do you apply for the medical records?

- D. 2 For which records do you apply?
- D. 3 Who sorts, checks and paginates the records?
- D. 4 When would you compare the copies supplied with the originals and who in your firm does this?
- D. 5 In what circumstances and for what purpose would you ask the client to obtain disclosure of records?
- D. 6 In what circumstances would you not allow a client to see records and/or medical reports?

E. Medical Experts and Counsel

- E. 1 Who assesses the quality of reports received from medical experts and how is the assessment made?
- E. 2 In what circumstances would you not use an expert again?
- E. 3 In what circumstances would you not use a Counsel again?
- E. 4 What action do you take to ensure that an expert used some time previously is still appropriate?
- E. 5 Do you have the assistance on a regular basis of any medically qualified person? If so, what is their role in relation to your cases?
- E. 6 At what stage would you normally first instruct counsel to provide an opinion on a case?
- E. 7 In what circumstances would you ask Counsel for an opinion before seeking the extension or discharge of a funding certificate?
- E. 8 At what stage do you usually arrange your first conference with Counsel?

F. Quantum and Damages

- F. 1 At what stage do you assess quantum and how and when is it updated and recorded?
- F. 2 Do you assess quantum or does Counsel and if the latter, at what stage is Counsel instructed?
- F. 3 In cases in which you assess quantum, how do you achieve this?
- F. 4 Please describe the essential matters conveyed to your clients if a Part 36 payment is made?
- F. 5 At what level of damages would you consider a structured settlement?

- F. 6 If you give any advice to your client on how to make best use of their damages, please describe the extent of that advice.
- F. 7 How many of your clinical negligence cases have gone through mediation in the past two years?
- F. 8 What do you perceive as the benefits/drawbacks of mediation within clinical negligence?

G. Specialist Areas

- G. 1 Please list any particular areas of expertise/experience that you have successfully specialised in and would be willing to accept Clinical Negligences (e.g. dentistry, gynaecology, orthopaedics, cerebral palsy, head injury, psychiatry, care of the elderly, professional negligence etc).
- G. 2 Do you have experience of dealing with cases involving mental health issues including Mental Health Review Tribunals, psychiatric negligence? Please give details.
- G. 3 Have you conducted any product liability claims? If yes, please give details and approximate numbers of clients involved.
- G. 4 Have you assisted clients with preparing for an inquest involving clinical negligence issues? If so, approximately how many?
- G. 5 Who would normally represent the client at the inquest?
- G. 6 Have you assisted clients with complaints to professional bodies (e.g. GMC, NMC)? If so, how many and what form has that assistance comprised?
- G. 7 Have you advised clients in relation to referring cases to bodies such as the National Patient Safety Agency and the Commission for Health Improvement?
- G. 8 Do you have experience of conducting professional negligence claims against other firms of solicitors/counsel relating to clinical negligence matters? Please provide details of the extent of your experience.

H. Training

- H. 1 List the conferences and courses you have attended on clinical negligence in the last three years. Provide a separate list of those courses which had a predominantly medical content as opposed to legal.

J. Other information

- J. 1 Do you receive any clinical negligence client Clinical Negligences from any other specialist agency? If so, name the agency and indicate the basis on which the Clinical Negligence is made.

J. 2 Please give any other information that you consider relevant in support of your application.

Part Two - Your Firm

K. The clinical negligence department

- K. 1 What is your position in the clinical negligence department and/or firm?
- K. 2 Does your firm have a clinical negligence franchise?
- K. 3 If yes, who is the franchise supervisor?
- K. 4 If no, are you in the process of applying for a clinical negligence franchise? Please give details.
- K. 5 Who else handles clinical negligence cases in your firm and what has been their average personal caseload over the past two years?
- K. 6 If you are absent from the office, who handles your cases? Describe their experience.
- K. 7 Describe the firm's/department's policy and procedure for screening new clients who approach the firm in relation to a potential clinical negligence matter?

