

**Response to  
the Ministry of Justice Consultation Paper  
'Legal Aid: Funding Reforms'**

**Prepared by  
the *UK Register of Expert Witnesses***

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## 1. Executive Summary

This is the response of the *UK Register of Expert Witnesses* to Part 3 of the Ministry of Justice (MoJ) Consultation Paper 18/09 – “Legal Aid: Funding Reforms” – issued on 20 August 2009. It draws together 1,076 contributions from over 660 expert witnesses listed in the *UK Register of Expert Witnesses*.

The proposals – based, as they are, on guesswork – fail to deliver a convincing analysis of the current position. From such poor groundwork, the MoJ has arrived at proposals that carry with them a significant danger of reducing the pool, and overall quality, of experts willing to work in publicly funded cases. This is a view supported by 98% of our expert witness contributors.

We provide evidence from our own survey work that, for example, the expert witness fees of medical consultants have increased by just 9% above the rate of inflation since 1999. Furthermore, based on our data, fee rate caps at the level proposed would mean that most expert witnesses would see a fall in their fee rate; medical expert witnesses, the largest group in our survey, would see on average their fee rates halved.

Some 94% of our expert witness contributors agree that the disparity between the rates paid to expert witnesses in the civil and crime arenas arises from the fact that the LSC is a monopoly purchaser in the publicly funded arena. As such, it currently achieves a discount on its purchase of expert witness services of around 16% compared with the rates set by the free market operating in the civil arena.

The MoJ proposals are based on the flawed assumption that expert witnesses are equivalent to the solicitors and barristers involved in publicly funded cases. It is implicit in these proposals that the MoJ thinks expert witnesses will react in the same way as the lawyers have to the unsophisticated application of arbitrary banding and capping of fee rates. We think they will not, for they need not, and 96% of our expert witness contributors agree with us.

Lawyers are part of the legal system, but expert witnesses are simply guests in it. Whilst the MoJ pays lip-service to the fact that expert witnesses have a vital role as guests in the system, these proposals take no account of the reality of the disruption that forensic work can cause to professional people’s working lives.

We identify a number of inflationary pressures on expert witness fee rates, including the effect of the CPR, post-Meadow effects, more rigorous quality assurance, endemic late payment and sanctions against expert witnesses. The MoJ proposals do not address any of these issues.

5 We offer suggestions as to how the MoJ could make changes to the litigation process, such as staged instructions, setting new brink points and involving experts earlier in the assessment of cases. These changes could foreseeably save far more money than could the current proposals, and might even release some of the pressure on the supply of expert witnesses.

10 The MoJ complains that the expert witness community is hard to reach because, unlike lawyers, experts do not have a small number of representative bodies. This is because, for good reasons, we do not have a professional class of 'the expert witness' in this country. The courts need experienced (and often busy professionals) to visit the legal system to assist as necessary on technical matters. If implemented, these proposals would run a very great risk of restricting the supply of experts to those who, for whatever reason, *have* to accept the 'meagre' rates on offer – experts who presumably couldn't earn more elsewhere. Over 96% of our expert witness respondents agree with us that this would be a major step in the creation of the professional class of expert witness we should all be working to prevent.

15 Ultimately, we conclude that the MoJ has not identified the inflationary drivers on expert witness fees. The MoJ has failed to produce cost-saving proposals that are sufficiently targeted, or neutral in terms of supply and competition, as to be capable of being broadly accepted by expert witnesses. The nature of the proposals leaves little doubt that the driving force behind the consultation paper is financial. If these budgetary factors force the MoJ to  
20 adopt these proposals we anticipate that quality, competition and supply will all be adversely affected and will reduce access to justice for the most vulnerable in Society.

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## 2. Introduction

This is the response of the *UK Register of Expert Witnesses* to Part 3 of the 'Legal Aid: Funding Reforms' Consultation Paper 18/09 issued by the Ministry of Justice on 20 August 2009. The first draft of this response was posted on the *UK Register of Expert Witnesses* website (<http://www.jspubs.com>) in October 2009. It incorporated feedback from over 660 expert witnesses. The 2,500+ experts in the *Register* were then invited to consider the response and feed back their own views. We also enabled experts to contribute by lending their support to, or recording their rejection of, the views contained in our initial response through an on-line polling system.

Overall, 110 expert witnesses registered their views through the polling system, 438 expert witnesses provided details on fee rates, 410 expert witnesses provided feedback on alternative ways of saving money in the publicly funded litigation arena and 83 expert witnesses sent written responses.

J S Publications has published the *UK Register of Expert Witnesses* since 1988. The *Register* has developed over the years from a simple directory publishing project into a support organisation for expert witnesses. Most of our time is now spent on the professional support and education of expert witnesses.

An important feature of the *UK Register of Expert Witnesses* is the vetting we've undertaken since the product's inception way back in 1988. Indeed, our many conversations with lawyers have highlighted the importance they place on knowing that listed experts are vetted. In recent years we have introduced re-vetting so all experts have the opportunity to submit to regular scrutiny by instructing lawyers in a number of key areas, such as report writing, oral evidence and performance under cross-examination. The results of the re-vetting process are published in the printed *Register*, in the software and on-line.

The printed *Register* is distributed free of charge to around 10,000 selected litigation lawyers on a three-year cycle. The on-line version of the *Register* is also available free to anyone with an Internet connection, and currently attracts around 28,000 searches per year.

We provide registered experts with a variety of free educational resources. These include our quarterly *Your Witness* magazine, a series of more than 60 factsheets, court reports on cases that have implications for expert witnesses, the Expert Witness Year Book, Rulex software and our expert *e-wire* service. This information flow ensures that experts in the *Register* have the opportunity to be amongst the best-informed experts, with respect to expert witness-specific issues, in the country.

5 However, we also recognise that the quality of expert evidence is in large part dependant on the quality of the instructions received. Sadly, we have observed a marked decrease in the quality of such instructions in recent times. To try to help combat this trend, we have published *Practical Guidance for Expert Witnesses in Civil Cases*. Subtitled “What lawyers think experts should know but seldom get round to telling them!”, this guide helps lawyers and experts to work together more professionally.

Our daily contact with expert witnesses – drawn from across all disciplines, both those who undertake occasional instructions and others who work almost exclusively as expert witnesses – has given us a detailed understanding of this arena.

10 Part 3 of the Consultation Paper proposes introducing a cap on the hourly fee rates for expert witnesses paid from public funds, and harmonising the rates between civil, family and crime cases. We first examine the scale of the inflationary problem that affects expert witness fee rates and follow on by discussing some of the key sources of inflationary pressure in the system. We then look at the MoJ proposals, before considering alternative, less dangerous,  
15 approaches the MoJ might use to cut costs.

### 3. Scale of the Expert Witness Fee Inflation Problem

The Consultation Paper sets out proposals to deal with a perceived increase in the cost of expert evidence. We believe the proposed changes would be very likely to reduce the supply of expert witnesses willing to undertake publicly funded cases. When considering changes that are likely to have a significant negative impact, it is necessary to demonstrate that the expected benefits, in this case in cost saving, are sufficient to justify the downside. The MoJ is severely hampered in its ability to make this assessment in the absence of the necessary data.

