

AvMA Medico-legal Expert policy on the recruitment, retention, suspension, and removal of experts on the expert database.

1. Background for experts: About AvMA

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

- 1.1.1 Supporting patients following an incident of avoidable harm in a healthcare setting.
- 1.1.2 Providing a medico-legal service to claimant lawyers practicing clinical negligence law.
- 1.1.3 Organising medico-legal conferences and conferences designed for lawyers, clinicians or NHS management.
- 1.1.4 Working towards improved patient safety through our input into assorted government and non-governmental organisations and agencies.

1.2 In addition to the above, we are a campaigning organisation and feed into government policy concerning patient safety issues and work with the Department of Health, Ministry of Justice (MoJ) as well as the Legal Aid Agency (LAA) and NHS Resolution.

1.3 The caseworkers who assess medico legal experts for eligibility to the AvMA expert database are all professionally trained as either solicitors, barristers and/or medical doctors.

2. AvMA's Expert recommendations to solicitors and other professionals

2.1: AvMA maintains an up-to-date database of medico-legal experts to recommend to members of AvMA's Lawyers Service.

2.2. AvMA's Lawyer Service is a subscription service for clinical negligence lawyers specialising in, investigating and/or representing claimants in clinical negligence claims. Lawyers Services membership offers a range of benefits chief among them is access to our data base of high-quality medico legal experts.

2.3. Occasionally, agencies other than Lawyers Service Members may need to access expert opinion to help resolve clinical disputes and in certain circumstances AvMA may refer an expert from the database to such an agency. For example, where appropriate AvMA endeavours to work with coroners to provide them with details of possible, suitable medico legal experts.

2.4 The database comprises of both medically qualified experts who can report on clinical matters and non-medical experts that may report in relation to quantum issues.

2.5 Medical experts are vetted for their clinical experience and qualifications. All experts are vetted in relation to their experience of producing independent, fair and impartial reports and/or giving expert evidence in court.

2.6 AvMA does not charge a fee for experts to be included on our database. Admission to the AvMA database of experts is based on merit. This is not a subscription service for experts.

2.7 Inclusion on to the database and recommendation of any expert is entirely at AvMA's discretion. However, AvMA is bound by the Data Protection Act 2018 and the General Data Protection Regulations (GDPR) and will provide access to individuals about information held

about them and its use, if requested.

2.8 AvMA values the work that its experts undertake. The work of the expert witness is crucial in enabling access to justice for people affected by avoidable harm in a healthcare setting. AvMA believes it crucial that the experts included on its data base are independent, objective and impartial, experts should not be deemed partisan. AvMA therefore expects experts included on the database to complete a satisfactory mix of claimant and defendant work.

2.9 AvMA does not offer an Expert Accreditation Scheme. Experts who appear on AvMA's database are not to be taken to have any express or implied warranty of an expert's medical specialisation or their performance as an expert witness simply because they appear on the AvMA expert database.

2.10 None of the experts included on the AvMA expert data base are permitted on note paper or otherwise to refer to him/herself as an AvMA accredited expert or member of AvMA.

2.11 Experts approved for listing on AvMA's database are authorised to use the AvMA expert logo which will be updated annually to reflect the current year. The guidelines for use of this logo can be found on our website.

2.12 AvMA's lawyer service aims to introduce medico legal experts and claimant clinical negligence lawyers with a view to them potentially working together. In no circumstances should AvMA be construed as acting for an agent either for experts or lawyers.

2.13 Any terms of business, including hourly rates, turnaround times and payment arrangements are strictly between the lawyer or third party and the expert. AvMA is not an agent for either party and is unable to bind and/or enforce terms of business for any party.

3. Recruitment of experts to the database

3.1 Experts can apply to be on AvMA's expert database by contacting AvMA via the website and completing the new experts application form: <https://www.avma.org.uk/resources-for-professionals/lawyers-resources/information-for-medical-experts/forms-for-experts/new-experts-questionnaire/>

3.2 From time-to-time AvMA caseworkers may approach an expert directly and invite them to apply to join the AvMA expert data base. This approach may be taken where AvMA has received a recommendation by a solicitor, or other person; is aware of the expert's reputation and/or through word of mouth including referral from a lawyers' service member solicitor or another expert, following learning of an expert that has provided reports for reported cases, seeing an expert speak at a conference or articles written for medico-legal journals to name a few.

