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## 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)

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# 'update'

## From the Chairman



### Mediation

Lately, the Mediation world has been going through a period of change, members may have noticed a reduction in the number of mediations and observerships which we at The Academy have been offering. I thought it was time for a review and summary of all that has been going on, and some ideas as to how to we can all help ourselves and move forward.

### National Mediation Helpline

The Academy has been an NMH provider and this has been a regular source of appointments, particularly for our newly qualified mediators. However, the future of the Helpline has been under a cloud for some time. We now know that the Helpline will close this October. What exactly will replace it, if anything, is not yet known.

In the meantime, the government issued its consultation paper on 'Solving Disputes in the County Courts', and the proposals discussed include raising the threshold under CPR for claims in the small claims court to £15,000, increasing the volume of small claims mediation, introducing compulsory "mediation information sessions" for claims up to £100,000, and ensuring the enforceability of mediation settlements in line with the EU Mediation Directive. All of these, if introduced, ought to dramatically

increase the use of mediation generally, and its encouragement by the courts, so the news coming out is encouraging.

TAE has of course responded to this consultation paper. The consultation period has now closed and we understand that it attracted around 250 responses. We now await the response from the Ministry.

### CMC

The Academy is a provider member of the Civil Mediation Council, and has a seat on its Board. The CMC also responded to this consultation, and its comments were broadly similar to ours – welcoming any moves to increase the use and understanding of mediation, but expressing doubts as to the merits of compulsory mediation. Because of this we expressed our general with the CMC in our own response.

The CMC itself has appointed a new chairman of its accreditation committee – Bill Wood QC who is himself a distinguished and successful mediator. There is currently much discussion of whether the CMC should change its original terms of reference, and introduce accreditation of individual mediators. Opinion on this subject is, naturally, strongly divided.

*continued inside...*



The next President's Dinner will be on 2nd November 2011

## From the Chairman

...continued from page 1

My personal view is that it should not. The CMC's role is to provide an umbrella body for, and accredit, mediation providers and training organisations, and it has yet to achieve the last. It would then be open for individual mediators to cite their accreditation by a CMC accredited body.

A general national "benchmark" or level of quality assurance for mediators could be established, while individual bodies such as ourselves and CEDR would retain their identity and individuality as accreditors. Given that opinion is so divided, with much strength of feeling on both sides of the argument we would very much like to hear what your views are. Please let us know and we will consider them all and let you know the results. Responses by the end of August would be welcome, please.

### Mediation Observers

One of the CMC requirements is that we must ensure that all our new QDRs undertake at least two mediation observerships. Please do let the office know if you are appointed as a mediator, so that we can arrange whenever possible for a TAE observer to be present. If you don't tell us that mediations are taking place, we can't help support you and other QDRs in retaining our accreditation.

### Mediation Information Sessions

At TAE we remain active on behalf of our QDRs and Dominic Stanton co-chairs the National Mediation Providers Association. We are taking part in the

current Mediation information sessions trial in the courts which the NMPA is running with MoJ. The trial is up and running in Birmingham and Manchester and is shortly due to start in London. TAE has already done a week long stint in Birmingham, and you will shortly receive an e-mail from Dominic asking for more volunteers to help in Manchester and London. These sessions are a chance both to spread the word as to the merits of mediation, and to identify yourselves as accredited mediators, so please participate if you can. The feedback from Birmingham was that the 'expert' mediators were also able to speak to some solicitors in their capacity as Experts as well.

This is the crux of the matter. We will all only get more mediation appointments if we actively market ourselves as mediators, and inform the public as to how and why mediation works. While TAE does try to provide mediation opportunities to its members, it is not an employment agency and can only make appointments if asked to do so.

So, while the use of mediation may be in something of a lull at the moment, all is not gloomy, and there are initiatives underway to improve the position. But all mediators must play their part (see *inset*).

Between us we can work to take advantage of the current proposals from the government and others all of which ought to increase the take up of mediation. None of us can simply rely on others to do our legwork for us!

### What can you do?

- ❑ Market your own mediation practice – to local solicitors, courts, CABs, etc.
- ❑ Write articles on ADR and mediation for your professional journals, or local press.
- ❑ Offer to talk to networking groups, local institutes and the like.
- ❑ Volunteer to assist in the mediation information session trial.
- ❑ Tell us if you do get mediation appointments so that we can appoint observers.
- ❑ Let us know your views on CMC individual accreditation.

