



SCOTTISH EXECUTIVE

The Role of Mediation in Tackling Neighbour Disputes and Anti-social Behaviour

Development Department



**THE ROLE OF MEDIATION IN TACKLING
NEIGHBOUR DISPUTES AND
ANTI-SOCIAL BEHAVIOUR**

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SUMMARY

1. The aims of the study are to provide evidence about mediation and alternative approaches to the resolution of neighbour disputes, and to draw conclusions about the effectiveness and costs of mediation compared to legal remedies such as actions for repossession and anti-social behaviour orders. An additional objective was to investigate the reasons for refusing to take part in mediation.

2. In the study, the main research methods used were analysis of 100 cases from two community mediation services and two local authority mediation services, and 50 legal proceedings cases (eviction, anti-social behaviour order and interdict) from local authorities. In addition, parties to mediation were interviewed to compare their view of outcomes with those recorded by mediation services. Housing officers who make referrals to mediation, and a small number of people who had opted not to take part in mediation, were also interviewed. The main methodological challenges were the difficulty in obtaining data from environmental health, police and housing services, and to a lesser extent from mediation services; the reasons for this included data protection considerations, and lack of time recording. Specialist investigation teams provided the most robust data, but few areas of Scotland have such teams therefore these costs may not be typical.

3. In general, the mediation cases examined involved mildly anti-social behaviour or serious personality or lifestyle clashes. In most cases, the main presenting issue was noise, either noise of domestic appliances, children, dogs, and other 'normal' living, or noise of parties and loud music. A smaller number of disputes originated in disputes between children, with which parents had become involved, or disputes over boundaries and upkeep of common areas. Cases remained live in mediation services generally for between two weeks and two months. Half of the cases included at least one non-council-tenant party.

4. In 61 percent of cases, the outcome recorded by the mediation service was either full or partial agreement or some improvement in the situation. In just under half of these cases (in 28 percent of all cases), the mediation service recorded an agreement on all presenting issues. Mediators themselves, however, suggest that there are likely to be positive outcomes in terms of changed awareness, which cannot easily be measured, even in 'unsuccessful' cases. The profile of interventions, outcomes and costs varied significantly between mediation services.

5. From the perspective of participants, however, outcomes recorded at the close of a case are not necessarily a reliable guide to the longer-term outcomes. Although outcomes are not always worse than those recorded, the proportion of positive outcomes recorded by some mediation services appears not necessarily to reflect the experience of participants. Participants' views demonstrate some of the challenges facing mediation, but show a generally positive view of the process, even where it does not bring the desired outcome. A number of participants, however, have found the mediation process more traumatic than might be expected.

6. All legal action cases studied involved serious and protracted anti-social behaviour, often including fighting, verbal abuse, swearing and damage to property. In most cases, it involved the perpetrator and visitors or family members, and in all cases it affected more than one neighbour. In many cases, there was a history of criminal convictions and/or mental health and/or alcohol-related problems. These cases in general were quite different to those found in mediation services. The seriousness of the behaviour was reflected in the length of time from decision to take legal proceedings to an outcome; this was usually several months and often one or two years. The majority of perpetrators were local authority tenants.

7. In terms of outcomes of legal cases, it is particularly difficult to assess the long-term outcomes of evictions and transfers, which were the short-term outcome in half of the cases. In the short term, several cases were 'solved' by the perpetrator moving away, being imprisoned, or being offered a community care package. In only two cases were proceedings dropped due to evidence of improvement in the situation. The majority of anti-social behaviour orders examined were breached, some of which breaches were then prosecuted.

8. From the 100 mediation cases studied, the average cost of handling a case was £121, which rose to £204 when face-to-face or shuttle mediation was involved; and the maximum case cost was £484. Costs for local authority mediation services were, on average, slightly lower, but this reflects a higher proportion of cases where no contact was made with parties to the dispute. From the 50 legal cases, the average cost was £3,546, with a range from £339 to £13,692 for a very complex eviction case. These are net costs, however, and would be considerably higher if overheads were included. Average costs of ASBOs and repossession actions were approximately £2,250 and £9,000 respectively. These figures should be read in the context of the diverse organisational arrangements found; that is, the costs depend on the proportion of work carried out by a specialist team with its own budget, or by housing managers, where costs are likely to be absorbed.

9. In terms of unwillingness to take part in mediation, or to see the process through to a conclusion, the main reasons given by refusers themselves were: unwillingness to engage with the other party; fear of reprisals; belief that the other party did or would manipulate the process or the mediators; fear of an escalation of the dispute; and the desire for a definitive judgement on their case. Lack of knowledge about mediation or of confidence in mediation services did not appear to be a significant factor.

10. Legal action costs far more than mediation, due to the seriousness of disputes, but also to the procedures required in order to prepare a case for possible court action. There are local variations in the amount of evidence generally thought to be necessary for a strong case.

11. Although mediation will not be sufficient to deal with serious anti-social behaviour, which is associated with alcohol and drug abuse, mental health problems or criminal activity, its cost effectiveness suggests that there is considerable scope to extend mediation in the area of neighbour disputes.

1. AIMS AND OBJECTIVES OF THE STUDY

1.1 The main aims of the study are to use case studies to:

a. collect and analyse substantial fresh evidence about mediation and alternative approaches to neighbour dispute resolution in Scotland, and

b. draw conclusions about the effectiveness and costs of mediation as compared to legal remedies (interdict, anti-social behaviour order, action for possession and eviction, and action by environmental health departments, police and procurator fiscal).

1.2 Specifically, the objectives are to:

- collect quantitative and qualitative evidence of the costs and effectiveness of the intervention in each case, including the views of disputants;
- present conclusions about the relative effectiveness and costs of mediation; and
- examine the reasons why some disputants do not agree to the use of mediation.

1.3 Existing research on neighbour disputes and anti-social behaviour is based largely on the experience of local authority housing management. The dominance of owner occupation generally, and the increasingly mixed tenure profile of many former 'council estates', mean that neighbour disputes can no longer be seen as solely a local authority housing management problem. This research, therefore, will examine the use of mediation and legal measures across tenures.

1.4 We adopt the broad definition of neighbour dispute used by Mackay and Moody (1994): 'incidents that reflect an underlying or potential conflict, between people living in relational and geographical proximity, excluding the immediate family'.

2. MEDIATION FOR NEIGHBOUR DISPUTES

Extent of neighbour problems

2.1 Neighbour disputes are widespread, however the use of mediation is not. According to a recent survey (Palmer and Monaghan 2001), neighbourhood disputes are the most common type of civil legal problem, experienced by 12 percent of the population (compared to seven percent for criminal problems and six percent for housing problems, the next most common civil problem). Only two percent of people who seek help for any civil legal problem approach a mediator.

Purpose and ethos of mediation

2.2 Mediation aims to provide more sustainable and satisfactory outcomes and to resolve disputes without having to resort to costly and time-consuming legal processes. Advocates

of mediation claim that it offers a non-adversarial, non-judgemental, confidential, relatively inexpensive, and speedy way of tackling disputes (Gray 2002, Mackay and Brown 1998). It also removes the reliance on external adjudication and retains responsibility for a solution with the parties themselves. Mediation services avoid using language such as ‘perpetrator’ or ‘victim’, and use neutral identifiers such as ‘party one’ and ‘neighbour two’. More generally, it is claimed that mediation can encourage better communication and greater tolerance in communities. It can deal with disputes for which there is no appropriate legal remedy. It can reduce the risk of agencies themselves becoming embroiled in disputes. In terms of effectiveness, Gray (2002) suggests that it is difficult to compare mediation with housing and environmental health intervention because of its flexibility. As with all restorative justice approaches, the lack of clear distinction between offender and victim sets mediation apart from the ethos of the criminal justice system.

Models and process of mediation

2.3 Two main models of community mediation have been identified (Peper and Spierings 1999): neighbourhood and city, which differ in the size of area with which they are identified. A more appropriate term for the model found in Scotland is a ‘city or regional’ model, reflecting the coverage of rural areas. In 1998, when Dignan and Sorsby (1999) did their survey of mediation in Scotland, there were three community mediation services and two in-house local authority services. By 2002, that number had doubled, to five community mediation services (Edinburgh, Fife, Aberdeen, East Lothian, Orkney) and three local authority in-house services (Falkirk, South Lanarkshire and Scottish Borders - with at least two more in the start-up phase). Although most cases involve two individuals or households, some can involve large groups of neighbours. A growing number of local authorities have in-house mediation services. Gray (2002) suggests that around ten percent of mediation services in the UK are ‘in-house’, but that the expansion of this model is limited by the reduction in council tenancies through the Right to Buy and stock transfer.

2.4 Mediation for neighbour disputes in the UK is voluntary. One or more parties may decide not to take up the offer of mediation, or may withdraw at any point during the process. After initial contact with mediation services, the parties may resolve the matter without mediator involvement, although this may be influenced by contact with mediation services. There are several ways in which mediators can operate: to speak to one or both parties by phone or in person, by ‘shuttle’ mediation where an agreement is reached without direct contact between parties, or by face-to-face meetings. In the community mediation service studied by Mulcahy (2001), most cases were resolved without mediation, and 28 percent of cases were resolved by shuttle or face-to-face mediation (face-to-face in only 12 percent of cases), with the rest dealt with by visits or telephone contact with the parties. Although mediation is often associated with the use of unpaid mediators, Gray (2002) found that a significant number of services had begun to pay mediators in order to meet service delivery targets, because paid mediators are more likely to have greater availability.

