

Volume 17 - Issue 5

**Inside this issue**

From the Chairman	1-2
AGM Notice	2
Mediation Corner	2
Changes to CPR & CrPR	3
News & Announcements	4
Academy Diary	4

This and past editions of 'update' are available from:  
<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)

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)

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# From the Chairman



**A new term**

I hope you have all enjoyed – or are perhaps still enjoying – your Summer break. As we come into the Autumn we enter the period where we hope for a surge in enquiries and new instructions for experts as solicitors prepare cases to come to court. In the next few months we shall see how the economic situation is continuing to affect the volume of cases and the number of instructions for experts.

It is worth reviewing recent history. In the early months of the recession most predictions were that economic downturn would as usual lead to an upturn in legal cases. But what actually happened, assessed by talking to as many Academy members as possible, was different and rather complex. Some areas, notably forensic accounting, were extremely busy. In most other areas of civil expert work members were reporting quieter times than usual but this was uneven – a few were reporting the opposite. Mediations were steady. Rather oddly there seemed to be less criminal expert work than usual

apart from fraud. So the period leading up to the Summer seemed to be difficult.

The Summer is always quiet but members have been reporting positive signs and indicating a more optimistic mood. If the quiet period earlier in the year was just caused by a delay in cases coming to court, there could be a surge in enquiries and instructions over the next few months. So be prepared.

**Old-fashioned marketing**

My musings in the last edition of Update about a passing-out ceremony for Experts raised a wry smile from delegates to the EuroExpert General Assembly held in London at the end of July. For example, German Experts have to make a public declaration at their local Chamber of Commerce not only when they are first accepted onto the official register of court experts but also every time their acceptance is renewed. Other European countries have a similar system.

My immediate thought was – what an opportunity to promote your practice: a *cont page 2...*



One of the last original London Plane trees in the Walks, Gray's Inn, is felled to be replaced by English Oak

## From the Chairman cont...

...cont from page 1

short piece in the local paper, perhaps a photograph, an announcement in the member's news section of your professional journal ... but of course we already have everything we need for such marketing. We just need to write that article to the local paper, send in that piece of background information to the professional journal, maybe offer to give a talk about Expert work and ADR to a local service club or a branch of our primary professional body – and remember to say that we are a member of The Academy of Experts. In other words – basic old fashioned marketing.

Our websites and our Academy Internet register entries are probably our most important marketing tools and they work for us 24 hours a day. But this fact makes it possible for us to turn our attention from our marketing and to forget about the basics. This is not a good time to neglect any aspect of marketing.

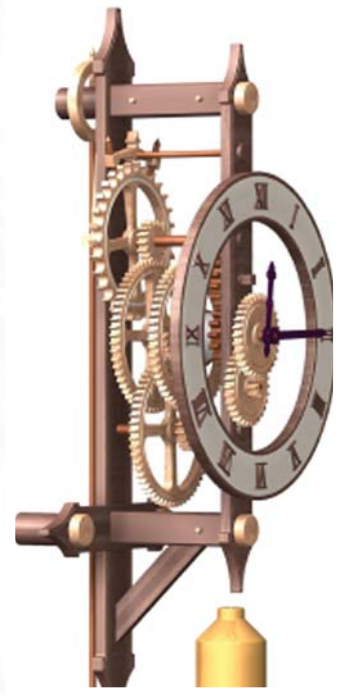
**Nigel Young**  
**Chairman**  
**August 2009**

## Annual General Meeting

Notice is hereby given that the Annual General Meeting will be held at 1300 on Monday 12th October 2009 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 13th October 2008 – published in 'update' Volume 16 Issue No 5
- 3 Matters arising
- 4 Chairman's Report
- 5 Treasurer's Report including adoption of accounts for the year ending February 2009.
- 6 To appoint the Auditors for the year 2009-2010
- 7 Election of Officers (Chairman, Deputy Chairman, Vice Chairmen, Secretary and Treasurer)
- 8 Election of Council Members (4 vacancies)
- 9 To approve 2010-2011 subscription levels
- 10 Any other Business



## Mediation Corner

### Australia: Putting the A in ADR

Australian Courts are taking a lead in the promotion of court referred mediation. Appropriate Dispute Resolution (ADR) will be enshrined in Victoria's courts with a proposed law confirming that judges have the power to lead mediation in civil cases to resolve disputes more quickly and cheaply, Attorney-General Rob Hulls announced, saying:

*"The ... Bill puts beyond doubt that ADR techniques, such as mediation, are a core function of judicial office... This legislation, introduced into Parliament today, will place Victoria another step down the path of a justice system that fully integrates ADR to make access to justice a reality for all Victorians.*

*The community demands that Government and the Courts work together to develop more flexible and innovative ways of settling civil disputes..."*

Mr Hulls said the legislation would

ensure that courts have the power to implement a range of ADR techniques, including mediation, conciliation, settlement conferences and early neutral evaluation.

