TECBAR Review
Issue Spring 2017

The Newsletter of the Technology and Construction Bar Association

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## Chairman's Message

I have been asked by the Bar Pro Bono Unit to remind the TECBAR membership that we are now in the Authorisation to Practice (AtP) period and you have the opportunity to donate £30 to the Unit.

In 2016 over 50% of the Bar donated to the Unit. This optional donation was only introduced four years ago and it is testament to the Bar's commitment to pro bono work that over half of all Members make this contribution. This simple and convenient donation option results in a significant portion of their funding.

The £30 initiative has meant that over four years the Unit has facilitated the Bar:

- To provide advice and/or representation on 3,849 pieces of work;
- To help 1,521 people;
- To set up four major duty schemes: the Rolls Building, Central London Family Court, Central London Employment Tribunal, and the Court of Appeal; and
- To collaborate with multiple front line agencies to support litigants in person.

It has also meant that internally the Unit could:

- Hire two new caseworkers;
- Implement a comprehensive database to support better working;
- Upgrade its IT hardware;
- Streamline processes; and
- Begin to digitise its services.

There is so much that the Bar Pro Bono Unit needs to achieve over the next 12 months and the impact of AtP funding cannot be overstated.

*Martin Bowdery QC,*
*Atkin Chambers*

## From the Editor

This Spring 2017 issue of the *TECBAR Review* contains four contributions.

First, we are very pleased to include a Letter to the Chairman from the Hon. Mr Justice Edwards-Stuart, reflecting on his time as Judge in Charge of the TCC, his achievements during that period, and the future of the court. I am grateful to the Chairman and to Mr Justice Edwards-Stuart for their kind permission in allowing us to reproduce the letter.

In the second, Darryl Royce of Atkin Chambers contributes the second of his regular columns for the *TECBAR Review* on the subject of 'Adjudicating Low Value Disputes,' in which he discusses the issue of whether adjudication is fit for purpose in disputes of a value between £50,000 and £200,000.

Third, Tom Owen of Keating Chambers comments on the new Pre-Action Protocol for Construction and Engineering Disputes, which came into force on 14 November 2016, discussing some of the key changes made and the practical questions to which it gives rise.

Finally, all TECBAR Members will be aware that the new Continuing Professional Development rules came into effect on 1 January 2017. On behalf of TECBAR, the Chairman sets out the guidance published by the Bar Standards Board on the application of the new rules and

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lists some of TECBAR's upcoming professional educational events which we hope will meet the needs of Members.

*Christopher Reid,*
*Atkin Chambers*

## Letter to the Chairman

Dear Martin,

On 1 September 2016, I completed my three year term as Judge in Charge of the TCC, which is now in the very competent and experienced hands of Mr Justice Coulson. I wish Peter every success in his new role.

It has been a great privilege to have been Judge in Charge of the court at such an interesting period. When I took over in September 2013 the TCC had finally become a court whose members were all High Court Judges. This necessary and long overdue step was the result of some sustained lobbying by all branches of the profession involved in construction and technical litigation.

It was my task to ensure that the TCC in its new form played a full part as a Rolls Building court, to maintain its well justified reputation for procedural innovation and flexibility, to continue the development of a body of a case law – particularly in relation to the enforcement of adjudicator's decisions – that was coherent and reasonably predictable and, finally, to do my best to encourage practitioners of the right background and calibre to apply to the High Court bench in order to ensure the security of the future of the TCC. I like to feel that some good progress has been made in each of these areas.

During my term as Judge in Charge there has been a steady growth in the number of public procurement claims issued in the TCC. Thanks to the hard work of several leading practitioners in this area, we now have a draft protocol for public procurement disputes which will appear as Appendix H of the new revision of the TCC Guide. In addition, the new revision will include guidance on the conduct of paperless trials using the now well established document management software that is available. The process of transition to electronic working in the TCC Registry has been completed, thanks to much hard work by the court staff – to all of whom I am very grateful – and it only remains to encourage practitioners to make proper use of it. In relation to the TCC Users Group, I am pleased that I have been able to encourage younger practitioners to become members of the group, which is now a very proactive and useful committee.