Referral routes and types of case

2.5 Cases reach mediation services through referrals by the parties themselves or via services such as housing, environmental health or police. A recent evaluation of a

community mediation service in England (Mulcahy 2001) found that although housing officers were generally positive about mediation, it was rarely the first option for them; mediators, on the other hand, believed housing officers should refer cases sooner.

2.6 There are types of case where mediation is less suitable (Mackay and Brown 1998); for example, disputes that are very entrenched, that involve mental illness, criminal charges, violence, or ongoing civil proceedings; but these are not absolutes. Mulcahy (2001) found that housing officers generally avoided referring cases of domestic violence, racial harassment or mental health problems. Research into how neighbourhood disputes are dealt with by Procurators Fiscal (Mackay and Moody 1996) found that around half of cases were potentially suitable for diversion to mediation. However, police reports did not contain sufficient detail for prosecutors to make informed decisions about prosecution and alternatives. Prosecutors were doubtful about the effectiveness of court proceedings that could only exacerbate the problem. This suggests that there is considerable scope for expansion of mediation.

2.7 Noise is the main cause of neighbour disputes. Mediation UK's 2001 Community Mediation Dispute Survey found the main issue in disputes to be noise (45 percent of cases), abusive behaviour and threats (20 percent), children's behaviour (17 percent), and boundary or property disputes (17 percent). In 2001-02, community mediation services in Scotland saw almost the same percentage (44 percent) of noise-related cases (figures from SACRO). In the community mediation service studied by Mulcahy (2001), 52 percent of cases were noise-related.

Outcomes of mediation

2.8 In 2001, across the UK, the proportion of cases where full or partial agreement was reached was 30 percent, although around one in five cases closed following withdrawal by one or more parties (Gray 2002). Of 703 cases coming to community mediation services in Scotland in 2001-02, 59 percent resulted in a positive outcome of agreement or improvement of the situation. In 85 percent of the remaining cases, this lack of agreement or improvement was a result of withdrawal or refusal to get involved by one of the parties (figures from SACRO).

2.9 The study by Dignan, Sorsby and Hibbert (1996) concluded that the outcomes of community mediation are likely to be better than informal intervention, which is often ineffective, or amounts to very little intervention at all. As in relation to victim-offender mediation, it has been argued that agreements as a measure of success is ambiguous, and depends on what one means by agreements and what they mean to the parties (Marshall and Merry 1990). One of the conclusions of Mulcahy's study (Mulcahy 2001) was that the success of mediation had to be seen in the context of structural and social causes of disputes (such as poor design, high-density living, lack of play facilities, mental health problems and cultural differences), which are readily identified by mediators themselves.

3. LEGAL MEASURES

Neighbour disputes and anti-social behaviour

3.1 'Neighbour dispute' is not a specific legal category, and can cover a wide variety of behaviour and situation (for example, it is not a category by which the Scottish Legal Aid Board can examine their records). There is a close relationship between measures aimed at neighbour disputes and at anti-social behaviour. As Bannister and Scott (2000) point out, however, the two are not synonymous: the anti-social behaviour 'spectrum' includes neighbour problems, neighbourhood problems and crime problems. As Mackay and Brown (1998) note, neighbour disputes do not necessarily involve anti-social behaviour: 'disputes in neighbourhoods may result from innocent clashes of interest'.

Principal legal measures

3.2 Since 1998, the legal framework within which local authorities tackle neighbour disputes involving anti-social behaviour has changed. Until the advent of ASBOs, the legal remedies available to social landlords were action for repossession and interdict. The Crime and Disorder Act 1998 altered the statutory grounds for possession to broaden the scope of behaviour covered, to include anti-social behaviour by visitors, and to facilitate the use of professional witnesses.

3.3 Furthermore, the Crime and Disorder Act introduced Anti-Social Behaviour Orders (ASBOs), with effect from April 1999. At the time of writing, ASBOs were available to local authorities only, although the Criminal Justice (Scotland) Bill extends them to other social landlords. Breach is a criminal offence. The advantage of ASBOs from the local authority's point of view is that they can be used against non-tenants; and where there is no breach of tenancy conditions; and they can be used as evidence in any subsequent eviction proceedings. They take longer to obtain, however, than interim interdicts – although the Criminal Justice (Scotland) Bill 2002 makes provision for interim ASBOs. In 2000-01, only 13 percent of ASBOs were granted in less than one month, and half took more than four months from the date of lodging the application in court (Fletcher 2002). With the introduction of anti-social behaviour orders (ASBOs), social landlords in Britain are increasingly relying on civil law powers to control behaviour due to difficulties with witnesses in criminal proceedings (Burney 2000). ASBOs are, however, not only used for neighbour disputes; they can also be used to anti-social behaviour related to drug dealing, for example.

3.4 An interim interdict can be granted very quickly without representation from the defender. It may be recalled later if the defender gives an undertaking as to future conduct. As for ASBO, breach is an offence. Unlike for ASBOs, there may be difficulty in establishing title and interest if council property or employees are not involved. Atkinson, Mullen and Scott (2000) found that the use of interdict for anti-social behaviour was less frequent than action for possession, and was rare outside local authorities (in 1996-97, 29 such interdicts were granted, 27 to local authorities).

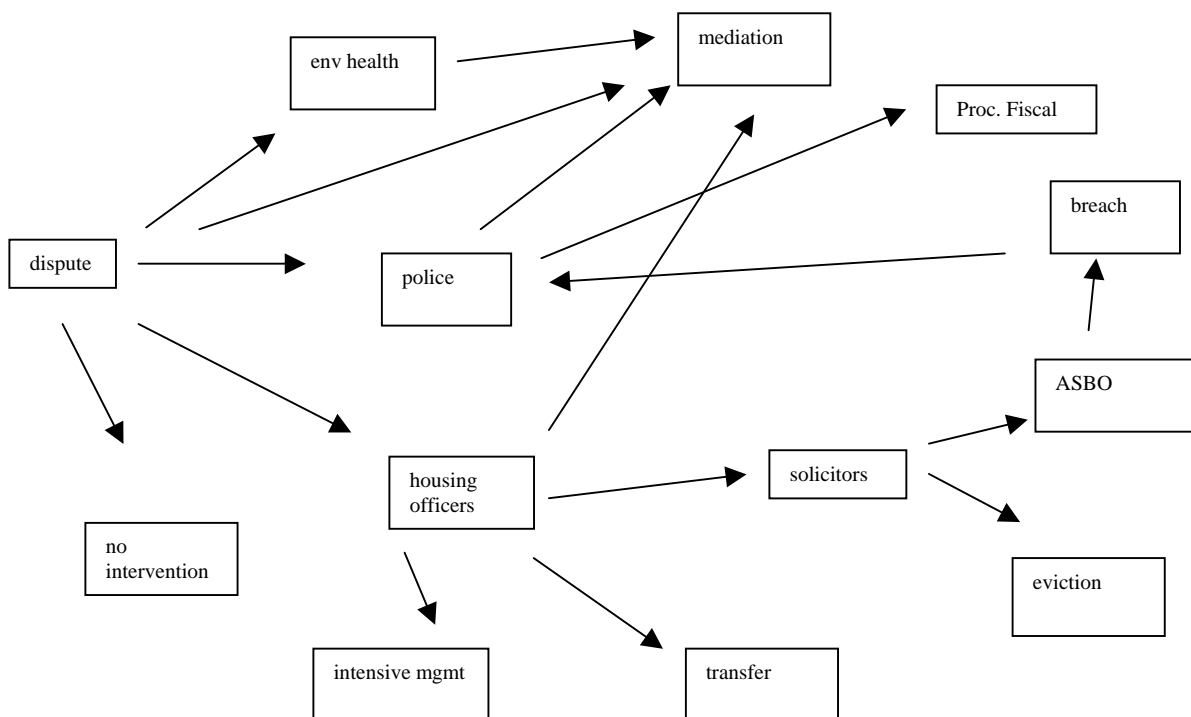
Other legal measures

3.5 Two other forms of legal action to tackle neighbour disputes co-exist with ASBOs, interdicts and repossession proceedings. These are environmental legislation (for noise issues) and police action. Figure 1 shows a simplified model of the various ways neighbour disputes may be dealt with.

3.6 Noise is the main reason for environmental services' involvement in neighbour disputes. Under Part III of the Environmental Protection Act 1990, local authorities have a duty to investigate noise complaints, and in certain circumstances can issue abatement notices. The most recent published statistics on domestic noise complaints for Scotland, however, date from 1996-97. They show that of 3,243 complaints recorded by environmental health officers, in 419 cases the nuisance was confirmed; and only 24 abatement notices were served. It appears to be the case that some local authorities no longer regard domestic noise as an environmental health priority.

3.7 The police may be involved in neighbour disputes when called upon by one of the parties or another agency, or when there is a breach of an interdict or ASBO. They also have powers under the Civic Government (Scotland) Act to seize noise-making equipment where a nuisance is established. Procurators Fiscal may become involved in cases where an ASBO has been breached.