*"Apart from the traditional role of adjudicating in trials and providing a written judgment, the courts should be able to employ a range of techniques to resolve disputes ... There are very few civil disputes that require the time and expense of going through the full court process to judicial determination.*

*By harnessing the authority and knowledge of judges earlier in the process, the courts will be able to encourage a settlement as the most effective means of resolving a dispute."*

Mr Hulls said the legislation ensured that the existing immunity for judges continued when judges were engaged in ADR approaches such as mediation.



*"The courts will have the power to set out rules governing the practices and procedures of judge-led ADR, with the confidence that their chosen procedures will be confidential and covered by a specific statutory immunity," Mr Hulls said.*

*"The independence of the judiciary is further protected by ensuring that judicial officers cannot be compelled to give evidence about what has occurred during an ADR process.*

*This is necessary to maintain public confidence in the independence of the judiciary."*

## Changes to Civil & Criminal Procedure Rules

### Civil Procedure Rules (CPR)

On 5th October 2009 the 50th update will take effect. Part 35 which is the Rule affecting Expert Witnesses has a number of changes. Most of these are stylistic and, for example, simplify the original wording or add clarity.

Of particular note are the changes to 35.6(1)

#### The main changes to CPR 35 are:

- ❑ **35.2(2)** ‘Single joint expert’ means an expert instructed to prepare a report for the court on behalf of two or more of the parties (including the claimant) to the proceedings.
  - ❑ In contrast to the Criminal Procedure Rules a CPR SJE **must** be the Claimant’s expert.
- ❑ **35.4(3A)** Where a claim has been allocated to the small claims track or the fast track, if permission is given for expert evidence, it will normally be given for evidence from only one expert on a particular issue.
  - ❑ This is a new paragraph reinforcing the current practice for the SJE to be the norm in Small Claims and Fast Track cases as shown in the Expert’s Protocol.
- ❑ **35.5(2)** If a claim is on the small claims track or the fast track, the court will not direct an expert to attend a hearing unless it is necessary to do so in the interests of justice.
  - ❑ Amended to include small claims.
- ❑ **35.6(1)** A party may put written questions about an expert’s report (which must be proportionate) to...
  - ❑ The Rule now specifically refers to proportionality - previously it was implied from **1.1(2)(c)**.
- ❑ **35.10(1)** An expert’s report must comply with the requirements set out in practice direction 35.
  - ❑ The Rule now specifically refers to PD35 where previously it referred to ‘the relevant practice direction’
- ❑ **35.10(2)** At the end of an expert’s report there must be a statement that the expert understands and has complied with their duty to the court.
  - ❑ A syntactical amendment.

### Criminal Procedure Rules (CrPR)

The Criminal Procedure Rules Committee has recently notified us of the changes that it has made.

One of the purposes is to revise and simplify the rules presently contained in Part 24 (disclosure of expert evidence) without altering their substance and to consolidate them into Part 33 on expert evidence. The committee has commented that when the original consultation took place in October 2005 that The Academy contributed a most helpful response.

#### The main changes to CrPR 33 are:

- ❑ The introduction of a new rule 33.4 on the Service of expert evidence.
- ❑ A new 33.9 Court’s power to vary requirements under this Part.

The two new sections are shown below:

#### Service of expert evidence

##### 33.4

(1) A party who wants to introduce expert evidence must -

a) serve it on -

(i) the court officer, and

(ii) each other party;

(b) serve it -

(i) as soon as practicable, and in any event

(ii) with any application in support of which that party relies on that evidence;

and

(c) if another party so requires, give that party a copy of, or a reasonable opportunity to inspect -

(i) a record of any examination, measurement, test or experiment on which the expert’s findings and opinion are based, or that were carried out in the course of reaching those findings and opinion, and

(ii) anything on which any such examination, measurement, test or experiment was carried out.

(2) A party may not introduce expert evidence if that party has not complied with this rule, unless -

(a) every other party agrees; or

(b) the court gives permission.

