

The Bond Solon Annual Expert Witness Survey

9 November 2012

Conducted at the Bond Solon Annual Expert Witness Conference
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Sample: 146 experts.

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Experts Believe Jackson Reforms Will Lead to Injustices

Over a third of expert witnesses believe that the wholesale reforms to litigation and its funding proposed by Lord Justice Jackson will lead to injustices, a recent survey has found.

The annual Bond Solon expert witness conference survey in November found that 39% of expert witnesses believe cutting expert fees will lead to injustices. Around a third were undecided, while a smaller minority of 24% said they believe it will not lead to injustices.

Experts were also asked whether, in 'austerity Britain' experts should charge lower fees. In a sign that a majority of experts are resisting the era of cutbacks ushered in by the Jackson reforms, 61% said no. Sixteen percent said yes, while the remainder were undecided or did not answer.

Furthermore, asked whether cost management – a central tenet of the Jackson reforms - will lead to a decrease in experts fees, over a third said no. Twenty seven percent said yes while 32% were undecided.

Of those who do believe costs management will decrease their fees, fifteen percent said they intend to leave expert witness work altogether. A further 28% intend to decrease their expert witness workload. However, 15% intend to increase the workload and 42% said they will maintain it at their current level.

Those who believe costs management will lead to a decrease in their fees were also far more likely to believe that the reforms will lead to injustices. Seventy percent of this group said the reforms will lead to injustices compared with 21% of those who did not expect an increase in their fees.

However, in signs that experts are embracing the less adversarial direction that expert work is taking in a bid to control costs, a majority of 53% said that 'hot tubbing' – in which experts provide concurrent evidence to the court – will work. Thirty eight percent were undecided, while 6% said no and 3% did not answer.

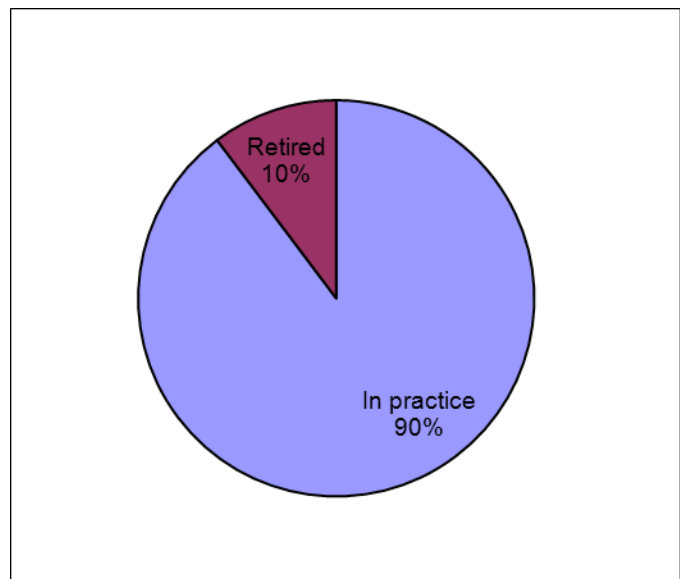
Meanwhile 68% of experts have been involved in experts discussions – held between experts ahead of a court hearing in order to narrow the issues in the case – and a majority 53% believe it leads to a quicker settlement.

Mark Solon, managing director of Bond Solon, said he was surprised more experts did not expect fees to decrease. "The thrust of Jackson is time, money and focus," he said. "Things should be quicker, with less expense, and focus on the things that matter.

"I think experts may be living in a world of optimistic unreality when it comes to their fees and the amount of work they will get in the future. They are a substantial cost in litigation and in the judiciary's firing line."

1 Are you:

In practice	131
Retired	15
No answer	0

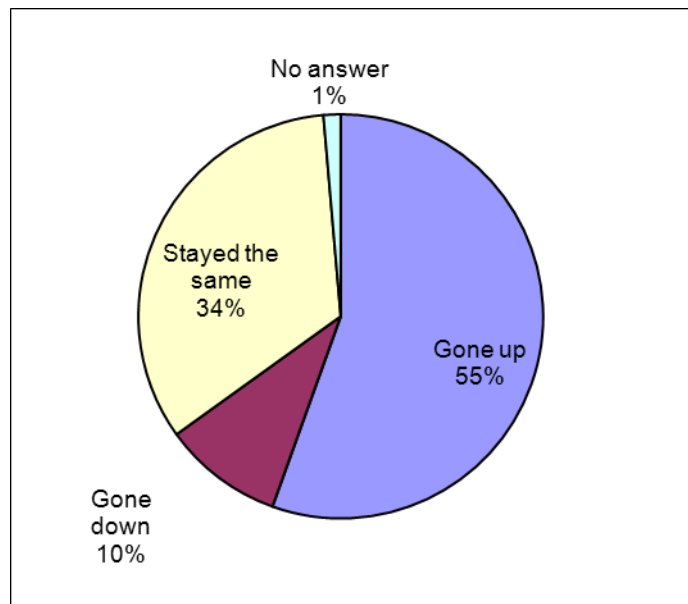


Comments

There are still experts who do expert witness work even though they are not currently in practice. Many solicitors are wary of instructing them as their knowledge may not be current.

