

# Expert witness survey 2021

Enclosed with our June 2021 issue of *Your Witness* was a survey questionnaire, the fourteenth of its kind over the past 30 years. By the end of July 2021, more than 200 forms had been returned. A big thank you to all who took the trouble to take part and contribute data.

## The experts

Of the 209 experts who responded by the end of July 2021, 94 were medical practitioners. Of the remaining experts, 34 were engineers, 15 were in professions ancillary to medicine, 9 were accountants or bankers, 11 had scientific, veterinary or agricultural qualifications, 8 were surveyors or valuers and 14 were architects or building experts. The 'others' category totalled 24 experts.

## Work status and workload

Of the respondents, 49% undertake expert witness work full time, with 39% part time and 10% describing themselves as retired. Overall, expert witness work accounts for 59% of their workload. This figure was 37% in 2003 and rose to 45% in 2011. It is the fourth time over the past 30 years that this percentage has been over 50%.

It is clear, then, that those experts who responded are much involved in expert witness work but still have a strong commitment to their professions – 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, 92% have been practising as expert witnesses for at least 5 years, and 84% have been undertaking this sort of work for more than 10 years. Ten years ago, well over half of the respondents (60%) saw expert witness work as an expanding part of their workload. With the increased regulatory pressures on expert witnesses, the removal of expert witness immunity, and now the impact of a pandemic, this optimism has fallen. We now see only half of respondents (49%) expecting expert witness work to be a growth area.

## Nature of the work

The way the workload of these experts is partitioned between the various courts is little changed from 2013. Our respondents state that, on average, they perform 83% of their expert witness work in civil courts, 5% in family courts and 12% in criminal courts. Near 63% of these experts undertake civil work exclusively. This dominance of civil matters over the other courts is a long-standing feature of the make up of the *Register's* membership.

When we asked about publicly funded work in 2013, 46% of our respondents undertook no publicly funded work. This percentage has been increasing ever since, now standing at 61%. Given the increasingly parsimonious pay rates for legal aid cases when compared with fee rates

in the open marketplace, this should surprise no one. Of those who do accept publicly funded work, it averages just 27% of their workload, which is down on 2 years ago, continuing the long-term downwards trend. These **data show just how financially unattractive the Ministry of Justice is making publicly funded work for expert witnesses.**

When it comes to accepting instructions from litigants in person, 64% (56% in 2019) 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 of such cases each year. One of the difficulties that can arise with **litigants in person** is apparent in the **increase in the last 8 years in the percentage of experts who require payment on account in such cases** – from 38% to 63%.

## Their work

### Reports

In all 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. When compared with previous surveys, it is hard to detect much of an impact of the pandemic on 2021 data.

### 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, **55% of experts have been instructed as SJE's in the past 2 years** (it was 73% in 2011), and on average each expert receives five such instructions in the year – one-third 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 sides in a dispute may well lead to a disgruntled party, and either side (or both!) 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.

### 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 likely in the multi-track. In

Report type	2011	2013	2015	2017	2019	2021
Advisory	15	18	16	21	13	15
Single party	56	55	56	47	50	42
SJE	9	8	8	5	7	5

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

*On average, 59% of workload is expert witness-related*

*49% expect expert witness workload to increase*

1997 we found 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 1.2. It is, of course, likely that the near-complete closure of the court system during part of 2020 will have depressed this metric, but perhaps not as much as one might have predicted (of which more shortly).

### 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? See 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 2019 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, 19% of our respondents earn less than £20k per year, 21% earn between £20k and £50k per year and 55% 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, 41 respondents charge on average 47% of their fee if notice is given at least 28 days before the trial is due, 84 respondents charge 56% with 14 days' notice, 126 charge 73% on 7 days' notice and 142 charge 99% 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

Professional group (n = number of respondents)	Reports	Court appearances	Advisory reports	SJE instructions
Medicine (n = 94)	72.7	1.2	20.6	7.2
Paramedicine (n = 15)	39.8	2.1	5.1	8.8
Engineering (n = 34)	16.0	1.0	12.4	3.7
Accountancy (n = 9)	10.0	0.8	6.0	2.6
Science (n = 11)	29.7	3.2	3.0	2.0
Surveying (n = 8)	14.9	0.1	10.0	3.5
Building (n = 14)	3.6	0.2	7.4	1.2
Others (n = 24)	9.9	1.0	17.8	2.4
Aggregate averages	42.1	1.2	15.0	5.2

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

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, **34% of experts report that the promptness with which invoices are paid has not deteriorated – but that means 66% of experts are finding payments are taking longer to secure!** 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 57% (up from 49% in 2017). On average, 40% of solicitors pay within 8 weeks, 25% pay between 9 and 12 weeks and 28% pay between 13 and 48 weeks.

Against this background, while **93% of experts say they stipulate terms, still only 51% use a written form of contract. 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* have access to our *Terminator* service through our website (see page 8) to create personalised sets of terms, and our *Little Book on Expert Witness Fees*<sup>1</sup> has a chapter dedicated to terms.

### Impact of COVID-19 on forensic practice

With the pandemic hitting just after our 2019 survey, we wanted to see how much impact it has had on our members' forensic practices. When asked if their forensic workload changed during the pandemic lockdowns, 29% reported no change while 34% reported an increase. Of those who reported a downturn, half saw less than one-third of their work fall away. The majority (67%) believe the downturn to be temporary.

During the pandemic, 79% of respondents used the likes of Zoom for remote meetings. Fewer than 10% found such meetings ineffective, while for the majority (73%) thought they were at least as effective as face-to-face meetings. Two-thirds of respondents feel remote meetings should continue post pandemic.

Professional group (n = number of respondents)	Average rate (£)			
	Writing reports (per hour)		Court appearances (per day)	
	2021	2019	2021	2019
Medicine (n = 94)	261	241	1,523	1,653
Paramedicine (n = 15)	187	161	1,065	1,098
Engineering (n = 34)	177	149	1,024	1,224
Accountancy (n = 9)	264	251	1,069	1,900
Science (n = 11)	135	141	916	993
Surveying (n = 8)	194	175	1,509	1,152
Building (n = 14)	177	180	1,180	1,602
Others (n = 24)	196	109	1,148	726
Aggregate averages	220	196	1,297	1,408

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

**COVID pandemic did not close the forensic workplace**

### References

<sup>1</sup> Pamplin, CF & White, SC [2016] *Expert Witness Fees*. 3rd Edition J S Publications ISBN 1-905926-24-4 Order line 01638 561590