*[Note. Under section 81 of the Police and Criminal Evidence Act 1984, and under section 20(3) of the Criminal Procedure and Investigations Act 1996, rules may-*

*(a) require the disclosure of expert evidence before it is introduced as part of a party’s case .. and*

*(b) prohibit its introduction without the court’s permission if it was not disclosed as required.]*

#### Court’s power to vary requirements under this Part

##### 33.9

(1) The court may-

(a) extend (even after it has expired) a time limit under this Part;

(b) allow the introduction of expert evidence which omits a detail required by this Part.

(2) A party who wants an extension of time must-

(a) apply when serving the expert evidence for which it is required; and

(b) explain the delay.

# NEWS & ANNOUNCEMENTS

## CPR & CrPR

This October sees a number of changes being implemented to both the Civil and Criminal Procedure Rules and they will take effect on 5th October.

These will be respectively the 50th update for CPR and the 8th update for the CrPR. Details of the main changes affecting Experts are shown on page three of this issue of 'update'.

## New Master of the Rolls

The youngest of the law lords, Lord Neuberger of Abbotsbury (pictured right), is to become the 95th Master of the Rolls. In 2007, he became the country's youngest Law Lord, having spent just two years in the Court of Appeal.



Lord Neuberger replaces Lord Justice Clarke who joins the Supreme Court when it opens in October.

## Legal Aid: Funding Reforms

The number of consultation papers in circulation seems to grow daily. As 'update' goes to press we have just received the latest which will be of particular relevance and interest to members - **Legal Aid: Funding Reforms** - the paper has a section (Annex B) on proposed rates for Experts. Published on 20th August responses are due by 12th November 2009 and the response to the consultation will be published by December 2009.

TAE will be publishing a response to the consultation on behalf of members. If you would like to contribute please contact the office. A copy of the consultation paper is available from the MoJ website:

Link: <http://www.justice.gov.uk/consultations/consultations.htm>

## Turn on and Tune in to the new Supreme Court

From October, the 12 Law Lords who currently hear appeals in Parliament will become the first Justices of the Supreme Court. Their senior member, Lord Phillips of Worth Matravers, will become the first President of the Supreme Court. (Note: they will then no longer participate in the House of Lords' business, although they will retain the title that came with their peerage)

The new court has confirmed it will allow its proceedings to be televised. The decision to broadcast the Supreme Court's proceedings, when requested by the media, came as the government confirmed the institution would open on time in October.

The decision to televise events from inside the court's three chambers is a first for England and Wales. There have been experiments with television in Scotland where the law is different - but heavy restrictions remain in place on most hearings.

## New Chairman of the Law Commission

The new Chairman of the Law Commission for England and Wales has been announced by the Lord Chancellor.

The Secretary of State for the Ministry of Justice and Lord Chancellor, Jack Straw, appointed the Honourable Mr Justice Munby to be Chairman for three years from 1 August 2009. He succeeds the Right Honourable Lord Justice Etherton.

The Law Commission is an advisory non-departmental public body sponsored by the Ministry of Justice and established by the Law Commissions Act 1965.

It exists to keep the law of England and Wales under review and to recommend reform where needed. Its recommendations are designed to make the law as fair, modern, simple and cost effective as possible.

## President's Dinner

### Tuesday 3rd November 2009

Final preparations are now being made for the President's Dinner in November and we can confirm that the location is the same as last year - the Oriental Club.



Formal notice and a booking form for the Dinner will be sent by the end of the month.



As the conclusion of The Academy's 21st Anniversary this is an event not to be missed.



September		
Tuesday	15	➤ Foundation Course
Wednesday	16	
Tuesday	22	➤ Mediation Training - Module 1
Wednesday	23	
Friday	25	➤ Into Court
October		
Friday	2	➤ ICAEW Forensic Conference
Tuesday	6	➤ Law for Experts
Monday	12	➤ Annual General Meeting
Monday	12	➤ Mediation Training - Module 2
Tuesday	13	➤ Mediation Training - Module 3
Wednesday	14	➤ Mediating Against the Clock
Monday	19	➤ Mediation Training - Module 4
Tuesday	20	➤ Mediation Training - Module 5
Thursday	22	➤ Procedure Rules
November		
Monday & Tuesday	2 - 3	➤ Mediation Assessment(2 days)
Tuesday	3	➤ President's Dinner
Wednesday	4	➤ Council Meeting
Wednesday	18	➤ Into Court
Wednesday	18	➤ Role & Responsibilities - Hong Kong
Thursday	19	➤ The Expert's Report - Hong Kong
Thursday	26	➤ Into Court - Hong Kong
See <a href="http://members.academyofexperts.org">members.academyofexperts.org</a> for more dates		

Diary Dates

### Key to events:

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

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