

An Evaluation of the Small Claims Dispute Resolution Pilot at Exeter County Court

Final Report Prepared for the Department of Constitutional Affairs (September 2006)

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Acknowledgements

We would like to thank all of the staff and members of the judiciary at Exeter County Court who were so helpful and patient with this project and were willing to be interviewed, help with finding relevant files, and more generally, allowed us to frequent the court building. Similar thanks must go to Devon and Exeter Law Society for letting us observe their mediation process on numerous occasions. Thanks also to the students who helped with research especially Scott Lace. Sheila Aldridge made an invaluable contribution to the interviewing process.

Please note that the views represented in this research are those of the authors and do not necessarily coincide with the views of the Department of Constitutional Affairs.

Executive summary

Introduction

The Civil Procedure Rules explicitly require the courts to consider the use of alternative dispute resolution as an aspect of active case management. Using mediation as an alternative to litigation is central to the Department of Constitutional Affairs Public Service Agreement objective 'to reduce the proportion of disputes resolved by resort to the court'. Mediation is a non-binding attempt at resolving disputes which gives people the possibility of resolving their own disputes quickly without having to resort to hearing.

The small claims mediation service at Exeter County Court has been in operation since June 2002. Between June 2005 and the end of May 2006 it was the subject of a DCA pilot, along with other, different schemes at Manchester and Reading County Court. Mediation at Exeter is currently provided free to the user in order to ensure that the service offered is proportionate to the value of the dispute. The purpose of this research is to determine how effectively the small claims mediation scheme at Exeter operates and whether such a model fulfills the need for an accessible and proportionate method of providing alternative dispute resolution to users of the small claims track more generally.

Methodology

A spreadsheet of information gathered from all of those cases referred to mediation has been compiled since the start of the research project. This spreadsheet was maintained from 1st June 2005 until 31st May 2006. It contains substantial data on all cases referred to mediation since this date. Data was also compiled separately on the main task that district judges carry out in relation to small claims cases to ascertain how much time was devoted to mediation-related work.

A range of qualitative data was also generated to supplement the data collected on the spreadsheet. Qualitative data took a variety of forms. Observations were conducted of 65% of the total number of mediations in the scheme over the period of the research. Questionnaires were sent to 412 parties who had been referred to mediation. Responses were received from 31% of these parties.

Follow-up telephone interviews were conducted with 45 parties who had mediated, who responded positively to the questionnaire and provided sufficient details to be able to contact them. Responses to questionnaires were received from 16 individual mediators out of a total of 44, representing 36% of mediators. In addition a focus group meeting was held at Exeter County Court for judges and court staff. All of the three full-time district judges attended as well as the Court Manager and the Mediation Clerk.

Results of the research

Number of Cases

This research project ran from June 2005 to May 2006. At Exeter during this period there were 756 cases allocated to the small claims track at Exeter County Court and 386 cases were disposed of at small claims hearings.

Over the research period 255 cases were referred by the district judges to mediation. This number represents 34% of all cases allocated to the small claims track at Exeter. 53% of these cases actually mediated. Of that number 65% settled their case at mediation. Of the remaining 48 cases that did not settle at mediation 17% settled their case after the mediation, and 35% were resolved at the small claims hearing. Over 30% of these remaining cases are still awaiting a small claims hearing at the end of the research period.

Referral to mediation

The usual method is referral to mediation by the district judge at allocation stage. Parties are able to withdraw from the mediation at a later point as mediation is a voluntary process. In addition there have also been a few cases which are referred to mediation later in the process when parties are before the judge at the hearing.

Information and awareness of the mediation process

Only two respondents said that they knew a lot about mediation prior to taking part in the process and 77% had either never heard of mediation or had heard of it but knew nothing about it or only knew a little about mediation. It was noted during the observations conducted for this research that parties still arrived at the mediation expecting an adversarial process and in many cases some form of determination by an external individual or body. There is a concern that litigants are not aware of the purpose of the process in which they are engaged and so are not able to give 'informed consent' to mediate.

Saving of judicial time

The service does help to save judicial time for the court. A conservative calculation shows that actual time saved for district judges over the period of the research is 121 hours. Additional time was also noted and saved by judges in small claims related work for those cases that settled at mediation.

Saving of litigants time

There is a significant amount of time saved for those parties who engage in mediation where the case settles as a result of the process. The time from referral to mediation is significantly lower for the parties who settle at mediation (5 weeks) than time from referral to small claims hearing (13.3 weeks). One of the complaints from parties who had not gone to mediation

was that they were spending significantly longer on their case than those parties who had gone to mediation.

Suitability of cases

The largest category of claim types was the broad general debt / contract category. This category was generally more likely to settle at mediation than other case types as 83% settled compared to the overall settlement rate of 65%. However, there were only very few cases in other categories so it was difficult to draw any broad conclusions. The value of the claim was an important deciding factor in whether or not the case would settle as 22% of referred cases were for less than £500 and this increased to 32% for cases which actually settled at mediation.

Mediators

The mediators on the service are all members or associates of Devon and Exeter Law Society. There are 29 mediators registered on the scheme. There is some concern with the training of the mediators. Although the majority of respondents were happy with the mediator, 33% of those parties interviewed on the telephone said they felt under pressure to reach a settlement at the mediation and 30% of these said the pressure was from the mediator. However, most parties who had attended a mediation were not unhappy with the process. Only 8% said they would not want to take part in a mediation in future.

Chapter 1. An introduction to the research

Aims and objectives of the research

Lord Woolf's 1996 Report on Access to Justice promised a '...landscape of civil litigation fundamentally different from what it is now' which demanded an 'avoidance of litigation wherever possible' and relied upon the idea that in the future, 'litigation would be less adversarial and more co-operative'.¹ These principles were reinforced in the Civil Procedure Rules (CPR) which came into force in 1999. The overriding objective of the CPR is to enable the court to deal with cases 'justly'.² The CPR explicitly requires the court to consider alternative dispute resolution (ADR) as an aspect of active case management under CPR r1.4(2)(e) which states that active case management includes encouraging the parties to use an alternative dispute resolution procedure if the court considers that appropriate and facilitating the use of such a procedure. Under CPR r1.2 (f) the court is required to 'help the parties to settle the whole or part of the case' and at r1.2(l) 'give directions to ensure that the hearing of a case proceeds quickly and efficiently'.

Using mediation as an alternative to litigation is clearly supported by developing government policy and is encouraged by initiatives such as 'Mediation Awareness Week'.³ The Department of Constitutional Affairs (DCA) Public Service Agreement (PSA) Target 3 objective is 'to reduce the

¹ Lord Woolf, *Access to Justice: Final Report*, July 1996.

² The overriding objective in CPR r1.1(2) states, 'Dealing with a case justly includes, so far as is practicable –
(a) ensuring that the parties are on an equal footing;
(b) saving expense;
(c) dealing with the case in ways which are proportionate;
(i) to the amount of money involved;
(ii) to the importance of the case;
(iii) to the complexity of the issues, and
(iv) to the financial position of each party;
(d) ensuring that it is dealt with expeditiously and fairly; and
(e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

³ This took place week commencing 24th October 2005. The second 'Mediation Week' is scheduled for 9th October 2006. It is likely to become a regular fixture on the DCA calendar.

proportion of disputes resolved by resort to the court'.⁴ This is strengthened by the DCA's business priority in civil matters being more effective and proportionate dispute resolution. The aim is by 2008 to:

- increase by 5% the proportion of justiciable problems for which people receive suitable advice and assistance;
- reduce by 5% the proportion of disputed claims in the courts that are ultimately resolved by a hearing and to increase by 2% the number of small claims heard on time.⁵

Mediation offers the possibility of achieving this target effectively. It is a non-binding attempt at resolving disputes which gives people the possibility of resolving their own disputes quickly without having to resort to hearing. It has been defined as '...the intervention, by invitation of the parties, of an experienced, independent and trusted person [who] can be expected to help the parties settle their quarrel by negotiating in a collaborative rather than adversarial way'.⁶ In some county courts such as Cardiff, Birmingham, Exeter, Guildford and Central London, there is an established court-based mediation scheme, whereby judges can refer cases to mediators, who try to help the parties find a settlement during a time-limited, three hour mediation, which takes place at the court. Most of these schemes are relatively recent innovations although the scheme at Central London has been in existence since 1996.⁷ These established schemes are generally in the fast-track and multi-track and the user pays a fee which has been determined by the court. The current pilot scheme in small claims mediation at Exeter County Court, which is the subject of this research, is the only dedicated small claims scheme of its kind in England and Wales. It is effectively a relaunch of a scheme which has been in operation since 16th June 2002. It is currently

⁴ See further, HM Treasury, Public Service Delivery and Performance (Spending Review, 2002)

⁵ "Delivering justice, rights and democracy DCA Strategy 2004 – 2009" (DCA, London 2004).

⁶ M Noone, *'Mediation'* (Cavendish Publishing, London, 1996)

⁷ H Genn, "The Central London County Court Pilot Mediation Scheme Evaluation" (LCD, No 5/1998).

provided free to the user in order to ensure that the service offered is proportionate to the value of the dispute.

The purpose of this research is to determine how effectively the small claims mediation scheme at Exeter operates and whether such a model fulfills the need for an accessible and proportionate method of providing alternative dispute resolution to users of the small claims track more generally. The Exeter scheme is one of a number of pilots currently the subject of research by the DCA, the others being at Manchester and Reading County Courts.

The small claims track

Small claims represent the most common way in which ordinary members of the public and small businesses come into contact with the civil justice system.⁸ It is the dominant means by which defended claims are heard in the civil courts.⁹ In 2004, in England and Wales there were 46,100 claims disposed of by way of the small claims procedure.¹⁰ Over 70% of all claims issued were for amounts generally within the small claims limit. The system has been designed for use mainly by litigants-in-person as there are limited costs allowed.¹¹ For this reason the system needs to be straight-forward, easy to use, speedy, cheap and as undaunting as possible.

A recent Parliamentary Select Committee Report has stated that the purpose of the small claims procedure is to provide a forum in which relatively straightforward, low value claims can be dealt with in an accessible and user-friendly way, quickly and at proportionate cost.¹² The Law Society provided

⁸ Similar courts have in other parts of the world been labelled as peoples courts. In the US a television programme called 'The Peoples Court' hears actual cases that have been filed in the small claims court.

⁹ Constitutional Affairs Select Committee Report First Report, The courts: small claims (6 December 2005), Ev 53, at para 6.

¹⁰ Source: Judicial Statistics: Annual Report, 2004 (Cm 6565, May 2005)

¹¹ Businesses are also inclined to use the system as a means of debt recovery. "County courts are commonly viewed as debt collection agencies..." See Constitutional Affairs Select Committee Report, *op cit*, Ev 56 at para 16 (iv).

¹² *ibid.*

evidence to the Committee that they had received anecdotal feedback that litigants in person find the system complicated and difficult to negotiate.¹³ This view is also supported by anecdotal evidence gathered for this report.

In the county court all defended cases are allocated by a district judge to the appropriate track.¹⁴ The small claims track is for lower value claims, generally up to a value of £5000.¹⁵ The small claims track is generally used for consumer disputes such as:

- the recovery of debt,
- claims for poor workmanship,
- claims for faulty goods and services;
- claims between landlords and tenants.

Very few litigants are represented by lawyers and consequently, the laws of evidence are more relaxed than in other, higher value cases before the county court. The lack of representation is due to the fact that there are firm limits on the amount of costs which can be awarded in the small claims court. Therefore district judges dealing with small claims cases tend to be more 'interventionist' in approach in order to help the parties distinguish between law and fact.¹⁶ Other than the costs of filing the claim, limited permitted expert's fees (currently £200) and a very small amount in lost earnings (currently £50 per day) as well as expenses incurred in attending court and other costs, such as those of a legal representative will not be awarded.¹⁷

It is also true to say that there is very little research or evaluation of this area of civil justice and that it is largely neglected. There has been some work undertaken by Professor John Baldwin on litigants attitudes to the small

¹³ *Ibid*, Ev 42, at para 10.

¹⁴ There are 3 tracks: small claims, fast-track and multi-track. Cases are allocated by the court normally on the basis of the value and/ or complexity of the claim (r 26.6).

¹⁵ The exception is damages for personal injuries where the maximum value of a small claim is £1,000 (CPR, r26.6). The limit for small claims has changed radically since its introduction in 1973 (via Administration of Justice Act 1973). The original limit was set at £75. It has been amended a number of times in the last 33 years. The current limit came into force April 1999.

¹⁶ J Baldwin, 'Small Claims in the County Courts in England and Wales: The Bargain Basement of Civil Justice' (OUP, Oxford, 1997), at p 45.

¹⁷ CPR r 27.14.

claims process.¹⁸ With such a dearth of published literature and research it has at times been difficult to easily and comprehensively evaluate the data presented in this report as it is difficult to know whether attitudes of parties following mediation are really comparable more generally to attitudes to small claims court hearings.

Small Claims at Exeter County Court

At Exeter over the period of this research (Jun 05 – May 06) there have been 756 cases allocated to the SCT at Exeter County Court.¹⁹ Over the same period 386 cases have been disposed of at small claims hearings.²⁰ A breakdown is provided below.

Table 1: Number of small claims disposed of at hearing

Month	Number of small claims disposed of (at hearing)
Jun-05	53
Jul-05	22
Aug-05	45
Sep-05	29
Oct-05	27
Nov-05	32
Dec-05	18
Jan-06	39
Feb-06	28
Mar-06	30
Apr-06	18
May-06	16
Jun-06	29
Total	386²¹

¹⁸ Much of the research in this area has been conducted by Professor John Baldwin. See J Baldwin, *op cit*. Also, J Baldwin, 'Monitoring the Rise of the Small Claims Limit: Litigants' Experiences of Different Forms of Adjudication (LCD Research Series No 1/97). J Baldwin, Lay and Judicial Perspectives on the Expansion of the Small Claims Regime (LCD Research Series, No 8/2002)

¹⁹ See detailed breakdown on page 43.

²⁰ Figures compiled by Exeter County Court

²¹ *ibid*.

Judicial time spent on small claims

The main task that district judges carry out in relation to small claims cases are as follows:

- allocation to track
- applications for judgment (paper and in-person)
- hearings (final and directions)
- preparing and delivering judgments
- drawing up orders

These tasks also require the case files to be read prior to each stage of the hearing.

All cases require:

- allocation to track and appropriate directions

All district judges and deputy district judges at Exeter County Court were asked to complete a form every time they worked on anything to do with small claims during a one month period.²² The aim of this was to be able to note:

- the type of tasks carried out by district judges in association with small claims cases and how frequently;
- the amount of time taken for each task.

A typical case tracked through the small claims process has the following judicial times for each task -

²² See example of form in appendix.

Table 2: Judicial time taken for small claims tasks

Tasks ²³	Time taken (approximate)
Allocation to track	5 – 10 minutes
Applications for judgment (paper and in-person)	15 mins
Reading to prepare for hearing	10 – 15 mins
Hearings (final and directions)	Depends on evidence and complexity – usually between half an hour and 2 hours but can go up to a full day
Preparing and delivering judgments	15 mins each
Drawing up orders	5 minutes

If the case is then mediated and settled then the only judicial task is to draw up a consent, normally a Tomlin, order (see example in appendix). The total time taken for this task averaged about 5 – 10 minutes.

If the case goes to mediation and then does not settle the district judge must also see the parties after the mediation has taken place for a direction hearing. This can take about 10 minutes but is aided by the information which the mediator can pass onto the judge about witnesses required etc. So the case requires a directions hearing and then a hearing with the reading time etc that that entails.

During the month of February, 110 different small claims cases engaged district judges at Exeter County Court. There were 5 district judges involved and 2448 minutes (40.8 hours) engaged in small claims related work.²⁴

A breakdown of different tasks carried out and the time taken as a percentage of the total time spent on small claims related work follows –

²³ Approximate figures compiled from data collected by monitoring all district judge activity on small claims at Exeter during February 2006.

²⁴ It is suggested that this is a conservative figure as one district judge was on vacation during much of the month studied.

Table 3: Breakdown of judicial tasks and time taken

Task	Number of tasks	Percent	Amount of time taken in minutes	Percent
Hearings	30	21	1464	60
Reading files	37	26	461	19
Telephone conversation	2	1	15	1
Allocation directions	14	10	73	3
Miscellaneous directions	5	3	28	1
Transfer	2	1	15	1
Correspondence	5	3	40	2
Drawing an order	5	3	26	1
Case settling pre-hearing	1	1	5	0
Application	10	7	76	3
List for disposal	1	1	5	0
Delivering judgement	2	1	25	1
Check mediation report and draw order	1	1	5	0
Conversation with mediator	1	1	5	0
Failed mediation directions hearing	5	3	50	2
Miscellaneous paperwork	8	6	75	3
Miscellaneous	14	10	80	3
Total	143	100	2448	100

The table above shows that the highest proportion of time is spent by district judges in hearings and reading files. Neither of these tasks is necessary should the case settle at a mediation.

This data shows that there is a distinct saving in judicial time where the case is mediated and settled.²⁵ Even where the case is mediated and does not settle there is a saving in judicial time when the mediator can help to give advice to the parties as to what evidence they will need for hearing, etc.

²⁵ See also the actual savings of judicial time on cases settled at mediation on page 74.

The purpose of small claims mediation

The aims of integrating alternative dispute resolution methods within the civil justice system have already been stated. The main purpose of the small claims mediation service is to offer:

- a more cost-effective form of dispute resolution for those parties who are involved in small claims litigation;
- a dispute resolution method which is more proportionate to the issues involved in the dispute;
- a service which does not cost any more than the current costs of issue.

The Exeter small claims pilot forms one of three pilot schemes on mediation in the small claims court. The aim of the pilots is to help to identify the most effective way that the courts can promote mediation amongst users. The pilots build upon other mediation projects which aim to test different models of interaction between mediation and the courts and identify which provide the best outcomes in which circumstances.

The aims of the pilot project

The pilot project runs from June 2005 until the end of May 2006. It has been established for the following purposes:

- To test alternative arrangements for delivering small claims mediation
- To encourage individuals with small claims to consider and use alternatives to the traditional court process
- To evaluate the small claims pilot so that we can identify the most effective model(s) according to the following criteria:
 - ◆ The number of court users that agree to participate in the scheme
 - ◆ The proportion of mediations that are successful
 - ◆ The cost and benefits to the Court
- To evaluate the success of the mediations conducted under the scheme according to the following criteria:

- ◆ The satisfaction of users, compared to satisfaction with court processes.
- ◆ The cost to parties, compared with court processes.
- To establish principles of best practice in setting up and administering a small claims scheme.
- To identify the barriers and obstacles that can affect the success of a small claims scheme.

The aims of the research

This is necessarily a small scale study due to the relatively low number of cases which are referred to mediation.

The objectives of the research are:

- to assess the effectiveness of the small claims dispute resolution pilot;
- to explore the views of users of the service; and
- to draw out any conclusions that will be helpful to the DCA in deciding how to take forward its wider remit, under the PSA, to reduce the number of cases that are resolved through the courts.

In order to estimate cost-savings the following are being considered:

1. Number of cases:

Is there a reduction in the number of small claims hearings over the period of the pilot? There may be some issues over listing of small claims hearings which can be recorded in order to try to ascertain whether any judicial time is liberated as a result of the pilot.

2. Time estimate of cases:

At the end of the pilot the time estimate of those cases which successfully mediated but would have gone on to hearing if not settled will be recorded. It is accepted that there are a number of these cases which might have settled prior to hearing in any event.

3. Judicial input:

The amount of judicial time spent on discussing mediation with parties (Eg telephone CMCs, etc) will be recorded to evaluate whether this is a significant element of the scheme and whether judicial input is more or less likely to lead to a settlement at the time of the mediation.

4. Administrative time:

A general picture of the work of the pilot scheme manager will be created to show the division of time spent on work connected with the mediation scheme and work connected directly with the pilot, ie spreadsheet.

Methods and research samples

There have been a variety of methods used to collect data on the small claims scheme. A detailed spreadsheet of quantitative data on each of the pilots has been maintained by the mediation clerk at the court on an Excel database collecting all enquiries and mediations during the course of the pilot. In order to provide additional qualitative data to supplement the quantitative data collected there have also been observations of mediations conducted under the scheme, structured interviews with litigants, as well as questionnaires and telephone interviews. In addition, a focus group meeting was held to discuss the aims, direction and management of the scheme with court staff and members of the judiciary.

Quantitative Data

The main quantitative data was compiled from the cases files and maintained on a spreadsheet at the court²⁶.

²⁶ All graphs included in this report use numerical values to show the actual numbers in each category.

Data collection procedures - statistical data from case files

A spreadsheet of information gathered from all of those cases referred to mediation has been compiled since the start of the research project. This spreadsheet has been maintained since 1st June 2005 and contains data on all cases referred since this date.²⁷ The type of data held includes:

- Number of referrals and number of mediations
- Case types
- Case values
- Number of parties involved
- Whether parties are represented
- Date of mediation
- Outcome of case – ie withdrawn, settled, court order, mediated. If mediated, whether settled or not at mediation

The spreadsheet kept by the mediation clerk is extremely comprehensive (where the required information is available). There are 51 categories which have been divided into the following four sections:

- Case details
- Small claims mediation appointment details
- Small claims hearing details
- Outcomes

The spreadsheet provides a month-by-month breakdown of cases based upon the date that they were referred to the mediation scheme. The number of cases included in this research is 255 based upon 250 from the spreadsheet and 5 that were referred to mediation at a later point by the district judges.

²⁷ Referred cases are included from 1st June although the data on actual mediations runs from 1st July 2005.

The table below gives a breakdown of referrals to mediation by month.

**Table 4: Breakdown of referrals to mediation by month
(Total sample = 255)**

Month	Number of Referrals to Mediation
May-05	1
Jun-05	29
Jul-05	31
Aug-05	21
Sep-05	12
Oct-05	11
Nov-05	35
Dec-05	23
Jan-06	12
Feb-06	13
Mar-06	23
Apr-06	22
May-06	18
Jun-06	4 ²⁸
Total	255

Qualitative Data

A range of qualitative data was also generated to supplement the data collected on the spreadsheet. This was to ascertain:

- The views of users of the service
- Why users declined to use mediation
- The views of users who took up the offer of a mediation
- Any previous experience of mediation
- What users liked and disliked about the service
- Whether the service met users' expectations

²⁸ This is low because of the cut-off date for the end of the research.

- Whether users would consider using mediation in future disputes
- The views of mediators²⁹
- The views of judges

The qualitative data took the form of observations, interviews and a focus group meeting.

Observations

Observations were conducted of 89 mediations from 1st July 2005 onwards. The number of mediations observed represents 65% of the total number of mediations in the scheme over the period of the research. The purpose of the observations was to examine the process of the mediation itself as well as to describe the mediation process and to analyse litigants' awareness of mediation. It helped to explain that many of the variables considered in the rest of the research were dependent on the attitude and approach of the parties and the mediator to the mediation itself.

Structured Interviews

Structured interviews were conducted with as many litigants as possible immediately following the mediation. These interviews were very short and took place at the court. Participants were generally very happy to talk about the mediation and there were very few who refused the opportunity. There were 151 interviews conducted in total, representing 56% of all litigants who took part in mediations. This total number is made up of 75 claimants and 76 defendants. The chart below shows that as the interviews conducted were a random sample the results are skewed somewhat towards those who did not settle at mediation.

²⁹ There were also a few legal representatives who responded to the questionnaire but none gave comments or were prepared to be interviewed further.

Table 5: Parties interviewed after mediation

Parties interviewed after mediation	Settled at mediation	Percentage	Not settled at mediation	Percentage	Total
Claimants	47	63%	28	37%	75
Defendants	49	65%	27	36%	76
Total	96	64%	55	36%	151

Questionnaires

Questionnaires were sent to all parties who took part in mediations and also to those who did not mediate even though they had been referred to mediation. Questionnaires were sent to those who had experienced a mediation within six weeks of the mediation taking place. Those parties who had not mediated were sent a questionnaire after the case had completed its passage through the courts where possible. The table below gives a breakdown of questionnaires sent out and returned.

Table 6: Breakdown of questionnaires sent and returned by litigants

Litigants	Status of questionnaire	Non-mediated cases (postal)	Mediated cases (postal)
Claimants	Sent out	107	99
	Returned	37	34
Defendants	Sent out	107	99
	Returned	25	29
Other	Returned	1	0
	Total sent ³⁰	214	198
	Total returned	63	63
	Percentage returned	29%	32%

³⁰ Any discrepancy between questionnaires sent and the number of cases is due to the fact that questionnaires were only sent to cases that had either settled or concluded at final hearing. It was impractical due to the timing of this report for questionnaires to be sent after 23/6/06.

It does need to be noted that not every respondent completed every question and this affects the quantity of returns on single issues.

Telephone Interviews

Litigants were asked on the questionnaire whether they would be happy to be asked further questions by telephone.

The aim of conducting later interviews with parties involved in the mediation scheme was to:

- provide more in-depth answers to the questions asked on the original questionnaire;
- to discover what has happened since the mediation;
- to determine whether parties would be happy to mediate again in the future.

Telephone interviews were conducted with 45 parties who had mediated, who responded positively to the questionnaire and provided sufficient details to be able to contact them. They were therefore self-selecting. There were 21 claimants and 24 defendants. Of these 31 had settled their case at mediation.

Mediators Questionnaires

Responses were received from 16 individual mediators out of a total of 44.³¹ The mediators were given a questionnaire to send back to the researchers by reply paid post at the beginning of each mediation session. The purpose of the questionnaire was to note information about the individual mediator and their views of the small claims scheme and to capture their views about the cases on the list for that particular day.

