



AvMA Clinical Negligence Panel

Reaccreditation Booklet

June 2006

The AvMA Clinical Negligence Panel Reaccreditation Booklet

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Introduction

The AvMA Clinical Negligence Panel

The AvMA panel was set up as a referral panel for AvMA's clients soon after the establishment of our charity in 1982. As panel membership now also acts as a gateway to a Legal Services Commission clinical negligence franchise where the public can access panel members directly, there is an additional onus on AvMA to ensure that standards are maintained to protect the interests of all clients who use the services of AvMA panel members.

From July 2006, AvMA is introducing five-yearly reaccreditation. This means that panel members will have to apply in order to retain their panel membership for a further five year term. The onus will be on the panel member to demonstrate that they continue to meet current AvMA panel standards. As the majority of panel members were first appointed more than five years ago, it will be necessary to phase in reaccreditation over the first two years of operation. Although reaccreditation lasts for five years, panel membership 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.

This booklet includes details of the current eligibility and criteria against which applications for reaccreditation will be assessed together, with the obligations of membership which sets out what is expected of panel members.

AvMA look forward to receiving your application for reaccreditation.

1. The standards expected of AvMA panel members

- 1.1 Standards in clinical negligence are continually developing. To ensure clients who approach an AvMA panel member are assured of the best advice and service available, it is an essential requirement of continued panel membership that AvMA panel members not only maintain their position at the forefront both of current standards in clinical negligence practice but also at the cutting edge of new developments in the law to be able to offer clients a more holistic service. Practitioners also need to be willing and able to recognise when it would be in the client's best interests to refer the client to another practitioner with more appropriate specialist skills to ensure the best achievable outcome for that client and their case.
- 1.2 A high standard is expected of AvMA 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. In addition to their technical abilities, panel solicitors must also be able to demonstrate the interpersonal and client care skills to assist often

distressed victims of clinical negligence both effectively and sympathetically.

- 1.3 We would also expect that practitioners who have the privilege of working in this field will recognise their responsibility to use their unique knowledge and expertise to feed into systems for improving patient safety.

2. Eligibility and Criteria for reaccreditation

Eligibility

- 2.1 Those eligible to apply for reaccreditation of the AvMA Clinical Negligence Panel will:
- be current members of the AvMA Clinical Negligence Panel
 - be solicitors holding a current practising certificate and/or are
 - current Fellows of the Institute of Legal Executives who have passed the Institute's Civil Litigation and Tort papers.
 - specialise in clinical negligence work on behalf of claimants

Criteria for panel reaccreditation and membership

- 2.2 In line with AvMA's overriding criteria that the panel member must be capable of providing an expert service to victims of a medical accident, the purpose of the reaccreditation procedure is to ensure that existing panel members continue to meet panel standards as set out in the criteria and obligations of panel membership and that this is demonstrated in their day to day practice, case management, outcomes and client satisfaction.
- 2.3 Where the panel member is responsible for supervision the panel members must demonstrate best practice is followed and high standards maintained in the department

Applicants for reaccreditation must satisfy the following criteria:

2.4 Specialisation and case management

- (i) Applicants must be able to demonstrate specialisation in clinical negligence and active involvement in case management. We would normally expect a minimum caseload during each of the previous three years of 30 active clinical negligence cases on behalf of claimants (subject to the firm's policy on caseloads, case mix and excluding multiparty actions), this representing a minimum of 60% of the applicants total

caseload. (This figure to comprise cases from the applicant's personal caseload, not those of the department as whole or supervised cases). In most circumstances, consultancy posts would not be considered to meet AvMA's criteria for continued panel membership.

- (ii) 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.
- (iii) 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.
- (iv) 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.
- (v) An innovative and creative approach in the tactics used in the conduct and resolution of cases and consideration of alternative methods of resolution where this would be in the client's best interests.
- (vi) A good understanding and knowledge 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.
- (vii) Experience and knowledge to advise clients on inquests. Experience of preparing cases for inquests is preferred but the applicant should as a minimum have the knowledge to refer cases to an experienced practitioner where appropriate.
- (viii) Be able to demonstrate that the applicant is achieving appropriate and timely settlements on behalf of clients in line with current best practice.

