

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

The Hearing

- A2.9.1** The Panel member will have the right to request a hearing before a decision on disciplinary action is made. Those deciding whether there should be disciplinary action (as set out in paragraph *A2.8.1* above) also have the right to ask the Panel member to attend a hearing.
- A2.9.2** If the Panel member wishes to attend a hearing, he must notify the Panel Administrator in writing. This notification must be given within 20 working days of notification of a decision to move to consideration of disciplinary action in accordance with paragraph *A2.5.3*.
- A2.9.3** If the Panel member confirms that he/ she would like a hearing, if possible, a date will be arranged no later than 40 working days after the request has been made in accordance with paragraph *A2.9.2* above.
- A2.9.4** If the Disciplinary Committee confirms that it would like a hearing, if possible, a date will be arranged no later than 40 working days after the request has been made in accordance with paragraph *A2.9.1* above.
- A2.9.5** On occasions it may not be possible to comply with the time limits set out in in Appendices 1-3. This should be the exception rather than the rule.
- A2.9.6** The Panel member will have the right to make representations at the hearing.
- A2.9.7** Members of the Disciplinary Committee can put additional questions to the Panel member at the hearing.
- A2.9.8** The Panel Administrator and any members of the Panel Committee who investigated the complaint and made the decision to proceed to disciplinary action shall take no part in the hearing other than to answer questions from the Disciplinary Committee. They should also not be present or take part in any discussion before the hearing or after the hearing before a decision is made and will have no voting rights in relation to the decision made on disciplinary action.
- A2.9.9** The panel member is entitled to have legal representation at the hearing at his/ her own cost.
- A2.9.10** There is no entitlement to costs from AvMA.
- A2.9.11** A full note shall be taken of any evidence given and/ or representations made at a hearing, but not of any discussion before the hearing or after the hearing before a decision is made.
- A2.9.12** The External Adjudicator will chair any hearing that does take place.

Decision without a hearing

- A2.10.1** If the panel member does not request a hearing or does not attend a hearing requested by the Disciplinary Committee, a decision will be made based on the documentation before the Disciplinary Committee.
- A2.10.2** The Disciplinary Committee will still have the right to request clarification from those who investigated the complaint and made the decision to proceed to disciplinary action.
- A2.10.3** Where no hearing is requested by the Panel member or Disciplinary Committee, a decision on disciplinary action should be made no later than 40 working days after the expiry of the time limit for the Panel member to request a hearing in accordance with paragraph A2.9.2 above.

Decision of the Disciplinary Committee

- A2.11.1** The Disciplinary Committee will have the power to:
- a) Dismiss the allegations against the Panel member and to decide that no disciplinary action should be taken;
 - b) Find that some or all the allegations have been proved, and that conditions should be placed on the Panel member's membership of the AvMA Specialist Clinical Negligence Panel. This could include conditions such as additional monitoring of the solicitor's cases or undergoing additional training;
 - c) Find that some or all the allegations have been proved and make recommendations as to the future conduct of the Panel member;
 - d) Find that some or all the allegations have been proved, and place the Panel Member on probation in relation to panel membership;
 - e) Find that some or all the allegations have been proved, and that the Panel member should be suspended from the AvMA Specialist Clinical Negligence Panel for a period, membership only being reinstated subject to the Panel member undertaking corrective action;
 - f) Find that some or all allegations have been proved and that the Panel member should be removed from the AvMA Specialist Clinical Negligence Panel.
- A2.11.2** The panel member will be notified of the decision within 10 working days of the decision being made. The notification to the panel member will confirm:
- a) Any facts found by the Disciplinary Committee;
 - b) The decision made; and
 - c) The reasons for that decision.

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

Test to be applied

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

Effect of withdrawal of AvMA Panel membership

A2.13.1 If AvMA panel membership is withdrawn following disciplinary action and no appeal has been lodged, panel membership will terminate from the date the member was notified of his/ her removal from the Panel.

A2.13.2 Where the Panel member unsuccessfully appeals the decision in accordance with *Appendix 3*, panel membership will terminate from the date the member was notified of the decision made on appeal.

A2.13.3 Following receipt of written notice of termination the former Panel member must contact all his/her AvMA referred clients to inform them of removal from the Panel and advise them to contact AvMA if they wish to have their case referred to another member of the AvMA Specialist Clinical Negligence Panel. The former member must provide AvMA with a list of clients referred to them by AvMA.

A2.13.4 If a client wants the AvMA Panel member to continue to represent them, and for AvMA's continued involvement, the former Panel member will be expected to continue to report to AvMA on the progress of the case. Failure to comply will be reported to the client.

