

Volume 18 - Issue 2

## Inside this issue

From the Chairman	1-2
ADR Corner	2
Review of Civil Litigation Costs	3
News & Announcements	4
Academy Diary	4

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<http://members.academyofexperts.org/>

## Member's Information

All of The Academy's information is available for Members from the Member's website.

This includes:

- Guidance
- Publications
- Reports
- The Member's Handbook
- Model Terms of Engagement

[members.academyofexperts.org](http://members.academyofexperts.org)

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## From the Chairman



### Spring is on the way?

Despite Radio 4's constant insistence that Spring has begun, up in the Pennines where I'm writing this we still have snow in the garden - and lots more on the tops of the hills around us. Despite the weather's efforts, there still seems to be a hint that things are at last on the turn for the better. The days are getting longer, people have returned from the long holiday break, and haven't yet gone skiing, and the enquiries are slowly trickling in. Not that the trickle looks like turning into a flood yet, but it's better than nothing at all. Forty eight lever arch files of documents on an expert's case have just turned up from the USA - with an apologetic note that most of them are not relevant, but I might want to look at them all before producing a first draft report - due in four days time!

### Instructions

If there is one thing that every expert could probably agree on it is the importance of receiving clear instructions, and all necessary documents, as early as possible. If there is a second, it is that

lawyers almost never manage it. In my case I was first approached in April 2009, interviewed - at last - in October 2009, had my instruction confirmed in January and received an initial selection of documents three weeks ago. As for my precise instructions, I'm still trying to pin them down. Sadly, this early involvement is a gift for experts which it is probably not in The Academy's power to obtain for members, although we continue to make the point on your behalf both in public and in private.

There are stirrings too in the world of government, and even a general election to look forward to. The Ministry of Justice (MoJ) has published its response to its consultation on Funding Reforms (cuts) for Legal Aid. The response on Experts' Fees was published separately, and after the main response, due to the high volume of submissions on the subject. The MoJ received a total of 270 responses to Part Three on experts' fees, including 136 from individual experts. The Academy was of course one of the organisations

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## From the Chairman continued

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and representative bodies who responded. The published paper draws no conclusions at this stage except that, "There was a very strong message from all categories of professional expert witnesses that if inadequate remuneration rates are imposed, this would lead to more experienced practitioners refusing to undertake the work, potentially leading to access and quality problems across England and Wales. There was however general recognition that something should be done to regulate rates charged as they were often variable and too high, although this was sometimes attributed to poor, or unclear instructions from solicitors leading to lengthy or unnecessary work." (Which is where I came in, above!)

The MoJ proposes a further data gathering exercise to increase its understanding of the type of work undertaken and current rates paid for it. They are also hoping to set up a working group including "expert witness representative bodies" and others to analyse and validate the exercise. You have already received a message from Nicola Cohen

requesting that you complete our 2010 Fees Survey online, and I urge all members who have not already done so to fill it in. It only takes 5 or 10 minutes to fill in, and the greater the number of responses we get the more weight our findings will have as part of the MoJ data gathering. And do not think this does not involve you if you don't undertake publicly funded work. This is almost certainly the beginning of a long campaign to attempt to limit all experts' fees in the name of reducing the cost of justice. The Academy intends to do all we can to ensure that your interests are protected, and that any policy recommendations from the MoJ are as reasonable as we can help make them, but we can't do so without your help and input.

### Evening Meeting

In the meantime our next Technical Evening Meeting is scheduled for Wednesday 14th April. It is a joint meeting with the UK insurance and reinsurance arbitration society ARIAS (UK). Entitled '*Are Expert Witnesses really needed in arbitration?*', it will be a panel discussion and update on the latest developments. The panel will be led by Sir Anthony Colman, who is both Chairman of

the committee of ARIAS (UK) and a Vice President of The Academy and Principal of our ADR Faculty. He is also a distinguished international arbitrator.

Details of the meeting have already been circulated and I look forward to seeing as many as possible of you there and to enjoying a glass of wine afterwards.

In the meantime I hope that we all begin to benefit from some green shoots of recovery, and can look forward to prosperous and interesting times.

**Phillippa Rowe  
Chairman  
March 2010**

### A Note of Caution

Experts appear to be having problems with Meetings of Experts in accordance with CPR.

The latest challenge to Experts' immunity results from an Experts' Meeting. CPR gives the parameters and the Protocol has useful guidance on the subject.

