

PAYMENT ISSUES AFFECTING EXPERT WITNESSES

Survey Report 2020



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Number of respondents

285



Start Date:

31

07

20

End Date:

31

08

20

285 experts responded to this year's survey of expert witnesses. The survey highlights serious issues for experts in getting paid for the work that they do and reveals some ways in which they may be able to tighten up their contractual position in order to ensure payment in future.

Mark Solon

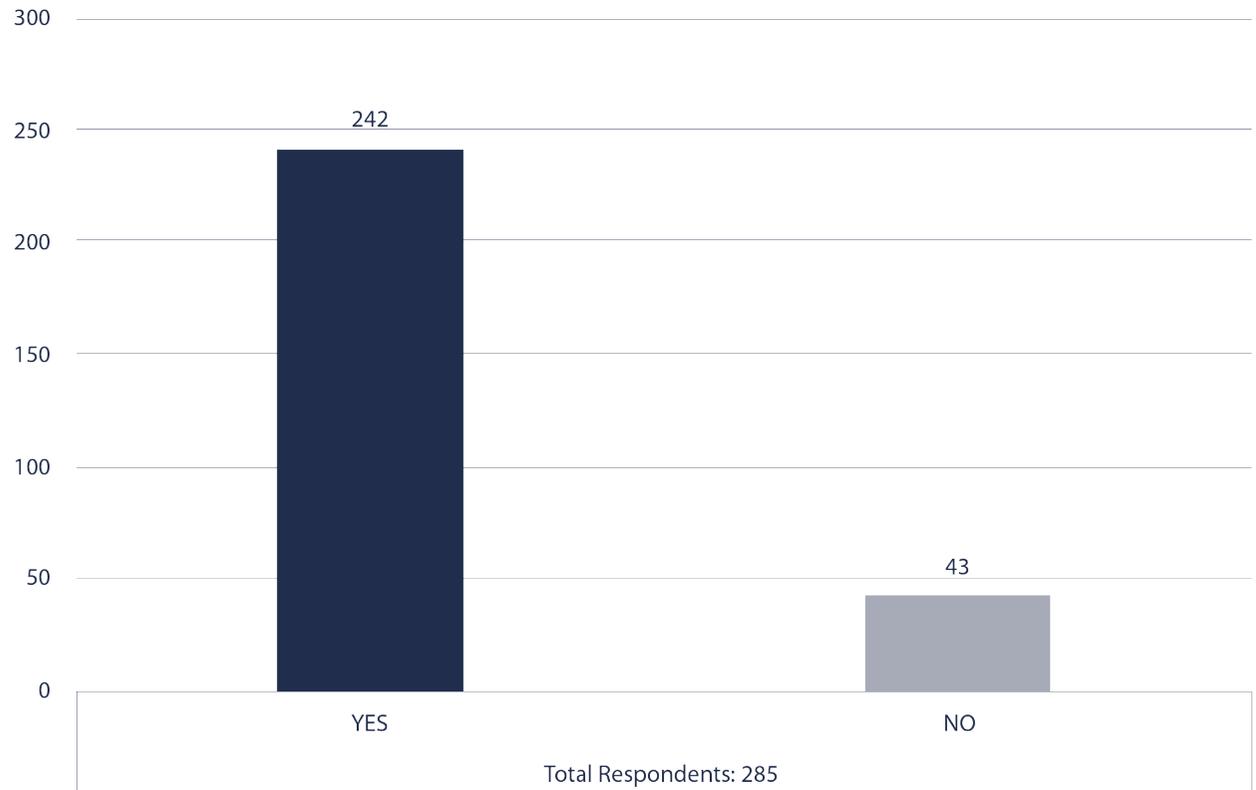
Mark Solon

Question 1

Are you self-employed?

Nearly 85% of respondents stated that they were self-employed, probably reflecting the position of the majority of the expert witness population. The likely impact of this is that experts are working alone, without the support of an organisation behind them to deal with issues of cash-flow, sourcing work and setting up and enforcing contractual provisions and pursuing late, or non-payment.

Experts are, therefore, in a vulnerable position when dealing with their instructing party, a fact which is borne out by some of the results which follow.

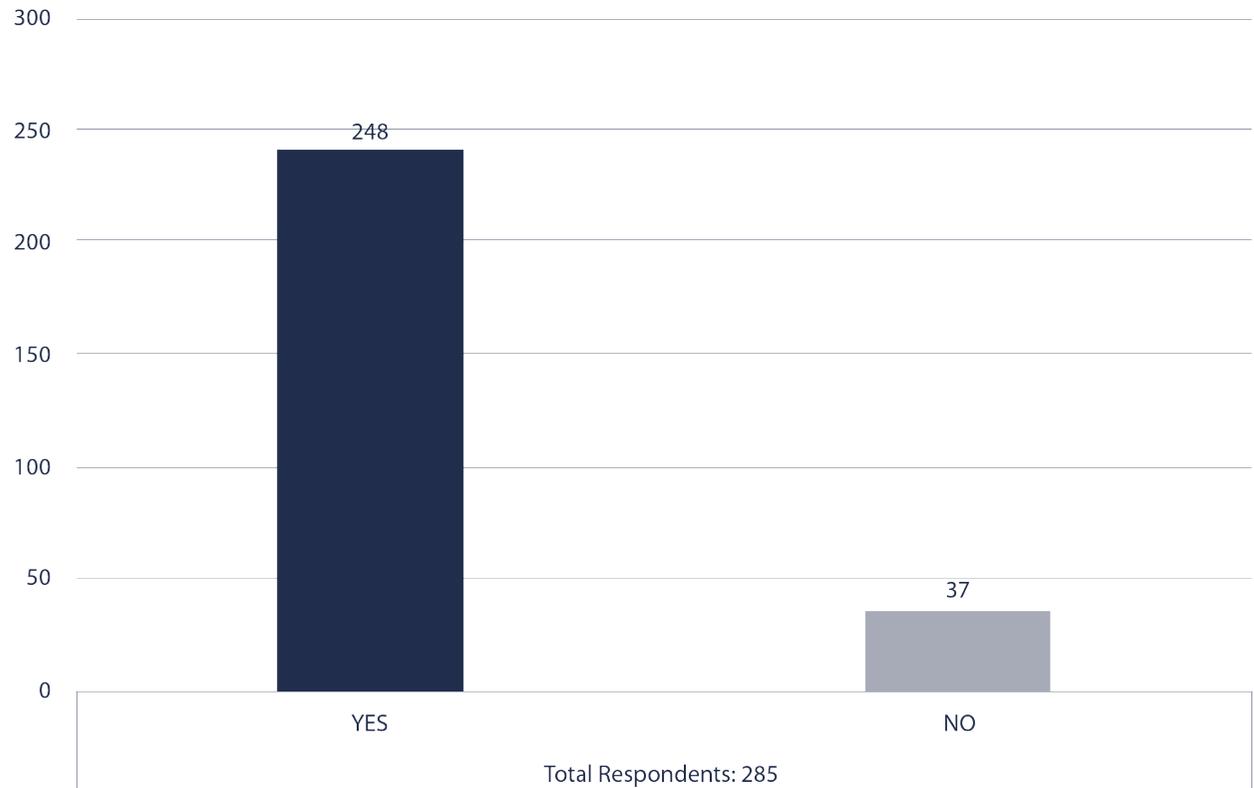


Question 2

Do you have terms and conditions covering payment of your expert witness services and stipulating when payment is due?

Interestingly, 87% of those surveyed do have terms and conditions. The precise terms were not requested and so we do not know exactly what those terms covered or how effectively they did so; nor do we know how, or why, those experts chose to create terms. Possibilities include having had a bad experience of non-payment and so deciding to strengthen their position for the future; advice from colleagues in their field; training; advice from lawyers on how to create an effective contract of engagement.

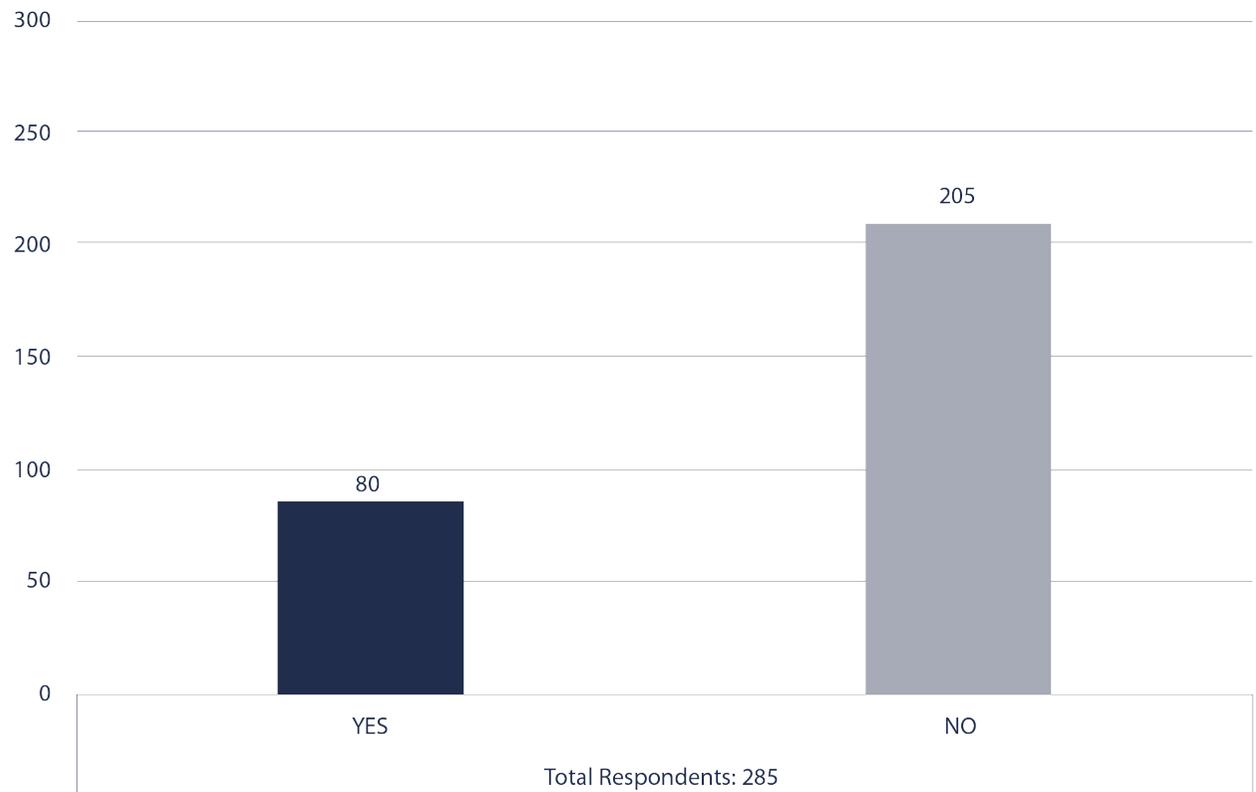
There are three imperatives for an expert witness: firstly, to be an expert in their field; secondly, to understand and fulfil their duty to the court; thirdly, to understand that they are operating a business as an expert and must do so with appropriate provisions in place regarding payment terms. The instructing parties know that they are running a business – the expert must recognise that, too.



Question 3

Before accepting instruction, do you conduct some due diligence to ascertain the credit worthiness of the instructing party?

