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**AvMA Medical Experts Database Listing Confirmation,**

**AvMA Questionnaire and Feedback 2016/17**

For your ease this form can also be found as a word document on our website: Please go to: [www.avma.org.uk](http://www.avma.org.uk), click on “**Resources for Professionals”, “Medical Experts” and then** “**Forms for Experts”**. Once the forms are completed they can be emailed to: [norika@avma.org.uk](mailto:norika@avma.org.uk)

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| **Title**: | **First Name**: | **Surname**: |

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| **GMC Registration Number:** | |
| **I confirm that I continue to be registered with the GMC and have not been referred for any disciplinary hearing and/or I do not hold any restrictions on my ability to practise** |  |

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| **Medical Speciality:** |

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| **Specific areas you wish to report on**: |

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| **Current hourly rate: £** | **Average cost of a report: £** |

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| **Average turnaround time for preparing reports**: |

**Please tick as appropriate**

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| I wish to remain on AvMA’s database of medical experts and am happy to have my details provided to third parties to whom I am being recommended. |  |
| I am no longer reporting but happy to remain on AvMA’s database and receive news and updates. |  |
| I wish to be removed from AvMA’s database. |  |

**Contact details for my medico-legal work:-**

**(This is the address where you want solicitors to send you instructions and correspondence to)**

|  |  |
| --- | --- |
| Full Address: | |
| Post Code: | |
| Telephone: | Mobile: |
| Email: | |

**MEDICAL EXPERT QUESTIONNAIRE 2016 – 2017**

**This information will help us provide you with a better service, offer courses which will be of interest and seeks your views on proposed changes to clinical negligence law.**

1. **Two government consultations:** you may recall from last year’s 2015/16 AvMA questionnaire that we have been expecting two government consultations both of which will impact on clinical negligence work. The two consultations are: the Department of Health’s (DH) consultation on Fixed Recoverable Costs (FRC) and the Ministry of Justice consultation on loss of recoverability of After the Event Insurance (ATE) premiums in clinical negligence cases. **Please note, the ATE consultation is still pending however the FRC was published on 30.01.17 and can be found here:** at <https://consultations.dh.gov.uk/clinical-negligence/fixed-recoverable-costs>. There has been a pre consultation of FRC which we responded to in October 2015. That response can be found at the AvMA website [www.avma.org.uk](http://www.avma.org.uk) under “Policy and Campaigns” and “Responses to consultations” 2015 (see link below)

<https://www.avma.org.uk/?download_protected_attachment=2015/03/Final-AvMA-REDUCING-LEGAL-COSTS-IN-CLINICAL-NEGLIGENCE-CLAIMS-Pre-consultation-Questionnaire.pdf>

Paragraph 5.3 of the FRC consultation is consulting on capping expert fees. The current suggestion is that a successful claimant will only be able to recover a maximum of £1,200 from defendants. **We understand that £1,200 is to cover the cost of liability, causation, and condition and prognosis reports inclusive.** We are seeking confirmation of this from the DH. If our understanding is correct, that means there is potentially a maximum of £400 for each report. The DH maintain that: “*The level of cap proposed is considered sufficient to allow a claimant to obtain reports from an appropriate number of experts and will have regard to case type and value”*

Paragraph 5.5 raises the possibility of single joint experts (SJE) being used to provide an opinion in “broad terms” on breach of duty and causation at an early stage. AvMA recognises that on paper this suggestion appears to be persuasive, not least because experts are expected to be independent and impartial. However, the fact is, in practice there are difficulties with SJE. One potential difficulty is that the appointment of a SJE will mean a loss of legal privilege. The loss of legal privilege means that the expert will not be able to attend conference with only one party’s legal representatives being present – a SJE will not be able to attend a claimant conference without a member of the defence being there and vice versa. This fact alone may well undermine the expert’s ability to test difficult matters during discussions in conference.

The loss of legal privilege means that in practice the SJE will effectively become the arbitrator or adjudicator in low value claims; the expert’s initial conclusion will be a key deciding factor as to whether the claimant can progress their claim. It will also mean that the court will not see the full range of opinion available on the issue. The increased use of SJE may give rise to objections to the nominated expert being instructed and encourage a subsequent impasse between parties. **As we understand it, the cap of £1,200 will apply to SJE reports as well as individual expert reports;** this fee is very much lower than many experts currently charge for a single report and takes no account of the complexity of the case.

It should be remembered that although the current FRC consultation is for claims up to £25,000, there is a stated wider commitment to extending FRC to claims up to £250,000

**Have your say**: (please feel free to elaborate your responses on a separate sheet of paper)

* 1. Do you think it is possible to report in a clinical negligence claim where fees for liability, causation and condition and prognosis reports are capped at £1,200? **Yes No**
  2. Are you aware that if costs capping is introduced, any additional costs charged by the expert will in all likelihood be passed on to the client and deducted from their damages? **Yes No**
  3. If you answer to 1.2 above is no, would this cause you to alter the fee you charge? **Yes No**
  4. Do you have any concerns about SJEs being appointed in matters of liability? **Yes No**
  5. If so, what are they?

