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First published February 2015

ISBN 978-1-84099-685-2

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A survey of civil court users: a feasibility study

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In 2013, the Ministry of Justice commissioned a research consortium (listed above) to undertake a study to explore the feasibility of conducting a representative and robust survey of civil court users. The study comprised two phases. Phase 1 looked at the suitability of using the HM Courts & Tribunals Service case management system data as a sampling frame; Phase 2 piloted telephone and postal survey approaches to test whether they could deliver robust and reliable data. This report summarises the findings from the feasibility study.

Key findings

- Conducting a robust and representative survey of civil court claimants and defendants is challenging. This is due to the limited availability of contact information held on the identified sample frame and to reluctance among some groups to take part in a survey.
- At the time of the study, the HM Courts & Tribunals Service case management system for civil cases (Caseman) was the only viable sampling frame, providing a comprehensive list of all civil cases and allowing for a sample to be stratified by key factors such as case type. The contact details held on the system were, however, limited. While address information was complete for the vast majority of claimants and defendants, there was limited inclusion of telephone numbers, and email addresses were rare.
- A telephone survey would enable more detailed data to be collected from civil court customers than a postal survey. The limited inclusion of telephone numbers, however, cast doubt on whether a representative sample of civil court customers could be contacted and interviewed by phone. Two survey approaches were therefore piloted – a postal survey of individual (i.e. not business) claimants and defendants, and a telephone survey covering both individual and business claimants and defendants. A telephone directory-matching exercise based on address information was undertaken to increase the proportion of the sample with telephone numbers for the telephone pilot.
- The postal survey tested the impact on response rates of offering a £5 ‘thank you’ voucher, and found this to be effective in increasing response rates to an acceptable level among claimants. A response rate of 31% was achieved among individual claimants when the voucher was offered, compared with 22% without the voucher. For defendants the response rate was low, at only 12% with the voucher.

Key findings continued

- Based on these findings, and an assessment of non-response bias, it was concluded that a postal survey of individual claimants would be broadly representative, as long as an appropriate non-response weighting strategy was adopted. The response rate was, however, too low among defendants for a postal survey to deliver representative findings.
- The overall response rates among those sampled for the telephone survey (where non-respondents include both those who did not respond to the survey and those for whom there was no valid telephone number available) were low for all groups – 17% among individual claimants, 6% among individual defendants, 11% among business claimants and 5% among business defendants. The low response rates were largely due to the lack of telephone numbers, even after the matching exercise, as well as, in businesses, the lack of named contacts. These response rates were deemed too low for a weighting strategy to adequately account for potential non-response bias.
- These findings suggest that it would be feasible to undertake a representative postal survey of *individual claimants* using Caseman as a sampling frame, but that surveys of other groups using Caseman are not likely to be robust using any of the approaches tested.
- Improved coverage of telephone numbers on the Caseman system, and for businesses having a named contact in the business, could facilitate a future telephone survey of civil court claimants and potentially of defendants. Defendants – especially those that do not actively engage with their case – are, however, likely to be difficult to recruit for any survey, and alternative approaches to understanding their experiences and motivations may be required.

Background

The Ministry of Justice (MoJ) and its agencies cover a wide range of functions designed to deliver fair, effective, efficient and responsive justice through the criminal, civil, family and administrative justice systems. Understanding the characteristics and experiences of, and outcomes for, those who come into contact with the justice system is important in helping to inform the design and provision of services. This study focused on developing a suitable methodology for gaining a better understanding of *civil* court customers and their experiences.¹ A civil court customer can be involved in a case as a claimant (the person or organisation who started the claim) or as a defendant (the person or organisation who the claim is made against).

