

The Bond Solon Annual Expert Witness Survey

November 2010

Conducted at the Bond Solon Annual Expert Witness Conference on 12 November 2010.

Sample: 109 experts.

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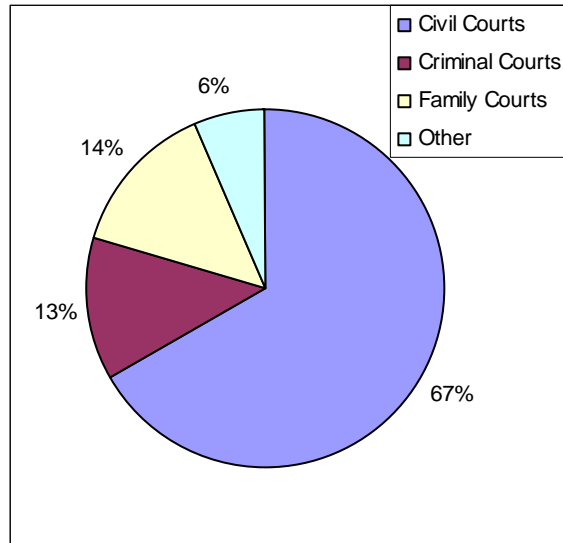
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1 Is the majority of your work as an expert witness carried out in the:

Civil Courts	84
Criminal Courts	16
Family Courts	18
Other	8



Comments

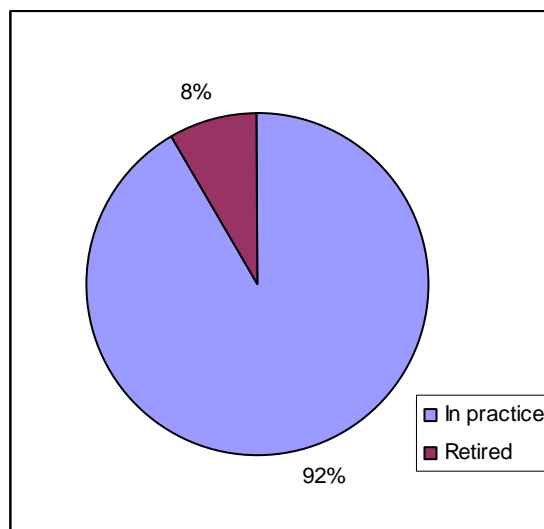
This largely mirrors the data collected by the Ministry of Justice Central Working Group – Review of Legal Aid fees paid to Expert Witnesses.

<http://www.justice.gov.uk/consultations/legal-aid-funding-reforms.htm>

A very broad brush overview indicates that approximately 10 – 15% of experts work in the criminal courts. Those experts are paid approximately 60% of the fees paid to their civil counterparts.

2 Are you:

In practice	100
Retired	9



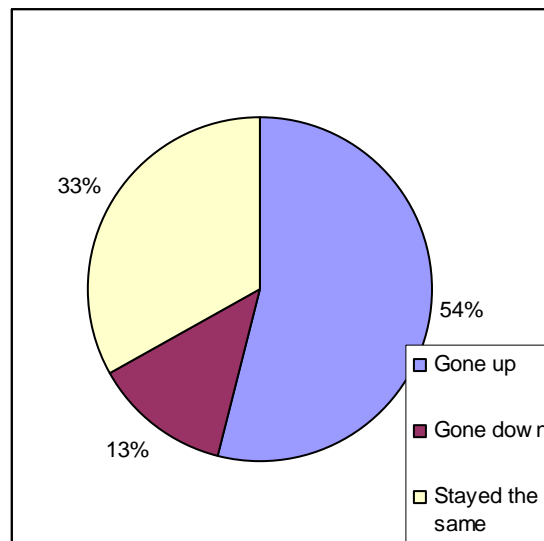
Comments

If this is a representative sample, LJ Moses may have less to worry about than he thinks, as far as evidence being given by retired experts is concerned.

The full text of Lord Justice Moses' presentation to the Bond Solon Expert Witness Conference is attached to the press release.

3 In 2010, have the number of your instructions:

Gone up	57
Gone down	14
Stayed the same	35

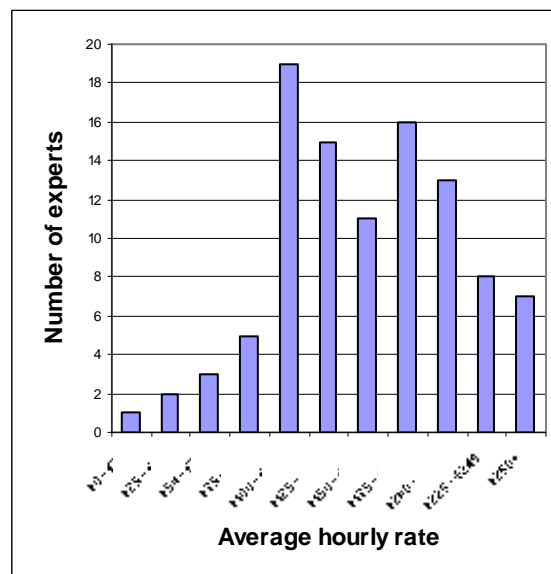


Comments

This tends to support the theory that litigation increases during recessionary periods.