4. Criteria for entry on to the expert database

4.1: When considering an expert's suitability to be included on AvMA's database several qualities are assessed which include:

4.1.1 The expert's reputation

4.1.2 The quality of their medico-legal report writing skills.

4.1.3 Their understanding of the law related to clinical negligence claims and associated medico-legal issues.

4.1.4 That they hold a valid registration with the relevant regulatory body (ie GMC for medical doctors, NMC for nurses and midwives etc)

- 4.1.5 Experience of, or is prepared to accept instruction from both claimant and defendant solicitors.
- 4.1.6 The number of years they have been practicing at consultant level in the UK. AvMA requires that experts must have completed at least 5 years of clinical work at Consultant level before being included on our expert database.
- 4.1.7 Whether they are still practising – retired experts may be considered in relation to historic cases where the alleged negligence occurred when they were still in practice.
- 4.1.8 AvMA may also give consideration to whether the expert does have experience of giving evidence as an expert witness in court proceedings and/or whether the expert has undergone any medico legal training as an expert witness.
- 4.1.9 Whether the expert has been sued as a defendant in a clinical negligence action. The fact that an expert has had proceedings issued against him or her will not on its own prevent the expert from being admitted to AvMA’s database but AvMA will take this into account and make reasonable enquiry about the circumstances of the case before deciding whether it is appropriate to include the expert.

4.2: AvMA requires that all experts wishing to be considered for and/or included on the AvMA expert database must complete an application form. The application form can be found at: <https://www.avma.org.uk/resources-for-professionals/lawyers-resources/information-for-medical-experts/forms-for-experts/new-experts-questionnaire/>.

4.3 All experts including those which AvMA may have sought out and approached must complete an application form.

4.4 From time-to-time medico-legal expert agencies contact AvMA inviting us to add their list of experts added to the AvMA database. In such cases the agency must complete an application form on behalf of each individual expert.

4.5 The application requires a proposed expert to provide details which include information about the expert’s specialty, number of years qualified and relevant medico-legal experience. Experts are expected to confirm their hourly rate, average turnaround time, whether they will undertake work at Legal Aid Agency (LAA) rates and whether they will undertake medico legal work in the Irish Republic.

4.6 All experts are expected to carry professional indemnity insurance for the purposes of conducting medico-legal expert witness work. A video produced by Bond Solon highlighting the importance of having indemnity insurance for the purposes of expert witness can be found at: <https://www.youtube.com/watch?v=fzmMy81fkkY>

4.7 The expert also needs to provide an up-to-date medico-legal CV.

- 4.7.1 In addition to completing the application form and providing a copy of their CV the expert will need to produce either:
- 4.7.2 A redacted and GDPR compliant copy of a medico-legal report on liability or causation which was prepared and completed by the applicant for use in a clinical negligence case. Please note a personal injury report will not be accepted.
- 4.7.3 In most cases, reports on condition and prognosis will not be an acceptable alternative to the requirement that prospective experts provide a redacted copy of a medical report on liability or causation. AvMA reserves the right to make exceptions to this requirement, this discretion will be exercised in circumstances where it is not

considered usual for the expert to prepare liability and causation reports, for example quantum experts or medical experts practicing in specialist areas such as pain management.

4.7.4 Or, where the applicant has not yet completed a medico legal report

4.7.5 The names of two specialist clinical negligence solicitors or clinicians who can act as referees.

5. Assessment of the Medico Legal expert application:

5.1 Once the completed application has been received it is reviewed by one of AvMA's caseworkers who will make a preliminary decision on the expert's suitability to be listed on the database considering the criteria listed at paragraph 4, above.

5.2 The application will then be passed to a second caseworker for a further consideration and review of the application.

5.3 The two caseworkers will then discuss their respective views of the applicant's eligibility for acceptance on the AvMA expert's database and a decision will be made on their assessment.

5.4 Caseworkers reserve the right to ask the applicant for additional evidence and/or information to help inform their decision.

5.5 Once a decision has been made the applicant will receive written notice confirming their acceptance or otherwise onto the data base. If an applicant is rejected, reasons for non-acceptance will be provided.

5.6 Once the expert has received confirmation that they have been included on AvMA's data base of experts the expert is responsible for ensuring that the AvMA email address is added to their address book so future emails from us are received.

