

Inside this issue

From the Chairman	1-2
Changes in Scotland	2
Experts in the News	3
News & Announcements	4
Academy Diary	4

Members Information

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

This includes:

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

This and past editions of 'update' are available from:
www.academyofexperts.org

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

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'update'

From the Chairman



Selling yourself is not a bad thing!

Some of you may remember the evening lecture that I gave on 'Marketing Your Expert Practice' some time ago. Unlike me, it seems that some people still think marketing is a dirty word and that experts and other dispute resolvers should not sully their hands with such worldly activities. However, the fact remains that, you may be the best expert or mediator in the world, but if nobody knows, you will not get any appointments and you will not be able to bring your talents to the assistance of the Courts, Tribunals and clients that are in need of our help.

Getting the message out

With that in mind, we have initiated a number of activities within TAE aimed specifically at promoting the skills and services that our members can offer to the users of experts, mediators and expert determiners. We started by revamping our website and the members' directory so that our skills are displayed in a user-friendly manner. You may well have had a call from the office asking if you want to update or improve your presence on the web directory and I would urge those who have not considered this to do so. We are now moving

into active promotion of our members by an extensive mailshot to around 5,000 users of experts and ADR professionals. On top of this, we continue, as always, to participate in events and communities that promote the use of our experts and ADR professionals. After all, we are the only body that accredits Experts, Mediators and Expert Determiners, so we really do have something to shout about.

The specific promotion of Mediation and Expert Determination is next on the list. Mediation provision has become a difficult and over-subscribed market in recent years, but we are still working on promoting our Mediators and will be developing some specific activities in this respect over the coming months. We also aim to do some targeted promotion of our Expert Determiners, where we have a USP in having the only register of accredited EDs in the UK. So, watch this space and, hopefully, you will see an increase in enquiries as our marketing initiatives gain some traction.

We have also been busy with our 'reaching out' programme under which we aim to make contact with many of the primary professional bodies and form alliances to help develop their

continued inside...

The President's Dinner

5th November

Call 020 7430 0333



From the Chairman continued

...continued from page 1

dispute resolution activities. Thanks to the hard work of our Executive and Council, we have some interesting discussions in process with a number of important organisations. So, again, watch this space.

Our work in promoting members business interests has not prevented us from continuing to work in improving the standards of Expert and ADR activity in the UK and overseas. I recently attended a one day conference on your behalf organised by the Ministry of Justice to debate the Jackson Reforms, one year after introduction. I think a fair summary

of the response from the key speakers (including Lord Justice Jackson) might be, "There may well be some issues arising that need to pass through the Courts before we get absolute clarity – but the reforms are here to stay, so get on with it!". We are certainly moving into an era where the pressure will increase on experts and ADR professionals to do more work for less reward while improving standards. Hopefully, TAE will continue to help its members achieve these aims.

Dr Chris McArdle
Chairman
June 2014

TAE Events Calendar

Do you check the online Events Calendar?

Details of all TAE events, training dates and external events that TAE supports are published online with full booking information:

www.academyofexperts.org

Changes to procedure in Scotland...

Pre-Action Protocols

There are currently four pre-action protocols in Scotland compliance with which is voluntary. This is unlike England & Wales where compliance is compulsory. The four Scottish Protocols are:

- Personal injury claims up to £10,000 (parties may agree to use it for higher value claims);
- Professional negligence claims up to £20,000 (parties may agree to use it for claims of a higher value);
- Industrial disease claims; and
- Commercial actions in the Court of Session

The Scottish Civil Justice Council (SCJC) is the body with responsibility for drafting court rules and for making recommendations on the civil justice system in Scotland. The SCJC's Personal Injury Committee has launched an information gathering exercise to explore the current use of the pre-action protocols. As compliance with the commercial action protocol is expected, the focus of the consultation exercise is the personal injury, professional negligence and industrial disease protocols. The responses will assist the SCJC to reach a view on draft rules on pre-action protocols.

The consultation period is short – Responses are due by 30 June 2014 – as is the consultation document which can be found at www.scottishciviljusticecouncil.gov.uk/home

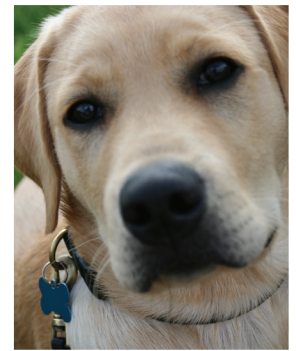
It may well be that this is pointing the way to the future approach to procedural rules for the courts and members are encouraged to read the documents and to respond where appropriate.