(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.)

2.5 Knowledge

- (i) Be able to demonstrate a thorough knowledge of the relevant law relating to clinical negligence and product liability. An understanding of Human Rights law as it applies to cases involving medical care is also expected.

- (ii) Be able to demonstrate a thorough knowledge of current 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 risk assessment, conduct of claims and their ability to have effective dialogue with experts and counsel.
- (v) Applicants must have a good understanding of funding issues, the operation of CFA's for clinical negligence and an appreciation of and systematic approach to risk assessment with the best interests of clients in mind at all times.
- (vi) Reasonable knowledge of other systems for clients to obtain redress or have concerns investigated or recorded, including NHS and private complaints procedures, fitness to practise procedures relating to health professionals, and reporting patient safety concerns. Applicants should be able to demonstrate the ability and willingness to provide basic 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.
- (vii) 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.

2.6 **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 and appropriate Counsel in this field are instructed.

2.7 **Client Care and Monitoring Client Satisfaction**

- (i) That the legitimate needs and interests of the client are put first and that they can be assured at all times that the practitioner has the skills and expertise to obtain the best achievable outcome in their case. The

practitioner must be willing and able to recognise when the client's best interests would be served by transfer of their case.

- (ii) As an organisation representing the interests of medical accident victims, AvMA would expect firms to be able to demonstrate a high level of client satisfaction. It is AvMA's intention in the future to develop more formal ways of monitoring this.
- (iii) Applicants are expected to recognise the needs of this group of clients and have a full client care package including client literature and information tailored to those specific needs.
- (iv) A thorough understanding of, and an empathy with, victims of medical accidents and their families as reflected in their management and conduct of cases.

2.8 Supervision, Training, Resources and Support

- (i) That the clinical negligence department has appropriate supervision arrangements in place and that supervision is performed in accordance with best practice and to a high standard such that all clients can be assured of a service that meets the same standards as that which they could expect from a panel solicitor.
- (ii) That delegation or allocation 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 and 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.)*
- (iii) 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 (i) and (ii) above) and in the best interests of the client.
- (iv) 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 relevant to clinical negligence.
- (v) That the applicant has appropriate support mechanisms 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.

- (vi) 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, medical and legal resources etc.

2.9 Franchise Requirements

- (i) That they have systems sufficient to satisfy any franchising requirements of the Legal Services Commission.
- (ii) At the present time, an LSC clinical negligence franchise remains a condition of continued panel membership. If the applicant's firm does not have a current LSC clinical negligence franchise, the assumption will be that panel membership will be withdrawn subject to representations on why a franchise is not currently held. (This requirement will continue to be under review.)

2.10 Working with AvMA

- (i) Because the AvMA panel continues to act as a referral panel, the applicant must be able to demonstrate an ongoing 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 etc.
- (ii) That the applicant agrees to sign up to and abide by the AvMA Obligations and Code of Conduct for AvMA Clinical Negligence Panel members (see attached).

3. Reaccreditation Procedure

- 3.1 During the first 2-year phase of reaccreditation of panel members will be achieved via a rolling programme whereby AvMA will notify individual panel members of the date by which they will be required to apply for reaccreditation. Once all panel members have been subject to reaccreditation, subsequent reaccreditation will take place on the fifth anniversary.

Submitting your application for reaccreditation

- 3.2 You will have two months to submit your application for reaccreditation following notification and receipt of the reaccreditation documents. If you

are not in a position to comply with the timetable, due to leave or other significant commitments, please contact us to agree a timetable.

Documents in support of your application

- 3.3 There is a checklist attached to the questionnaire setting out the documents which should be provided in support of the application.
- 3.4 In addition, you will be required to:
- a. Sign the declaration form
 - b. Pay the non-refundable fee of £450+ VAT.

