



Equal Representation for Expert Witnesses (ERE) Survey 2023

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Why an expert witness survey and why now?

It is now one year since we launched the Equal Representation for Expert Witnesses (ERE) website and unveiled the ERE Pledge for individuals and organisations to sign.

We are delighted by the number of signatories so far – over 1,200 across more than 50 countries worldwide. These numbers demonstrate the real appetite for increasing the number of female expert witness appointments.

We always recognised that change would take time and that measuring progress would be a challenge due to the lack of consolidated data regarding expert appointments across all forms of dispute resolution and jurisdictions.

ERE was originally conceived following research that AlixPartners carried out in 2020 and 2021, which indicated that more than half of lawyers had not seen any female expert witnesses in action during the previous three years. It also highlighted that the proportion of women appointed as testifying expert witnesses was below 10%.

To provide continuity and consistency of measurement, we have decided to run an annual survey to gather data and opinions to support the ERE initiative and drive change.

The response to this inaugural survey has been phenomenal, with 620 participants from 32 countries, across a broad range of ages, and roughly equal numbers of participation from lawyers and expert witnesses, and men and women. Once again, this demonstrates the

universal interest in driving change in the world of dispute resolution across generations and geographies. We are very grateful for the time people have taken to provide in-depth additional feedback within the survey, which will help our steering committee develop impactful strategies for the coming year.

The findings also present the stark reality of the size of the challenge ahead of us. Expert witnesses play a critical role in ensuring the legitimacy and effectiveness of our legal systems domestically and internationally. Consequently, to ensure public confidence in the courts, it is imperative to increase the diversity of the expert witnesses appointed.

We thank you for your interest in this study and your personal contributions to our research.



Kathryn Britten
Co-Founder ERE



Isabel Santos Kunsman
Co-Founder ERE

Discover more about ERE and take the ERE Pledge at www.expertwitnesspledge.com

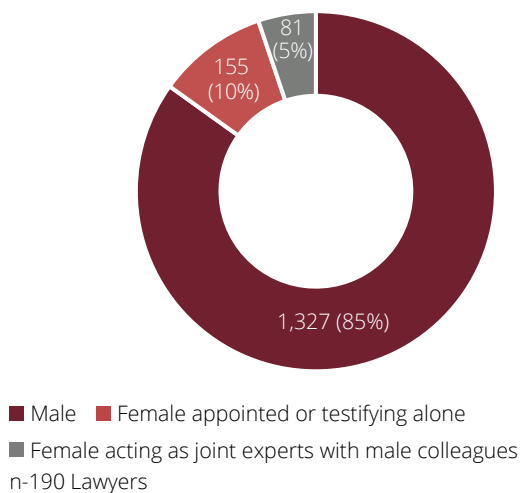
CHAPTER 1: A dearth of female experts observed

Lawyers' observations – numbers of female expert witnesses

In total, the 224 lawyer respondents observed 1,563 expert witnesses appointed or testifying in cases during 2022. **Women were appointed or testified as the sole expert witness in just 10% of those cases** (see Figure 1). The data also shows that **64% of lawyers had not seen any female expert testers or co-testifiers in that 12-month period** (see Figure 2).

A larger proportion of female experts was not observed if you include those co-testifying with a male colleague, which highlights the value of this approach in providing opportunities for less experienced experts to gain experience with the support of more seasoned experts. Of course, we hope to see these figures shift over time to a higher proportion of females leading alone in their expert witness roles or co-testifying with a more junior male or female expert.

FIGURE 1: HOW MANY OF THE EXPERT WITNESSES YOU OBSERVED APPOINTED OR TESTIFYING (APPOINTED BY EITHER PARTY) IN THE CALENDAR YEAR 2022 WERE FEMALE?



"I have put forward female experts as options (with males) but the client very often selects the male option."

– Female lawyer

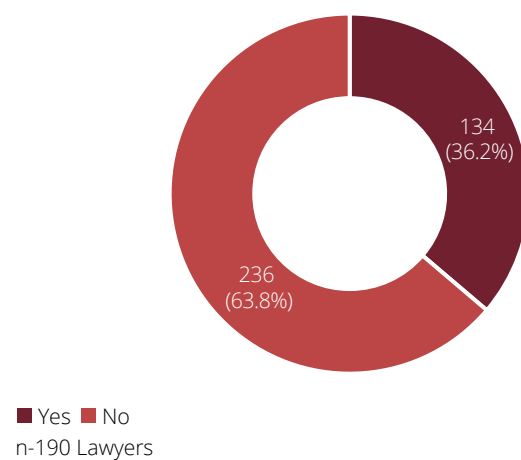
"I have pushed my clients to appoint women as expert witnesses. Unfortunately, there is not enough confidence in women yet..."

– Female lawyer

"I would like to see more joint authoring of expert reports to recognise the role of female team members."

– Male lawyer

FIGURE 2: DID YOU OBSERVE A FEMALE EXPERT WITNESS APPOINTED OR TESTIFYING (APPOINTED BY EITHER PARTY) IN THE CALENDAR YEAR 2022?



