

## Inside this issue

From the Chairman	1-2
Family Rules	2
ADR Corner	2
Fees Survey	3
Membership Renewals	3
Forensic Regulator	3
Academy Diary	4

## Members Information

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

This includes:

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

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

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

3 Gray's Inn Square  
London WC1R 5AH  
DX: 283 London, Chancery Lane

t:020 7430 0333  
f:020 7430 0666  
e:[admin@academy-experts.org](mailto:admin@academy-experts.org)  
© The Academy of Experts 2011

# 'update'

## From the Chairman



### A New Year

Anniversaries have the effect of making one reflect on changes in the intervening period. This year, 2011, marks 21 years since I walked away from (more or less) lucrative salaried employment and set up my own consulting firm as, amongst other things, a London Market reinsurance expert. Two years later I joined The Academy and was admitted as an Associate and the rest, as they say, is history. I have benefited enormously from my Academy membership, and hope I have returned the reward in kind.

### Progress

Since I was first admitted as a very rookie Expert an awful lot has changed. The Academy's reputation and influence has grown stupendously, beyond anything the small group of founder members might have dared to hope. Our Judicial Committee has granted us huge public and intellectual repute, and all the guidance it has produced remains good today.

Civil Procedure Rules have been introduced, following Lord Woolf's "Access to Justice" Report to which The Academy made a major contribution in respect of expert evidence. The

subsequent Practice Direction and Protocol, to Part 35, again with substantial input from The Academy, have given robust support and assistance to the Expert attempting to maintain his proper, ethical, independent role with an overriding duty to assist the court. Arbitral and other procedures have, in the intervening period, tended to adopt similar standards and ethics.

The concepts of Single Joint Experts, Discussions between opposing experts, and proportionality have all been adopted almost without question, although they bring their own new difficulties for Experts. Simultaneously, in the interests of reducing the huge costs of "Access to Justice" and aiding cost effective dispute resolution, other alternative means of resolving disputes have taken hold, notably ADR, by which most commentators mean Mediation.

The Academy was one of the first organisations to introduce the concept of Mediation to the UK, via its early training courses, and remains at the forefront as an accredited provider and a founder member of the Civil Mediation Council (in a shameless plug may I remind



Members and Guests at the Chairman's Lunch

## From the Chairman

...cont from page 1

any CMC members to vote for TAE in the upcoming CMC elections - *see below*) and also with its training and accreditation in the areas of both Mediation and Expert Determination.

### Plus ça change

And yet, some fundamental things seem not to have changed, at least in my personal experience - and from listening to you all, especially at evening meetings.

- ❑ Solicitors still try to rewrite experts' reports.
- ❑ Counsel still sometimes tries to suggest that the expert might "like to change the emphasis" in the report, or re-order the logical sequence to reflect the progress of the argument in counsel's own opening submission.
- ❑ Experts are still given late instructions, with incomplete and poorly copied documents. Late, or non-existent, notice of court deadlines or orders regarding expert evidence are, if not the norm, then very common.
- ❑ Judges, including the new animal the Case Management Judge, apparently remain reluctant to impose the requirements of CPR Part 35 on experts, parties or their lawyers. Allegedly for fear of not allowing the parties their full say.
- ❑ Solicitors seem not to adhere to the rules regarding written questions to experts, or regarding discussions between experts and their signed

## Family Procedure Rules

Family Procedure Rules 2010 for England and Wales have now been published and will come into effect on 6th April 2011.

The Rules provide a single set of rules of court for family proceedings in the High Court, county courts and magistrates' courts which have been modelled on the Civil Procedure Rules.

They are supplemented by Practice Directions and forms which have yet to be published.

Experts and Assessors are dealt with in

Part 25 whilst mediation is dealt with in Part 35.

Whilst the Expert Rules are similar to those in CPR and CrPR there are some significant difference such as the timescale for putting written questions to the expert which in the case of family matters is 10 days beginning with the date on which the expert's report was served.

The rules can be found at:

[www.legislation.gov.uk/ukxi/2010/2955/contents/made](http://www.legislation.gov.uk/ukxi/2010/2955/contents/made)

memorandum of agreement and otherwise reached at these meetings.

- ❑ The Legal Services Commission and the Ministry of Justice continue their repeated attempts to reduce the fees payable to experts in publicly funded cases ... and we continue, in conjunction with the other UK expert witness bodies to point out that if you pay peanuts you get monkeys, and if you pay too few peanuts you get nobody at all.

But we all continue to offer our services as Experts, and – I hope – strive to meet The Academy's three I's (Independence, Impartiality and Integrity, in case they've slipped your mind) while fulfilling our overriding duty to the court. Why? Surely not masochism.

I submit that, despite the actual absence of a real change of attitude in those employing us, we do it because we enjoy

it intellectually, because we have a sense of obligation to society and to justice, and because people are still prepared to instruct us.