Reimbursement of the reaccreditation application fee

- 3.5 The Legal Services Commission has advised AvMA that successful applicants can apply for reimbursement of the application fee where the applicant's firm has a franchise. Please advise us if you have any difficulties.

Assessment Procedure

- 3.6 The assessment procedure comprises two stages:

Stage 1

- 3.7 Following receipt of all the relevant documentation, your application will be screened by an internal AvMA assessor and then submitted to the AvMA Panel Committee for consideration. Further information may be requested or an interview arranged if this is required in order to reach a decision.
- 3.8 It is anticipated that some applications for reaccreditation may be accepted following satisfactory completion of stage one. AvMA reserves the right to attach conditions to membership where this is deemed necessary. Where an applicant clearly fails to meet the criteria for panel membership, their application will be rejected at Stage 1. The applicant will have a right of appeal as set out in Appendix 1.

Stage 2

- 3.9 If it is not possible to reach a decision under Stage 1 and a more in-depth review is required, the applicant will be asked for more specific information in support of their application for reaccreditation. This may include, for example, submission of additional case reports including details of abandoned cases, review of files, evidence of case management and attendance at an interview.

AvMA Panel Committee

- 3.10 The AvMA Panel Committee (PC) will include a clinical negligence solicitor (either a member of AvMA's staff and/or an external assessor – see below), a senior member of the Advice and Information team responsible for overseeing AvMA referrals and at least one other senior member of AvMA's staff. External assessors may be co-opted onto the Committee to assist with assessments and interviewing applicants and will be clinical negligence specialists of at least 10 years standing.

Assessment of applications

- 3.11 Applications will be assessed on the basis of the standards and stated criteria set out in 1.1 – 1.3 and 2.1 to 2.10 and satisfactory submission of the relevant documentation.

Timetable and procedure for the preliminary consideration of applications

- 3.12 Applicants for reaccreditation will be required to submit their completed reaccreditation questionnaire to AvMA within 2 months of receipt. Extensions to this time may be granted in specific circumstances.

- (i) The applicant will receive an acknowledgement and will be told how long the preliminary consideration should take (this should not normally be longer than two months).
- (ii) The applicant should inform AvMA of any change of circumstances in the intervening period. (See 3.17 – Change of Firm during the application process).
- (iii) The application for reaccreditation will undergo preliminary consideration by an AvMA assessor who will complete a form to record whether the applicant complies with the stated criteria for reaccreditation. This will then be submitted together with the application to the AvMA Panel Committee.
- (iv) If the application for reaccreditation meets AvMA's criteria for continued panel membership, the applicant will be informed and a new certificate will be issued for a period of five years. The panel member will continue to be subject to ongoing monitoring to ensure continued compliance with panel membership criteria.
- (v) If the AvMA PC is unable to make a decision based on the information submitted under Stage One, the application for reaccreditation will be considered under Stage Two of the procedure.
- (vi) Stage Two of the reaccreditation procedure may include:
 - Submission of additional information in support of their application

- Submission of a selection of additional case reports as deemed appropriate by the PC
 - Attendance at an interview with members of the PC and where appropriate, external assessors (clinical negligence solicitors of at least ten years standing).
- (vii) 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 for panel membership in the normal way with 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 6 months then a fresh application will have to be made and the fee applicable at that time will have to be paid.

Successful applications

- 3.13 If the application is accepted by the 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 member will be asked to confirm that they agree to abide by the Code and Obligations. The applicant should make any assistants or others assisting with AvMA cases aware of the Code of Conduct and Obligations of panel membership.
- 3.14 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, resources etc. 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.
- 3.15 The panel member will receive a certificate of panel membership confirming the date of acceptance to the AvMA Clinical Negligence Panel and its expiry.
- 3.16 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.

