

Factsheet 5: Expert Witness Survey 1995

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The following article has been extracted from Issue 1 of *Your Witness* and was published in September 1995.

In May of 1995 J S Publications distributed a questionnaire to a large sample of the experts who had entries in the 8th edition of the *UK Register of Expert Witnesses*. Of the 1341 questionnaires mailed, 451 were returned – a response rate of 33.6%. This number of replies was easily large enough to permit a statistical analysis of the answers provided, while the level of response encouraged us to think that any conclusions to be drawn from the analysis may well be applicable to expert witnesses in general. Certainly one of the most remarkable features of the survey was the uniformity of the statistics across the whole range of those questioned. Time and again the same results emerged, regardless of the length of time those replying had been engaged in expert witness work, the workload it engendered for them or the amount of expert witness training that they had received.

Experience and prospects

Overall, those replying to the questionnaire were **very** experienced. Just about 60% of them had been undertaking expert witness work for more than 10 years, and a further 31% for between 5 and 10 years. On the other hand, only one in five categorised it as their principal activity, and for half of them it accounted for less than one fifth of their workload.

More interesting still, the great majority – 82% – foresaw their involvement in expert witness work as increasing in the future.

Frequency of enquiries

We asked our experts to tell us how many enquiries they had received from instructing solicitors during the previous 12 months, and their replies revealed widely differing levels of demand. At one end of the scale 5% of them reported that they had received no enquiries during the period, while at the other end 28% reported to have had more than 25. The median figure was 10 enquiries over the 12 months.

Frequency of instruction

The questions we posed under this heading distinguished between those instructions to write expert reports and those requiring evidence to be given in court or before a tribunal. As might be expected, there was a much greater incidence of the former, with 27% of those replying having written more than 25 reports during the previous 12 months but only 2% having made that many court appearances. Indeed, almost 35% of the experts completing the questionnaire had made no court appearances at all during the period.

The median levels of activity were, for writing reports, between six and 10 instructions, and for giving evidence in court, between one and five instructions.

Business practices

A number of the questions touched on the business side of being an expert witness, and it has to be said that they produced some disquieting answers. Thus:

- 43% of the respondents do not routinely ask enquirers how they came to hear of their expert witness capabilities
- 68% have no standard form of contract for use when accepting instructions
- 41% do not even stipulate by when their fees should be paid.

This situation is all the more surprising when one considers that the great majority of expert witnesses are professional

people used to dealing with clients in a business-like way in their other spheres of activity.

Payment for services rendered

The answers to questions on this topic revealed an even more lamentable state of affairs. Thus:

- only 32% of those experts who stipulated payment of their fees within a fixed period were able to report that the solicitors instructing them settled on time in even the majority of instances, while a staggering 41% claimed that solicitors did so in less than one case in four.
- 52% of the 346 respondents who accepted instructions in legally aided cases reported that in at least half of them solicitors excused delay in paying fees on the grounds that they had yet to be reimbursed themselves by the Legal Aid Board – a situation which need never arise if solicitors claimed for expert witness expenses in good time.

These findings clearly demonstrate the need **both** for individual expert witnesses to adopt a more rigorous approach in their dealings with solicitors **and** for the latter to meet their obligations far more speedily.

Training needs

We asked a number of questions about training and whether more might be welcomed. Bearing in mind that over 90% of those replying had been undertaking expert witness work for at least 5 years, their answers on this topic were no less surprising than those already mentioned – but, in this case, encouragingly so.

It is no doubt to be expected that the majority of expert witnesses have received no formal training in either the requirements of litigation or how to conduct themselves in court. It is, after all, only in the last few years that courses have been devised for this purpose. Indeed, in such circumstances it is commendable that 43% of those returning the questionnaire had already taken advantage of such courses. What is remarkable is the near unanimity of their answers to the subsidiary question, *Was the training of value to you?*, with 96% replying ‘Very much so’.

Turning to future training requirements, 39% of respondents expressed an interest in attending day courses on court techniques, and 37% said that they would be interested in renting training videos on the same topic. And, no doubt because of their favourable previous experience of it, those who had undertaken some training already were just as keen to attend courses and rent videos as those who had undertaken none.

EXPERT SUPPORT SERVICES FROM THE UK REGISTER OF EXPERT WITNESSES

Organisations

Just 26% of the experts who answered the question about the professional organisations they belonged to mentioned any that catered for their needs as expert witnesses, and even this may overstate the position for expert witnesses in general. Thus, while 16% of the experts who returned questionnaires said that they were members of the Academy of Experts, only 10% of those listed in the *UK Register of Expert Witnesses* cite membership of that body among their post-nominals. This suggests that fewer than one in five of the experts in the *Register* currently belong to **any** organisation related to their expert witness work.

Yet it is abundantly clear from the answers to the question, *Would you be interested in joining an informal association for the purposes of exchanging information, promoting training and establishing standards?*, that such a body could meet a real need. No fewer than 276 of the 451 replying to this question, or 66%, answered, 'Yes', and 119 of them further indicated that they would be willing to play an active role in the association's formation. Intriguingly, this enthusiasm was shared in like measure by respondents who already belong to other relevant organisations – in their case 63% replying affirmatively. Even for them, it would seem, their needs as expert witnesses are not being fully catered for.

It would be a bold step to conclude from the response to these particular questions that the interest in such an association

would be shared by those other experts in the *UK Register of Expert Witnesses* who have yet to be sent the questionnaire – and still less, of course, by those who did not get round to responding to the one they received last May. If these two groups can now be persuaded to add their voice, it would be that much easier to determine whether we have the makings of a viable organisation committed to meeting the needs of all expert witnesses.

Survey highlights

- Four out of five expert witnesses expect their workload to increase.
- The majority are insufficiently business-like in their dealings with solicitors.
- In general, solicitors are abysmally slow in paying fees.
- More opportunities for training would be welcomed even by the most experienced of witnesses.
- There is considerable support for the idea of an association to promote the interests of all expert witnesses.

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The next issue of *Your Witness* published the following update to the questionnaire.

The article I wrote for the last issue analysed the replies from 451 of the experts questionaired in May 1995. Since then, a further 341 experts have returned forms to us, and these fully bear out the conclusions I came to in September.

As with the earlier group, the great majority of those responding in the second wave were highly experienced expert witnesses, although overall only one in six would describe such work as their principal activity. Also, as before, 82% of them foresaw their involvement in expert witness work increasing in coming years.

On the other hand, an even greater proportion of the new respondents – 72% instead of 68% – admitted to not having a

standard form of contract for use when accepting instructions from solicitors, and 45% of them do not even state by when they require their fees to be paid, compared with 41% of the earlier group. In such circumstances, it is perhaps not surprising that the experts in this second group also appear to fare less well when it comes to being paid, with 48% of them reporting that solicitors settled their bills on time in less than one case in four.

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