

The Bond Solon Annual Expert Witness Survey

7 November 2014

Conducted at the Bond Solon Annual Expert Witness Conference, 7 November 2014.

Sample: 186 experts completed the survey

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Expert witnesses say they are under pressure to change their reports, according to the latest Bond Solon Annual Expert Witness Survey. In a survey of 186 expert witnesses, 55 respondents said they had been asked to, or felt pressurised to, alter a report, in a way that damaged their impartiality.

Witnesses' experiences ranged from being asked to remove sections of reports which were seen as damaging to the client's case to being asked to re-write in their favour. Other experts said some solicitors had even refused to pay them if they felt they had written an "unhelpful" report. One said: "A leading firm of solicitors tried to pressurise me on more than one occasion as the client didn't like my conclusions." Another expert witness said: "Solicitors were asking for the report to be changed materially to the client's advantage. Other solicitors were asking for quoted GP notes entries to be changed. I always refused."

Expert witnesses are currently bound by civil, criminal and family procedural rules. The rules state that those giving expert evidence must have a duty to justice above their duty to the person paying for their services. The survey found that contrary to these rules, experts were being put under varying amounts of pressure to disregard their objectivity.

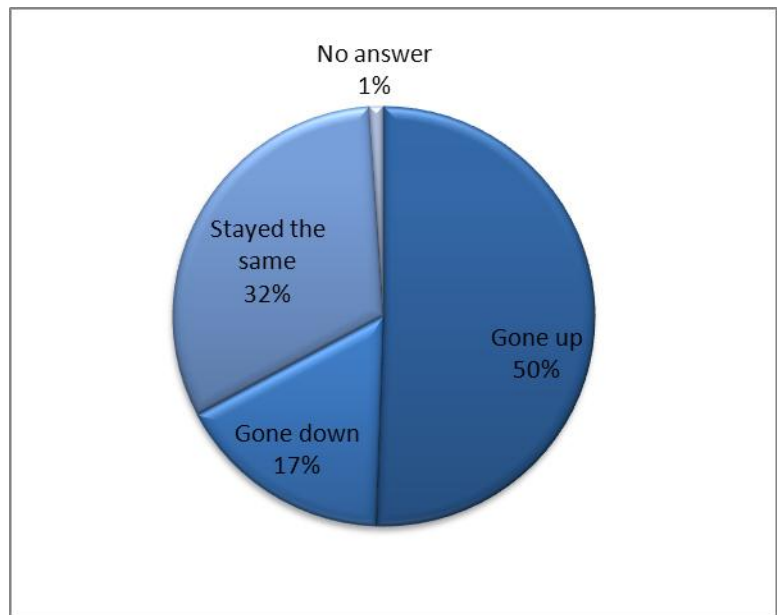
One expert witness wrote: "A case of overt bullying. Solicitor had a weak case and was clutching at straws. Solicitor told me: "You have a duty to the court to do as instructed by solicitor". I knew that to be wrong. Solicitor threatened I would be liable for wasted costs." Another expert reported how he experienced: "the salami technique of redaction (until) gradually the essence of my argument was lost". Yet another was asked to change a claimant's past medical history while others were asked to remove damaging comments or take out certain evidence.

The duty of an expert witness to the court rather than client is highly topical as it follows on from a BBC Panorama investigation broadcast this summer. The programme found experts in handwriting, CCTV analysis and animal behaviour prepared to help clients hide the truth in breach of their professional obligations. Following on from this, the subject of the "hired gun" was raised in the Bond Solon survey and an overwhelming 45 per cent of expert witnesses said they had encountered what they believed to be hired guns in the last 12 months.

This raised the question of greater regulation of the profession. As an industry, expert witnesses have never been regulated, although there have been calls in the past for greater powers to police them. The survey found that an overwhelming majority of respondents believe better regulation is needed of expert witnesses. A total of 82 experts said they believe in some form of regulation, while just over a third disagreed. Similarly, around a third of respondents believe mandatory accreditation will improve standards of expert witnesses.

1 Over the last 12 months, have the number of your instructions:

| | |
|------------------|----|
| Gone up | 94 |
| Gone down | 31 |
| Stayed the same | 59 |
| <i>No answer</i> | 2 |



Comments

Half of respondents reported that the number of their instructions had increased this year. A total of 94 experts said their workload had risen. This is an increase on last year's survey where 45 per cent of experts reported a rise in instructions. Fewer experts reported their caseload decreasing this year.