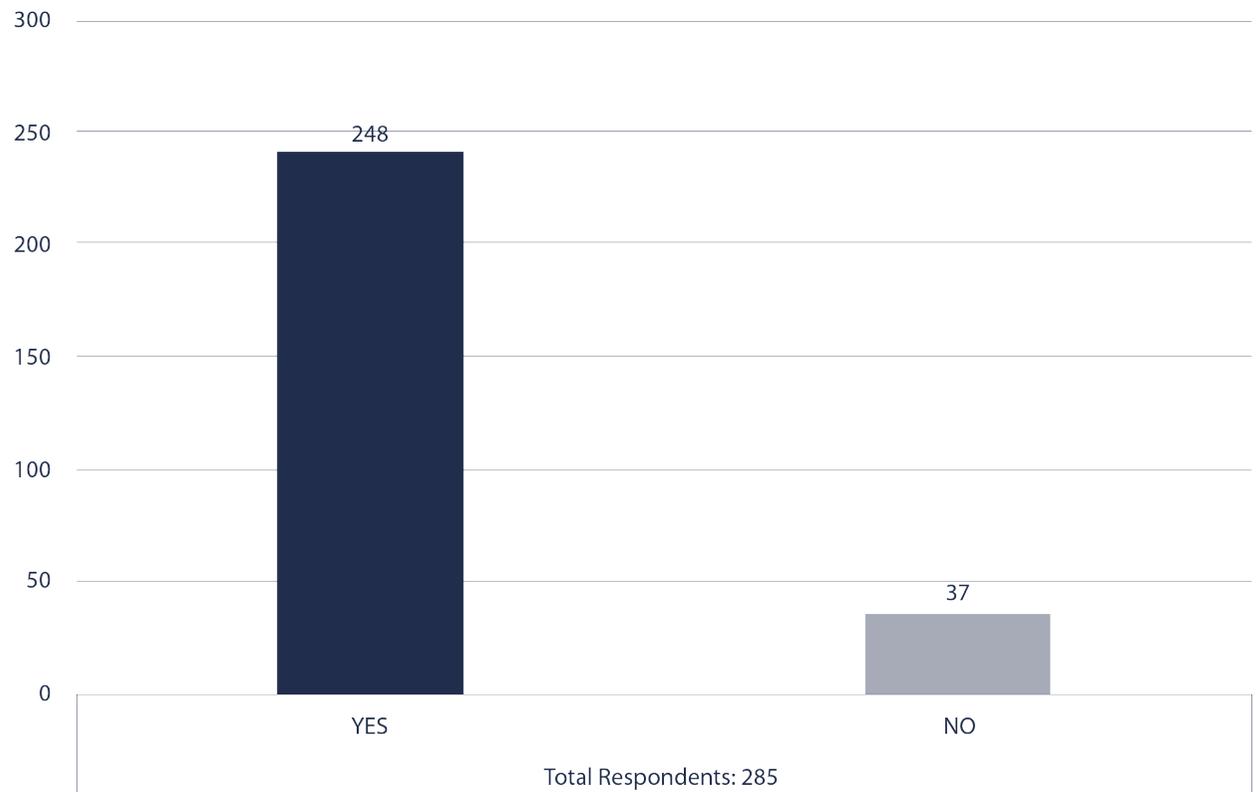
The vast majority (approximately 72%) do not and it may very well not occur to many to do so. As we shall see under Question 11, in some instances the reason for non-payment is that the instructing party went into liquidation. Many law firms have found themselves going bust as a result of the pandemic and so experts will need to tread carefully as they enter into contracts for their services.



Question 4

Have you previously experienced late payment by instructing parties?

With over 96% of respondents stating that they have, this represents a major issue for experts as they manage their cash flow. Previous surveys have shown that experts have stated this as a reason for leaving expert witness work. If the legal system wants to retain good quality experts, there must be an expectation that they should receive remuneration in a timely way. The starting point is to enshrine payment expectations in the terms of engagement.

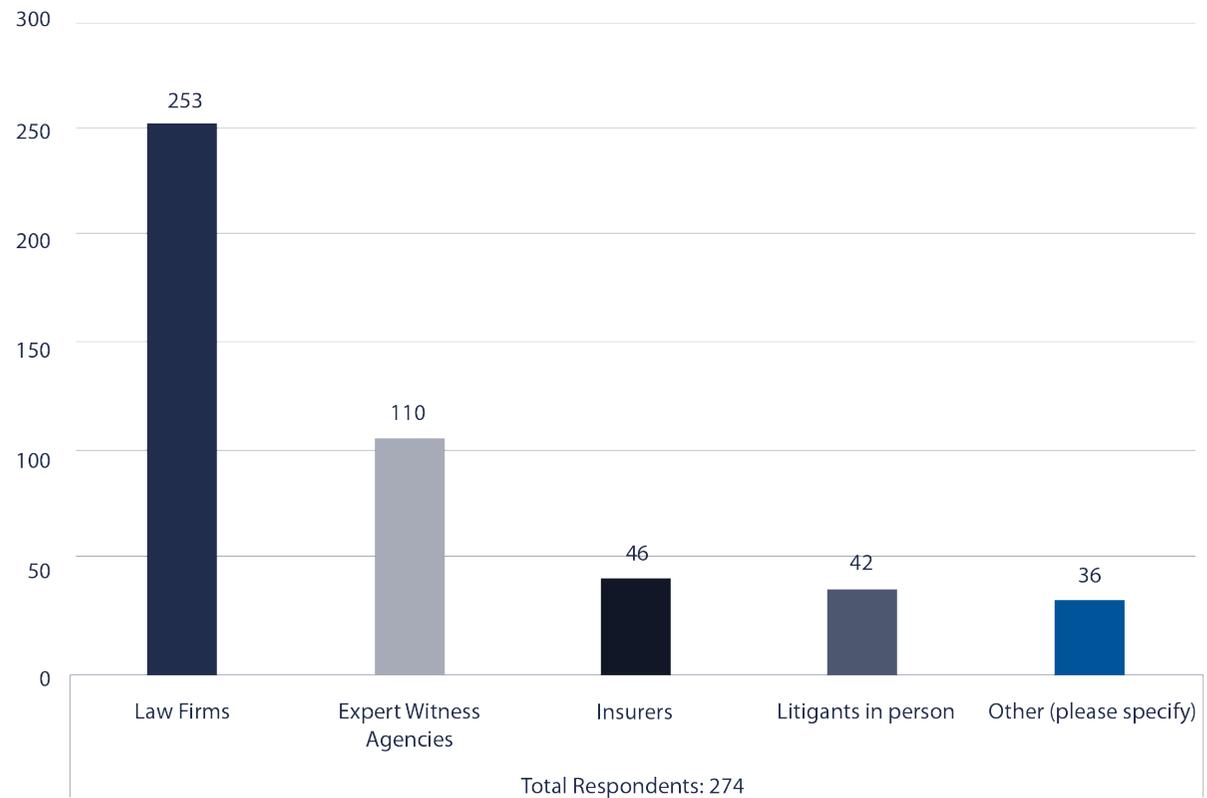


Question 5

Have you previously experienced late payment by instructing parties? From whom?

The spread here may simply reflect the reality of the sources of instructions, rather than making any point about law firms as opposed to, say, litigants in person.

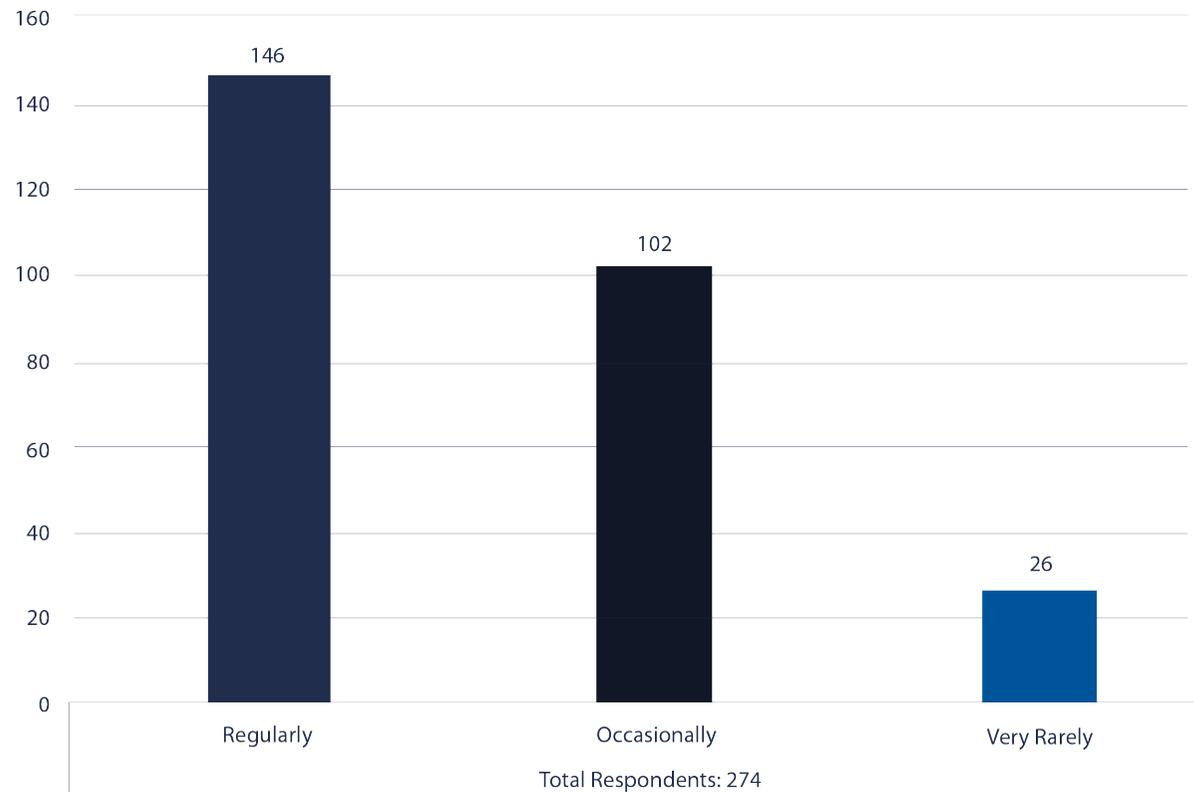
Please see Appendix 1 on page 21 for comments given in response to the “Other (please specify)” option in this question.



Question 6

Have you previously experienced late payment by instructing parties? How often?

With over half of respondents reporting regular late payment, this is plainly an issue that needs addressing. Given that over 90% of respondents had experienced this issue from law firms, this is surely a matter for the Solicitors Regulatory Authority (“the SRA”) to take seriously and to investigate.



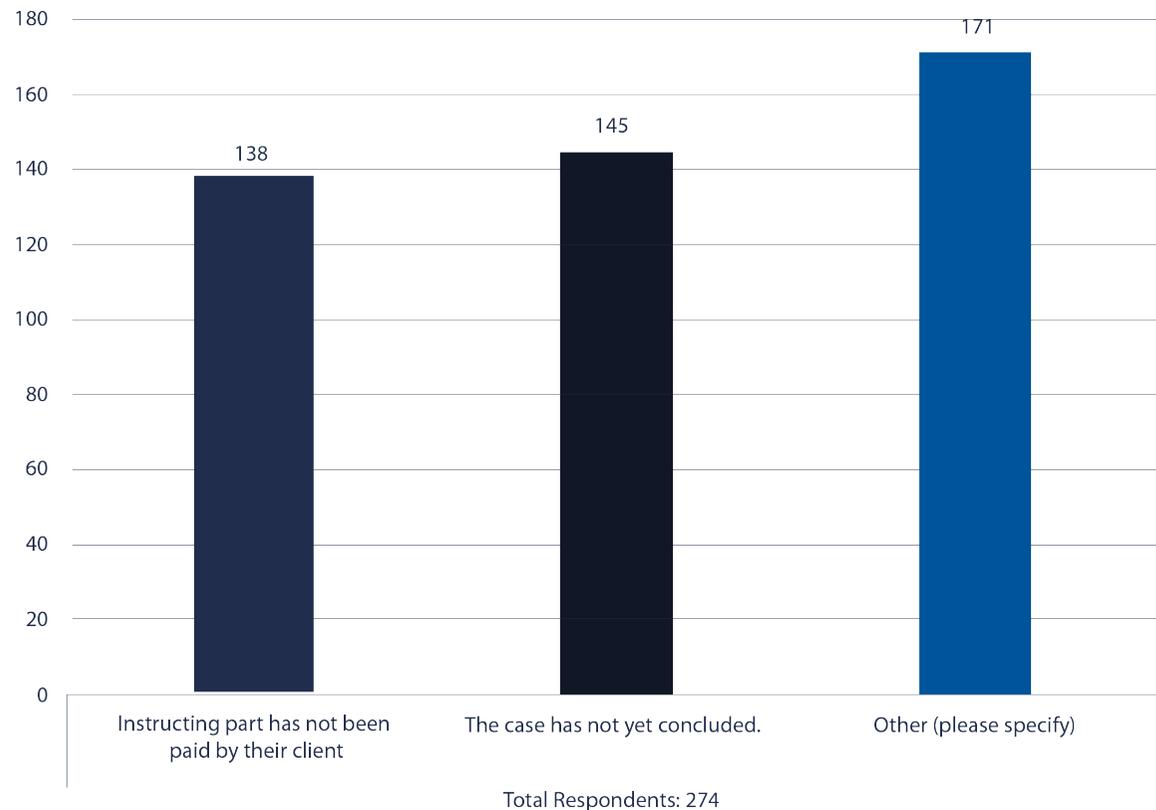
Question 7

What reason has been given for late payment?