In 2013, there were 1,487,000 claims² issued and 43,000 hearings or trials in civil courts.³ Civil justice

cases (that do not involve family matters) predominantly relate to claims for a specified amount of money (e.g. debt) (64%), unspecified money claims (e.g. personal injury) (11%), non-money claims (e.g. mortgage and landlord possession) (23%), and insolvency (3%). Many of the cases involve disputes about agreements made between individuals and/or companies or organisations. Many claims submitted to court are not actively defended by the defendant. It has been estimated that only 14% of cases were defended in 2013.⁴

While previous research provides some useful information on civil court customers' views and experiences,⁵ evidence gaps remain. In particular, more systematic quantitative information is needed in relation to the following.

- Socio-demographic characteristics of civil court customers.

1 Phase 1 of the research also explored the potential sampling frames for conducting a survey of private family court customers. However, fuller exploration of survey options was not possible within the set time frame for the project.

2 Includes insolvency petitions (Ministry of Justice, *Court Statistics Quarterly: January to March 2014*, published June 2014).

3 Ministry of Justice, *Court Statistics Quarterly: January to March 2014*, published June 2014.

4 Ministry of Justice, *Court Statistics Quarterly: January to March 2014*, published June 2014 – see Table 1.2.

5 See, for example, *HMCS Court User Survey*, available at <http://www.justice.gov.uk/statistics/previous-stats/hmcs-court-user>, and I. Pereira, P. Harvey, W. Dawes and H. Greevy (2014) *The Role of Court Fees in Affecting Users' Decisions to Bring Cases to Civil and Family Courts*, Ministry of Justice Analytical Series.

- Financial resources of customers – to understand the extent to which financial resources and costs encourage or deter customers from accessing justice through courts.
- Legal capabilities and knowledge – to understand the extent to which customers are able to engage with the justice system, in particular without professional help or advice.
- Pathways to civil court systems – to understand the routes through which people come into contact with the court system, and the extent to which their expectations of courts or their knowledge of alternative options influence their decisions to use courts.
- User experience – to assess their experiences and how these compared with their expectations, and levels of satisfaction and perceptions regarding, for example, fairness of the process.
- Outcomes – to understand whether court decisions are followed and the wider impacts, for example on financial situation or employment.

MoJ commissioned a feasibility study to explore various options for conducting a robust survey of civil court users (claimants and defendants), to propose a potential survey design or designs and to test the design(s) in a pilot. The aim of this work was to make sure that a number of challenges in undertaking such a survey, such as completeness of sampling frames, encouraging high levels of response, and appropriate question design, were fully explored and tested prior to any full-scale survey being undertaken.

Methodological considerations

The feasibility study examined a number of key issues to inform the assessment of whether it was possible to conduct a robust survey of civil court users. These included:

- the availability of an appropriate sample frame from which a representative sample of claimants and defendants could be drawn, covering both

individuals and those acting for small and medium-sized businesses;⁶

- the availability of case, claimant and defendant information on the sampling frame to facilitate sophisticated sampling strategies (e.g. to make sure sufficient numbers of respondents in specific groups of interest);
- the availability of claimant and defendant contact details to facilitate different modes of data collection, such as telephone, postal or, online;
- the type of information sought and its suitability for different modes of data collection;
- the most appropriate time in a case to survey users, taking into account how up to date contact details would be, how likely survey respondents would be to accurately recall their experiences, and the type of information that could be asked (for example case outcome could only be captured after the case has finished);
- the survey response rates and representativeness that could be achieved.

Phase 1: Suitability of Caseman as a sampling frame

Phase 1 of the study examined whether information held on the HM Courts & Tribunals Service case management system for civil court customers (Caseman) provided a suitable sample frame for the conduct of a survey of civil court customers.

⁶ Large businesses, which potentially deal with a large volume of claims, were out of scope of the survey as it would be difficult to survey them about an individual case. Large businesses may also have a different approach to dealing with civil cases compared to one-off or infrequent users.

