

# Expert witness survey 2011

*Ninth survey since 1995*

There was once again a good response to the questionnaire enclosed with our June 2011 issue of *Your Witness*. By the end of September, 452 forms had been submitted, accounting for some 19% of the readership. A big 'thank you' to all who took the trouble to complete them. Their data has contributed to the ninth survey of its kind in 16 years.

## The experts

Of the 452 experts who returned questionnaires by the end of September, 211 were medical practitioners. Of the remaining 241 experts, 58 were engineers, 23 were in professions ancillary to medicine, 17 were accountants or bankers, 36 had scientific, veterinary or agricultural qualifications, 20 were surveyors or valuers and 29 were architects or building experts. The substantial 'others' category totalled 59, of whom 14 were psychologists.

## Work status and workload

Of the respondents, 48% work full time and 43% work part time. Only 9% describe themselves as retired. These figures show for the first time in our surveys fewer than half the respondents working full time, although the split has been fairly stable since 2001.

Overall, expert witness work accounts, on average, for 45% 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, 97% had been practising as expert witnesses for at least 5 years, and 89% had been undertaking this sort of work for more than 10 years. Well over half of the respondents (60%) saw expert witness work as an expanding part of their workload, despite the increasing pressures on expert witness work and the recent removal of expert witness immunity.

## Their work

### Reports

In all nine of our surveys we have asked those taking part to estimate the number of expert reports they have written during the preceding

Report type	2001	2003	2005	2007	2009	2011
Advisory	21	11	13	17	19	15
Single party	41	45	54	54	57	56
SJE	12	14	15	14	15	9

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

12 months. The averages for the last six surveys are given in Table 1. The three types of report are advisory reports not for the court, court reports prepared for one party only and single joint expert (SJE) reports.

## Single joint experts

A dramatic rise in the number of SJE instructions between 1999 and 2001 (a jump from 3 to 12 instructions a year brought on by the Woolf reforms) then levelled off. Now, 73% of experts have been instructed as SJE's, and on average each expert receives nine such instructions in the year – but that is a drop from 15 in the 2009 survey.

Since the removal of expert witness immunity in January 2011, the role of the SJE has become even more fraught. Working for both parties in a dispute may well lead to a disgruntled instructing party, and that party can sue you! Indeed, we have heard from experts – even those who until now have been very supportive of the SJE approach – who say that they will no longer undertake such instructions. This is one metric we will watch closely.

## Court appearances

Another change over the years has been the reduction in the number of civil cases that get to 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 3.2. Of course, this survey does not separate civil cases from criminal and family cases (in which most will get to court), and so the number of civil cases reaching court will be much lower even than 3.2.

## Variation by specialism

However, these averages hide a lot of variation by specialism (see Table 2). For example, the reporting rate for medics is much greater than in

Professional group (n = number of respondents)	Reports	Court appearances	Advisory reports	SJE instructions
Medicine (n = 211)	89.3	2.7	20.7	13.9
Paramedicine (n = 23)	57.7	3.9	10.0	18.6
Engineering (n = 58)	19.5	2.3	14.7	1.9
Accountancy (n = 17)	35.4	4.5	9.2	8.2
Science (n = 36)	31.1	9.4	14.7	1.9
Surveying (n = 20)	17.2	1.2	12.9	3.3
Building (n = 29)	9.7	0.6	6.1	1.0
Others (n = 59)	29.5	3.4	7.2	5.4
Aggregate averages	55.8	3.2	15.2	9.0

**Table 2. Average number of reports, court appearances, advisory reports and SJE instructions by specialism (2011 data).**

*SJE instruction rate already dropping fast*

all other specialisms. Furthermore, SJE appointments are much more common in medical cases than in the other specialisms.

Numbers of court appearances are similar in all areas except the sciences, where we suggest that the use of forensic science in the criminal caseload pushes up the average.

### 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 2009 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.

In terms of annual income from their expert witness work, 32% of our respondents earn less than £20k per year, 29% earn between £20k and £50k per year and 15% earn over £50k per year.

### 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 5.7% if notice is given at least 28 days before the trial was due, 15.5% if 14 days, 33.3% if 7 days and 69.4% 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, although the Ministry of Justice has made claiming them very difficult in publicly funded cases. This ought to act as yet another spur to all experts to put in place clear, written terms of engagement.

### Speed of payment

In this survey, 87% 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 44%. Clearly, the situation remains grim. On average, 33% of solicitors pay within 8 weeks, 22% pay between 9 and 12 weeks and 27% pay between 13 and 48 weeks.

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. The *Civil Procedure*

Professional group (n = number of respondents)	Average rate (£)			
	Writing reports (per hour)		Court appearances (per day)	
	2011	2009	2011	2009
Medicine (n = 211)	201	192	1,210	1,252
Paramedicine (n = 23)	139	153	1,127	1,067
Engineering (n = 58)	131	118	1,076	836
Accountancy (n = 17)	220	192	1,476	1,246
Science (n = 36)	143	114	925	811
Surveying (n = 20)	159	162	912	1,140
Building (n = 29)	144	118	1,084	860
Others (n = 59)	119	120	828	760
Totals	169	160	1,102	1,069

**Table 3. Average charging rates for report writing and court appearances by specialism (2009 and 2011).**

*Rules Experts Protocol* requires (at 7.2) that terms be agreed at the outset. Clearly, the hope we often express – that the imposition of this official obligation would help to persuade more experts to adopt written terms – is falling on deaf ears!

As every lawyer knows, setting out clear terms for any contract, at the outset, is essential if subsequent problems are to be avoided. The contract between expert and instructing lawyer should be no different.

As an expert listed in the *UK Register of Expert Witnesses* you have access to *Factsheet 15* dealing specifically with terms of engagement (all factsheets are freely available at [www.jspubs.com](http://www.jspubs.com)), and our *Little Book on Expert Witness Fees*<sup>1</sup> makes creating a set of terms even easier. Or why not go to the *Terminator* section of our website to create personalised sets of terms based on the framework set out in our *Little Book*? So you have no excuse! Use our free member resources to set down a firm contractual base and better secure your position with your instructing solicitor.

### 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.

Of those who took part in our 1999 survey, 24% claimed to have sued for their fees on at least one occasion in the preceding 5 years. That figure had risen to 29% in the 2009, and in this survey it has jumped to 37%!

If you are considering suing for your fees, our *Little Book on Expert Witness Fees*<sup>1</sup> has a chapter dedicated to getting paid. But it is important to recognise that the basis for any such suit is in contract. If you have not built the instruction upon a firm contractual footing, winning in court may well be more tricky than it need be.

*Average fee rate increased by 6.25% since 2009 – that's less than inflation at 6.85%*

*All experts should have written terms of engagement*

### Reference

<sup>1</sup> Pamplin, C.F. [2011] *Expert Witness Fees*. 2<sup>nd</sup> Edition  
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