The reason most frequently given for late payment was that the case had not concluded. Experts need to be careful not to tie themselves into agreements to defer payment until the conclusion of the case. Instructing parties may well be on a “no win no fee” agreement (which of course an expert cannot agree to for their terms as it would breach their overriding duty to the court); they will want to limit their cash flow issues and so will want the expert to defer payment until the case is concluded. There is nothing wrong with doing that, provided the expert is happy to work on that basis.

Check what the instructing party is saying about payment.

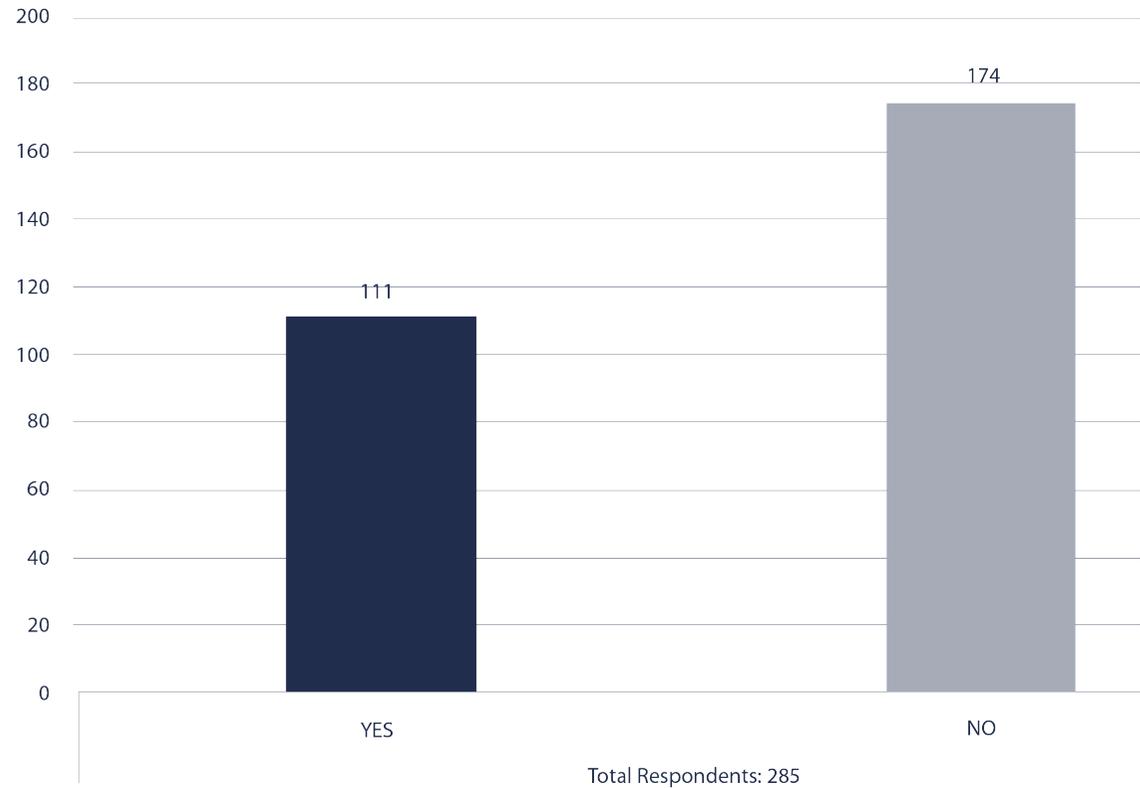
Please see Appendix 2 on page 22 for comments given in response to the “Other (please specify)” option in this question.



Question 8

Have you previously experienced payment refusals from instructing parties?

Well over a third had experienced payment refusal, again, in line with previous surveys. Of course, all business areas have their share of non-payers and it is not clear how this figure compares to other sectors. It is a significant percentage, which becomes more interesting, and concerning, when the reasons are explored under Question 11.

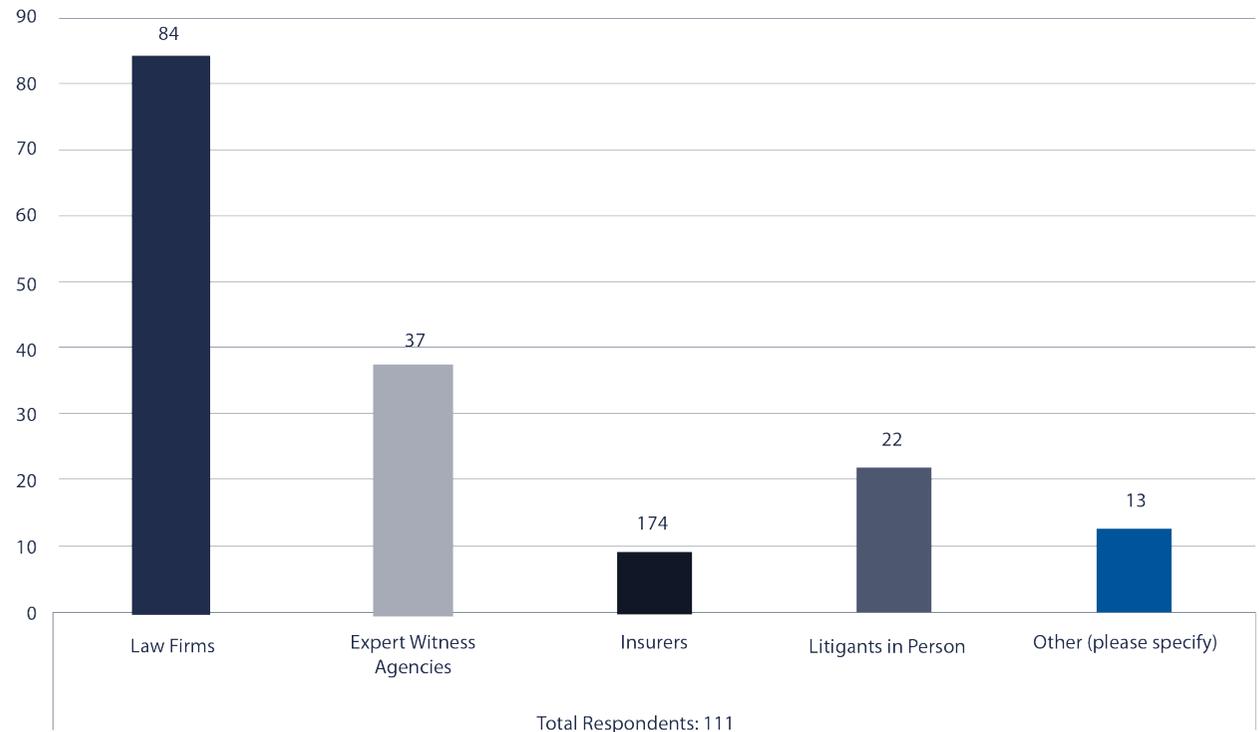


Question 9

Have you previously experienced payment refusals from instructing parties? From whom?

The proportion is broadly similar to that for late payment, again raising an issue for the SRA to investigate.

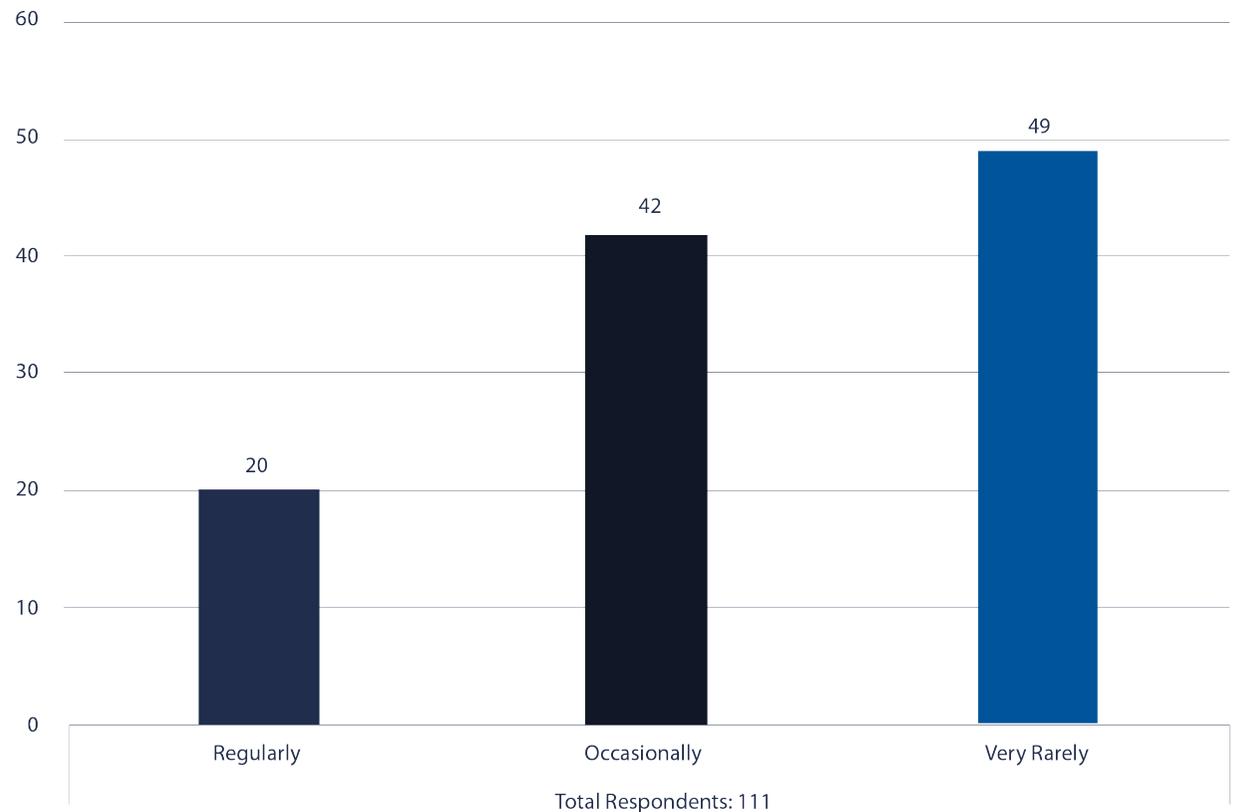
Please see Appendix 3 on page 23 for comments given in response to the “Other (please specify)” option in this question.



