

From the Chairman

President's Reception

Summer is approaching, or so I thought. The last Bank Holiday made a nice change with some decent weather let us hope that it holds for the President's reception on June 20th. Last year we were very lucky with the weather being fine and this year we are hoping for the same again. Lord Howe, our President, will be hosting the evening, which is being held, for the second time, in 'the walks', the gardens at Gray's Inn. There will be a (strolling) jazz band, and an evening buffet. There are still some tickets left so why not bring your wife, partner and guests. I look forward to meeting you there.

On the 20th we will also be holding a Council meeting and reporting on the events of the year. The time has moved on quickly again and it seems that the periods between Council meetings get shorter and shorter. I will be pleased to report that the appointment of the Secretary General last year was a good move. It has been very effective, and to the benefit of The Academy. Having a Secretary General has also made my job as Chairman very much easier.

The recent evening meetings have been well attended, although I myself was unable to attend the last one due to client commitments. The topics have been drawn increasingly from the comments and suggestions from members made during the telephone calls made by Council members. These telephone calls are providing us with valuable information about what members



The Academy
2 South Square

want from The Academy. We shall continue to call members and to try to put their suggestions into practice.

Regional Meetings

Unfortunately we have still not managed to have any effective regional meetings so Executive members will have to be reminded to fulfil their offers of setting them up. However, if any of you wish to assist in organising or arranging a meeting(s) in your area The Academy will provide the necessary administrative support. We would and do welcome your involvement. We are still looking for more members to get involved in the Special Interest Groups and I hope that these will start to take off soon.

Faculty of Mediation & ADR

The Faculty has now set up its main board which includes many influential members from the world of Dispute Resolution. We will now be able get down to some effective work to bring the faculty to the fore.

I know that Sir Brian Neill and John Bishop have great hopes for the faculty. Although events have so far moved slower than we all anticipated. There is, the age old problem that for all people who give their time freely and have to make a living elsewhere time is a limited resource.

Roger Trett
May 2001

JUNE

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Diary Dates

June

Wednesday	4	Expert Appointment Course (Day 1)
Friday	15	The Expert's Report
Monday	18	Commercial Mediation - Module 4/5
Wednesday	20	Executive Committee Council President's Reception Hong Kong Evening Meeting Faculty of Mediation & ADR - Evening Meeting
TBA		
TBA		

July

Monday	2	Expert Appointment Course (Day 2)
Thursday	5	CPR Compliant Expert
Wednesday	11	Commercial Mediation - Coping with Lawyers
Monday	16	Into Court...

August

Tuesday	7	Executive Committee
Monday	13	Copy deadline for 'The Expert & Dispute Resolver'

September

Monday	10	Commercial Mediation -
+ Tuesday	11	Module 1 (2 Days)
Friday	14	Into Court
Monday	24	Day in Court

October

Thursday	11	Annual General Meeting
Saturday	13	Bar Conference
Monday	15	Commercial Mediation - Module 2
Tuesday	16	Commercial Mediation - Module 3
Monday	22	Commercial Mediation - Module 4
Tuesday	23	Commercial Mediation - Module 5
Wednesday	24	Law for Experts & Dispute Resolvers
Tuesday	30	Expert Determination
Wednesday	31	President's Dinner

INSIDE this issue

From the Chairman	1	Notice of AGM	3
Cases	2	Announcements	4
Evening Meetings	2		

Cases

Concealment

This article first appeared in 'Building Magazine' on 20th April 2001.

Cave v Robinson, Jarvis and Roll

A SOLICITOR'S NEGLIGENCE CASE MAY HAVE profound consequences for the construction industry in general and its insurers in particular. Its decision may considerably enlarge the period of time over which contractors, architects and others within the industry can be held responsible for defects in buildings.

The brief facts of the case were that Cave engaged his solicitors to sell certain land. The land was jointly owned by two companies, one controlled by Cave and another by his friend, Cooper. The solicitors were retained not only to sell the land to Hyde Securities but to ensure that Cave and Cooper separately acquired mooring rights for 100 years.

