

From the Chairman

Back Down to Earth

This is the period when London is a bit easier to move in, when all the schools have broken up and summer holidays are being taken. Unfortunately, as with many things, such halcyon days are short lived.

I have just returned from the perfect holiday, no television, radio, papers or mobile phone coverage. Sitting by the shore with white sands on a desert island and even watching the turtles lay their eggs at night in front of our chalet. I am telling you this only because I came down to earth with a crash when I opened my e-mails, including the one from Nicola Cohen, saying that we must have something for 'update'. The immediate reaction is I should have stayed away. Nevertheless life has to go on.

President's Reception

The 'President's Reception' in June held in the walks at Gray's Inn went very well. Over 150 guests attended and the weather was superb, the Mardi Gras strolling jazz band entertained us and the barbecue was excellent. It was good to see so many people, old and new members alike, enjoying themselves and getting to know each other.

Insurance

You will remember a couple of months ago I referred to the PI policy and the case of personal liability. The case of Merrett v Babb where the Court of Appeal held that following the insolvency of his former employer Mr Babb was personally liable for a negligent mortgage valuation carried out over seven years earlier.

The House of Lords appeals Committee has now refused Leave to Appeal. This means that employees will continue to be



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vulnerable to claims brought directly against them for advice given on behalf of their employers. The Court of Appeal's ruling will impact upon all sectors and professions where employees give specialist advice to clients on behalf of their employers.

The lesson to be learned is that you must make sure that you maintain your *personal* insurance. The implications arise if your firm is insolvent/has ceased trading, is underinsured to meet the full claim, cannot pay the excess or in fact does not have PI Insurance. It does not stop if you leave the employment as your firm may not have run-off cover.

The first step is to make sure that your employer's insurance covers you personally - and then, if not, maintain a personal cover.

Council

In just a few weeks (31st August) nominations for positions on The Academy's Council will close. Although it only meets two/three times per year Council has an important role to play in the development and structure of the Academy.

Representation on council is broad in spectrum - whether you have been a member for many years or are relatively new your input is valid and wanted.

If you need a nomination form or further information about what the duties and requirements for a Council Member are please contact the Secretary General.

Enjoy your holidays.

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Diary Dates

August

Monday	6	Gray's Inn Hall Closed
Tuesday	7	Executive Committee
Monday	13	Copy deadline for 'The Expert & Dispute Resolver'

September

Monday	10	Gray's Inn Hall Re-opens for Luncheon
Monday + Tuesday	10	Commercial Mediation - Module 1 (2 Days)
Friday	14	Into Court
Monday	24	Day in Court

October

Monday	1	Commercial Mediation Training - Lisbon
Thursday	11	Annual General Meeting
Thursday	11	Evening Meeting
Saturday	13	Bar Conference
Monday	15	Commercial Mediation - Module 2
Tuesday	16	Commercial Mediation - Module 3
Wednesday	17	The Expert's Report
Monday	22	Commercial Mediation - Module 4
Tuesday	23	Commercial Mediation - Module 5
Wednesday	24	Law for Experts & Dispute Resolver
Tuesday	30	Expert Determination
Wednesday	31	Management Committee Council President's Dinner

November

Wednesday	14	Into Court
Wednesday	14	Evening Meeting
Friday	30	EuroExpert Conference - Paris

December

Monday	10	Commercial Mediation - Module 1 (2 Days)
& Tuesday	11	The Expert's Report
Wednesday	12	CPR Compliant Expert
Thursday	13	

Unless otherwise shown all courses/ meetings will be held in London

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Questions, questions, questions...

Questions about Questions (under CPR) and other questions. We would not want to question members' knowledge of CPR however ... The following questions are selected from those we have been asked in the last few weeks and may provide some answers which you might find useful.

My solicitor has declined to pay my fees for answering Questions posed by the other side in accordance with CPR. Should I bill the other side?

