An Evaluation of Pre-Trial Conferences in the Christchurch District Court

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Foreword

Access to the Court must be ensured if it is to remain the successful arbiter of civil conflicts. The length and expense of legal proceedings need to be constantly reappraised and adjusted. The District Courts Rules Committee has a wide brief to consider the causes of unwarranted delay in civil proceedings, and to remove these causes while at the same time protecting the rights of both parties. Any initiative to streamline the system must be based on the best information available.

This report on the pilot scheme of pre-trial conferences provides a useful addition to the picture we are building up of the courts system. The results show that excessive delay is not an inevitable part of the legal process. Given a will to change, application of thought to fresh procedures, and co-operation between all parties involved, improvements can be made.

The results of this evaluation have been considered by the District Courts Rules Committee, and I expect to receive from the Committee recommendations, based on these findings, on ways to speed up the civil courts system.

Geoffrey Palmer
Minister of Justice

Acknowledgements

Many people were involved with this study and we would like to thank them for their contributions.

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Our thanks must also go to the judges, solicitors and Christchurch District Court staff who gave their time in interviews, and those solicitors who completed and returned the questionnaires.

Many people helped in the preparation of this report; in particular Colin Sweetman, Assistant Courts Manager for the Southern Region, with advice on procedures and technical details. We would also like to thank the typists, Leonie Loeber and Alice Candy; and those who read and commented on early drafts - Mark Carruthers of the Department of Justice's Law Reform Division; Bruce Asher and Graheam Simpson, of Policy and Research Division; and Robyn Bargh, Information Officer, for advice on layout.

John White and Janette Briggs

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Executive Summary

AN EVALUATION OF PRE-TRIAL CONFERENCES IN THE CHRISTCHURCH DISTRICT COURT

In 1984 a pilot scheme using pre-trial conferences for civil cases was introduced in the Christchurch District Court.

Objectives

1. To reduce the frivolous filing of notices of intention to defend.

2. To reduce the proportion of cases going to defended hearings.

3. To reduce the delay between the filing of notice of intention to defend and final judgment.

4. To reduce the time spent in a defended hearing.

5. To improve the accuracy of estimates of the duration of defended hearings.

Methodology

The evaluation of the pilot scheme involved analysis of data collected from court files, and comparisons made between the pilot group (1984 pre-trial conference scheme cases) and the control group (1983 civil cases). As this evaluation did not use a true experimental design where cases were randomly assigned either to control or pilot groups, the results must be treated with caution. The views of participants in the pilot scheme were obtained through interview and questionnaire.

Results

Comparison of control and pilot groups showed that a notice of intention to defend was filed for significantly more control cases, and that in all cases where a summons was served, a significantly higher proportion of control cases went to a defended hearing.

At least one conference was held for 10.9 percent of all eligible pilot group cases, or 95.4 percent of the pilot cases for which a notice of intention to defend was filed. Both plaintiff and defendant attended for just over half of all conferences held. The average time taken at all conferences was 2.0 minutes. Conferences took more time when both parties were present, and first conferences took longer than second and later conferences.

For both control and pilot groups a summons was more likely to be served, and a notice of intention to defend more likely to be filed, when the case began as an ordinary action and the amount claimed was $1,000.00 or more. Cases were more likely to go to defended hearing in both control and pilot groups when the case began as an ordinary action. Requests for entry of judgment by default were more likely in cases that began as default actions and when the amount claimed was under $1,000.00.

The time between filing a notice of intention to defend and when the parties were ready for the defended hearing was on average 3 times longer for the control group (134.5 days) than the pilot group (42.9 days). This significant reduction in "preparation time" was attributed to pilot scheme procedures.

Time taken at defended hearings was significantly shorter for the pilot group (23.6 minutes) compared to 39.5 minutes for the control group. However because of missing data the control group time may not be reliable. For both control and pilot groups hearing times were consistently overestimated prior to the hearing. Longer actual hearing times for both control and pilot groups were recorded where cases had begun as ordinary actions; where the amount claimed was $1,000.00 or more; and when both parties attended the hearing. Control group hearings had significantly more adjournments than did pilot group hearings, but the reduction in adjournments could have resulted from a number of factors, not necessarily the pilot scheme procedures.

The views of 42 people (30 solicitors, 7 court staff and 5 judges) who had been involved with the pilot scheme were obtained by interview or self-administered questionnaire. As it was not a random sample of opinions, responses cannot be taken as representative of all who had dealt with the pilot scheme. The majority of respondents were in favour of the pilot scheme. Most of the success of the scheme was seen as the reduction in delay between filing of a notice of intention to defend and final judgment. Three-quarters of respondents had experienced problems in the way the pilot scheme was run, or saw problems with the legal status of conferences and the role of the judge.

Conclusions About the Objectives

It was tentatively concluded that Objective 1 - to reduce the frivolous filing of notices of intention to defend - was met. This was indicated by significantly fewer notices of intention to defend being filed, accompanied by a slight but non-significant increase in the proportion of cases where notices of intention to defend had been filed going on to defended hearings.

Objective 2 - to reduce the proportion of cases going to a defended hearing - was met. For every 100 control group hearings, there were 77.2 pilot group hearings, a significant reduction in the proportion of cases going to defended hearing.

Objective 3 - to reduce the delay between the filing of the notice of intention to defend and final judgment - was met. For cases going to a defended hearing, average time for the delay was reduced from 309 days for the control group to 96 days for the pilot group.

Objective 4 - to reduce the time spent in a defended hearing - was not clearly met. When all conference time was added to pilot group hearing times for a fairer comparison, the reduction in average hearing time from control to pilot groups was not significant.

Objective 5 - to improve the accuracy of estimates of the duration of defended hearings - was not met. There was no significant improvement in the accuracy of hearing duration estimates.

General Conclusions

The pilot scheme met with varied success. While conferences helped clients of the civil court by providing a speedier service, this increased the workload of the courts. As to whether the scheme was a worthwhile innovation, 37 out of 39 respondents considered conferences worth keeping and 26 out of 28 thought they should become a permanent part of the civil process.

Chapter 1

Introduction

In 1984 a pilot scheme involving the use of pre-trial conferences for civil cases was introduced in the Christchurch District Court. The initiative for this innovation came from the District Courts Rules Committee which had, during 1982 and 1983, been considering the legislative, evidential and procedural requirements to implement such a scheme. A general dissatisfaction with civil timetabling, felt particularly by the local law profession, was the reason behind the implementation of the pilot scheme in Christchurch.

1.1 Pre-Trial Conferences in Other Jurisdictions

The concept of pre-trial conferences for both civil and criminal cases is not a new one. Since 1984 the Family Court has used a system of pre-trial conferences in certain cases going to a defended hearing. In the Auckland District Court an unofficial scheme of pre-trial conferences has been operating for some years with civil actions granted special fixtures. The purpose of these conferences was to ensure that all cases were in fact ready to proceed to a hearing. However there has been no systematic monitoring of this scheme.

The problems of delay in civil litigation, and the consequent costs, have long been recognised in North America where the pre-trial conference has been used as one of many options for speeding up the pace of civil litigation (Ebener, 1981; Stewart, 1979). In the USA provision for pre trial conferences has existed in federal law since 1938 (Amendments to the Rules of Civil Procedure for the US District Courts, 1983). Pre-trial review there has varied both in scope and

intent. In the scheduling conference it has focussed on the problems of timetabling. In the discovery conference it concerned itself with setting out all the documentary evidence so that neither party could take the other by surprise. The settlement conference explored the possibilities of settlement in the later stages of the pre-trial process.

A search of the overseas literature suggests that both theoretical proposals for and practical applications of pre-trial conferences have variously emphasised the elements of arbitration, mediation and conciliation. No systematic evaluation of pre-trial conferences as such has been revealed.

1.2 The Civil Process Under the Christchurch Pilot Scheme

The Christchurch District Court pilot scheme began operation with plaints filed from 1 January 1984 and lasted until all plaints laid in the 6 months January-June 1984 period had been followed through to final outcome. It was confined to those District Court civil actions where both parties resided in Christchurch. The basic feature of the innovation to civil timetabling was the direction by a District Court judge that, where a notice of intention to defend was filed, both parties meet at a conference presided over by a judge to sort out all relevant matters and to clarify disputed from non-disputed issues. The process took the following steps:

(a) The summons was isssued and served as under existing civil procedure, but a notice attached to the summons advised the defendant that the consequences of filing a notice of intention to defend would be the requirement to attend a pre-trial conference. (See Appendix A, P/S Form 1.)

(b) When a notice of intention to defend was filed, the date of the first conference was set.

(c) Parties were notified that the defendant had filed a notice of intention to defend and of the conference date. (Appendix A, P/S Form 2.)

(d) The conference took place, attended by counsel or unrepresented parties in person. Issues relevant to conducting a defence were discussed and times set for the supplying of the necessary information. If matters were still outstanding, a date was set for a second conference.

(e) If a second conference was necessary this was held to deal chiefly with issues such as numbers of witnesses, estimated duration of the hearing, and fixing a date and time for the hearing. (Appendix A, P/S Form 3.)

(f) At the final conference a hearing date within the next 6 weeks was set. The notice of date and hearing was completed and sent out to the parties. (Appendix A, P/S Form 4.)

(g) Parties attended the hearing and proceedings continued as normal under the existing procedures.

1.3 Objectives of the Pilot Scheme

The Christchurch District Court pilot scheme was formulated with certain objectives in mind. These are listed below, though not in order of their importance. In fact objective (3) was seen as the most crucial to the success of the pilot scheme.

(1) To Reduce the Frivolous Filing of Notices of Intention to Defend

By "frivolous defence" is meant the filing of a notice of intention to defend as a tactical ploy to delay payment. In such a case the defendant has no real intention of contesting the case should it come

to a defended hearing. It was expected that requiring defendants to go before a judge at an earlier stage in the civil process ie, at a pre-trial conference, would act as a deterrent to frivolous defence.

(2) To Reduce the Proportion of Cases Going to Defended Hearings

By bringing the parties together sooner before a judge, the pre-trial conference should increase the chances of settlement before a hearing.

(3) To Reduce the Delay Between the Filing of Notice of Intention to Defend and Final Judgment

The court would take control of the pace of civil proceedings because the power to fix hearing dates was transferred from counsel to the court. With this change it was hoped to achieve a reduction in delay.

(4) To Reduce the Time Spent in a Defended Hearing

If the pre-trial conference could help to clarify the issues, and elicit documentary and other evidence earlier, then it was thought hearings would be shorter.

(5) To Improve the Accuracy of Estimates of the Duration of Defended Hearings

Full disclosure at pre-trial conferences was to be encouraged, thus eliminating the elements of surprise leading to unforeseen adjournments of the hearing. It was hoped this would lead to a more realistic allocation of judges' time to hearings.

These key objectives arose from more general aims such as providing a speedier service at less cost to the public; enabling parties involved in the civil process to plan their workload more systematically; and reducing the costs to the Justice Department of administering civil actions.

1.4 The Form and Content of this Report

Part I of this report is based on data collected from court files. All cases for the first 6 months of 1984 where both parties were resident in Christchurch were designated as the pilot group, and data on these cases were collected from court files. Similar data were collected from all cases for the first 6 months of 1983, again where both parties resided in Christchurch, for the purpose of providing a comparison or control group. Part I of this study reports the results of the analysis of these data.

Much of Part I (particularly Chapters 3, 7 and 8) consists of comparisons of the pilot and control groups, with particular attention given to analyses bearing on the objectives of the pilot scheme. Considerable space is also given to reporting of detail about the conferences (Chapter 4). Finally, data on characteristics of cases and events in the civil process are reported (Chapters 5 and 6). While not directly related to the objectives or to the conferences, these last 2 chapters take advantage of the data available to provide some background about the civil process that is of interest beyond the pilot scheme itself.

In Part II the views of solicitors, judges and court staff who participated in the pilot scheme are reported. The data here come from either interviews or questionnaires. Part II complements Part I by providing something of the flavour of the conferences, as well as providing useful feedback on problems with the way they operated.

In Part III conclusions are drawn about the success of the pilot scheme, both in terms of the specific objectives and more generally.

A postscript describes what has happened to the conferences since the end of the pilot scheme.

Part 1- Analysis of the Files

Chapter 2

The Nature and Conduct of the Evaluation

2.1 The Design of the Evaluation

This study was not a true experiment: cases were not randomly assigned either to the control or pilot group. Instead all eligible cases (ie, where both parties resided in Christchurch and the case was not transferred to another court) for the first 6 months of 1983 constituted the control group, while the pilot group consisted of all eligible cases for the first 6 months of 1984.

The way in which the control and pilot groups were derived has very important implications for the interpretation of the results. In a study of this type there can never be any certainty that observed differences between the groups are the result of the "treatment", which in this case was the pilot scheme described in the Introduction. It might be that differences found between the groups result from other differences that existed prior to the application of the pilot scheme procedures. In this case some difference in the distribution of various types of case between 1983 and 1984 might better "explain" the results than does the change in procedures associated with the pilot scheme.

Four variables that were collected provide some clues as to whether pre-existing differences might provide a major problem for the interpretation of the results: the amount of the claim, whether a government department was involved as the plaintiff, whether a debt-collecting agency was involved as the plaintiff, and whether the case was an ordinary or default action. The 2 groups did not differ significantly on amount of the claim or type of action, while the

analysis in Appendix D indicates that differences between the groups in the proportions of government and debt-collecting agencies involved probably had only a small effect on the 2 most important outcome variables, whether a notice of intention to defend was filed, and whether there was a defended hearing.

The size of the effect was sufficiently small to make it generally unnecessary to attempt to 'control for' this difference.

Another pre-existing difference between the groups was in the proportion of all plaints filed in the first 6 months of the year that were classed as eligible for the study - 58.7 percent for the control group and 54.0 percent for the pilot group. This might have resulted from some external change such as an increase in 1984 of non-local parties appearing in the Christchurch court. It does not appear to be due to an increase in the proportion of cases transferred out to the Small Claims Tribunal, as the number of cases dealt with by the Christchurch Tribunal in fact fell from 1983 to 1984. Whatever its causes, this introduces some unknown but probably small bias, the effect of which might be incorrectly attributed to the changes introduced with the pilot scheme.

As with any study of this kind where there is not random assignment of cases to the 2 groups being compared, it is necessary to treat the results with caution. The best that can be said, when differences in outcomes are found, is that they probably result from the application of the pilot scheme procedures.

2.2 Data Collection

The basic source of information for Part I of the report was the civil file. A PEP worker was employed to transcribe the information described in Appendix B from relevant files on to coding sheets. Names

of the parties were not entered, thus preserving confidentiality. Where information was not available from files then other registers and civil lists were used.

During the initial data collection, the PEP worker recorded information as it was on the files at the end of December 1984 for pilot cases, and as at the end of June 1984 for control cases. It became clear after preliminary analysis of this information that some cases would not have reached their final stage at the time the data were initially collected. This was particularly likely for the pilot group where data collection went only as late as 6 months after the last plaints were filed. To overcome this, a large number of files for which no judgment was initially recorded were re-examined in February 1986.

As a result of this follow-up all instances where the summons was served within 12 months of the plaint being filed, all instances where a notice of intention to defend was filed within 9 months of the summons being served, and all instances where a request for entry of judgment by default was made within 12 months of the summons being served are included in the data to be reported. Analysis of the data indicates that it is unlikely that more than a very few cases in either the pilot or control groups would have had further action after the 1986 followup.

2.3 Editing the Data

The data were entered into a computer file from the coding sheets, and then checked for inaccuracies or discrepancies. Any discrepancies found, for example a defended hearing but no summons served, were checked against the court files and corrections were made.

The amount of the claim posed a problem for the analysis in that there was one very large claim for the pilot group which caused distortions to averages. To rectify this, the claim (for $159,856) was recorded as

missing data, leaving the next highest pilot group claim as $35,465, little different from the highest control group claim of $31,083. Seven control group and 9 pilot group cases exceeded $12,000 (the usual district court limit except for claims brought by government departments). In all but one case the claimaint was a government department, usually Inland Revenue. The exception was a claim that started under $12,000, but exceeded this later due to interest being added to the initial claim.

2.4 Missing Data

With the exception of form of judgment and final outcome which are discussed below, there was generally little missing data. For the control group there was less than 1 percent missing data for all variables except for time taken at defended hearings (36.5 percent missing), parties attending defended hearings (16.2 percent) and date cause of action arose (2.8 percent). The first 2 of these are of concern, and a caution is given in the text when they are discussed.

For the pilot group the missing data was less than 1 percent for all but 6 variables, and less than 4 percent for all except 2 - time taken at defended hearing (6.2 percent missing) and orders made at the third conference (7.9 percent). In neither case was the amount of missing data sufficient to cause concern.

Two variables - form of judgment (judgment by consent, default or on confession, or judgment entered after hearing) and final outcome (judgment for the plaintiff or defendant, struck out or paid into court) - had no information recorded for a large number of cases. As a result these 2 variables are not used in the analysis, except for whether or not judgment was entered after the defended hearing which is used in Chapter 8.

2.5 Significance Testing

Significance testing is the procedure by which a decision is made as to whether a difference found might reasonably have arisen "by chance". This is of central importance for this study with its emphasis on comparisons between the pilot and control groups. In order to fully understand the results, it is necessary to have some understanding of significance testing as it has been applied in this study.

First, it is necessary to examine what is meant by an outcome arising "by chance". As an example, it was found that the average time for defended hearings for the control group was 39.5 minutes, and the average time for defended hearings plus conferences for the pilot group was 26.6 minutes, but that this difference was not statistically significant. This seems a large difference - the average time for the pilot group is only two-thirds that for the control group. The reason that it is not statistically significant is because the number of cases involved was relatively small (120 for the control group and 106 for the pilot group), and there was a large variation in the times (from 1 to 242 minutes for the control group and from 1 to 289 for the pilot group). This means that the chance inclusion of a few lengthy hearings for the control group might explain the result. The outcome of the statistical test says that given the numbers of cases involved and the extent of the variation in times, there is greater than one chance in 20 of the result arising by chance. In this case it cannot be concluded with much certainty that the difference in average time is an effect of the pilot scheme procedures.

In order to keep the text as readable as possible for those without a statistical background, where a difference is reported no mention is made of statistical significance or the statistical test used, but the result will be statistically significant ($p \leq .05$; two-tailed). Thus the statement "the proportion of cases for which a summons was served was greater for the pilot group than for the control group" can be read

as implying a statistically significant difference. There are many such statements in this report, and it is considered undesirable, given the non-statistical background of most readers, to write "The proportion of cases for which a summons was served was significantly greater ($p \leq .05$; chi square) for the pilot group than for the control group".

The emphasis is on reporting differences that are statistically significant. Non-significant differences, if reported, are in the form "There was no significant difference between the pilot and control group on x", or "the mean value of x was 30 minutes for the control group, and 32 minutes for the pilot group, but this difference was not significant".

For the statistically minded, the statistical tests used were the Chi Square test for differences in proportions, and the Wilcoxon rank sum test (data in 2 levels) or the Kruskal-Wallis test (data in 3 or more levels) for differences between continuous variables. Only two-tailed tests were applied, and the level of significance used was .05. The Wilcoxon rank sum test is a ranks-based non-parametric equivalent of the t-test, and the Kruskal-Wallis test is similarly equivalent to oneway analysis of variance. Non-parametric tests have been used because the data generally did not meet the assumptions for parametric tests. While rank-based non-parametric tests have been used for determining significance, means have still been reported[1].

Note 1: Readers wishing for more detail on statistical testing are welcome to examine the computer printouts held by the Policy and Research Section.

Chapter 3

An Overview of the Pilot and Control Groups

In the first 6 months of 1983 (the control period) there were 4,875 civil plaints filed in the Christchurch District Court, and of these 2,864 (58.7 percent) were eligible for this study, ie both parties resided in Christchurch and the case was not transferred to another court. There were 4,991 plaints filed in the first 6 months of 1984 (the pilot period), with 2,695 (54.0 percent) of these being eligible.