6. The Expert referral process:

6.1 The expert referral service is funded by annual subscriptions from lawyers (solicitors and barristers) to become members of AvMA's Lawyers Service.

6.2 Lawyers Service subscriptions offer its members several benefits, of which access to AvMA's expert data base is only one.

6.3 Lawyers seeking recommendations for a medico legal expert must complete an 'expert request form' via the secure log in section of the website <https://www.avma.org.uk/resources-for-professionals/lawyers-resources/members-area/request-for-experts/>. The expert request form asks lawyers to set out details of their client's case and to ensure that the client cannot be identified by name, but by file number only thereby preserving the client's anonymity and protecting their data.

6.4 Members of Lawyer Service who do not follow the expert request process do so at their own risk. AvMA does not take responsibility for expert requests made by lawyer service firms which depart from the expert request procedure. AvMA specifically urges lawyer service members not to approach individual caseworkers direct with their request for an expert.

- 6.5 Upon receipt of an expert request form the AvMA caseworker will log the case on AvMA's system and where possible will endeavour to provide the lawyer with the contact details of at least 2 experts per specialty requested. It should be noted that our ability to do this may vary depending on the number of experts available in the specialist field requested.
- 6.6 To protect client confidentiality both AvMA and the lawyer and/or the firm requesting the recommendation will identify the client with reference to the firm's client reference number. Firms are asked not to provide their client's name when seeking a recommendation. Details of the request including the firm's client number are stored on AvMA's IT system in compliance with GDPR.
- 6.7 AvMA caseworkers will recommend an expert based on the firm and/or the client's requirements as evidenced from the details contained in the Expert Request Form. Every effort is made to recommend experts who are independent of the treating clinician and or healthcare worker. Regard will be had to the medico legal experts' skills, knowledge and expertise in the issue relating to breach of duty and/or injury or causation.
- 6.8 Once AvMA has recommended likely, suitable medico legal experts from the database it is the lawyer's responsibility to verify with the expert(s) whether there is any conflict in the case and whether the expert has the appropriate expertise for the case.
- 6.9 To help facilitate the introduction and process, AvMA will provide the lawyer with such factual information as it holds on its file such as the expert's hourly rate, turnaround time and expected cost of producing the report. However, it should be noted that this information can go out of date very quickly and ultimately it is the lawyer's responsibility to be satisfied that the medico legal expert does hold the necessary medico legal qualifications and is the correct expert to progress the claim.
- 6.10 The medico legal expert and the lawyer are responsible for agreeing their terms of business including confirming the hourly rate, turnaround time and likely cost of the report. If either party falls short of the agreement or standard terms of business if those are being relied upon, it is for the parties to resolve.
- 6.11 AvMA does not act as an agent for either the medico legal expert or the lawyer and cannot and will not become involved in any dispute which may arise between either the lawyer and the medico legal expert or the client and the medico legal expert and/or their lawyer.
- 6.12 From time-to-time Lawyer Service firms request bespoke assistance on identifying the correct expert or experts for their client's case. It is not unusual in those cases for lawyers to submit additional client information such as the client statement. AvMA expects any additional information and documents submitted by firms to be anonymised and where appropriate redacted to ensure compliance with GDPR, firms are encouraged to substitute their client's name with their firm's file- reference number.
- 6.13 Firms who submit additional documents and information about their client in accordance with paragraph 6.10 above are expected to advise AvMA when the case has concluded so the client information held by us can be destroyed
- 6.14 Where a firm has submitted additional client information as described above and experts are provided, AvMA reserves the right to destroy the client documents after 3 years where there has been no further activity or correspondence from the firm during that time.

