EVALUATION OF THE SMALL CLAIMS MEDIATION SERVICE AT MANCHESTER COUNTY COURT

FINAL REPORT

to the Better Dispute Resolution Team,

Department for Constitutional Affairs

6 September 2006

RESEARCHER:

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Executive Summary

This is the final report of the independent evaluation of the Small Claims Mediation Service pilot scheme at Manchester County Court, commissioned by the Department for Constitutional Affairs (DCA). The pilot took place from June 2005 through May 2006.[1]

The primary evaluation took place in the first eight months, from June 2005 through January 2006, and an interim report submitted in March 2006. This was because it was necessary for the DCA to make decisions on the future of the pilot based on the first eight months, so that by the time the pilot came to the end of the year, the DCA would be informed about the future viability of the service.

The overall purposes of the evaluation were to assess the effectiveness of the pilot mediation scheme, to explore the views of users of the service (both those whose cases went to mediation and those whose did not) and of other stakeholders such as court staff and judges, and to draw out any conclusions that may contribute to policy development in the area of civil mediation and to the establishment of good practice principles in this area.

Key findings:

- Although the pilot was established to provide face-to-face mediation of small claims at Manchester County Court, and indeed most cases were handled in this way in the first four months of the pilot, the use of telephone-based facilitation became the predominant method used by the end of the pilot. Face-to-face mediation involves a one-off meeting with the mediator at the court, with both parties and their supporters or representatives attending. Telephone-based facilitation involves the mediator working with the parties separately over the telephone, sometimes over several days or weeks, to broker a resolution. The increased use of this method was a reflection of parties' preferences; both face-to-face and telephone-based processes were offered throughout the pilot. As a result, in the final four months of the pilot only nine face-to-face mediations took place, although 34 telephone-based facilitations took place in this period. This development had not been anticipated and

[1] From May 2006, the Small Claims Mediation Service became a permanent service available at Manchester County Court, and in July 2006 it will be extended to ten courts in the region.

resulted in some difficulties in the evaluation. Nevertheless, it demonstrated an innovative and responsive approach to meeting the needs of parties.

- Of all cases allocated to small claims at the court from June 2005 to January 2006, nearly one-third (27 percent) were referred to the Small Claims Mediation Service.

- Of the 189 cases referred to the service in this period from Manchester or Oldham county courts, 78 (41 percent) proceeded to face-to-face mediation or telephone-based facilitation. A further 43 cases were mediated/facilitated from February to May 2006, making a total of 121 cases referred in June 2005 – May 2006 that proceeded to mediation or telephone-based facilitation.

- The service achieved a high rate of settlement, relative to other court-based mediation services. During the June 2005 – January 2006 evaluation period, the rate of settlement at face-to-face mediation was 82 percent. The rate of settlement for all face-to-face mediations and telephone-based facilitation was 86 percent. This overall settlement rate of 86 percent continued for the remainder of the pilot.

- The largest category of claims involved debt/breach of contract/goods and services. Cases handled by telephone facilitation were predominantly in this category; only one, a housing debt case, was not. The majority of cases handled by face-to-face mediation were in this category, although there were a handful of housing debt, professional negligence and other negligence cases. These figures broadly reflect the claim values of cases referred to the service during the evaluation period; 88 percent of referrals were claims involving debt/breach of contract/goods and services.

- Claim values of mediated and telephone-facilitated cases also broadly reflect those of cases referred. More than two-thirds of all claims referred and mediated/facilitated were for less than £2,000, although there was a greater percentage, three-quarters, of this claim value category among the cases dealt with by telephone. Higher-value claims of over £4,000 did not appear to be any less likely to proceed to mediation/facilitation than lower-value claims.

- Cases in which both claimant and defendant were companies made up the largest group: 38 percent. Only 14 percent of cases involved individuals as both claimant and defendant.

Claims initiated by individuals made up 39 percent of all referred and telephone-facilitated cases and 36 percent of all mediated cases.

- The use of telephone-based facilitation as an alternative to face-to-face mediation has been welcomed by users and by the end of the pilot period the majority of cases were being dealt with by this method. However, the telephone-based process is currently not well defined or publicised as distinct from face-to-face mediation.

- Parties who had contact with the service, whether or not they proceeded to mediation, expressed overall satisfaction with the service in terms of information received and ease of getting in touch.

- Parties who used mediation or telephone-based facilitation expressed high levels of satisfaction with the service and the mediation officer.

- Among those parties who settled using mediation or telephone-based facilitation, most expressed satisfaction with the outcome – although this appeared to be related more to the fact of having settled and avoided a court hearing than to the actual terms of the settlement. Several claimants expressed disappointment at what they perceived of as low settlements; similarly, several defendants expressed disappointment at having agreed to pay what they perceived of as too much.

- Although several parties mentioned that they felt under pressure to settle during the mediation, the source of this pressure varied: for some it related to their own circumstances, for others it was the behaviour of the other party, and others felt under pressure from the mediator. Pressure was not always seen in a negative light.

- Settlements in both mediation and telephone facilitation were primarily financial. Only twelve percent of settlements included an outcome that could not have been ordered by the court – e.g. a future-business discount or a donation to charity. Some parties felt that the process focused on compromise and bartering.

- Unlike enforcement of court judgments, enforcement of mediated/facilitated settlements was not a problem. All settlements achieved through mediation or telephone-based facilitation during the evaluation period were complied with. In addition, 75 percent of

financial settlements included terms stipulating that payment would be made within one month.

- Although it was not possible to identify actual cost savings to the court, on a broad-brush analysis of estimated hearing time in cases that settled, the mediation service saved a total of 172 hours of judicial time during the twelve-month pilot.

- For most of the judges and court staff, ‘success’ was identified as the opportunity to offer court users a different service, and one that achieved high satisfaction levels.

The evaluation identified areas where the service could be improved, arising from the views of court users, judges, and court staff, including the mediation officer, and of analysis of case outcomes and court files. A number of recommendations are outlined in Chapter Five of this report, relating to service delivery and mediation practice and procedure.

Acknowledgements

The author would like to thank all those who contributed to this research, especially James Rustidge, mediation officer at Manchester County Court, for his openness and cooperation in the face of every-changing demands. Thanks are also due to all the claimants and defendants who agreed to participate and give their time to completing questionnaires and interviews; to staff and district judges at Manchester County Court and Manchester Advice who agreed to be interviewed; and to the Better Dispute Resolution Team at the Department for Constitutional Affairs for coordination and support. Thanks also to the colleagues and consultants who contributed particular expertise to researching, analysing, and producing this report, including Mark Sefton for his help with the analysis of interview data, Helen Arthur for her persistence with the charts and figures and Oliver Marshall for careful and repeated editing The author holds responsibility for the views expressed and any errors that might appear.

Author profile

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Among the author's publications are: *Advising on ADR: The essential guide to appropriate dispute resolution* (Advice Services Alliance, 2000) – now a website: www.adrnow.org.uk; 'Seeking Resolution: The availability and usage of consumer-to-business alternative dispute resolution in the United Kingdom', lead researcher, National Consumer Council, January 2004; and an evaluation of the Mediation Advice Service pilot at Manchester County Court, DCA, January 2005.

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Chapter One: An Introduction to the Research

Aims and objectives of the research

In April 2005 the Department of Constitutional Affairs (DCA) established a pilot scheme at Manchester County Court offering free, in-court mediation in small claims cases issued at the court. In June 2005 the DCA commissioned an independent evaluation of the pilot scheme. The overall purposes of this evaluation were to assess the effectiveness of the 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 Public Service Agreement (PSA), to reduce the number of cases that are resolved through the courts.

The pilot scheme in Manchester County Court (MCC) has been run alongside two other pilot schemes for small claims: the Small Claims Mediation Service at Exeter County Court and the Small Claims Support Service at Reading County Court. These have been evaluated by other researchers at the same time as this evaluation, with some collaboration taking place in terms of research design.

The DCA identified the following objectives for evaluation of the three small claims dispute resolution pilots:

a) *How effective are the pilot schemes in providing an effective dispute resolution service for customers with small claims?*
b) *What elements of the service do users like/dislike?*
c) *Are there ways in which the service can be improved?*
d) *Views of the mediators involved in the schemes.*
e) *Case and value types using the service.*
f) *The mix of parties, are they legally represented/litigants in person?*
g) *Did the service meet the customer's expectations?*
h) *For successfully mediated cases, would the case have gone to trial, and if so what would have been the estimated length and cost of the hearing?*

Some of the key indicators for the pilots were:

- *the number of mediation appointments made*
- *the success rates of the mediations*
- *user satisfaction levels*

Specific outcomes sought in the evaluation were:

- to establish satisfaction levels of users and other stakeholders
- to identify ways that mediation provision in small claims can be improved
- to identify barriers to mediation perceived by stakeholders
- to contribute to the establishment of best-practice principles in setting up and administering a small claims mediation scheme

Several potential problems were identified at the start, including:

- Given the timescales for the pilots, it was not possible to establish control groups of respondents. The implications of this are that it was not possible to compare the experiences of parties who were offered mediation with those who were not.
- Given that this was a new service being offered, it was difficult to estimate beforehand the number of enquiries and mediations that would be dealt with. In the event the numbers were lower than anticipated. The implications of this are that it is difficult to draw general conclusions about the effectiveness of the small claims mediation pilot service.

Methods and research samples

The research included both quantitative and qualitative elements. Quantitative data was collected on all referrals in the period June 2005–January 2006 by the mediation officer at MCC, including:

- number of enquiries and number of mediations
- case types
- case values
- number of parties involved
- whether parties are represented
- name of court if appropriate
- date of mediation if appropriate

- outcome of case – i.e. withdrawn, settled by negotiation, court order, mediated. If mediated, whether settled or not at mediation
- key dates
- costs where available

The mediation officer maintained an Excel spreadsheet with the above data on each of the cases referred to him. Note, however, that because of a communication error, those cases that did not go to mediation were not recorded on the spreadsheet until September 2005. Therefore it appears that all referrals handled in May, June, July and August were mediated, when in fact only an unknown proportion of all cases referred in that period were mediated.

It was acknowledged at the start of the research that a cost-benefit analysis could at best be a broad-brush one. The DCA proposed an approach involving an assumption that all small claims would go to hearing unless they were resolved at mediation, so cost savings would be determined by multiplying the estimated judicial times for a small claims hearing in all of the cases that settled through mediation. This assumption is problematic in that some of those cases would have been withdrawn and others would have settled pre-judgment, so it is not possible to determine with accuracy how many would have gone to a hearing and thus how much judicial time was saved. It is also possible that cases that went mediation and did not settle, and then went on to a hearing, might have required less time at the hearing because of the preparatory work done with the mediation service. Nevertheless, this calculation provides a rough estimate of judicial time savings.

In addition, both quantitative and qualitative data were collected by the researcher, through questionnaires and interviews, including:

- the views of users who received information and/or advice from the service
- why users declined to use mediation
- the views of users who took up the offer of a mediation
- what previous experience of mediation users had
- what users liked and disliked about the service
- whether the service met users' expectations
- whether users would consider using mediation in future disputes
- the views of legal representatives where they were involved
- the views of the mediation officer

- the views of judges and other court staff at MCC about the impact on their work

Questionnaires

Postal questionnaires were sent to all claimants and defendants who had contact with the MCC Small Claims Mediation Service from June 2005 until end of January 2006. The questionnaires were sent out by the mediation officer but they were not identified as from him or from the court; instead they were accompanied by a cover letter from the researcher, with the researcher's contact details, and posted in a pre-stamped envelope without court franking or other identification. Parties were sent a paid reply envelope. A four-week deadline was given and the researcher sent reminder letters after two weeks to those who had not responded.

As it was important to allow for a range of experiences, questionnaires were sent to those court users who were referred to the service but did not use mediation, as well as those who made use of the full mediation service on offer. Experience in other mediation provisions (e.g. Manchester Mediation Advice Service, National Mediation Helpline, community mediation services) shows that a large percentage of contacts involve those who do not proceed to mediation. In assessing the value of a scheme it is important therefore to consider the reasons why people do not proceed with mediation as well as their views of the service they received. Therefore, two questionnaires were devised: a 'no mediation' one, for those who did not mediate, and a 'mediation' one for those who did. Both questionnaires appear in Appendix 1 of this report. Because of the communication error referred to above, however, only from September were questionnaires sent to parties who did not use mediation; before that time, no records were kept of contacts or approaches the mediation officer made to parties in cases that did not use mediation. As a result, the figures are somewhat problematic because cases that did not go to mediation were not fully recorded on the spreadsheet for the period to which this evaluation relates.

Parties receiving a questionnaire were asked to indicate in their response if they were willing to participate in an interview with the researcher to discuss their experiences with the scheme more fully. They were assured of the confidentiality of this interview and told it would be by telephone and would take no longer than twenty minutes.

The questionnaire was designed in conjunction with the researchers of the Exeter County Court and Reading County Court pilot schemes in order to the maximise the opportunities for comparison across evaluations.

One difficulty with the questionnaire arose in relation to changes made in how the service was delivered. As explained in more detail later in this report, from October 2005 the mediation officer began to achieve settlements through telephone-based facilitations. The use of this new service increased over subsequent months and overtook the use of face-to-face mediations, but it did not fit into the category of 'mediation' as originally envisioned but was instead a kind of brokering service facilitating settlement. Neither the 'mediation' questionnaire nor the 'no mediation' questionnaire fit the experience of users of this 'telephone-based facilitation'. It was decided that 'mediation' questionnaires would be more appropriate, but in the responses received it was clear that many respondents who had participated in a telephone-based facilitation did not see themselves as having gone through a mediation process, and were unable to answer some of the questions. It is possible that this had an effect on the response rate as some individuals may have perceived that the questionnaire was not relevant to their experience and would have declined to return it.

TABLE 1.1: Questionnaire response rates

Questionnaires to those who used mediation	
Number of questionnaires sent	110
Number of completed questionnaire responses received	47
Response rate	43%
Questionnaires to those who did not use mediation	
Number of questionnaires sent	109
Number of completed questionnaire responses received	19
Response rate	17%

The response rate to the questionnaires was not as high as had been anticipated, although it was expected that there would be fewer responses from individuals whose cases had not gone to mediation than from those whose cases did go to mediation. The response rates are shown in Table 1.1.

Observations

The researcher observed only one mediation, which was observed with the consent of the parties. Although several visits to the small claims pilot were made by the researcher, on only one occasion was it possible to arrange for a mediation to take place. Also, the increasing use of "telephone-based facilitations" meant that fewer face-to-face mediations were available for observation.

Interviews

The researcher conducted interviews, by telephone and face-to-face as appropriate and feasible, in order to gain more in-depth information about the views of users, referrers and other stakeholders (e.g. judges and court staff, legal representatives, advisers, mediators). The interviews were semi-structured to allow for comments and views from the respondents to be explored. The interview schedule for party interviews appears in Appendix 2.

Interviews were held with:

- court users who responded to the questionnaires and indicated that they were willing to be interviewed
- the in-court mediation officer
- district judges and the designated civil judge
- other stakeholders including the court manager, the listing division manager and a consumer adviser who refers cases to the pilot scheme

The complete list is shown in Table 1.2.

TABLE 1.2: Interview respondents

Interview category	No. of interviews
Claimants who used mediation or telephone facilitation	9
Defendants who used mediation or telephone facilitation	8
Claimants who did not mediate/facilitate	2
Defendants who did not mediate/facilitate	3
Representatives of court users	0
District judges	5
Designated civil judge	1
Mediation officer	1
Other court staff	2
Other: Consumer adviser	1

TOTAL	**32**

Court users

Court user interviewees were self-selected through their responses to the questionnaires, which asked respondents to indicate if they were willing to be interviewed and to provide a contact number and best time to contact them. This self-selection process has implications for the research in that parties who volunteer to be interviewed may do so for particular reasons, such as having had a notably good or bad experience with the service.

Out of 66 respondents, including both those who mediated and those who did not, 36 agreed to be interviewed, representing 55 percent of respondents. Eight of these respondents agreed to be interviewed but their responses were received too late to be included in the research. All 28 parties who agreed to be interviewed before the 31 January deadline were contacted. Of these, 22 proceeded to interview; in the other cases, parties did not respond to messages left or did not have the time to be interviewed or, in one case, had not yet made the decision whether to mediate.

Interviewing took place between November 2005 and January 2006. All were conducted by telephone, and most lasted around twenty minutes. All but six were tape recorded, with the party's permission, and transcribed by a professional transcriber. Of the six that were not recorded, four were pilots to assess the interview schedule and timings, after which the interview schedule was amended. In one case the recorder malfunctioned and the subsequent analysis was based on the interviewer's notes. In one case the respondent declined to give permission for the interview to be recorded.

Judges

All district judges at MCC were asked by the researcher, via email, if they were willing to participate in an interview. Because of scheduling difficulties it was not possible to interview all who responded, but in December 2005 and January 2006 the researcher interviewed five district judges and the designated civil judge in Manchester. All these interviews were conducted in person in the judge's chambers and were tape recorded with the judge's permission. The interviews took from fifteen to thirty minutes. Two of the district judges had been sitting at the court for only two to three months before being interviewed; the other three had been sitting at the court for eleven to thirteen years.

Other interviewees

In addition the researcher interviewed the mediation officer, the court manager and the listing division manager, all at MCC, and a consumer adviser at Manchester Advice, the council-run advice centre. Manchester Advice was selected because the consumer adviser had referred several cases to the service and had had contact with the mediation officer. These interviews ranged from twenty minutes to one and a half hours.

More details of all interviewees are given later in this report, in Chapter Four: The Views of Court Users, Judges and Other Stakeholders.

Structure of the report

The Executive Summary at the start of this report briefly highlights the main findings of the evaluation. This introductory chapter has set out the purposes of the evaluation and the research methods. Chapter Two describes the origin and development of the Small Claims Mediation Service pilot scheme. These two chapters together set the scene for the following chapters. Chapter Three describes the quantitative findings from the casework during the evaluation period of June 2005–January 2006 and presents an overall picture of the casework during the entire twelve-month pilot, based on data collected by the mediation officer up to June 2006. Chapter Four describes the findings from questionnaire responses from litigants, and interviews with litigants and other stakeholders, undertaken during the evaluation period. Chapter Five sets out recommendations for the future for this and other court-based mediation services.

Documents used in the evaluation, such as questionnaires and interview schedules, appear in the appendices. Collated questionnaire responses are included in the questionnaire appendices. The letter sent to court users from the mediation service is reprinted in Appendix 3.

Chapter Two: The Origin and Development of the Small Claims Mediation Pilot Scheme

Introduction

In 2005 the Department for Constitutional Affairs (DCA) established a pilot mediation scheme for small claims at Manchester County Court (MCC), to be run from April 2005 to May 2006. The Small Claims Mediation Service pilot scheme follows on from a previous pilot scheme offering information and advice on mediation, and referrals to mediators, for cases in the fast-track and multi-track at the court (i.e. generally cases above £5,000). That mediation advice pilot was evaluated in a separate study in 2004-05.[2] It has continued beyond its pilot stage and is delivered by the scheme's mediation officer, who also delivers the mediation provision for small claims cases.

The purpose of the current pilot has been to establish the effectiveness of using mediation in small claims cases. Three pilots for small claims have been running concurrently, each with different procedures: in Exeter County Court, mediation is offered on the day of hearing; in Reading County Court, information and advice on settling claims is made available; and in Manchester County Court, mediation is available by appointment. The pilots are among several that are being carried out to help identify the most effective way that the courts can promote mediation amongst users. These include: the circulation of information leaflets about mediation at a range of courts; the Automatic Referral to Mediation scheme in operation at the Central London Civil Justice Centre; and National Mediation Helpline pilot scheme. The overall objective of the research programme is to test different models of interaction between mediation and the courts and identify which provide the best outcomes in which circumstances.

The small claims procedure – and in particular the rise in the small claims limit, from £75 when it was established in 1973 to £5,000 today – has been studied by Professor John Baldwin in 1997 and 2002.[3] Baldwin describes the small claims procedure as having "been designed specifically with litigants-in-person in mind, and is intended to be a cheap and simple mechanism by which

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[2] M. Doyle, "Mediation Advice Service Pilot at Manchester County Court: Evaluation Report", January 2005, DCA.
[3] J. Baldwin, "Monitoring the Rise of the Small Claims Limit: Litigants' Experiences of Different Forms of Adjudication", DCA Research Series No. 1/97, December 1997; and J. Baldwin, "Lay and Judicial Perspectives on the Expansion of the Small Claims Regime", DCA Research Series No.8/02, September 2002.

people unfamiliar with legal procedures can bring straightforward civil actions to the courts, whether they are legally represented or not."[4]

Although the use of mediation in court to resolve small claims cases is relatively new, a scheme has been operating in Exeter County Court since June 2002 and was the subject of research in 2003-04, by Dr Sue Prince at Exeter University, and in 2004–05, by the DCA itself.[5] In larger-value cases, in the fast-track and multi-track, court-based mediation services have been operating at the Court of Appeal since 1996, the Commercial Court since 1993 and Central London County Court since 1996. These have been the subject of extensive research by Professor Hazel Genn.[6] Other fast-track and multi-track mediation schemes have been established at Birmingham, Exeter, Guildford, Cardiff and Swansea county courts.

The Small Claims Mediation Service at Manchester County Court

At MCC, the in-court mediation officer, a full-time employee of the DCA, has been available to give advice on the use of mediation, make referrals to external mediation providers, and provide free, on-site mediation for small claims. The small claims mediation is available only in claims issued at MCC and, since November 2005, claims issued at Oldham County Court, where one or both parties have indicated that they are willing to try mediation or where a judge makes an order in a small claims case directing the parties to consider mediation and referring them to the service. The advice on mediation is available in fast-track and multi-track cases (i.e., generally those with claim values over £5,000).

Mediation for small claims is free to the court users, and the choice of whether to use it is a voluntary one. All defended claims have been allocated to the small claims track and have had a hearing date set before they are referred to the mediation service. The case is not adjourned or stayed for the parties to consider or use mediation.

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[4] Ibid, p.4.
[5] See S. Prince, "Court-based Mediation: A Preliminary Analysis of the Small Claims Mediation Scheme at Exeter County Court", A report prepared for the Civil Justice Council, March 2004; and report by DCA Research Unit on small claims mediation at Exeter, forthcoming.
[6] H. Genn, "The Central London County Court – Pilot Mediation Scheme Evaluation Report", Lord Chancellor's Department Research Series No. 5/98, July 1998; and H. Genn, "Court-based ADR Initiatives for Non-Family Civil Disputes: the Commercial Court and the Court of Appeal", Lord Chancellor's Department Research Series No. 1/02, March 2002.

The mediation officer also provides signposting to mediation providers and sources of advice when he receives queries about using mediation in cases that have not been issued at either court. He has built up a network of other providers – such as community mediation services, advice agencies and other sources of free or low-cost help – to which he can signpost and refer.

The referral process

There are several routes for court users to gain access to the small claims mediation service: self-referral, i.e. via a leaflet distributed by the court, or judicial referral, i.e. via judicial directions on allocation. Cases are also referred by external agencies such as Manchester Advice and citizens advice bureaux.

A leaflet explaining the small claims mediation procedure is sent or given to all claimants issuing claims at the court. It contains a tear-off reply slip allowing a court user to state whether they are interested in using the small claims mediation. The same leaflet is also sent to both parties at the time they are sent an allocation questionnaire. If one or both parties complete the slip, the slip is attached to the issue documents and is seen by the judge, and after allocation to the small claims track the case is referred to the mediation officer. In such cases the judge issues one of the following judicial directions:

> *SC7 – "Upon all the parties having indicated they wish to engage in mediation, it is directed that the case be referred to the Court Mediator for the mediation to be arranged.";*
> or
> *SC8 – "Note for Court Staff. Some but not all parties have indicated they wish to engage in mediation. Please notify the Court Mediator of the case."*

If neither party completes the slip, the judge can refer the case to mediation at the allocation stage by issuing the following judicial direction:

> *SC9 – "The judge has considered your case is suitable for mediation and you are therefore invited to use the free Small Claims Mediation Service. The Court Mediator will be notified of your case. If you do not wish to use this service, please contact the Court Mediator on 0161 954 8991."*

The mediation officer attempts to contact all parties in cases referred to mediation.[7] If a case is referred to mediation and one or both parties declines, the mediation officer places a note on the court file to the judge stating that mediation has been offered but has not taken place. He does not identify which party declined mediation or what reasons were given for the decline. He does record this on the spreadsheet on which he collects data for the purposes of the pilot evaluation.

Developments in the referral process

From November 2005 the mediation officer, with the help of court staff, reviewed every case that had been allocated to the small claims track before a judge had issued directions. This 'proactive' approach was an attempt to draw more court users into the scheme, and from the numbers of positive responses he received the mediation officer felt this had been successful. This was also an attempt to keep accurate statistics on the number of cases referred by the district judges, the need for which arose as a result of some judges believing that accurate records had not been kept of the number of cases they had referred to the mediation scheme.

This proactive approach continued for one month as a trial, and the mediation officer settled three cases that had not been referred to the mediation service. But a concern was expressed by at least one district judge that this procedure potentially undermined the role of judges. Since December 2005 this procedure has been modified so that the mediation officer has been sent all cases once they have been allocated to small claims and identifies those that have been referred by a judge to the mediation service. He then returns all other allocated cases, where there is no judicial referral and no evidence of a party's request for mediation, to the filing system. This way he has ensured that he has seen all cases that have been referred to mediation.

According to the mediation officer, there have been a few instances when district judges have issued a stay for mediation and not fixed a trial date; this is not the established procedure, as all cases should have a fixed trial date before being referred to the mediation service. In the few cases where no trial date has been fixed and the case has been stayed, these have then not been sent to the mediation officer by oversight of court staff, and have been in limbo for several months. In general, however, the procedure appears to have worked as it was intended.

Another development in the referral process was the decision to extend the mediation service to Oldham County Court. The mediation officer met with court staff and judges at Oldham County Court in November 2005, and the extended scheme was launched later that month. Cases allocated to the small claims track at Oldham are assessed by the district judges there and referred to the mediation officer, who contacts the parties in the same way as he does parties at MCC. The mediation leaflet was adapted for the expanded service and is now used in Oldham as well as Manchester.

As of end of January 2006, 23 cases had been referred to the mediation service from Oldham County Court. Of these, nine were mediated or facilitated. Of these nine, five were by telephone-based facilitation, all of which settled; and four were by face-to-face mediation, of which one did not settle. The nine mediated/facilitated cases are equivalent to twelve percent of all the cases mediated or 'telephone-facilitated' by the mediation officer (eleven out of 78 cases mediated or 'telephone-facilitated'). The percentage of Oldham-referred cases that go on to mediation/facilitation is 39 percent (nine out of 23 referrals), about the same as the Manchester cases, at 40 percent (67 out of 166 referrals). Another two cases were settled by phone facilitation out of six Oldham referrals in February 2006. Although referral figures were not kept for the period March–May 2006, a further eight cases from Oldham were handled in that period: five by phone facilitation and three by face-to-face mediation. In total 19 Oldham cases were mediated/facilitated. All face-to-face mediations were held at Manchester County Court, even when referred from Oldham County Court.

In December 2005 a new allocation questionnaire was put into operation, specifically for small claims. This meant that litigants in small claims cases would get information that was more relevant to their small claim, and the mediation service leaflet would possibly stand out more. Cases that were allocated to small claims in December and referred to the mediation service showed a slight increase in parties requesting a stay for ADR, but this was reversed in January when no parties in referred cases requested a stay at allocation.

[7] Note that from March 2006 the referral process was modified to allow for an anticipated increase in casework. From this date the mediation officer ceased contacting parties in all referred cases and instead contact must now be initiated by the parties.

Criteria for referral

The only criterion for referral is that the case must be allocated to the small claims track. At allocation stage, judges examine the case and consider whether it would benefit from mediation. In general, the district judges say that the only cases they are unlikely to rule out are all road-traffic accidents (RTAs), with or without a personal injury claim; debt and consumer cases were identified as particularly suitable for mediation. During the course of the pilot at least one RTA was referred to the service and, unsurprisingly, did not proceed to mediation.

More detail of judges' views of the suitability of mediation in small claims in given later in this report in Chapter Four: The Views of Court Users, Judges and Other Stakeholders.

The mediation appointment

When the mediation officer receives a case after allocation and referral, he reviews it and takes brief notes about the claim, the defence, and the amount claimed. He then contacts the parties, usually by phone if the telephone numbers are available in the court file or on Caseman (the court's database), to explain mediation and invite them to use the mediation service. If he is unable to contact the parties by telephone he will write a letter that states that in accordance with the judicial order he is inviting them to consider using mediation to resolve their case.

By the time they are contacted, by phone or letter, by the mediation officer, both parties will have received the typed order, which contains the judge's direction referring the case to mediation; hence the invitation from the mediation officer should not come as a surprise. The order also contains their trial date and information on when they must exchange evidence.

The mediation officer carries out his own assessment of whether mediation is suitable, based on the facts in the file and also the discussion he has with parties on the telephone. Where he assesses – from preliminary discussions with the parties – that there is a threat of violence or verbal abuse, he decides that neither mediation nor telephone facilitation is appropriate and does not offer them to the parties.

Where parties are reluctant themselves to try mediation, the mediation officer has found that a main reason is concern about travelling to the court when one or both parties are based some distance away, with the possibility that they may have to attend court again if the mediation is unsuccessful. Another reason for parties' reluctance is where a party has deep-held principles and states that they want their day in court.

The mediation officer does not give the parties legal advice on the strengths or weaknesses of their claim or defence, but he does describe what he considers to be the advantages of mediation over a court hearing and judgement. There is sometimes a difficult balance to be struck in his role, and he explains that "there is a fine line between putting pressure on people but also giving them enough information to make an informed choice".[8] Where parties both agree to use mediation, the mediation officer sends a three-page letter explaining what will happen at mediation and how to prepare for it. This letter appears in Appendix 3 of this report.

The Court Service target for disposing of small claims is fifteen weeks, but small claims at Manchester are expected to be disposed of within twelve weeks of issue, and meeting this target was one concern expressed by the court manager at the start of the pilot. Although the date of allocation and the date of referral to the mediation service are recorded as identical, in reality case files make their way to the mediation officer approximately two weeks after they have been allocated. The time from issue to allocation varies and can be as little as four weeks and as much as twelve weeks. Therefore in some cases the mediation, if one is to be held, must be arranged very quickly after the case has been received by the mediation officer. Much depends on the availability of the parties; to expedite matters, the mediation officer tends initially to contact the parties by telephone rather than letter. Generally the mediations are scheduled from one to six weeks after having been received and are arranged at times and dates to suit the parties. More detail on the timings of referrals is given later in this report in Chapter Three: Findings from the Casework.

The mediation process

[8] This and further direct quotations from the mediation officer are from the researcher's interview with the mediation officer, 31 January 2006.

When the parties arrive for their mediation, the mediation officer greets them and spends some time speaking privately with each side before bringing the parties together in his office, around a table. He states the ground rules – which include listening to each party and not interrupting each other – and emphasises that the mediation is voluntary and without prejudice, that it is intended to be less stressful than a court hearing, that it is "semi-official" up to the point of agreement, and that if they reach a settlement this will be binding on both parties.

Each side is given a few minutes to state their case, starting with the claimant, and then the mediation officer makes a judgement about whether to keep the parties in the same room to negotiate together, or to separate them and shuttle between them. In both cases the parties are encouraged to think about what the other party is saying and consider how it might impact on their case. If the parties are in separate rooms, the mediation officer will spend time with each exploring what movement there is on their positions. When working with parties separately, he sees his role as that of 'reality checker': challenging what are sometimes unrealistic expectations or assumptions, exploring how committed each party is to a particular outcome, trying to "open up doors towards a settlement" and sometimes "suggesting something that might work". He explains,

> *"Although we're not actually talking directly about the evidence within the case, it's important for parties to realise that because they ask for something it doesn't necessarily 1) mean they're going to win [at court] and 2) if they do win that they might not get everything that they're asking for."*

He goes on to describe, as an example, a claimant who added £10 per day interest to her claim of £290, and the claim had "spiralled up to over £3,500" – when in reality the claim with interest would have been in the region of £324. "Whereas it's not for me to say what she can claim, obviously I had to check her aspirations as to what a judge might think of her putting in a claim for over £3,000."

In some cases during these confidential private meetings, a party will suggest a way forward, "and we'll discuss that as to how we might proceed to putting that to the other party." There might be several separate meetings during the course of the mediation, or only one separate meeting with each before a way forward is agreed.

If there appear to be no avenues for negotiation, the mediation officer can stop the session, and has done so.

Mediation sessions are intended to be time limited, with a maximum of one hour. In practice, face-to-face mediations lasted on average 57 minutes, and phone facilitations lasted on average 46 minutes, usually spread out over several phone calls and over weeks or months. The range was from fifteen minutes to two hours.

If a settlement is achieved, the mediation officer will bring the parties back together to finalise the terms of the settlement, which is then written and signed. The mediation officer will then get a consent order from a district judge – while the parties are still there, if possible, and give them a copy; or later if it is not possible to get one at the time of the mediation. The mediation officer then updates the case information on Caseman and arranges for the listing officer to de-list the case. The consent order does not usually specify the terms of the settlement but merely confirms that a settlement has been achieved. A copy of the settlement agreement is then placed in a sealed envelope and placed on the court file.

The process is somewhat flexible in that if agreement is reached at the mediation but it cannot be finally settled without referring to someone outside the mediation – e.g. a solicitor – then the parties have the option to finalise the settlement agreement at a later date. This is generally not recorded as a settled mediation, although it was in one case in which the parties reached a mediated settlement on the day but required a solicitor's involvement in order to finalise one aspect of it. The consent order in this case was finalised some time after the actual mediation.