2 What is your average hourly rate for report writing?

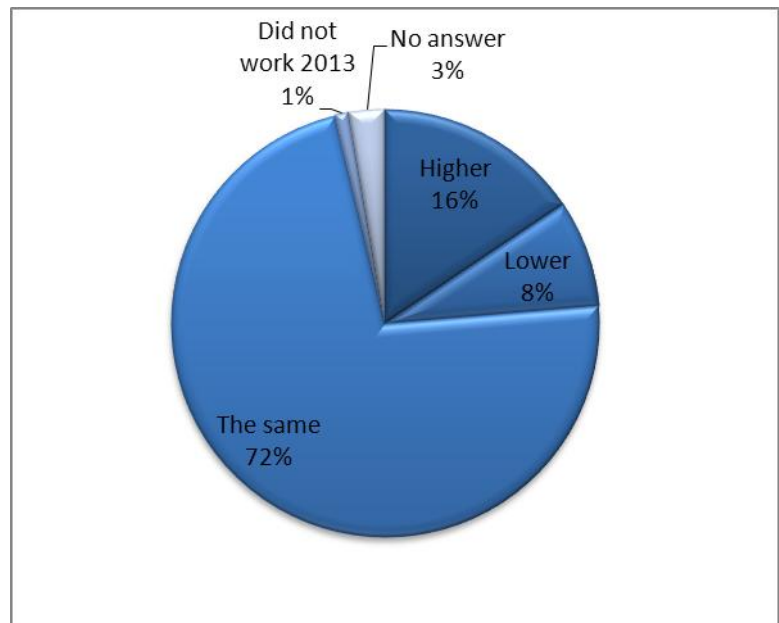
| | |
|---------------------|------|
| Average | £177 |
| Lowest hourly rate | £32 |
| Highest hourly rate | £500 |

Comments

The average hourly rate for report writing increased slightly this year, from an average of £174 last year to an average of £177. The lowest hourly rate also increased from an average of £30 last year to £32 this year. The highest hourly rate rose from £480 to £500.

3 How does this relate to your average hourly rate in 2013?

| | |
|-----------------------------------|-----|
| Higher | 29 |
| Lower | 15 |
| The same | 135 |
| Did not work as an expert in 2013 | 2 |
| No answer | 5 |

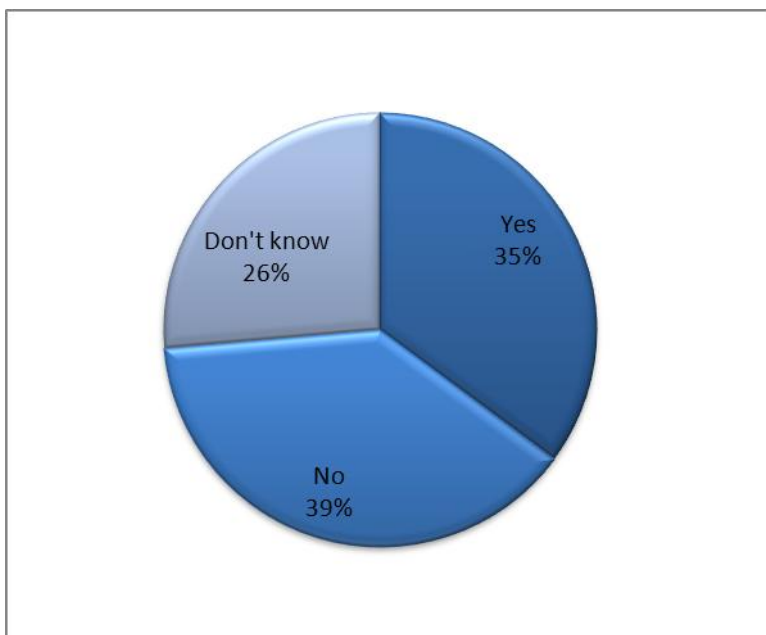


Comments

Rates are fairly static, showing only a minor increase on last year.

4 The government is carrying out a consultation on accrediting experts who undertake soft tissue personal injury (whiplash) claims. Do you feel that mandatory accreditation within your area would improve standards?

| | |
|------------|----|
| Yes | 64 |
| No | 70 |
| Don't know | 48 |
| No answer | 4 |