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* 1. Do you have any concerns about SJEs being appointed in matters of causation? **Yes No**
  2. If so, what are they?

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* 1. Do you have any concerns about SJEs being appointed in matters of condition and prognosis?

**Yes No**

If so, what are they?

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* 1. Do you have any other comments or observations you wish to make on receiving single joint instructions? Please provide details:

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1. **Training for experts:** Following on from previous feedback we have received from you, we have now rolled out our first dedicated medical expert training session which received excellent feedback. We aim to continue to collaborate with leading members of the legal profession to deliver high quality expert training courses in 2017. We expect that the next AvMA expert training will take place in Liverpool later this year (probably November). Given the proposals to cap expert fees and introduce single joint expert reports for liability and causation issues it will be more important than ever to ensure that your reports are clear, succinct and go directly to the core issues. Report writing will require even more careful consideration of the issues at the outset; this means receiving proper instructions from your solicitor as well as a potentially different approach to writing the report. Given these factors we envisage that our Autumn course be aimed at both lawyers and medico legal experts. Longer term we are aiming to roll out a unique approach on how to give evidence in court.
   1. The training will be delivered as two separate courses.

Please score the options below with a number between 1 – 3 where number 1 represents your preferred area of training and 3 represent the area of least interest.

* + 1. Expert report writing
    2. Giving evidence in court
    3. Both
  1. How far would you be prepared to travel to attend training? Please score the regions identified below with a number between 1 – 5 where number 1 represents your most convenient region and 5 being the least convenient region.
     1. London
     2. Midlands
     3. South West
     4. North (Leeds)
     5. Manchester

1. **Legal Aid:** Over the last few years we have drawn the Ministry of Justice’s (MoJ) attention to the inequity that occurs by artificially depressing expert rates on legal aid; most notably that defendant experts are not restricted by the same rates. Despite our efforts no resolution has yet been found, we continue to pursue this concern. We want to keep our records up to date to ensure that we don’t recommend experts for legal aid cases where they have confirmed they do not wish to undertake this work.

***Details of the hourly rates allowed by the Legal Aid Agency can be found on the AvMA website***

***at*** [***www.avma.org.uk***](http://www.avma.org.uk) ***under “Resources for Professionals”, “Medical Experts”, “Information for Experts”*** <http://www.avma.org.uk/information-and-forms-for-experts>

* + 1. Are you prepared to undertake work at legal aid rates? **Yes No**
    2. Please feel free to comment further on this issue, if you wish:

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* + 1. Other than the rates allowed for experts, do you have any other comments or concerns about working for clients who are funded by legal aid?

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1. **New Firms:** The NHS Litigation Authority Report and Accounts for 2013/14 cited an 18% increase in the number of clinical negligence claims made that year, the report noted that “***we have seen an increase in poorly investigated claims and claims where the care was clearly not negligent being brought by lawyers who do not specialise in clinical negligence work***”. The most recent report notes that “***new clinical negligence claims in 2015/16 fell in number by 4.6%”***. Nonetheless this still represents a significant number of new claims. We would like to identify whether there may be a correlation between the reduction in new claims and a slowing down of the number of new and less experienced firms entering the clinical negligence market, we would therefore be grateful if you could answer the following questions:
   * 1. Please circle one of the following options: Over the 12 month period (2015-2016) has the number of new clinical negligence instructions you have received:

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| --- | --- | --- |
| **Reduced** | **Increased** | **Stayed the same** |

* + 1. If you have noticed a reduction, by roughly what amount?

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| --- | --- | --- |
| **1/2** | **1/3** | **¼ or less** |

* + 1. If you have experienced an increase, by what amount?

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| **1/2** | **1/3** | **1/4** |

* + 1. In your opinion, what is the reason for the increase in the number of referrals you have received?

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* + 1. Do you have any observations on the quality of instructions you have received from firms in the last 12 months or so? If so, please give brief details.

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1. **Firms in the Republic of Ireland (Eire):** We have a growing number of Irish firms specialising in clinical negligence work. Whilst the principle of proving a claim is similar to the legal test used here there are some distinctly different practices. We have good relations with our Irish firms and are pleased to pass on any observations or comments you may wish to make about Irish litigation practices. We are unable to directly interfere with the litigation process however we do aim to educate firms about the expectations experts from different jurisdictions have. To avoid us recommending experts who do not wish to undertake work in the Republic of Ireland would you please confirm as follows:
   * 1. Are you prepared to accept instructions from Irish firms? **Yes No**
     2. If your answer to (a) above is no, can you please state why not**:**

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* + 1. Have you checked to make sure that your indemnity insurance covers you for undertaking work in the Republic Ireland? **Yes No**

**Please note that it is your responsibility to ensure that you are adequately covered**

**by your indemnity insurers, we urge you to check your indemnity status.**

* + 1. Do you have any comments or observations on the way in which instructions are drafted or bundles of medical records are delivered from Irish firms?

