

# The Bond Solon Annual Expert Witness Survey

## 8 November 2013

Conducted at the Bond Solon Annual Expert Witness Conference  
8 November 2013.

Sample: 165 experts completed the survey

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### **Expert witnesses report negative experiences with litigants in person**

Respondents in the Bond Solon Expert Witness Survey 2013 reported that their contact with litigants in person (LIPs) had been largely negative. Experts' complaints about LIPs include not being paid (although solicitors' firms also earn criticism in this area).

Other comments included 'lack of structure', 'irrational behaviour', 'distressing', 'dreadful', 'lied to the other expert', 'disaster', 'much more time-consuming' and 'forgot to turn up'. The most commonly repeated word was 'nightmare'.

To balance this, though, their experiences are by definition restricted to the type of LIP who instructs an expert; there are other kinds of LIP who either carry out their own research or are themselves expert in some way. The cuts to legal aid are expected to increase the number of LIPs overall.

### **Jackson reforms will not increase access to justice**

Although the point of the Jackson reforms is to increase access to justice by streamlining litigation and cutting costs, about two-thirds of respondents (67%) felt that this would not work in practice. Given that only the minority (38%) believed that costs would actually fall as a result of the Jackson reforms, this should not be surprising.

### **Budgeting: only a minority think this will reduce costs**

Although budgeting at the outset of a case is intended to cut costs, only 31% of respondents thought this would be the case. Some of this may be wish fulfillment.

### **Televised trials lead to unease**

A significant minority of respondents (30%) said they would mind if their testimony were televised, and 12% felt it would affect the way they gave evidence.

At the moment, advocates' arguments and the judges' summing up, decision and (in criminal cases) sentencing remarks may be filmed in the Court of Appeal if television programme editors decide that they are sufficiently interesting to the general public. Maybe experts would feel more confident after being trained to deal with the technicalities of filming.

Although the testimony of expert witnesses is not currently going to be televised, it is possible that their evidence may be cited in a judgment which is broadcast.

### **No surge in instructions this year**

More than half of the respondents (54%) in the survey said that they had received either fewer or the same number of instructions during the twelve months leading up to November 2013. In Bond Solon's 2012 survey, however, more than half (55%) reported an increase. It is too early to tell whether the Jackson reforms, implemented in April 2013, are among the causes of this decrease in work.

### **No surge in requirement for single joint experts**

Although the Jackson reforms encourage the use of single joint experts to save time and money, 82% of respondents reported that the demands for such work had either stayed the same or fallen in the twelve months up to November 2013.

### **Hourly rates broadly static**

The average hourly rate for report writing was £174 for the twelve months up to November 2013, compared with £162 for the previous year.

### **Unimpressed by social media**

Social media are yet to win popularity among the bulk of respondents, although LinkedIn, with its sober reputation and extensive supply of special-interest groups, was the most popular in that category, being used by 23% of respondents.

### **Extreme moments in court**

Predictably enough, experts **relish praise** from judges but **dislike probing cross-examination** ('Standing blinded by the light hearing questions coming out of the daze.' 'Fed up about being out-manoeuvred!')

**Feeling undervalued** is a common theme:

'Main ongoing gripe is being called to court and either not required or kept waiting extensively.'

'Resuscitating the claimant half way through her evidence while all else in the court carried on as nothing was happening'

'Having to repeatedly chase solicitors to pay me, even after six months or more. They never pay interest.'

'Being told I was a "hired gun" by a judge when I was an independent expert and the expert on the other side was the defendant's accountant.'

'The start of the case was delayed because the legal teams decided to do some horse-trading. I and my counterpart experts were sent to the canteen to wait. Five hours (and much coffee) later we were still there. We went to find someone but everyone had gone. The case had been settled and no one had bothered to tell us.'

'Witness accusing me of using the same prostitute that he did. Clearly confusing me with someone else.'