2 In 2012, have the number of your instructions:

Gone up	81
Gone down	14
Stayed the same	49
No answer	2

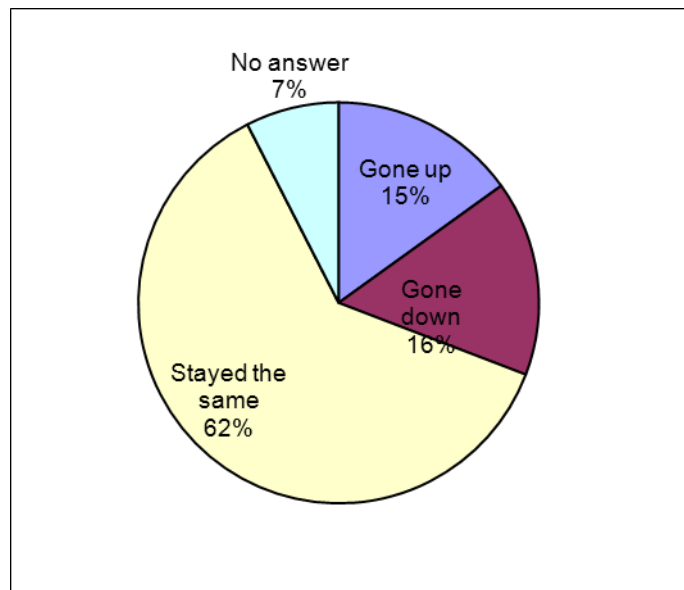


Comments

Despite the recession, litigation seems on the up as over half the experts responding say the number of instructions have increased.

3 In 2012, have your instructions to act as a single joint expert:

Gone up	22
Gone down	23
Stayed the same	90
No answer	11



Comments

For experts who saw a general increase in their number of instructions as indicated in answers to question 2, their instructions to act as a SJE:

Gone up 22%
Gone down 13%

4 What is your average hourly rate for report writing?

Average £165

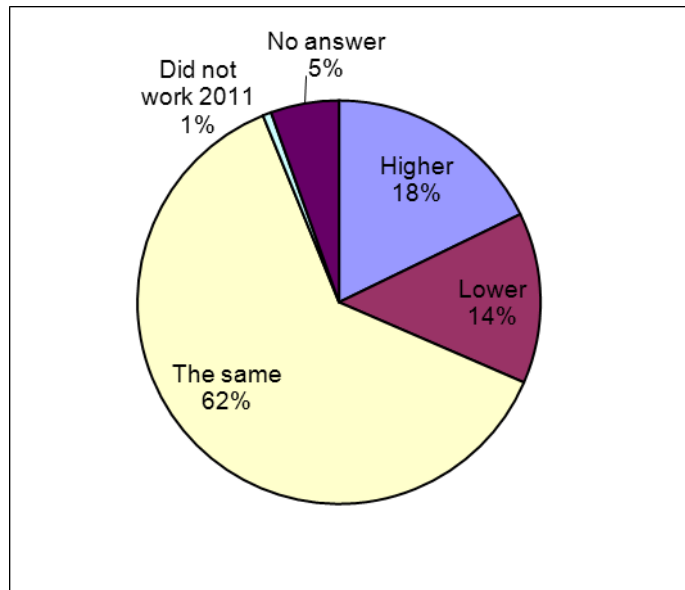
If we exclude the highest 2 values and the lowest 2 values, the average is not dramatically changed: £162

