

## From the Chairman



### A new term starts...

Summer recess is over for most and the holiday will soon pale into the background. Fortunately I still have mine to look forward to.

The onslaught of cases picking up now that the summer is over will bring the usual pressures for completion and service of reports. Amongst these pressures is the reviewing of Expert reports by the Barrister or Solicitor before service. The Academy's helpline has had a number of questions from members of late along the lines of:

*'the Barrister is insisting that I put this in what should I do?'*

If you are being asked to include something in your report with which you do not agree or is not your opinion and you cannot support it then the simple answer is that 'No' you should not include it.

### It's your report

I have had a very recent experience where a report of mine was being reviewed before service. I am happy to say that apart from a few spelling mistakes and the odd split infinitive (if I knew what they were) there were no other comments. However, the Barrister did come up with some wording that he wanted me to put

in. It was in relation to a theoretical argument that was so remote that I just didn't believe it. Nevertheless he was insistent. I thought about it and said OK but I will preface it with the words that 'I have been instructed by my instructing solicitor to incorporate the following paragraph'. 'No' he said, 'I want it in your words'. I retorted 'OK if I put it in and am cross-examined on it and if asked why I incorporated it as it was so remote, I will say because I was instructed to'. Then if further asked is it my opinion? I will say 'No'. I then said to him 'what will that do for the independence of my report?' He saw the light. It is not the lawyers who have to go into the witness box, it is the Expert. If it is not your opinion and you cannot support it, do not succumb to pressure to put it in. Your reputation and subsequently your client's case will go belly-up.

### Meetings

Another common question which we are asked to give advice on is to do with Privilege - usually with regards to whether the Expert's 'full' instructions should be disclosed in the report as opposed to a summary. The Academy is holding an evening meeting on October 8th where this and other questions relating to privilege will be answered - full details are on the back page.

Roger Trett  
September 2002

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**2002**

September	
Tuesday	3 Evening Meeting - Scotland
Tuesday	3 Foundation Course - Scotland
& Wednesday	4 (2 Days)
Monday	9 Law for Experts & Dispute Resolvers
Tuesday	10 Commercial Mediation -
& Wednesday	11 Module 1 (2 Days)
Tuesday	17 The Expert's Report - Leeds
Wednesday	18 CPR for Experts
Wednesday	18 Joint Evening Meeting - CIARB London Branch
Friday	20 Day in Court (provisional)
Wednesday	25 Role & Responsibilities of the Expert
Saturday	28 Bar Conference 2002
October	
Thursday	3 CPR for Experts - Taunton
Thursday	3 Evening Meeting - South West
Friday	4 Mediation Training - Taunton
Monday	7 Commercial Mediation - Module 2
Tuesday	8 Commercial Mediation - Module 3
Tuesday	8 Annual General Meeting
Tuesday	8 Evening Meeting
Monday	14 Commercial Mediation - Module 4
Tuesday	15 Commercial Mediation - Module 5 Assessment
Wednesday	16 Foundation Course
& Thursday	17 (2 Days)
Friday	18 Into Court - Scotland
Friday	18 Society of Expert Witnesses Conference - Reading
Friday	18 EuroExpert Council - Vienna
Wednesday	23 The Expert's Report - for Medics - <b>NEW COURSE</b>
Thursday	24 The Expert's Report
November	
Wednesday	6 Executive Meeting Council President's Dinner
Wednesday	13 Into Court
Thursday	14 Training Courses in
- Friday	30 Hong Kong (2 weeks)

Further dates are available from  
[www.academy-experts.org/members](http://www.academy-experts.org/members)

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

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This and past editions of 'update' are available from:  
[www.academy-experts.org/members/](http://www.academy-experts.org/members/)

## An Expert's Tail

### An Expert replies...

"I read with interest the article in the August edition of Update "Whose expert are you and can it change?".

I have two instances of this kind in mind which relate to changing sides which you might like to share with Members.

In the first case I gave an opinion that was not favourable to the instructor's case. I was released and I was warned that the instructor claimed property to my opinion and that I should not make it known to the other side.

Thanks to a memory of one of the Academy's courses I held the view that the instructor did not own my opinion. I expressed surprise at what he said and I told him that he had the advantage of knowing what my answer would be if the relevant question were to be put to me. I added that I was not in the business of hawking my opinion around and in the event no-one else asked my opinion on the case.

In the second case, I was called in to give a second opinion in my capacity as a consulting engineer in a matter of civil engineering construction. My opinion at the time was favourable to the first party's case. The other side asked the first party if I could be released to advise them. The first party agreed. More

information came to light which led to me changing my opinion such that it became favourable to the second party. My change in views were disclosed almost immediately at a meeting of experts.

Matters could not be resolved and the dispute went to hearing.

Under cross examination it was put to me that the code of conduct of a consulting engineer puts no time limit on the consultant's duty to the client and that I had an ongoing duty to the first party, since having engaged my services as an expert consulting engineer, he considered himself to be my client, and that he had relied on the opinion which I gave him. Should his case fail at the hearing then I should be held accountable for his costs.