Question 10

Have you previously experienced payment refusals from instructing parties? How often?

Just under 1/5th of respondents experienced this “regularly”, which must surely be an unacceptably high proportion of the expert witness community. One of the problems here is that, with most experts operating alone, there is not a loud enough voice to raise the issue at a level at which it will be taken seriously – it is currently an issue between an individual expert and their instructing party and an individual frequently may not feel equipped financially, and emotionally, to pursue enforcement of payment.



Question 11

What reason has been given for payment refusal?

The main single reason for refusal was failure of payment by the client. The issue here is to go back to the contract and be clear that the instructing party is to be liable for payment, irrespective of whether or not they have been paid themselves.

What is more worrying is the reality hidden behind the “other” reasons for refusal to pay.

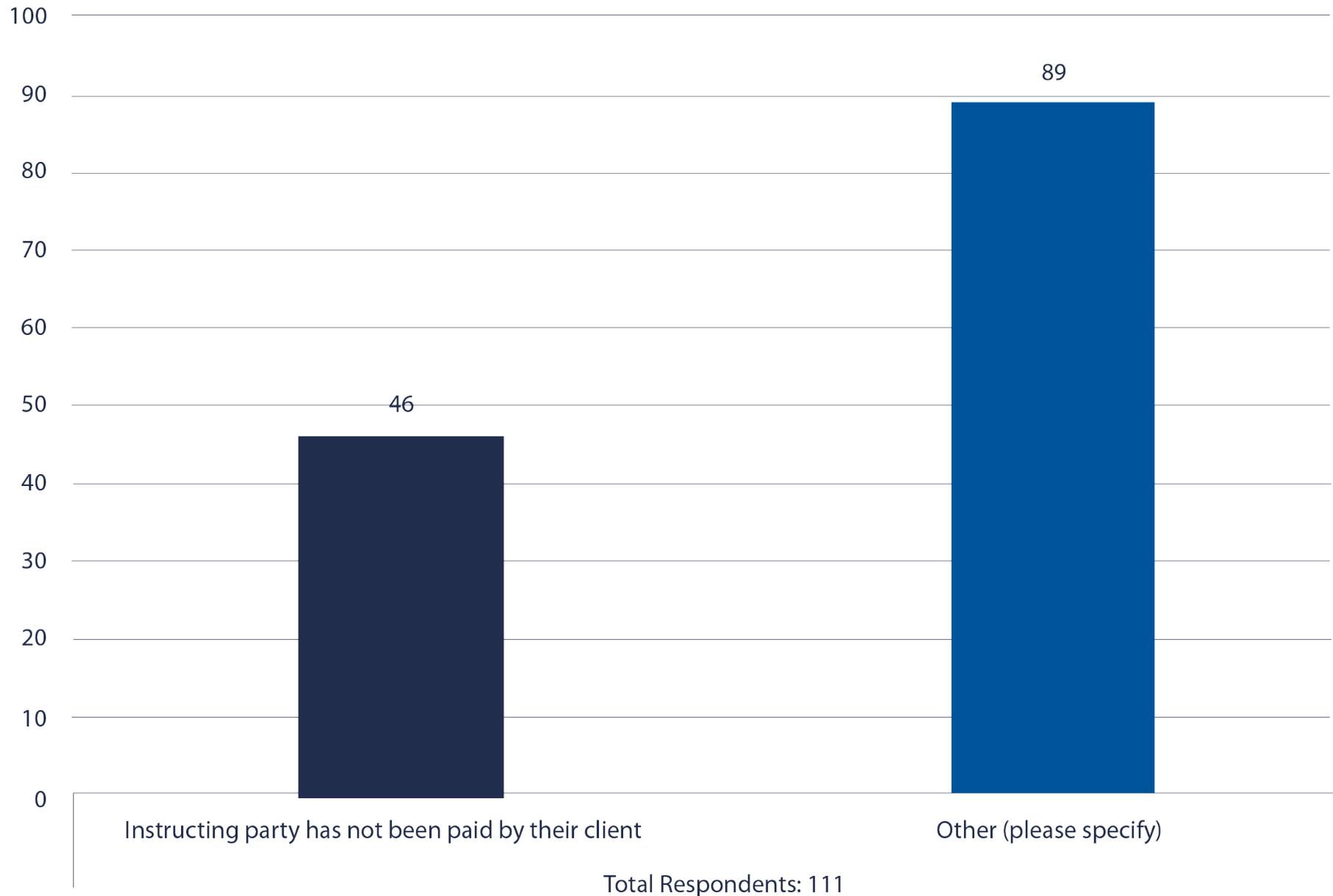
The single highest other reason was that the instructing party did not agree with/like/want to use the expert’s report, because it did not state the opinion that they wanted. Experts owe an overriding duty to help the court on matters within their expertise; they must do so independently, uninfluenced by the pressures of litigation. There is plainly a serious pressure being placed on experts to state “friendly” opinions to boost the party’s case; the expert cannot do that without breaking their duty to the court.

For the last 30 years, the courts have been increasingly energetic in demanding high standards of independence from their experts; it is clear that instructing parties are still operating a different system.

After “not liking the opinion”, the next highest refusal reason relates broadly to contractual manoeuvres by the instructing party e.g. “fees higher than expected”, “contractual issues”, “never properly instructed in the first place”. Careful wording of the contract terms is needed here, as well as clarity about what work is being requested, and at what rate, before the work is embarked upon.

Finally, on some occasions, the judge has disallowed the expert witness fees as they have held that an expert was not needed. There is a distinction to be drawn here. If a judge disallows fees because of the expert’s conduct, that expert can hardly expect their instructing party still to pay them; if the expert has acted in good faith and fulfilled their duty to the court, their instructing party is still liable to pay them, even if they cannot recover those fees from the other side. Make sure you know what the judge has said and ordered.

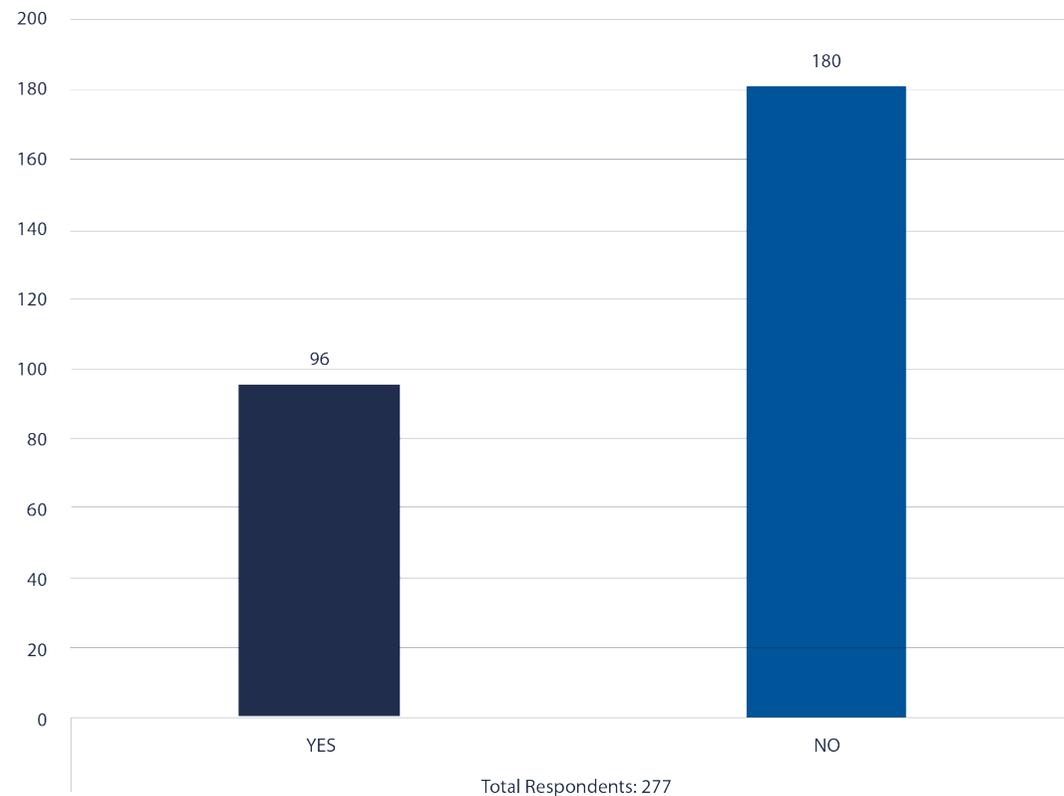
Please see Appendix 4 on page 27 for comments given in response to the “Other (please specify)” option in this question.



Question 12

Do you have in place a formal credit control process?

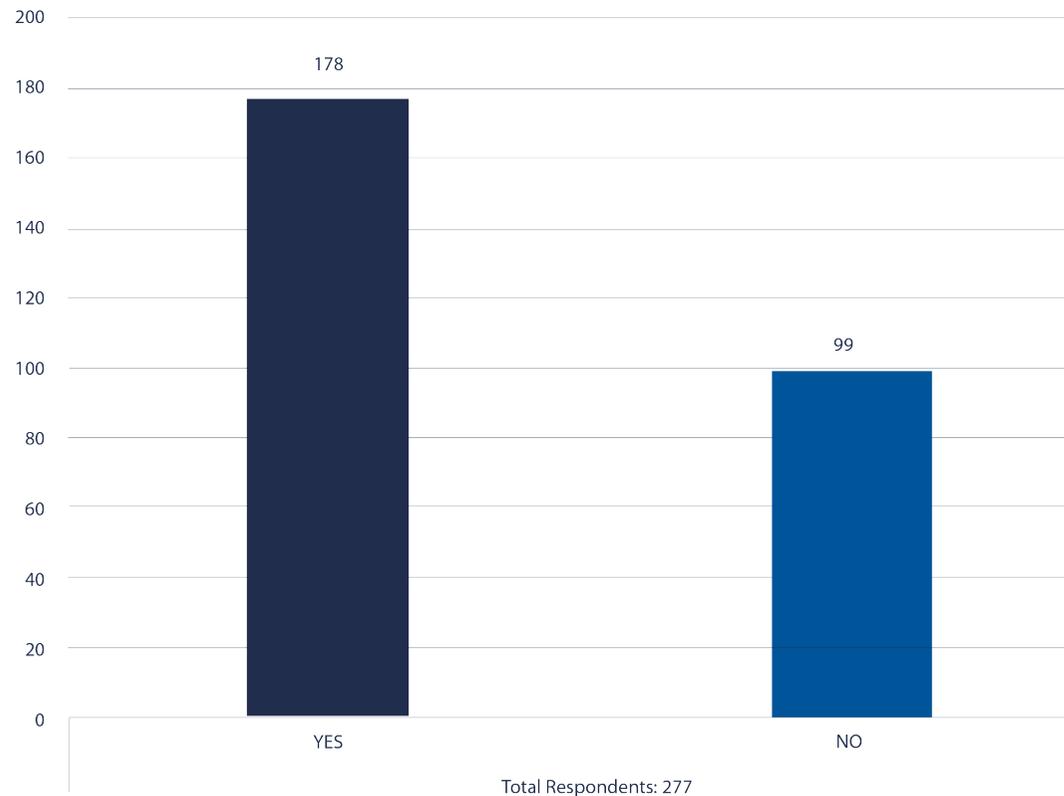
Two thirds do not and again we are in the realms of proper business processes. Relatively simple software is available to monitor work done and payment made and to chase payment as necessary.



Question 13

Have you ever threatened legal action to recover a fee from an instructing party?