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1. **Factors that contribute to increases in clinical negligence costs:** AvMA has called on the government to bring together key stakeholders to identify the factors that give rise to increases in costs in this area, unfortunately this suggestion has not been taken up. AvMA has submitted evidence to Lord Justice Jackson’s second review of costs in civil litigation and have identified what we consider to be some of the key practises that give rise to increased costs. If you are interested our submissions can be found on the AvMA website [www.avma.org.uk](http://www.avma.org.uk) under “Policy and Campaigns” and “Responses to Consultations” <https://www.avma.org.uk/?download_protected_attachment=Jackson-LJ-Second-Review.pdf>

**From time to time we do see examples of good Serious Incident Reports (SIR) or equivalent documents, good complaint handling and genuine attempts to put right things that have gone wrong. However, in our experience this is not the usual experience, at least not where potential or actual clinical negligence claims are concerned. We have identified a number of areas where we believe, if improvements were made it would most likely result in a reduction in the number of clinical negligence claims being brought, significant cost savings and improvements to patient safety – please let us have your views on these issues:**

* 1. **Improved learning:** In our experience many patients bring litigation out of necessity either because they have had difficulty getting to the truth of what happened or because their injuries mean they are unable to work and require financial compensation. Invariably, what an injured claimant wants is for the clock to be turned back to the time before the injury had happened – faced with the impossibility of that task, the majority of claimants are driven to ensure that the same thing does not happen to anyone else**.** AvMA is concerned that not enough is being done to learn from **\***clinical failings and litigation, we consider that a uniform and recognised pathway would ensure that details about the failings are fed back and acted upon. More details on our suggestions for improving patient safety can be found here on the AvMA website: [www.avma.org.uk](http://www.avma.org.uk) under “Policy and Campaigns” and “Briefings”

[**https://www.avma.org.uk/?download\_protected\_attachment=Briefing-Patient-Safety.pdf**](https://www.avma.org.uk/?download_protected_attachment=Briefing-Patient-Safety.pdf)

**\*** The expression “clinical failings” has been used to describe any failings in patient safety which have been identified as part of

a clinical negligence claim. We believe it is important to capture the learning from these failings whether or not they constitute

a breach of the duty of care owed to the patient. The term clinical failings is a broad one and could include a failing which was

identified in a SIR but not pleaded in a clinical negligence claim.

(a) Do you agree that if Defendant organisations were obliged to adequately address their

**\***clinical failings, this would prevent or minimise the chance of them happening again?

**Agree Disagree**

**Additional Comment**

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(b) Do you agree that once representatives have resolved a clinical negligence action whether as a result of settlement or judgment of the court that any clinical failings identified should be subject to a formal process designed to feed this information back to the defendant hospital or trust?

**Agree Disagree**

**Additional Comment:**

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(c) Do you agree that where a defendant hospital or trust has a clinical failing brought to its

attention it should (i) be required to set out the changes they have made in response to each

clinical failing? (ii) do you agree that a requirement to respond in this way will help to

prevent or minimise those incidents recurring?

**In relation to 6.1 (c) (i) Agree Disagree**

**In relation to 6.1 (c) (ii) Agree Disagree**

**Additional Comments:**

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(d) If you have read AvMA’s patient safety paper referred to above (see link), do you agree with

the suggestions put forward?

**Agree Disagree**

**Additional comments**:

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* 1. **Serious Incident Reporting (SIR): Please comment on the following questions drawing on your experience as a medical expert** 
     1. Have you observed that all too frequently trust and hospitals fail to initiate the Serious Incident Reporting (SIR) process (or equivalent investigation) properly and when required.

**Agree Disagree**

**Additional Comment:**

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* + 1. Do you agree that all too frequently SIRs (or equivalent investigations) are (i) not produced in an objective, open, honest and robust way and (ii) need to set out clearer recommendations and conclusions?

**In relation to 6.2 (b) (i) Agree Disagree**

**In relation to 6.2 (b) (ii) Agree Disagree**

**Additional Comments:**

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* + 1. Do you agree that when SIRs or equivalent investigations are drafted in an independent and objective way they are more likely to (i) be instrumental in narrowing the issues between parties and (ii) result in early admissions of negligence and where appropriate early settlement.