Figure 1: Intervention in neighbour disputes



Extent of ASBOs and repossession actions

3.8 In the period 1 December 2000 to 30 November 2001, around 100 ASBO applications were made by local authorities in Scotland, with a similar number of actions for eviction on anti-social grounds. Figures for actions by social landlords in Scotland are as shown in the table below. In many cases, the legal process was ongoing, therefore figures refer to decrees granted *within the timeframe of the research*. Where decrees did not lead to eviction, in most cases the tenant abandoned the property. In only two cases was an ASBO application rejected by the Court. According to the COSLA Audit (Janes forthcoming), that most landlords obtained decree ‘seems to reflect that only very strong cases were presented’ (a finding borne out in the present study).

3.9 Evictions for anti-social behaviour form a tiny proportion (less than half of one percent) of all eviction actions: 29,000 by local authorities in 2001-02. The number of evictions for anti-social behaviour has remained fairly constant since 1999. Although available for all tenures, ASBOs are still largely associated with council tenants. Owner occupation accounts for 63 percent of tenure, but very few ASBO actions; council tenure (24 percent of housing) accounts for four-fifths of ASBO actions.

***Table 1: Actions against anti-social behaviour
Scotland 2000-01***

Eviction actions	111
(other RSL)	(10)
decree	54
evictions	41
ASBO applications (total)	100
council tenants	82
owner occupiers	9
other RSLs	7
private tenants	2
ASBO granted (total)	66
council tenants	59
other RSLs	3
owner occupiers	3
private tenants	1
ASBO breached	30

Source: Adapted from Fletcher 2002.

Complexities of the legal process

3.10 During this study, the following information on the processes involved was gathered, in order to make sense of the data on costs and outcomes, and to demonstrate their complexity compared to mediation.

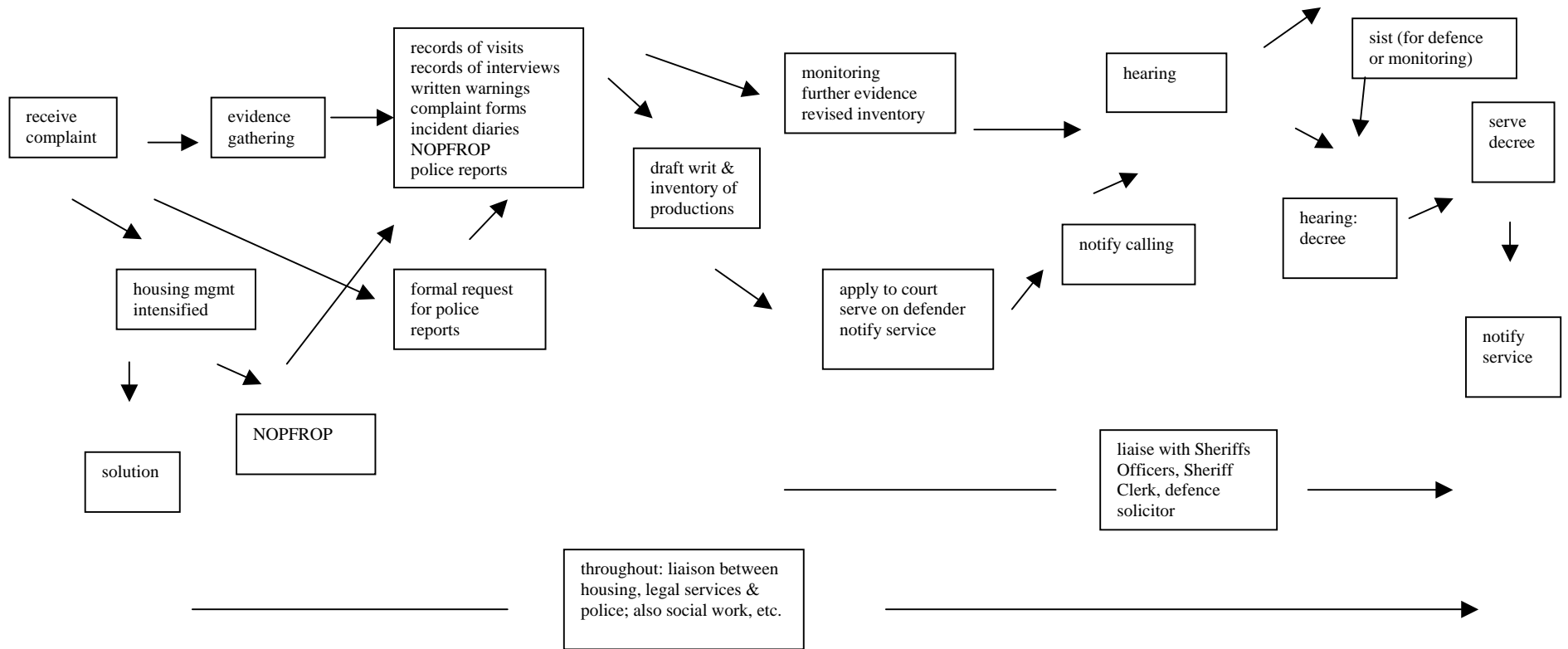
3.11 In terms of legal remedies, the process for dealing with neighbour disputes varies, depending on factors such as whether or not the local authority has a dedicated

investigation team, on the tenure of the defendant, and the requirements of the local courts. Although the processes are similar for repossession or ASBO actions, there are many possible processes and stages that have implications for costs and outcomes. In repossession proceedings, written warnings and interviews will precede the first formal stage - service of a notice of proceedings for recovery of possession (NOPFRP). There may be a further period of monitoring the situation, until it becomes necessary to prepare a case. If the action reaches court, it may be defended. It may be sisted to allow a defence to be prepared, or for further monitoring of behaviour. It may then go to proof. If decree is granted, eviction may follow; but most tenants faced with an eviction will relinquish the property. In the case of an ASBO, if granted, it may be breached, and this may lead to prosecution.

3.12 There may be local variations in the availability of information. Not all police information systems will record every incident. Police forces' policies may differ in terms of what is regarded as a relevant report to pass on in relation to a particular anti-social behaviour situation (e.g. hoax 999 calls or calls to other addresses). Depending on local circumstances, there may be a need to prepare for a hearing on the evidence. Sheriffs' requirements differ between areas; for example, for repossession cases, hearings on evidence are required in one area studied. Solicitors may or may not feel it necessary to precognose witnesses, depending on their priorities. Different local arrangements exist for liaison; for example, one area studied has a standing multi-agency meeting on anti-social cases. Different local practices exist; for example, some councils find that joint meetings between the perpetrator, police and housing officers is often highly effective, in a way that a Notice of Proceedings would not be of itself. Others find that ASBO warning letters are often effective.

3.13 Where a specialist investigation team exists, it is likely to do the majority of evidence-gathering after the case is passed over by a local office, usually at Notice of Proceedings stage. They will then take over liaison with neighbours, receive diary records and interview neighbours, and respond to out of hours calls and undertake proactive monitoring to make their own observations. They will then pass records to legal staff, and later appear as witnesses if necessary. Depending on funding arrangements, specialist teams may deal only with cases involving council tenants. Aside from preparing writs and evidence, and appearing in Court, legal staff have administrative duties such as to notify calling dates to witnesses and to notify decree and service, or other outcome, to housing services, local police and police HQ. Figure 2 gives a simplified representation of the processes a legal action may go through and the different agencies involved.

Figure 2: Formal processing of anti-social behaviour cases



ASBOs, evictions and prosecutions

3.14 Action for repossession may run in parallel to an ASBO application, but often commences following breach of ASBO. In one specialist team studied, all evictions included in the research followed breach of an ASBO. While some local authorities have taken the ASBO route readily, others prefer not to make ASBO applications, unless the perpetrator is not a council tenant, and instead pursue housing management options such as transfers, with eviction as a last resort. In some areas, housing managers are increasingly asking for ASBOs, but legal services are more cautious: they find that ASBOs are not necessarily effective and are most likely to succeed where there is a criminal record and the perpetrator is not vulnerable. Thus, except where non-council tenants or owner occupiers are concerned, the use of ASBO or eviction is less a matter of seriousness than of policy choice and local circumstances.

3.15 Breach of ASBO is not necessarily followed by prosecution. In some cases where ASBOs are breached, neighbours and main complainers have moved away, leaving empty houses and little scope for gathering evidence for further proceedings. Some officers report difficulties or uncertainty in enforcement of ASBOs. The CIOH survey indicated that only half of breaches are prosecuted. In the present study, however, in one area each ASBO breach recorded led to prosecution, with penalties ranging from admonition, to probation, to six months' imprisonment. In the event that the ASBO is breached, the Council may proceed towards repossession; but face uncertainty as to whether a Sheriff will take into account breaches where there is no *conviction*. Furthermore, prosecutors may require police evidence of breach, even if housing officers are the main source of evidence.

3.16 Several process-related factors influence the outcomes of legal action. Even for specialist teams, the co-operation of neighbours is essential for evidence-gathering, and this is not guaranteed (for example, the complainers themselves may be engaging in anti-social behaviour); this may result in insufficient evidence for action. The local authority may have a legal duty or commitment under other policies to rehouse households with children or significant community care needs, therefore there is little point in pursuing an eviction. Alternatively, the authority may pursue an eviction on grounds of rent arrears or abandonment of tenancy in anti-social cases. Frequently, the anti-social behaviour exists alongside criminal activity and ceases when the perpetrator is taken into custody. Less serious cases may be solved by voluntary transfer or social work intervention.

