



**THE CHARTERED INSTITUTE OF ARBITRATORS
WEST MIDLANDS BRANCH**

**NEWSLETTER
JANUARY 2007**

Letter from the Chairman Tim Willis,

Dear Members,

The month of November was a busy month for the Branch and the Chartered Institute. I attended Congress on 16th and 17th November 2006 and Conference on 18th and 19th November.

The agenda for change and the changes to the constitution are still being worked through. The Congress considered issues such as the relationship between Congress and the Board of Trustees, managing the CI Arb relationship with local branches and the election of the Deputy President and Vice President.

Congress reflects the international breadth of the Institute with contributions from branches such as Kenya, Lebanon, Malaysia and East Asia and highlights the challenges faced by those engaged in arbitration in all parts of the world. Listening to the experiences of those in Kenya and Lebanon gave a new perspective to the concept of threats to arbitration. Whilst in the UK branches we are often concerned with the reduction in arbitration due to the impact of adjudication, in Kenya the difficulty arbitrators face is the prospect of being sued directly by dissatisfied parties or government ministries. After 3 years of development in which they have trained their judges and involved ministers at high level in the development of arbitration the Lebanese branch is now faced with a prospect of war disrupting all efforts and threatening the continued existence of their branch.

Against that background the UK branch chairmen had to consider what could be done to promote the activities of the Institute in the UK.

Of interest to UK members were papers on the involvement of branches in the examination process, the new pathways to fellowship and the proposals with regard to peer review panels and panel appointment certificates. In addition, we heard from the chairman of the Young Members Group about their activities and how this can be further encouraged at branch level.

The proposals for pathways to fellowship and panel appointments certificates were the subject of considerable debate. Whilst the papers presented to Congress envisaged implementation of the new system in January 2007, it appears that the existing structure for fellows to proceed to Chartered Arbitrator status will remain in place until December 2007. With regard to pathways to fellowship the issue was raised whether the new accredited adjudicator qualification will lead to fellowship status.

In relation to panel certificates, concerns were raised about the proposed conditions which require that before being granted a panel certificate the applicant would have to demonstrate that they had carried out arbitrations or adjudications. This potentially produces a catch 22 situation for those wishing to commence practising as arbitrators or adjudicators.

The outcomes of the Congress were summed up by Doug Jones the Chairman of the Board of Trustees. Following on from the debate in Congress the ongoing work of the Management Board will be subject to further discussion with the Trustees and in particular it is envisaged that there may be a meeting of the Trustees with the UK branch chairmen to consider issues relating to the UK branches and the regional development plans. We have offered the Midlands as the venue for the meeting. Our proposal is under consideration.

As a result of the discussions at Congress with regard to the activity of the branch we will now be considering the need for holding courses locally in order to assist those wishing to complete pupillage by December 2007. We will update you in relation to the progress of the Accredited Adjudicator Course. Further we will consider a branch appointment system and branch arbitration schemes in order to provide opportunities for new arbitrators seeking to gain experience of arbitration to obtain necessary experience for panel certificates. A model of how this can be achieved was the subject of discussion at Conference following the very interesting presentation from the Irish Branch.

Following Congress Michael Stevens and I attended the Conference on the 18th and 19th November 2006. The Conference picked up with the membership the discussions that had taken place at Congress. Papers given included a summary from Veena Kanda, of the new competence led programs to attain membership and fellowship, a paper on "Providing Appointments for Members - Do Branches Have a Role to Play?" from Rowena Mulcahy a former chairwoman of the Irish Branch and a presentation from Ercus Stewart SC on opportunities for young members. Ercus explained the schemes arranged with the Bar Counsel of Ireland and the new sports arbitration schemes which are mechanisms by which the Irish Branch have provided the opportunity for new arbitrators to enter the practice of arbitration. Ron Baden-Hellard gave an interesting and highly entertaining talk on the history of the CI Arb and the extraordinary characters who have been the driving force behind the Institute.

The Conference gave the opportunity to discuss with other branch chairmen issues that had arisen at Conference and for the wider membership to express their views as to the proposals and direction of the Institute.