A2.13.5 Following removal, the former Panel member must remove any reference to AvMA Panel membership from publicity and other materials.

A2.13.6 Members removed from the Panel may not re-apply for AvMA Panel membership until twelve months have elapsed from the date of the final decision to remove. The applicant will have to demonstrate that systems have been instituted to remedy the issues that led to Panel membership being withdrawn (e.g. increase in staffing resources/qualifications further training etc.).

A2.13.7 When a member is removed from the AvMA Panel, the Legal Aid Agency (LAA) and the Chief Assessor of the Law Society Clinical Negligence accreditation scheme will be notified and where appropriate, the LAA/ Law Society will be supplied with a copy of the final reasons for removal.

APPENDIX 3

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

Right of appeal and time limit for appeal

Right of Appeal

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

Grounds for appeal and initial consideration of the appeal

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

- A3.2.4** Where a valid ground for appeal has not been made, the Appellant will have 10 working days from the date of the notification to provide valid grounds for appeal in writing. If valid grounds for appeal are not supplied within this time limit, the appeal cannot proceed.
- A3.2.5** Where the appeal appears to be out of time, the Appellant will have 10 working days from the date of the notification to provide any representations and evidence that he/ she wishes to rely on to establish that the appeal has been made in time or that there are exceptional grounds to allow the appeal to proceed outside the time limit.
- A3.2.6** Within 15 working days of receiving further grounds for appeal and/or representations and evidence in relation to the timing of the appeal, the Trustee/ External Adjudicator will decide whether the appeal has been made in time or exceptional grounds shown to allow the appeal to proceed out of time and/ or whether a valid ground for appeal has been made.
- A3.2.7** The Appellant will be notified of the decision on whether the appeal can proceed within 10 working days. There will be no right of appeal against this decision. If the Appellant alleges that the procedure set out in Appendix 3 has not been followed, he/ she can make a complaint under the AvMA Complaint's Procedure.

Determination of the Appeal

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

Documentation

- A3.4.1** The following documentation will be submitted to the Trustees for consideration:
- The Grounds for Appeal;
 - Any correspondence in connection with the grounds for appeal;
 - Any revised Grounds for appeal;
 - Any correspondence, documentation or other evidence in connection with the time limit to appeal;

- All documentation seen by the Panel Committee/ Disciplinary Committee which reached the decision being appealed;
- Any correspondence between AvMA and the Panel member in connection with the decision being appealed;
- Notes relating to any hearing that took place.

A3.4.2 New documentation from the Appellant or AvMA will only be considered in exceptional circumstances when the party can show that there is good reason why the documentation was not available when the decision under appeal was made, that it is relevant to the decision under appeal and in the interests of justice for it to be considered.

A3.4.3 For the avoidance of doubt the Appellant is entitled to see any documentation sent to the Trustees of which he/ she does not already have copies.

A3.4.4 The Appellant has the right to send in comments on any documentation that he/ she has not previously seen within 20 working days of the documentation being sent. Any comments will be sent to the Trustees within 10 working days of receipt.

The Decision

A3.5.1 The appeal shall be considered on the papers unless the Trustees feel that a further hearing is essential to properly deal with the appeal.

A3.5.2 The Trustees will decide the appeal within 56 working days of documentation being sent to them in accordance with paragraph *A3.4.1* or within 56 working days of any further comments being received from the Appellant in accordance with paragraph *A3.4.4*, whichever is the later.

A3.5.3 The Trustees must also decide any factual issues on the balance of probability.

A3.5.4 The Trustees have the power to:

- a) Dismiss the appeal; or
- b) Allow the appeal and substitute their own decision; or
- c) Allow the appeal and send the case back to the Panel Committee and External Adjudicator for further consideration.

A3.5.5 The Panel Administrator will notify the Appellant of the decision within 10 working days of the decision being made. The notification will confirm the decision made and the reasons given by the Trustees for that decision.

- A3.5.6** The decision of the Trustees is final unless the case is referred to the Panel Committee and External Adjudicator for further consideration.

Further Application for Panel Membership

- A3.6.1** The Panel Administrator will write to a Panel member within 10 working days of a decision to remove them from the Panel to confirm the date on which membership of the panel terminates. A further application for panel membership cannot be made until 12 months have elapsed from the date of that decision.
- A3.6.2** If the decision of AvMA to remove a solicitor from the Panel is unsuccessfully appealed, then a further application for AvMA panel membership cannot be made until 12 months have elapsed from the date of the last decision in the appeal process

Appendix 4 – Code of Conduct



CODE OF CONDUCT

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

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