CHAPTER 2: Involvement in selection isn't enough to move the dial

Lawyers' observations – numbers of female expert witnesses

The survey probed into the cases where lawyer respondents had played an active role in appointing expert witnesses.

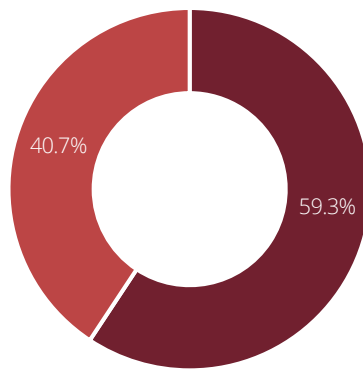
- 20% said that they had not seen females even considered as expert witnesses in any of their cases that required an expert during 2022.
- 38% had not seen any females appointed as expert witnesses in any of their cases that required an expert during 2022.
- Fewer than one in 10 said that they had seen females appointed as expert witnesses in more than half of their cases last year.

The data shows that lawyers play a key role in the selection of expert witnesses. Yet even with this first-hand involvement, they still observe low consideration, appointment and, ultimately, representation of women as experts. The big question is: Why?

"Although I try to include women in proposed lists of experts, there is a limited number recommended when you ask their companies for recommendations."

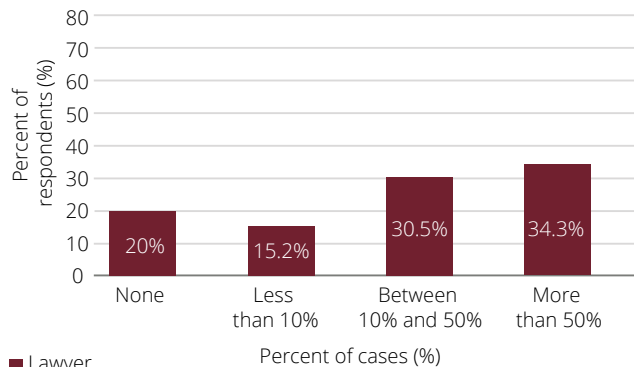
– Female lawyer

FIGURE 3: WERE YOU PART OF THE PROCESS FOR APPOINTING EXPERT WITNESSES, IN THE CALENDAR YEAR 2022?



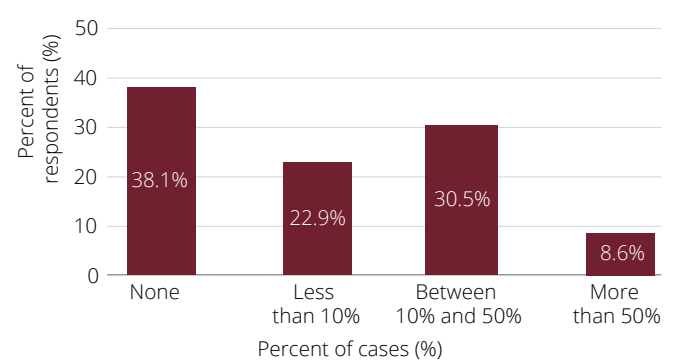
■ Yes ■ No
n-177 Lawyers

FIGURE 4: FOR THOSE OF YOUR CASES THAT REQUIRED AN EXPERT WITNESS IN THE LAST TWELVE MONTHS, ROUGHLY WHAT PROPORTION INCLUDED CONSIDERATION OF A FEMALE EXPERT WITNESS?



■ Lawyer
n-105 Lawyers

FIGURE 5: IN THE LAST TWELVE MONTHS, ROUGHLY WHAT PROPORTION OF THE EXPERT WITNESSES APPOINTED IN YOUR CASES HAVE BEEN FEMALE?



■ Lawyer
n-105 Lawyers

CHAPTER 3: Complex and connected challenges must be addressed

The critical challenges facing female expert witnesses

Respondents believed the top four reasons for fewer female than male expert witness appointments were:

- Lawyers' preference to use experts they know or have used previously
- A lack of women reaching sufficiently senior levels in their own professions
- A lack of experience in an expert witness role
- Lack of encouragement or promotion by own colleagues

Note that we do not necessarily draw a direct connection between the highest ranked reason and any overt gender bias amongst appointing lawyers, particularly given this group themselves identified this as the biggest reason for low representation.

We believe the issue is more complex, and a connection between the top ranked reason and the lack of female expert witnesses coming through industries to then also secure the breakthrough experience of their first case is a high contributing factor to lower female representation.

"The biggest issue I see is women leaving the profession at senior manager/director levels because it is not made possible to have a reasonable work/life balance or truly work part-time."

– Female expert witness

A lack of awareness of the dearth of females being appointed as expert witnesses also ranked highly in our survey, which only serves to highlight further the importance of initiatives such as ERE.

FIGURE 6: WHICH OF THE FOLLOWING DO YOU BELIEVE ARE THE MAIN REASONS FOR FEWER FEMALE THAN MALE EXPERT WITNESSES BEING APPOINTED?

