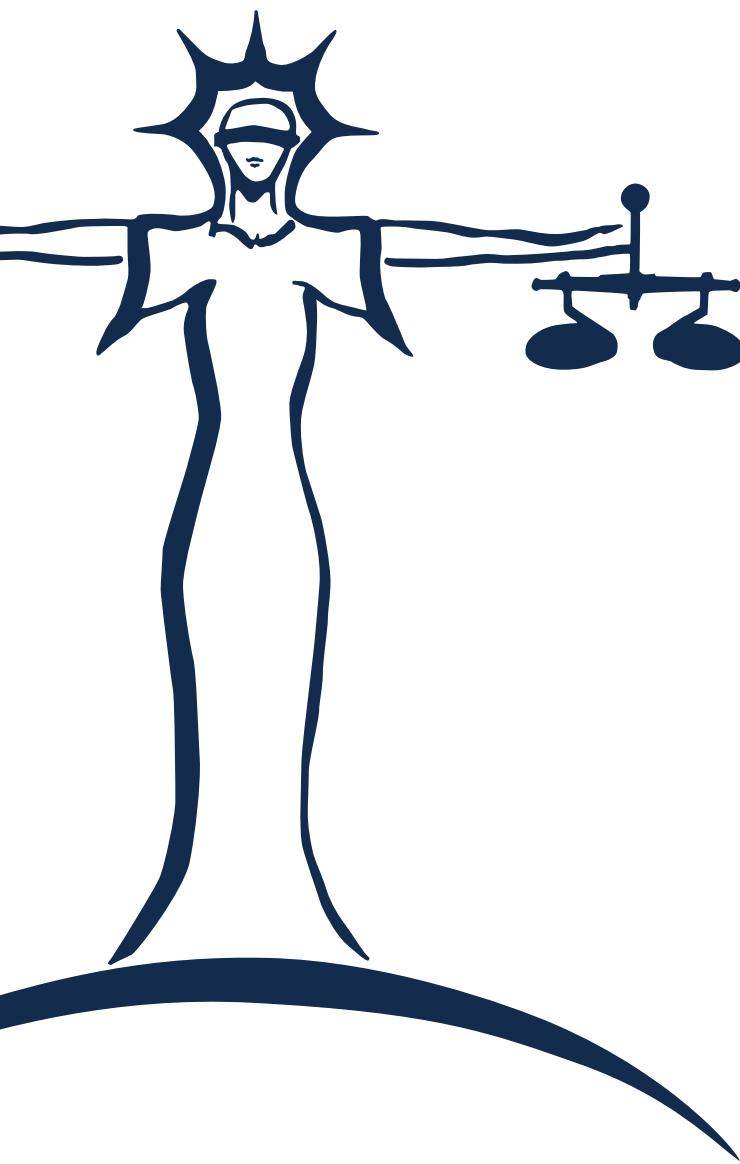


# ANNUAL EXPERT WITNESS SURVEY REPORT 2018

9 November 2018

Annual Expert Witness Survey in  
collaboration with *The Times*



THE  TIMES

BOND  
SOLON  
Wilmington Professional

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## Number of respondents

**607**



**Number of areas of  
expertise represented**

**OVER**

**35**

**Start  
Date:**

**01**

**10**

**18**

**End  
Date:**

**15**

**10**

**18**

"The Times and Bond Solon Annual Expert Witness Survey 2018 was conducted online from 1<sup>st</sup> October 2018 to 15<sup>th</sup> October 2018. 607 experts completed the survey making it one of the largest expert witness surveys conducted in the UK. The report provides the analysis of the results from the survey. I hope you will find it interesting and useful.

I would like to thank *The Times* newspaper for their collaboration with us. Thank you also to the expert witnesses who completed this survey."

Mark Solon

*Mark Solon*

# Question 1: What is your area of expertise? Please select the option which is closest to your area of expertise. Please only select one.

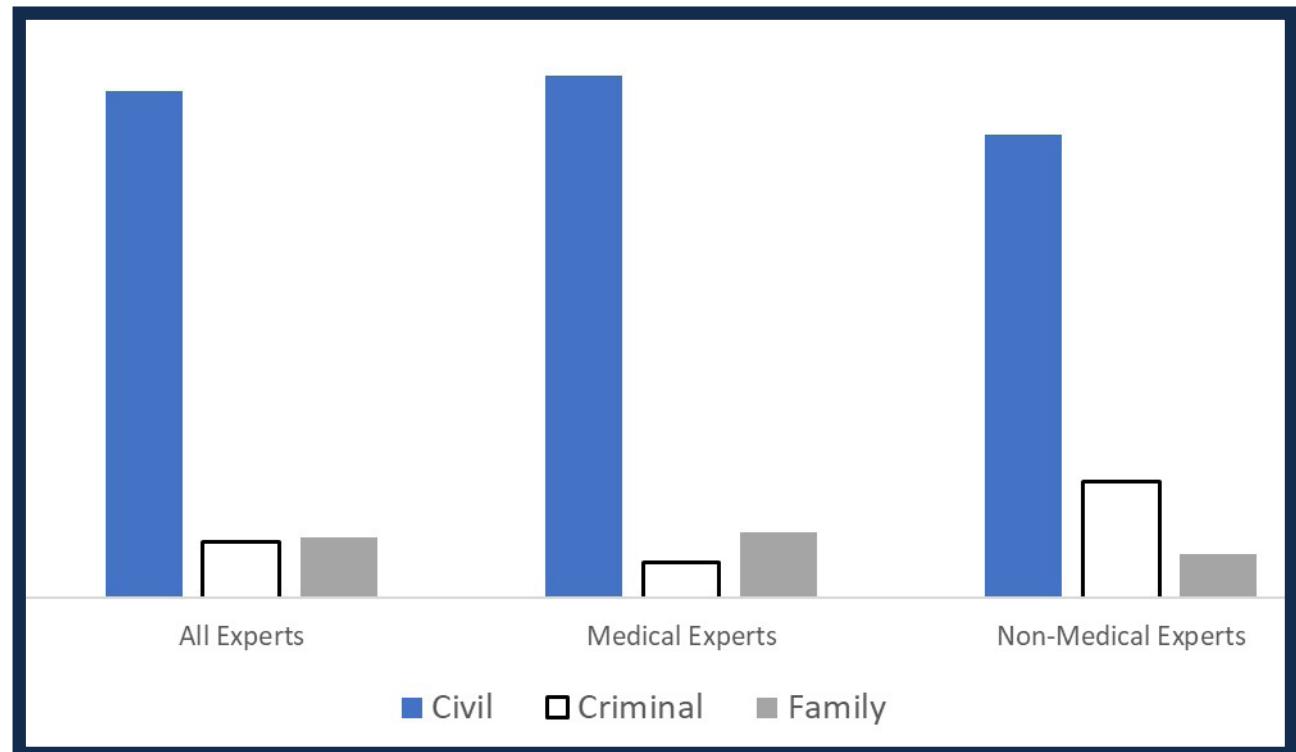
Medical - List of areas of expertise	Number of respondents	Non-Medical - List of areas of expertise	Number of respondents
Chiropody and Podiatry	1	Accountancy	17
Cosmetic, Dermatology, Hair	9	Agricultural / Environmental / Animals	5
Ear, Nose, Throat	3	Architectural	7
Emergency Medicine and Anaesthesia	14	Computing / Technology	6
Eyes	7	Engineering	29
Forensic Medical Examiner / Police Surgeon	1	Financial	7
Gastrointestinal and Urinary	3	Fire	5
General Medicine / Surgery	20	Fraud / Theft	2
GP	31	Health / Safety / Occupational / Use of Force	12
Heart and Lungs (cardiothoracic)	7	Marine	7
Immunology, Diabetes, Hormones	1	Other	24
Musculoskeletal and Prosthetics	6	Science / Forensics	18
Neurology	11	Social Care	2
Nursing / Midwifery	30	Surveying / Building	20
Obstetrics, Gynaecology and Fertility	10		
Occupational Health / Therapy	16		
Oncology and Treatment	3		
Oral / Dental	16		
Orthopaedics / Trauma	42		
Other	85		
Paediatrics	8		
Psychiatry	29		
Psychology	87		
Speech and Language Therapy	6		

Total number of respondents: 607

## Question 2: Which type of cases are you instructed in the most?

81% of the experts surveyed are mainly instructed in civil cases.

10% of the experts surveyed indicated that they are mainly instructed in family cases. These results may reflect the sharp decline in the use of experts in family court cases since the introduction of the new Family Procedure Rules in January 2013. 9% of the experts surveyed are mainly instructed in criminal matters.



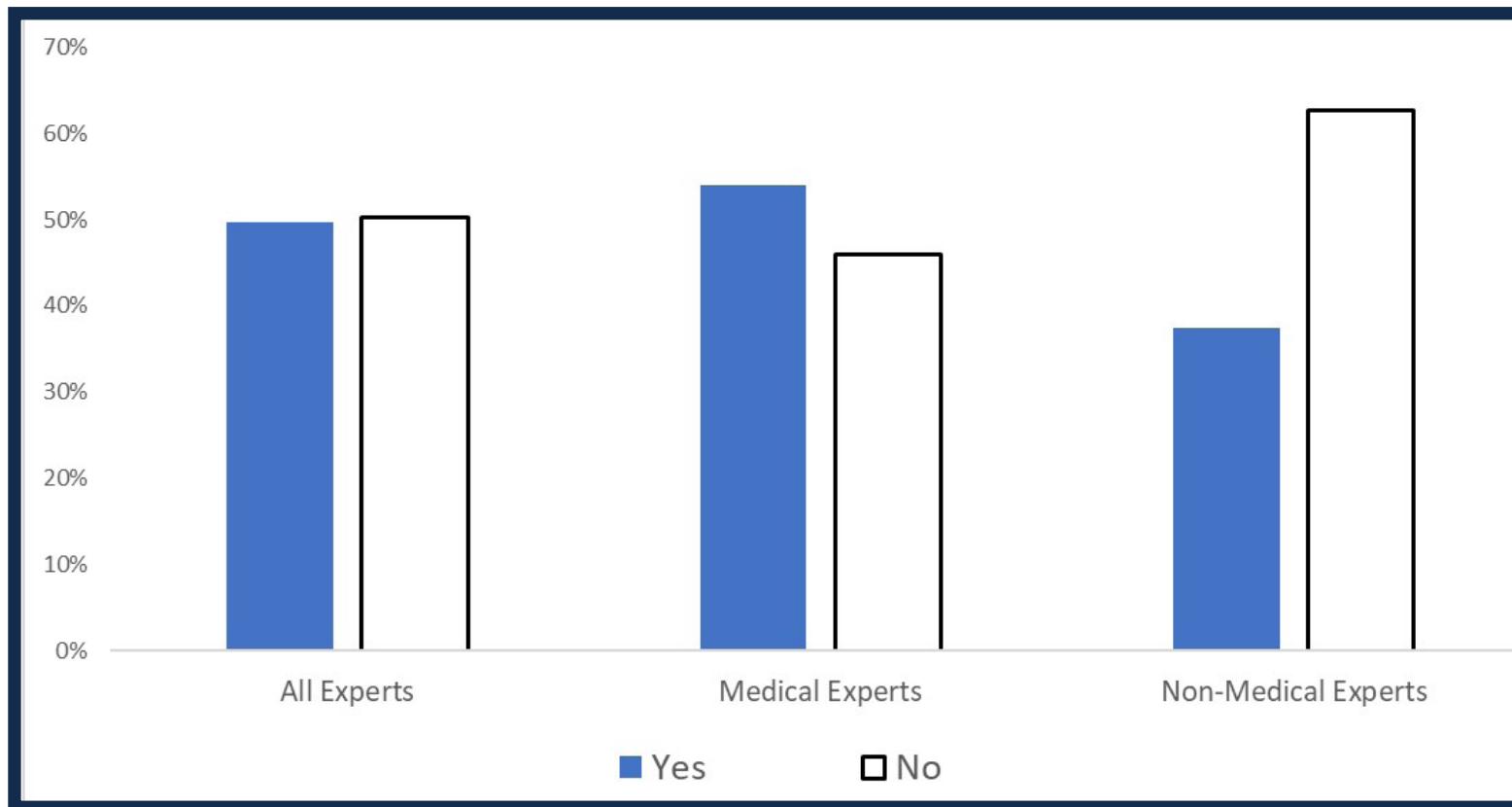
Total number of respondents: 607

## Question 3: Do you accept legal aid cases?

Expert witnesses who accept or do not accept legal aid cases were evenly split.