When the issue of expert witness fees in publicly funded cases was previously subjected to scrutiny – in the Legal Services Commission (LSC) 2004 Consultation Paper *Use of Experts* – we expressed surprise that the LSC did not actually collect data on how much it paid experts. We are disappointed to learn that nothing has changed in the intervening 5 years. The position is still that the LSC only gathers data on gross disbursements, and expert witness fees are just part of the disbursements solicitors incur. Since every expert has to submit a bill to his instructing lawyer, we remain, frankly, astonished that proper record keeping is not deemed necessary by the LSC.

Hampered in this way, instead of providing reliable data on the trends in expert fee rates over time to justify its proposals, the LSC is forced to make guesses based on limited validation research. That research itself is hampered by the LSC lumping in with expert witness fees the costs for other unrelated services, such as those provided by interpreters. Furthermore, the LSC is unable to assess the differences that there might be between the fees of experts working in the various specialities.

So, taking all this into account, it is only possible to calculate *in broad terms* the saving that the MoJ is seeking to make. This is helpful because it gives us a handle on the benefit side of the cost-benefit analysis the MoJ should be using to justify a decision that could make potentially damaging changes to the way in which expert witnesses are paid in publicly funded cases.

In 2007/08 the MoJ spent £192 million on disbursements. It estimates that around £120 million of this can be attributed to expert witnesses. Making an allowance for the non-experts the MoJ counts in with expert witnesses (such as interpreters), assume for convenience £100 million. The MoJ seeks cost savings of 20% over 2 years, so that is a saving of £10 million in a year, being just 0.5% of the annual Legal Aid budget.

We provide evidence that access to justice through publicly funded litigation is likely to suffer disproportionate damage if the MoJ attempts to secure this modest saving in the way it has proposed. We then provide suggestions that could save significantly greater sums, and



maybe even increase the supply of expert witnesses willing to undertake publicly funded cases. But first we offer some evidence about what has happened to expert witness fees over the past 12 years, based on our own surveys.

### 3.1. UK Register of Expert Witnesses biannual surveys (1999-2009)

5 Since 1997, we have undertaken a detailed biannual survey of the views, experiences and working practices of experts listed in the *UK Register of Expert Witnesses*. The 2009 printed questionnaire was dispatched to all expert witnesses listed in the *UK Register of Expert Witnesses* along with our June 2009 issue of *Your Witness*. Experts could also complete the survey on-line.

10 The sample size of all our surveys is above 2,500, with between 400 and 600 experts responding on each occasion. So that you may appreciate the make-up of this constituency, it is important to know something of the nature and background of the *UK Register of Expert Witnesses*.

15 The *UK Register of Expert Witnesses* lists expert witnesses drawn from across the range of specialities. Some are relatively junior; others are at the top of their profession. It lists some experts who undertake mostly criminal work, a larger group who undertake mostly civil work (including family), and a smaller group who do both. In the current edition of the *UK Register of Expert Witnesses*, which lists over 2,500 expert witnesses, there are:

- 1,819 experts who undertake some criminal work
- 20 • 2,443 experts who undertake SJE instructions
- 2,269 experts who undertake publicly funded cases.

The percentage of expert witnesses in the *UK Register of Expert Witnesses* who are willing to undertake publicly funded work has stayed remarkably stable over the past decade at between 88% and 91%.

25 We subdivide the responses to our surveys into broad groups of specialities, and the results over the last six surveys conducted are presented in Table 1.

Hourly fee rates for expert witnesses over time							10 year real-terms increase						
	n	Rate	n	Rate	n	Rate							
	1999		2001		2003		2005		2007		2009		
Medicine	249	£136	200	£149	230	£153	264	£171	181	£170	223	£191	9%
Paramedicine	36	£68	39	£100	42	£91	28	£104	21	£116	48	£154	76%
Engineering	94	£71	63	£85	79	£86	84	£96	52	£112	65	£118	29%
Accountancy and Banking	49	£135	24	£133	26	£151	34	£161	21	£175	28	£192	10%
Science and Agriculture	79	£79	53	£78	37	£82	35	£89	19	£107	32	£114	12%
Surveying and Valuing	49	£83	36	£104	24	£121	28	£122	18	£143	18	£164	53%
Architecture and Building	19	£77	17	£84	27	£92	33	£97	17	£103	31	£118	19%
Others	96	£71	50	£127	78	£109	68	£97	85	£121	61	£120	31%
Overall	671	£100	482	£119	543	£122	574	£136	414	£143	506	£159	24%

Table 1: UK Register of Expert Witnesses survey results since 1999. *n* = number of respondents. Rate = the hourly rate for report writing. The overall figures are not simple averages from the rates shown but are derived from the entire bi-annual dataset. Full reports on each survey are available at <http://www.jspubs.com/Surveys/feesurveys.cfm>.

It is apparent that:

- the average hourly fee has increased by 59% from £100 in 1999 to £159 in 2009
- compounding inflation across that 10 year period would account for a 35% increase in fees, so the real-terms increase across the board has been around 24%. But, for the biggest sector (medicine), it has been just 9% above inflation over 10 years.
- charging rates have a bimodal distribution, with medical consultants and accountants (and in recent years, surveyors) charging something like 50% more per hour than other experts.

It is no surprise that expert witness costs in civil cases have increased since April 1999.

Although one of the main aims of the Access to Justice Act was to decrease the costs of expert evidence, the changes have, in fact, had quite the opposite effect. We have also seen the increased emphasis on quality assurance of expert evidence, which carries its own cost, and the effect of changes brought about following the very public criticism of expert witnesses, and in particular the unfortunate treatment of Professor Meadow.

However, before we consider the inflationary pressures on expert witness fees, we report on some survey work we undertook specifically to inform our response to this Consultation Paper.

### 3.2. Consultation-specific fee survey

The bi-annual surveys of expert witnesses we conduct do not ask experts to separate their civil, family and crime work, nor their publicly funded from their non-publicly funded work. In order to expand on the data we can present, we ran a supplementary fees survey during October 2009. We received responses from 438 expert witnesses. For 52% of our respondent expert witnesses, more than half their working week is taken up with expert witness work. Of these, 77% do mostly civil work, 15% do mostly criminal work and 8% do mainly family work.

5 For this survey data, we have been able to partition the data between the civil, crime and family arenas and between public and non-public funding. As can be seen from Table 2, the Medicine category (which includes all the consultant-level doctors) is by far the largest group, and 70% of them currently charge between £126 and £238 per hour for publicly funded civil work.