Lowest hourly rate £30
Highest hourly rate £500

15 experts did not answer this question

5 How does this relate to your average hourly rate in 2011?

Higher	26
Lower	20
The same	91
Did not work as an expert in 2011	1
No answer	8

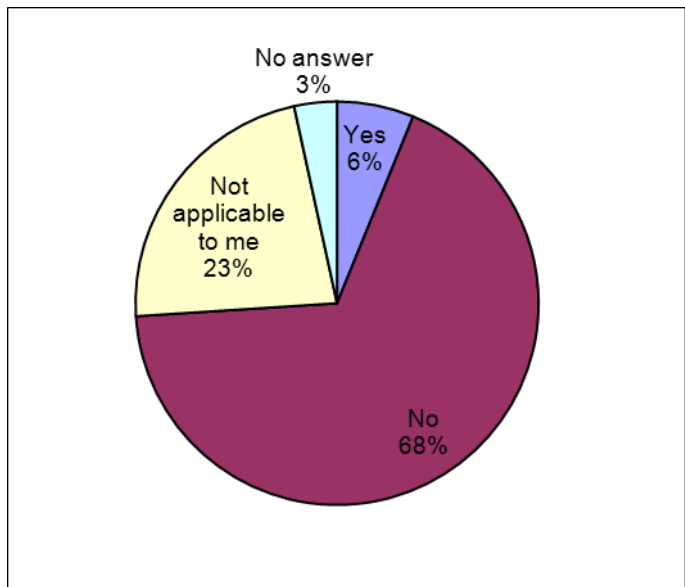


Comments

It seems fees for experts are generally flat.

6 In the last year, have you been involved in a case where there was an unfair outcome because one side had more resources than the other?

Yes	9
No	99
Not applicable to me	33
No answer	5

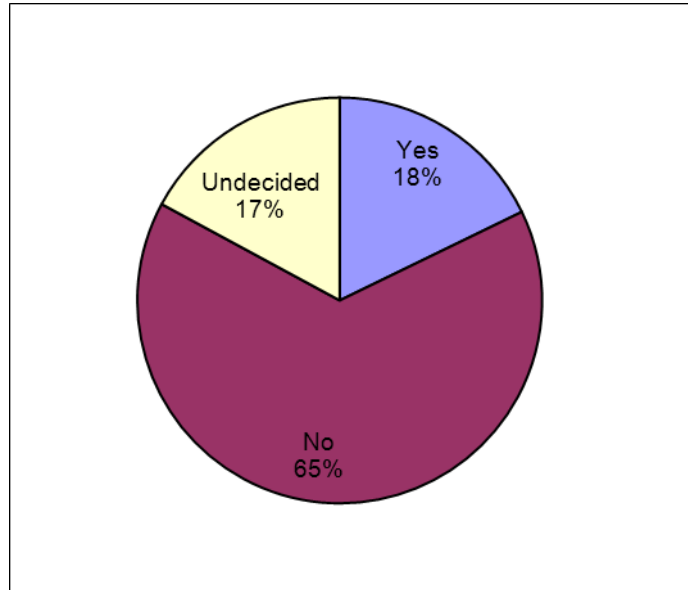


Comments

It seems there is equality of arms when it comes to expert evidence.

7 Do you think that when someone retires from their profession they should also retire from expert witness work?

Yes	26
No	95
Undecided	25
No answer	0



Comments

Of experts that are currently in practice:

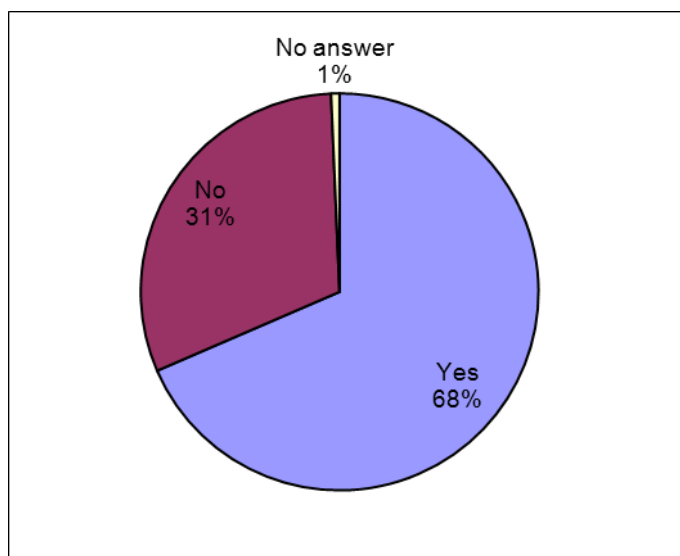
Yes 19%
No 62%

Of delegates that are retired, surprisingly 1 delegate said yes. The rest (14 delegates) said no.

Yes 7%
No 93%

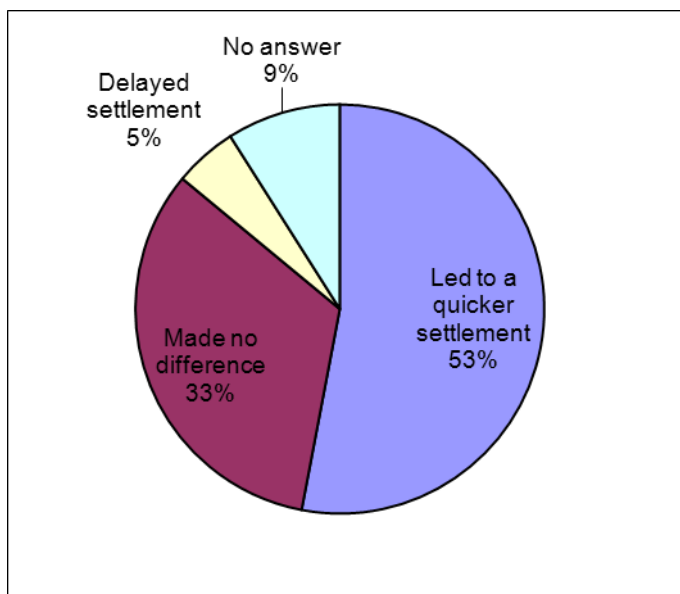
8 Have you been involved in experts' discussions in the last twelve months?