Change of firm during the application process

- 3.17 In the event that the applicant changes firm while an application for reaccreditation is pending, the application will be deferred for a period of three months.
- 3.18 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 with the payment of the relevant fee.

4. Rejected applications

Notification of rejection

- 4.1 If the application for reaccreditation is rejected either at Stage 1 or Stage 2 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. 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.

5. The Obligations of an AvMA Panel Solicitor

Having been re-selected as a member of the AvMA panel, the following obligations will be a condition of panel membership:

- 1. You will abide by the Code of Conduct for AvMA panel solicitors (see attached).
- 2. In general you will be obliged to conduct personally cases referred to you by AvMA and not to pass sole conduct of such cases to another fee earner without agreement. Transfer of a case to another panel member or fee earner must be agreed with AvMA beforehand.
- 3. If cases are conducted by non-panel members the 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 a panel solicitor. The panel member should have sufficient contact with the case to be able to discuss it with the client or AvMA.
- 4. Ensure that any member of the firm acting in relation to AvMA cases is made aware of these obligations.

5. Report details of settlements including breakdown of awards obtained giving as much detail as the 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.
6. In the event of departure from the firm to give AvMA 2 months' notice or, if not practicable, as soon as possible. The panel member must provide AvMA with the names and addresses 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.
7. To inform AvMA of any significant change in their practice which 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 will be withdrawn. 'Consultancy' posts would not generally be considered to meet AvMA's criteria for continued panel membership.
8. To acknowledge receipt of formal referrals and to comply with AvMA's reporting requirements for referred cases.
9. 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.
10. With the client's consent, to provide any information that AvMA requires about the case including copies of documents.
11. Except in extraordinary circumstances, which must be discussed with AvMA beforehand, not to make any charges to clients for supplying information to AvMA.
12. Not to discontinue AvMA referred cases or apply for discharge of a public funding certificate without first reporting to AvMA.
13. 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.
14. To abide by the reporting requirements for AvMA referrals.
15. To make every effort to attend AvMA LSG meetings and utilise networking opportunities.

16. Training: 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 12 hours training per annum in courses relevant to clinical negligence including courses with a predominantly medical content.
17. Contact with AvMA: AvMA is committed to maintaining the standards of the AvMA Clinical Negligence Panel. It is essential AvMA has up to date information about panel firms. It is therefore important that solicitors maintain regular contact with AvMA, regardless of whether they have received any referrals, so that we are in a position to assess that their present practice still meets our panel criteria. Staying in touch, 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 difficult or unusual cases. Staying in touch could also involve contributing to the Lawyer's Service Newsletter and the AvMA Medical and Legal Journal, giving ideas for conferences and courses etc.
18. 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.
19. 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.

6. Client Complaints

- 6.1 If a client complains to AvMA about the conduct of an AvMA panel solicitor, the matter will initially be dealt with by a senior member of the Advice and Information department 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.

- 6.2 If the matter is more serious, especially persistent failure to meet panel standards, then the complaint will be considered under the Category Two Disciplinary process (see appendix 3).
- 6.3 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 Disciplinary process (see appendix 3).

7. Solicitors who move firms: suspension arrangements.

- 7.1 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 may be suspended.

Move to an AvMA Panel Firm

- 7.2 If the panel member moves to an office with an existing AvMA panel member, panel membership will normally be suspended until such time as the panel member has provided an update on their practice and details of any changes as a result of their move either to their personal practice or the department they have joined. Panel membership will remain suspended until such time as AvMA are satisfied that the new arrangements meet AvMA's criteria for continued panel membership. Once the panel member has provided the relevant information, their panel membership will be reinstated and a new certificate of panel membership issued.
- 7.3 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.
- 7.4 If the panel member moves to a firm with an existing panel member, but there has been limited recent contact with that particular firm or department, AvMA may require the panel member to complete Part Two of the application questionnaire. 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 an updated questionnaire. The panel member will be advised accordingly.