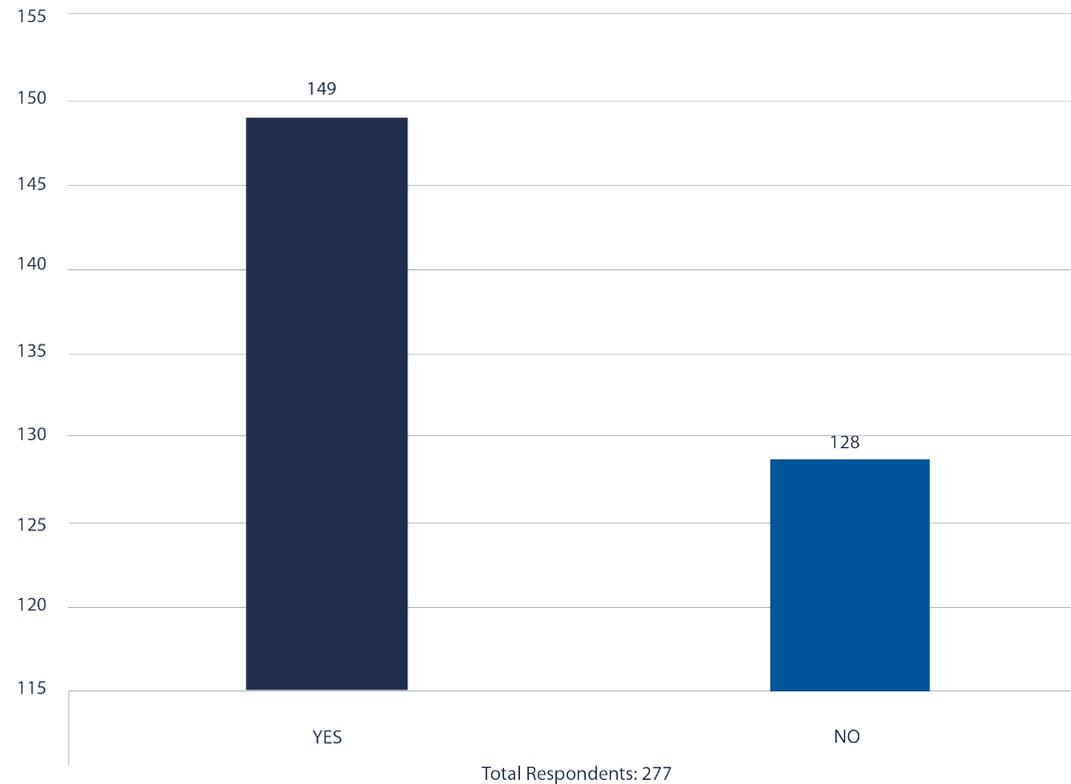
Perhaps reflecting the response to Question 12, two thirds have; the success rate of this threat is not known but, from anecdotal conversations, it has been effective in many instances. The small claims court has a relatively easy-to-use process, although there is now an obligation to go through mediation before finally coming to court, which can add time, and expense, to the process.



Question 14

Have you had to write off any bad debt linked to an instructing party in the last 3 years?

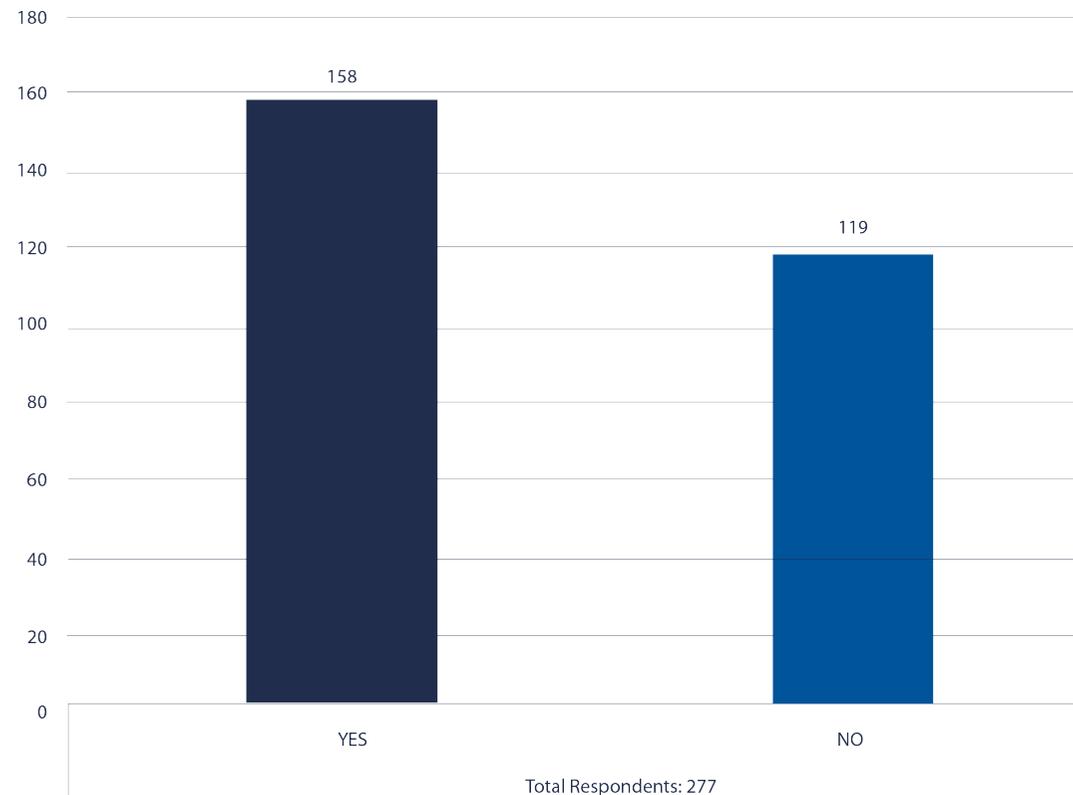
With just over half of respondents saying they had, this again is an unacceptably high proportion of the expert witness community and merits being taken seriously by the SRA in relation to the activities of solicitors.



Question 15

Are you concerned that if you take too hard a line with debtors you will not be instructed again by that party?

At one level, it could be argued that an expert witness may not want to be instructed again by a party who refuses to pay or who draws out the process of making payment, but this is to underestimate the precarious position that many experts find themselves in. It is not an easy sector to break into and the expert is reliant on their contacts and instructors to maintain their work. It is easy to appreciate the difficulty faced by experts and the financial losses they may feel forced to absorb, often with the promise of more work in the future.



Question 16

What do you see as the single biggest challenge when it comes to getting paid by instructing parties?

Please see Appendix 5 on page 29 for comments given in response to this question.

Appendix 1

Question 5

Have you previously experienced late payment by instructing parties?
From whom?

- Corporate Clients
- Local Authority
- Local Authorities' Legal Departments
- Scottish Legal Aid Board
- The CPS, The Courts
- Appointing Parties
- CPS
- Local Authorities
- The Company Managing my Billing
- Police Authorities
- The Courts Central Funds
- Court
- County Councils
- Courts
- Local Authorities
- Local authorities - they are the worst payers. They will do anything to avoid payment.
- Local Authorities
- Local Authorities
- Police and CPS
- Other Expert Firms
- Police Forces
- Clients who were legally represented, but paid me direct
- Courts
- Local Authorities
- Local Authorities are perhaps the biggest problem
- Courts
- Local Authorities
- Claims management companies claiming to act on behalf of solicitors
- Ministry of Justice
- Local Authorities
- Direct payments from the party whom we are advising
- Local Authorities
- Local Authorities
- Wind Farm Developers
- Local Authorities

Appendix 2

Question 7

What reason has been given for late payment?

- Often, they do not give a reason or reply to calls/emails.
- "Oversight"!
- Disputes involving third parties about fees.
- Negligence / poor management of their affairs by the responsible parties. Poor communication between the parties in cases of multiple shared responsibility.
- Not known - the bad debtors rarely reply to messages.
- Often none, especially from agencies.
- No reason given.
- Insolvency.
- No reason is usually given.
- Not given.
- Solicitor and client in dispute over handling of the case.
- No reason or client unhappy with report (6 months later).
- Reasons often not given: Some refuse to respond to requests for payment. Presumably they didn't like the recommendation in the report. Irish law firms seem to be a particular problem.
- Case has closed and they "didn't have our invoice" - impossible for us not to have sent it.
- No reason given.
- Client did not want to pay until they had the product without the 'DRAFT' watermark.
- LAA haven't paid them yet.
- Miscommunications between fee earners / lost invoices / changed fee earners / change in credit control personnel / lack of funds or working capital.
- Invoice lost, the IP forgot to pay, cash flow issues.
- 1. Case settled but our invoices are not paid. 2. Arguing about the invoice after the claim has settled.
- Legal Aid Agency hold ups.
- Didn't understand payment was required for that particular part of the service.
- Oversight on their part...
- The LAA has not paid and therefore I cannot be paid.
- None given.
- Usually no reason given.
- No reason is usually given. Just have to keep chasing, and occasionally threaten to issue. Very, very occasionally, have had to issue.
- Forgot to process invoice.
- They missed it.
- They are looking into it.
- Often there is no reason preferred; solicitors simply delay payment as much as possible.
- Buck passing - it went to the wrong department.
- Insurer didn't pay.
- No reason given.
- Any random excuse.
- No reason just don't pay until nagged.
- Not applied for Legal Aid.
- Just don't pay.
- No idea.
- Usually no reason given, reminders having been ignored.
- Agency slow.
- Payment overlooked.
- In spite of the fact that CI 1 in my terms hold them individually and severally responsible... When reminded of this they offered to pay me w a 10% discount on a total of £50,000.
- Just a decision not to pay.
- No reason given .
- No reason given, just sluggish response to nagging emails, although I've only had to threaten SCC action once in the past c. 20 years to get payment eventually in all cases.
- Claims computing errors. Missed payroll, person dealing with fees is not in and invariably not contactable.
- Case concluded but costs being reviewed.
- Have to be reminded.
- No reason given. Payments just do not come even when promised.
- Covid pressures.
- LIP just wouldn't pay. I was withholding the report but judge made me release it. Since then money before I work for LIPs.

- Forgot to pay.
- Delays in payment from LAA.
- None!
- Some of the solicitors even stop corresponding or replying to communication.
- No reasons given - just bottom of in-tray!
- My reports have not been used, my office did not provide invoices.
- None!
- Legal firm claiming that I was to be paid out of court central funds rather than the law firm; law firm claiming there wasn't an effective contract in place; law firm amending the terms of a contract without informing me.
- Request for payment ignored.
- New ways of working with COVID.
- The report didn't say what they wanted it to!
- Just slow processing of the invoice.
- Gentleman concerned was a crook!
- The case was unable to progress and is closed.
- One law firm went into liquidation - and I suspect they were already aware the firm would no longer exist when they instructed me. I only discovered this when I tried to chase payment and got through to someone on the phone who told me it was his last day in the office and they were closing down. I had to search online for contact details for one of the partners but received no reply. I eventually found out which company was dealing with the liquidation proceedings and I contacted them directly.
- Often no reason, or no reply to reminder emails.
- No reason.
- They are waiting for payment from the LSA and refuse to pay 'on account'.
- No details given - in one case law firm went into liquidation.
- No excuse.
- Usually no explanation.
- No reason given.
- Lazy accountant.
- None.
- Law firm refused to answer my emails.
- Generally no reason, nor apology.
- Amnesia.
- I changed my mind at the joint conference because of lack of medical evidence.
- They have not wanted to pay on work already done when change of instructions.
- Often no reason given and no single person taking responsibility for payment.
- Invoices higher than originally anticipated, wish time to pay.
- The local authorities simply ignore requests for payment and the local authority lawyers who instruct me then say payment is nothing to do with them. As a result, there are some LA's that I won't accept instructions from.
- Despite my terms and conditions - they state the case has not concluded.
- Always chasing up payment - just slow.
- Awaiting payment by legal aid.
- Instructing party has cashflow problems.
- Invoice "lost" or not received.
- No reason given in many cases.
- Lawyer moving firm.
- Litigation concluded badly for client.
- LAA not paid up.
- No reason.
- 'We forgot!'
- Waiting for money from LAA.
- Invoice lost or not received.
- Often no response given.
- Scope of work exceeds "agreed" notional budget, not instructed. Settled for less than they wanted. Reduced income due to Covid-19.
- Oversight.
- Admin errors.
- No reason.
- No reason given.
- No reason given, or subsequently found to be untrue.
- No explanation is given.
- General gross incompetence! We are regularly paid by law firms and deputies several times for the same piece of work!! We have sufficient controls to pick this up but they are often totally unaware! Very poor client fund management processes.
- Case failed.
- Claim that payment terms are much longer than what they signed for.
- No reason given.