Yes	100
No	45
No answer	1



If yes, the experts' discussion(s):

Led to a quicker settlement between the parties	53
Made no difference	33
Delayed settlement between the parties	5
No answer	9

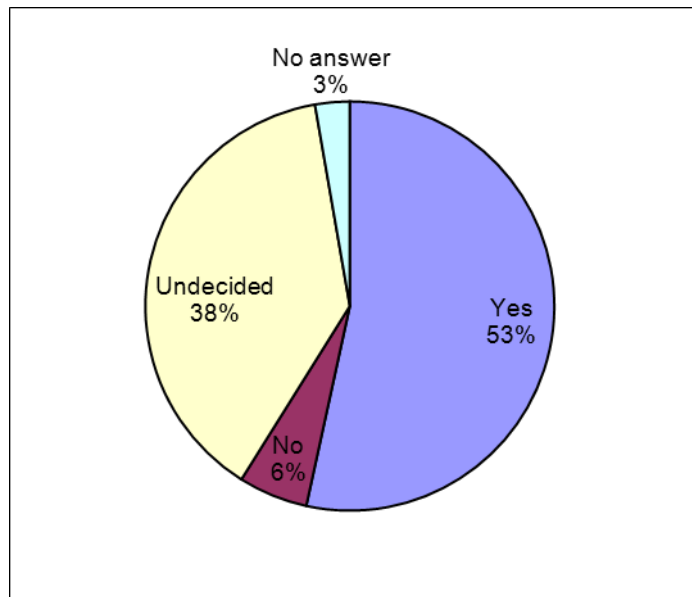


Comments

Experts generally consider that discussions are useful.

9 Do you think that hot-tubbing (concurrent expert evidence) will work?

Yes	78
No	8
Undecided	56
No answer	4

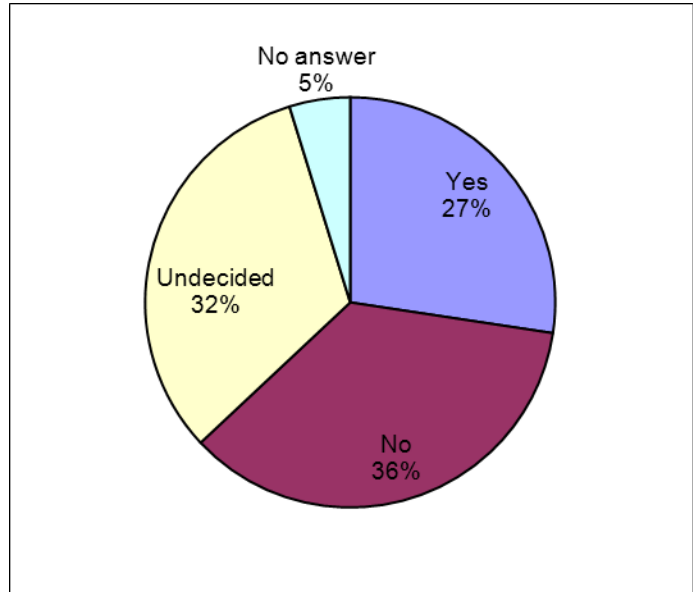


Comments

There have been so few actual cases of concurrent expert evidence that we can really say yet how effective this process is. Over half experts thought it would work.