³¹ This is the total number of mediator responses although there were a number of repeat players - about 7 mediators who have mediated more than once during this pilot. The mediators taking part during the pilot does not therefore accurately reflect therefore the total number of mediators on the scheme.

Focus Group

As there have been several other research projects conducted at Exeter County Court it was felt that individual interviews might not be as productive for this study as allowing the judiciary and the court staff to respond together to questions. A focus group meeting was therefore held at Exeter County Court on 24th January 2006. All of the three full-time district judges attended as well as the Court Manager and the Mediation Clerk. The main areas of discussion were the:

- purpose and effectiveness of the mediation service
- impact of the service on court users
- success factors and future of the service

Chapter 2. The origin and development of the small claims pilot mediation scheme

Exeter County Court moved into new premises in November 2004. It uses clusters of rooms in which to run mediation sessions. There are usually two sessions per month and each session relies upon two mediators who can each conduct up to 6 half hour mediations during one session. The sessions are timed to run from 10am until 1pm and the length of each individual mediation depends upon how many parties turn up during a session, their own approach to the mediation and the complexity of the issues involved. During the period of this research there have been a total of 29 mediation sessions.

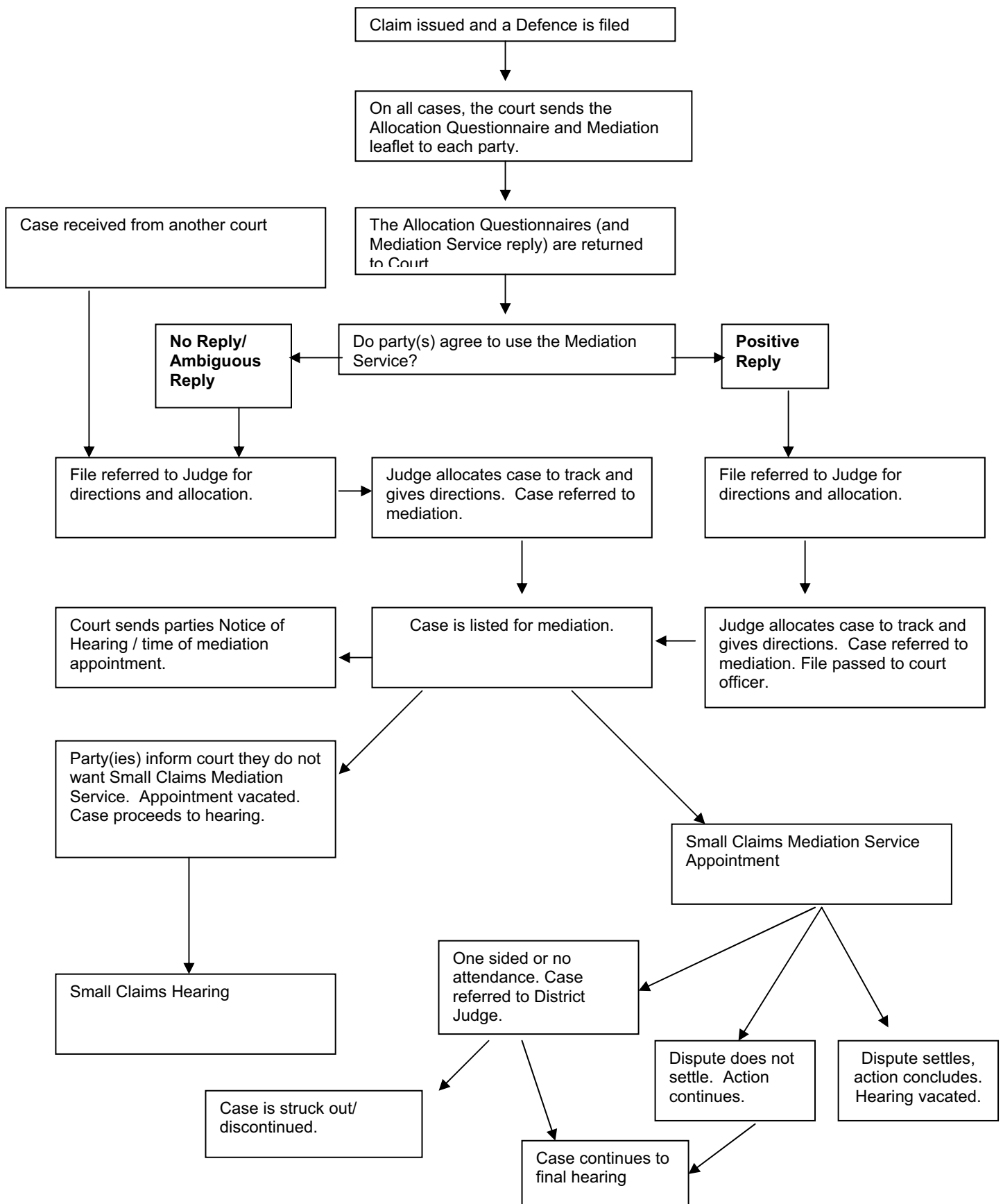
The small claims scheme procedure at Exeter

The first contact that either claimants or defendants have with the small claims mediation service is an explanatory leaflet which was produced by the DCA which is sent to them with the allocation questionnaire upon receiving a defence to the claim. This leaflet gives the parties an opportunity to volunteer to take part in a mediation by returning a reply slip to the court. In fact extremely few of these reply slips were ever returned. The allocation questionnaire (AQ) also asks the parties whether they wish the case to be stayed in order to give them a chance to consider using alternative dispute resolution methods.

Once the AQ has been returned to the court the district judge then examines the file and determines to which track it should be allocated. If the case is allocated to the small claims track the district judge will then consider whether it is appropriate for mediation.

The diagram overleaf provides an overview of the process for cases referred to the mediation service.

Table 7: The small claims mediation service process



Information to litigants

All parties involved in defended claims which are likely to fall into the small claims track are sent a leaflet about the small claims mediation service with the allocation questionnaire (AQ). The leaflet states on the front cover, 'I would like to settle my small claim without going to court'.

It maintains that the advantages of going to mediation are that it is:

- free
- quicker than waiting for hearing
- unbiased
- voluntary
- confidential
- less stressful, and
- less formal than hearing by judge.

Very few respondents to the questionnaire who had been to a mediation appointment cited this information leaflet as a source of their knowledge about mediation. In addition, very few litigants (about 1-3),³² returned the reply slip volunteering to take part in a mediation.

Once a district judge had referred the case to mediation the parties are each sent an information notice explaining in more detail the nature of the mediation service. The focus of this document appears to be the voluntary nature of mediation and the process itself. This is how the document answers the question: 'What is mediation?'

"In mediation, each side to a dispute has a chance to put its case and to hear what the other side has to say. A mediator helps both sides reach agreement about how a dispute should be settled. To get the best out of the process it is important that the parties understand it and come prepared."³³

³² This data was not specifically collected for the purposes of this report.

³³ DCA handout 'Small Claims Mediation Service at Exeter Combined Court Centre' (2005)

This definition does mention settlement but does not clearly say what is expected of the parties in relation to their attitude towards settlement. The benefits of settlement are also not included in the stated advantages of going to mediation. It seems particularly unhelpful not to clearly explain and then state explicitly how important it is that the parties understand what mediation is before they attend.³⁴

“The mediation was not carried out in the manner suggested in the notes sent to us prior to the mediation.”
Defendant

Once again there was little acknowledgement by parties who had been through mediation that this document provided a helpful source of knowledge of mediation.

There are no associated websites or any references by which interested litigants can obtain more information about the process they are going to undertake. Devon and Exeter Law Society who supply the mediators for the service do not give any additional information on their website for people who may use mediation or any links to help or advice or information on small claims procedure. Similarly the HMCS website does not provide any general information as to why litigants should mediate or try to settle their cases.

It was noted during the observations conducted for this research that parties still arrived at the mediation expecting an adversarial process and in many cases some form of determination by an external person. There were opportunities to give them information or to have posters in the waiting room and leaflets etc to look at whilst waiting for their mediation to take place but there was no such provision. In addition, a video screen could play a film

³⁴ This contrasts with information given at other similar schemes. For example, the Edinburgh Sheriff Court Mediation Service states in answer to the question: What is mediation?: “In mediation each party to a dispute has a chance to put his or her case and to hear what the other person has to say. It then involves informal discussions about the dispute with a mediator helping both parties to reach agreement about how the dispute should be settled. It is not like a trial and there is no need to bring witnesses. Usually people do not choose to have a lawyer represent them.” (Source: Edinburgh Sheriff Court Mediation Service, Information for the parties leaflet, Edinburgh Sheriffs Court, 2006).

about mediation in the waiting room and whilst something of this kind was used during 'Mediation Week' it does not constitute a standard tool in the court waiting room.

Criteria for referral of cases to mediation

The practice is that all cases will usually be referred unless one of the parties lives at least 30 minutes outside the area. The district judges also have a general policy of not referring road traffic accidents (RTAs) to mediation, although there were a few that appeared in the list during the period of the research.

One of the district judges explained the criteria as follows:

"We can see the benefit of a settlement and sometimes can spot a chance for a settlement in the paperwork so we will often invite a non-local party to, if you like, opt in and agree to travel for a thirty minute ADR appointment."³⁵

Other than clearly excluding those parties who live a long distance from the court and RTAs there is no clear criteria for referral. The district judges seem to agree that unless there is a reason in the file not to recommend mediation most cases will be referred as there is an opportunity for parties themselves to withdraw at a later time.

The referral process

At the same time that district judges allocate small claims to track they also decide whether a case should be referred to mediation by reviewing the file.³⁶ Parties are able to withdraw from the mediation at a later stage as it is a voluntary process. In addition to this method there have also been a few

³⁵ Transcript from the focus group meeting.

³⁶ A very limited number of litigants volunteered for mediation by returning the reply slip sent out by the court. Only one side volunteered so it was still left to the district judge to determine whether the case should be referred to mediation. The reply slip was therefore a factor in the decision.

cases who are referred to mediation at hearing. This is usually because one party did not attend the original hearing and at a second appointment the judgment was set aside. If there is a mediation session happening at the same time the judge may refer the parties directly to the mediator to save them all from having to return to court for a third appointment.

The order from the district judge which offers the parties the opportunity to mediate has changed over the course of the pilot (see appendix). The district judges felt that the original order was a little ambiguous for parties and led to some individuals feeling that they were not required to attend court. This resulted in some parties attending without the other side and wasting their time. The district judges therefore changed the order so that the case could be progressed and the importance of giving notice of withdrawal impressed upon them should one party choose to absent themselves from the mediation.

The mediation process

The mediation process is based upon a model of time-limited mediation where the mediation itself is tightly constrained by a cut-off point in time which is often raised during the mediation to remind the parties that the goal is potential settlement. Consequently, there is little time available to build trust between the parties or develop co-operative strategies. There is also little time to consider some of the more traditional aspects of a defended claim which has been filed with the court: evidence and determination of issues.

The focus of the mediation process at Exeter is instead more pragmatic and far more in line with the conceptual underpinnings of the CPR: to encourage the parties to negotiate their own resolution to the dispute by asking the parties to focus particularly on the advantages and disadvantages of

settlement.³⁷ DELS state that the mediation used for the small claims scheme follows the same principles as are used in standard mediations.³⁸

Each mediation session consists of a block of mediations listed on the 'mediation day'. A 'mediation day' involves two mediators undertaking mediations listed between 10am and 1pm. The aim is that each mediation takes half an hour which allows for a maximum of 12 cases to be listed between these times. Parties are given a time for their mediation in advance.

On the day of the mediation the mediators will receive the full case files a short time in advance of the mediation session. They will usually have time to gather no more than a basic knowledge of the issues involved in the cases which are to come up on the list that morning. When the parties arrive at the court the usher directs them to the waiting room. If the mediator has an opportunity they ask the parties at this point to sign an 'agreement to mediate' form (see appendix) which signifies their consent to take part in the mediation process. This document has been drafted by the DCA but it is quite dense and complicated to read and many litigants are unsure about the nature of the form although they still sign it as they have been asked to do. There is some disparity in approach between individual mediators; some give the parties the form in the waiting room; some ask them to sign it at the beginning of the mediation and others remember it needs to be signed at the end. There is little indication that parties really appreciate the nature of the form that they are signing which may affect their own understanding of the mediation process.

³⁷ See further on this point the idea of 'co-existential justice' in M Cappelletti, 'Alternative Dispute Resolution Processes within the Framework of the World-Wide Access-to-Justice Movement' 56 *MLR* 282.

³⁸ "The principle of mediation in the "Small Claims Court" is exactly the same as that applied to all other mediations, namely:

- (a) It is confidential
- (b) It is under the control of the parties
- (c) The mediator is non-judgmental
- (d) the mediator cannot give advice to either party
- (e) either party is free to leave at any time
- (f) any settlement is arrived at freely between the parties". Source: Select Committee on Constitutional Affairs, First Report, The courts: small claims, HC519 (6 December 2005), Ev 57)

The mediations take place in small rooms that have been designated for that purpose by the usher on the morning of the mediation session. Usually there are a number of rooms available to allow the mediators to work near to each other and to also allow them the opportunity to put individual parties in separate rooms so that they can talk to them independently about what they wish to get from the mediation process. At the time specified for the mediation the mediator will usually ask the parties to enter the room together and sit them either side of a table. He/she will introduce himself and explain their role and the purpose of mediation. They will usually say that the proceedings are confidential and that their role is to be impartial and not to judge the case but instead to see if there is common ground. The mediator may say something similar to: "What we might try to look for is a settlement or resolution that is better than having to come back and take a chance before a judge".³⁹

The mediator therefore tries to get the parties to focus on settling the case rather than discussing the issues. In order to achieve this many of them emphasise the contention that a legal decision in this area is by no means certain and during a mediation the parties themselves have the opportunity to determine the outcome of the case in a way which best suits their own requirements.

Each mediator approaches the mediation slightly differently although the similarity is the focus on settlement. The mediators generally encourage the parties to settle by concentrating upon the benefits of bargaining and resolution. The type of mediation used is not peculiar to Exeter but has been identified elsewhere by other academics.⁴⁰ Often the mediators will employ devices to encourage participants to consider the advantages of not returning to court if they settle their case at the mediation. There is usually little time to

³⁹ Quote from DELS mediator during a small claims mediation.

⁴⁰ "Typical techniques include encouraging the parties to consider the strengths and weaknesses of their case and stressing the consequences, particularly the costs, of failure to reach settlement in the mediation." L Boulle, M Nesic, 'Mediation Principles Process Practice' (Butterworths, London, 2001) at p 157.

look for common ground in the dispute itself and the mediator is looking for a cue that the parties are willing to accept something that is not a determination by a judge.⁴¹

At the end of the mediation if the parties have settled their case the mediator will draw up a mediation report with a schedule explaining the nature of the settlement. The parties will then leave and the mediation report will be placed on the file so that it can be translated into a consent order by a district judge. Accordingly if the case settles at this point the parties will have had no contact with the district judge and their case will have been resolved.

If the case does not settle at mediation the parties are asked to go back to the district judge for directions. At this point the judge is able to speak to the parties about any evidence, witnesses etc required for the hearing. However this is likely to be a short meeting as the mediator is able to advise the parties as to any relevant points to raise with the judge at this hearing. There is some ambiguity as to the role of the mediator at this point in the proceedings.

Origins of the scheme

The mediation service was established on 16th June 2002. It was launched as an initiative by the district judges and DELS to reduce the proportion of small claims disputes which had to be resolved at a hearing. There was a surfeit of small claims at that time and the judges were finding that the parties were usually inadequately prepared to attend the hearing.

The service began as a six month trial in Exeter, Barnstaple and Torquay courts. The focus of the scheme for litigants was that it was a way to avoid hearing and incur further costs. For the court the focus was the saving of court, essentially judicial, time and to provide guidance to parties who did not settle at the mediation but had to go on to a further hearing. The DELS

⁴¹ Notes from observations of the mediation process at Exeter County Court (2005/06).

mediators were keen to develop and expand their own mediation skills so that they would be able to build up their mediation experience.

The first mediation session was held on 16th July 2002. In the first year over 200 cases were referred to mediation.⁴² During the first 18 months of the operation of the service the settlement rate was 70%.⁴³

The Exeter mediation service aroused quite a lot of interest nationally. For example, Baroness Scotland, speaking to the Select Committee on Culture, Media and Sport on models of alternative dispute resolution stated:

“...I can tell you about a model of mediation that is being used in Exeter. In June 2002, Exeter started a mediation pilot to deal with small claims cases, so that when a claim was made an opportunity to mediate would be offered to the participants, and that had a very good take-up rate. From June 2002 until now they had a 70% success rate overall and in recent months the success rate of that small claims mediation has been about 90% plus, but overall we have about 70%.”⁴⁴

This interest helped to lend concrete support to the mediation service which has enabled it to continue long beyond its initial pilot phase.

This present research is part of a new one-year pilot which has been established by the DCA who identified and addressed what they considered to be shortcomings in the original scheme. These shortcomings were identified as:

1. Scheme should be more transparent and voluntary
2. Appointments to be less time-constrained and not limited automatically to 30 minutes.⁴⁵

⁴² Source: County Court Annual Report 2002 – 2003 (Court Service, 2004)

⁴³ S Prince ‘Court-based Mediation: A preliminary analysis of the small claims mediation scheme at Exeter County Court (Civil Justice Council, 2004)

⁴⁴ Evidence to Select Committee on Culture, Media and Sport, Fifth Report, HC458-I (16 June 2003)

⁴⁵ It was recognised at an early stage that this was difficult to achieve as the mediations were listed for specific times and so unless each mediation was time-limited other parties, scheduled for later mediations, would be waiting for long periods for their own appointment.

3. District judges, who used to see parties both immediately before and after the mediation, would now only see those parties whose case did not settle at the mediation.
4. Provision of publicity and information should be improved so that parties received an information leaflet about mediation as soon as their case was referred. The aim of this was to stress the voluntary nature of the scheme by presenting the parties with an opportunity as to whether to use mediation with the ability to opt-out at any stage in the process. The DCA was keen that notification to parties that their case was suitable for mediation was to be sent by means of a *letter* inviting them to mediate and not through a judicial order as had previously been the case.
5. The training programme for mediators should be revised to emphasise the specific skills required to mediate on the small claims track.

The pilot operates to include all cases referred to mediation from 1st June 2005 until 31st May 2006.

Funding

When the service was launched initially lawyers were operating on a *pro bono* basis. There was no cost to the parties and also no cost to the courts. However after the initial six months it became clear that in order for the service to continue there would need to be funding. DELS never considered that parties should be asked to fund their own mediation. Instead, early in 2003 they approached the DCA and were referred to Baroness Scotland, who was at the time a Minister in the department. It was agreed that funding would be provided for the scheme and it would operate as a pilot from August 2003 until March 2004. This funding was later extended, although it was always for a set period, the scheme continues to be funded, although at a reduced rate, almost three years later. The DCA have now announced the withdrawal of funding from May 2006 and the Devon and Cornwall Area

Director has decided to maintain the scheme as an interim measure before implementing the HMCS recommendation of a full-time HMCS staff mediator.

Administration of small claims mediation service

The administration of the service is conducted by the court. The administration for the mediation aspect is minimal. There is a mediation clerk at the court but very little of her time is devoted to small claims matters. Once a case has been referred to mediation she will send an order to the parties to inform them that they have been offered a mediation. She will then list cases for scheduled mediation dates. In addition, she deals with telephone enquiries from the parties and cancels their mediation appointments if they choose to go straight to hearing. During the period of this research project the most labour-intensive aspect of her work linked to small claims mediation was the maintenance of the spreadsheet of information on all the cases which had been referred. The spreadsheet was being compiled for the purposes of the DCA rather than aligned to the operation of the mediation scheme itself.

The role of court staff

The court have chosen to appoint a dedicated mediation clerk to handle all administration and enquiries concerning mediation. This is not a full-time role and the small claims part is far smaller than the work that is conducted on the fast-track and multi-track scheme at Exeter.

The usher also has to be able to answer queries on the small claims mediation from parties on the day of the mediation. There was an intention at one stage in the life of the mediation service that the usher would ask the parties to complete the 'agreement to mediation' form upon arrival at the court. This does not seem to happen consistently, however, and it is left generally to the mediator to fulfill this task. As a result some mediators are more committed to ensuring this formality is performed than others.

The role of DELS at Exeter

The mediators on the service are all members or associates of Devon and Exeter Law Society (DELS), the local branch of the Law Society. DELS are paid a flat rate by the DCA of £250 per mediator for each individual mediation session of up to six mediations.

There are 29 mediators registered through the Devon and Exeter Law Society. These are mainly solicitors by profession although there is one barrister also registered.⁴⁶ There are currently also 8 trainee mediators who need to observe small claims mediations prior to being allowed to mediate themselves independently.

In order to become a mediator on the small claims service at Exeter interested lawyers need to attend a DELS-organised training session. This session lasts one day and is usually held at a venue in Exeter. The trainer is Andrew Fraley who is a full-time commercial mediator. Andrew has run his own mediation organisation for the past 10 years. He is an expert and has advised government working groups and the Law Society on mediation. He is an expert on mediation but not on the small claims procedure. For this reason, Jeremy Ferguson, the ex-DELS president who established the service talks to potential mediators about small claims mediation during the training session.

Much of the training Andrew Fraley delivers is based upon his own anecdotal experiences enhanced with both mediation and negotiation theory. It is an extremely interesting session but the focus is on developing skills rather than understanding the procedure of the small claims track which is perhaps not so necessary for established lawyers. However, it is possible to attend the training scheme and not have to speak or take part in any meaningful sense. Andrew emphasizes the skills required in time-limited mediation generally although most of his accounts are about longer mediations where both the parties are represented by lawyers and / or barristers and the amount in

⁴⁶ Information supplied by DELS (March 2006).

dispute is far larger than a small claim. Although the principles may be similar, it is difficult to give those attending any real flavour of being a mediator on the small claims service, and they do not get to practice their own skills. In addition there is no peer or other assessment. There are no existing criteria to determine who should or should not be eligible to go on the training scheme. Anyone who is associated with DELS and who pays to attend the training course can then go on to the next stage of training to become a small claims mediator.

Once the mediation training has been attended the potential mediator needs to observe three mediation sessions before they can conduct their own small claims mediation independently. Again, although they usually talk with the mediator running that particular session there is no testing of their own skills or understanding before they are allowed to run their own mediation sessions.

During observations of the mediation sessions it was clear that each mediator takes a different approach to mediation. This is not a criticism but there were distinctly variable standards in relation to knowledge and understanding of both mediation itself and the small claims process. Although the majority of mediators were extremely professional in their approach this was not always the case. One mediator chose to hold the mediation in an empty courtroom and told the parties, “We are in court. This is a mediation hearing”. Such a comment did not seem to convey the co-operative nature of the mediation process and to an observer (or indeed a party to the mediation), it might appear that this was a very similar approach to that used in a court hearing. At another mediation the mediator told one of the parties that by walking out of the mediation they would instantly raise issues of costs for which they would be penalised when the case went to hearing. This seemed to contradict the confidential and voluntary nature of the mediation as well as the law.⁴⁷

⁴⁷ *Halsey v Milton Keynes NHS Trust* [2004] 1 WLR 3002

As the mediators are operating from the court and therefore working under the authority of the court it would seem that more rigorous training and standards should be in operation. There appears from our observations of 116 mediations that there is no system of peer review in operation, although DELS does hold a yearly review meeting which is attended by all mediators. There is a question to be asked as to the overall quality assurance of the mediation process.

Chapter 3. Findings from quantitative research

Discussion of quantitative findings based on court compiled data and statistics

The data in this chapter has been compiled using as sources a combination of the spreadsheet kept by the mediation clerk and data compiled by the researchers from listings of actual mediations reinforced by factual data collected whilst observing actual mediations.

The profile of cases in the research

There are 255 cases in the total population of this research project.⁴⁸ All of these cases have been referred to small claims mediation by a district judge since the beginning of this pilot project in June 2005. Included in this research are only those cases which have been referred to mediation at some stage in the litigation by a district judge and it is these that are considered as the overall population.

Referral usually happens at allocation stage but there are also examples of a few ad hoc referrals by district judges at a later stage in the litigation which have also been included in the total population of the research.

Table 8: Profile of cases by referral to mediation (Total sample = 255)

Profile of cases	Number
Referred to mediation at AQ stage	250
Referred to mediation by DJ ad hoc	5
TOTAL	255

⁴⁸ This total includes all cases which have been referred to mediation by the end of the pilot project, ie 31st May 2006.

Since the start of the project there have been 756 cases allocated to the small claims track at Exeter County Court. During the course of the research pilot a total of 255 cases were referred to mediation. This represents 34% of all cases referred to the small claims track.

