

Expert Witness Survey 2013

Enclosed with our June 2013 issue of *Your Witness* was a survey questionnaire, the tenth of its kind over the past 18 years. By the end of August 2013, some 340 forms had been returned, accounting for some 16% of the membership. A big thank you to all who took the trouble to take part and contribute data.

The experts

Of the 340 experts who responded by the end of August 2013, 154 were medical practitioners. Of the remaining 186 experts, 48 were engineers, 15 were in professions ancillary to medicine, 14 were accountants or bankers, 32 had scientific, veterinary or agricultural qualifications, 19 were surveyors or valuers and 10 were architects or building experts. The substantial 'others' category totalled 48, of whom 22 were psychologists.

Work status and workload

Of the respondents, 54% work full time and 35% work part time. Only 11% describe themselves as retired. This split has been fairly stable since 2003, when the full-time figure was 51%.

Overall, expert witness work accounts, on average, for 40% of their workload. This figure was 37% in 2003 and rose steadily to 46% in 2009 and 45% in 2011. This year's figure suggests a reduction in the amount of expert witness work being undertaken at present.

It is clear, though, that those individuals who responded are still 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 have been undertaking expert witness work. From their answers it is apparent that they are a very experienced lot indeed. Of those who replied, 95% have been practising as expert witnesses for at least 5 years, and 85% have been undertaking this sort of work for more than 10 years. Two years ago, 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 then recent removal of expert witness immunity. But in our 2013 survey that optimism has decreased somewhat. Now we observe 47% of expert respondents expecting expert witness work to be a growth area in their business.

Nature of the work

For the first time we asked how an expert's workload is partitioned between the various courts. Our respondents state that, on average, they perform 79% of their expert witness work in civil courts, 5% in family courts and 14% in criminal courts. This dominance of civil matters over the other courts is a long-standing feature of the make up of the *Register's* membership.

We also enquired about publicly funded work. It is no surprise that with civil work dominating, 46% of our respondents undertake no publicly funded work. Of those who do accept such work, it averages 38% of their workload – 7% lower than a year ago. A further 8% drop is predicted by our respondents for 2014 if the Legal Aid Agency introduces a further 20% cut in fee rates for experts.

When it comes to accepting instructions from litigants in person, 58% of our respondents do not agree to such instructions. Of those who are prepared to accept such instructions, the vast majority take just a handful each year.

Their work

Reports

In all 10 of our surveys we have asked how many reports the experts have written during the preceding 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 as a result of the Woolf reforms) then levelled off. Now, 57% of experts have been instructed as SJE's (it was 73% in 2011), and on average each expert receives eight such instructions in the year – but that is barely half of the average in our 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 the instructed expert! 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 have been watching closely, and the decline in SJE instructions is beginning to look more like a trend rather than a blip.

Court appearances

Another change over the years has been the reduction in the number of civil cases that reach 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 five times a year; some 4 years later this had dropped to 3.8; it now stands at 2.7. Of course, this survey does

Report type	2003	2005	2007	2009	2011	2013
Advisory	11	13	17	19	15	18
Single party	45	54	54	57	56	55
SJE	14	15	14	15	9	8

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

*On average,
40% of workload
is expert witness-
related*

*47% expect expert
witness workload
to increase*

not separate civil cases from criminal and family cases (in which most will reach court), and so the number of civil cases reaching court will be much lower even than 2.7.

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

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 offers average hourly rates for writing reports and full-day rates for attendance in court, with the 2011 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, 30% of our respondents earn less than £20k per year, 29% earn between £20k and £50k per year and 38% earn over £50k per year.

Cancellation fees

Fees due as a result of cancelled trials continue to be a source of friction. 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, 37 respondents charge on average 33% of their fee if notice is given at least 28 days before the trial was due (the other 303 make no charge), 95 respondents charge 42% on average with 14 days notice, 162 charge 58% on 7 days notice and 211 charge 83% 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

Professional group (n = number of respondents)	Reports	Court appearances	Advisory reports	SJE instructions
Medicine (n = 154)	83.6	2.4	28.7	12.9
Paramedicine (n = 15)	99.7	4.0	13.8	2.6
Engineering (n = 48)	16.4	1.8	8.0	2.1
Accountancy (n = 14)	12.7	2.0	10.0	2.6
Science (n = 32)	37.8	5.9	13.9	3.3
Surveying (n = 19)	10.6	0.9	10.6	3.8
Building (n = 10)	13.0	2.0	10.1	1.4
Others (n = 48)	42.2	3.5	8.4	9.4
Aggregate averages	55.5	2.7	18.2	8.2

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

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 report that the promptness with which invoices are paid has not deteriorated – but that really means matters could not 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 are being paid on time in even half of their cases is only 46%. On average, 32% of solicitors pay within 8 weeks, 23% pay between 9 and 12 weeks and 30% pay between 13 and 48 weeks.

Against this background, it is depressing to note that while 88% of experts say they stipulate terms, still just 52% use a written form of contract. Mind you, that is a 10% point improvement on a decade ago, so the message must be getting through – slowly! Without a solid contractual basis, experts are making their credit control much more complex than it need be. All experts listed in the *UK Register of Expert Witnesses* are free to access our Terminator service on our website to create personalised sets of terms. See page 7 for details.

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 is 33%. Given the recent economic difficulties, that perhaps isn't such a bad outcome.

If you are considering suing for your fees, our Little Book on *Expert Witness Fees*¹ 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 prove more difficult than it need be.

Professional group (n = number of respondents)	Average rate (£)			
	Writing reports (per hour)		Court appearances (per day)	
	2013	2011	2013	2011
Medicine (n = 154)	207	201	1,554	1,210
Paramedicine (n = 15)	142	139	1,180	1,127
Engineering (n = 48)	145	131	1,112	1,076
Accountancy (n = 14)	193	220	1,652	1,476
Science (n = 32)	134	143	961	925
Surveying (n = 19)	152	159	1,422	912
Building (n = 10)	157	144	1,004	1,084
Others (n = 48)	164	119	1,058	828
Aggregate averages	177	169	1,329	1,102

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

Number of SJE reports now at half the rate of 2007

All experts should use written terms

References

¹ Pamplin, C F [2011] *Expert Witness Fees. 2nd Edition* J S Publications ISBN 1-905926-11-4 Order line (01638) 561590