The reason for the significantly greater proportion of eligible plaints in the control period is not known. It is possible that whatever caused this difference may also have led to some unknown but probably not large bias in some results.

In this chapter the breakdown of cases into sub-groups is outlined, and then some characteristics of 5 sets of cases (all eligible cases, cases for which a summons is served, cases for which a request for entry of judgment by default is made, cases for which a notice of intention to defend is filed, and cases for which there is a defended hearing) are compared for the control and pilot groups.

The results are presented here without comment or interpretation. In some cases they are considered further in later chapters. In particular objective 1 (to reduce frivolous filing of notices of intention to defend) and objective 2 (to reduce the proportion of cases going to a defended hearing), which are examined in chapter 12 relate to results presented in this chapter.

3.1 The Breakdown of the Cases Into Groups

This chapter presents an overview of the 2,864 eligible control group cases and the 2,695 eligible pilot group cases. Figures 1a and 1b show the breakdown of these cases into sub-groups based on 5 variables: whether a summons is served; whether the action is ordinary or default; whether a notice of intention to defend is filed; whether a request is made for entry of judgment by default; and whether there is a defended hearing.

The percentages in the figure 1 rectangles give the proportions of all eligible cases in the sub-groups resulting from the breakdown. Moving anti-clockwise from the top it can be seen that 16.6 percent of control group and 13.8 percent of pilot group cases had no summons served, 5.7 percent and 7.9 percent respectively were ordinary actions for which no notice of intention to defend was filed, 5.8 percent and 4.8 percent respectively went to a defended hearing, 9.0 percent and 6.6 percent respectively had a notice of intention to defend filed and no request for entry of judgment by default but no defended hearing, 37.1 percent and 38.4 percent respectively involved a request for entry of judgment by default, and 25.8 percent and 28.5 percent respectively were default actions that did not lead to a request for entry of judgment by default.

An aspect of figure 1a that might cause puzzlement is the 13 control group cases for which there was both a notice of intention to defend filed and a request made for entry of judgment by default. This occurred because after having filed the notice of intention to defend, the defendant failed to file a statement of defence.

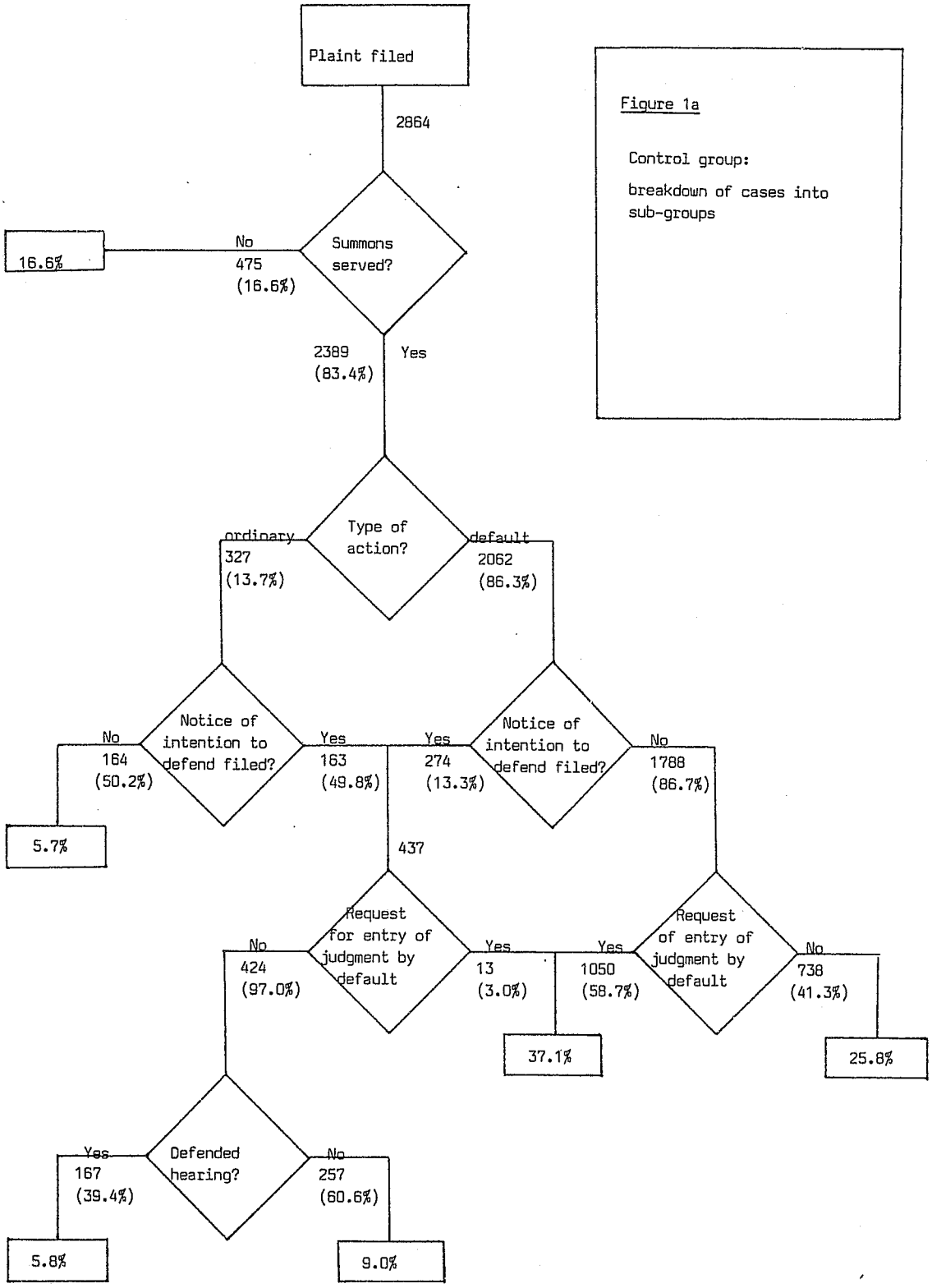

Figure 1a

Control group:

breakdown of cases into sub-groups

Note 1: Defined in Appendix C

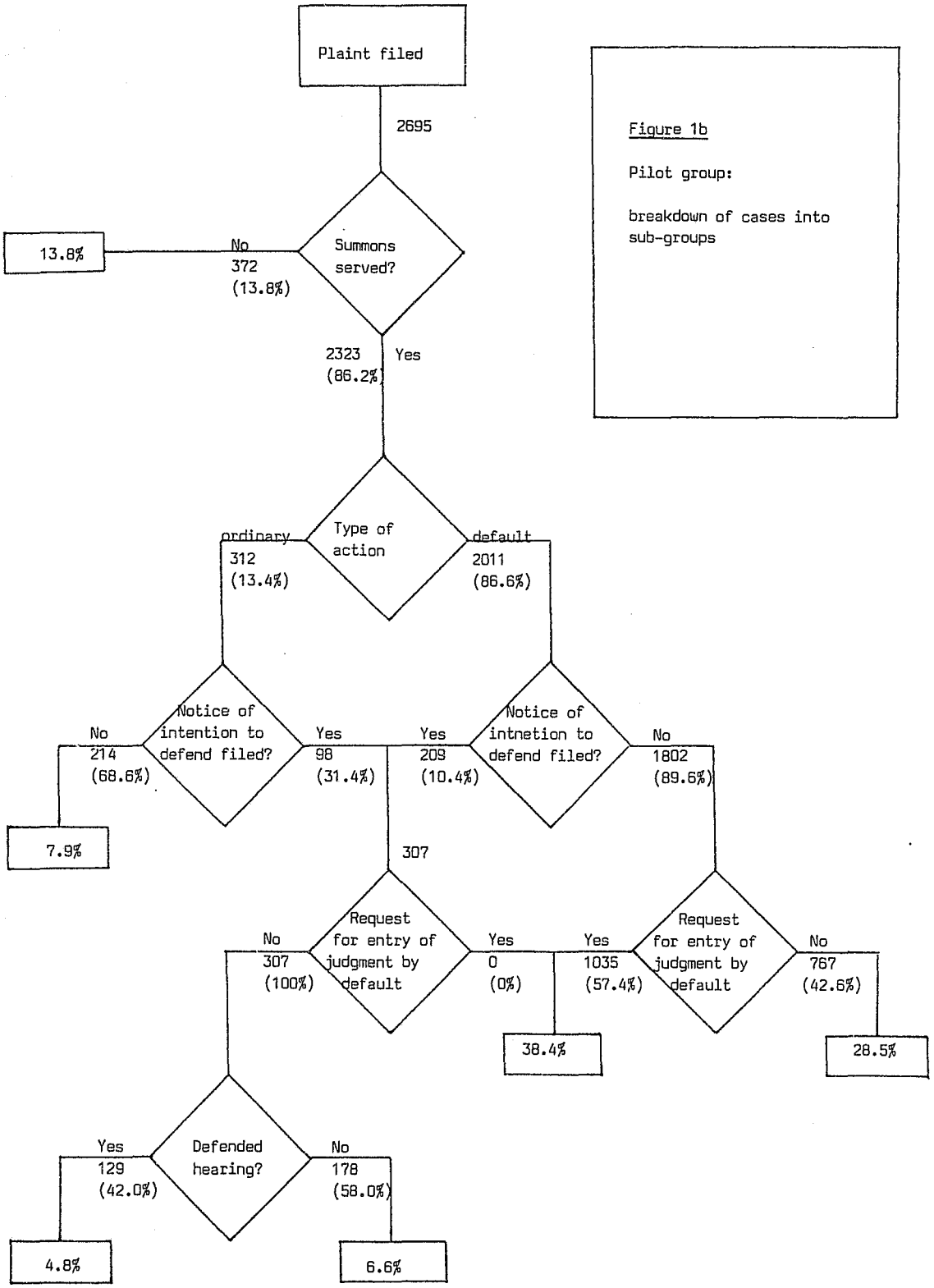

Figure 1b

Pilot group:

breakdown of cases into sub-groups

3.2 Eligible Cases: (2,864 control; 2,695 pilot)

Table 3.1 shows the differences, expressed as percentages of all cases eligible for the study, between the control and pilot groups on some important variables.

Table 3.1

All eligible cases: differences between groups on 10 variables

Variable	Control group %	Pilot group %	Significant difference?
Ordinary action	12.8	13.2	no
Amount claimed $1,000 or more	18.7	16.7	no
Government department as plaintiff	18.5	10.3	yes
Debt collecting agency as plaintiff	35.0	37.7	yes
Summons served	83.4	86.2	yes
Request made for entry of judgment by default	37.1	38.4	no
Notice of intention to defend filed	15.3	11.4	yes
Application made for special fixture	7.0	-	-
At least one conference held	-	10.9	-
Defended hearing held	5.8	4.8	no

It can be seen that there was little difference between the control and pilot groups in the percentages of eligible cases that were ordinary rather than default actions (12.8 percent and 13.2 percent respectively).

There was little difference between the 2 groups in the amount of the claim, which was $1,000 or more for 18.7 percent of the control group and 16.7 percent of the pilot group. The average for the control group was $817, not significantly greater than the $760 average for the pilot group.

The plaintiff was a government department for 18.5 percent of control group cases, but for only 10.3 percent of pilot group cases. There was a much less marked difference in the proportion of cases for which the plaintiff was a debt-collecting agency (35.0 percent and 37.7 percent respectively).

A summons was served for slightly fewer eligible control than pilot cases (83.4 percent to 86.2 percent).

There was little difference in the proportions of cases for which a request for entry of judgment by default was made: 37.1 percent for the control group and 38.4 percent for the pilot group.

A notice of intention to defend was filed for significantly more control cases than pilot cases (15.3 percent to 11.4 percent), despite the lower proportion of control cases for which a summons was served.

As a result of the change in procedure associated with the pilot scheme there was, for the pilot group, no provision for the making of applications for a special fixture, which was done for 7 percent of control group cases. On the other hand no control group cases were involved with conferences, while there was at least one conference for 10.9 percent of all eligible pilot cases.

The proportion of eligible cases which went to a defended hearing was not significantly different for the 2 groups (control group 5.8 percent; pilot group 4.8 percent).

3.3 Cases for Which a Summons was Served: (2,389 control; 2,323 pilot)

Table 3.2 differs from table 3.1 in that the set of cases on which the percentages are based are those for which a summons was served. For the control group, for example, 13.7 percent of the 2,389 cases for which a summons was served were ordinary actions.

Table 3.2

Cases for which a summons was served:
differences between groups on 10 variables

Variable	Control group %	Pilot group %	Significant difference?
Ordinary action	13.7	13.4	no
Amount claimed $1,000 or more	20.9	17.7	yes
Government department as plaintiff	20.3	10.9	yes
Debt collecting agency as plaintiff	32.1	35.5	yes
Summons served	69.1	34.8	yes
Request made for entry of judgment by default	44.5	44.6	no
Notice of intention to defend filed	18.3	13.2	yes
Application made for special fixture	8.4	-	-
At least one conference held	-	12.6	-
Defended hearing held	7.0	5.6	yes

The average amount claimed for cases for which a summons was served was $900 for the control group. This was not significantly greater than the average of $788 for pilot group claims.

An interesting feature of table 3.2 is that for those cases where a summons was served it was served personally for 69.1 percent of control cases but for only 34.8 percent of pilot cases. For the remainder of cases it was served by mail.

A notice of intention to defend was filed for significantly more control than pilot cases (18.3 percent to 13.2 percent). This held for both ordinary and default actions: 49.8 percent of control group ordinary actions led to the filing of a notice of intention to defend compared with 31.4 percent for the pilot group, while the proportions for default actions were 13.3 percent for the control group and 10.4 percent for the pilot group.

A significantly higher proportion of control group cases for which a summons was served (7.0 percent) went to a defended hearing than for the pilot group (5.6 percent).

3.4 Cases for Which a Request for Entry of Judgment by Default was Made: (1,063 control; 1,035 pilot)

The percentages in table 3.3 are based on those cases for which a request was made for entry of judgment by default.

Table 3.3

Cases for which a request for entry of judgment by default was made: differences between groups on 4 variables

Variable	Control group %	Pilot group %	Significant difference?
Began as ordinary action	0.2	0.0	no
Amount claimed $1,000 or more	13.8	13.5	no
Government department as plaintiff	11.1	8.0	yes
Debt collecting agency as plaintiff	41.5	47.1	yes

For the control group 2 of the 1,063 cases (0.2 percent) for which a request was made for entry of judgment by default began as ordinary actions. In both cases a notice of intention to defend was filed, but the defendant failed to follow this with a statement of defence, enabling the plaintiff to apply for entry of judgment by default.

For those cases for which a request was made for entry of judgment by default the average amount claimed was $615 for the control group and $668 for the pilot group.

3.5 Cases for Which a Notice of Intention to Defend was Filed: (437 control; 307 pilot)

The percentages in table 3.4 are based on those cases for which a notice of intention to defend was filed.

Table 3.4

Cases for which a notice of intention to defend was filed: differences between groups on 9 variables

Variable	Control group %	Pilot group %	Significant difference?
Began as ordinary action	37.3	31.9	no
Amount claimed $1,000 or more	56.4	47.2	yes
Government department as plaintiff	11.2	2.9	yes
Debt collecting agency as plaintiff	19.7	29.0	yes
Counter claim filed as defence	6.2	1.3	yes
At least one interlocutory application	30.9	-	-
Application made for special fixture	45.8	-	-
At least one conference held	-	95.4	-
Defended hearing held	38.2	42.0	no

The average amount of the claim for those cases for which a notice of intention to defend was filed was $2,192 for the control group and $1,742 for the pilot group.

There were 27 counter claims for the control group (6.2 percent of cases for which a notice of intention to defend was filed), and 4 counter claims for the pilot group (1.3 percent).

For the control group, there were 200 applications for a special fixture (45.8 percent of cases for which a notice of intention to defend was filed), with 36.5 percent of these being bilateral applications and the remaining 63.5 percent being unilateral applications.

There was no significant difference between the 2 groups in the proportion of cases for which a notice of intention to defend was filed that went to a defended hearing; 38.2 percent for the control group and 42.0 percent for the pilot group.

For the pilot group there were 293 cases for which there was at least one conference (95.4 percent of cases for which a notice of intention to defend was filed).

3.6 **Cases for Which There was a Defended Hearing:** (167 control; 129 pilot)

The percentages in table 3.5 are based on those cases which resulted in a defended hearing.

Table 3.5

Cases which went to a defended hearing:
differences between groups on 4 variables

Variable	Control group %	Pilot group %	Significant difference?
Began as ordinary action	43.7	40.3	no
Amount claimed $1,000 or more	62.6	50.0	yes
Government department as plaintiff	11.4	2.3	yes
Debt collecting agency as plaintiff	19.2	25.6	no

The average amount of the claim for those cases which went to a defended hearing was $2,258 for the control group and $1,878 for the pilot group.

Chapter 4

The Conferences

The conferences were at the heart of the pilot scheme. The requirement that a conference be held before cases proceeded to a defended hearing was the key element that made procedures for the pilot group different from those for the control group. This chapter is concerned with those pilot group cases for which at least one conference was held. It does not specifically address any of the objectives of the study, all of which involved comparisons between the control and pilot groups.

The word "conferences" is perhaps a misnomer for what actually occurred. Generally there was little or no discussion; the conference was not concerned with the merits of the case. The purpose of the conference was to monitor the progress of interlocutory procedures. It provided an opportunity for the judge to check that events had occurred (eg, discovery of documents had taken place), or to set times for future events (eg, delivery of answers to interrogatories, further conferences or fixtures).

There were 293 cases for which there was at least one conference. This is 10.9 percent of the 2,695 cases in the pilot group, 12.6 percent of the 2,323 for which a summons was served, and 95.4 percent of the 307 for which a notice of intention to defend was filed.

4.1 Factors Influencing Whether at Least One Conference Was Held

Four factors were associated with a decreased likelihood that a case would proceed as far as a first conference: the involvement of a government department as plaintiff, the involvement of

a debt-collecting agency as plaintiff, the amount claimed being less than $1,000, and the case beginning as a default rather than an ordinary action. The details of this can be seen in Table 4.1.

Table 4.1

All pilot cases: variables related to whether or not at least one conference was held

	Conference held		Conference not held		
	No.	%	No.	%	Significant difference?
Government department involved	9 (293)	3.1	268 (2399)	11.2	yes
Debt collecting agency involved	85 (293)	29.0	930 (2399)	38.8	yes
Amount less than $1,000	148 (289)	51.2	2085 (2391)	87.2	yes
Originated as default action	196 (293)	66.9	2142 (2402)	89.2	yes

4.2 The Number of Conferences Held

Table 4.2 shows the number of conferences held and the number of cases involved.

Table 4.2

Number of conferences held by number of cases involved

No. of conferences	No. of cases	Percentage
1	160	54.6
2	95	32.4
3	21	7.2
4	12	4.1
5	4	1.4
6	1	0.3
	293	100.0

In all, 293 cases had at least one conference. Over half of these (160) had one conference only; one third (95) went to 2 conferences; and the remaining 13 percent had 3 or more conferences.

Number of Conferences and Times Between Some Events

The relationships between number of conferences held and some time intervals are shown in Table 4.3. The number of cases involved for each average time are given in the columns under "No.". The reason that the numbers involved for the time between the filing of a notice of intention to defend and the last conference held are much larger than those in the other 2 columns is because only a minority of cases involving conferences got as far as a defended hearing.