Reason	Overall	Female	Male	Aged under 30	Aged 30-39 /40-49/ 50-59	Aged 60+	Lawyers	Expert witnesses	Litigation funders
Lawyers' preference to use experts they know/ have used previously	1	1	1	1	1	1	1	1	2
Lack of women reaching sufficiently senior levels in own professions	2	2	2	2	2	2	2	2	3
Lack of experience in an expert witness role	3	3	3	4	3	3	3	3	1
Lack of encouragement or promotion by own colleagues	4	4	4	3	4	4	4	4	5
Lack of awareness of the issue, of those involved in appointing expert witness	5	5	5	6	5	6	5	7	No responses
Actual or perceived lack of gravitas	6	6	7	5	6	5	6	6	4
Actual or perceived lack of confidence	7	7	6	8	7	8	8	5	6
Preference of some women to remain in a support role	8	8	8	7	8	9	9	8	No responses
Lack of gender data collected	9	9	9	9	9	7	7	9	No responses
Lack of competence	10	10	10	10	10	10	10	10	No responses

n-470

"The decision-makers (and their advisors) need to adopt a more open-minded approach to selecting experts (both female and male). The biggest blockage to getting the first appointment as an expert witness is not having been appointed before."

– Male expert witness

CHAPTER 4: Support needed for the expert witnesses of the future

The expert witness view

Our survey revealed a burgeoning pipeline of aspiring expert witnesses under the age of 40 – male and female in almost equal proportions who have extensive experience in drafting reports – with 80% of respondents who have yet to provide oral expert evidence aspiring to do so in the future.

The pipeline of future expert witnesses is imbalanced from a gender perspective, but proportionality should be the minimum achievable objective.

Of the female respondents who have been appointed as expert witnesses, 31% have been appointed more than 20 times, showing that, given the initial opportunity to break into an expert witness role, repeat appointments for these women are following.

However, despite this positive data relating to appointments, twice as many male expert witnesses had gone on to provide oral evidence or testify as an expert witness more than 20 times. A time lag likely plays a part in these results, given historical opportunities to testify in recent decades has been significantly skewed towards men.

"There is a preference for experienced experts irrespective of gender. Clients are focused on assembling teams that put them in the best position for success and team member selection, to a significant degree, is driven by the amount of experience."

– Male expert witness

"The elephant in the room is this: lawyers usually pick the 'gray haired man' as their expert witness because their client will not fault them for that choice."

– Female expert witness

FIGURE 7: DO YOU REGULARLY DRAFT EXPERT WITNESS REPORTS OR PLAY A MAJOR ROLE IN DRAFTING SUCH REPORTS?

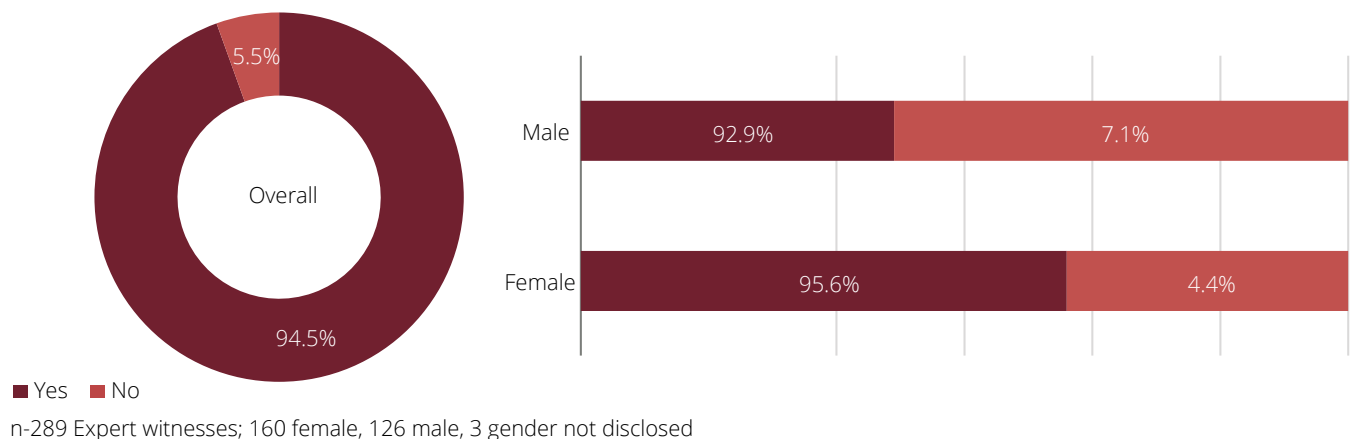


FIGURE 8: HAVE YOU EVER PROVIDED WRITTEN OR ORAL EXPERT EVIDENCE?