Legal action in context

3.17 As demonstrated by the recent COSLA audit (Janes forthcoming), a range of measures are used to tackle anti-social behaviour aside from mediation and legal action, including information to residents, multi-agency working, use of allocations policy and tenancy agreements (such as local lettings plans, contracts, visits and support), services for young people and vulnerable people, environmental approaches (such as improved estate management and concierges), and support for complainants. These are variable across the country, however; for example, only a quarter of local authorities have well-developed intensive management and support for anti-social households (one of the areas in the present study had introduced support workers for perpetrators to reduce the need for legal

action). The audit identifies several constraints to effectively tackling anti-social behaviour by means of legal proceedings. These include the following:

- a. lack of joint working and information sharing between agencies (despite s.115 of the 1998 Act which is designed to facilitate information exchange)
- b. reluctance on the part of the police to detain people for breach of an ASBO and of procurators fiscal to prosecute (in 2000-01, 30 ASBOs were breached, which was nearly half the number of ASBOs granted in the same period, but only 17 of the 30 breaches resulted in prosecution – Fletcher 2002).
- c. delays and inconsistencies in the legal process: the cautious approach of legal staff in local authorities; court delays (sisting cases for legal aid or monitoring of behaviour); and inconsistency or leniency on the part of Sheriffs;
- d. age limits: in Scotland (unlike in England), ASBOs cannot be granted against people under 16;
- e. victim and witness support and protection, particularly in the context of delays in legal proceedings.

3.18 These points suggest that there is scope for greater use of alternatives to legal action, such as mediation.

Legal action and mediation

3.19 The relationship between mediation and legal proceedings must be seen in the light of the fact that many (possibly the majority) of neighbour disputes see neither form of intervention. Even if a dispute does come to the attention of any relevant agency, it may be that the dispute is insufficiently serious to warrant legal action but mediation is not available (or refused or inappropriate). An important point to note is that all local authorities involved in the study would refer to mediation, if possible, all but the most serious cases, such as those that involved violence and racial abuse.

3.20 Comparing mediation with other interventions presents particular challenges. Mediation increasingly forms one part of a process of intervention by, say, a housing department. Courts increasingly wish to see before them only those cases which, where appropriate, have been to mediation. Disputes are therefore not necessarily dealt with *either* by mediation *or* by other methods – a range of interventions, including mediation, are often employed in one case. Informal negotiations may precede mediation, and formal intervention may succeed it if mediation does not bring resolution. Informal intervention may or may not increase the chances of successful mediation. Informal intervention is likely to sift out cases unsuitable for mediation. Criminal or other civil legal proceedings may (but not necessarily) prevent a dispute from going to mediation.

3.21 It is clear, then, that when one compares mediation with other interventions, one is *not necessarily comparing similar types of case*. Moreover, the use of a mixture of interventions, including mediation, in one case poses a challenge for comparison of cases.

4. RESEARCH METHODOLOGY

Data collection and analysis

4.1 In autumn 2002, 100 neighbour dispute cases from four mediation service providers across Scotland were accessed. Fifty cases were obtained from two community mediation services. The geographical catchment area of Mediation Service A was a city and Mediation Service B covered a large mixed urban/rural area. Fifty cases were accessed from in-house mediation services of two local authorities, Mediation Service C and Mediation Service D, both of which had mixed urban/rural catchment areas.

4.2 Community and in-house mediation services were asked to keep additional records of time spent on all neighbour dispute cases during a specified period (generally one month). In some cases, a further period was required in order to capture a sufficient number of cases where mediation activity had taken place. The researchers examined cases files and took details of the nature of the dispute. Interviews were then held with staff to obtain data to allow the research team to calculate hourly rates and costs per case. In the local authority services, case costs were calculated by the service, due to the complexity of mediator costs where different mediators had different hourly rates. For some organisations, it was possible to compare this with costs per case calculated from total budget and caseload. Mediation services obtained permission from clients for their records to be used in the research. Where possible, outcomes were checked using services' own follow up procedures for cases where agreements are reached (some services have a fixed follow-up period, usually three months, others set a variable review period with the parties).

4.3 For legal interventions, meetings and telephone discussions were held with several local authorities, which, according to Chartered Institute of Housing survey data, appeared to take the highest numbers of legal actions. Two local authority housing investigation teams agreed to allow researchers to examine their cases. These data were then supplemented by examination of legal files and interviews with solicitors. A further two such teams submitted anonymised case records to the research team. Four local authorities without specialist investigation teams were also involved. In these areas, the researchers examined legal section files and interviewed housing officers and solicitors to gather information, and in some cases housing officers and solicitors also provided their own calculations. Several local authorities were able to provide information on only one or two cases. A total of fifty cases were accessed across eight geographical areas, including one city, two predominantly rural areas, and five mixed urban/semi-rural areas.

4.4 As for police records, in one area, it was possible to prepare summaries of ASBO cases for senior police officers who calculated time spent on each case from their records. In a second area, police officers were able to give data relating to a number of anonymised cases, but these could not be linked directly to housing services' data. Environmental health officers in one local authority prepared summaries of cases detailing their involvement. Contacts with other environmental health services and police forces did not result in access to additional data. A survey was conducted of 41 housing associations; from nine responses, three reported having used community mediation, but only one association reported having taken any legal action for anti-social behaviour in recent years (through a local authority investigation team which took part in the present study).

4.5 Analysis was carried out using Excel and SPSS to determine costs per case and to make comparisons between types of case. A series of assumptions were made in order to arrive at costs per case, and these varied between the services contacted depending on the nature of their data. These are shown along with the case information in the appendices. The costs given do not include overheads such as buildings costs, central administrative services (payroll etc.), employers' costs (NI and pensions). The costs given are salary (including overtime) and travel costs that can be attributed to particular cases.

4.6 Interviews were held with people who had taken part in mediation. Their names were given by mediation services who had written to ask for their agreement to take part in the research. Seventy participants from three mediation services agreed that their contact details could be provided to the researchers. Twenty-seven telephone interviews were held with mediation participants, around two-thirds from local authority services and one-third from a community mediation service. One party from each case was interviewed.

4.7 Twelve housing officers, from four local authorities, who make referrals to mediation were also interviewed as to their views on reasons for refusal of mediation, and also to find out whether they might be able to contact 'refusers' on our behalf to take part in the research (none were able to do this). Two mediation services provided contact details for 11 potential interviewees who were parties to neighbour disputes and had decided not to take part in mediation. Of these, five were interviewed.

Quality of the data

4.8 Previous studies have highlighted the methodological challenges created by the definitional and conceptual issues noted above, and the general lack of data among the organisations involved. The problematic nature of cost benefit analysis of mediation has been reported upon by previous researchers (Dignan, Sorsby and Hibbert 1996). In addition, confidentiality and data protection considerations present difficulties for research such as this, which aims to examine specific dispute cases. For mediation services, confidentiality is central to their practice.

4.9 For data protection reasons, data from the police, with the exception of a small number of data from one force, was provided in a way which made it impossible to link it to particular cases.

4.10 The researchers obtained access to cases from mediation services with relative ease. Particularly for in-house services, which lack the standardised recording systems of community mediation services, there was a lack of harmonized data collection on presenting issues for cases and a range of criteria and codes used for outcomes. Where the quality of data needed to be enhanced, mediation service providers were asked for explicit clarification to ensure that, as far as could be possible, the researchers could compare like with like, between mediation cases. Mediation services keep limited information about the nature of disputes on file; this was a barrier to accurate categorisation of cases. Some, though not all, mediation services, for confidentiality reasons, provided names of interviewees in such a way that data about outcomes from interviews could not be linked to recorded outcomes, although valuable participants' views could nevertheless be gathered.

4.11 There is little systematic recording of outcomes of legal action. One of the specialist investigation teams involved in this study keeps ongoing records of the reasons why cases are closed. This, however, says little about whether a dispute was resolved. An ongoing satisfaction survey of clients is carried when a case is closed, but this does not cover satisfaction with outcomes. Team performance targets focus on response times rather than outcomes. For many legal cases, the outcome in terms of resolution of the dispute was not yet known, either because the cases, while protracted, were still very recent, or because it would require further (highly sensitive) investigation to track the perpetrator following transfer or eviction.

4.12 Despite these constraints on the quality of data, it is possible to provide detailed analysis of the nature, costs and outcomes of mediation and legal cases. Details of cases are contained in the appendices; these are presented so as not to be identified with any particular mediation service or local authority.

Cost calculations and assumptions: legal cases

4.13 The methods used had to accommodate the lack of routine time recording in most organisations. Furthermore, in relation to legal action, time monitoring could not be carried out specifically for this project because the lifetime of an average ASBO or eviction case well exceeds that of the project. In local authorities, on the whole, legal costs are not recharged for each case, but are contained within a comprehensive charge to the housing service for all legal or all central services. Different organisational arrangements and degrees of specialisation exist among solicitors, from those who undertake only housing investigation work, to those who cover all housing work, to those charged with the whole range of local authority duties. In most areas without investigation teams, due to other commitments, housing officers and solicitors were able to calculate retrospectively the time spent on only one or two cases.