Where the parties have not reached a settlement, they either come back together in the office to close the mediation or they leave the mediation from their separate rooms. Again, this is a judgement call on the part of the mediation officer, and he explains that he usually leaves it up to the parties to decide whether they want to come back together for five minutes. When a case is not settled as mediation, the mediation officer writes a note to the judge stating that "the case was not settled at mediation" and updates the case information on Caseman with a code that indicates "not settled at mediation". Details of who attended and the time spent in mediation are recorded on the mediation officer's Excel spreadsheet. No further details about the mediation or any offers made during the course of mediation are recorded.

The mediation officer does not conduct any follow up of mediated agreements. In three cases he has been contacted by parties about a perceived breach of the agreement, but the problem was not an actual breach but either a difficulty in the terms being met or a confusion about what "payment" meant – e.g., where parties were relying on a cheque to be received by a certain date and it turned up the following day, or where one party interpreted "payment" to mean a cheque had

been sent, but the other expected it to mean “cleared funds” (the mediation officer explains that “payment” should be interpreted as “cleared funds” but this is not always spelled out in the settlement agreements).

If there were an actual breach of the mediated agreement, the mediation officer would first contact the other part to determine the reason for the breach. If necessary (e.g. if the other party appears to have intentionally breached or reneged on the agreement), the mediation officer will advise the party alleging the breach to seek enforcement action.

Developments in the mediation process

From October 2005, the mediation officer began to offer telephone settlement discussions as an alternative to face-to-face mediation meetings at the court. This was an attempt to meet the needs of those court users who were not based in Manchester or who otherwise wished to avoid travelling to the court for a meeting or hearing. The process involves the mediation officer acting as a broker, speaking with parties separately on the telephone and attempting to facilitate a settlement. It is not always evident at what point the process begins, as telephone discussions are a part of the mediation officer’s contact with parties in most cases. Generally the parties have not signed an agreement to mediate, as they do before a face-to-face mediation takes place. A crucial difference between this process and the mediation process used by the service is that at no point do the parties speak with each other, nor does the mediation officer speak with them jointly. Even where a settlement is achieved, it has not always been formalised, as explained below.

In order to distinguish these interventions from the face-to-face mediation sessions, this process is referred to in this report as ‘telephone-based facilitation’. As the mediation officer explains:

> *“I use some of the same techniques that you would expect in a mediation, although it can never be exactly…the same as having two parties together because I feel you get quite a lot out of being able to sit across the table from the other party and being able to put your position to them face to face. Having said that, it still seems to work and it still seems to be something that people want to do, especially companies who don’t want to travel to Manchester.”*

These telephone facilitations were not classified as mediations until late in the year, in December, when the mediation officer began to formalise the settlement agreement arrangements to more closely mirror those that take place in mediation. For example, in cases where the parties have reached a settlement agreement and want this recorded and finalised, the mediation officer writes this up, faxes it to both parties one after the other for signature, then takes the signed fax to a district judge to obtain a consent order. In this way parties involved in a settlement by telephone have the advantage of achieving legally binding agreements. Sometimes these telephone-based facilitations result in a written agreement and consent order; sometimes not. The decision about having a written agreement depends on what the parties want and how close their hearing date is. For example, in one case the telephone-based facilitation took place one day before a three-hour trial was scheduled. It led to a consent order being obtained on the day and trial was de-listed. In this case, because of the length of the scheduled trial, a deputy district judge was not needed, so saving court resources. If the terms of the settlement – including any financial payment – can be met well before the date of the hearing, the mediation officer does not formalise the settlement in a written agreement.

The facilitation can take place over the course of a few days to a few weeks, depending on the parties' availability. The mediation officer explains that in the future, he would like to be able to offer distance mediation via conference call or videoconference, so that the parties are speaking with one another. Until then, the process used departs considerably from the face-to-face mediation session that was originally envisioned. It has been a popular option, however, and has been taken up in increasing numbers as the pilot has progressed.

Origins of the scheme

The Small Claims Mediation Service at Manchester County Court arose as an extension of the mediation advice service pilot for fast-track and multi-track cases that had been in operation at the court from April 2004. Part of the DCA's Public Service Agreement (PSA3) – which focuses on the need to reduce the number of cases resolved only by resort to the courts – is to establish successful models of mediation and other alternative dispute resolution (ADR) provision by the courts themselves. Low-value claims were identified as a specific target for ADR because they account for seventy percent of hearings in civil courts but have a much lower pre-hearing settlement rate than higher-value claims, with about 68 percent of small claims being listed for a

hearing, as opposed to fifteen percent of non-small claims.[9] (The average for Manchester County Court during the evaluation period was 56 percent of small claims that were allocated proceeded to a hearing.) The DCA was interested in the fact that court fees for small claims do not reflect the true cost of proceedings.

The Small Claims Mediation Service was designed as a free, time-limited, voluntary mediation available in the court to litigants whose cases had been allocated to the small claims track. Thus litigants will already have paid their issue fee and, where appropriate, their allocation fee before having the option of using the free mediation.

A proposal was put to the district judges at Manchester County Court and discussed with them at a meeting in December 2004. At that meeting, the district judges raised a number of concerns, specifically:

1) that offering mediation after proceedings had been issued would risk the expeditious disposal of those claims;
2) that the small claims procedure works well and has a target time at Manchester of twelve weeks, and introducing delay and/or complication into what is already a simple and speedy process would be counter-productive. Furthermore, the judges were concerned that litigants-in-person might be put to the time and expense of two attendances at court, and this might place undue pressure on parties to settle in order to avoid this; and
3) the profile of cases at Manchester reflects that small claims are a relatively small proportion of cases heard, unlike in other courts, making that court an inappropriate venue for the pilot.

Nevertheless, the judges expressed their willingness to support the operation of the pilot, with a clear view that the provision of mediation should be voluntary and that the scheme should be tested out first at Manchester County Court before being rolled out to other courts in the region.

A project board was established, including the designated civil judge, the court manager, the listing division manager and, eventually, the mediation officer, as well as representatives of the DCA's Better Dispute Resolution Team. For a transitional period, from January 2005 until the full-time mediation officer was appointed in May 2005, the listing division manager oversaw the scheme and helped establish referral procedures. After the mediation officer was appointed in May the listing division manager provided mentoring and training, and has continued to be a source of information

[9] Annex A of "Proposed Mediation Pilot for Small Claims at Manchester County Court", not dated, obtained by the researcher from the mediation officer.

for the mediation officer and a liaison between the mediation service and the court staff throughout the pilot.

The mediation officer, whose background is in policing and who was new to the courts and to mediation when he took on the role, received three days of tailored mediation training and also observed several mediation sessions at Birmingham County Court, where a scheme exits for fast and multi-track cases.

The service was launched in July 2005, at a launch event attended by court staff and judiciary.

Funding

The DCA paid the salary of the mediation officer for the one-year pilot period.

Administration of the Small Claims Mediation Service

The mediation provision is administered as described above under “The referral process”. The mediation officer is based within the court but is employed by and reports to the DCA. He attends regular meetings with the court manager and court staff, however, and day-to-day liaison is in effect with the court manager and listing manager. Supervision and support are divided between the DCA and the court manager.

The handling of complaints for the pilot scheme has been through the court, not the DCA. Only one formal written complaint has been received, and that was forwarded to the court manager for her reply. She explains that the complaint was not put through the normal channels of the court’s complaints procedure but was handled separately and kept on file separately.

The role of court staff

Court staff, in particular the court manager and listing manager, have been involved from the start of the pilot and attend the project board meetings. The listing division manager, in addition to being

a source of advice and information for the mediation officer as described above, has worked with him to establish and refine referral procedures as the pilot has progressed.

The mediation officer has the role of mediation adviser in fast-track and multi-track cases referred to his service, as well as the role of mediator in small claims cases. In fast-track and multi-track cases he advises on mediation and refers parties, when requested, to the mediation scheme operated by the Manchester Law Society. This scheme uses local, trained mediators registered with the Law Society; there is a fee, based on the claim value, for this mediation provision. He estimates that about five percent of his time is spent on mediation advice in these higher-value cases, but that the number of mediations conducted by the Manchester Law Society scheme has continued to grow: from April to September 2005, 24 mediations were held as part of the mediation referral pilot.

In addition to providing advice and mediation, the mediation officer considers his role to be that of a "mediation champion". During the DCA's mediation awareness week in October 2005, the mediation officer spent time promoting mediation in the area, arranging events at court and outside of court. As a result of that work, the mediation service was featured in a newspaper article in *The Observer* in October 2005. Although he can only take on cases that have been issued in Manchester or Oldham county courts, the mediation officer sees his role as advising on mediation in response to enquiries and signposting people to appropriate providers. In addition to directing fast and multi-track cases to the Manchester Law Society mediation scheme, he says,

> *"I also give advice just to solicitors who contact me ad hoc regarding different types of mediation. Mediation covers a vast spectrum, even down to agricultural mediation. … So whenever I get contacted by somebody who's got a problem on a farm, I've got somebody. I've got a body of people out there that I can connect them with. So it's just building up a wide range of knowledge of different providers."*

Although this "mediation champion" role means that he plays an active role in raising awareness of the scheme, it also presents a potential conflict. If parties perceive that his job is to obtain mediated settlements it might affect their perception of his impartiality – two interview respondents (one claimant and one defendant) described feeling under pressure from the mediation officer during the mediation: "The mediator actually wanted the issue settled there and then" [interview 20] and "his interest was to find a settlement" [interview 9]. This issue of pressure to settle is explored more later in this report, in Chapter Four: The Views of Court Users, Judges and other Stakeholders.

There is an international aspect to the mediation officer's awareness-raising role in that he has addressed court staff who have visited from other countries and are interested in the provision of mediation within the court. Among the groups he has addressed during the course of the pilot were court staff from Poland (May 2005), Belgium (June 2005), and China (February 2006).

Since April 2006 the mediation officer's post has been funded on a permanent basis by the court. In the future the mediation officer's role is to develop across courts in the regional area – to be an 'area resource'.

Chapter Three: Findings from the Casework

This chapter describes the findings that are based on the spreadsheet data collected by the mediation officer during the evaluation period from June 2005 to end of January 2006. It relates to all the cases that were referred to the Small Claims Mediation Service and all cases that were mediated/facilitated during this period. As well as describing the profiles of the cases and settlement rates and outcomes, this chapter describes the outcomes of those cases that did not mediate/facilitate or did not settle at mediation/facilitation. It also provides details of the time spent on mediations/facilitations and an estimate of the judicial time saved.

At the end of the chapter an update provides a brief overview of all cases mediated/facilitated during the entire twelve-month pilot, from June 2005 to end of May 2006.

Number of allocations

The number of small claims allocated at Manchester County Court during the evaluation period of June 2005 – January 2006 was 701. In the same period, 394 small claims cases went on to a hearing, as shown on Table 3.1. The number of hearings held in this period is 56% of the number of allocations, although the monthly figures for hearings do not relate to cases allocated in that month, as there is a time lag of several weeks or months between allocation and hearing.

TABLE 3.1 Small claims at Manchester County Court

Month	No. of cases allocated to small claims	No. of small claims hearings	No. and percentage of small claims allocations referred to mediation service
June	52	29	7 (13%)
July	99	43	3 (3%)
August	101	55	10 (10%)
September	114	46	30 (26%)
October	76	38	31 (41%)
November	90	69	30 (33%)
December	67	49	23 (34%)
January	102	65	32 (31%)
TOTAL	**701**	**394**	**166** (23.6%)

[Source: DCA and mediation officer's spreadsheet]

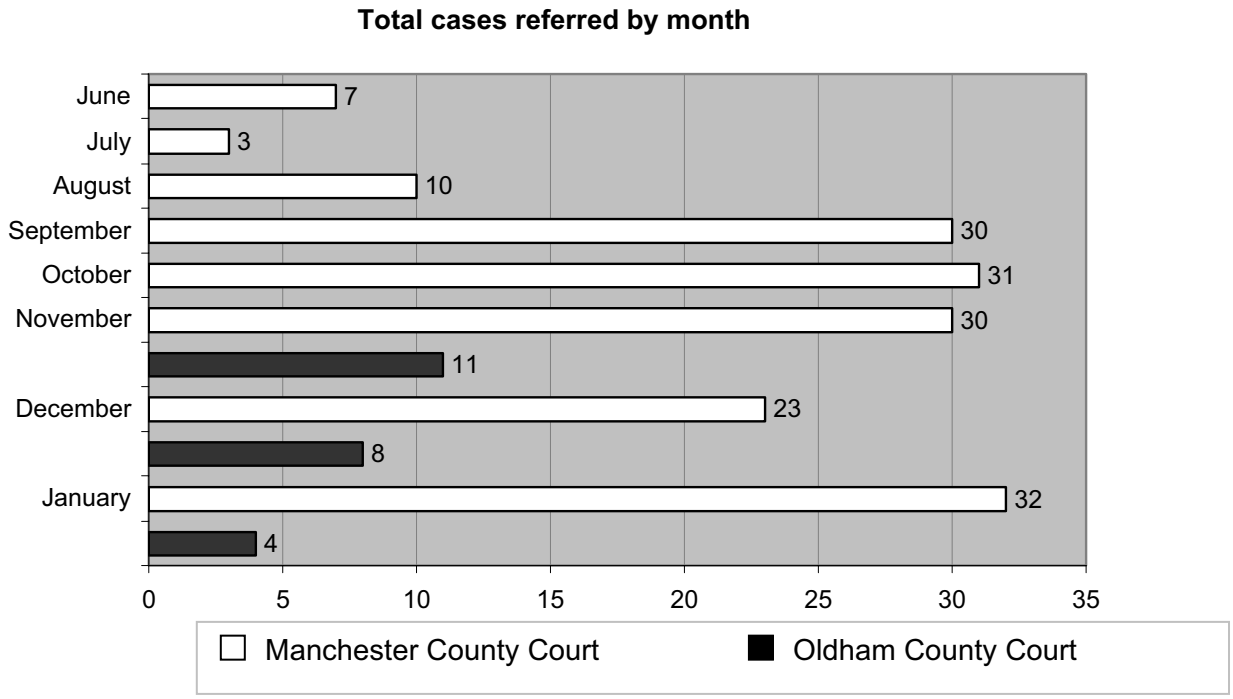
The percentage of allocated small claims that were referred to the Small Claims Mediation Service in this period started relatively small but gradually increased to about one-third, where it remained steady for the remainder of the evaluation period.

The profile of cases in the research

Number and source of referrals

During the evaluation period, 166 cases were referred to the Small Claims Mediation Service from Manchester County Court. As explained in Chapter Two, the service began to take referrals from Oldham County Court in November 2005. An additional 23 cases were referred from Oldham County Court, resulting in a total of 189 referrals. Overall, referrals increased significantly from September, as shown in Figure 3.1.

FIGURE 3.1



total=189 [Source: mediation officer's spreadsheet]

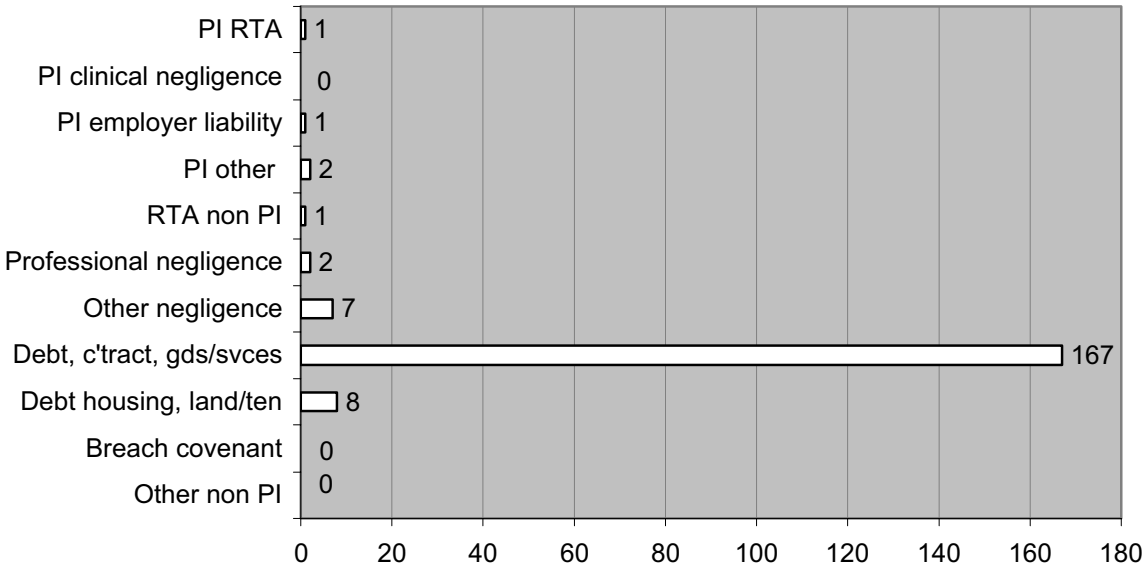
Case types and claim values

Of all referred cases, the vast majority (88 percent) were claims for debt/contract or goods and services, as shown in Figure 3.2. There were roughly equal numbers of claims related to housing debt and claims relating to other negligence, each making up only about four percent of the total.

Figure 3.3 shows that almost half the claims were for values of less than £1,000 and half over £1,000. Five referrals were claims of more than £5,000. The average value of all claims referred in this period was £1,307; the median value was £896.

FIGURE 3.2

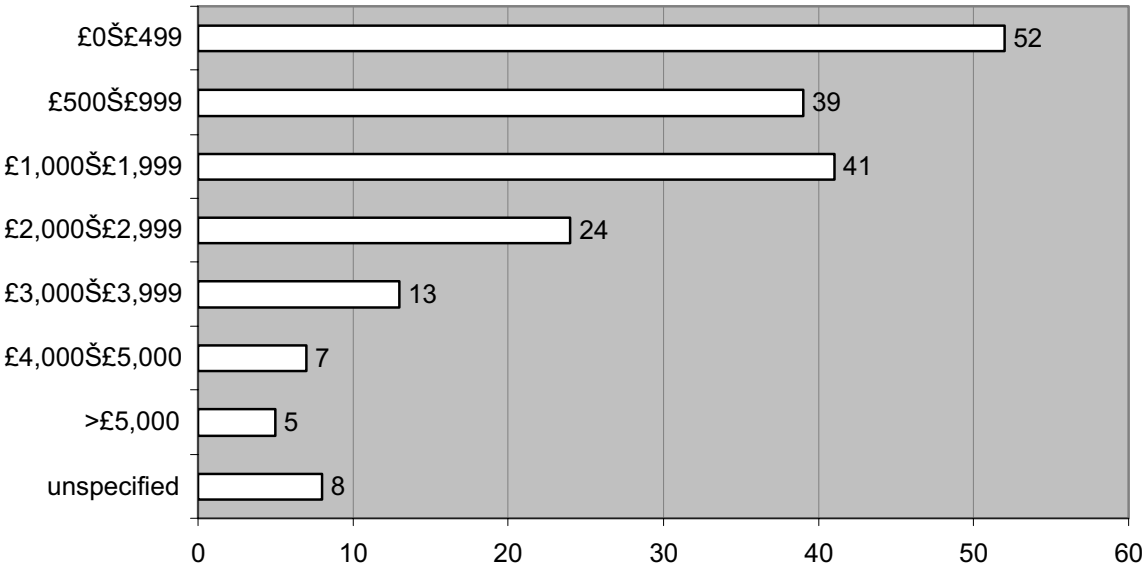
Case types, cases referred June 2005 - January 2006



Total=189 [Source: mediation officer's spreadsheet]

FIGURE 3.3

Claim values, cases referred June 2005 - January 2006



Total=189 [Source: mediation officer's spreadsheet]

The profile of parties in the research

The spreadsheet identifies each party as an individual in person or represented, company in person or represented, or local authority. No parties were identified as belonging to the other categories on the spreadsheet – e.g. hospital or health trust, insurance company, or sole trader. It is therefore difficult to determine if any of the parties identified as companies were in fact sole traders. One reason this is important is because of criticism that the small claims procedure has been 'taken over' by large companies to recover debt from individuals. This so-called 'hijack theory'[10] suggests that businesses dominate small claims procedures, which were designed to be a low-cost and accessible forum to which individual consumers can take their legal claims. A study conducted at York County Court in 2004, however, questioned this 'hijack theory' and revealed that most of the companies using the procedure were in fact small traders – effectively individuals attempting to recover unpaid invoices from customers.[11] From that evidence it could be concluded that the small claims procedure is being used primarily by individuals, as intended, although many of these individuals represent their own commercial business interests as sole or small traders.

The profile of all referrals shows that the majority of claimants were indeed companies, but so were the majority of defendants. The company-versus-company configuration was the largest category, at 38 percent. In all, 39 percent of referrals were actions initiated by individuals (14 percent against other individuals, and 25 percent against companies or local authorities), and 61 percent were actions initiated by companies (23 percent against individuals, and 38 percent against companies). The profiles of parties in referred cases and of those who participated in mediation or telephone-based facilitation, as shown later in this chapter, are nearly identical, as shown in Table 3.2.

Individuals were predominantly litigants-in-person. Only eight percent of individual claimants, and three percent of individual defendants, were legally represented.

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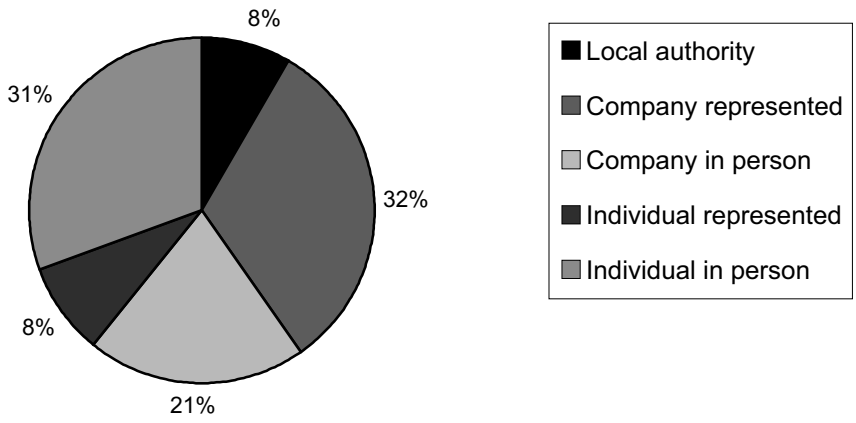
[10] Baldwin refers to the term 'colonisation' used in the American literature on small claims, rather than 'hijack'. He notes that the numbers of commercial organisations have increased in small claims as the financial limit has increased. He also notes that in some jurisdictions commercial organisations are prohibited from bringing small claims. See J. Baldwin, "Is There a Limit to the Expansion of Small Claims?", *Current Legal Problems*, vol.56, p.335, 2003; J. Baldwin, "Monitoring the Rise of the Small Claims Limit: Litigants' Experiences of Different Forms of Adjudication", DCA Research Series No. 1/97, December 1997; and J. Baldwin, "Lay and Judicial Perspectives on the Expansion of the Small Claims Regime", DCA Research Series No.8/02, September 2002.

[11] P. Lewis, "The Consumer's Court? Revisiting the Theory of the Small Claims Procedure", *Civil Justice Quarterly*, vol.25, p.52, Jan 2006.

Another interesting factor about the profile of referrals is that approximately eight percent of claimants and four percent of defendants were local authorities. These were not always actions against individuals, but the vast majority were, and at least one involved recovery of debt after statutory action taken.

FIGURE 3.4

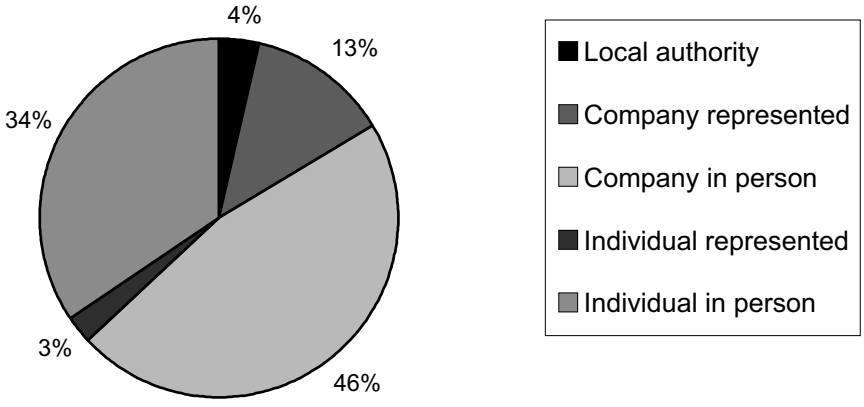
Claimant status, cases referred June 2005 - January 2006



Total=189 [Source: mediation officer's spreadsheet]

FIGURE 3.5

Defendant status, cases referred June 2005 - January 2006



Total=189 [Source: mediation officer's spreadsheet]

TABLE 3.2 Profile of party initiating action

Claimant	Referred cases	Mediated cases	Facilitated cases
Individual	39%	36%	39%
Company/Local authority	61%	64%	61%
TOTAL	**100%**	**100%**	**100%**

[Source: mediation officer's spreadsheet]

The number and profile of mediations and facilitations

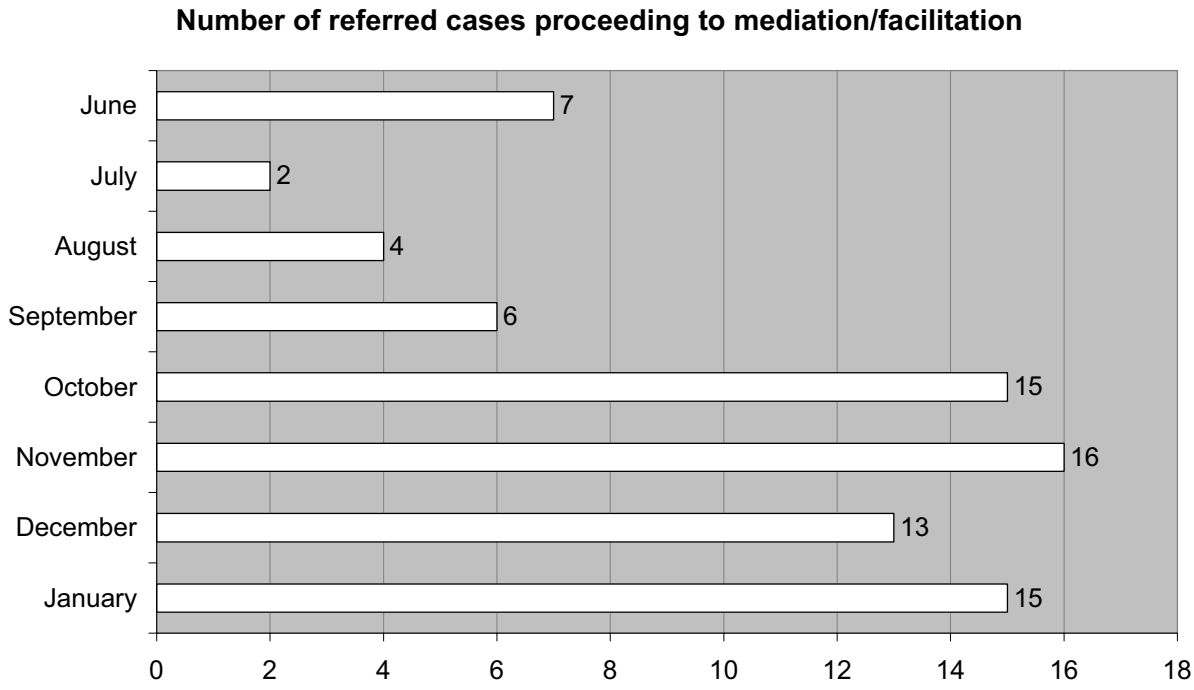
Of the 189 cases referred to the mediation service during June 2005 to January 2006, 78 proceeded to mediation or telephone-based facilitation (another face-to-face mediation was scheduled but not held because one party declined to attend). [Note that these mediations/facilitations were not necessarily held in the month the case was referred, and the figures in this chapter relate to the month the case was referred, not necessarily the month in which the mediation/facilitation took place.]

An analysis of the number of referrals compared to number of mediations/facilitations shows that although at the start the service saw 100 percent of its referrals proceeding to mediation/facilitation, this was from a very low start of only seven referrals. As the referrals increased, so did the mediations, with a peak in October of nearly half of all referrals proceeding to mediation/facilitation. The referral-to-mediation/facilitation conversion figure settled at just over forty percent for the remainder of the evaluation period.

For the twelve months from June 2005 to May 2006, a total of 121 referrals proceeded to mediation or telephone-based facilitation (the 78 mentioned in the preceding paragraph and a further 43).[12] In February, the final month in which referral figures were recorded, one-third of referrals proceeded to mediation/facilitation. Because after February no record was kept of all referrals to the service, it is not possible to give an overall figure for the percentage of referrals that proceeded to mediation/facilitation during the entire pilot period.

[12] A brief analysis of the total figures for this twelve-month period appears at the end of this chapter.

FIGURE 3.6 Mediations/facilitations, cases referred June 2005 – January 2006



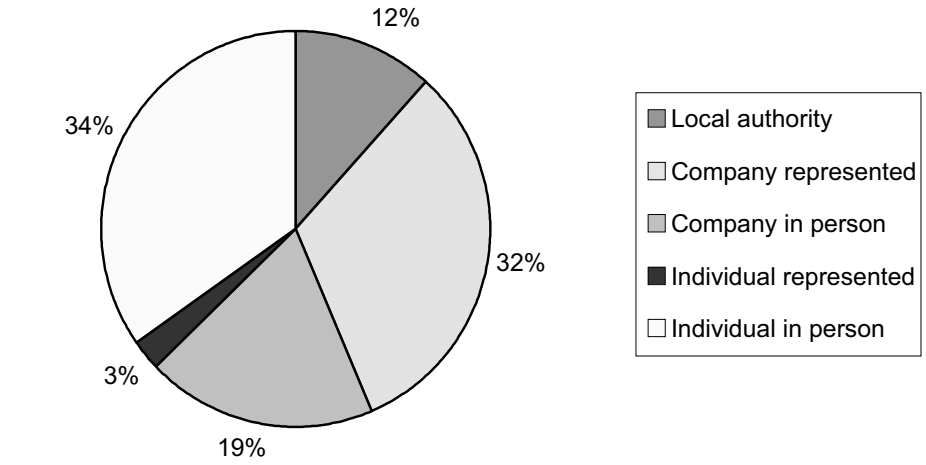
Total=78 [Source: mediation officer's spreadsheet]

One question to consider was how might the parties' status (i.e. company or individual) affect the decision to proceed to mediation/facilitation. An analysis of status in cases mediated/facilitated shows a slight decrease in the percentage of claimants who were individuals and an increase in the percentage of company or local authority claimants, as compared with referrals. Although this could suggest that individual claimants are less likely than company claimants to proceed to mediation/facilitation, the percentage change is only three percent, too slight to be significant. As for defendants in mediated/facilitated cases, again there were more companies or local authorities (67 percent compared to 63 percent in referred cases) and fewer individuals (33 percent compared to 37 percent) represented in mediated/facilitated cases than in referred cases, although again the change is small, at four percent, so unlikely to be significant.

The figures for legal representation are similar for referred and mediated/facilitated cases, showing that as claimants, companies were more likely to be represented than not. As defendants, however, they were less likely to be represented. In both referred and mediated cases, individual claimants and defendants were far less likely to be represented. The percentage of represented individuals was lower in the mediated/facilitated cases than in referrals, however, and this change

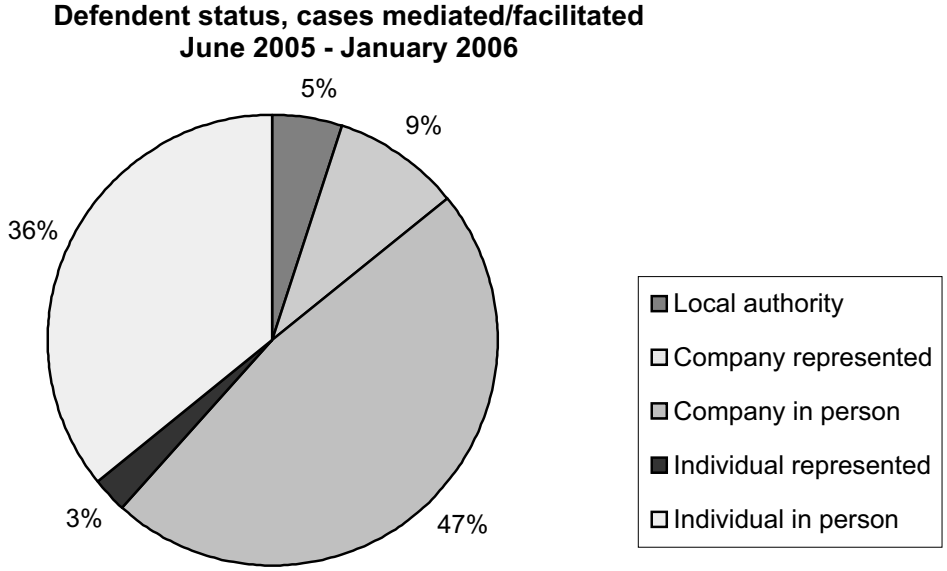
was particularly marked among claimants: only three percent of individual claimants were represented in mediated/facilitated cases, as compared with eight percent in referred cases.