7. Protection of Information held about Medical Experts:

- 7.1 No information held about the individual expert will be divulged to third parties save for the purposes set out in this protocol i.e. for assisting lawyers in medico-legal cases to make decisions about the most appropriate expert to use.
- 7.2 In some exceptional circumstances (and only following authorisation from the Medico-legal Director) AvMA may inform other third parties such as a coroner, whether an expert is on AvMA's database of recommended experts.
- 7.3 Unless an expert states to the contrary, AvMA may approach experts with information and advice about relevant conferences, courses, newsletters and legal updates which are likely to be of interest to them. Such information is also used to approach experts for voluntary donations or to survey experts.
- 7.4 If an expert does not wish to have the information divulged for the purposes set out in paragraph 7.3, an expert may request that the information relating to him/her is not used in this way. A request needs to be communicated to the lawyer service team by emailing the lawyer service team (ls@avma.org.uk) to ensure that this information is noted alongside the expert's entry on the database.
- 7.5 The above is subject to any disclosure which AvMA is required to make by or under any enactment, by any rule of law or by the order of a court or which it is necessary for AvMA to make for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings), or for the purpose of obtaining legal advice or is otherwise necessary for the purposes of establishing, exercising or defending AvMA's legal rights.
- 7.6 AvMA endeavours to ensure that the information it holds on its experts is up to date and accurate. There is an expectation that the expert will contact AvMA to advise on any change to the expert's hourly rate, turnaround time and contact details, including any changes of email address.
- 7.7 If an expert is unable to undertake any new work at any given time perhaps because they do not have capacity to take any new medico-legal work on, the expert is encouraged to contact AvMA to advise they are taking a break from medico-legal work. Experts should do this by emailing the lawyer service team: ls@avma.org.uk Where possible, experts are asked to provide AvMA with a time estimate for how long they want us to refrain from recommending them so this can be diarised.
- 7.8 AvMA contacts the experts on the data base annually and invites them to provide up to date information in the expert's contact details form.
- 7.9 AvMA also asks that experts listed on our database inform us if they have been referred for any disciplinary hearings and/or if they hold any restrictions on their ability to practise.
- 7.10 AvMA reserves the right to remove any expert from its data base where they have failed to provide up to date information and where it appears their email address is not valid or where it appears that AvMA's email correspondence is not being opened and/or being sent to junk mail.

8. Monitoring the database

- 8.1 AvMA does not actively seek feedback on experts from lawyers.
- 8.2 Where lawyers do provide information about an expert's turnaround time, hourly rate, willingness to do work on Legal Aid Agency rates, take instruction from firms in the Republic of Ireland or particular areas of specialism, this information will be recorded with expert's entry on the data base.
- 8.3 Where AvMA receives negative feedback on an expert, the nature of which is so serious that it potentially or actually calls into question concerns about the protection of the interests of people affected by avoidable harm in healthcare and/or the reputation of AvMA. In this case the feedback will be logged along with the expert's details on AvMA's database. Please see paragraph 9, below for further information.
- 8.4 Where it has come to AvMA's attention that an expert's conduct and/or performance at the trial of a clinical negligence action was commented on by the presiding judge, a case citation will be placed next to the expert's name.
- 8.5 Where it has come to AvMA's attention that an expert has previously had proceedings issued against them as a defendant in a clinical negligence case and that matter settled either because of a settlement or trial of the action a case citation will be placed next to the expert's name.
- 8.6 In the case of an experts conduct as an expert witness, the case citation will be placed next to an expert's name whether the judge's comments about the expert were positive or negative.
- 8.7 Where an expert is recommended to a Lawyer Service member and there is a case citation lodged with their details, the case citation will be passed on with the expert recommendation. It is for the Lawyer Service member to decide whether the comments contained in the judgment about the expert make the expert suited to instruction.
- 8.8 When lodging the case citation, AvMA will not form an opinion on the judge's conclusions. However, AvMA will consider whether the judge's comments or observations about the expert amount to "serious information" and whether the comments need to be considered and/or dealt with as "Negative feedback and/or complaints" as referred to in paragraph 9 below.
- 8.9 AvMA will log such case citations referring to an expert as come to their attention. However, it is entirely possible that an expert has been referred to in a judgment, (whether in positive or negative terms) and AvMA is not yet aware of the fact. It will be for the Lawyer Service member to make

all necessary enquiries about the expert's suitability before they instruct them.

8.10 Experts are expected to be candid with AvMA about their involvement in any court proceedings at the time they make their application to be on the expert database. That expectation is ongoing, even after the expert is admitted to the database. Any change in circumstances whether by way of judicial comment as an expert witness, or in the event that the expert should be identified as a defendant or tortfeasor to a clinical negligence action should be reported to AvMA without delay.

9. Negative feedback and/or complaints

9.1 Information may come to AvMA's attention which calls into question an expert's suitability for recommendation as an expert. This might be from a variety of sources including instructing lawyers as well as third parties such as clients; members of the public; media reports etc.