4.14 On the other hand, mediation services were able to carry out time recording for this project because of the generally shorter life of mediation cases. Costs of mediation cases were then calculated from using time sheets and staff hourly rates based on gross salary costs (where volunteers were used, rates were based on equivalent paid mediator salaries).

4.15 In a number of legal cases, costs were estimated by the research team, because the services' own calculations could not be provided within the time frame of the research. The information from specialist teams is more reliable, due to the detailed time recording in place in such teams for the purposes of calculating overtime. Some teams have also already calculated hourly costs in preparation for the service to be contracted out to other social landlords.

4.16 **Table 2** shows the relative degrees of quality of the costings data for legal cases from each source. In general, where time recording data was not available, housing and legal services' costs have been estimated based on similar cases from other areas. Costs for police and other services such as social work have not been estimated, except where records were available of the number of callouts or meetings attended in connection with the case. But these services are likely to have been involved in most if not all cases. Therefore, total costs are likely to be underestimates. In each local authority area, slightly

different cost assumptions were made in order to arrive as close to actual costs as possible. Details of assumptions are given with each table in the appendices.

Table 2: Quality of cost data in legal cases

	1-15	16-28	29-36	37-44	45	46-47	48-50
specialist team	yes	yes	yes	no	yes	yes	no
housing	reliable	reliable	reliable	reliable in 2/8, rough estimates in rest	reliable	reliable	rough estimates
legal	reliable in 2/15, rough estimate for rest	reliable in 9/13, rough estimate for rest	rough estimate	reliable	rough	reliable	rough estimates
police	not inc.	not inc.	not inc.	included, probably under-recorded	not inc.	not inc.	fairly accurate
other	reliable re specific meetings	reliable re specific meetings	reliable re specific meetings	not included	not inc.	not inc.	meetings included in one case

5. RESULTS: MEDIATION CASES

Nature of neighbour disputes

5.1 Neighbour disputes going to mediation have been reported as falling into four categories (Dignan and Sorsby 1999). These are disputes that:

1. arise from inconsiderate or mildly anti-social behaviour
2. are serious, but arise from a personality or lifestyle clash rather than primarily from criminal behaviour
3. are byproducts of another problem e.g. domestic violence, drug use
4. involve mental health or other ‘community care’ problems.

5.2 There is no clear distinction, however, between categories, in that it depends what one defines as criminal behaviour, e.g. a wide range of behaviour could in principle be regarded as breach of the peace but may not result in arrest or charges. In our study, most of the mediation cases fell into categories 1. and 2. of Dignan and Sorsby’s typology. Most were a result of inconsiderate or mildly anti-social behaviour or serious personality or lifestyle clashes (loud music, parties) (See **Table 3**). Noise related to wooden or laminate flooring contributed to a significant number of referrals to the mediation services. (Some local authorities, such as Stirling Council, have drawn up policy guidelines for their tenants to address the problem of laminate flooring, which has become a significant source of neighbour disputes). Many other referrals resulted from noise from children playing, dogs barking, domestic appliances including DIY activities, or other ‘normal’ living conditions. Approximately 56 percent of cases studied were noise-related disputes, 71 percent if one

includes those which involve noise and verbal abuse, which are likely to be noise problems that have escalated.

5.3 In some cases, disputes that had arisen from mildly anti-social behaviour had escalated into verbal abuse alleged on one or both sides. Only just over one in ten cases concerned boundaries or common areas (rubbish, parking, fences or infrastructure). There was a similar profile of types of dispute across mediation services, although one community mediation service had a significant proportion of neighbour disputes that had originated in disputes between children. From the information available, there was no evidence that mediation services had taken on disputes stemming primarily from domestic violence or drug misuse, although a number were linked to mental health or other community care needs.

Table 3: Presenting issues of neighbour disputes to mediation services

	Community mediation	Local authority	Total
Loud music/parties	12	14	26
Noise of appliances, floors etc.	10	9	19
Noise and verbal abuse	7	8	15
Common areas /boundaries	4	7	11
Between/about children	5	6	11
Noise of children	7	2	9
Verbal abuse/unspecific allegations	3	4	7
Noise of dogs	2	0	2
Total	50	50	100

Sources of referral and tenure of households

5.4 Significant variation was found in the referral routes between services, with in-house mediation service of local authorities generally having more housing referrals, and only one (community) mediation service receiving significant numbers from environmental health or the police (**Table 4**). Self referrals were made for issues relating to verbal abuse, boundaries, common areas and children’s disputes. As might be expected, referrals from environmental health and police frequently related to noise from parties and household appliances.

5.5 The tenure profiles varied locally depending on the aims and funding of the service and housing stock profile, but almost half (47 percent) of the total cases included non-council-tenant parties (**Table 5**).

Table 4: Referral routes to mediation services

	Community mediation	Local authority	Total
Council housing local office	11	40	51
Self	14	6	20
Environmental Health	10	1	11
Police	7	-	7
Housing Investigation Team	4	-	4
Housing Association	3	-	3
Social Work	1	-	1
Not known	-	3	3
Total	50	50	100

Table 5: Tenure of parties: mediation cases

	Community mediation	Local authority	Total
Council tenants only	20	27	47
Involving owners/other tenants	30	23	53
Total	50	50	100

Intervention by mediation services

5.6 Just under two-thirds of cases (61 percent) involved direct mediator contact with the parties (**Table 6**). Face-to-face mediation was used in one-third of cases, but shuttle mediation in only nine percent of cases. This compares with national figures for community mediation services (quoted by Dignan, Sorsby and Hibbert 1996) who made greater use of ‘shuttle mediation’ (40 percent of cases) and slightly less use of face-to-face mediation (27 percent of cases). Local authority and community mediation services used similar levels of face-to-face and shuttle mediation. Local authority mediation services made a significantly greater use of visits, without further mediation intervention, compared to community mediation services. This may be because, as landlord, the local authority had an ongoing relationship with at least half of the parties. These averages conceal significant differences between individual services, however. There was no particular relationship between the mediation approach used and the type of neighbour dispute (**Table 7**).

Table 6: Mediation interventions

	Community mediation	Local authority	Total
Face to Face	18	15	33
Visits	3	16	19
Shuttle	6	3	9
None	23	16	39
Total	50	50	100

Table 7: Mediation interventions and presenting issues

	Face to face	Visits	Shuttle	None	Total
Loud music/parties	9	5	1	11	26
Noise of appliances, floors etc.	4	5	2	8	19
Noise and verbal abuse	2	5	3	5	15
Common areas/boundaries	3	2	0	6	11
Between/about children	6	2	0	3	11
Noise of children	3	0	3	3	9
Verbal abuse /unspecific	5	0	0	2	7
Noise of dogs	1	0	0	1	2
Total	33	19	9	39	100

Recorded outcomes for neighbour disputes dealt with by mediation

5.7 **Table 8** shows the outcomes for all 100 cases, as reported by the mediation service provider. Between community and in-house mediation, the profile of outcomes is similar, although it appears that in-house services have a higher rate of ‘no response’ from one or more parties, whereas community mediation services have more cases where the parties *respond* but either choose not to use mediation or find that mediation does not work.

5.8 In 28 percent of the cases examined in our study, the recorded outcome was agreement on all presenting issues. This is higher than the UK-wide survey of community mediation service which reported complete agreement in 23 percent of cases (Dignan, Sorsby and Hibbert 1996). These ‘successful’ cases outcomes were spread across different presenting issues. Including those where agreement was reached, in a total of 61 percent of cases there was a positive outcome, in that either the problem was resolved or there was some improvement in the situation, either with or without mediation. In 39 percent of cases, mediation was refused or did not produce a positive outcome. This proportion is similar to previous research by Dignan, Sorsby and Hibbert (1996) who reported that in 37 percent of cases, mediation was refused or did not lead to a ‘positive’ outcome.

5.9 In our study, different outcome profiles may reflect different referral routes and the degree of seriousness of cases referred, rather than the performance of the mediation services. To track the processes towards these outcomes would require further intensive interrogation of the practices of each agency and the case profiles. For example, one local authority mediation service alone accounted for 22 out of the 25 cases where the recorded outcome was no response from either party or both parties. If there was no further problem, then this could be considered a ‘successful’ outcome, but this is not possible to judge from available records. This finding does raise issues relating to the assessment of cost-effectiveness, as these cases are very inexpensive, as will be shown below. Moreover, one of the main aims of mediation services is to introduce the concept of non-adversarial dispute resolution to the general public, and this positive outcome may well be achieved even where no agreement or improvement in the situation is visible in the short term.

Table 8: Reported outcomes of mediation for neighbour disputes

	Community mediation	Local authority	Total
Problem resolved and agreement on all presenting issues	15	13	28
Partial agreement on the presenting issues	4	2	6
No agreement but evidence of improved communication and better understanding between parties	7	8	15
Assistance given to one party removes need for further involvement	2	0	2
Problem resolved without intervention by the mediation service	9	0	9
Mediation felt to be inappropriate and parties referred elsewhere	1	0	1
Closure following withdrawal by one of the parties	4	2	6
Closure following irreconcilable differences between parties	5	0	5
No response from either party A or party B or both	3	25	28
Total	50	50	100

N.B. Outcome categories shown are those used by community mediation services. These are used in abbreviated form in the tables below.