This involved a number of exploratory elements, including:

- consultation with MoJ about evidence requirements, for example the type of information to be collected and the subgroups of interest;
- discussions with HM Courts & Tribunals Service and MoJ about the information held on the Caseman system, particularly the type, quality and coverage of contact details;
- a review of the civil claim forms and discussions with court staff about how the forms are processed and the information transferred to the Caseman system;
- a review of a Caseman data extract to assess the number of cases in the various subgroups where telephone numbers and address information were available.

Findings

The Caseman case management system includes details of all civil court applications and provides basic case details (for example, if specified or unspecified monetary claim, if defended, if there was legal representation) and information on the progress of cases, including dates of events as the case progresses. These details allow for a sample to be drawn to a detailed specification, with oversampling of subgroups that are of particular interest but are small relative to other groups, such as defended cases. No other viable source was found from which to draw a representative sample.

There were, however, some characteristics of Caseman which had implications for its use as a sampling frame, and in particular for the mode of the survey.

- The telephone contact information held was limited – populated for only 15% of civil claimants and 3% of civil defendants – see **Table 1**. This was mainly because telephone numbers are not requested in claim forms.⁷ Given these percentages, it was not considered possible to select a representative sample of all claimants and defendants from those with telephone numbers alone.

⁷ Most forms do not request telephone numbers. The exceptions to this are the N5 and N5B forms (claims for possession and claims for accelerated possession) where a telephone number is requested for claimants but not for defendants.

- Address information was available for most cases. A review of 500 cases extracted from Caseman showed that there was useable address information for 94% of cases. A postal survey was therefore considered possible, although this mode would limit the type of information which could be collected compared with a telephone approach.
- Although fields were included on Caseman for email addresses of both claimants and defendants, these fields tended not to be populated. Email addresses tended only to be available for claims made online.

In light of the above features, a decision was made to pilot both a telephone and a postal survey in Phase 2 of the study. The good coverage of address details meant that a postal survey was deemed potentially viable, although the achievable response rate required piloting. The viability of a telephone survey depended on whether the number of cases with telephone numbers could be increased. This was tested in the pilot firstly by writing to claimants and defendants asking for a telephone number, and secondly by a telephone directory-matching exercise. As email addresses on Caseman were rare, the option of an online survey was discounted at an early stage.

Table 1: Percentages of claimants and defendants with phone numbers recorded on Caseman (full record and pilot sample extract)

		% with field populated with a phone number	
Caseman record*	Claimants		15%
	Defendants		3%
Pilot	Claimants	<i>Individual</i>	10%
		<i>Business</i>	13%
	Defendants	<i>Individual</i>	7%
		<i>Business</i>	6%

* This excludes Claims Production Centre/Money Claims Online cases, for which phone number % could not be provided. The pilot sample allowed for estimates to be made separately for individuals and businesses and to include CPC/MCOL.

Phase 2: Piloting telephone and postal survey methodologies

The pilot stage (Phase 2) involved developing and piloting the telephone and postal survey approaches to test whether either or both could deliver robust data.

Sampling

A stratified random sample was drawn from the Caseman system. This was designed to make sure that there was a good coverage across the key subgroups of interest (e.g. claimants and defendants; different case types, e.g. specified and unspecified claims, defended and undefended claims; and the route by which proceedings had been issued⁸).

The case management system was set up at the case level and sampling was divided into two stages: selecting the case and then at random selecting the claimant or defendant. Each member of the sample was randomly allocated to either the telephone or postal pilot.

The main sample consisted of cases opened in July 2013. This included both defended and undefended cases. There was also an additional boost sample of defended cases that started between March and June 2013.⁹

The time period between the start of a case and survey data collection ranged from four to nine months. The survey data suggest that the majority of cases (around 70%) had concluded within this time frame.¹⁰

Cases which take longer to conclude are those which are defended and result in a hearing or trial. To collect outcome information on these cases, it was estimated that a survey would need to be conducted six months after the start of a case that resulted in a hearing and 12 months after the start if the case resulted in a trial.