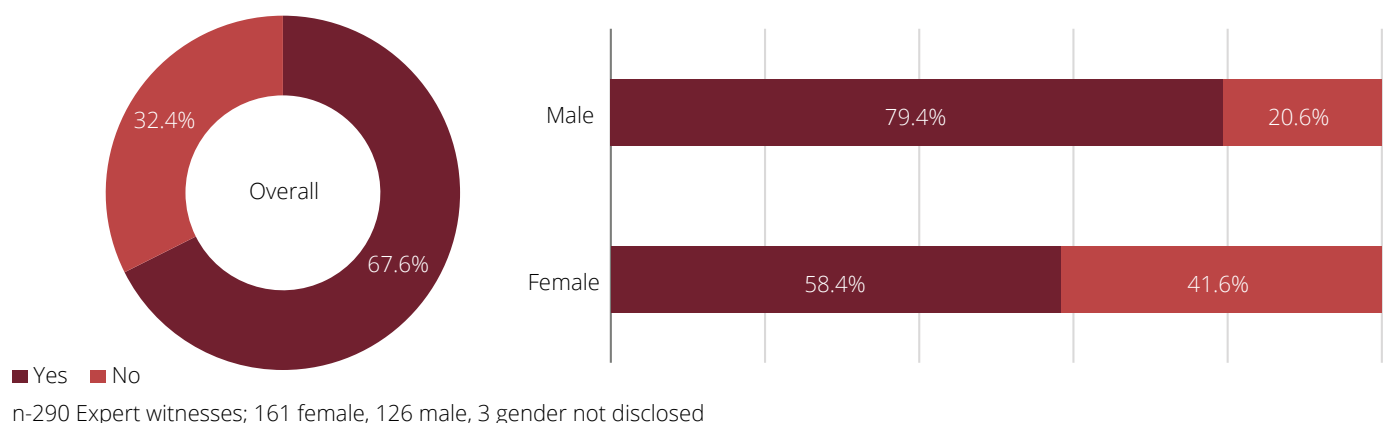


FIGURE 9: SINCE YOU HAVEN'T PROVIDED WRITTEN OR ORAL EXPERT EVIDENCE, DO YOU ASPIRE TO DO SO IN THE FUTURE?

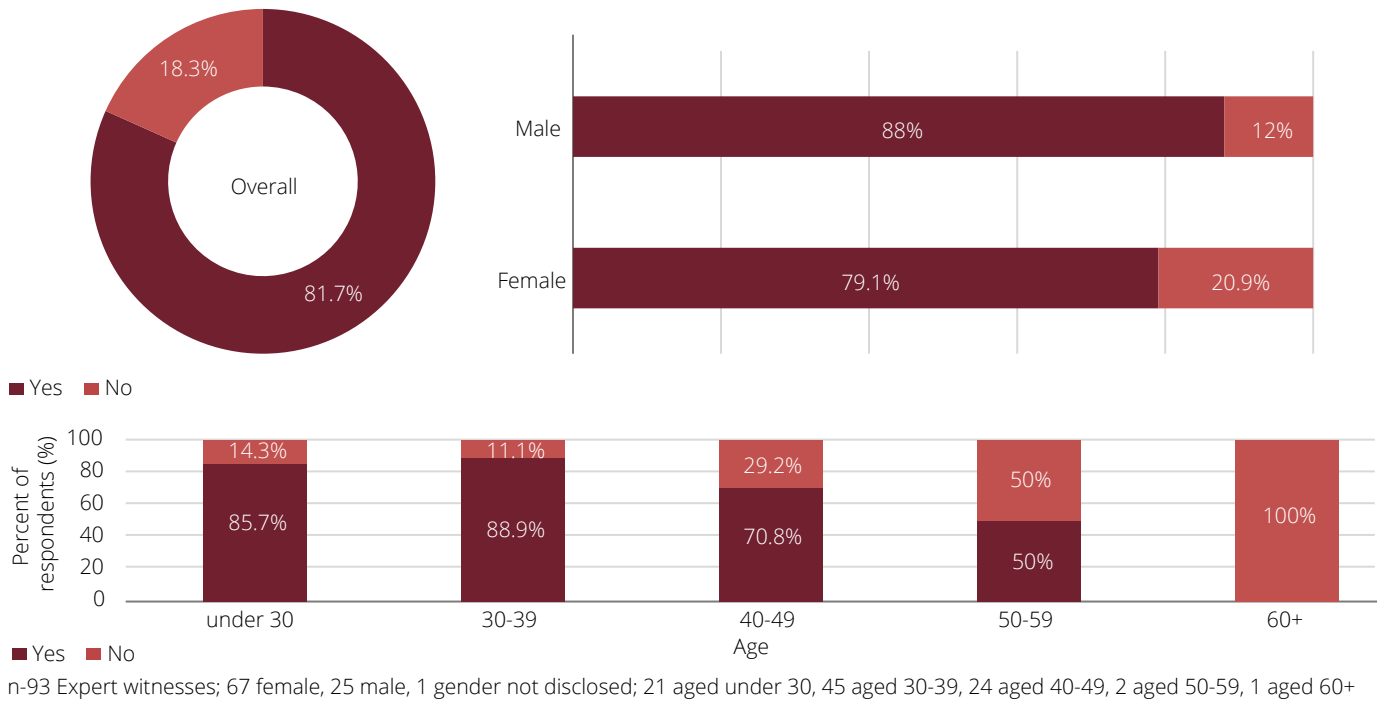


FIGURE 10: EXPERTS WHO HAVE BEEN APPOINTED
HOW MANY TIMES HAVE YOU BEEN APPOINTED AS AN EXPERT WITNESS IN ANY DISPUTE RESOLUTION FORUM?