L. Handling and monitoring claims

- L. 1 Describe generally how clinical negligence cases are monitored by the head of the department in the firm. What form does this supervision/monitoring take?
- L. 2 If you are the head of department, who monitors your cases?
- L. 3 Describe in particular, what systems exist for checking on:
 - i. Limitation periods
 - ii. Compliance with CPR deadlines/case management directions
 - iii. Inactivity on the file
- L. 4 How do you ensure that you and other fee earners do not become overloaded with clinical negligence cases?
- L. 5 What is considered to be the optimal clinical negligence caseload for practitioners within the department?
- L. 6 Does the department have a set policy setting out best practice for the management of clinical negligence claims including a timetable for the various stages of a claim? If yes, please provide brief details.

M. Medical Experts and Counsel

- M. 1 Does your firm keep lists of medical experts and other experts and counsel?

- M. 2 How often and for what reasons are these lists updated?
- M. 3 Would you be prepared to make this list available to AvMA?
- M. 4 Please provide details of the main counsel that you currently use in relation to clinical negligence matters.

N. Accessibility

- N. 1 Are you prepared to carry out home visits and if so in what circumstances and within what radius of your office?
- N. 2 Is there access to your office for disabled persons?
- N. 3 Are you able to provide translation services? Please provide details.
- N. 4 What arrangements can you make for clients with sensory deficits?

P. Client Care

- P. 1 Does your firm/department provide any literature/information sheets for clients to help them understand clinical negligence and the litigation process? Please give details.
- P. 2 What systems/policies do you have to deal with distressed or vulnerable clients? Do you provide training within the firm?
- P. 3 What information does your firm have for clients on support services?

Q. Costs

- Q. 1 What is your firm's charging policy for first interviews?
- Q. 2 List the sources you consider to cover a client's costs.
- Q. 3 Are you on any insurance company panels for legal expenses insurance that also cover clinical negligence claims?
- Q. 4 At what stage do you write to the client informing them of the cost implications of the case?
- Q. 5 Do you or your firm provide clients with a standard letter on costs? If so list them and when they are sent.
- Q. 6 Do you have a system of interim billing of clients? If so, when is this explained to the client?
- Q. 7 How often and at what stage do you check the level of costs incurred to date?
- Q. 8 How often do you write to your clients informing them of costs incurred?
- Q. 9 Please describe any system that you have of warning clients in advance of costs rendering their litigation uncommercial.

- Q. 10 Does your firm have a system for dealing with a dispute with the client about costs? If the answer is yes, please give details.
- Q. 11 Does your firm have a system for dealing with complaints? If yes, please give details.

Conditional Fee Arrangements

- Q. 12 Does your firm have provision for such arrangements for clinical negligence matters?
- Q. 13 At what stage would you accept a case for CFA?
- Q. 14 Would you involve Counsel in risk assessment or would you carry this out yourself or with colleagues in the firm?
- Q. 15 What level of quantum will you enter into a CFA?
- Q. 16 Would you always obtain after-the-event-insurance?
- Q. 17 Who are your main providers for after-the-event insurance?

Fixed Fees/Charging policies

- Q. 18 Do you offer clients any form of fixed fee arrangement for preliminary investigation of their case or any similar arrangement? Please give details.
- Q. 19 What is your firm's charging policy for preparing for and representing clients at Inquest?
- Q. 20 What sort of costs would be involved in advising/preparing for/representing clients at an inquest?
- Q. 21 Do you ever represent clients at an inquest on a pro bono basis, and if so, under what circumstances?

R. Information resources and training

- R. 1 Does your office have a clinical negligence library?
- R. 2 List the medical texts, and relevant legal texts and journals in the library?
- R. 3 What is the firm's policy on training: generally, and in relation to clinical negligence? Give details of the training expected to be undertaken by members of the clinical negligence department including both clinical and legal training.
- R. 4 Does your firm provide in-house training on clinical negligence? If so, please describe the system.
- R. 5 Do you and/or the clinical negligence department have access to either in-house or external medical advice to assist with screening and generally