Table 4.3

Average number of days between filing of notice of intention to defend, last conference held, and defended hearing by number of conferences held

Number of conferences	Notice of intention to defend filed to last conference		Last conference to hearing		Notice of intention to defend filed to hearing	
	No.	Days	No.	Days	No.	Days
1	160	24.6	77	35.6	77	59.0
2	95	52.1	38	57.9	38	111.5
3	21	82.1	10	28.8	10	109.3
4	12	104.8	3	24.3	3	142.7
5	4	128.5	1	62.0	1	238.0
6	1	181.0				

As would be expected, there was a strong linear relationship between the number of conferences and the time from the filing of a notice of intention to defend to the last conference: the 160 cases for which there was one conference averaged 24.6 days, while the single case with 6 conferences took 181 days. The relationship between number of conferences and time from the last conference to a defended hearing was not statistically significant. However the relationship between number of conferences and time from the filing of a notice of intention to defend to defended hearing was a significant one, in spite of the slight hiccup with the period for cases having 3 conferences (109.3 days) being less than that for those having 2 conferences (111.5 days).

Number of Conferences and Amount Claimed

There was a marked tendency for larger claims to be associated with more conferences. The average amount of the claim for cases going to one conference was $1,503, while cases going to 2 conferences averaged $2,018 and cases going to 3 or more conferences $2,392. Looked at

another way, 56.0 percent of cases going to just the one conference involved claims under $1,000, compared with 50.5 percent for cases going to 2 conferences and 32.4 percent for those having 3 or more conferences.

Number of Conferences and the "Complexity" of Cases

It seems reasonable to assume that more complex cases would be likely to require more conferences than would less complex cases. Possible indicators of greater complexity would be the type of action originally brought and the time spent at the first conference. For both of these indicators (cases beginning as ordinary actions rather than default actions, and cases with longer average times spent at the first conference) this assumption appears to have been justified. Considerably fewer cases beginning as default actions (39.8 percent) had more than one conference than those beginning as ordinary actions (56.7 percent). The average time spent at the first conference for cases involving one conference only was 1.8 minutes, compared with 2.4 minutes for cases involving 2 or more conferences.

For those cases that went to a defended hearing, possible indicators of complexity would be the time taken at the hearing or hearings, and the accuracy with which hearing times were estimated. In those cases that went to just one conference, the hearing took an average of 14.8 minutes, compared with over twice as long (36.6 minutes) for cases going to 2 or more conferences. The average absolute difference between estimated and actual duration of defended hearings for cases having only one conference was 44.0 minutes compared with 63.3 minutes for those going to 2 or more conferences, although this difference was not statistically significant.

It seems safe to conclude that a good part of the reason for some cases having more conferences than others is their greater complexity.

Number of Conferences and Other Variables

There was no statistically significant relationship between the number of conferences held and whether or not there was a defended hearing or whether or not the plaintiff was a government department or debt-collecting agency.

4.3 Dates on Which Conferences Were Held

Conferences were held on every Tuesday except for 5 between 14 February 1984 and 4 December 1984 inclusive. Three conferences were held in 1985 (29 January, 23 April and 28 May) to deal with remaining pilot scheme cases of those plaints filed in the first 6 months of 1984. Table 4.4 shows the conference dates and the number of conferences held on each date.

Table 4.4

Number of conferences by date and conference type

Date	Type of conference						
	first	second	third	fourth	fifth	sixth	Total
14 February 1984	3	–	–	–	–	–	3
21 February	2	–	–	–	–	–	2
6 March	11	–	–	–	–	–	11
13 March	7	2	–	–	–	–	9
20 March	10	1	–	–	–	–	11
27 March	14	–	–	–	–	–	14
3 April	2	11	–	–	–	–	13
10 April	13	2	1	–	–	–	16
17 April	18	2	–	–	–	–	20
1 May	16	1	1	–	–	–	18
8 May	10	6	2	1	–	–	19
15 May	8	10	1	–	–	–	19
22 May	12	1	–	–	–	–	13
29 May	9	5	1	–	–	–	15
5 June	9	10	–	–	–	–	19
12 June	17	2	1	–	–	–	20
19 June	12	4	5	–	–	–	21
3 July	6	10	2	–	1	–	19
10 July	11	5	3	2	–	–	21
17 July	12	7	1	3	–	–	23
24 July	13	–	1	1	–	–	15
31 July	18	4	2	2	–	–	26
7 August	15	9	1	–	1	–	26
14 August	11	10	2	–	–	–	23
21 August	3	5	–	–	–	–	8
28 August	3	7	3	–	1	1	15
4 September	6	4	1	–	–	–	11
11 September	3	2	3	–	–	–	8
18 September	7	6	1	1	–	–	15
25 September	3	2	2	–	–	–	7
2 October	–	1	1	3	–	–	5
9 October	–	–	–	2	–	–	2
16 October	1	1	–	–	1	–	3
23 October	1	–	2	1	1	–	5
30 October	1	2	1	1	–	–	5
13 November	1	–	–	–	–	–	1
20 November	1	–	–	–	–	–	1
4 December	2	–	–	–	–	–	2
29 January 1985	1	–	–	–	–	–	1
23 April	1	–	–	–	–	–	1
28 May	–	1	–	–	–	–	1
All dates	293	133	38	17	5	1	487

The average number of conferences held at on each date was 11.9. On almost half (20) of the 41 dates there were 11 or fewer conferences. Thirteen dates had between 13 and 19 conferences. The 8 dates which had 20 or more conferences were mostly at a time when a high volume of second, third and fourth conferences were coming through the system, some 5 to 7 months after the first pilot scheme plaints were filed. By mid-August 1984, 6 months after the first conference date, the volume of first conferences was tapering off.

4.4 Parties Attending the Conferences

Table 4.5 shows the attendance of the parties at the conferences. Attendance by either party (plaintiff or defendant) was defined by the presence of the solicitor and/or that party in person. Where attendance is referred to as "plaintiff only", it means that apart from court staff and judge only the plaintiff's solicitor and/or the plaintiff in person attended the conference. "Defendant only" means only the defendant's solicitor and/or the defendant in person attended apart from court staff and the judge.

A conference attended by neither party probably requires some explanation. This occurred rarely; for 2.4 percent of first conferences and 0.8 percent of second conferences. In 3 of the 8 instances, a further conference was scheduled. The remaining 5 cases were probably put back into the civil list, ie removed from the pilot scheme.

Table 4.5

Numbers of each party attending conferences

Conference	Plaintiff only		Defendant only		Both parties		Neither party		Number of conferences
	No.	%	No.	%	No.	%	No.	%	
First	125	42.7	17	5.8	144	49.1	7	2.4	294
Second	45	33.8	7	5.3	80	60.1	1	0.8	133
Later	24	39.3	2	3.3	35	57.4			61
Total	194	39.8	26	5.4	259	53.2	8	1.6	487

According to this table, of all 487 conferences held (first, second, third, etc), 259 or 53.2 percent were attended by both parties, 194 or 39.8 percent by the plaintiff only and 26 or 5.4 percent by the defendant only.

First conferences were less likely to be attended by both parties: 49.1 percent of these were attended by both parties compared with 60.1 percent for second conferences and 57.4 percent for later (ie, third, fourth, fifth and sixth) conferences. The lower proportion of first conferences being attended by both parties was accompanied by a slightly higher proportion attended by the plaintiff only.

Conference attendance can be looked at in another way - by considering which parties attended <u>any</u> conference. Both the plaintiff and the defendant attended at least one conference (not necessarily the same one) for 59.7 percent of the 293 cases involving conferences. The plaintiff attended at least one but the defendant none for 34.8 percent of these 293 cases, and the defendant attended at least one but the plaintiff none for 4.1 percent. For the remaining 1.4 percent neither party attended any conference.

Parties Attending and Type of Action

Both parties were more likely to attend at least one conference when the case began as an ordinary action. The defendant attended a conference for 73.2 percent of cases beginning as ordinary actions, but only for 59.1 percent of those beginning as default actions. Similarly, the plaintiff attended for 97.9 percent of cases beginning as ordinary actions and 92.9 percent of those which began as default actions.

Parties Attending and Time Taken at Conferences

As might be expected, conferences took longer when both parties attended. When both parties attended the first conference, it lasted for an average of 2.7 minutes, compared with 1.8 minutes if the defendant only was present, and 1.5 minutes if the plaintiff only attended. Similarly, the second conference took, on average, 2.4 minutes when both parties were present, compared with 1.4 minutes if the defendant only attended, and 1.3 minutes if the only party there was the plaintiff.

Parties Attending and Orders Made at Conferences

When both parties attended a conference, it was more likely that at least one order would be made. At the 144 first conferences attended by both parties half, or 72, had at least one order made compared with just over one-fifth of first conferences attended by the plaintiff only (27 of 125) or defendant only (4 of 17). There were 25 second conferences where at least one order was made and all of these had both parties present.

Parties Attending and Defended Hearings

There was more likely to be a defended hearing in those cases where both parties attended at least one conference. When both attended 48.6 percent proceeded to a hearing, compared with 25.0 percent when only the defendant attended and 38.2 percent when only the plaintiff did so. This result, however, was not statistically significant.

Parties Attending and Other Variables

There was no statistically significant relationship between which parties attended conferences and whether the plaintiff was a government department or debt-collecting agency.

It might have been expected that when higher amounts claimed were involved parties would be more likely to attend conferences, but this was found not to be so.

4.5 Orders[1] Made at Conferences

Table 4.6 shows the number of orders made at the conferences. At 71.1 percent of conferences (344 of 484) no orders were made. One order was made at 19.2 percent of the conferences, 2 orders at 7.2 percent, 3 orders at 2.1 percent and 4 orders at 0.4 percent.

[1] Defined in Appendix C

Table 4.6

Orders made at conferences

Conferences	Number of orders made										No. of conferences
	None		One		Two		Three		Four		
	No.	%	No.	%	No.	%	No.	%	No.	%	
First	189	64.5	66	22.5	30	10.2	8	2.7			293
Second	108	81.2	19	14.3	3	2.3	2	1.5	1	0.7	133
Later	47	81.0	8	13.8	2	3.4			1	1.7	58
Total	344	71.1	93	19.2	35	7.2	10	2.1	2	0.4	484

First conferences were more likely to have orders made at them than were second and later (third, fourth, etc) conferences. One order was made at more first conferences (22.5 percent) than at second and later conferences (about 14 percent), and 2 orders were made at more first conferences (10.2 percent) than at other conferences (about 3 percent). On average there were 0.51 orders made at first conferences compared with 0.26 at second conferences and 0.28 at later conferences.

Orders Made and Other Variables

Cases involving larger claims were more likely to have orders made at conferences. Where no order was made, the average amount claimed was $1,639, and 55 percent of claims were under $1,000. Where at least one order was made, the average amount claimed increased to $2,017, with only 45 percent of claims under $1,000.

There were fewer orders made for what were originally default actions and where a debt-collection agency was involved. In 32.7 percent of cases beginning as default actions, at least one order was made at any conference compared with 49.5 percent of those beginning as ordinary actions. If the plaintiff was a debt collecting agency then 29.4 percent of cases had at least one order made at any conference, compared with 41.8 percent when there was no involvement from a debt-collecting agency.

No relationship was found between the making of orders at conferences and the involvement of a government department as plaintiff, or whether or not the case went to a defended hearing.

4.6 Time Taken at Conferences

The average time taken at conferences was extremely short - 2.0 minutes for all conferences, and even for those attended by both parties (53 percent of all conferences) the average length was only 2.7 minutes. The reasons for this are first the nature of the conference and what actually happened, as explained at the beginning of this chapter; and second that what was recorded was "judge time", or time that the conference was formally in session. When both parties were present they may in fact have conferred prior to seeing the judge.

There was a slight tendency for conference times to reduce for second and later conferences: first conferences averaged 2.1 minutes, second conferences 1.9 minutes, and third and later conferences 1.8 minutes.

The maximum time taken at first conferences was 28 minutes, at second conferences 7 minutes, and 7 minutes again at third and later conferences. The minimum time taken at first, second and later conferences was 1 minute.

4.7 Time Between Events

Table 4.7 shows the average time between certain component stages of the civil process that involved conferences.

Table 4.7

Average, maximum and minimum times between conference-related events

Event 1	Event 2	Average (days)	Min. (days)	Max. (days)	No of plaints
Intention to defend	to First conference	23.8	4	99	293
First conference	to Second conference	28.6	14	70	133
Second conference	to Third conference	30.9	7	70	38
Third conference	to Fourth conference	25.5	7	56	17
Fourth conference	to Fifth conference	28.0	14	56	5
Fifth conference	to Sixth conference	21.0	21	21	1
Intention to defend	to Last conference	42.9	4	181	293
Last conference	to Defended hearing	41.6	6	458	129

It can be seen that on average there were 23.8 days between the filing of a notice of intention to defend and the first conference, with a range from 4 to 99 days. Times from one conference to the next generally averaged about 4 weeks.

The average time from a notice of intention to defend being filed to the last conference (the first conference if one conference only, the second conference if 2 conferences, etc) was 42.9 days, with on average a further 41.6 days from the last conference to a defended hearing. The range for last conference to hearing was particularly variable - from 6 days to well over a year (458 days).

Times Between Conferences and Orders Made at Conferences

There was a slight but not statistically significant tendency for the time from one conference to the next to be longer when orders had been made. The average time between the first and second conferences was 29.4 days when at least one order had been made at the first conference, and 27.5 days when no order was made. When at least one order was made at a second conference, there were on average 36.1 days between the second and third conferences, compared with 28.3 days when there were no orders.

4.8 Whole Weeks Between Conferences

Table 4.8 shows the number of whole weeks between conferences, which were always held on Tuesdays.

Table 4.8

Number of whole weeks between conferences

Whole Weeks	Conf 1 to Conf 2			Conf 2 to Conf 3			Conf 3 to Conf 4			Conf 4 to Conf 5			Conf 5 to Conf 6			Total		
	No	%	cum %	No	%	cum %	No	%	cum %	No	%	cum %	No	%	cum %	No	%	cum %
1				1	2.6	2.6	2	11.8	11.8							3	1.5	1.5
2	20	15.0	15.0	6	15.8	18.4	1	5.9	17.6	2	40.0	40.0				29	15.0	16.5
3	28	21.1	36.1	7	18.4	36.8	7	41.2	58.8				1		100.0	43	22.2	38.7
4	56	42.1	78.2	12	31.6	68.4	4	23.5	82.4	2	40.0	80.0				74	38.1	76.8
5	8	6.0	84.2	5	13.2	81.6	1	5.9	88.2							14	7.2	84.0
6	9	6.8	91.0	1	2.6	84.2										10	5.2	89.2
7	3	2.3	93.2													3	1.5	90.7
8	3	2.3	95.5	1	2.6	86.8	2	11.8	100.0	1	20.0	100.0				7	3.6	94.3
9	3	2.3	97.7	3	7.9	94.7										6	3.1	97.4
10	3	2.3	100.0	2	5.3	100.0										5	2.6	100.0
	133	100.0		38	100.0		17	100.0		5	100.0		1	100.0		194	100.0	

To give an example of how to read Table 4.8, 133 cases had a second conference, and of these 20 (15 percent) had a wait of 2 weeks between the first and second conference.

The cumulative percentages in Table 4.8 probably give the best description of what occurred. Of the 133 cases going to a second conference, 15 percent had a 2 week wait after the first conference, 36.1 had no more than a 3 week wait, and 78.2 percent had no more than a 4 week wait.

The right hand column of the table gives the cumulative percentages for all cases that went to more than one conference. It can be seen here that the time between any 2 conferences was no more than 4 weeks for over three-quarters of these cases, and no more than 7 weeks for over 90 percent.

Chapter 5

Amount Claimed and Type of Action: Some Relationships

This chapter examines the relationships of the amount of the claim and the type of action (ordinary or default) to a number of major variables. These relationships are considered for the control and pilot groups separately. For each group, all eligible cases are used in the comparisons.

The chapter does not relate directly to the objectives of the pilot scheme which are the major concern of this evaluation. Rather it describes data on civil cases that are of general interest, and elucidates 2 variables that are important in other chapters.

5.1 The Amount Claimed

The relationships between the amount claimed and other variables are shown in table 5.1. All relationships with the 7 other variables are statistically significant.

Table 5.1

Average amount claimed (dollars) by other variables

Variable	Control group		Pilot group	
	No.	Dollars	No.	Dollars
Ordinary action	355	1,852	342	1,315
Default action	2,496	670	2,337	679
Government department as plaintiff	525	1,242	269	1,642
Other plaintiff	2,326	721	2,407	662
Debt-collecting agency as plaintiff	1,001	376	1,015	392
Other plaintiff	1,850	1,056	1,661	986
Summons served	2,376	900	2,307	788
No summons served	475	406	372	586
Notice of intention to defend filed	433	2,192	302	1,742
No notice of intention to defend filed	2,418	571	2,377	636
Defended hearing held	166	2,258	127	1,879
No defended hearing held	2,865	728	2,552	705
Request for entry of judgment by default	1063	616	1,035	668
No request for entry of judgment by default	1,788	937	1,644	818

The pattern of relationships between the amount claimed and other variables was the same for both the control and pilot groups. The average amount claimed was higher for ordinary than for default actions. It was also higher when a government department was the plaintiff, when a debt-collecting agency was not the plaintiff, when a summons was served, when a notice of intention to defend was filed, when a defended hearing was held, and when there was no request for entry of judgment by default.

As an example of how to read table 5.1, the average amount claimed for the 355 ordinary actions in the control group was $1,852, compared with $670 for the 2,496 default actions. There was a similar result for the pilot group with an average claim of $1,315 for the 342 ordinary actions and $679 for the 2,337 default actions. For both groups, the amount claimed was therefore much higher for ordinary actions than for default actions.

5.2 Type of Action

Table 5.2 shows the relationships between type of action (ordinary or default) and the other variables being considered in this chapter. A description of what is meant by type of action is included in Appendix C.

Table 5.2

Percentages of other variables that are default and ordinary actions

Variable	Group	Default action (%)	Ordinary action (%)	Significant difference?
Government department as plaintiff	control	19.4	12.5	yes
	pilot	10.8	7.0	yes
Debt-collecting agency as plaintiff	control	38.0	14.4	yes
	pilot	39.7	24.7	yes
Summons served	control	82.6	88.9	yes
	pilot	86.0	87.4	no
Notice of intention to defend filed	control	11.0	44.3	yes
	pilot	8.9	27.4	yes
Defended hearing held	control	3.8	19.8	yes
	pilot	3.3	14.6	yes
Request for entry of judgment by default	control	44.3	0.0	yes
	pilot	42.5	0.5	yes

For both the control and pilot groups the pattern of relationships was the same: government departments and debt-collecting agencies were involved for higher proportions of default than ordinary actions; a summons was served for a slightly lower proportion of default actions than ordinary actions; and a notice of intention to defend was filed and a defended hearing held for much lower proportions of default actions than ordinary actions. In almost all cases where a request for entry of judgment was made it was for a default action.

As an example of how table 5.2 is read, the data for those cases where a government department was the plaintiff are described. For the control group a government department was involved for 19.4 percent of default actions compared with 12.5 percent of ordinary actions, and for the pilot group for 10.8 percent of default actions compared with 7.0 percent of ordinary actions. For both groups, then, default actions had a higher proportional involvement of government departments than did ordinary actions.

It may be noted that cases that began as ordinary actions were much more likely to proceed further through the civil process toward a defended hearing than were cases beginning as default actions. There was only a slightly larger proportion of summonses served for ordinary than for default actions. The proportion of cases for which a notice of intention to defend was filed, however, was 3 to 4 times higher for ordinary actions than default actions. Similarly, the proportion of cases going to a defended hearing was 4 to 5 times higher for ordinary actions than for default actions.

Chapter 6

Major Events in the Civil Process: Some Relationships

In this chapter consideration is given to variables which might influence the occurrence of major events in the civil process. The events considered are whether or not a summons is served, whether a request for entry of judgment by default is made, whether a notice of intention to defend is filed, and whether a defended hearing is held.

As for the previous chapter, this one does not relate directly to the objectives of the pilot scheme. What it does is to help fill out a background picture of the civil process. Relationships are considered for control and pilot groups separately.