No - Section 4.3 of The Practice Direction attached to Part 35 (referred to here as PD35) says: "The party or parties instructing the expert must pay any fees charged by that expert for answering questions put under rule 35.6. This does not affect any decision of the court as to the party who is ultimately to bear the expert's costs."

I have been asked Questions by the one side, should I show them to the other side?

PD35 at 4.2 says "Where a party sends a written question or questions direct to an expert and the other party is represented by solicitors, a copy of the questions should, at the same time, be sent to those solicitors." If the Questions you received do not show that they have been sent to the other side(s) you should do so. Do however note the discrimination in the PD as it is only when a party "is represented by a solicitor" that this entitlement exists.

How many Questions do I have to answer? It is going to take longer to answer the Questions than it took to write my Report.

Part 35.6(2)(c) says that they must be for the purpose of clarification of the Report. In addition to this the underlying doctrine of proportionality applies - see 'Code of Guidance for Experts and those instructing them' (The Code) 17.4 which gives more detail.

When I do not believe that the Questions are proper or are served out of time what should I do?

The advice given in The Code sums up the position at 12.7. "Where a single joint expert, is appointed the parties should agree instructions wherever possible (refer paragraph 19.3 below). Failing agreement, any of the parties may give separate instructions.

I am a Party Appointed Expert (PAE) and my side have asked me Questions about my Report. I cannot find anything in CPR which says I have to answer them. Is this correct and if I do should I copy them and the answers to the other side?

Stop and think about why it is only 'the other side' which has the CPR right to ask Questions. As a PAE you will be working with those who instruct you and this will of course include answering their questions and other discussions including a conference with counsel. The 'other side' does not have the benefit of access to you until you are in the witness box. Before then there are two opportunities prescribed by CPR - Questions and Expert Discussions.

I have just been appointed by the Court as a Single Joint Expert and one of the parties disagrees. Should I write and tell the Judge and ask him for Directions?

Are you sure that the Court has appointed you? The given answer is always 'yes' although the real answer is that the Court does not have power to appoint an SJE. It does have the power to Order who the parties shall appoint. This means that if the Court has Ordered your appointment and one of the parties declines to appoint you, you are not appointed and can take no part in the proceedings. It will be up to the parties to apply to the Court for Directions or an appropriate remedy.

I was appointed as an SJE in a case with 3 Defendants. I completed my Report and submitted it to them. I also sent each a fee account for 25% of my fees. Two Defendants have paid their share, one Defendant has gone into liquidation and I am told there will not be any assets and the Claimant has refused to pay his 25%.

I believe that the real problem is that he does not have the funds to pay. As I have already lost 25% of my fee I do not want to lose another 25%. Should I sue him? What happens if he has no resources? Will it cause unpleasantness? Will it make me look unreasonable and partial as the case has not yet been heard?

We need to go back to basics.

The Code at 11.2(1) clearly reflects CPR 35.8(5) that the parties have 'joint and several' liability for the SJE. It goes further by showing that "the expert's invoice(s)

PI Scheme

The Academy's Professional Indemnity Scheme was designed to enable members to be properly protected. Although this was before *Merrett v Babb* it does take this situation into account as it was our understanding of the Law. In essence the policy covers members as individuals for their liability. This means that should the individual be sued, whether or not their employer has cover, the protection is there. This is continuing cover all of the time the policy is in force.

At retirement when theoretically the risk starts to diminish the member can switch to 'run off' cover at a fraction of the cost. Run off cover is only available to members who are in the Scheme prior to retirement and for no larger indemnity than they previously had.

Currently the choice is an indemnity of £500,000 for a premium of £50 or £1 million for £75 (both plus insurance tax).

Any member who is not currently participating in the Scheme is recommended to contact the office.

Evening Meetings

The Meeting held on 31st May discussed Costs and their assessment. It was an extremely lively meeting which almost refused to end.