Sometimes **solicitors do not understand the expert's role**: 'My knuckles were rapped by my instructing solicitors when, at the request of both parties, on the day of trial I met with my opposite expert to produce a joint report which clearly did not favour their case – although in my opinion we had come to a sensible view.'

The expert's **role is a public one**:

'It's all theatre, in a way.'

'A defendant once jested that my court performance smacked of the drama of John Cleese.'

One confessed to making a juror fall asleep while giving evidence.

'I had to step down from the witness box, stand with my back to the jury, bend over and point at my ischial tuberosity.'

One expert may have stumbled across a useful manoeuvre to gain some thinking time when the questioning gets tough: 'Having to replace my hearing aid battery in court when being cross-examined.'

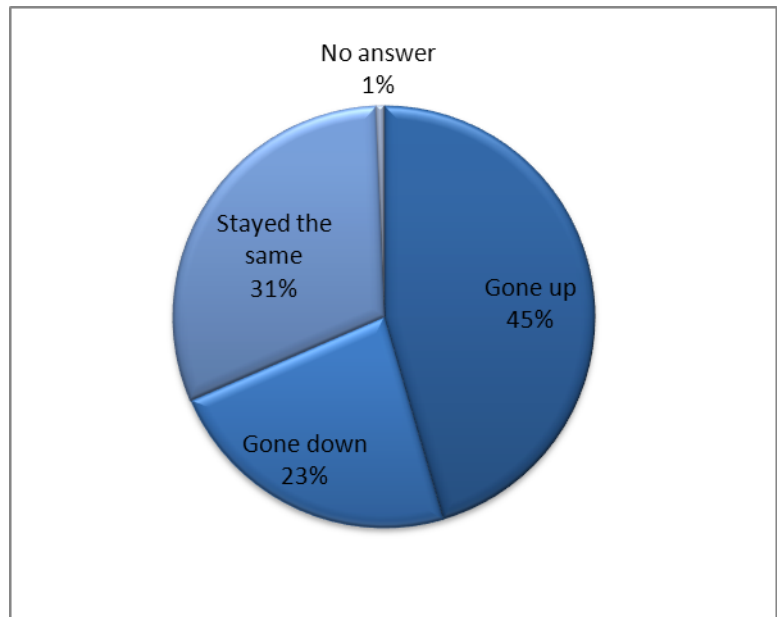
### **Most matters settle**

'Court? I'm an orthopaedic expert doing 200 reports per year – court?'

'Never been in court in 21 years of expert witness practice.'

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

Gone up	75
Gone down	38
Stayed the same	51
<i>No answer</i>	1

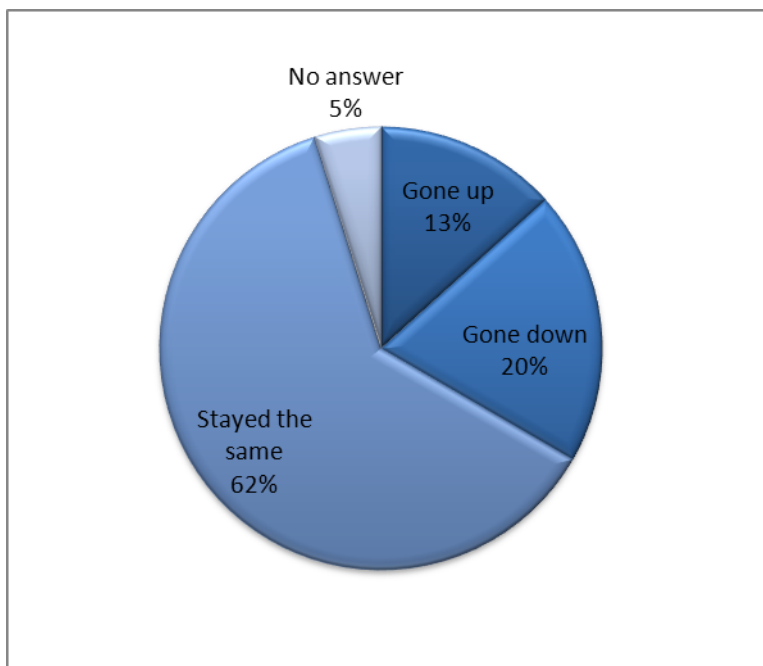


**Comments**

Last year, more than half of respondents reported an increase in the number of their instructions in the twelve months up to November 2012. The Jackson reforms were implemented in April 2013. In this year's survey, fewer than half reported an increase in the twelve months up to November 2013.