6.1 Whether a Summons was Served

A summons was served for 83.4 percent (2,389 of 2,864) of all control group cases, and for 86.2 percent (2,323 of 2,695) of all pilot group cases. Table 6.1 shows the percentages of cases for which a summons was served for a number of variables. The differences between the percentages for each variable are statistically significant for all comparisons in table 6.1 except that between pilot group ordinary and default actions.

Table 6.1

Percentages of cases for which a summons was served by other variables

Variable	Control group (%)	Pilot group (%)
Ordinary action	88.9*	87.4
Default action	82.6	86.0
Amount claimed less than $1,000	81.1*	85.0*
Amount claimed $1,000 or more	93.1	91.5
Government department as plaintiff	91.2*	91.7*
Other plaintiff	81.6	85.6
Debt-collecting agency as plaintiff	76.6*	81.2*
Other plaintiff	87.1	89.3

* Statistically significant difference between the 2 values being compared.

For both the control and pilot groups a summons was more likely to be served if the action was ordinary rather than default, if the amount of the claim was higher, if the plaintiff was a government department, and if the plaintiff was not a debt-collecting agency. As an example, for the control group a summons was served for 88.9 percent of ordinary actions compared with 82.6 percent of default actions.

6.2 Whether a Notice of Intention to Defend was Filed

Of cases for which a summons was served, a notice of intention to defend was filed for 18.3 percent of control group cases (437 of 2,389) and 13.2 percent of pilot group cases (307 of 2,323). Table 6.2 records the percentages of cases that resulted in a notice of intention to defend being filed for 5 variables.

The differences between the percentages are statistically significant for all 5 of the variables compared in table 6.2.

Table 6.2

Percentages of cases for which a summons was served that resulted in a notice of intention to defend being filed, by 5 variables

Variable	Control group (%)	Pilot group (%)
Case began as ordinary action	49.8*	31.4*
Case began as default action	13.3	10.4
Amount claimed less than $1,000	10.0*	8.4*
Amount claimed $1,000 or more	49.2	35.0
Government department as plaintiff	10.1*	3.5*
Other plaintiff	20.4	14.4
Debt-collecting agency as plaintiff	11.2*	10.8*
Other plaintiff	21.6	14.6
Summons served by mail	13.6*	9.6*
Summons served personally	20.3	19.5

* Statistically significant difference between the 2 values being compared.

For both the control and pilot groups a notice of intention to defend was more likely to be filed for ordinary rather than default actions, when the amount claimed was $1,000 or more, when the plaintiff was other than a government department or debt-collecting agency, and when the summons was served in person rather than by mail.

Most of these differences were very marked. Using the control group as an example, a case beginning as an ordinary action was almost 4 times as likely to result in a notice of intention being filed than was a case beginning as a default action (49.8 percent to 13.3 percent).

Claims involving amounts of $1,000 or more were 5 times more likely to see the filing of a notice of intention to defend than were smaller claims (49.2 percent to 10.0 percent).

6.3 Whether there was a Defended Hearing

Of cases for which a notice of intention to defend was filed, 38.2 percent in the control group (167 of 437) and 42.0 percent in the pilot group (129 of 307) resulted in a defended hearing. Table 6.3 shows the percentages of cases for which there was a defended hearing for 6 variables.

Table 6.3

Percentages of cases for which a notice of intention to defend was filed that resulted in a defended hearing, by 6 variables

Variable	Control group (%)	Pilot group (%)
Case began as ordinary action	44.8*	53.1*
Case began as default action	34.3	36.8
Amount claimed less than $1,000	32.8*	40.0
Amount claimed $1,000 or more	42.6	44.8
Government department as plaintiff	38.8	33.3
Other plaintiff	38.1	42.3
Debt-collecting agency as plaintiff	37.2	37.1
Other plaintiff	38.5	44.0
Summons served by mail	30.0	44.1
Summons served personally	40.6	40.1
Counter claim involved	70.4*	75.0
Counter claim not involved	36.1	41.6

* Statistically significant difference between the 2 values being compared.

For both groups a defended hearing was more likely to be held when the case was originally brought as an ordinary action, when the amount claimed was $1,000 or more, and when there was a counter claim, although the pilot group differences were not statistically significant for the last 2 variables. Taking the control group as an example, 44.8 percent of cases which began as ordinary actions and for which a notice of intention to defend was filed led to a defended hearing, compared to 34.3 percent of cases beginning as default actions.

6.4 Whether a Request for Entry of Judgment by Default was Made

A request for entry of judgment by default was made for 44.5 percent (1,063 of 2,389) of control group cases for which a summons was served, almost identical to the 44.6 percent (1,035 of 2,323) for the pilot group. Table 6.4 shows the percentages of cases that resulted in a request for entry of judgment by default. These percentages are given for 5 variables which might be related to whether a request for entry of judgment by default was made.

The differences between the percentages for each variable are statistically significant for all comparisons except for how the summons was served (mail or personally).

Table 6.4

Percentages of cases for which a summons was served that resulted in a request for entry of judgment by default, by 5 variables

Variable	Control group (%)	Pilot group (%)
Ordinary action	0.6*	0.0*
Default action	51.4	51.5
Amount claimed less than $1,000	48.7*	47.1*
Amount claimed $1,000 or more	29.6	34.2
Government department as plaintiff	24.4*	32.7*
Other plaintiff	49.6	46.0
Debt-collecting agency as plaintiff	57.5*	59.1*
Other plaintiff	38.4	36.5
Summons served by mail	46.5	43.6
Summons served personally	43.7	46.6

* Statistically significant difference between the 2 values being compared.

As expected, there were no (pilot group) or very few (control group) requests for entry of judgment by default for ordinary actions, whereas over half of default actions resulted in such a request for both groups.

For both groups a request for entry of judgment by default was more likely when the amount claimed was less than $1,000, when the plaintiff was a debt-collecting agency, or when the plaintiff was <u>not</u> a government department. Using the control group as a example, a request for entry of judgment by default was made for 48.7 percent of claims under $1,000, but only for 29.6 percent of claims for $1,000 or more.

Chapter 7

Time Intervals Between Some Events

This chapter relates particularly to Objective 3 (to reduce the delay between notice of intention to defend and final judgment). As well it examines other time intervals prior to a notice of intention to defend being filed.

7.1 Overview of Time Between Some Events

Table 7.1 outlines the average times between a number of successive events from the date the cause of the action arose until the date of the final judgment.

Table 7.1

Average time (days) between some events

Event 1	Event 2	Control group	Pilot group	Cases compared
Cause of action	to plaint filed	325.5 days (n = 2784)	331.3 days (n = 2590)	eligible plaint filed
Plaint filed	to summons served	24.1 days (n = 2384)	21.7 days (n = 2321)	summons served
Summons served	to notice of intention to defend filed	13.7 days (n = 434)	18.6 days (n = 307)	notice of intention to defend filed
Notice of intention to defend filed	to parties ready	134.5 days (n = 200)	42.9 days (n = 293)	application for fixture or at least one conference
Parties ready	to defended hearing	129.0 days (n = 166)	41.6 days (n = 129)	defended hearing
Defended hearing 11.9 days	to date of final judgment	(n = 146)	(n = 110)	45.6 days judgment recorded

The differences between the control and pilot groups were statistically significant for all time periods in table 7.1 except for that between the date of the cause of the action and a plaint being filed.

7.2 Differences Between Groups up to the Filing of a Notice of Intention to Defend

Up until the filing of a notice of intention to defend, the differences between the 2 groups were small, and were probably not related to the pilot scheme procedures. The only deliberate difference between what

happened to the 2 groups prior to a notice of intention to defend being filed was on the notice to defendant which accompanied the summons (see Appendix A). This informed the defendant that if a notice of intention to defend was filed, the action would be adjourned and a date set for a first conference. There seems to be no reasons why this should result in a difference in times between events, and there is no evidence in the results to suggest that it did so.

One difference between the control and pilot group which was not a planned part of the pilot scheme was the much higher proportion of control group summonses that were served personally: 69.1 percent compared with 34.8 percent for the pilot group. If a summons is served by mail then the defendant has 21 days to file a notice of intention to defend, compared with 7 days when it is served by a bailiff. Not surprisingly, the average number of days between the summons being served and a notice of intention to defend being filed was higher when the summons was served by mail. For the pilot group, for example, this period averaged 21.4 days for summonses served by mail, and 14.0 days for summonses served personally. There was no significant difference between the control and pilot groups on the average number of days between the serving of a summons and the filing of a notice of intention to defend when a separate comparison was made first for cases where the summons was served by mail and second for those where it was served personally. This indicates that the larger average period recorded for the pilot group was mainly the result of the higher proportion of summonses served by mail. The higher average time for the pilot group between the summons being served and the filing of a notice of intention to defend is thus explained by the difference between the 2 groups in how summonses were served, which itself is probably the result of non-pilot scheme factors such as the availability of bailiffs.

7.3 Differences Between Groups After the Filing of a Notice of Intention to Defend

The overall time between the filing of a notice of intention to defend and final judgment was about 10 months (309.1 days) for the control group, and just over 3 months (96.4 days) for the pilot group.

The procedures adopted for the 2 groups differed markedly once a notice of intention to defend was filed. For the control group it was in the hands of the parties themselves and their solicitors as to when an application for a special fixture was made, whereas for the pilot group the timing of first and later conferences was a matter for the court. As well, during 1984 judges and court staff were aware which cases were in the pilot group and which were not, and therefore were in a position to influence the speed at which events occurred for the pilot group by giving them preference. Evidence is presented in Part II that this in fact occurred.

In all 3 time periods after the filing of a notice of intention to defend the average times for the pilot group were very much shorter than for the control group. The period most directly related to the pilot scheme procedures was what might be termed "preparation time" - the time from the filing of a notice of intention to defend to that when the parties are presumably ready to proceed to a defended hearing (application for a special fixture made for control group cases, and last conference for the pilot group). Preparation time was on average more than 3 times longer (134.5 days) for the control group than for the pilot group (42.9 days). It appears reasonable to attribute this speeding up to the pilot procedure which made the court rather than the parties responsible for keeping things moving.

The delay from the time the parties were ready until a defended hearing was held was also more than 3 times longer for the control group (129.0 days) than for the pilot group (41.6 days). This finding is

doubtless influenced by the reported preference given in the fixing of dates for defended hearings for pilot group cases at the expense of non-pilot group cases during 1984. The non-pilot cases would have included some that were in the control group (ie, plaints filed in the first 6 months of 1983). It may well be that all of the difference in delay resulted from this preference given to pilot group cases. It would therefore be invalid to conclude that the shorter delays occurring for the pilot group are evidence for the superiority of the pilot procedures.

The delay from the (first) date of a defended hearing to a judgment being given was nearly 4 times longer (45.6 days) for the control group than for the pilot group (11.9 days). It could be argued that this was attributable to the pilot scheme in that, having gone through the conferences, the parties and judge were better prepared for the hearing, reducing the likelihood of the judge reserving his decision for a later date because of some unresolved issue of fact or law. It is unlikely, however, that this could have led to such a large difference as that found between the 2 groups. An alternative explanation, that the judges gave a higher priority to reaching a decision quickly when dealing with pilot scheme cases, cannot be ruled out. There may be some truth in both explanations, and it would be unwise to conclude that the smaller time interval evident for the pilot group indicated some superiority for pilot scheme procedures.

To summarise, the time between the filing of a notice of intention to defend and final judgment was more than 3 times greater for the control group than the pilot group, with the sub-intervals being consistently shorter for the pilot group. Only for the interval between filing of a notice of intention to defend and the parties being ready to proceed to a hearing, however, can it safely be concluded that this resulted from the pilot scheme procedures being superior.

Chapter 8

Defended Hearings

In this chapter 3 aspects of defended hearings - actual hearing times and the estimates made of these, parties attending the hearings, and adjournments to hearings - are examined in some detail.

Data presented in section 8.1 relate to objective 4 (to reduce the time spent in defended hearings) and objective 5 (to improve the accuracy of estimating the duration of defended hearings). These objectives are discussed more systematically in Chapter 12.

8.1 Actual and Estimated Hearing Times

Time Taken at Defended Hearings

The average time taken at defended hearings was much shorter for the pilot group (23.6 minutes) than for the control group (39.5 minutes). For both groups the minimum hearing time was one minute and the maximum around 4 hours (3 hours 58 minutes for the pilot group and 4 hours 49 minutes for the control group).

There was a large amount of missing data, particularly for the control group where there was a hearing time recorded for only 63.5 percent (106 of 167) of the cases proceeding to a defended hearing. For the pilot group a hearing time was recorded for 94.6 percent (122 of 129) of such cases. In the case of the control group the amount of missing data is sufficiently large to leave open the possibility that the remaining data are biased. If, for example, it was generally short hearings for which a time was not recorded, then the average of

39.5 minutes obtained here would be higher than the true average. The control group average hearing time of 39.5 minutes should therefore be treated as possibly unreliable.

Estimates of Hearing Time

Estimates of the duration of hearing times were obtained for the control group from the Application for a Special Fixture form and for the pilot group from the minute sheet P/S form 5 (see appendix A). Because the pilot estimates were made after conferences it was hoped that with the advantage of greater knowledge about the details of the cases of both parties they would be more accurate than control group estimates. As can be seen from table 8.1 this did not eventuate.

The 106 control group cases and 114 pilot group cases in table 8.1 are those for which both an actual and estimated hearing time were recorded. For the control group all 106 cases with an actual time recorded also had an estimated time recorded. For the pilot group, however, 8 of the 122 cases with an actual time recorded did not have a recorded estimate. This explains the difference between the average pilot group actual time of 24.2 minutes in table 8.1 (based on 114 cases) and the same average time reported above of 23.6 minutes (based on 122 cases).

Table 8.1

Averages in minutes of actual and estimated hearing times by group

Group	No.	Actual time	Estimated time	Difference (est. - act.)	Average error
Control	106	39.5*	88.6*	49.1	62.3
Pilot	114	24.2	72.2	48.0	52.3

* Statistically significant difference between control and pilot groups.

It can be seen that for both groups there was a tendency for the actual time to be very much overestimated. The average overestimate for the control group (the difference between the average actual time of 39.5 minutes and the average estimated time of 88.6 minutes) was 49.1 minutes, little different from the average overestimate for the pilot group of 48.0 minutes.

The error of an estimate is the difference between the actual and estimated times irrespective of whether the estimated time was greater or less than the actual time. This is greater than the overestimate because there were some cases (12 for the control group and 7 for the pilot group) where the actual time was underestimated. For the control group, the estimates were on average out by 62.3 minutes, slightly more than for the pilot group where they were out by 52.3 minutes. This difference between the groups was not statistically significant.

It might be thought that it should be possible to be more accurate in estimating the duration of shorter rather than longer hearings. This did not prove to be the case as can be seen from table 8.2. For the pilot group, for example, estimates were out by an average of 55.4 minutes for hearings that took 1 to 4 minutes, and were out by an average 48.0 minutes for hearings that took an hour or more.

Table 8.2

Average errors in estimating hearing time by actual hearing time

Actual hearing time	Control group		Pilot group	
	No.	minutes	No.	minutes
1 to 4 minutes	24	63.0	65	55.4
5 to 9 minutes	40	59.0	16	50.4
10 to 59 minutes	14	56.7	13	45.9
60 minutes or more	28	69.2	20	48.0

Variables Related to Hearing Times and Hearing Time Estimates

Tables 8.3 (control group) and 8.4 (pilot group) show the relationships of actual and estimated hearing times and average error made when estimating to a number of variables of interest.

Table 8.3

Control group: Average actual and estimated hearing times (minutes) by 10 variables

Variable	No.	Actual time	Estimated time	Average error
Case began as ordinary action	52	68.6*	127.8*	84.2*
Case began as default action	54	11.5	50.9	41.2
Amount claimed less than $1,000	48	16.3*	61.2*	50.9
Amount claimed $1,000 or more	58	58.7	111.3	71.8
Government department as plaintiff	9	24.4	63.3	56.0
Other plaintiff	97	40.9	100.0	62.9
Debt-collecting agency as plaintiff	23	7.0*	48.0*	41.0*
Other plaintiff	83	48.5	99.9	68.2
Counter claim filed as defence	11	114.4*	177.3*	105.4
No counter claim filed	95	30.8	78.4	57.3
Unilateral application for fixture	67	25.4*	67.0*	52.0*
Bilateral application for fixture	39	63.7	125.8	79.9
At least one interlocutory application	35	81.5*	127.4*	76.4
No interlocutory applications	71	18.8	69.5	55.4
Both parties attended hearing	54	73.3*	109.7*	62.3
At least one party did not attend	47	4.6	66.8	62.1
At least one adjournment of hearing	15	90.5*	85.3	57.6
No adjournments	91	31.1	89.2	63.1
Judgment entered at hearing	63	16.2*	77.6*	66.8
Judgment entered after hearing	37	85.0	113.9	57.5

* Statistically significant differences between the 2 values being compared.

Table 8.4

Pilot group: Average actual and estimated hearing times (minutes) by 9 variables

Variable	No.	Actual Time	Estimated Time	Average Error
Case began as ordinary action	47	49.0*	105.8*	66.6*
Case began as default action	67	6.7	48.6	42.3
Amount claimed less than $1,000	55	10.0*	63.9*	54.1
Amount claimed $1,000 or more	58	37.9	81.0	51.4
Government department as plaintiff	3	2.3	40.0	37.7
Other plaintiff	111	24.8	73.1	52.7
Debt-collecting agency as plaintiff	27	4.0	46.3*	42.3
Other plaintiff	87	30.4	80.2	55.4
Counter claim filed as defence	3	30.3	43.3	28.3
No counter claim filed	111	24.0	73.0	53.0
One conference only held	65	14.8*	56.0*	44.0
More than one conference held	49	36.6	93.7	63.3
Both parties attended hearing	63	41.8*	87.1*	52.8
At least one party did not attend	49	2.4	54.0	52.1
At least one adjournment of hearing	14	8.9	77.1	68.3
No adjournments	100	26.3	71.5	50.8
Judgment entered at hearing	57	3.9*	55.0*	51.1
Judgment entered after hearing	34	72.8	100.9	42.4

* Statistically significant difference between the 2 values being compared.

Because tables 8.3 and 8.4 are self-explanatory the results they document are not detailed in the text. There are, however, some generalisations that can be made about them.

First, most variables examined show marked differences on average actual hearing times for the 2 values of each variable that are compared. Taking type of action originally brought as an example, for the control group cases beginning as ordinary actions had on average very much longer hearings (68.6 minutes) than cases beginning as default actions (11.5 minutes). For the pilot group the difference was equally marked, with cases that were brought as ordinary actions having an average hearing time of 49 minutes, compared with 6.7 minutes for cases beginning as default actions.

Second, with 2 exceptions the direction of difference for all variables was the same for both the control and pilot groups on both actual and estimated times. (The exceptions are whether or not there was at least one adjournment, and for the pilot group, whether or not a counter claim was filed.) For example, the average actual and estimated hearing times were much greater for both control and pilot groups when both parties attended the hearing than when at least one party did not attend.

Third, with one exception (control group - at least one adjournment) for both values of all variables in both groups the estimated hearing time was greater than the actual time.

Finally, the average error in estimating hearing times was generally not as strongly related to the variables under consideration as were actual and estimated times. This was especially so for the pilot group where only for type of action originally brought (ordinary or default) was there a statistically significant difference between the 2 values being compared.

8.2 Parties Attending the Hearings

Throughout this section "plaintiff" means "plaintiff and/or plaintiff's solicitor" and likewise "defendant" means "defendant and/or defendant's solicitor".

The level of missing data about parties attending hearings was quite high for the control group: for 27 of the 167 hearings (16.2 percent) no data were available, and this may have produced some slight distortion of the results. Missing data for the pilot group was insignificant (1.6 percent).

Comparisons Between the Control and Pilot Groups

The attendance of parties at defended hearings is set out in table 8.5.

