

Expert witness survey 2019

Enclosed with our June 2019 issue of *Your Witness* was a survey questionnaire, the thirteenth of its kind over the past 20 years. By the end of August 2019, over 220 forms had been returned. A big thank you to all who took the trouble to take part and contribute data.

The experts

Of the 227 experts who responded by the end of August 2019, 96 were medical practitioners. Of the remaining experts, 37 were engineers, 18 were in professions ancillary to medicine, 15 were accountants or bankers, 19 had scientific, veterinary or agricultural qualifications, 7 were surveyors or valuers and 17 were architects or building experts. The small 'others' category totalled 18.

Work status and workload

Of the respondents, 45% undertake expert witness work full time, with 42% part time and 10% 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 our 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 54% of their workload. This figure was 37% in 2003 and rose to 45% in 2011. It is the third time that this 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 and outlook

We also asked respondents to say for how long they have been undertaking expert witness work. From their answers it is apparent that they are a very experienced lot indeed. Of those who replied, 95% have been practising as expert witnesses for at least 5 years, and 86% have been undertaking this sort of work for more than 10 years. Eight 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 2019 survey supports the conclusion from our 2013, 2015 and 2017 surveys that this optimism is decreasing. Now we observe **48% 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. Near 65% of these experts undertake civil work exclusively. This dominance of civil matters over the other courts

is a long-standing feature of the make up of the *Register's* membership.

When we asked 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 – 56% – say they do no publicly funded work. Of those who do accept such work, it averages 31% of their workload, which is slightly down on 2 years ago. These **data show just how financially unattractive the Ministry of Justice is making publicly funded work** for expert witnesses.

When it comes to accepting instructions from litigants in person, 56% of our respondents 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 last 6 years in the percentage of experts who require payment on account in such cases** – from 38% to 58%.

Their work

Reports

In all of our surveys we have asked how many reports the experts have written during the preceding 12 months. The averages for the last six surveys are given in Table 1. The three types of report are advisory reports not for the court, court reports prepared for one party only and single joint expert (SJE) reports.

Single joint experts

A dramatic rise in the number of SJE instructions between 1999 and 2001 (a jump from 3 to 12 instructions a year as a result of the Woolf reforms) then levelled off. Now, **46% of experts have been instructed as SJE's in the past 2 years** (it was 73% in 2011), and on average each expert receives seven 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

Report type	2009	2011	2013	2015	2017	2019
Advisory	19	15	18	16	21	13
Single party	57	56	55	56	47	50
SJE	15	9	8	8	5	7

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

*On average,
54% of workload
is expert witness-
related*

*48% expect expert
witness workload
to increase*

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 4 years later this had dropped to 3.8; it now stands at 1.9. 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 1.9.

Variation by specialism

However, these averages hide a lot of variation by specialism (see Table 2). For example, the reporting rate for medics is much greater than in all other specialisms. Furthermore, SJE appointments are much more common in medical cases than in the other specialisms.

Their fees

Which brings us to the detail everyone wants to know. How much are fellow experts charging for their expert witness services? See Table 3!

For each professional group, the table offers average hourly rates for writing reports and full-day rates for attendance in court, with the 2017 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, 28% of our respondents earn less than £20k per year, 20% earn between £20k and £50k per year and 46% earn over £50k per year.

Cancellation fees

Fees due as a result of cancelled trials continue to be a source of friction. The average percentage of the normal fee experts charge is generally controlled by the amount of notice they receive of the cancellation. In this survey, 48 respondents charge on average 36% of their fee if notice is given at least 28 days before the trial is due, 89 respondents charge 47% with 14 days' notice, 130 charge 74% on 7 days' notice and 151 charge 98% 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

Professional group (n = number of respondents)	Reports	Court appearances	Advisory reports	SJE instructions
Medicine (n = 96)	75.0	2.0	18.9	8.6
Paramedicine (n = 18)	48.6	1.1	7.3	17.3
Engineering (n = 37)	18.6	2.1	9.3	5.9
Accountancy (n = 15)	12.4	2.1	5.3	2.8
Science (n = 19)	29.9	3.2	9.6	1.9
Surveying (n = 7)	8.1	1.1	8.2	4.0
Building (n = 17)	23.8	1.1	5.5	2.8
Others (n = 18)	13.7	1.0	9.9	3.1
Aggregate averages	45.2	1.9	12.9	6.8

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

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, **36% of experts report that the promptness with which invoices are paid has not deteriorated – but that means 64% of experts are finding payments are taking longer to secure!** One measure of the problems experts have in securing prompt payment is the number of bills settled on time. In this survey, the number of experts reporting their bills are being paid on time in even half of their cases is 55% (up from 49% in 2017). On average, 41% of solicitors pay within 8 weeks, 27% pay between 9 and 12 weeks and 22% pay between 13 and 48 weeks.

Against this background, while **93% of experts say they stipulate terms, still only 56% 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! **Without a solid contractual basis, experts are making their credit control much more complex than it need be.** All experts listed in the *UK Register of Expert Witnesses* have access to our *Terminator* service through our website (see page 8) to create personalised sets of terms, and our *Little Book on Expert Witness Fees*¹ has a chapter dedicated to terms.

Jackson Reforms

We have asked about the Jackson Reforms in our last four surveys. When it comes to the 'hot tub', 15% of our respondents have 'dipped their toe in the water', up from 8% in 2013 and 12% in 2017. But **only 59% of these think hot tubbing is an improvement** (80% in 2017).

In 2013, 40% of respondents had been asked to provide a costs budget. This had increased to 63% in 2017 but has fallen back to 47% now.

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

Professional group (n = number of respondents)	Average rate (£)			
	Writing reports (per hour)		Court appearances (per day)	
	2019	2017	2019	2017
Medicine (n = 96)	241	226	1,653	1,680
Paramedicine (n = 18)	161	150	1,098	1,091
Engineering (n = 37)	149	151	1,224	1,165
Accountancy (n = 15)	251	209	1,900	1,177
Science (n = 19)	141	149	993	1,271
Surveying (n = 7)	175	215	1,152	1,739
Building (n = 17)	180	157	1,602	1,580
Others (n = 18)	109	132	726	754
Aggregate averages	196	198	1,408	1,492

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

Despite plenty of judicial support, the 'hot tub' is still seldom entered

References

¹ Pamplin, CF & White, SC [2016] *Expert Witness Fees*. 3rd Edition J S Publications ISBN 1-905926-24-4 Order line 01638 561590