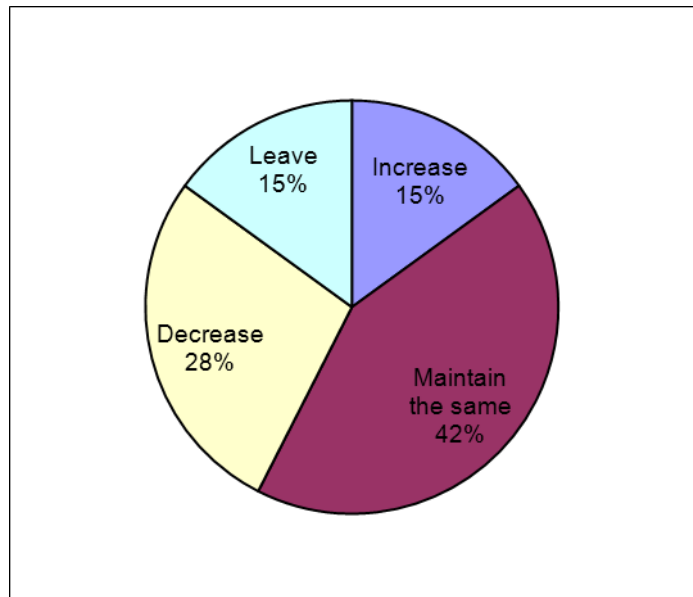
10 Do you think that costs management will lead to a decrease in your fees?

Yes	40
No	52
Undecided	47
No answer	7



If yes, are you likely to:

Increase your expert workload	6
Maintain the same expert workload	17
Decrease your expert workload	11
Leave expert witness work	6
No answer	0

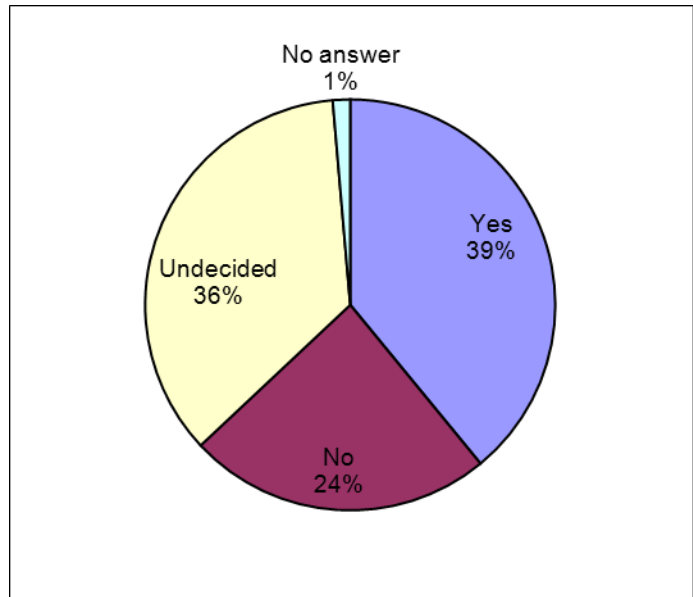


Comments

This gives a snap shot of views on the Jackson reforms before implementation in April next year.

11 Do you think that the Jackson reforms, reducing expert fees, will lead to injustices?

Yes	57
No	35
Undecided	52
No answer	2



Comments

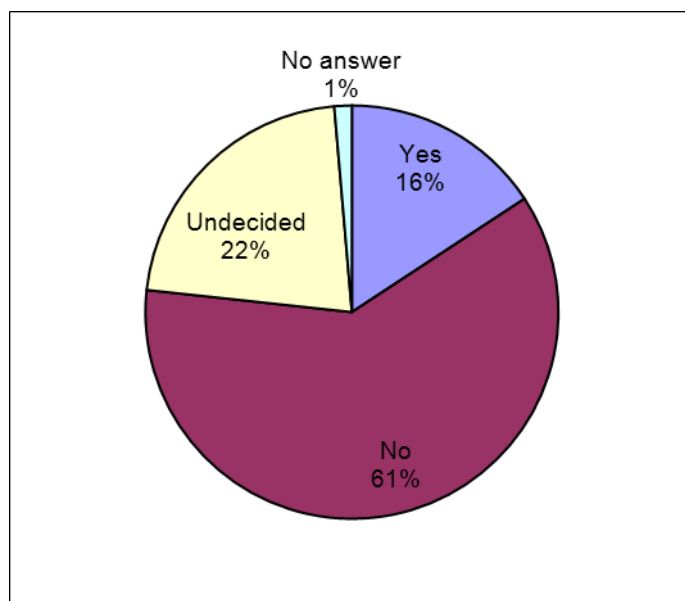
Experts who think they will be personally affected feel more strongly than those who do not. This could be due to self-interest or greater experience in the areas that will be affected.

Of experts who expect costs management to lead to a decrease in their fees, 70% think that the Jackson reforms will lead to injustices.

Of experts who do not expect costs management to lead to a decrease in their fees, only 21% think that the Jackson reforms will lead to injustices.

12 Do you think that in 'austerity Britain' experts should charge lower fees?

Yes	23
No	89
Undecided	32
No answer	2



Comments

Interestingly, the hourly rate for report writing of those who said yes (experts should charge lower fees) is £149. This is lower than the average hourly rate of those attending the conference.

The hourly rate for report writing of those who said no (experts should not charge lower fees) is £179. This is higher than the average.