FIGURE 3.7 Claimant status



Total=78 [Source: mediation officer's spreadsheet]

FIGURE 3.8 Defendant status



Total=78 [Source: mediation officer's spreadsheet]

The figures below are shown separately for, first, face-to-face mediations and, second, telephone-based facilitations.

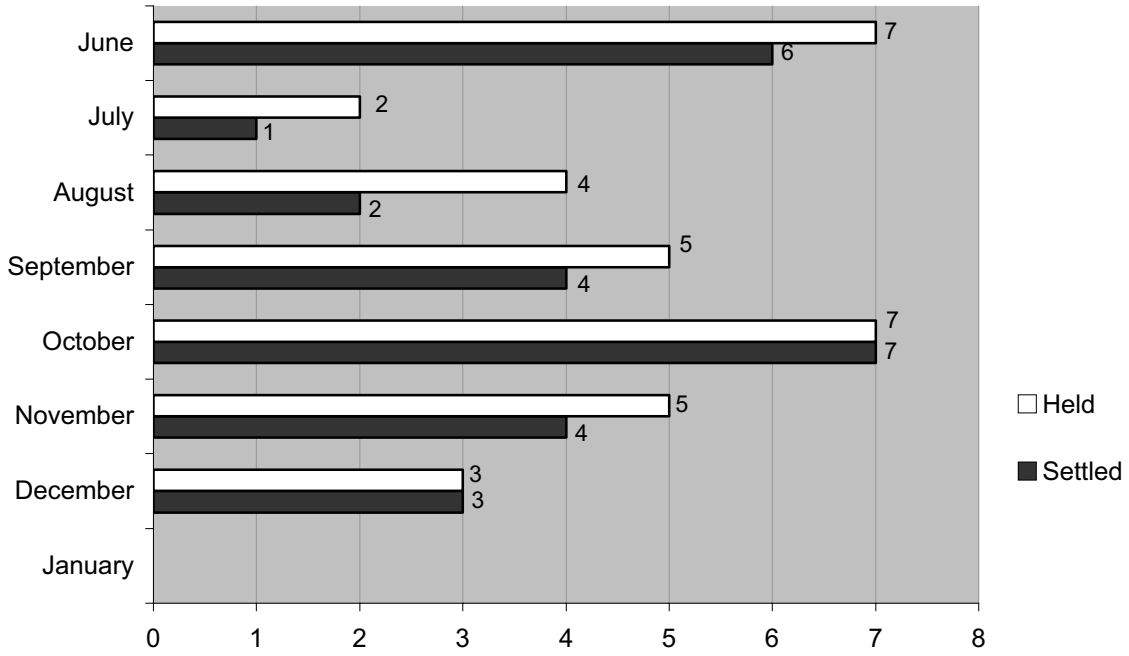
Face-to-face mediations

Of cases referred during the evaluation period, 34 proceeded to face-to-face mediations; one of these did not take place because one party failed to appear. Of the 33 that were held, 27 settled at mediation (82 percent).

Most of the cases (76 percent) involved claims of debt/contract, goods and services, although there were a number of housing-related claims and negligence claims, as shown in Figure 3.10. Just under half were for claims under £1,000, proportionate to the number of claims of that size that were referred to the service, as shown in Figure 3.11.

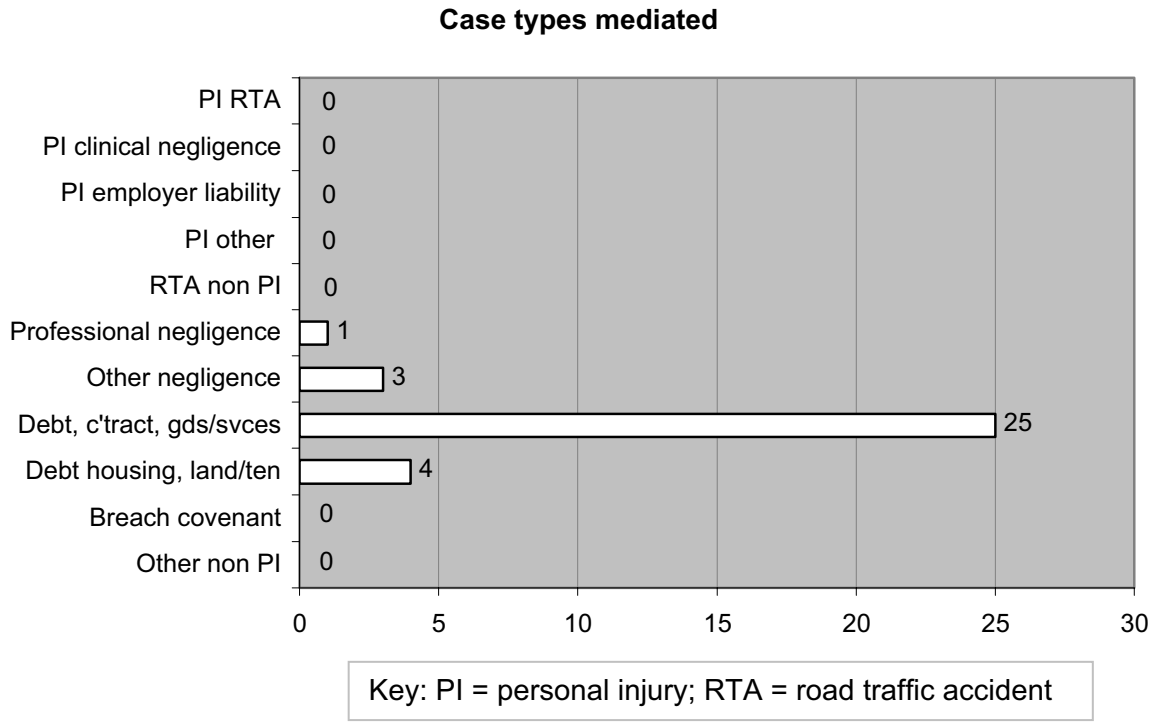
FIGURE 3.9

Total number of face-to-face mediations by month



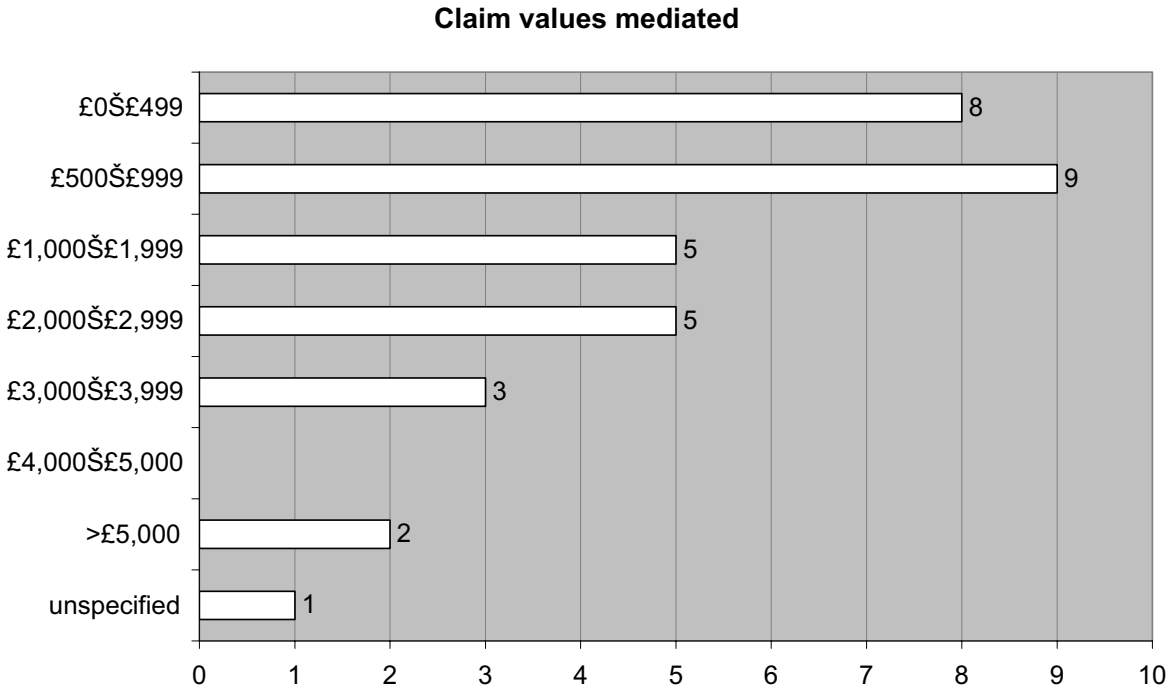
Total=33 [Source: mediation officer's spreadsheet]

FIGURE 3.10



Total=33 [Source: mediation officer's spreadsheet]

FIGURE 3.11



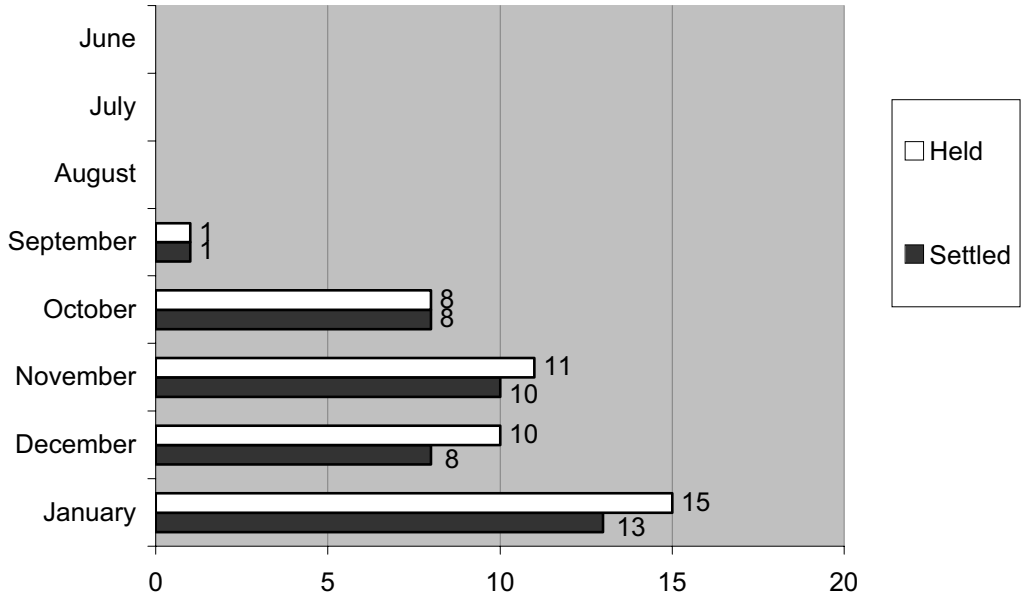
Total=33 [Source: mediation officer's spreadsheet]

Telephone-based facilitations

A total of 45 cases referred during June 2005 – January 2006 proceeded to telephone-based facilitation, from September when the mediation officer began to offer parties this process as an alternative to face-to-face mediation. Of these, 40 settled. As explained elsewhere in this report, it is important to note that not all attempts at telephone facilitation are recorded; therefore giving a settlement rate is unreliable for this process. The mediation officer frequently discussed cases with parties by telephone, and if these resulted in a settlement it was recorded as a settled 'mediation'. If the discussions did not result in a settlement, it was generally not recorded on the spreadsheet, although as shown in Figure 3.12 there are a few instances where an unsettled attempt was recorded.

FIGURE 3.12

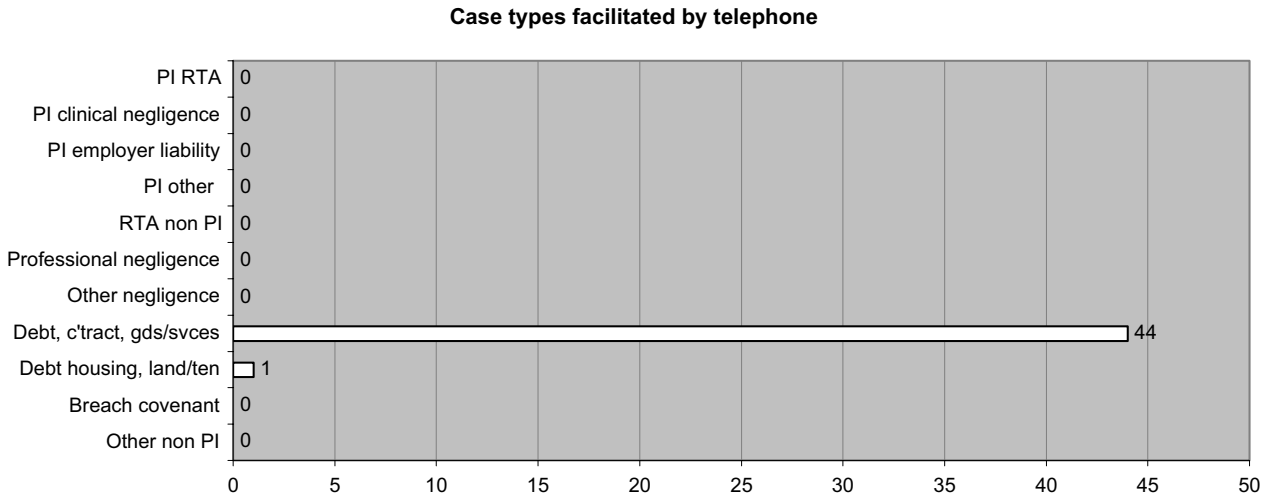
Number of telephone-based facilitations by month



Total=45 [Source: mediation officer's spreadsheet]

The profile of claim values for cases handled by telephone facilitation is similar to that of referred and mediated cases; just over half were for claims of under £1,000, and very few cases were for claims of more than £3,000. The profile of claim types shows significantly less diversity than that of referred cases and mediated cases: all but one of the facilitated cases (98 percent) involved a claim of debt/contract, goods and services.

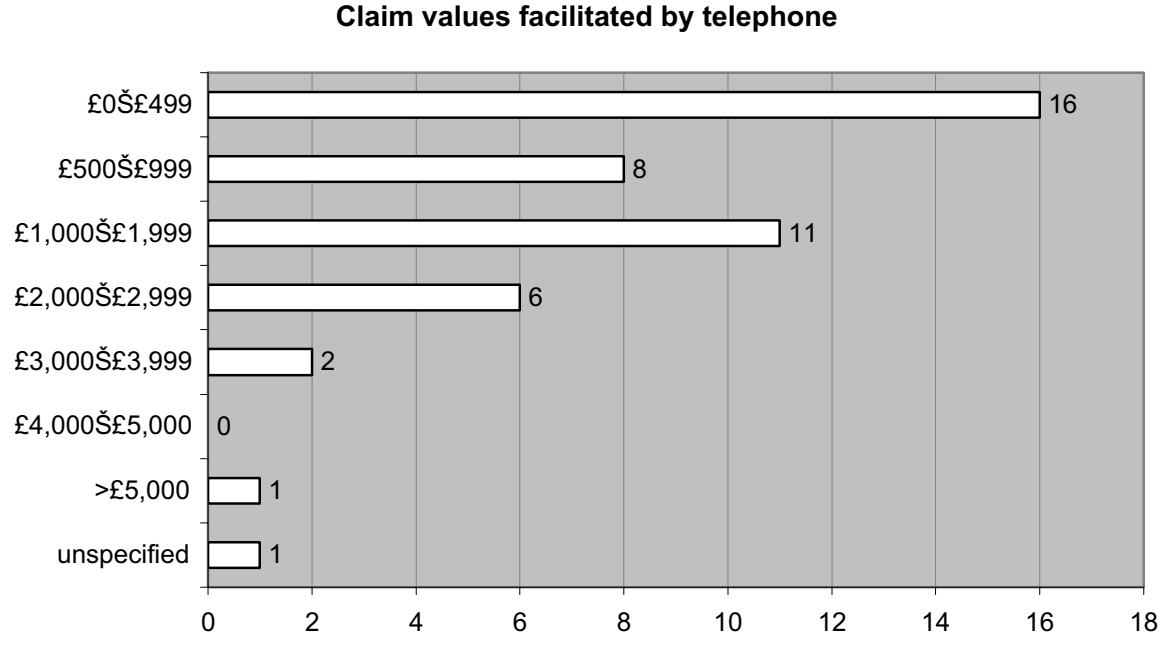
FIGURE 3.13



Key: PI = personal injury; RTA = road traffic accident

Total=45 [Source: mediation officer's spreadsheet]

FIGURE 3.14



Total=45 [Source: mediation officer's spreadsheet]

Types of settlement

The outcomes of cases settled in mediation and telephone-based facilitation are shown in Table 3.3 on the following pages. The table shows settlement values in terms of a monetary transfer from defendant to claimant; 'Other outcomes' include other terms in the settlement aside from this monetary transfer. For example, where an agreement involved the defendant making a donation to a charity, but no payment directly to the claimant, this is described as 'None' in 'Settlement value' but the charity donation is described in 'Other outcomes'.

Terms of settlement

The terms of payment set out in the settlement agreement can itself be a 'bargaining chip', and the mediation officer describes how he often uses the fact that payment can be made very quickly, even on the day, as a way to encourage the other party to settle. It is not uncommon for judges to order payment to be made in accordance with an assessment of that party's means – for example, small payments by monthly instalment. In contrast, financial settlements in mediation are often concluded relatively quickly. For example, as shown in the table on the following pages, many of the mediated/facilitated settlements reached involved payment 'Forthwith – up to 7 days'; one even involved a cash payment of approximately £1,600 at the end of the mediation. In all, 75 percent of cases involving a financial settlement (15 out of 60) included terms stipulating payment to be made in one month or less.

Costs

In all but five settlements, the parties agreed to pay their own costs.

'Other outcomes'

Eight of the 67 settlements (twelve percent) included a term under 'Other outcomes' that was an outcome that could not have been ordered by a court, such as a discount on further business, a credit note or a continuation of a commercial relationship of some other kind. One of the benefits attributed to mediation is its capacity to help parties achieve 'creative' settlements that preserve business and personal relationships and/or that reflect the parties' underlying interests, but neither of these appear to be an explicit element of most of the mediated settlements. It could be that such outcomes were not an explicit part of the settlement but were nevertheless a result of the mediation. Examples of these other, non-tangible benefits were described by some of the litigants; see Chapter Four: The Views of Court Users, Judges and Other Stakeholders.

TABLE 3.3 Outcomes of cases settled at mediation or telephone facilitation

Key: Ind = individual; Co = Company; LA = Local authority

MONTH	CASE TYPE	PARTY STATUS	PROCESS	CLAIM VALUE	SETTLEMENT VALUE	TERMS	OTHER OUTCOME
JUNE	Debt housing land/ten	Ind vs Ind	mediation	£700	None	Over 1 mnth	£780 3rd party payment to charity
	Profes neg	Ind vs Ind	mediation	£3,000	£500	8–14 days	£250 3rd party payment
	Debt contract gds/svces	Ind vs Co	mediation	£1,080	£500	8–14 days	Defendant to give 10% reduction on future bookings. Claimant agrees to continue business relationship.
	Debt housing land/ten	Co vs Ind	mediation	£250	£271	Regular installments taking longer than 1 mnth	None
	Debt housing land/ten	Co vs Ind	mediation	£610	None	n/a	None
	Other neg	Ind vs Co	mediation	£330	£250	15 days - 1 mnth	None
JULY	Debt contract gds/svces	Co vs Ind	mediation	£1,630	£650	Over 1 mnth	Defendant to pay £650 on completion of remedial work to conservatory by fixed date.
AUG	Debt contract gds/svces	LA vs Ind	mediation	£2,151	£1,638	Forthwith - up to 7 days	Defendant paid sum in full at conclusion of mediation.
	Debt contract gds/svces	Ind vs Ind	mediation	£850	£175	Over 1 mnth	None
SEPT	Other neg	Ind vs LA	mediation	£1,260	£825	8–14 days	None
	Debt contract gds/svces	Co vs Co	mediation	£2,258	£2,047	Regular installments taking longer than 1 mnth	Defendant and claimant revived original contract to continue business.
	Debt contract gds/svces	Ind vs Co	mediation	£484	£325	8–14 days	None
	Debt contract gds/svces	Ind vs Co	mediation	£5,040	£1,300	8–14 days	None
	Debt contract gds/svces	LA vs Co	telephone facilitation	£1,981	£900	15 days - 1 mnth	None
OCT	Debt contract gds/svces	Co vs Co	mediation	£324	£147	8–14 days	None
	Debt housing land/ten	LA vs Ind	mediation	£380	£330	Over 1 month	None
	Debt contract gds/svces	LA vs Ind	mediation	£294	£323	Regular instalments taking longer than 1 mnth	None

MONTH	CASE TYPE	PARTY STATUS	PROCESS	CLAIM VALUE	SETTLEMENT VALUE	TERMS	OTHER OUTCOME
OCT cont	Debt contract gds/svces	Ind vs Ind	mediation	£300	£210	Forthwith - up to 7 days	£90 credit note
	Debt contract gds/svces	Co vs Co	mediation	£5,535	£3,700	Forthwith - up to 7 days	None
	Debt contract gds/svces	Ind vs Co	mediation	£550	£350	Forthwith - up to 7 days	None
	Debt contract gds/svces	Ind vs Co	mediation	£297	£250	8–14 days	None
	Debt contract gds/svces	Co vs Co	telephone facilitation	£896	£400	Over 1 mnth	None
	Debt contract gds/svces	Co vs Co	telephone facilitation	£1,885	£1,785	8–14 days	None
	Debt contract gds/svces	Co vs Ind	telephone facilitation	£2,216	£2,008	15 days - 1 mnth	None
	Debt contract gds/svces	LA vs Co	telephone facilitation	£1,981	£895	8–14 days	None
	Debt contract gds/svces	Co vs Co	telephone facilitation	£1,782	£600	Forthwith - up to 7 days	None
	Debt contract gds/svces	Co vs Co	telephone facilitation	£1,751	£1,000	15 days - 1 mnth	None
	Debt contract gds/svces	Ind vs Co	telephone facilitation	£398	£155	Forthwith - up to 7 days	None
	Debt contract gds/svces	Ind vs Ind	telephone facilitation	Unspec (£1,001 –5,000)	£900	15 days - 1 mnth	None
NOV	Debt contract gds/svces	Ind vs LA	mediation	£1,258	£750	Forthwith - up to 7 days	None
	Debt contract gds/svces	LA vs Ind	mediation	£791	£218	Regular instalments taking longer than 1 mnth	None
	Debt contract gds/svces	Ind vs Ind	mediation	£3,401	£2,000	8–14 days	None
	Debt contract gds/svces	Ind vs Ind	mediation	£3,172	£1,000	Regular instalments taking longer than 1 mnth	None
	Debt contract gds/svces	Ind vs Co	telephone facilitation	£782	None	n/a	None
	Debt contract gds/svces	Co vs Co	telephone facilitation	£5,053	£500	8–14 days	None
	Debt contract gds/svces	Ind vs Co	telephone facilitation	£500	£375	Forthwith - up to 7 days	None
	Debt contract gds/svces	Co vs Ind	telephone facilitation	£167	None	n/a	None

MONTH	CASE TYPE	PARTY STATUS	PROCESS	CLAIM VALUE	SETTLEMENT VALUE	TERMS	OTHER OUTCOME
NOV cont	Debt contract gds/svces	Co vs Co	telephone facilitation	£1,019	£1,113	Regular installments taking longer than 1 mnth	Defendant pays costs
	Debt contract gds/svces	Co vs Co	telephone facilitation	£1,074	None	n/a	Both parties agreed to resume business dealings. Defendant agreed to carry out contractual work for claimant in 2006 with no invoice being raised. Parties agreed that in 2007 they would resume normal business relations. Defendant pays costs.
	Debt contract gds/svces	Ind vs Co	telephone facilitation	£281	£200	Over 1 mnth	None
	Debt contract gds/svces	Co vs Co	telephone facilitation	£1,530	£1,000	15 days - 1 mnth	Defendant pays costs.
	Debt contract gds/svces	Co vs Co	telephone facilitation	£2,211	£1,250	Forthwith - up to 7 days	None
	Debt contract gds/svces	Co vs Co	telephone facilitation	£1,146	£1,146	Forthwith - up to 7 days	None
DEC	Debt contract gds/svces	Ind vs Ind	mediation	£655	£200	Forthwith - up to 7 days	None
	Debt contract gds/svces	Co vs Co	mediation	£2,403	£1,200	Forthwith - up to 7 days	Defendant pays costs
	Other neg	Ind vs LA	mediation	£2,000	£1,100	8–14 days	None
	Debt contract gds/svces	Co vs Co	telephone facilitation	£646	£413	Forthwith - up to 7 days	None
	Debt contract gds/svces	Co vs Co	telephone facilitation	£3,577	£400	Forthwith - up to 7 days	None
	Debt contract gds/svces	Co vs Co	telephone facilitation	£464	£469	Forthwith - up to 7 days	None
	Debt housing land/ten	Ind vs Ind	telephone facilitation	£500	£300	Forthwith - up to 7 days	None
	Debt contract gds/svces	LA vs Co	telephone facilitation	£266	£346	Forthwith - up to 7 days	None

MONTH	CASE TYPE	PARTY STATUS	PROCESS	CLAIM VALUE	SETTLEMENT VALUE	TERMS	OTHER OUTCOME
DEC cont	Debt contract gds/svces	Co vs Co	telephone facilitation	£345	£100	15 days - 1 mnth	None
	Debt contract gds/svces	Ind vs Ind	telephone facilitation	£300	£200	Forthwith - up to 7 days	None
	Debt contract gds/svces	Ind vs Co	telephone facilitation	£329	£200	8 - 14 days	None
JAN	Debt contract gds/svces	Co vs Ind	telephone facilitation	£342	£200	8 - 14 days	None
	Debt contract gds/svces	Ind vs Ind	telephone facilitation	£2,747	£1,370	Forthwith - up to 7 days	None
	Debt contract gds/svces	LA vs Ind	telephone facilitation	£276	£296	Regular installments taking longer than 1 mnth	None
	Debt contract gds/svces	Co v Ind	telephone facilitation	£1,138	£450	Forthwith - up to 7 days	None
	Debt contract gds/svces	Co v Co	telephone facilitation	£2,050	£1,000	15 days – 1 month	None
	Debt contract gds/svces	Co vs Co	telephone facilitation	£2,935	None	n/a	None
	Debt contract gds/svces	Co vs Ind	telephone facilitation	£540	£610	Regular installments taking longer than 1 mnth	Defendant pays all costs.
	Debt contract gds/svces	Co vs Co	telephone facilitation	£2,512	None	n/a	Return of disputed goods.
	Debt contract gds/svces	Co vs Co	telephone facilitation	£194	£140	15 days - 1 mnth	None
	Debt contract gds/svces	Co vs Co	telephone facilitation	£219	£238	Forthwith - up to 7 days	None
	Debt contract gds/svces	Co v Co	telephone facilitation	£3,500	£750	Over 1 month	None
	Debt contract gds/svces	Co vs Co	telephone facilitation	£953	£800	Regular installments taking longer than 1 mnth	None
	Debt contract gds/svces	LA vs LA	telephone facilitation	£72	£72	Forthwith - up to 7 days	None
SUBTOTAL: 27 mediation settlements; 40 telephone facilitation settlements							
TOTAL = 67 [Source: mediation officer's spreadsheet]							

Relationship between settlement value and claim value

The settlement values achieved in face-to-face mediation represent, on average, 55 percent of the claim value; the figure for telephone-facilitated settlements is 58 percent. These figures must be used with caution, however. The average is affected by several cases in which the settlement was much lower or much higher than either of these percentages. Also, without knowing what the equivalent is for judgments or pre-judgment settlements – i.e. what percentage each represents of claim values – it is not possible to make a comparison and form any conclusion about whether, on

an objective basis, parties do as well in mediation as they do with other outcomes. The other unknown element is whether cases that are settled in mediation/facilitation have certain characteristics, such as being particularly weak cases, or with inflated claim values, both of which would affect the parties' willingness to settle and the final settlement value.

There does not appear to be any significant difference in this relationship between claim value and settlement value in face-to-face mediations compared with telephone-based facilitations, although it is noted that three of the cases settled by telephone facilitation resulted in no financial settlement on large original claims (of more than £1,000, with two of these more than £2,500). In only two of the mediated settlements was there no financial settlement, and these were both claims of £700 or less. In several further cases (both mediated and facilitated) the settlement was substantially lower than the claim. With a small data sample such as this it is not possible to reach a conclusion as to whether face-to-face mediation or telephone facilitation is likely to result in settlements that are substantially lower than the original claim.

Time from referral to mediation

The average length of time from date of referral to mediation to date of scheduled mediation was just over one month, at 33.3 days. This is a fairly crude estimation, however, arrived at by subtracting the date of scheduled mediation from the date of allocation. It should only be taken as a rough estimation because the calculation disregards weekends and holiday periods, when the court is closed; it does not take account of the fact that in some cases the date of referral to mediation is actually later than the date of allocation; and two dates out of the total of 78 mediations/facilitations are not recorded on the spreadsheet.

Estimated judicial time saved

Once a case is allocated to the small claims track, an estimate is made of the time needed for the hearing. The estimate of judicial time saved by the service is a fairly crude, broad-brush approach involving adding up the time estimated for hearings in those cases that settled through mediation or telephone-based facilitation. In the period June 2005 – January 2006 this totalled 113 hours, as shown in Table 3.4.

TABLE 3.4 Judicial time saved by month	
MONTH	MINUTES / HOURS
June	390 / 6.5
July	90 / 1.5
August	180 / 3
September	390 / 6.5
October	2,190 / 36.5
November	1,350 / 22.5
December	1,245 / 20.75
January	945 / 15.75
TOTAL	**6,780 / 113hrs**
[Source: mediation officer's spreadsheet]	

Outcomes of cases not settled

Twelve cases were scheduled for mediation/facilitation but did not settle. Of these, one was scheduled but not held because one party did not appear. This and six others were face-to-face mediations. Five telephone-based facilitations were held but not settled. Because of the lack of definition of the telephone-based facilitation process, however, not all cases where settlement was attempted by this process but unsuccessful were recorded as 'not settled' cases.

All non-settled cases involved claims for debt/contract for goods and services. Of the eleven non-settled cases that were conducted, two settled pre-judgment, two had their hearings adjourned and seven were decided at hearing. Of those decided at hearing, four were in favour of the claimant and three were in favour of the defendant or dismissed. The actual judgment was not recorded in several of the cases, nor were pre-judgment settlements, the details of which are not known by the court unless it is notified by the parties.

Two-thirds of the cases not settled at mediation/facilitation involved companies as claimants. Individuals were involved in four cases as claimants (two against individuals and two against companies) and in six as defendants (four of which had company claimants). In two of the cases involving company claimants against individual defendants, the claim was either dismissed or the judgment appears to have been in the defendant's favour, although details of the judgments were not recorded.

Relationship with settled cases and with pre-judgment settlements

There does not appear to be any difference in terms of claim values of cases that settled and those that did not. Roughly half of each group were claims under £1,000. Only two of the eleven attempted cases settled pre-judgment, whereas the figure for referrals overall, including those cases where no attempt at mediation was made, is about one-third settling pre-judgment (58 out of 189 total referrals). This could cast doubt on the claim that even attempting to mediate/facilitate brings the parties closer to a settlement before hearing, but it is impossible to reach a firm conclusion because the numbers are relatively small and other factors have an impact on this, so that cases referred to mediation could be ones that are more likely to settle pre-judgment or be withdrawn anyway.

The outcomes of these cases not settled appear in Table 3.5. Some of the judgment values were not recorded on the spreadsheet and are therefore missing from the table on the following page, as are the values of pre-judgment settlements, which as explained above are not normally notified to the court.

TABLE 3.5 Outcomes of cases scheduled for mediation/facilitation but not settled

Key: Ind=individual; Co=Company

Month	Value	Claimant	Defendant	Outcome
June	£763	Co	Co	Judgment for defendant(s) or claim dismissed. No details given of judgment.
July	£1,783	Co	Ind	Judgment for defendant(s) or claim dismissed. No details given of judgment.
Aug	£2,022	Co	Ind	Judgment for defendant(s) or claim dismissed. Mediation stopped when claimant alleged defendant had acted fraudulently. Trial took place all parties attending judgment for claimant. No details given of judgment.
	£976	Ind	Co	Judgment for claimant(s); defendant to pay £547.50; amount to be paid at £50 per month.
Sept	£1,396	Co	Co	No show at mediation. Settled pre-judgment; letter from claimant stating defendant paid in full. Defendant failed to attend mediation no reason given. No hearing. Defendant applied to set aside order.
	£550	Co	Co	The person who attended the mediation did not have the authority to negotiate offers being made by defendant. Judgment for claimant(s) £500.
Nov	£720	Co	Co	Failed phone facilitation as settlement reached but defendant failed to return signed consent form. No hearing held; settled pre judgment. No details of settlement given.
	Unspecified	Ind	Co	Oldham case. Judgment for claimant(s); defendant to pay claimant £350.
Dec	£400	Ind	Ind	Oldham case. Judgment for claimant; defendant to pay claimant £320.
	£410	Co	Ind	Oldham case. Judgment for claimant; defendant to pay claimant £200.
Jan	£186	Ind	Ind	Adjourned to another hearing.
	£1,939	Co	Ind	Adjourned to another hearing.

Total=12 [Source: mediation officer's spreadsheet]

Settlement rates

The number of cases proceeding to mediation or telephone facilitation increased during the course of the pilot, with a peak in November 2005, as shown in Table 3.6. The overall settlement rate also increased, with an average over the period, for both mediations and facilitations, of 86 percent. Because the majority of settlements in the last eight months of the pilot (i.e. October 2005 – May 2006) were by telephone facilitation, however, and as mentioned previously cases that were not settled by this process have not been recorded as such on the spreadsheet, the settlement rate would be artificially exaggerated, and thus it is a mistake to refer to settlement rates overall. More useful is to identify the settlement rate only of face-to-face mediations, which is 27 out of 33, or 82 percent.