Perhaps my greatest satisfaction was the recent approval by Her Majesty the Queen of the appointment as High Court Judges of two eminent Queen's Counsel, Finola O'Farrell QC and Nerys Jefford QC, both of whom are highly regarded practitioners at the Construction Bar and Recorders in the Crown and County Court. They have been assigned to the TCC and we are very lucky to have them. This meant also that by the end of 2016 the TCC became a gender parity court: I hope that this may send a message of encouragement to women generally who are involved in or associated with the construction industry.

Sadly, in addition to handing over as Judge in Charge, on my birthday in November I had to retire as a High Court Judge – a step that I regard with very mixed feelings. Throughout my time as a judge in the TCC I have been very touched by the warmth shown to me and my fellow Judges by the members of TECBAR, TecSA, the Society for Construction Law, the Adjudication Society, the Society of Construction Arbitrators, the London branch of the Chartered Institute of Arbitrators and several other professional bodies that have had some involvement with the TCC. I shall miss greatly my association with all of them, but I hope that contact will not be severed altogether since I intend to return to practice as an arbitrator having stepped down from the High Court bench.

As ever,

Antony

*The Hon. Mr Justice Edwards-Stuart*

## *Adjudicating Low Value Disputes*

### Introduction

1. Part of the justification for the introduction of the payment and dispute resolution regime under the Housing Grants Construction and Regeneration Act 1998 was that of allowing a sub-contractor David to take on a main contractor Goliath where the latter had declined to administer the necessary transfusion of 'the life blood of the industry'. How successful can the sling of adjudication be in securing the downfall of the Philistines in this and other types of disputes at the lower end of the financial scale?

### The Types of Dispute Involved

2. Apart from sub-contractor or sub-sub-contractor claims, I have in mind claims by main contractors for the balance of a contract price, defects or delay claims by small developers or house owners. These sorts of claims used to be the bread and butter cases for construction lawyers in the county court, and still are to a certain extent if you put to one side our much loved old friend, the party wall dispute appeal.
3. Generally speaking, the amount in dispute in these types of claim hovers between £50,000 and £200,000.

Although this will be a lot of money to the individuals or small companies and firms involved, it is small beer in terms of construction litigation in relation to the legal and other costs likely to be incurred. Just think why. Almost all construction disputes involve cross-claims and the tribunal has to be provided with technical evidence in order to carry out the necessary balancing exercise in order to arrive at a sum due to one party or the other. Very often, the cost of doing so will exceed the balance arrived at. Take the case of an extension to small business premises. The contractor will maintain that he was delayed, is entitled to be paid for varied works and only left the site because of the employer's repudiation of the contract. The employer will say that the contractor failed to make reasonable progress, carried out defective work, was not entitled to leave the works when he did and has a business interruption claim.

4. Resolving such issues is not a straightforward exercise, even within the leeway granted to the robust procedure of adjudication. And even though residential occupiers are not covered by the Act, construction contracts with such employers very often include a contractual adjudication scheme. The justification for this is that adjudication is quick. The downside is that each party must bear its own costs (subject to the third part of this article) and the successful party may also have to incur irrecoverable costs in enforcing the decision by court proceedings.

## Disadvantages of Adjudication

5. As suggested above, the nub of the problem in the adjudication of low value disputes is costs. In addition to incurring the costs of the adjudication and enforcement, the successful party may also have to pay the adjudicator's fees and expenses and then try to recover the relevant amount from the unsuccessful party. These are all risks that a party may not wish to take.

## Potential Solutions

6. Apart from reverting to litigation or arbitration, where the tribunal has the power to order that the unsuccessful party should bear the successful party's costs, what are the options? An initiative that has caught my eye is that of Maximum Fee Adjudication for Low Value Claims that has recently been introduced by the Society of Chartered Surveyors in Ireland. Under this scheme, claims between €40,000.00 and €74,999.99 can be dealt with for a maximum fee of €7,500.00 and lower fees apply to smaller claims. One half day conference of the parties is included in the fee, although inspections are charged on top at a fee of €750.00 plus time spent travelling at €250.00/hr, plus travel expenses. The terms provide rigorous limits to the amount of documentation that can be placed before the adjudicator.