The transaction took place in March 1989. In 1994, Hyde Securities went into receivership. The receivers contended that, because of negligent drafting on the part of the solicitors, Cave and Cooper did not enjoy mooring rights. Cave brought proceedings - but not until January 1998.

Usually, claims in negligence have to be brought within six years, or three years from the date when the claimant knew or ought to have known about the negligent act. Cave was outside these periods.

However, time limits can be greatly extended where there is fraud or "deliberate concealment": Section 32 of the Limitation Act provides that where "any facts relevant to the plaintiffs right of action have been deliberately concealed ... the period of limitation shall not begin to run until the plaintiffs discovered the fraud concealment or mistake". It goes on to say that the "deliberate commission of a breach of duty in circumstances in which it is unlikely to be discovered for some time amounts to deliberate concealment of the facts".

The solicitors did not deliberately draft the deed so as to prevent Cave

and Cooper from obtaining the mooring rights. They did, however, deliberately draft the deed in the way they did, mistakenly believing this would confer the rights. The failure to confer the rights was clearly a breach of duty on the part of the solicitors. Further, that breach of duty was unlikely to be discovered for some time. Cave therefore said that all of this was enough to give him the benefit of the "deliberate concealment" provisions of the Limitation Act. The Court of Appeal agreed.

This case has effect only on claims in respect of "negligence", not contract. However, there will be plenty of circumstances in which an architect or a contractor may be liable because of negligence.

Say an architect deliberately draws up plans that it believes comply with fire regulations but which, in fact, do not. If a fire breaks out in the premises 30 years after practical completion, and the cause of the extent of the fire is traced back to inadequate fire-stopping details, and if a neighbouring building is damaged, the owner of the neighbouring building may be entitled to bring proceedings against the architect even after all that time.

The same applies to contractors. If a contractor has to supply and install class 0 materials to comply with building and fire regulations, and the contractor deliberately supplies materials that it believes are Class 0 but that in fact are not, then, if that fact is unlikely to be discovered for some time, this also counts as "deliberate concealment".

The Court of Appeal's decision has largely rendered the distinction between "deliberate" and "unintentional" breaches of duty indistinguishable. The case will have profound implications on claims against contractors and professionals and their insurers. Claims that were thought to be long since dead and buried may be about to experience a grim resurrection.

Julian Holloway is a partner in the construction and engineering group of Paisner & Co.

Adjudicator as Mediator?

Glencot Developments and Design Co Ltd v Ben Barrett and Son (Contractors) Ltd. 13 Feb 2001 judgment of HHJ Humphrey Lloyd QC in TCC.

In a nutshell this case illustrates the dangers of an adjudicator turning into a mediator and then reverting to being an adjudicator. Of course if the mediation succeeds then problems should not arise but if it does not the adjudicator is compromised. Presumably this case is 'transposable' to the situation of an arbitrator.

Evening Meetings

It is intended that there will in future be a paragraph or two about Evening Meetings in 'update'. Most Evening Meetings will then be reported in the Expert & Dispute Resolver'.

Evening Meeting 13 May - Meeting of Experts

"To cover a two hour meeting in a paragraph is formidable in itself, to volunteer ones services to do so seems, in hindsight, ludicrous. How long is a paragraph? However, meetings of Experts, now called Discussions of Experts require formalising both from an agenda viewpoint and the resultant joint agreed statement. 'Agreed' agendas by solicitors should be based on the issues without limiting the experts on the scope of discussion or running interference from the solicitors, neither should they interject in the formulation of the Resultant Statement by the experts which should be signed asap.

The meeting generally expressed the view that longer meetings could well be of interest and benefit to members providing the topics were of particular interest."

Peter Walpole MAE

Note: It was suggested that there should be a half day seminar on the subject. If you are interested in attending please let the office know - preferably by email.

