

Factsheet 49: Expert Witness Survey 2003

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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*.¹ Some 2 years later, the findings of that survey were updated with a more limited investigation into the fees experts were charging.² Then, in 1999 and 2001, J S Publications conducted further surveys that combined the main features of the predecessors, while adding some new topics of enquiry.³

The 2003 printed questionnaire was dispatched to all expert witnesses listed in the *UK Register of Expert Witnesses* along with the June 2003 issue of *Your Witness*. Listed experts could also complete the survey on-line. A further 5,000+ experts were invited to take part in the survey via the *Register's* monthly e-wire.

In the event, well over 500 experts responded to the questionnaire, and we are grateful to all of them for so doing. Their data have contributed to the fifth survey of its kind in 8 years. The following is an analysis of their replies.

The Experts

Profession

Of the 543 experts who returned questionnaires by mid-August, 230 were medical practitioners. Of the remaining 313 experts, 79 were engineers, 37 had scientific, veterinary or agricultural qualifications, 42 were in professions ancillary to medicine, 24 were surveyors or valuers, 26 were accountants or bankers, and 27 were architects or building experts. The substantial 'others' category totalled 78, of whom 12 were psychologists.

Work status and workload

Of the 543 respondents, 277 (51% of the total) work full time, and another 209 (38%) work part time. Only 9% describe themselves as retired. These figures reveal a significant shift of some 15% away from full-time work to part-time work in the last 2 years.

Overall, expert witness work accounts, on average, for just 37% of their workload, a figure 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, 91% had been practising as expert witnesses for at least 5 years, and 63% had been undertaking this sort of work for more than 10 years. Furthermore, most of the respondents (57%) saw expert witness work as an expanding part of their workload.

There is currently debate about whether experts should continue to enjoy immunity to suit for their expert witness work. So we asked whether the loss of such immunity would stop them undertaking expert witness work. Only 10% of our respondents said that such a change would force them to remove their services from the marketplace altogether, whilst 56% were certain that they would continue to accept instructions; 32% weren't sure.

Their Work

Reports

In all five of our surveys we have asked those taking part to estimate the number of expert reports they have written during the preceding 12 months. The 2001 survey was the first to show a fall in output. Furthermore, it dropped for both reports prepared for use in court and those written solely for the advice of the instructing solicitor and the client. The experts who took part in our 1999 survey were averaging per year 48 of the former and 19 of the latter. In 2001 these average annual totals dropped to 41 and 12 respectively. In the current survey, the first average has climbed back up to 45, whilst the second has dropped further to 11.

One possible factor in this slight recovery in the average number of reports written is that, while the downturn in civil court business brought on by the Woolf reforms continues (there was a 6% fall in county court claims between 2001 and 2002), there was an increase of nearly 4% in the number of criminal committals.

Single joint experts

One of the biggest changes we found in 2001 was the increased use of single joint experts (SJE). At that time, 80%

of experts had been instructed as SJE, and on average each expert had received 12 such instructions in the year.

The equivalent average this time around shows a small increase, with experts being instructed in this capacity some 14 times a year. Of course, while every case where one expert is instructed in place of two contributes to the overall reduction in demand for expert witness services, there is now a recognition that SJE work is more involved and experts need more time, and command higher fees, for this type of work than when appointed by just one of the parties.

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 2.6.

Variation by specialism

These averages, however, hide a lot of variation by specialism (see Table 1). For example, the reporting rate for medics is three times that of all other specialisms (75 versus 24 reports per annum on average). Furthermore, SJE appointments are much more common in medical and surveying cases, where each expert has 18 such appointments

on average each year. This compares with the other specialisms, where the average drops to just 4 SJE instructions per year.

Court appearances are similar in all areas except the sciences. This may reflect the use of forensic science in the increasing criminal caseload, as revealed in the Department for Constitutional Affairs publication *Judicial Statistics 2002*.