Table 9: Outcome by mediation type

	Face to face	Visits	Shuttle	None	Total
Agreement on all issues	23	2	3	0	28
Partial agreement	4	0	2	0	6
Improved communication	5	2	1	7	15
Assistance given	0	0	1	1	2
Resolved without intervention	0	0	0	9	9
Parties referred	0	0	0	1	1
Withdrawal	0	2	1	3	6
Irreconcilable differences	1	0	1	3	5
No response	0	13	0	15	28
Total	33	19	9	39	100

Table 10: Outcome by nature of mediation case

	music /parties	appli- ances etc.	noise, verbal abuse	common areas /boundaries	between children	noise: children	abuse /un-specific	noise: dogs	Total
Agreement	7	5	3	0	6	3	3	1	28
Partial agreement	2	1	0	1	1	0	1	0	6
Improved communication	2	3	2	3	1	2	2	0	15
Assistance given	1	0	0	0	0	1	0	0	2
Resolved without intervention	2	1	0	1	1	2	1	1	9
Parties referred	0	1	0	0	0	0	0	0	1
Withdrawal	1	1	2	0	2	0	0	0	6
Irreconcilable	0	1	2	2	0	0	0	0	5
No response	11	6	6	4	0	1	0	0	28
Total	26	19	15	11	11	9	7	2	100

5.10 As **Table 9** shows, not surprisingly, face-to-face and shuttle mediation are associated with making of agreements between the parties. Although face-to-face or shuttle mediation was used in only 42 percent of cases, it was generally successful: in only three percent of cases face-to-face or shuttle mediation took place but ‘failed’ due to withdrawal or irreconcilable differences. As **Table 10** shows, a range of outcomes can be seen across all types of case.

Participants’ views of outcomes

5.11 One mediation service provided the results of questionnaire follow-up with parties to five (noise) disputes which were recorded as having reached agreement or partial agreement. In five out of five cases, the parties responded that ‘things are generally better’. To compare recorded outcomes of mediation with outcomes according to the parties themselves, telephone interviews were undertaken. The results of 27 interviews with participants from three mediation services are presented below.

5.12 The main referral route for most participants was their local housing officer who was often aware of the difficulties between neighbours. Six participants mentioned that their local police officer also suggested mediation. One participant found out about the mediation service through a Citizens Advice bureau. In general, participants felt that referrers had adequately explained what mediation was about. One reported: *Housing told me exactly what was going to happen and it did, but my neighbour had a different idea of what she wanted.*

5.13 The largest category of disputes concerned complaints about domestic noise from music systems, televisions and laminate flooring. The second major cause for complaint was the behaviour of children, including noise, arguing, fighting, littering and vandalism. Verbal abuse, boundary issues relating to fences, bins and driveways, intimidation and communication breakdown concerned the remaining participants.

Table 11: Outcomes according to participants

Outcome	Recorded	Participant’s view
Agreement reached	10	8
Part agreement	2	0
Amicable resolution	2	0
Situation improved	4	2
No agreement	0	9
Resolved without mediation	1	1
Not sure	0	2
One party unwilling	7	5
No response	1	0
Total	27	27

5.14 **Table 11** compares the outcomes recorded by mediation services with those described by participants. Eight participants felt they had reached an agreement, although these weren't always the cases that had been recorded as such. Two cases recorded as ‘amicable resolution’ and one recorded as ‘partial agreement were’ described by the participants as

having reached an agreement. In four cases recorded as ‘agreement’, the participant reported that no agreement had been reached. Although limited conclusions can be drawn from a small number of responses, there is a significant discrepancy between the number of positive outcomes (full or part agreement, amicable resolution or situation improved) recorded and those described by participants (18 compared to ten).

5.15 Six participants felt their agreements were still in place and two felt that the improved situation had remained. Three participants felt that their agreements had fallen apart and two participants felt that although the problem had initially been resolved, it was now going back to the way it was prior to mediation. Seven participants felt their situation to be much the same whilst four participants felt the situation had quietened down. In one case, the situation improved although the parties had not taken part in mediation, and in two other cases the situation had improved because one of the parties had moved away. In two other cases the participants were hopeful that a move was imminent. Council anti-social behaviour investigators are now involved in three cases.

5.16 Where no agreement had been reached, some disputes were going to be tackled by legal measures, and others were allowed to run on; for example, the following contrasting comments were made about the current situation:

I sit in the spare bedroom because of the noise in the living room, but I am just going to let it go and hopefully they will move out soon. I am not going to complain to the renting office again.

The anti-social behaviour team is involved now.

5.17 Thirteen participants felt that the mediation process had been helpful, whether or not the dispute had been resolved (**Table 12**). A number of participants commented that the mediators were helpful and that the process went very well, even in serious disputes, as the following comments illustrate:

The process of getting the two parties together is very good particularly where physical violence has been involved.

We were at the end of our tether, it was either mediation or court.

Table 12: Participants’ view of mediation process

View of mediation process	
Helpful	9
Helpful in some ways not others	4
Resolved without mediation	2
Difficulties with process	3
Neighbour would not take part	4
Did not think it would help	2
Didn't help	2
No view	1
Total	27

5.18 Prior to accessing the mediation service, seven participants had attempted to resolve the dispute by talking to their neighbours, all had been unsuccessful.

I tried to approach him twice but he the shut the door in my face.

5.19 The following participants highlighted the positive impact of involving a third party:

I had approached my neighbour in the past to no avail. Having a third party involved made all the difference.

I have been trying to solve this for a year but it was escalating and getting worse. Having a third party helped especially when my neighbour realised I had contacted someone else.

5.20 Three participants felt that mediation hadn't resolved their problem and commented:

His anti-social behaviour is still carrying on. All this could have been prevented but it has since deteriorated again. There is no point going back to mediation, I'll probably go to the papers soon.

My neighbour would complain about almost anything. My feeling is that I didn't get much help from the mediation process. I am now going to my solicitor and will take it through the courts.

I was disappointed with the mediation process. It gave my neighbour a licence to tell lies and ridicule me. It is a body without teeth.

5.21 The process of mediation requires the participation of both parties involved in the dispute, as the following participants commented on their lack of progress:

We didn't go through the mediation process because my neighbour didn't answer any letters.

We had our coats on to go to the mediation session when the mediators phoned to tell us that our neighbour had changed her mind and wasn't coming now. She refused to take part.

5.22 Four participants found the process unhelpful because their neighbour refused to participate. Three participants felt that the process of mediation raised difficulties for the following reasons:

I felt they were more to her side. She had her landlord to speak on her behalf when the mediation team visited her, I had nobody. It has been a difficult time for me.

I didn't agree with taking turns because my neighbour kept going on for ages and I had forgotten half what was said. It would have been better if we could have taken shorter turns. Also I knew my neighbour was lying through her teeth and Mediation

had a letter from the housing office stating that this was the case but they didn't say that.

5.23 One participant felt that she would have preferred shuttle mediation but wasn't given the choice. She comments:

I couldn't sleep the night before our face-to-face meeting. It was one of the worst situations in my life. She called me a liar and her attitude during the meeting was awful.

5.24 It can be concluded from this small number of interviews that outcomes recorded at the close of a case are not necessarily a reliable guide to the longer term outcomes. This is not to say that outcomes are always worse than those recorded; they may be better. There is, however, a disparity between recorded outcomes and the views of participants in a significant number of cases. Interviews with participants also offer greater understanding of the challenges facing mediation, but show a generally positive view of the process, even where it does not bring the desired outcome. Some participants have, however, found the mediation process harrowing, which suggests that mediation services may have to take greater care over preparing the parties for face-to-face meetings and consulting participants about the forms mediation might take.

6. RESULTS: LEGAL ACTION CASES

Nature of disputes

6.1 All of the ASBO and repossession cases studied involved serious anti-social behaviour: repeated incidents over a long period. The problems included loud music and/or shouting and swearing; *and* at least one of fighting, verbal abuse, banging doors, barking or fouling by dogs, or damage to common areas (**Table 13**). In most cases, it involved the defendant and visitors, and often disputes with visitors, other family members, or ex-partners. All cases involved problems with several neighbours. In at least half of cases, there was a history of convictions or convictions during the legal process. Several cases involved identified mental health problems or alcohol misuse (and at least one case involved a learning disability). Many of the households with children had ongoing social work involvement. Drug use and/or dealing was a factor in several cases. In other words, the situations revealed in these cases were generally *not only neighbour disputes*, but also problems in themselves, which came to the attention of the authorities through the disturbance to neighbours. This is in contrast to the general nature of neighbour disputes found in mediation services. It also suggests that many such cases could not be solved by mediation alone.

6.2 This contrast is also seen in the duration of intervention or proceedings. In mediation cases, mediation lasted from one day to three months, whereas legal cases had durations of between two months and 52 months (over four years).

6.3 Where mediation services were available, all local authority housing services reported that they would refer cases to mediation whenever possible before taking legal action. Further in-depth research would be required to 'track' the trajectories of cases prior to the

action and make an assessment whether mediation partially resolved, completely resolved for a period of time or contributed very little due to irreconcilable differences prior to the pursuit of a legal action.

Table 13: Main issue in neighbour disputes: legal cases

		%
Loud music, shouting/swearing/verbal abuse	21	42
Noise and property damage	9	18
Noise and disturbance/violence	14	28
Verbal abuse/shouting/swearing	5	10
Noise of DIY/children	1	2
Total	50	100

Tenure

6.4 Of 50 cases, the majority of perpetrators of anti-social behaviour were local authority tenants, although two were owner occupiers, two private tenants and one tenant (or occupier) of a voluntary organisation. In around half of cases, the neighbours affected included owner occupiers.