A copy of any responses would be appreciated by The Academy.

Have you heard the one about the dog...

In France

Spotted recently under the headline of "Golden Labrador 'expert witness' in French murder trial" the case of a golden Labrador named Tango who was called to the stand in court in Tours, France in an effort to identify the defendant who is alleged to have killed the dog's owner.



The defendant was ordered by the Judge to threaten the dog so that his reactions could be used to identify or rule out the suspect. Another dog was used as a control.

The defence lawyer asked "So if Tango lifted his right paw, moved his mouth or his tail, is he recognising my client or not"?

Shocking testimony

In the US in the case of **Gunn Hill Dairy v Los Angeles Department of Water & Power** the attorney tried to prove his case against an expert witness by asking him to demonstrate if there would be a shock generated by a using a pen with a AAA battery in it.

The outcome of this experiment can be guessed by the headline which ran as "shocking-testimony-literally-lawyer-administers-750-volt-shock-to-witness".

The Judge in his award stated "(his) examination exceeded the bounds of aggressive cross examination...he went beyond that acceptable form of questioning."

Experts in the News!

Experts around the world have been in the news a lot recently, particularly in some high profile cases. We have reproduced below some extracts of the numerous reports which have been widely published.

We are not making any judgement calls but are drawing attention to situations which appear to be damaging the credibility and reputation of experts in general.

These extracts highlight some of the apparent risks of being an expert witness and being potentially outside your expertise. Experts are often put in a difficult position but ultimately they need to apply the correct standards – be it qualifications or relevant experience for the role they undertake. Although the current examples highlighted are from outside the English Courts members are reminded of the impact of **Jones v Kaney** on their liability.

The growing trend and development of the use of social media continues to pose risks to experts. Indeed the potential pitfalls for Experts were drawn to members attention as long ago as 2011 in TEDR volume 16 issue 3.

“Evidence given by defence expert witness Roger Dixon came under scrutiny in the High Court in Pretoria during Oscar Pistorius's trial.

Roger Dixon, a forensic geologist at the University of Pretoria and a former policeman, contradicted parts of the evidence given by a police ballistics expert and the state pathologist who examined the body of Reeva Steenkamp, fatally shot last year by Pistorius. But Dixon acknowledged that he did not have expertise in some of the areas in which he was testifying, including sound, light and ballistics.

Dixon also said he took part in audio tests conducted by experts for the defence that showed the sounds of gunshots and of a cricket bat hitting a door were similar and could be confused:

“My part of that test was to wield the cricket bat to produce the sound.”

On questioning Dixon conceded the tests had to be done a second time because of problems with the first test, and they were recorded by a music producer who had no experience in recording gunshots.

Dixon, who gave evidence on Tuesday and Wednesday on issues including fibres, wood splinters, the sound of a gun versus a cricket bat hitting a door, and how a bullet could ricochet off tiles, said as an expert he "only looked at the evidence".

Prosecutor Gerrie Nel queried Dixon's qualifications and background, before asking specifically what type of expert Dixon, a qualified geologist, was:

“Are you a sound expert?”

“I would hope I'm a sound expert,” he replied.

...moved onto the test Dixon conducted on how dark it would have been ...

“The instruments that I used were my eyes.”

Following further questioning he said he was not a light measuring expert, and had not used equipment to conduct the test.

Mr Dixon conceded ... that he was not an expert on many of the fields he testified on, but stuck to his findings. He tried to explain to the court how, as a scientist, he has used the fundamental principles applied in geology to analyse the crime scene and all its elements.

... resumed his attack, criticizing Dixon's work after the geologist did not use Pistorius' exact height when standing on his stumps. The prosecutor questioned why his measurements were 20 centimeters (eight inches) shorter in a test to see if Pistorius' head and body would have been high enough to be seen by a neighbor through a window of his bathroom. “It is something I omitted. I overlooked it at the time,” Dixon said, adding that he was not trying to “mislead” the court.

... his Facebook account that was apparently posted on Thursday morning. He confirmed its authenticity when questioned by journalists. It read:

“Third day in court today. Let's see how much of my credibility, integrity and professional reputation is destroyed. It is difficult to get belief in those who will not listen because it is not what they want to hear. After that, beer!”

Man charged with perjury in six counties sentenced

“Investigators found that he, an Expert Witness, had testified under these false qualifications in six counties in Pennsylvania. Joseph Citron, 68, was sentenced to seven years of intermediate punishment, and will never be allowed to testify in a courtroom again, according to Franklin County District Attorney Matthew Fogal.”

Conflicted?

