

## Date of Next Council Meeting:

Friday 13th June 2003.



## LETTER SENT TO OUR CHAIRMAN

**Letter sent to our Chairman, Matthew Harman, from Simon Gibbs, Negotiations Manager at Legal Costs Negotiators Ltd**

Dear Mr Harman,

### Re: Costs Negotiators/Training

Your Chairman's Address, published in the April issue of the ALCD Journal, has prompted me to write.

I attended the exploratory meeting between the ALCD and costs negotiators last year. I was left with a very positive impression of the meeting but note your comments that "no material progress was made". Speaking personally, I believe that lethargy, at least on our part, may be as much to blame as anything else.

One of the main hurdles that Legal Costs Negotiators Ltd considered as discouraging us from seeking membership to the ALCD is the training programme. The letter from the Student member Kevin Hassey, also published in the April issue, raised this issue from a slightly different perspective. However, his problems are exasperated for most defendant costs negotiators. Our work is obviously almost entirely inter partes PI work. Of the 12 sections in the Training Manual 6, at best, are relevant to most of our work. As the vast majority of our staff would be exempt from the first 2, only 4 of the remaining 10 would apply. Even that is including advocacy which it will be appreciated tends to be conducted by only a small proportion of our negotiators (even though many have previously trained as barristers). From my recollection of the Portfolio of Evidence requirements there are

many sections that would be impossible to complete as part of the day-to-day work that we see. It may not be possible to submit a complete portfolio at all,

It is naturally hard, as a commercial organisation to justify a not insignificant amount of money and staff time learning areas of costs law that will never be needed by the staff while they remain employed by us. (Having joined myself as a student member some time ago I am struggling to motivate myself to complete the training for this very reason, despite a large amount of time to keeping up to date with costs law).

Indeed, so far as the training offered by the ALCD is concerned, the Training Manual alone would be entirely inadequate to train our staff to the level we expect. Issues such as CFA's, success fees, insurance premiums, claims management firms, etc are either hardly touched upon or ignored entirely. I do, of course, recognise that with the constant developments in these fields any training programme faces problems dealing with these issues, but the materials provided are inadequate on many of the areas that are covered. Possibly some of these items are covered in more detail at the various seminars given by the ALCD but the titles of the programmes do not suggest that they give even the kind of overview that some of the specialist conferences given by Central Law Training give. We have our own internal training programme which we believe offers more comprehensive training for costs negotiators' purposes that that offered by the ALCD.

Naturally, I understand that the ALCD's traditional perception is that a qualified costs draftsman should be able to "cope adequately with the costing of any file presented to you for that purpose by a solicitor" (in the words of Bob Tanner). You will see that this statement may well be appropriate for a traditional costs draftsman in independent practice but has little or no relevance for a costs negotiator working for insurance companies. The ALCD will always struggle to persuade my side of the industry of the need to be able to prepare Legal Aid, family or non-

contentious bills, for example. The ALCD may wish to retain its current make-up and goals but this will always be a barrier to entry by costs negotiators.

I realise that any way forward will produce difficult issues. The ALCD would have concerns about changing the training process so that an individual, whose knowledge is limited to one small area of costs law, however comprehensively mastered, is able to hold themselves out as a Fellow and then go on to practice independently, offering to prepare all types of bills. An alternative idea of having two types of members, full ("real") and partial ("second division"), would also cause problems. Despite this, the requirement that all members must complete the full training within a certain period or be "thrown out" of the ALCD is possibly the main problem.

I have no magic solution to "square the circle", but can offer two possible solutions:

1. The ALCD recognises that if it wants to offer membership to the whole of the costs profession it needs to radically alter its structure. It acknowledges that costs is now such a specialist area that there will always be those who specialise only in certain fields of it, in the same way as solicitors and barristers specialise. There is no requirement that a barrister ever studies family law or commercial law. There are opportunities to study those areas, for those who plan to practice them, but many successful barristers will never have any need to know anything about them. In the same way the ALCD's training could offer a combination of options, in addition to a core of subjects (certainly the first 3 Sections of the Training Manual). The individual options can be expanded to require a more comprehensive knowledge than I suspect is currently required. Those who subsequently wish to work in different areas can then return to complete the relevant additional sections. If it is really thought necessary, the ALCD can give certificates for each area that an individual has passed for the

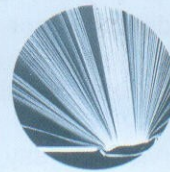
benefit of potential employers and clients. A move towards increasing specialisation among costs draftsmen should not be viewed as a backward step. It certainly is not at the Bar. There is little merit in being seen as a jack-of-all trades and a master of none.

2. Alternatively, the basic training programme remains the same but the requirement to complete the training within a set time is removed. Potential member firms, of costs negotiators and others, would have the benefit of the training that the ALCD does offer and be able to use the ALCD's logo. The ALCD would have the benefit of a potentially massively increased membership, income and strength. Further, it would then have control over those new members through the Code of Conduct, complaints process, etc. Those costs negotiators and others who only require training in certain areas would remain Students but have the opportunity to complete the training at a later stage and become Associates and Fellows. The large increase in individual members, through their firms, would encourage many to see costs as a longer-term profession than many currently do and many may well wish to complete the full training and remain members.

I suspect that the issue of **Ahmed v Powell** is currently unlikely to be a major factor encouraging many costs negotiators to seek membership. That may well change if the ALCD obtains rights of audience. Whether a significant number of members who are costs negotiators would help or hinder those attempts is another issue! Still, it might give some encouragement to various interested parties to know that costs negotiators who were members had passed a minimum level of training and were subject to the ALCD's Code of Conduct.

I am sure that Legal Costs Negotiators Ltd would be interested in exploring these issues further and would be more than happy to discuss any of the above with you or the Council.

.... we are hoping that this thought provoking letter generates some interesting debate.



## NEW MEMBERS

The following have applied for Membership to the Association. Any objections should be sent in writing to John Wilson, Chairman, Membership Sub-committee, 57 South New Road, Coulsdon, Surrey, CR5 2JL within 10 days.

Stephen Bernard	ALCD Training
Wayne Wilmet	ALCD Training
Bob Knock	ALCD Training
Christopher Shaw	ALCD Training
Alan Gaig	ALCD Training
James Barratt	ALCD Training
Ruth Savage	ALCD Training
Tracey Reed	ALCD Training

## TAFFY'S TANTRUMS

The perfect how?  
My thanks to Bob...  
From an afternoon...  
relating to care proceedings.  
When the...  
attended [the morning]...  
offered them some...  
drackers:  
With thanks to James Adams:  
Attending court to... both Ritz