7. The parties are free to make any arrangements as between them for payment of the adjudication fees and expenses. However, and notwithstanding any such agreement as between the parties, the parties are to be jointly and severally liable for the adjudicator's fees and expenses, including any fees and expenses incurred by the adjudicator in the absence of an award or additional award fixing the costs and expenses of the adjudication, together with any additional costs howsoever incurred by the tribunal in recovering any overdue monies on a full indemnity basis.

8. In England and Wales, there is the possibility of funded adjudication using damages based agreements. Fees will be based on a percentage of the damages recovered, agreed at the outset on a case-by-case basis. It is similar to the fee arrangements offered by some construction claims consultants, but with the difference that only solicitors and barristers can guarantee that their advice and their communications with clients will attract legal advice privilege and will not have to be disclosed to the other side or to the court in any subsequent court proceedings. The following example has been given:[1]

   Claim value (dealt with within a 35 day period in adjudication): £20,000

   Solicitors' fee: 25% of the claim value = £5,000

   Typical fee for nominating adjudicator: £320

   Client receives: £14,680 (£20,000 claim – £5,000 DWF fee – £320 nomination fee)

9. I have no experience of such arrangements but I can see that they could make sense in terms of the figures (subject to the rather obvious point that the calculation set out above assumes 100% success). As with all funding schemes, the weakness lies in the operator's obvious interest in only taking on claims with a significant chance of success. This could not really be an option for a 50/50 case.

10. Contractual adjudication through use of the JCT Rules for Adjudication for home owners or occupiers offers a potential solution for claims concerning residential works that would not otherwise be caught by the statutory provisions. With a restricted hourly fee of no more than £150 being charged by the adjudicator, up to a maximum of 15 hours and a decision within 21 days of appointment, this would represent good value for smaller disputes. But it seems doubtful that this procedure could be adopted for anything more than the most factually straightforward cases.

1 www.dwf.law/media/1477321/funded-adjudication.pdf.