## ADR Corner

### Government & ADR

A report monitoring the effectiveness of the government's commitment to using alternative dispute resolution across government departments and agencies was published on 2<sup>nd</sup> March. The report also gives examples of the type of cases in which the government has used ADR processes.

On 23 March 2001, the Lord Chancellor published a formal pledge committing government departments and agencies to settle legal cases by alternative dispute resolution techniques in all suitable cases whenever the other side agreed to it. These annual reports summarise the effectiveness of that pledge.

During 2008/09, alternative dispute resolution was used in 314 cases, with 259 leading to settlement, saving costs estimated at £90.2 million. It is interesting to note that whilst there

has been a decrease in the number of cases from 2007/08 where ADR was attempted in 374 cases the settlement rate has actually increased,

The Report can be found at:

[www.justice.gov.uk/publications/docs/alternative-dispute-resolution-08-09.pdf](http://www.justice.gov.uk/publications/docs/alternative-dispute-resolution-08-09.pdf).



### Expert Determination

Following the completion of the first few Expert Determination training days and the admittance of the first qualified Determiners to our register we have decided to make some small changes to the process. The changes have been driven mainly by feedback received from those who have already been through 'the process'.

The principal change, and the one which is likely to be most noticeable, is that the required training is now becoming a two day course. The purpose of this is to provide more practical assistance to those who are seeking to act as Expert Determiners and we hope that those undertaking accreditation will feel the benefit of the additional time.

## Review of Expert’s Fees

At the beginning of March The Ministry of Justice announced a major review of Expert’s Fees. This follows on from the earlier **Legal Aid: funding reforms consultation**.

Although many experts do not undertake publicly funded cases there are a number of principles which are being considered such as cancellation fees which have parallels in the commercial sector. This review may well have far reaching effects for all Experts - not just those who undertake publicly funded work.

### Preparing our response

As members will already be aware The Academy anticipates being actively involved in this new review.

In order to best represent your views we need to have as much accurate and up to date information as possible from you.

In January we wrote with details of The Academy’s Fee Survey which is a vitally important way for us to collect the information and we would be grateful if you would take the time to complete it.

The closing date for completing the survey is 30th April.

[www.surveymonkey.com/s/ewfs2009m](http://www.surveymonkey.com/s/ewfs2009m)

## RTA Processing

A new streamlined process for dealing with low value road traffic accident personal injury claims comes into force on 30th April.

The process will apply to road traffic accident [RTA] personal injury claims worth between £1000 and £10,000. The new rules do apply fixed recoverable costs and a fixed success fee to each of the three stages of the process. These must be paid promptly - within ten working days of the relevant stage being completed.

There are also provisions that should prevent the parties from dragging out the litigation, although there is still some scope for delay around obtaining medical reports. Insurers, however, will need to be able to respond to claims within a strict 15-day time limit which cannot be extended.

The scheme is supported by a RTA PI claims portal, which provides a secure medium for the electronic transfer of information between parties at the various stages of the process. The portal will also monitor whether mandatory information has been provided and remind the parties of upcoming deadlines.

Further information is available from the MOJ’s website.

[www.justice.gov.uk](http://www.justice.gov.uk)

## Expert’s Immunity

### Jones v Kaney, QBD, 21/1/10

This is a case from January which is being watched with interest on behalf of experts as there is a challenge to experts’ immunity.

An application of an expert psychologist for summary judgment striking out the claimant’s professional negligence claim against her was granted. The expert had prepared an expert report in support of a claim by the claimant for personal injuries sustained in a road traffic accident. A joint statement was signed by the experts. This statement was damaging to the claimant’s claim and it transpired that the expert had not made amendments or comments. The expert’s defence to the professional negligence claim against her was a plea of witness immunity. The court held that, in accordance with the decision in *Stanton v Callaghan* (2000) 1 QB 75; 2 WLR 745 that there was immunity and the claim was struck out.

However the Judge gave leave to appeal direct to the Supreme Court leapfrogging the Court of Appeal given the importance of the subject.

### A reminder

The current situation was set out in *Stanton v Callaghan* which, confirming the current immunity for experts, said that an expert will be liable:

- where negligent advice is not preliminary to giving evidence in court;
- for advice given at an early stage of litigation eg on the merits of the claim, particularly if proceedings had not been started, or as to whether he was qualified to advise at all.

An expert will not be liable:

- for anything said in court even if he is dishonest;
- for the contents of his report adopted in evidence;
- for concessions made in an experts’ meeting or a joint statement.

