

# Experts talk back

Dr Chris Pamplin analyses the results of the 2017 UK Register of Expert Witnesses' expert witness survey

## IN BRIEF

► Experts' average fees and cancellation fees, impact of the Jackson reforms, court appearances, workload, outlook and average number of reports.

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 expert witnesses. The following analysis is based on the latest survey conducted over the summer.

## The experts

Of the 201 experts who responded by the end of August 2017, 107 were medical practitioners. Of the remaining 94 experts, 21 were engineers, 18 were in professions ancillary to medicine, 12 were accountants or bankers, 16 had scientific, veterinary or agricultural qualifications, 13 were surveyors or valuers and six were architects or building experts. The small 'others' category totalled eight.

## Work status & workload

Of the respondents, 39% undertake expert witness work full time, with 46% part-time and 28% describing themselves as retired. Between 2003 and 2013 this split was fairly stable, with the full-time figure at around 50%. It dipped a little in 2015 and again in the 2017 survey. Increasingly, we are looking at experts who are mixing their forensic work with other activities, or are undertaking forensic work in retirement.

Overall, expert witness work accounts for 61% of their workload. This figure was 37% in 2003 and rose to 45% in 2011. It is the second time that the figure 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 & 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, 97% have been practising as expert witnesses for at least five years, and 91% have been undertaking this sort of work for more than 10 years. Six 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 witnesses and the then recent removal of expert witness immunity. But our 2017 survey supported the conclusion from our 2013 and 2015 surveys that this optimism is decreasing. Now we observe 47% of expert respondents expecting expert witness work to be a growth area in their business.

## 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. Over 65% of these experts exclusively undertake civil work. 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, it was no surprise that with civil work dominating, 46% of our respondents undertook no publicly funded work. This time the majority—51%—say they do accept such work. Of those who do accept such work, it averages 33% of their workload—which is around the same as two years ago. This data shows 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, 66% 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. One of the difficulties that can arise with litigants in person is apparent in the increase in the past four years—from 38% to 51%—in the percentage of experts who require payment on account in such cases.

## 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.

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A dramatic rise in the number



Table 1

Average annual number of advisory, single-party and SJE reports per expert over time.

	2007	2009	2011	2013	2015	2017
Advisory	17	19	15	18	16	21
Single Party	54	57	56	55	56	47
SJE	14	15	9	8	8	5

Table 2

Average annual number of reports, court appearances, advisory reports and SJE instructions by broad specialism.

Broad professional group (n = number of respondents)	Report	Court appearances	Advisory report	SJE instructions
Medicine (n = 107)	64.6	1.7	29.5	5.6
Paramedicine (n = 18)	42.9	0.8	3.1	13.5
Engineering (n = 21)	14.1	1.8	6.1	3.0
Accountancy (n = 12)	15.6	2.6	5.4	4.6
Science (n = 16)	42.1	4.7	29.1	2.2
Surveying (n = 13)	12.5	1.1	14.1	2.6
Building (n = 6)	7.3	0.2	3.8	1.2
Others (n = 8)	17.5	1.0	12.6	1.5
Aggregate averages	45.6	1.8	20.7	5.2

Table 3

Average charging rates for report writing and court appearances by specialism (2015 and 2017).

Broad professional group (n = number of respondents)	Average rate (£)			
	Writing reports (per hour)		Court appearances (per day)	
	2017	2015	2017	2015
Medicine (n = 107)	226	218	1,680	1,524
Paramedicine (n = 18)	150	135	1,091	1,074
Engineering (n = 21)	151	142	1,165	1,142
Accountancy (n = 12)	209	241	1,177	1,833
Science (n = 16)	149	118	1,271	963
Surveying (n = 13)	215	188	1,739	1,396
Building (n = 6)	157	150	1,580	978
Others (n = 8)	132	129	754	1,145
Aggregate averages	198	185	1,492	1,353

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, 55% of experts have been instructed as SJE's in the past two 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 parties 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 1997 we found 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 1.7. This survey does not separate civil cases from criminal and family cases (in which most will reach court), so the number of civil cases reaching court will be much lower even than 1.7.

**“Experts continue to find it a challenge to generate accurate budgets at the outset of an instruction”**

### 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.

### Expert fees

Which brings us to the detail everyone wants to know. How much are fellow experts charging for their expert witness services? This information is summarised in Table 3.

For each professional group the table offers average hourly rates for writing reports and full-day rates for attendance in court, with the 2015 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, 27% of our respondents earn less than £20,000 per year, 27% earn between £20,000 and £50,000 per year and 43% earn over £50,000 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, 34 respondents charge on average 40% of their fee if notice is given at least 28 days before the trial is due, 74 respondents charge 47% on average with 14 days' notice, 114 charge 60% on 7 days' notice and 135 charge 87% if just one 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.

### The Jackson Reforms

We have asked about the Jackson Reforms in our past three surveys. When it comes to the 'hot tub', 12% of our respondents have 'dipped their toe in the water', up from 8% in 2013 and 10% in 2015. But 80% of these think the approach is an improvement on traditional methods.

In 2013, 40% of respondents had been asked to provide a costs budget. This had increased to 53% in 2015 and now stands at 63%. But experts continue to find it a challenge to generate accurate budgets at the outset of an instruction.

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