

Expert witness survey 2005

Strong growth seen in the number of reports written

There was an excellent response to the questionnaire enclosed with the June issue of *Your Witness*. Almost 600 forms were returned, or submitted on-line at www.jspubs.com, accounting for some 20% of the readership. I extend my thanks to all who took the trouble to complete them. Their data have contributed to the sixth survey of its kind in 10 years.

The experts

Of the 574 experts who returned questionnaires by mid-August, 264 were medical practitioners. Of the remaining 310 experts, 84 were engineers, 35 had scientific, veterinary or agricultural qualifications, 28 were in professions ancillary to medicine, 28 were surveyors or valuers, 34 were accountants or bankers, and 33 were architects or building experts. The substantial 'others' category totalled 68, of whom 21 were psychologists.

Work status and workload

Of the respondents, 313 (55% of the total) work full time and 215 (37%) work part time. Only 7% describe themselves as retired. These figures reveal a shift of some 10% towards full-time work from part-time work over the last 2 years, taking the figures back to their 2001 levels.

Overall, expert witness work accounts, on average, for just 38% of their workload, a figure essentially unchanged since 2001. Clearly, these individuals are much involved in expert witness work but have an even more extensive commitment to their professions – which is, of course, exactly as it should be.

Experience and outlook

We also asked respondents to say for how long they had been doing expert witness work. From their answers it is apparent that they are a very experienced lot indeed. Of those who replied, 93% had been practising as expert witnesses for at least 5 years, and 68% had been undertaking this sort of work for more than 10 years. Most of the respondents (55%) saw expert witness work as an expanding part of their workload, similar to the view expressed in 2003.

Their work

Reports

In all six of our surveys we have asked those taking part to estimate the number of expert reports they have written during the preceding 12 months. The averages for the last four surveys are given in Table 1.

These data reveal a dip in output in 2001, following introduction of the Woolf reforms and

	1999	2001	2003	2005
Full reports	48	41	45	54
Advisory reports	19	12	11	13

Table 1. Average number of full and advisory reports per expert over time.

the Civil Procedure Rules. This downturn now appears to have been fully reversed. Recovery must be related to the number of experts used per case, since the downturn in civil court business brought on by the Woolf reforms continues (there was a 7% fall in county court claims between 2001 and 2004, although the declining trend has now levelled off), and the volume of cases in the much smaller criminal sector has remained essentially unchanged since 2001.

Single joint experts

The use of single joint experts (SJE) has remained essentially unchanged since 2003. At that time, 73% of experts had been instructed as SJE, and on average each expert had received 14 such instructions in the year.

The equivalent average this time around shows a small increase to 75%, with experts being instructed in this capacity some 15 times a year.

Court appearances

Another change over the years that many experts will find more welcome is the reduction in the number of cases for which they are required to give their evidence in court. It is now altogether exceptional for experts to have to appear in court in 'fast track' cases, and it is becoming less and less likely in those on the 'multi-track'. In 1997 we recorded that the average frequency of court appearances was 5 times a year; some 4 years later this had dropped to 3.8; it now stands at 2.6.

Variation by specialism

These averages, however, hide a lot of variation by specialism (see Table 2). For example, the reporting rate for medics is three times that of all other specialisms. Furthermore, SJE appointments are much more common in medical and surveying cases than in the other specialisms, where the average drops to around five SJE instructions per year.

Professional group (n = number of respondents)	Reports	Court appearances	Advisory reports	SJE instructions
Medicine (n = 264)	82.0	2.2	13.4	23.2
Paramedicine (n = 28)	51.4	2.1	9.5	10.9
Engineering (n = 84)	17.6	1.8	9.7	4.3
Accountancy (n = 34)	16.1	2.0	10.5	4.6
Science (n = 35)	50.5	7.3	27.1	4.3
Surveying (n = 28)	34.6	2.2	21.7	15.2
Building (n = 33)	18.1	0.8	10.4	8.6
Others (n = 68)	36.6	4.3	7.0	14.5
Aggregate averages	53.8	2.6	12.8	15.3

Table 2. Average number of reports, court appearances, advisory reports and SJE instructions by specialism.

Exceptional for an expert to appear in court

Numbers of court appearances are similar in all areas except the sciences. This may reflect the use of forensic science in the criminal caseload.