**In relation to 6.2 (c) (i) Agree Disagree**

**In relation to 6.2 (c) (ii) Agree Disagree**

**Additional Comment in relation to 6.2 (c) generally:**

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* 1. **Complaints Process: Please comment on the following questions drawing on your experience as a medical expert**
     1. Do you agree that there is a need for trusts and hospitals to make better use of the complaints process, in particular to do more to accurately address the issues raised in complaint letters, carry out detailed investigations and respond in a robust, timely and open way?

**Agree Disagree**

**Additional Comment:**

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* + 1. Do you agree that trusts and hospitals should routinely and uniformly analyse complaints so that areas of concern can be identified at the earliest opportunity and addressed before they give rise to negligence?

**Agree Disagree**

**Additional comment**:

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* 1. **Disclosure of documents:** This is the process by which each party lets the other see documents of relevance. Trusts and hospitals are expected to provide copies of medical notes within 40 working days as well as any other relevant documents such as SIRs.
     1. Have you experienced instructions to prepare a report only to realise that the medical notes are incomplete? Yes No
     2. Have you been asked to reconsider a report in light of additional documentation that has subsequently come to light? Please exclude reference to expected documentation such as receipt of a defence or on exchange of expert reports. **Yes No**
     3. If your answer to 6.4 (b) above is yes, in any 12 month period, what proportion of your medico legal expert reports will require amendment because of piecemeal disclosure of additional documents. Again, please exclude reference to expected documentation.

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| **1/2** | **1/3** | **¼ or less** |

* 1. **Letters of Claim and Response (pre action protocol):** Please comment on the following questions drawing on your experience as a medical expert
     1. Do you think the litigation process would benefit from there being a requirement that trusts, hospitals and/or defendant organisations should be obliged to obtain an independent medical expert report on the medical care provided and in particular the allegations set out in the Letter of Claim before preparing the Letter of Response. The exception being when both parties agree that this step is not required.

**Agree Disagree**

**Additional comment:**

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1. **Safe space:** You are probably aware that the department of health (DH) has recently consulted on providing a statutory safe space in healthcare safety investigations, the consultation has now closed but can be found here:

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/560522/Safe_spaces_cons.pdf>

AvMA responded to this consultation, our response can be found on the AvMA website: [www.avma.org.uk](http://www.avma.org.uk) under “Policy and Campaigns” and “Briefings” (or see link below)

<https://www.avma.org.uk/?download_protected_attachment=Briefing-Patient-Safety.pdf>

The “safe space” concept is taken from a model used in air accident investigations. The consultation proposes that there should be a statutory prohibition on the disclosure of material obtained during health care investigations unless the High Court makes an order permitting it. If a statutory safe space were introduced AvMA believes that this would cut across the intention behind the existing statutory duty of candour and the medical staffs professional duties. It would also be contrary to the NHS constitution and policy on being open and honest.

AvMA believes that before anything akin to a “safe space” is introduced there needs to be further

discussion around what professionals fear and want protection from. We have set out a table of possible

reasons why clinicians fear coming forward but we want to hear your views – please respond to each

reason given and let us have any additional reasons you have identified:

**Table of reasons why clinicians don’t come forward**:

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| --- | --- | --- | --- | --- |
|  | **Strongly Agree** | **Agree** | **Disagree** | **Other comment** |
| **Reprisals from employers** |  |  |  |  |
| **Reprisals from regulators** |  |  |  |  |
| **Professional embarrassment** |  |  |  |  |
| **Personal disappointment at letting patients down** |  |  |  |  |
| **Lack of a professional, emotional support network** |  |  |  |  |
| **Bullying from managers and work colleagues** |  |  |  |  |
| **Fear that it will affect future ambitions** |  |  |  |  |
| **Fear of litigation** |  |  |  |  |
| **Fear of being scapegoated particularly where personal failings are caused or exacerbated by existing systems failures** |  |  |  |  |
| **Not knowing who to turn to within the organisation to discuss the matter** |  |  |  |  |
| **Any other reason/s you wish to include** |  |  |  |  |

1. **Pro Bono Work**: Would you be prepared to undertake any pro bono work for AvMA? For example, assisting with our pro bono inquest service or difficult cases going through the complaints process

**Yes No**

1. Would you be happy for AvMA to contact you directly to discuss any of the issues set out in his Questionnaire?

**Yes No**

**THE END**

If you are interested in any of the issues raised in this questionnaire then more information can be found in our Experts Newsletter which is on our website: LINK

Thank you for completing this form, please return it to Norika Patel by **6th March** **2017 at the latest** either by email: [Norika@avma.org.uk](mailto:Norika@avma.org.uk) or by post or DX to:

**Norika Patel,**

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**Croydon**

**CR0 1QG**

**Dx:144267 Croydon 24**