Table 8.5

Parties attending defended hearings

	Both parties attended		Plaintiff only attended		Defendant only attended		Neither party attended	
Group	No.	%	No.	%	No.	%	No.	%
Control	79	56.4	46	32.9	1	0.7	14	10.0
Pilot	68	53.5	54	42.5	1	0.8	4	3.1

For both control and pilot groups over half of all defended hearings were attended by both parties. A lower proportion of hearings were attended by the plaintiff only for the control group (32.9 percent) than for the pilot group (42.5 percent). Neither party attended for a higher proportion of control group hearings (10 percent) than for pilot group hearings (3.1 percent).

Table 8.6 shows the proportions of defended hearings attended by the plaintiffs or defendants irrespective of whether the other party attended. The plaintiff figures are the sum of "both parties" and "plaintiff only" from table 8.5, and the defendant figures are likewise derived.

Table 8.6

Attendance at defended hearings by plaintiffs and defendants

	Plantiff attended		Defendant attended	
Group	No.	%	No.	%
Control	125	89.3	80	57.1
Pilot	122	96.0	69	54.3

A smaller proportion (89.3 percent) of control group hearings were attended by the plaintiff than was so for the pilot group (96 percent). On the other hand, a slightly larger proportion (57.1 percent) of control group hearings were attended by the defendant than was the case for the pilot group (54.3 percent).

Variables Related to Parties Attending Hearings

The relationships between whether or not both parties attended a hearing and some variables of interest are shown in table 8.7. In this table control and pilot groups are not being directly compared.

The striking feature of table 8.7 is the close similarity of results for the control and pilot groups. Taking the amount of the claim as an example, 40.7 percent of cases where this was less than $1,000 for the control group and 42.9 percent of cases for the pilot group were

attended by both parties, while for claims of $1,000 or more both parties attended in 60.9 percent of control group cases and 63.5 percent of pilot cases.

To summarise the results described in table 8.7, both parties were more likely to attend for cases that began as ordinary rather than default actions, when the amount claimed was larger, when the plaintiff was other than a government department or debt-collecting agency, when a counter claim was filed as a defence, when there was at least one interlocutory application (control group only) and when there was more than one conference (pilot group only). When both parties attended it was more likely that hearings would be longer, and that judgment would be entered after the hearing.

Table 8.7

Percentages of hearings attended by both parties, by 10 variables

Actual hearing time	Control group %	Pilot group %
Case began as ordinary action	69.1*	76.9*
Case began as default action	40.5	37.3
Amount claimed less than $1,000	40.7*	42.9*
Amount claimed $1,000 or more	60.9	63.5
Government department as plaintiff	37.5	33.3
Other plaintiff	55.7	54.0
Debt-collecting agency as plaintiff	33.3*	36.4*
Other plaintiff	58.3	59.6
Counter claim filed as defence	72.2	54.0
No counter claim filed	51.2	33.3
Unilateral application for fixture	48.4	N/A
Bilateral application for fixture	63.5	
At least one interlocutory application	68.6*	N/A
No interlocutory applications	45.8	
One conference only held	N/A	40.0*
More than one conference held		73.1
Hearing time less than 10 minutes	27.1*	40.0*
Hearing time 10 minutes or more	90.5	94.1
At least one adjournment of hearing	63.4	65.0
No adjournments	50.0	51.4
Judgment entered at hearing	39.3*	37.1*
Judgment entered after hearing	90.5	92.1

* Statistically significant difference between the 2 values being compared.

8.3 Adjournments

Control group hearings were more likely to be adjourned than were pilot group hearings. For the control group 47 of the 167 hearings (28.1 percent) had at least one adjournment, compared with 20 of the 129 pilot group hearings (15.5 percent).

The number of adjournments for each group are set out in table 8.8, which demonstrates the reduction in adjournments for the pilot group. What is striking here is that for the control group there were 7 cases with 3 or more adjournments, compared with none for the pilot group. The greatest number of adjournments for a control group case was 5, while for the pilot group it was just 2.

Table 8.8

Number of adjournments of defended hearings

	None		One		Two		Three		Four		Five	
Group	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Control	120	71.9	33	19.8	7	4.2	4	2.4	1	0.6	2	1.2
Pilot	109	84.5	19	14.7	1	0.8						

In general whether or not there was at least one adjournment was not related to other variables.

There are a number of possible explanations for the reductions in adjournments evident for the pilot group. One possibility to be considered is that conferences simply "took the place" of adjournments. However this is unlikely, given the extremely short average times for conferences, and the fact that those cases which went to 2 or more conferences also had much longer hearing times than cases

going to just 1 conference. (See Chapter 4 on Number of Conferences and the "Complexity" of Cases.) Hearing time of course included time taken at all adjournments. Another explanation is that the conferences system led to fewer adjournments because it meant that the parties were generally better prepared. Another is that the reduction in average time for pilot group hearings meant that they were less likely to require adjournment because of time constraints. Finally, the explanation might lie with some situational factor such as change in the way cases were scheduled that has nothing to do with the pilot scheme.

Given the range of possible explanations, it would be unwise to conclude that the reduction in adjournments for the pilot group was a result of pilot scheme procedures.

Part II – The Views of the Participants

Chapter 9

Methodology

It was envisaged that the perceptions of those involved in the pilot scheme would be canvassed by personal interviews and, failing that, by self-administered questionnaires. The population frame was law practitioners in the Christchurch area who had attended a conference, court staff, judges, litigants in person, and debt collecting agencies. However the numbers of litigants who had represented themselves throughout the whole process was small, and an even smaller proportion of those would have had enough experience of the old system to compare with the pilot scheme. The views from this group were therefore not considered but it is not expected that this will have affected the validity of the results.

9.1 Population Frame

The names of 59 solicitors were found from pilot scheme files which recorded the solicitors involved - 13 of these agreed to be interviewed and questionnaires were sent to the remaining 46. Five of the 7 judges who had conducted a conference were available for interview; questionnaires were sent to the other 2. All 7 court staff members who had been involved in the pilot scheme were interviewed.

9.2 Response

Interviews were conducted in June 1984. The questionnaires were sent out in July 1984 and most returned within the month.

Solicitors:	13	solicitors were interviewed;
	17	solicitors completed and returned questionnaires;
	6	solicitors replied advising they could not take part in the evaluation because they lacked either conference or pre-conference experience;
	23	solicitors made no response.
	59	

While it may be tempting to assume that the 23 solicitors who did not reply may have also felt that their experience of the conference situation was too limited to allow comparison, such an assumption would probably be unjustified. Six of the solicitors who completed questionnaires had personally attended fewer than 4 conferences each, and one interviewed had attended only one, though his firm had been involved in many more. Two of the 6 solicitors who declined to complete questionnaires because of lack of experience said they had attended "only one or two". (See 9.5 Experience with Conferences.) This all really calls into question just how much is enough experience of the conference situation to be able to evaluate it. The size of the response from solicitors (30 out of 59) means that the views of solicitors can in no way be taken as representative of the Christchurch law profession as a whole.

Judges	5	judges were interviewed;
	2	judges were sent questionnaires but these were not returned.
	7	

Court staff: all 7 court staff were interviewed.

Therefore total response was as follows:

30	solicitors (at least 5 with a debt collecting agency);
7	court staff;
5	judges.
42	

9.3 Data Collection

The questionnaires sent to solicitors and used as the basis for the interviews are found in Appendix F, as are the questionnaires used for the interviews with judges and court staff. The general areas covered by the interview/questionnaire included experience with conferences, opinion of conferences, problems encountered and suggestions for improvement to conferences, and how conferences affected workload.

9.4 Data Analysis

As with most self-administered questionnaires, the format allowed for standardised answers which were relatively unambiguous. Apart from missing data caused by the fact that not all solicitors who completed questionnaires responded to every question, analysis of the questionnaires was reasonably simple.

The interviews were analysed by a method of content analysis. In the more unstructured interview situation missing data was generated by topics omitted and responses not being made to every question.

All responses were first analysed in terms of the respondents' experience with conferences. The analysis then focussed on respondents' views relating to the 5 objectives of the pilot scheme as outlined in the Introduction.

A further 9 variables were isolated from the questionnaire format and the responses analysed in terms of these. These variables were:

(1) General opinion of conferences.

(2) Problems with conferences.

(3) Solicitors' attitudes to conferences (as seen by fellow practitioners, judges and court staff).

(4) Workload - how it was affected by conferences.

(5) Judicial approaches to conferences.

(6) Whether conferences were better for certain types of civil cases.

(7) Witness availability and recollection under the conference system.

(8) How conferences were conducted (atmosphere and organisation).

(9) Whether court administration of civil cases had become more efficient with conferences.

The role played by each respondent in the conference process - whether a member of court staff, a judge, a solicitor acting for defendants or for plaintiffs - is taken as the independent variable in the analysis.

9.5 Experience with Conferences

Respondents were asked how many conferences they had attended. For solicitors this meant how many individual cases they had represented in a conference situation. Judges gave an estimate of how many conference sittings they had presided over and this figure was multiplied by an average number of cases per sitting. For court staff experience and understanding of the conference system was not necessarily related to the number of conferences attended.

As Table 9.1 shows, over one third of all respondents had attended fewer than 10 conferences and, as mentioned earlier, 7 of these were solicitors who had been at no more than 3 conferences each. Four of

the 5 solicitors who were acting for debt collecting agencies (DCA) had been to 30 or more conferences each; one had personally attended only one, though his firm had been involved with more than 80.

Table 9.1

Number of conferences attended by respondent's role

Role	Conferences attended					
	Fewer than 10	10 - 39	40 - 69	70 & more	Not stated	Total
Solicitor - DCA* or mainly for plaintiff	5	6	1	1	-	13
Solicitor - half each plaintiff & defendant	4	4	-	-	1	9
Solicitor - mainly for defendant	7	1	-	-	-	8
Judge	-	2	3	-	-	5
Court staff	1	4	-	2	-	7
Total	17	17	4	3	1	42

* In this table "DCA" refers to "debt collecting agency".

Chapter 10

Views Relating to the Objectives

Objective One **To Reduce the Frivolous Filing of Notices of Intention to Defend**

Respondents were evenly divided over whether the frivolous filing of notices of intention to defend was at all discouraged by the conference system (see table 10.1).

Table 10.1

Perception of frivolous filing of notice of intention to defend by respondent's role

Role	Number of frivolous filings: Fewer	No change	DK*/Uncertain	Total
Solicitor - DCA* or mainly for plaintiff	4	7	1	12
Solicitor - half each plaintiff & defendant	3	3	-	6
Solicitor - mainly for defendant	3	4	1	8
Judge	1	-	-	1
Court staff	3	-	4	7
Total	14	14	6	34

Missing data = 8

* In this and the following tables, "DCA" refers to "debt collecting agency", and "DK" to "don't know".

It was asserted (by 3 solicitors and 2 court staff) that a large number, if not the majority, of frivolous notices of intention to defend are filed by defendants acting on their own behalf. The feeling was that these people, variously described as "professional debtors" who knew "how to play the system", would be unlikely to see conferences as a deterrent because the pilot scheme had not been running long enough. Six solicitors said most frivolous notices of intention to defend were filed merely to buy time, because the defendant did not have the money, and that such delaying tactics were still possible under the conference system. Most of those who felt conferences had deterred the filing of frivolous notices of intention to defend thought

this objective had been achieved by the speed with which conference fixtures were allocated, requiring the defendant to front up a lot sooner with the statement of defence.

Objective Two To Reduce the Proportion of Cases Going to a Defended Hearing

Twenty-eight respondents answered a question about whether conferences would lead to fewer defended hearings and more out-of-court settlements. Their responses are shown in table 10.2.

Table 10.2

Perception of defended hearings by respondent's role

Role	Number of defended hearings			
	Fewer	No change	DK/Uncertain	Total
Solicitor - DCA or mainly for plaintiff	3	5	3	11
Solicitor - half each plaintiff & defendant	4	2	-	6
Solicitor - mainly for defendant	1	2	3	6
Judge	1	-	-	1
Court staff	3	-	1	4
Total	12	9	7	28

Missing data = 14

Fewer than half (12) thought there had been more out-of-court settlements under the conference system, and many of these comments seemed to imply that the settlements were merely coming sooner rather than later. The general impression was that the majority of cases settle out of court anyway and at best all conferences can do is to hurry that settlement. Two solicitors felt that conferences may even make settlement less likely, one because they "discourage contact between solicitors outside conferences" and the other "because it is probably easier to go ahead and litigate a matter that's perhaps fresher in the memory".

Objective Three To Reduce the Delay Between Filing of Notice of Intention to Defend and Final Judgment

Respondents were overwhelmingly of the opinion that conferences had reduced the delay from when the notice of intention to defend is filed until the final judgment (see table 10.3).

Table 10.3

Perception of delay between filing of notice of intention to defend and final judgment by respondent's role

	Delay				
Role	Less	No change	More	DK/Uncertain	Total
Solicitor - DCA or mainly for plaintiff	9	-	1	2	12
Solicitor - half each plaintiff & defendant	8	-	-	-	8
Solicitor - mainly for defendant	6	1	-	1	8
Judge	5	-	-	-	5
Court staff	7	-	-	-	7
Total	35	1	1	3	40

Missing data = 2

A judge, a court staff member and a solicitor all commented on delays of 6 to 9 months under the old scheme as compared with about 2 months under the conference system. This reduction in delay was mostly seen as due to the availability of earlier fixture dates (mentioned by

16 respondents). The setting of time limits for interlocutory matters was mentioned by 11 respondents as helping to reduce delay. Three solicitors thought that conferences removed the opportunity to delay simply for the sake of delay, and 2 thought conferences encouraged parties or their solicitors at least, to get together, talk matters over informally and arrive at a settlement sooner.

Two drawbacks to this reduction in delay were mentioned. One was the effect on those civil cases which did not come under the pilot scheme. This was raised by 3 solicitors and 3 court staff members. Said one:

> "Special priority (for fixture dates) being given to the pilot scheme ... is to the detriment of other outstanding matters ... . Non-pilot scheme matters are having to wait an extra 6 weeks for hearing dates."

Seven respondents seemed to feel that in some cases the process had been too rushed. A judge commented:

> "I've noticed that fixture dates were (sometimes) too soon. The system should be flexible enough (to allow for adjournment sine die in complex cases)."

Objective Four To Reduce the Time Spent in Defended Hearings

Very few respondents were asked to give an assessment of how the pilot scheme met this objective. Two (both solicitors) out of the 6 who did comment on this, thought hearing time may have been reduced to the extent that conferences helped in preparation for the trial. One solicitor suspected that conferences could even lead to hearings running less smoothly. One judge did not think that the extra time at conferences was in any way offset by reduced hearing time, while 2 other judges were uncertain as to the effects of conferences on hearing time.

Objective Five To Improve the Accuracy of Estimates of the Duration of Defended Hearings

Only 3 respondents, all court staff, made comments which could be related to this objective. Two thought that estimates of the duration of defended hearings had become more accurate under the conference system; the other thought there had been no change.

Chapter 11

Views on the Conferences

11.1 General Opinion of Conferences

Thirty-two out of the 42 respondents agreed that conferences had been effective, though a few qualified this statement with expressions like "reasonably", "partially", "depends on who was judge" and "eventually going to be as effective as the old system". Nine of the remaining respondents either were not asked the question about effectiveness, or did not answer it; one said conferences had been ineffective because they were premature.

Thirty-seven out of 39 respondents who answered the question thought conferences were worth keeping, though 3 of these respondents said only in a modified form or in limiting circumstances.

Twenty-six out of 28 respondents who answered the question thought conferences should become a permanent part of the civil process, though 6 of these thought modifications or restrictions would be needed. One solicitor felt that the conference process should not apply unreservedly to cases which develop unforeseen complexities. A member of court staff said there ought to be provision for adjournments sine die and also felt the conference process needed to be restricted for cost reasons to those residing in Christchurch. However, another solicitor and a judge thought conferences could be extended to cases when either party had an address or registered office out of Christchurch.

In terms of overall success of the conferences, almost half (20) of all respondents thought conferences were a success without any qualifications. Nearly as many (19) thought conferences a qualified success, with reservations ranging from minor doubts to major criticisms eg:

> "System works when one party does not have a genuine claim or defence - otherwise it is an unwarranted intrusion into the District Court rules and the requirements of pleading and the tactics of pre-trial preparation."

> "Conferences speed matters up and deter frivolous 'stalling' but have no jurisdictional basis; should not be able to over-ride District Court rules unless they have a statutory basis."

Two respondents, both solicitors, thought conferences had been a failure, describing them as a 'waste of time'. Table 11.1 shows the distribution of responses for the success variable.

Table 11.1

Perception of conference success by respondent's role

Role	Conference seen as: Success	Qualified success	Failure	DK*/ Uncertain	Total
Solicitor - DCA or mainly for plaintiff	7	5	1	-	13
Solicitor - half each plaintiff & defendant	2	7	-	-	9
Solicitor - mainly for defendant	2	4	1	1	8
Judge	4	1	-	-	5
Court staff	5	2	-	-	7
Total	20	19	2	1	42

*In this and following tables "DCA" refers to "debt collecting agency", and "DK" refers to "don't know".

11.2 Problems with Conferences

Problems were raised by 32 out of 42 respondents (see table 11.2). While 17 respondents mentioned only one problem, 13 had encountered 2 kinds of problem and 2 respondents came up with 3 different types of problem.

Table 11.2

Problems with conferences by respondent's role

Role	Type of problem: Time wasting	Legal status of conferences	Too rigid time limits	Judge's role	Delays	Other	Total problems	No problems mentioned
Solicitor - DCA or mainly for plaintiff	5	4	2	1	2	1	15	1
Solicitor - half each plaintiff & defendant	4	2	2	1	-	2	11	4
Solicitor - mainly for defendant	4	2	1	-	-	1	8	3
Judge	2	2	1	1	1	-	7	1
Court staff	4	-	1	1	1	1	8	1
Total	19	10	7	4	4	5	49	10

The most common problem (mentioned by 19 respondents) was that of time spent away from normal duties at conferences or waiting for conferences to start. The 11.30 am scheduled start time for conferences, after the civil lists on Tuesdays, seems to have been an unrealistic one. This was the focus of the criticism. One solicitor:

> "spent one a half hours waiting for a 5 minute appearance. This kind of delay makes conferences non-effective from a cost point of view."

Another found it frustrating having to:

> "go over to conference at 11.30 and at 12.45 you get away ... . Twenty or 30 solicitors sitting in No 3 court from 11.30 onwards ... waiting for an hour for only one thing."

And another solicitor described a situation where one conference session went to 4.00 pm:

> "The judge stood down two-thirds of the people and gave them time to come back."

The caseload of conferences added to this time problem. The previous solicitor observed that the conference system placed a strain on judges who had already been doing the civil lists; that 20 cases was too much for one conference session. Other comments suggested that early on in the pilot scheme there were only about 10-12 cases for each conference session, but that as time went on the number of cases per session was likely to be in the 18-20 range.

There were various suggestions for remedying this problem. An appointments type of system was most frequently mentioned (by 7 respondents), with one suggestion for staggered start times as in the Family Court, where 3 or 4 cases were timetabled for 15 minute intervals. Other suggestions were for the conferences to be held before the civil lists, ie starting at 9.00 am; to be spread out over other days in the week; to be held as a separate proceedings in

a different court; to be held before a judge who had not already done civil lists; and for the number of conference cases to be limited to 10 per session.

The legal status of conferences, especially with regard to attendance, compliance and sanctions, was raised as a problem by 10 respondents. Commented one solicitor:

> "Nobody seems to know what the status of conferences is ... . They don't come from the District Court Act yet judges can make orders for discovery (but) don't seem to think they have the authority to enter judgment for non-compliance."

Another solicitor said

> "Failure to comply has no consequences except delay ... . The system lacks teeth."

A judge felt that the validity of the civil conference scheme could be challenged:

> "It wouldn't take very long to find out that the direction to come to the first conference ... isn't a valid one because it hasn't been signed by a judge ... . The order (for the first conference) is not signed by a judge until the actual parties are present ... making it retrospective."