In reply, it was pointed out that, through the medium of the meeting of experts at the time, at which both parties were in attendance, I had advised them of the change in my views at the earliest possible moment. The line of cross examination was then dropped.

The lessons from these instances are that the training provided by the Academy stands an expert in good stead and, in the first case, what is put to an expert by an instructor may not be correct."

## Mediation Growth

We are often asked just how much Mediation work there is and whether it is increasing or not.

There are no nationally compiled statistics as yet. There is, however, a great deal of anecdotal evidence to suggest that Mediation is gaining more and more acceptance as a form of dispute resolution amongst the judiciary, lawyers, the bar and most importantly the actual users of mediation - the parties in dispute.

- 1 Part of this evidence comes from the increased number of mediators which are requested from The Academy from Court Schemes. From a slow start with some confusion these now seem to be running more smoothly and providing successful mediation.
- 2 The Academy is increasingly being named in commercial contracts to supply Mediators in the event of a dispute.
- 3 'Pressure' from the courts is being brought to send cases to Commercial Mediation (outside of the court schemes) and in some cases costs have been awarded against parties who have not considered Mediation.
- 4 High profile cases are being reported in the press as going to Mediation. The most recent of these being the parents in the Alder Hey Hospital 'organ retention scandal'.

## Treasurer's Report



Treasurers are generally miserable when it comes to money – sometimes about life in general as well. I try to maintain the reputation on the first count but avoid taking it as a

pattern for daily existence.

At virtually every meeting I put on my miserable hat and remind members of Council, members of the Executive and anyone else who will listen that we must keep our new member enrolment up if we are going to survive and prosper. By their very nature many experts are people for whom retirement is likely to be the next major life event. Those retiring have to be replaced, and there can be no respite in that process if The Academy is to continue to be an effective service for us all.

However, I do have a sunny side and am pleased to report that membership income did make good strides last year. I trust that the considerable efforts my colleagues make to enhance the standards and reputation of experts generally will continue to be recognised, and thus be reflected in the membership figures.

On more mundane matters. Do keep signing up for the direct debit scheme, it helps enormously in reducing the administrative burden. You will know that we now believe the internet register is sufficiently well established and effective to justify the long planned annual fee. Two areas where members can really make a difference. If you can identify improvements that could be made please do not keep them to yourself (keeping your own entry up to date is a good first step!), and do encourage instructing solicitors to use

it. A link on your own website is a very good way to spread the word.

To return to my main theme. We are a membership organisation. Please make sure you are getting what you need from The Academy. It is my job to keep an eye on the bills, but only the members can say whether they are getting value for the money they contribute to meet them.

As usual the Accounts will be available at the AGM, when they will be adopted. Technical hitches notwithstanding a copy will be posted in the Members Area of the website in advance. If there are points that you would like clarifying do ask.

Stephen Hiscock  
Treasurer  
September 2002

## Officers' Annual Reports

### Chairman's Report

Once again, like me, you are probably surprised that the time for the AGM is upon us – although for me this one is a little different as I will be handing over 'the reins of power' to a new Chairman. I have enjoyed my time as Chairman immensely and would like to take this opportunity to thank all my officers and those who have supported and assisted me during this time.



It is always immensely difficult to know what to say and to cram the events of a year into a short report - I will however do my best.

#### Codes of Guidance

The year started with the Chairman's lunch and the successful seminar on the subject of the updated 'Code of Guidance for Experts and those instructing them' and a comparison of the Working Party's Code of Guidance. We hope to repeat this format in the future.

#### The Regions

I am pleased to report that this year saw the introduction of regional meetings accompanied by regional training session both for Experts and Mediators. These have been a great success and have taken place around the country in areas as diverse as the South West to Scotland.

#### Finances

Now in his second year as Treasurer I am glad that Stephen Hiscock's report shows that The Academy continues to proceed on a sound footing. It is essential that we keep sufficient reserves in case of emergency, but as the membership grows The Academy will be able to afford to increase still further its services to members and society.

#### Overseas

Once again The Academy has held what is now becoming its annual Hong Kong Conference. This year the subject was the proposed Civil Justice Reforms that are based on the English CPR. A combination of local and UK speakers gave a good account of themselves and The Academy and with the experience of having gone through CPR already, made a significant contribution to the debate that is ongoing in Hong Kong.

#### Cooperation

Throughout the year The Academy has continued to strengthen its links with other professional bodies through the 'Like Minded Professionals' group and in particular the Society of Expert Witnesses at whose conference in October we will have several speakers. We have also provided speakers to many other bodies and institutions notably the Council for the Registration of Forensic Practitioners.

The Academy has also continued its involvement with EuroExpert.

#### Faculty of Mediation and ADR

I am pleased to report that the Birmingham scheme which I announced in my last Chairman's Report is now fully operational. As you will see opposite, mediation is growing and there are plans afoot for further schemes around the country.

In addition we are strongly represented on the working party of the Association of ADR Providers by the Dean of the Faculty (John Bishop) and the Secretary General (Nicola Cohen). In the coming months we hope to report further on this important development.