The ability of everyone to resolve their legal issues is vital to a just society. Yet experts are not obliged to accept legal aid cases.

The government is currently undertaking a review of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) to assess the impact of the policies implemented under the 'Legal Aid Reform' (LAR) and 'Legal Aid Transformation' (LAT) programmes.



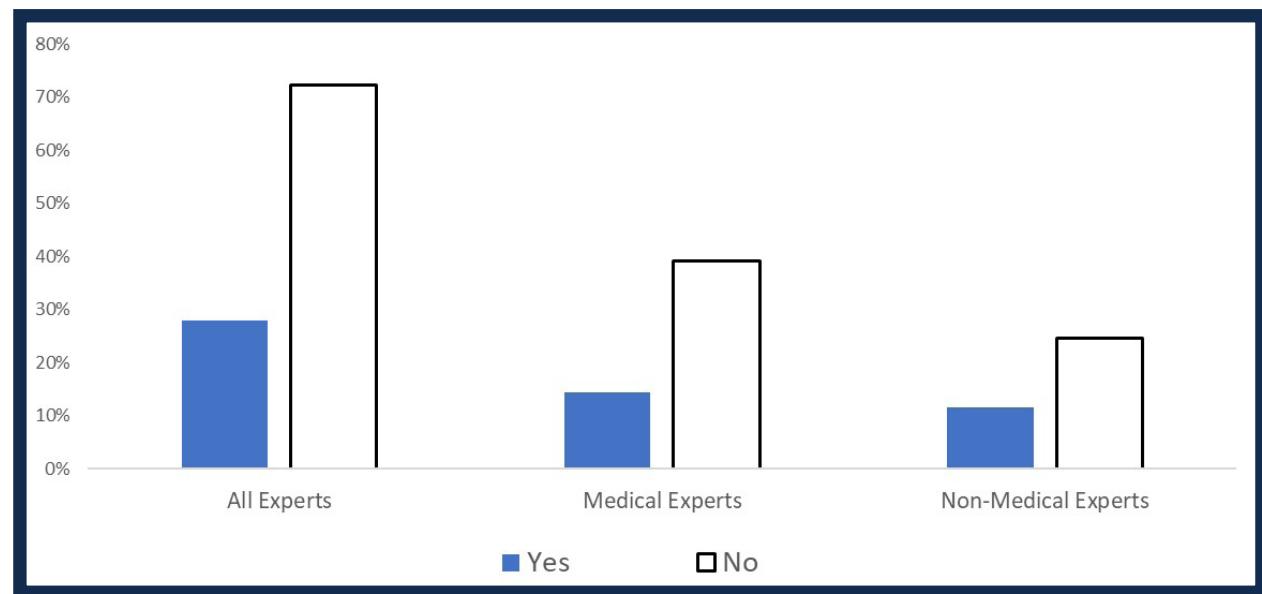
Total number of respondents: 607

## Question 4: Would you continue to work in legal aid cases if expert witness fees were further reduced?

72% of the experts surveyed said they would stop doing legal aid work if expert witness fees were further reduced.

There have been significant cuts to fees for legal aid work over the past few years. The government's own statistics show spending on legal aid fell from £2.6bn in 2005-2006 to £1.5bn in 2015-2016. The sharpest decline came the year after Legal Aid, Sentencing and Punishment of Offenders (LASPO) came into force. (Source: Legal aid statistics: July to September 2017, (2017). [online] Available at: <https://www.gov.uk/government/statistics/legal-aid-statistics-july-to-september-2017>)

This could have a significant effect on fairness in the system if those with money can employ the best legal teams and experts, compared to those who are legally aided. Another consequence of the cuts to legal aid is the increase in the number of litigants in person who cannot afford to pay for their own lawyers and are not entitled to legal aid. Litigants in person pose real problems for experts as they do not know the complex rules around experts and particularly how to instruct them properly. Also many lay people do not understand that the duty of an expert witness is to the court not to the person paying the bill.

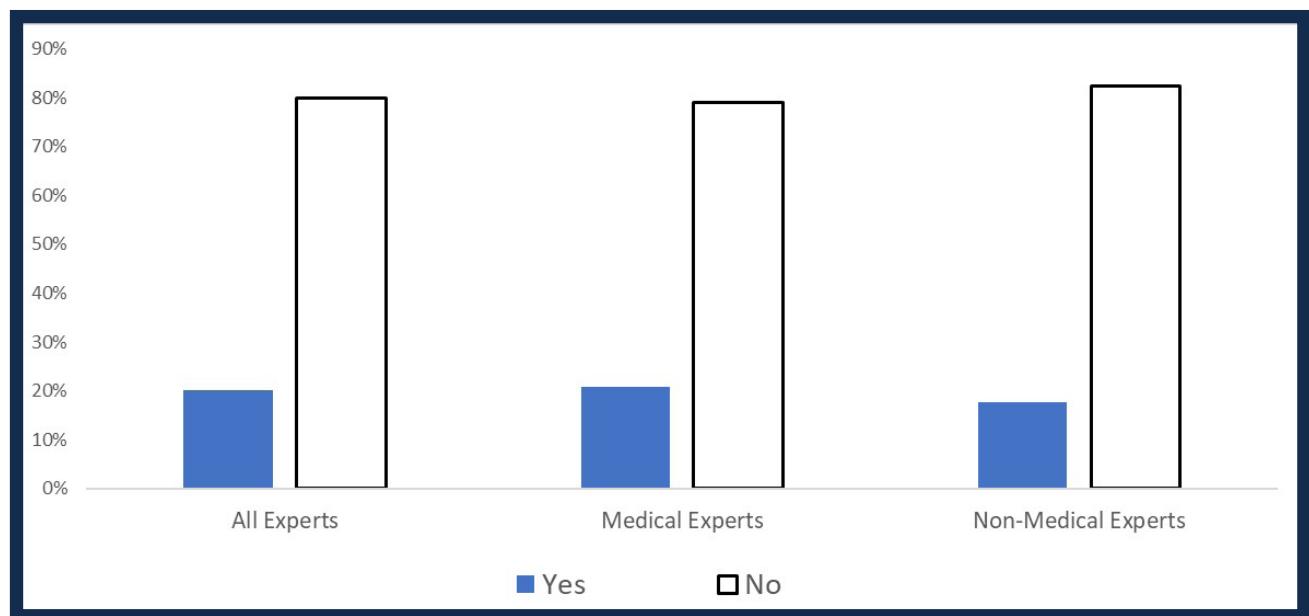


Total number of respondents (of those experts who would accept legal aid cases): 298

## **Question 5: In the future, do you think many parts of your expert witness work could be done using Artificial Intelligence (AI) systems reducing the need for full reports as it exists now?**

80% of the experts surveyed do not think that many parts of their expert witness work could be done using Artificial Intelligence (AI) reducing the need for full reports as it exists now.

AI refers to technology performing processes that require human intelligence. The Artificial Intelligence (AI) revolution has now arrived in the legal sector. For instance, AI-based technological solutions have been developed to assist with the e-disclosure process. Lord Chief Justice says: "The ability of computers to analyse vast quantities of material to enable accurate predictions in many areas of human activity is one of the most exciting developments of the age." (Source: Lord Chief Justice hails potential of big data and AI to reduce litigation and promote settlement, (2018). [online] Available at: <https://www.legalfutures.co.uk/latest-news/lord-chief-justice-hails-potential-big-data-ai-reduce-litigation-promote-settlement>)

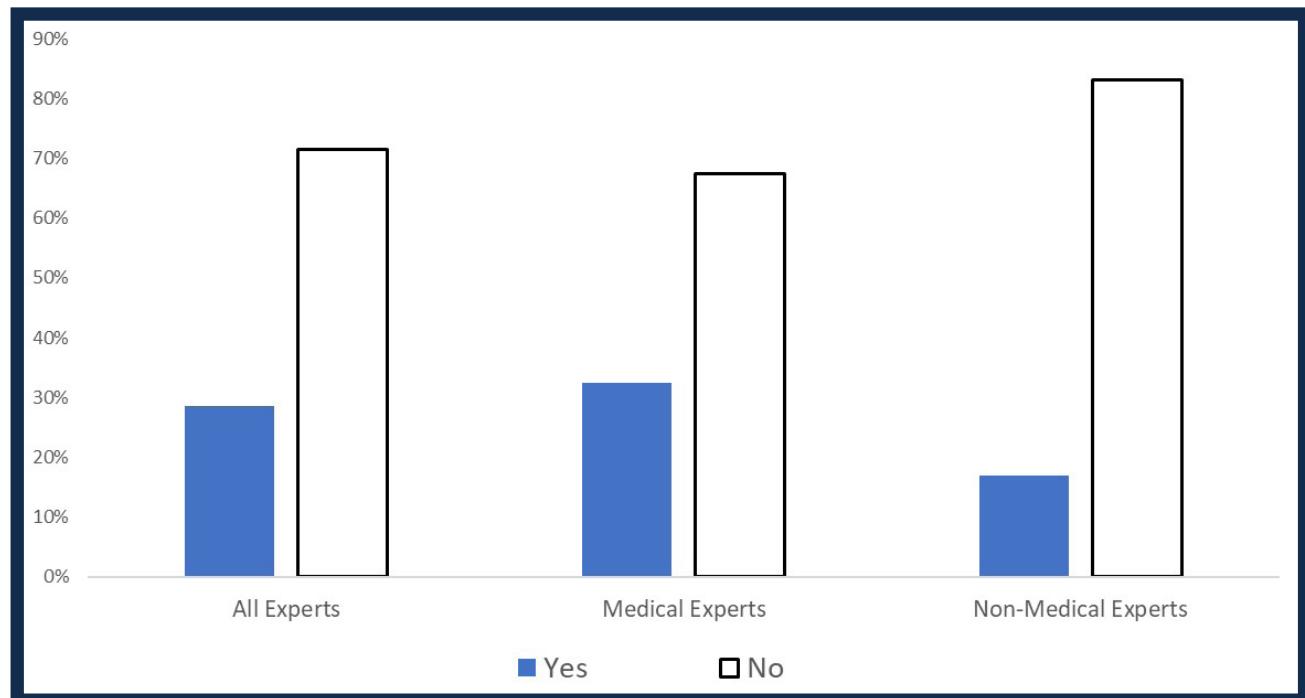


Total number of respondents: 588

## **Question 6: In the light of ministers' plans to extend digital hearings to more trials, do you think that this will lead to the decline, or the end, of expert witnesses giving evidence?**

As in last year's survey, the majority of the experts surveyed do not believe that the increased use of IT in courts will lead to the decline, or the end, of expert witnesses giving evidence.