On the Sunday of the Conference parallel workshops were held. Michael Stevens attended the mediation workshop and has produced a mini-report. I attended the arbitration workshop chaired by Rowan Planterose with contributors Bruce Harris, Steven Bickford-Smith, Karen Gough and Ercus Stewart SC. The workshop considered issues such as whether arbitrators should have an unqualified right to determine their own jurisdiction, "what is misconduct" or "serious irregularity" in 2006, a comparison of institutional and ad hoc arbitration and a presentation on the problems that arise in relation to conflict of interest particularly in the appointment of panels of arbitrators in international arbitration.

The Institute is going through a period of change and development. The re-introduction of the newsletter should assist members in keeping up to date with those changes but the Chartered Institute website and the branch website are also important means of keeping up to date with events. Members who consider that there are opportunities for scheme arbitration

at a local level (which could be in any area of dispute resolution) are encouraged to come forward with their suggestions. Members who consider that the local branch should offer specific training needs are also encouraged to make their wishes known either to me or to Robert Gemmell, Chairman of the Education and Training Sub-Committee.

Finally, we will hold our Annual Conference on 2nd March 2007 our subject is "Dispute Management". We also have two events; a visit and talk from Hew Dundas on 7th February and the event on 25th January at Hammonds. Booking forms are enclosed for these. The Provisional programme for the remainder of the session is attached.

On behalf of the committee I wish you a happy and prosperous New Year. We look forward to hearing from you with your views and to seeing you at our future events.

Yours sincerely

TIM WILLIS
CHAIRMAN

REPORT BY MICHAEL STEPHENS ON THE MEDIATION WORKSHOP HELD AT THE ANNUAL CONFERENCE ON 19 NOVEMBER 2006

There were parallel workshops on arbitration (chaired by Rowan Planterose) and mediation (chaired by Peter Fenn), each lasting 2.5 hours. The mediation workshop was billed as an interactive session, each speaker being allotted 15 minutes to make a presentation and thereafter a discussion on the topic for a further 15 minutes.

The first presentation was by **Bill McLaughlin**, entitled "*Judges as Mediators: Lessons from the Civil Code*", subtitled "*Providencia and Motivacion*". He did not produce a paper (which was a pity) as his presentation demanded concentration by reason of its detailed discussion of codified systems of law. The discussion that ensued covered areas such as the involvement of the TCC judges in mediation and to what extent that was proper or permissible; the benefits of active case management; and how far a common law system such as ours could borrow or benefit from techniques enshrined in a codified system.

This first presentation was followed by a very interesting, indeed challenging, paper by **Niall Lawless** dealing with "*Cultural and moral perspectives on successful mediation*". Niall drew upon his considerable experience of conducting business in China in seeking to explore whether there are personal attributes such as ethical or moral perspectives which influence whether an individual uses their skills and qualities to act as mediator. This exploration not only examined the moral orientation of the individual through such things as conscience, sense of duty, justice, respect and religious beliefs but also gave rise to a lively debate as to whether the moral perspective differs between the sexes. The suggestion made by the speaker was that men are concerned more with the morality of justice where the parties are treated equally whereas women are more concerned by the morality of care whereby relationships are preserved. This particular aspect of the topic was later highlighted by Bloomsbury Square as a topic for debate on the main website.

Scarcely had we settled down from that debate than there was yet another riveting presentation, this time by **Richard Butler** on "*Assisted negotiation: Advance Skills for Mediators*". Just as Niall had drawn on his personal experience of business in China so

Richard used his opportunity to tell us about the importance and relevance of the work of Mary Parker Follett, an American academic, often described as the world's first management consultant. She was arguably the first to recognise the fundamental concepts that underlie most modern negotiation theory such as integrative bargaining and distributional bargaining. Richard showed how from her original writings the basic practical mediator techniques have emerged. His thesis, based on considerable experience of conducting commercial mediation, stressed the importance of the “magic circle” of relationship forged between the parties to communication to commitment to looking at alternatives to the relationship. In many ways, using anecdotes from his own experience, Richard was able to give a masterclass in the techniques to be adopted by the mediator in bringing the parties together. The questions and contributions that followed showed that there was no set way in which to approach mediation or to achieve a solution with which the parties could live.

