

From the Chairman



The following is extracted from the Chairman's address to the members at the chairman's lunch.

CPR Code of Guidance

The biggest single issue for the Academy this last year has been the CPR Code of Guidance for Experts and those instructing them. The Master of the Rolls has ended up recognising two codes, although not endorsing either as the official code. We therefore have two codes that in certain important areas are in direct conflict, as no doubt those of you at the Seminar this morning would have noted. I can see problems arising with lawyers cherry picking from both when they are dealing with their experts.

The Working Party's code was altered by the Master of the Rolls department prior to publication and I am pleased to say they have taken on board a number of the Academy's points. In reality therefore it does not reflect the Working party's work that lead to the differences between us. I think it is fair to say that had the Code produced by the Working Party in December 2000 been that which has now been produced we would not have had the problems that we have had. The Academy has proposed that all parties continue to work together in an attempt to end up with a single Code.

The Academy's Code has been



The Academy
2 South Square

well received and in constant use with positive references being made in certain Court cases and in the appeal court. We can feel justly proud and I would like to put on record our thanks for all those who have given their time so willingly and effectively.

Although a lot of effort has gone into the Code the other activities of the Academy have continued unabated. The web site now has the special interest groups set up so that members and non-members can discuss their own topics with like-minded experts. I hope that this communication between members will increase in the coming year.

Insurance

The PI insurance has settled down The savings in costs for a number of members are significant. The case of Merrit v Babb last year, when a Surveyor was held liable even though he had left a company 7 years earlier and the company had gone bust shows how necessary it is to carry personal PI and that the Academy was right to stick by its guns.

Activity

We have had many evening meetings this year on a variety of subjects and they have all been well attended. We are seeking to have even more this year including regional meetings – arrangements are in hand for meetings in Birmingham and Leeds.

March

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Diary Dates

April

Friday	5	Day in Court - <i>Royal Courts of Justice</i>
Wednesday	10	The Expert's Report
Thursday	11	Executive Meeting
Tuesday	16	Expert Determination
Monday	22	Commercial Mediation -
& Tuesday	23	Module 1 (2 Days)
Tuesday	23	Evening Meeting - Update on CPR Changes
Tuesday	30	Role & Responsibilities of the Expert

May

Monday	13	Commercial Mediation - Module 2
Tuesday	14	Commercial Mediation - Module 3
Wednesday	15	Foundation Course
& Thursday	16	(2 Days)
Monday	20	Commercial Mediation - Module 4
Tuesday	21	Commercial Mediation - Module 5 Assessment
Thursday	23	The Expert's Report
Friday	24	The Criminal Expert
Tuesday	28	Into Court

June

Monday	10	Law for Experts & Dispute Resolvers
Wednesday	12	Council Meeting
Wednesday	12	President's Reception

September

Tuesday	10	Commercial Mediation -
& Wednesday	11	Module 1 (2 Days)
Saturday	28	Bar Conference 2002

October

Monday	7	Commercial Mediation - Module 2
Tuesday	8	Commercial Mediation - Module 3
Monday	14	Commercial Mediation - Module 4

Further dates are available from
www.academy-experts.org/members

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

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The Faculty of Mediation and ADR has not achieved as much this year as we would have hoped and I am hoping that it will achieve more in the year to come. Irrespective of that the Academy has been at the forefront of Mediation in the Courts. The Central London Scheme has been adopted in Birmingham and the Academy was there at the launch. We have also had requests from other areas which are thinking of setting up the same or similar Mediation schemes. Hopefully, this will bring more opportunities for our QDR members outside London.

The Help Line is kept busy with various questions relating to Expert work under CPR, in particular in relation to the SJE. Whilst the help line provides answers, where possible, the feedback that we get allows us to find out what the problems are and we can take them into account when reviewing the Code of Guidance.

The Academy continues to progress well in Hong Kong with the support of Daniel Fung QC SC. The Academy is well respected in HK and the training programmes are well attended. HK is probably adopting Civil Procedure Rules similar to those introduced here and there is a conference in March on the subject. The Academy's Code of Guidance has also been well received in Hong Kong.

I am happy to say that the Academy is in Good Health and we have achieved a reserve in the accounts that we set to enable us to go forward with some confidence.