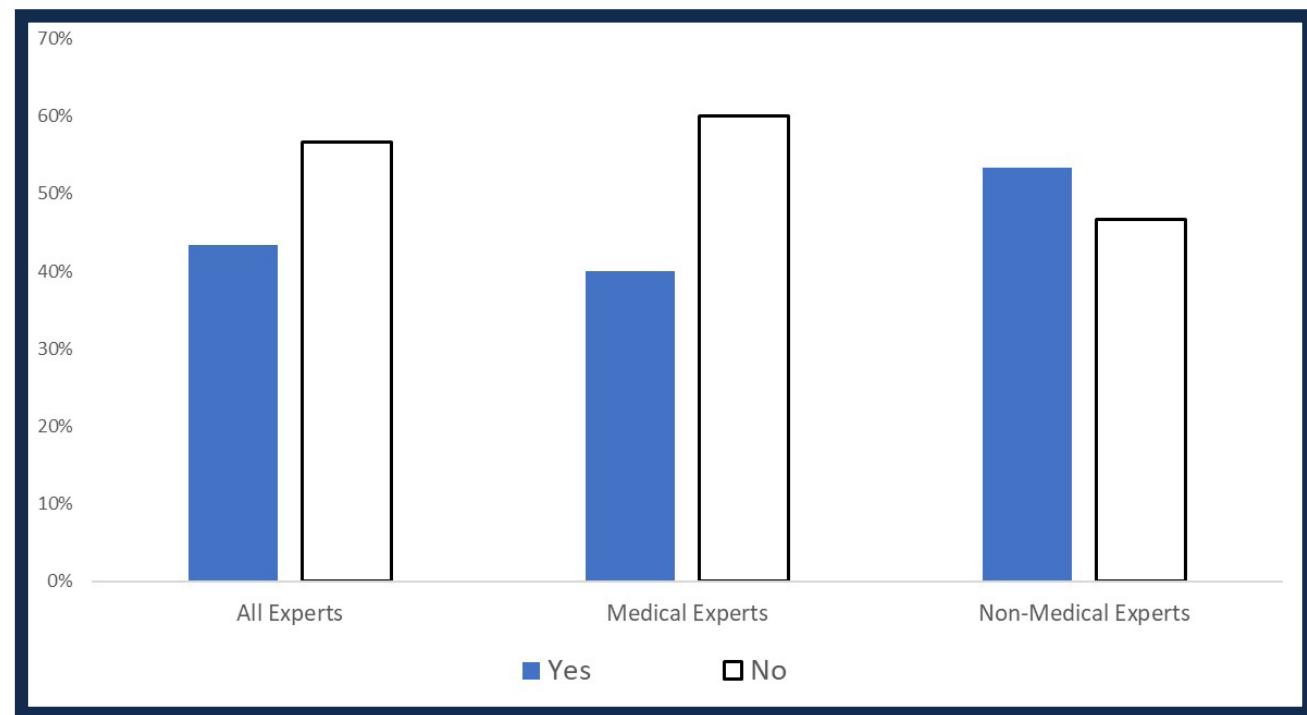
The Ministry of Justice is spending more than £1 billion to modernise the courts and tribunal systems. In June 2018, Lord Chief Justice said in a speech: "The advantages of enabling hearings to take place using technology ought to be obvious. If parties and witnesses are able to appear via their computers, it will be easier for them to fit their court appearances around their lives." (Source: The Age of Reform, (2018). [online] Available at: <https://www.judiciary.uk/wp-content/uploads/2018/06/speech-lcj-the-age-of-reform2.pdf>)



Total number of respondents: 588

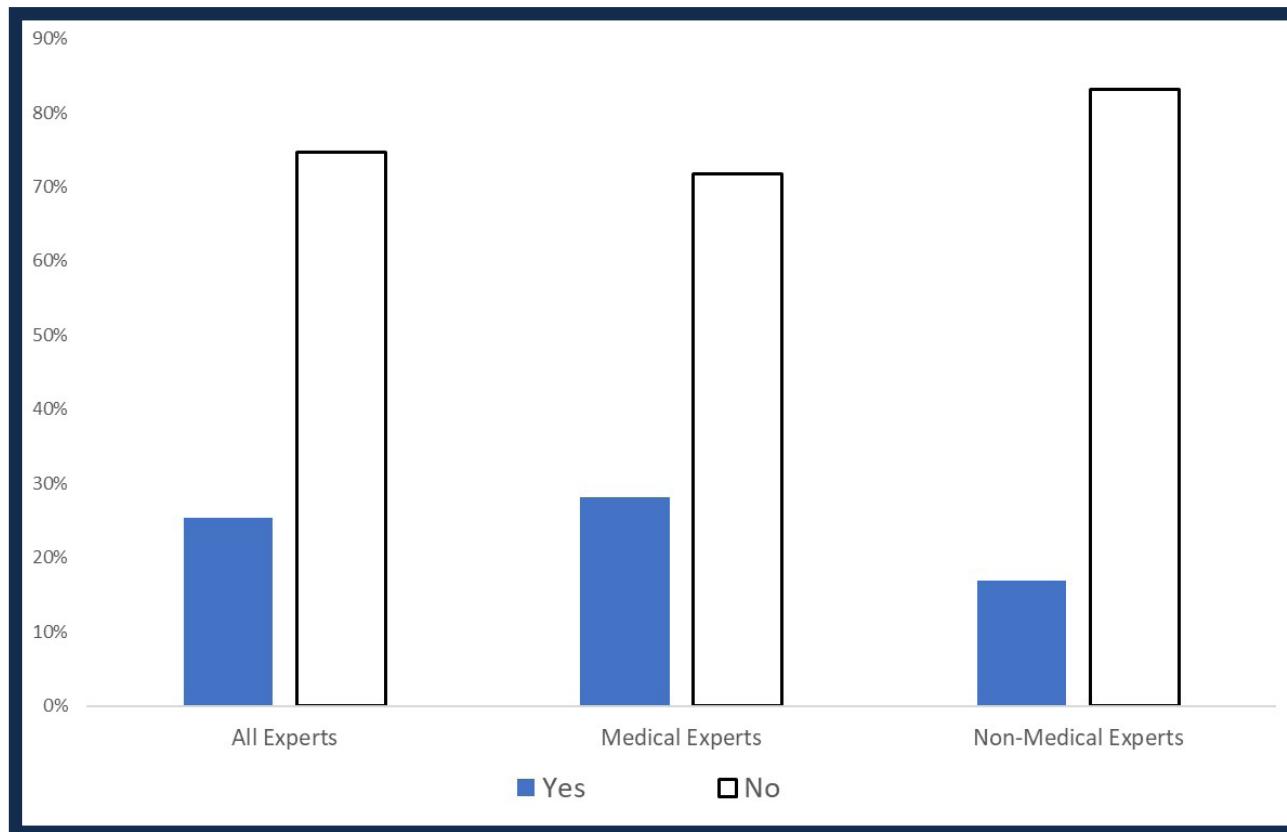
## **Question 7: Since the introduction of the Civil Procedure Rules in 1999, many experts are still being criticised for being advocates rather than independent experts – acting as a “hired gun”. In the last 12 months, have you come across an expert that you consider to be a “hired gun”?**

As in last year's survey, 43% of the experts surveyed indicated that they have come across an expert they consider to be a “hired gun”. The question now is what leads an expert witness to be a hired gun. Pressure from instructing parties will be one of the reasons although Lord Woolf made clear in the Civil Procedure Rules 1999 that an expert's duty is to the court not the side paying.



Total number of respondents: 588

## **Question 8: In the last 12 months, have you been asked or felt pressurised to change your report, by an instructing party, in a way that damages your impartiality?**



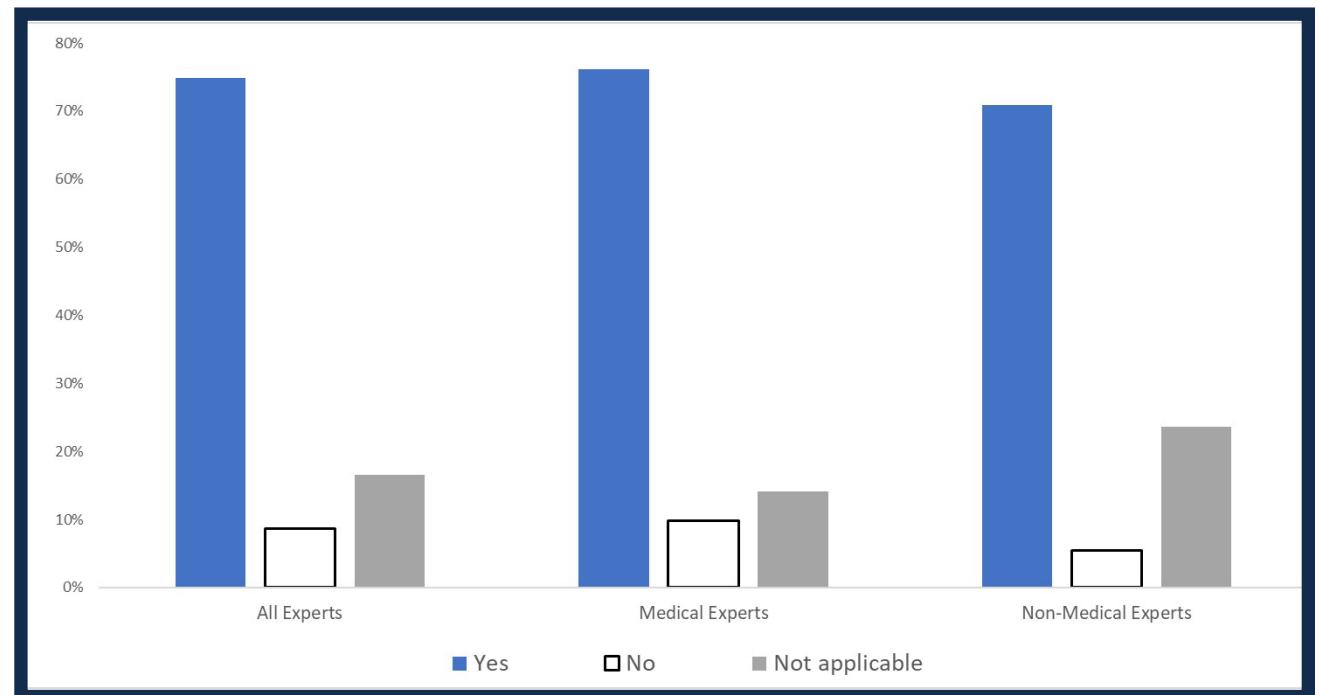
Total number of respondents: 588

25% of the experts surveyed have been asked or felt pressurised to change their report, by an instructing party, in a way that damages their impartiality, in the last 12 months.

This can only be explained by the inherent contradiction that although one party pays for the expert, the duty of the expert is to the court and not to the paying party. We have an adversarial system that is based on winners and losers. It is difficult to see a solution to prevent this pressure to change an opinion from happening. Experts already have recourse to the courts under the procedure rules, but the concern must be that if that recourse is taken, the solicitor would not use that expert again.

## **Question 9: Do you think your professional body or regulator should be more stringent in removing experts from their approved lists who act as hired guns or are incompetent?**

75% of the experts surveyed consider that professional bodies should play a more active role in situations where experts are incompetent or behave as a hired gun. Professional bodies should do more to ensure that experts who are regulated by them are properly trained and approved. It is better that professional bodies perform this role than yet another independent body. The professional bodies already know who is on their books as qualified members and could create lists of suitable members who could act as expert witnesses. This would assist lawyers in finding suitable experts and also provide a stick to remove non-complying experts.