Table 1. The average number of reports, court appearances, advisory reports and SJE instructions by specialism.

| Professional group | Reports | Court appearances | Advisory reports | SJE instructions |
|------------------------|-----------|-------------------|------------------|------------------|
| Medicine | 75 | 2.5 | 15 | 24 |
| Paramedicine | 39 | 1.7 | 2 | 12 |
| Engineering | 17 | 2.6 | 11 | 3 |
| Accountancy, banking | 16 | 1.6 | 6 | 3 |
| Science, agriculture | 36 | 7.3 | 17 | 2 |
| Surveying, valuation | 31 | 1.1 | 8 | 17 |
| Architecture, building | 8 | 1.2 | 7 | 3 |
| Others | 21 | 2.4 | 7 | 8 |
| Total averages | 45 | 2.6 | 11 | 14 |

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 2.

Table 2. Average charging rates.

| Professional group | n* | Average rate (£) | | | |
|------------------------|------------|----------------------------|------------|-----------------------------|------------|
| | | Writing reports (per hour) | | Court appearances (per day) | |
| | | 2003 | 2001 | 2003 | 2001 |
| Medicine | 230 | 153 | 149 | 1,041 | 927 |
| Paramedicine | 42 | 91 | 100 | 749 | 718 |
| Engineering | 79 | 86 | 85 | 694 | 663 |
| Accountancy, banking | 26 | 151 | 133 | 1,105 | 895 |
| Science, agriculture | 37 | 82 | 78 | 690 | 648 |
| Surveying, valuation | 24 | 121 | 104 | 984 | 787 |
| Architecture, building | 27 | 92 | 84 | 744 | 712 |
| Others | 78 | 109 | 127 | 802 | 622 |
| Totals | 543 | 123 | 119 | 893 | 798 |

* n is the total number of respondents in each professional group in the 2003 survey.

For each professional group the table gives average hourly rates for writing reports and full-day rates for attendance in court. In each instance, the rate is followed by the corresponding amount taken from the survey we conducted in 2001.

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 less than the prevailing rate of inflation. However, those for appearances in court have risen by around 6% per year.

In 2001, we were intrigued by the trend-bucking drop in the charging rates of accountants and bankers. We speculated that they may well have priced themselves out of their market. Well, this year they appear to have made a spectacular recovery – which just goes to underline how dangerous it is to get carried away with a sample size of just 26 respondents!

Once again, the figures in the final column demonstrate the extent to which officially determined allowances in criminal cases fall short of the fees experts are free to negotiate for themselves. For example, the most a consultant medical

practitioner can count on being paid for giving evidence at a criminal trial is £500 a day – well under half the average fee such an expert might charge for an appearance in a civil court.

Speed of payment

Here there is at least some improvement to report, although the general situation remains grim. In this survey, 62% of respondents said that their invoices were being settled more promptly than 2 years ago, versus 13% who reckoned they were being settled more slowly. On the other hand, only 39% could claim that bills were being paid on time in even half of the cases on which they worked, a statistic that has changed little over the years.

Against this background, it is depressing to report a drop in the number of experts who use a written form of contract when accepting instructions from a solicitor. The proportion of those who now do so stands at 42%, as against 47% 2 years ago, 38% in 1999 and 32% back in 1995. Without a solid contractual basis, experts are making their credit control much more complex than it need be. Factsheet 15: Terms of Engagement for Experts provides a basic written contract that experts may adopt for their own use. Somewhat more

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encouraging is that more experts are now stipulating in their terms of engagement how soon after invoice they expect to be paid, up 1% to 66%. This action cannot guarantee prompt payment, but it is at least a move in the right direction towards securing it.

If all else fails, experts can, of course, sue for their fees – or at least threaten to so do. 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. In 2001 that figure had risen to 31%, but has dropped back slightly in this survey to 30%.

Footnotes

¹For full details see Factsheet 5, 'Expert Witness Survey 1995'.

²For full details see Factsheet 24, 'Fees Survey 1997'.

³For full details see Factsheet 39 'Expert Witness Survey 1999' and Factsheet 47 'Expert Witness Survey 2001'.

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