**2 Over the last 12 months, have your instructions to act as a single joint expert:**

Gone up	22
Gone down	33
Stayed the same	102
No answer	8



**Comments**

The Jackson reforms encourage more use of single joint experts in order to save time and costs. So far, however, almost two-thirds of the respondents reported that their level of single joint expert work had remained the same, while about one-fifth reported a decrease in such work.

### 3 What is your average hourly rate for report writing?

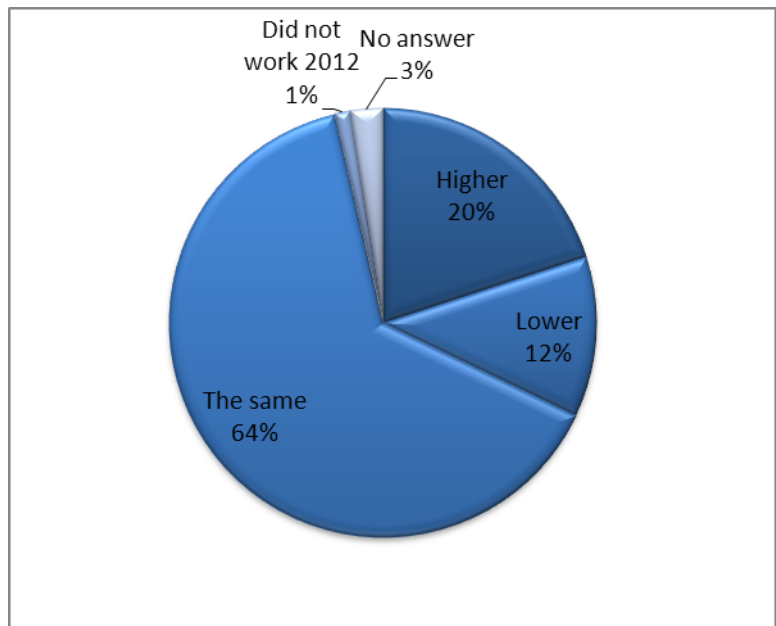
Average £174  
Lowest hourly rate £30  
Highest hourly rate £480

#### Comments

The average rate in the 2012 survey was £162; the lowest rate was the same, and the highest was £500. Overall, rates are fairly static.