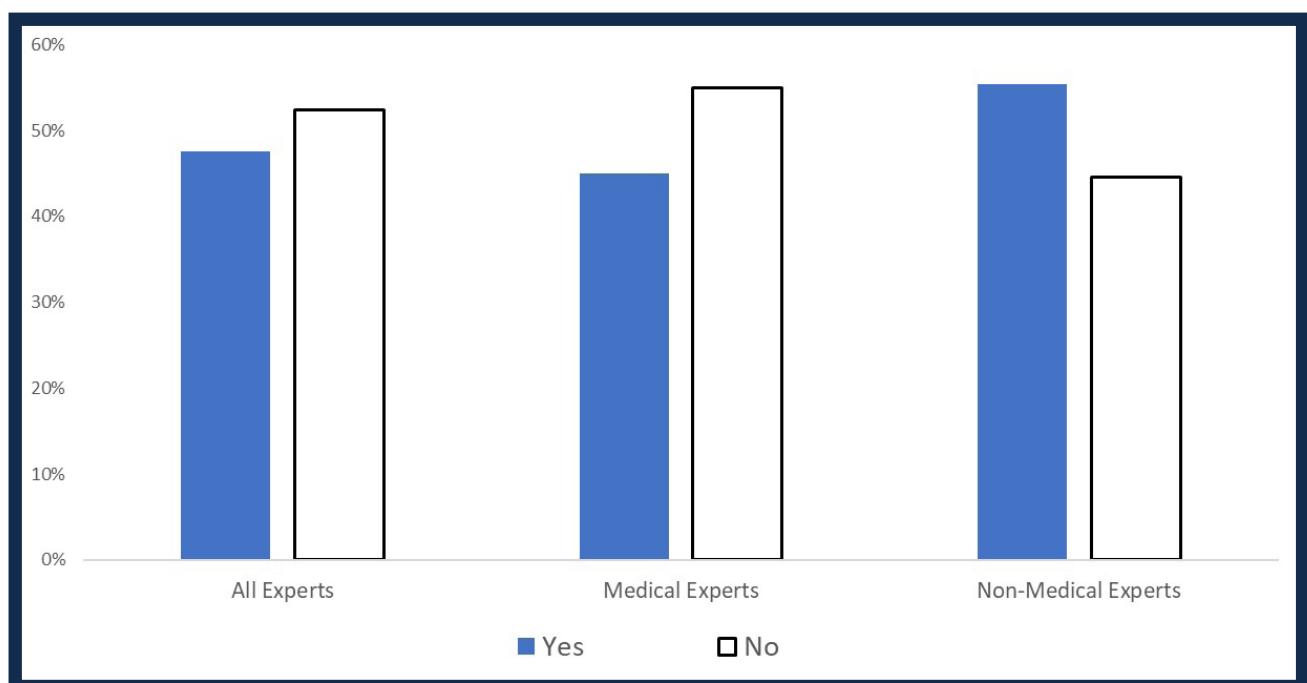
Total number of respondents: 588

## **Question 10: Have you come across experts who profess expertise in an area in which they are not qualified or does not warrant expertise?**

## **Question 11: Please give us an example.**

Almost half of the experts surveyed have come across experts who profess expertise in an area in which they are not qualified or does not warrant expertise. Hopefully this was pointed out to the instructing solicitors at the time so it could be raised as part of the litigation process. However it is concerning that such experts still put themselves forward and are then instructed. This also reflects on the adequacy of due diligence necessary from instructing solicitors.

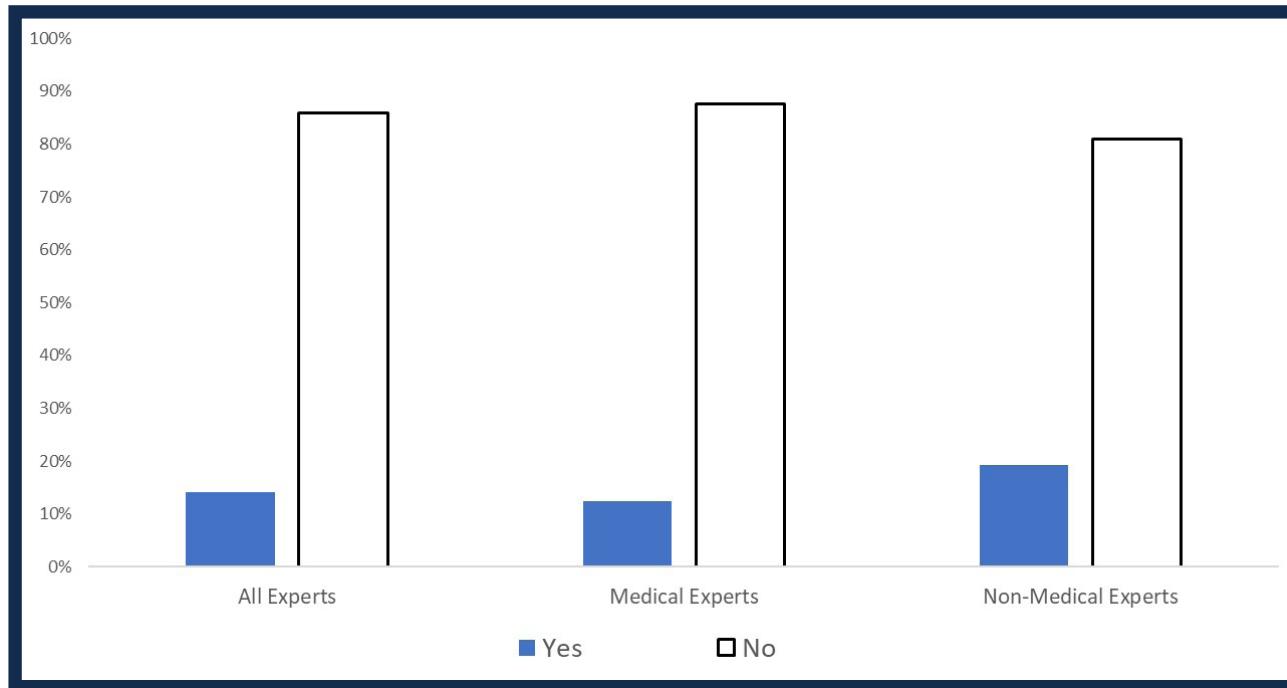
Please see Appendix 1 for a full list of the answers given to question 11.



Total number of respondents: 588

## **Question 12: Do you think some experts are inventing or embellishing their reports to produce fake opinions in this time of fake news?**

## **Question 13: Please give us an example.**



Total number of respondents: 582

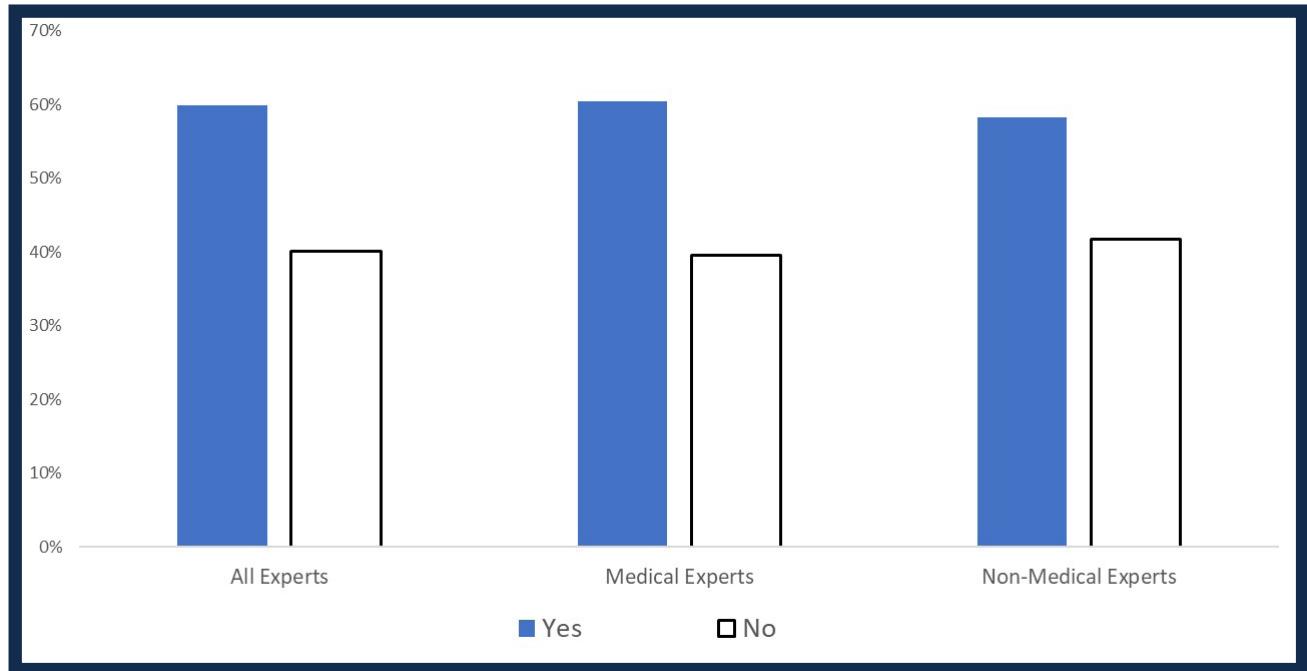
We are constantly reading that we are in era of fake news. 86% of the experts surveyed do not consider that this trend has affected the evidence experts give.

Please see Appendix 2 for a full list of the answers given to question 13.

## **Question 14: Do you have concerns that courts find it hard to distinguish the “truth” between conflicting expert witness opinions?**

60% of the experts surveyed have concerns that courts find it hard to distinguish the “truth” between conflicting opinions.

It is interesting to try to distinguish truth from opinion. One of the main roles of an expert witness is to express an informed opinion on an issue in dispute to assist a court to understand that issue and come to a decision. Whether that option is the “truth” is a moot point but it is interesting to see that this concept causes concern for experts. Experts already have to confirm in their reports that they are “true” and they have to swear under oath in court to tell the truth. Difficulties arise when two experts have differing opinions. Courts must understand that each expert is merely expressing their own opinion that they believe to be true.



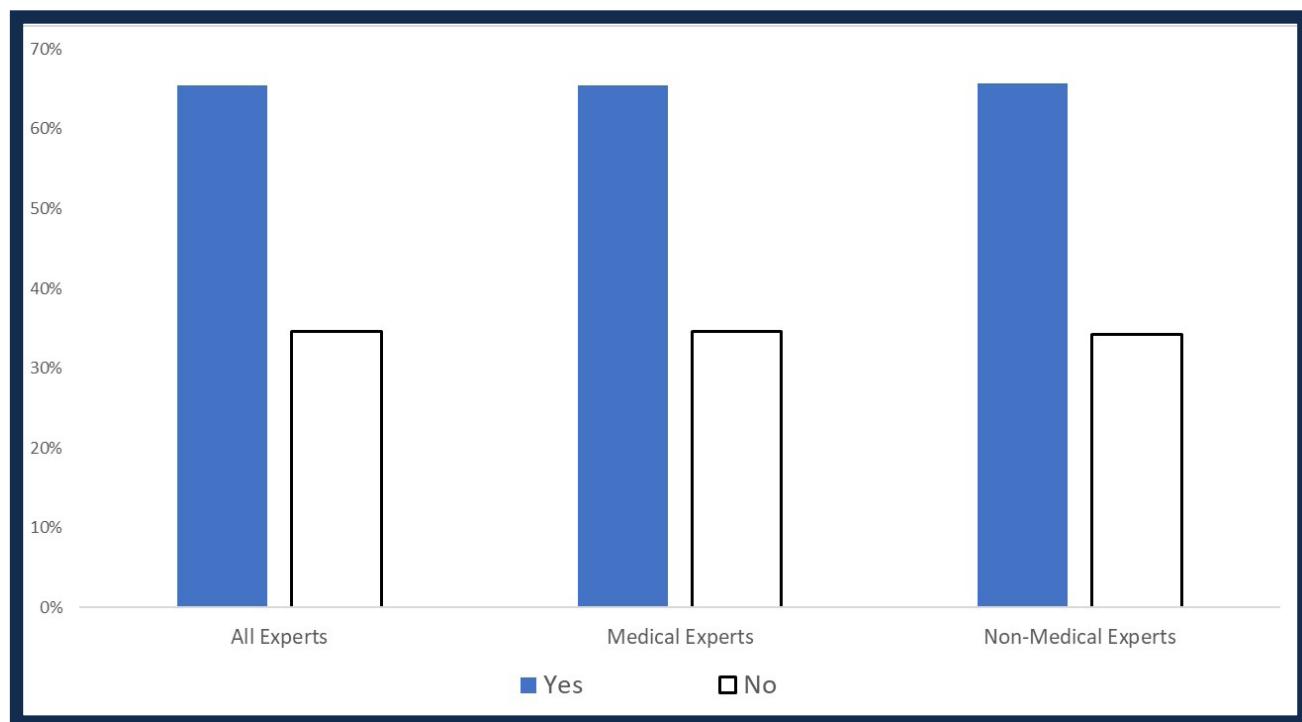
Total number of respondents: 578

## **Question 15: As expert evidence becomes more complex and specialist, do you have concerns that courts may increasingly struggle to understand it?**

## **Question 16: What can be done about this?**

65% of experts consider that courts struggle to understand the evidence of experts as that evidence becomes more complex. The primary role of an expert is to assist a court to understand an issue and so the explanation needs to be in clear language that a non-expert can understand and act upon. Experts should make sure that their reports are clear and fit for purpose.