10 It would be unwise to place undue reliance on those categories and case types that have only a small number of data points, but for the Medicine, Paramedicine (psychologists, nurses, etc.), Engineering, Science and the Other categories, the data are reasonably robust. Table 3 provides the same analysis but for non-publicly funded cases. It can be seen that in the non-publicly funded cases, expert witnesses are consistently paid more (when consideration is restricted to groups with a reasonable size of data set) than for the same work that is publicly funded. Considering the data in Table 4, it is clear that, on average, the discount the LSC currently enjoys (from the fees the market sets in the civil arena) is around 16%.

15 This discount for publicly funded work is what leads the MoJ to conclude that it does not obtain best value for money. We disagree. The important distinction here between the publicly and non-publicly funded sectors is that the former is under the control of a monopoly purchaser (the LSC), while the latter is a free market with lots of buyers competing for the retention of good quality expert witnesses. In the free market setting, expert witness fees settle to the level the market dictates. The LSC, by contrast, being a monopoly, has acted to  
20 reduce the fee rates by around 16%.

From this analysis, it is clear that the LSC can readily demonstrate that it already extracts excellent value from the expert witnesses it retains.

## Publicly funded

## Hourly charging rate for court reports

	<i>n</i>	Civil	<i>n</i>	Criminal	<i>n</i>	Family
Medicine	127	£ 182 ± £56	80	£ 165 ± £88	51	£ 181 ± £133
Paramedicine	25	£ 153 ± £102	22	£ 137 ± £103	20	£ 155 ± £108
Engineering	20	£ 119 ± £52	19	£ 102 ± £25	2	£ 120 ± £40
Accountancy	2	£ 238 ± £28	10	£ 170 ± £42	5	£ 188 ± £46
Science	14	£ 100 ± £42	19	£ 100 ± £36	5	£ 77 ± £12
Surveying	8	£ 112 ± £21	6	£ 94 ± £47	4	£ 93 ± £57
Architecture	9	£ 132 ± £38	4	£ 138 ± £42	0	
Other	49	£ 126 ± £64	50	£ 114 ± £56	21	£ 118 ± £62

Table 2: Current hourly charging rates for publicly funded cases partitioned between civil, crime and family caseloads. The  $\pm$  figures show the 1 standard deviation range, so ~70% of the respondents charge fees that fall between the given range.

5

## Non-publicly funded

## Hourly charging rate for court reports

	<i>n</i>	Civil	<i>n</i>	Criminal	<i>n</i>	Family
Medicine	141	£ 199 ± £56	44	£ 185 ± £64	34	£ 206 ± £170
Paramedicine	31	£ 155 ± £95	9	£ 181 ± £149	13	£ 185 ± £127
Engineering	50	£ 135 ± £70	18	£ 111 ± £32	2	£ 80 ± £0
Accountancy	10	£ 254 ± £120	6	£ 277 ± £107	7	£ 206 ± £37
Science	23	£ 125 ± £94	13	£ 127 ± £117	5	£ 77 ± £12
Surveying	18	£ 135 ± £40	9	£ 128 ± £26	6	£ 127 ± £69
Architecture	14	£ 114 ± £42	2	£ 112 ± £6	0	
Other	75	£ 148 ± £73	47	£ 132 ± £62	18	£ 142 ± £73

Table 3: Current hourly charging rates for non-publicly funded cases partitioned between civil, crime and family caseloads. The  $\pm$  figures show the 1 standard deviation range, so ~70% of the respondents charge fees that fall between the given range.

10

## Public-Private funding

## % discount from non-Publicly Funded fees

	Civil	Criminal	Family
Medicine	9%	11%	12%
Paramedicine	2%	24%	16%
Engineering	12%	8%	
Accountancy		39%	
Science	21%	21%	
Surveying			
Architecture			
Other	15%	13%	17%

Table 4: Current discounts on hourly fee rates for publicly funded cases (i.e. how much less expert witnesses charge in publicly funded cases compared with non-publicly funded cases). Missing figures are where we have <10 data points for comparison.

## 4. Inflationary Factors affecting Expert Witness Fees

We have provided evidence that shows the fee rates of expert witnesses has increased in real terms (i.e. after inflation) by around 23% over the past 10 years, although the real-terms increase for the biggest category (medicine) is much less at 9% over 10 years. For the sake of comparison, over the past 9 years, the criminal legal aid budget has increased from £873 million to £1,200 million, whilst the civil legal aid budget has increased from £719 million to £914 million. Both these increases are around a 5% real-terms increase. Why have the fee rates of expert witnesses increased more steeply? There are several reasons, including the introduction of the Civil Procedure Rules (CPR), the aftermath of the Meadow affair, the increased focus on quality assurance and the effect of medical reporting agencies.

### 4.1. Civil Procedure Rules

Whilst the CPR have resulted in major improvement in the conduct of civil litigation, one consequence has been the move towards requiring every expert report being written as if it will be put before the court. Great care must be taken over the writing of such reports. This inevitably increases costs, and is one reason why the cost of expert reports has risen in recent years. However, the vast majority of cases never get to court – instead they settle. In such cases the expert's report is used as a negotiating tool between the parties. Is it necessary for reports used in this way to be as detailed as those that will go before the court?

### 4.2. The post-Meadow effect

The treatment of Professor Meadow at the hands of the General Medical Council, the legal establishment and the press has resulted in a number of effects. First, as the Consultation Paper recognises, the public criticism of Meadow has increased the pressure on the supply of doctors, particularly paediatricians, to the courts. Limit the supply of a commodity, and its price will increase.

There has, however, been another inflationary effect following the Meadow case. Before Professor Meadow was roundly criticised for providing a photocopy of statistics published by others (one of whom subsequently gave evidence in the trial), experts would often have been willing to give an opinion on matters that were not central to their area of expertise. This is now viewed with the greatest suspicion. However, *in the context of the case*, it doesn't have to be that troubling.

Most scientists, medical doctors included, will have a good grounding in statistics, and this ought to be enough to take them beyond the knowledge that could be expected of the

layman. To explain how one should multiply probabilities is a very basic bit of statistics, and many medical doctors, before Meadow, would have been likely to explain the process if asked to by counsel, as was Meadow. We venture to say few would do so today. And this same reticence to stray even slightly from one's core competency is now being seen in other ways.

5 No longer will a surgeon easily venture an opinion on a blood test result, even if his general medical training would permit him to deal with the query perfectly well (*in the context of the case*). Instead we see a toxicologist or haematologist drawn into the litigation, and another fee incurred.

10 Regardless of the reasons or justifications for this 'hemming in' of the expert witness, the effect is that costs increase because every nuance of the evidence has to be handled by a separate expert witness.

### 4.3. More rigorous quality assurance

15 Since 1999, the quality assurance of expert witnesses has received ever more attention. We have seen the arrival, and ultimate demise, of the Council for the Registration of Forensic Practitioners. The post of the Forensic Science Regulator has been created, and the first incumbent is doing a fine job of creating proper standards that will help ensure quality in the provision of forensic science in crime cases. We have also seen many, but not enough, professional regulatory bodies taking seriously their role in ensuring the competence of member experts to provide forensic services. Individual expert witnesses have also been  
20 participating in training designed to increase their understanding of, and compliance with, the welter of new rules and regulations governing their work as expert witnesses. This is all good and proper, but such activities carry a cost, and these increased costs will inevitably filter through to the fee rates charged by expert witnesses.