There are a number of grey areas including whether the existing immunity extends to a report prepared for trial where the trial does not take place.

## Evening Meeting

12th May

The May Evening Meeting with Colin Passmore will be looking at this subject and the possible implications for experts.





# NEWS & ANNOUNCEMENTS

## Data Protection

The Academy has received a number of enquiries recently with regard to Data Protection Registration and whether or not it is necessary to register.



As an expert witness it is likely that you will be recording, storing and using information about individuals in a database and therefore under the terms of the Act processing personal data. If this is the case then you will need to be registered under the Act.

The Information Commissioner's website [www.ico.gov.uk](http://www.ico.gov.uk) has information regarding the Act, what is covered and how to register.

## Olympics 2010

Construction of the Olympic Park in Stratford is now well underway. There is an opportunity for Academy members to enjoy a guided tour of the Park. Although the date has not yet been set it will be held during the afternoon on a week-day in early summer. If you would be interested in attending please can you contact the office now.



Formal details will be sent to all member when a date has been set but we would like to ensure that there is sufficient interest before arrangements are made.

## A reminder about the duty of confidentiality has been issued in a recent case:

Porton Capital Technology Funds v Porton Capital Inc & Ors, QBD, 2/2/10

It was held that disclosure of information during the course of litigation did not absolve potential witnesses from the duty of confidentiality owed by them to the party making such disclosure in respect of matters in issue in the proceedings. Accordingly, the effect of the disclosure did not release a former employee from his/her duty of confidence owed to their former employer such that they were precluded from providing any information as witnesses which would breach such duty of confidentiality. Any principle to the contrary would enable the party receiving the disclosure to question the other side's employees about anything that could potentially be said to relate to an issue in the proceedings.

This is particularly important for experts who when working on a civil case are then approached by prosecuting authorities to be a witness in a criminal trial.

## Forthcoming events

The Academy is delighted that Lord Justice Jackson will be speaking at the evening meeting on 9th June looking at "hot tubbing". More details will be announced shortly.

## Civil Litigation Costs

In his final report on civil litigation costs, Lord Justice Jackson identified e-disclosure as a large element of litigation costs and suggested more cost effective ways of managing Electronically Stored Information (ESI). The report endorsed a draft e-disclosure Practice Direction which is currently being considered by a sub-committee of the Civil Procedure Rules Committee. Although not yet formally approved in a recent case Senior Master Whitaker directed the parties to use the questionnaire attached to the Practice Direction and until a formal decision is reached it is likely this will continue as best practice.

## Fees Survey 2010

The Fees Survey for Experts has already had a very good response. We would, however, like **all** Academy members to complete the Survey.

If you have not already done so please do complete the Survey today.

We are all seemingly bombarded with requests for our view on all manner of subjects these days but this really is a very important subject and the more data we can collect the better we will be able to help members.

[www.surveymonkey.com/s/ewfs2009m](http://www.surveymonkey.com/s/ewfs2009m)

<b>April</b>		
Friday	2	Good Friday
Monday	5	Easter Monday
Wednesday	14	↗ Joint Evening Meeting with ARIAS
Tuesday	20	↗ Mediation Training - Module 2
Wednesday	21	↗ Mediation Training - Module 3
Friday	23	↗ Law for Experts
Monday	26	↗ Mediation Training - Module 4
Tuesday	27	↗ Mediation Training - Module 5
Wednesday - Thursday	28-29	↗ Foundation Course (2 Days)
<b>May</b>		
Monday	3	May Day Bank Holiday
Tuesday	11	↗ CMC Conference
Tuesday - Wednesday	11-12	↗ Mediation Training - Assessment
Wednesday	12	↗ Evening Meeting
Tuesday	18	↗ Procedure Rules
Wednesday	19	↗ Into Court
Wednesday - Thursday	26-27	↗ Expert Determination Course - 2 Days
Monday	31	↗ Bank Holiday
<b>June</b>		
Wednesday	9	Council
Wednesday	9	↗ Evening Meeting
Monday	14	↗ Advanced Mediation Training
Tuesday - Wednesday	22-23	↗ Foundation Course (2 Days)
See <a href="http://members.academyofexperts.org">members.academyofexperts.org</a> for more dates		
<b>Key to events:</b>		
↗	Academy Courses	
↗	Academy Events & Meetings	
↗	External/Joint/Supported Events	

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

D i a r y D a t e s