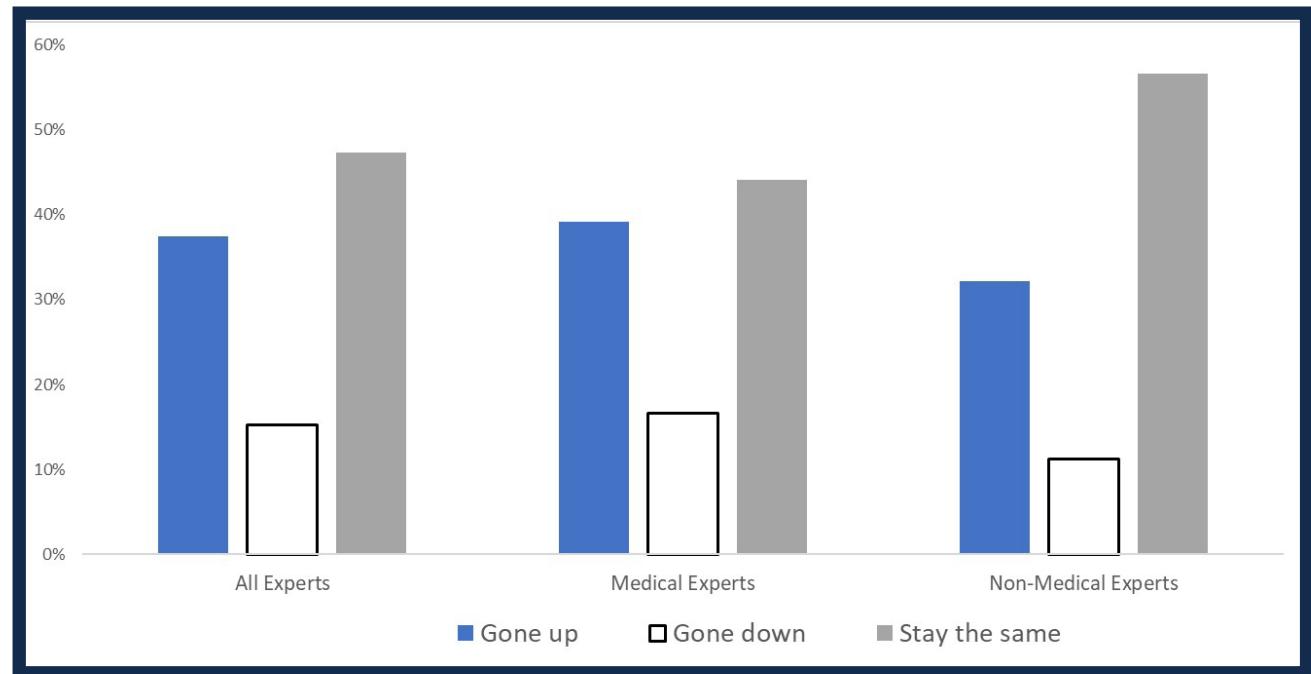
Please see Appendix 3 for a full list of the answers given to question 16.



Total number of respondents: 578

## Question 17: Over the last 12 months, have the number of your instructions gone up, gone down or stayed the same?

Nearly 50% of the experts surveyed indicated that the number of instructions received were at the same level whereas 37% said they had increased.

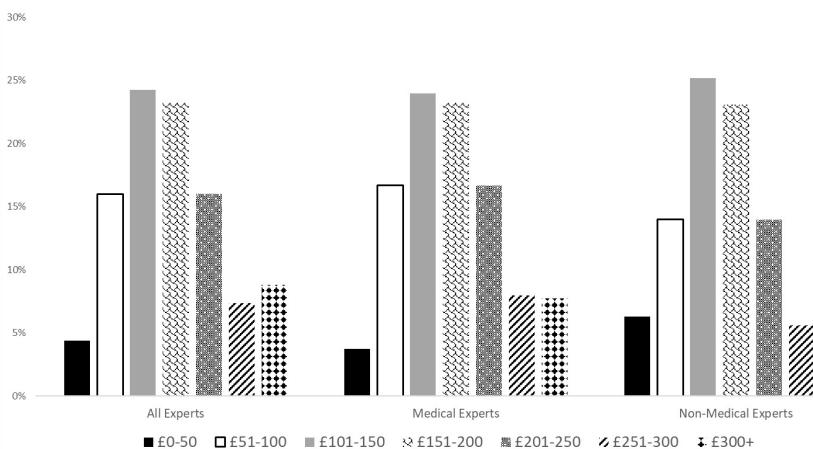


Total number of respondents: 569

## Question 18: What is your average hourly rate for report writing?

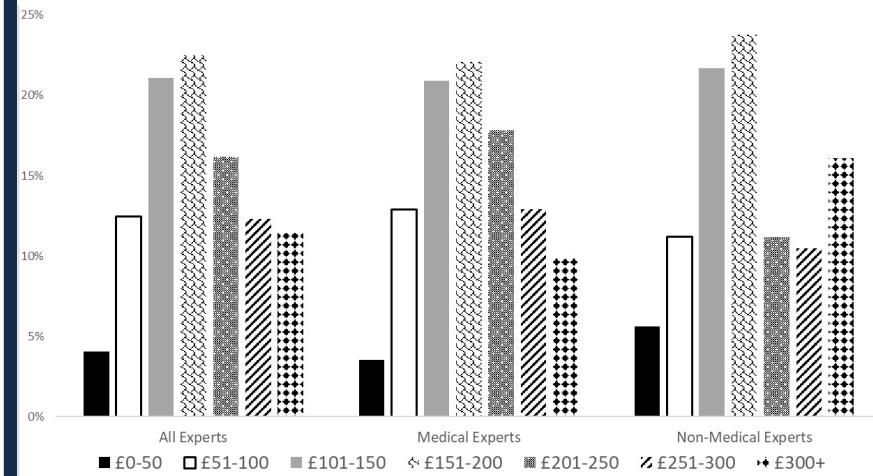
## Question 19: What is your average hourly rate for court?

Q18



These results show a significant variation in rates between different areas of expertise which echoes the difficulty in considering expert witnesses as a single group when referring to experts' fees.

Q19

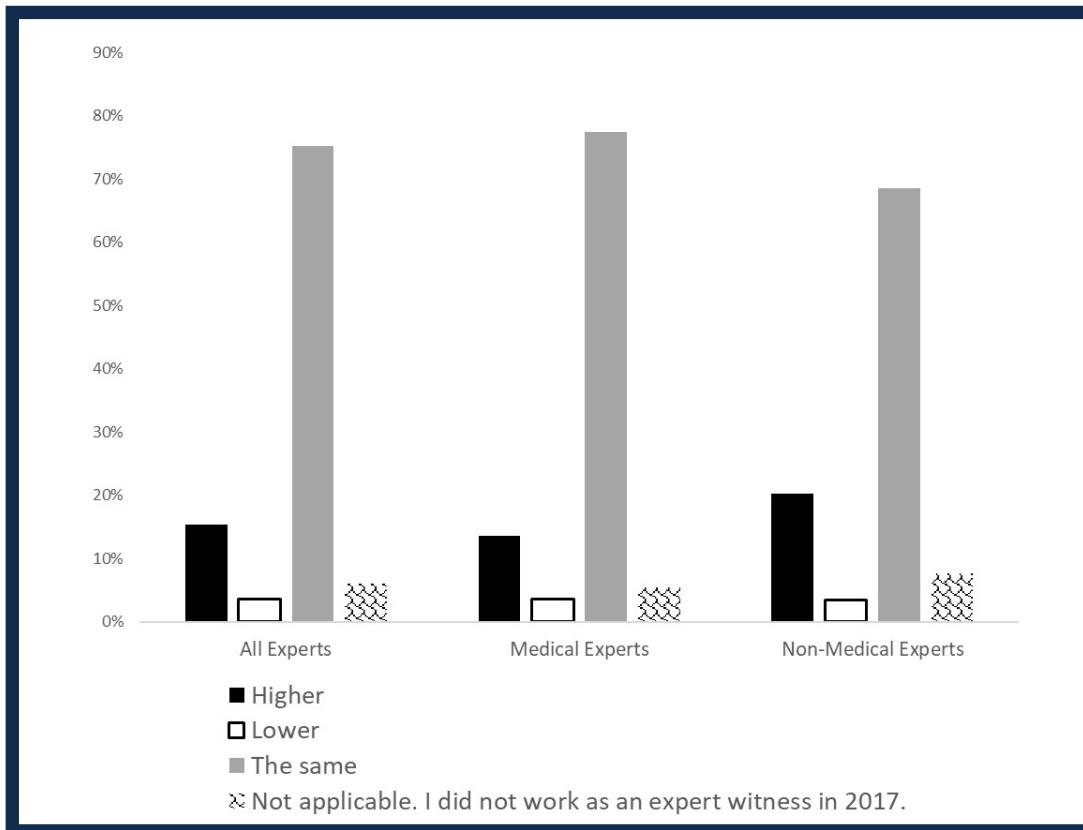


Total number of respondents: 569

Please see Appendix 4, 5, 6 and 7 for a full list of hourly rates by area of expertise.

## Question 20: How does this relate to your hourly rate in 2017?

As in last year's survey, the majority of the experts surveyed (80%) indicated that their rates remain the same as last year.

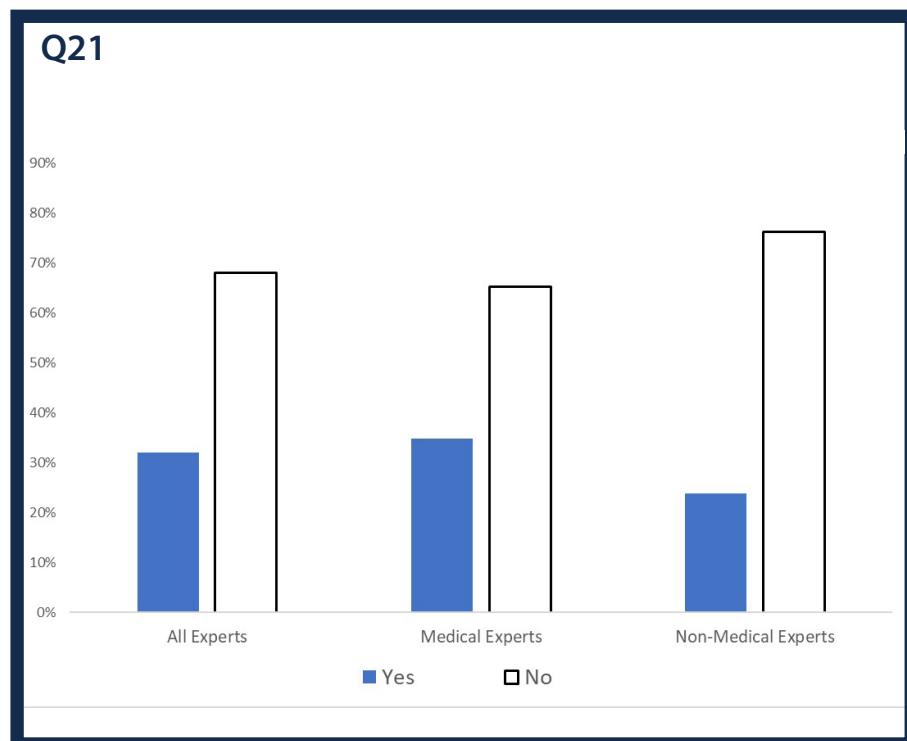


Total number of respondents: 569

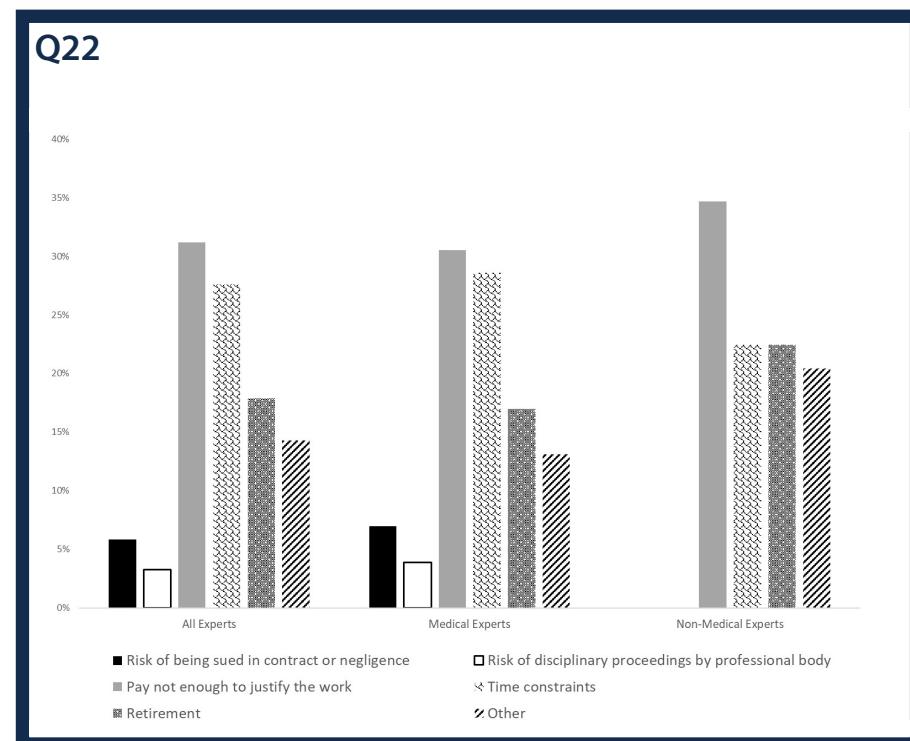
## Question 21: In the last 12 months have you considered stopping your work as an expert witness?