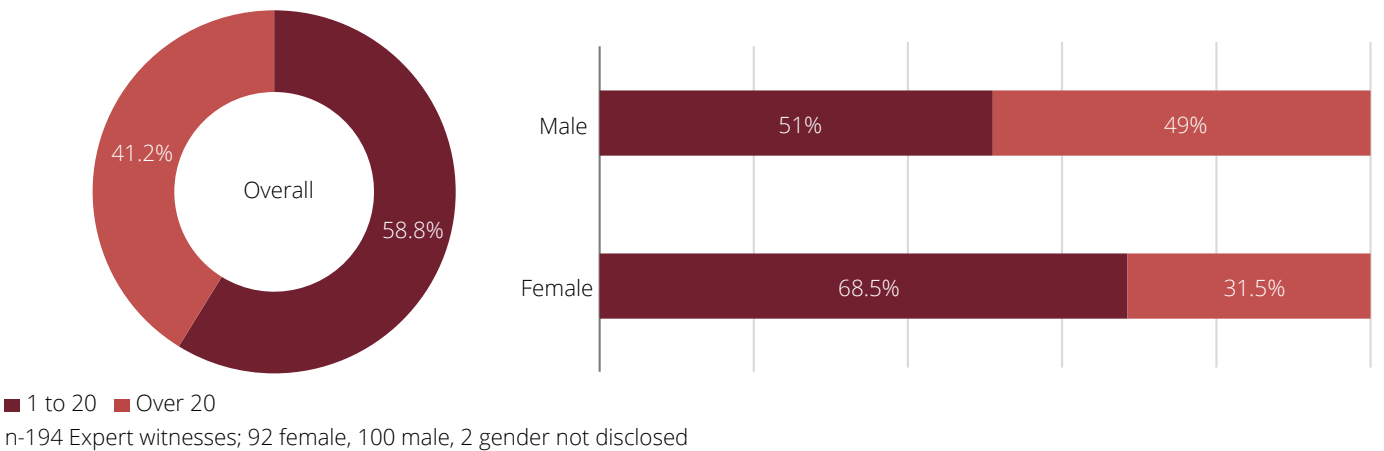
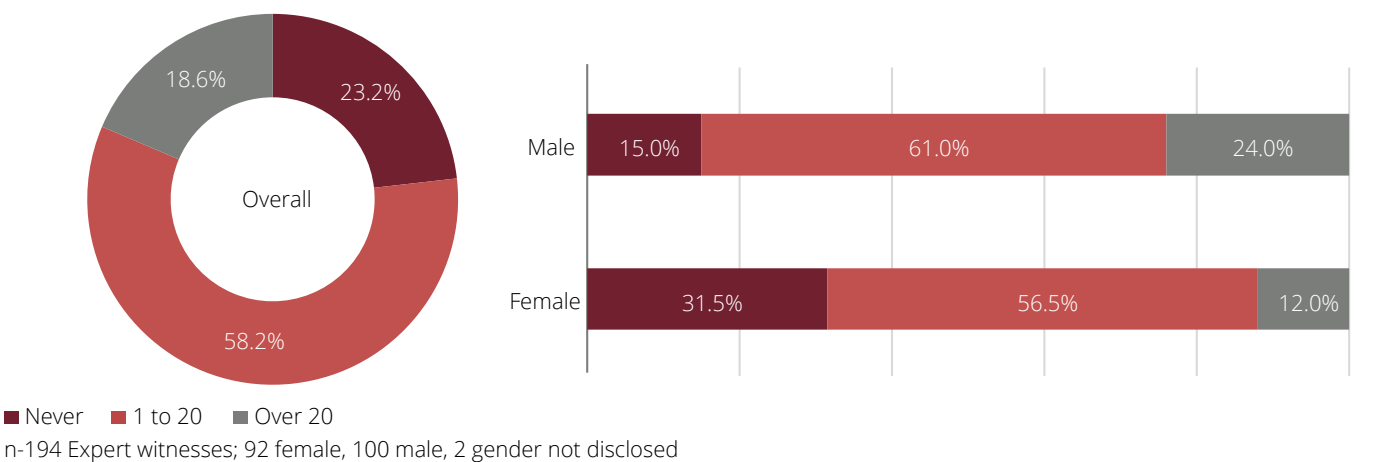


FIGURE 11: EXPERTS WHO HAVE BEEN APPOINTED
HOW MANY TIMES HAVE YOU GIVEN ORAL EVIDENCE/TESTIFIED AS AN EXPERT WITNESS?