### 4 How does this relate to your average hourly rate in 2012?

Higher	33
Lower	20
The same	106
Did not work as an expert in 2012	2
No answer	4

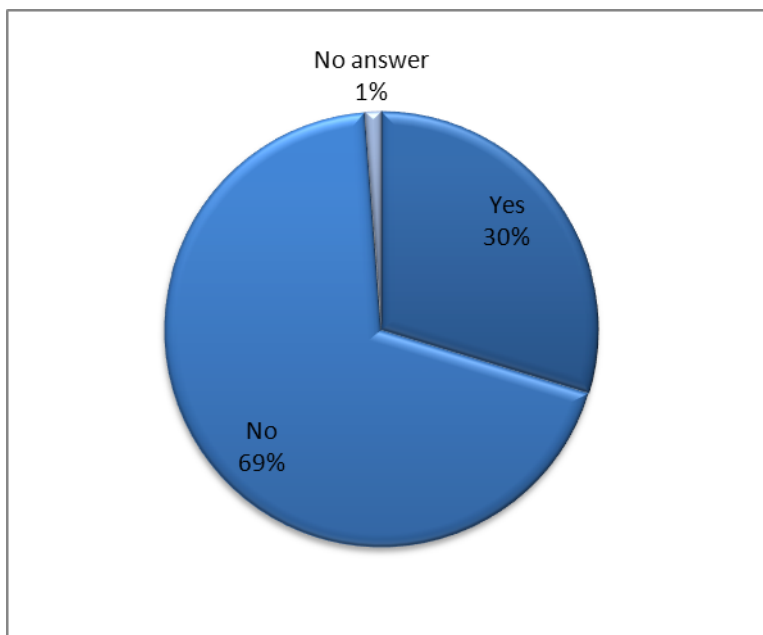


#### Comments

Again, rates are fairly static.

**5 The current rules on broadcasting court proceedings exclude all witnesses. If the rules were changed and expert witness testimony were televised, would you mind?**

Yes	49
No	114
No answer	2



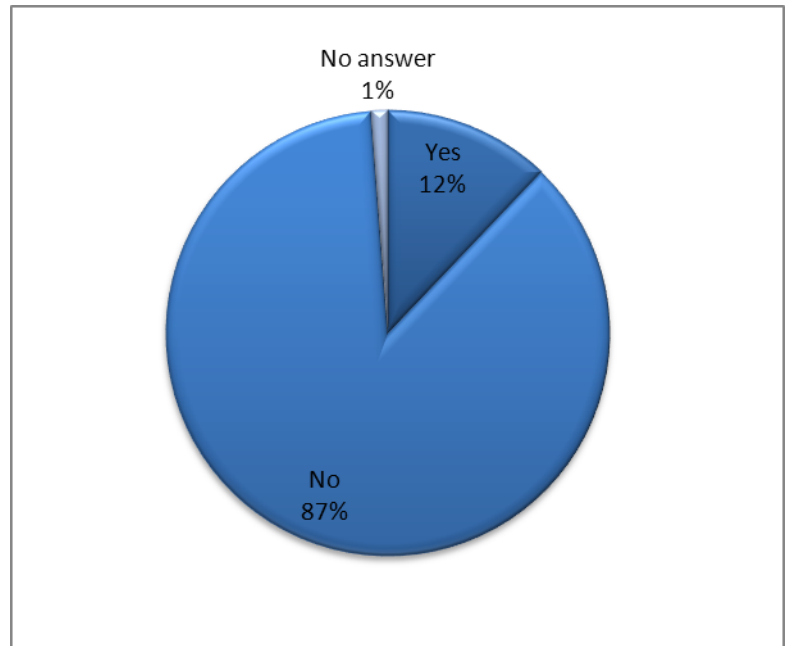
**Comments**

Just under one-third of respondents say they 'would mind' if their testimony were televised. At the moment, advocates' arguments and the judges' summing up, decision and (in criminal cases) sentencing remarks may be filmed in the Court of Appeal if the TV channels think they are sufficiently interesting to the general public (so straight away the editorial voice comes from broadcasters rather than from the court). Maybe experts would feel more confident after being trained to deal with the technicalities of filming.

Although the testimony of expert witnesses is not going to be televised, it is technically possible for their evidence to be cited in a judgment which can be broadcast.