Thank you

It just leaves me to thank all of those who have given their time so willingly however I would like to see still more people making a contribution); Nicola Cohen and her team for there sterling work. Also to Michael Cohen and Philip Newman for the amount of unpaid time that they have put into the Code of Guidance. Special thanks to Iain Tolmie and also to members of the Executive and Council. Finally my thanks to Lord Howe for his continued support.

Roger Trett
January 2002

On 25th March the 26th update to the CPR came into affect.

Certain changes affect Experts - in Part 35 and the Practice Direction to accompany Part 35. These changes are shown in below.

The full text of Part 35 and its accompanying Practice Direction are available from the Academy's web site in the Member Area or from the Lord Chancellor's Department site www.lcd.gov.uk

Changes to Part 35

35.12 para (1), sub-para (a) and (b) replaced with new text

35.14 para (2) replaced with new text; para (3), after 'served with' new text is inserted, and sub-para (a) and (b) have been deleted

Discussions between Experts

35.12

(1) The court may, at any stage, direct a discussion between experts for the purpose of requiring the experts to -

- (a) identify and discuss the expert issues in the proceedings; and
- (b) where possible, reach an agreed opinion on those issues.

(2) The court may specify the issues which the experts must discuss.

(3) The court may direct that following a discussion between the experts they must prepare a statement for the court showing-

- (a) those issues on which they agree; and
- (b) those issues on which they disagree and a summary of their reasons for disagreeing.

(4) The content of the discussion between the experts shall not be referred to at the trial unless the parties agree.

(5) Where experts reach agreement on an issue during their discussions, the agreement shall not bind the parties unless the parties expressly agree to be

bound by the agreement.

Expert's Right to ask Court for Directions

35.14

(1) An expert may file a written request for directions to assist him in carrying out his function as an expert.

(2) An expert must, unless the court orders otherwise, provide a copy of any proposed request for directions under paragraph (1)-

- (a) to the party instructing him, at least 7 days before he files the request; and
- (b) to all other parties, at least 4 days before he files it.

(3) The court, when it gives directions, may also direct that a party be served with a copy of the directions.

Changes to Practice Direction PD 35

Paras 1.1-1.6 replaced with new text.

Section (2) is replaced (with items 2.1-2.6).

Existing sections 2-6 renumbered as 3-7

Expert Evidence - General Requirements

1.1 It is the duty of an expert to help the court on matters within his own expertise: rule 35.3(1). This duty is paramount and overrides any obligation to the person from whom the expert has received instructions or by whom he is paid: rule 35.3(2).

1.2 Expert evidence should be the independent product of the expert uninfluenced by the pressures of litigation.

1.3 An expert should assist the court by providing objective, unbiased opinion on matters within his expertise, and should not assume the role of an advocate.

1.4 An expert should consider all

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material facts, including those which might detract from his opinion.

1.5 An expert should make it clear:

- (a) when a question or issue falls outside his expertise; and
- (b) when he is not able to reach a definite opinion, for example because he has insufficient information.

1.6 If, after producing a report, an expert changes his view on any material matter, such change of view should be communicated to all the parties without delay, and when appropriate to the court.

Form and Content of Expert's Reports

2.1 An expert's report should be addressed to the court and not to the party from whom the expert has received his instructions.

2.2 An expert's report must:

- (1) give details of the expert's qualifications;
- (2) give details of any literature or other material which the expert has relied on in making the report;
- (3) contain a statement setting out the substance of all facts and instructions given to the expert which are material to the opinions expressed in the report or upon which those opinions are based;
- (4) make clear which of the facts stated in the report are within the expert's own knowledge;
- (5) say who carried out any examination, measurement, test or experiment which the expert has used for the report, give the qualifications of that person, and say whether or not the test or experiment has been carried out under the expert's supervision;
- (6) where there is a range of opinion on the matters dealt with in the report-
 - (a) summarise the range of opinion, and
 - (b) give reasons for his own opinion;
- (7) contain a summary of the conclusions reached;

www.academy-experts.org

We are pleased to say that our new Internet site is a great success, as indicated by the following statistics taken from mid-January February of this year:

www.academy-experts.org - Statistics 14/01/02-13/02/02

Average hits per Day (excl. graphics)	655.97
Average hits per User	5.25
Average time spent by a single user	5 Minutes 1 second
Average users per Day	124.97
Each user has visited approximately	2.18 times
Total time spent by all users	6 d, 5 hrs, 12 mins, 6 secs

Are you making use of it? If not why not?