CHAPTER 5: Changes are needed beyond the legal industry

Some potential solutions

When asked to consider the actions to increase the numbers of female expert witnesses rapidly and effectively, respondents highlighted the requirement – and the appetite from all groups, irrespective of age, gender, or profession – for parties and external counsel to have gender diverse shortlists when selecting expert witnesses.

Increased internal support in organisations employing female expert witnesses (or aspiring ones), and mentoring schemes for aspiring experts or young and new practitioners were also highly recommended. This reflects the growing awareness of the need for change and the need for expert witness matters to be included in gender diversity initiatives across expert firms, corporates, and law firms alike.

Consideration of reduced fee structures and/or senior oversight support for experts shows the willingness of aspiring experts (and the younger age group) to be flexible in their approach to overcome the critical hurdle of securing a first expert role. They will need the seasoned experts to be prepared to support them in arrangements such as these.

It is clear that the lack of female expert witnesses is not purely an issue for the legal industry to address. Individual industries must play their part in supporting all initiatives that will help more women reach the top of their professions. After opportunities are gained, we can see from the data that expert witnesses – male and female – go on to become trusted by lawyers and their clients over the long term.

We have a huge opportunity to turn what appears to be a vicious circle into a virtuous one by taking action at every step, from industry-specific professional development and support right through to the point of taking to the witness box.

"Clients and instructing parties should be encouraged to demand a diverse list of experts. Firms should be encouraging shadowing programmes for junior experts to get more experience."

– Female lawyer

FIGURE 12: WHICH OF THE FOLLOWING WOULD HELP TO INCREASE THE NUMBER OF FEMALE EXPERT WITNESSES MOST RAPIDLY/EFFECTIVELY?

Solution	Overall	Female	Male	Aged under 30	Aged 30-39	Aged 40-49	Aged 50-59	Aged 60+	Lawyers	Expert witnesses	Litigation funders
Parties and external counsel requiring gender diverse shortlists when selecting expert witnesses	1	1	2	1	1	1	1	2	1	1	1
Increased internal support in organisations employing female expert witnesses or aspiring expert witnesses	2	2	1	2	2	2	2	1	2	2	3
Mentoring scheme for aspiring experts/young or new practitioners	3	5	3	3	3	4	3	4	5	3	4
'Meet the expert' events to showcase female experts to users	4	3	4	4	4	5	4	3	4	4	6
Courts, arbitral institutions and expert witness firms publishing gender data on expert witnesses	5	4	5	5	6	3	5	5	3	7	5
Reduced fee structures and/or senior oversight support for experts (female and male) looking to gain experience	6	7	6	7	5	7	7	7	7	5	No responses
Expert witness skills and impact training specifically for women	7	6	7	6	7	6	6	6	6	6	2

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APPENDIX: Survey demographics

The Equal Representation for Expert Witnesses (ERE) Survey was completed online by 620 respondents from 32 countries globally between 18 April and 15 May 2023, capturing the views of lawyers, expert witnesses, expert witness team members and consultants, litigation funders, and other institutional, corporate and legal professionals. A breakdown of respondent demographics is illustrated below. The survey was developed and delivered with the support of global management consultancy AlixPartners.

FIGURE 13: WHERE IS YOUR PRIMARY WORK BASE LOCATED?

