



RESPONSE TO

Legal Services Board:

Approaches to Quality

May 2012

Action against Medical Accidents

Action against Medical Accidents (AvMA) was established in 1982. It is the leading UK Charity specialising in advice and support for patients and their families affected by medical accidents. Since its inception, AvMA has provided advice and support to over 100,000 people affected by medical accidents, and succeeded in bringing about significant changes to the way that the legal system deals with clinical negligence and in moving patient safety higher up the agenda in the UK.

AvMA also provides support services to lawyers who practise in the field of clinical negligence and healthcare law through AvMA's Lawyers Service. We support best practice in clinical negligence through our comprehensive programme of medico-legal courses and conferences and providing opportunities for specialist lawyers to network and share expertise

AvMA was responsible for pioneering the concept of clinical negligence as a separate specialism within legal practice. The AvMA panel was set up soon after the charity was established over thirty years ago as a referral panel for AvMA's clients, but is now widely recognised as a quality mark for claimant clinical negligence solicitors. As a patients' organisation, a client focus and safeguarding the interests of patients and their families is fundamental to the operation of the AvMA panel.

Consultation questions

As an organisation specialising in patient safety and clinical negligence, our responses will be restricted to our particular area of expertise.

Question 1: In your experience, when consumers do not receive quality legal services, what has usually gone wrong? Where problems exist, are these largely to do with technical incompetence, poor client care, the service proving to be less useful than expected by the client – or something else?

The key issue AvMA sees relates to clients using non-specialist providers. This can make a very significant difference not only to the success or failure of a case but also the outcome that is achieved in terms of the level of damages and/or other forms of redress being sought. When AvMA was originally established thirty years ago, one of our key functions in addition to providing advice to patients about problems with their medical care, was to advise patients who had been poorly served by their legal advisors. In many instances poor legal services created more trauma to already damaged clients than the original medical injury. It was AvMA's task to identify the problem and where appropriate, refer the client to a specialist legal advisor.

It is AvMA's experience that clients have often not been aware of the extent to which they were receiving poor legal services having unquestioning trust in the legal profession as professionals and also having no context against which to compare the quality of advice being provided. Clients would also show remarkable stoicism, for example, in the face of inordinate delays. It was against this background that AvMA established a specialist panel for clinical negligence solicitors so that clients could be directed to legal advisors with the appropriate skill set. The basis of the AvMA panel involves both a rigorous selection process as well as providing ongoing support and training. AvMA encourages networking and shared learning as it is essential that practitioners have access to benchmarks against which they can compare their own practice. It has certainly been AvMA's experience that practitioners have often not been aware when their practice has fallen out of step with current standards and it has been part of AvMA's role to provide a context and framework.

The other issues referred to around competence, client care and service provision are also very important factors in the quality of service received. In addition to core specialist competencies, some cases may require additional specialist expertise even within a field as narrow as clinical negligence. We also see the impact that issues such as high caseloads and funding restrictions can have in terms of compromising the quality of service, as well as economic factors resulting in cases being delegated to fee earners without the appropriate expertise and experience. Supervision is also a significant issue in terms of the wide interpretation of the function of supervision and often a lack of understanding of the role of supervision in both protecting clients interests as well as mentoring and professional development. The failure to select counsel appropriate to the needs of the individual case is also a factor that can result in poor outcomes on cases.

Funding and costs is a particularly difficult and opaque area for clients. It is not uncommon for legal practitioners to be wrong footed by conditional fee agreements and not surprisingly, clients face enormous challenges in even beginning to try to compare CFA packages and the true implications of those agreements. For example, a not uncommon issue for clients is finding that they are in effect 'locked-in' to staying with a particular provider because of the financial consequences of changing firms even though they may be unhappy with the service being provided. Clients have historically always been at a disadvantage in relation to understanding the costs system and therefore having the ability to challenge costs that are unfair or unreasonable. This is not to say that there are not examples of good practice but this needs to be shared across the profession.

Question 2: Would it be helpful if the regulators approached issues of quality by looking separately at different segments of the legal services market? Which segments do you perceive as being greatest risk to consumers?

There are some core generic standards that should apply across all legal practices and professions but there also needs to be segment specific standards and requirements. We are not able to comment specifically on other areas of law but there are clearly particular areas of law where clients will be more vulnerable and have very specific needs. With the withdrawal of legal aid funding from many areas of legal practice, the additional tier of quality assurance provided by the Legal Services Commission will be lost to many of the most vulnerable clients.