Their fees

Which brings us to the detail everyone wants to know. How much are fellow experts charging for their expert witness services? This information is summarised in Table 3.

For each professional group the table gives average hourly rates for writing reports and full-day rates for attendance in court, with the 2003 data for ease of comparison.

Given the small size of some of the groups, it would be unwise to read too much into the changes revealed by these pairs of figures. It is apparent, though, that on average the rates for report writing have increased by little more than the prevailing rate of inflation over the 2 years. However, those for appearances in court have dropped by around 6% per year, taking them back to their 2001 levels. It is notable that this trend is pervasive across all specialisms. One possible explanation is the very low numbers of experts giving evidence in court in civil cases. This will tend to allow the much lower fees that are paid in criminal cases to start to show through in the data. It will be interesting to see if the decrease is sustained into the 2007 survey.

Whilst on the topic of fee levels in criminal cases, the figures in the penultimate column demonstrate the extent to which officially determined allowances in the criminal arena fall short of the fees experts are free to negotiate for themselves. For example, the most that a consultant medical practitioner can count on being paid for giving evidence at a criminal trial is £500 a day – around half the average fee such an expert might charge for an appearance in a civil court.

Cancellation fees

The issue of fees that become due as a result of cancelled trials continues to be a source of friction between expert witnesses and those who instruct them. The average percentage of the normal fee experts charge is generally controlled by the amount of notice they receive of the cancellation. In this survey, the percentages are 4.2% if notice is given at least 28 days before the trial was due, 14.4% if 14 days, 33.2% if 7 days and 66.5% if just 1 day's notice is given.

The right to cancellation fees is one that has to arise from the contract between the expert and the lawyer. Furthermore, the reason for many very late-stage cancellations is that the parties agree to settle. It is, then, unfortunate that when agreeing a settlement, the lawyers so often fail to account for the resulting cancellation fees they will face. Or do we think that, maybe, this trend suggests most lawyers fail to read the contracts experts provide, or fail to remember the terms once read?

Professional group (n = number of respondents)	Average rate (£)			
	Writing reports (per hour)		Court appearances (per day)	
	2005	2003	2005	2003
Medicine (n = 264)	171	153	984	1,041
Paramedicine (n = 28)	104	91	658	749
Engineering (n = 84)	96	86	631	694
Accountancy (n = 34)	161	151	1,059	1,105
Science (n = 35)	89	82	614	690
Surveying (n = 28)	122	121	888	984
Building (n = 33)	97	92	610	744
Others (n = 68)	97	127	657	622
Totals	135	123	793	893

Table 3. Average charging rates for report writing and court appearances by specialism.

Speed of payment

In this survey, 80% of experts reported that the promptness with which invoices are paid had not deteriorated – but that really means matters couldn't get much worse! One measure of the problems experts have in securing prompt payment is the number of bills settled on time. In this survey, the number of experts reporting their bills were being paid on time *in even half of their cases* is only 48% (up from 39% in 2003). That's the first increase in 10 years, but the situation remains pretty grim.

Against this background, it is depressing to note that whilst 85% of experts say they stipulate terms, still fewer than 50% use a written form of contract. Without a solid contractual basis, experts are making their credit control much more complex than it need be. *Factsheet 15: Terms of Engagement for Experts* provides a basic written contract that experts may adopt for their own use. It is freely available on the Register's website at www.jspubs.com. The new *Experts Protocol* now requires (at 7.2, see page 5) that terms be agreed at the outset. Let's hope that the imposition of this official obligation helps to persuade more experts to adopt written terms.

The ultimate solution?

If all else fails, experts can sue for their fees – or at least threaten as much. Obviously, this should be the option of last resort, if only because it is likely to lose the expert a client. But experts are increasingly finding it necessary to take such action.

Of those who took part in our 1999 survey, 24% claimed to have sued for their fees on at least one occasion. That figure has risen to 34% in this survey. Don't forget, registered experts can read *Factsheet 51: A Practical Guide to Securing Payment from Lawyers* for help on this option. All the factsheets are available free to registered experts on our website at www.jspubs.com.

Chris Pamplin

*Report fee rates
up – court fee
rates down*

*It is hoped that
official pressure
will increase the
use of Terms*