**6 If expert witness testimony were televised, would it affect the way that you give your evidence?**

Yes	20
No	143
No answer	2



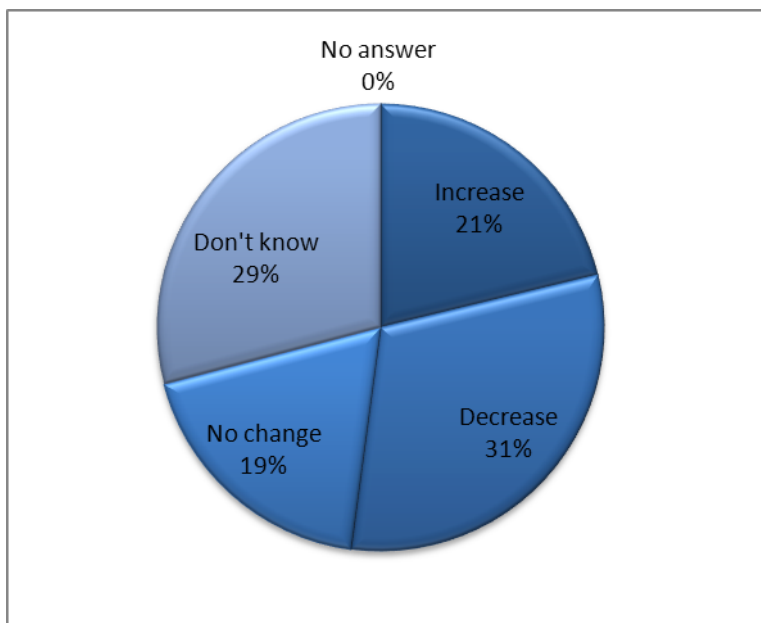
**Comments**

12% of respondents felt that being televised would affect the way they gave evidence; again, perhaps this suggests a need for training in this area.



## 7 Do you think budgeting will increase or decrease costs?

Increase	35
Decrease	51
No change	31
Don't know	48
No answer	0

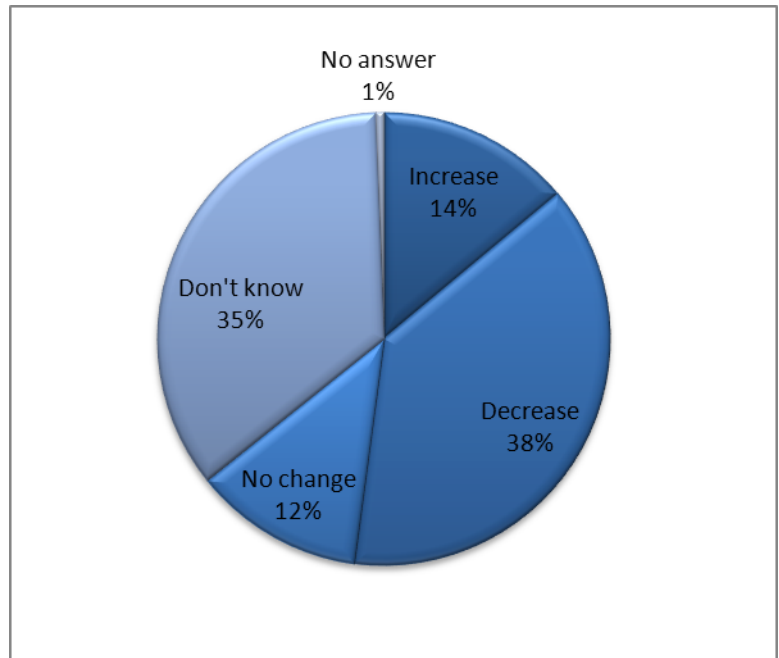


### Comments

Budgeting is intended to decrease costs but just 31% of respondents thought this would be the case. A requirement to itemise experts' projected expenditure, in order to submit an accurate estimate, might actually lead to more elements of work being taken into account. There is also a need for the legal team to isolate the main issues at the beginning of a case, and that process in itself may incur costs if experts are required to help.