## Question 22: Please tell us why. More than one answer can be selected.

32% of the experts surveyed have considered stopping their work as an expert witness in the last 12 months. One of the main reasons mentioned by the experts is the expert's fees. Since the Jackson reforms have introduced proportionality for costs, expert's fees have been reduced. One must remember that expert witness work is for most experts a secondary source of income. If the expert's fees are too low, experts have to decide whether the case is worth their time. Also, since the judgment in Jones v Kaney, experts are now facing the risks of being sued in contract or negligence.



Total number of respondents: 569



Please see Appendix 8 for a full list of other reasons given by experts.

# **Appendix 1**

## **Question 10: Have you come across experts who profess expertise in an area in which they are not qualified or does not warrant expertise?**

## **Question 11: Please give us an example.**

- Improper conclusions reached which do nothing but support an instructing party's case. The opinion is changed when logic flaws are exposed, the goal being only to support the party's case and not to reach an objective, impartial and sensible conclusion.
- Retired Musculoskeletal Radiologist approaches the defendant, finds out details of case and then sends in statements based on knowledge from conversations on a CT chest. Retired "experts" should not be allowed to comment on cases.
- There are many handwriting consultants who have not had efficient training and consider themselves experts.
- Microbiology expert giving neurology advice.
- Specific aspects of nursing such as, for example, tissue viability (complex wound management & pressure ulcer prevention & management).
- A physiologist who expresses a strong opinion of psychiatric matters in their report.
- Example of a professor commenting on a prognosis for an illness for which they don't see such patients.
- A/ An expert witness report from a rheumatologist on hand-arm vibration syndrome. I doubt he has ever seen a case. B/ From a vascular surgeon who knew nothing about sensorineural hand-arm vibration syndrome. Lawyers frequently do not possess the expertise to know who an expert in a particular area of medical practice is; neither do the commercial intermediaries. For example, I doubt that many lawyers know the difference between occupational health and occupational therapy. C/ An expert recently changed his opinion in a criminal case to suit an indictment. He cited no evidence and also could not substantiate his opinions on the subsequent joint meeting and statement.
- Statements of medical "facts" for which no evidence exists.
- Someone commenting outside their area, on meteorology.
- Many marine experts who provide evidence and opine on pilotage competence have no experience in pilotage or even command experience.
- A person who claims in their CV to be an expert in the diagnosis and treatment of psychiatric and psychological disorders, but their qualifications gained abroad imply that at best they may be able to work as a social worker although the individual concerned is not registered to practise in the UK as a social worker, a psychotherapist, a psychologist or a psychiatrist.
- Within a family case, where I had been instructed as a second, reviewing, single joint expert, a series of the initial expert's opinions were found wanting and my opinion was accepted.
- Many neuro expert reports on head injury do not take account of recent studies/information on neuro-trauma.
- Psychiatrists who present themselves as expert in psychology.
- Ankle negligence case, expert not operated on ankle trauma for more than 20 years. Only did elective knee

surgery.

- Medical consultants giving expert opinions on prosthetic components and fittings.
- Trauma surgeon commenting on psychological problems.
- Some experts are instructed only by defendant or claimant solicitors and are known for making recommendations which are favourable to their instructing party's position. I feel these experts lack credibility but clearly their instructing solicitors are not concerned about this.
- Defence drug expert whose CV shows no drugs experience.
- My area of orthotics is little known and there are very few experts. It seems instead of taking the time to search for one, others in the medical profession are quite happy to comment on what is needed and also comment upon the costs as well - often quoting old NHS prices which aren't a true reflection of the market value. In my experience there are many who have experience and probably a very good working relationship with an Orthotist but are still not qualified to offer expert opinion.
- Dental experts - if you are not a specialist on the GDC specialist list then you should not be an expert. Many dental expert witnesses are in so many specialities for which they are not in the list.
- Civil claim associated with inadequate first aid; defence expert felt a first aid certificate gave him sufficient knowledge to take instructions.
- Current or ex-police officers with no formal qualifications professing to be experts on drug abuse.
- Pensions.
- Adult psychologists providing reports for young people, i.e. CAMHS population.
- Care experts who do not provide care and do not have a care qualification e.g. Occupational Therapists, Physiotherapists.
- Vocational rehabilitation and capacity to work issues.
- Straying into areas of liability / issues for the Tribunal to determine and not an expert.
- Retired individual from my speciality acting as expert on current practice having been out of said practice for more than a decade.
- Specialists advising on GP care.
- Misleading claims of experience on professional CVs.
- Educational Psychologist professionally "undiagnosing" a child with ASD diagnosed by consultant paediatrician.
- Using product-based companies.
- Consultant in cardiology giving expert opinion on what would be expected of an emergency medicine doctor.
- General orthopaedic surgeons reporting upon spinal injuries.
- Not having up to date knowledge of their subject area.
- I am a paramedic expert witness. We have our own professional body and professional regulator - but still some traditionalists believe that an emergency doctor is able to provide an opinion.
- Experts putting themselves forward as valuation experts when they are not, e.g. they are forensic accountants.
- A metal futures case on hedging (swaps) where the expert on the other side hardly had a clue as to how the business works but was trying to make a case that the other side was in the right.
- A surveyor purporting to be an expert in a market in which they patently have no previous experience.
- Trauma surgeon commenting on perioperative management of rheumatoid arthritis.
- Fenestration.
- Child reports particularly and psychologists commenting on parental risk factors with no forensic training. Also,

people not qualified to be experts in the fields they are reporting on.

- People from outside the profession giving expert opinion.
- Experts on security alarm systems giving evidence in a case involving the ram raiding of a bank.
- A GP doing reports outside their expertise e.g. orthopaedic trauma.
- An expert claiming knowledge of Aviation employment with no experience or insight to the industry.
- A Gynaecologist giving a very difficult opinion on an Obstetric case.
- Knowledge of a limited range of the areas required.
- Cladding expert who had a background in contracting, but none in the other issues which related to an architect's duty to his client, so was unable to deal with all the issues.
- In my area we have individuals who having won their court case act as "experts" in other cases - they all come from an anti-access/anti-public rights of way background.
- Colorectal surgeon who no longer performs cholecystectomy but reports on such cases.
- A physiotherapist reporting on soft tissue injury, but also offering a psychiatric opinion. Furthermore, re the opinion on the soft tissue injury, no range of opinion given.
- Training grade surgeons who are not fully qualified yet.
- Over 10 years out of practice.
- Forensic technology expert giving an opinion on whether the documents identified during a forensic technology examination of digital media established "fraud."
- Neurologist giving views on psychological matters.
- Experts who give opinions on the veracity of the evidence.
- Exaggerating qualifications and experience.
- Vascular surgeons commenting on Carpal tunnel vs HAVS when vascular surgeons don't see patients with either in their clinical practice.
- Negligence report on a surgical procedure that the "Expert" had never performed.
- Intensive care consultant with no pre-hospital/ambulance experience giving opinion on ambulance management of cardiac arrest.
- Surgeons commenting on procedures they have never themselves performed – e.g. long retired Oncologist advising in current oncology practice.
- Have come across experts taking on immigration cases who are either illegally here or are asylum seekers.
- Medical doctors giving psychological opinions.
- I was involved in a recent case in which the Defence had doctored email evidence and persuaded the instructed expert of the validity of that evidence (even though close inspection of the bundle showed the evidence had been altered). The expert acted partially to promote the cause of the defendant even when confronted with evidence that the information relied on had been tampered with. The case was settled prior to a Court hearing when the altered evidence was discovered, and the fact communicated to the Defence.
- I work in vocational rehabilitation. I have encountered people who give expert opinions about this but have never worked in the field.
- I have been reading medicolegal reports from a particular practitioner who calls themselves an expert but is not on the national register for this specialty. The work is incompetent and, in my opinion, has caused harm to Claimants by giving them an incorrect diagnosis on more than one occasion.
- A General Practice Surveyor professing expert Boundary knowledge.

- An Expert who has never trained in the clinical specialty and has no clinical qualifications or experience in the field he professes to be an Expert in.
- Child psychiatrist carrying out ML work in PI work relating to adults.
- I have come across an expert in one medical speciality giving an opinion on a different speciality in which they were not qualified.
- General practitioner reporting on Surgical aspects of Dental Implants.
- Specialist assessment of parents with learning disabilities.
- A psychologist offering services as an expert witness in child and family cases who has no post qualification experience in this area.
- Unqualified engineers providing reports on vehicle damage compatibility.
- Transport planners.
- I have seen a number of neurology opinions where there has been a request for a report related to trauma-induced severe and disabling headache disorders where I am aware that the general neurologist has no real clinical or medicolegal interest in that area and opines with highly outdated views that do not recognise the basic classification criteria and the expert assumes a psychological reaction or malingering, despite very clearly outlined presentation in NHS and medicolegally to recognised headache subspecialists (including witnessed attacks, e.g. cluster headache) with clearly defined objective features that would not be possible to generate under volition and that would not be seen with psychological non-organic disorder.
- An expert professed to understand laboratory test methods for water who clearly did not and wrongly interpreted results. This cost his client the case and 5 figure costs.
- Colorectal giving opinion on GP.
- Orthopaedic expert opining on psychiatry and similar.
- Experts regularly say a witness was credible without any objective independent evidence.
- Fire engineers who think that they can carry out site work with no site experience. Fire investigators who think they can comment on fire safety design with no design experience. Fire Brigade representatives who comment on origin and cause but are not qualified/trained to do so. Fire Brigade representatives who comment on fire safety design without qualification or experience to do so.
- Neurosurgeon providing opinion on a plainly not neurosurgical condition - extent of injury due to not wearing a seatbelt.
- In the work of insurance - I have seen an occasion of a broker purporting to be able to provide knowledge comparable to that of an expert underwriter.
- A RICS member who was an Estate Agent being hired by a client to provide expert evidence on a boundary dispute. His evidence was demolished in court, proving that although he was probably a very good estate agent he was not suitably knowledgeable in the law and practice of Land Registration and the specifications of Ordnance Survey large scale mapping when applied to property boundaries.
- Retired consultant surgeon with no evidence of practice in the area of surgery concerned; but the title Professor!
- Generalist practitioners giving specialist opinion.
- The Occupational Safety and Health Consultants Register (OSHCR) lists people with expertise in educational visits and school trips, but if these people had this level of expertise they would be known to colleagues and also me, members of the appropriate professional association relating to this area, which they are not.
- Clinical psychologist giving opinion of cause of medical symptoms.
- An expert alleges to be a transport expert for disabled drivers or passengers. He has no experience or qualification in this area. Also, he hires vehicles to claimants therefore he has a conflict of interest.
- Occupational therapists are constantly dabbling in the area of personal transport for which they have no

qualification. See judgement of Judge Swift.