6.5 From the survey of 41 housing associations, three reported having used community mediation to resolve disputes; but only one association had taken legal action for anti-social behaviour, which it pursued by means of ASBO through its local authority investigation team.

Intervention and outcomes of legal action

Table 14: Nature of legal intervention/outcome

Insuff. evidence	5
Improvement	2
Interdict-breach-eviction	1
Interdict	2
ASBO sisted	4
ASBO	6
ASBO – breached	7
ASBO – breached and eviction/transfer	6
Repossession action - transfer	7
Repossession /ASBO action – moved away	2
Eviction	5
Custody	1
Mental health referral	2
TOTAL	50

6.6 Housing and legal services regard outcomes in a different way to mediation services, and may regard the intervention itself (ASBO, for example) as the outcome. A proportion of the cases dissolved because there was insufficient evidence or there was a reported improvement (seven cases). Insufficient evidence may be because there is not in fact a significant problem, or because neighbours are unwilling to co-operate with the

investigation for some reason. In around half of the cases an Anti-Social Behaviour Order was pursued, although the cases studied were at different stages of the ASBO process. The other main outcome was a repossession action; in some cases this led to eviction, and in other cases this was avoided through voluntary transfer to another tenancy (**Table 14**). Some evictions followed breach of ASBO, some were pursued without ASBO. Seven cases resulted in the problem being 'solved' by the perpetrator leaving the area or going to prison, or by mental health proceedings. Further research would be required to improve our understanding of whether the displacement of 'problem' households and or individuals resolve the anti-social behaviour or simply 'moves it on' to another set of neighbours or locality.

6.7 It is less than straightforward to describe particular outcomes as positive or negative. Often, legal and housing services themselves regard obtaining decree as a positive outcome in itself. In just over half of the 50 cases, a decree was obtained. In the majority of cases (39 of 50), legal action resulted in a positive outcome for neighbours, that is, either decree against the perpetrator or the perpetrator moving away or being rehoused elsewhere. On the other hand, only two of 50 cases where legal action commenced resulted in improvement of the situation such that no further action was necessary. Two referrals for community care can perhaps be seen as positive outcomes. When a perpetrator is evicted, moves away, or is offered housing elsewhere, this is no doubt a positive outcome for the neighbours, but may or may not be in terms of preventing any further disputes.

7. COSTS OF MEDIATION AND LEGAL ACTION

Cost of mediation: background

7.1 Despite the growth of mediation, information on its relative cost effectiveness is limited. It has been suggested that comparing costs of mediation with litigation is 'not always a useful exercise', because most disputes do not come to the attention of official bodies, and if they do, they are handled by a range of agencies and means (Mulcahy 2001). For mediation services in particular, there are two main challenges to costing:

- a. mediation may be introduced at various points in a dispute, making comparison of like with like difficult;
- b. costs depend on the range of agencies involved, which in turn depends on their degree of specialisation.

7.2 In their survey of mediation in England and Wales (Dignan, Sorsby and Hibbert 1996) adopted a mixed-method approach to cost-effectiveness allowing them to assess relative costs of mediation in neighbour disputes. Dignan and colleagues emphasise that not all neighbour dispute cases are suitable for mediation but in instances where mediation is used, there are significant cost savings made to a number of agencies. In their later study in Scotland, Dignan and Sorsby (1999) did not calculate average costs per case of mediation in Scotland, but extrapolated from their previous English study. It compared average costs per case and concluded that community mediation was more expensive than informal intervention, but cheaper than the formal intervention that may be required when disputes persist.

7.3 It was decided to calculate *net* costs in the present study, that is, the costs of staff time and travel costs that can directly be attributed to cases. These net costs exclude organisational overheads, that is, building and office costs, staff training, and central services such as personnel. To calculate these total costs would require detailed examination of the finances of each organisation, including large local authorities, which is a task beyond the scope of this study. The reader must bear in mind that total costs including overheads can be assumed to be at least 40 to 50 percent higher than the net costs presented here. To use net costs, however, offers a more accurate comparison between mediation and legal cases.

Costs of mediation cases

7.4 From the 100 cases studied, ‘average’ costs per case of neighbour dispute to a mediation service were calculated (**Table 15**). From this research, the average cost of mediation in a neighbour dispute is £121 per case, with community mediation services being higher than in-house mediation services (£136 compared to £105). Where face-to-face or shuttle mediation was involved, the average cost of a case rose to £204. One community mediation service dealt with the two most costly disputes (costed at £484 and £431). These each involved over 20 hours of mediation time (face to face in one case and shuttle in the other). One dispute concerned loud music, shouting, swearing and verbal abuse, similar in description to some of the anti-social cases dealt with by legal remedies; the other involved domestic noise and verbal abuse but had clearly escalated to serious proportions.

7.5 The minimum and maximum costs per type of neighbour dispute contacting mediation services is presented to show the breadth of costs per case, from which it is clear that there is no ‘average’ case. A small number of cases from local authority mediation services involved initial contact only with one party; this reduces the average costs considerably. As shown earlier, there is no association between the type of dispute and the nature of the intervention. Cost of case is related to the time and intervention input into the case. As would be expected, there is no pattern of cost across type of dispute (**Table 15**), but the cases which result in an agreement or improvement of the situation are more expensive, due to the additional work involved (**Table 16**).

Table 15: Average cost by nature of dispute: mediation cases

	Community mediation			Local authority			All	
	Mean	Min	Max	Mean	Min	Max	N	Mean
Verbal abuse/unspecific allegations	123	21	182	197	178	223	7	165
Noise of appliances, floors etc.	177	26	484	108	5	254	19	144
Noise of children	135	22	317	140	113	166	9	136
Noise and verbal abuse	159	18	431	107	9	293	15	132
Between/about children	90	38	201	165	134	191	11	131
Noise of dogs	105	29	181	-	-	-	2	105
Common areas /boundaries	73	29	152	104	9	245	11	93
Loud music/parties	137	13	319	46	5	159	26	88
Total	136	13	484	105	5	293	100	121

Table 16: Average cost by outcome: mediation cases

	Community mediation			Local authority			All	
	Mean	Min	Max	Mean	Min	Max	N	Mean
Partial agreement	193	114	319	183	167	200	6	190
Improved communication	194	31	484	182	59	293	15	188
Agreement	189	38	352	174	125	223	28	182
Withdrawal by one of the parties	153	39	431	83	23	142	6	129
Irreconcilable differences	100	33	222				5	99
Assistance given	96	88	104				2	96
Referred elsewhere	62	62	62				1	62
No response	65	18	143	40	5	254	28	43
Resolved without intervention	29	13	58				9	29
Total	136	13	484	105	5	293	100	121

7.6 As part of the present research, where possible, data regarding annual service costs with overheads and case load were gathered in order to provide a baseline for comparison of our sample of cases. For one community mediation service, for example, in the 2001-02 annual budget of approximately £150,000, mediation in neighbour dispute was allocated £125,000 of the overall budget. The service cited that their case load was 250 cases per annum. It can be crudely estimated that the average total cost of a mediation case, including non-case-specific tasks, is £500.

7.7 In the 1996 English study, the average cost per mediation case was estimated, based on time sheet data from one mediation service, as £252 (Dignan, Sorsby and Hibbert 1996). This, however, included non-case-specific administrative tasks; and is therefore probably comparable to the average costs calculated in the present study. These are also similar to the costs per case estimated by Mulcahy (2001). Mulcahy's study identified three categories of costs. Average cost per case was £410, of which £226 was specific case tasks (plus £75 general mediator tasks such as monitoring and liaison, and £109 organisational overheads). Only a detailed examination of the finances and activities of mediation services would provide an explanation as to why case-specific cost are lower than in Mulcahy's study. Community mediation services do from time to time deal with very complex cases with multiple parties. It is likely that had even one such case fallen within the sample taken for this study, it would easily raise average costs considerably.

Cost of legal action: background

7.8 In relation to community mediation, Mackay and Brown (1998) found that the degree of involvement of other agencies, and the resulting additional costs, may bear more relation to the relationships between agencies than the nature of the dispute. This point can also be made in relation to legal action; for example, it may be that local authorities have generally better liaison with police than housing associations do; and that liaison between housing, social work and environmental health services is variable across local authorities. Notices of proceedings may be used to encourage social work services to take action, which may lead to additional costs but to better outcomes. There may be geographical variation in the priorities of prosecutors or police, which influences their involvement in neighbour disputes.

7.9 Little information is kept by the organisations involved on costs of Anti-Social Behaviour Orders and related measures. Atkinson, Mullen and Scott (2000) found the

average cost of an action for possession (at 1999 prices) to be £3,200, and of an interdict as £1,175. This was based on a small sample of seven possession actions and two interdicts. A complex, defended repossession case could cost up to £7,500, although undefended cases cost in the region of £1,500-2,000. Campbell’s survey of local authorities in England found the average cost associated with an ASBO to be £5,350, with a range from under £400 to £18,000 (Campbell 2002). Findings from the present study can readily be reconciled with this previous research.