Telephone survey

Approach

Around 2,500 civil customers were selected for the telephone survey pilot, with approximately equal proportions of claimants and defendants. The sample included 1,592 individuals and 869 businesses. The business sample at this stage included businesses of all sizes, but at a later stage an attempt was made to screen out large businesses of 250 or more employees.¹¹

Of the 1,592 **individuals** in the sample, telephone numbers were available for 9% (146) on the Caseman system. Two routes were attempted to obtain telephone numbers for the remaining 1,446 individuals. Firstly HM Courts & Tribunals Service wrote to the individuals to request their telephone number; and secondly, for those who did not respond to the first request, their name and address details were cross-checked against publicly available directories. Just 16% of those written to provided a telephone number, and telephone numbers for a further 7% were obtained via the cross-check against the directories.¹²

For the 742 small and medium-sized **businesses** in the sample, 7% had telephone numbers on the Caseman system. The cross-check against directories was used to identify additional telephone numbers, and these were obtained for a further 51%. **Figure 1** below provides details of the success of the telephone enhancement exercise.

All sampled individuals and businesses were offered the opportunity to opt out of the survey, either as part of the request for their telephone number or in an advance letter prior to the telephone survey being conducted.

The fieldwork for the telephone survey ran from December 2013 to January 2014. The 25-minute telephone survey questionnaire included questions on the profile of survey respondents and their experiences up to the point of the interview.

8 The five routes identified were Claims Production Centre, Money Claims Online, The County Court Money Claims Centre, Possession Claims Online and individual courts.

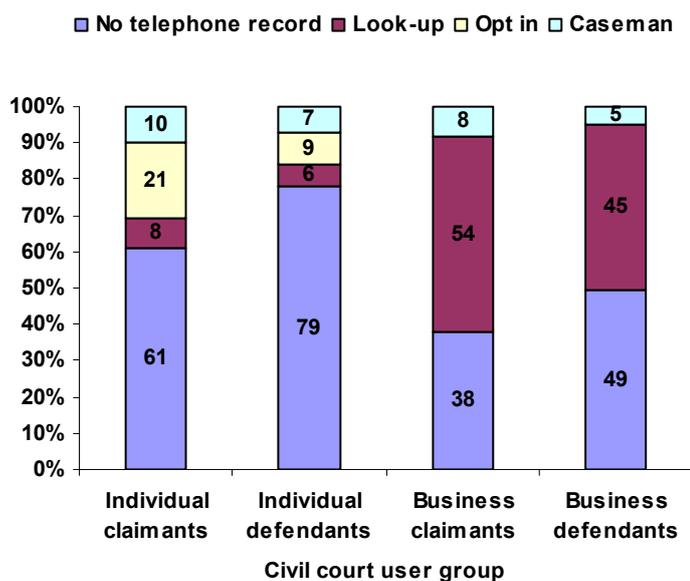
9 The boost sample was included to ensure that there were sufficient numbers of defended cases in the sample.

10 Caseman did not include a 'case closed' field, so it was not possible to draw a sample based on completed cases.

11 The sample was manually screened using companycheck.co.uk. If the business was not recognised on the database, it was assumed that the company was not large and the case was kept in the sample.

12 In total, a match was achieved for 671 individual civil court users (56% of those sought) but the large majority of these matches were ex-directory and could therefore not be supplied.

Figure 1: Success of telephone enhancement phase: distribution of telephone numbers by source



Findings

Response rates

The response rates are summarised in **Figure 2**. The *survey response*¹³ to the telephone survey was reasonably good amongst **individuals** for whom a valid telephone number was available (57% of claimants with a telephone number and 43% of defendants with a telephone number responded). The low proportions of individuals for whom a valid telephone number was available (39% of claimants and 21% of defendants) meant that the *overall response rates*¹⁴ were 17% among individual claimants and 6% among individual defendants.

