

# Expert analysis

Dr Chris Pamplin shares the top line results of the 2013 UK Register of Expert Witnesses survey

As the largest multidisciplinary expert witness community in the UK, the individuals listed in the *UK Register of Expert Witnesses* represent an unrivalled source of information on matters of importance to experts and those who instruct them. Since 1995, the register has regularly conducted surveys of its members. The following analysis is based on the latest survey conducted over the summer.

## Work status & workload

Of the 340 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 & 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 an experienced lot. Of those who replied, 95% have been practising as expert witnesses for at least five 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 membership of the *UK Register of Expert Witnesses*.

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 an additional 20% cut in fee rates for expert witnesses.

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.

## Expert fees

Which brings us to the detail everyone wants to know. How much are expert witnesses charging for their expert witness services? This information is summarised in the table below.

For each broad professional group the table gives average hourly rates for writing reports and full-day rates for attendance in court, with the 2007 data for comparison. The average increase in fees over this

six-year period is 23% for reports and 45% for court appearances. Over the same period, inflation (as measured by RPI) has increased by 19.6%. So, for report writing at least, in real terms these experts are charging almost what they were in 2007.

## 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 funded cases. This ought to act as yet another spur to all experts to put in place clear, written terms of engagement.

## Speed of payment

In this survey, 87% of experts reported that the promptness with which invoices are paid had not deteriorated – but that really means matters couldn't get much worse! One measure of the problems experts have in securing prompt payment is the number of bills settled on time. In this survey, the number of experts reporting their bills were being paid on time in even half of their cases is only 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.

Broad professional group	Writing reports (per hour) Average rate (£)		Court appearances (per day) Average rate (£)	
	2013	2007	2013	2007
Medicine	207	170	1,554	1,163
Paramedicine	142	118	1,180	827
Engineering	145	112	1,112	876
Accountancy	193	174	1,652	1,105
Science	134	107	961	720
Surveying	152	142	1,422	938
Buildings	157	102	1,004	835
Others	164	121	1,058	811

The experts: 340 responded by the end of August 2013. 154 were medical practitioners, 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, & 10 were architects or building experts. The substantial "others" category totalled 48, of whom 22 were psychologists.

Against this background, it is depressing to note that whilst 88% of experts say they stipulate terms, only 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!

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

**Reports**

In the 10 surveys we have run since 1995 we have asked how many reports the experts have written during the preceding 12 months. The three types of report are:

- ▶ **Advisory:** those written for the benefit of the party alone. In such a report the expert is not required to abide by the Civil Procedure Rules (CPR). Instead, he can take on the role of the partisan advisor, helping ‘his side’ to build up the strongest case and to develop litigation strategies.
- ▶ **Single Party:** those written under CPR where the expert is instructed by just one of the parties.
- ▶ **Single Joint Expert (SJE):** those written under CPR 35.8 (Instructions to a single joint expert) where the

expert is instructed jointly by all of the parties.

**Single joint experts**

A dramatic rise in the number of SJE instructions between 1999 and 2001 (a jump from three 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 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 four years later this had dropped to 3.8; it now stands at 2.7. Of course, this survey does 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. **NLJ**

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