- Many times no reason given, just constantly ignoring reminders.
- No reason is usually given - they simply delay payment without explanation.
- Company/individual/solicitor does not have the funds or has become insolvent.
- Either no reason, or that LAA funds have not been received, or that I need to be "recorded" in the (local authority) system.
- Slow admin.
- Often will not respond to demand for payment!
- They just don't want to pay. They've forgotten. It's not on their system. They couldn't be bothered. The person dealing with the matter has left etc.
- Admin delays.
- Covid.
- Invoice mislaid, person who authorises payment was on holiday or on sick leave, disputed invoice.
- Usually the request for payment is ignored and often the agencies finances are dire as the solicitors have not paid the agency.
- No reason given.
- Either 'the case has not yet concluded' or 'you forgot to include your invoice with your report' (untrue!).
- Solicitor dealing with the case no longer employed, papers misfiled etc.
- They have lost the invoice!
- Delays from Legal Aid Agency. Local Authorities invoices not being authorised and lost in processing.
- LAA inefficiency or solicitor's firm's inefficiency. Often I don't actually know.
- Lies, distractions, forgotten invoices...you name it, any excuse.
- Poor account management.
- Procrastination.
- No reason given.
- Solicitor asks for a report in draft.
- Insolvency / inefficiency.
- Often ignored emails.
- Rarely given a reason.
- Often no reason, just does not seem to be a priority or is forgotten about.
- Often not even given a reason.
- Not been paid by legal aid agencies.
- Many and varied excuses! Often I get no answer to emails and phone calls from my secretary.
- Where litigation claim dropped but fees for work done still to pay.
- I am not given a reason. I have to request payment, sometimes more than once.
- Someone has gone bust.
- Administrative error.
- Lack of any response is common, or fobbing off - I will pass this on to accounts, I will look into this, etc.
- No reason given.
- Firm has gone bust!
- Cash flow problems. COVID-19 as stated staff working from home with no access to accounts systems .
- It's somehow been delayed in being put on their payment run, and even though it's now flagged up, it won't be paid until the end of the month...
- Late payment from LAA.
- In SJE the losing party was upset.
- Reasons are rarely given, but have included losing our invoices and re-organisation of finance departments.
- I cannot begin to describe the sheer incompetence of some MRO's. Some are excellent, most are not. At one stage I was owed 10,000 pounds in outstanding payments.
- Solicitor did not submit invoice for payment on receipt.
- No explanation given.
- Solicitors insolvent.
- Not applied for Payment on Account, fee earner left firm, lost invoices.
- There seems to be complete administrative disorganisation - lots of excuses.
- Legal aid agency delays / no reason given just lack of communication.
- Various - case did not settle etc.
- No reason given.
- Interim payment not received.
- Bogus allegations about my professional status.
- "Payment run dates" (months after work has been rendered). Also sometimes no reason, just promises to pay leading to more delay and then often a requirement to contact again.
- With my cases, payment to the instructing criminal solicitor is via Legal Aid and not the client themselves.
- Often no reason offered.

- Often do not get any response to emails.
- Their terms are different from mine. My terms are payment within 28 days. For one organisation (who I will not work for again), I needed to “badger” them and was paid 9 months late.
- Client of limited means and cannot afford to pay (in cases where the medicolegal claim has failed).
- I think they just hope I will forget!
- None. Just late.

Appendix 3

Question 9

Have you previously experienced payment refusals from instructing parties? From Whom?

- Corporate clients
- The CPS, the courts
- I changed my mind at the joint conference because of lack of relevant medical documentation.
- Local Authorities
- Local Authorities. If an appointment is cancelled on the day, or if the interviewee is not available, the LA typically refuses to pay. In such cases, I apply directly to the court and the judge has always instructed them to pay what they owe.
- Legal Aid Agency
- Local Authorities
- Generally when a lawyer makes first instruction via an agency then emails additional instructions direct. Lack of clarity as to who is now instructing.
- Case failed.
- RTI
- Clients who were legally represented but paid me direct.
- Company instructing law firm (law firm hired us) refused to pay full amount owed to the law firm (and hence to us).

Appendix 4

Question 11

What reason has been given for payment refusal?

- Amount was more than they thought.
- Fees were higher than budget / estimated, cash flow problems, failure to agree over runs in advance.
- Technicalities around appointment confirmation.
- Client considered that my evidence did not support their case - arbitration case.
- LIP is dissatisfied with the report conclusions.
- Often no reason given. Just refusal to respond to requests for payment.
- Post settlement. Instructing Solicitor not informed me of the closure / end of case and client won't pay.
- Law firms pretending they'll look into paying. They challenge the size of the fee despite having our T&CS or say the other side won't pay unless we reduce the fee.
- Client wanted to change the report after the final draft to include material known to be untrue.
- Disagreeing with opinion(!) or costs more than expected / quoted (its estimate only and dependent on the amount and timely delivery of all evidence).
- They do not accept the fee - usually regarding addendums/fee for review material that was not available at the time of examination. Also DNA fees.
- Disputed fees.
- Supposed disagreement with our conclusions.
- Didn't understand payment was due for that particular part of the service.
- No funding to cover the fee.
- Claimant has no insurance.
- The client did not agree with the diagnosis and claimed breach of contract.
- The expert witness group went 'bust'.
- Claim not successful, that I need to chase payment.
- Claimed they did not agree to be joint party in commissioning the report.
- Law firm has been taken over; the case has been taken over by a different firm.
- Interpreting terms and condition as to whether additional work was chargeable according to T&Cs.
- Did not agree with report.
- No valid reason given other than they will look into it.
- I had not gone through their tendering process and therefore I had not been formally instructed.
- E.g. the Judge decided an expert witness should not have been called.
- Fee dispute.
- Said they expected pro bono advice.
- Excuses given not to pay.
- Report not favourable despite highlighting the rules!!!
- Invoice exceeds their expectations.
- Already settled case and "forgot" to pay expert!
- He knew report was not likely to assist his case.
- Some of them just do not respond to requests for payments.
- My office did not provide invoices for my reports or the reports were delayed.
- Not accepting my expertise.
- Not instructed specifically.
- Claiming that there wasn't an effective contract in place with the law firm and that it remained with the client.
- Firm has gone bust, sole partner had died, simply not paid or entered into correspondence.
- The report didn't say what they wanted it to!
- Didn't follow instructions.
- Case settled a long time ago.
- Not responsible.
- None.
- Work not what they wanted i.e. it did not suit them.
- Case failed , whilst no proof was forwarded to the expert.
- As noted.
- They just don't want to pay and have said they have not received my report.
- Typically, it is because the instructing agent considers that my time is less important than their time, and therefore I shouldn't be paid for my time that has been wasted.
- Reminder too late; case concluded.

- Refusal for payment of admin costs in itemised invoice.
- Judge decided an expert's evidence was not helpful to the court and said they should not have to pay fee. We agreed to reduce fee significantly.
- Queries regarding amount of professional time spent or travel claims.
- Covid 19. Not agreed budget. Not instructed. Client negotiated a poor deal.
- None - or asked for cheaper fee despite previously agreed fee.
- Matrix instruction leading to confusion re responsibility. Not following Ts&Cs, i.e. late payment requiring significant debtor management costs.
- Case failed.
- None given.
- No reason given.
- Proprietor has absconded with the money.
- Not happy with my evidence.
- Often dissatisfied with the speed of the process.
- Case did not settle.
- Did not accept the opinions expressed in my report.
- The request for payment is often ignored.
- All sorts of reasons.
- Want to see if report is "worth" the fee... honestly!
- They did not accept the need for cancellation payments although agreed.
- No longer representing the client and legal aid certificate no longer valid.
- Complained the fee didn't match the work. Went to small claims court and they paid. About to take another law firm to court for refusal to pay 50% of a joint instruction fee. the other firm paid their 50% share.
- Claimant law firms who do not like the opinion given.
- Only one incident, the law firm went into administration and was taken over. Managed to negotiate payment from the new firm in the end.
- Many different reasons given - ongoing case etc... often no answer to chasing emails and phone calls.
- Legal claim dropped so no fee to expert due for work already completed.
- Case discontinued.
- They did not like the opinion and want to find a hired gun expert who says the 'right' thing.
- Felt that the independent view did not "add value" to the procedures.
- They did not agree with my opinion.
- Did not agree with the opinions expressed in my report and told me unable to use it as detrimental to their client.
- In an SJE case the losing party disputed my report.
- Didn't like content of report.
- Usually over whether a report has been "amended" or effectively new. Supplementary reports are almost never paid for without constant nagging.
- Invoice not processed for payment on receipt.
- No win, no fee.
- Case did not settle etc.
- They didn't use your report/ the agency went bust/ the lawyers went bust... They both went bust...
- Client has no money.
- 3rd party refuse then instructing agency refuse.
- Case has failed.

Appendix 5

Question 16

What do you see as the single biggest challenge when it comes to getting paid by instructing parties?

- Getting a response to calls/emails.
- I have to chase them for a payment which I do not always have time for, and it can take months for me to even chase them due to time constraints. On top if there are barriers on the solicitors' side then this causes further delay/. It is quite common for me now to expect payments 6-9 months after completion and submission of report.
- Lack of reply to emails requesting updates / payment.
- Providing and agreeing revised cost estimates for additional work before undertaking the work, when under extreme time pressure to meet court deadlines and it is hard to predict the final cost of the job.
- The time it actually takes to pay. My recent case took 15 months before I got paid. I would like a part payment before 1st draft to help cashflow.
- Their inertia, excuses, apparent lack of organisation.
- Problems with legal aid plus the variable and neglectful practice of some law firms in cases of joint instructions.
- They don't reply to reminders and or promise to pay but then do not.
- Getting them to engage with communication when payment is late.
- Not knowing whether the case is settled or not.
- Arbitration and mediation cases, as it is certain that one party will be unhappy with the outcome.
- I find that solicitors are very keen for me to complete my work as quickly as possible but then do not take responsibility for ensuring I am paid. Some firms will pay promptly when the invoice is received, others will not pay or communicate with me until several reminders have been sent. Costs are typically shared between four or five parties, which often means chasing several invoices for each piece of work. A further issue which arises not infrequently is that the LOI contains inaccurate information about who will be paying shares of the final bill, leading to invoices being returned and costs per firm needing to be recalculated. This usually turns out to be due to instructing solicitors using a template for instructions which is not modified to suit the case.
- Keeping check on invoices.
- Time to regularly chase invoices.
- Law firms are by far the worst offenders; the excuse that they have not yet been paid by their client has sometimes proven to be untrue and I now take a very hard line with this.
- Insolvency of the instructing party when the case collapses.
- Not great. Threat to use county court (easy online) usually works. Did recently have to go to county court to get fee from solicitor. He did not respond (he thought he had) so had judgement against him and paid with added court fee.
- Breach of Trust. It is too expensive and troublesome to chase up bad debt and dodgy law firms know this. An aggregated credit and reliability score for instructing solicitors would help.
- Those who try to pass the buck / change in legal firms during the case.
- I have had no issues - all medico-legal.
- Claimant instructed law firms rarely pay out before conclusion of the case despite agreeing payment terms. Possibly when the report is not supportive, they're even more loathe to pay and avoid answering or replying to calls and emails.
- Knowing how frequently to chase late payments, when the terms state that payment is due on presentation of the fees, whilst maintaining the client relationship.
- Acceptance of 180 days payment terms.
- Not everybody will comply with our "100% in Advance" policy and some will pay 50% in advance and half on completion.
- All LAA funded; I have to submit 4 or 5 different invoices to each party, it is then incumbent on them to submit to LAA (often they forget to do this or allegedly did not receive the invoice); then when LAA pay the solicitor they have to remember to pass the money on to me. I know some firms sit on this money and do not send it across right away. There are so many places in this chain where things could go wrong. I wish I could just submit one invoice to the

LAA myself, which would cut down the chances of things going wrong at every step in the process. And there have also been occasions where a client has sacked their solicitor or instructed someone else and then firms do not want to accept the invoice as it's not clear whose certificate the funds will come under. It is the bane of my life!