A breakdown of cases by allocation and referral is provided below:

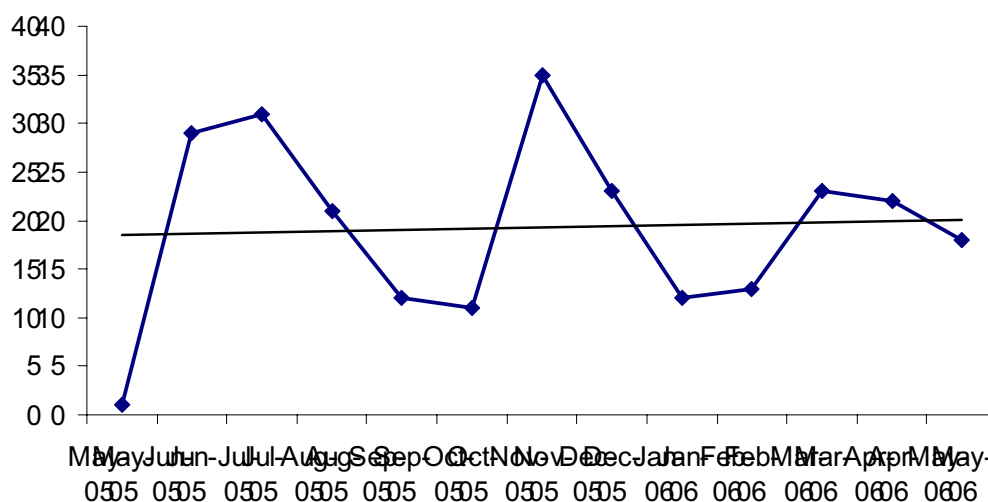
Table 9: Cases by allocation to track and referral to mediation

Month	Allocated to SCT	Referred to mediation
Jun-05	86	29
Jul-05	57	31
Aug-05	44	20
Sep-05	55	11
Oct-05	15	10
Nov-05	69	35
Dec-05	86	23
Jan-06	64	13
Feb-06	38	13
Mar-06	115	23
Apr-06	43	22
May-06	53	18
Jun-06	31	4
Total	756	252⁴⁹

The numbers of cases allocated to the small claims track have altered demonstrably month by month during the period. This is shown on the line graph below:

⁴⁹ There were also 3 additional cases which were referred to mediation outside the period of this research but mediated within the period of the research.

Figure 1: All cases referred to mediation (Total sample = 255)



The peaks and troughs in the graph above show that although there are many divergent (internal and external) reasons why the numbers of cases which are referred to mediation alter dramatically over a period of time. The number of cases in each category is affected by what is happening both in the court itself and in the local area. Consequently, if a situation arises where there are a lot of arrears at the court, which prevents files being sent to the district judge, this might create a blip in the system. One of the district judges clarified an unexplained increase as follows:

“I mean we can’t tell if we have for instance, if the increase is as a result of an insurance company moving into the area and doing all their RTA’s through us then we would have an increased number but a lesser number of referrals. Or, if you’ve got a lot of people where one party is out of the area.”⁵⁰

The trendline inserted on the graph shows that the number of cases allocated to the small claims track has dropped during this period but the number of cases referred to mediation has followed the same trend.

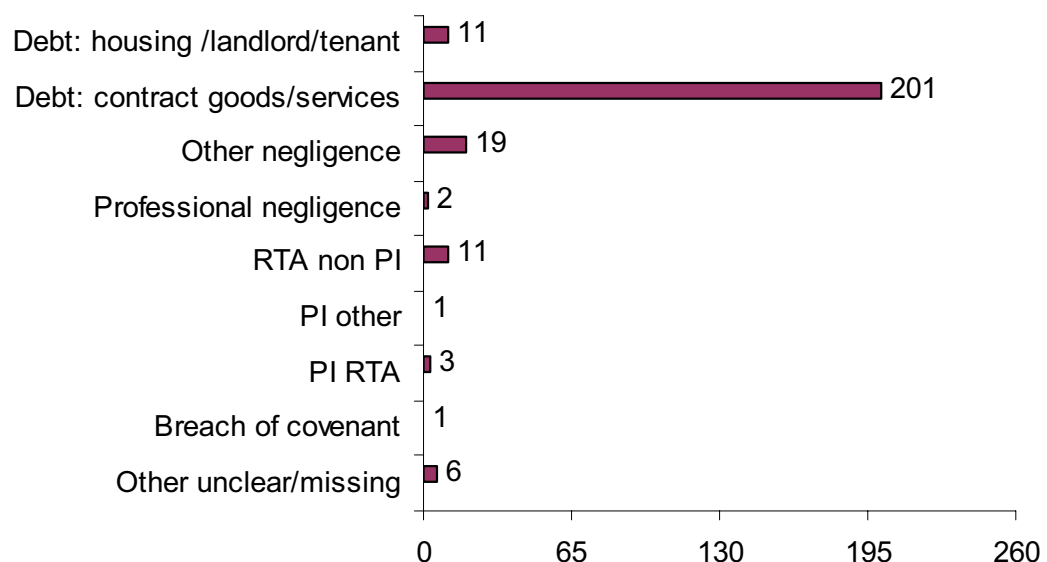
⁵⁰ Taken from transcript of focus group discussions.

Profile of cases referred to the mediation service

Referred to mediation by case type

The small claims track was originally designed for general consumer disputes. It is therefore unsurprising that 78% of cases referred to mediation fall into the general debt, contract, goods and services category where the dispute is straight-forwardly about amounts of money / debt. The type of case that arose frequently were unpaid invoices for home repairs and maintenance, building disputes and faulty vehicle repairs. Other types of disputes were complaints about professional fees, general negligence and disputes between landlords and tenants. A breakdown by category is provided below.

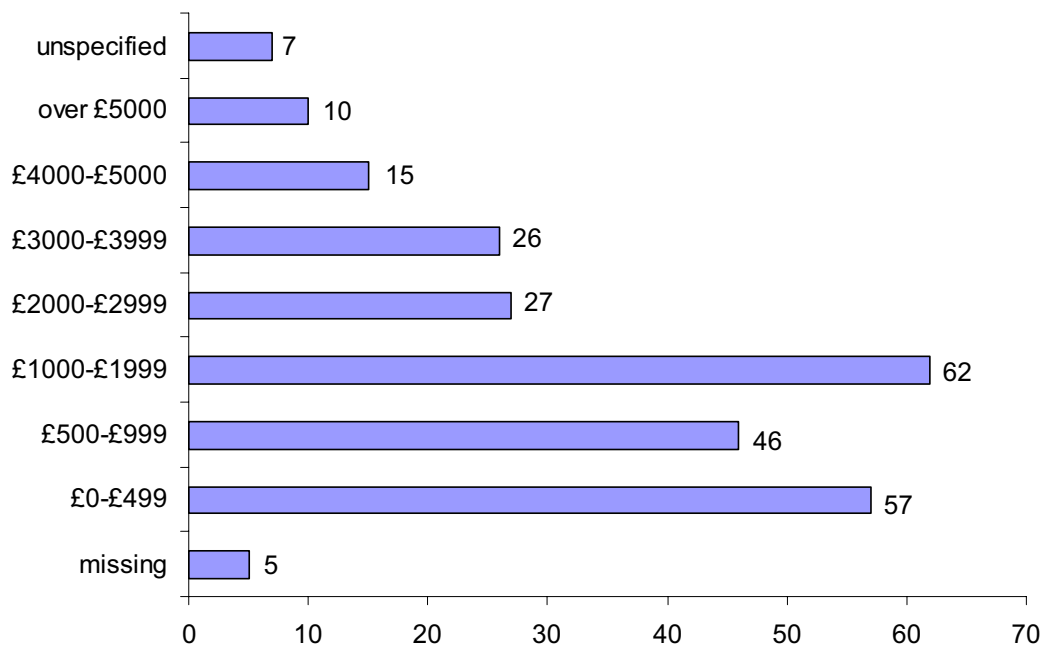
Figure 2: Referred to mediation by case type (Total sample = 255)



Referred to mediation by claim value

The majority of cases referred to mediation have a value of less than £2,000. This accounts for 68% of all the referred cases with a specified claim value. These are described on the bar chart below.

Figure 3: Referred to mediation by claim value (Total sample = 255)



The median for these values is £1229.29.⁵¹ The mean is £1839.55. The value of the cases referred to mediation is therefore generally at the lower end of the range of the small claims track.

Referred to mediation by status of claimants and defendants

The most common status of parties whose cases are referred to mediation (15%) is individuals in person against individuals in person. 40% of claimants

⁵¹ This figure takes into account all cases where the amount was specified and excludes unspecified amounts and where only a vague figure is given to show value, ie up to £5k.

and 40% of defendants fall into this category. Around 20% of claimants and 27% of defendants were represented. The majority of these tended to be individuals or companies and 7% of referred claims involved represented companies against individuals in person. Individuals in person against companies in person accounted for 9% of referred cases. The cross-tabulation below shows the breakdown of cases by claimants and defendants in each case.

Table 10: Referred to mediation by status of claimant and defendant (Sample = 255)

		Status of Defendant							Total
Status of Claimant	missing	Individual in person	individual represented	company in person	company represented	sole trader/ partner- ship in person	sole trader/ partnership represented	LA	
missing	4	0	0	0	0	0	0	0	4
Individual in person	0	38	6	24	11	19	1	2	101
individual represented	0	3	11	0	3	2	1	0	20
company in person	0	21	0	14	7	5	1	0	48
company represented	0	19	4	6	3	8	0	0	40
sole trader/ partnership in person	0	14	2	6	0	8	0	0	30
sole trader/ partnership represented	0	4	0	0	1	3	0	1	9
LA	0	3	0	0	0	0	0	0	3
Total	4	102	23	50	25	45	3	3	255

Time from referral to mediation date

Cases that settle at mediation have experienced a process which works much faster than traditional adversarial methods and results in a majority of settlements well within national small claims targets. The national target is set

at disposal of cases within 15 weeks.⁵² During the period of this research the mean time taken from referral to small claims track to the mediation is 34 days (almost 5 weeks). This represents a considerable time saving for those parties who settle their case at that mediation session. It reduces by a third the number of weeks required to reach the target which itself represents a considerable benefit for those parties who settle at mediation.

The mean for the time between the mediation and the small claims hearing, for those cases which do not settle at mediation, is 93 days (13.3 weeks). It is a similar figure for those cases going straight from referral to hearing as the hearing date has already been established in advance by the court. This is because the cases are listed for mediation and for hearing at the same time so that in the event that the case does not settle at mediation there will be no delay in listings.

How many cases go to mediation

53% of cases originally referred to mediation actually mediated. The table below gives a breakdown by mediated and non-mediated cases.

Table 11: Cases referred to mediation and mediated (Sample = 255)

All cases referred to mediation	Number	Percentage
Mediated cases	136	53%
Non-mediated cases	119	47%
TOTAL	255	

Mediation was more likely to be taken up than refused. Of the total referred to mediation only 20% asked not to attend the mediation appointment. Either

⁵² "Delivering justice, rights and democracy DCA Strategy 2004 – 2009" (DCA, London 2004).

one of the parties could ask for the case to be delisted. It did not require both parties to ask not to attend.⁵³

Attendance at mediation appointments

136 cases were listed for mediation and mediated and a further 57 were listed and did not mediate out of the total number of 255 cases. The list schedules the times of each mediation on the day of the mediation session. However, 20% of the total number of cases listed (39 cases) did not go ahead as one or more party did not turn up to the mediation.

Although the mediation scheme is voluntary parties who do not wish to mediate are asked to contact the court up to 7 days prior to the mediation appointment. Parties who just did not turn up were merely penalizing the other party who did attend and also incurring extra costs to the system as the mediator was not mediating.

Following discussions at a meeting at Exeter County Court in December 2005 it was felt that the reason for this was the N24 order sent to parties which stated that the case had been referred to mediation, gave the date and time of the scheduled mediation and then stated, 'The Court has arranged a free Small Claims Mediation appointment at Exeter County Court on _____ at _____'.

There was no comment included on the order to the effect that the parties should attend court to appear before the judge. It seems that this was because, originally, the emphasis was upon the voluntary nature of the mediation. Yet if parties failed to attend this led to a significant increase in the use of judicial time because the court were unable to tell if parties did not appear because they were not going to appear anyway or because they did not want to mediate. The judge was therefore unable to strike out the claim or

⁵³ See further the section on non-mediated cases at page 64.

find for a party owing to the ambiguity of the order. This also led to uncertainty for the party who did attend court as they were forced to go before the judge purely to make another appointment to attend a full hearing with no possible claim for expenses of attending the court. This has been modified on a couple of occasions since the beginning of the pilot. In January, the new order stated

“If you do not wish to use this service and wish to proceed directly to a hearing, please contact the court in writing [or telephone]. If you fail to attend the mediation appointment and have not given prior notice to the court that you do not wish to use the mediation service, then the court may deal with your case in your absence.”

In order to resolve any ambiguities the order was changed further in May to state:

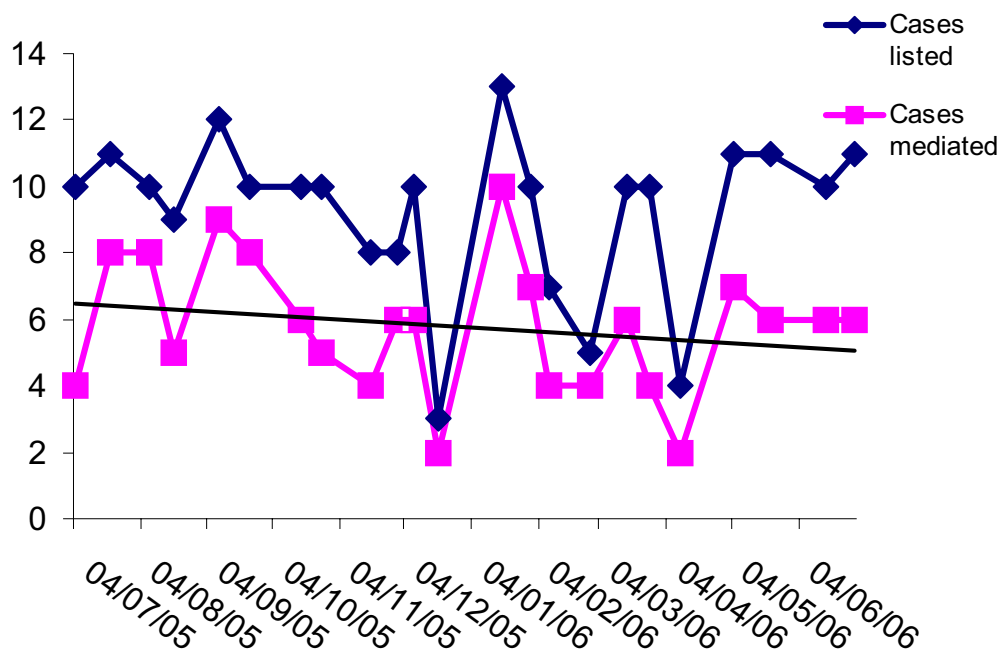
1. Each party shall attend The Exeter County Court on at a.m/p.m. for a directions appointment
2. The Court will provide free mediation facilities to the parties to assist them in reaching a settlement
3. In default of any agreement, the District Judge will give directions for the final hearing. You should not therefore bring any witnesses to the directions appointment
4. If you do not attend the District Judge will proceed to hear the case in your absence and make such order as may be appropriate. That may include making a final order entering judgment or dismissing or striking out the claim

The graph below shows cases listed and cases mediated for each mediation session since the start of the research pilot. It shows that there is a distinct gap between those cases which are listed and those which mediate which reduced slightly at the beginning of 2006. It is unclear whether the difference has anything at all to do with mediation as there is evidence that it is common in small claims cases for one or other of the parties not to turn up to the hearing.⁵⁴ However the trendline does show that whilst the number of cases

⁵⁴ “The main reason that small claims hearings do not proceed as anticipated is that one of the parties does not turn up on the day....these hearings are dogged by the non-appearance of the parties.” John Baldwin, ‘Small Claims in the County Courts’, *op cit*, at page 34 – 35. Indeed in Baldwin’s own research over half of the cases failed to turn up for the hearings.

listed for mediation seems to drop only slightly over time the numbers of cases which mediate seems to be reducing.

Figure 4: Cases listed and cases mediated (Total sample = 193 listed)



***"Needs to be clear on the court hearing letter - we did not realise we were going for a mediation session. We had applied to small claims court and thought this was what we were attending - discovered on arrival at the court that it was a mediation."
Claimant***

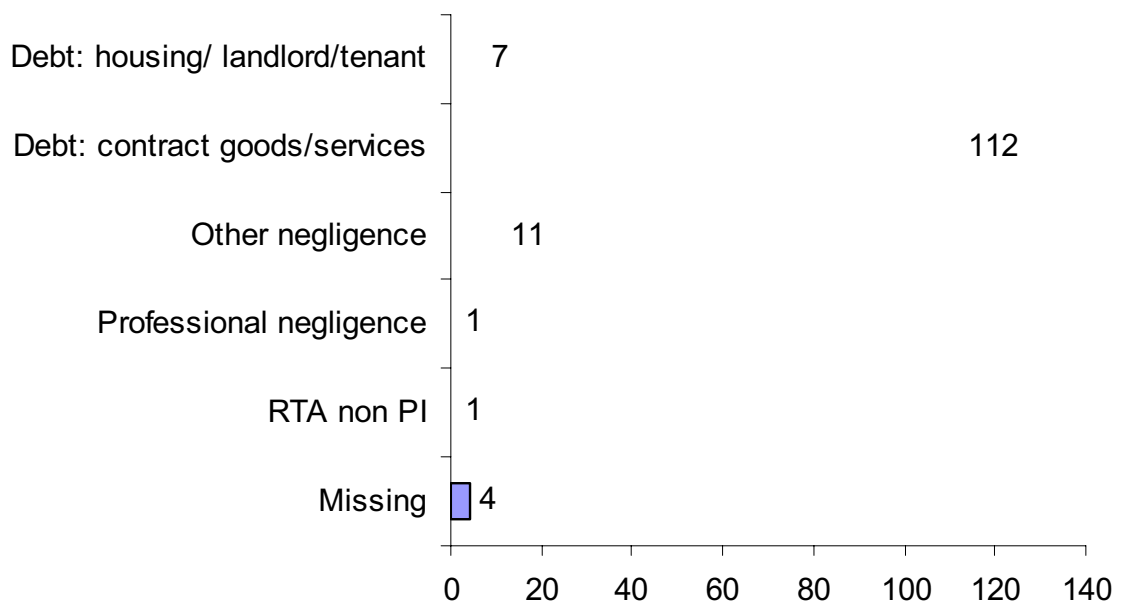
Mediated cases

136 cases out of the original 255 actually went through the mediation process.
These are broken down as follows:

Mediated by case type

The breakdown of cases actually mediated is given below. 82% of mediated cases fall into the general debt/ contract, goods and services category. This is higher than for those cases originally referred to mediation.

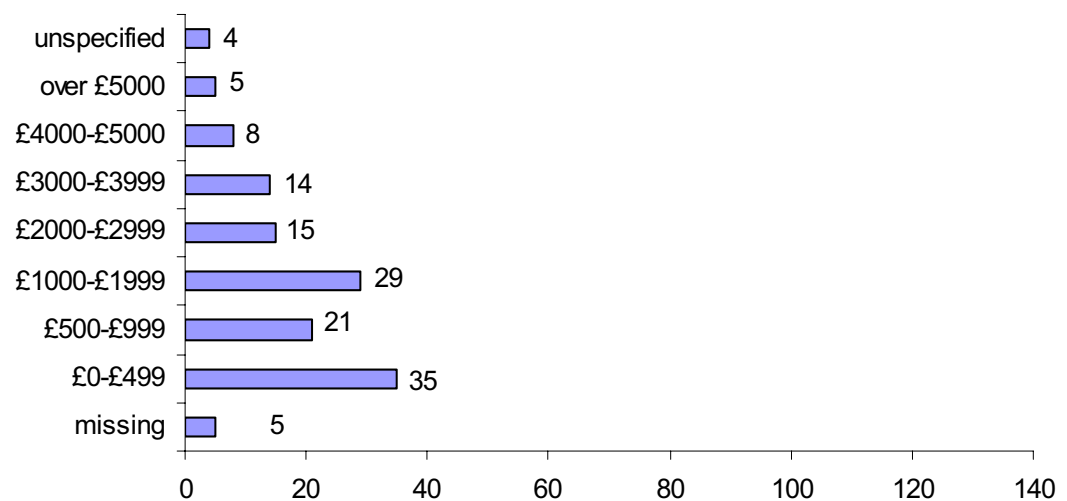
Figure 5: Mediated by case type (Total sample = 136)



Mediated by claim value

The majority of cases mediated have a claim value of less than £2,000. These claims account for 63% of all mediated cases. This is very slightly less than the total population of referred cases but it is not a significant difference.

Figure 6: Mediated by claim value (Total Sample = 136)



The median for those cases where a value was specified and which mediated is £1150 (almost £80 lower than for cases referred to mediation).⁵⁵ The mean is £1791.35.

Mediated cases by status of claimants and defendants

The majority of both claimants and defendants are individuals-in-person and the highest number of mediated claims (18%) involves individuals-in-person against individuals-in-person. This is a higher proportion than the general population referred to mediation. It is also interesting to note that the number of represented parties actually mediating, as opposed to those referred to mediation, has dropped significantly. There are no represented defendant sole traders/ partnerships. Of all parties that mediated 16% (272) in total were represented. 21% of claimants (136) and 11% of defendants (136) were represented.

⁵⁵ This figures takes into account the cases where the sum is specified.

**Table 12: Mediated by status of claimant & defendant
(Total sample = 136)**

Status of Claimant	Status of Defendant							Total
	missing	Individual in person	individual represented	company in person	company represented	sole trader/partnership in person	LA	
missing	4	0	0	0	0	0	0	4
Individual in person	0	24	1	17	5	13	2	62
individual represented	0	1	1	0	2	0	0	4
company in person	0	10	0	6	2	4	0	22
company represented	0	12	2	3	0	4	0	21
sole trader/partnership in person	0	8	1	3	0	5	0	17
sole trader/partnership represented	0	3	0	0	1	0	0	4
LA	0	2	0	0	0	0	0	2
Total	4	60	5	29	10	26	2	136

Settlement at mediations and outcome

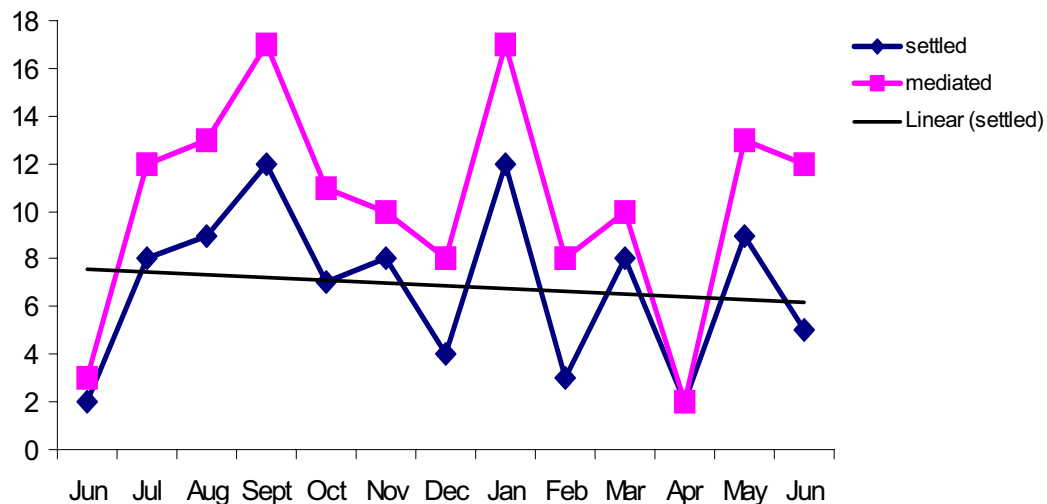
136 cases actually mediated and of that number 88 (65%) settled at the mediation. This figure is slightly lower than the settlement rate for the service when it first began.⁵⁶ It compares extremely favourably with the settlement rate on the fast-track / multi-track scheme at the same court.⁵⁷

⁵⁶ The settlement rate from the start of the scheme in June 2002 until the end of February 2004 was 70%. See Sue Prince, "Court-based Mediation: A preliminary analysis of the small claims mediation scheme at Exeter County Court" (Report prepared for the Civil Justice Council, May 2004), at page 38.

⁵⁷ The settlement rate for fast-track and multi track cases is 40%. (See S Prince and S Belcher, An Evaluation of the Effectiveness of Court-Based Processes in Non-Family Civil Proceedings at Exeter and Guildford County Courts, DCA, 2006, forthcoming)

The breakdown of settlements shows that the settlement rate varies significantly month-by-month. The trendline shows that the tendency is for the rate to reduce over time.

Figure 7: Mediated and settled (Total sample = 136)



Type of settlement at mediation

One of the main stated advantages of mediation is the ability of the parties to be able to make creative settlements and for the mediator to help to encourage flexibility in the nature of the outcome of the case. Hence, one textbook states:

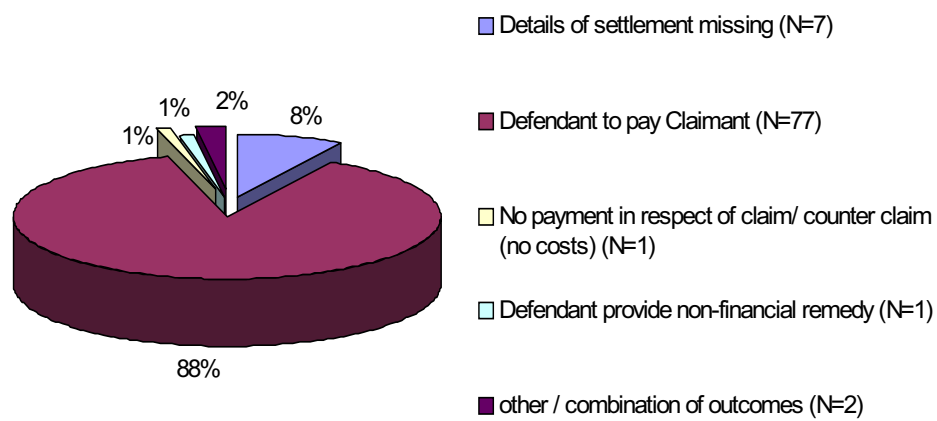
“.... Parties may agree on outcomes which could never be available as a court remedy. Thus they may agree upon one party performing a personal service for another, on a dismissed employee being re-employed in another branch of the firm, or on one party giving the other an employment reference”.⁵⁸

On the small claims mediation scheme at Exeter such creative settlements are rare. The great majority of settlements involve the defendant paying the

⁵⁸ L Boulle, M Nesic, 'Mediation: Principles, Process, Practice' (Butterworths, London 2001), at page 40.

claimant. However it may be that the payment is significantly different from what the claimant originally specified on the claim form. Only a very small percentage involves an alternative to this sort of financial payment, as is shown on the graph below.