This judge suggested that either the order for the first conference should be signed by the judge in the first instance, or else the District Court Act and Rules be amended, giving the registrar power to direct parties to attend conferences. The general solution to this problem of legal status was stated by one solicitor:

> "What can be done at conferences needs to be crystallized ... written down into the rules."

Another solicitor said:

> "Judges should be given power to penalise litigants or strike out proceedings where a defence or claim is not being pursued properly."

Sanctions mentioned by respondents were orders for costs, waiving of a party's right to interlocutory matters, and entering judgment by default.

The third most common problem, mentioned by 7 respondents, was that the time limits set by the conference system were too rigid. This seemed to be mainly a difficulty where cases were more than usually complex. One solicitor observed that:

> "when complex legal issues are involved, the conferences seem to be used by the party not concerned with interlocutory matters to force the other party into going to trial unprepared."

Another solicitor thought the conference system 'pushes you too far too fast' and cited the sort of situation where:

> "You have to file an affidavit of documents within a certain time and you know you won't have all the documents ... . Files coming in from many solicitors over a period of 3 months and still more files to come. I advised the court of that ... and the judge said if necessary I would have to file an amended affidavit of documents later."

The remedy for this problem seems to lie in greater flexibility in the system, so that

> "if at the first conference it is clear one party needs eg, discovery of documents, interrogatories etc, the matter should stand adjourned sine die."

Four respondents mentioned uncertainty about the judge's role as a problem. But there was little agreement on what the role should be. One solicitor thought the judge should not be trying to sort out issues between parties whereas a member of the court staff thought there should be more investigation of issues by judges. A judge complained that unrepresented litigants expected the judge to help them, which conflicted with the principle of impartiality.

Four respondents mentioned the problem of delays in the conference system, caused by lack of preparation and action by parties or their solicitors between conferences, and leading to too many conferences where things got "bogged down". A judge suggested that except in emergencies or exceptional cases 2 conferences should be all that was needed.

Other problems raised were: misunderstanding of the scope of the pilot scheme (2 respondents); the delay the conference system has caused to non-pilot scheme matters in getting hearing dates (one); the lack of co-ordination of conference dates with other civil list matters (one); and the revenue the court was missing out on by not collecting a filing fee on conference matters which did not go to fixtures (one member of the court staff).

11.3 Solicitors' Attitudes to Conferences

Solicitors described their own approach to the conferences, as well as that of their fellow practitioners, in terms of their understanding of the conference aims, their cooperation with it, their preparedness and their frankness in the conference situation. The opinions of all 5 judges and 6 of the court staff were also canvassed on some of these aspects of solicitors' attitudes. Tables 11.3, 11.4, 11.5 and 11.6 show these results.

Table 11.3

Solicitors' understanding of conference aims by respondent's role

Seen by	Understanding			
	Clear from start	Not clear at start but clear now	Still unclear	Total
Solicitor - DCA or mainly for plaintiff	4	3	1	8
Solicitor - half each plaintiff & defendant	4	2	-	6
Solicitor - mainly for defendant	2	3	1	6
Judge	1	-	-	1
Total	11	8	2	21

Missing data = 21

Half (10 out of 20) of solicitors indicated they had understood the purpose of conferences from the start; another 8 said while the purpose of the conferences had not been clear at the beginning it had become so, particularly after attending the first conference. Two solicitors maintained that the purpose of the conferences was still not quite clear.

Table 11.4

Solicitors' cooperation by respondent's role

Seen by	Degree of cooperation: General cooperation	Some resistance	Total
Solicitor - DCA or mainly for plaintiff	5	6	11
Solicitor - half each plaintiff & defendant	4	4	8
Solicitor - mainly for defendant	7	1	8
Judge	4	1	5
Court staff	3	-	3
Total	23	12	35

Missing data = 7

Sixteen out of 27 solicitors thought they and their fellow practitioners had been generally co-operative with the conference process, although some of these put it a little grudgingly:

"I haven't tried to resist - just drift with the tide."

"Obliged to be cooperative."

Eleven solicitors detected varying degrees of resistance among their peers and 2 of these admitted quite frankly that they had been among those who resisted initially. One solicitor put this resistance down to some being "a bit distrustful at the beginning"; another suggested cooperation depended on the solicitor's personality; and another pointed out that initial enthusiasm to cooperate "diminishes if you do

not get a fair degree of cooperation back" (referring to the time wasted waiting round for conferences to start). Three court staff and 4 judges had a much more optimistic view of the degree of cooperation from solicitors - only one judge thought some had been less than cooperative.

Table 11.5

Solicitors' preparedness for conferences by respondent's role

	Degree of preparedness				
Seen by	Generally well prepared	Sometimes not prepared/one side only prepared	Generally unprepared	DK	Total
Solicitor - DCA or mainly for plaintiff	6	4	3	-	13
Solicitor - half each plaintiff & defendant	3	2	3	-	8
Solicitor - mainly for defendant	3	2	1	-	6
Judge	4	-	-	1	5
Court staff	2	2	-	-	4
Total	18	10	7	1	36

Missing data = 6

On the preparedness of solicitors, 12 thought both themselves and their peers had been generally fully prepared. Eight solicitors said they had not usually been fully prepared or that if they had, their opposing colleagues had not, and 7 said generally both they and the other party's solicitors were unprepared. In other words, 15 out of 27 solicitors indicated that there were difficulties with preparation for conferences, with statements such as:

> "Not fully prepared at the beginning. Didn't really know what I was looking for."
>
> "You just arrive and box on. Some of the time you don't know what the other guy is going to say."

Even some of those who had had no problems with preparation indicated a certain degree of being forced to that state:

> "As prepared as possible within the time."
>
> "Every month they have to go and account for their actions ... have to be on the ball."

Most judges (4 out of 5) thought solicitors were generally fully prepared, but 2 out of 4 court staff thought the degree of preparedness varied among solicitors. One judge made the comment that while solicitors had been adequately prepared within the limits of what the conferences had been doing, he thought they could have achieved more:

> "They could be much more effective in narrowing down what is really in dispute ... depends on the legal advisors making better use of procedures that are available."

The procedures this judge was referring to were those already in existence under the Rules, such as the notice to admit specific facts, giving notice to inspect and admit documents etc. He thought the legal profession should be encouraged and educated, by means of seminars and discussions, to use such procedures more often.

Table 11.6

Solicitors' disclosure at conferences by respondent's role

Seen by	Degree of disclosure: Full disclosure on both sides	Limited disclosure/ disclosure one side only	Full disclosure on neither side	DK	Total
Solicitor - DCA or mainly for plaintiff	5	4	3	-	12
Solicitor - half each plaintiff & defendant	3	-	3	-	6
Solicitor - mainly for defendant	3	2	1	1	7
Judge	4	1	-	-	5
Total	15	7	7	1	30

Missing data = 12

On the amount of disclosure at conferences, 11 out of 25 solicitors said there had been full disclosure on both sides. Six solicitors admitted to full disclosure in certain circumstances only:

"To the extent that you have to - yes",

commented one, and another said;

"Not in cases where I was acting for the defendant."

Seven solicitors denied that they or their peers had ever fully disclosed cases:

> "Not sure that we expected to have cases fully disclosed, or to fully disclose our own."

was one comment, while another solicitor said flatly;

> "One always tends to try and hide the ace ... . It's an adversary system."

Once again judges had a slightly more distanced, favourable view - 4 out of 5 thought there had generally been full disclosure by solicitors on both sides.

11.4 Workload

Forty respondents tried to assess the effect conferences had had on their workload (see table 11.7).

Table 11.7

Change in workload by respondent's role

Role	Workload				
	Increased	No change	Decreased	DK/Can't compare	Total
Solicitor - DCA or mainly for plaintiff	5	2	2	3	12
Solicitor - half each plaintiff & defendant	5	2	1	-	8
Solicitor - mainly for defendant	4	2	1	1	8
Judge	3	1	-	1	5
Court staff	5	2	-	-	7
Total	22	9	4	5	40

Missing data = 2

Just over half of respondents (22) had experienced an increase in their workload, but not all of these felt it was an unwelcome burden. Two solicitors who acted for a debt collecting agency observed that although;

> "workload is slightly increased ... it is to our advantage. (We) direct our activities into something with a definite prospect of resolution."

Another solicitor thought the increase in workload was probably only temporary;

> "As time goes by we won't end up doing any more work than we already do ... once we get rid of the backlog of old stuff."

Other solicitors mentioned a more efficient structuring of their workload as a way of coping with this increase. Five of the court staff indicated they could not have coped with the extra workload without the PEP worker, but one court staff member pointed out:

> "It may be easier to administer if there weren't parallel systems running. If there were only the conference scheme we could do it with existing staff ceilings."

The only judge to comment negatively on the increased workload said:

> "When we have been having 20 conferences, 24 conferences ... they are going to take you at least an hour ... you are knocking them off like Aunt Sallies and that is no good - that detracts from the dignity of the court."

For those who felt there had been no change or that workload had actually decreased, it seemed that even the extra time spent at, or waiting for conferences, had been offset by less correspondence, less delay in waiting for the opposing party to complete pleadings, interlocutories etc, since many of these matters could be handled at conference. Five respondents felt unable to assess the impact on workload because they had not been to enough conferences, or had not had enough experience of the previous system.

11.5 Judicial Approaches to the Conferences

Out of 26 respondents who answered the question on judicial approaches to the conference, 15 (10 solicitors and 5 court staff) thought judicial approaches had differed. Table 11.8 shows the views on judicial approach.

Table 11.8

Perceptions of judicial approach by respondent's role

Role	Judicial approaches			
	Much the same	Differing	DK	Total
Solicitor - DCA or mainly for plaintiff	2	5	1	8
Solicitor - half each plaintiff & defendant	3	4	1	8
Solicitor - mainly for defendant	2	1	2	5
Court staff	-	5	-	5
Total	7	15	4	26

Missing data = 16

Often the judge's approach was seen as crucial to the atmosphere and effectiveness of the conferences:

> "Differing judicial approaches clearly influenced outcomes of conference decisions. One judge took a very passive attitude ... did not prompt ... made no demands or requests of counsel ... there was 75 percent adjourned for an additional conference. Another judge made comments, asked about the state of negotiations and ... there were far fewer passed on to next conference day."

This question inevitably led on to discussion and comments on the role of the judge, which has partly been dealt with earlier in this chapter under "Problems".

> "The procedure should have greater judicial discretion to ensure proceedings are brought onto a hearing quickly without too much paraphernalia of interlocutory proceedings."

said a solicitor, while a member of court staff thought:

> "The judge's responsibility is to explore issues and allow counsel to take appropriate action."

One solicitor found it frustrating, time-consuming and often unnecessary when the judge treated the conference situation as a conciliation matter, but the other extreme when;

> "judges are very very tough on counsel and time limits, in making sure people comply"

was not seen as helpful either. Two solicitors felt that:

> "It's not the judge's function to question, for example, orders for discovery, when solicitors are entitled to these under the Rules."

Another solicitor thought that judges;

> "could take a greater role in ... having a look at claims and seeing whether the statement of defence or claim is sufficient or not"

but that if judges were to take on a mediation role:

> "This would be a complete change in the philosophy of the system ... have to be special provision for that type of mediation ... if both parties are prepared for the judge to do that."

Several observers made the point that early on in the pilot scheme judges were 'feeling their way' and this may have been responsible for some of the variation in judicial approach:

> "One judge just ran it like a normal court. There were other judges with whom it was what I would regard as a true conference ... a lot more relaxed ... open discussion between the judge and two solicitors ... more of an attempt to get at the issues."

Three judges volunteered other comments on judicial approaches and what they thought the judge's role should be. All these comments tended to favour a certain judicial distance towards issues at the conference stage. While they acknowledged the pressures to adopt a mediating role, they were aware of the danger of getting prematurely involved in the merits of the case and thus disadvantaging themselves from handling the case ultimately.

11.6 Whether Conferences Were Better for Certain Types of Cases

A majority of respondents (19 out of 31) thought conferences were better for some types of civil cases than for others, but there was little agreement or clear indication as to what sorts of cases these might be. Table 11.9 shows the distribution of responses on the question of the types of civil cases helped by conferences.

Table 11.9

Perception of benefit from conferences by respondent's role

Role	Benefit from conferences: Simple cases	Complex cases	No. thinking conferences benefit some cases only	Benefit all cases	DK	Total
Solicitor - DCA or mainly for plaintiff	5	4	7	1	1	9
Solicitor - half each plaintiff & defendant	3	1	3	1	1	5
Solicitor - mainly for defendant	1	1	2	3	1	6
Judge	3	1	4	-	-	4
Court staff	3	1	3	3	1	7
Total	15	8	19	8	4	31

Missing data = 11

Fifteen respondents gave examples of simple cases as being the most suitable for the conference procedure - cases such as straightforward debt collection with no legal argument or documentary evidence, cases involving unliquidated demands, ordinary traffic accident claims, claims where there was no bona fide defence. One court staff member thought the sole unrepresented defendant would benefit from the conference situation.

> "At least he has a chance to find out what he is facing ... conference can prompt a getting together of an aggrieved defendant and a plaintiff."

But one of the judges pointed out that the unrepresented party was disadvantaged in cases of any complexity.

> "Talk of interlocutory matters ... discovery ... inspection ... filing of more explicit statements of claim or defence ... are completely over the heads of unrepresented litigants."

Eight respondents said very complex cases involving large sums or complicated legal argument were especially likely to benefit from conferences, but 4 of these respondents had also mentioned cases at the other extreme - the straightforward ones - as particularly helped by conferences. While building disputes were given by a judge as an example of a complex case likely to benefit from a conference, a solicitor took quite the opposite view.

> "Conference system isn't adding anything to (one case) where the defendant is a builder who is difficult; there are a lot of documents involved and a lot of rude general allegations he has made - the case is now going into sixth or seventh conference."

11.7 Witness Availability and Recollection

Only 10 respondents, all solicitors who completed questionnaires, answered a question on the availability of witnesses. Five thought witness availability had been improved by the conference system, 3 thought there had been no change, and one thought witnesses were less available with conferences, saying that rulings were needed as to when witnesses were required to attend conference. One respondent could not tell if witness availability had been improved by the conference system.

Of the 21 respondents commenting on witness recollection, the majority (15) said witness recollection was improved by the pilot scheme. Table 11.10 shows the responses for the question on witness recollection.

Table 11.10

Perception of witness recollection by respondent's role

Role	Witness recollection: Better	No change	DK	Total
Solicitor - DCA or mainly for plaintiff	4	1	1	6
Solicitor - half each plaintiff & defendant	6	2	-	8
Solicitor - mainly for defendant	2	-	2	4
Judge	3	-	-	3
Total	15	3	3	21

Missing data = 21

With one exception, the comments here pointed to the greatly reduced time between filing of the plaint and the case being heard (because of the earlier fixture dates being allocated to conference cases).

> "It (the conference itself) wouldn't aid the recollection of witnesses, but the sooner it comes onto hearing the less likelihood there is of getting vague evidence,"

said a judge.

11.8 How Conferences Were Conducted

Twenty-three respondents (21 solicitors, one judge and one member of court staff) gave an assessment of the atmosphere in which conferences were conducted. Nineteen of these described the atmosphere as "friendly" or "informal". Most seemed to appreciate that kind of atmosphere, but one solicitor commented:

> "Sometimes as relaxed as debtors court used to be and that is not necessarily a good thing."

Out of 15 respondents who commented on the way the conferences were organised, 10 said the organisation was efficient or reasonably efficient. For 6 respondents, the waiting around for conferences to start after the civil lists was seen as a flaw in the organisation. One solicitor said the conferences were in fact "not well organised". For 4 other solicitors who commented either on the atmosphere or the organisation of conferences, a lot depended on the judge.

11.9 Court Administration of Civil Cases

Only 12 respondents (all 7 court staff, 2 judges and 3 solicitors) made comments relating to the efficiency of the court's administration of civil cases. However, this question might really have been expected to be asked of court staff and judges only; the fact that 3 solicitors were able to step back from the demands and interests of their own profession and take a view of the pilot scheme from the court's point of view is encouraging. All 12 respondents thought that the court's administration of civil cases had been made more efficient by the conferences. Five respondents seemed to put this greater efficiency down to the court's having a tighter rein on the direction and pace of proceedings. A judge said:

> "Under the old system the court lay dormant ... . Now the court is being master in its own court."

Three court staff seemed to think the improved efficiency had come about mainly because of the way conferences were given priority for early fixture dates. One of these perceived that as a lack of fairness towards those cases which were outside the scope of the pilot scheme.

> "When you've got (non-pilot scheme) files there for about 4 or 5 months, whereas with these ones they could get dates straight away and they don't have to pay a fee."

But another court staff member said that delay in non-pilot scheme matters was due to judge manpower not being increased for the first 6 months of the year (the time covered by the pilot scheme), and that judge time could in future be arranged to allow for the extra workload caused by conferences.

11.10 Public Reaction to the Conferences

Unfortunately there was no direct specific feedback from either plaintiffs or defendants themselves that was reported on the questionnaires or in the interviews. It seemed to be almost a folk wisdom that the public generally gets impatient with delay in court proceedings, and two solicitors commented optimistically to the effect that clients must see the proceedings moving more rapidly under the conference system. But whether this perception was in fact shared by clients is hard to say. The number of litigants who had, within reasonably short space of time, experienced the old system and the new conference system may not have been very many. It was the impression of one court staff member that most defendants filing their notice of intention to defend in person, ie those not represented by counsel, were unaware of the changes.

> "When they file the notice of intention to defend you ... tell them there's going to be a (conference) date. They don't really notice anything. They probably think its part of the court system."

Another member of court staff had heard complaints from clients as well as solicitors relating to the fact that non-pilot scheme fixtures were being delayed more and more while the pilot scheme cases got preferential fixture dates.

11.11 Respondent's Role

Views held about the conference scheme do not appear to have depended on the role played by the respondent, ie whether solicitor acting for plaintiff, for defendant, judge or court staff member. However numbers in the categories were too small to test this statistically.

Part III – Conclusions

Chapter 12

Conclusions about the Objectives of the Pilot Scheme

This chapter presents an assessment of the extent to which the pilot scheme achieved the objectives outlined in the Introduction. For the most part, the data used for this assessment have been presented in earlier chapters. Here they are examined again for the express purpose of evaluating whether or not the objectives of the pilot scheme were achieved.

But before any conclusions are drawn a general caution made earlier needs repeating. This evaluation was not based on a true experimental design where cases were randomly assigned either to control or pilot groups. This left open the possibility that differences between the groups that are reported here may not have resulted from the change in procedures associated with the conferences, but from some other cause. Some factor not accounted for in the study (the economy perhaps) that was different between 1983 and 1984 might have led to differences in outcomes that have been incorrectly attributed to the pilot scheme.

In non-randomised studies the danger arises from pre-existing differences between the groups being compared. In order to check for this, groups were compared on 4 pre-existing variables, and on 2 (the proportion of plaints where the plaintiff was a government department and the proportion where the plaintiff was a debt-collecting agency) differences were found. Fortunately it was demonstrated these differences probably had only a small effect on 2 of the most important outcome variables, whether a notice of intention to defend was filed and whether there was a defended hearing. From this it was assumed that probably these 2 pre-existing differences had at the most only a minor effect on other outcomes.

For objectives 1 and 2 percentages used are adjusted to take into account the differing proportions of plaintiffs that were government departments or debt-collecting agencies in the control and pilot groups (see Appendix D). The percentages are thus what would be expected if both groups had the same proportions of involvement as plaintiffs of government and debt-collecting agencies. They are slightly different from the unadjusted percentages presented in Part 1.

There remains, however, the danger that other unrecognised pre-existing differences may have produced some bias in the results.

