

# Expert witness survey 2007

*Experts can still contribute to this survey*

There was a good response to the questionnaire enclosed with the June issue of *Your Witness*. Just over 400 forms were returned, or submitted on-line at [www.jspubs.com](http://www.jspubs.com), accounting for some 16% of the readership. I extend my thanks to all who took the trouble to complete them. Their data have contributed to the seventh survey of its kind in 12 years. However, this represents a small downturn in the number of experts contributing to the survey. But it isn't too late to take part! If you go to [www.jspubs.com](http://www.jspubs.com) before the end of September and follow the link to *Survey 2007* you can still complete the survey and we will add your input into our final analysis.

## The experts

Of the 414 experts who returned questionnaires by mid-August, 181 were medical practitioners. Of the remaining 233 experts, 52 were engineers, 21 were in professions ancillary to medicine, 21 were accountants or bankers, 19 had scientific, veterinary or agricultural qualifications, 18 were surveyors or valuers and 17 were architects or building experts. The substantial 'others' category totalled 85, of whom 12 were psychologists.

### Work status and workload

Of the respondents, 211 (51% of the total) work full time and 165 (40%) work part time. Only 7% describe themselves as retired. These figures reveal a shift of some 5% towards part-time work from full-time work over the last 2 years, taking the figures back to their 2003 levels.

Overall, expert witness work accounts, on average, for just 43% of their workload, a figure essentially unchanged since 2001. Clearly, these individuals are 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 and outlook

We also asked respondents to say for how long they had been doing expert witness work. From their answers it is apparent that they are a very experienced lot indeed. Of those who replied, 92.5% had been practising as expert witnesses for at least 5 years, and 76.6% had been undertaking this sort of work for more than 10 years. Most of the respondents (57%) saw expert witness work as an expanding part of their workload, similar to the view expressed in 2003 and 2005.

## Their work

### Reports

In all seven of our surveys we have asked those taking part to estimate the number of expert

	1999	2001	2003	2005	2007
Full reports	48	41	45	54	54
Advisory reports	19	12	11	13	17

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

reports they have written during the preceding 12 months. The averages for the last five surveys are given in Table 1.

These data reveal a dip in output in 2001, following the introduction of the Woolf reforms and the Civil Procedure Rules. This downturn now appears to have been fully reversed. This recovery has also been seen in civil court business. Following the introduction of the Woolf reforms there was a 7% fall in county court claims between 2001 and 2004. But by the end of 2005 the number of civil claims in England and Wales had increased to 1,870,374, 8% higher than in 2001<sup>1</sup>. The volume of cases in the much smaller criminal sector has remained essentially unchanged since 2001.

### Single joint experts

Statistics relating to the use of single joint experts (SJE) have remained unchanged since 2003. Now, as then, 73% of experts had been instructed as SJE, and on average each expert had received 14 such instructions in the year.

### Court appearances

Another change over the years that many experts will find more welcome is the reduction in the number of cases for which they are required to give their evidence in 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 5 times a year; some 4 years later this had dropped to 3.8; it now stands at 3.1.

### Variation by specialism

These averages, however, 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,

Professional group (n = number of respondents)	Reports	Court appearances	Advisory reports	SJE instructions
Medicine (n = 181)	81.9	3.0	15.8	23.1
Paramedicine (n = 21)	29.4	2.7	7.1	10.7
Engineering (n = 52)	20.4	2.5	17.1	6.5
Accountancy (n = 21)	11.3	1.9	10.3	2.9
Science (n = 19)	39.5	6.1	19.7	2.0
Surveying (n = 18)	8.6	1.2	9.5	3.7
Building (n = 17)	14.9	0.9	15.3	4.4
Others (n = 85)	39.2	4.2	8.8	10.9
<i>Aggregate averages</i>	<i>51.3</i>	<i>3.1</i>	<i>13.7</i>	<i>14.3</i>

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

*Volume of work has recovered to pre-Woolf levels*

where the average drops to around five SJE instructions per year.

Numbers of court appearances are similar in all areas except the sciences. This may reflect the use of forensic science in the criminal caseload.

### Their 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 gives average hourly rates for writing reports and full-day rates for attendance in court, with the 2005 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. It is apparent, though, that on average the rates for report writing have increased by little more than the prevailing rate of inflation over the 2 years.

### Cancellation fees

The issue of fees that become due as a result of cancelled trials continues to be a source of friction between expert witnesses and those who instruct them. 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, the percentages are 8.0% if notice is given at least 28 days before the trial was due, 20.0% if 14 days, 42.9% if 7 days and 70.0% 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. This ought to act as yet another spur to experts to put in place clear, written terms of engagement. But as we are about to see, there has been little improvement in this aspect of expert witness practice!

### Speed of payment

In this survey, 80% 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 48% (up from 39% in 2003 but unchanged since 2005). Clearly, the situation remains pretty grim.

Against this background, it is depressing to note that whilst 85% of experts say they stipulate terms, still fewer than 50% use a written form of contract. Without a solid contractual basis, experts are making their credit control much more complex than it need be. The *Civil Procedure Rules Experts Protocol* requires (at 7.2) that terms be agreed at the outset. Clearly, the hope we expressed in our report on the 2005 survey (see *Your Witness* 41) – that the imposition of this

Professional group (n = number of respondents)	Average rate (£)			
	Writing reports (per hour)		Court appearances (per day)	
	2007	2005	2007	2005
Medicine (n = 181)	170	171	1,163	1,068
Paramedicine (n = 21)	118	104	827	785
Engineering (n = 52)	112	96	876	674
Accountancy (n = 21)	174	161	1,105	1,177
Science (n = 19)	107	89	720	664
Surveying (n = 18)	142	122	938	880
Building (n = 17)	102	97	835	732
Others (n = 85)	121	97	811	767
<i>Totals</i>	<i>143</i>	<i>135</i>	<i>991</i>	<i>914</i>

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

official obligation would help to persuade more experts to adopt written terms – was ill-founded!

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. As an expert listed in the *UK Register of Expert Witnesses* you have access to *Factsheet 15* dealing specifically with terms of engagement (all factsheets are freely available at [www.jspubs.com](http://www.jspubs.com)), but with the launch of the *Little Book on Expert Witness Fees*<sup>2</sup> we have made creating a set of terms even easier.

The *Terminator* section of the *Register* web site enables registered experts to create personalised sets of terms of engagement based on the framework set out in the *Little Book on Expert Witness Fees*<sup>2</sup>. So now there is even less of a reason why any expert should take on instructions without setting down a firm contractual base and in the process better secure their own position.

The ultimate solution?

If all else fails, experts can sue for their fees – or at least threaten as much. Obviously, this should be the option of last resort, if only because it is likely to lose the expert a client. But experts are increasingly finding it necessary to take such action.

Of those who took part in our 1999 survey, 24% claimed to have sued for their fees on at least one occasion. That figure has risen to 34% in this survey. If you are considering suing for your fees, the *Little Book on Expert Witness Fees*<sup>2</sup> has a whole chapter dedicated to getting paid. But it is important to recognise that the basis for any such suit is in contract. If you haven't built the instruction upon a firm contractual footing, winning in court may be more tricky.

Chris Pamplin

*Hourly rates grow at just above the rate of inflation*

### Reference

<sup>1</sup> *Judicial Statistics 2005 (revised)*, Cm 6903, HMSO. ISBN 0-10-169032-0

<sup>2</sup> Pamplin, C.F. [2007] *Expert Witness Fees*. JS Publications ISBN 1-905926-01-4