The final paper was presented by Dr Ann Brady and was entitled "Developments in mediation: UK, EU and Global". She examined why mediation was expanding globally and suggested that this was due to a combination of factors such as escalating legal costs and the increasing perception of the need to provide access to justice to all and exactly what justice might be in any particular case. Ann told us that the Chartered Institute was involved in a collaborative global research project in conjunction with universities in America and Europe as well as the World Jurist Association. The purpose of this project was not only to ascertain how mediation was spreading around the globe but also to exchange ideas and solutions on a wide range of issues affecting legal systems around the world, not limited to ADR. She also drew attention to European developments including the European Code of Conduct for Mediators and the draft Directive on certain aspects of mediation in civil and commercial matters. In relation to domestic developments, Ann highlighted the strategy document published by the DCA to promote mediation and the foundation of the Civil Mediation Council and subsequent establishment of the National Mediation Helpline. She concluded by drawing attention to the involvement of the Chartered Institute in these developments and she felt confident that such involvement would lead to opportunities for its members.

Everyone who participated in the workshop agreed that it had been a most successful event. Virtually everyone in the room made a contribution to the session and the discussion continued over the later refreshments.

It was a shame that this workshop ran parallel to that on arbitration as several of us would have been interested to have attended both. Nonetheless, this was still a very good choice and a very stimulating exercise.

Would you like to become a CI Arb Accredited Adjudicator?

The CI Arb has recently launched its new “Pathways to Fellowship”, along with a completely revamped suite of education and training programmes. One welcome addition is the introduction of a much awaited independent route to Membership for those wishing to specialise in adjudication, which can be followed by Accredited Adjudicator Assessment. Modules which have already been developed for construction adjudication and modules for adjudication in other specialist fields are under development and are due to become available during 2007.

The first step on the adjudication route is to qualify as an Associate by successfully undertaking a CI Arb Introduction Course either in mediation, arbitration or adjudication. To progress from Associate to Member it is necessary to complete two further Modules, which are delivered through a combination of distance learning and face to face tutorials. The first

Module is the law of contract, tort and evidence, and those wishing to specialise in adjudication can now follow this with the new Module 2 (Law of Adjudication), which is delivered over a period of 4 months. Successful completion of Modules 1 and 2 leads to Member grade and a Certificate in Adjudication (CertAdj). It is worth noting that exemptions are available for those who have successfully undertaken equivalent recognised courses and/or qualifications.

The new qualification of Accredited Adjudicator will be available to those who have qualified as Members by successfully completing the Certificate in Adjudication. To achieve Accredited status, candidates will undertake a 3 day skills based assessment, and it is hoped that this new programme will set a new industry standard for the training of adjudicators. On successful completion, Members may use the designation 'MCI Arb Accredited Adjudicator' followed by the name of their specialist field (e.g. CI Arb Accredited Adjudicator (Construction)). This will surely be a huge benefit to those who want their competence and expertise in adjudication recognised.

If you have any queries or require any further information about the new Pathway for adjudicators, please contact Robert Gemmell, the Course Director of Module 2 (robert.gemmell@mcms.co.uk) or the CI Arb Professional Development Department (tel: 020 7421 7444).

West Midlands Branch Conference

Enclosed with this newsletter are details of our Conference in March together with a booking form. We have been extremely fortunate in attracting high quality speakers including Tony Bingham, John Riches, John Rushton, Alan Dyer, Robert Gaitskell and John Kendall. All our speakers have expressed enthusiasm for the proposed topic which considers dispute resolution in the context of a large building project. We hope that the conference will be interactive with the speakers expressing their views and providing technical information regarding the various matters that the delegates (acting the part of Consultants to the project) should consider in advising on dispute resolution matters. Topics covered will include arbitration, adjudication, mediation, expert determination as well as pre action protocols. We hope for a lively debate and an informative event.

Sarah Jane Hudson

From the Secretary

On behalf of the Branch, the committee would like to welcome the following new members. Mr M S Lim, Mr Y Usman-Wowu, Mr C J Norcup, Ms A Fairburn, Mr E J Flanagan, Mr C P Papavarnava, Mr M R Oldbury-Shemilt, Mr P J Arnall, Mr P Nicholls, Mr M J Hussain, Mr C A Palmer, Mr K Parsley and Mr D R Gogerty

The AGM will soon be upon us and I will be sending out the notice of the AGM shortly and calling for nominations to the committee shortly. If you are interested in standing for election to the committee and want further information please contact me.

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