Figure 8: Type of settlement (Total sample = 88)



There were only 2 non-financial remedies recorded over this period. One was the repair of the claimant's watch by the defendant which the claimant alleged he had damaged. Another involved the repair of a car by the defendant. In at least one case, involving parties who had had a prior business relationship, there was some evidence that they were planning to work together after the mediation whilst before mediating they had refused to talk to each other. It may be that once the dispute has been turned into a small claim and been filed at the court the financial value becomes a priority whilst mediating outside, or prior to, becoming involved in the court system allows for consideration of other options. Generally once the claim has been filed it becomes a financial issue.

However, although the majority of cases involved the defendants paying the claimants many of the claimants settled for far less than they originally stated on their claim form. Observations of the mediation process showed that over the course of the mediation many of the claimants become more realistic about what taking someone to court means. One claimant, for example, realized that they would be unlikely to recover punitive or non-economic damages during the mediation and amended their claim respectively. This point can be illustrated by comparing the mean of claim value and amount settled at where parties settled at mediation.⁵⁹

Claim value (mean): £1680.20

Sum settled at (mean): £869.65

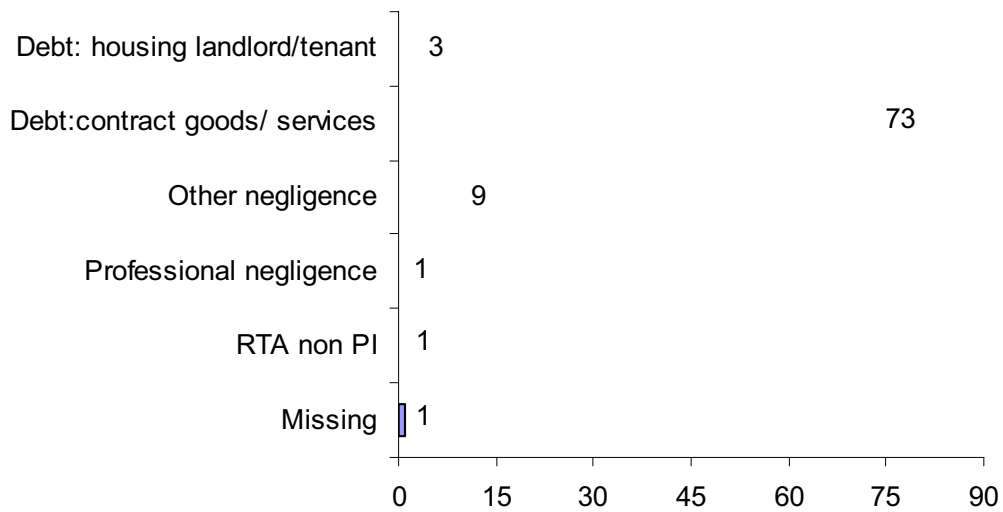
The mean of the difference between the two figures is: £819.90. This indicates there is a fairly substantial difference between the amount of the claim and the sum agreed at mediation on the Exeter scheme.

Settled at mediation by case type

The majority of cases that settle at mediation (83%) are general debt, contract, goods and services and this is similar to the proportion of cases which mediated.

⁵⁹ These calculations were based upon the available data from settled cases (total 88).

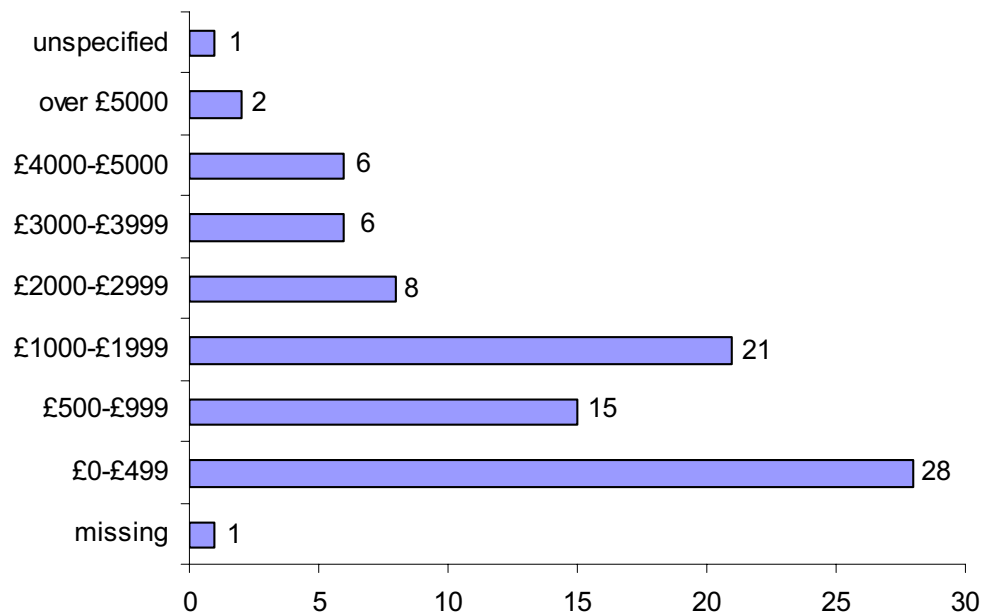
Figure 9: Settled by case type (Total sample = 88)



Settled at mediation by claim value

73% of cases that settle are for a specified claim value of less than £2,000 – compared to 65% of cases originally referred to mediation. There are also more cases that settle at mediation that fall in the lowest claim band of less than £499 (32%) than the number originally referred to mediation (22%).

Figure 10: Settled by claim value (Total sample = 88)



The median for all settled cases is £1000 and the mean is £1542.83. The median is lower than cases referred and mediated. It is almost £230 lower than for cases referred to mediation and £150 lower than the cases which mediated. This indicates that lower value claims are more likely to settle at mediation on the Exeter scheme.

Settled at mediation by status of claimants and defendants

17% of cases that settled at mediation involve non-represented individuals against individuals. 15% involve non-represented individuals as claimants against defendant companies and 11% involve companies against companies. There is a marked lack of any significant numbers of represented parties in settled cases. They account for only 16 claimants (18%) and 7 defendants (8%). This compares to 69 claimants (27%) and 51 defendants (20%).

Table 13: Settled by status of claimant & defendant (Total sample = 88)

	Status of defendant							
Status of Claimant	missing	Individual in person	Individual represented	Company in person	Company represented	Sole trader/ partnership in person	LA	Total
Missing	1	0	0	0	0	0	0	1
Individual in person	0	15	1	13	2	4	2	37
Company in person	0	9	0	6	1	4	0	20
Company represented	0	5	1	3	0	3	0	12
Sole trader/ partnership in person	0	5	1	3	0	4	0	13
Sole trader/ partnership represented	0	3	0	0	1	0	0	4
LA	0	1	0	0	0	0	0	1
Total	1	38	3	25	4	15	2	88

It can be seen that there is a variation in settlement rates between different categories (the overall settlement rate over the period of the pilot was 65%):

- 42% in company represented v individual in person cases;
- 63% in individual in person v individual in person cases;
- 76% in individual in person v company in person cases;
- 100% in company in person v company in person cases.

Cases that mediated but did not settle and then went on to a final hearing

The table below shows the status of the 48 cases that did not settle at mediation but went on to a final hearing. As there are over 30% of these cases still pending at the end of this research period it is difficult to make any really conclusive findings.

Table 14: Status of cases that did not settle but went to hearing (Total sample = 48)

Status	Number of Cases
Settled prior to final hearing	8
Case completed at final hearing	17
Final Hearing Pending	15
Unknown	5
Other ⁶⁰	3
Total	48

Of the 17 cases that have completed at final hearing the outcomes were as follows:

Table 15: Status of cases that completed at hearing (Total sample = 17)

Outcome	Frequency	Percent
Judgment for Claimant	9	57
Claim struck out	6	38
AGLR, stayed to attempt settlement or similar	1	6
Total	16	

In the majority of these cases the judge found in favour of the claimant. However, the claimant did not always receive the full value of the claim. Of the 9 cases only 2 claimants obtained the full value of their claim and 1 was a complex mixed result which is difficult to quantify. Of the remaining 6 cases, 5

⁶⁰ 'Other' refers to alternative outcomes, ie switched to fast track (2 cases) and transferred out (1 case).

claimants received less than the value of the claim and one received more. The amount of the claim and the final amount of the individual judgment is shown below:

Table 16: Amount of claim and amount of final judgment (6 cases)

Case number	Amount of claim	Amount awarded
1.	£288	£177
2.	£3050	£1000
3.	£2260	£850
4.	£596	£192
5.	£175	£260
6.	£3474	£1990

This breakdown suggests that even if parties are unhappy at settling for a lower amount at mediation they may still be unlikely to be awarded the full amount if the case goes to a hearing and the judge finds in favour of the claimant.

Attendance at small claims hearings

The following table shows who attended for the claimant. One quarter of these cases involved the claimants returning to court to attend in person.

Table 17: Attendance at hearing (claimant) (Total sample = 16)⁶¹

Attendance for Claimant	Number	Percentage
Claimant in person	12	75
Claimant with legal representative	2	13
Claimant's legal representative but no claimant	1	6
Nobody	1	6
Total	16	

For the defendant there were also 12 litigants in person.

Table 18: Attendance at hearing (defendant) (Total sample = 16)

Attendance for the defendant	Number	Percentage
Defendant in person	12	75
Defendant with legal representative	2	13
Defendant's legal representative but no defendant	0	0
Nobody	2	13
Total	16	

Cases not mediated

119 cases of the 255 which were referred to mediation did not mediate (47%).

The cases which did not mediate can be divided into 2 groups: those that were referred and listed for mediation but did not go to mediation (57 cases) and those that were referred but not actually listed for mediation (62 cases).

⁶¹ Only includes those parties where it is known who attended. There were 8 cases where the information was missing for both the claimant and the defendant.

1. Cases referred and listed but did not mediate

There were 57 cases in this category. The reasons for not mediating were as follows:

**Table 19: Listed for mediation and reasons for not mediating
(Total sample = 57)**

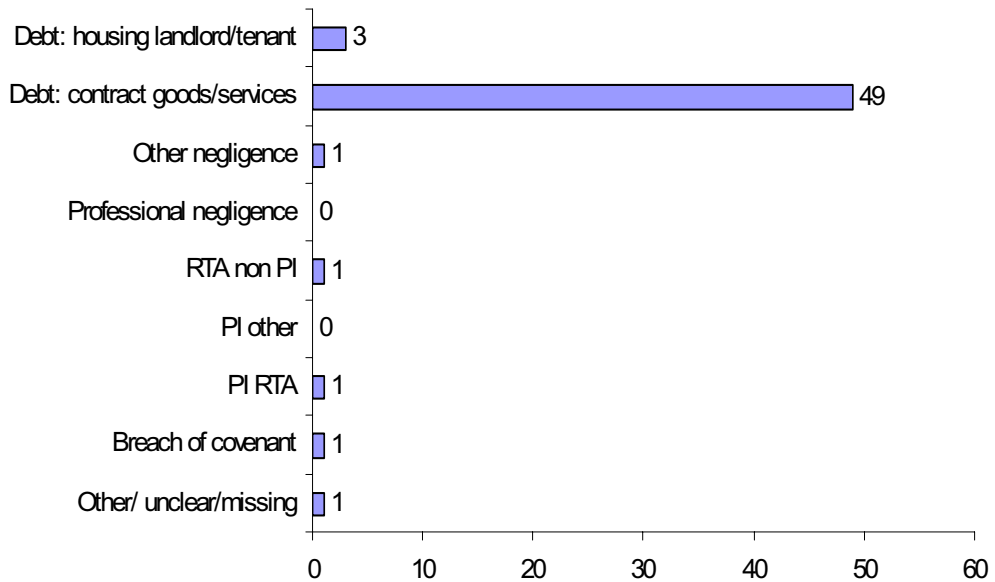
Reason	Number	Percentage
One/more party didn't attend on the day	39	68
Settled before mediation	2	4
Settled on mediation date but without hearing	2	4
Cancelled because party objected / refused	9	16
Unknown / missing	5	9
Total	57	

These cases account for 48% of the cases which did not mediate. The highest category is for those cases where one or more parties did not attend court on the date. However there is some ambiguity as to whether this was directly associated with the mediation at all or just a general factor of small claims.⁶²

⁶² See the comparison with the work of Baldwin on page 51. The percentage seems to tally with his figures where over half of litigants did not turn up to their small claims hearing.

a. Cases listed for mediation but not mediated by case type

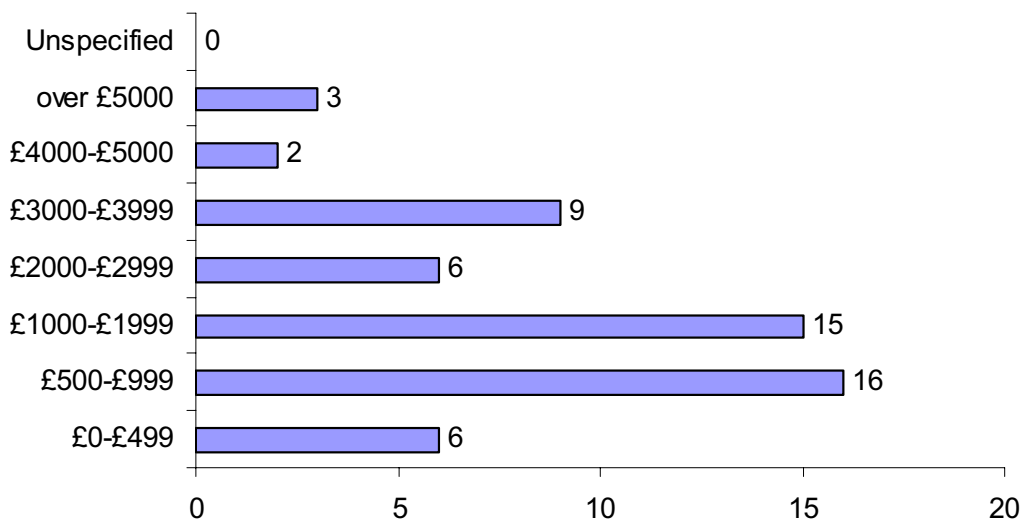
**Figure 11: Listed for mediation and not mediated by case type
(Total sample = 57)**



86% of these cases were general debt claims. This is a similar percentage to those cases which mediated.

b. Cases listed for mediation but not mediated by claim value

**Figure 12: Listed for mediation and not mediated by claim value
(Total sample = 57)**



65% of cases listed for mediation that did not mediate had a claim value of less than £2000. The claim values represented in this sample do not differ dramatically from those which were listed and actually mediated. The median for these cases is £1369. This is £219 higher than for those cases which mediated helping to reinforce the view that at Exeter those cases which mediated were of a lower value than the norm.

c. Cases listed for mediation but not mediated by status of claimants and defendants

Table 20: Listed for mediation / not mediated by claimant and defendant (Total sample = 57)

	Status of Defendant						Total
Status of Claimant	Individual in person	Individual represented	Company in person	Company represented	Sole trader /partnership in person	Sole trader /partnership represented	
Individual in person	4	0	4	2	2	1	13
Individual represented	0	4	0	1	2	1	8
Company in person	7	0	3	3	0	0	13
Company represented	5	1	2	2	2	0	12
Sole trader /partnership in person	3	0	2	0	2	0	7
Sole trader /partnership represented	1	0	0	0	2	0	3
LA	1	0	0	0	0	0	1
Total	21	5	11	8	10	2	57

Just 7% of cases involve individuals in person against individuals in person which is significantly below the general population of 15%. 53% of parties (23 claimants and 7 defendants) are represented compared to the general population of 16%.

Parties in this category were more likely to be businesses and to be represented. The majority of these cases objected to the mediation.

2. Cases referred but not actually listed for mediation

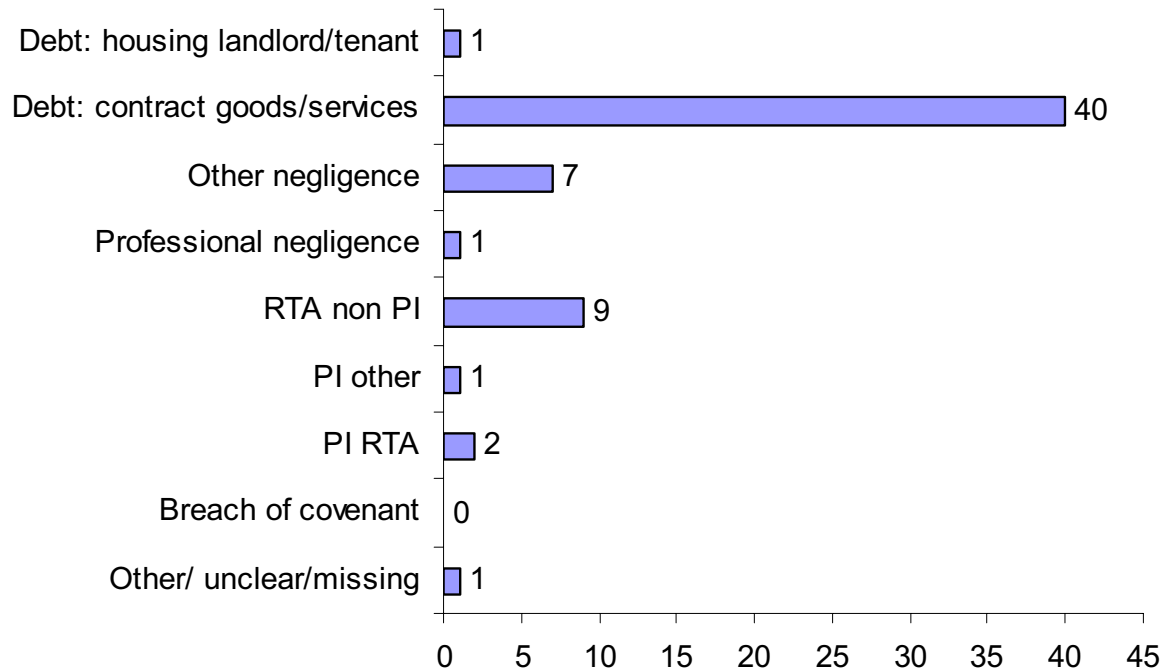
Table 21: Not listed for mediation and reasons for not mediating (Total sample = 62)

Reason	Number	Percentage
Opted out of mediation	51	82
Settled before mediation date	9	15
Other	1	2
Unknown/ missing	1	2
Total	62	

These cases account for 52% of the cases originally referred to mediation but which did not mediate. The majority of these cases involved one party objecting to taking part in the mediation.

a. Cases referred but not listed by case type

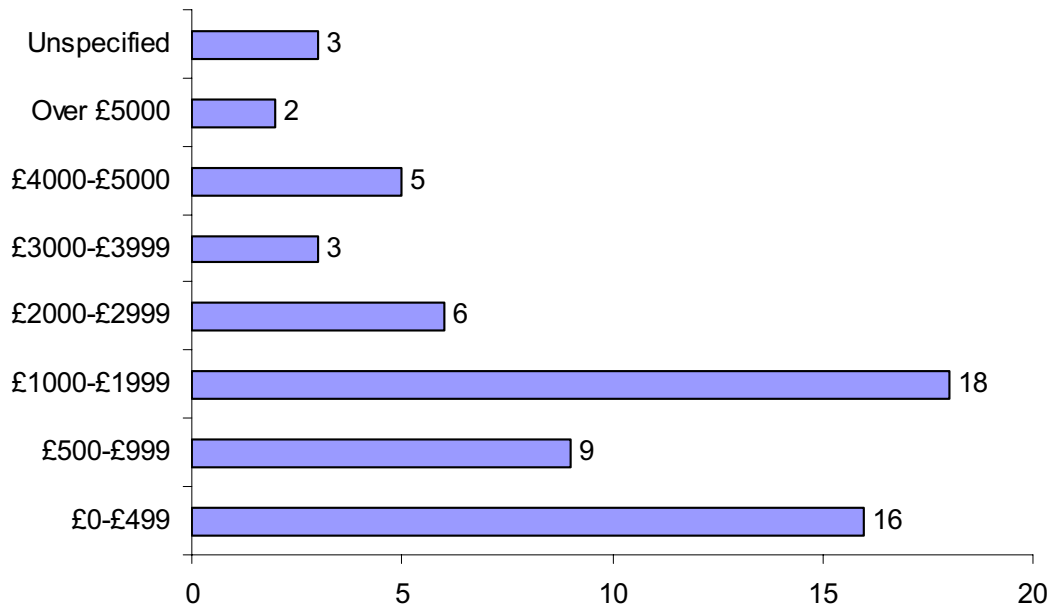
**Figure 13: Not listed for mediation and not mediated by case type
(Total sample = 62)**



65% of these cases were general contract debt cases compared to 78% of the whole population referred to mediation. 9 out of the 11 cases originally referred to mediation as RTA non PI cases were listed but did not mediate and 2 out of the 3 PI RTA cases. These cases are more likely to involve insurance companies who have a perceived reluctance to mediate.

b. Cases referred but not mediated by claim value

**Figure 14: Not listed for mediation and not mediated by claim value
(Total sample = 62)**



69% of cases had a claim value of less than £2000. This is similar to the percentage for all those cases referred to mediation.

c. Cases listed for mediation but not mediated by status of claimants and defendants

Table 22: Not listed for mediation / not mediated by status (Total sample = 62)

Status of Claimant	Individual in person	Individual represented	Company in person	Company represented	Sole trader /partnership in person	Sole trader / partnership represented	LA	Total
Individual in person	10	5	3	4	4	0	0	26
Individual represented	2	6	0	0	0	0	0	8
Company in person	4	0	5	2	1	1	0	13
Company represented	2	1	1	1	2	0	0	7
Sole trader /partnership in person	3	1	1	0	1	0	0	6
Sole trader /partnership represented	0	0	0	0	1	0	1	2
Total	21	13	10	7	9	1	1	62

16% of parties are individual in person against individual in person. There are 17 represented claimants and 21 represented defendants. 31% of parties in this table are therefore represented compared to the total population of mediated cases of 16%.

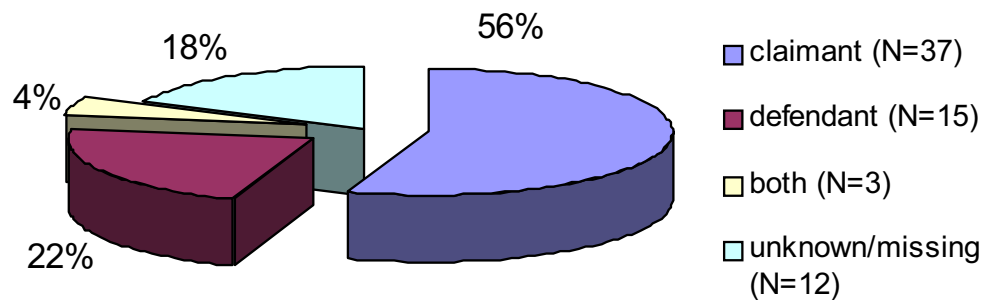
The cases in this category were more likely to be higher value claims and claim types outside of general contract cases. Parties were more likely to be represented than the general population of referred cases. A number settled on or before the date of the mediation.

Objections to mediation

There were 55 cases in which at least one, or both, of the parties objected to mediation. The chart below provides a breakdown of these cases by the

person who lodged the objection with the court. Over half of these objections were made by the claimant.

**Figure 15: Objections to mediation by claimant / defendant
(Total sample = 67)**



A number of objections were received by solicitors representing claimants and defendants who did not think that mediation was suitable for their dispute. The following are typical comments which seem to imply that solicitors had as little understanding as their clients as to the purpose of mediation:

- "There is a substantial dispute as to fact in this matter with each party giving different versions of events. There are no independent witnesses. Our client instructs us that mediation is unlikely to assist"
- "This claim hinges on the construction of a contract and therefore we do not deem it appropriate for mediation."

There were a number of cases where one or more of the parties objected to mediation settled by consent in advance of a hearing. There were a variety of other reasons for objecting. In one case the claimant found he had only a few days to live and decided to discontinue the claim.

Main outcomes of cases that did not mediate

Table 23: Outcomes of cases that did not mediate (Total sample = 119)

Outcome	Cases listed but not mediated	Cases referred but not listed for mediation	Total	Percentage
Hearing cancelled for any reason inc. settlement	0	9	9	8
Judgment for claimant	2	15	17	14
Claim struck out	1	9	10	8
Claim withdrawn/discontinued	0	1	1	1
Outcome pending	7	6	13	11
Settled before mediation	2	8	10	8
Case concluded after one party failed to attend mediation ⁶³	34	2	36	30
AGLR stayed to attempt settlement	1	5	6	5
Other	4	0	4	3
Settled on mediation date but without mediation	2	0	2	2
Missing	4	7	11	9
Total	57	62	119	

67% of cases that were listed but did not mediate were resolved by the date of the mediation either because one party failed to attend or because the case settled either on the date of the mediation or prior to it. Only 32% of cases that were referred but not listed for mediation were resolved by the mediation date.