The proceedings will be published in the next edition of *The Expert & Dispute Resolver*.

will be served simultaneously on all instructing parties". The whole purpose of 'joint and several liability' is that each of the individuals concerned is personally liable for the whole amount. They can then attempt to recover their rateable share from the others. This means that you can recover the 'shortfall' due from the Claimant and from the party in liquidation from the others. Furthermore if you have used the TAE Terms of Engagement for an SJE the solicitors will also have this liability. In other words you have a plethora of potential payers!

A word of guidance: remember to consider the commercial realities in addition to your legal rights. You need to think about the cost of recovery as well any potential knock on effects. If you are going to 'have a go' remember the guiding principle that you should not look for the moral obligation but ask 'where is the money?'

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

Cooperation

Academy members are reminded that they are invited to attend events around the country run by the Association for Project Management and the Institution of Civil Engineering Surveyors following an agreement between the three 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.

Nearer to home if you are proposing to visit Hong Kong why not contact the Hong Kong Committee who will be pleased to welcome you.

Meetings of Experts

Following on from last month's evening meeting on the Meetings of Experts, members may be interested to hear of the recent case *Smith v Stephens* NLD 15 May 2001, QBD.

It was ruled that a joint meeting between experts at which the claimant's representative could attend but not the defendant was not in the spirit of a 'level playing field' and was stopped by the Divisional Court.

President's Reception

Yet again the Academy managed to select a rain free, warm and sunny evening for the Summer Reception - the Garden Party held in the ancient walks of Gray's Inn.

Some 130 members and their guests mingled on the lawns and enjoyed the product of our Expert Chefs at the barbecue.

If you were unable to attend the Reception why not come to the President's Dinner on Wednesday 31st October?



ANNOUNCEMENTS

Congratulations

Academy Chairman, **Roger Trett QDR FAE**, has announced his engagement to Colleen Hooper. We wish them the best of luck.

Congratulations

Congratulations go to Tony Cox FAE MBE, newly elected as a Fellow of The Academy and honoured with an MBE in the Queens Birthday Honours List for services to the Advisory Committee on Dangerous Substances, Health and Safety Commission.

European Matters

The Chairman's Executive Assistant **Iain Tolmie QDR MAE** was elected to the Board of EuroExpert at the General Assembly held in Luxembourg in June. At the same meeting **Antonio Louro QDR MAE** was also elected but to represent Portugal.

Hail the Chief

Robert Morgan AMAE has recently been elected as Chairman of the Chartered Institute of Arbitrators East Asia Branch.

John Lees MAE has been elected President of INSOL (The International Federation of Insolvency Professionals)

Web Site - Members' Area

Work is currently underway on The Academy's web site. The current ethos of simplicity and ease of use will of course remain but with additional information and functionality.

Most important in the new developments will be the introduction of a Member's Area which will be packed with Academy news and events, discussion forums, technical help and information for members.

Since the member area will be restricted to Academy members there will be a registration process for which you may need your email address.

If we do not already hold your email address, or you are unsure, please send an email giving your membership number followed by your name in the subject to webreg@academy-experts.org (please note that you should not use this address for anything else)

Gray's Inn Hall

Hall has now closed for the summer vacations. It will reopen for lunching on Monday 10th September.

A number of members have now taken advantage of lunching in Hall - some have even become regulars.

If you have yet to sample the experience of Lunch in Hall why not pop in when it reopens in September (but please contact the office first to collect your lunching ticket).

President's Dinner 31st October

With our wonderful summer weather it is difficult to think of the winter but the President's Dinner will be a sparkling affair.

Book now to ensure your places for the dinner on 31st October. We are fortunate in being able to hold the Dinner in the Hall at Gray's Inn. The dinner is an excellent opportunity for new members to meet the President and Chairman and indeed for all to enjoy an evening where good food and drink lubricate sophisticated networking.

The dinner is also an opportunity for inexpensive business entertaining as a part of your marketing strategy.

Academy enclosures in this mailing

- Day in Court Booking Form
- Course Booking Forms
- President's Dinner Booking Form

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The Rt Hon The Lord Howe of Aberavon CH QC

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