4 What is your average hourly rate?

£0 - £24	1
£25 - £49	2
£50 - £74	3
£75 - £99	5
£100 - £124	19
£125 - £149	15
£150 - £174	11
£175 - £199	16
£200 - £224	13
£225 - £249	8
£250+	7

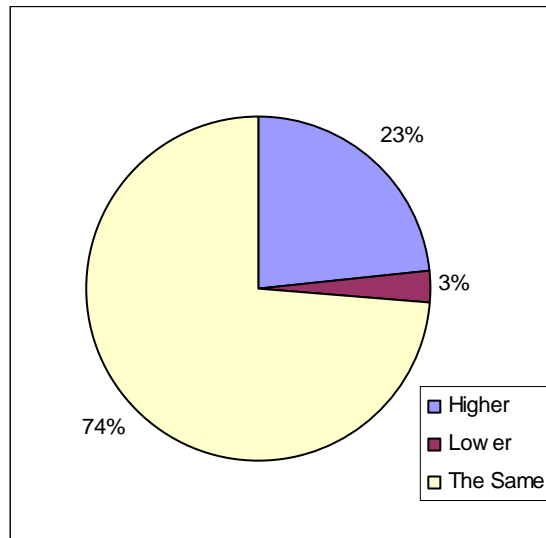


Comments

The average fees paid to civil experts by the Legal Services Commission was £362.38 and to criminal £214.56, so these results are surprising, and tend to suggest that fees paid by the LSC are indeed very high.

5 How does this relate to your average hourly rate in 2009?

Higher	23
Lower	3
The Same	73

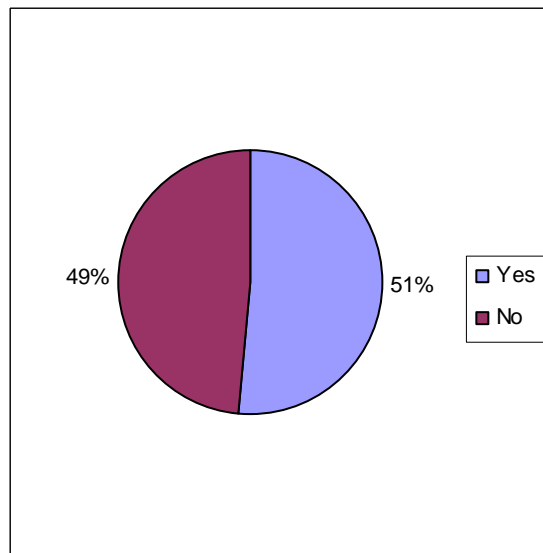


Comments

With the RPI at around 4%, it is not surprising that some experts have been able to increase their fees. Others have clearly taken a pragmatic view, and have apparently chosen to freeze their fees in order to maintain or increase their volume of work.

6 Have you taken any additional training to ensure you can comply with the requirement in the Civil Procedure Rules that you are aware of the rules as they relate to expert witnesses?

Yes	54
No	51

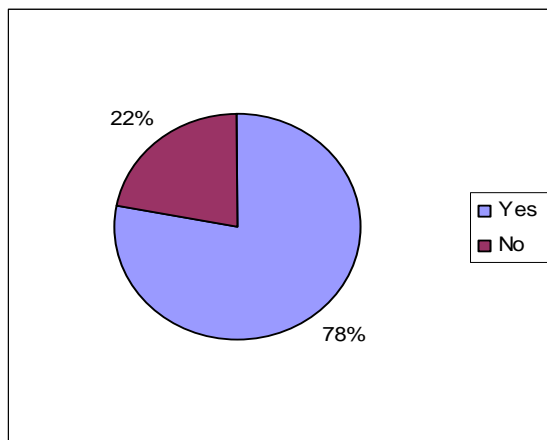


Comments

66% of those who responded said they did the majority of their work in the civil courts, yet only slightly more than half have done additional training in the civil procedure rules. This begs the question of how aware and up to date civil experts are as far as procedural rules are concerned. It is now mandatory for experts to state an awareness of the rules and we have launched a web learning package to enable experts to gain this awareness. Please see the attached flyer.