⁶³ The outcome of the total of 36: 12 were struck out, in 22 judgement was made for the claimant, and of the remaining 2, judgement was made for the defendant in both cases.

"I think it was a shame that the defendant decided not to use mediation as I feel a resolution could have been reached very easily."
Claimant

Judicial time saved by the mediation

The following chart is based upon time estimates for all cases that settled at mediation and therefore did not have to go through a hearing. It does not account for any preparation time by judges. Where a case did not state a time estimate a moderate one hour was added which appears to be the minimum for a standard small claims hearing. It is therefore felt that these figures are very conservative.

Table 24: Judicial time saved

Month	Hours
May	1
June	18
July	19.75
August	11.5
September	5.5
October	2.8
November	19.75
December	10.5
January	4
February	1.5
March	7.25
April	16.25
May	3.5
Total	121.3

An estimated 121 hours (approximately 20 working days) was saved over the length of the pilot project.

Summary of findings

1. Referrals to mediation

From the total profile 34% of cases allocated to the small claims track at Exeter are referred by the district judge to mediation. There are the same proportions of cases being referred over time. There are variations in the numbers of cases mediating depending upon who turns up to the mediation and how many cases are listed. The variables depend upon the administration load of the court and the attitude of parties towards their case. However, almost half of the cases referred to mediation during this research did not mediate. It is difficult to determine whether this is to do with the mediation service or is just usual behaviour for court users. It is clear that there are less cases mediating than there were at the beginning of the pilot.

2. Case type

The types of cases allocated to the small claims track are completely dominated by the general debt contract, goods and services category which makes up 78% of referred cases. This increases slightly for mediated cases (82%) and settled cases (83%). This is mainly due to a contraction in other categories but the numbers in these are so small that it is difficult to draw any conclusions.

3. Claim Value

The most significant point is that cases with the lowest claim values are more likely to settle at mediation. 65% of cases had a claim value of less than £2000 compared to 73% of cases which settled at mediation. In addition, 22% (57) referred cases; 26% (35) mediated cases and 32% (28) settled cases had a value of less than £500.

4. Status of claimant / defendant

Around 40% of referrals and settled cases, both claimants and defendants, are individuals in person. 15% of all claims involve individuals or businesses in person against individuals or businesses in person compared to 17% of all settled cases.

Represented individuals/ businesses are less likely to settle at mediation. Although approximately 20% of claimants and 27% of defendants in the general population of referred cases were represented this reduced to 21% of claimants and 11% of defendants in mediated cases and 18% of claimants and 8% of defendants in settled cases.

Additionally, although the settlement rate was 65% overall for referred cases there was a higher rate (76%) for individual in person v company in person cases and company in person v company in person cases (100%). A lower rate was recorded for company represented v individual in person cases (42%). Although the numbers were low in all categories this may give some indication of the cases which might succeed at mediation at Exeter in the future.

5. Settlements

There were 88 settlements at mediation which represent a 65% settlement rate on the day of the mediation. The nature of all of the settlements, except for a couple, was financial. This may be linked to several factors:

- The filing of the claim at court forces claimants to reduce their claim to monetary terms;
- The mediators are all lawyers who do not tend to focus on the individual needs of the parties but rather on the stated claim;
- There is little time in a half hour mediation to explore creative settlements.

There is evidence that claimants tend to settle for substantially less than the value of their original claim at mediation. Observations of the mediation process showed that this was most often due to the mediator explaining the reality of the court system and claimants realising that it might be difficult to obtain punitive damages in small claims cases.

Even if parties are unhappy at settling for a lower amount at mediation they may still be unlikely to be awarded the full amount if the case goes to a hearing and the judge finds in favour of the claimant. This research found that of 10 cases where the judge found for the claimant, 5 received less than the original value of the claim.

6. *Efficiency of service*

It is estimated that the service has saved 121 hours (approximately 20 working days) of judicial time since the beginning of the research. If the additional paperwork and reading time were included, as explored in the study of district judges time,⁶⁴ then this figure would increase significantly.

There is a significant saving in time from referral of case to mediation and the date of the mediation. This means that if parties are to settle at mediation the length of the litigation is 34 days (almost 5 weeks) which compares extremely favourably with the DCA target of 15 weeks from referral to a small claims hearing. The date of the hearing is not affected by the referral to mediation as both are set at the same stage. This point should be made clearly to parties who are referred to mediation as there have been comments received about the length of the litigation process, especially by those parties who have chosen not to mediate.

⁶⁴ See page 17.

Chapter 4. Findings from qualitative research

Discussion of findings based on questionnaires, interviews and observations

Introduction

Litigants expectations and assumptions about the nature of the case and of the court process they are engaged in are likely to determine their desires about settling their case. Even if the parties agree as to the nature of the problem they still have to agree to the appropriate remedy.⁶⁵

The experience of small claims mediation at Exeter

Views about the mediation process were collected from a number of sources.

“I have found the process of taking someone to the small claims court protracted; the forms quite confusing because not everything was applicable to my case but it did not explain this clearly.... I understood the small claims process was cheap and easy but it certainly is not. It is all extremely frustrating and will probably be a complete waste of time and money.”

Claimant

Results of interviews with parties immediately after mediation

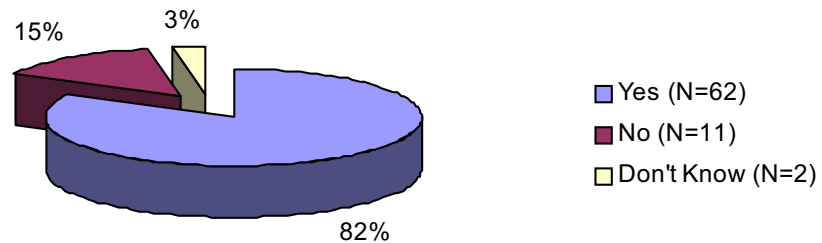
151 interviews conducted in total representing 56% of all litigants. This total number is made up of 75 claimants and 76 defendants.

82% of claimants said they knew before coming to court that they would be attending a mediation compared to 92% of defendants.

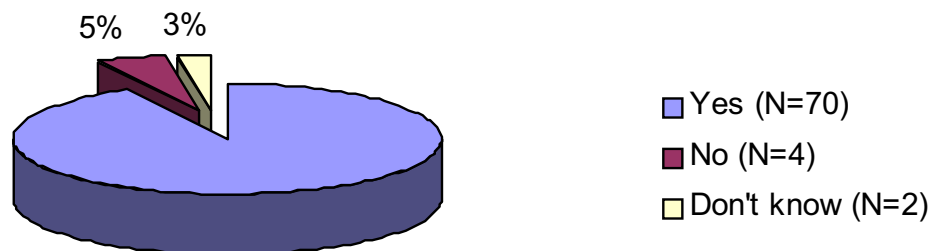
⁶⁵ J Macfarlane, ‘Why Do People Settle?’ 46 McGill Law Journal (2001) 663

Figure 16: Litigants knowledge of attending mediation
(Total sample: claimants = 75 and defendants = 76)

Claimants



Defendants



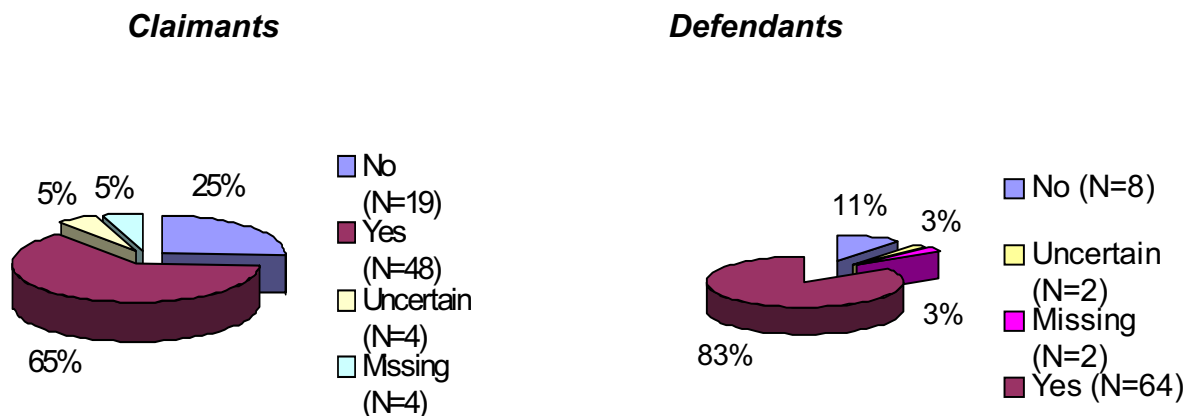
Observations of the parties showed that even where they said they knew they were attending a mediation they did not seem clear as to the objectives of mediation or how it differed in its focus on settlement from a hearing.

"I prepared background information but didn't get a chance to use it."

Claimant

65% of (48) claimants and 82% of defendants (61) found the mediation process to have been useful in their case.

Figure 17: Usefulness of process
(Total sample: claimants = 75 and defendants = 76)

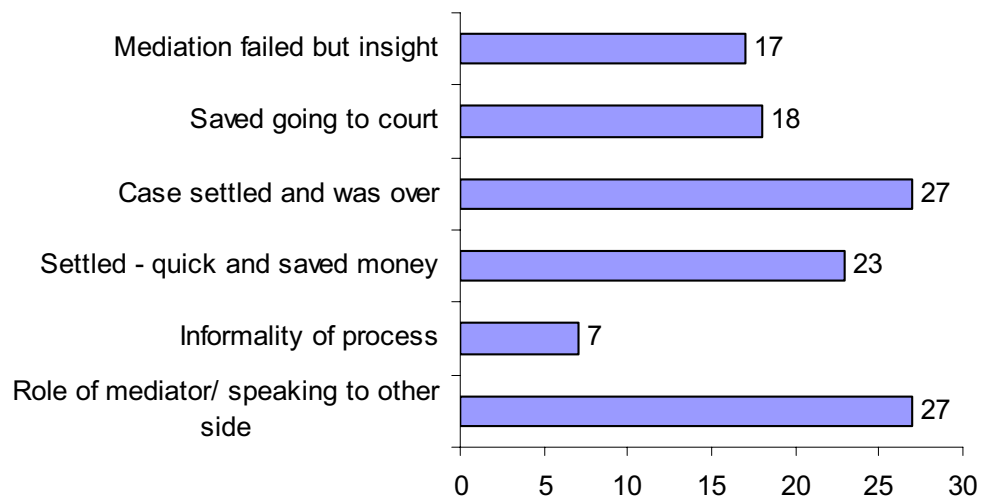


The outcome of the case is important in determining if the mediation was useful or not. 25% of claimants (12) and 30% of defendants who said that mediation had been useful did not settle their case. These litigants found that there was something else useful about the process other than just achieving settlement.

“Yes, it was useful - at least it is good to know the other side is pushing ahead - that the other side weren't going to give in.”
Defendant

21% of claimants (16) and 14% of defendants (11) said they could see no advantages. 5 parties did not comment on advantages. 119 (79%) of all those interviewed said there had been advantages to them from their mediation. When asked about the advantages of mediation there were several different explanations given. Further detail on each is provided below.

Figure 18: Advantages of mediation (Total sample = 119)



- 23% (27) of these said that the role of the mediator and / or the fact that both sides had spoken together was important.

“I am a great believer in compromise, it saves wasting more expensive people’s time. I hate conflict, an unbiased negotiator helped.”
Defendant

- 6% (7) said that the advantage was that the process was informal.

“Informal, face-to-face, more relaxed atmosphere. [There is a] chance of settlement without the fear of not getting what you wanted.”
Claimant

- 19% (23) said that the advantage was that the case settled - it was quick and / or saved money

“Very pleased to see that they sat in front of me and added up invoices - made [the defendant] look a bit silly. Got a result which saved me having to spend more time and money.”
Claimant

- 23% (27) said the advantage was that the case settled / was over.

“We sorted out the problem and it was a solution both of us could live with”
Defendant

- 15% (18) said that mediation had saved them from having to go to court.

“Saves aggravation at court. Also lots of things are misunderstood and here we got a chance to speak.”
Defendant

- 14% (17) said that even though the mediation had failed they had gained additional insight into their case.⁶⁶

“Made us realise when we go to court we will be more realistic.”
Claimant

When interviewed immediately after the mediation a high proportion of parties were positive about the mediation process. This included those who did not settle at mediation but still found some advantages in taking part in the process.

⁶⁶ This is the only category where there was a significant difference between claimants and defendants. The 17 is made up of 6 claimants and 11 defendants.

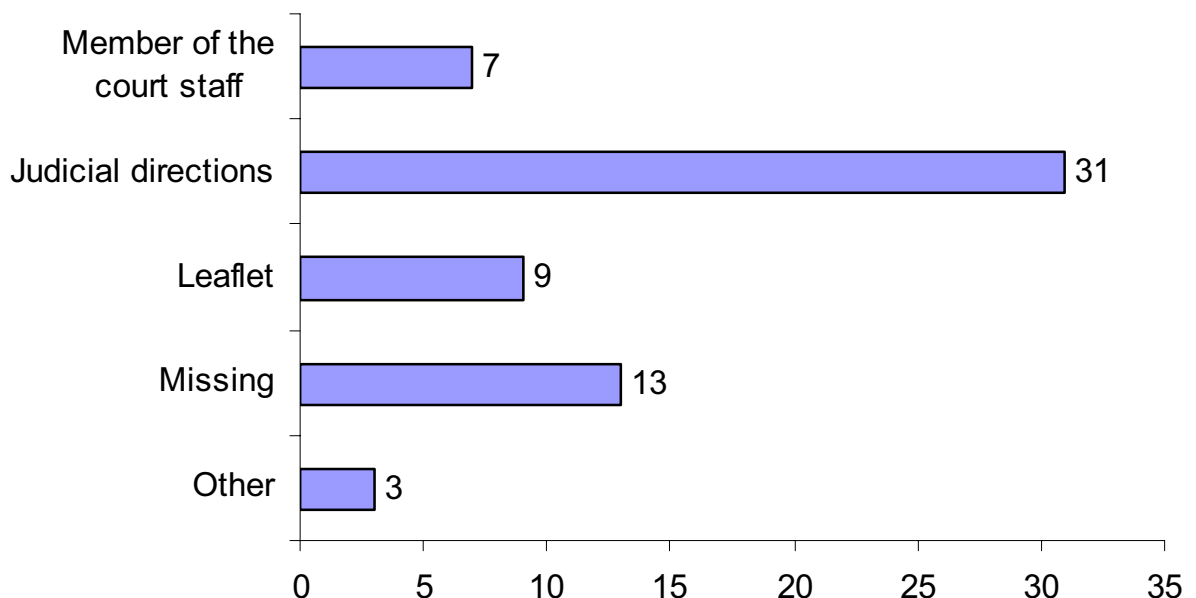
Results of postal questionnaires - parties who mediated

Questionnaires have been received from 63 parties who mediated (representing 36% of cases that mediated): 34 claimants,⁶⁷ and 29 defendants. It should be borne in mind that some of those parties that did not settle have not yet been to a hearing.

When asked whether they had ever been involved in a mediation before, 56% of claimants (19), and 70% of defendants (20) had had no prior experience of the process. Only 1 defendant had been involved in a mediation more than once compared to 5 claimants.

When asked how they found out about the mediation service 49% (17 claimants and 14 defendants) had been given judicial directions to mediate. Other sources are given on the chart below.

Figure 19: Mediated – found out about mediation (Total sample = 63)



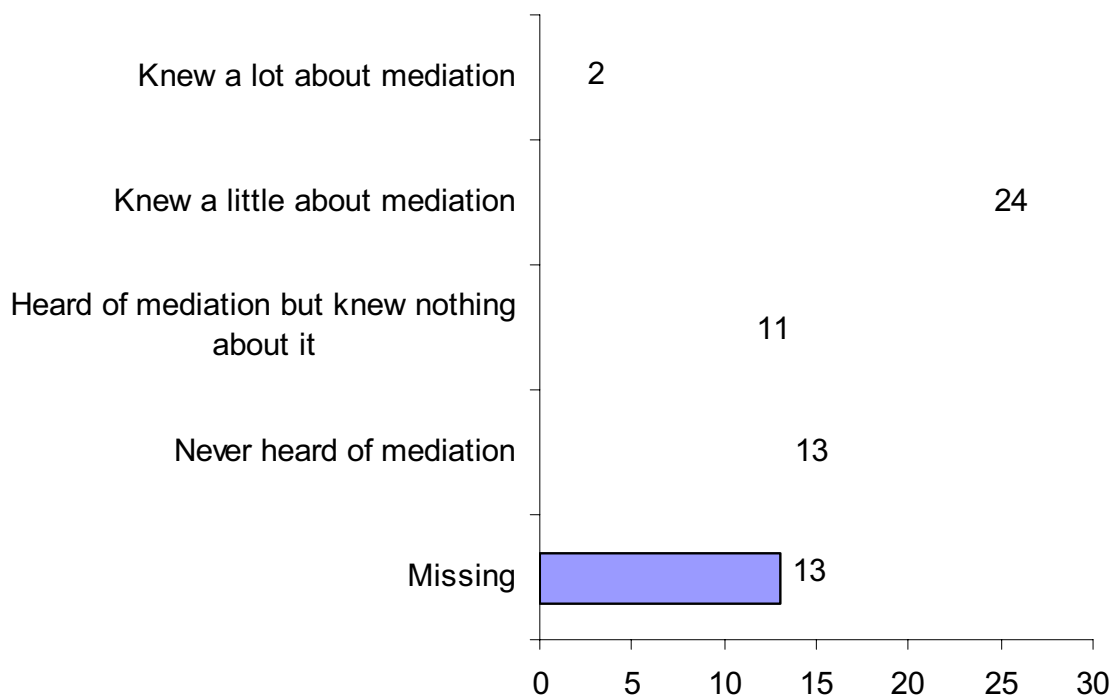
⁶⁷ One response was received from a claimant's representative.

Only two litigants (3%), (one claimant and one defendant) said that they knew a lot about mediation when asked about their knowledge of the process.

- 38% said they knew a little about mediation.
- 21% said that they had never heard of mediation.
- 18% said they had heard of mediation but knew nothing about it.

More defendants (8) said that they had never heard of mediation than claimants (5). It seems though that many respondents (at least 77%) did not fully understand the process they were involved with and what they needed to do to get the greatest benefit in their case for themselves.

Figure 20: Mediated – knowledge of mediation (Total sample = 63)

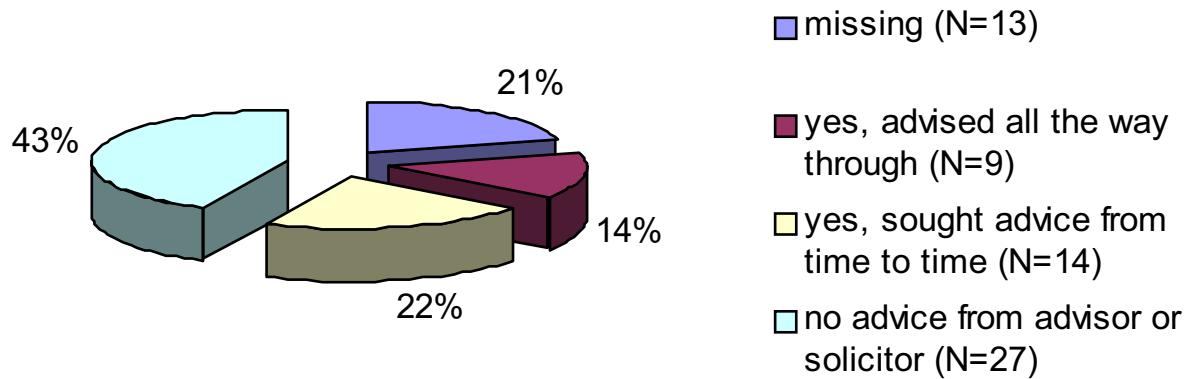


When asked about whether they had received any advice from a solicitor or other advisor –

- 43% had received no advice
- 22% said they had sought advice from time to time

- 14% said that they were advised all the way through

Figure 21: Mediated - advice provision (Total sample = 63)

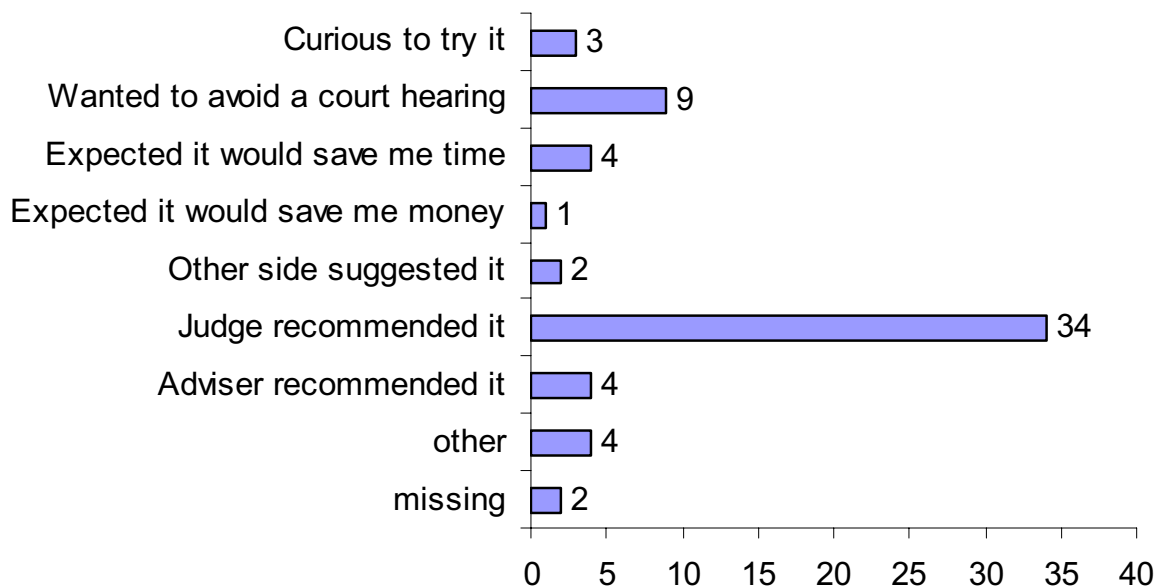


25% (16) said they had received this advice from a solicitor and 11% (7) from another advisor eg CAB.

Those who had mediated were asked why they had decided to try mediation. There was a broad range of replies but the highest numbers fell into two categories:

- 54% said it was because the judge had suggested it
- 14% wanted to avoid a court hearing

Figure 22: Mediated – reasons for mediating (Total sample = 63)



When asked whether the mediation process was what the litigant had expected –

- 78% (49) said it was as expected and 18% (11) said it was not as they had expected.

Less confrontational, more civilized!” Claimant

Litigants were asked whether they were happy with aspects of the service:

- 75% (47) were satisfied or very satisfied with the information provided.
- 52% (33) were satisfied or very satisfied with the ease of communication. 41% (25) didn't know or did not answer the question.⁶⁸
- 62% (39) were happy with the explanations given.

⁶⁸ Suggesting some the question was a little ambiguous.

“The other side dropped his claim, absorbed his own costs on the promise that I did not pursue a subsequent counter-claim”.

Defendant

When asked whether the settlement in the case was better or worse than expected –

- 35% (22) said it was as expected
- 33% (21) said worse
- Only 8% (5) said it was better

These figures reflect the fact that the amounts agreed in settlement were lower in the majority of cases than the original claim.

“Wished to avoid further aggravation and a court case”

Defendant

As the mediations are relatively short in length of time (approximately 30 minutes) there is a question as to whether the parties felt under any pressure to settle.⁶⁹ 33% (21) said they did feel under pressure and 41% (26) said they did not feel pressure. 24% (15) did not answer the question and 1 respondent did not know.⁷⁰

“I don’t feel we got justice, if I had my time again I would not have used mediation. We felt pressured to compromise and the defendant got off light.”

Claimant

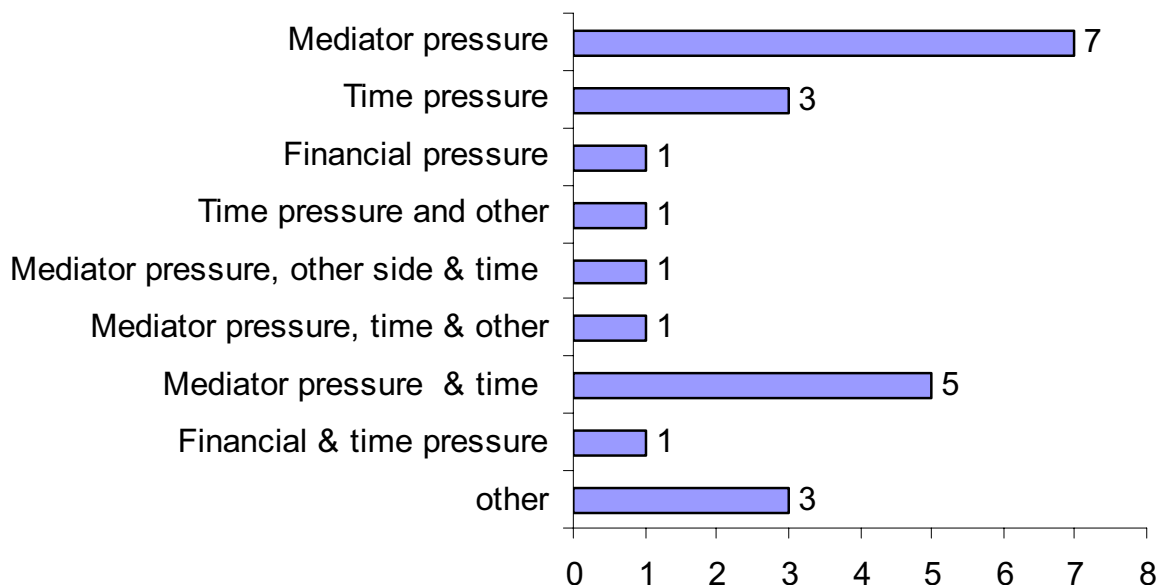
When asked why they felt pressured there were a number of different responses which also indicate that it might be difficult to identify the exact

⁶⁹ However there is no comparison available to see what sort of pressure is felt by parties generally when they attend court.