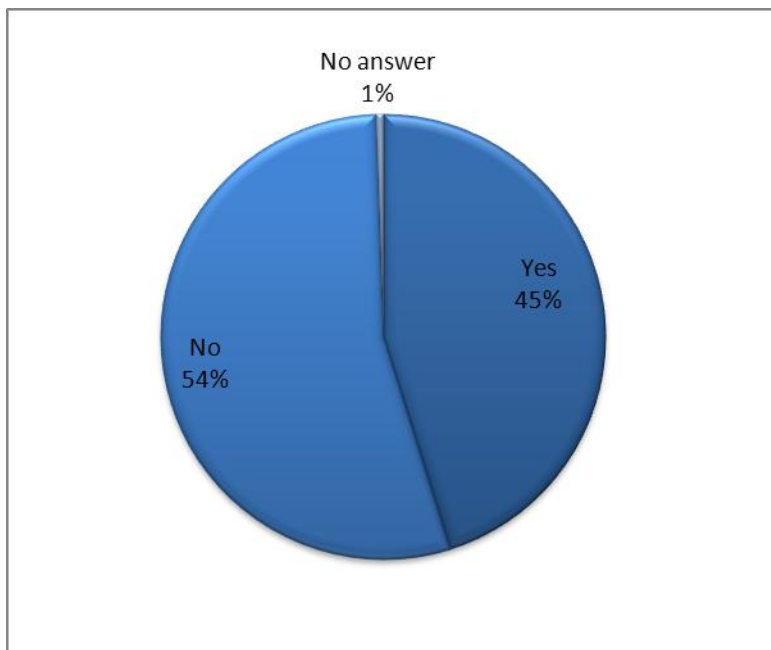


Comments

Around a third of respondents believe mandatory accreditation will improve standards of expert witnesses. However, a greater percentage felt accreditation would have no effect.

5 In the last 12 months, have you come across an expert that you consider to be a 'hired gun'?

| | |
|------------------|----------|
| Yes | 84 |
| No | 101 |
| <i>No answer</i> | <i>1</i> |

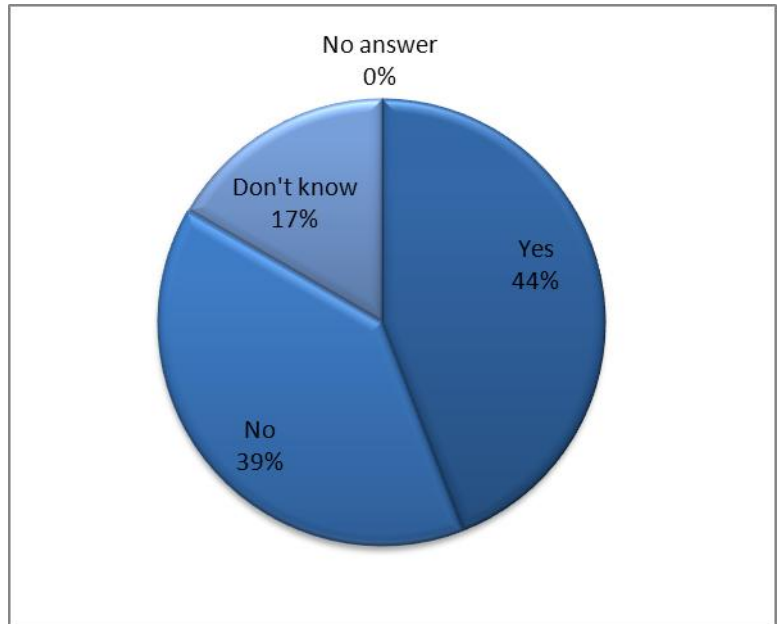


Comments

Nearly half of respondents (45 per cent) encountered what they believed to be “hired guns” in the last 12 months, a huge number and particularly significant in the wake of the Panorama investigation into fraudulent experts. In contrast, 101 experts confirmed that this was something they had not come across in the course of their work.

6 Do you think better regulation of expert witnesses is needed?

| | |
|------------|----|
| Yes | 82 |
| No | 73 |
| Don't know | 31 |
| No answer | 0 |