“In cross-examination the Parris' lawyer (Gilde) brought out the “substantial” amount of work Payne (the Expert) had done for oil companies as an expert witness – and the fact that his company charges \$495 an hour for that work.

“It would be bad for your business if you testified against the oil and gas industry, wouldn't it?” Gilde asked.

(The Expert) Payne bristled at the suggestion. “No, you're dead wrong on that,” he said.

“We talk about the facts. Platt Sparks (the company of which the Expert was President) tells the truth, whether it's for or against the oil company. That's why we get hired. Sometimes they like it, and sometimes they don't.”

DIARY, NEWS & ANNOUNCEMENTS

Your Academy needs you...

The Academy's Council is your chance to have a say in how it is run. All eligible Members are actively encouraged to get involved by standing for Council. Meetings are held twice a year in June & November and this is just one of the ways that we help to ensure that we are acting in the members' wishes and providing what you need.

Full details of the AGM and how to stand will be published shortly but in the meantime do contact the office for further information.

Legal Aid Agency may have to bear cost of expert fees in family cases

In news that may have wider reaching effects for Expert Witnesses undertaking publicly funded work a recent judgement has criticised the The Legal Aid Agency (LAA), formerly the LSC.

The Court of Appeal in **JG v The Lord Chancellor** [2014] All ER (D) 192 (May), [2014] EWCA Civ 656 held that the Agency was wrong to refuse to pay the full cost of an expert witness report ordered for a child by the family court.

The Lord Chancellor, argued that parents who are not legally aided should pay their share of the expert's fee whilst the Law Society countered that the expert was instructed by the child alone. According to the Law Society, the decision means the LAA will in future need to decide whether it should pay an expert's fees in full depending on the facts of a specific case. As a result, in some cases, it may be appropriate for the full costs to be borne by the child's legal aid certificate.

More Legal Aid

Fees paid to experts have again been in the headlines - this time in criminal proceedings. Unfortunately, as predicted by TAE and other organisations in last year's consultation on legal aid, an increasing number of experts are becoming even more unwilling to take on publicly funded work at the rates offered.

Attention has been drawn to this by a recent criminal case which the guardian newspaper reported on 1st May "Criminal case faces collapse following legal aid cuts for medical experts".

<http://goo.gl/heF1U5>

Respite from being 'Mitchelled'

The CPR is to be amended to allow parties to agree time extensions of up to 28 days for serving certain documents, without needing to make an application to the court.

A Civil Justice Council (CJC) conference to assess the impact of the Jackson reforms was told that the new 'buffer' measure will be approved by the Civil Procedure Rules Committee at its next meeting.

"Experts for hire"

As we go to press we read that the BBC's Panorama is about to screen an undercover investigation into experts who are alleged to write supportive reports despite being told that the party instructing them agrees the allegations being made against them.

As we await the evidence we are pleased to report that none of those whose names we have seen are members of The Academy. The Academy was founded on promoting the highest standards and is pleased that the agreed basic standard is its 3I's – Independence; Impartiality & Integrity.

President's Dinner

Butchers' Hall

Wednesday 5th November 2014

"Remember, remember the 5th November"

The Academy's most formal function of the year - The President's Dinner - is in November.

We will be returning, again, to Butchers' Hall.

Put the date in your diary - we will shortly be sending full details of the event. This is always extremely popular so book early to claim your place.



Diary Dates

June		
Monday-Tuesday	9-10	Foundation Course
Wednesday	11	➤ TAE Council
Wednesday	11	➤ Evening Meeting
July		
Tuesday - Wednesday	1-2	➤ Commercial Mediation - Module 1
Thursday	3	➤ Commercial Mediation - Module 2
Tuesday	8	➤ Into Court
Wednesday	9	➤ Mediation CPD Day
Thursday	10	➤ TAE Executive Committee
Tuesday	15	➤ Commercial Mediation - Module 3
Wednesday	16	➤ Commercial Mediation - Module 4
Thursday	17	➤ Commercial Mediation - Module 5
Friday	25	TEDR Copy deadline
Friday	25	➤ Gray's Inn Garden Party
Tuesday - Wednesday	29-30	➤ Commercial Mediation - Assessment
Thursday	31	ED Assessment Submission
September		
Wednesday	10	➤ TAE Executive Meeting
Wednesday	10	➤ Evening Meeting
Wednesday - Thursday	17-18	➤ Foundation Course
October		
Wednesday	8	➤ Evening Meeting
November		
Wednesday	5	➤ TAE Council
Wednesday	5	➤ President's Dinner

Key to events:

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