Notice of Annual General Meeting

NOTICE OF ANNUAL GENERAL MEETING

11th October 2001

3.45pm

To be held at The Academy of Experts,
2 South Square,
Gray's Inn,
London WC1R 5HT

Draft Agenda

- 1 Apologies for absence
- 2 To approve the minutes of the AGM held on 10th October 2000 – published in 'update' November 2000 (Volume 8 Issue No 5)
- 3 Matters Arising
- 4 Chairman's Report
- 5 Treasurer's Report including adoption of accounts for the year ending February 2001
- 6 To appoint the Auditors for the year 2001-2002
- 7 Election of Officers
- 8 Election of Council Members
- 9 To approve 2002-03 subscription levels
- 10 Any Other Business

Proxy Voting

Any Member wishing to have a proxy vote (for this AGM only) must ensure that it is registered in writing with by the Secretary (at the office of the Academy) at least 5 working days before the date of the AGM. (See clause 7.7 of the consitution)

Cooperation

Academy members are reminded that they are invited to attend events around the country run by the Association of Project Managers, the Institution of Civil Engineering Surveyors and the Society of Construction Law following an agreement between the four bodies.

Details of APM and ICES regional groups and meetings are available from the Academy office.

Further arrangements such as these are being made and we will keep you informed as they happen. If you think we might approach your professional body please let us know.

Oops!

As the more observant members among you have noticed the photograph of Hong Kong in the last edition of 'The Expert and Dispute Resolver' was not in fact of Hong Kong.

Thank you to the many members who have pointed this out to us - the publishers have been informed and next time the photograph will be authentically Hong Kong.



Victoria Harbour - Hong Kong

Income Tax Relief

Members in the UK are reminded that their subscriptions are allowable against tax. The Academy of Experts has been approved as a Learned Society by the Board of Inland Revenue under Section 201 Income and Corporation Taxes Act 1988, with effect from 6th April, 1992. The reference number to quote is:

SAPP/T/1644/43/1922

Lunching Rights

The scheme allowing Academy members Lunching Rights in Gray's Inn is now in operation and the first members have already taken advantage of it.

Members are reminded that lunch is served from 1230 to 1400 Monday to Friday in the law terms. (There are exceptions so you need to check). Dress is 'business suits'. In order to use the facility you will need to collect a 'luncheon ticket' (shown below) from The Academy's office on the day you are lunching.



It is important that members observe the etiquette of the Inn and do not abuse the privilege. Please note that if you have any questions please contact The Academy Office. DO NOT contact Gray's Inn.

Maybe we got it right!

The consultation period has now been completed for the proposed alterations for 'The Code of Guidance for Experts and those who Instruct Them'. Not one adverse comment has been received on the proposed changes, although several typos in the unaltered part were drawn to our attention. The various alterations are in the process of being made and the new edition of the Code will be dated 1 June 2001. It will be on our website for downloading, (www.academy-experts.org).

The next stage is that the revised version will be sent to Lord Justice May for adoption.

If you have not read the Code lately, why not refresh yourself and reread them? The result could be well worthwhile. Do not hesitate to quote them as the backing for your action.

We believe that the Code should be a living document rather than one set in stone. Should there be areas that you feel need to be addressed please let us know - preferably by email.

Break a Leg!

As you read this edition of 'update' Dominic Stanton should be walking along the Great Wall in China in aid of charity(SACC). We wish him the best of luck.



Those of you attending the President's Reception will undoubtedly have a chance to hear all about it!

On a similarly philanthropic note, Nicola Cohen has just taken part in the Playtex Moonwalk in aid of Breast Cancer.

Council Elections

As the nation is gripped by election fever it ill behoves The Academy not to join in the fun! The time for Council Elections is again upon us and this year there are seven vacancies. Serving on Council is not too arduous and can be very rewarding. Members who are interested will find a Nomination Form enclosed with this mailing.

Academy enclosures in this mailing

- Council & Officer Nomination Forms
- Mediation Training Booking Form
- President's Reception Booking Form

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