### 4.4. Late payment

25 There is the real, and continuing, problem with late payment of expert witness fees. In our bi-annual surveys, we collect data on the payment record of solicitors. In July 1999, only 35% of the expert witnesses who took part in that year's survey were able to report that their instructing solicitors paid up on time in even the majority of cases. By 2009, that statistic had clawed its way up to 52%. But, the fact remains that the single most common complaint from  
30 expert witnesses on the *UK Register of Expert Witnesses* helpline and when we meet them at conferences is that they find it hard to get solicitors to pay in accordance with the agreed terms of engagement.

35 Much of this is outside the ambit of the legal aid system. For example, the single biggest problem in the civil arena comes from the introduction of cases run on a conditional fee agreement. With no disbursement funding available during the running of the case, solicitors

5 tend to use all means, fair and foul, to avoid paying expert witnesses until such time as they have themselves been put in funds. But the LSC still plays a big role in paying expert witness fees and, whether due to tardy solicitor administration or nefarious attempts to use legal aid disbursement payments to bankroll the office account, the process is seldom as smooth as it ought to be.

10 When a supplier finds his bills aren't being paid on time, he has to find ways of covering the cash flow shortfall. He might do this by borrowing, which has a cost that will eventually find its way into his hourly charging rate, or he may just raise his hourly rate as a kind of insurance premium. Either way, the culture of late payment has created another inflationary pressure on expert witness fee rates.

#### 4.5. Sanctions against expert witnesses

15 We have seen an increase in the number of expert witnesses who have been the subject of sanctions of one sort or another imposed by the court or others. We saw Judge Jacobs send an architect (Mr Wilkey) to the Architects Registration Board – which exonerated Wilkey.<sup>1</sup> We saw Meadow called to the GMC (despite there being no criticism of him by the trial judge), struck off, then reinstated as the GMC was described by the Administrative Court as acting in a manner that was almost “irrational”. Finally, the Court of Appeal endorsed the GMC approach although the GMC decided not to reinstate the striking off sanction.

20 In another weakening of the immunity that expert witnesses notionally enjoy, the court has (in an admittedly extreme case of expert witness ineptitude) joined an expert witness to an action in order to impose a wasted costs order on him.<sup>2</sup>

25 There are also examples of judicial criticism of expert witnesses that come out in judgments. This is a particular problem for the experts concerned, because there is no discernable right of defence or reply readily open to them. While this is not common, when it does happen, the effect on the expert can be devastating. This is even more so now that many professional regulatory bodies (the GMC being a notable example) are all too willing to initiate (of their own volition) misconduct proceedings against such an expert which then ignore the context of the original legal proceedings.

30 The often high-profile nature of these cases is another factor that can drive away expert witnesses, or discourage experts from starting up in forensic practice thereby limiting supply and increasing the commodity price.

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<sup>1</sup> See <http://www.architectsjournal.co.uk/home/trial-and-error/143807.article>

<sup>2</sup> *Phillips & Others -v- Symes & Others* [2004] EWHC 1887 Ch

#### 4.6. Existing supply problems

5 The MoJ acknowledges that expert witnesses are unlike other players in the litigation process in that they are often busy professionals with many calls on their time, are able to command large fees for their professional time and have the option to simply withdraw from expert witness work should they so choose. Forensic work is often quite disruptive to their professional schedule and the frustration of cancelled court bookings is all too familiar. This has meant there has always been difficulty finding enough experts in some areas (geographical or speciality), and the effect of Meadow and existing cost pressures has only increased concerns over the quality and supply of expert witnesses. It is trite economics to recognise that the price of a commodity in short supply goes up.

10

#### 4.7. A switch in burden from the prosecution to the defence

15 While most expert witnesses are busy professionals who spend more time outside the forensic arena than in it, in the crime arena we see an important subset of experts who work exclusively as expert witnesses. These are the forensic scientists, and they have been reporting a progressive transfer of costs from the prosecution to the defence. Constraints on police force budgets and Simple Speedy Summary Justice initiatives promote the instruction of prosecution experts to do just enough work to justify the charges being brought. One of our respondents told us that “increasingly, therefore, additional work needs to be commissioned by the defence on original exhibits to test the veracity of the defendant’s version of events”.

20 If the CPS and police are not instructing their experts to look at the broader technical evidential ‘landscape’ underlying a prosecution, it is inevitable that costs will increase. Prosecutions that will have to be dropped once the full evidential picture is available make it past the early stages of litigation, when the CPS could have simply and speedily disposed of them. They draw in more people, take more time and cost more. Of course, if the defence had confidence in the work of the *independent* prosecution expert witnesses, they would be more likely to accept the findings and not spend more money repeating the work. The current trend towards restricted instructions to prosecution expert witnesses is a truly false economy.

25

#### 4.8. How MROs have caused expert witness costs to increase

30 The Access to Justice Act widened the scope for conditional fee agreements (CFA). The resultant growth of claims farms and the widespread adoption of CFAs to handle PI cases have resulted in a rapid increase in the number of medical reporting organisations (MRO) in recent years. There is a large, and growing, groundswell of medical doctors who are against their use. Our own analysis is that the MRO market tends to increase costs by selling on reports for far more than the fee charged by the doctor, and simultaneously reduces report



quality by interposing an (often non-legal) intermediary between the instructing solicitor and the medical doctor/consultant.

5 The increase in the cost of expert evidence created by the MRO is significant but is not included in the statistics we are able to gather. This is because experts can only tell us what they charge the MRO, not what the MRO charges the lawyer.

#### **4.9. Conclusion**

10 We have sought to show that there are myriad factors that generate inflationary pressures on expert witness fee rates. Most of these will not be altered by the MoJ proposals simply to cap all expert witnesses paid out of the legal aid fund at those rates currently offered as guidance for determining officers paying expert witnesses who attend court in criminal trials. Indeed, we predict in the following section that such a naive approach will act to severely restrict the supply of experts of sufficient experience willing to undertake publicly funded cases, thereby having a major negative impact on the legal aid fund's ability to provide access to justice for some of the most vulnerable in Society.

## 5. The Proposals

5 The MoJ proposes to cap the fee rates it will pay to expert witnesses out of public funds, with only limited exceptions being allowed through prior authority. It is discouraging to note that the current proposals are almost identical to those put forward by the LSC back in 2004 when, according to information provided by Simon Morgan, that consultation generated a large body of responses hostile to the capping proposals. The MoJ states it is “familiar with concerns raised in previous discussions about the cost, quality and supply issues with expert witnesses” and so it is regrettable that such familiarity doesn’t appear to have led to the development of a new approach to deal with the perceived problem of expert fee inflation.