We would very much like to know the views of Academy QDRs. Please e-mail:

[chairman@academy-experts.org](mailto:chairman@academy-experts.org)

### Finally

Finally a reminder on a completely different topic – our annual fee survey will be issued shortly. Please complete it. It is simple and quick to answer and provides us with essential information for responding to public consultations and proposals. For example the MoJ/LSC have just published their new fee scale for experts. We need to have some real statistics to assess their reasonableness. The message remains the same – your input as members, experts or QDRs is essential to the success of Your Academy.

With best wishes to you all.

**Phillippa Rowe**  
Chairman  
July 2011

## ADR Corner

### EU Mediation Directive

The EU Mediation Directive came into force on 21st May and now applies to cross border disputes. It covers five broad areas:

- ❑ Encouragement by member states of mediator training and the development and adherence to a voluntary code of conduct
- ❑ Judicial powers to invite parties to mediate
- ❑ Obligations on member states to ensure mediation settlement agreements are enforceable as if

they are court judgements (should all parties consent)

- ❑ Confidentiality of mediations such that submissions made during a mediation cannot be used in subsequent judicial proceedings if the mediation fails
- ❑ the suspension of limitation periods while parties mediate

In order to implement the Directive changes have been made to the Civil Procedure rules which came into effect on 6th April 2011 and it is proposed that mediation settlements will be



made enforceable by way of new order "mediation settlement enforcement order".

As part of a current MoJ consultation consideration is being given as to whether to apply a similar directive to domestic mediations.

## Remuneration of Expert Witnesses in Publicly Funded Cases

### Consultation Response

As you may have seen the Ministry of Justice has now reported on the result of the 'Proposals for the Reform of Legal Aid in England & Wales' consultation.

As well as publishing a new set of rates the response seeks to:

- codify the benchmark rates for experts
- reduce by rates by 10%, with provision for exceptional cases
- continue to develop a longer term framework towards a fixed and graduated fee scheme.

This applies to both civil and criminal cases.

This is contained in the response to the Legal Aid Reform in England and Wales Consultation paper which closed in February 2011. The Government's response was published on 21st June.

See: [www.justice.gov.uk/consultations/legal-aid-reform.htm](http://www.justice.gov.uk/consultations/legal-aid-reform.htm)

Expert fees are covered in paragraphs 256 to 260 and Annex 1 (page 238)

The department says:

*Most of the respondents to the consultation accepted that action needed to be taken to address the rising costs of experts. However, expert witnesses argued that the rates were too low to ensure continued access to experienced, quality advisers in the future, particularly in child protection, other family cases and in London generally.*

*The majority of respondents supported the Government's proposals to develop its plans to reform expert fees, based on a mix of fixed and graduated fees, with limited access to fees paid at hourly rates, and with provisions for exceptional cases. However,*

### Extract from the Government response

259. The Government notes concerns about the level of fees paid to expert witnesses. However, given the need to make substantial savings to legal aid, it remains the Government's view that fees paid to experts should be subject to the same constraints as those paid to lawyers. The Government therefore intends to:

Codify the Legal Services Commission's benchmark hourly rates (reduced by 10%) as set out in the consultation paper; and continue to develop our longer term plans to reform expert fees, as set out in the consultation paper.

260. Details of the new fees we intend to pay to experts have been published separately and can be found at: [www.justice.gov.uk/consultations/legal-aid-reform.htm](http://www.justice.gov.uk/consultations/legal-aid-reform.htm). We will bring forward the necessary legislation, giving effect to these reforms, with effect from October 2011.

*some respondents argued that expert fees should be competitively tendered.*

*The full figures are available in the fees schedule section C, an excerpt of which is shown below.*

Section 8 of the consultation sought views on proposals to exert greater control over the fees paid to experts under the legal aid scheme.

Full details of the issues raised, and the Government's response, are at Annex I.

A copy of the schedule rates is available from the member's website:

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

## Notice of Annual General Meeting

Notice is hereby given that the Annual General Meeting will be held at 1700 on Wednesday 12th October 2011 at, 3 Gray's Inn Square, Gray's Inn, London.