**8 Do you think the Jackson reforms, including the new rules on disclosure, will increase or decrease costs?**

Increase	23
Decrease	63
No change	20
Don't know	58
<i>No answer</i>	1

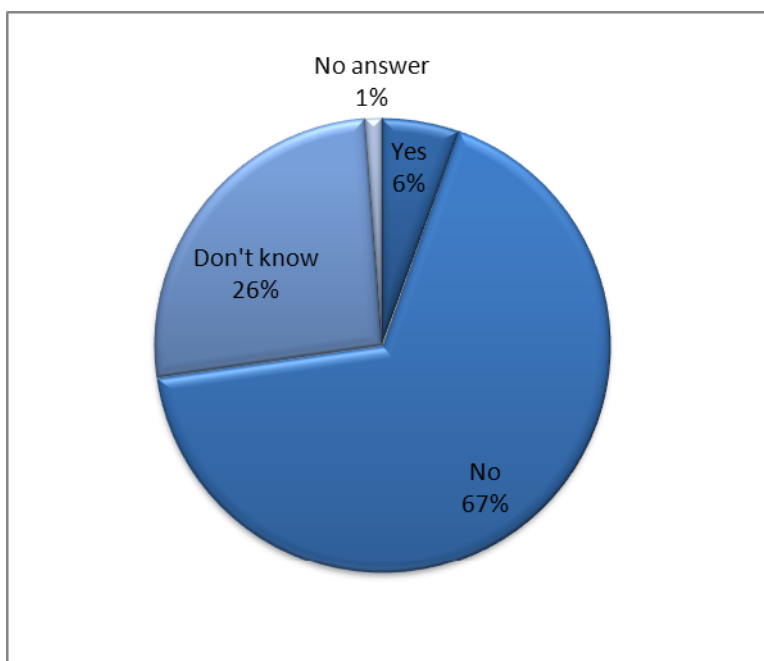


**Comments**

There is a lot of uncertainty on this issue, with only a minority of correspondents (just over one-third) believing that the Jackson reforms would attain their goal of cutting costs. Those who felt that costs would fall are balanced by those who did not feel able to make a prediction.

**9 Do you think the Jackson reforms as promised will increase access to justice?**

Yes	9
No	111
Don't know	43
No answer	2

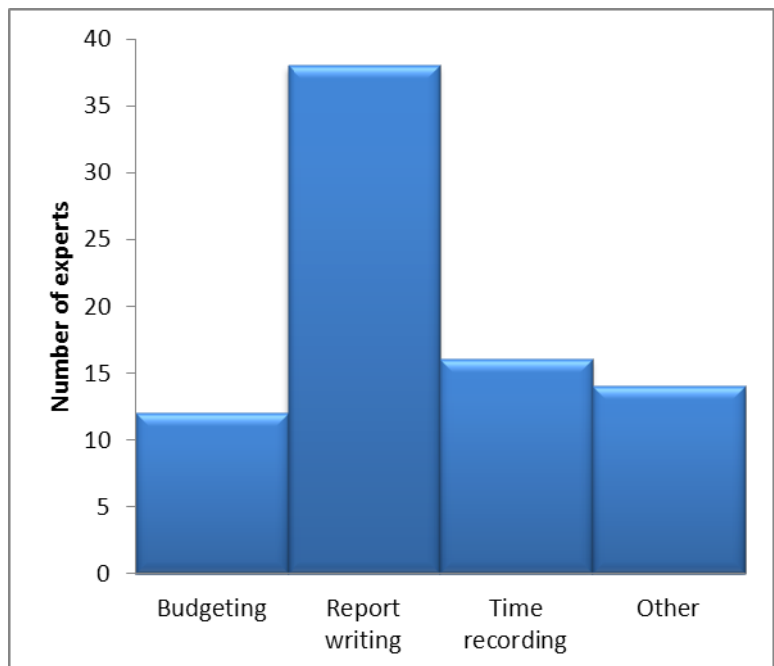


**Comments**

Although the point of the Jackson reforms is to increase access to justice by streamlining the litigation process and cutting costs, about two-thirds of respondents felt that this would not work in practice. Given that only the minority believed that costs would actually fall, this should not be surprising.

