

## Factsheet 70: Expert Witness Survey 2017

Last updated: November 2017

In 1995, J S Publications undertook a survey of the views, experiences and working practices of experts listed in the UK Register of Expert Witnesses.<sup>1</sup> Some 2 years later, the findings of that survey were updated with a more limited investigation into the fees experts were charging.<sup>2</sup> Then, in 1999, 2001, 2003, 2005, 2007, 2009, 2011, 2013 and 2015, J S Publications conducted further surveys that combined the main features of the predecessors, while adding some new topics of enquiry.<sup>3</sup>

The 2017 printed questionnaire was dispatched to all expert witnesses listed in the *UK Register of Expert Witnesses* along with the June 2017 issue of *Your Witness*. Listed experts could also complete the survey on-line. There were over 200 forms returned or submitted on-line at <http://www.jspubs.com>, accounting for some 10% of the readership. We are grateful to all of these experts for so doing. Their data have contributed to the twelfth survey of its kind in over 20 years. The following is an analysis of their replies.

### 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 6 were architects or building experts. The small 'others' category totalled 8.

#### Work status and 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 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, 97% have been practising as expert witnesses for at least 5 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.

### Their Work

#### 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 no publicly funded work. Of those who do accept such work, it averages 33% of their workload – which is around the same as 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, 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 last 4 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 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.

Report type	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 1. Average number of full, advisory and SJE reports per expert over time.**

**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, 55% of experts have been instructed as SJE in the past 2 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 4 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

Professional group (n = number of respondents)	Reports	Court appearances	Advisory reports	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 2. Average number of reports, trials, advisory reports and SJE instructions by specialism.**

reach court), so the number of civil cases reaching court will be much lower even than 1.7.

**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? 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 £20k per year, 27% earn between £20k and £50k per year and 43% 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, 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 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, 34% of experts report that the promptness with which invoices are paid has not deteriorated – but that means 66% 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 only 49%. On average, 32% of solicitors pay within 8 weeks, 14% pay between 9 and 12 weeks and 36% pay between 13 and 48 weeks.

Against this background, while 91% of experts say they stipulate terms, only 55% 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

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

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

## EXPERT SUPPORT SERVICES FROM THE UK REGISTER OF EXPERT WITNESSES

control much more complex than it need be. All experts listed in the *UK Register of Expert Witnesses* have access to the Terminator service on our website to create personalised sets of terms, and our *Little Book on Expert Witness Fees*<sup>4</sup> has a chapter dedicated to terms.

### The Jackson Reforms

We have asked about the Jackson Reforms in our last 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 over 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.

### Footnotes

<sup>1</sup> For full details see [Factsheet 5](#), 'Expert Witness Survey 1995'.

<sup>2</sup> For full details see [Factsheet 24](#), 'Fees Survey 1997'.

<sup>3</sup> For full details see [Factsheet 39](#) 'Expert Witness Survey 1999', [Factsheet 47](#) 'Expert Witness Survey 2001', [Factsheet 49](#) 'Expert Witness Survey 2003', [Factsheet 54](#) 'Expert Witness Survey 2005', [Factsheet 57](#) 'Expert Witness Survey 2007', [Factsheet 62](#) 'Expert Witness Survey 2009', [Factsheet 64](#) 'Expert Witness Survey 2011' and [Factsheet 65](#) 'Expert Witness Survey 2013'.

<sup>4</sup> Pamplin, C.F. (2015) *Expert Witness Fees*. J S Publications ISBN 978-1-905926-24-4

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**J S Publications can be contacted at:**  
**PO Box 505, Newmarket, Suffolk CB8 7TF**  
**Tel: 01638 561590 • Fax: 01638 560924 • e-mail: [ukrew@jspubs.com](mailto:ukrew@jspubs.com)**