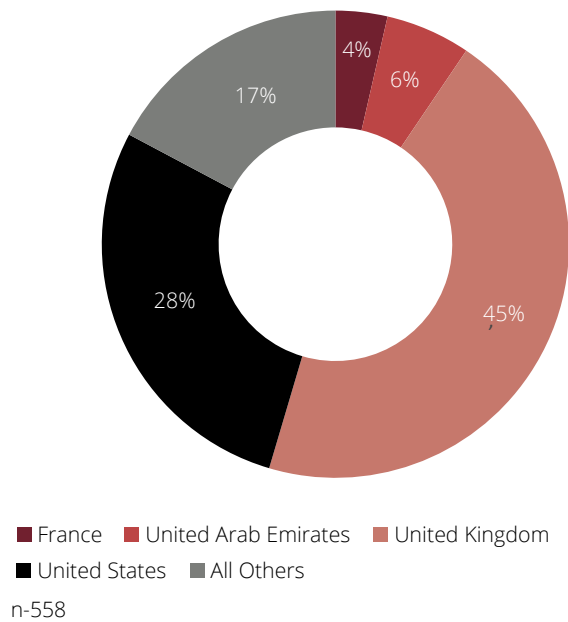


FIGURE 14: PLEASE SELECT YOUR GENDER

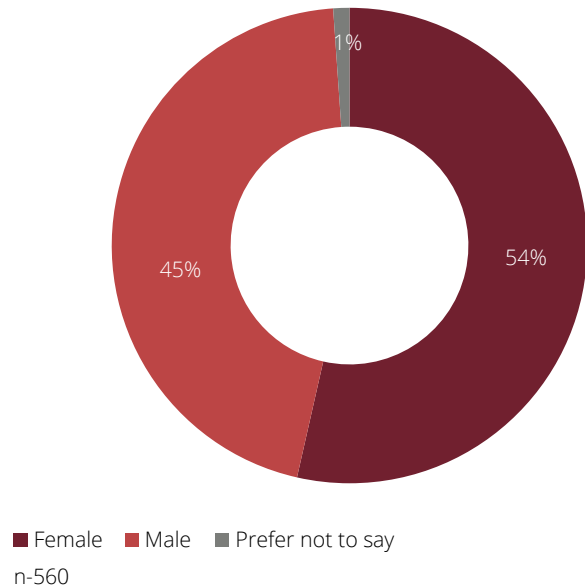


FIGURE 15: PLEASE SELECT YOUR AGE

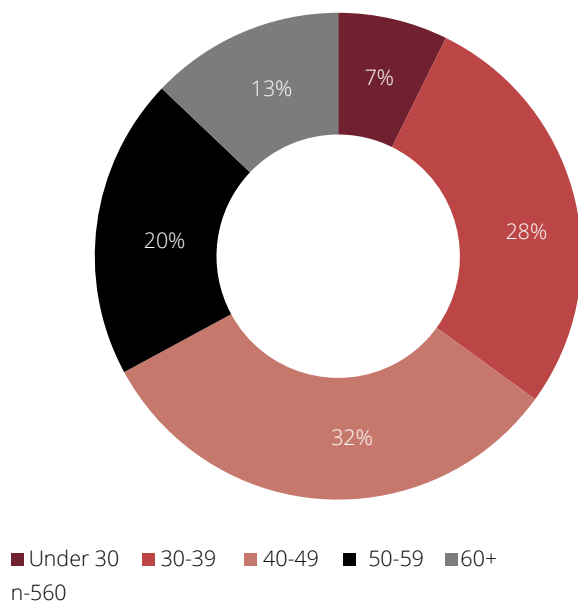


FIGURE 16: WHAT IS YOUR PROFESSION?