⁷⁰ The reason that the figures do not correlate exactly is that a couple of respondents gave more than one reason for their answer.

source of the pressure in some cases. Yet 30% (7) said that the pressure came directly from the mediator.⁷¹

Figure 23: Mediated – source of pressure (Total sample = 23)



“I expected to be able to explain my story not to be bullied and told to be quiet.”
Defendant

- Almost half of those who responded, 48% (30) said they were satisfied with the opportunity to express their views during the mediation and 21% (13) were very satisfied. 6% (4) were very dissatisfied and 13% (8) were dissatisfied.

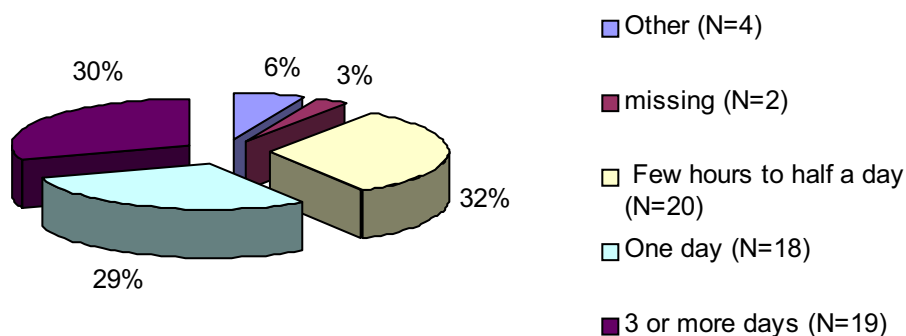
“I am dissatisfied because the claimant lied and it is annoying that I have to prove his lies spending much time and aggravation. However, I made a commercial decision to pay a vastly reduced sum at mediation to avoid large fees, time etc on fighting through the court hearing.”
Defendant

⁷¹ There is some overlap here as some respondents gave more than one answer.

- 37% (23) were satisfied with the time allowed and 24% (15) were dissatisfied. 13% (8) were very satisfied and 11% (7) were very dissatisfied.
- 68% (43) were either very satisfied or satisfied with the mediator. 16% (10) were either very dissatisfied or dissatisfied.
- 60% (38) were either very satisfied or satisfied with the facilities and 24% (15) were either very dissatisfied or dissatisfied.

Litigants were asked how much time they had spent on their case.

Figure 24: Mediated – time spent on case (Total sample = 63)



Approximately a third (20) had spent a few hours to half a day, around another third (19) had spent 3 or more days and around another third (18) had spent one day. 46% (29) were either very or fairly satisfied with the time they had spent on the case and 27% (17) were neither satisfied nor dissatisfied. 25% (16) were either fairly or very dissatisfied.

“She thought by getting a solicitor I would back down but she was wrong. If I owe money I pay, if anyone owes me they pay.”
Defendant

- 51% of respondents (32) said that they would use the mediation service again if they were involved in another case. Only 8% (5) would not.

“Gave both people the opportunity to speak frankly”
Claimant

These figures are a little skewed by the fact that 25% of respondents (16) did not answer this question.

“I don’t feel we got justice. It was a poor compromise and although we were the injured party we ended up paying out more money than we should have done.”
Defendant

The respondents were then asked if they would use the service in the future and whether they would be prepared to pay for it. Almost half (30) did not respond to this question.

- 37% (23) said they would pay - £20 or less.

“It should be free! It is saving court time and therefore tax payers money. The judge was involved for 5 minutes instead of half a day. This must be good value for money.”
Claimant

- 11% (7) said they would be prepared to pay £20 - £50. 5% (3) would pay more than this.

“In the current format of a very short time allocated I do not consider that a fee should be payable although as in our case it can concentrate the mind to reach a settlement.”
Claimant

Conclusion

The majority of those who responded to the questionnaires (62%) had had no previous experience of mediation. 49% said they knew about the mediation through the judicial directions they had received from the court. There was a high proportion of parties (at least 77%) who knew little or nothing about mediation. As almost half of them (43%) had received no advice before attending the mediation this meant that they were not prepared for the process they were about to take part in. Over half (54%) said that they had just attended the mediation because it had been suggested on the judicial order. Only 8% said that the settlement in the case was better than they had expected, reflecting the amounts settled at were significantly lower than the original claim.

A third of respondents said they had felt pressure to settle their case. Although this represented 21 respondents the figures are low when broken down into the reasons for the pressure. Yet 30% said that the pressure had come from the mediator. However, overall 68% were either very satisfied or satisfied with the mediator, indicating that perhaps they felt that the pressure was an acceptable and anticipated aspect of the mediation process.

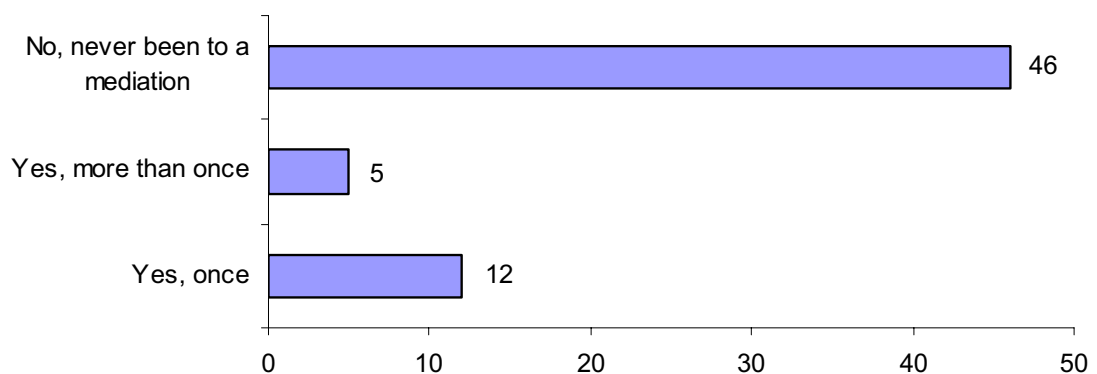
Almost half of respondents (49%) were either very or fairly satisfied with the time they had spent on their case and 27% were neither satisfied nor dissatisfied. 25% were either fairly or very dissatisfied. Over half (51%) would use the mediation service again with only 8% saying they would not. The general impression was that even if mediation had not been appropriate in the instant case respondents could see advantages in the process.

Results of postal questionnaires – parties who did not mediate

There were 63 respondents to the questionnaire sent to parties who did not mediate. 59% (37) who responded were claimants and 40% (25) were defendants. There was also 1 respondent who ticked 'other' (1%).

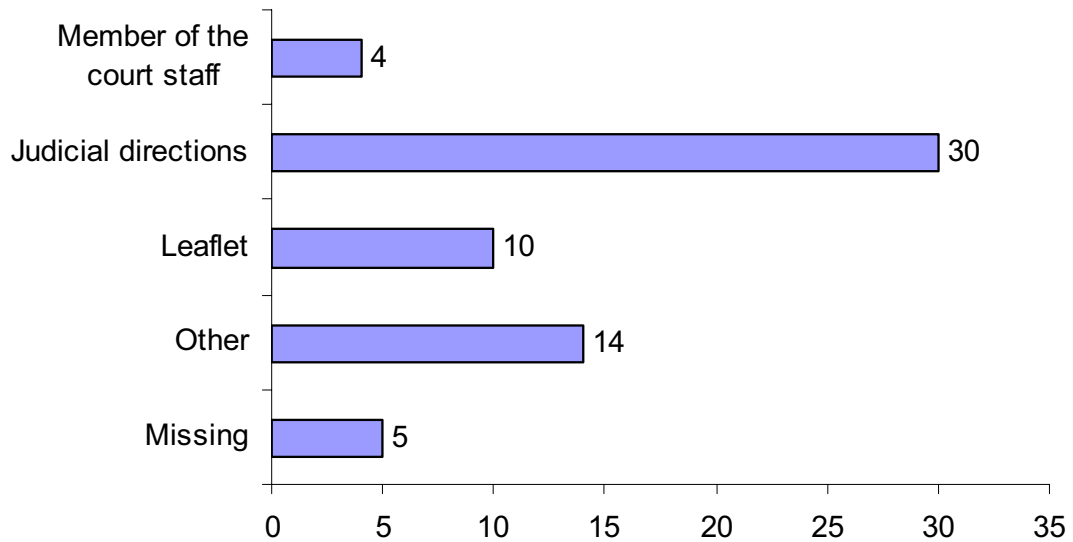
- 57% (36) were individuals, and
- 38% (24) were representatives of organizations.
- 54% (34) had never been involved in a civil case before.
- 46% (29) had been involved in a civil case previously on more than one occasion.
- 73% (46) had never been to a mediation, and
- 27% (17) had been involved in a mediation once or more than once before.

**Figure 25: Not mediated – prior experience of mediation
(Total sample = 63)**



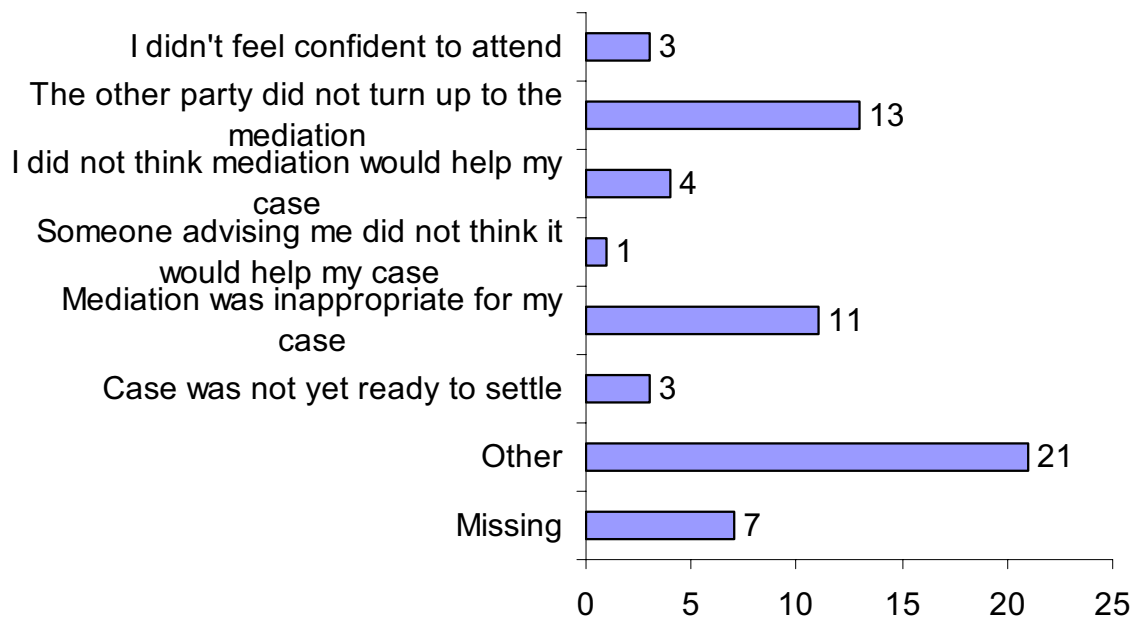
Similarly to those parties who mediated, many (48%) of the respondents heard about the mediation service through judicial directions. 16% heard about it from the leaflet and 22% heard about it from another route – solicitor, CAB or other advice agency.

Figure 26: Not mediated – source of knowledge of mediation
(Total sample = 63)



Respondents were asked why they had not mediated. 21% said that they had not mediated because the other party did not turn up to the mediation. Only 35% of respondents had not mediated because either they or someone else had chosen not to mediate. They did not go through mediation because the case settled in advance of the mediation, the other side had not wanted to mediate or they were unaware of the mediation service.

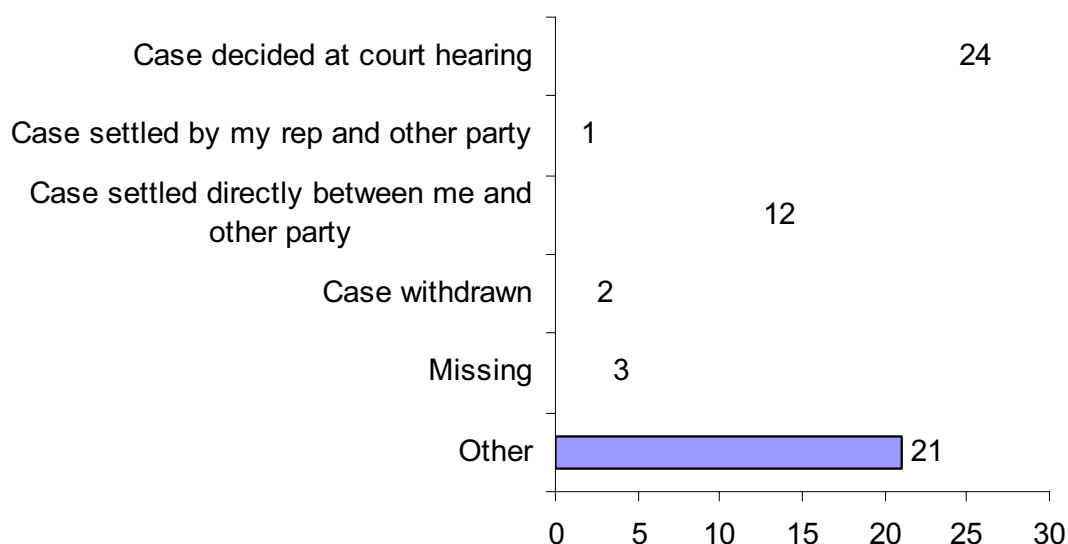
Figure 27: Not mediated – reasons for not mediating (Total sample = 63)



- 37% (23) had never heard of mediation.
- 21% (13) had heard of it but knew little about it.
- 35% (22) knew a little about mediation.
- Only 6% (4) said that they knew a lot about mediation.

Therefore 92% of respondents had very little or no knowledge of mediation.

Figure 28: Not mediated – outcome of cases (Total sample = 63)



When asked whether they had received any advice from a solicitor or other advisor -

- 52% (33) of respondents had not received any legal advice on their case.
- 16% (10) had received some advice.
- 32% (20) were advised all the way through their proceedings.
- 33% (21) said that advice had come from a solicitor and 11% (7) said it came from another source eg CAB etc.
- 46% of respondents (29) were very satisfied or satisfied with the information received from the court. Only 6% (4) were very dissatisfied or dissatisfied.

Respondents were asked about the outcome of their case.

- 38% had their case decided at a court hearing

- 19% had settled their case directly with the other party⁷²
- 25% (16) said the result of their case was as expected⁷³

“Claim allowed in full. However I expected to have serious problems in obtaining the money from the defendant – a faster procedure would have helped here.”
Claimant

- 16% (10) said it was worse.

“At no time was an attempt made by the local magistrates (sic) to understand my point of view and I feel that laziness led to the fine (sic) not being lowered even once the accused (sic) admitted to making up the amount of the costs caused to him.”
Claimant

Litigants were asked how much time they had spent on the case. 35% (22) had spent 3 or more days on the case. 22% (14) had spent one day and 22% (14) had spent a few hours to half a day.

38% (24) were either very satisfied or fairly satisfied with the time they had spent on the case and 14% (9) were neither satisfied nor dissatisfied. 38% (24) were very dissatisfied or dissatisfied.

38% (24) agreed or agreed strongly that mediation was not suitable for their case. 50% (31) disagreed or disagreed strongly with the statement ‘I was not adequately prepared to mediate’. 40% (25) disagreed or disagreed strongly that *both* parties had not thought mediation was suitable for their case. In addition 35% (22) disagreed or disagreed strongly that mediation would not

⁷² Settled without judicial intervention

⁷³ Most of the cases that fell into the category of ‘other’ were on-going at the end of the research.

making reaching any settlement easier. 40% (25) agreed with the statement that it was the other side that had not wanted to mediate.

These replies appear to show some ambiguity in reasons for deciding not to mediate. There is no one clear reason why people might decide not to mediate. It seems that many parties tend to view their own case in isolation and assess its suitability for mediation. They generally tend to see the merits of the mediation process but the specificities of their case (nature of the other party or other factors) lead them to decide it is not appropriate in their own particular case.

It also seems that many of those who responded to the questionnaire had wanted to mediate but it was the other party who had not wanted to take part or who had not turned up in time for the appointment.

- Only 16% (10) agreed or agreed strongly that they did not want a face-to-face meeting with the other side whilst 40% (25) disagreed or disagreed strongly. 19% (12) neither agreed or disagreed. 21% (13) were missing and 5% (3) didn't know.
- 35% (22) disagreed or disagreed strongly that mediation would not make reaching settlement any easier – the implication here being that those who responded were in favour of mediation. 26% (16) agreed or agreed strongly with the statement. 13% (8) neither agreed or disagreed, 18% (11) were missing and 10% (6) didn't know.

It is suggested that the ambiguity illustrated in the two points above further demonstrates the lack of knowledge about mediation reflected generally throughout this research.

- Only 4 people (6%) disagreed with the statement 'I would use mediation again in the future' whereas 45% (28) agreed or agreed strongly.

“I have never used the Exeter Mediation Service but have recently used the Torbay service with a good outcome. However it was a different set of circumstances to my Exeter case. I found mediation to be useful.”
Claimant

- 35% (22) disagreed or disagreed strongly that mediation would have been a waste of time.

The overwhelming view of those who responded is of a positive or at least not a wholly negative view of mediation. Many were unable to mediate because the other side did not want to or they did not turn up to the appointment.

“We were not really given much information about mediation - I suppose as it implied a compromise we were not prepared to consider it as we had a reasonably clear-cut case we thought.”
Claimant

Results of telephone interviews

45 telephone interviews were conducted with those participants who had mediated and indicated that they were willing to take part. Of these 21 were claimants and 24 were defendants.

69% (31) had settled their case at mediation and 31% (14) had failed to settle. 49% (22) thought that mediation had been a positive experience.

“It resolved the situation fairly quickly and simply - by a mediator who was able to listen to what both parties say, and bring, to some extent, some common sense to it.”

Defendant

38% (17) thought it was a negative experience. Despite this the responses were generally positive about the small claims mediation service. 78% (35) said that they would recommend mediation to a friend.

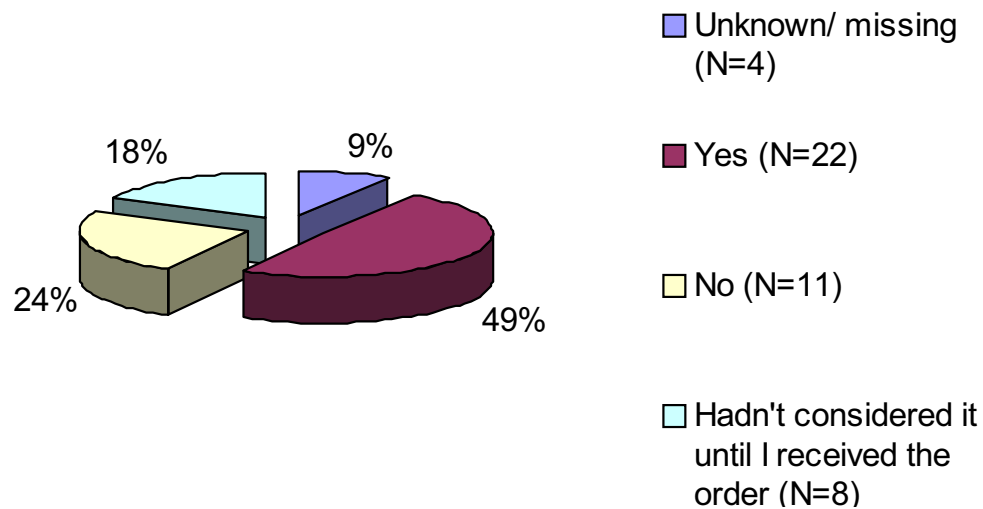
“It was pretty useless really, the two of us together and it sort of... it didn't get any judgment at all at the end. I wasted all my money ... all the money I spent on my solicitor and the day I took off it's all wasted really.”

Claimant

When asked why they went to mediation 78% said it was because the judge recommended it.

Almost half of those who responded said they had wanted to go to mediation. There were slightly more claimants (57%) than defendants (42%) who wanted to mediate. The chart below shows the breakdown for both claimants and defendants.

Figure 29: Telephone interviews – reason for mediating
(Total sample = 45)



“I was worried thinking what’s going to happen but when I got there I thought this is ok ... I hadn’t got to face the person I’d taken to court.”
Claimant

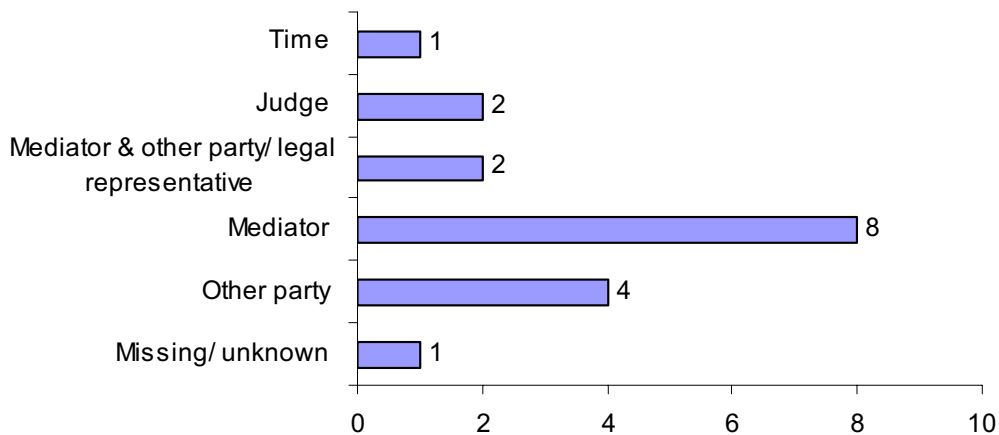
51% (23) said they had felt no pressure to settle and 40% (18) said there had been pressure. 7% (3) did not respond.

“With hindsight we could have perhaps have been stronger ... now looking back I don’t think we quite got justice ... we settled because we thought it was the least worst option.”
Defendant

Of those parties had said they felt pressure it was overwhelmingly from the mediator (36%) as the chart below shows:⁷⁴

⁷⁴ 22 respondents failed to say they did not feel pressure but only 18 positively said they did feel pressure.

Figure 30: Telephone interviews & pressure
(Total sample = 18 who said they had felt pressure)



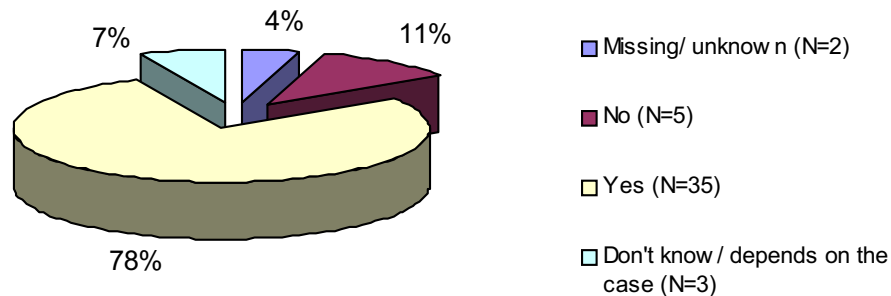
- 31% (14) thought that mediation had saved them money whilst 49% (22) thought that it had not.
- 56% (25) thought it had saved time and 33% (15) said it had not.
- 49% (22) thought it had saved them any stress. 44% (20) thought it had not.
- 64% (29) said mediation had not increased money spent, time, or stress expended whilst 18% (8) thought it had.

“... we didn’t dig out heels in, we decided to come to an arrangement because it was cheaper for us and less tiring ... so we could get on with our lives....”

Defendant

Respondents were positive about mediation as a process even if they felt that it had not been useful in their case. 78% said they would recommend mediation to a friend.

Figure 31: Telephone interviews and recommendation of mediation
(Total sample = 45)



Some of the many reasons given for recommending mediation to a friend were as follows:

- “It is an opportunity to review your cases without court intervention.”
- “... you very much think you are 100% in the right but the cold hard facts are that one of you is going to lose and have to pay.”
- “Especially if they are worried about having to face people. I would try mediation before going to court.”
- “I’d do it again to try to get the matter sorted out on civil terms by someone that’s neutral to both parties.”
- “I don’t really think you have got a choice because they recommend mediation and they explain that it will save time so you are more or less guided to do mediation right from the beginning. It saved time if anything.”
- “If it’s not a point of principle or law it’s the best way to go. I’ve been telling people about it since I came out. It’s far more sensible than going to court. The only people who lose out are the legal service (sic).”