7 Do you agree with Lord Justice Moses that expert evidence from those in practice could provide a far more reliable source than that of experts who have retired?

Yes	80
No	23



Several of those that responded 'no' gave explanatory comments:

- 'In the field of banking many of the issues faced are covered by cases precedent & statute dating back many years'
- 'The novice expert does not have the knowledge or experience of the older and perhaps retired expert'
- 'Retired means greater experience'
- 'Experience may also be valuable'
- 'PI cases do not change much'
- 'Surgeons in practice do not have the time and also the definition of retirement in medicine is difficult, if you retire from the NHS but work part time privately are you still in practice'
- 'Depends on expertise'
- 'Those who are retired can keep up to date, depends on expertise'
- 'Those in retirement have more time to research and keep up to date'
- 'You can keep up to date in other ways e.g. peer group support, membership of various groups and personal research rather than doing clinical work'
- 'Most of my cases relate to allegations across the 12 years of compulsory education, commonly I need to report on matters that may have occurred up to 15 years ago so historical standards of practice are more relevant than present practice'
- 'Retired doctors have a full career's experience. They have the time to devote to the task without undue delay.'

Comments

These are interesting and valid comments. It may be too simple a generalization to divide experts into "Retired and therefore unreliable" and "In practice and more likely to be reliable". Surely, it depends on the individual circumstances of the case?

Lord Justice Moses' original comments can be found here:

http://www.solicitorsjournal.com/story.asp?sectioncode=2&storycode=16454&c=3&eclipse_action=getsession&eclipse_action=getsession

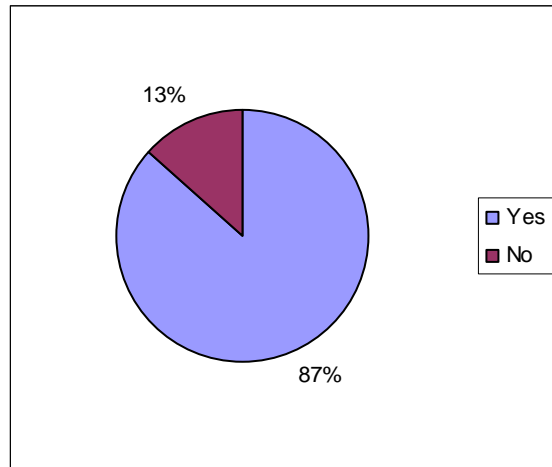
The full text of Lord Justice Moses' presentation to the Bond Solon Expert Witness Conference is attached to the press release.

Article on his comments at the Bond Solon Expert Witness Conference:

http://www.solicitorsjournal.com/story.asp?sectioncode=103&storycode=17270&c=3&eclipse_action=getsession

8 If expert immunity from suit is substantially reduced, will you continue to act as an expert witness?

Yes	92
No	14



Comments

This seems to indicate a very small percentage will be discouraged from undertaking expert witness work if Immunity is restricted. It may be that experts will simply buy the protection of Professional Indemnity Insurance.

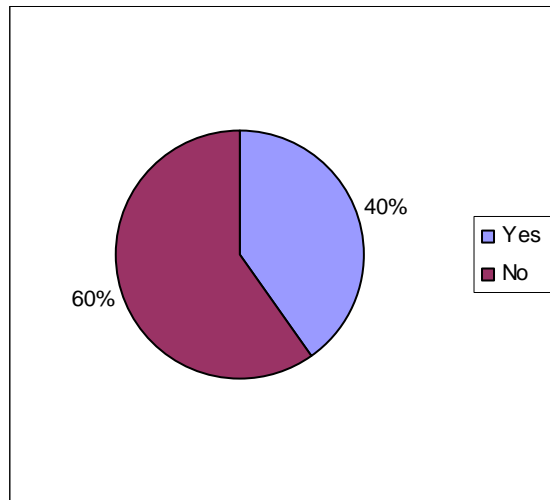
Expert witnesses currently enjoy immunity from suit in respect of their performance in the witness box and the contents of their reports. However, this may change when the Supreme Court hears an appeal in the case of Jones v Kaney. Roger ter Haar QC, who has been instructed for the appellant in this test case on experts' immunity, talked at the Bond Solon Expert Witness Conference about the implications for expert witnesses.

[http://www.dac.co.uk/documents/resources/newsletters/Expert_witness_immunity_under_threat - Wire](http://www.dac.co.uk/documents/resources/newsletters/Expert_witness_immunity_under_threat_-_Wire)

<http://www.mondaq.com/article.asp?articleid=93680>

9 If you do legally aided work, will you continue to do so if the rates are substantially reduced?

Yes	23
No	34



Comments

This should be a clear warning to the Legal Services Commission, if it is reflected nationwide. Unfortunately, the LSC has very little room to negotiate.