13 What is the worst experience that you have had as an expert witness, including getting paid?

"Hostility" of attitude from an instructing solicitor.

80% of court appearances conclude in evidence (oral) not being given. Sometimes I can be in court 2 days waiting - then being dismissed!!

A claimant decided to be his own medical and legal representative in his case against a surgeon. After several letters to the managing judge I was able to fend him off only for him to report me to the GMC! I was reporting for the MDU.

A couple of solicitors, fearfully claimant oriented who have not liked opinion given, even though well argued and a) have been really disrespectful, unprofessional and rude and b) tried to get out of paying fees.
Some experts not wanting to engage in experts meetings.

A Local Authority refusing to pay for a report and commissioning another report from another expert (not expert in the salient area of expertise). L.A. convinced the Judge to go along with this (no payment for experts). (LSC paid the lawyers but no fee paid to expert).

Agency collapsing - non payment of fees.

Attempted (failed) expert witness meeting.

Attending an Appeal hearing, arriving late due to snowy weather and not being introduced on arrival.

Being "bullied" by my counterpart at meeting of experts, implying I was being partial, inconsistent and not logical, whereas (in my opinion!) he was the partial one. Also assured me that my arguments would not stand up in court.

Being accused of defamation by a claimant within PI work despite being instructed by the claimant's solicitor. Given no help from the instructing solicitor and ended up responding to very irrational and unreasonable requests, which demanded a great deal of my time and energy. Reported my report to the accrediting body and they are currently dealing with this - leaving a great deal of uncertainty.

Being asked for an immediate response following provision of additional documentation. Time pressures in general.

Being asked to have no further contact with an Iranian doctor, who was eventually erased from the medical register - A predictable outcome.

A competent surgeon who whistle blew what about a colleague - erased from the medical register. I got the strong impression from events that he had been "stitched up", but I do not understand how.

Being bullied by instructing solicitor to change my opinion - I stuck to my guns!

Being called to court without reason then being told that I am not required at the last minute after arriving late.

Being expected to firm up opinion without real justification.

Being expert witness for GMC in a fitness to practice hearing - being cross-examined for three weeks!! I began to doubt my own competence!! Got over it though!

Being in court as an SJE - isolated and then defendant's lawyers rejected my evidence, refused to pay me. Had to fight for my fees - this was pre Woolf though (1998).

Standing in the "witness box" at a Bond Solon Cross Examination Day - worse than the real thing.

Being interrupted and shouted at in a family court by a judge!

Being put under severe pressure by my instructing solicitor to change my recommendations to achieve a higher value settlement for his client. Consequently me evidence was not used. Being in a case conference where the claimant brought along 5 family members, all of whom wanted to question me / criticise me, and none of whom had any understanding of the issues. Counsel was ineffective at managing the situation.

Being subject to an attack of a personal nature during a meeting of experts.

Being unjustly referred to the GMC just because the Defendant was unhappy with the outcome.

Chasing payment!!

Cases that become long and drawn out.

Client refused to pay because he didn't like the report - it was not what HE wanted to say!

Having a client who was a litigant in person.

Conducting a meeting of experts where the other "expert" changed statements.

Cross examination by an aggressive barrister, with the Judge* in a hurry and impatient to leave court. The case unfairly settled IMHO against the Claimant, who in my opinion had a sound case. (* who had been allocated the case at the last minute.)

Currently being asked to reduce my fee because as a result of my report the claim was felt to be devalued.

Dealing with an opposing expert who did not understand their role or their expertise (or rather its limits!).

Delay in payment. Average for 2012 4 months delay.

Delayed closure through joint reports - though not against this.

Delayed payment - waiting more than 12 months for monies.

Delayed payment of fees

Delayed payment. Medico-legal Agencies declaring bankruptcy.

Delays in getting paid are a frustration >3/4 months often, otherwise nothing untoward so far.

Difficult time in cross examination due to lack of adequate preparation.

The opposing expert claimed a huge experience of a rare complication that I didn't really believe. He said he dealt with more than 12 cases per year whereas I only saw 1. It was settled out of court, so the issue never arose.

Driving 180 miles through snow and arriving at Court to be told case had settled the night before and they had forgotten to ring me and let me know and they quibbled about my fee note!

Failure of solicitors to communicate in a timely manner.

Feeling compromised when medical experts push an opinion on which you rely as a care expert then changing their opinion pre-trial.
Similarly being pushed by QCs to cost care at a level you are not entirely comfortable with and how you express this which leaves you uncompromised.

Firm declining to pay as their client had died.

London Country Court a) mal administration of a court case involving small claims court non-payment of fees b) non-payment because report was distinctly less than favourable to instructing side.