These are some of the reasons given by those who would not recommend mediation to a friend:

- “Both having experienced mediation, we are both of the opinion that in theory mediation is good, but if you have someone stubborn on the other side, who is not willing to talk, negotiate or compromise then it is a total waste of time, and I would not.”
- “Don't touch the courts, they are only out for the money they can take from you.”

“We've been through mediation before and it worked very well, we are convinced that it is a much better way of coming to settlement. In half an hour we sorted out more than through two years of writing letters to each other.”

Claimant

The respondents to the telephone interviews were fairly mixed in their response to mediation. On the whole they are positive about the process but not so positive about their own individual experiences. That 78% went to mediation because of the judge's recommendation may show the lack of knowledge about the benefits of the process in advance of attending the mediation. The interviews do illustrate that there are lots of factors involved in the experience of court eg views of representatives, the attitude of the other party, the atmosphere and facilities at the court which combine to create a viewpoint.

Focus group discussion with judiciary and court staff

A focus group was held with the district judges and the relevant court staff: the court manager and the mediation clerk.

The district judges identified several purposes for the existence of the service:

- To save time for the judges and the court staff;
- To save costs for the court and the user;
- To meet targets (meeting civil listings helps meet other listing targets too);
- To provide a service to the public from the court.

“[The mediation service] gives the parties the opportunity of settling their dispute without a trial and ... fulfils the court’s obligation to encourage the parties to do so and we overlook the fact that we **MUST** do that. The CPR says so, it’s not a fancy idea, it’s an obligation.”
District Judge

The district judges seemed to be convinced that the mediation service was providing a necessary service and without it ‘...things would very rapidly grind to a halt.’ One district judge said that if the service did not continue into the future there could be a crisis in case management. He said:

“If you tot up the hours that have been saved and add them to our existing heavy lists we haven’t a hope of meeting any targets.”

The district judges thought that the mediation service was beneficial to small claims as it enabled them to focus on settlement. One said, “If a judge tells the parties to go out and try and settle it he’s sending a clear message, I don’t want to hear this. That’s not the perception [the parties] should have.”

The court manager was concerned that the cost of the DELS mediators combined with the administrative costs of the service was more expensive than the use of deputy district judges.

In terms of referring cases to mediation the district judges said they were more prepared now than in the past to potentially refer cases to mediation involving parties who live more than 30 minutes away from the court – if they can ‘...spot a chance for a settlement in the paperwork’ at AQ stage.

The court manager pointed out that peaks and troughs in the allocations and referrals was likely to be down to a number of factors. One of these was when the court office was concerned with arrears which meant that the files did not reach the district judges as promptly as it might do under normal circumstances. It was confirmed that peaks and troughs in referrals to mediation might have more to do with administrative loads than cases not being referred by the judiciary.

“The mindset has been for so many years, got to get, got to get into court.”

District Judge

The court manager said that the benefit of the service was to “... reduce the number of cases that have ended up with a court hearing which is what the public service agreement is about.”

The district judges said that an added benefit of the service is that if the parties fail to settle at mediation the time estimate is then revised by the district judge and so it is bound to be more accurate. The court manager said that the problem was that there were no reliable statistics.

“Parties do need encouragement and that’s the word in the rules. They do need it, they are fighting at that point, they are combatants, and it does require encouragement to get them to think in a different way.”

District Judge

The district judges were unanimous that they wanted to see the service continue. They were extremely positive about the medication service. The court manager was more tentative as resources for small claims were lacking

and the service could only work provided that the court could “...release the resources....”.

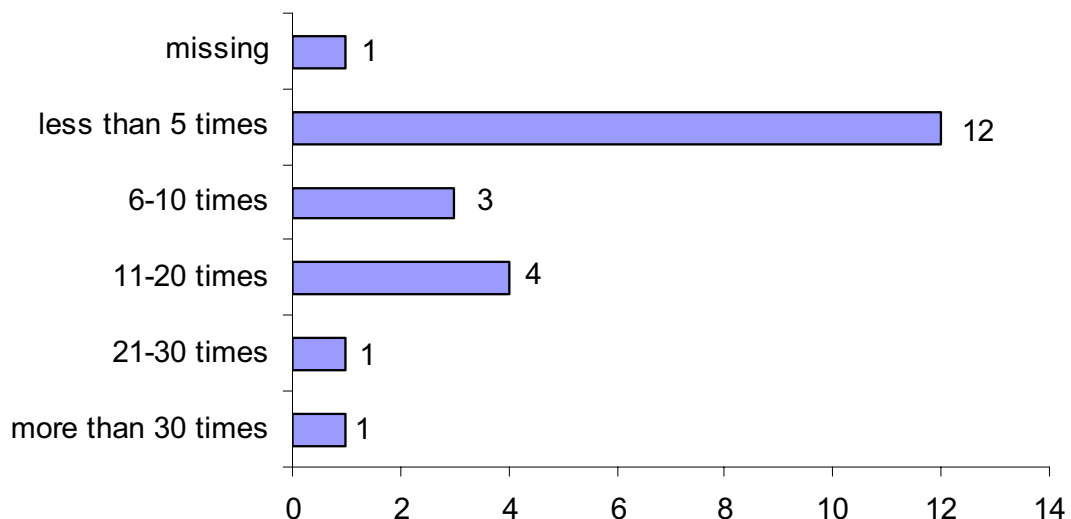
Results of mediators questionnaires

16 individual mediators out of a total of 44 responded to the questionnaire. The mediators are all members or associates of the Devon and Exeter Law Society (DELS). It is therefore to be expected that they are solicitors but 4 said they were barristers.⁷⁵

“I have used the mediation service previously and it has given the first opportunity for an independent 'authority' to look at the case. I feel that many cases could be settled before entering court if the mediators were able to give guidance.”
Claimant

Few of the mediators were very experienced at mediation. 75% had conducted less than 5 mediations in the last year and only 2 mediators had conducted over 20 mediations.⁷⁶

Figure 32: Mediators experience of mediation process
(Total sample = 22)⁷⁷



⁷⁵ This seemed to contradict information given to the researchers by DELS themselves.

⁷⁶ The questionnaire did not specify what type of mediations so this total could include commercial and other mediations. Anecdotal evidence suggests that these are likely to be small claims mediations in the main.

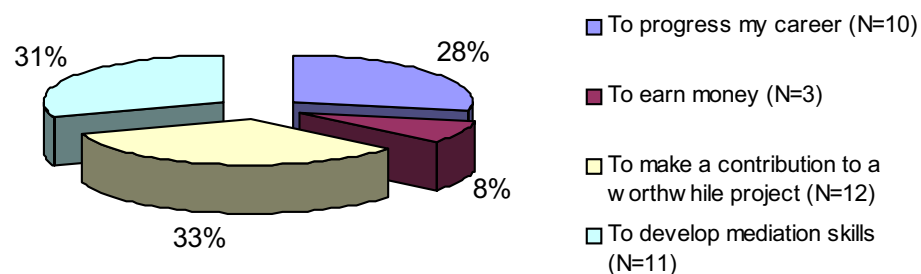
⁷⁷ Some mediators had conducted more than one mediation session during the research period.

68% (15) said the fees for the mediation were not adequate and none were happy with the fees that they received for mediating.

"I do four hours work for 1 hours pay."
Mediator

Yet the mediators did not appear to be driven by money when explaining why they took part in the scheme. 33% said it was to make a contribution to a worthwhile project and 31% said it was to develop mediation skills whilst 28% said it was to progress their career. Only 3 replies stated that it was to earn money. There is some overlap in this question as some of the mediators ticked more than one box (as is shown by the number of respondents to the question).

Figure 33: Mediators reasons for taking part in scheme
(Total sample = 36)



The mediators involved in the scheme do seem to feel that they are engaged in an altruistic venture. Many of their comments are about pay and facilities rather than the parties or the appropriateness of mediation.

“As I settled all of my cases I did not see the judge, a 'thank you' would have been nice from the court.”

Mediator

“Files should be available at 9am. There is only an hour to read them all and chasing to get them by 9.15am is never a good start to what is a busy morning for the mediator.”

Mediator

There is a marked contrast between the mediator requiring the files to examine the details of the case in advance of the mediation and not wishing to give any advice or get involved with the issues in the case. The initial reading of the files is the approach of a lawyer to the case but during the mediation the issues in the case are reduced as being to secondary to achieving settlement.

Chapter 5. Summary of findings and conclusions with recommendations

This research was conducted over the period 1st June 2005 until 31st May 2006. During this time 255 cases were referred by the district judges to mediation. This number represents 34% of all cases allocated to the small claims track at Exeter. 53% (136) of these cases actually mediated. Of that number 65% (88) settled their case at mediation. Of the remaining 48 cases that did not settle at mediation 17% (8) settled their case after the mediation,⁷⁸ and 35% (17) resolved their case at the small claims hearing. Over 30% (at least 15) of these cases are still awaiting a hearing at the end of the research period. These figures show that, even though there has been a slight drop in numbers of cases actually mediating over recent months, in general the small claims service at Exeter is operating on an effective and active level which does have a genuine impact on the work of the court at Exeter.

The main findings in this report fall under the following headings: the purposes of mediation; information and awareness of the service, suitability of the service, costs and delay, the mediators and appropriateness of service.

1. *Purpose of mediation as an aspect of the civil justice system*

One of the key points in Lord Woolf's Access to Justice report was to aim for the 'avoidance of litigation wherever possible'.⁷⁹ The district judges at Exeter County Court are of the view that this scheme helps to underpin such a principle. The question is how the legal system best achieves this for the benefit of the justice system and the court user. The service does help to save judicial time for the court. A conservative calculation shows that actual time saved for district judges over the period of the research is 121 hours. Supplementary analysis of the work of the district judges in February of this

⁷⁸ Indicating that perhaps the mediation has had a later impact upon settlement.

⁷⁹ Lord Woolf, *Access to Justice, Interim Report*, June 1995.

year showed that the highest proportion of time spent by district judges on small claims work is reading of files and hearing time. Where the case settles at mediation these tasks are avoided which increases the time saved.

In addition, there is a significant amount of time saved for those parties who engage in mediation where the case settles as a result of the process. The time from referral to mediation is significantly lower for the parties who settle at mediation (5 weeks) than time from referral to small claims hearing (13.3 weeks). One of the complaints from parties who had not gone to mediation was that they were spending significantly longer on their case than those parties who had gone to mediation.

It does seem from the perspective of encouraging settlement that the 65% settlement rate that the service is fulfilling the aims of the DCA's PSA target of reducing by 5% the number of cases resolved without a hearing. At present the service is reducing the number of cases resolved at small claims level without resort to a hearing by 35% at Exeter County Court.⁸⁰ However, just under half of litigants referred to mediation are not taking part in the mediation process either because one party has objected to taking part in the mediation or because one or more parties do not turn up to the mediation.

2. Information / awareness

In his report on Access to Justice, Lord Woolf stated, "The accessibility of the system can be measured by the extent to which people know of its existence..."⁸¹

This seems to be a massive flaw in the small claims service at Exeter as the information provided is lacking and the actual mediations take place over such a limited period of time (30 minutes) that it is difficult for the mediators to fully

⁸⁰ This is a crude indication as it is difficult to make a more accurate comparison without information as to what percentage of small claims actually result in a final hearing.

⁸¹ Lord Woolf talking about the small claims process, *ibid*.

explain the process. Only 14% of participants said that they found out about the mediation service from the leaflet whereas 49% said that they had heard about it from judicial directions. It is a signal that there is a fault here in that only two people said that they knew a lot about mediation prior to taking part in the process and 77% had either never heard of mediation or had heard of it but knew nothing about it or only knew a little about mediation.

The point of mediation is for parties to consider their case in a way which does not fit easily with the adversarial system and to try to find co-operative methods of settlement. In reality, parties who attend the small claims mediation service at Exeter do not seem to be aware of the difference between mediation and a hearing and the emphasis on settlement rather than rules of evidence and proof. There have been occasions where litigants have turned up to the mediation with witnesses, huge files of information and evidence such as a window, which was the subject of a dispute. Often parties have not even considered finding any sort of compromise and want the mediator to tell them whether or not they have a case.

"I felt I had done my very best at getting letters to support my case from people and experience to prove I was truthful, proving (sic) pictures and e-mails."

Defendant

The whole research project suffered as a result of the lack of information and this skewed the data received. Parties arrived at court generally expecting someone to hear their case, even if they did not expect a decision. It is likely that this affected the level of user satisfaction with the service.

"We weren't aware of what was involved and what we should have been thinking about. I'm sure we were probably sent a leaflet but that went straight over our heads. Now I know the process I think I would handle it differently.... I don't feel we got justice."

Claimant

The DCA are keen to encourage the service to be as voluntary as possible but parties need to be able to give 'informed consent' to mediate rather than just consent. Without this information it seems that litigants are opting out of a process because they do not know what it is rather than because they have considered that it is not a suitable option for their particular case or their own circumstances.

"It would have been useful to have case studies of where mediation has been appropriate to gauge if it would have been a good solution for my case."
Claimant

Despite this there is a very positive view generally of mediation from those interviewed or those who responded to the questionnaires. 79% of all those interviewed said there had been advantages to them from their mediation. When interviewed immediately after the mediation a high proportion of parties were positive about the mediation process. This included those who did not settle at mediation but still found some advantages in taking part in the process. 78% of those taking part in the telephone interviews said they would recommend mediation to a friend.

3. Suitability of cases for mediation

As such a large proportion of cases referred were in the general debt and consumer type of goods and services category it is difficult to ascertain exactly which type of case that falls into this category is more likely to settle at mediation. It is clear however that this category is more likely to settle at mediation than other case types as 83% of settled cases⁸² fell into this broad category – compared to the general settlement rate of 65%.

The research shows that it is the value of the claim is a deciding factor in whether or not the case will settle as 22% of referred cases were for less than

⁸² There were very low numbers in all of the other categories and so it is difficult to determine effectiveness. The findings here are therefore a little inconclusive.

£500 and this figure increased to 32% for cases which actually settled at mediation. 65% of referred cases had a claim value of under £2000 compared to 73% of cases which actually settled. Additionally, represented parties are less likely to settle at mediation. The settlement rate was 81% for individuals in person cases against company in person cases.

20% of claimants and 27% of defendants were represented in referred cases but this reduced to 18% of claimants and only 8% of defendants in settled cases. It is to be hoped that this information can help inform the type and nature of cases referred to mediation.

4. *Cost and Delay*

One of the main aims of the service is to save costs and time for the litigant and for the courts. There is a clear saving of judicial time as the number of cases that settle are taken off the hearing list and result in a minimum saving of 121 hours of judicial time. There is very little administration for the service over and above the work in allocating cases to the small claims track. This mainly consists of one letter to the parties and telephone enquiries.

Yet there is a discernible saving in time for those parties that use the mediation scheme if they are able to settle their case at mediation. This is because the mean time from referral to mediation is 5 weeks compared to the average time from referral to hearing of 13 weeks. Even if the case does not settle at mediation the date of the hearing is unaffected as this date is set after allocation to track.

5. *Mediators and the pressure to mediate*

There is some concern about the mediators as their role was not clearly understood by some of those taking part in the mediation although the majority were happy with the mediator. 33% of those parties interviewed on

the telephone said they felt under pressure to reach a settlement at the mediation and 30% of these said the pressure was from the mediator.

'I personally wasn't very impressed by the solicitor that was actually handling it, I felt he was putting me on the spot. Basically his attitude was, I don't want to waste any time, make a decision now or you will go to court.'

Claimant

There is a very basic training for the mediators and a lot of reliance on their skills as lawyers. The training provided is based upon the experience of a mediator trainer who usually mediates with represented parties and the majority of parties at small claims are not represented. There is no real discussion about the difference between information and advice on the training and what the mediator should be saying to the parties, many of whom do not understand the legal system or know what they need to do if they have to go to hearing.

'It is so much more informal than going to court and if people go with an open mind then a lot more could be settled... I do believe it is a more positive way of dealing with the problem.'

Defendant

Many of the mediators (75%), who responded to the questionnaire, have done very few mediations (less than 5 sessions) and use the service to increase their own experience. 68% complained about the fees for the mediation. Yet there were also other reasons given for mediating when mediators were explaining why they wished to be involved in the service. 33% said it was to make a contribution to a worthwhile project.

The training of the mediators does not involve them in undertaking any simulations, role plays etc and there is no evaluation of different mediators as part of the service provided by DELS.

Recommendations

- Cases referred to mediation could be refined from the general categories to take into consideration the type of cases that seem most likely to settle at Exeter.
- More detailed information should be provided to parties being offered the opportunity to take part in mediation. This information should take the form of clear guidance as to the purposes of mediation and how it will benefit court users. The evidence in this report shows that if a case settles at mediation there are clear time benefits which should be highlighted. The settlement rate needs to be stressed and explained and comments from parties who have mediated need to be included in the literature. There needs to be an emphasis upon settlement as opposed to determination by a judge. To reinforce the nature of the process there should be a video explaining the benefits of small claims mediation in the waiting room as well as more information for parties for them to read whilst they are waiting. There needs to be more emphasis placed upon ensuring all parties to the mediation sign the 'agreement to mediate'. This will ensure that parties give their 'informed consent' to take part in the mediation.
- Potential parties to mediation should be informed of the fact that the date of the hearing is set in advance and that if they settle at mediation there is no disadvantage to them in undertaking mediation. The benefit of mediation is that parties could resolve their case in an average of 3 weeks if it were to settle.
- All mediators should attend an induction course for small claims to familiarize themselves with the process before they are able to conduct a mediation independently. This should include information about fees, costs at hearing, etc. Although many of those involved have experience of the small claims court it is important that there is

continuity in the information provided to parties. Also the training should require participation eg, some form of role play, etc as currently potential mediators can attend the training course and do not need to speak in order to pass. In addition, there should be a clear criteria to cover quality and standards and mediators should have to peer review each other. It is not suggested that this should be an arduous process although it should be done rigorously. By engaging with, and devising such a process it will help the mediators to agree the purpose of small claims mediation and the borderline between advice and information which is currently ambiguous and is not agreed even among individual mediators.

- It is important that the service develops in a positive way. Concerns raised by litigants about issues such as pressure and lack of information should be monitored in the short-term by a body or appointed individual (possibly the Court manager) to ensure that they are not on-going.

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Cases

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APPENDICES

APPENDIX A - Court Documentation

- A.1 Agreement to Mediate
- A.2 Consent Order Schedule
- A.3 Small Claims ADR Order to 30th April 2006
- A.4 Small Claims ADR Order from 1st May 2006

APPENDIX B – Data Collection

- B.1 Mediators Questionnaire**
- B.2 Questionnaire Covering Letter**
- B.3 Parties who mediated Postal Questionnaire**
- B.4 Parties who did not mediate Postal Questionnaire**
- B.5 Post mediation interview Questionnaire**
- B.6 Telephone Interview Schedule**
- B.7 District Judges' February Time Sheet**

Agreement to mediate

Name of court	Claim No.
Name of Claimant	
Name of Defendant	

We, the parties, agree to mediation of the dispute between us on the following terms and conditions

1. The mediator

The parties agree to the appointment of *(insert name)*

, who is a mediator. The parties understand that the mediator is independent, neutral, and is not employed by, or acting as, a representative of the Her Majesty's Courts Service (HMCS). The parties also understand that the role of the mediator is to facilitate settlement of the dispute by negotiation and agreement where it is possible. The mediator does not give legal advice and will not adjudicate the dispute.

The Mediator may ask the parties to consent to a co-mediator or observer to be present at the mediation if the parties agree. The parties may be asked to assist in the ongoing assessment of the present mediation scheme operated in

County Court.

Save in the case of gross error or misconduct, the parties agree that they will respect the neutrality of the mediator, any professional body to which the mediator may belong, and HMCS, and not bring any claim, demands or proceedings against any or all of these, arising out of the appointment of the mediator or the conduct of the mediation.

2. Good faith and authorisation to negotiate

Whilst it is recognised that mediation is a voluntary process that enjoys the support of HMCS, and that the mediator will not, and cannot, compel the parties to settle, nor even to continue the mediation, the parties agree to participate in good faith with the aim of achieving settlement.

The parties agree that they will have present at the mediation such people as are authorised to agree settlement terms, or ensure that they themselves have such authority.

3. Private sessions

During the mediation the mediator will probably speak to the parties separately in order to improve the mediators understanding of the each party's views. Information given to the mediator during such private talks will be treated by the mediator as being confidential unless the party involved allows the mediator to give the information to the other party.

4. Confidentiality and the without prejudice nature of mediation

The parties agree to keep confidential the fact that mediation is to take place.

Other than a final written agreement, any information – whether written in a document prepared for mediation or written or spoken during the mediation – can only be used for the purpose of mediation and cannot be referred to in any court action unless the parties agree.

The parties agree that they will not call the mediator to give evidence in any court action.

6. Ending the mediation

The mediator, or either of the parties, may end the mediation at any time without giving a reason. In that event the trial judge will only be aware that mediation has taken place and that it has failed.

7. Monitoring

I agree that the researchers authorised by the court may contact me for feedback after the mediation.

☐ Yes

☐ No

Signed:-

Claimant

Defendant

Mediator

Date

Schedule

Name of court	Claim No.
Name of Claimant	
Name of Defendant	
Date of mediation	

Upon the parties having agreed the following terms at a mediation held at

County Court on

☐ All further proceedings in this case shall be stayed on the terms agreed by the parties and set out in the schedule to this order, save that either party may apply for the purpose of enforcing those terms

☐ BY CONSENT

IT IS ORDERED AS FOLLOWS:

☐ There shall be judgment for the Claimant in the sum of £
and judgment for the Defendant in the sum of £ on the counterclaim, which may be set off against the sum awarded to the Claimant

☐ The [Claimant][Defendant] shall pay the balance of £ by
[days]

☐ Upon [payment of the said sum[s] and costs as ordered below] [and] [satisfaction of the said terms] the Claimant [and Defendant] shall be discharged from all liability in respect of the claims [and counterclaims] made in this case.

☐ It is recorded that the claim and/or counterclaim is discontinued.

☐ The fixed costs/court fee shall provide for as follows:

--

☐ Terms agreed between the parties

Signed

Mediator	
Claimant:	
Defendant:	

Proposed alternation to Form N24 in Small Claims cases

Direction pursuant to Rule 23.9 Civil Procedure Rules 1998

The District Judge having considered the allocation questionnaires has given the following directions

IT IS ORDERED THAT

1. The claim be allocated to the Small Claims track
2. Each party shall attend The Exeter County Court on _____ at
a.m/p.m. for a directions appointment
3. The Court will provide free mediation facilities to the parties to
assist them in reaching a settlement
4. In default of any agreement, the District Judge will give directions
for the final hearing. You should not therefore bring any witnesses
to the directions appointment
5. If you do not attend the District Judge will proceed to hear the case
in your absence and make such order as may be appropriate. That
may include making a final order entering judgment or dismissing
or striking out the claim

NOTICE TO THE PARTIES

This order has made without a hearing. Any party affected by it may request within 7 days of its service for it to be varied or set aside

Directions pursuant to Rule 23.9 Civil Procedure Rules 1998

IT IS ORDERED THAT

- 1) Allocate to the Small Claims Track
- 2) The Judge has considered your case is suitable for mediation and you are therefore invited to use the free small claims mediation service at Exeter County Court

A mediation appointment has therefore been arranged on.....at.....at Exeter County Court with a time estimate of 30 minutes

If you do not wish to use this service and wish to proceed directly to a hearing, please contact the court in writing or on 01392 415349. If you fail to attend the mediation appointment and have not given prior notice to the court that you do not want to use the mediation service, then the court may deal with your case in your absence.

Dated...

NOTICE TO THE PARTIES

This order has been made without a hearing. Any party affected may apply within 7 days of its service to vary or set it aside.

Name of Mediator _____

Date of Mediation Session: _____

**EXETER COUNTY COURT
SMALL CLAIMS MEDIATION SCHEME**

MEDIATORS QUESTIONNAIRE

Thank you for agreeing to take part in the evaluation of the Exeter Small Claims Mediation Scheme. We would very much appreciate you spending some time in helping us with our research by completing the attached questionnaire and returning it to us in the Freepost envelope attached. Please note that any information given, which obviously identifies you, the parties, or any individual concerned is strictly confidential and will not be disclosed without your prior permission.

The University research team consists of Dr Sue Prince, with the assistance of Ms Sophie Belcher, from the School of Law at Exeter University. If you have any questions about this questionnaire or evaluation, or if you would like a copy in larger print or an alternative format, please contact me: s.j.prince@exeter.ac.co.uk.

PART 1: ABOUT YOU

1. Please tick the mediation organisations with whom you are registered as a mediator.

1	DELS	
2	CEDR	
3	ADR GROUP	
4	ACADEMY OF EXPERTS	
5	ADR CHAMBERS	
6	CIA	
7	OTHER (PLEASE STATE)	

2. How many times have you conducted an unsupervised mediation (or small claims mediation session) during the past 12 months?