TABLE 3.6 Mediations and facilitations held, and number settled, by month

Month	Mediations	Settled	Settlement rate	Telephone facilitations	Settled
June	7	6	86%	0	0
July	2	1	50%	0	0
August	4	2	50%	0	0
September	5	4	80%	1	1
October	7	7	100%	8	8
November	5	4	80%	11	10
December	3	3	100%	10	8
January	0	0	n/a	15	13
TOTAL	**33**	**27**	82%	**45**	**40**

Note: An additional face-to-face mediation was scheduled but not held because one party did not appear.

[Source: mediation officer's spreadsheet]

This settlement rate for face-to-face mediations compares very favourably to that achieved in other court-based mediation pilots. For example, in the Exeter Small Claims Mediation Service, the settlement rate given in an interim pilot evaluation report was about 64 percent.[13] The Birmingham Civil Justice Centre mediation service for fast-track and multi-track cases saw a settlement rate of

[13] S. Prince, "Interim Figures: Exeter Small Claims Mediation Service", presented internally to DCA and other researchers in small claims mediation pilots, February 2006.

60 percent (of cases settled at the mediation).[14] The settlement rate for fast-track cases mediated at Exeter and Guildford county courts was 40 percent and 53 percent respectively.[15]

Time spent on mediations and facilitations

The average time spent per face-to-face mediation was just under one hour, at 57 minutes, representing the actual time of the mediation meeting. The average time spent on telephone facilitations was 46 minutes, representing several phone calls, sometimes over the course of weeks. Note that not all telephone facilitations had their time recorded; two cases are missing from this calculation. The average time decreased slightly in later months of the pilot, as the use of telephone facilitation increased. In June–September, when only face-to-face mediations were conducted, the average ranged from 50 to 72 minutes per mediation. In January, when only phone facilitations were conducted, the average was 43 minutes. This could suggest that the phone facilitation process requires less of the mediation officer's time than face-to-face mediation sessions do.

TABLE 3.7 Average time spent on mediation/facilitation by month

Month	Minutes
June	mediation: 50
July	mediation: 60
August	mediation: 60
September	mediation: 72; phone facilitation: 85
October	mediation: 42 ; phone facilitation: 53
November	mediation: 66 ; phone facilitation: 47
December	mediation: 52 ; phone facilitation: 42
January	phone facilitation: 43
AVERAGE	mediation: 57; phone facilitation 46
[Source: mediation officer's spreadsheet]	

[14] L. Webley et al, "Birmingham Mediation Scheme DCA-Funded Research", presentation to the DCA and others, June 2005.
[15] S. Prince, "Court-Based Mediation at Exeter and Guildford", presentation to the DCA and others, June 2005.

Update on the Small Claims Mediation Service, June 2005–May 2006

This section gives a brief overview of the casework of the Small Claims Mediation Service for the twelve-month period of the pilot, from June 2005 to May 2006. Total casework statistics given here combine those from the evaluation period of June 2005 – January 2006 discussed earlier in this chapter with those from the period February–May 2006, covering mediations/facilitations conducted up to 20 June 2006.

Changes in the service

The Small Claims Mediation Service was a pilot scheme during the evaluation period that is the subject of this report. Since April 2006 the Small Claims Mediation Service has become a permanent service offered at Manchester and Oldham county courts, and in July 2006 it will be extended to all ten courts in the Manchester region.

The same mediation officer who was in post during the evaluation period has continued in post.

Changes in the process

In March 2006 the mediation officer began to keep only limited case statistics, collecting much less information than the spreadsheet that had been used for the evaluation period of June 2005–January 2006. Only cases where mediation or telephone facilitation has been attempted are recorded on the spreadsheet. No information is recorded on other cases, even where there might have been some preliminary work toward arranging a mediation or facilitation. No specifics of settlement terms are recorded, and no outcome details are recorded for cases that do not settle in mediation or facilitation.

Cases are no longer referred to the service for the mediation officer to contact the parties; instead, the direction wording has been changed slightly so that parties who want to use mediation now must contact the mediation officer, replacing the former process by which the mediation officer would proactively contact all parties in cases referred by district judges.

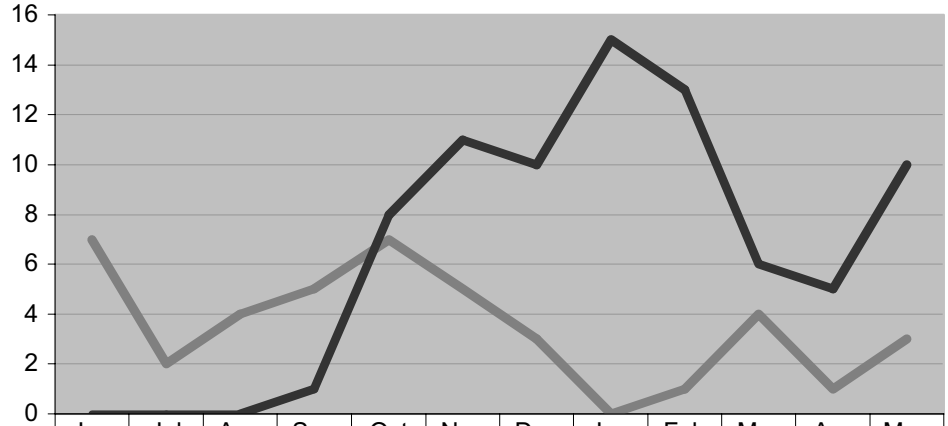
The use of telephone-based facilitation has continued to increase, and the mediation officer intends to adopt conference call facilities in some such cases.

Case statistics for the pilot period June 2005 – May 2006

For the period June 2005 – June 2006, a total of 121 cases proceeded to mediation or telephone-based facilitations. The relationship between mediations and facilitations is shown in Figure 3.15.

FIGURE 3.15

Mediations/facilitations of cases allocated June 2005 - May 2006



	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May
Mediations	7	2	4	5	7	5	3	0	1	4	1	3
Phone facilitations	0	0	0	1	8	11	10	15	13	6	5	10

Total=121 [Source: mediation officer's spreadsheet]

In November the mediation officer began to accept referrals from Oldham County Court, and between November and January a total of 23 referrals were received from Oldham. Of these 23, nine (39 percent) proceeded to mediation/facilitation. In February a further six referrals were received from Oldham, of which two (33 percent) went on to mediation/facilitation. The referral figures for March–May 2006 were not recorded, but in that period eight cases referred from Oldham were mediated/facilitated.

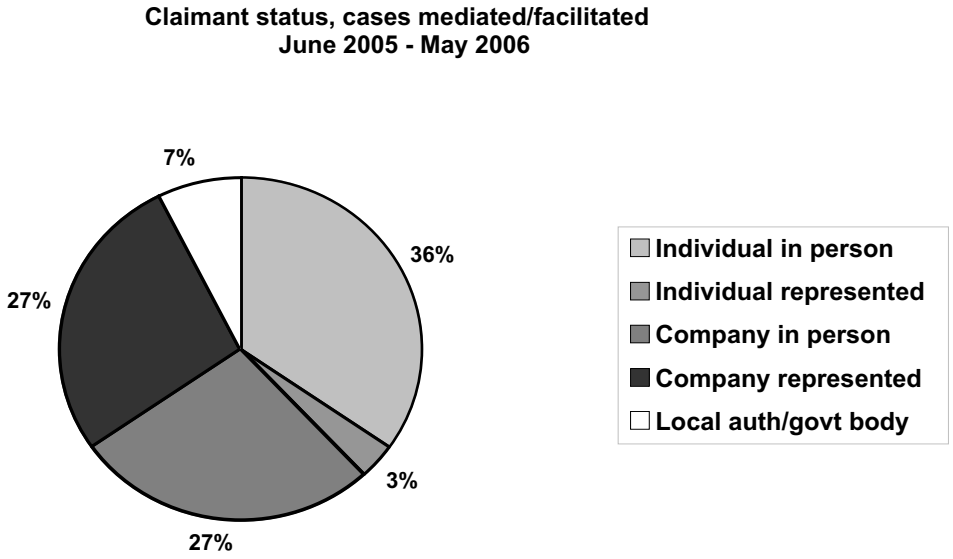
The proportion of Oldham to Manchester cases that were mediated or facilitated is shown in Table 3.8, demonstrating that although the average was just under one-quarter referred from Oldham, the month-by-month proportion of mediations/facilitations that had been referred from that court varied considerably, from a low in January of nine percent to a high in April, when half of the cases handled were referred from Oldham. It will be interesting to see if and how this proportion changes as the service expands to the other courts in the region.

Table 3.8 Source of mediated/facilitated case				
Month	**Oldham**	**Manchester**	**Total**	**Percentage**
November	5	13	18	27%
December	3	8	11	27%
January	1	10	11	9%
February	2	12	14	14%
March	2	8	10	20%
April	3	3	6	50%
May	3	10	13	23%
TOTAL	**19**	**64**	**83**	**Average: 23%**
[Source: mediation officer's spreadsheet]				

Party status

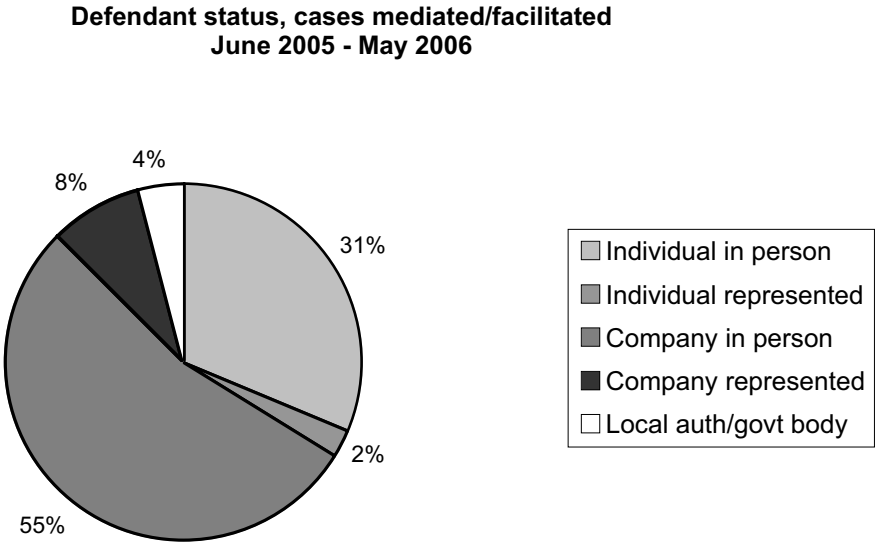
The majority of both claimants and defendants were companies or local authorities (61 percent claimants, 67 percent defendants). As explained earlier, this figure can disguise the fact that many parties that were identified as companies, either in person or represented, are in fact individual sole traders. Both individuals and companies were for the most part not represented, although as claimants an equal number of companies were represented as not.

FIGURE 3.16



Total=121 [Source: mediation officer's spreadsheet]

FIGURE 3.17

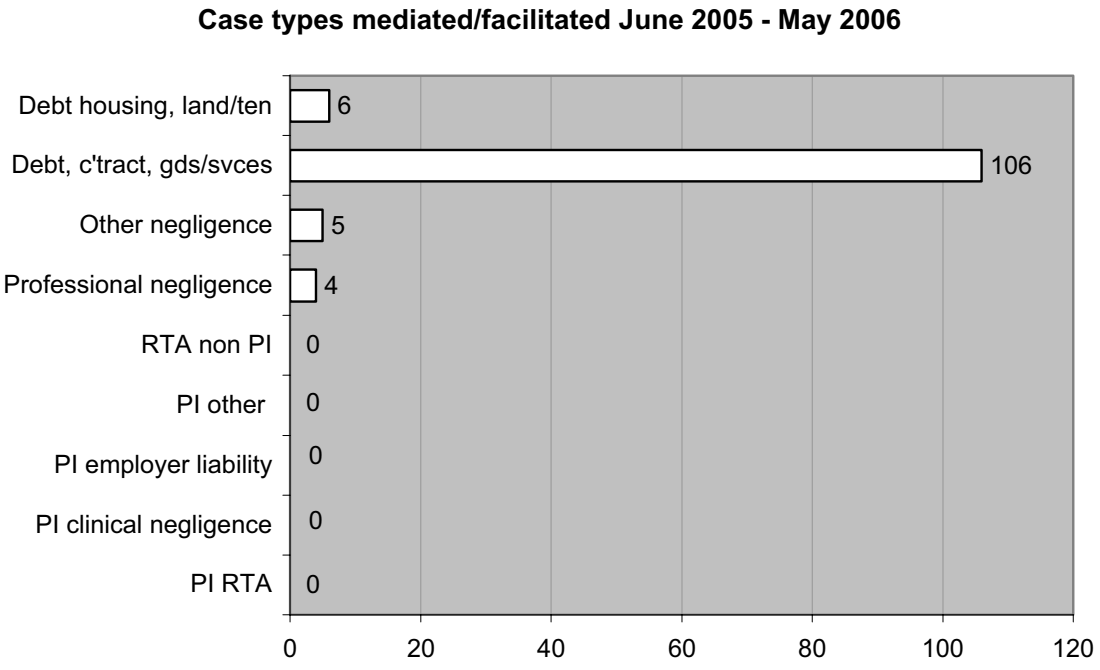


Total=121 [Source: mediation officer's spreadsheet]

Case types and claim values

The types of cases handled during the twelve-month period of June 2005 – May 2006 were not dissimilar from those of the evaluation period. Debt/contract and goods and services claims predominated, with 88 percent of cases overall falling into this category, and only a handful of cases falling into three remaining categories: housing debt, professional negligence, and other negligence.

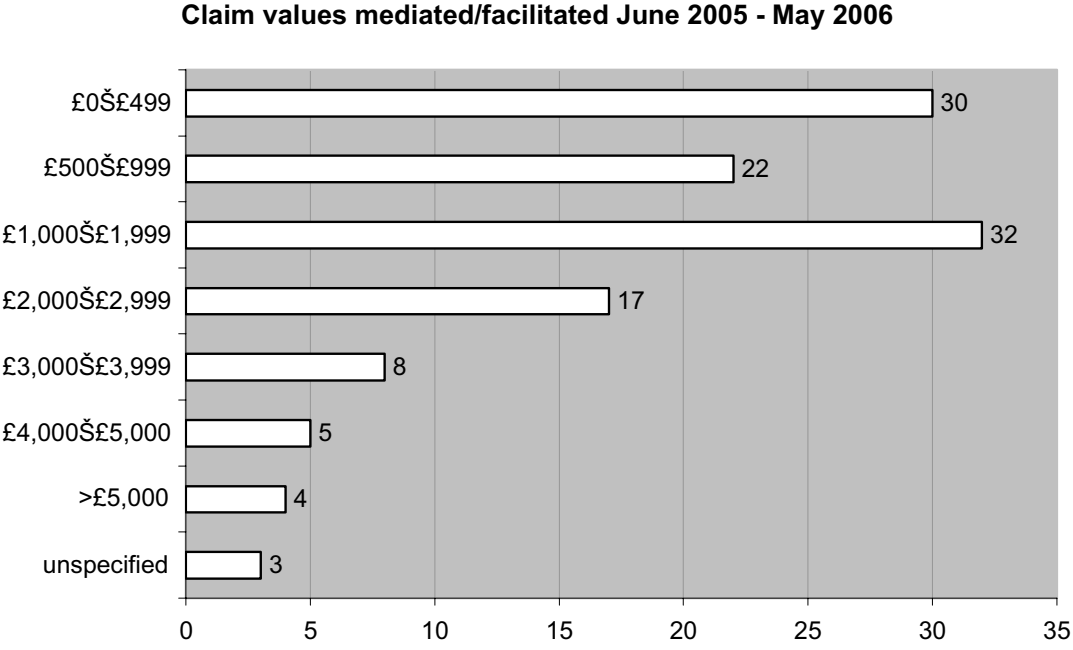
FIGURE 3.18



Total=121 [Source: mediation officer's spreadsheet]

The value of claims handled during the twelve-month period of June 2005 – May 2006 was also not dissimilar from those of the evaluation period. Claim values were spread across the categories, with the majority (69 percent) for less than £2,000.

FIGURE 3.19



Total=121 [Source: mediation officer's spreadsheet]

Time from referral to mediation/facilitation

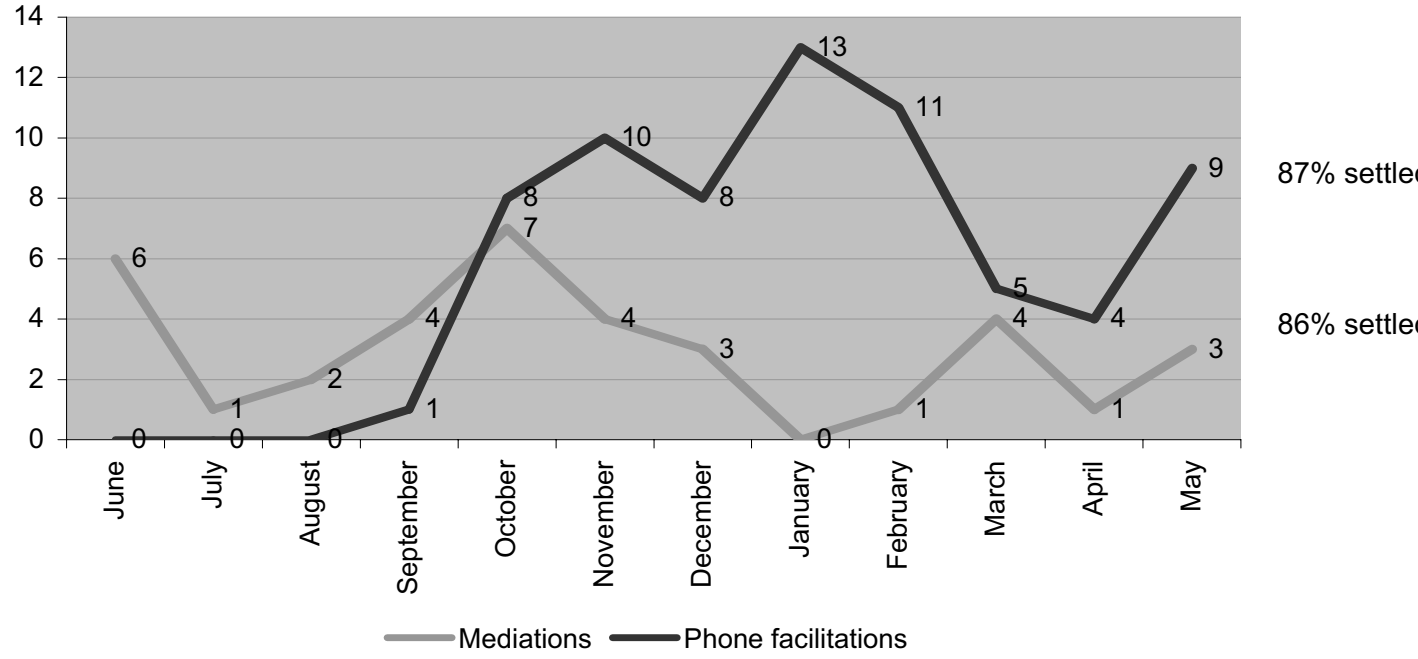
For the twelve-month period of June 2005 – May 2006, the average length of time from date of referral to mediation to date of scheduled mediation or facilitation conclusion was 34.4 days. As noted earlier, this is a fairly crude estimation arrived at by subtracting the date of scheduled mediation or closed facilitation from the date of allocation. It should only be taken as a rough estimation because the calculation disregards weekends and holiday periods, when the court is closed and it does not take account of the fact that in some cases the date of referral to mediation is actually later than the date of allocation.

Settlements

Of the 121 cases that were mediated or facilitated, 104 settled. The settlement rate for face-to-face mediations for the twelve-month period was 86%. The equivalent for telephone facilitations was 87%, although as stated earlier this is not as reliable a figure because not all unsettled facilitations are recorded.

FIGURE3.20

Settlements of cases allocated June 2005 - May 2006



Total=121 [Source: mediation officer's spreadsheet]

Time taken for mediations/facilitations

The average time spent per face-to-face mediation during the twelve-month period was just over one hour, at 62 minutes, representing the actual time of the mediation meeting. The average time spent on telephone facilitations was 49 minutes, representing several phone calls, sometimes over the course of weeks. Generally the phone facilitation process can require less of the mediation officer's time than face-to-face mediation sessions do, and indeed the 'quickest' facilitations were dealt with in as little as twenty or thirty minutes. This is deceptive, however, as telephone facilitations can take as long as or longer than face-to-face mediation. There were, for example, several telephone facilitations towards the end of the pilot that lasted for two hours.

TABLE 3.9 Average time spent on mediation/facilitation by month

Month	**Minutes**
June	mediations: 50
July	mediations: 60
August	mediations: 60
September	mediations: 72
October	mediations: 42 ; phone facilitations: 53
November	mediations: 66 ; phone facilitations: 47
December	mediations: 52 ; phone facilitations: 42
January	phone facilitations: 43
February	mediations 90; phone facilitations: 52
March	mediations 60; phone facilitations: 55
April	mediations 55; phone facilitations: 54
May	mediations 73; phone facilitations: 43
AVERAGE	mediations: 62; phone facilitations: 49
[Source: mediation officer's spreadsheet]	

Judicial time saved

Once a case is allocated to the small claims track, an estimate is made of the time needed for the hearing. The estimate of judicial time saved by the service is a fairly crude, broad-brush approach involving adding up the time estimated for hearings in those cases that settled through mediation or telephone-based facilitation. In the period June 2005 – May 2006 this totalled 172 hours.

TABLE 3.10 Judicial time saved by month	
MONTH	MINUTES / HOURS
June	390 / 6.5
July	90 / 1.5
August	180 / 3
September	390 / 6.5
October	2,190 / 36.5
November	1,350 / 22.5
December	1,245 / 20.75
January	945 / 15.75
February	1140 / 19
March	720 / 12
April	390 / 6.5
May	1290 21.5
TOTAL	**10,320 / 172hrs**
[Source: mediation officer's spreadsheet]	

Chapter Four: The Views of Court Users, Judges and Other Stakeholders

Introduction

A primary aim of the evaluation research was to explore views of the Small Claims Mediation Service from the perspective of court users, judges and other stakeholders. Details of how the responses were obtained are given in Chapter One: An Introduction to the Research, of this report. Here the views of court users, as reflected in questionnaire responses and interviews, and of judges and other stakeholders, as reflected in interviews, are explored in the context of particular themes, starting with the views of court users. The views were gathered during the evaluation period of June 2005 – January 2006 and reflect the service that was offered in that period only, not the full twelve-month pilot period.

The views of court users

The research included both those court users who participated in mediation and those whose cases were referred to the mediation service but who did not mediate. It was not possible to explore the views of a control group – i.e. court users whose cases were not referred to the mediation service. Views were obtained through postal questionnaires and through telephone interviews with questionnaire respondents.

Questionnaire responses

Two questionnaires were sent to litigants who had contact with the service: a 'mediation' questionnaire, sent to those litigants who used the mediation service, and a 'no mediation' questionnaire, sent to those whose cases were referred to the service but who did not use mediation. The latter group had varying degrees of contact with the service, ranging from simply receiving a telephone message from the mediation officer to having had a mediation arranged that did not take place. Some in this group did not perceive that they had had any contact with the service; hence the response rate predictably was not high for this group of litigants: 19 completed responses out of 109 questionnaires sent, or about 17 percent. The first group, of litigants who had used the mediation service, had a higher response rate: 47 completed questionnaires out of 110

sent, or about 43 percent. This group included those who used telephone facilitation rather than face-to-face mediation, although which service they used was not identified on the questionnaire because it had been developed before the telephone-based process was instituted.

In addition, eight individuals who had been sent a 'no mediation' questionnaire responded to the researcher to say that they could not identify who dealt with the case or had had no contact with the service and so could not complete the questionnaire.

The number of respondents is small so it is not possible to draw robust general conclusions. Nevertheless, the questionnaire responses do represent the experiences of at least one of the parties involved in 32 of the total of 78 mediated/facilitated cases during the period under evaluation and they give a flavour of how litigants viewed the service offered, the mediation and the outcome of their particular case. The fact that 94 percent (44) of the responses were from litigants who settled their case in mediation or telephone facilitation suggests settled cases are over-represented in the responses.

Both questionnaires, and their response results, are attached to this report in Appendix 1.

Interviews

Interviews were held with 22 litigants, all of whom completed either the 'mediation' or the 'no mediation' questionnaire and indicated on their response that they were willing to participate in an interview. Because there were eight matched pairs, covering four mediations, this meant that eighteen cases are represented by the interview responses: eleven of these were mediated, five were not mediated, and two were handled using telephone-based facilitation.

TABLE 4.1 Interviewees

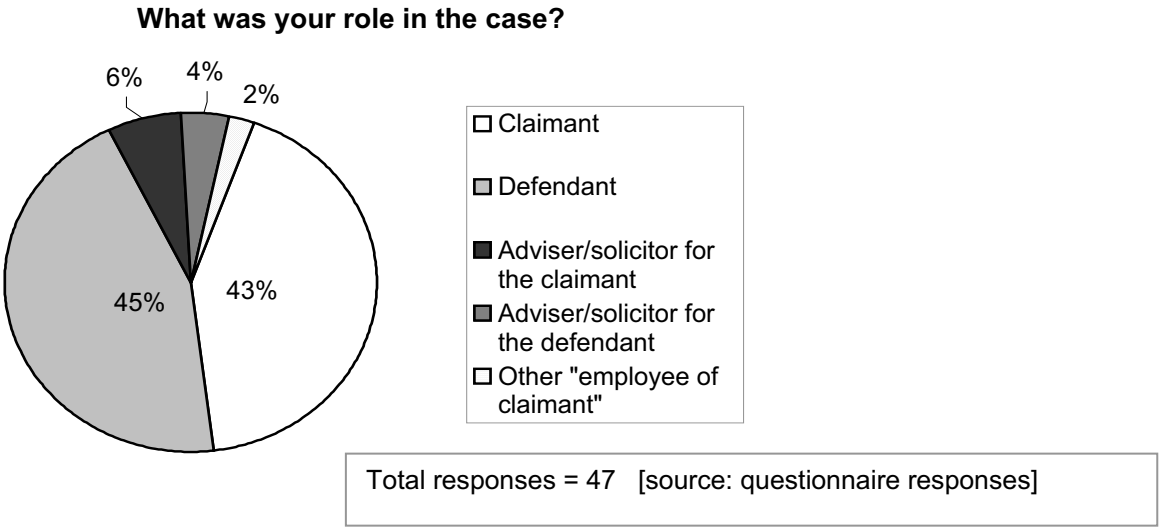
	Number of interviews	Claimants (of which matched)	Defendants (of which matched)	Number of cases
Mediated	15	8 (4)	7 (4)	11
Not mediated	5	2 (0)	3 (0)	5
Telephone facilitations	2	1 (0)	1 (0)	2
Total	22	11 (4)	11 (4)	18

The interview schedule is attached to this report in Appendix 2.

Profile of respondents

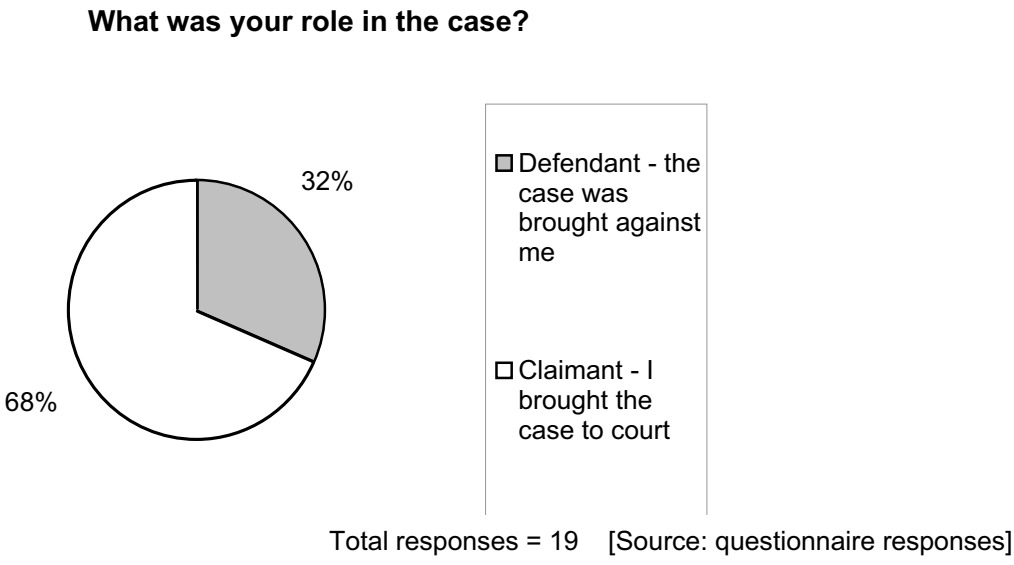
Respondents to the 'mediation' questionnaire were evenly divided between claimants (21) and defendants (21). Five respondents were advisers/solicitors. Just over half of the respondents (24) were individuals, and the remainder were representatives of a local authority or company.

FIGURE 4.1 Mediated/facilitated cases



Respondents to the 'no mediation' questionnaire were primarily claimants (13 out of 19), with only six defendants. No advisers responded. Three of the claimants were business representatives; all but one of the defendants were business representatives.

FIGURE 4.2 Non-mediated/facilitated cases



Interview respondents were evenly split between claimants and defendants, with 11 of each (see Table 4.1). Few of those interviewed were legally represented, as indicated below.

TABLE 4.2 Legal representation of parties

	Claimant in person	Claimant represented	Defendant in person	Defendant represented	Total
Individual	4	1	4	0	9
Business	2	0	6	0	8
Other	2	2	1	0	5
Total	8	3	11	0	22

[Source: interviews]

The 'other' parties were two claimant and one defendant housing associations (all in person) and two local authority claimants (classed as represented because their cases were handled by in-house legal departments on behalf of other departments within the authorities). The individual represented claimant was involved in a road traffic case conducted by insurers, which appears to have been referred to the Small Claims Mediation Service through an oversight. One of the business defendants was a firm of solicitors – strictly speaking the firm acted in person, but as one of the firm's solicitors handled the case, they would have had more in common with a represented party. Another of the business defendants had been represented early on in the proceedings but subsequently acted in person.

Previous experience of mediation

Mediation experience among respondents was very limited. The questionnaires asked if the respondent had been involved in a mediation before and defined mediation as 'a service in which an independent, professionally trained mediator helps people who are in dispute to resolve their dispute'. Of those who mediated, the majority of respondents (40) had never been involved in mediation before. Four respondents (two defendants, an adviser and one claimant) had been involved in mediation once before, and all four had been involved in a civil case at county court before either once or more than once. Only two respondents had been involved in a mediation more than once; they were both advisers, and both had been involved in a civil case at county court more than once.

Of those who did not mediate, again most (17 out of 19) had never been involved in a mediation; only two had been involved in a mediation once before, and none more than once. Involvement in

a civil case at county court was more mixed, with eight never having been involved, six having been involved once before, and five more than once.

This lack of experience of mediation is reflected in respondents' descriptions of how much they knew about mediation. More than half (26 of those who mediated, and 13 of those who had not mediated) had never heard of mediation or had heard but knew nothing about it. Of those who mediated, a further fifteen knew a little, and only five described themselves as knowing a lot (two advisers and three defendants). Of those who did not mediate, five knew a little and only one knew a lot.

Just under a third of interviewees had some prior experience of taking part in a mediation (one of whom had used the Manchester scheme in a case previous to the one that was the subject of the interview). In two cases the experience was of mediation outside of the civil arena. A further three claimed some knowledge of mediation. But a majority appeared to have no direct experience and little if any prior knowledge or understanding.

Some of the interview responses reflect misunderstandings or misconceptions about the nature of mediation and the mediator's role. One respondent, for example, who described himself as knowing a little bit about mediation, expressed dissatisfaction that the mediator had not provided more support for him during the mediation:

> *'The only doubts I had was, I said to the mediator I'm quite happy because he said what would you accept because you can do this, that and the other. I said look, £250, not a penny less is what I would accept. And I was surprised when he came back within about 5, 7, 10 minutes and said you're going to get your £250, and I thought gosh should I have asked for £300. That was the only little bit that I felt I was let down on. That they could have said look, you could really…go the whole hog here if you want, I don't know how you'd put it, but I knew he wasn't allowed to. But I felt I could have been given a little bit more encouragement perhaps to go for more.' [interview 22]*

Another respondent, a defendant in a claim brought by a local authority, had not understood that he could argue the case made by the claimant in the opening session of the mediation:

> *'there was nothing explained that you would have the chance of explaining yourself or to go as you are before the judge. Because when you are with judge you have a*

case, you have to explain the reason why you don't want to pay them. But in mediation there was nothing like that, I thought.' [interview 17]

Profile of the cases

The questionnaires did not request details of the claim types or claim values, but a cross-reference with the mediation officer's spreadsheet reveals that thirty of the responses from those who mediated were part of matched pairs – i.e. there were fifteen matched pairs, with both defendant and claimant responding. Of those who did not mediate, only two were matched pairs, with both defendant and claimant responding.