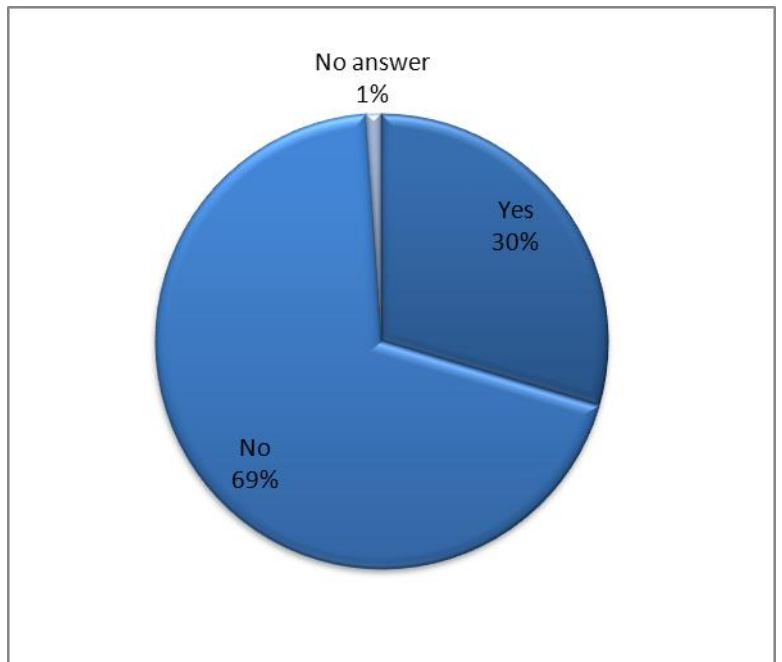


Comments

44 per cent believe better regulation is needed of expert witnesses. A total of 82 experts said they believe in some form of regulation, while just over a third disagreed.

7 In the last 12 months have you been asked to, or felt pressurised to, change your report in a way that damages your impartiality?

| | |
|-----------|-----|
| Yes | 55 |
| No | 129 |
| No answer | 2 |



Comments

Nearly a third of expert witnesses reported being asked to change a report which affected their sense of neutrality. A total of 55 witnesses said this was something they had felt pressurised to do in the last 12 months. Encouragingly, 69 per cent said this was something they had not experienced.

NOTES:

In questions 7 (In the last 12 months have you been asked to, or felt pressurised to, change your report in a way that damages your impartiality?) we also asked a follow-up question.

If yes, please give an example:

Client direct phone call, which was rebuffed, wanting me to change an element of my report.

The barrister asked me to redact a passage in my report which described what the defendant had told me about the alleged events. The barrister said I had not been asked about this (I was asked about fitness to plead) and it was problematic as it differed from what the defendant had previously said.

Most lawyers try this but none succeed!!

A report scanned, emailed back with alterations to the opinion handwritten into the margins.

A leading firm of solicitors tried to pressurise me on more than one occasion as the client didn't like my conclusions.

Sometimes asked to leave out.

Solicitors asking for the report to be changed materially to their client's advantage. Always refused unless they provide evidence. Solicitors asking for quoted GP notes entries to be changed. Always refused no matter what.

I wrote a negative medical negligence report for a claimant's solicitor. 2 years later I was approached by a different solicitor for the claimant, I was presented with over 300 questions on my original (40 page) report to answer. Included in the questions were questions from the claimant asking whether I had sufficient experience as "an expert witness for a claimant" because I had produced a negative report. I thought the solicitor acting for the claimant should have informed the claimant of the need for the expert to be impartial, and that I was being placed under unreasonable pressure to change my report to be more favourable to the claimant.

Given evidence to consider, written a report and then counsel asked me to disregard that particular piece of evidence which damaged the clients' case. I refused.

I have had a phone call from another consultant who was clinically in charge of a patient who was claiming negligence against a previous consultant. The phone call was to pressurise me into coming down more firmly against the defendant. Because of his pressure the claimant also wrote to me to pressurise. It is back in the hands of his solicitor – I have not changed my opinion!

I presented an opinion in a medical negligence case, and also presented the opposing, respectable view, as I understand I am obliged to do. The barrister took me to task at conference for making the defendant's case for them. I was asked to rephrase the report to make it more favourable and I refused.

Been asked to remove sections of report which were deemed non relevant as they were not within my area of expertise. I pointed out this should be mentioned and referred to the appropriate experts in that field. Despite not being my expertise I nevertheless realised that this was a significant factor to be taken into account and needed to be mentioned as it was inappropriate not to take this into account. I pointed out the report was done for the court.

I was asked to omit a reference to an entry in medical records that contradicted claimant's account in a small but significant way. I refused to make the change. The solicitor argued that the claimant has misunderstood my questions. I said I would be happy to write a letter saying that such were the solicitor's instructions and that they could be correct, or to see the claimant again to go over the point. The solicitor accepted a supplementary letter.

Instructed by a new firm of solicitors who, as always, pushed the boundaries. Made it clear they were wasting their time.

I do medico-legal work. Solicitors (claimant) were angry at me for agreeing to take an instruction for personal injury where I did not want to offer an opinion on certain injuries, which I felt were outside my area of expertise. I recommended other specialities for the claimant to see. The solicitors did not want to pay for the other experts and felt I should comment on the other injuries and I refused. They threatened not to pay me (this was all via an agency).

Told by claimant's solicitor I should write off the costs as they were not going to use my report as they didn't like the opinions. Instructed via an agency (large one) in process of complaint. (They had not given me up to date GP records nor other expert (diff. discipline) report which didn't support my clinically derived opinion).

Incremental changes with 2-3 iterations.