Objective 1: To Reduce the Frivolous Filing of Notices of Intention to Defend

It was hypothesised that the pilot scheme would result in the filing of fewer notices of intention to defend, but that more of those filed would be with a serious intention of defending the case. If this occurred then there would be a reduction in the proportion of cases where a notice of intention to defend was filed from 1983 (control group) to 1984 (pilot group), accompanied by an increase in the proportion of cases where notices of intention to defend were filed that went to a defended hearing. Both changes did occur in the predicted direction.

Using adjusted percentages from Appendix D, for the control group 15.6 percent of plaints filed resulted in the filing of a notice of intention to defend, significantly more than the 11.0 percent for the pilot group. This represents a 29.6 percent reduction in the number of notices of intention to defend filed from 1983 to 1984 (see Appendix E). It means that for every 100 notices of intention to defend filed for the control group there were 70.4 filed for the pilot group.

Of those cases where a notice of intention to defend was filed, 38.2 percent for the control group and 41.9 percent for the pilot group went to a defended hearing, but this difference was not statistically significant.

It is not as easy to conclude that fewer frivolous notices of intention to defend were filed, given this result, as it would be if both hypothesised changes had been statistically significant. Nevertheless the explanation that there was some reduction in the proportion of frivolous filing fits the findings quite well, and it is tentatively concluded that this objective was met.

The respondents to interviews and questionnaires (solicitors, judges and court staff) whose views are reported in Part II were evenly divided as to whether the frivolous filing of notices of intention to defend was discouraged by the conference system. Most of those who thought that the conferences did discourage this considered that it was achieved through the speed with which conferences fixtures were allocated, requiring the defendant to front up a lot earlier with a statement of defence.

Objective 2: To Reduce the Proportion of Cases Going to Defended Hearings

This objective was met. Using adjusted percentages from Appendix D, for the control group 6.0 percent of all cases went to a defended hearing, compared with 4.6 percent for the pilot group. This amounts to 22.8 percent reduction in the proportion of cases going to a defended hearing (see appendix E). For every 100 control group hearings, in other words, there were 77.2 pilot group hearings, a substantial reduction.

The general view of the respondents to interviews and questionnaires was that the majority of cases were settled out of court irrespective of whether the pilot scheme was operating, and that at best the conferences hurried up this settlement. Fewer than half of the respondents thought there had been an increase in out-of-court settlement under the pilot scheme, an increase which would indicate that this objective had been met.

Objective 3: To Reduce the Delay Between the Filing of Notice of Intention to Defend and Final Judgment

This objective was clearly and dramatically met. For those cases for which there was a defended hearing there was a reduction in the average time from the filing of a notice of intention to defend to final judgment from 309 days for the control group to 96 days for the pilot group.

In assessing what this means it must be borne in mind that during the pilot period court staff gave preference in assigning fixture dates to cases in the pilot scheme (ie, those where both parties resided in Christcurch). An analysis presented in Chapter 7 demonstrates that was not the only reason for the reduction in delay, and that credit must also be given to the pilot scheme procedures. Table 7.1 should be examined and section 7.3 read to see this analysis in full. In brief, it showed that the time between the filing of a notice of intention to defend and final judgment could be broken into 3 segments - from filing of notice of intention to defend to when the parties were ready (application for special fixture made for the control group and last conference held for the pilot group); from when the parties were ready to the defended hearing; and from the hearing to final judgment. For all 3 segments, the average time for the control group was at least 3 times as long as for the pilot group. While non-pilot scheme factors almost certainly influenced the last 2 segments it was concluded that the first was due to the change in procedures introduced with the pilot

scheme. This segment from the filing of the notice of intention to defend to when the parties were ready, which might be termed "preparation time", averaged 134.5 days for the control group but only 42.9 days for the pilot group. This represents a reduction in delay of some 3 months which can unambiguously be attributed to pilot scheme procedures, and in particular making the court rather than the parties responsible for keeping things moving.

Respondents to the interviews and questionnaires were overwhelmingly of the opinion that this objective was achieved. The reduction in delay was mostly seen as due to the availability of earlier fixture dates (16 respondents), and the setting of time limits for interlocutory matters (11 respondents).

Objective 4: To Reduce the Time Spent in Defended Hearings

There was a statistically significant reduction in average hearing time from 39.5 minutes for the control group to 23.6 minutes for the pilot group. When time at conferences was added to the hearing time for pilot cases (a fairer comparison) there was a reduction in average time from 39.5 minutes to 26.6 minutes, which was not statistically significant.

The result for the comparison which includes conference time requires some explanation. First, it is judge time that is being compared. This helps explain the rather surprising short average time for conferences of 2 minutes per case. Second, the 32.7 percent reduction from 39.5 percent to 26.6 minutes is not statistically significant because the numbers involved are relatively small and the variation in average time is large. What this means is that the chance inclusion of a few large times for the control group might explain the result, and there is greater than one chance in 20 that something like this would have occurred. For this reason it is dangerous to assume that the reduction is the result of the pilot scheme.

There is a further reason for treating the hearing time comparison between the control and pilot groups with great care. Hearing time was recorded for only 63.5 percent of the 167 control group cases that resulted in a defended hearing. The amount of missing data here is sufficient to seriously bias the average control group hearing time, the true figure for which might be either considerably more or less than the 39.5 minutes recorded.

The results just reported leave it still an open question as to whether the pilot scheme resulted in a reduction in hearing time.

Few respondents to the interviews and questionnaires provided comment bearing on this objective. Of 3 judges who commented one thought that the extra time at conferences was not offset by a reduction in hearing time, and the other 2 were uncertain.

Objective 5: To Improve the Accuracy of Estimates of the Duration of Defended Hearings

For the control group the average error in estimating actual hearing time (the mean absolute difference between actual and estimated hearing times) was 62.3 minutes, compared with 52.3 minutes for the pilot group. This difference was not statistically significant. It is concluded that there was no significant improvement in the accuracy of hearing duration estimates.

Only 3 respondents to the interviews and questionnaires made comments which could be related to this objective. Two thought that estimates of the duration of defended hearings had become more accurate under the pilot scheme, while the other thought there had been no change.

Chapter 13

General Conclusions

In terms of its specific objectives the conference scheme met with varied success. It appears likely that the conferences resulted in a reduction in the filing of frivolous notices of intention to defend, and in the proportion of cases going to a defended hearing. Certainly there was a reduction in the delay between the filing of a notice of intention to defend and final judgment. There was, however, no firm evidence that the conferences led to a reduction in the time spent in defended hearings, or that they resulted in an improvement in the accuracy of estimates of the duration of defended hearings.

It remains to assess the impact of the achievement or otherwise of the objectives on the general aims of the conference scheme, and to draw some conclusions about whether the conferences are a worthwhile innovation.

13.1 The Aims of the Pilot Scheme

In the Introduction, 3 general aims of the pilot scheme were mentioned: to provide a speedier service at less cost to the public; to reduce the costs of administering civil actions; and to enable all parties to the civil process to plan their workload in the civil area more systematically.

Providing a Speedier Service at Less Cost to the Public

There is no doubt that, as discussed under Objective 3 in the previous chapter, clients of the civil court were provided with a speedier service. The delay between the filing of a notice of intention to defend and final judgment was reduced from an average of 10 months for the control group to 3 months for the pilot group.

There is no direct evidence from the evaluation as to the effect of the conferences on costs to the public. Clients who felt that the conferences enabled them to dispense with a solicitor would clearly save on solicitor's fees, but might lose elsewhere through inadequate representation of their case. It was not the intention of the conference scheme for the judge to assist unrepresented clients with matters normally handled by a solicitor.

To Reduce the Costs of Administering Civil Actions

Administrative costs were not investigated as part of this evaluation. Some comment can, however, be made on the basis of other findings. It would appear likely that the average cost for each defended hearing increased slightly, in that there were additional costs associated with the conferences that were not compensated for by any marked reduction in hearing time. On the other hand the reduction in the proportion of cases going to a defended hearing would result in some savings.

To Enable all Parties to the Civil Process to Plan their Work More Systematically

In the case of solicitors, it might be said that the conferences forced them to plan their work more systematically. They were no longer able to wait for events to take their course before their clients appeared before the court. This did put some pressure on solicitors, only a minority of whom were prepared to say that they were generally well prepared for conferences (see table 11.5).

Judges and court staff would have been able to plan their work more systematically had the conference scheme led to an improvement in the estimates of the duration of hearings (objective 5), but this did not occur.

13.2 Is the Conference Scheme a Worthwhile Innovation?

It appears that while the conferences assisted clients by providing them with a speedier service, it increased the work of the courts. Certainly, there were problems with the conferences (see table 11.2), particularly time spent away from normal duties attending conferences or waiting for them to start. Most of the other problems raised by solicitors, judges and court staff were, however, more in the nature of teething difficulties that could be remedied eg, the legal status of conferences and the role of the judge.

In spite of the problems, it is worthy of note that the respondents to the interviews and questionnaires generally regarded the conferences as successful. Thirty-seven of 39 respondents considered the conferences "worth keeping" and 26 out of 28 thought they should become a permanent part of the civil process (Chapter 11, section 11.1). Of the 30 solicitors responding, 11 rated the conferences "a success", 16 more "a qualified success", and only 2 "a failure", while one was uncertain. The judges and court staff were more favourably disposed toward the conferences, with 9 rating the conferences "a success", 3 "a qualified success" and none "a failure" (see table 11.1). The views of solicitors here, though, must be treated with caution as 29 solicitors were neither interviewed nor completed the questionnaire, and these may have held a very different view of the conferences to that of the responding group. The views of judges and court staff are more reliable, with 5 of 7 judges and all 7 eligible court staff being interviewed.

13.3 A Final Thought

While the general opinion was that the conferences scheme was worthwhile, only some of its objectives were achieved, and the scheme led to problems for solicitors, judges and court staff. One outcome, however, is certain. The great reduction in delays brought about by the conferences system shows that excessive delay is not an immutable part of the civil court system. Given the cooperation between solicitors, judges and court staff evident in the operation of the pilot scheme, dramatic improvements are very much achievable.

Postscript

Changes Made Since the Evaluation

After the end of the pilot scheme evaluation (plaints filed in the first 6 months of 1984) the conferences system continued for a further 6 months. It was finally terminated because there were insufficient judges available to allow allocation of fixture dates, and it became necessary to adjourn cases sine die.

The situation has now changed again (October 1986) as hearings are now occurring some 6 to 8 weeks after applications for fixtures, an improvement due to the increased availability of judges. Conferences have not, however, been revived.

After the pilot scheme period, several changes were made that made some of the findings of this report obsolete.

1 **Change of name** - the pilot scheme became known as the Civil Conference Scheme.

2 **Purpose of first conference defined** - the first conference was replaced by a "Scheduling Conference" at which a judge, after consultation with the parties or solicitors, would enter a scheduling order that would have the effect of setting time limits for such things as amending pleadings, completing discovery etc. The Scheduling Conference could also allocate fixture dates for the next conference and trial.

3 **Discouraging multiple conferences** - subsequent conferences were to be amalgamated into one, to be known as the Pre-trial Conference. Represented parties would be required to attend as well as their

solicitors. Matters to be dealt with at the Pre-trial Conference would include defining the issues, sufficiency of statements of claim and defence, the admissibility of evidence, the identification of witnesses and documents, the possibilities of settlement and the management of complex legal questions.

4 **Timing of conferences and appointments system** - the Scheduling and Pre-trial Conferences would be held on Tuesday afternoons, using an appointments system of 5 cases per quarter hour.

5 **Sanctions and judicial powers** - the judge could make orders with respect to certain costs in cases of non-compliance, or non-appearance, or lack of preparation by a party or party's solicitor.

These changes would appear to have alleviated some of the problems raised in Chapter 11, section 11.2 - particularly a better timetabling of conference sessions to avoid solicitors waiting round an hour or more for a brief conference appearance; and a clearer definition of what aspects of a case were to be dealt with at conference and what judicial powers could be exercised in the conference setting.

References

(1) Ebener, P A (1981) Court Efforts to Reduce Pretrial Delay - A National Inventory. Rand Corporation. The Institute for Civil Justice. Santa Monica.

(2) Stewart, G R (1979) Toward More Expeditious Civil Justice - Canadian and American Perspectives - Canadian Trends. Wayne Law Review vol 26 (November 1979).

(3) The Chief Justice of the United States (1983) Amendments to the Rules of Civil Procedure for the US District Courts. US Government Printing Office, Washington.

Appendices

Appendix A

Court Forms used for the Pilot Scheme

The 5 forms on succeeding pages were used during the pilot scheme. They are:

- Notice to Defendant (P/S form 1)
- Notice of Adjournment and Date of First Conference (P/S form 2)
- Order for Second Conference (P/S form 3)
- Notice of Special Fixture and Orders as to Conduct of Hearing (P/S form 4)
- Minute Sheet (P/S form 5).

P/S Form 1

NOTICE TO DEFENDANT

In addition to the information shown on the back of this Summons, your attention is drawn to the following points:

1. As from 1 January 1984 a new scheme to reduce the delay in obtaining a hearing for defended Civil cases was introduced in the Christchurch District Court.

2. If you file a notice of intention to defend or a statement of defence, the action will be adjourned and you will be given a date for the hearing of a conference between the parties to be held before a District Court Judge. You will be advised of the date of this conference which will be after 14 days from the filing of the defence.

3. At this conference you and the other party will be expected to discuss:

   All matters necessary before the case can be heard.

   If all matters are resolved at this conference the Judge will fix a date for hearing the case.

   If further steps are required to be taken by the parties, the Judge will make the appropriate orders and will fix a date for a second conference, by which time all outstanding matters must be completed.

   A date of hearing will then be fixed at this conference.

IF YOU HAVE A SOLICITOR

Your solicitor will advise you if you need to attend the conference.

NOTE

IF YOU DO NOTHING THE PLAINTIFF MAY TAKE STEPS TO HAVE JUDGMENT ENTERED AGAINST YOU.

NOTICE OF SERVICE

I certify that a copy of this notice was:
handed/posted by me to the plaintiff/plaintiff's solicitor
handed/posted by me to the defendant/defendant's solicitor
at Christchurch on_____

Officer of the Court

P/S Form 2

NOTICE OF ADJOURNMENT AND DATE OF FIRST CONFERENCE

In the District Court
held at Christchurch

Plaint No.

To the Plaintiff and Defendant

TAKE NOTICE that this action has been adjourned.

IT IS ORDERED that there will be a conference between the parties at the District Court, Chancery No. 3 Courtroom, Chancery House, 329 Durham Street, Christchurch on

Tuesday [ ] at 11.30 am

Deputy Registrar

Date:

NOTES FOR YOUR GUIDANCE

At this conference you and the other party will be expected to discuss:

All matters necessary before the case can be heard.

If all matters are resolved at this conference the Judge will fix a date for hearing the case.

If further steps are required to be taken by the parties, the Judge will make the appropriate orders and will fix a date for a second conference, by which time all outstanding matters must be completed.

A date of hearing will then be fixed at this conference.

IF YOU HAVE A SOLICITOR

Your solicitor will advise you if you need to attend the conference.

IF YOU DO NOT APPEAR AT THIS CONFERENCE

Orders may be made against you in your absence.

NOTICE OF SERVICE

I certify that a copy of this notice was:
handed/posted by me to the plaintiff/plaintiff's solicitor
handed/posted by me to the defendant/defendant's solicitor
at Christchurch on_____

Officer of the Court

P/S Form 3

ORDER FOR SECOND CONFERENCE AND

In the District Court
held at Christchurch

Plaint No.

BETWEEN

Plaintiff

AND

Defendant

IT IS ORDERED that:

1. There will be a second conference to be held on

Tuesday [ ] at 11.30 am

2.

Deputy Registrar

Date:

NOTE:

At the second conference a Judge will fix a date of hearing and review such matters as:

- Numbers of witnesses, and
- Estimated duration of the hearing;

And make such other orders as may facilitate the hearing.

NOTICE OF SERVICE

I certify that a copy of this notice was:
handed/posted by me to the plaintiff/plaintiff's solicitor
handed/posted by me to the defendant/defendant's solicitor
at Christchurch on_____

Officer of the Court

P/S Form 4

NOTICE OF SPECIAL FIXTURE and

ORDERS AS TO CONDUCT OF HEARING

In the District Court
held at Christchurch

Plaint No.

BETWEEN

Plaintiff

AND

Defendant

TAKE NOTE that your case will be heard by a District Court Judge on _____ day the _____ day of _____ 19___ at _____ The hearing will be held in No. Chancery Courtroom, Chancery House, 329 Durham Street, Christchurch. The Judge has made the following orders:

Deputy Registrar

Date:

NOTES:

1. The day and time of hearing has been made on the basis of the estimates provided by you or your solicitor at the conference.

2. You must be ready to proceed with your witnesses and evidence available.

3. FAILURE to attend may result either in Judgment being entered or the claim being struck out.

To: The Plaintiff and Defendant

NOTICE OF SERVICE

I certify that a copy of this notice was:
handed/posted by me to the plaintiff
handed/posted by me to the defendant
at Christchurch on_____

Officer of the Court

P/S Form 5

MINUTE SHEET

Plaint No.

Date	Action adjourned
	1. Order for first conference on _____ Further orders: Judge
	2. Order for particulars (Plaintiff/Defendant present) There will be a second conference on _____ Further orders: Judge
	3. Fixture on _____ Orders as to conduct of hearing: Judge

Appendix B

The Data used for the Study

The data used in Part I of this study were collected from court records. This appendix describes the data and the sources used to obtain them.

The instructions given for coding missing data have not been included here.

B.1 Data Common to Both the Control and Pilot Groups

Plaint Number

This was recorded from the plaint note (MC10) or on the backing sheet.

Date Plaint Filed

This was recorded from the plaint note.

Date Cause of Action Arose

This was recorded from the "Statement of Claim". Where a date was given by month and year only, the day of the month was entered as 15.

Type of Action (ordinary or default)

This was recorded from the plaint note, or by ascertaining whether an ordinary summons (DC11) or a default summons (DC16) was issued.

(See Appendix C for a description of ordinary and default actions.)

Amount of Claim

This was recorded from the plaint note or the backing sheet. Whole dollars only were recorded, ie cents were ignored.

Whether the Plaintiff was a Debt-Collecting Agency

This was determined by looking at the name of the solicitor or law firm given in the box at the bottom of the plaint note. It usually applied to default actions. A list of the names of debt-collecting agencies was used by the coder to help with this. In cases of doubt, the deputy registrar was consulted for a decision.

Whether the Plaintiff was a Government Department

This was determined by looking at the name of the plaintiff. The Post Office was excluded as they did not wish to participate in the scheme.

Whether a Summons was Served, and if so, How it was Served

This was recorded from the backing sheet under "particulars of service". When a summons was served this was coded either as "personal service" which includes served by bailiff or by private service, or as "served by mail". If more than one type of service was identified, that with the latest date was used.

Date Summons Served

This was recorded from the back of the summons. For personal service, the bailiff is required to notify the court that service has taken place. Where the summons is served by mail, the court records the date it was sent. The latest date of service was used if there was more than one type of service.

Whether a Request for Entry of Judgment by Default was made

This was indicated by the presence of form DC27 ("Request for Entry of Judgment in Default Action").

Date of Request for Entry of Judgment by Default

This was recorded from form DC27. The date used was that entered by the solicitor, not that of the date stamp indicating when the request was received by the court.

Whether a Notice of Intention to Defend was Filed

This was indicated by the stamp "DEFENDED" on the backing sheet, or from the presence of form DC26 on the file. Where a counter claim was filed this was also recorded.

Date of Filing of Notice of Intention to Defend

This was recorded from form DC26.

Whether There was a Defended Hearing

This was indicated by the presence of form J26 on the file, and meant that a defended hearing actually took place and was not merely set down.

Date of Defended Hearing

This was recorded from form J26.

Estimate of the Duration of a Defended Hearing

For the control group this was obtained from form DC26B ("Application for Special Fixture for Hearing of Defended Action"). For the pilot group this was recorded from the minute sheet PS 5, possibly as one of the orders of the judge (ie, that the parties estimate the duration of the hearing).