11. Another possibility arises from the re-launch on 25 May 2016 of the *Adjudication Scheme Trial for Professional Negligence Claims*, the original pilot having been launched as from 1 February 2015 and being generally intended to apply where the claimant seeks damages or compensation with a financial value of less than £100,000 exclusive of costs. The main changes were the availability of the scheme to claims against a wider range of professional, removal of the limit on the value of the dispute, which had been fixed at £100,000, and the introduction of 'banding' in terms of the cap on the fee payable to the adjudicator.
12. The critical elements of the re-launched pilot scheme are as follows:
    - the parties must agree to be bound by the Rules (participation in the pilot scheme is entirely voluntary, but once committed the parties are required to see the process through);
    - once the parties have agreed to participate, an adjudicator will be selected by the Chairman of the Professional Negligence Bar Association from a panel of barristers who specialise in professional negligence disputes;
    - the adjudicator will ask for evidence and written submissions from the parties; he or she *may* request a short hearing;
    - within 56 days of his or her appointment the adjudicator will provide a reasoned written decision;
    - that decision will be legally binding upon the parties unless and until altered by a court or arbitral tribunal (unless the parties have opted for finality);
    - the parties will be jointly liable for the adjudicator's costs, which will be within a set limit, but the adjudicator will have the power to require that the losing party pays all or most of his or her costs (the parties may agree that he or she will have a broader power to award costs);
    - unless the parties agree otherwise, the adjudicator's decision will not be confidential.
13. The pilot scheme is intended for 'professional negligence' disputes. There is no precise definition of 'professional negligence', but as a generality the scheme is intended to apply to disputes between professional persons such as lawyers, valuers, accountants and so forth and their clients. In the usual case the professional person is likely to be represented by solicitors appointed by insurers, but that is not always so. 'Professional negligence' disputes are thought to be particularly suitable for a scheme of this kind because usually, but not always, the facts are reasonably clear from documents and usually, but not always, the issue of whether a breach of duty has occurred can be ascertained without the assistance of experts or with very limited expert assistance.
14. These changes were accomplished by a working party set up at the direction of the Master of the Rolls and included representatives from the Ministry of Justice, the Professional Negligence Bar Association, the Association of British Insurers and the Professional Negligence Law Association. The scheme remains fully voluntary and both parties to a dispute must agree to adopt it.
15. Most negligence claims against construction professionals will already be caught by the 1996 Act. However, where the work in question does not relate directly to 'construction operations' within the meaning of the Act, this scheme might offer an alternative.
16. Finally, there is the Consumer Code for Home Builders, which came into force on 1 April 2010. The third edition applies to a Reservation (made when a Home Buyer and a Home Builder jointly make a written statement of intent (subject to contract and whether or not a fee is paid) to buy and sell a home) signed on or after 1 April 2013. It sets mandatory requirements that all Home Builders must meet in their marketing and selling of homes and their after-sales customer service. The Dispute Resolution Scheme is an independent process set up to deal with Code disputes that fall outside the cover of a Home Warranty Body. Examples of this would be claims falling within Years 3 to 10 for less than £1,600 or those relating to roof covering damage without water ingress or damage to floor coverings, which are excluded from the National House-Building Buildmark cover.
17. Disputes are resolved by adjudication whereby an adjudicator reviews written submissions from both parties and issues an award based on his or her conclusions. The adjudicator decides whether or not a Home Buyer has a legitimate dispute and has suffered financial loss because their Home Builder broke the Consumer Code's requirements. Home Buyers must complete an application form and send it to the independent Disputes Resolution Scheme with their statement of evidence and a case registration fee of £100 plus VAT. If early settlement does not happen, the Home Builder must submit their response to the Home Buyer's statement along with a payment of £300 plus VAT.
18. The adjudicator's decision may be a performance award (where the Home Builder has to do something) or a financial award (where the Home Builder has to pay the Home Buyer money) or a combination of the two. The maximum value of the combined award available under this adjudication scheme is £15,000 including VAT. As well as making such an award, the adjudicator may make a discretionary award up to a maximum of

£250 for any inconvenience a Home Buyer may have suffered as a result of how the Home Builder handled their complaint. The £15,000 maximum award would include any award for inconvenience.

19. The Code is looking to gain approval through the Chartered Trading Standards Institute's (CTSI) Consumer Codes Approval Scheme, which has succeeded the previous Office of Fair Trading scheme under the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015, which implement most provisions of Directive 2013/11/EU of the European Parliament and of the Council of 21st May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (OJ L 16518.6.2013, p.63). I assume that this will remain the case pending the finalisation of the terms of the UK's exit from the EU.
20. The indications are that more cases are succeeding either in part or fully, in favour of the Home Buyer. This may indicate that compliance with the Code has fallen short in some measure: see *Consumer Code for Home Builders Consumer Code Consultation*, September 2015, s 5, Introduction.

### Conclusion

21. I am not convinced that there is any genuinely attractive alternative to the current system of statutory adjudication in relation to anything but a very low end claim. I would, however, be interested to see the results of the Irish experiment, which seems to offer some hope to those with smaller claims.

Darryl Royce is a member of Atkin Chambers and his book, *Adjudication in Construction Law*, is published by Informa from Routledge as part of the Construction Law Series. This article is based on part of a paper presented at the RICS Dispute Resolution in Construction Conference held on 25 January 2017.

***Darryl Royce***
***Atkin Chambers***

## Pre-action protocol – key changes and practical questions

### Introduction

The second edition of the Pre-action Protocol for Construction and Engineering Disputes came into force on 14 November 2016.

Much has been written already of the new Protocol. This article considers some of the key changes and practical questions which arise.