- In all cases this problem is reducing. However, I have had a prominent example of an expert in general psychiatry with no neuropsychiatry experience professing to know about a complex brain injury case.
- GPs who give opinions on complex trauma cases.
- Radiologist doing RTA reports. Pharmaceutical doctor doing RTA reports. Physiotherapist doing psychological reports.
- A rheumatologist discussing the non-existence of Complex Regional Pain Syndrome.
- Medical experts are sometimes very willing to give opinions outside their true expertise. This commonly includes pathologists and radiologists.
- Forensic psychologists assessing adults in family law proceedings and commenting on parenting - they are not trained to assess parenting/the impact of personality or mental health on parenting. I frequently come across them reaching erroneous conclusions about parenting.
- Retired from practice for several years and still giving opinions.
- Giving advice on schooling, support in schools and GCSE when education is not their expertise.
- Many defence accountants stray into Tax or Benefit (POCA) which is not their area of expertise.
- One expert wrote about EDS without having read the updated literature that blew his testimony out of the water.
- Several individuals claiming to be Forensic Document examiners despite having no recognised training or supervised experience.
- Social worker claiming expertise in Pharmacology.
- An expert trying to mediate.
- Medical expert giving opinions on forensic science evaluation where he had no knowledge of the forensic tests and how to interpret the findings.
- An Expert whose qualifications were in disease control but who gave an opinion on engineering. He also "switched sides" during the case.
- A well-qualified and experienced Engineer who had built dams and motorways, but was clueless regarding domestic, simple building defects/disrepair issues. Three of us gave contemporaneous evidence-his performance was embarrassingly poor. He was openly criticised by the judge-correctly so.
- An expert is a breast surgeon who was never qualified to give an expert opinion but continues to do so when discredited at many levels.
- A significant proportion of hair testing laboratories profess themselves as "experts" when they simply use cut-off-based reporting which requires no expert knowledge to interpret.
- Colleague 40 years qualified with no CPD record or further qualifications allowed to give expert evidence.
- Someone with no clinical expertise or experience and knowledge being regarded as a gait expert when their knowledge and experience is laboratory based only.
- Private Law cases are particularly susceptible to inexperienced psychologists who do not have knowledge or training in this specialist area. Clinical psychologists who assess adults and children in families despite only being trained in one age group. Clinical psychologists are not routinely trained in the evidence-based assessment of attachment yet a great many of them take on cases where they are being asked to report on just that. Psychologists 'diagnose' personality disorder without the necessary training. The list is endless.
- Professing to be an expert in pseudomyxoma peritonei, when clearly not.
- Lack of expertise in geotechnical engineering.

- Many opine on disability without experience or qualifications in the field. Many experts opine on cases they never see in their clinical practice.
- Academics who are very well qualified on paper but have no real world or practical experience using those qualifications working in the industry - never been outside of a University.
- Asbestos exposure estimation with no practical knowledge of the subject leading to poor interpretation of the evidence.
- So-called 'experts' in treatment techniques/procedures that have not been clinically trialled or researched appropriately. They appear to act as the 'hired guns' of the manufacturers or distributors of these products/services.
- A 'Consultant Psychologist' - which is not a protected or regulated title - who is not registered with the HCPC. They are not a psychologist yet are giving supposedly expert evidence with great regularity.
- Experts who say they have experience of treating a particular condition when they don't have that experience!
- Surgeons retired for over 15 years giving evidence in areas in which they have not practiced medicine.
- Major trauma involving multiple systems and yet his practice was very limited.
- A psychiatrist giving contradictory and nonsensical evidence on psychometric data.
- A retired urologist who was not in clinics practice who based his view on aspects of consent when he had not been in practice for over 5 years and freely admitted that he had never taken full consent by today's standards.
- Plenty of Building Surveyors giving accommodation advice without having completed any Inclusive Design training.
- Someone who diagnosed a client as autistic based on very limited medical notes suggesting a history of dyslexia and one interview.
- Local authority Fire Service personnel giving evidence as fire investigation experts, with no formal training, qualification or specific experience in the subject.

## **Appendix 2**

**Question 12: Do you think some experts are inventing or embellishing their reports to produce fake opinions in this time of fake news?**

**Question 13: Please give us an example.**

- A few individuals in MSK radiology who are a closed circle.
- Expert inserted several opinions based on guesswork (stated he had questioned staff on their site visit - all staff had very different memories to that of the expert).
- GP reports frequently add "fear of travel" for trivial accidents.
- A surveyor making exaggerated statements and expressing obviously biased opinions.
- Holiday claims for "food poisoning".
- Citing their own small case report rather than wider body of published evidence.
- Experts who give opinions without reading the medical records.
- A pain specialist disregarding severity of chronic pain symptoms and opining the claimant fakes them.
- Diagnosis of a head injury when there was no evidence of such an injury at the time of the accident.
- Some are claiming items in their CV which are not being certified as correct - e.g. a visiting professor using title Professor when in fact they are Doctor with a visiting, one day a week professorial role.
- Parental Alienation is a 'hot' topic and there are many poorly trained experts who are attempting to get involved in this specialist area without an understanding of the complexity of family dynamics.
- Supporting claimants' case with bias and not being impartial.

## **Appendix 3**

### **Question 15: As expert evidence becomes more complex and specialist, do you have concerns that courts may increasingly struggle to understand it?**

### **Question 16: What can be done about this?**

- Ultimately, the expert's job is to explain things properly to the court. Complex topics need to be simplified by the expert. Sufficient time spent cross examining and suitably knowledgeable / experienced Arbitrators will reduce the risk of misunderstanding.
- Truly independent society bodies set up to advise courts.
- Ensuring that those who profess to have expertise actually hold the relevant qualifications and/or experience.
- In medical cases, make sure the appropriate expert is used i.e. an expert who sees the type of patient in their day to day practice and MUST still be practising- grey haired "in my day ...." is not contemporary.
- Get the right experts in the first place. For example, only instruct those experts who in the previous 10 years have had papers published in peer reviewed journals in the field they say they are expert in.
- More specialist judges chosen for cases (as one would a barrister). This is difficult considering the recent consideration to raise high court judge pay by 32% which suggests shortages of senior lawyers prepared to sit as a judge.
- Experts need better training - perhaps by judges - about communicating information that they (the judges) require. We have consultants teaching junior doctors in hospitals. Judges teaching experts how to be effective experts seems sensible.
- Use of Single Joint Experts? Or expert to the court.
- Within the Admiralty division and Court of Appeal, there needs to be a more structured approach to the choice of Elder Brethren whose specialist area of expertise relates to the cases they are advising on.
- The problem is the whole criminal justice system seems untouched by 150 years' progress in psychology and psychiatry. How do you rectify profound ignorance?
- It is our job as experts to explain in clear terms.
- Impartial expert advisors to the court e.g. from the professional background concerned.
- Meetings for prior acclimatisation.
- Greater move to instruct an SJE.
- Quality over price - there is no incentive to keep qualifications up to date if all the Legal Aid board are interested in is the cheapest quote.
- Experts need to be clearer and more succinct and Courts need to spend the time looking at the differences between experts and querying experts when giving verbal evidence.
- Specialist panels reviewing reports before Judge.
- Better reports.
- Specific guidelines on report contents including glossary of terminology/ key abbreviations.

- To make sure facts are facts.
- Remove jargon as much as possible. Train experts in presenting their evidence objectively, dispassionately and succinctly.
- More training.
- Choose judges who have expertise in the topic (or in the case of damages, judges who are financially proficient) or have experts on tribunals or appointed by the judge.
- Use a judge or arbitrators who know the field of business, and not just the law.
- More use of ADR with tribunals having experience of the specialist area.
- Ensuring experts have relevant expertise to their instructions.
- Greater numbers of instructions of joint experts and possibly considering professional assessors sitting with judges.
- Court could appoint a third expert to advise the court and interpret complex evidence.
- Courts need to hold experts to account to offer clear supporting evidence for their opinions, in terms of the independent medical literature, not only cited, but also clearly quoted and explained, paper by paper.
- Only employ experts who are fully trained in their specialty and trained as an expert witness.
- More use of simplifying graphics, hot-tubbing, (internally) having greater non-expert involvement in the review of drafts to ensure clarity and comprehensibility.
- I believe there should be an instructional element before expert witness testimony. This could be by either expert. It would then allow the context of the following expertise to be more useful.
- Before hearing the evidence, the key parties should update their knowledge in the area of concern and a particular specialism. Reading about the issues can be a monumental task or mission impossible but if they could have some sessions with the experts in the field who could educate them about salient practical as well as theoretical issues that would be useful.
- Experts write their reports in good English and are prepared to discuss the reports with the legal teams in a collegial environment to optimise the content but ensure independence. Barristers test evidence in the pre-court meetings in a non-adversarial way to again ensure the evidence is as robust as possible but still independent. Leave the adversarial theatricals to the occasional case that comes to court.
- Most cases settled well before Court, experienced lawyers and barristers are able to understand and analyse the cases I have been involved in.
- Ensure that the judge is experienced in the area of litigation, in the same way that the expert has to be expert in the area they practise in. For example, having a judge who has spent most of his career in dealing with administrative law sitting on a medical negligence case seems to me to be entirely inappropriate.
- Single joint expert.
- Jointly instructed experts who are given time to verbally explain their evidence.
- Only using properly qualified experts, making sure reports are written for the correct audience.
- Revert to agreed facts wherever possible and use common sense.
- Follow the Technical Courts example and use specially trained engineering or scientific judges. Failing this, beef up the SJE system.
- Perhaps a closed technical briefing to the Judge from the experts, prior to cross examination in open court, to explain the technical differences between experts' views. Cross examination can deny the court avenues of information which could alter the wider understanding of the determining issues.
- A primer for most frequent topics.

- Experts who are better able to explain themselves. More thorough pre-trial questions, perhaps even by the judge.
- Single joint expert - recognised by their professional body and speciality organisation as both practising and published in the area of clinical concern and the case would routinely be under their clinical practice.
- The educational fora that exist currently could usefully be expanded to introduce joint learning between legal and clinical professionals.
- Expert reports should be returned as incomplete, unless all technical terms have been explained in a glossary.
- Meeting with Counsel and full explanation in non-medical terms.
- Single joint expert can help. Alternatively, obliging experts to explain their opinions more carefully, possibly in lay-terms would also be helpful.
- I try to ensure that the report is written in a non-medical way and to highlight those areas which I am not able to give a black and white answer for.
- More rigorous discussion of experts. More expectation that we explain differences in plain English. More focus on how differences might be overcome/circumvented or if they are actually that important for the progress of the Claimants (in my case, young people).
- Create judges with particular expertise.
- Courts should bring opposing experts to court for penetrating cross examination.
- Better training for judges and focusing on the real issue rather than the detail.
- Experts improving how they write their reports. More use of joint statements where experts from each side get together and list what they agree or disagree on.
- In criminal matters - juries with relevant expertise - accountants, architects etc.
- Have approved super-experts who can distil the information for the Court.
- Training for the judiciary in concepts.
- Need to ensure accredited experts only and accredited by bodies such as Bond Solon Cardiff University Law school training or through EWI or Academy of Experts rather than 'professional' bodies or so called regulators who have no legal basis in Law.
- Training for judges at the Judicial college. Compulsory CPD training (psycho-education) for barristers and solicitors involved in family law of all types. I have to learn about court procedure and processes and the law around my caseload.
- Hot tubbing - very underused.
- Possibly face to face meeting of experts prior to production of joint statements - or independently appointed experts. Statements audited for clarity.
- Ensure experts are really expert in their field.
- Ensure a single report is produced based on joint views.
- Not sure anything can be - we just need to ensure the judges understand.
- Provision of background subject information to better inform courts in the relevant subject.