TABLE 4.3 Claim types of questionnaire responses

	Mediated cases	**Non-mediated cases**
Debt/breach of contract	25	18
Debt/housing or landlord/tenant	5	0
Professional negligence	1	0
Other negligence	2	0
Road-traffic accident	0	1
Total cases	**33**	**16**
Total responses	**47**	**19**
[Source: questionnaire responses cross-referenced with mediation officer's spreadsheet]		

Of the mediated cases, 25 were for debt/breach of contract; five were for debt/housing or landlord/tenant; one was professional negligence and two were other negligence. Claim values ranged from £250 to £5,535. All but one of the non-mediated cases were claims for debt/breach of contract; the other was a road-traffic accident. Claim values ranged from £8.95 to £2,500.

TABLE 4.4 Claim values of cases in questionnaire responses

	Mediated cases	**Non-mediated cases**
£0–£499	9	4
£500–£999	9	5
£1,000–£2,499	8	7
£2,500–£5,000	4	0
Unspecified	2	0
Total cases	**33**	**16**
Total responses	**47**	**19**
[Source: questionnaire responses cross-referenced with mediation officer's spreadsheet]		

Interviewees were not always clear about the type of claim or value of claim they were involved in. In all of the interview cases, however, the claim was for money owed. Only one claim did not arise from some form of contractual or other financial dealings between the parties, and that involved a road traffic accident case that appears to have been referred to the service through an oversight.

The claim amounts described by interviewees ranged from £267 to £2,500. A majority involved relatively small amounts – more than half were for approximately £500 or less.

Advice

Of those who mediated and completed the 'mediation' questionnaire, 29 respondents had no advice from a solicitor or other adviser during the course of their case or the mediation. Only one of these did not settle at mediation. Litigants, both claimants and defendants, who did not have any advice were approximately evenly divided between individuals and businesses.

TABLE 4.5 Advice		
No advice	**Advice from time to time**	**Advised all the way through**
2 advisers for claimant	6 individual claimants	2 business claimants
2 advisers for defendants	1 business claimant	2 business defendant
4 business claimants	2 individual defendants	1 individual claimant
7 individual claimants	2 business defendants	
7 business defendants		
7 individual defendants		
[Source: questionnaire responses]		

Eleven respondents had advice from time to time; most of this group was made up of individual claimants. This group obtained advice from a variety of sources, including

- free legal adviser for business
- student legal service
- Citizens Advice Bureau (CAB)
- consultant
- solicitor and CAB
- trainee solicitor and CAB
- solicitor and debt collection agency
- solicitor

Only one of these did not settle at mediation. Only one of these parties was advised by their adviser (advised by both solicitor and debt collection agency) to use mediation.

Of the five respondents who identified that they were advised all the way through the case, four were representing businesses, and only one was an individual. Four used solicitors and one used

a consultant for the business. Only one decided to use mediation because their adviser recommended it. All settled at mediation.

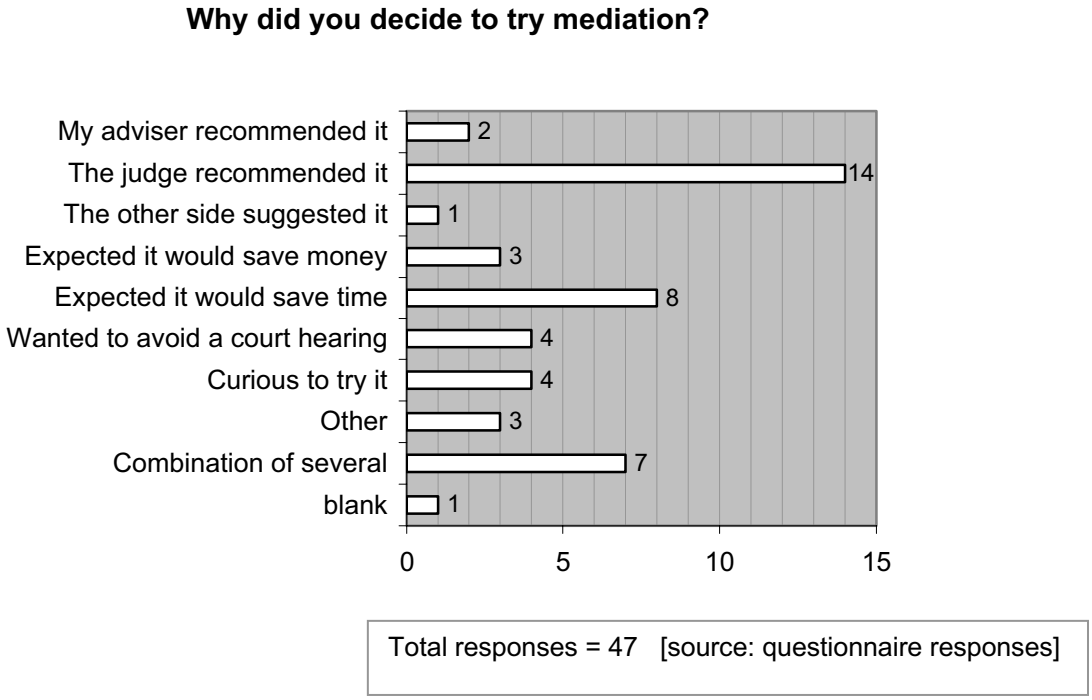
How did you find out about the small claims mediation service?
Both groups of questionnaire respondents found out about the service through a phone call or letter from the mediation officer. For the group who mediated the majority found out about the service in this way, suggesting that this contact may have had an impact on the subsequent decision to mediate. Of those who did not mediate/facilitate, only one of the nineteen respondents indicated that they heard about the service through judicial directions. In one-quarter of the responses from those who did mediate, the respondent indicated they had heard about the service through judicial directions.

Of the interviewees, around three-quarters (16 out of 22) said they had first learned about the scheme when the mediation officer contacted them. Of these, around half were aware of some form of judicial backing for the use of mediation in their particular case. The other interviewees had come to learn of the scheme by various means, but only a handful mentioned receiving leaflets prior to contact from the mediation officer.

Reasons for using mediation
For nearly one-third (30%) of the respondents who mediated, the reason given for trying mediation was because the judge had recommended it. Another identified the judge's recommendation as one reason, as well as the expectation that it would save time and money. As well as the four who indicated avoiding a court hearing as their reason, another three gave that as one reason, along with saving time and/or money.

Some respondents appeared to have misconceptions about whether they had a genuine choice or not to use mediation, although the service is clearly described as voluntary. One respondent gave as one reason for using mediation because "the mediation officer explained it 'was the usual procedure' "; another said they were directed by the court to do so. Although direct contact may have influenced decisions to use mediation, this finding suggests that judicial directions may be just as important a factor.

FIGURE 4.3 Reasons for using mediation



Among the interviewees, reasons for using mediation were varied, but overall their perceptions were that mediation would offer a quicker, simpler and cheaper solution than a small claim hearing. The two most frequently cited reasons for agreeing to mediate among the interviewees were to achieve a quick resolution and to avoid a court hearing. For some, avoiding a hearing meant saving time and thus money, which would otherwise be spent in preparation and attendance. For others, the prime concern was to avoid a court appearance, which they thought would be ‘a bit scary’ or ‘daunting’. One interviewee had previously had a bad experience before a judge and wanted to avoid a repeat of that. She was also eager to meet the defendant in her case face to face, “to tell him what I thought” [interview 7].

Another factor for several interviewees was recognition that pursuing a case to a hearing involves an element of risk in that one could not be sure of winning before a judge. One interviewee also considered that the amount of money at stake was small and so should not take up a judge’s time. Two respondents cited specific advantages of mediation over a judicial ruling: one, a claimant social housing landlord, was keen to avoid a county court judgment against the defendant, a former tenant, whom she described as young and vulnerable, and in another case the defendant wanted to try to reclaim the claimant’s custom and saw a mediated solution as more likely to achieve that:

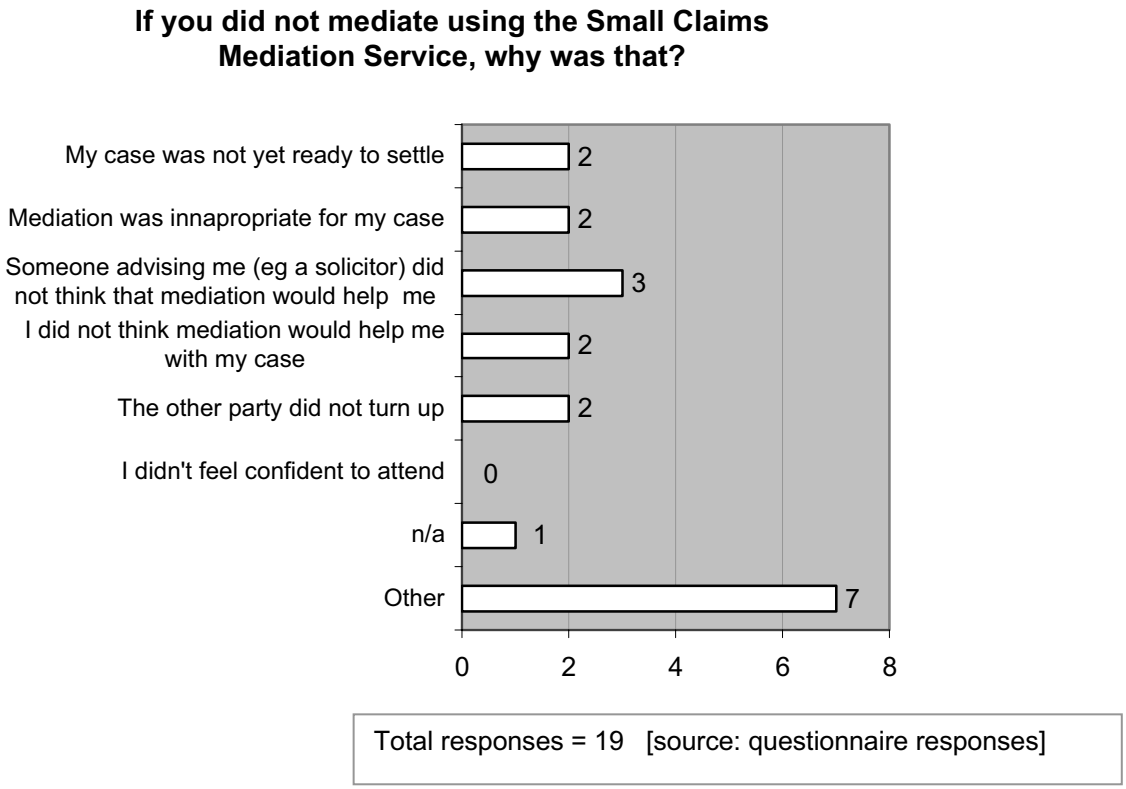
"Really… we were after a quick settlement of this issue. We'd actually had a very good, and still have an ongoing working relationship with the parties concerned. And we didn't really want to … spoil this from either party's point of view and a mediation service just seemed a way of negotiating if you like with a third party in the middle and would possibly be independent and therefore be prepared to explain why one or the other of us should bend a little bit." [interview 20]

Two other parties wanted to meet their opponents face-to-face, one to explain their position, as described above, and the other to find out what their opponent wanted to say, but not in the setting of a court hearing. In one case, the defendant wanted to get the case out of the way as quickly as possible because of unfortunate personal circumstances and so agreed to mediation because it could be concluded earlier than a court hearing. In another case, the defendant, a former tenant or a social housing landlord, wanted to mediate because she knew she was right and could prove it – she wanted to avoid a court hearing and saw mediation as a chance to stop the case. That case settled at mediation with the claimant agreeing to withdraw the claim.

Reasons for not using mediation

It is difficult to form an overall view of the reasons why people did not mediate. Questionnaire respondents gave a variety of reasons for not using mediation, as shown in Figure 4.4.

FIGURE 4.4 Reasons for not using mediation



Some respondents gave practical, logistical reasons for not using mediation: for example, the other party refused to mediate or did not turn up, or there were difficulties in arranging a time for mediation. Four respondents gave as the reason that the other party did not wish to mediate or did not respond to or cooperate with the mediation officer. None indicated that they did not feel confident to use it, an interesting result in light of the general lack of experience with mediation that respondents had. This might be a reflection of the reassurances given to the parties by the mediation officer or the leaflet.

Among the interviewees, only five had not mediated, and they each gave a different reason. Two did not mediate because the other side had not wanted to; on one of these the other side, the defendant, had agreed to mediation but failed to turn up. One, the road-traffic accident case, was settled without mediation. One felt that mediation was premature because he had not yet had all the particulars of the claim:

> *"[T]he court had made an order for the claimant to submit details of the claim which I hadn't had and that's where I was up to. And I said to the mediator that whilst I was happy to go to anything in relation to mediation, I need to know what it is I'm being claimed against. So until I got the information then I couldn't agree to mediation on something I don't even know what I'm being sued for. And the [mediation officer] said to me well the best thing to do then would be to wait until the documentation arrived, which it still hasn't even as today." [interview 4]*

In that case, the respondent erroneously believed that there would be no action on the case until the details had been submitted by the claimant; he did not attend the hearing and obtained a judgment against him.

One interviewee had difficulty arranging the mediation and had to cancel two scheduled mediation appointments; he also indicated that he was concerned that the mediation officer could not deal with the legal issues in the case:

> *"The other factor that … did not endear me to the mediation process in this case, was that the central issue between us and [the claimant] was a very clear legal issue. [The mediation officer] made it clear in the initial discussions … that he would not be looking at the legal issues, he would be looking to see if there was common ground between the parties, i.e. carving up the [claim], on what grounds I don't know, but I can just imagine... they'll accept 50 percent of the claim if you're*

prepared to pay it and everybody goes away and shakes hands sort of thing. And it wasn't that sort of an issue, it was an all or nothing issue. So, having been told by way of introduction that [the mediation officer] wouldn't be looking at the legal issues…then the appetite for mediation evaporated." [interview 6]

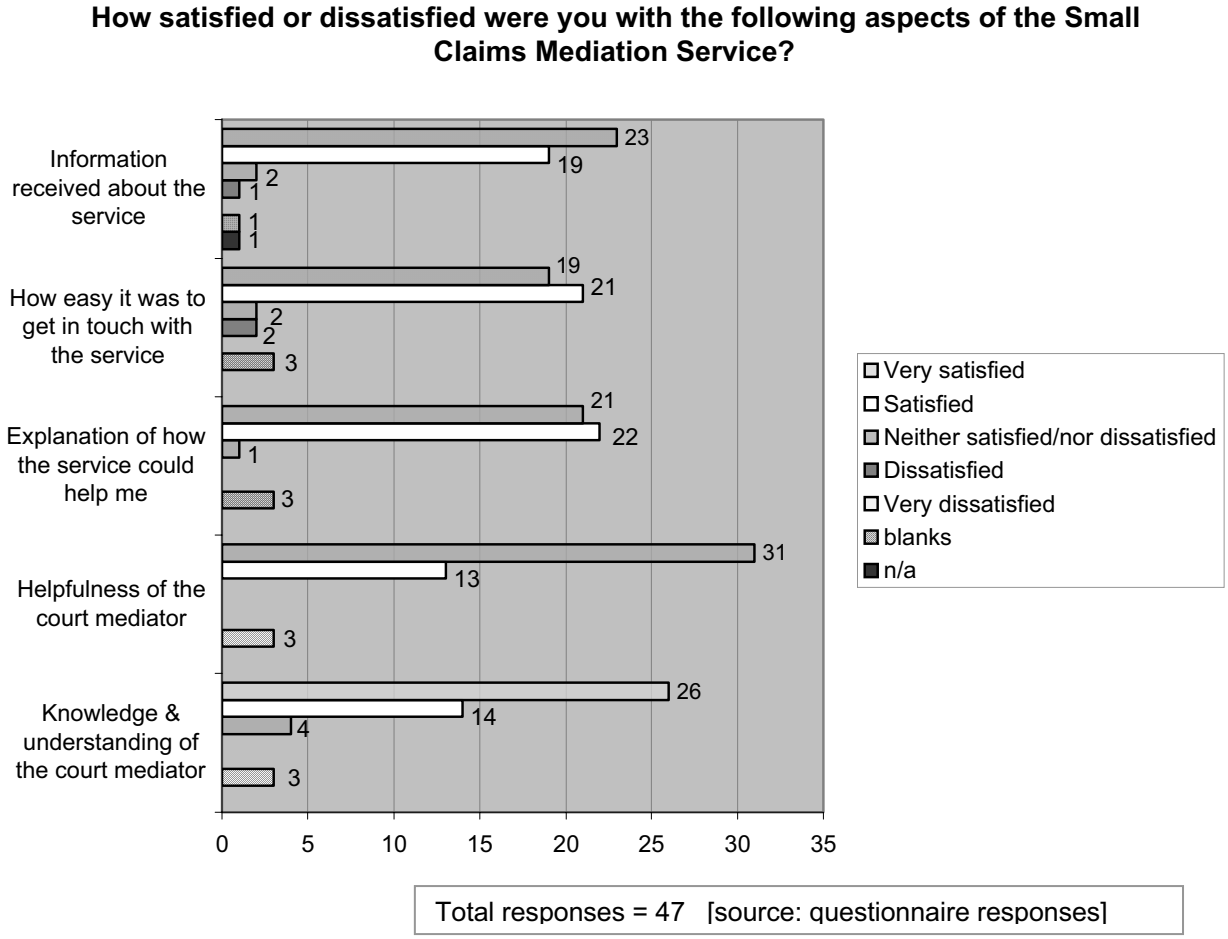
He felt that the judge had referred the case to mediation purely because he did not want the two parties, who were representing two firms of solicitors, to be "scrapping in front of him over a relatively small amount of money".

Satisfaction with the service

The questionnaires asked about respondents' satisfaction with the service, covering information received, how easy it was to get in touch with the service, the explanation of how the service could help, and the helpfulness, knowledge and understanding of the mediation officer. Overall satisfaction was very high among respondents to both questionnaires.

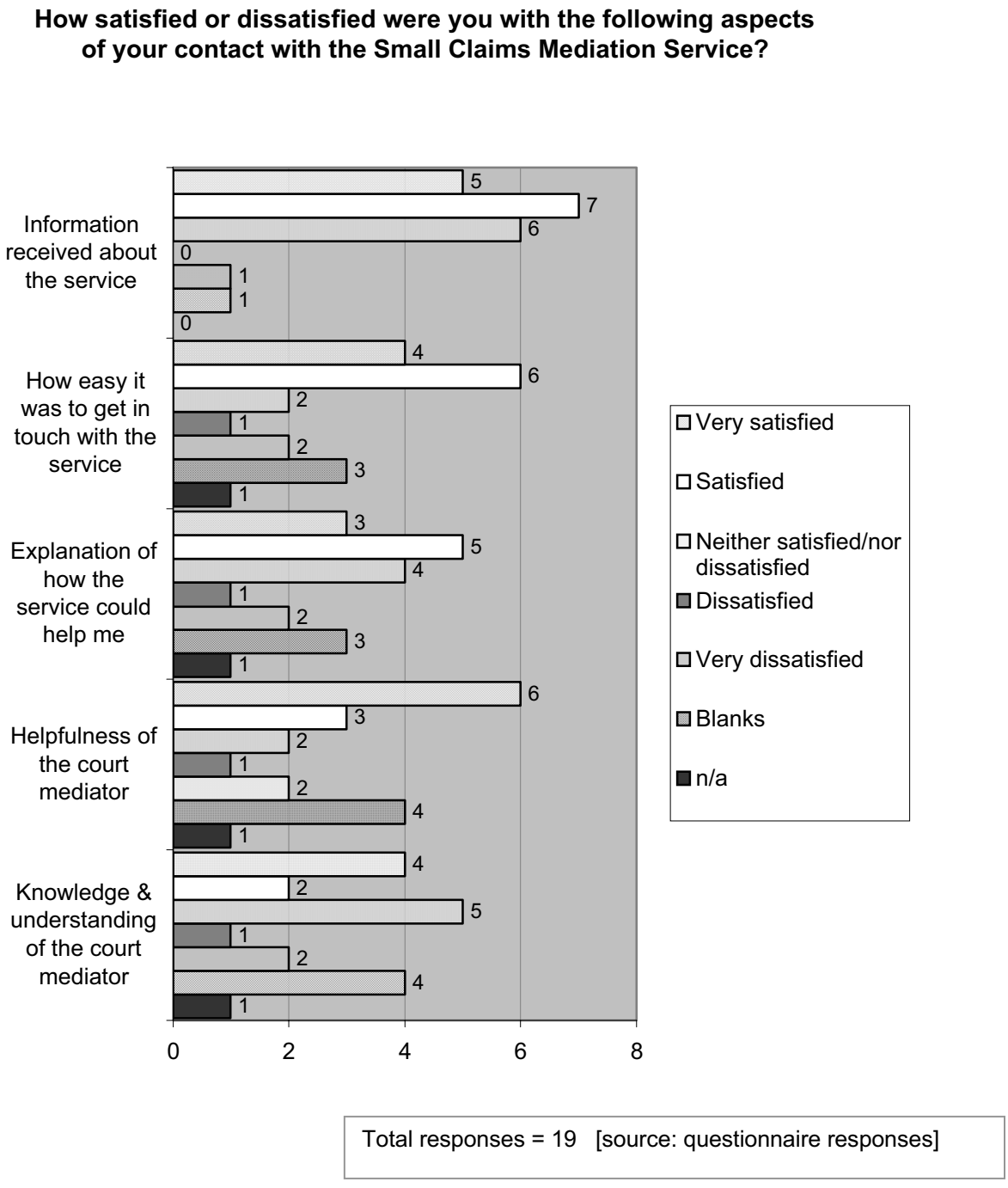
Among those who expressed a view (there were some blanks in responses), for those who mediated, satisfaction was particularly high with the mediation officer's explanation of the service and helpfulness (98 percent and 100 percent satisfied or very satisfied, respectively). The only 'dissatisfied' responses related to ease of getting in touch (two responses) and information received about the service (one dissatisfied), and there were no 'very dissatisfied' responses. These figures are shown in Figure 4.5.

FIGURE 4.5 Satisfaction with the service among parties who mediated or facilitated



For those who did not mediate, the picture is more mixed. Overall satisfaction was still high, with most respondents who expressed a view indicating they were ‘satisfied’ or ‘very satisfied’ with most aspects queried. There were, however, several respondents who indicated they were ‘dissatisfied’ or ‘very dissatisfied’ with some aspects, as shown in Figure 4.6. More respondents who did not mediate replied ‘neither/nor’ to these questions than those who did mediate, reflecting that many of this group either did not perceive they had actually used the service or had no direct contact with the court mediator.

FIGURE 4.6 Satisfaction with the service among parties who did not mediate or facilitate



Interview respondents also described high satisfaction levels. Most respondents indicated that they received information about the service from the mediation officer, through telephone discussions. Aside from the two who said they had not used the service, all those interviewed said they found the service helpful, and several described it as 'very helpful'. For many, the main value appeared to

be in offering a route into mediation and therefore an early resolution, rather than any aspects that might be considered as a stand-alone service.

Among the aspects that were mentioned as particularly valuable were that the mediation officer explained that mediation wouldn't be threatening; that he assured the parties that they could go to a hearing if the case was not settled: "Yes, he was very nice and he really said, reassured me that the idea of mediation was to actually try and avoid actually going in front of a judge and seeing if we could sort it out…" [interview 8]. For this interviewee and one other, the contact from the mediation officer was a pleasant surprise: "It was a surprise but it wasn't, I didn't feel offended by it, in fact it was pleasant to receive it because at least I knew something was happening." [interview 18]. This party's contact with the mediation officer was reassuring: "[H]e explained exactly how it would work, what was the worst scenario and the best scenario; he explained everything … in layman's terms put in front of me … courts always seem to me to be a bit of a threatening place but he explained that that wouldn't be so." [interview 18].

Less satisfactory among interviewees was the written information about the service, particularly the leaflet. Many interview respondents were unclear about whether they had seen the leaflet at all, although several mentioned that they had probably received it and not looked at it. One interviewee was very critical of the poor quality of the information he had been sent and described it as looking as if it had been run out on a photocopier. He cited the 'comms' issue – referring to documentation generally – as needing improvement. The leaflet appears not to have been a major source of information for court users, perhaps because it was one of several sent out with allocation questionnaires and so could easily have been overlooked.

Pressure

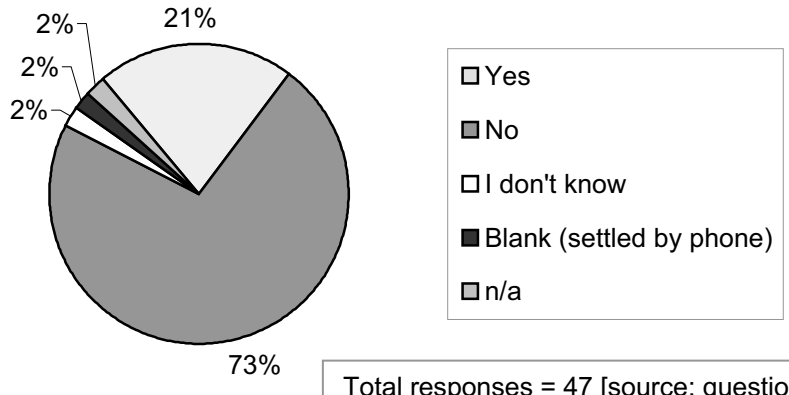
The mediation questionnaire asked whether respondents felt under pressure during the mediation and, if so, what was the source of the pressure. The majority (73 percent) said they did not feel under pressure; just over one-fifth did feel under pressure. For most of these the pressure was generated from time or financial pressure, although three also cited the mediator as a source of pressure.

This is a difficult area to measure because the perception of pressure is individualistic and subjective. 'Pressure' is a somewhat loaded term and whether or not it was felt is open to some interpretation. It could be that respondents interpret pressure as a negative force, or it could be that they expect to come under some degree of pressure when involved in a legal claim. There are also

many different possible sources of pressure, including time and financial pressures that relate to individual circumstances.

FIGURE 4.7 Pressure at mediation

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



Total responses = 47 [source: questionnaire responses]

Ten of the 47 respondents indicated they felt under pressure during the mediation. Of these:

- one felt under pressure from the other side
- three felt under pressure from the mediator, one of whom also felt under financial and time pressure
- two felt under financial pressure only
- one felt under financial pressure and didn't want to go to court
- two felt under time pressure only
- one felt under time pressure and also another, unstated reason

It is interesting to compare these responses with those given in interviews with questionnaire respondents, where the issue of pressure could be explored more fully. Interviewees were asked whether they felt under any pressure in the mediation, without specific reference being made to pressure coming from the mediator. One respondent who indicated in his questionnaire response that he had not felt under pressure said in his interview that he felt pressure from the mediator to settle. Another respondent had said on her questionnaire that she felt no pressure, but when interviewed she said that she felt under pressure from herself – she wanted to get it sorted. Another, a business defendant, said in his questionnaire response that he had not felt under pressure, but he said when interviewed that the mediation officer emphasised the fact that the

district judge would decide the case according to law, and as he did not know the legal position of the claim, he felt influenced by this in his decision to settle.

Only two interviewees said they had felt under direct pressure from the mediator to reach a settlement on the day. This pressure was not necessarily seen in a negative light; sometimes it was considered a necessary and desirable aspect of resolving the case. One described the process as being,

> *"…effectively I think just putting both of our heads together and cracking them a little bit until we both sort of agreed.*'

Later on in the interview, the mediator was described as:

> *"…just reiterating the facts as stated by both parties and then plump[ing] for somewhere in the middle. That's the way it felt at the end and then we were under a little bit of pressure, 'look we've gone this far, how about if we settle at £500 and then if I persuade them to settle will you settle as well?' " [interview 20]*

Two other interviewees (both employees of defendant companies) felt pressured indirectly by what the mediator had said. For one, it was the mediator stressing that if the case went before a judge, it would be decided according to legal principles; this interviewee felt unsure of his case, and what the mediator said was therefore a strong factor in the decision to settle. However, this interviewee had no complaints about having the risks of continuing with litigation brought home to him in that way, and mainly blamed himself for not having obtained legal advice beforehand. The other interviewee cited the mediator as saying that if the claimant won at a small claim hearing, the defendant would also be liable to repay the court fee. The interviewee calculated that this would have added another ten percent to the amount payable, and seeing the potential for the price of continuing to defend to escalate, the defendant decided to settle.

One other interviewee had felt under pressure during the mediation due to external factors, i.e. personal circumstances, which meant he needed a quick settlement.

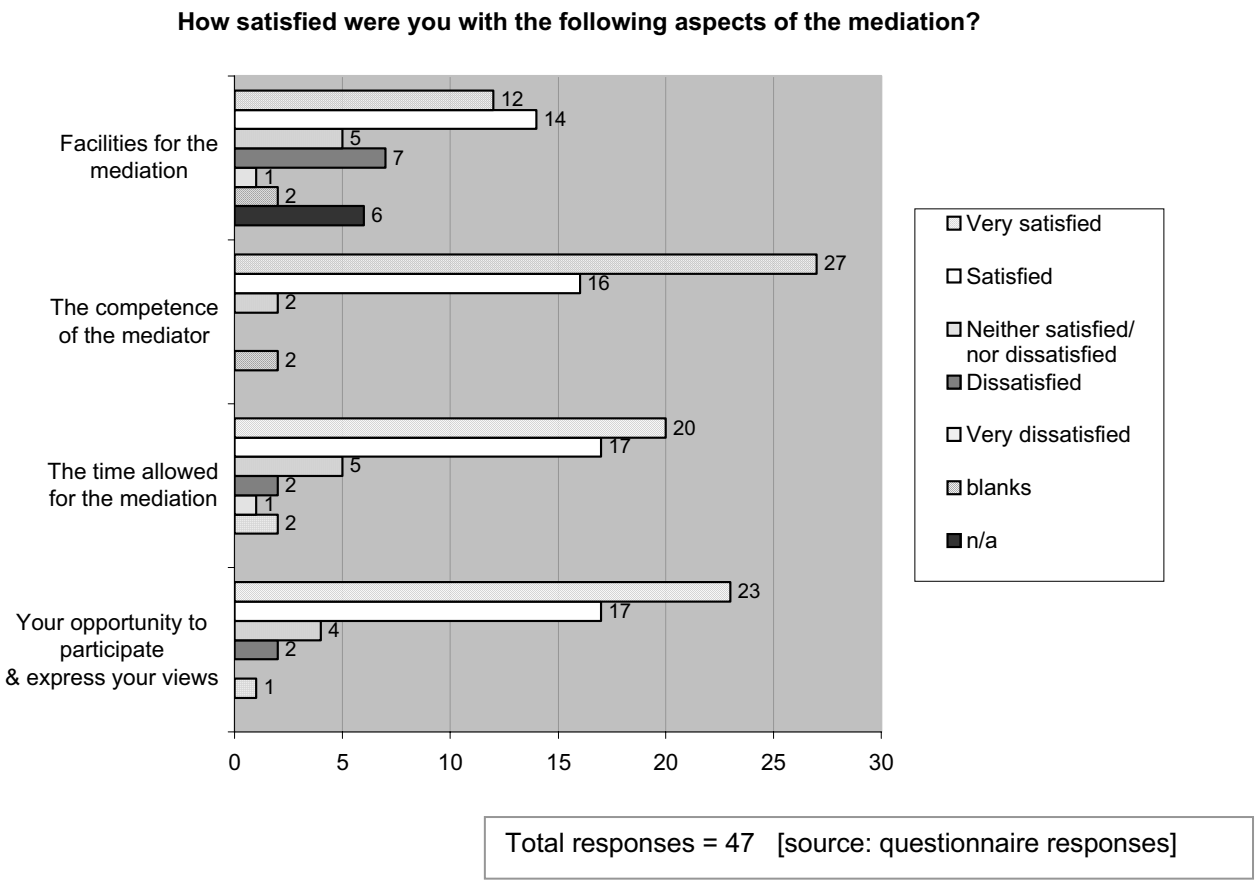
Overall, however, a clear majority of interviewees said they felt under no pressure from the mediator – or elsewhere, to settle at the mediation. The strongest exposition of this came from an in-house lawyer for a local authority claimant:

"No, none at all, because we know that we can decide that it was a nice exercise but we're too far apart, we're not going to get anywhere and we can walk away from it. So there's no pressure." [Interview 16]

Satisfaction with the mediation

Those who mediated were asked in the questionnaire about their satisfaction with aspects of the mediation (as distinguished from aspects of the service such as information, described above).

FIGURE 4.8 Satisfaction with the mediation



Total responses = 47 [source: questionnaire responses]

Nearly all questionnaire respondents who expressed a view (96 percent) were satisfied or very satisfied with the competence of the mediator, and 87 percent were satisfied or very satisfied with the opportunity to participate and express their views. The only very dissatisfied responses were in relation to the time allowed and the facilities; a significant 21 percent of respondents were dissatisfied or very dissatisfied with the facilities provided. (Note: Follow-up interviews indicated this dissatisfaction usually relates to the condition of the extra room used for caucusing, or separate meetings.) Three respondents out of the 45 who replied said they were dissatisfied or very dissatisfied with the time allowed for the mediation.

Six respondents replied ‘not applicable’ to the question on facilities because those cases were handled by telephone-based negotiations and hence they had perceived that the court-based facilities had not been used.

Of the interviewed parties, all but one who had been through a mediation had something positive to say about the experience. For some, the whole thing was positive. But most frequently, positive comments focused on having the opportunity to engage with their opponent constructively – something which few appeared able to have done previously, and to get a result without the need for a court hearing. One interviewee also pointed to the mediation being held on court premises as meaning it had a ‘stamp of authority’.