Gamesmanship of QC in cross examination using Racist terms and Judge did not stop him. I was criticised for pausing as I expected the Judge to interrupt.

Getting paid - LSC.

1) Solicitors didn't send in receipts so didn't have access to "prior authority" funds - I went to Small Claims and judgment was against sol. - still didn't get £ and the various organisations involved with sol's competency + LSC not interested. The sol went to N Cyprus. This was a family law case in which I was SJE.

2) LSC paid professional fees but queried my travel (I originally accepted as it was Insurance case so charged 1/2 hourly rate for travel time and costs included). They wanted petrol receipts (illogical) and my revised invoice (£40ph + 45p per mile) came to £30 less than originally... 9 months later I'm still waiting to be paid my travel.

Getting paid by some solicitors, especially those in the Irish Republic. Received payment yesterday for report and account submitted in 2007.

Getting paid for the work done. Seeing incorrect results issued by another laboratory, who were originally chosen simply because they were cheaper.

Giving an "Overview Report" before all the facts are made available.

Going to distant court (by train and overnight) to find I had the wrong file. The police force (my client) had submitted 2 cases close together with no defendant names. They had discussed issues arising on one case and the defence position. I assumed this was the case going to court (no ref. no. or date of accident on the warning). I gave evidence without the file but ready to explain to the court - didn't prove necessary - relief!!

Have not had one.

Having a judge prefer the opinion of a maverick US expert over an expert in good standing in the UK.

Having my credibility questioned by claimant when the evidence of the case and my report was not in question.

Having to sue instructing solicitor for fees which client had paid to him to pass on to me.

Solicitor not passing on my letters requesting meeting to their client which led to potential claim for producing report without considering issues she wished to raise. Claim immediately dropped by client who is now making complaint against solicitor.

Having to threaten to report a firm that had me submit a report and a supplementary, and then despite multiple reminders over the course of the next 18 months wouldn't pay. After my more aggressive letter they paid within a fortnight.

Having to visit 37 agreed visual impact viewpoints over a 15km radius area including a walk through a working china clay quarry on a cold day in October. Very long day!

Hostile cross-examination. Not being paid by an agency.

Hostile experts' discussions, interference from lawyers during preparation of joint experts' reports. This all took place prior to BS training and during my first experience of expert witness work.

I acted as a single joint expert for TCC, served my report and one party went to the other party's solicitor's office and shot the solicitor in the head. He died a few weeks later. The party who had shot the lawyer handed himself in and wrote me threatening letters from prison. I have only received payment of about half my fees.

I assisted the GMC as an expert on behalf of GMC which had received a complaint from a member of the public against a doctor. With my assistance the GMC won the case and the doctor (defendant) was given a notice. The doctor then became unhappy and complained about me to the GMC. The GMC then had to investigate the complaint and contacted my employers, etc. as usual. Thankfully within 2 months the GMC concluded that there was no case against me.

I have no complaints.

I haven't had any terrible experiences yet! I've been doing it for 17 years.

I prepared a report on a whiplash claimant that was not 'helpful' to the claimant's solicitors, who threatened to withhold my fee as a result.

Another shocking experience is having to be cross examined by a barrister (family case) on information in a file that I had not been supplied with.

I took a case based in Ireland - gave preliminary advice - ended up spending 3hrs on it - not what the client / solicitor wanted to hear - never received payment! Live and learn.

I was once involved in a case where I provided costs for artificial limbs and rehab costs for a very badly injured person. A year or so after my report the patient had significantly improved after having several months of intense physio and rehab treatment. I therefore change my view, prescriptions and costs due to the increase in mobility. The insurance company were very displeased and said they didn't want to use my services again due to the increase in costs and change of view.

In general delays in payments. Solicitors file reports / 'lose' fee notes / wait for reminders until paying

Judge forgetting his own order and agreeing with father, in private law case, that I had damaged his daughter by disclosing Findings of Fact (re. sexual abuse of step sibling) even though the order and my Sol specified that I should disclose findings to the child?! Judge asked for letter of apology and if didn't receive this I would be facing contempt of court proceedings. Had to hire my own lawyer to then represent me. Thankfully the lawyer reminded Judge of his order and matter dropped. Where is the Clinical Governance around Judges??

Longest period of overdue payment was 6 months, no interest paid despite being clearly stated and agreed to in the Terms of Engagement signed by the Partner. Joint Statement meetings have been extremely challenging at times due to assumed superiority, biased reporting of note-taker, brow beating for other side. It's a learning curve!

LSC not paying fees agreed by solicitor.

Main problem - occurring more frequently - is getting paid!!

My report, written for another purpose, being used by solicitors for the CICA. Additional questions were asked and invoiced. My opinion changed on the basis of (evidential) further information - obtained independently. Solicitor was quite nasty and has not paid. Learning points / questions: importance of instructions; how do I control what happens to my report?