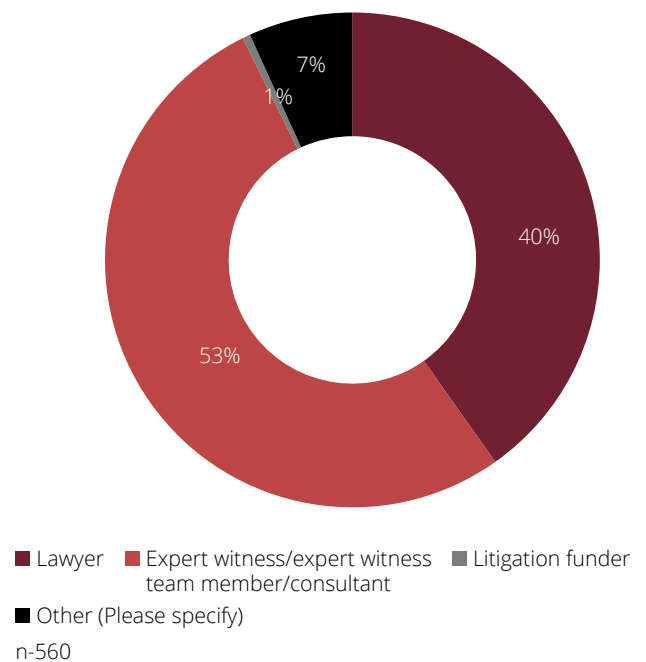


FIGURE 17: LAWYERS

PLEASE SELECT YOUR PRIMARY PRACTICE

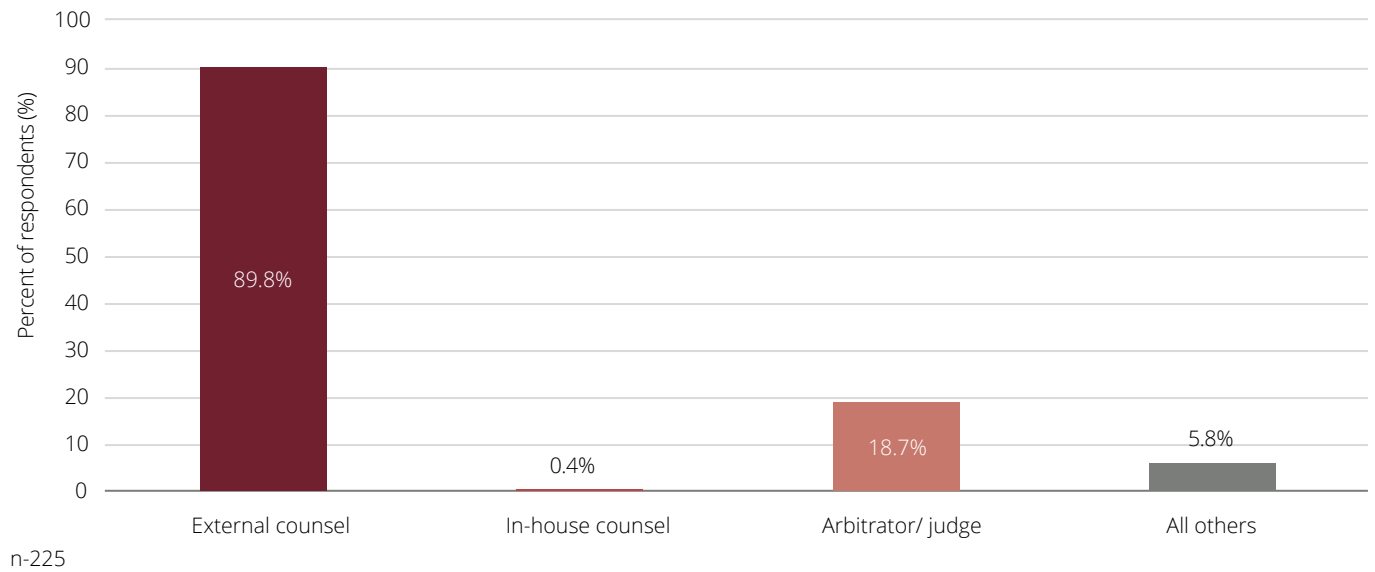
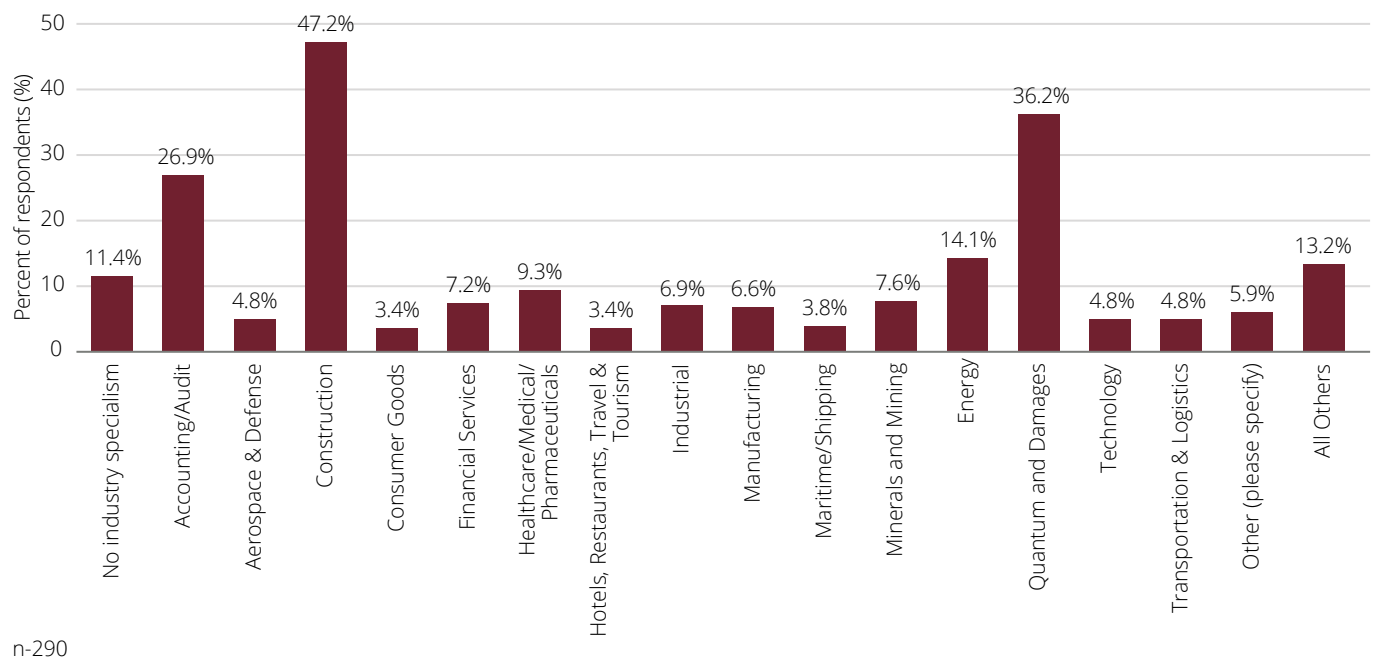


FIGURE 18: EXPERT WITNESSES

WHAT IS/ARE YOUR INDUSTRY SPECIALISM(S)?



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ABOUT ALIXPARTNERS

For more than forty years, AlixPartners has helped businesses around the world respond quickly and decisively to their most critical challenges – circumstances as diverse as urgent performance improvement, accelerated transformation, complex restructuring and risk mitigation.

These are the moments when everything is on the line – a sudden shift in the market, an unexpected performance decline, a time-sensitive deal, a fork-in-the-road decision. But it's not what we do that makes a difference, it's how we do it.

Tackling situations when time is of the essence is part of our DNA – so we adopt an action-oriented approach at all times. We work in small, highly qualified teams with specific industry and functional expertise, and we operate at pace, moving quickly from analysis to implementation. We stand shoulder to shoulder with our clients until the job is done, and only measure our success in terms of the results we deliver.

Our approach enables us to help our clients confront and overcome truly future-defining challenges. We partner with you to make the right decisions and take the right actions. And we are right by your side. When it really matters.

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