Question 3: How can regulators ensure that regulatory action to promote quality outcomes does not hinder (and where possible encourages) innovation?

The regulatory framework should be based on the premise that protecting the interests of consumers is at its core but to a considerable extent this is not reflected within the current system of legal regulation. The regulatory bodies have been particularly slow to engage with consumers and this has meant that the regulators still tend to have a professional focus. This is perhaps demonstrated by the fact that the present systems of regulation fail to provide adequate protection against persistently poor or incompetent practice. There needs to be a refocusing of priorities to consumer centred regulation that is more responsive to the sorts of issues that are going to provide the greatest protection for consumers. The first step is to ensure greater direct consumer involvement within the professional regulators

Question 4: What balance between entry controls, on-going risk assessment and targeted supervision is likely to be most effective in tackling the risks to quality that are identified?

We would consider these equally important. Entry controls provide assurance of a certain minimum standard of professional training but this is of limited assurance to the client whose case is handled within the practice by a non-lawyer or a professional who has failed to keep up to date.

The introduction of alternative business structures creates enormous challenges for the regulators if consumers are going to be protected and be able to navigate their way to the most appropriate provider for their needs.

Question 5: Quality can also be affected by external incentives and drivers. Some examples include voluntary schemes (for example the Association of Personal Injury lawyers (APIL) Accreditation), consumer education and competition in the market place. How far do you think these external factors can be effective in tackling the risks to quality that exist? Which external factors do you think are most powerful?

AvMA is a strong believer in empowering consumers through information not only to enable them to select an appropriate advisor but also to be able to understand how the legal process works so that they can recognise and challenge poor legal services. The AvMA panel was established to enable patients to identify specialist clinical negligence lawyers and AvMA has always promoted the importance of empowering clients by providing accessible information on the legal process.

One of the difficulties from a consumer perspective is the increasing number of 'quality marks' and other forms of 'badging' that are now out there and being able to identify which are meaningful in term of enabling consumers to find an appropriately qualified and experienced legal advisor to deal with their legal problem.

Question 6: Another possible tool for improving quality is giving consumers access to information about the performance of different legal services providers. How far do you think this could help to ensure quality services? How far is this happening already?

For this to be of value, the information has to be consistent, reliable, and accessible. It also needs to have context i.e. reliable benchmark standards against which firms can be compared. As far as we are aware, data collection that is likely to meet these criteria is at best very limited. The Legal Services Commission had made considerable inroads into performance reviews and particularly in relation to clinical negligence, was able to generate some useful outcome data for legally aided clinical negligence cases. With the withdrawal of legal aid from most areas of legal practice, this form of independent monitoring and quality control will be lost and it is difficult to see how this will be replaced to provide the kind of consistency that comes from a centralised monitoring system.

Question 7: What do you believe are the greatest benefits of such transparency? What are the downsides and how can these be minimised?

The benefits are that it should drive up standards. It also provides a benchmark for practitioners and it supports consumer in making an informed choice.

The downside is the lack of reliable performance data that is meaningful. The wrong dataset could actually prove more misleading for consumers.

Question 8: The table (Figure 3) gives some examples of how risks to quality can be mitigated and actions that can be taken by regulators to ensure this happens. Can you suggest any other actions that can be taken?

The complaints and disciplinary system needs to be far more responsive to the concerns raised by consumers, and practices need to be more willing to recognise where their service has failed. From the consumers' perspective the legal profession can still appear immune to challenge. AvMA has recently seen a case that required two interventions by the Legal Service Ombudsman before quite significant failings were identified by the professional regulator.

Question 9: Which of the possible interventions by regulators do you think likely to have a significant impact upon quality outcomes?

- Closing the virtuous circle – feeding the learning from outcomes in to standards and training
- Consumer satisfaction feedback / consumer co-regulation
- Accreditation schemes / minimum competency assurance

Question 10: To what extent should the LSB prescribe regulatory action by approved regulators to address quality risks?

This would have the benefit of ensuring greater consistency across the regulators including setting the standards that users of legal services have the right to expect. A very important role for the LSB would be to ensure greater consumer input into legal regulation across all the regulators with a view to refocusing the key priorities to achieve better consumer protection.

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