Around a third of those who had been through a mediation could not point to any negatives. Where there were negative comments they tended to relate either to the outcome or the facilities, rather than the process – although some did have negative comments about aspects of the process (as explained below). Several parties had complaints about the facilities available for the mediation, with the rooms used being variously described as ‘a bit small’, ‘cramped’, ‘scruffy’ and ‘dirty’. Such complaints were aired by only a minority of interviewees.

In the interviews with parties who used mediation or telephone facilitation, the interviewees were asked if they felt able to participate fully in the mediation, and just over half felt that they had been able to. For others, participation was only a qualified success. Two parties would have preferred to have been in the same room as their opponent, and to deal with them more directly, rather than rely on the mediator’s ‘shuttle’ approach to get their respective positions across. These views are described later in the discussion on the mediation process. Two others said that lack of time prevented them from saying all they would have liked to have said in support of their case; these are described below. Only one interviewee felt he had not been able to participate properly at all; he described his perception that mediation does not allow the parties to argue their case or explain the reason for not paying, whereas he felt that before a judge he would have been allowed to do so. He also explained, however, that he was under duress because of personal circumstances and wanted to get it finished as quickly as possible. In spite of not feeling able to argue his case, he did feel that the mediator had been fair.

Interviewees were asked whether they felt the time allowed for mediation had been adequate. (The times given by the respondents ranged from fifteen minutes to an hour and a half.) Of the eighteen who mediated, all but two responded that the time had been adequate, but several qualified this

statement by saying that they could have held out for a larger settlement but decided to cut their losses; they did not have time to bring up all the facts; they would have liked longer to state their case but they were at a stalemate; they should have taken more time negotiate a higher settlement. One interviewee, a claimant in a negligence case, said the face-to-face mediation (which was about an hour long) "took all the time we were given. I would have liked to go on a bit longer. About another half hour at least." [interview 7]. She did feel satisfied with the process overall, however; she explained that she had been able to "get everything off my chest. Walked away with my head high. I got a payment. I proved my point." In another case, in which the mediation lasted about forty minutes, the interviewee acknowledged that a point had been reached where both parties were simply re-stating their interpretation of the facts. In another case, lasting about one hour and twenty minutes, the claimant said, "In a way it was [enough time] and in a way it wasn't. I didn't bring up all the facts." [interview 9].

Most of those who had been through a mediation said they had felt comfortable with the process, saying they had found it 'straightforward' and 'easy'. Several commented on the mediator's placing of the parties in separate rooms while he conducted 'shuttle' negotiations. For some, this was a good thing: it reduced the likelihood of a 'shouting match' and allowed for more dispassionate assessment of the other side's position:

> *'I think it's better that you're not face to face because you can feel quite angry towards the other person ... if somebody else comes back with an offer it kind of detaches you from that sort of feeling that you've got when the other person's there.'* [interview 5]

Others, however, would have preferred to be in the same room as their opponent. The main reason for this appeared to be a desire – if not quite amounting to mistrust, to know what was being said in their absence. For example:

> *"The only thing I found quite frustrating was that we didn't sit in the same room for mediation, the mediator sat in a separate room and he travelled backwards and forwards passing messages, which I found really quite frustrating."* [interview 8]

> *"…the only negative thing is I felt I should have perhaps heard a little bit more from the other side and possibly…disagree with some of the points they raised. If they raised any, I don't know. … I would have been quite happy to have answered my questions in front of the other person and I would have preferred to hear the other*

person answer his questions in front of me. … I was asked questions and I just wondered what the other party had said." [interview 20]

"[W]ith hindsight if I'd actually sat with the claimant and said look you know, let's be reasonable about this, you did have all this opportunity to do this, why didn't you, you know the amount you claimed. But it could have got into a slanging match with other things that I think from the personality would have come into it. So I'm not sure. I mean the opportunity was there to put the case forward but we didn't have a big debate between the claimant and myself, we just stated our cases and then that was it. The claimant was taken out of the room to discuss it with the mediator." [interview 2]

This case, which involved an ex-employee of a company claiming expenses some time after leaving his job, resulted in a settlement. When asked if he would have liked to have had more time with the claimant, the defendant said: "Possibly, yes, … to say well you know come on, what are you playing at with this … obviously you've got some issues … what it came down to [was] that he did have some issues with the company when he left."

One other interviewee (an individual defendant) had a different complaint about the process; he had wanted a greater opportunity to focus on his reasons for not paying the money allegedly owing. In this respect, he would have preferred a court hearing.

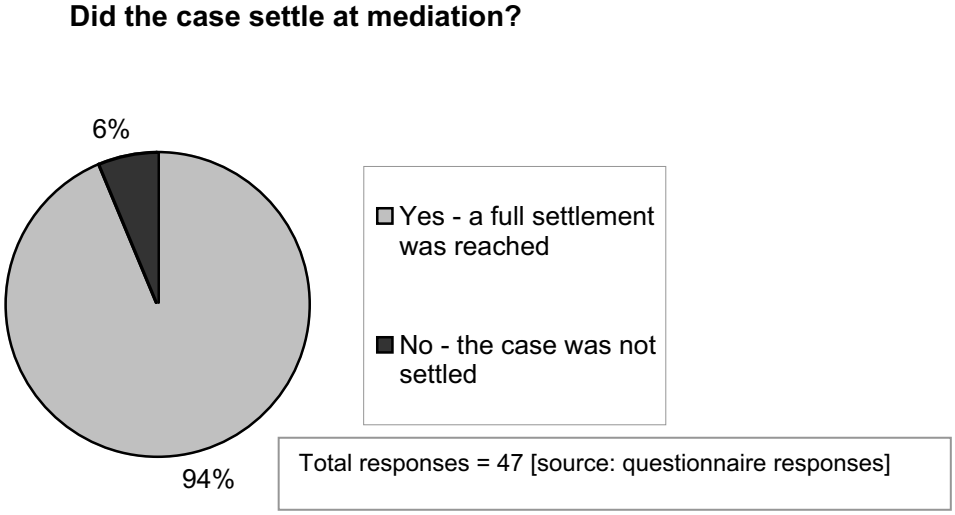
Those who had been through a mediation were overwhelmingly positive about the mediator's conduct generally – they found him approachable and good at putting everyone at ease; they thought he instilled confidence and had the skills necessary to broker settlements. Positive feedback from two interviewees, however, was tempered with feelings that the mediator was perhaps unduly focused on getting a settlement, as described under "Pressure" above. Several very positive comments were made specifically about the mediator's approach:

"One of the things that I did particularly like and one of the things that inspired me with confidence to think, yes, I would do this again in similar circumstances, was that the mediator who managed our case was very informative, very approachable, very personable. I think both the defendant and myself felt very comfortable with him, although he obviously was very professional…he made it a very positive experience." [interview 19]

Outcomes

Of those questionnaire respondents who mediated, most (94 percent) had settled their case in mediation; only three cases had not. Among interviewees who mediated, all had settled their case. This suggests that settled cases were disproportionately represented in the questionnaire and interview samples.

FIGURE 4.9 Settlement at mediation



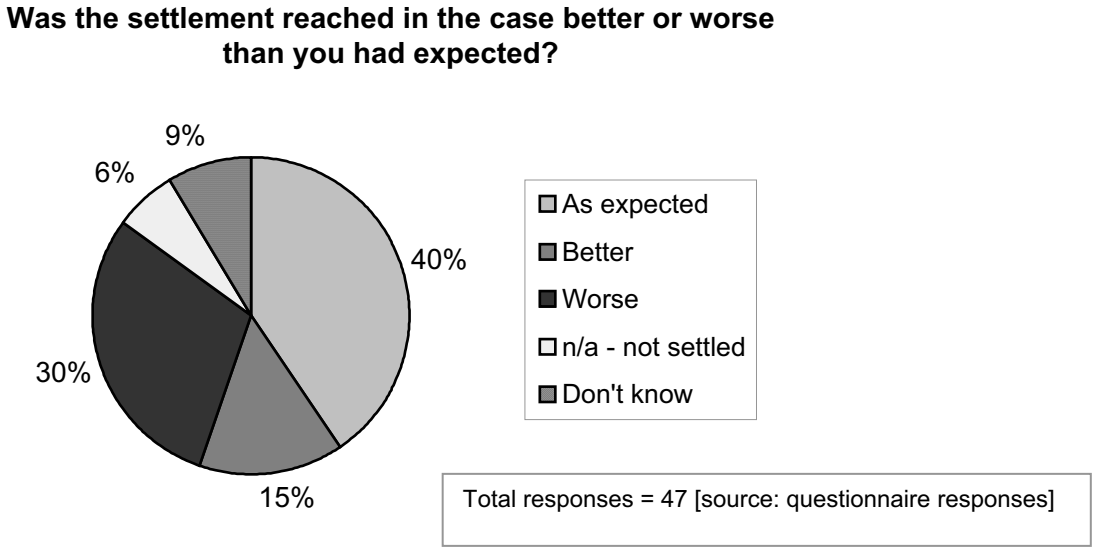
All but one of the settlements in the mediated cases involved the defendant agreeing to pay a sum of money. Of these cases, three involved solutions that the court would not have been able to order. In one case a quarter of the money went to a charity. In another the whole payment went to charity. In the third case, the defendant agreed to a discounted price on future business from the claimant, in addition to paying some compensation. In the case not involving a payment, the claimant agreed to withdraw the claim.

Views of settlement

Questionnaire respondents' views of the settlement was mixed. Most (55 percent) felt the settlement was as they had expected or better, but a large proportion (30 percent) felt it was worse than expected. There did not appear to be a significant difference between claimants and defendants in the response to this question. Among those who felt the settlement was as expected or better, half were claimants (or in one case an adviser to a claimant). Among those who felt the settlement was worse than expected, 57 percent were claimants (or an adviser to or other

representative for a claimant). It was not always clear which cases had been mediated and which facilitated by telephone, so it is not possible to give a breakdown of satisfaction by type of process.

FIGURE 4.10 Views of settlement



Where questionnaire respondents described the settlement as worse than expected, those who gave an explanation for this view generally felt that the settlement amount had been lower than they had hoped:

> *"A reduced figure was reached even though the claimant felt they had a 100% chance of success at a hearing." (Explanation: "Didn't feel should have reduced amount as much.")* [adviser for claimant]
>
> *"I had to take what was offered due to time factor no time."* [individual defendant]
>
> *"It was agreed the claim would be withdrawn." (Explanation: "During the mediation session it became clear that actions taken by the claimant prior to the claim issue would have the effect of diminishing the prospects of success at any future hearing.")* [business claimant]
>
> *"partial refund to claimant without prejudice" (Explanation: "would have given less")* [business defendant]

“Reduced amount paid to claimant but more than was originally offered by defendant.” (Explanation: “Greater amount settled. Felt that money should not have been paid but financial cost of time was prohibitive.”) [adviser for defendant]

“The Council claimed I owed them over one thousand pounds in wages and wasn't willing to pay back what I was entitled to so we settled it. … I had to pay back £200.” (Explanation: “I knew I had a very strong case against them but personal things happened in my life and didn't [want] a court hearing on top of everything else that's the reason I [accepted].”) [individual claimant]

“The defendant paid £200. I reluctantly accepted it as the mediator said if it went to court he would say he didn't have any money.” (Explanation: “My bill was for £650 so I was hoping for a lot more than £200. The mediator said £350–£400 would be ok but the defendant refused.”) [individual claimant]

“We accepted a much reduced offer in full and final settlement.” [business claimant]

“We agreed a settlement amount midway between our own figures.” [business defendant]

Among those respondents who said their settlement was as expected, three described settlements that equalled half the initial claim, and one described one equalling one-third the claim value. One claimant, for whom the settlement was as expected, described being “prepared to ‘lose out’ a little - rather than demand my full entitlement because I wanted to end what I considered to be a farce. I was dealing with idiots [from] whom I could not seem to get any sense.” Another claimant who also said the settlement was as expected said: “I would have liked more money than the amount agreed on but accepted the amount as I was nervous about going to court.“

Of those seven litigants who felt the settlement was better than expected, three (all claimants) gave descriptions of their settlements:

“We got paid £3,700 from £5K owed, and got an agreement enough to make it worthwhile to settle.” [business claimant]

"Small claim was for £500. Settled for £375 through mediation. It would have cost me a lot more to have a day off work and go to Stoke-on-Trent court." [individual claimant]

"Agreement made between ourselves and defendant to pay a percentage of former tenant arrears due – acceptable to both parties. " [business claimant]

The four defendants who said it was better did not describe their settlements.

Of the fifteen interviewees who had mediated, all had settled their case in mediation, and almost all expressed satisfaction with the outcome. This was not necessarily a straightforward matter, however. Perhaps not surprisingly, the degree of satisfaction appeared to be linked to the result. Those who declared themselves most satisfied with the outcome were claimants who had succeeded in getting the defendant's agreement to pay the full amount owed, and a defendant who had persuaded the claimant to withdraw the claim. In addition, one defendant who had agreed to make a payment to charity was 'over the moon' with the result, because it meant not paying the claimant anything personally.

Disappointment with the outcome was found among both claimant and defendant interviewees and among both the mediated and the facilitated cases. Three claimants (one of whom settled through telephone facilitation) felt they settled for less than they wanted. Another two also felt this way but believed they would not have fared better at a hearing. Four defendants felt that it had been wrong for them to agree to pay anything or that they had agreed to pay too much. Another defendant (who participated in telephone facilitation) was annoyed to pay legal costs because the case settled for what had previously been offered, plus half the court fee and costs.

Some, however, were satisfied primarily because they had got the case out of the way. They were not particularly enamoured with the lengths they had had to go to, but viewed compromise over the amount to be paid or received as a worthwhile price to pay for having achieved a settlement and avoiding the perceived time, trouble and costs of a small claim hearing. For example:

"I expected to have to pay some money but probably paid a little bit more than I'd anticipated beforehand. … I was [happy with the outcome] at the end of the day, it was a settlement and the thing was put to bed, which was fine." (defendant company, paying party) [interview 12]

> *"In the bigger picture I suppose yes [I was satisfied]. I still felt that it was wrong to pay the guy to be honest ... it was a case of saying well you know, how much longer do we want it to go on for and how much is it costing, it's cost more than that in my time to date, it may cost twice, three times as much as that in my staff time in dealing with the matter. So yes it was, as I say it was the lesser of the two evils."* (defendant company, paying party) [interview 2]

Some others were ambivalent about satisfaction with the outcome for different reasons. Although not very happy with the amount of the settlement, they were nevertheless glad to have gone down the mediation route, and had got something positive out of it – primarily an opportunity to get their point of view across to their opponent. For example, one claimant said:

> *"I felt that they hadn't paid enough but I felt that I'd got justice in my eyes because they knew that they were in the wrong. ... I do feel I didn't have the amount of money that I should have had, that's a negative side. But on the other hand, it saved me from going to court and it wasn't really about the money, to be honest. It was about making a point. ... "* (claimant, sole trader) [interview 5]

Only one interviewee who had mediated expressed outright dissatisfaction with the outcome. This was the defendant who had agreed to mediate to get the case out of the way. He felt he had in effect capitulated in agreeing to pay the amount that he did in order to achieve a quick result.

One interviewee stated in his questionnaire and interview that he was dissatisfied with a particular aspect of the outcome: that the issue of VAT on the unpaid invoice had not been resolved: "If a settlement is reached it would be useful for the documentation to take account of the fact that we are a company – i.e. we need to break out the VAT element of the claim." [questionnaire response]

Another interviewee, although satisfied with the outcome, had wanted to be able to publicise her case among others in her profession, and was disappointed to learn at the end of the mediation that the settlement was confidential. She said that she had not been told of this beforehand, and it would have made her reconsider the choice to use mediation because being able to make others aware of the issue was important to her.

Cases that did not settle

Two of the three questionnaire respondents who did not reach a settlement in mediation did not describe the outcome of their cases. One did; her case went to a hearing, where the judge awarded £547 to be paid in £50 monthly instalments. The original claim was for £976.

Comments made by the three questionnaire respondents who did not settle were:

> *"It's not really a good medium to settle if both parties are adamant that they're right. I think more documentation guidance should be required, to weed out the chancers who use small claims to bully others into paying for something."* [individual defendant]

> *"It didn't seem to have enough bite."* [individual claimant]

This respondent also described the process used in the mediation: "It was pretty informal. The mediation officer let me speak first. Then the defendant - he was quite offensive – and the mediation officer moved him to another room. No movement. The defendant left us all high and dry." He felt that the time allowed, one hour, was inadequate. Nevertheless, all three respondents expressed overall satisfaction with all aspects of the mediation.

Outcomes of non-mediated cases

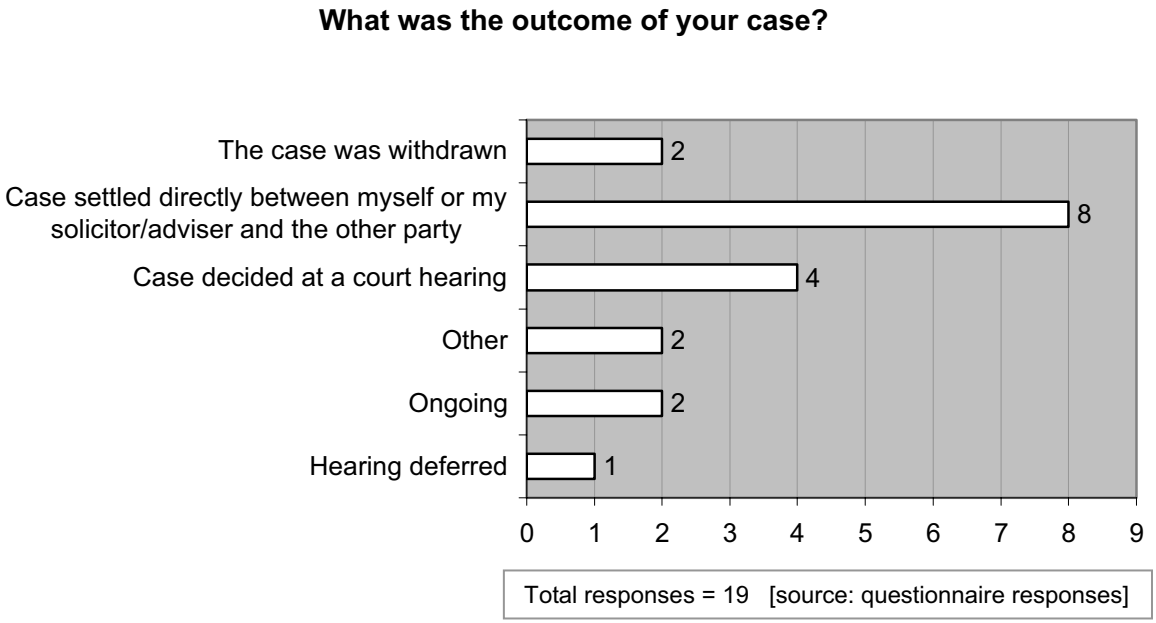
Of those who responded to the "no mediation" questionnaire, approximately one-third went to a hearing and the majority were settled pre-judgment: six were decided in a court hearing, eight settled before judgment, two were withdrawn, two were ongoing, and in one case the outcome was unclear, as the respondent said the hearing had been cancelled.[16]

Five respondents said the outcome was as they had expected; three of these were court judgments and two were settled. Two – one of which was settled and one decided at court – said the outcome was better. Two said the outcome was worse than they had expected. (Five did not answer this question, and five gave 'not applicable' as the answer.)

In one case, in which the claimant was awarded judgment, the claimant described the outcome as 'as expected' but expressed disappointment with the outcome:

"The defendant admitted that it was completely in the wrong. I expected to win but the whole process took far too long. In the end, although I was awarded judgment, I received nothing" [the company had ceased trading].

FIGURE 4.11 Outcomes of non-mediated cases



Among interviewees who did not mediate, of the four whose cases were concluded at hearing, three were satisfied with the outcome (all had judgments in their favour). The fourth (representative of a defendant company) was dissatisfied, feeling that both sides would have been better off financially had they been able to settle via mediation.

Time and money spent to pursue the case

Both questionnaires asked how much time respondents had spent on their case, including time for a mediation or hearing. Questionnaire respondents were generally satisfied with the amount of time they had to spend on their case. Of those who mediated, just over half (24 out of 47) spent a few hours or up to one day on the case; eight spent two days; and nearly one-third (fourteen) spent three or more days on the case, including one stating they spent over six months on the case. Nearly one-half were fairly or very satisfied with this amount of time, and one-third said they were neither satisfied nor dissatisfied.

[16] In two cases the respondent identified the outcome as 'other' but specified that it was judgment for claimant; hence the total number going to hearing was six, but the data in Figure 4.11 shows this as four, with two in the 'other' category.

Of these nineteen who did not mediate, six spent a few hours to half a day; four spent two days; and seven spent three or more days, with one respondent stating they spent nine months on the case. Satisfaction with time spent was slightly less than among those who mediated, although the numbers are too small to form a sound conclusion. Of the nineteen respondents who did not mediate, seven were very or fairly satisfied and five were very or fairly dissatisfied.

The questionnaires also asked about costs. A majority of respondents, both those who mediated and those who did not, had incurred court costs. Those who mediated, but not those who did not mediate, were also more likely to have travel costs and costs for taking time off work. Other costs described by respondents included:

- *"obtaining credit reference on opponent"*
- *"less time on other work"*
- *"obtaining bank statements, photocopies, parking fees"*
- *"other party legal costs"*
- *"preparations"*
- *"valuations"*
- *"cost of compiling defence"*

Responses on actual costs incurred are probably unreliable, as some respondents appear to have included the judgment or mediated settlement amount in their estimate of costs. Responses appear in the questionnaire responses shown in Appendix 1.

Views of future use

The majority of questionnaire respondents who mediated felt that mediation was suitable for their case, that they were fully prepared to mediate, that mediation made reaching settlement easier, and that mediation was a good use of their time. Most also said they would be prepared to use the Small Claims Mediation Service again; six said they did not know. Of those who did not mediate, the picture is less straightforward, with no clear pattern emerging. Most (68 percent) said they would use the Small Claims Mediation Service in the future, with only two respondents stating they would not be. These two did not give reasons.

One respondent who mediated particularly liked that the mediation service allowed the parties to be in control: "Excellent service, it actually brings people to take responsibility for their own actions."

One respondent who had not mediated (because the other side did not turn up) was nevertheless very enthusiastic about using the service in the future:

> *"From my experience it is very 'user friendly'. The gentleman handling my case was extremely helpful, before and after my case went to mediation. He explained everything very clearly and in 'layman's' terms. Although the defendant decided not to appear I found the service excellent."*

Interviewees who had been through a mediation were generally positive about using mediation again. None said they definitely would not. Two-thirds gave an unqualified 'yes', and a third gave a qualified 'yes'. The main qualification, identified by two housing association and one local authority representative, was that they would use mediation in cases where there might be room for argument on the merits of claims – but would prefer to go before a judge if they believed the case was cut and dried (presumably in their favour). Parties who had less experience of the courts did not generally raise this issue.

Parties were asked if they would be prepared to pay for the mediation service in future. This is a tricky question in that the respondents are asked about a hypothetical question with many qualifiers: it assumes the parties will be involved in a small claim again, and it asks them about paying for a service that at the moment is offered free. As a result, their responses do not necessarily reflect what they would do in an actual future case. Most said they would be willing to pay. Of the mediation questionnaire respondents, four would not be willing to pay, eleven out of 47 would be prepared to pay £20 or less; twelve would pay £2050, eight would pay £50–100 and three said they would pay more than £100. [The remainder were: six blank and three said the amount they would be willing to pay depended on claim value.]

Among those interviewed, almost all of those who had been through a mediation said they would be willing to pay a fee for a similar service in the future. However, this willingness was clearly conditional and depended on any fees being proportionate to the amounts at stake and also low in absolute terms. Those willing to take a stab at what would be a reasonable fee variously suggested amounts ranging from £10 to £50. Two parties said they would not be willing to pay a fee – their rationale being that if there were savings in court time to be had, mediation ought to be available for free. Some interviewees linked this question to payment of court fees generally – being willing to pay for mediation, but only instead of, rather than in addition to, court fees such as the allocation fee. For more than one interviewee, reluctance to pay a fee for mediation stemmed from a belief

that such fees would not be recoverable – which, if based on their experience of the mediation, would appear to be a reasonably held belief (in only two mediated cases among those interviewed did the settlement provide for the paying party to refund court fees).

Interviewees who had been through a mediation were unanimous in thinking that the scheme should continue. Two (both individual defendants) suggested mediation in small claims should be compulsory, though for different reasons. One thought it would assist in keeping small consumer cases out of the courts.

Most interviewees felt that mediation is different from judgment, particularly in terms of the process used and the role of the mediator versus that of the judge. Judgment was described as "black and white", about answering set questions, being judged, formal, concerned with the law, decided in favour of one side of the other, strict, harder to put across one's position. One respondent indicated that he believed a judge, basing a decision on the laws, would have been on his side and recognised that he was legally in the right. Another felt that an advantage of going before a judge would have been having witnesses called.

Among interviewees there was a general underlying feeling that courts and judges are to be avoided if possible. Some views were explicitly negative about courts: that judges and courts are scary or intimidating, and that laypeople at a disadvantage. In at least one case this perception was not borne out. The claimant described being concerned about appearing in court, and said he had only been in court as a member of a jury. After the other party did not appear at the scheduled mediation, however, the case went to a hearing, at which the defendant failed to turn up. The claimant was pleasantly surprised:

> *"And even that wasn't as bad as I thought it would be, no it wasn't, it wasn't anything like my imagination but you know when you've never been in a court and you get this court appearance, you're imagining it being like Judge Judy or something. Everybody I'm sure gets a different vision of what a court appearance is going to be like but my vision was after being a juror in the crown court it was gonna be something similar to that, and it was nothing like that at all. It was just me and the judge or whoever he was, sat at a table. He asked me a few questions, he gave me answers, he took all the necessary documentation and within fifteen minutes I was coming out of court and everything was settled." [interview 18]*

There was also a view expressed by one or two interviewees that small-value cases should not take up a judge's time. One solicitor party didn't want to go before a judge because it would be embarrassing to be seen to be involved in a dispute by judges before whom he conducted. One party associated the courts with 'riff raff' and thought they should be for criminal not civil disputes.

Creative settlement outcomes and terms

One of the benefits often attributed to mediation is its capacity to allow parties to reach settlements that are creative, that go beyond what a judge could order, and that address the underlying interests of the parties rather than the strictly legal issues.[17] An examination of the settlements achieved in the small claims mediation pilot shows, however, that most settlements involved only a monetary transfer from defendant to claimant, with the final amount usually reflecting a compromise between the claim and the defendant's opening offer. This process involves chipping away at both parties' positions until the gap between the two is close enough to reach a settlement. 'Shuttle' mediation – in which the parties are in separate rooms –facilitates this kind of negotiation because it allows the mediator to challenge parties' bottom lines in confidence, and any bluster about 'that's my final offer' can be moderated by the mediator's translation as he or she conveys proposals from one to the other. This focus appears to place less emphasis on finding creative solutions and more on achieving a compromise settlement because the alternative – the risk of an unfavourable judicial ruling, and the time and cost involved in getting one – is worse.

Nevertheless, there were examples of mediated outcomes and terms that went beyond the settlement of the financial claim. Some settlements contained terms that reflected the ongoing business relationship between the parties. For example, in one case involving a travel company and a community group, the travel company agreed to a partial refund to the claimant as well as a ten percent discount for future bookings made by the claimant. In another, a computer goods retailer agreed to refund a consumer £210 of his £270 claim for a refund for faulty goods, plus a credit note of £90 for purchase of goods in future. Neither party responded to the researcher's questionnaire, in spite of reminders, so it is not known whether they were both satisfied with this settlement and how it compared to what they thought a judge might have ordered in this case.

In others, the method of payment of the settled amount was itself unusual – e.g. a case in which the defendant, a private landlord, paid £1,600 in cash to the solicitor for the city council to settle a

bill for a new boiler that had had to be installed under the council's statutory duty. Another involved an agreement that the settled amount would be paid to the claimant's named charity. In another the case didn't settle at the mediation meeting but settled outside the court immediately afterwards, when the defendant offered an additional £50 to his last offer and the claimant accepted it.

The method of payment also presented problems, especially when the mediation was held very close the hearing date or another deadline. In one case, the parties – two small businesses – reached an agreement that the defendant would pay part of the invoice in dispute, and in exchange the claimant agreed to return artwork for publication, which was needed urgently by the defendant for a printing deadline. When the artwork was not received in time for the deadline the defendant contacted the mediation officer, who contacted the claimant, only to discover that the payment had been made by cheque and had not yet cleared. The mediation service informed the defendant that it was he, not the claimant, who was in breach of the mediated settlement because he had not made the payment by the electronic BACS system, which would have cleared immediately. This had not been one of the stated terms of the mediated agreement, however.

The classic example of a small claim ripe for mediation is that of the small building dispute. Manchester perhaps sees fewer of these than other courts, however, because – as explained by one district judge – the area it serves is more commercial, and indeed this is borne out by the statistics on parties in small claims collected by the service – disputes involving companies as both parties outweighed those involving individuals by a 3:1 ratio. One such case, however, involved a new conservatory and was a claim by the builder for unpaid invoices of £1,430, plus £120 court fee and £80 solicitor's fees. It was referred by Manchester Advice, and there was a long history to the case, with several prior adjournments. The adviser was concerned that the defendant, a homeowner, was unable to cope. A hearing was scheduled for 5 August, but the case settled at a mediation on 26 July, at which the defendant agreed to pay £650 on completion of remedial work on the conservatory, to be carried out by 2 September. Unfortunately, neither party responded to the researcher's questionnaire, after reminders, so it is not known how they felt about this settlement or indeed whether the remedial works were completed to the defendant's satisfaction and the payment made. The mediation service does not initiate follow-up of any settlement agreements; it is for the parties to contact the service if they believe the agreement has been breached. In this case, neither party got in touch after the hearing date.

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[17] R. Wissler, "Mediation and Adjudication in the Small Claims Court: The Effects of Process and Case Characteristics", *Law & Society Review*, vol.29, no.2 (1995). See also R. Bush and J. Folger, *The Promise of Mediation*: *The Transformative Approach to Conflict*, Jossey-Bass, revised edition 2005.

On the other hand, some examples occurred of lost opportunities to explore other interests and how they might be agreed. For instance, in one case a photographer found that her work had been used without payment on a client's website. Although the case was settled with a payment to be made to her (just over two-thirds of the claim amount – she said in interview that she "would have liked more money than the amount agreed on but accepted the amount as I was nervous about going to court"), she felt that the client company had deliberately set out to take advantage and that it was only her vigilance that forced them to pay up. As a new freelance business and as a member of a professional body, she wanted the opportunity to let other freelance photographers know of her experience (without necessarily identifying the client company by name) and to urge them to take action if they found themselves in similar situations with other clients. She said in an interview that she had not been told about the strict confidentiality of the mediation and mediated agreement, and that she raised her concern at the end of the meeting but this was not explored. It is possible that had it been identified as a key interest it could have been explored in the context of the settlement negotiations. As it was, she felt it had not been taken into account. Although she expressed satisfaction with the mediation and the mediator's approach[18], she also described the forty-minute mediation as like being at an auction:

> *"It was more like a sort of a bartering thing you know. How much are you looking for, and I said my amount, £500 plus my £50 court costs. Then the mediator goes to the other person and says what are you prepared to offer, and he said some ridiculous amount like £250. So it was like to-ing and fro-ing until we came to an agreed amount between us. And at that time, I didn't think that the hotel were going to pay anything at all, I thought it was like trying to get blood out of a stone." [interview 5]*

She said that she would have preferred a court judgment but did not want what she perceived as the stress of going to court.

In one case that was settled by telephone facilitation, the defendant expressed in an interview that he was very pleased to be able to resolve the case over the phone, as he was not based in Manchester. He liked

> *"the fact that we could do it all via the phone and the fact that mediation actually drafted the documents because, again, I think if we'd had to have a lawyer draft the*

[18] In that case, the defendant described the settlement as "worse" than he had expected because he had expected to settle at paying only fifty percent of the claim. Both parties, however, expressed that they were very satisfied with the mediation.

documents for it all, it may not have been worthwhile settling because the costs of the lawyer might have been more than the actual thing is worth." [interview 15]

In that case the agreement was written and a consent order was signed, with the mediation officer sending all parties the documents to sign, "which I thought was a very positive way of doing things because it was like, it was almost an end to end service there we didn't have to back to the lawyer to get things finished off [defendant]." However, a problem arose with the revised invoice that the defendant had believed would be sent, and he identified this in the interview when asked about any negative aspects of the mediation:

"I mean the only thing I would say is in terms of putting the documentation together, the fact that we were both companies involved in this claim, the only one thing that came up is in terms of having a written negotiation part of the claim was obviously the VAT on the invoice. It came a little bit difficult, once we'd agreed on this 50% what we really needed was the claimant to withdraw their invoice and we issued it as a 50% invoice because obviously as a business it's hard for us to pay 50% of an invoice without something in documentation to say that and to know how much VAT's on that. So that side of it was a bit tricky, I'm not sure the mediator was that aware of things like VAT that affect businesses but I guess that's quite a minor thing in the overall."