Online Register

Our Internet based register of experts is also very successful. Are you on it? If not maybe you are missing out on opportunities:

On average each member on the Internet Register has had their CV's viewed 29.4 time in the last year. Many of these directly result in appointments.

A form for entry onto the on-line register is included in this mailing.

Note

You do not have to have an Internet connection of your own in order to have an entry.

Are you being served?

Whilst we always search all members' records when we receive an ExpertSearch enquiry, more and more solicitors are going to the web first. Why not make sure that your details are easily available[†]!

[†]Note:

For further information regarding the Academy's Internet Register please contact the office. The cost of joining the Register is £60+v at after which an annual retention fee applies.

(8) if the expert is not able to give his opinion without qualification, state the qualification; and

(9) contain a statement that the expert understands his duty to the court, and has complied and will continue to comply with that duty.

2.3 An expert's report must be verified by a statement of truth as well as containing the statements required in paragraph 2.2(8) and (9) above.

2.4 The form of the statement of truth is as follows:

'I confirm that insofar as the facts stated in my report are within my own knowledge I have made

clear which they are and I believe them to be true, and that the opinions I have expressed represent my true and complete professional opinion.'

2.5 Attention is drawn to rule 32.14 which sets out the consequences of verifying a document containing a false statement without an honest belief in its truth.

(For information about statements of truth see Part 22 and the practice direction which supplements it.)

2.6 In addition, an expert's report should comply with the requirements of any approved expert's protocol.

ANNOUNCEMENTS

The Expert's Declaration

The amended expert's declaration (which should now be included in all Expert Reports under CPR) is now available for members.

You may view/download the declaration from the Academy's web site or request a copy from the office.

CPR Part 35 & Practice Direction changes

We welcome the changes as a further step in the rationalisation of the Rules. The fact that the changes follow TAE philosophy and Guidance is gratifying. Most importantly the new 'Declaration of Truth' follows suggestions we made even before CPR came into force! No longer does the Expert have to believe in the truth of 'instructed facts' - this is especially helpful for SJs.

We have always advocated that if the Expert needs to ask the Court for Directions that he should give notice to the parties despite the CPR wording. Now it is mandatory.

The Academy is continuing to work for Experts and rationalised high standards for all Experts.

On-line debt recovery

A new scheme has been introduced for the recovery of debts up to £100,000. Individuals may now file their claim on-line using the court service website.

Full details are available from:

<http://www.courtservice.gov.uk/mcol/>

Walking the walk...

The Secretary General, Nicola Cohen, is undertaking a charity walk on behalf of Breast Cancer. The Playtex Moonwalk is a walked marathon/half-marathon through London commencing at midnight on 11th May.

Any donations (made payable to 'Walk the Walk') would be gratefully received and should be sent to Nicola care of the office. Further information regarding the moonwalk is available from the website:

<http://www.walkthewalk.org/>

CPR NOTE

A detailed commentary on the CPR changes shown in the preceding pages may be found on The Academy's web site in the member's area.

<http://www.academy-experts.org>

Cases

Dunnett v Railtrack Plc (2002), CA (Brooke LJ, Robert Walker LJ, Sedley LJ) 22/2/2002

A recent Court of Appeal ruling will have a resounding effect on the perception of Mediation and the requirement for parties to consider forms of ADR.

When the claimant ('S') was granted permission to appeal to this court, it was strongly suggested that the parties attempt to resolve the matter by arbitration or mediation. It appeared that Railtrack ('R') had refused to pursue that route. Skilled mediators could achieve results that went far beyond the court's powers and lawyers who dismissed the opportunity for arbitration or mediation out of hand would suffer uncomfortable consequences. Given R's refusal to consider arbitration or mediation, it would be highly inappropriate to make a costs order against S.

Academy enclosures in this mailing

- Reception Booking Form
- Evening Meeting Notice

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Further information about anything contained in this publication may be obtained from The Academy Office

2 South Square, Gray's Inn, London WC1R 5HT

DX: 283 London, Chancery Lane

Tel: 020 7637 0333 Fax: 020 7637 1893 e-mail: admin@academy-experts.org

<http://www.academy-experts.org>

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