Move to a firm without an existing AvMA panel member

- 7.5 If the panel member moves to a firm (or a new 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.
- 7.6 Panel membership including referrals will normally be suspended for a period of six months. (Please refer to the Obligations of Panel Solicitors with respect to existing referral cases.)
- 7.7 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 panel membership may be withdrawn permanently. The member has a right to appeal the decision in accordance with the procedures set out in Appendix 1.
- 7.8 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.

8. Suspension and AvMA referred cases

- 8.1 Whilst a panel member is suspended, either 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 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 panel member to ensure there are appropriate arrangements in the firm and to advise AvMA accordingly.

9. Career Breaks

- 9.1 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 their plans. AvMA must be informed at least two months before the start of the career break. The AvMA Panel Committee 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, AvMA panel membership will be withdrawn.
- 9.2 In the event that a prospective panel member or a 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.

- 9.3 Should a panel member need to apply for re-accreditation during the period of suspension (because the five year period of membership has expired) then an application must be completed immediately after the panel member's return to practice.

APPENDICES

Appendix 1 – Appeals Process

1. Appeals process against withdrawal of panel membership

- 1.1 There is a right of appeal in relation to:
- rejection of an application for reaccreditation for the AvMA Clinical Negligence Panel leading to withdrawal of panel membership
 - withdrawal of panel membership following disciplinary action.

2. Time Limit

- 2.1 The applicant has the right to appeal within 20 working days of notification of withdrawal of their panel membership following disciplinary action or following rejection of their application for reaccreditation. 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.

3. Grounds for Appeal

- 3.1 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.

4. References

- 4.1 References from other practitioners or barristers cannot be accepted.

5. Fee

- 5.1 The administrative fee for an appeal is £200 plus VAT. The administration fee will be refunded to successful appellants.

6. Appeals Procedure - Reaccreditation

- 6.1 Appeals will be considered by external adjudicators drawn from a panel of external assessors comprising practitioners with a minimum of 10 years clinical negligence experience and who are members of both the AvMA and Law Society Clinical Negligence Panels.
- 6.2 The notice of appeal, the original application, grounds for rejection and correspondence between AvMA and the applicant, will be submitted to the external adjudicator for consideration.
- 6.3 The adjudicator may be prepared to consider further evidence submitted by the applicant on the matter complained of originally.

- 6.4 The Adjudicator will have the power to:
- (a) Reject the appeal;
 - (b) Ask for further information;
 - (c) Ask the AvMA PC to reconsider the matter if it is felt that they have overlooked some point;
 - (d) Request an interview.
- 6.5 An interview will be requested in the following circumstances:
- a. where it is deemed necessary in order to assist them in consideration of the applicant's appeal;
 - b. where there is a dispute as to fact;
 - c. before any appellant is appointed to the panel.
- 6.6 Interviews will normally be conducted by two adjudicators. The second adjudicator will be supplied with the relevant papers prior to the interview.
- 6.7 However, in circumstances where the involvement of a second adjudicator would lead to undue delay, or is considered unnecessary in the circumstances, then with the appellant's agreement, the interview will be conducted by the original adjudicator.
- 6.8 Appellant's expenses will not be reimbursed for the cost of attending the interview or incidental expenses.
- 6.9 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.
- 6.10 If the adjudicator(s) rejects the appeal, this will represent the completion of the appeals process.
- 6.11 If AvMA'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.

7. Appeals Procedure – Disciplinary Action

- 7.1 The adjudicator will have access to the documentation which led to the decision and will have the power to:
- (a) Reject the appeal;
 - (b) Ask for further information;
 - (c) Ask the AvMA PC to reconsider the matter if it is felt that they have overlooked some point;
 - (d) Request an interview.
- 7.2 The adjudicator may ask for the appellant to attend an interview, for example, if there is a dispute as to fact at which the appellant has the right to appear or where the adjudicator considers this necessary. Interviews will be conducted as set out in 6.6 and 6.7 above.
- 7.3 Appellant's expenses will not be reimbursed for the cost of attending the interview or incidental expenses.
- 7.4 If the decision is appealed but decision to withdraw panel membership is upheld then re-application for panel membership cannot be made until 12 months have elapsed from the date of the appeal decision.
- 7.5 If the adjudicator rejects the appeal, this will represent the completion of the appeals process.
- 7.6 If AvMA's decision is upheld the notice of rejection of the appeal will state the date on which membership of the panel terminates as the date of the original decision to remove the panel member.