He raised it with the mediation officer during the telephone calls, who queried it with the other side. The other party indicated they were willing to provide the revised invoice but had not done so at the time of the interview. The interviewee said, "that's a bit unfortunate because obviously if we ever do get into a VAT problem effectively we've had to put that through as having VAT on it based on the original invoice and work out what the VAT portion would be. But strictly speaking, we should have a revised invoice file." He had already paid the money to the claimant, "because the deal was for us to pay by a very specific date in order to have it discontinued in time because I guess we were quite close to the court date. So we've paid the money and I guess it would be nice to get the invoice but if we don't I guess we'll live with the fact that our documentation isn't completely complete."

He pointed out that he felt this was a minor point but one that should be fed back to the service because it was likely to affect other users. He was overall very pleased with the service and would use it again: "I mean as I say very positive experience for us, it got it sorted out and we didn't waste any of the court's time essentially. So it was very good."

Compliance

Another benefit often attributed to mediation is that parties to a mediated settlement are more likely to comply with the agreement and meet all the terms of the settlement. Indeed, this has been cited as the primary difference between mediation and court hearings in a small claims context, where the informality of the hearings mirrors that of mediation, and the speed by which both processes are conducted allows little scope for probing other than the presenting issue: "mediation can be distinguished from adjudication by the degree to which the disputants can shape the settlement process and the need for them to consent to outcomes of the dispute."[19] By determining the settlement terms themselves, parties acquire 'ownership' of the settlement and, by implication, the settlement is self-enforcing. This is in contrast to court judgments, where a claiming party can 'win' but not receive the payment, leading to costly and potentially futile enforcement proceedings.[20] An example is a case that went to mediation during this evaluation but did not settle; at the hearing the claimant received judgment in her favour – albeit less than her claim and at £50 monthly instalments – but the defendant subsequently ceased trading and did not pay anything beyond the first instalment.

It appears that settlements achieved through mediation or telephone-based facilitation with the Small Claims Mediation Service were all complied with, although in one or two cases one or both parties contacted the mediation officer subsequently with queries about payment not having been received, and as far as is known these were resolved and the settlement was kept to. The mediation officer does not take on any monitoring or enforcement role, however, so it is impossible to know if any of these mediated settlements subsequently unravelled and led, or will lead, to future proceedings being issued.

The views of judges and other stakeholders

In December 2005 and January 2006, the researcher interviewed five district judges and the designated civil judge at Manchester County Court. She also interviewed the court manager and

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[19] C. McEwen and R. Maiman, "Mediation in Small Claims Court: Achieving Compliance through Consent", *Law & Society Review*, vol.18, no.1, 1984.

[20] Baldwin has noted that enforcement problems in small claims threaten to undermine the credibility and integrity of the process. In several studies he found that at least one-quarter of successful claimants had received no payment several months after the conclusion of the case. See J. Baldwin, "Is There a Limit to the Expansion of Small Claims?", *Current Legal Problems*, vol.56, p.337, 2003.

the listing division manager at the court, as well as a consumer adviser at an advice centre run by Manchester City Council. The interviews were semi-structured and were conducted in person and were recorded, with the permission of the interviewees. More detail on how the interviewees were identified is given in Chapter One: An Introduction to the Research.

Small claims make up a small proportion of the work of the district judges at Manchester County Court. Generally, about two-thirds of their time is spent on civil work and one-third on family work; although this can work out to less than fifty percent of the time on civil work because when a district judge is unavailable, deputy district judges, when necessary, are used primarily to cover civil work, not family [interview 1]. By their own estimates the interviewees indicated that only a very small proportion of their time is spent on small claims: three estimated they hear small claims one to two days a month; another that he spends about five percent of his time on small claims; another has had official business that has taken him outside the court during the pilot period so has heard fewer small claims than usual. The designated civil judge does not hear small claims and so does not refer cases directly to the Small Claims Mediation Service. He has been instrumental in setting up both the Mediation Advice Service and the Small Claims Mediation Service, however, and continues to be active on the Project Board (see Chapter Two) overseeing the pilot.

All the judges have had some contact with the mediation officer, although the extent of their contact is generally limited and does not involve regular meetings – aside from the designated civil judge, who sits on the Project Board and sees the mediation officer at the board's review meetings held about every three months. The judges can also be a useful resource for the mediation officer, who is not legally trained: one judge described how the mediation officer had asked him for advice to clarify a legal point in relation to a mediation he was handling.

All the judges interviewed expressed their support for the Small Claims Mediation Service, although with slightly differing levels of enthusiasm. The three who had been sitting at Manchester for many years were already familiar with the Mediation Advice Service operating for fast-track and multi-track cases. The two newer judges had been introduced to the scheme either before or just after taking up their posts at the court. One had also been a solicitor in private practice until two years before and had been involved in three or four cases that had been referred to mediation, all involving commercial litigation. The other new judge at the court explained that he had been involved also as a solicitor in two mediations, one a boundary dispute and one a commercial dispute. Both described their prior involvement in mediation as positive.

At the time of interview the court manager had been in post for only three months, but she had previously been court manager at Salford County Court, another court in the group, and so was aware of the scheme before taking up her post at Manchester County Court. She regularly meets with the mediation officer and also attends the Project Board meetings, as well as discussing the pilot service with judges at their monthly meetings.

The listing division manager, as described earlier in this report, had been instrumental in the early stages of the Small Claims Mediation Service pilot in establishing procedures and supporting the mediation officer once he was in post. He continues to be a source of support and a key liaison between the mediation officer and other court staff.

The consumer advice manager became aware of the service when the head of advice at the agency was contacted by the mediation officer at the start of the project. Only a fairly small percentage of her work is dealing with small claims – about five to ten percent in her estimate. Most of the cases she deals with are resolved before going to court, but she notes that there are cases, usually involving 'dodgy' traders, that cannot be resolved. The difficulty is that such traders are unlikely to agree to participate in mediation. At the time of interview she had referred two cases to the mediation service, but neither proceeded to mediation (although at least one other case referred from Manchester Advice had gone to mediation; see 'Creative settlement outcomes and terms' above).

Among the themes explored in these interviews were: what criteria are used to assess the suitability of mediation; what feedback do the judges get or want on cases they have referred to the mediation service; what impact do they believe the pilot scheme has had; and what they would consider to be measures of success when evaluating the pilot.

Criteria for referring cases to the mediation service

An issue that was raised by several district judges before the pilot was established was that the profile of small claims at Manchester County Court might not be suitable for a mediation pilot. Two judges raised this in interviews, one stating that when he sat at a smaller court before coming to Manchester, he heard many more small claims that he described as 'genuine' small claims, meaning consumer-versus-trader disputes. At Manchester, he said, "we get the road traffic accidents, where two people are involved in an accident but they're proxy for the insurers fighting it out. We often get financial services claims here." [interview 1] Another explained that he maintained from the start of the pilot that Manchester, which services a primarily commercial community, was not in his view the best court for the pilot, given that its proportion of small claims

is relatively small compared with its multi-track work. That said, he considers the Small Claims Mediation Service to be a success, and would like to see it rolled out to other courts.

When asked in interviews what criteria they use to identify cases suitable for mediation, most district judges said that the only hard-and-fast rule they have is that road-traffic accidents (RTAs) are unlikely to benefit from mediation because they involve insurance companies who are used to negotiating these claims and are unlikely to participate in mediation.

> *"I tend not to refer to mediation where it's a road traffic accident, where the parties are legally represented and it's effectively two insurers. …I tend to think that they are sufficiently savvy, they know the system, they know the issues, they're represented, certainly where there's a classic conflict of evidence as to whose fault it was at the roundabout, which it usually is." [interview 5]*

> *"The reason I say not a road traffic accident is because most of the road traffic accident cases, although they involve small sums of money, are usually funded by insurers, therefore the parties are usually represented and there will no doubt have been a fair amount of exploration between the insurers and/or the solicitors and/or the parties as to whether they want to split liability. So I think one can safely assume that if they've issued proceedings, the likelihood of settling is comparatively negligible." [interview 4]*

Debt and consumer-trader cases were identified as particularly suitable. One judge was surprised to learn that professional negligence cases had been settled in mediation. Most of the judges interviewed indicated that they would start with the premise that all cases but RTAs are potential candidates for mediation. One judge explained that he asks himself what cases are not suitable for mediation,

> *"almost like a default position…the cases which I don't refer to mediation are basically the small road traffic cases where two insurers are fighting each other and it seems to me that the likelihood of mediation is remote…because they come here and fight before me over the most ludicrously small claims, but there's a bigger agenda. But everything else I will refer to mediation even if the parties have not expressed an interest." [interview 1]*

Another judge explained that he would determine first of all if the parties are amenable to mediation, and would consider if on the review of the papers he finds there is no matter of law that is at issue. He says that in his view it is not about identifying the particular type of claim that is suitable, "it has rather more to do with this position of the parties…and the issues which are involved, rather than the actual fundamental core." [interview 3]

The fact that parties in small claims are primarily unrepresented indicated for most judges that mediation would be suitable. They perceived that litigants-in-person would usually not have considered the possibility of mediation and might misunderstand the legal or factual issues.

> *"Where it looks like a case of six of one and half a dozen of the other. A classic case would be the botched conservatory, or the alleged botched conservatory, where what's happened is the conservatory's been built, the home owner has a few issues. There's either a whole of the purchase price paid or only a balance outstanding. There's a complaint, the complaints aren't really sufficient to amount to a defence of the whole claim. The defendant is offering to put right the work or arrange for a third party to do it. Where the impression would be that the claimant would success but only partially and the defendant would success on the counter claim. That would be a situation." [interview 5]*

One mentioned cases where a litigant-in-person has a strong desire to go to court – a 'bee in their bonnet' – although it was unclear whether he meant these should go to mediation or should not. Certainly he felt strongly that unless litigants-in-person are adequately prepared for a hearing, they should use mediation:

> *"The one factor is absolutely clear on every court action that I deal with, apart from road traffic cases, is that where two litigants-in-person are involved, they never have the relevant evidence. If you're asked to do a trial, they never have all the relevant evidence. And what they do is bombard the other side in the court with unnecessary paper. Therefore, a quick way to resolve matters may be if the mediation officer can get through to the [nub] of the matter. … if litigants are not going to bring to the court all the relevant evidence, it may be better for their matters to be dealt with out of a court hearing, within a court context, by a mediation officer." [interview 2]*

A contrasting view was given by another district judge, who described his firm belief that a case that is not substantiated should not go to mediation, although this was not a widely held view among the judges interviewed. His concern was:

> *"If a claim has no substance and shouldn't be pursued then of course mediation might bring about precisely the wrong result because the mediator can't say when there's a claim at law, and he might in fact mediate a position in which the defendant, who shouldn't be paying anything, pays up" [interview 3].*

He described such a situation as 'wholly wrong'. Two other district judges interviewed, however, expressed their view that mediation could be helpful where the parties believe that the 'best' solution for them is not necessarily the legally correct one, and they felt comfortable with the distinction between a mediated outcome that differed from the 'legally correct' decision [interviews 1 and 4].

The designated civil judge explained that he does not have a view on the issue because he is not familiar with the spread of small claims work at the court:

> *"But I suppose my starting point is that most claims may be suitable for referral, particularly if there are only small sums involved. I had an experience of that in fact recently when I was sitting at Bolton for a few days and my list collapsed and on the last day I found myself conducting a district judge's list and one of the cases there was a small claims case which cried out for mediation. It was a dispute about the installation of some windows. And the amount of money at issue was very small and the parties were at daggers drawn and I'm sure, had I been able to say, well, we've got a mediator here, had it been in Manchester I would have unhesitatingly said I think you ought to go and see the mediator as a means of sorting this out." [interview 6]*

Feedback on cases referred to mediation

Most of the judges interviewed said that they did not get, nor did they expect to get, regular feedback from the mediation officer on cases that they had referred to the small claims mediation service. If a case is settled at mediation, it will not return to the judge who referred it; the judge who signs the consent order is whichever judge is available at the time. Because in most cases the judges issuing directions will only know of the case on paper and will not have had any personal

dealings with the parties, they are unlikely to want or be able to remember each one they have referred.

The mediation officer does give feedback to judges on an ad hoc basis, however. He said in interview that sometimes a judge will ask about a particular case: "how a case panned out, what's happened to it. Because it will never go back to them, that's the point, they won't be aware that the case has settled in the mediation because the file will go back into filing." The designated civil judge said he thought it would be helpful to district judges to have feedback: "If it can be demonstrated that it works in a lot of cases, it may actually encourage those who are reluctant for whatever reason to refer cases to think well maybe I should give this a try."

In terms of the form of the feedback, he recognised that there is a resource issue in terms of the time needed to give feedback, but ideally,

> *"it's helpful to do it on a one-to-one basis to report back to the district judge that you referred this case and the mediation was successful or the mediation wasn't successful. If you're trying to encourage others who are less proactive, you need some sort of wider global statistics because you're addressing those who are more reluctant to get involved. I think that would need a certain amount of thought as to the appropriate way of feeding back." [interview 6]*

Several of the judges mentioned that this ad hoc feedback is useful, particularly if – as in the case of one judge – it identifies a type of case that he had not considered would benefit from mediation. This judge was surprised to learn that professional negligence cases can be resolved successfully – and that, as he described it, a better outcome can be achieved in mediation in such cases. He stated,

> *"In one area where I would not necessarily have thought that it could be a success, it was. Namely one case where the litigant-in-person was claiming damages for professional negligence and the conduct of a claim by solicitors arising from the negligence of another lawyer. I think it was in a medical negligence case. All the litigant wanted was an apology from the lawyers and a cheque to her favourite charity. One wouldn't have divined that from the formal documents filed in court." [interview 2]*

> *"[I]deally I prefer [the mediation officer] just to come and see me and tell me what*

happened. I don't particularly want another piece of paper sent to me saying this was the outcome. And I think it's useful just to have a bit of face-to-face contact so I can be told how easy it was or how difficult it was. I mean I know because he told me on another case he managed to settle it over the telephone. I think that was what you would term a commercial debt case with the debtor here in Manchester but the creditor in the south of England. Interesting to know that he can resolve matters over the telephone. I mean he's a very good man." [interview 2]

Another district judge explained that he welcomes ad hoc feedback: "I will occasionally pop in and say I've referred a particular case to you because it's perhaps an interesting case and he will tell me any of the cases that I've referred to him where he's had a success." [interview 1]

One district judge explained that he would not expect to have feedback on cases that he had referred to the mediation officer:

"I think to my mind it is one thing or another, either it's a case which ought to go to court and ought to have a disposal at court; or alternatively it's a mediation, and the should not, there shouldn't be any cross-fertilisation between the two other than that there might be a referral from one to the other. But once it's referred, if the referral's successful, that should be the end of the matter so far as the court is concerned. Separate process." [interview 3]

Another district judge pointed out that he does not get feedback on cases he has referred and would not expect to have feedback on every case because there are too many of them, and "I would be deluged with information which I don't really need, to be honest." [interview 4] Another reported he had not had any feedback from the mediation officer and would only expect or want to receive such feedback where he had seen the parties, for example at an allocation hearing, and referred them to mediation. "Then I might have an interest because I would have seen the personalities involved, but in a case that I've dealt with on paper, unless there was something unusual or peculiar about it, I suspect not." [interview 5]

Impact

None of the judges identified whether the mediation service has had a specific impact on their work or the work of the court generally. For some this was because they felt they did not have enough information on which to base a judgement about impact:

"Whether there has been a downturn in the number of small claims cases issued and heard, I have no idea, it may well be the case, but having been here three months I just wouldn't know. I would hope that it has." [interview 4]

"I think it's had an impact in the sense that I think it is another worthwhile option in terms of resolving the disputes which are coming into court. But it is not to be seen as a preferable option nor the only option. It's one of a range of options." [interview 3]

This judge felt that there will always be enough small claims to hear, and that the likely impact of cases being settled at mediation is in reducing the waiting time for cases that do not mediate, or do not settle, to be heard. This calculation does not take into account the numbers of small claims that settle before hearing, however. For many of the interviewees, the impact was to be found in the possibility of increased satisfaction among court users (see also 'Measure of success' later):

"Well the impact is that in small matters one can see another way to resolve matters, to both parties' satisfaction, maybe at less cost to them and with less judicial time, freeing me up for dealing with other litigants." [interview 2]

Generally it was agreed that although the rate of settlement at mediation is high, the numbers of cases that are settled at mediation remains relatively small, and so the impact on court time and resources is minimal. Note, however, that these interviews took place midway through the pilot, while it was still becoming established; therefore the perception of its impact on court time and resources may have changed by the end of the pilot.

One judge described his perception that cost savings were an aim of the pilot:

"I know that from a DCA perspective in part at least there's an economic driver in that claims allocated to the small claims track generate little in the way of court fees. There's an issue fee but it's modest, in a lot of cases there's no allocation fee payable and if there is one, it's small and that's it. So if they compare the time that district judges spend against the income that the small claim has generated, in their terms it makes a loss. So they're anxious to get cases out of the small claims and sorted out by mediation on the basis that the district judges will then be engaged in other work which is from their point of view more cost effective." [interview 6]

The court manager said it was difficult to determine if the mediation service has had a major impact on the court's resources, although she said that when a case is settled at mediation, "obviously that case doesn't go to a hearing and then there isn't an order following it, so it saves a small amount of staff time and also a small amount of judicial time…. And obviously they're resources that are available to us, so … there is a saving there." But she acknowledged that this saving is likely to be minimal and that the main benefit to the court is being able to offer the option to users:

> *"It doesn't sort of quantify itself to be big enough to say well you're saving you know, a district judge, you can do away with a district judge because you've got your mediation, it doesn't equate in that way. But there is obviously a small saving and obviously it gives the public the court users another option doesn't it and I think that's probably the main thing, really, to give them a choice."*

She and the listing division manager identified, however, that there was also an impact on the court's performance targets and statistics in that the more cases settled by mediation prior to hearing, the more that adjourned cases would be come a bigger proportion of overall hearings and thus would skew the waiting time target. This suggests that there might be some scope in ideas put forward by the mediation officer to work with the listing division manager to try to predict how many cases are likely to settle in mediation. Such a prediction would be based on the number in the mediation 'pipeline' (i.e. those where the mediation officer is discussing mediation with the parties but it has not yet been arranged) and knowledge and judgement of the mediation officer, and if accurate it would allow the listing division manager to 'overbook' small claims hearings in anticipation that a certain number will have been settled and adjourned.

For the consumer adviser, there is value in being able to offer her clients another option. She discusses mediation with clients even before a claim is issued:

> *"We mention it, you know when things are getting serious and you're talking about court – the processes, the legal process really. We give them information about what happens, the sort of process, issue any claim form, allocation questionnaire etc. And also mention that the mediation service is there and how it works and why it's there so that, to hopefully resolve things before it gets to that final court hearing stage. That's the way we explain it to clients. And I think it's quite reassuring for clients to know that it's there."*

Much of the impact of the service on her work has involved the contact she has had with the mediation officer. Although none of the cases she has referred have gone to mediation (because the trader was unwilling to), she described valuable conversations she has had with the mediation officer: "I do feel that he seems to have a very good understanding of the implications for clients, and I think it's a great service, and long may it continue."

Measures of success

Although it was difficult for interviewees to identify a specific cost benefit to the court, all identified 'softer' benefits of having the mediation service available, such as increased satisfaction of court users.

> *"If there's a substantial proportion which are resolved by mediation, then that's a good thing I think. Not from an economic viewpoint but from the parties' viewpoint. To my mind a consensual arrangement is much better than a court-imposed solution. And you see that, for example, in some of the appeals I get in small claims cases. Because a lot of the time the ground of appeal is no more than they don't like the judge's decision, which of course is not a proper ground of appeal. But it's very difficult to explain that to litigants in person and I actually think those cases if it were resolved by mediation so that both sides walk out at the end of the day happy with the outcome, that has to be a good thing." [interview 6]*

> *"[I]f a litigant in person starts proceedings, that is likely to be their only exposure to the court service. And I view the court service in the same way as any other public service like National Health and I will always want to ensure that whoever uses the service when they finish using the service comes away with a sense of being properly dealt with and a sense of satisfaction. And against that background, if having the mediation service results in those involved in the case coming away with a sense that they've been fairly and properly dealt with, and they've been listened to and they come away with a satisfactory solution, then I think it's worked." [interview 5]*

Several district judges also cited the flexibility that mediation allows in crafting solutions that suit the parties, whether or not they are the 'legally correct' solutions:

> *"Well let's take a classic case … the neighbour dispute where if I were deciding, be it a small claims or fast track, all I would be able to decide is what are the legal*

issues and … the facts and apply those to the legal issues. What I couldn't do for example is create a solution whereby for the sake of argument, a fence was replaced by a half brick wall or trees or neighbour A dug out a bit and allowed neighbour B to park his car … or whatever on payment for a small consideration." [interview 5]

"We apply the law and sometimes applying the law results in what seems to be hard for one party or the other. Mediation is a way of tempering that 'all or nothing' result." [interview 1]

Somewhat surprisingly, there was no suggestion from any of the interviewees that mediation might be risky in terms of parties settling for less than they would obtain from a judgment. There was a comment, referred to earlier, made by one judge about his firm belief that unsubstantiated cases should not be mediated, because of the danger that a defendant who would not be required to pay anything by a judge might agree to pay as part of a mediation settlement. Other than that, there was a strong sense that parties should be able to weigh up the pros and cons and the risk involved and make their own decisions.

"The advantage of mediation is that you don't apply the law on its own, [but] it obviously comes into the process. The parties' rights and obligations are obviously part of the process but there are other factors, too. … litigation is quite a daunting prospect, even coming to a small claims hearing. They get quite nervous and anxious. …the risk of losing, the anxiety of the proceedings, the fear that you might lose. Getting rid of it now rather than having it hanging on for longer, those are all reasons, people have always compromised cases and always will, absolutely nothing wrong with that." [interview 1]

"As I often say to parties, not so much in a civil mediation scenario but in divorce cases, at financial dispute resolution hearings, I will often say to them remember you can agree whatever you want between the pair of you, I will make a decision that probably neither of you will like whereas you might at least be able to agree something that you can live with and the same applies to mediation. They can more or less agree anything they want, and if it's an ongoing business relationship then it's more likely to carry on than coming to court and airing their dirty linen in front of me, or one of my colleagues." [interview 4]

The consumer advice manager also held the view that parties should be able to reach their own settlement, regardless of the legal position. A successful outcome would be:

> *"[o]ne where both parties reached a reasonable agreement that they were both satisfied with because at the end of the day, it's not me that is affected, it's the client, so it's what they're happy with at the end of the day. … [T]here are some compromises … in mediation where both sides have sort of sought to make some compromise and come to reach an agreement so that it's give and take. … I'm there to advise them, assist them, help them to make an informed choice and at the end of the day it's up to them. So as long as they were aware of what they were doing and that by signing a consent order that they're bound by that … as long as they're fully aware of what they were doing."*

She believes that clients sometimes have unrealistic views about the strength of their case and the likelihood they will win:

> *"I think there's a lot of misconceptions out there about courts so we have to make it absolutely clear that the burden of proof falls to them to prove the case … we have to have ample evidence to put before the judge. You have to show that you've acted reasonably, that you've mitigated your loss. ... We're not lawyers or solicitors or barristers so we don't have an automatic right to speak because we're there as lay representatives so it's at the judge's discretion. And I know when I've been in court some judges have a different approach, some like to hear from us as the representative, others want to hear directly from the client. … [I]t's quite a serious thing you know if you go into court, it's not something you do lightly."*

The court manager also identified customer satisfaction as an important measure of success:

> *"I think it would be a success if … the number of people who successfully used it and with positive feedback really, I think on that basis you could say yes, it was successful. Rather than looking at it from a financial point of view. You know, you're offering, I think the key is that we're offering people a choice. … [Y]ou've decided to issue your claim but even though there are still options that you can take, you don't have to appear before the judge and set out your side of the story, perhaps there are other ways of dealing with this. And I think that's the key in my opinion if people sort of take up that option and … get positive feedback as a result of it in terms of*

it's saved them time, resolved the issue sooner than it would have done otherwise, so therefore they're satisfied, then I think that's a success."

Similarly, the listing division manager suggested that the reputation of the court stood to benefit from mediation being available. He cited the value to the court as word gets out about the different sort of outcomes that can be achieved in mediation – as opposed to the 'win or lose' outcomes from a hearing – and the way that mediation can rebuild relationships on a commercial level.

The mediation officer said that he would look to a reduction in the number of hearings as a measure of success:

"I would think it's successful by an impact that it has on the court, i.e. that the listing officer, his ability to use his resources, judicial resources to the best, to put judicial resources to the best possible use. This could be measured by the reduction in trials that actually end up with a hearing. I believe at the moment it's around about 68 or 70 percent of small claims actually reach a hearing date, whereas I would look at reducing that to something in the region of 60 percent, 50 percent. But that's of only the cases that are sent to me because I only deal with something like 40 percent of cases that are referred. So when I make reference to that it's only cases that are referred to me, I can't have any impact on cases that aren't referred."

Voluntary and free of charge

All interviewees agreed that the mediation service should continue and should remain voluntary and free to court users. On the issue of charging for the service, all felt that it would be counterproductive to introduce an additional fee, as litigants would then be less likely to use mediation than they are currently, with the service free. Most commented that because there is no specific charge for a hearing, there should be no charge for mediation. If it ever comes to litigants paying for a judge's time, one interviewee commented, maybe then it would be appropriate to charge for mediation at the court.

"Well, they don't pay anything else do they? If they were to have a small claims hearing they wouldn't pay anything else would they? So I would think you would probably be discouraging people if we started to make them pay for mediation because they would think well, I can go before the judge and I won't have to pay any more, and lose the time, whatever you know – their pay or whatever for the day they had to turn up to court. So I don't really see that would be an advantage in charging

for it because as you say they've already paid the fee anyway haven't they." [court manager]

All interviewees felt that charging for the mediation would turn people away. The consumer adviser said it would be 'off-putting'; most cited the fact that small claims tend to be relatively low value so an additional fee would not be proportionate to the value of the claim. The designated civil judge suggested that it might be possible to give people the choice of paying, at allocation stage, either an allocation fee and proceed to a hearing, or a mediation fee. The listing division manager made a similar suggestion:

"[I]f it is established and running for a long time, that could be a sort of a positive for people to say, well, that's one way of getting mediation, we might be able to resolve it, yes we'll have to issue the claim but they won't pay the allocation fee."

The difficulty with this idea is that if the mediation does not settle, then the parties will have to pay another court fee on top of the mediation fee, unless the allocation fee were to be waived when parties had attempted mediation.

All interviewees agreed that the mediation service should remain voluntary and there should be no suggestion of compulsion, and that this in fact would be counterproductive because many parties using mediation under duress would have entrenched positions and be unlikely to negotiate or compromise. The mediation officer noted this as well, saying that it would "be a waste of my time and their time, there isn't any point in doing it. And within a few minutes you can actually gauge whether or not someone's initial reluctance about mediation is because they're not aware of what mediation is or because they actually feel that they have a specific reason why."

Several district judges mentioned the possibility of costs sanctions used against parties who unreasonably refuse to mediate, although they did not explore this in great depth.

"Parties can be aware that the court might consider the matter ideal for mediation, and that failure to mediate may have cost consequences. But I don't think you can force people to mediate…. I'm in favour of the litigants being aware of the consequences if mediation is not adopted and that at the final hearing the trial judge considers that in the light of his decision an offer of mediation should have been taken up, yes." [interview 2]

A practical issue with this is that the mediation officer does not record on the court file any reason for a refusal to use mediation, so this information is not passed to the judge hearing the case.

The consumer adviser suggested that 'press ganging' people into mediation would create the wrong atmosphere, and that a trader or business that is unwilling to negotiate or cooperate voluntarily is even less likely to do so under compulsion. She has had two cases in which the consumer was interested in using the mediation service but the trader involved was not.

One district judge said that requiring parties to use mediation could give parties the impression that judges are not interested in small claims and just want to get rid of the case – a mistaken impression, from this judge's perspective. Indeed none of the interviews held a hint that district judges see small claims as uninteresting or unimportant, although there were expressions of frustration about parties being unprepared or unrealistic.

Timing of mediation

The issues of fees and compulsion for mediation were related by some interviewees to the issue of when mediation should be used. Most judges agreed that after allocation is the appropriate time for case to be mediated, although several expressed a strong preference for mediation to be used before the claim is issued.

> *"If somebody owed me £5,000 I wouldn't think that was really all that small a claim, that's quite a significant sum of money. If I'd bitten the bullet and decided that I'm going to take somebody to court and I prepare all my case, research it no doubt – this is presupposing I'm not represented and I'm doing it all myself. Go through a considerable amount of work and effort to get it all sorted out. Pay a fee, issue it and then I'm told well actually, no the judge has said that this isn't a suitable case for a court hearing, it's a suitable case for mediation. … I might think oh well, the judge is right. But I might also think well it would have been jolly good if somebody had told me before I'd gone to all this effort. And I do feel that it's a bit frustrating to have had to go to all this effort and then find I'm not going to get what I thought I was going to get for the amount of effort and money that I've expended. So I just think public relations wise … it's not the best way of going about it." [interview 3]*

One judge agreed that mediation must be voluntary once a claim is issued, but suggested that pre-issue compulsion, through a mandatory protocol, would be useful. The difficulty, which he noted, is that mediation is not easily available, particularly at a cost proportionate to the values of small

claims. If the court's mediation scheme were to be available for claims pre-issue, this would have implications for the funding of the service because it would mean the court would lose out on issue and allocation fees in those cases.

Other judges felt there might be scope to examine directing parties to mediation before they issue a claim, but that there is a distinction between informing people of the option and putting pressure on them or compelling them to mediate:

> *"I think you have to be careful about putting pressure on, it can be counter productive I think because they've been driven to issue a claim anyway and pay fee and when once they've done that, I suppose their expectation is that they are entitled to a court hearing if the claim is disputed. And I think an area which may merit further explanation in due course is whether at the point where they come to the court and say 'I want to issue a claim' whether there's some function by the issuing staff or the customer service desk operator to say, were you aware that there's a mediator available, have you thought about resolving this by mediation rather than by litigation?" [interview 6]*

Another explained that until a defence is filed, there is no way to know if there is an actual dispute or not, so although earlier mediation would be preferred, it will not always be practical: "I mean if party A sues party B and party B doesn't reply then party A wins. So until you know there's something to argue over or they are actually having an argument then there's nothing for you to mediate either. So I can't see how it could be done any earlier." [interview 4]

Challenges for the future

Very few weaknesses of the Small Claims Mediation Service were identified by the interviewees. Several said they thought the take-up had been lower than they had expected, and discussions about timing, cost, and voluntariness tended to focus on the need to make the scheme attractive to users. The mediation officer identified administrative issues that should be addressed for the future provision of small claims mediation at the court, including the issue of space.[21] Several of the questionnaire and interview respondents indicated that they were dissatisfied with the facilities, and the mediation officer agrees:

[21] Note, however, that this interview took place before it became apparent that the majority of cases would be handled by telephone-based facilitation, and thus the concerns about space for mediations became less pressing later in the pilot.

"Well, there is an issue regarding my accommodation here which is pretty poor. It's poor in respect of I need two rooms and my only access to another room during a mediation is one of the interview rooms which are used by solicitors and barristers during the day. And I have to fight a running battle to have one made available when a mediation is going to take place. Because otherwise I can't have a confidential talk with either party. At the moment those rooms as I say are heavily used and although I try to make sure that they're quite clean before I go in, at times I may find that when I go in they're full of somebody's dinner or cans of Coke or cups of tea from a machine on the tables. And at other times there's no seating in them, someone's taken the seating to another room. So I just have the table there and it's not the most salubrious place to try to reach an agreement with someone or try to foster an idea of an agreement. It's just looks pretty poor."

The main challenge he identified is in raising awareness of the service among members of the public.

"As I said at the beginning, although I am extremely pleased that the majority of my referrals come through the judges, and I'm happy to have their support, I would be equally as happy if the public or the court users, the customers, were able or took more time or had more awareness of how to deal with, having a case dealt with by mediation in some way. There's not a great uptake from the public."

There is also the issue of administrative support, which the mediation officer identified as problematic, particularly as the service is extended to other courts:

"One [weakness] is that I work alone, my caseload is handled entirely by myself and as I made clear, so is the administration. As the amount of cases that are forwarded grows, it may become increasingly difficult for me to deal with all those aspects that surround mediation and impact on my ability to actually give the court users the chance to actually attend at mediation. In other words, there is a capacity for me to become swamped, become the victim of my own success, there must be a time when if I roll out to other courts, I may meet that moment when it would be impossible for me to carry on expanding the scheme."

Chapter Five: Recommendations

Introduction

The evaluation findings show that there was a high level of satisfaction with the Small Claims Mediation Service by users, both those who mediated and, to a lesser extent, those who did not. The settlement rate over the pilot period has been high relative to other court-based mediation schemes, and compliance with mediated settlements appears to be 100 percent. The evaluation also highlighted a number of areas of potential improvement, and these are described in this chapter.

As explained in Chapter Three, the service is continuing on a permanent basis at Manchester County Court, funded by the court and not the DCA, and expanding to other courts in the region. Therefore recommendations made here – as part of this report to the DCA – may or may not be taken up by the permanent service. Nevertheless, it is hoped that they will be useful both to the permanent Small Claims Mediation Service at Manchester County Court and also to the development of other court-based mediation schemes around the country.

Recommendations

Administrative and service delivery issues

RECOMMENDATION 1

The mediation officer highlighted in interview that in future he foresees a problem with capacity – i.e. how to deal with an increasing number of mediations and facilitations and also administrative demands. For example, when the service is closed because the mediation officer is on leave, he returns to a huge number of messages to deal with and cases coming in regularly. It would be useful to consider how administrative support could be built into the service on a sustainable and appropriate level.