10 The proposals split experts into various categories with different capping rates. The MoJ sees no reason for the higher charging rate in civil cases compared with crime cases, and thinks they should be the same. It also thinks that defence and prosecution experts in criminal cases should have the same rates. Accordingly, it proposes to harmonise the capping rates to the lower crime levels contained in the guidance the MoJ current provides to determining officers  
15 when paying expert witnesses who give evidence in criminal trials. The MoJ believes that this approach will “increase transparency, ensure consistency and control the unsustainable rising costs of expert’s fees”. Ultimately, the MoJ would like to move to fixed fees for expert witnesses. We consider each element of the proposals in turn.

### 5.1. Capping fees

20 The proposal is to introduce caps to the hourly rates expert witnesses will be paid in publicly funded work as a way of controlling the LSC spend on expert witnesses. Leaving to one side the trite point that fixing one variable (fee rate) without the other (number of hours) cannot possibly control total spend, we think such a move has to be justified by reference to a proper cost-benefit analysis and impact assessment.

25 But the LSC, 5 years after it first conceded the point, still does not have the necessary data to undertake a proper cost-benefit analysis. We have provided data from our own survey work that shows modest increases in the charging rates of the majority of expert witnesses over the past decade. We have also catalogued a number of factors that put inflationary pressures on expert witness fees. Based on these data, fee rate caps at the level proposed would mean  
30 that most expert witnesses would see a fall in their fee rate. And medical expert witness, the largest group, would see on average their fee rates halved!

We asked expert witnesses listed in the *UK Register of Expert Witnesses* whether they have recently stopped undertaking publicly funded cases. Of the 410 experts who responded, 8% said they had, and the reasons given relate primarily to the *current* level of fees that the LSC

are paying. When we asked would you stop doing publicly funded cases if the proposals as set out go ahead, only 39% said they would continue to take on such work. The MoJ acknowledges that there are already serious pressures on the supply of expert witnesses of sufficient quality prepared to undertake expert witness work. It seems to us that a further  
5 reduction of 60% in the number of experts willing to undertake LSC funded cases would create a supply problem that would bring the publicly funded legal system to a grinding halt.

The MoJ in part justifies its capping approach to controlling expert witness fees on the grounds that this approach has worked with solicitors and barristers. But expert witnesses are not like solicitors and barrister in some crucial ways. The key one here is that very few expert  
10 witnesses *need* to undertake forensic work. Indeed, for many of the most experienced expert witnesses, who are busy in professional practice, the disruption caused by cancelled court hearings, seemingly hugely inefficient legal practices, and the need to fit the forensic work in during evenings and weekends already contributes to the pressures on supply. Cut their fee  
15 rates by half and it is clear that many of these experts (i.e. those the market places higher value on) will simply walk away.

## 5.2. Different rates across different categories of law

The usual way to determine the proper rate for a commodity is to permit the market to set the fees. This is what happens in the civil arena. With many different people commissioning  
20 expert witness reports in civil cases, the market sets the rates. In the publicly funded arena, in contrast, the LSC operates as the monopoly purchaser. As we have shown in Table 4, this results in the LSC currently obtaining a discount of around 16% on average on the market rate set in the civil arena.

Far from being unable to show it obtains good value for public funds, these data show that the LSC is currently obtaining very good value for money!

## 5.3. Harmonising down

If fee bands linked to those currently set in the criminal arena are introduced in civil cases, then for example, based on our own survey data, on average medical expert witnesses would  
lose roughly half of their current fee income in such cases.

There is already considerable concern within expert witness and judicial circles about the low  
30 level of expert fees in criminal cases. Consider, for example, the following:

*“The second matter that has been the subject of considerable complaint by defence solicitors and experts is the low level of publicly funded experts’ fees. I have had a look at the current scales, and, without going into detail on the figures, they are meagre for professional men in any discipline. I am not*

5 *surprised that solicitors complain that they have often had difficulty in finding  
experts of good calibre who are prepared to accept instructions for such poor  
return. The best expert witness in most cases is likely to be one who practices,  
as well as giving expert evidence, in his discipline, rather than the 'professional'  
expert witness – one who does little else. Justice is best served by attracting  
persons of a high level of competence and experience to this work. If we expect  
them to acknowledge an overriding duty to the court and to develop and  
maintain high standards of accreditation, they should be properly paid for the  
job. I hope that the Legal Services Commission will take an early opportunity to  
review and raise appropriately the levels of their publicly funded remuneration.”*

10  
A Review of the Criminal Courts of England and Wales  
by The Right Honourable Lord Justice Auld,  
September 2001  
<http://www.criminal-courts-review.org.uk>

15 As the MoJ Consultation Paper notes, the LSC is currently paying above the scale rates  
considered by LJ Auld. To propose imposing such 'meagre' fee scales across the board for  
expert witnesses in publicly funded cases seems calculated to increase the problem of  
attracting suitable expert witnesses into publicly funded work.

#### 5.4. Transparency, consistency and control

20 If the LSC wants transparency and consistency in what it spends on expert witnesses, it need  
only collect the data it needs from solicitors to permit it to know what it spends. We fail to  
understand how it can still not gather these data – after all, every expert paid has to present  
an invoice. It would be very straight forward for this to be captured. Indeed, the *UK Register of  
Expert Witnesses* could readily provide this service to the LSC, if asked, for a modest fee!

25 Armed with the data, the LSC would be well placed to be transparent about what it pays. It  
could be sophisticated in how it analyses data between the civil, criminal and family divisions,  
between defence and prosecution expert witnesses, across specialisms and even, for a given  
expert witness, between cases. We live in an information age, and with information comes  
power. Power to ensure consistency, control and objective measurement of best value for  
30 public money.

#### 5.5. Fixed fees

35 For high-volume work of minimal complexity that, ideally, is not central to the case, it may be  
possible to develop a fixed-fee regime. An example of such work is in the high-volume low-  
value motor accident claims market where the parasitical MRO industry has grown up. This  
area of work is dominated by negotiations between insurers about where the level of

compensation should lie. It has scant relevance to the types of cases that receive public funding.

## 5.6. Summary

5 It will be clear that we feel the proposals as set out are not fit for purpose. They cannot achieve the end results the MoJ hopes for, and worse still, would, based on our data, decimate the supply of experienced expert witnesses so necessary for the operation of the publicly funded litigation system.

10 However, as we set out in the next section, there is clear potential for the MoJ to tackle some of the causes of increasing expert witness fees without risking the negative supply and competition effects the current proposals would cause.

## 6. How to Save Money without Damaging the Supply of Expert Witnesses

We have identified eight factors that tend to inflate expert witness fee rates. Some of these are not under the control of the MoJ, but some are. In this section we make specific  
5 recommendations on outline reports, staged instruction, wasted court dates, earlier involvement of expert witnesses, value for money metrics, better instructions to prosecution expert witnesses, late payment and MROs in the hope that we can persuade the MoJ that it can tackle the cost issue without damaging the system.