### Key changes and practical questions

1. Compliance with the protocol is now not required in proceedings not involving the established exceptions in para 2.1 of the Protocol if all the parties agree in writing that the Claimant is not required to comply with the Protocol.
    a. *When is the agreement required?*
        i. Not expressly stipulated in the Protocol.
        ii. Agreement in advance of commencing proceedings is envisaged, but retrospective agreement is likely to suffice.
        iii. If protective proceedings were issued, there would probably be no bar in principle for agreement by the parties after issue, provided the parties had knowledge of the fact of prior issue of the claim form.
    b. *Which parties have to consent?*
        i. "*All*" the parties (see para 2.2 of the Protocol), which probably means all parties against which and in whose name proceedings are in fact issued.
2. Exchange of *sufficient* information about the proposed proceedings, *broadly* to allow the parties to understand each other's position and make informed decisions on settlement and how to proceed.
    a. *What does this mean?*
        i. Particularity to the level of a statement of case is unlikely to be required.
        ii. The Protocol is not intended to impose a requirement on the parties to marshal and disclose all the supporting details and evidence that may ultimately be required if the case proceeds to litigation.
        iii. That said, see below.
    b. *What about proportionality?*
        i. The overriding objective applies to the Protocol – see para 5.1 of the Protocol.
        ii. So, the Protocol must not be used to generate unnecessary costs.
        iii. However, there will be a spectrum of disputes. Proportionality does not only work one way: to reduce the particularity of a case or information to be exchanged in every case. Just as a simple, low value dispute will require a commensurate pre-action process, a complex, high value case is likely to require a proportionately more detailed process so that the parties may exchange "*sufficient*" information "*broadly*" to understand the case.
        iv. That said, the clear object of the new protocol (compared with its predecessor) is to leave

behind an unduly protracted, front-loaded and expensive process.

3. The Protocol must not be used as a tactical device to secure advantage for one party.
   a. *What does this mean?*
      i. Within the confines of the overriding objective and normative conduct in contested litigation, most litigants will properly seek to secure advantage for themselves in the proceedings.
      ii. This statement in the new protocol does not concern advantage by means of resolution of a dispute quickly and cost-effectively within the protocol, but use of the protocol simply to protract and generate costs.
4. It is likely to be only in exceptional circumstances, such as a flagrant or very significant disregard for the terms of this Protocol, that the Court will impose cost consequences on a party for non-compliance with this Protocol.
   a. *What conduct will this sanction cover?*
      i. Failure to comply with the protocol at all without lawful excuse (e.g. one of established exceptions in para 2.1) or good reason, and only then, presumably, when the circumstances or conduct is exceptional.
5. The parties may agree longer periods of time for compliance with any of the steps described above save that no extension in respect of any step shall exceed 28 days in the aggregate.
   a. *What if the parties simply all agree to a longer extension?*
      i. Jurisdictionally there would be nothing to prevent this. The court has no jurisdiction prior to issue of the claim form.
      ii. Strictly, all the parties which agreed would be in breach of the Protocol and perhaps "*flagrantly*" so, given the absolute limit on extensions in the aggregate.
      iii. But, it is difficult to see what sanction or consequence would arise, given the agreement and, thus, co-operation of the parties, not least if there were good reason in fact for the extension.
   b. *Does that mean the provisions on extensions are not mandatory in practice?*
      i. Yes, it probably does.
   c. *Does that matter?*
      i. No, the parties would have to agree to a longer extension, and would do so presumably because it is in each of their interests to do so.
      ii. If a party does not agree to an extension breaching the 28 maximum in the aggregate, it is entitled to do so and will not be penalised.
      iii. The change is there to stop one or more of the parties improperly protracting the process.
   d. *If a longer extension were agreed, would there be an agreement to disapply the Protocol altogether?*
      i. No, unless there were an agreement expressly in writing to that effect: para 2.2 of the Protocol.
6. The Protocol process concludes at the completion of the pre-action meeting or, if no meeting takes place, 14 days after the expiry of the period in which the meeting should otherwise have taken place.
   a. *What form of meeting?*
      i. The meeting need not simply consider the formal requirements of whether and how the case might be resolved without recourse to litigation and, if not, what steps should be taken to ensure it is conducted in accordance with the overriding objective.
      ii. The meeting can alternatively, and/or presumably additionally, take for the form of an ADR process such as mediation.
7. Protocol referee procedure.
   a. *What is the procedure?*
      i. It is a contractual process by which the parties agree to appoint an experienced TECBAR or TECSA practitioner from a limited panel. The referee procedure is on the TECBAR website.
      ii. The referee is to determine two types of dispute.
         1. First, directions in the protocol. Examples include whether the letter of claim is compliant, extensions of time for a response (if consent is not given), or the appropriateness of a meeting.
         2. Second, recording of and sanctions for non-compliance. Examples include any type of non-compliance.
   b. *Which parties?*
      i. The Protocol does not stipulate. It does not say all parties must agree.
      ii. In a multi-party dispute, it is conceivably valid for some parties, as between themselves, to appoint a Referee.
   c. *What is the legal effect of a referee decision?*
      i. For valid appointment, the parties must give the referee power to determine his/her jurisdiction.
      ii. Para 5.5 of the referee procedure provides the decision shall be binding on the parties to the referee procedure agreement and that in subsequent proceedings the Court shall give due weight to the decision, but shall not be bound by it.