How Much Time (Minutes) did the Defended Hearing Take

This was obtained from form J26 under "time taken", or else calculated as the difference between "time started" and "time finished". When a defended hearing was adjourned, the time taken at later hearings was added.

The Parties Attending a Defended Hearing

This was obtained from form J26 on the 2 lines beginning "Mr". It was recorded whether plaintiff only, defendant only, both parties or neither party attended.

Whether a Defended Hearing had been Adjourned/Number of Adjournments

This was indicated by more than one J26 form on the file, or by an amendment to a single J26 form.

Final Outcome

This was obtained from the backing sheet where it reads "judgment for plaintiff/defendant", or was stamped on the backing sheet. Final outcome was recorded as "judgment for plaintiff", "judgment for defendant", "struck out", "paid into court" or "no recorded decision".

Because of the large amount of missing data, final outcome was not used in the study.

Form of Judgment

This was also obtained from the backing sheet, and was recorded as "judgment by default", "judgment by consent", "judgment on confession", "judgment entered after a hearing" or "not recorded".

(See Appendix C for a description of form of judgment.)

Because of the large amount of missing data for form of judgment, only "judgment entered after the hearing" was used in this study.

Date of Judgment

This was obtained from the backing sheet, immediately below judgment by default, consent and confession.

B.2 Variables for the Control Group Only

Whether There was an Application for Special Fixture

This was indicated by the presence on the file of form DC26B, "Application for Special Fixture for Hearing of Defended Action".

Date of Application for Special Fixture

This was recorded from form DC26B.

Whether an Application for Special Fixture was Made Unilaterally or Bilaterally

This was determined in one of 2 ways: (1) if, on the DC26B, only one signature of the parties appeared then it was a unilateral application; if both signatures appeared then it was a bilateral application. (2) A solicitor, when asking for a fixture, might state whether it was a unilateral or bilateral application.

Whether There Were any Interlocutory Applications, and if so, How Many

Interlocutory applications are made by a solicitor before a defended hearing takes place, and would usually be made on a solicitor's letterhead. They are not court documents.

(For a description of interlocutory applications see Appendix C.)

B3 Variables for the Pilot Group Only

Whether There was a First Conference Held

This was inferred from the date of a first conference (see below).

Date of First Conference

This was recorded from either the "notice of adjournment and date of first conference" (PS 2) or the Minute Sheet (PS 5).

Parties Attending First Conference

This was obtained from the minute sheet (PS 5). It was recorded whether the plaintiff only, defendant only, both parties or neither party attended.

Time Taken (Minutes) at First Conference

This was recorded from the minute sheet (PS 5).

Orders Made at First Conference

These were also obtained from the minute sheet under the heading of "further orders". The number of orders (0, 1, 2 etc) was recorded.

Details of any second or later conferences were obtained in the same way as for first conferences.

Appendix C

Some Definitions

Plaint

This is the written statement which commences an action in the District Court. The data for this study were originally defined by "plaints filed", but "cases" is used in this report when referring to the data beyond the point of filing the plaint.

Ordinary and Default Actions

These are differentiated by the type of summons originally served.

A default summons is used to recover any debt or liquidated demand, ie where the sum claimed is a fixed and settled amount.

An ordinary summons is used to bring an action against any person in respect of any claim (ie all unliquidated demands) where the amount is not fixed and settled. It is also used for those liquidated demands where (1) the defendant is the Crown, an infant or mental defective, (2) the plaintiff is only an assignee of the debt, (3) the plaintiff is a moneylender, or (4) the debt claimed is interest over a certain percentage.

Once a notice of intention to defend is filed, it ceases to be relevant whether a default or ordinary summons was served. For this reason terminology such as "began as an ordinary action" or "was originally a default action" is used in the report when discussing cases where a notice of intention to defend has been filed.

Interlocutory Applications

These are applications made to the court about matters incidental to the main issue, but which must be sorted out before the case is set down for a hearing. Examples of interlocutory matters are the notice to admit facts, third party notices, and applications to alter the details of the proceedings. The most common interlocutory application is for an order for the discovery of documents.

Order

Any decision (other than the final judgment) made by a judge, eg an order for the discovery of documents.

Form of Judgment

For this study, this refers to the various judgment outcomes which describe the end result of the case as recorded by the court, whether or not there has been a defended hearing.

Judgment by default occurs either through the plaintiff filing a request for entry of judgment by default when no notice of intention to defend was filed by the defendant in response to a default summons, or through the defendant's failure to appear at the hearing.

Judgment by consent is essentially a judgment by agreement between the parties. It comes about either through the defendant appearing at the hearing and agreeing to judgment, or by the defendant not appearing nor having delivered a confession to the court or plaintiff, but addressing any letter to the court which admits the claim.

Judgment on confession occurs when the defendant files, at any time before judgment is entered, a confession with the court admitting liability for whole or part of the claim. Judgment is then entered at the conclusion of the hearing.

Judgement entered after the hearing occurs when the judge's decision is reserved on any question of fact or law. Judgment may then be given at any subsequent sitting, or the decision may be delivered in writing to the parties.

Because of the large amount of missing data for form of judgment, only "judgment entered after the hearing" is used in this study.

Appendix D

Controlling for Pre-existing Differences between Groups

Before conclusions can be drawn about differences found between the control and pilot groups, it is necessary to investigate whether differences found might be due to pre-existing differences between the groups. By pre existing differences is meant differences that existed prior to the pilot scheme and that are independent of it.

Whether or not a government department is involved is an example of a pre-existing difference in that this is determined prior to any difference in procedure between the control and pilot groups, and therefore cannot be a result of the pilot scheme. The 2 groups do in fact differ on this variable: a government department was involved in 15.3 percent of the control group cases compared with 11.4 percent of pilot group cases. The danger is that differences between variables of interest might be due to the pre-existing difference in the proportion of cases where government departments are involved rather than to the difference in procedures between the control and pilot groups. This danger is investigated and controlled for in this appendix.

Four variables are possible sources of pre-existing differences: the amount of the claim, whether a government department is involved, whether a debt-collecting agency is involved, and whether the case began as an ordinary or default action. These 4 variables are investigated in table D1.

Table D.1

Possible pre-existing differences between the control and pilot groups

	Control group		Pilot group		Significant difference?
Variable	No.	%	No.	%	
Amount less than $1,000	2,318 (2,851)	81.3	2,233 (2,680)	83.3	no
Government department involved	531 (2,864)	18.5	277 (2,692)	10.3	yes
Debt-collecting agency involved	1,001 (2,864)	35.0	1,015 (2,692)	37.7	yes
Ordinary action	368 (2,864)	12.8	357 (2,695)	13.2	no

All 4 variables are differentially related to key differences between the control and pilot groups such as the proportion of cases for which there is a notice of intention to defend filed, and thus all 4 pose a threat to the validity of conclusions about the efficacy of the pilot scheme. Fortunately, the groups do not differ significantly on the amount of the claim and whether the case is an ordinary or default action. This leaves involvement or otherwise of government departments and debt-collecting agencies as the 2 variables that have to be considered further.

Table D.2 shows the differences between the control and pilot groups as to whether government departments or debt-collecting agencies were involved.

Table D.2

Unadjusted numbers of cases where
government departments or debt-collecting agencies involved

	Control group		Pilot group		Total	
Agency involved	No.	%	No.	%	No.	%
Government	531	18.5	277	10.3	808	14.5
Debt-collector	1,001	35.0	1,015	37.7	2,016	36.3
Neither	1,332	46.5	1,400	52.0	2,732	49.2
	2,864	100.0	2,692	100.0	5,556	100.0

The results of the next step, deriving adjusted numbers of cases, are shown in table D.3. This leaves both the control and pilot groups with the same proportions of government departments and debt-collecting agencies involved.

Table D.3

Adjusted numbers of cases where government departments or debt-collecting agencies involved

	Control group		Pilot group		Total	
Agency involved	No.	%	No.	%	No.	%
Government	417	14.5	391	14.5	808	14.5
Debt-collector	1,039	36.3	977	36.3	2,016	36.3
Neither	1,408	49.2	1,324	49.2	2,732	49.2
	2,864	100.0	2,692	100.0	5,556	100.0

Next, the adjustment ratios are calculated (see table D.4). The adjustment ratio is the ratio of adjusted to unadjusted numbers, thus in the case of a government department involved for the control group, the ratio of adjusted to unadjusted is 417 to 531 or 0.7853.

Table D.4

Adjustment ratios

Agency involved	Control group			Pilot group		
	Unadj.	Adj.	Ratio	Unadj.	Adj.	Ratio
Government	531	417	0.7853	277	391	1.4116
Debt-Collector	1,001	1,039	1.0380	1,015	977	0.9626
Neither	1,332	1,408	1.0571	1,400	1,324	0.9457

Finally, adjusted numbers of cases are derived by multiplying unadjusted numbers by the appropriate adjustment ratios (see Tables D.5 and D.6). The adjusted numbers are the numbers that could be expected if the pilot and control groups had the same proportional involvement of government departments and debt-collecting agencies.

Table D.5

Unadjusted and adjusted numbers of cases for which a notice of intention to defend was filed

Agency	Control group		Pilot group	
	Unadjusted	Adjusted	Unadjusted	Adjusted
Government	49	38.5	9	12.7
Debt-collector	86	89.3	89	85.7
Neither	302	319.2	209	197.7
	437	447.0	307	296.1

Table D.6

Unadjusted and adjusted numbers of cases for which there was a defended hearing

Agency	Control group		Pilot group	
	Unadjusted	Adjusted	Unadjusted	Adjusted
Government	19	14.9	3	4.2
Debt-collector	32	33.2	33	31.8
Neither	116	122.6	93	88.0
	167	170.7	129	124.0

Tables D.7 and D.8 show the effects of using adjusted rather than unadjusted numbers. It can be seen that these are slight in terms of percentage change, and that, with one important exception, the adjusted numbers do not affect whether differences between the groups are statistically significant.

Table D.7

Unadjusted and adjusted percentages of cases for which a notice of intention to defend was filed

	Control group		Pilot group		Significant difference?
	No.	%	No.	%	
All cases:					
unadjusted	437/2864	15.3	307/2695	11.4	yes
adjusted	447.0/2864	15.6	296.1/2695	11.0	yes
Summons served:					
unadjusted	437/2389	18.3	307/2323	13.2	yes
adjusted	447.0/2389	18.7	296.1/2323	12.7	yes

Table D.8

Unadjusted and adjusted percentages of cases for which there was a defended hearing

	Control group		Pilot group		Significant difference?
	No.	%	No.	%	
All cases:					
unadjusted	167/2864	5.8	129/2695	4.8	no
adjusted	170.7/2864	6.0	124.0/2695	4.6	yes
Summons served:					
unadjusted	167/2389	7.0	129/2323	5.6	yes
adjusted	170.7/2389	7.1	124.0/2323	5.3	yes
Notice of intention to defend filed:					
unadjusted	167/437	38.2	129/307	42.0	no
adjusted	170.7/447.0	38.2	124.0/296.1	41.9	no

The one case where the significance of a result is affected is in table D.8. Using unadjusted numbers, there was no significant difference between the 2 groups in the proportion of cases for which there was a defended hearing (5.8 percent for the control group and 4.8 percent for the pilot group). Use of the adjusted numbers resulted in a slight change in the proportions (to 6.0 percent for the control group and 4.6 percent for the pilot group) but this was sufficient to make the difference between the 2 groups statistically significant.

Appendix E

Calculating Percentage Decreases for Notices of Intention to Defend Filed and Defended Hearings

These calculations which are referred to in Chapter 12 use adjusted numbers derived in Appendix D.

For the control group, there were 447.0 notices of intention to defend filed out of 2864 plaints, and for the pilot group 296.1 out of 2695 plaints. To calculate the percentage change, it is necessary to use the same denominator for both groups. If there were the same number of pilot plaints as control plaints (2864) then there would be 296.1 (2864/2695) or 314.7 notices of intention to defend filed for the pilot group. This gives a decrease of (447.0 - 314.7) 447.0 or 29.6 percent in the number of notices of intention to defend filed from 1983 (control) to 1984 (pilot).

The decrease for defended hearings is worked out in the same way. There were 170.7 defended hearings for the control group out of 2864 plaints, and 124.0 for the pilot group out of 2695 plaints. If there were the same number of pilot plaints as control plaints, there would be 124(2864/2695) or 131.8 defended hearings for the pilot group, giving a decrease of (170.7 - 131.8)/170.7 or 22.8 percent in the number of defended hearings from 1983 to 1984.

Appendix F

The Questionnaires

Four versions of the questionnaire schedule were used, depending on whether the respondent was a solicitor, debt collecting agency, court staff member or judge. The questionnaire format was used as the basis for the interviews also.

QUESTIONNAIRE SCHEDULE : SOLICITORS

1. Approximately, how many conferences have you attended?

    * What proportion of these would you say were on behalf of plaintiffs? What proportion for defendants?

2. What is your opinion of the conferences generally?

    * Ineffective? Effective?

    * Please explain

    * Do you think the conferences are worth keeping or not?

    * Do you think they should be introduced as a permanent part of the civil process?

3. What problems did you find with the conferences?

    * How did you deal with these problems?

    * Have any of the problems you have identified been rectified?

    * Can you suggest ways in which the conferences might be improved?

4. Was the purpose of the conference clear to you before you attended your first one?

    * Is it clear now?

5. How have the conferences been conducted?

    * Friendly or unfriendly atmosphere?

    * Efficiently or badly organised?

6. How did other solicitors react to the conferences?

    * Co-operated? Resisted?

7. Do you believe you have fully disclosed cases you have handled at the conferences?

    * Do you think <u>other</u> solicitors have given full disclosure at the conferences?

8. Do you believe you have managed to be fully prepared for most conferences?

   * Do you think <u>other</u> solicitors have been fully prepared for the conference?

   * Are witnesses being briefed better?

   * Has the availability and recollection of witnesses improved due to the new procedure?

   * Do you think you are using your time in the civil area more profitably under the new procedure?

9. Have the conferences affected the way you handle civil cases?

   * If so, how?

   * Do you welcome these changes or do you think them unnecessary and troublesome?

   * Have the conferences increased or decreased your workload?

   * Do you feel more or less satisfied with your handling of civil cases where a conference is held as compared to cases going through the usual process?

10. One of the reasons for introducing the conferences was to speed up reaching a final decision in civil cases. Do you think the conferences have achieved this?

    * IF YES:

      - What specific features of the conferences do you think have led to this result?

    * IF NO:

      - Why have the conferences failed to do this?

11. Another major reason for the conferences is that they would deter defendants from filing defences frivolously (ie where he or she has no real intention of defending the case). Do you think the conferences have achieved this?

    * IF YES:

      - What specific features of the conferences do you think have led to this result?

    * IF NO:

      - Why have the conferences failed to do this?

12. Do you think certain types of civil cases benefit more from a conference than other types?

    * Which types? Why?

    * Did judicial approaches to the conference differ? If so, how?

13. Do you think the conferences have led to a greater number of pre-trial settlements?

    * If so, how have they achieved this?

14. Finally, would you call the conferences a success, a qualified success or a failure?

    * Why?

QUESTIONNAIRE SCHEDULE : DEBT COLLECTING AGENCIES

1. What experience have you or other members of the agency had with the conferences?

2. What is your opinion of them generally?

   * Good? Bad? Effective? Ineffective? Please explain

   * Do you think the conferences are worth keeping?

   * Do you think they should become a permanent part of the civil process?

3. Did the conferences present you with any special difficulties?

   * If so , what were they? How did you deal with these difficulties?

   * Can you suggest ways in which the conferences might be improved?

4. Have the conferences affected the way you handle civil cases?

   * If so, how?

   * Have they increased or decreased your workload?

   * Do you feel more or less satisfied with your handling of civil cases under the new scheme compared with the usual system?

5. In your experience have the conferences resulted in a quicker resolution of civil cases?

   * IF YES:

     - What specific features do you think have led to this result?

   * IF NO:

     - Why have conferences failed to do this?

6. Finally, would you call the conferences a success, a qualified success or a failure?

   * Why?

QUESTIONNAIRE SCHEDULE : COURT STAFF

1. How were you involved in the conferences?

2. Did you attend any conferences?

   * If so, how many?

3. What is your opinion of them generally?

   * Good? Bad? Effective? Ineffective?

   * How? Can you be specific?

   * Do you think the conferences are worth keeping or not?

   * Do you think they should be introduced as a permanent part of the civil process?

4. Do the conferences present you with any difficulties in your work?

   * If so, what difficulties? What can be done to improve the conferences?

   * Have they increased or decreased your workload?

   * Have solicitors commented to you about the conferences? Complaints or praise?

   * Have clients commented to you?

   * Have judges commented to you?

   * Do you feel more or less satisfied with your handling of civil cases under the new scheme compared with under the old scheme?

5. One of the reasons for introducing the conferences was to speed up reaching a final decision in civil cases. Do you think the conferences have achieved this?

   * IF YES:

     - What specific features of the conferences do you think have led to this result?

   * IF NO:

     - Why have the conferences failed to do this?

6. Another major reason for the conferences is that they would deter defendants from filing defences frivolously (ie where he or she has no real intention of defending the case). Do you think the conferences have achieved this?

   * IF YES:

     - What specific features of the conferences do you think have led to this result?

   * IF NO:

     - Why have the conferences failed to do this?

7. It was also hoped that the introduction of conferences would enable a more efficient court administration of civil cases. Has this come about?

   * IF YES:

     - What specific features of the conferences have led to this result?

   * IF NO:

   * - Why have the conferences failed to do this?

8. Do you think certain types of civil cases benefit more from a conference than other types?

   * Which types? Why?

9. Finally, would you call the conferences a success, a qualified success or a failure?

   * Why?

QUESTIONNAIRE SCHEDULE : JUDGES

1. Approximately, how many conferences have you presided over?

2. What is your opinion of them generally?

   * Ineffective? Effective?
     Please explain

   * Do you think conferences are worth keeping or not?

   * Do you think they should be introduced as a permanent part of the civil process?

3. What problems did you find with conferences?

   * How did you deal with these problems?

   * Have any of the problems you have identified been rectified?

   * Can you suggest ways in which the conferences might be improved?

4. What was the general approach to the conferences adopted by the solicitors?

   * Did solicitors understand or were they confused as to the purpose of the conference?

5. How did solicitors react to the conferences?

   * Do you think solicitors accepted or did not accept the pilot scheme?

   * Why was this so?

   * Were solicitors adequately prepared for the conference?

   * Have solicitors tried to avoid the conferences? If so, how?

   * Have any solicitors, to your knowledge, tried to bring up issues at the hearing which should have been dealt with at the conferences?

   * If so, what did you do about this?

6. Have you had any feedback (eg complaints or praise) from plaintiffs or defendants about the conferences?

7. Have the conferences affected the way you handle civil cases?

   * If so, how?

   * Have they increased or decreased your workload?

   * Do you feel more or less satisfied with your handling of civil cases where a conference is held as compared to cases going through the usual process?

8. One of the reasons for introducing the conferences was to speed up reaching a final decision in civil cases. Do you think the conferences have achieved this?

   * IF YES:

     - What specific features of the conferences do you think have led to this result?

   IF NO:

     - Why have the conferences failed to do this?

   * Have the majority of cases resulted in full disclosure at the conference?

   * Has the availability and recollection of witnesses improved as a result of the new procedure?

9. Another major reason for the conferences is that they are supposed to enable a quicker and smoother passage of the case at the defended hearing. Do you think this has happened?

   * IF YES:

     - What specific features of the conference do you think have led to this result?

   * IF NO:

     - Why have the conferences failed to do this?

10. Do you think certain types of civil cases benefit more from a conference than other types?

    * Which types?

    * Why?

11. Finally, would you call the conferences a success, a qualified success or a failure?

    * Why?