### 6.1. CPR

10 Under CPR, every report has to be written as if it was to be placed before the court. But, as we have noted, quite often an expert witness report is only used by a lawyer as a negotiating tool and never gets near a court. Is it necessary for reports used in this way to be as detailed as those that will go before the court? If not, then a reduction in costs could be achieved by  
15 ensuring experts are instructed to prepare an initial 'outline' report at an agreed cost, proportionate to the (likely) quantum of the case, that would allow the parties to seek a negotiated settlement. Only in the small number of cases that do not settle would the additional expense of a 'full' report, for use in court, need to be incurred.

We stress the point, however, that it must be for the lawyer (who has conduct of the case and an overview thereof) to instruct the expert to undertake a programme of work that can be  
20 completed within a cost regime proportionate to the quantum of the case. The choice of what can or cannot be left out of a report should not, and must not, fall to the expert, who not having conduct of the case is not competent to make such judgments.

### 6.2. Staged instructions

The procedure rules place great importance on ensuring that the involvement of expert  
25 witnesses in a case is proportionate to the value (quantum or seriousness of the crime) of the case. Whether in the civil, crime or family arena, the same two basic considerations apply:

- expert witnesses should not be expected to work for inadequate payment
- expert witnesses are not competent to determine which aspects of a case can be omitted from consideration because they do not have conduct of the case and an  
30 overview thereof.

It follows, therefore, that if cost savings are required, they have to be realised by the solicitor instructing the expert witness to undertake a programme of work that can be completed within

the available budget. But solicitors, who are not experts themselves, often have some difficulty knowing what can safely be omitted in pursuit of proportionality. The answer to this conundrum perhaps lies with greater use by solicitors of staged instructions.

5 An expert witness could be instructed to prepare an initial report. This would be designed to conduct a 'reconnaissance' of the expert matters raised by the case and to identify potential areas for more detailed analysis. If the quantum in the case, or the seriousness of the crime, warrants investigation of particular avenues of expert enquiry, further report stages could be sanctioned.

10 This approach, already adopted by many experienced litigation lawyers in the civil arena, has the benefit of breaking potentially large expert witness assignments into smaller, more easily managed, stages. Each stage of reporting acts to inform the next stage and to assist in determining applications for prior authority.

### 6.3. Wasted court dates

15 If the LSC had access to the data it would be able to tell us how much money is wasted by cases being settled or pleas changed 'at the doors of the court'. Without objective evidence, we are left with the anecdotal evidence provided by the experts listed in the *UK Register of Expert Witnesses*. They make it very clear that not only does it waste lots of money, it also causes great frustration that the disruption caused to, say, a doctor's clinic dates, was ultimately unnecessary.

20 The reason parties settle at the doors of the court is because that is the last opportunity they have to "do a deal". It is just brinkmanship. But it is brinkmanship with a cost that others bear. If the court created a new brink, say 1 month before the trial date, perhaps by putting cost or sentencing sanctions in place after that date, would not the lawyers play their brinkmanship out without having dragged all the witnesses, court officers and the judge along for the ride?

25 The timetabling difficulties experienced by the court would be greatly reduced if cases that did get listed were very likely to proceed. Acting to create a new brink point more distant from the trial could save significant costs and improve the willingness of busy professional experts to undertake forensic work.

30 Of course, the unjustified decision of the LSC to curb cancellation fees of expert witnesses is another pressure on supply. It is seldom the fault of the expert witness that a court hearing is cancelled, so why should he be expected to bear the costs, particularly when he has had to make special provision in his professional world to be available? Here again, the LSC is guilty of treating the expert witness as just another player in the litigation, with similar motivations to those of the solicitors and barristers. This is not so. Busy experts seldom need to undertake

forensic work, and this sort of unjustified (can the LSC tell us how much this decision will save?) cost cutting will add further pressure to the supply problem.

#### **6.4. Early involvement of experienced experts**

5 Whilst experts are not the only people involved in the conduct of litigation, their involvement can be a decisive factor in the path a case takes or, as the MoJ notes, in the outcome for the client. If instructed at the earliest stage, an experienced expert can help to focus the attention of the lawyers on the real issues in the technical evidence in question and enable cases to run more smoothly, or even settle early.

10 Indeed, why doesn't the MoJ consider involving experts in the very earliest stages of case assessment within the LSC? Many expert witnesses have told us of cases that the LSC has funded where the expert evidence didn't justify the case being taken on in the first place. With better decision making at the start, the LSC would foreseeably save more costs in not running hopeless cases than it would cost to involve experts early on in case assessment.

#### **6.5. Value for money**

15 It is abundantly clear to many expert witnesses that the LSC has come to equate lowest price with best value. We have provided examples to show that this is simply wrong, and the issue of outcomes is another facet of the weakness of the current LCS approach. In the commercial world, it is usual for the paying party to require the commissioned party to demonstrate value for money. This idea of 'measured outcomes' appears to be entirely absent from the MoJ and  
20 LSC approach to cost control in relation to expert fees. One of our respondents gave an example that is helpful in this respect:

25 "... the defendant was pleading not guilty to charges of stealing from the retail shop where he worked. The court was scheduled for 8–10 days with the prosecution planning to call over 40 witnesses. My report indicated that the prosecution had at least some basis for a few of the charges but no real basis for the rest. The defendant was willing to plead guilty to 'the few' if the crown dropped 'the rest'. The crown agreed."

30 In effect, this expert witness saved 8 days of court time and the expense of 40 witnesses coming to give evidence. If the LSC required solicitors in publicly funded cases to prepare simple outcome reports with each application for payment of expert fees – and then the LSC retained and used this information – it would soon build up a picture of the true value of individual expert witnesses. Anticipating that this data management task might seem daunting to the LSC, the alternative would be for the individual expert witnesses to build up their own dossiers of such evidence (with the help of the solicitors in this task being required by the



LSC). The LSC would then be able to consider such material whenever the expert witness sought to negotiate a reasonable fee for his work.

## 6.6. Better instructions to prosecution experts

5 We have already given one example of anecdotal evidence of poor instructions being given to prosecution experts which results in wasted CPS costs. This often seems to turn on a very narrow focus of investigation on the part of the prosecution expert witness. By way of further example, we know of one case where mobile phone cell data was used to place a suspect at the locus of a crime at the relevant time. But the prosecution expert limited his work to the date and time of the incident. When the defence expert came along and did the analysis for 10 adjacent days it became clear that the suspect habitually travels past the locus on his way to work. This made his proximity to the scene of crime on a particular day far less relevant, and the case was then dropped.

Of course, it is not safe to make decisions based solely on anecdote, but this does seem to be an area of wasted costs that could be addressed quite easily.

## 15 6.7. Late payment

We have identified late payment as one of the drivers of fee rate inflation. If the MoJ decides to modify its proposals to provide a more rational division of experts into categories (i.e. link experts by seniority and not speciality, thus avoiding lumping GPs with Consultant Surgeons) and set rate bands that are far more realistic, tackling the late payment culture would be a good 'sweetener' for many experts. Many experts would happily trade a small cut in fees for 20 the certainty that the bills will be paid *on time*. Whilst the LSC has told us they are not sure they can do much to solve the late payment problems, we believe this deserves more detailed consideration.