# Appendix 4

## Medical – Average hourly rate (£) for report writing

Areas of Expertise - Non Medical	Total number of respondents	£0-50	£51-100	£101-150	£151-200	£201-250	£251-300	£300+
Chiropody and Podiatry	1	0%	0%	100%	0%	0%	0%	0%
Cosmetic, Dermatology, Hair	8	0%	25%	25%	25%	13%	13%	0%
Ear, Nose, Throat	3	0%	0%	0%	33%	67%	0%	0%
Emergency Medicine and Anaesthesia	14	0%	14%	7%	29%	36%	14%	0%
Eyes	7	0%	0%	0%	0%	43%	29%	29%
Forensic Medical Examiner / Police Surgeon	1	0%	0%	100%	0%	0%	0%	0%
Gastrointestinal and Urinary	3	0%	33%	0%	0%	67%	0%	0%
General Medicine / Surgery	19	0%	0%	11%	26%	37%	21%	5%
GP	30	0%	30%	13%	33%	10%	10%	3%
Heart and Lungs (cardiothoracic)	7	0%	0%	0%	43%	14%	14%	29%
Immunology, Diabetes, Hormones	1	0%	0%	0%	0%	100%	0%	0%
Musculoskeletal and Prosthetics	6	0%	17%	0%	17%	33%	17%	17%
Neurology	11	0%	0%	27%	18%	18%	9%	27%
Nursing / Midwifery	28	21%	29%	32%	18%	0%	0%	0%
Obstetrics, Gynaecology and Fertility	10	10%	10%	30%	20%	10%	20%	0%
Occupational Health / Therapy	14	14%	29%	14%	43%	0%	0%	0%
Oncology and Treatment	2	0%	0%	50%	0%	0%	50%	0%
Oral / Dental	14	0%	7%	36%	29%	21%	0%	7%
Orthopaedics / Trauma	39	0%	0%	10%	18%	36%	15%	21%
Other	88	5%	11%	15%	34%	17%	10%	8%
Paediatrics	7	0%	0%	71%	0%	29%	0%	0%
Psychiatry	29	3%	10%	34%	21%	7%	7%	17%
Psychology	78	3%	36%	36%	14%	6%	3%	3%
Speech and Language Therapy	6	0%	17%	83%	0%	6%	0%	0%

## Appendix 5

### Non-Medical – Average hourly rate (£) for report writing

Areas of Expertise - Medical	Total number of respondents	£0-50	£51-100	£101-150	£151-200	£201-250	£251-300	£300+
Accountancy	17	6%	18%	12%	6%	6%	6%	46%
Agricultural / Environmental / Animals	5	20%	40%	40%	0%	0%	0%	0%
Architectural	5	0%	0%	20%	20%	60%	0%	0%
Computing / Technology	6	0%	17%	50%	0%	17%	17%	0%
Engineering	25	0%	4%	36%	32%	20%	8%	0%
Financial	7	0%	0%	0%	29%	29%	0%	43%
Fire	5	20%	20%	40%	20%	0%	0%	0%
Fraud / Theft	2	0%	0%	0%	50%	0%	0%	50%
Health / Safety / Occupational / Use of Force	7	0%	14%	14%	43%	14%	14%	0%
Marine	7	0%	14%	0%	43%	29%	14%	0%
Other	19	11%	16%	26%	21%	11%	5%	11%
Science / Forensics	17	12%	47%	29%	6%	6%	0%	0%
Social Care	2	100%	0%	0%	0%	0%	0%	0%
Surveying / Building	19	0%	0%	26%	42%	11%	5%	16%

## Appendix 6

### Medical – Average hourly rate (£) for court

Areas of Expertise - Medical	Total number of respondents	£0-50	£51-100	£101-150	£151-200	£201-250	£251-300	£300+
Chiropody and Podiatry	1	0%	0%	0%	0%	100%	0%	0%
Cosmetic, Dermatology, Hair	8	0%	25%	13%	25%	38%	0%	0%
Ear, Nose, Throat	3	0%	0%	0%	33%	33%	0%	33%
Emergency Medicine and Anaesthesia	14	0%	7%	14%	29%	21%	14%	14%
Eyes	7	0%	0%	0%	14%	14%	29%	43%
Forensic Medical Examiner / Police Surgeon	1	0%	100%	0%	0%	0%	0%	0%
Gastrointestinal and Urinary	3	0%	0%	0%	0%	67%	33%	0%
General Medicine / Surgery	19	5%	0%	5%	16%	37%	26%	11%
GP	30	0%	10%	13%	40%	20%	10%	7%
Heart and Lungs (cardiothoracic)	7	0%	0%	14%	29%	29%	14%	14%
Immunology, Diabetes, Hormones	1	0%	0%	0%	0%	100%	0%	0%
Musculoskeletal and Prosthetics	6	0%	0%	0%	33%	33%	17%	17%
Neurology	11	0%	0%	27%	18%	9%	18%	27%
Nursing / Midwifery	28	18%	18%	32%	18%	7%	7%	0%
Obstetrics, Gynaecology and Fertility	10	10%	20%	0%	20%	30%	10%	10%
Occupational Health / Therapy	14	7%	36%	14%	36%	0%	0%	7%
Oncology and Treatment	2	0%	0%	50%	0%	0%	0%	50%
Oral / Dental	14	0%	7%	14%	43%	21%	0%	14%
Orthopaedics / Trauma	39	0%	0%	3%	15%	36%	28%	18%
Other	88	5%	8%	19%	26%	16%	15%	11%
Paediatrics	7	0%	14%	57%	0%	29%	0%	0%
Psychiatry	29	3%	3%	34%	28%	7%	17%	7%
Psychology	78	3%	31%	35%	13%	12%	3%	3%
Speech and Language Therapy	6	33%	67%	0%	0%	0%	0%	0%

## Appendix 7

### Non-Medical – Average hourly rate (£) for court

Areas of Expertise - Non Medical	Total number of respondents	£0-50	£51-100	£101-150	£151-200	£201-250	£251-300	£300+
Accountancy	17	6%	12%	18%	0%	6%	6%	53%
Agricultural / Environmental / Animals	5	20%	40%	40%	0%	0%	0%	0%
Architectural	5	0%	20%	0%	20%	40%	20%	0%
Computing / Technology	6	17%	17%	33%	0%	17%	17%	0%
Engineering	25	0%	0%	20%	52%	8%	16%	4%
Financial	7	0%	14%	0%	14%	14%	0%	57%
Fire	5	20%	0%	40%	20%	20%	0%	0%
Fraud / Theft	2	0%	0%	0%	0%	0%	0%	100%
Health / Safety / Occupational / Use of Force	7	0%	0%	14%	43%	0%	14%	29%
Marine	7	0%	0%	0%	29%	43%	29%	0%
Other	19	5%	21%	26%	21%	5%	11%	11%
Science / Forensics	17	6%	35%	41%	6%	6%	6%	0%
Social Care	2	100%	0%	0%	0%	0%	0%	0%
Surveying / Building	19	0%	0%	16%	37%	16%	16%	16%

## **Appendix 8**

### **Question 21: In the last 12 months have you considered stopping your work as an expert witness?**

### **Question 22: Other. Please specify.**

- The politicisation of the Law and the slavish pursuit of cheapness means price is all that matters when experts are retained. To not have experience recognised and only specialism regarded means to narrow a view.
- I am 72 years old and trying to wind down my medico-legal practice: thus, I am not accepting new cases.
- Law firms not paying, excessive delays, non-payments, time-consuming court claims.
- Moved to live primarily outside of the UK mid-2017
- The hassle of revalidation.
- Approaching 70 and family illness.
- Way too stressful.
- Hassle from solicitors when my report does not support claim e.g. forwarding lists of gabbled comments from Claimants. Solicitor - Failure to send properly paginated records. Solicitor - Failure to disclose all relevant information.
- The MedCo system seems to encourage a race to the bottom.
- As one of the leading UK experts on drug abuse, my company used to turn over £100-£120k a year with full time staff. This year I have not been able to afford to pay myself over several months as turnover barely keeps overheads covered.
- Not getting paid and the increasing tension of reducing fees vs. criticism of not getting to the bottom of things.
- Time taken to receive payment.
- Too much work.
- Childcare.
- Unsure if I really enjoy.
- Solicitors sometimes do not accept/understand how much time a complex case can take.
- Need for annual appraisal and 5 yearly revalidation.
- Takes so much time to do the work justice. You can't charge for all the hours you actually work.
- Lots of therapy clients which I enjoy more.
- More complex work, fewer hours, less pay, shorter deadlines, more pressure, more administration (e.g. LAA picking apart travel expenses - finding fault taking hours to resolve for sake of a few £).
- Litigation is being politicised and favouring the financial institutions with the Insurance companies imposing their agenda on legislators and the courts.
- Disrespect under cross-examination.
- Very demanding and not worth the stress to my life.

- Working for lawyers invariably means being paid extremely late, sometimes years not months!
- I work as an independent social worker. We are not valued as experts in the same manner as other experts and pay capped to carcass rates that are not comparable in terms of expertise experience or costs installed as self-employed workers. At £33 per hour this is not viable.
- Many solicitors are farming work out to agencies, who are increasingly undercutting one another to win the work and therefore expecting Experts to work for far below a rate which reflects the expertise needed to produce a legal report. I have been asked to work at a rate of £250 for a report that would take me 8-9 hours (I refused). It is more profitable for me to work as a therapist than as an Expert Witness - and without the level of stress and legal accountability I have as an Expert Witness. It is becoming increasingly financially unviable to work as an Expert Witness in my field, especially with agencies competing with me (some of whom are highly incompetent and don't pay until threatened with legal action many months later) and taking at least 50% of what they charge the solicitors. I don't enjoy working as an Expert Witness any more.
- (1) We are bombarded by instructions from legal agencies that are poorly organised and where there is no proper instructing letter detailing the instruction, and where the files are poorly copied (illegible), highly duplicated and where CD-ROM will not open. (2) There is increased expectation to provide urgent reports or joint statements with very short (e.g. 1-2 week) deadlines and where we have to chase the relevant reports and records, and chase again, despite the solicitors having these for months - there is a very high expectation that leaves experts working round the clock on top of busy NHS and research roles, and very little recognition that to be an expert, we need to do medicolegal work in addition to keeping up our clinical and scientific expertise. (3) We are having to spend a lot of time (unpaid) providing estimates before accepting potential instructions and to do this we need to see records and what is involved - with increasing GDPR security, this often leads to hours of unpaid time. ML work is highly time consuming to do well and it is disheartening to see how our opposite experts often hardly give time of day to the claimant and write very brief reports that do not show proper evaluation of all the facts, and (even though I do a lot of defendant as well as claimant work, and medicolegal / forensic as well), I see all too often that the claimant is belittled and not taken seriously and that the expert jumps to a malingering conclusion without really spending any time with them.
- Issues re-GMC and indemnity.
- There is another area of interest that I feel might be a better career option for me.
- Other work opportunities.
- Delay in payment by solicitors, often several years.
- Requests for supplemental reports with very short notice.
- Offers of other easier PT work options.
- Stress and emotional impact.
- Because it takes too long to receive payment.
- Pressure from instructing solicitors.
- Low number of instructions.
- My specialism is being used less. My belief is that this is due to a lack of resources, the police are far less willing to pay for expertise that they may not understand themselves or view as 'speculative'.
- Coming across reports which do not conform to Criminal Procedure Rules or Civil Rules but accepted by Court?
- Charlatans continuing to work when they lose their Regulated status or are not Regulated and some with health issues.
- Indemnity insurance no longer included in professional membership. ICO membership required at personal cost.
- Cost of indemnity insurance.
- Impact of on-going process on other life priorities.
- Solicitors not paying their bills, rude (!! ) solicitors, no thank you and no update through case, threatening solicitors.
- Work full time as a nurse specialist but cases seem to all come through at the same time.



# About Bond Solon

Bond Solon is the UK's leading Expert Witness Training Company and since 1992 have trained tens of thousands of expert witnesses. In this time we have been at the forefront of improving the standards of expert witnesses in the UK through the provision of knowledge and skills based learning and qualifications.

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