The *overall response rates* for the telephone survey among **businesses** were similar to those for individuals: 11% of claimants and 5% of defendants. Although the proportion of businesses with valid telephone numbers was higher, the *survey response rate* among those with telephone numbers was substantially lower than among the individuals (28% of business claimants and 21% of business defendants). The main reason for this was the difficulty in reaching the appropriate person in the business, as named contacts were not available for many of those in the sample.

Assessment of response bias

Information available on Caseman enabled an assessment of response bias against certain case characteristics – i.e. it could be checked whether the profile of respondents matched the known profile of all on the sampling frame. It was not possible, however, to assess for potential bias in relation to *personal* characteristics (e.g. age, income), as these are not recorded on the system. The analysis showed differential response rates among both individuals and businesses, and claimants and defendants in relation to the following four factors:

- case type (e.g. specified or unspecified) and route into court;
- whether the case was defended;
- whether the claimant or defendant had legal representation;
- whether a judgment by default was made.

For example, among **individual claimants** the overall response rate was lower for unspecified money claims (12%), possession claims (14%), undefended cases (14%), and those with legal representation (14%). It was higher for those using Money Claims Online (MCOL) (29%), specified money claims (20%), those without legal representation (24%) and defended cases (21%). This variation in response biases the sample towards certain types of cases, and under-represents others.

For **individual defendants**, non-response appeared to be particularly acute among those who were not actively engaging with the case. Response rates were particularly low for judgment by default cases (2%) and undefended cases (4%). They were also very low for those without legal representation (5%).

Overall the telephone pilot generated low overall response rates for all four customer groups (individual claimants, individual defendants, business claimants and business defendants) and the risk of response bias was considered too high to generate a survey that would be considered robust, even after the application of a weighting scheme.

¹³ The survey response rate refers to the number of achieved interviews from the sample issued (i.e. the sample for which there was a valid telephone number available).

¹⁴ The overall response rate is the number of interviews achieved from among all cases assumed eligible for the survey, including those without telephone numbers.

Figure 2: Response rates to telephone survey

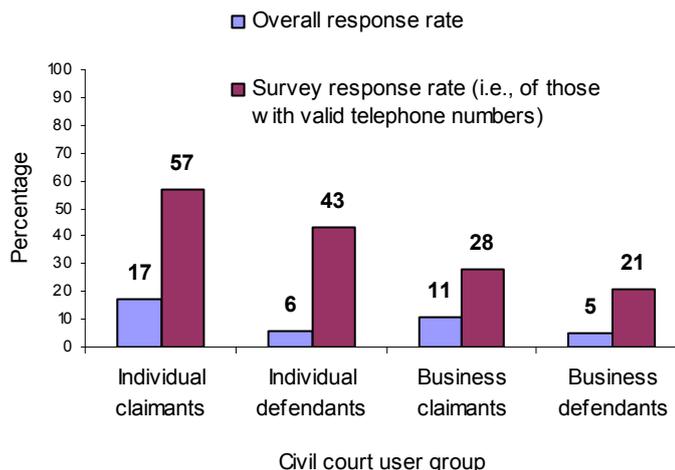
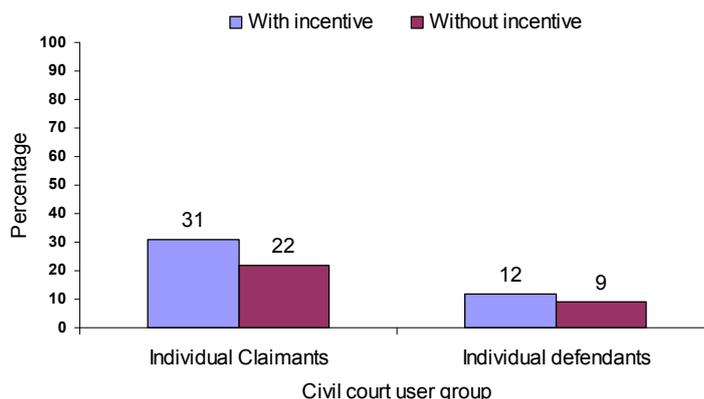


Figure 3: Response rates to postal survey by whether or not an incentive was provided



Postal survey

Approach

The postal survey was conducted amongst individual claimants and defendants only. Business customers were not included as existing evidence indicated that postal survey response rates among businesses are typically very low.