**10 Do you use specialist IT software for (tick all that apply):**

Budgeting	12
Report writing	38
Time recording	16
Other	14

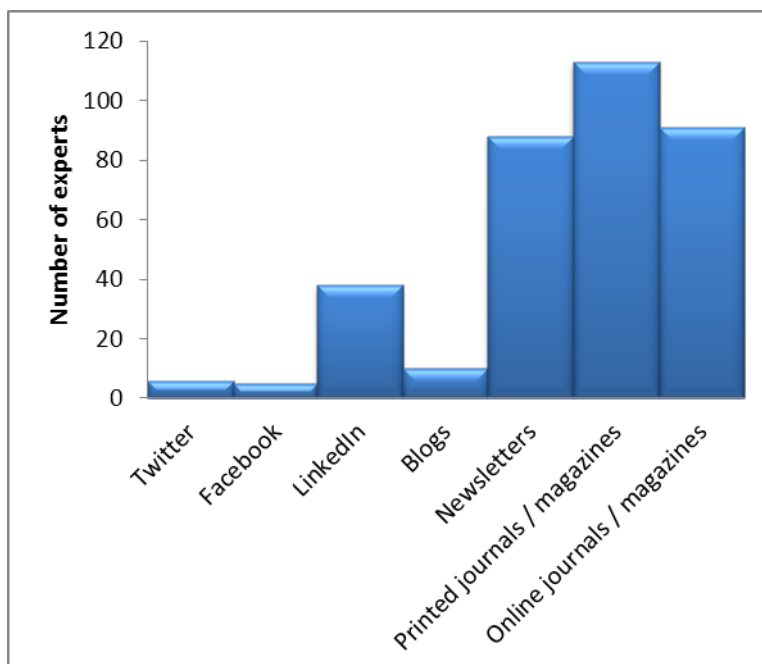


**Comments**

Despite the demands of budgeting and keeping precise records of time-keeping and expenditure to help with cost estimates in future, this question attracted a low number of respondents. Software can be helpful but maybe suppliers need to explain their wares and win confidence in this area.

**11 Which of the following do you use at least once a month, to keep up to date on expert witness issues? Tick all that apply.**

Twitter	6
Facebook	5
LinkedIn	38
Blogs	10
Newsletters	88
Printed journals / magazines	113
Online journals / magazines	91

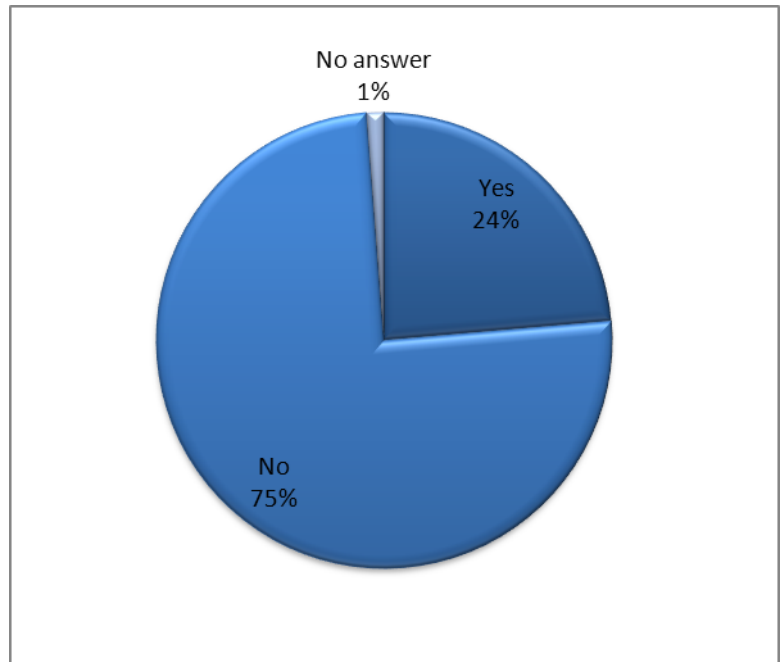


**Comments**

Social media are yet to win confidence among the bulk of respondents, although LinkedIn, with its sober reputation and extensive supply of special-interest groups, was the most popular in that category.

**12 Have you been instructed by a litigant in person?**

Yes	39
No	124
<i>No answer</i>	2



## 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 8 November 2013.

For more information on Bond Solon and training, either:

- Visit [www.bondsolon.com](http://www.bondsolon.com)
- Call 020 7549 2549
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