I submit that we should all, members of The Academy at whatever grade, continue to put ourselves forward as Experts, and exercise robust and possibly stubborn responses to anyone attempting to subvert our proper overriding duty to the court.

Only we, acting individually and collectively through The Academy, can effect a real and lasting change in the approach to expert evidence. The Academy exists to help it to help you and your fellow Experts, but it needs your active participation.

Wishing you a belated happy New Year.

**Phillippa Rowe FAE**  
Chairman  
January 2011

## ADR Corner

### CMC Conference – May 2011

#### Mediation: Seizing the Moment

The CMC's 5th National Conference will be taking place on Tuesday 10th May at The Lowry Hotel, Manchester.

Tickets are now on sale and we are happy to report that last year's prices have been held again for this year.

Confirmed speakers include:

- ❑ Jonathan Djanogly MP, Parliamentary Under Secretary of State at the Ministry of Justice.
- ❑ Helen Alexander President of the CBI.

Sessions will include a combination of workshops, presentations and debates.

### CMC Elections

The Academy is currently standing for the board in the upcoming CMC elections. If you are a CMC member we would ask for your support to help us to represent you further.

All completed forms must be returned to the CMC Registrar, by post or by hand, by 1800 on Wednesday 16th February 2011.

Ballot Papers are available from the CMC website:

[www.civilmediation.org/downloads-get?id=351](http://www.civilmediation.org/downloads-get?id=351)



### Mediation in Jersey

Jersey continues to expand its use of mediation in the court system.

Mediation has already been used in the Petty Debts Court where over two thirds of cases are solved before trial and now it is being used in the Royal Court.

It is hoped that this will lead to similar success levels.

## Fees Survey 2011

We will shortly be commencing the 2011 Fees Survey. This will cover the 12 months to September 2010. The response from Academy members to last year's Fees Survey was again encouraging with 45% of Expert members responding. Reasons for not completing the survey ranged from "I wouldn't be relevant as I work for a large firm" to "It will take too long and I haven't got time".

We really do need as many members (and non-members) to complete the survey as possible to give the most accurate and meaningful results. There is no reason why every member should not complete the survey, it should only take ten minutes to complete and information from a sole trader is just as relevant as an Expert working in a FTSE100 firm particularly with experts fees and costs under continual scrutiny.

We are often asked by members - both new and long standing 'Am I charging the right amount?'. On speaking to them we discover that they hadn't completed the survey....

Perhaps even more importantly TAE is often consulted by other institutions including government and elsewhere. The information you supply us with is vital in making our representations meaningful and persuasive.



### The following is an extract from TEDR Summer 2010

This is the second of the 'new' fee surveys. After a short gap between 2004-2007 the annual survey has been resumed. Helped by the ubiquity of the internet it is now much easier to gather good data (although interpretation is still the tricky part!) and we have, again, increased the number of responses. Ideally all members would respond but there are still those who believe that their 'special circumstances' mean that they do not complete the survey.

What is the reality? Are Experts fees spiralling upwards out of control? Has economic climate had an impact on the legal world?

Certainly this year, whilst the same numbers of experts are receiving instruction they seem to have been receiving much less of them in some areas. In particular the Healthcare sector seems to have taken a dramatic hit in the average number of instructions.

Last year we showed that compared to 2001 there were more Experts under 50, a decrease in the number over 65 and the largest number to be found in the 50 – 59 age band. Although the distribution has not changed greatly this year it has shifted upwards a little.

A new question for this year was 'How long have you acted as an Expert Witness'. Taken in alongside 'How long have you been working in your profession' we can see that in general about 15 years of experience are required before a professional calls themselves 'Expert'.

### The Typical Expert 2010

*The typical expert is male,  
self-employed in his mid fifties.  
In the year: he received 38  
appointments, wrote 39 reports,  
made one court appearance and  
charged £187 an hour.*

### Forensic Science Regulator

Andrew Rennison has agreed to a second term as the forensic science regulator. A written ministerial statement was laid in the House of Commons on 13th January by James Brokenshire MP. In the statement it says:

"He has plans to work with stakeholders to develop and maintain the quality of forensic science services across all forensic processes from the supply of equipment used at crime scenes, the examination of scenes, the collection and storage of exhibits, the sampling from and analysis of exhibits, and the reporting of forensic science evidence.

An important aspect of this work is to ensure that quality standards for forensic science continue to be regulated and that the forensic science regulator plays a central and independent role in coordinated work with the Home Office, the police and other stakeholders."



### Membership Renewals

Membership subscription invoices are currently being prepared and will be sent to all members shortly.

Bearing in mind the economic climate we have kept subscriptions as low as possible with only a small (5 percent) increase on last year's rates.

This year the rate for individual members will be **£225**.

#### Payment

Swift payment is always gratefully received as it reduces costs and helps us keep rates as low as possible. In addition to cheque, credit card etc we can accept payment in the following ways.