#### Website

Since last year the Member's Area of the Web Site has become an important part of The Academy's communication with the membership and is an invaluable resource. Communication is vitally important and we are always looking at ways of improving it and providing you with more information. If you have any comments or suggestions they would be gratefully received.

#### Finally

Many Members have now starting taking advantage of the lunching rights at Gray's Inn which were accorded to Academy

members last year - some are almost regulars in Hall. In this, the Golden Jubilee year, the Inn extended a further honour by inviting Members of The Academy to attend the Inn's most prestigious social event of the calendar the Treasurer's Garden Party in July. The full complement of places which we were allocated were snapped up and a most enjoyable time was had by all. Sadly your Chairman was unable to attend as I was representing The Academy at a meeting with the Chairman of the CRFP.

The President's Dinner now draws near. It will be a special occasion this year as The Academy will be celebrating its fifteenth anniversary. We are now halfway through our second decade - The Academy will shortly be coming of age!

Last but not least I would like to sincerely thank the Secretary General and her staff for their loyal support to both myself and The Academy. To my successor I hope you enjoy your term as much as I have and I look forward to the continuing development of The Academy under your leadership. I will continue to work for the success of the Academy.

Roger Trett  
Chairman  
September 2002

### Secretary's Report

#### A year in the life...



A year in the life of your Secretary starts with a rapid descent down from the heights of the Annual General Meeting, via Academy Training in Hong Kong, to the plains wherein dwell several tribes of executive meetings (best not to dwell too long on those!).

The journey continues through occasional thickets of correspondence (some of which spring up overnight quite mysteriously) and forests of dense drafting. These obstructions call for no little skilled teamwork from the whole executive in the arts of hacking and slashing particularly if one has to struggle through them to arrive on time at the major gatherings. These gatherings or jamborees (sometimes called council meetings and sometimes called by other names) are quite

often accompanied by excellently organised feasting, drinking and speech-making which enliven and refresh your Secretary.

Thus succored (sic) he then continues his journey through the desolate marshlands of disciplinary procedures to the next base camp. On reaching this camp, just below the vertiginous heights of the succeeding annual general meeting and elections, your Secretary thought he might shed his responsibilities and take a rest. In this (as in possibly much else) he was mistaken.

So, after the vigorous application of some persuasion to the aching joints and greatly encouraged by the prospect of even more thickets and forests to hack at in the next valley, he will (with your permission of course) resume the journey for one more year.

Charles Gardner  
Secretary  
September 2002

Keeping order of The Expert & Dispute Resolver



Binders for  
The Expert & Dispute Resolver  
now available


Just £10.00 inc p+p



Each Binder will hold 12 Copies of The Expert & Dispute Resolver.  
Contact The Academy's office for details on 020 7637 0333 or email [admin@academy-experts.org](mailto:admin@academy-experts.org)

# ANNOUNCEMENTS

## President's Dinner - 6th November

 There are still a few places left for the President's Dinner on 6th November but they are not expected to last long. If you do want to reserve a ticket fax your form in NOW to ensure that you are not disappointed.

This year we have been able to freeze the price at the same rate as last year. Tickets cost £67.50 (plus vat).


This event is a perfect opportunity for entertaining. The chance to meet other Academy members, solicitors, members of the bar and the judiciary should not be missed.

A booking form is included with this mailing.



The National Liberal Club  
Whitehall Place


## Conference News

 On 18th October the Society of Expert Witnesses is holding its Autumn Conference 'The Importance of Independence of Expert Witnesses' with which The Academy is pleased to be involved.

Speaking at the conference will be a number of Academy members, including The Chairman Emeritus **Michael Cohen FAE**, the Vice Chairman (legal affairs) **Philip Newman** and **Steve Hannaford FAE**. In addition the Vice Chairman of the Society is **Geoffrey Beresford Hartwell MAE** who will also be speaking at the conference.


A booking form is enclosed.

## More Conference News

 Enclosed with this copy of 'update' is a brochure for the conference 'Forensic Accounting and Litigation Support'. You may notice that chairing the event is **Michael Swift MAE** a Member of the Academy.

We are always eager to know what members are doing and are happy to pass this on to other members if it is of interest to them so please let us know if there is anything which you think might be of interest.

## Annual Accounts

 You will see from the Treasurer's Report that the Annual Accounts are currently being finalised for publication.

When the accounts are ready they will be available from the Member's Area of the Web Site.

If you are not able to access the accounts through the web please contact the office.

## Evening Meeting

### 8th October - Privilege

A reminder that there is an evening meeting on 8th October on the thorny question of 'Privilege and the Expert'. The speaker will be chairman of the Member's Vetting Committee, Colin Passmore a Partner at Simmons & Simmons Solicitors.

There are still places left for the meeting so book soon - the joint meeting with the London Branch of the Chartered Institute of Arbitrators last week was completely sold out a fortnight before the meeting.

## Academy enclosures in this mailing

- Binder Order Form
- Course Registration Form
- Evening Meeting Notice
- President's Dinner Form
- Society of Expert Witnesses' Conference

### OFFICERS of THE ACADEMY OF EXPERTS

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The Academy of Experts 2002