### Agenda

- 1 Apologies for absence
- 2 To approve the minutes of the AGM held on 10th October 2010 – published in 'update' Volume 18 Issue No 6
- 3 Matters arising
- 4 Chairman's Report
- 5 Treasurer's Report including adoption of accounts for the year ending February 2011.
- 6 To appoint the Auditors for the year 2011-2012
- 7 Election of Officers (Chairman, Deputy Chairman, Vice Chairmen, Secretary and Treasurer)
- 8 Election of Council Members
- 9 To approve 2012-2013 subscription levels
- 10 Any other Business

# NEWS & ANNOUNCEMENTS

## New Court

The Rolls Building will bring under one roof the expertise in the High Court in London of the Chancery Division, the Admiralty and Commercial Court, and the Technology and Construction Court.

The court complex is located off Fetter Lane in the City of London. It covers more than 16,000 square metres, houses 31 courtrooms, 11 hearing rooms and 55 consultation rooms.

Equipped with the latest IT facilities and three 'supercourts,' the Rolls Building will be the largest centre for the resolution of financial, business and property disputes in the world.

The judicial expertise available in the Rolls Building will include asset recovery, banking, commodities, company law, construction, finance, fraud, insolvency and reconstruction. It will also cover information technology, insurance, intellectual property (including patents), international trade, mining, oil and gas, partnership, property, public procurement, regulation, shipping, tax and trusts.



## Government Pledge

The Government has launched a new "Dispute Resolution Commitment", building on the ADR Pledge which was launched in 2001.

The Commitment is aimed at encouraging increased use of flexible, creative and constructive approaches to avoid, manage and resolve disputes. The overriding objective for publication of the Commitment is to show how the Government intends to lead by example in resolving disputes quickly and efficiently.

## In the Media

Although the broadcasters BskyB has been in the news itself recently it has been outputting some content which is quite interesting for Experts.

### Supreme Court

In the Supreme Court proceedings can be watched live on Sky News. Hearings and judgements are being streamed live at [www.skynews.com/supremecourt](http://www.skynews.com/supremecourt).

### Mediation

Sky 1 HD has commissioned a new factual entertainment series, which will bring warring neighbours together in an attempt to resolve ongoing feuds. This new series will follow their journey as the mediators are sent in to try and defuse the situation.

## President's Dinner

Places for the President's Dinner in November are selling very well. Members are reminded that the early-bird rate of £85 is still valid until 15th September.

## ADR in Asia Conference

The Academy has once again agreed to be a supporting organisation for the ADR in Asia Conference 2011. The conference will be held on 28th September at the Four Seasons Hotel in Hong Kong and will promote arbitration and other forms of alternative dispute resolution in the Asia region. Academy members will receive a 10% discount on the conference fees.

Further information can be found at:

[www.hkiac.org](http://www.hkiac.org)

## Evening Meetings

### 14th September

- Linda Lee
- Immediate Past President of Law Society
- Experts Instructions & Case Management

### 12th October

- Professor David Ormerod
- Law Commissioner
- Law Commission Report - Expert Evidence in Criminal Proceedings March 2011

# Diary Dates

### July

Friday	22	TEDR Article Deadline
Monday	25	↗ Olympic Park Visit
Friday	29	Gray's Inn Hall closes for Lunch
Friday	29	↗ Gray's Inn Garden Party

### September

Monday	5	Gray's Inn Hall reopens for Lunch
Tuesday - Wednesday	13-14	↗ Foundation Course
Wednesday	14	↗ Evening Meeting
Thursday	15	↗ Executive Committee
Monday	19	↗ EuroExpert General Assembly - Berlin
Tuesday	20	↗ Into Court
Thursday - Saturday	22-24	↗ Mediation Training
Monday - Tuesday	26-27	↗ Law & Procedure Course

### October

Wednesday	12	↗ Annual General Meeting
Wednesday	12	↗ Evening Meeting
Thursday - Saturday	13-15	↗ Mediation Training
Tuesday - Wednesday	18-19	↗ Expert Determination

### November

Wednesday	2	↗ Council Meeting
Wednesday	2	↗ President's Dinner
Tuesday - Wednesday	8-9	↗ Foundation Course
Monday	21	↗ Role & Responsibilities - Hong Kong

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**