**BACS:** If you are paying by BACS/Bank Transfer please ensure that your membership number shows as a reference with the payment and send us your remittance advice to [accounts@academy-experts.org](mailto:accounts@academy-experts.org).

Please note that we may be unable to credit your account with your payment if we are not able to identify your payment.

**Direct Debit:** If you do not already pay by Direct Debit there is a £10 discount available for DD forms (available from the website) received by TAE prior to 23rd February.

**Paypal:** We can now accept payment via PayPal. Send your subscription to [papayal@academy-experts.org](mailto:papayal@academy-experts.org).



# NEWS & ANNOUNCEMENTS

## TAE Website

The Academy is in the process of updating its website. We have had the current one for a few years and despite great work from Dominic Stanton and the headquarters team, like many of us, it is starting to show its age.

There will be a major re-design of the style, content and function of the site and this is a great opportunity for members to suggest what they might like to see added or removed from it.

If you have any suggestions or comments, please make them known by email to Chris McArdle, who is coordinating the activity on behalf of Council.

To contact Chris please email [responses@academy-experts.org](mailto:responses@academy-experts.org) putting the word 'Website' in the subject.

We look forward to receiving your comments.

## Immunity

The Supreme Court last month heard the case of **Jones v Kaney** and Judgement is awaited in this important case concerning experts' immunity. As soon as TAE receives any information we will post it on the member's website.

## Tweet Tweet...

The Lord Chief Justice, Lord Judge has issued interim guidance on the use of live text-based forms of communication (including Twitter) from court for the purposes of fair and accurate recording. The guidance applies to court proceedings which are open to the public and to those parts of the proceedings which are not subject to reporting restrictions.

There is no statutory prohibition on the use of text-based communications but before it can be used the court must be satisfied that it does not interfere with the administration of justice subject to this provision "*the use of an unobtrusive, hand-held, virtually silent piece of modern equipment for the purposes of simultaneous reporting of proceedings to the outside world as they unfold in court is generally unlikely to interfere with the proper administration of justice*".

The rule is normally that mobile phones must be turned off in court but a formal or informal application can be made to use a phone, or laptop "*solely in order to make live text-based communications of the proceedings*".

A consultation relating to the use of live, test-based communications will be conducted shortly.

Further information can be found at:

[www.judiciary.gov.uk/publications-and-reports/guidance/lcj-interim-pracr-guide-text-based-comms-20122010.htm](http://www.judiciary.gov.uk/publications-and-reports/guidance/lcj-interim-pracr-guide-text-based-comms-20122010.htm)

## Events

### The Challenges of Scientific Evidence

Academy members have been invited to attend The Second Macfadyen Lecture on Wednesday 2 March 2011.

The lecture will take place at 6.00pm in the Wolfson Theatre, Royal Society of Edinburgh and will be given by The Hon Mr Justice Cromwell of the Supreme Court of Canada.

Please note that admittance to the lecture is by invitation only. Places are limited and will be awarded in order of application.

To obtain a free invitation please apply via the SCLR website at [www.scottishlawreports.org.uk](http://www.scottishlawreports.org.uk) or write to The Secretary, SCLR, Darkfauld's Cottage, Blairgowrie, Perthshire, PH10 6PY.

## EuroExpert Symposium

The next EuroExpert symposium will be taking place in Berlin on 18<sup>th</sup> March.



Hosted jointly by the DTS and BVS the theme of the day will be ADR for Experts. As ever this will be an excellent opportunity to mingle with other experts from around Europe.

The fee for the Symposium is €150 which includes coffee/tea breaks, lunch and VAT. There is also a reception on the evening of 17<sup>th</sup> March (€35) which is being organised by DST.

Full details from TAE or the members website

### February

Tuesday - Wednesday	8-9	➤ Law & Procedure <sup>NEW</sup>
Wednesday	9	➤ Evening Meeting
Friday	18	Submission deadline - TEDR

### March

Wednesday	2	➤ Macfadyen Lecture - Edinburgh
Thursday - Saturday	3-5	➤ Mediation Training
Tuesday - Wednesday	8-9	➤ Expert Determination
Wednesday	9	➤ Evening Meeting
Monday - Tuesday	14-15	➤ Foundation Course
Friday	18	➤ EuroExpert Symposium - Berlin
Wednesday	23	➤ Into Court
Thursday	31	➤ Mediation Training

### April

Friday - Saturday	1-2	➤ Mediation Training
Wednesday	13	➤ Evening Meeting
Friday - Saturday	15-16	➤ Mediation Assessment
Friday	22	Good Friday
Monday	25	Easter Monday
Friday	29	Royal Wedding

### May

Monday	2	Bank Holiday
Tuesday - Wednesday	10-11	➤ Law & Procedure
Wednesday	11	➤ Evening Meeting
Monday	30	Bank Holiday

See [members.academyofexperts.org](http://members.academyofexperts.org) for more dates

### Key to events:

- Academy Courses
- Academy Events & Meetings
- External/Joint/Supported Events

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