iii. The underlying points as to conduct and costs can, therefore, be re-argued in the litigation, if required.

d. *Will the referee procedure be used in practice?*

i. It remains to be seen. The intentions are noble and responsive to a desire by TCC users to have guidance from TCC Judges pre-action.

ii. The procedure has benefits for both Claimants and Defendants.

iii. If, on receipt of a letter of claim, the Defendant considers there to be non-compliance by the Claimant (e.g. particularisation), and the Claimant has proposed the referee procedure, the Defendant can decide whether or not to agree to the referee procedure, with a view to exerting pressure on the Claimant at any early stage.

iv. Equally, if the letter of claim is clearly compliant and the Defendant would rather avoid scrutiny from a referee pre-action, the Defendant has that tactical choice not to opt in. The obvious benefit for the Claimant, confident in its case and its compliance with the protocol, would be to scrutinise a recalcitrant Defendant.

v. The procedure relies on co-operation for its inception, namely agreement to the referee procedure. Many litigants may simply seek to take their chances on costs once proceedings are issued.

*Tom Owen*
*Keating Chambers*

## Guidance on the New CPD Regime

1. The Bar Standards Board ("BSB") has published guidance on the new Continuing Professional Development rules which come into effect on 1 January 2017.
2. Detailed guidance for established practitioners can be found at this web address: https://www.barstandardsboard.org.uk/media/1800835/cpd_guidance_for_barristers.pdf
3. The new rules require established practitioners to plan their CPD objectives, keep evidence of the CPD that they have undertaken, reflect on the achievement of their objectives and then report on whether they have completed their CPD.
4. The BSB maintain that these changes are intended to be
   - Less prescriptive;
   - More flexible;
   - More suited to your actual training needs;
   - Less likely to result in irrelevant CPD activities being completed;
   - Less likely to result in disproportionate supervision and enforcement action being taken for non-compliance.
5. The BSB also maintain that these changes will provide the following benefits
   - There is no need to complete a minimum amount of CPD, nor any amount of accredited CPD. This could save you time and money as you do not need to attend courses just to complete twelve hours of CPD.
   - There is no incentive to complete irrelevant CPD activities.
   - The types of CPD available are more flexible. For example, there is no restriction on the amount of legal writing which can be completed.
   - The scheme takes into account CPD completed in previous years. This means CPD can be planned with anticipated workload in mind and varied with actual workload, and can be directly carried over between years.
   - There is no longer an extension or waivers process. If your circumstances mean that less CPD needs to be completed due to, for example, maternity leave, ill health or another reason, then this only needs to be noted on your CPD plan. This means that the regulation is less bureaucratic and more responsive to changing circumstances.
   - As a result, the BSB will be able to spend more time focussing on "High Risk" barristers and those who are not engaging with the CPD process or not completing appropriate CPD.
6. Whether this new scheme meets these objectives and provides the promised benefits is something of a moot point. The new scheme seems somewhat bureaucratic and places a greater emphasis on "established practitioners" to plan and then to record their intended compliance with their CPD requirements.
7. Given the novelty of the system and the practice-specific nature of the new process, just as COMBAR have produced a short note to assist COMBAR members to plan and to execute their CPD requirements, TECBAR have produced this note drawing on COMBAR's note and experience.
8. This note is not intended to replace the BSB's own guidance but has been prepared to supplement and to give specific guidance for TECBAR Members. However, this note has been reviewed and has been approved by the BSB.
9. There are four stages which an established barrister must complete to be compliant with their CPD requirements:

- Stage 1: "REVIEW" Planning;
- Stage 2: "RECORD" Recording and evidence;
- Stage 3: "REFLECT" Reflecting on your CPD activities;
- Stage 4: "REPORT" Declaring completion.

## Planning

10. At the beginning of the year it is necessary for each established barrister to complete a plan of the CPD that you are going to undertake by setting your "learning objectives". No date has been set by when any such plan should be prepared but it could be sensible to have such a plan in place no later than the end of March each year.
11. The TECBAR Committee will continue to provide a professional educational programme to meet the requirement of its TECBAR practitioners. Many of our members will continue to meet their continuing professional education requirement through the programme of lunchtime and evening seminars, lectures, conferences and adjudication accreditation days.
12. The TECBAR Committee is unable to set out the entirety of its proposed programme at the beginning of the year or indeed by the end of March. However, the following programme of events is in the course of being finalised by the TECBAR committee or with the assistance of the TECBAR committee.

| | |
|---|---|
| April 2017 | TECBAR Lunchtime Lecture |
| May 2017 | Junior TECBAR launch event |
| May/June 2017 | Inns of Court College of Advocacy ("ICCA") evening lecture |
| June 2017 | Junior TECBAR Lunchtime Lecture |
| 15th July 2017 | TECBAR Adjudication Accreditation Day |
| 22nd July 2017 | TECBAR ICCA proposed Expert Evidence Conference |
| September 2017 | TECBAR Lunchtime Lecture |
| 7th October 2017 | ICCA proposed Expert Evidence Conference |
| November 2017 | TECBAR Annual Lecture |
| December 2017 | SCL/TECBAR Annual Lecture |
| January 2018 | TECBAR Annual Conference |

13. It seems inevitable that if TECBAR members are seeking to rely upon TECBAR to assist in the achievement of their "learning objectives" any description of those "learning objectives" at the beginning of the year or even by the end of March cannot be very specific. The BSB understands and accepts that those objectives will undoubtedly develop and will become more specific as the year unfolds.
14. Following the very helpful guidance provided by COMBAR to its membership we have completed a modified draft of the BSB's "Established Practitioner Programme Template" which has been completed with some outline Learning Objectives which might be appropriate for a TECBAR practitioner and which will be made available on the TECBAR website.
15. Before any of the events listed above, the CPD subcommittee of TECBAR will provide a short statement of the Learning Objectives that will be met by any such event and these can form part of the Learning Objectives in your plan as it evolves and develops over the year.

## Recording and Evidence

16. It would also be sensible for each TECBAR Member to keep a note of your attendance at each such event as set out in the attached BSB template. TECBAR will continue to keep a note of those attending its own events in case any individual Member is spot-checked. Until further guidance is provided it would seem prudent to plan to take part in some twelve hours of CPD activities.

## Reflecting on your CPD Activities

17. This aspect of the process is the most difficult to be specific about. The BSB have not prescribed a specific process for its "Reflect" stage but has indicated that a "structured process" is required but has not provided a basic framework for the reflection stage of the process in its rules and guidance.
18. It would seem sensible to keep some record of how we each carry out this phase of the process explaining whether we have achieved all "learning objectives". Indeed, the final page of the attached BSB template is designed to enable you to consider achievement of your objectives in a "structured" way.

## Declaring Completion

19. Finally, you must make a declaration of completion of CPD each year. This should be done when you complete your authorisation to practice documentation.

*Martin Bowdery QC,*
*Atkin Chambers*

Readers are invited to submit material by email to be considered for possible publication. This may consist of correspondence, short articles or case notes, news of forthcoming cases or events, book reviews, or other matters of interest to members of TECBAR or SCL.
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