- Communication and obtaining the truth!
- Keep chasing the payment. The defendants usually pay, but pay late, however. Claimants instructions one has to wait until claim has settled.
- Endless chasing of unpaid fees.
- Financial fragility of solicitors, particularly those acting for claimants.
- 1. Parties not wanting to pay for my services because they hadn't budgeted for use of an Expert. 2. Pay when paid, which in the English Courts has been outlawed. 3. Solicitors stating they only invoice every three months. The insurers can take anywhere up to several months to pay the Solicitor; therefore, the payment can take a disproportionate amount of time to be paid.
- Knowing my rights and how to pursue issues if I'm told they can't pay my fee.
- The parties want deferred payment terms to end of case.
- Most instructing parties are legally aided and will not apply for funding until report submitted. They will not pay until the money is received from LAA, no matter what my terms are.
- It is time consuming chasing late payments - and expensive in terms of secretarial time.
- Time frame and getting them to agree to payment for professional services and time.
- They have more legal resources than I as a single provider and I would most likely be pushed into a prolonged and difficult process to recover the money and it would cost me money to undertake a process of recovery.
- Not having any recourse when parties fail to pay.
- Making constant payment requests, I end up giving up. I am no longer doing expert reports because of the payment issues and the pay is not equal to the time spent prepping the report/court time/travel. Just not worth it.
- As a single-handed professional, it is difficult to devote the time and energy to keeping on top of credit control.
- Insurance companies should make timely payments on account to cover the report fees. There is no good reason for them not to do so.
- Cashflow of instructing parties.
- They don't have the funds.
- Faceless agency or solicitor contacts and a tendency to sending from pillar to post.
- Forensic scientists reach conclusions which may be beneficial or detrimental to the case of those instructing them. If the former you have simply shown that they were telling the truth all along; if the latter you have got it wrong; in either case you surely don't expect to get paid, do you?
- The attitude of the courts to expert witnesses and lack of clarity of the duty to pay.
- As I work through an agency, I do get paid on time but found out that the agency take 90% of what I actually earn.
- Unpredictability.
- Obtaining a response. There is usually silence.
- You have to chase the instructing party several times to get paid.
- Non-payment despite numerous requests.
- The small numbers who routinely do not pay until reminders are sent.
- Communication - emails ignored.
- Cash flow of those instructing me.
- Liquidity and cash flow - it is standard practice for many companies to delay payment to improve their cash balance.
- The time taken to ask them for payment - I could be spending that time earning more money.
- Endless chasing.
- Waiting until the case is settled, despite my terms and conditions.
- Their cash flow.
- Getting paid within 10 weeks.
- Most law firms do not provide details on how to bill them - fee notes go through instructing lawyer.

- Constant late payments, sometimes 3 times the length of agreement (6 months). 2 cases in debt recovery at the moment. Unlikely to get anything.
- Arguing that they should pay for the report before the case is concluded.
- My work is in Court of Protection and the cases can go on for years. Not knowing when the case will conclude is difficult to determine and once the report is accepted difficult for others to inform me of. There is a lack of communication with the expert witness from the instructing solicitor on the progress of the case and when payment will be made. When the case progresses over years sometimes key contacts change without notification, so any chasing emails / invoices go into a 'black hole'. It's very difficult to make a hard line on things like this as future work is based on reputation and this can damage relationships. Much of my work is LAA funded cases, it would be helpful if the LAA would release the money for expert witnesses that have been agreed so that payment can be made promptly.
- The time taken for invoices to be settled.
- Firms asking to defer.
- The agency that I work for report that they have to strike a balance between placing demands and future work opportunities.
- Despite terms of business giving payment timescales, instructing firms just ignore them and reminders. A letter to the senior partner, or threatening legal action to an agency eventually gets results. No delaying parties appear the slightest concerned. How does one get them to comply with reasonable terms?
- Getting terms right before starting.
- There is a need to be able to learn how to produce higher standard, extremely professional invoices, at the same level as expert reports, that will attract attention and not simply be overlooked (enhanced 'business like'). This could be a great short online live course for Bond Solon with available templates following attendance!
- The lawyers have court deadlines and expect us to meet those deadlines which I have always done over a period of 30 years. I tell the lawyers that I expect them to meet their deadlines on payment to me, just as I have met the deadline they set for my reports. Apart from making them feel guilty it does not change much in the speed to get paid.
- If valuation does not suit one of the parties, it becomes the basis of a reason not to pay.
- They sometimes need reminders.
- I have only ever accepted instructions directly from individual firms of solicitors, and the only issues I've ever faced in 20 years as an expert witness is general slowness to pay and failure to respond to initial emails. Wearing, but I've always been paid eventually.
- The solicitors. Too many of them take on cases which have no merit and costs mount up they try to negate. Intend to write an article when I retire of my lengthy experiences in this shadowy field.
- Knowledge of what is considered reasonable in terms and conditions and the ability to encourage instructing agent to comply.
- Having to remind companies to pay their invoice.
- Keeping track of the fees owing and spotting the villains. Needs a sharp secretary / practice manager.
- Wilful disregard of my payment terms of business. I ensure my terms of business are agreed before undertaking work but when it comes to payment they are disregarded. The worst situation is when I have also undertaken travel and room hire and so I'm actually out of pocket irrespective of time engaged on the case. Law firms of all sizes take advantage of the self-employed individuals they instruct. Post COVID I am considering giving this all up as I am working for nothing - payments have become so bad. There is never any explanation or communication from the firm just unreturned calls and emails.
- Very occasional problems. Difficulty getting paid and I will not work for them again. 30 day terms so my exposure to any one company is limited.
- I don't have the problem anymore because no fee, no report is written in my TOR and works. Might have lost a couple of instructions but likely they wouldn't have paid anyway.
- Balancing being tough on payment with having a good relationship with them.
- Apparent incompetence on the part of some law firms, or alternatively a deliberate policy to delay payment as long as possible.
- Their idea that all debts will be paid at the end of a case (when the solicitor is paid), rather than paying for a service like anyone else.
- The culture of payment deferral to expert witnesses from law firms and MROs is making EW work less attractive and unnecessary stressful and wasteful of time.

- Holding them to the agreed payment schedule.
- We are at the bottom of the food chain and, as a sole trader or small Ltd company, are perceived to have little clout. Most often I think the delay is incompetence rather than deliberate.
- Get things right first time on your side (timely, honestly, fully). Don't engage with dodgy agencies.
- Reluctance to pay me if the case is not complete.
- Their administration.
- Luckily, I've never had an issue with it, but I believe others have.
- It is not those instructing me where my problems are, but with the Court who seems to use its discretion with the sole intent of saving money.
- Not really a problem.
- Counter amendments to contracts in accepting expert services that are often hidden in other communication; law firms accepting responsibility that they are the client, not the party they are representing; waiting for the law firm to be paid by their client before passing payment to the expert
- Cash flow. Cases slow to settle.
- The time and cost involved does not justify doing it.
- Debt collecting.
- Solicitors regard it normal not to settle bills for 12 months.
- Will affect the relationship.
- Recovery from a third party who I have not dealt with.
- Dealing with large companies that feel they can decide when to pay regardless of terms to which they have agreed.
- They want you to testify with promise to pay. It is difficult when you are in the middle of case to stand down - especially when the expert adds such value to the case.
- Usually not a problem, but where I don't get paid my biggest problem is me getting around to chasing them!
- The pressure of doing additional work, answering questions before payment is made. I won't do it now. Mediation is next week? Pay my bill.
- The lack of transparency by some solicitors. Ironically, they treat experts as their servants and not an expert at all. The lack of respect for the expert overflows into not caring if they get paid or not.
- Time between instruction and payment. Have now changed my terms and conditions to require payment prior to release of report to instructing party. I understand this will reduce amount of work I get but time involved in chasing outstanding fees makes medicolegal work unviable otherwise.
- Time wasted chasing fees.
- Already on 90 day terms which is 60 days above my standard terms. It is being out of funds for quite some time - particularly if that payment is then even later beyond 90 days.
- Ensuring instructing party (solicitor) is responsible for fee and not its client. Since attending an Expert Witness conference many years ago, I have always made it clear in my terms that I will do the work, but will only issue my report once I have been paid. This is a clear demonstration of my independence, which benefits the client, as well as my cash flow. I have never been refused an instruction as a result of this, and many instructing solicitors (and individuals) have engaged me again and have requested the same arrangement. A win-win?
- Understanding what their payment policy is. Very often late payers say they are about to settle then stall for reasons not known to us.
- They are protecting their cash flow when they do legal aid cases.
- Some solicitors ignore repeated requests for payment.
- They are too slow to pay you!
- The time wasted in chasing them up. In egregious cases, a claim via the money claim court has almost miraculous effect.
- Contact with appropriate persons in finance.
- Whether they are in receipt of the funds.
- You feel that you have very little leverage - once you have delivered the report, they have what they want from you and if you kick up a fuss about the payment it feels very likely that you will end up on a blacklist and they won't instruct you again.
- Conditional fee agreements.
- Legal aid cases where you appear to have to wait until caesura has been concluded and legal firm has invoiced for all work and not just you as expert.
- Instructing parties dragging their feet when it comes to paying. Bringing up excuses. Pretending to not have received the invoice. Being unable to check if and when case was settled.
- Keeping track of late payers. Discount for keeping to agreed terms helps.