Non payment x2 after firm Halliwells went bust.

None

None so far!

None so far, fingers crossed.

Non-payment of fees by solicitors.

Not getting paid at all.

Not getting paid for 12 months. Letters/reminders being ignored.

Not getting paid in divorce case

Not getting paid!!

Not getting paid, obstacles in single joint work - too much hassle and stress in trying to negotiate settlement.

Not had any bad experiences.

Not paid on time and not paid at all

Occasional difficult Experts to deal with in joint meetings in terms of not being willing to discuss points, not being willing to add analysis to their recommendations so it is impossible to discuss in any depth.

Length of time payment if forthcoming. 3) Experts who over egg the pudding with no clear explanation for inflated costs.

One company not paying fully.

Ongoing struggles to get paid despite signed Terms and Conditions - up to 4 years - have to employ an accounts manager to hound solicitors - and I have had to sue four times to get paid (successfully). It does not create a good impression of solicitors who are eager to have deadlines met - often at unreasonably short notice - but then delay payment.

Other expert being "instructed" not to agree points.

Pages, and pages, and pages of part 35 questions.

Perennial problem of late and sometimes non payment.

Decision in care proceedings that Judge acknowledged would not have been made by most other judges and which several months afterwards in discussion with Children's Guardian + Guardian's Solicitor was extremely difficult to explain. That judge still sits - but no longer in care proceedings.

Poor communication with solicitors re: instructing.

Poor management of client expectations by solicitor led to conflict with the expert and client, resulting in having to accept an almost unreasonable discount on fees to avoid default.

Receiving instructions and papers then realising there is evidence I should see and evaluate e.g. crime records. Then told that it's not for me when I request, with no reasoning at all. I explain clearly why my diagnosis of personality disorder or ruling it out. This infringed the integrity of my medical practise. Lawyers withdraw the case and refuse to pay for 2 hours of my time wasted.

Rudeness and bullying by the solicitor.

Sheriff saying he didn't believe me simply because he could not grasp what I was trying to say.

So far, have not had a very bad experience - as yet!

Solicitors cheating experts of fees is still common.

Solicitors failing to pay on time.

Solicitors going out of business owing money.

Solicitors who don't know what they want.

The expert instructed by the other party introducing new material and explanations during one-to-one discussions that led to delays agreeing a joint statement and a statement that contained considerable content that should, in my view, have been in a supplementary (or the original) report of that person. Because of this, and the deadline for the completion of the joint statement, I felt that I had been ambushed and the cause of justice unfairly served.

The IMS disaster, when a firm which commissions medical reports collapsed. Luckily the solicitors reimbursed most but not all of my fees.

The medicolegal companies that have gone bust in past. Loss of income, no immunity as an unsecured creditor. IMS was one of them.

The other side's expert appeared to be irrational and it was not possible to enter into useful discussions with him.

The worst experience that I have had is the inequality between how prepared the prosecution is in comparison to the defense. Defense evidence is always on the back foot.

This year's was extreme difficulty in contacting a defendant's expert (surprising defendant chose them) to do a joint statement. After 6 months, having had similar difficulties with this individual in the past, I wrote apologising to the court and both parties instructing solicitors. This got the job done (by email) the party has yet to speak. This is an example of unprofessional behaviour which is luckily decreasing. I will send him Odedra and Ball (2012)! Thanks Jason.

Tremendous delay in getting paid. In one case I had to refer a firm of solicitors to the small claims court. I was awarded an extra £100 for the inconvenience this had caused me plus interest.

Usual thing barristers not fully briefed in lower courts.

Usually relates to giving evidence, particularly in criminal arena, where the truth is irrelevant and Barristers exert energy to either discredit or confuse you. Over a number of hours testimony and clever Barristers, it can be very tiring and even upsetting / annoying.

Watching a defence expert (who was speaking outside of her expertise) speak way out of turn.

Watching other so called experts giving opinions which were clearly inappropriate and way outside their area of expertise.

When a child is removed from a family when perhaps in other circumstances it could have been avoided.

When my report was disclosed to the court my opposing expert (without the knowledge of her instructing solicitors) took it to her own solicitor and issued an action of libel and defamation against me. This action further complicated the case and trial as my evidence had been disclosed, I was served with a writ, and the Judge had ordered a joint discussion between experts which could not be held without prejudice or putting me at further threat of libel. My own lawyers cited immunity of suit in Jones vs Kaney proving me to be non-libelous and free to express my unbiased opinion.

Worst experiences are usually in the witness box! And that's what we're paid for. Getting paid seems sometimes to depend on persistently demanding the fee owed and - occasionally - recourse to the small claims court. The latter never fails.