## 25 6.8. MROs

Whilst we acknowledge that the sector in which MROs operate is peripheral to the publicly funded sector, their tendency to increase costs makes them relevant to this consultation. The LSC has the power to prevent contracted solicitors from using an MRO, thus cutting expert costs. In addition, it must be possible for the activities of MROs to be regulated in two particular respects:

- 30 • the mark-up applied should be made clear to the client, lawyer, insurer and expert
- they should be prohibited from interfering with the direct line of communication between the solicitor and the expert.

Taken together, these changes would, we believe, ameliorate the worst aspects of MRO involvement in cases.

## 7. Conclusion

We came to the Consultation Paper with some sympathy for the plight of the LSC which, being funded by HM Treasury and in light of the current Public finance abyss, simply has to find ways to keep a rein on costs. However, the MoJ has:

- 5
- made general proposals when it does not actually know what the LSC is spending on expert witnesses – and, for that matter, how will it be able to assess the effectiveness of any changes if it has no detail of current expenditure?
  - failed to consider any of the structural reasons why the cost of expert evidence has increased in recent years.

10

Thus, we conclude, the MoJ has not identified the inflationary drivers on expert witness fees. The MoJ has, in our analysis, failed to produce cost-saving proposals that are sufficiently targeted, or neutral in terms of supply and competition, as to be capable of being broadly accepted by expert witnesses. If, however, budgetary factors force the MoJ to adopt these proposals, we anticipate that quality, competition and supply will all be adversely affected.

15

The MoJ needs the LSC to work together with others to engage in an honest and open discussion with experts on the factors that contribute to the cost of expert reports. If this is done, we predict that several features of the current litigation landscape could be identified which, if tackled, would not only drive down costs but also enhance access to civil justice and promote its better administration.

## 8. Answers to the Specific Questions

**Question 7: Do you agree that the proposed hourly rates based on current guidelines are a reasonable starting point?**

5 No. Leaving to one side the trite point that fixing one variable (fee rate) without the other (number of hours) cannot possibly control total spend, they represent swingeing cuts for the majority of expert witnesses currently involved in publicly funded cases.

**Question 8: Are there situations when this would not be appropriate? If so, what would they be and why?**

10 Yes, in virtually all cases these proposals would set the rates so far below those currently paid that their effect on the supply of experienced expert witnesses into the publicly funded arena would be large and negative.

**Question 9: Do you agree that it is appropriate to pay the same rates for the same type of expert in both civil and criminal cases? If not, why and what would the difference be?**

15 The MoJ should use the free market that operates in the civil justice system to set rates. If, as some feel, it is appropriate to discount these rates for publicly funded cases, then set the discount at a level that maintains a sufficient supply of suitable expert witnesses. The LSC could sweeten the need to discount by paying expert witnesses directly and thereby remove the current protracted delays in payment that many expert witnesses experience.

20 **Question 10: What are the circumstances when prior authority would need to be sought to go above the proposed rates?**

This should be done on the basis of the complexity of the work.

**Question 11: Are there any circumstances where fixed fees would be appropriate, for example DNA and GP reports? What should the fixed fees be?**

25 It is unlikely that the LSC would be funding a sufficient volume of the types of case that might be amenable to fixed fee payments to permit this approach to be anything but a minor adjunct to other more serious efforts to control spending through improved efficiency.

**Question 12: Are there particular types of experts who may cease to do the work for the proposed rates? Who are they and what can be done to address this?**

30 Our data suggest that the majority of experts would not work for the proposed rates. We suggest a number of ways in which the MoJ could act to create a more efficient legal system.

That would probably both save more money than the current proposals seek to save and enhance, not reduce, the supply of experienced experts willing to undertake publicly funded work.

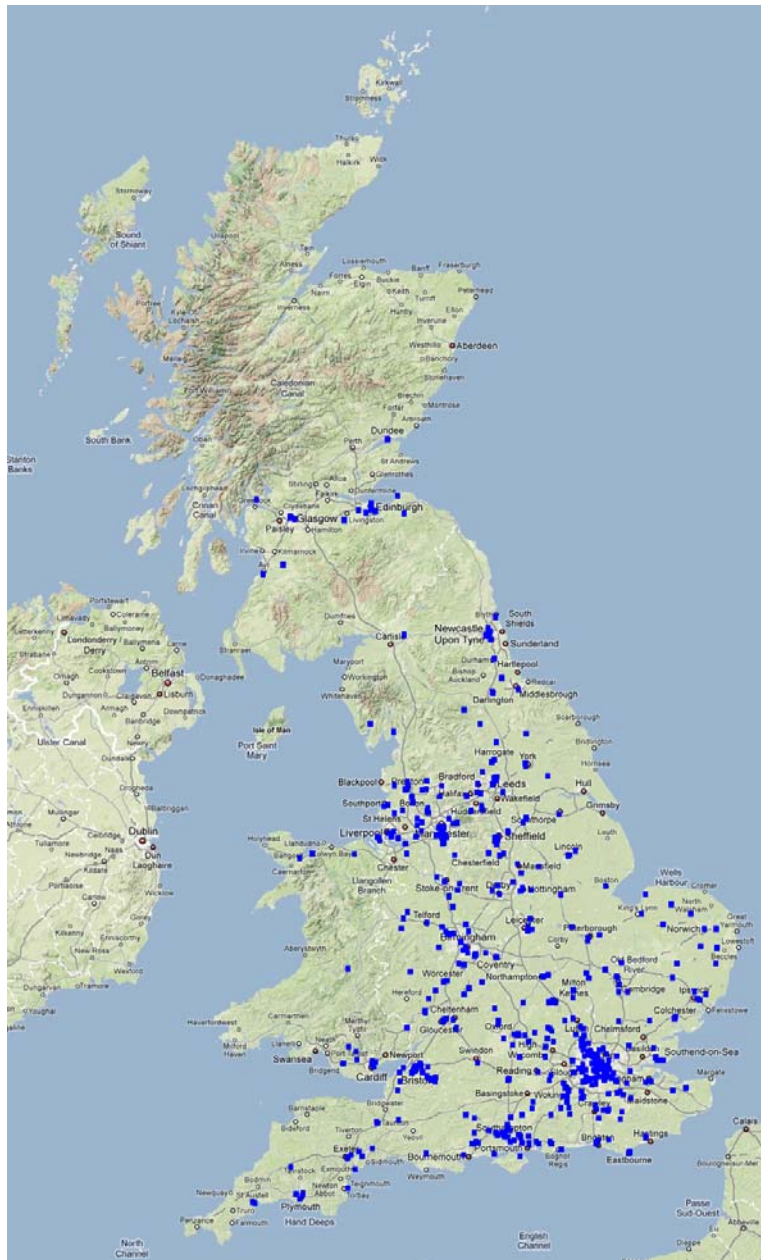
5 **Question 13: What other factors lead to issues with supply in some areas? What can be done to address these?**

We have addressed these in the body of our response.