- Getting them to pay.
- Chasing agencies, remind them to pay on time.
- Bankruptcy of instructing party.
- Agreeing terms up front and getting payments on account.
- They say they can't pay until the case is concluded. I know this to be rubbish as they have a sinking fund. Repeated emails seem to go unanswered so I have had to resort to small claims threats or going to the SRA. Some I have just written off.
- Majority do not want to provide proofs of failure of cases as informed by the insurer.
- In the Family Court the costs are often split between all parties and each legal firm will argue over the cost, how the invoice is worded and other delaying tactics. The time wasted in dealing with multiple solicitors/firms has led me to now refuse to take on any cases in the Family Court.
- Getting them to behave in an honest and acceptable fashion.
- Law firms trying to get me to alter opinions.
- Sometimes middle managers do not understand contracts, but when I have emailed their finance section and threatened legal action they have paid straightaway.
- Getting a single person to take responsibility.
- Lay clients who can be slow paying the instructing solicitor or the expert directly. They understand the work involved poorly, not withstanding formal fee quote and agreement, and have to scrabble about.
- As said, LAs are generally disgraceful and have an administration that is designed to defer payment. Only this morning, I sent a further request to an LA for an invoice that is a year old. With most lawyers, however, a prompt is usually all that is needed - the reply is always "Sorry, we seem to have overlooked your payment, I'll get it arranged immediately."
- Solicitor going into receivership and case changing instructing solicitors.
- Keeping an eye on my accounts; time to chase up debts.
- Being paid on time - solicitors lack of understanding about debt.
- Absence of professionalism.
- Mixed messages, inefficient communication, long periods of no contact/reply. They seem to demand a timely response but do not reciprocate.
- None.
- The instructing parties do not honour their side of the agreement to pay for the reports once ready.
- Once you have done the work there is no leverage. I now require any firm which has paid late (for example 30 day invoice paid after 90 days or more) to pay in advance of release of the report etc. in future. I was happy to take the risk they would not instruct me again as I do not want to work for free. I have done this twice and both firms have instructed me again and now pay in advance.
- Time spent chasing up invoices.
- No leverage unless I insist on payment up front which I am reluctant to do, but may have to introduce.
- My company (15-20 experts) has no bad debts (Turnover around £1.8M). The biggest problem is claimant PI lawyers that refuse to communicate when we contact them by email and by phone (sec says not available etc) sometimes quite remarkably even when they are told a claim will be made against them and they have received a seven day letter. They always pay before the court deadline, but all the effort required is very time consuming. The law firm is then blacklisted. We rarely pursue claims against defendant law firms because they communicate and we work things through. Overall, these problems occur in a very small number of cases.
- Risk of not getting instructions if I threaten legal action for non/late-payment.
- Parties trying to find ways to reduce costs whilst case is in process, despite the nature of work charged for being clear from terms and conditions.
- Claimed cash flow.
- Incompetence or unprofessionalism by certain solicitors.
- Making them realise there is an outstanding invoice.
- Delayed payments and time taken to chase these.
- Because costs are often split between a number of parties in Care proceedings so I spend a lot of time chasing small amounts from various parties.
- Having to keep requesting payment. This leads to increased administrative costs that are not covered
- Knowing how to persist in a professional manner when I've asked lots of times!
- Unprofessionalism.
- Poor case management. Law firms assign to inexperienced junior staff who do not understand construction, delay or how to handle experts who have been practising since before they were born.

- Instructions are usually very poor. There is pressure to give budgets without knowing the extent of the documentation or primary issues. Lawyers on contingency fees who do not wish to upset their clients.
- No issues encountered except on one occasion when payment was not made on time, but was done so with a chasing email.
 - Lack of clarity of terms of fees by expert witness.
 - Delay in payment despite accepting my T&C.
 - Usually system errors, I think.
 - Time and effort involved in chasing non-payment. Being instructed directly by a firm of solicitors leads to late payment more often than instructions received from agencies.
 - Time taken to chase debts.
 - During COVID, them even acknowledging emails!
 - Deferred payment agreements.
 - Lawyers want long terms, i.e. request 1 year- 5 years! With dubious commitment to further instruction. I don't accept this as their own credit worthiness is concerning! Challenges with fast turnaround requests via email and then don't see this as additional instructions and want it within fee. Cost budget pressures. Payment cycles, don't seem to want to pay until settlement and pretend no receipt of invoice, it's in the mail, it's authorised today etc.
 - Communication - emails ignored.
 - Timely payments and getting paid for all work (case failed or not)
 - Nothing in particular. If they do not pay, I issue proceedings and they almost all pay on receipt of a 7 day letter or after proceedings have been issued.
 - Credit terms.
 - Time and effort spent chasing payments.
 - It seems that late payment is their routine practice. Solicitors are not bothered by the threat of legal action.
 - The only time I had a bad debt was from an Irish firm, who had not been paid by the client after he won a claim from the Restitution Board. I tried for years to get the money from the Irish solicitor, but learned that he was struggling to cope financially. I had received many instructions from him regarding the Restitution Board, so in the end I just gave up chasing him.
 - I feel that I attempt to stick to more reputable solicitors - although I accept this may not always be possible.
 - Scottish Legal Aid Board being slow in paying instructing solicitors.
 - Lack of honesty, trustworthiness. Payment should be deposited on account and released as soon as report completed... See common practice in many parts of Europe... In the UK there is a serious problem.
 - Failure to respond to reminders and intentional delay in payment. However, the threat to refer the matter of non payment to the Solicitors Regulation Authority usually concentrates minds.
 - Overseas proprietors absconding.
 - Inefficiencies of (larger) solicitors' firms where communication between solicitor, client and accounts department means significant delays in receiving payments.
 - Funds don't always come as expected - some would try to delay the process, with no valid reason - understanding that and taking prompt actions when it happens helped receive payment promptly.
 - Lack of motivation or urgency from instructing party once they have my report.
 - Other party cash flow (including claiming fees but not passing on).
 - No easy way to ensure payment.
 - Instructing parties agree to payment terms when engaging me and they seem to forget the agreed terms!
 - Cases having to be concluded before instructing parties can bill for Legal Aid especially in Parole Board cases which can take up to a year to conclude.
 - The fact that law firms often want to set terms to only pay on conclusion of a claim, whilst we need to pay our costs in the interim period. So interim invoices are critical to business cash flow and viability.
 - Timely payment. Chasing.
 - Time involved in getting the firm to agree to pay.
 - Time and the report does not suit or promote the position of the party.
 - Making sure the invoice gets to the right person to authorise payment and then to the accounts department to get it paid.
 - If the instructing parties refuse to pay; I have tried all legal forms of recovery without success, primarily due to the fact that even though I received judgement in my favour, getting the fees is almost impossible.
 - Being paid within a time frame agreed at the start.
 - The time it takes to chase invoices. One of the largest agencies is the worst culprit.

- They do not like parting with money!!!
- Respect for the work we undertake. Sometimes late payment to solicitors.
- Trusting the solicitor to pay the invoice at the resolution of the litigation.
- Administering the follow up process where payment has not been made.
- Failure to act on payment requests.
- None now: we demand written acceptance of ToB before starting and no longer release reports until we are paid unless paid extra 5% "risk management".
- Lying. My worst experience losing thousands when a large firm of solicitors went into administration. They had diverted experts' fees into trying to keep their company afloat.
- Conflict between payment in time v payment at the conclusion of a case.
- Status of case, LAA only pay solicitor a % of their total bill so they only pay me the same % which complicates the billing process and takes ages.
- Getting them to pay out within an agreed timescale when they have not yet been paid themselves. It is particularly difficult with Legally Aided cases.
- Failure of the instructing party to honour my terms and conditions.
- Local Authorities lack of organisation.
- I'm a sole practitioner and I just don't have the time to chase. The complexity of instructions from lead sol but payment by several parties makes it difficult. I get part payment but some parties remain outstanding very often. It's messy. I do insist with litigants in person or self-funding parties, that they have deposited fund with me or lead sol before I start the work. These are issues which apply to family court work.
- I've given up worrying about upsetting people with the threat of legal letters etc. I am appalled at the way I am treated by legal aid, solicitors and local authorities... were it not for me spending a fortune on getting my money, I would be out of business. I enjoy the work, but seriously consider going on to do something else.
- The time spent chasing debtors.
- Communication - and chasing for payment - also getting paid for extra work needed after initial report.
- Need a credit agency.
- Late payment and refusal to pay interest according to stipulated terms and conditions.
- Not being told that a case has settled and for final invoices to be submitted.
- Claimant agencies are the worst.
- Ownership.
- Having the patience to wait for payment.
- They completely ignore contacts.
- Mostly a problem with claimant instructions. Mostly they simply ignore t & cs. Biggest problem is that they also ignore chasing emails and letters, even letters before action.
- The difficulty in implementing real measures to enforce payment. My demands/threats appear hollow / powerless.
- In my view solicitors are very slow in processing invoices for payment to the insurers.
- Lack of engagement by the solicitors.
- It just feels like you are ignored, despite phone calls, letters, emails sent to chase up. I get very cross when I've already given two months to pay invoices when they do not pay for work undertaken.
- My business being affected.
- Basically, the biggest single challenge is getting them to cough up the fee.
- Conclusion of cases and LAA payments due to Covid-19; complicated by period March-June when solicitors were shut and not processing payments.
- Case not concluded.
- Regularly chasing late payments - much sec/ admin time.
- The time it takes to resolve late payment. Small claims court mediation only works if both sides agree.
- Their poor bookkeeping, and not demanding payment on account. For med neg cases, I now demand payment up front.
- Having to repeatedly chase up payment.
- They seem too disorganised, particularly if payment comes directly from solicitors.
- There is no regulatory power to stop solicitors breaching CPR35 or the law. SRA are toothless and MedCo is run by solicitors for solicitors.

- It is difficult to challenge law firms when they withhold payment citing the excuse of "client hasn't paid".
- Having enough clout to request disbursements.
- (1) A culture that says the expert and barrister don't get paid until we do. (2) Not wanting to lose future business by pressing for timely payment / late payment fees.
- Timely payments.
- Making sure your processes for invoicing and chasing are fully up to speed.
- Shorter payment terms. Many do not accept 90 days. Direct law firms or solicitors especially. Or do accept them but then seem to pay me when the case concludes. Have used Redwood before and they are excellent. Thanks!
- Lack of transparency in payment process once work is done. One ends up chasing the firms and wasting time, getting frustrated and then giving up.
- Being paid in a fair and timely manner - and without having to chase it up!
- As most work is Legal Aid, the relationship between instructing solicitors and LAA can be problematic.
- Late payment. Only once has a party refused - I let it go. But payment through solicitors has taken up to 8 months.
- Parties not agreeing to my terms and conditions prior to accepting a case. I no longer have late payment problems as I now advise the instructing solicitor once my report is ready and will be made available to them once payment has been received - they usually then pay by BACS within my 5 day terms.
- Poor accounting in instructing firm.
- The main challenge is ensuring that the party who is funding the work is aware of the costs that are being incurred by their lawyer's instructions, this can become very difficult in the later stages of litigation when much additional and unexpected work can be necessary, but everyone is too busy to keep the client up to speed on the costs.
- They don't pay.
- Getting paid on time (i.e. within 30 days as stipulated in my T&CS which all instructing parties agree to).
- Making the instruction solicitor realise we actually rely on the money - and don't have a salary to fall back on.
- Lack of communication/response from the instructing party.
- Legal Aid will not release funds particularly in mags court cases until conclusion which currently can be years in the future and then we don't get paid for ever and a day. Courts themselves are equally slow at sending payments as well - 7 months for a 2 day hearing from central funds!
- Keeping track of the many and various different firms and agencies involved. As a 'sole trader'... in my case as a medical expert, I am simply too busy and lack the resources to check credit worthiness of the various agencies, as I invariably have other calls on my time.
- Having chasing emails, repeat invoices and phone calls responded to.
- Administration navigation - seems to be chaotic with the agencies who usually instruct me.
- Communication - it is either straight forward and no issues or completely fractured / absent - definitely patterns related to particular law firms.
- Honourable behaviour. Inadequate enquiry of claimants prior to instruction.
- Getting paid on time.
- Lack of communication from instructing party.
- They will not take responsibility for making sure my fee will be paid by all parties.
- Attitudinal/institutional historic attitude and practice.
- To be paid in a timely manner i.e. within a month.
- Some law firm's and agencies' ethos is to simply pay late.
- They ignore or just make it an administrative headache.
- Getting paid on time and requests for payment on settlement which is not financially viable (I will accept this for a few cases only).
- Budgetary control, scope creep. Clients are more frequently asking for entire dispute budgets before instructing.
- I now insist on payment before we see the client.

- A single agency which can link with expert witnesses and help them in recovering the fee (help in credit control).
- Their cashflow.
- The biggest challenge is when solicitors go bankrupt. Apart from this, by using small claim track, it is generally possible to get payment.
- Cash flow - I have to pay my staff monthly but can wait up to 2 years for payment.
- The time it takes to chase late payment.
- Keeping on top of chasing payments time and time again - most pay promptly and without requesting, but a small few need badgering.

About Bond Solon

Bond Solon is the UK's leading Expert Witness Training Company and since 1992 has 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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