Fieldwork for the postal survey was conducted between November 2013 and January 2014. The postal survey involved an initial mailing to 1,000 customers (512 claimants and 488 defendants) and two reminders intended to maximise the response.

Given the low response rates associated with postal surveys, an experiment was conducted to test the impact on response rates of offering a £5 shopping voucher as a thank you for completing the survey. A random half of the sample was offered the voucher if they completed and returned the survey.

The postal questionnaire was shorter and simpler than the telephone questionnaire, fitting onto 16 sides of an A4 booklet.

Findings

Response rates

The response rates among **individual claimants and defendants** are summarised in **Figure 3**. The survey achieved a response rate of 31% among claimants and 12% among defendants, where the £5 voucher was offered. Where it was not offered, the response rate was lower: 22% among claimants and 9% among defendants.

For claimants who were offered the incentive, the 31% rate is in line with other government postal surveys.

Assessment of response bias

As with the telephone survey, an assessment of the response bias was made.

For **individual claimants**, the analysis indicated that the response rate varied by case type, whether the claim was defended and whether there was legal representation. For most groups offered the voucher the response rate was at least 28%. It was lower for claimants in unspecified money claims (16%) and cases that went directly to the county court (23%).

It was assessed that a thorough non-response weighting strategy, weighting by case and area characteristics, could be used to make sure that the survey was broadly representative of all individual civil claimants and that any remaining biases would be acceptably small.

For **individual defendants**, however, the response rate for some subgroups was particularly low, and therefore it was concluded that even with a thorough weighting strategy there may be biases in the survey that the weighting would not address.

Overall the pilot suggested that a postal survey, with the offer of a £5 voucher, could provide robust evidence for individual claimants, but that a postal survey of individual defendants was not feasible.

Conclusions and recommendations

This study sought to identify a feasible method of undertaking a robust survey of civil court claimants and defendants. This proved challenging.

The preferred survey mode, for the type and level of information to be collected, would be a telephone survey. This study, however, identified a number of challenges to conducting a telephone survey, most notably the low proportion of cases which have telephone number details available on Caseman. If measures were taken to collect telephone numbers from claimants and defendants and record this information on the Caseman system, this would facilitate a future telephone survey, at least for some subgroups of interest.

Given the currently limited availability of telephone numbers, the main conclusions for each of the subgroups are as follows.

Individual claimants and defendants

For individual claimants it is possible to conduct a reasonably robust postal survey. The postal survey pilot achieved an acceptable response rate (where a £5 voucher was offered). Using a weighting strategy to adjust the survey data for biases would mean that a postal survey of this subgroup would be of an acceptable quality. If, however, a higher proportion of cases had claimant telephone numbers available, a telephone survey would be likely to deliver a more robust survey.

For individual defendants the response rate to the postal survey was too low to deliver robust findings. While improved collection of telephone numbers in the future would enable a telephone survey to be reconsidered, it may be that this is only suitable for those who defended their case or who were otherwise engaged in the process. The findings from this study suggest that individual defendants in undefended cases may be particularly unwilling to take part in any survey, regardless of how it is delivered.

Business claimants and defendants

Postal surveys are challenging among businesses and typically deliver very low response rates. The telephone pilot found that, even among businesses where a telephone number was available, response rates were low, particularly among defendants. A key factor appeared to be the lack of a named contact in the organisation. For a telephone survey of business users to be feasible, a named contact

would need to be collected and recorded on Caseman. As with individual defendants, it is likely that business defendants in undefended cases will be particularly difficult to engage in any survey, even if there is a named contact.

References

A full technical report is available from the Surveys Team in MoJ Analytical Services at:
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