## 9. Annexes

## Annex 1: Expert Witness Respondents

One strength of the *UK Register of Expert Witnesses* is the broad geographical and speciality spread of the expert witnesses it lists. This is important in ensuring our survey work reflects the views of the broadest possible range of expert witnesses. We demonstrate the spread of specialities in the body of our response. The following map shows the geographical spread of those expert witnesses for whom we have address data and who responded to the survey work undertaken to inform this response.



## Annex 2: Polling Survey

This survey was run at the end of October 2009 and was open to all expert witnesses with e-mail addresses listed in the *UK Register of Expert Witnesses*. It asked the expert witnesses to read the 20-page draft response to the MoJ and then rate five key observations from the executive summary thereof. Some 110 expert witnesses responded out of 2,377 polled. This survey required contributors to spend well over an hour reading to understand the background to the statements they were asked to rate.

### Results

		Agree	Neutral	Disagree
1	The proposals – based, as they are, on guesswork – fail to deliver a convincing analysis of the current position. From such poor groundwork, the MoJ has arrived at proposals that carry with them a significant danger of reducing the pool, and overall quality, of experts willing to work in publicly funded cases.	97.9%	1.6%	0.5%
2	The disparity between the rates paid to expert witnesses in the civil and crime arenas arises from the fact that the LSC is a monopoly purchaser in the publicly funded arena. As such, it currently achieves a discount on its purchase of expert witness services of around 20% compared with the rates set by the free market operating in the civil arena.	93.8%	4.5%	1.7%
3	The MoJ proposals are based on the flawed assumption that expert witnesses are equivalent to the solicitors and barristers involved in publicly funded cases. It is implicit in these proposals that the MoJ thinks expert witnesses will react in the same way as the lawyers have to the unsophisticated application of arbitrary banding and capping of fee rates. They will not, for they need not.	96.2%	3.8%	0.0%
4	Lawyers are part of the legal system, but expert witnesses are simply guests in it. Whilst the MoJ pays lip-service to the fact that expert witnesses have a vital role as guests in the system, these proposals take no account of the reality of the disruption that forensic work can cause to professional people's working lives.	96.4%	2.6%	1.0%
5	The MoJ complains that the expert witness community is hard to reach because, unlike lawyers, experts do not have a small number of representative bodies. This is because, for good reasons, we do not have a professional class of 'expert witness' in this country. The courts need experienced and often busy professionals to visit the legal system to assist as necessary on technical matters. If implemented, these proposals would run a very great risk of restricting the supply of experts to those who, for whatever reason, have to accept the 'meagre' rates on offer – experts who presumably couldn't earn more elsewhere and so would be likely to be full time expert witnesses. That would be a major step in the creation of the professional class of expert witness we should all be working to prevent.	95.9%	1.5%	2.6%



### **Annex 3: Fee Survey**

This survey was run throughout October 2009 and was open to all expert witnesses with e-mail addresses listed in the *UK Register of Expert Witnesses*. It asked the expert witnesses to provide their average fee rates partitioned between civil, criminal and family work, and between publicly funded and non-publicly funded cases. Some 438 expert witnesses responded out of 2,372 polled. This survey required expert witnesses to spend 10 minutes making their contribution.

The results are given in the body of the response.

## Annex 4: Reaction Survey

This survey was run throughout October 2009 and was open to all expert witnesses with e-mail addresses listed in the *UK Register of Expert Witnesses*. It asked the expert witnesses to separate their civil, criminal and family work, and the nature of the funding for each three. It then asked about the willingness of the respondents to undertake publicly funded work, what factors influenced their decision to take on expert witness work and what alternatives they had for saving money in publicly funded cases involving expert witnesses. In all, 410 expert witnesses responded out of 2,372 polled. This survey required expert witnesses to spend 10–20 minutes in making their contribution.

### Work profile of the contributors

We asked each contributor to tell us:

- What percentage of his or her workload is expert witness work
- How the expert witness workload is split between criminal, civil and family cases
- How much of each category is publicly funded

These data have allowed us to prepare the following work profile analysis:

- 67% of our expert contributors undertake mainly civil cases. Of these, 29% are publicly funded and 71% are privately funded.
- 16% of our expert contributors undertake mainly criminal cases. Of these, 80% are publicly funded and 20% are privately funded.
- 6% of our expert contributors undertake mainly family cases. Of these, 83% are publicly funded and 17% are privately funded.

### Willingness to undertake publicly funded cases

Of the expert witness respondents, 8% claimed to have already stopped undertaking publicly funded cases. The main reason they cited for this decision was the low rate of pay and delayed payment.

When we asked “If the Ministry of Justice implements their fee caps for experts undertaking publicly funded cases, would you stop taking on publicly funded work?”, 63% of the expert witness respondents who undertake some publicly funded cases said they would stop undertaking such work, amounting to over 4,500 cases that would need to find alternative expert witnesses.

## Factors influencing your decision to take on expert witness work

We asked our expert witnesses “what factors affect your decision making on whether to undertake expert witness work that falls within your expertise?”

Factor	
How the fee rate for expert work compares with other work I do	64%
How busy I am with other work	68%
Likelihood of a court appearance	15%
Danger of exposure to my professional regulator's competence procedures initiated by an aggrieved litigant	8%

## Alternative money saving ideas

We asked expert witnesses what ideas they had for helping the MoJ to save money in publicly funded cases involving experts. Some of the key ideas were, in no particular order:

- Get experts together earlier to improve case management.
- Improve the quality of lawyers – there has been a noticeable decline in quality over the past few years.
- Improve court timetables so that less time is spent in corridors.
- Improve the communication between the players.
- Improve CPS case preparation – the quality of preparation often appears to be very patchy.
- Penalise court door settlements – they just add costs.
- The post-Meadow boundary of expertise effect has acted to increase the number of experts in a case.
- Have expert panels in the LSC offices to screen appropriate cases, which will often stop unsuitable cases progressing and promote early settlement or plea change once the strength of expert evidence is clear.
- Have longer court days – why 10–4? It would allow some cases to finish without the need for overnight payments.
- Stop the practice of involving the barrister at the last minute. It does not give the barrister long enough to understand the nature of the case and it leads, in the experience of expert witnesses, to lots of cases being dealt with unjustly.
- Improve the work of the prosecution experts. Defence expert witnesses report that it seems clear the prosecution experts are being instructed to limit their work to that necessary to justify the case brought by the prosecution. This leads to unsuitable cases being taken forward and extra work for the defence expert witnesses in ‘filling in the gaps’.

- The LSC attitude that the lowest price equates to the best value is demonstrably wrong and should be abandoned.
- Make more use of expert meetings to reduce the technical issues that need to be dealt with in court.
- Outlaw Medical Reporting Organisations, who interfere in the proper communication between the lawyer and expert and increase costs by charging a mark-up on the expert's fee.