

# Expert witness survey 2023

The June 2023 issue of *Your Witness* launched our survey questionnaire, the fifteenth of its kind over the past 30 years. By the end of July 2023, around 300 forms had been returned. A big thank you to all who took the trouble to take part and contribute data.

## The experts

Of the 297 experts who responded by the end of July 2023, 119 were medical practitioners. Of the remaining experts, 49 were engineers, 27 were in professions ancillary to medicine, 18 were accountants or bankers, 23 had scientific, veterinary or agricultural qualifications, 11 were surveyors or valuers and 21 were architects or building experts. The 'others' category totalled 29 experts.

## Work status and workload

Of the respondents, 41% undertake expert witness work full time, with 47% part time and 9% describing themselves as retired. Overall, expert witness work accounts for 56% of their workload. This figure was 37% in 2003 and rose to 45% in 2011. It is the fifth time over the past 30 years that this percentage has been more than 50%. We are looking, therefore, at experts who are mixing their forensic work with other activities, or are undertaking forensic work in retirement.

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 80% 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 the impact of a pandemic, this optimism has fallen. We now see less than half of respondents (45%) 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 81% of their expert witness work in civil courts, 5% in family courts and 13% in criminal courts. Near 60% 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 in 2013 about publicly funded work, 46% of our respondents undertook no publicly funded work. This percentage has been

increasing since then, now standing at 56%.

Given the 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 25% of their workload, which is less than 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, 56% of our respondents (the same as in 2019) do not agree to such instructions. Of those who are prepared to accept them, the vast majority take just a handful of such cases each year. One of the difficulties that can arise with **litigants in person** is seen in the **increase over the last 10 years in the percentage of experts who require payment on account in such cases** – from 38% in 2013 to 55% today.

## 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 past 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, **59% of experts have been instructed as SJE's in the past 2 years** (it was 73% in 2011), and on average each expert receives eight such instructions in the year – 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 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	2013	2015	2017	2019	2021	2023
Advisory	18	16	21	13	15	14
Single party	55	56	47	50	42	37
SJE	8	8	5	7	5	8

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

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*On average, 56% of workload is expert witness-related*

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*45% expect expert witness workload to increase*

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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 1.4.

### 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 2021 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, 10% of our respondents earn less than £20k per year, 35% earn between £20k and £50k per year and 50% 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, 68 respondents charge on average 36% of their fee if notice is given at least 28 days before the trial is due, 125 respondents charge 48% with 14 days' notice, 166 charge 65% on 7 days' notice and 197 charge 89% 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.

Professional group (n = number of respondents)	Reports	Court appearances	Advisory reports	SJE instructions
Medicine (n = 119)	60.9	1.1	19.8	10.8
Paramedicine (n = 27)	46.7	2.1	7.0	9.8
Engineering (n = 49)	14.5	1.1	8.1	3.8
Accountancy (n = 18)	20.1	2.0	14.1	3.9
Science (n = 23)	16.9	2.8	10.3	1.7
Surveying (n = 11)	18.9	0.6	9.4	7.9
Building (n = 21)	6.3	0.4	7.3	1.4
Others (n = 29)	29.9	2.1	12.1	14.4
Aggregate averages	37.5	1.4	13.6	7.9

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

### Speed of payment

In this survey, **33% of experts report that the promptness with which invoices are paid has not deteriorated – but that means 67% think otherwise!** 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 40% (down from 57% in 2021). On average, 28% of solicitors pay within 8 weeks, 17% pay between 9 and 12 weeks, 19% pay between 13 and 48 weeks and 36% take more than 48 weeks to pay.

Against this background, while **91% of experts say they stipulate terms**, still **only 55% 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.

### Jackson Reforms

We have asked about the Jackson Reforms in our last six surveys. When it comes to the 'hot tub', 17% of our respondents have 'dipped their toe in the water', up from 8% in 2013 and 15% in 2019. This time, **72% of these think hot tubbing is an improvement**, up from 59% who did so in our 2019 survey.

In 2013, 40% of respondents had been asked to provide a costs budget. This had increased to 63% in 2017 but has fallen back to 45% now. **Experts continue to find it a challenge to generate accurate budgets at the outset of an instruction.** It will, then, be a significant relief for expert witnesses that the introduction of the intermediate track on 1 October 2023 will do away with cost budgeting for a vast swathe of civil claims. The new intermediate track brings with it fixed recoverable costs for less complex claims valued at more than £25,000 but not greater than £100,000, meaning budgeting is unnecessary.

Professional group (n = number of respondents)	Average rate (£)			
	Writing reports (per hour)		Court appearances (per day)	
	2023	2021	2023	2021
Medicine (n = 119)	280	261	2,005	1,523
Paramedicine (n = 27)	191	187	1,356	1,065
Engineering (n = 49)	192	177	1,502	1,024
Accountancy (n = 18)	267	264	1,553	1,069
Science (n = 23)	164	135	1,116	916
Surveying (n = 11)	194	194	1,428	1,509
Building (n = 21)	226	177	1,624	1,180
Others (n = 29)	160	196	1,150	1,148
Aggregate averages	229	220	1,641	1,297

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

*Need for cost budgets is being removed from many civil cases*

### 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