Appendix 2 – Withdrawal of AvMA Panel membership

1. If panel membership is withdrawn either following disciplinary action or rejection of an application for reaccreditation and no appeal has been lodged or the appeal was unsuccessful, panel membership terminates from the date the member was notified of removal.
2. 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 member of the AvMA Clinical Negligence Panel. The former member must provide AvMA with a list of clients referred to them by AvMA.
3. If a client wants the lawyer to continue to represent them, and for AvMA's continued involvement, the former 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.
4. Following removal, the former member must remove any reference to AvMA panel membership from publicity and other materials.
5. 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 remedy the issues that led to panel membership being withdrawn (e.g. increase in staffing resources/qualifications further training etc.).
6. When a member is removed from the panel a copy of the final reasons will be submitted to the Legal Services Commission.

Appendix 3 – Disciplinary Action

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

- 1.1 Membership of the AvMA 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 criteria and obligations of panel membership as set out in this booklet.
- 1.2 Serious concerns about the performance of any AvMA panel member will be investigated by two members of the AvMA Panel Committee. There are two categories of serious concern but there may be areas of overlap.

2. Category One – Immediate ‘show cause notice’

- 2.1 These will be cases of the utmost severity 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.
 - Where the panel member has had any cases struck out for want of prosecution where this appears to be due to the panel member’s fault, such as unreasonable delay in prosecuting the case
 - Panel member 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.
 - Evidence of any fee sharing arrangements or 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 practices.
 - The panel member is no longer specialising in clinical negligence (i.e. their personal clinical negligence caseload is below that which would be considered to constitute a specialist practice).
- 2.2 The Panel Committee members will report to the Committee and a meeting will be held to decide on the action to be taken. The AvMA Panel Committee 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 setting out the matters at issue and inviting them to give reasons why membership should continue. The Legal Services Commission may be informed at this stage.
- 2.3 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 20 working days to reply.
- 2.4 On receipt of any reply, a meeting of the AvMA Panel Committee 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 panel member
 - place the panel 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 Panel Committee.
 - withdraw panel membership (reasons being formally given to the member).
- 2.5 The member may be asked to attend an interview.
- 2.6 If no response is made to the 'Notice to Show Cause' within 28 working days, this will lead to the withdrawal of AvMA panel membership from the date specified in the notice to 'show cause'. A right of appeal as set out in Appendix 1 remains.
- 2.7 Only in exceptional circumstances would a decision to remove panel status be revoked.

3. Suspension following institution of show cause procedure

- 3.1 Membership of the AvMA 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 may not be able to apply for preferential insurance schemes.
- 3.2 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 Appendix 1.

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

- 4.1 All 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 panel member, this may lead to an investigation by a member of the Panel Committee, if necessary along with another member of the Committee.
- 4.2 The Panel Committee member(s) 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 (or after such time period is deemed appropriate).
- 4.3 If, after the initial review, the matter is considered to fall into Category One, the matter will then be considered under that procedure.

5. Appeal against removal from the AvMA Clinical Negligence Panel following disciplinary action

- 5.1 If membership of the AvMA panel is withdrawn following Category One disciplinary action, the panel member can appeal against the decision to remove in accordance with the appeals procedures as set out in Appendix 1.
- 5.2 Whilst an appeal is pending, the solicitor's membership of the panel will be suspended in accordance with the procedures set out in paragraphs 3.1-3.2 above.