1	LESS THAN 5	
2	5 – 10	
3	11 – 20	
4	21 – 30	
5	MORE THAN 30	

3. How many times have you conducted mediation sessions at Exeter / Torquay or Barnstaple courts?

1	1 – 5 TIMES	
2	6 – 10 TIMES	
3	11 – 20 TIMES	
4	MORE THAN 20 TIMES	

4. Please tick your profession.

1.	SOLICITOR	
2.	BARRISTER	
3.	OTHER (PLEASE STATE)	

PART 2: ABOUT TODAY'S MEDIATION SESSION

Please list some information about the mediations today

	Case number	Claimant attended?	Def attended	Settled?	If the parties settled was there any particular factor that seemed significant?		If not settled (or partially settled), what was the reason?	Any other comments about this case
1		YES/NO	YES/NO	YES/NO	a) TIME-LIMITED NATURE OF MEDIATION			
					b) POWER OF ONE PARTY			
					c) MEDIATOR SUGGESTED CREATIVE SOLUTION			
					d) CLEAR SCOPE FOR COMPROMISE			
					e) OTHER (PLEASE STATE)			
2.		YES/NO	YES/NO	YES/NO	a) TIME-LIMITED NATURE OF MEDIATION			
					b) POWER OF ONE PARTY			
					c) MEDIATOR SUGGESTED			
					d) CREATIVE SOLUTION			
					e) CLEAR SCOPE FOR COMPROMISE			
					f) OTHER (PLEASE STATE)			
3.		YES/NO	YES/NO	YES/NO	a) TIME-LIMITED NATURE OF MEDIATION			
					b) POWER OF ONE PARTY			
					c) MEDIATOR SUGGESTED CREATIVE SOLUTION			
					d) CLEAR SCOPE FOR COMPROMISE			
					e) OTHER (PLEASE STATE)			

	Case Number	Claimant attended?	Def attended	Settled?	If the parties settled was there any particular factor that seemed significant?		If not settled(or partially settled), what was the reason?	Any other comments about this case
4.		YES/NO	YES/NO	YES/NO	a) TIME-LIMITED NATURE OF MEDIATION			
					b) POWER OF ONE PARTY			
					c) MEDIATOR SUGGESTED CREATIVE SOLUTION			
					d) CLEAR SCOPE FOR COMPROMISE			
					e) OTHER (PLEASE STATE)			
5.		YES/NO	YES/NO	YES/NO	a) TIME-LIMITED NATURE OF MEDIATION			
					b) POWER OF ONE PARTY			
					c) MEDIATOR SUGGESTED CREATIVE SOLUTION			
					d) CLEAR SCOPE FOR COMPROMISE			
					e) OTHER (PLEASE STATE)			
6.		YES/NO	YES/NO	YES/NO	a) TIME-LIMITED NATURE OF MEDIATION			
					b) POWER OF ONE PARTY			
					c) MEDIATOR SUGGESTED CREATIVE SOLUTION			
					d) CLEAR SCOPE FOR COMPROMISE			
					e) OTHER (PLEASE STATE)			

4. Some general statements about the mediation session today.		
a) THE FACILITIES WERE ADEQUATE FOR THE MEDIATION SESSION	Yes/No	
b) I EVALUATED THE CASES TO HELP THE PARTIES HAVE A BETTER UNDERSTANDING OF THEIR LEGAL POSITION WHERE POSSIBLE	Yes/No	
c) I USED INDIVIDUALS MEETINGS WITH THE PARTIES DURING THE COURSE OF THE MEDIATION	Yes/No	
d) I CONSIDER THE BEST USE OF MEDIATION IS THE FACE-TO-FACE DISCUSSION OF THE ISSUES IN THE CASE	Yes/No	
e) I CONSIDER THE BEST USE OF MEDIATION IS TO RESOLVE THE CASE AS COST-EFFECITVELY AS POSSIBLE	Yes/No	
5. Were there any additional consequences during the mediation session today?		
Consequences	Case Number	Evidence and / or Comments
a) IMPROVEMENT IN PERSONAL RELATIONSHIPS BETWEEN THE PARTIES		
b) IMPROVEMENT IN BUSINESS RELATIONSHIPS BETWEEN THE PARTIES		
c) NOTICEABLE IMPROVEMENT IN UNDERSTANDING OF PARTIES OWN CASE		
d) NOTICEABLE IMPROVEMENT IN UNDERSTANDING OF OTHER SIDE'S CASE		
e) OTHER CONSEQUENCES (PLEASE STATE)		

6. Did you feel that the fees you received were adequate for the mediation session?			7. Can you please state your reasons for volunteering to be a mediator on the Exeter Mediation Scheme? (Please tick relevant boxes and / or comment below)		
1	YES, HAPPY WITH FEES RECEIVED		a)	To progress / develop career prospects	
2	FEES WERE ONLY ADEQUATE		b)	To earn money	
3	NO, FEES WERE NOT ADEQUATE		c)	To make a contribution to a worthwhile project	
Please comment, especially if you answered No. How much should a mediator receive for the mediation session?			d)	To develop mediation skills	
			e)	Other (Please state)	

PART 1: YOUR OVERALL ASSESSMENT

9. Do you have any suggestions as to how the Exeter Small Claims Mediation Scheme could be improved?

10. Would you be happy to take part in further research? If so, please give your contact phone number below

Contact Telephone Number _____

Email address _____

Thank you very much for taking the time to complete this questionnaire

Dear Sir/ Madam,

Exeter Small Claims Mediation Scheme Evaluation

I am writing as part of the research team whose responsibility it is to evaluate the small claims mediation scheme in Exeter. Parties who have already started litigation are offered the opportunity to try and resolve their differences, at an early stage in the process, with the assistance of a trained mediator. This research is funded by the Department of Constitutional Affairs.

The aims of the research project are:

- to evaluate the success of the Exeter mediation scheme;
- to develop a plan for good practice in the development of a system of judge-led mediation;
- to compare the Exeter scheme to other mediation schemes.

The University research team consists of Dr Sue Prince, with the assistance of Sophie Belcher and Fiona Pearson, from the School of Law at Exeter University.

We would very much appreciate you spending some time in helping us with our research by taking the time to answer a few, brief questions.

Please note that any information given, which obviously identifies you, the parties, or any individual concerned is strictly confidential and will not be disclosed without your prior permission.

You have the right not to participate and are under no obligation to assist. You will not be chased for a response if you state that you do not wish to take part in the research.

Thank you for taking the time to read this letter and for your help. Any responses received can only enhance the work of this important project.

Yours faithfully,

Dr Sue Prince

Direct Line: 01392 263382
s.j.prince@exeter.ac.uk

Case No.: _____

ref: med

EXETER COUNTY COURT SMALL CLAIMS MEDIATION SCHEME

QUESTIONNAIRE

This questionnaire is designed to help us to evaluate the effectiveness of the Exeter Small Claims Mediation Scheme. We would very much appreciate you spending some time in helping us with our research by answering the questions below and returning it to us in the Freepost envelope attached. All responses are confidential, and you will not be identified in the evaluation report. Please note that any information given, which obviously identifies you, the other parties, or any other individual concerned is strictly confidential and will not be disclosed without prior permission.

The University research team consists of Dr Sue Prince and Ms Sophie Belcher, from the School of Law at Exeter University. If you have any questions about this questionnaire or the evaluation, or if you would like a copy in larger print, or an alternative format, please contact me: s.j.prince@exeter.ac.co.uk.

PART A: ABOUT YOU AND YOUR CASE

Q1 What was your role in the case?

	<i>Please tick one only</i>
Claimant – I brought the case to court	<input type="checkbox"/>
Defendant – the case was brought against me	<input type="checkbox"/>
Adviser / solicitor for the claimant	<input type="checkbox"/>
Adviser / solicitor for the defendant	<input type="checkbox"/>
Other (please explain):	<input type="checkbox"/>

Q2 Were you involved in the case as:

	<i>Please tick one only</i>
An individual?	<input type="checkbox"/>
A representative of an organisation or company?	<input type="checkbox"/>
Other? (please explain):	<input type="checkbox"/>

Q3 Have you been involved in a civil case at county court before? (Not including family or divorce proceedings)

	<i>Please tick one only</i>
Yes, once	<input type="checkbox"/>
Yes, more than once	<input type="checkbox"/>
No, never	<input type="checkbox"/>

- Q4 Have you been involved in a mediation before?** (Mediation is a service in which an independent, professionally trained mediator helps people who are in dispute to resolve their dispute.)

	<i>Please tick one only</i>
Yes, once	<input type="checkbox"/>
Yes, more than once	<input type="checkbox"/>
No, never been to a mediation	<input type="checkbox"/>

- Q5 How did you find out about the Exeter Mediation Scheme?**

	<i>Please tick all that apply</i>
From a leaflet	<input type="checkbox"/>
Judicial directions	<input type="checkbox"/>
From a member of the court staff	<input type="checkbox"/>
Other (please explain):	<input type="checkbox"/>

PART B: ABOUT YOUR CASE

- Q6 What did you know about mediation before your contact with the Court?**

	<i>Please tick one only</i>
Had never heard of mediation	<input type="checkbox"/>
Had heard of mediation but knew nothing about it	<input type="checkbox"/>
Knew a little about mediation	<input type="checkbox"/>
Knew a lot about mediation	<input type="checkbox"/>

- Q7 At any stage, did you have advice from a solicitor or other adviser about the case?**

	<i>Please tick one only</i>	
Yes, advised all the way through	<input type="checkbox"/>	Go to Q8 now
Yes, sought advice from time to time	<input type="checkbox"/>	
No advice from adviser or solicitor	<input type="checkbox"/>	Go to Q9 now

- Q8 If you *did* receive advice, was that from:**

	<i>Please tick one only</i>
A solicitor?	<input type="checkbox"/>
Another adviser? (Please describe the type of adviser)	<input type="checkbox"/>

PART C: ABOUT THE MEDIATION

The following questions relate to the decision to use mediation and the outcome of that mediation.

Q9	Why did you decide to try mediation?		Q10	Was the mediation process what you had expected?
<i>Please tick one only</i>			<i>Please tick one only</i>	
Because my adviser recommended it	<input type="checkbox"/>		Yes	<input type="checkbox"/>
Because the judge recommended it	<input type="checkbox"/>		No	<input type="checkbox"/>
Because the other side suggested it	<input type="checkbox"/>		Please explain.	
Because I expected it would save me money	<input type="checkbox"/>			
Because I expected it would save me time	<input type="checkbox"/>			
Because I wanted to avoid a court hearing	<input type="checkbox"/>			
Because I was curious to try it	<input type="checkbox"/>			
Other (please explain)	<input type="checkbox"/>			

Q11 Did the case settle at the mediation?

	<i>Please tick one only</i>
Yes – a full settlement was reached.	<input type="checkbox"/> Go to Q12 now
No – the case was not settled.	<input type="checkbox"/> Go to Q14 now
Partial – some issues were settled.	<input type="checkbox"/> Go to Q14 now

Q12 If the case settled at mediation, please briefly describe the settlement agreement.

--

Q13 If you settled at mediation, have all the actions you agreed in mediation been carried out (eg, have you received the money that was part of the settlement)?

	<i>Please tick one only</i>
Yes.	<input type="checkbox"/>
No.	<input type="checkbox"/>
I don't know.	<input type="checkbox"/>
Please explain.	

Q14 Did the case settle after the mediation but before going to a hearing with a judge?

	<i>Please tick one only</i>
Yes.	<input type="checkbox"/>
No.	<input type="checkbox"/>

Q15 At the mediation, did you feel under pressure to reach a settlement?

	<i>Please tick one only</i>
Yes	<input type="checkbox"/> Go to Q16 now
No	<input type="checkbox"/> Go to Q17 now
I don't know.	<input type="checkbox"/> Go to Q17 now

Q16 If you felt under pressure at the mediation, was it because of:

	<i>Please tick all that apply</i>
pressure from the other side	<input type="checkbox"/>
pressure from your adviser	<input type="checkbox"/>
pressure from the mediator	<input type="checkbox"/>
financial pressure	<input type="checkbox"/>
time pressure	<input type="checkbox"/>
other (Please describe)	<input type="checkbox"/>

Q17 How satisfied were you with the following aspects of the mediation?

	Very satisfied	Satisfied	Neither satisfied / nor dissatisfied	Dissatisfied	Very dissatisfied
Your opportunity to participate and express your views	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The time allowed for the mediation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The competence of the mediator	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Facilities for the mediation (eg room, providing for your special needs, etc)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Q18 How much time did you spend on this case? Please include time spent preparing your case and time spent at the hearing.

*Please tick **one** only*

A few hours to half a day	<input type="checkbox"/>	Three or more days	<input type="checkbox"/>
One day	<input type="checkbox"/>	Other (please write in)	<input type="checkbox"/>
Two days	<input type="checkbox"/>		

Q19 How satisfied or dissatisfied were you with spending this length of time on the case?

*Please tick **one** only*

Very satisfied	<input type="checkbox"/>
Fairly satisfied	<input type="checkbox"/>
Neither satisfied / nor dissatisfied	<input type="checkbox"/>
Fairly dissatisfied	<input type="checkbox"/>
Very dissatisfied	<input type="checkbox"/>

Please say why:

Q20 What costs did you have during the course of this litigation?

*Please tick **one** only*

Court costs	<input type="checkbox"/>
Costs for advice	<input type="checkbox"/>
Costs for representation	<input type="checkbox"/>
Travel costs	<input type="checkbox"/>
Costs for taking time off work	<input type="checkbox"/>
Other (please explain):	<input type="checkbox"/>

Q21 What would you estimate your total costs were for this litigation?

--

Q22 Please say whether you agree or disagree with the following statements:

	Agree strongly	Agree	Neither agree nor disagree	Disagree	Disagree strongly	Don't know
Mediation was not suitable for my type of case	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I was not yet adequately prepared to mediate	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Both parties were agreed that mediation was not suitable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The other party did not want to mediate	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I did not want a face-to-face meeting with the other party	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mediation would not make reaching settlement any easier	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I would use mediation in the future, if I was involved in another case	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mediation was a waste of my time	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Q23 Would you be prepared to use this mediation service again?

<i>Please tick one only</i>	
No	<input type="checkbox"/> (Please explain)
Yes	<input type="checkbox"/>
Don't know	<input type="checkbox"/>

Q24 If yes, would you be prepared to pay for the mediation service?

Yes, I would be prepared to pay:

<i>Please tick one only</i>			
£20 or less	<input type="checkbox"/>	£50 – £100	<input type="checkbox"/>
£20 – £50	<input type="checkbox"/>	More than £100	<input type="checkbox"/>

Q25 Do you have any other comments about the Small Claims Mediation Scheme?

PART D: INFORMATION FOR DIVERSITY MONITORING

It would help us to have some additional information about you for diversity monitoring purposes. All information is confidential. If you do not want to complete this section, please leave this section blank and submit the completed form.

Q26	Are you:	Male	<input type="checkbox"/>		Q27	What is your ethnic group? (Please tick one box)
		Female	<input type="checkbox"/>			
					White	<input type="checkbox"/>
Q28	To which age group do you belong?				Mixed	<input type="checkbox"/>
24 years and under				<input type="checkbox"/>	Asian or Asian British	<input type="checkbox"/>
25–44 years				<input type="checkbox"/>	Black or Black British	<input type="checkbox"/>
45–64 years				<input type="checkbox"/>	Chinese	<input type="checkbox"/>
65 years and over				<input type="checkbox"/>	Other ethnic group	<input type="checkbox"/>
Q29	Do you consider yourself to have a disability?					
Yes				<input type="checkbox"/>	Please describe your disability.	
No				<input type="checkbox"/>		
Don't know				<input type="checkbox"/>		

I would like to contact you to discuss your experience of mediation and of the Small Claims Mediation Service. Please let me know your name and contact telephone number and the best time to reach you.

Name: _____ Tel. no.: _____.

If you do not want me to contact you, please tick here.

☐

Thank you for your time.

Re Case No.: _____

Ref: no med

EXETER COUNTY COURT SMALL CLAIMS MEDIATION SCHEME

QUESTIONNAIRE

This questionnaire is designed to help us to evaluate the effectiveness of the Exeter Small Claims Mediation Scheme. We would very much appreciate you spending some time in helping us with our research by answering the questions below and returning it to us in the Freepost envelope attached. All responses are confidential, and you will not be identified in the evaluation report. Please note that any information given, which obviously identifies you, the other parties, or any other individual concerned is strictly confidential and will not be disclosed without prior permission.

The University research team consists of Dr Sue Prince and Ms Sophie Belcher, from the School of Law at Exeter University. If you have any questions about this questionnaire or the evaluation, or if you would like a copy in larger print, or an alternative format, please contact me: s.j.prince@exeter.ac.co.uk.

Section A: About Your Part in the Case

Q1 What was your role in the case?

	<i>Please tick one only</i>
Claimant – I brought the case to court	<input type="checkbox"/>
Defendant – the case was brought against me	<input type="checkbox"/>
Adviser/ solicitor for the claimant	<input type="checkbox"/>
Adviser/ solicitor for the defendant	<input type="checkbox"/>
Other (please explain):	<input type="checkbox"/>

Q2 Were you involved in the case as:

	<i>Please tick one only</i>
An individual	<input type="checkbox"/>
A representative of an organisation or company	<input type="checkbox"/>
Other (please write in):	<input type="checkbox"/>

Q3 Have you been involved in a civil case at county court before? (Not including family or divorce proceedings)

	<i>Please tick one only</i>
Yes, once	<input type="checkbox"/>
Yes, more than once	<input type="checkbox"/>
No, never	<input type="checkbox"/>

Q4 Have you been involved in a mediation before? (Mediation is a service in which an independent professionally trained mediator helps people who are in dispute to resolve their dispute.)
(Please tick one box)

	<i>Please tick one only</i>
Yes, once	<input type="checkbox"/>
Yes, more than once	<input type="checkbox"/>
No, never been to a mediation	<input type="checkbox"/>

Q5 How did you find out about the Exeter Mediation Scheme?

	<i>Please tick all that apply</i>
From a leaflet	<input type="checkbox"/>
Judicial directions	<input type="checkbox"/>
From a member of the court staff	<input type="checkbox"/>
Other (please explain):	<input type="checkbox"/>

Section B: About Your Case

Q6 If you did not use the Exeter Mediation Scheme, why was that?

	<i>Please tick all that apply</i>
My case was not yet ready to settle	<input type="checkbox"/>
Mediation was inappropriate for my case	<input type="checkbox"/>
Someone advising me (eg a solicitor) did not think that mediation would help me with my case	<input type="checkbox"/>
I did not think that mediation would help me with my case	<input type="checkbox"/>
The other party did not turn up to the mediation session	<input type="checkbox"/>
I didn't feel confident to attend	<input type="checkbox"/>
Other (please write in):	<input type="checkbox"/>

Q7 What did you know about mediation before your contact with Exeter Court?

	<i>Please tick one only</i>
Had never heard of mediation	<input type="checkbox"/>
Had heard of mediation but knew nothing about it	<input type="checkbox"/>
Knew a little about mediation	<input type="checkbox"/>
Knew a lot about mediation	<input type="checkbox"/>

Q8 At any stage, did you have advice from a solicitor or other advisor about the case?

	<i>Please tick one only</i>	
Yes, advised all the way through	<input type="checkbox"/>	Go to Q9 now
Yes, sought advice from time to time	<input type="checkbox"/>	
No advice from advisor or solicitor	<input type="checkbox"/>	Go to Q10 now

Q9 If you *did* receive advice, was that from:

	<i>Please tick one only</i>
A solicitor?	<input type="checkbox"/>
Another advisor (please describe the type of advisor)?	<input type="checkbox"/>

Section C: The outcome of your case

Q10 What was the outcome of your case?

	<i>Please tick one only</i>	
The case was withdrawn	<input type="checkbox"/>	Go to Q13 now
The case was settled <i>directly</i> between myself and the other party	<input type="checkbox"/>	Go to Q13 now
The case was decided at a court hearing	<input type="checkbox"/>	Go to Q11 & 12 now
Other (please explain):	<input type="checkbox"/>	Go to Q13 now

Q11 If the case was decided at a court hearing, were costs awarded?

	<i>Please tick one only</i>
No, The case was withdrawn	<input type="checkbox"/>
Yes, awarded in my favour	<input type="checkbox"/>
No, awarded against me	<input type="checkbox"/>
Other (please explain):	<input type="checkbox"/>

Q12 1. Was the decision reached in the case better or worse than you had expected?

<i>Please tick one only</i>		
Better	<input type="checkbox"/>	(Please explain)
Worse	<input type="checkbox"/>	
Don't know	<input type="checkbox"/>	

Q13 How much time did you spend on this case? Please include time spent preparing your case and time spent at the hearing.

*Please tick **one** only*

Less than 3 hours	<input type="checkbox"/>	More than 8 hours	<input type="checkbox"/>
Between 3 and 5 hours	<input type="checkbox"/>	Other (please write in)	<input type="checkbox"/>
Between 6 and 8 hours	<input type="checkbox"/>		

Q14 How satisfied or dissatisfied were you with spending this length of time on the case?

	<i>Please tick one only</i>
Very satisfied	<input type="checkbox"/>
Fairly satisfied	<input type="checkbox"/>
Neither/ nor	<input type="checkbox"/>
Fairly dissatisfied	<input type="checkbox"/>
Very dissatisfied	<input type="checkbox"/>

Please say why:

Q15 Please say whether you agree or disagree with the following statements about the Exeter Mediation Scheme:

[illegible]

Q16 Do you have any other comments about the Exeter Mediation Scheme?
Please explain below:

Section D: Information for Diversity Monitoring

It would help us to have some additional information about you for diversity monitoring purposes. All information is confidential. If you do not want to complete this section, please leave this section blank and submit the completed form.

17.Are you:		Male		18. What is your ethnic group?	
		Female		(Please tick one box)	
				1	White
19. To which age group do you belong?				2	Mixed
1	24 years and under			3	Asian or Asian British
2	25–44 years			4	Black or Black British
3	45–64 years			5	Chinese
4	65 years and over			6	Other ethnic group
20. Do you consider yourself to have a disability?					
1	Yes			Please describe your disability.	
2	No				
3	Don't know				

I would like to contact you to discuss further your experience of mediation. Please let me know your name and contact telephone number and the best time to reach you.

Name: _____ Tel. no.: _____.

If you do not want me to contact you, please tick here. ☐

Thank you for your time.

Interviews with Parties about their Experience of Small Claims Mediation

Date

Claim Number

Claimant/Defendant

Q1 Were you involved in the case as:

	Please tick one only
An Individual	
A representative of an organisation or company	
Other (please state)	

Q2 Have you been involved in a civil case at county court before? (not including family or divorce proceedings)

	Please tick one only
Yes Once	
Yes, more than once	
No, never	

Q3 Have you been legally advised on this matter?

	Please tick one only
No	
Yes	
If Yes, by whom?	

Q4 Did you have a representative/helper present at the mediation today?

	Please tick one only
No	
Yes	
If Yes, who was the representative	

Q5 When you came to court today were you expecting to take part in a mediation?

	Please tick one only
No	
Yes	

Q6 Have you ever been involved in mediation before?

	Please tick one only	
No		Go to Q7
Yes		Go to Q8
If Yes, was it part of the Exeter Mediation Scheme	YES/NO	

Q7 Did you know what mediation was before you came to court?

	Please tick one only
Yes, general knowledge	
Yes, advised by a solicitor on mediation	
Yes, information leaflet from court	
Yes, advised by CAB or other information provider	
No, did not know what mediation was	

Q8 Why did you decide to enter into mediation today?

	Please tick one only
Court-Advised	
Volunteered	

Other (please state)

Q9

Can you identify positive aspects of the mediation? (Please state below)	Can you identify any negative aspects of the mediation? (Please state below)

Q10 Were you happy with the mediators approach? Was it different to how a judge would handle the dispute? (Please comment below)

--

Q11 Did you find the mediation you took part in to be a useful process?

	Please tick one only
No	
Yes	
Please comment	

Q12 Are there ways in which it could be improved?

	Please tick one only
No	
Yes	
Please comment	

Q13 Did you get the result you expected when you came to court today?

	Please tick one only
No	
Yes	
Please comment	

Q14 Was the settlement reached in the case better or worse than you had expected?

	Please tick one only
As expected	
Better	
Worse	
Don't know	

Please comment

Q15 How do you feel now that the mediation is over?

	Please tick one only
Pleased	
Frustrated	
Angry	
Other (please state)	

Q16 Would you be prepared to use mediation again?

	Please tick one only
No	
Yes	
Please comment	

Q17 Would you be prepared to pay for a mediation service?

	Please tick one only
No	
Yes	
If so howmuch?	

Would you be prepared to tell us how the case resolved or speak to us about mediation in the future? If yes, can you give us your phone number/email?

Telephone Questions for parties that mediated

1. Why did you go to mediation?
2. Did you want to go to mediation? YES / NO
3. Did you think that attending mediation was a positive or negative experience?
 - 3(a) If positive, what did you think were the main benefits of the mediation?
 - 3(b) If negative, what were the problems with the mediation?
4. Did you settle your dispute at mediation?
- 5(a) If you settled were you happy with the settlement?
- 5(b) If you did not settle did anything emerge from the mediation which helped you later with your case? (eg new information, being able to talk to other side, advice on your case, etc)
6. Did you feel there had been any pressure to settle? If so, who from?
7. Do you think that mediation saved:
 - (a) money?
 - (b) time?
 - (c) stress?
 - (d) relationship worries?
- 7(a) If not – did it increase any of these?
8. Would you recommend mediation to a friend as an alternative to going to court?
 - 8(a) If so, why?
 - 8(b) If not, why not?
9. If your case settled at mediation or did you have any problems enforcing the settlement reached?

Date: _____

Judge: _____

District Judges Time Sheet – Small Claims Pilot Feb 2006

Please can you record all time spent on judicial tasks which are associated with proceedings on the small claims track eg reading papers/files, CMC etc. This pilot is to be conducted each day of February 2006

Case Number	DJ Task Description	Time Taken On Task

Thank you for your time
s.j.prince@ex.ac.uk