9.2 When serious information comes to light which calls into question an expert's suitability to be recommended by AvMA, the matter is reviewed by the Medico Legal Team Leader and the Director Medico Legal Services with a view to first establishing whether the information identified may in any way compromise or risk compromising:

9.2.1 The interests of people affected by avoidable harm in healthcare

9.2.2 and/or

9.2.3 The reputation of AvMA

9.3 What amounts to serious information will vary according to the facts and substantive nature of the allegation. However, examples of what may constitute serious information include:

9.3.1 A series of complaints about the same expert which are similar in fact and/or circumstances

9.3.2 Inadequate clinical knowledge or expertise is indicated

9.3.3 a serious complaint

9.3.4 Poor service is demonstrated (for example, the expert cannot be relied upon to meet deadlines or commitments)

9.3.5. Evidence of inconsistent opinions / poor reasoning /unjustified conclusions/ other service flaws which seriously undermine the credibility and/or evidential value of a report

9.3.6. Where their credibility as an expert witness may be or is damaged due to Adverse publicity or decisions made by their professional body or criminal conviction.

9.3.7 Where there is suspicion of misconduct.

9.3.8 Where there is evidence of conduct undermining the relationship of trust and confidence with the client such as disagreeable conduct

9.3.9. Where there is excessive charging.

9.3.10. Where there is a concern that continued inclusion of the expert on the AvMA list of recommended experts may bring the credibility of AvMA into disrepute. The final decision that this is the case will rest with the Chief Executive.

9.4 Where it is established that the risk identified in paragraph 9.2 and 9.3 above may exist the expert will immediately be suspended from AvMA's data base of experts pending further consideration of the allegations.

10. Investigating negative feedback and complaints

10.1 : Where AvMA suspends an expert from the database in accordance with paragraph 9, above the expert will be written to either by email or post or both and the allegation set out.

10.2 To ensure the process is compliant with the law, natural justice and is as fair as possible the expert will be given the opportunity to respond to the allegation/s.

10.3 If AvMA does not receive a substantive response from the expert then after a reasonable period we reserve the right to remove the expert from the database indefinitely and without further recourse or warning to them.

11. The review process

11.1 In conducting the review, the Medico-legal team leader and the Director of Medico- Legal Services will act as reviewers.

11.2. The reviewers will:

11.2.1 Analyse the information that has come to light,

11.2.2 The reviewers may seek further information. If the concerns require further analysis before a decision can be made, the expert will be suspended from the expert database.

11.2.3 The decision to suspend will be recorded on the database entry relating to the individual expert.

11.2.4 Be entitled to consult or involve other members of AvMA staff as appropriate where they have experience or knowledge to bring to bear. This includes being able to consult the Chief Executive on decisions which are of a sensitive nature (for example where a decision is being contemplated based on issues other than performance / ability as an expert)

11.2.5 Decide as to whether the expert should remain available for recommendation as a medical expert.

11.3 Should the expert provide a substantive reply to the allegation (see paragraph 10), AvMA will give due consideration to the information provided and will consider whether it is appropriate to lift the suspension and reinstate the expert. When considering whether this action is appropriate AvMA's paramount concern will be to consider whether reinstatement is in the best interests of claimants who have or may have been injured because of avoidable harm in healthcare and/or whether lifting the suspension will/may have an effect on AvMA's reputation.

11.4 Where the expert is subject to investigation by their own regulatory body and or court or other formal proceedings because of the allegation or matters associated with it, AvMA reserves the right to suspend the expert from the expert database until the investigation and/or court proceeding has concluded.

11.5 AvMA will be entitled to rely on the findings of any regulatory body, court proceedings or other

formal proceedings when considering whether the expert should continue to be suspended from the database alternatively removed from it completely or to reinstate the expert.

12. Actions following a decision:

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

12.2 Should the expert subsequently wish to be reinstated on the expert database, they will need to complete a new application form and go through the application process again.

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

13. Review of Decision

13.1 There is no right of appeal from a decision made by AvMA under this policy.

13.2 AvMA may review a decision where it considers that new information has come to light from any source which has a bearing on its decision.

13.3 The chief executive will be informed of any request for review or information obtained suggesting a review might be necessary.

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