RECOMMENDATION 2

Also, clearly when the mediation officer is on leave the number of mediations/facilitations conducted decreases. This could affect timescales if leave is taken for a significant period of time,

given that the timescales in small claims are relatively tight. There is currently no provision for cover if the mediation officer were to be on extended sick leave or maternity/paternity leave. Aside from inability to deal with rising numbers of cases and enquiries, there are other risks in having a one-person operation. The evaluation showed that parties' satisfaction with the process is very much linked with the individual mediation officer, and having success linked to an individual could leave the service vulnerable in the case of staff changes. It would therefore be helpful for the sustainability of the service if a replacement mediator were trained and available to provide skilled mediation cover when the mediation officer is on leave for extended periods.

RECOMMENDATION 3

Mediation can be done my telephone but it requires clear procedures, definitions and boundaries. The evaluation found that many parties welcomed the opportunity to resolve their case by telephone, avoiding the need to travel to the court and put aside the time for the meeting. However, the evaluation also found that the practice of telephone-based facilitation is not well defined, and as a result inaccurate records were kept of the number of attempted and unsettled facilitations. A further risk is that parties are not well-informed about the process in which they are participating: its beginning and end, the boundaries about confidentiality, the finality of agreements. Some questionnaire respondents appeared to have been unclear whether they had in fact used the service when they had participated in a telephone facilitation. The mediation officer should put in place and publicise clear procedures for the use of mediation by telephone, replicating as much as possible the mediation practice used in face-to-face sessions, such as having the parties sign a mediation agreement form beforehand, scheduling a specific time for the mediation to take place, setting ground rules and obtaining agreements on confidentiality, facilitating direct contact between the parties, offering the facility to speak separately with each party, and finalising settlement agreements with parties' signatures. Conference calls could be arranged in order to conduct such telephone mediations; they do not require special equipment on the part of the parties.

RECOMMENDATION 4

There is currently a lack of supervision for the mediation officer, as well as a lack of explicit mediation support mechanisms. Support and supervision are often seen as identical in mediation practice, and indeed they are related, but they serve different purposes. Supervision is common practice for mediators in community, family and commercial mediation and is important for accountability and oversight; the Legal Services Commission's Mediation Quality Mark requires regular and ongoing supervision of individual mediators. Also important for mediators, for different reasons, are support and continuing professional development, particularly for mediators working on their own. Support involves giving the mediator opportunities to debrief difficult cases with

someone, either a colleague or a line manager. Working on one's own as a mediator can be an isolating experience, and mediators often find they are dealing with distressed parties or under pressured circumstances. Continuing professional development is wide-ranging and can involve training, attending conferences, networking and observation of others' work. It is important for mediators to develop their own skills and learn from others, no matter how experienced they are. Establishing regular opportunities for support, supervision and continuing professional development would improve accountability and strengthen service delivery.

RECOMMENDATION 5

Generally and in order to facilitate the above two recommendations, it would be useful for the mediation officer to have regular contact with other providers in the wider civil mediation field to be aware of good practice and to adopt practices and procedures that have been tried and tested by other providers, adapting them as necessary to the small claims environment, rather than 're-inventing the wheel'.

RECOMMENDATION 6

A clear and accountable complaints procedure is needed. During the evaluation period one complaint was received and handled by the court manager but was not put through the court's standard complaints procedure or recorded. Copies of the complaint and reply were not sent to the DCA, although technically the DCA was responsible for the management of the pilot. The difficulties with this process are, first, that accountability with the pilot rested with the DCA, and, second, that it appears to lack transparency because any complaints were not included in either the DCA's nor the court's complaints file. The reason for this is probably because the service was a pilot and had not become an established feature of the court. Nevertheless, there should be clear complaints procedures for pilot schemes that include reporting to the DCA as the pilot sponsor. Now the Manchester scheme is ongoing, and for any other court-based mediation schemes, complaints should be put through the standard complaints procedure, and the procedure should be publicised to all users and potential users of the service in information disseminated about the service.

RECOMMENDATION 7

A system is needed for obtaining feedback from service users on a regular and ongoing basis. This could involve an evaluation questionnaire being sent out at the end of each case or a brief telephone interview. Any feedback exercise should include both users who participated in mediation and those who did not, in order to gain information on users' views of all aspects of the service and to understand parties' reasons for not using mediation.

Mediation practice issues

RECOMMENDATION 8

Both parties and other stakeholders expressed high levels of satisfaction with the mediator; the comments from interviews and questionnaire responses bear this out. Parties appear to be less satisfied with mediated settlements than with the mediation service. To some extent this is to be expected and is a feature of any customer satisfaction research among dispute resolution services such as mediation and ombudsmen; users are most satisfied when they perceive they have 'won'. Yet mediation is promoted as generating so-called win-win outcomes, in which parties can expect to negotiate agreements that are satisfactory and that reflect both parties' interests – both those presenting interests, such as unpaid debt, and others that can be uncovered through the mediation process, such as explanations and acknowledgements. From the examination of settlements during the evaluation period, however, it appears that most involved monetary transfers only. This does not mean that other benefits have not accrued from the use of mediation in those cases, but the settlements do not record other, more creative outcomes that might have been achieved. The monetary settlements themselves reflect only about half the value of the original claims. Although this needs to be taken with some caution, as explained in the report, it could suggest the mediation provides the opportunity for compromise only, and that its full potential is not being realised in the process as used in the pilot. This is due in some part to the time limit placed on mediations. It is recommended that mediations be conducted in such a way that parties have the opportunity to explore other interests, as much as possible within the limited time allowed. This might mean the mediator must be attuned to implicit references to other interests that might be expressed by the parties and to explore these with the parties in addition to financial settlements. Where possible and where the parties agree, any non-financial remedies could be recorded on the settlement agreement.

RECOMMENDATION 9

The use of 'shuttle' mediation – in which the mediator separates the parties after a brief introductory joint session – provoked varied responses; some appreciated being separated from their opponent, especially if they feared being involved in a shouting match. On the other hand, it was disliked by some parties and seen as limiting the opportunities to 'talk reasonably' with their opponent. Although the amount of time spent with each party was relatively short, inevitably parties had questions and concerns about what was being said in the other room. In order to address this, the mediator could ask the parties what they would prefer in terms of staying in the same room or

separating. Ideally, this option will be discussed with them before the mediation takes place, but it could also be raised at the end of the introductory joint session.

RECOMMENDATION 10

Details of payment – e.g. whether the terms of the settlement are met with a cheque being received or actual cleared funds in an account – must be explicitly agreed in the settlement, so that there is no scope for misunderstandings. It should not be assumed that all parties interpret 'payment' in the same way. If electronic transfer of funds is expected, for example, this should be made explicit in the agreement. In addition, any requests or actions agreed by both parties – such as sending a revised invoice or receipt – whether the settlement is contingent on them or not, should be included in the settlement terms.

Other issues

RECOMMENDATION 11

Where satisfaction with outcomes is expressed by parties, it appears to be related to some extent to fear of court proceedings. This was raised primarily by individuals who had no experience of small claims and was reinforced in comments made by the consumer adviser and some district judges. Often this fear is based on lack of familiarity with the small claims process and with the element of risk that is involved in a judicial ruling. At least one party who proceeded to hearing after mediation was pleasantly surprised at the informality of the court proceedings. It might be useful for the court to encourage greater familiarity with the small claims proceedings so that litigants-in-person are making a more informed decision about the advantages and disadvantages of mediation and making a positive choice to use mediation rather than deciding on the basis of perceived, and perhaps unfounded, fears.

RECOMMENDATION 12

The leaflet explaining the mediation service does not appear to have been a useful source of information for most court users. In part this is due to the fact that it is sent with many other leaflets and forms and is perhaps overlooked by many parties. Direct contact and judicial referral appear to be most effective at drawing court users to the service; it is hoped that cost-effective ways to continue this direct contact can be found.

RECOMMENDATION 13

The evaluation found overwhelming support for the service to remain voluntary and free of charge. There was no support for introducing compulsory mediation post-issue, although some respondents mentioned that pressure put on parties to mediate before they issue a claim could be useful. Most felt that any coercion would be counterproductive. As for fees, the low value of most small claims makes it difficult to see how mediation in this context could be self-financing, although there was some support for allowing parties to pay either a mediation fee or an allocation fee. Difficulties with this solution are that not all cases attract allocation fees, and if the case does not settle at mediation there is the question of whether an allocation fee would be due in order to go to hearing. Given these difficulties and the overwhelming support expressed by respondents and interviewees, it is recommended that the service continue to be offered on a voluntary basis and free of charge.

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Appendix 1: Questionnaire responses

Case No.: __47 rec'd of 110 sent_____ **REF:** mediation

MANCHESTER COUNTY COURT
SMALL CLAIMS MEDIATION SERVICE

QUESTIONNAIRE

This questionnaire is designed to help us evaluate the effectiveness of the Manchester Small Claims Mediation Service. We want to hear your views, and we very much appreciate you helping us by answering the questions below.

All responses are confidential, and you will not be identified in the evaluation report. A self-addressed, stamped envelope has been included for you to return the completed questionnaire to the researcher.

The questionnaire is in four parts: Part A is about you and your case, Part B is about your experience of the Service, Part C is about the mediation and the outcome of your case, and Part D is to help us know more about who uses the service.

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 the independent researcher, Margaret Doyle, on 020 7610 2556 or email to margaret@domar.co.uk.

PART A: ABOUT YOU AND YOUR CASE

Q1 What was your role in the case?

	*Please tick **one** only*
Claimant – I brought the case to court	**20**
Defendant – the case was brought against me	**21**
Adviser / solicitor for the claimant	**3**
Adviser / solicitor for the defendant	**2**
Other (please explain): **"Employee of claimant"**	**1**

Q2 Were you involved in the case as:

	*Please tick **one** only*
An individual?	**24**
A representative of an organisation or company?	**22**
Other? (please write in): **"Myself and consultant"**	**1**

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

	*Please tick **one** only*
Yes, once	**7**
Yes, more than once	**20**
No, never	**19**
blank	**1**

Q4 **Have you been involved in a <u>mediation</u> 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** only*
Yes, once	**4**
Yes, more than once	**2**
No, never been to a mediation	**40**
blank	**1**

Q5 **How did you find out about the Small Claims Mediation Service?**

	*Please tick **all** that apply*
From a leaflet	**5**
Judicial directions	**12**
From a member of the court staff	**6**
Letter from the Small Claims Mediation Service	**12**
Phone call from the Small Claims Mediation Service	**19**
Other (please explain): **"I rang the court"** **"The mediation representative contacted our solicitor"** **"Solicitor"**	**3**

PART B: ABOUT YOUR CONTACT WITH THE MEDIATION SERVICE

Q6 **What did you know about mediation before your contact with the Mediation Service?**

	*Please tick **one** only*
Had never heard of mediation	**15**
Had heard of mediation but knew nothing about it	**11**
Knew a little about mediation	**15**
Knew a lot about mediation	**5**
Blank	**1**

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

	*Please tick **one** only*	
Yes, advised all the way through	**5**	Go to **Q8** now
Yes, sought advice from time to time	**11**	
No advice from adviser or solicitor	**29**	Go to **Q9** now
Blank	**1**	
n/a (respondent was a solicitor)	**1**	

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

	*Please tick **one** only*
A solicitor?	**9**
Another adviser? (Please describe the type of adviser) **"free legal adviser for business" 1** **"student legal service" 1** **"CAB" 1** **"consultant" 1** **"solicitor and CAB" 1** **"trainee solicitor and CAB" 1** **"solicitor and debt collection agency" 1**	**7**

Q9 How satisfied or dissatisfied were you with the following aspects of your contact with the Small Claims Mediation Service?

	Very satisfied	Satisfied	Neither satisfied / nor dissatisfied	Dissatisfied	Very dissatisfied
Information received about the service **(note 1 blank and 1 n/a)**	**23**	**19**	**2**	**1**	**0**
How easy it was to get in touch with the service **(note 3 blanks)**	**19**	**21**	**2**	**2**	**0**
Explanation of how the service could help me **(note 3 blanks)**	**21**	**22**	**1**	**0**	**0**
Helpfulness of the court mediator **(note 3 blanks)**	**31**	**13**	**0**	**0**	**0**
Knowledge and understanding of the court mediator **(note 3 blanks)**	**26**	**14**	**4**	**0**	**0**

PART C: ABOUT THE MEDIATION

Q10 Why did you decide to try mediation?

	*Please tick **one** only*
Because my adviser recommended it.	**2**
Because the judge recommended it.	**14**
Because the other side suggested it.	**1**

Because I expected it would save me money.	**3**
Because I expected it would save me time.	**8**
Because I wanted to avoid a court hearing.	**4**
Because I was curious to try it.	**4**
Other (please explain). **"Thought it would be more use than having a judge decide"** **"contacted by the court"** **"directed by court in a small claim"**	**3**
Combination of several:	**7**
blank	**1**

Q11 Was the mediation <u>process</u> what you had expected?

	*Please tick **one** only*
Yes.	**41**
No.	**5**
blank	**1**
Please explain. **Various explanations – see report.**	

Q12 Did the case settle at the mediation?

	*Please tick **one** only*
Yes – a full settlement was reached.	**44** Go to **Q13** now
No – the case was not settled.	**3** Go to **Q16** now
Partial – some issues were settled.	**0** Go to **Q16** now

Q13 If the case settled at mediation, please briefly describe the settlement agreement.

Various settlements – see report.

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

		*Please tick **one** only*
As expected	**19**	(*Please explain*) **Also 3 replied n/a – not settled. Various explanations – see report.**
Better	**7**	
Worse	**14**	
Don't know	**4**	

Q15 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)?

	*Please tick **one** only*
Yes.	**34**
No.	**7**
I don't know.	**1**
Please explain. **Also 2 blank responses and 3 n/a (not settled).**	

Q16 Did the case settle after the mediation but before going to a hearing with a judge?

	*Please tick **one** only*
Yes.	**33**
No.	**12**
n/a	**2**
Note that this question appears to have generated 'yes' and 'no' responses from those that settled AT mediation; wording was perhaps confusing.	

Q17 At the mediation, did you feel under pressure to reach a settlement?

	*Please tick **one** only*
***Yes** (including 1 "yes, slightly")*	**10** Go to **Q18** now
No	**34** Go to **Q19** now
I don't know.	**1** Go to **Q19** now
Blank (settled by phone)	**1**
n/a	**1**

Q18 If you felt under pressure at the mediation, was it because of:

	*Please tick **all** that apply*
pressure from the other side	**1**
pressure from your adviser	**0**
pressure from the mediator	**3**
financial pressure	**4**
time pressure	**4**
other (Please describe) **1 not described** **1 "didn't really want to go to court"**	**2**

Q19 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 **(Note: 1 blank)**	**23**	**17**	**4**	**2**	**0**
The time allowed for the mediation **(Note: 2 blanks)**	**20**	**17**	**5**	**2**	**1**
The competence of the mediator **(Note: 2 blanks)**	**27**	**16**	**2**	**0**	**0**
Facilities for the mediation (eg room, providing for special needs) **(Note: 2 blanks and 6 'n/a' – phone mediations)**	**12**	**14**	**5**	**7**	**1**

Q20 **How much time did you spend on this case?** Please include time spent preparing your case and time spent at the mediation session (whether successful or not) and time spent at any subsequent court hearing (if required).

*Please tick **one** only*

A few hours to half a day	**15**	***Three or more days***	**9**
One day	**7**	Other (please write in) **"about 2 hours"** **"about 7 hours"** **"1 week"** **"many days"** **"over 1 week"** **"weeks!"** **"over 6 months"**	**7**
Two days	**8**		

Q21 **How satisfied or dissatisfied were you with spending this length of time on the case?**

	*Please tick **one** only*
Very satisfied	**12**
Fairly satisfied	**10**
Neither satisfied / nor dissatisfied	**16**
Fairly dissatisfied	**6**
Very dissatisfied	**2**
blank	**1**

Please say why:

Various explanations – see report.

Q22 *What costs did you have during the course of this case?*

	*Please tick **all** that apply*
Court costs	**30**
Costs for advice	**7**
Costs for representation	**5**
Travel costs	**22**
Costs for taking time off work	**12**
Other (please explain): **"obtaining credit reference on opponent"** **"less time on other work"** **"obtaining bank statements, photocopies, parking fees"** **"other party legal costs"** **"preparations"** **"valuations"**	**6**

Q23 What would you estimate your total costs were for this case?

£0 - £49 = 5
£50 - £199 = 10
£200 - £499 = 10
£500 = £999 = 5
£1,000 and above = 6
blank = 9
"fixed costs" = 1
unspecified = 1
Note that some defendants appear to have included amount of settlement/judgment in costs estimate.

Q24 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 suitable for my type of case **(Note 1 blank)**	**22**	**17**	**5**	**1**	**0**	**1**
I was fully prepared to mediate **(Note 1 blank)**	**19**	**19**	**5**	**2**	**1**	**0**
Both parties were agreed that mediation was suitable **(Note 2 blanks)**	**10**	**18**	**7**	**5**	**0**	**5**
I wanted a face-to-face meeting with the other party **(Note 3 blanks)**	**8**	**12**	**13**	**4**	**7**	**0**
Mediation made reaching settlement easier **(Note 2 blanks)**	**20**	**16**	**3**	**5**	**0**	**1**
I would use mediation in the future, if I were involved in another case **(Note 2 blanks)**	**24**	**17**	**2**	**0**	**1**	**1**

Mediation was a good use of my time **(Note 2 blanks)**	**22**	**14**	**6**	**1**	**0**	**2**

Q25 Would you be prepared to use this mediation service again?

*Please tick **one** only*

No	**0**	*(Please explain)*
Yes	**40**	
Don't know	**6**	
blank	**1**	

Q26 If yes, would you be prepared to pay for the mediation service?

Yes, I would be prepared to pay:

*Please tick **one** only*

£20 or less	**11**	***£50 – £100***	**8**
£20 – £50	**12**	More than £100	**3**
Depends on value of claim	**3**	**Not willing to pay**	**4**
blank	**6**		

Q27

Various comments – see report.

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.

Q28	**Are you:**	Male	**27**		**Q29**	**What is your ethnic group?** (*Please tick one box)*	
		Female	**17**				
		Blank	**2**				
						White	**38**
Q30	**To which age group do you belong?**					Mixed	**0**
24 years and under			**2**			Asian or Asian British	**2**
25–44 years			**24**			Black or Black British	**2**
45–64 years			**13**			Chinese	**0**
65 years and over			**3**			Other ethnic group **"White English"**	**2**
Blank			**4**			**Blank**	**2**

Q31	**Do you consider yourself to have a disability?**	
Yes	**5**	Please describe your disability. **"Back problems"** **"Severe asthma and mobility problems"** **Question re meaning of question** **Blind**
No	**37**	
Don't know	**2**	
Blank	**4**	

If you would be willing for me to contact you by telephone 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.: _____

Best time to contact: _____

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

Please remember to return this form in the postage-paid envelope provided.

Thank you for your time.

Case No.: _19 responses out of 109 sent **REF:** no mediation
(+ 8 responded without questionnaire b/c couldn't identify who dealt with case or had no contact)

MANCHESTER COUNTY COURT
SMALL CLAIMS MEDIATION SERVICE

QUESTIONNAIRE

This questionnaire is designed to help us evaluate the effectiveness of the Manchester Small Claims Mediation Service. We want to hear your views, and we very much appreciate you helping us by answering the questions below.

All responses are confidential, and you will not be identified in the evaluation report. A self-addressed, stamped envelope has been included for you to return the completed questionnaire to the researcher.

The questionnaire is in four parts: Part A is about you and your case, Part B is about your experience of the Service, Part C is about the outcome of your case, and Part D is to help us know more about who uses the service.

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 the independent researcher, Margaret Doyle, on 020 7610 2556 or email to margaret@domar.co.uk.

PART A: ABOUT YOU AND YOUR CASE

Q1 What was your role in the case?

	*Please tick **one** only*
Claimant – I brought the case to court	**13**
Defendant – the case was brought against me	**6**
Adviser / solicitor for the claimant	**0**
Adviser / solicitor for the defendant	**0**
Other (please explain):	**0**

Q2 Were you involved in the case as:

	*Please tick **one** only*
An individual?	**11**
A representative of an organisation or company?	**8**
Other? (please write in):	**0**

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

	*Please tick **one** only*
Yes, once	**6**
Yes, more than once	**5**
No, never	**8**

Q4 **Have you been involved in a <u>mediation</u> 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** only*
Yes, once	**2**
Yes, more than once	**0**
No, never been to a mediation	**17**

Q5 **How did you find out about the Small Claims Mediation Service?**

	*Please tick **all** that apply*
From a leaflet	**5**
Judicial directions	**1**
From a member of the court staff	**2**
Letter from the Small Claims Mediation Service	**2**
Phone call from the Small Claims Mediation Service	**6**
Other (please explain): **Advice bureau 1** **"my own knowledge" 1** **"suggested by defendant" 1**	**3**

PART B: ABOUT YOUR CONTACT WITH THE MEDIATION SERVICE

Q6 **If you did <u>*not*</u> mediate using the Small Claims Mediation Service, why was that?**

	*Please tick **all** that apply*
My case was not yet ready to settle	**2**
Mediation was inappropriate for my case	**2**
Someone advising me (eg a solicitor) did not think that mediation would help me with my case	**3**
I did not think that mediation would help me with my case	**2**
The other party did not turn up to the mediation session	**2**
I didn't feel confident to attend	**0**
Other (please write in): **"not offered"** **"apparently judge decided hearing should be in Manchester when case was Leeds based"** **"other party refused mediation"** **"claim was settled out of court"** **"defendant didn't respond to mediator"** **"other party didn't wish to attend mediation"** **"the mediator couldn't resolve the matter due to claimant not**	**7**

cooperating with them"	

Q7 What did you know about mediation before your contact with the Small Claims Mediation Service?

	*Please tick **one** only*
Had never heard of mediation	**9**
Had heard of mediation but knew nothing about it	**4**
Knew a little about mediation	**5**
Knew a lot about mediation	**1**

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

	*Please tick **one** only*	
Yes, advised all the way through	**2**	Go to **Q9** now
Yes, sought advice from time to time	**3**	
No advice from adviser or solicitor	**13**	Go to **Q10** now
Blank	**1**	

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

	*Please tick **one** only*
A solicitor?	**5**
Another adviser (please describe the type of adviser)?	**1**
n/a (no advice)	**13**

Q 1 0 How satisfied or dissatisfied were you with the following aspects of your contact with the Small Claims Mediation Service?

	Very satisfied	Satisfied	Neither satisfied / nor dissatisfied	Dissatisfied	Very dissatisfied
Information received about the service **(Note: 1 blank)**	**5**	**7**	**6**	**0**	**1**
How easy it was to get in touch with the service **(Note: 3 blanks and 1 n/a)**	**4**	**6**	**2**	**1**	**2**
Explanation of how the service could help me **(Note: 3 blanks and 1 n/a)**	**3**	**5**	**4**	**1**	**2**
Helpfulness of the court mediator **(Note: 4 blanks and 1 n/a)**	**6**	**3**	**2**	**1**	**2**
Knowledge and understanding of the court mediator **(Note: 4 blanks and 1 n/a)**	**4**	**2**	**5**	**1**	**2**

PART C: ABOUT THE OUTCOME OF YOUR CASE

Q11 *What was the outcome of your case?*

	*Please tick **one** only*	
The case was withdrawn	**2**	Go to **Q13** now
The case was settled ***directly*** between myself or my solicitor/adviser and the other party	**8**	Go to **Q13** now
The case was decided at a court hearing	**4**	Go to **Q12** now
Other (please explain): **Judgment for claimant (marked as "other") 2** **Ongoing 2** **"no idea" – hearing deferred 1**	**5**	Go to **Q13** now

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

*Please tick **one** only*

As expected	**5**	(*Please explain*) **Various explanations – see report.**
Better	**2**	
Worse	**2**	
Don't know	**0**	
Blank	**5**	
n/a	**5**	

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*

A few hours to half a day	**5**	***Three or more days***	**5**
One day	**1**	Other (please write in) **9 months** **ongoing** **"no time – was informed by solicitor how case was proceeding"**	**3**
Two days	**4**		
Blank	**1**		

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

	*Please tick **one** only*
Very satisfied	**1**
Fairly satisfied	**6**
Neither satisfied / nor dissatisfied	**6**
Fairly dissatisfied	**2**
Very dissatisfied	**3**
Blank	**1**

Please say why:

Various explanations – see report.

Q15 *What costs did you have during the course of this case?*

	*Please tick **all** that apply*
Court costs	**11**
Costs for advice	**2**
Costs for representation	**1**
Travel costs	**4**
Costs for taking time off work	**2**
Other (please explain): **Time 3** **Ongoing 1** **Cost of compiling defence 1** **"received my policy excess and phone and postage" 1** **time/tel/money 1**	**7**

Q16 What would you estimate your total costs were for this case?

£0 - £49 = 1
£50 - £199 = 2
£200 - £499 = 2
£500 - £999 = 2
£1000 and over = 3
other = 5: "?"; "depends", "don't know", "far too much", "no idea - ongoing"
blank = 3
n/a = 1

Q17 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 **(Note: 1 blank)**	**2**	**2**	**5**	**6**	**3**	**0**
I was not yet adequately prepared to mediate **(Note: 2 blanks)**	**0**	**0**	**6**	**3**	**6**	**2**
Both parties were agreed that mediation was not suitable **(Note: 2 blanks)**	**0**	**0**	**5**	**4**	**4**	**2**
The other party did not want to mediate **(Note: 2 blanks)**	**5**	**0**	**2**	**3**	**2**	**5**
I did not want a face-to-face meeting with the other party **(Note: 2 blanks)**	**0**	**1**	**8**	**4**	**4**	**0**

Mediation would not make reaching settlement any easier **(Note: 2 blanks)**	**1**	**3**	**4**	**4**	**2**	**3**
I would use mediation in the future, if I was involved in another case **(Note: 1 blank)**	**4**	**6**	**3**	**1**	**2**	**2**
Mediation would be a waste of my time **(Note: 2 blanks)**	**1**	**1**	**3**	**6**	**3**	**3**

Q18 Would you consider using the Small Claims Mediation Service in the future?

*Please tick **one** only*

No	**2**	*(Please explain)* **Various explanations – see report.**
Yes	**13**	
Don't know	**4**	

Q19

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

Various comments – see report.

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.

Q20	**Are you:**	Male	**12**		**Q21**	**What is your ethnic group?** (*Please tick one box)*	
		Female	**5**				
						White	**14**
Q22	**To which age group do you belong?**					Mixed	**0**
24 years and under			**0**			Asian or Asian British	**1**
25–44 years			**9**			Black or Black British	**2**
45–64 years			**7**			Chinese	**0**
65 years and over			**1**			Other ethnic group	**0**
Blank			**2**			**Blank**	**2**
Q23	**Do you consider yourself to have a disability?**						

Yes	**2**	Please describe your disability. **“hip replacement”** **“mobility”**
No	**13**	
Don’t know	**1**	
Blank	**3**	

If you would be willing for me to contact you by telephone 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.: _____

Best time to contact: _____

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

Please remember to return this form in the postage-paid envelope provided.

Thank you for your time.

Appendix 2: Party interview schedule

Interviews with Parties about their Experience of Small Claims Mediation at Manchester County Court

by phone, following up on questionnaire responses

Date: _____

Claim Number: _____ _____

Claimant / Defendant / Other

Introduction
I am following up on the questionnaire you completed and returned to me. Thank you for agreeing to be interviewed about your experience of the Small Claims Mediation Service at Manchester County Court. It's useful to be able to explore some of your responses more fully. This should take no more than 30 minutes. Is now a good time to do this, or can we make an appointment for a more convenient time?

I would like to record this interview so that I can be sure to accurately reflect your responses. The tape will only be heard by myself and an independent transcription service. Do you mind if I record it?

Permission given? *YES* ☐ *NO* ☐

All your responses will be treated in confidence and you will not be identified in the research report unless you give me your permission.

ALL

1. **How did you find out about the Small Claims Mediation Service?**

Follow-ups for other than self-referred:

If the mediation officer contacted you, how did you feel about that?

If a judge directed you to the service, how did you feel about that?

2. **What contact did you have with the Small Claims Mediation Service at Manchester County Court?**

3. **Did you find it helpful to have contact with the Small Claims Mediation Service? Please explain.**

4. **Please describe what your case was about. If you were a claimant, what were you seeking? What was the value of the claim?**

5. **Did you use mediation in this case? Please explain why or why not. *[If no, skip to Q16.]***

MEDIATION USERS

6. **Why did you decide to use mediation?**

7. **Did you have a legal representative / helper present at the mediation?**
If yes, who was the representative?

8. **How long did the mediation take? Was this enough time?**

9. **Can you identify any positive aspects of the mediation?**

10. **Can you identify any negative aspects of the mediation?**

11. **Did you feel under any pressure during the mediation? If so, please describe. [Refer also to questionnaire response.]**

12. **Were you happy with the mediator's approach? Was it what you had expected? Do you think it was different to how a judge would handle the dispute?**

13. **Did you get the result you expected at mediation?**

14. **Please describe how your case was resolved (ie a mediated settlement, hearing, withdrawn, etc.) and what the outcome was.**

15. **Are there ways in which the mediation service could be improved?**

NON-MEDIATION USERS

16. **Why did you decide not to use mediation?**

17. **Please describe the outcome of your case (eg settled, decided at hearing, terms of settlement agreement or judicial order).**

18. **Were you satisfied with the outcome of the case? Please explain.**

ALL

19. **Would you be prepared to use the Small Claims Mediation Service in the future?**

20. **Would you be prepared to pay for a mediation service? If so, how much?**

21. **Do you think the court should continue to offer mediation in small claims cases? Please explain.**

22. **Do you have any other comments about the Small Claims Mediation Service at Manchester County Court?**

Thank you again for your time.

Appendix 3: Information document sent to parties before mediation

Small Claims Mediation Service at Manchester County Court

The information below should help you gain a greater understanding of the principles of mediation as well as setting out some basic steps to take to help you prepare for the appointment.

What do I have to do if I do not want to use the small claim mediation service?

Mediation is voluntary and requires both parties approval to take place. If either party decides that they do not want to pursue mediation the claim will continue on its normal course and may therefore conclude at the small claim hearing.

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.

What does it involve?

You will see a mediator who has been trained to help people to settle their disputes.

The mediator is not a Judge. He or she will not take sides or decide who is right or who is wrong. They cannot give advice.

On the day set for the small claims mediation appointment please arrive at the court building 15 minutes before the appointment is due to start. You will be directed to small conference rooms where the mediation will take place. The time set aside for the appointment is 1 hour. However, the mediator and parties may decide that more time is needed on the day to facilitate an agreement. Please therefore try to make suitable arrangements to cover this possibility. There is no need to call witnesses.

You can go to the mediation by yourself or with a friend or a legal adviser/solicitor. The court cannot provide you with legal assistance on the day of the mediation.
If you have a language difficulty, ensure you bring an appropriate interpreter with you. You should also inform the mediator and/or court that you will be relying on this help.

Before the day of the mediation, you should try to be prepared. You want the mediator and the other side to understand your case. Decide what is the best way of explaining your position. It may be helpful for you to make a list of the strengths and weaknesses of your case and, if you can, the strengths and weaknesses of the other side's case.

Remember that the mediator will be looking for solutions, which are in your best interest. The mediator will not tell you what your rights are. Mediation is also not a substitute for legal advice. If you need advice, and are not legally represented at the mediation, try to take it before the day fixed for the mediation. The court cannot provide duty solicitors to give legal advice on the day of the mediation appointment.

The mediator will usually have read the particulars of claim and the defence before the mediation takes place.

What happens at mediation?

Mediators have different ways of working, but what usually happens is that everyone involved may first meet in one room. The mediator will make sure everyone knows who is present and will briefly explain what the process is about. Each side will be given the chance to tell the mediator and the other side what their case is about and what they are looking for.

After the open session, each side will likely to go to separate rooms and the mediator will visit each in turn. These are private sessions. The mediator must not tell the other side what he or she has been told unless given permission to do so. During the private sessions, the mediator will briefly discuss the case with you. The mediator will be looking for solutions to problems and will be interested in what each side needs.

By moving between sides, carrying information, suggestions, ideas, explanations or offers, the mediator will seek to help everyone to reach a solution to their dispute.

If agreement is reached, the mediator will bring everyone together again and a settlement agreement will be drawn up and signed.

At the mediation

Remember that the mediator is not a Judge. When you are asked to present your case in the open session, try to get across to the other side what you think the dispute is about. Do not worry about details; the mediator can find out about these in the private sessions. Be brief. If you feel difficulty in talking about the case when the other side is present; tell the mediator.

In the private sessions, try to work with the mediator to find a solution. Be frank. What you say is confidential; you may know something that will help the mediator in talking to the other side.

When the mediator is with the other side, use your time. Think about what has been discussed. Consider what you may be able to offer or accept. Decide exactly what your needs are.

If you reach agreement, remember that it will be binding on you and the court proceedings will be ended. Make sure you can comply with the agreement.

If agreement is not reached, the normal court timetable will then continue and the legal action will go ahead. However, remember that the negotiations and any terms of settlement proposed during the mediation appointment are confidential and cannot be repeated once proceedings have been referred back to court.

Even if the mediation does not end with agreement between the two sides, you may find it was helpful and that each side understands the other's point of view more clearly. You can always try to settle the case at a later date.

What do I have to do if I am unhappy with the conduct of the mediator?

If you have any complaints or issues to raise regarding the court procedure or the conduct of the mediator, then they should be addressed in writing to the court manager.