Asked to reconsider my opinion in favour of claimant in clinical negligence case (on 2 occasions) – I resisted.

Instructing solicitor asked to remove several paragraphs relating to the facts as presented – asked to remove some “detail facts” in order to give the client a different slant on the evidence. The result being that one of my opinions on the cause had to be removed as it related to the facts removed. I wrote to the solicitor formally advising that if called to court that I would express my view to the court if it went to trial!

Being asked to remove reference to other expert reports.

A QC requested a CPR35 compliant report to be altered.

4 times all civil law – all dealt with and all refuted by me.

Removing references, deleting sectors.

Disagreed with medical opinion, was asked to change recommendations without any firm evidence to support medic's view.

I am often asked to read the initial often undated witness statement and consider it in forming my opinion but NOT refer to it as a document I have read as my initial report will not be disclosed but probably amended following discussion with counsel and then disclosed! I decline to read the witness statement!

Removing damaging comments and conclusions in a drink driving case.

Add or subtract material to a report. E.g. diagnosis of “Nervous Shock” as a medical entity rather than commenting on the symptoms as being potentially reflective of a “horrifying/shocking” experience.

In personal injury cases, the claimant misunderstands the role and duty of the expert, misunderstands the experts opinion (to the court) and pressures the solicitor who then

pressures the expert to change a conclusion to fit the claimant's perceptions. But I felt the requests were fairly made in the clients best interest. What varied was the subtlety which the points were put. Were I a less experienced expert I may have mistaken an attempt to try it on for a legally obliged alteration.

Instructed by defendant. Asked to remove recommendations as not in Claimant's report.

The solicitor asking to take out certain evidence/findings.

Difficult to remember the detail but revolved around a patient with delayed diagnosis of scabies... tried to claim for damages and loss of job!

Asked to reword my opinion that the operation notes made were of reasonable standard. V. young solicitor (acting for defendant).

They ask; it never happens.

Sorry, case is ongoing. It's around ignoring evidence that is in my opinion relevant.

Personal injury cases. Asked to alter what the client told me at consultation – "client has remembered something", "client 'forgot' to mention" etc. Usually matters that would alter my opinion.

I was asked by a solicitor to leave out one of my lines of enquiry, when I refused he said he wouldn't instruct me again. I continued to refuse (3 days later he instructed me again anyway). I was asked by a different solicitor to the one above to change my wording in a report and leave out my suggestions for further work. I refused and they agreed to keep the report as it was with minimal hassle.

Lawyers attempted to guide expert meeting agenda.

Solicitor refusing to pay for a report which he considered unhelpful. Rare but it is still happening. In the past referred to SRA – not very effective in taking this matter forward. I now threaten them with legal action to recover fee.

Client wanted past mental health problems kept out of a report, which was all highly relevant to her symptoms which she misattributed to an accident.

A case of overt bullying. Solicitor had a weak case and was clutching at straws. Solicitor told me 'you have a duty to the court to do as instructed by solicitor' (I knew that to be wrong). Solicitor threatened I would be liable for wasted costs if I didn't provide an acceptable report 'as instructed'. Result: I confirmed I was not able to say what I had been asked to say. I confirmed I was not competent to opine on the specific point in question (ie the cost of something at a time 4 years earlier). I resigned the engagement. I heard no more. I will not accept instructions from the firm or its associates.

Salami technique of redaction gradually until the essence of my argument was lost. Report being effectively rewritten by a barrister who was formerly a clinician (not in the UK courts).

Being asked to remove reports I consider to impact on my opinion.

Asked to ignore reports sent to me. Change past medical history after medical records review. Asked to change prognosis (without additional evidence).

To omit evidence from my report that I have been provided with but then is not being relied upon. To list (amended) reports that I have not yet been provided with at the time of

completing and signing by report – I refused.

Solicitor didn't like my care recommendations so gave my draft report to a medical expert (who didn't list it or refer to it) who then rubbished some of my recommendations. It did NOT cause me to change my view which was in my opinion appropriate, reasonable and based on sound assessment and the evidence including written, face to face assessment and oral evidence of the claimant, family, case manager and OT.

About Bond Solon

Bond Solon is the UK's leading expert witness training company. To date over 250,000 expert witnesses have attended these courses and in excess of 1,000 have completed, or are in the process of completing, the Cardiff University Law School Bond Solon Expert Witness Certificates.

This survey was completed by delegates attending the Bond Solon Annual Expert Witness Conference in London on 7 November 2014.

For more information on Bond Solon and training, either:

- Visit www.bondsolon.com
- Call 020 7549 2549
- Email info@bondsolon.com

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