7.10 Fifty cases were examined from across nine housing management or investigation services, and costs calculated using the assumptions given along with the data in the Appendix. In an attempt to separate the costs from those of housing management, costs are calculated from the decision to take legal action or the issue of a Notice of Proceedings. Where no specialist team exists, the costs to housing management may be much higher, and more difficult to calculate. Compared to the calculation of community mediation services, organisational costs of dealing with disputes were more challenging to disentangle from the overall budgets of the organisations. For example, neighbour dispute work forms only a tiny proportion of total activities of a local authority housing department.

Costs of legal cases

7.11 From the 50 cases studied, ‘average’ costs per legal action were calculated (**Table 16**). It can be suggested that the average cost of formal action by housing or legal departments in a neighbour dispute is £3,546, with a range from £339 to £13,962.

7.12 The average costs of an Anti Social Behaviour Order was about £2,250 but varied considerably (**Table 18**), between approximately £500 and £8,500. Once eviction action is taken, the average costs and the range of costs are higher. Where a repossession action followed breach of ASBO, the costs rose to up to £7800. In cases where eviction was pursued without an Anti-Social Behaviour Order, the costs per case were on average over £9000 with a range up to just under £14,000 – these are likely to be the most serious cases.

Table 17: Cost by nature of dispute: legal cases

	N	Mean	Min	Max
Loud music + shouting /swearing /verbal abuse	20	3929	493	13962
Serious disturbance /violence /harassment	14	2991	493	9965
Verbal abuse /shouting /swearing	6	5964	2215	9616
Noise and property damage	9	2017	339	4895
‘DIY’ noise	1	2913	2913	2913
Total	50	3546	339	13962

7.13 Even if the formal action is not pursued as far as court, the costs are much higher than mediation. In the sample of 50 cases studied, five cases had insufficient evidence to pursue the case, costing on average £1100 per case, and another two cases showed improvement (therefore proceedings were deferred) and cost just under £1400 per case.

Table 18: Cost by intervention/outcome: legal cases

	N	Mean	Min	Max
Eviction	5	9029	6464	13962
Repossession/ASBO action, moved away	4	6382	2800	9965
Repossession action, transfer	7	3616	538	9616
ASBO sisted for good behaviour /defence	4	2928	493	8400
ASBO breached, eviction/transfer	5	4679	3015	7807
ASBO, breached	7	2514	538	7153
ASBO	5	2247	493	6457
Mental health referral	2	3790	1398	6183
Interdict, breach, eviction	1	3982	3982	3982
In sufficient evidence/no evidence	5	1093	339	3239
Improvement	2	1379	543	2215
Interdict	2	1281	1042	1521
Custodial	1	872	872	872
Total	50	3546	339	13962

7.14 As part of the present research, where possible, data regarding annual service costs with overheads and caseload were gathered in order to provide a baseline for comparison of our sample of cases. For specialist team A, for example, the 2001-02 annual budget was approximately £198,000 for salaries including travel. The team estimated their caseload as 170 new cases each year. Ignoring that some cases may extend over one financial year, a very conservative estimate would be a cost of £1,165 on average per case. Specialist team C calculated average cost per case at £1,300, £1,100 if the out-of-hours service is not used, £1,600 if it is. These figures are considerably lower than the average cost calculated above; this is because specialist teams deal with a high proportion of cases where legal action is not pursued and which are therefore less costly.

7.15 Particularly where co-operation with police and courts is good, however, the actual cost of taking legal proceedings may be relatively low. In authority E, information is compiled and sent to Counsel for preparation of a writ. Costs per writ are Counsel's fees of £250, plus around £50-100 of solicitors' time. On the other hand, much work in tackling each case is done by a multi-agency liaison group, including police, housing associations and several local authority departments, the costs of which are absorbed by the housing service. Thus costs are a reflection of organisational arrangements as much as the seriousness of the case.

8. ENVIRONMENTAL HEALTH AND POLICE ACTION

8.1 The Environmental Health service involved with this research deals with around 250 neighbour noise complaints per year, but serves only a few notices. Setting noise levels stops most disputes, or at least solves them for a few months. Under the terms of a protocol,

the housing investigation team take cases where one or more parties is a Council tenant. Complaints are common in properties with poor sound insulation, and an increasing number involve private rented property. The main cost is staff time. Two officers will visit if corroboration is sought, or it is an evening visit. As shown in **Table 19** below, the cost of typical domestic noise cases varies depending on whether or not a court hearing occurs, but costs to environmental health services are higher than mediation services but well below the majority of cases that go to legal action. The more serious cases are likely to be taken on by anti-social investigation teams rather than confined to environmental health action.

Table 19: Costs of environmental health action

Case	Problem	Tenure	Outcome	Other services	EH cost
1	loud music	2 owner occupiers	warning given, no further complaints	police	140
2	loud music	private tenant, council tenant	statutory notice, breached, appealed (dismissed); continued complaints; under housing investigation	police, housing, hsg investigation, solicitors	300
3	TV noise, doors	2 owner occupiers	one party moved	none	160

8.2 In the present study, one police force was able to provide time estimates for involvement in particular ASBO cases, and these are included in the total case cost calculations (see appendix). A second force was able to provide time estimates that cannot be linked to particular cases. Taken alone, however, these give an indication of police time involved in anti-social behaviour-related neighbour disputes (**Table 20**).

Table 20: Hours spent by police on anti-social cases

hours	5-10	10-20	20-40	50-60
no. cases	2	5	2	1

8.3 Including call outs and preparation of custody and prosecution reports, the time spent by police on 10 cases ranged from nine hours to over 56 hours, with an average of 21 hours. This equates to an average net cost of approximately £420 in police time per case, excluding travel and all overheads, the net cost rising to over £1,100 for more serious cases.

9. REASONS FOR NOT PARTICIPATING IN MEDIATION

9.1 One objective of this study was to investigate the reasons why some parties to a neighbour dispute do not take up the offer of mediation. Below we present the results of interviews with referrers (mainly housing officers) and ‘refusers’ themselves.

Referrers’ perspective

9.2 In general, the main reason given by housing officers interviewed for this research for disputants refusing mediation accords with that in Mulcahy’s study (Mulcahy, 2001), that

is, unwillingness to engage with the other party. As one officer put it, 'As soon as you mention face-to-face meetings many people shy away. They are concerned about having to face their neighbour and have a dialogue'. This was particularly the case where a dispute had been ongoing for some time; officers felt that mediation was more likely to work where there was an early intervention (for example with new neighbours). One officer felt that there had to be some goodwill left: 'Some kind of connection needs to remain if things are going to work out'.

9.3 While the thought of having to meet the other party puts some people off, officers do explain that this is not essential. Yet even with a shuttle approach, it was felt that people were often still reluctant to get involved. Officers thought this was based on a fear that the alleged perpetrators would refuse to accept that there was a problem, or that they would try to 'pull the wool' over mediators' eyes. Thus, they felt that people were often wary of a 'stitch up', not by the mediators (in whom a good deal of confidence was expressed), but by the other party 'scheming' against them. Officers also found that some people are highly sensitive to procedural matters; for example, they object to which order mediators approach the parties. One housing officer explained that 'we advise people to bring notes with them as a tool to use to stay focused and not get knocked about'. However, it was recognised that sometimes people seem to get 'paranoid' about their neighbour and the dispute:

'Disputants may end up thinking that the other party is spending their time thinking of ways to get at them any way they can. For example, they think that if the other party is laughing in the next house, they're laughing at them. The dispute becomes a focal part of their whole life. It takes over, and you can see them deteriorating.'

9.4 Mediation is demanding, and may fail where one person has underlying emotional or health problems and can't cope with the process. However, there was not a sense that disputants needed to be particularly skilled in order to engage in mediation. When asked directly about this, officers said that this was not a factor that sprang to mind when people refused mediation, and that people of different backgrounds and abilities had been known to engage successfully with the process. Yet they acknowledged that level of 'ability' was something that they might not pick up immediately because, as one officer put it, 'People aren't going to tell us that, are they?' On reflection there was recognition that the more skilled and confident somebody felt, the more likely it would be that they might see a positive outcome emerging from the process and vice versa. Officers thought that mediators built up people's confidence effectively once they were in contact with the mediation service, but acknowledged that these issues might be influential for disputants who do not take it this far.

9.5 Many disputants appear to have anxieties about proceeding with mediation. Housing officers identified a key further source of anxiety as a fear of reprisals following mediation. Indeed, this was considered to be a major barrier. Officers felt that in cases where there has been a history of violence or viciousness the dispute may already be too serious to be dealt with through the mediation service. For example, threats such as slashing car tyres or setting dogs on people were not uncommon. Even where people had not been actively threatened it was accepted that many people still felt fearful of the other party in their dispute. Reprisals did not have to include physical intimidation or violence. Staff pointed to examples where alleged perpetrators simply escalated the behaviour that had led to the dispute in the first place as a way of getting back at their neighbour. There was a general

sense of frustration that it was not always easy for the authorities to observe this behaviour directly, and therefore to get the necessary evidence to take firmer action.

9.6 Housing officers thought that often refusers want someone else to solve the problem and do not want to take responsibility themselves. One officer commented that:

'People look for an element of authority to legitimise any agreement. With mediation it's a matter of getting a contract drawn up and signing it, but it's just a moral commitment - there are no sanctions attached. I would say that around 85 percent of refusers just want you to take their cases forward for them.'

However, while officers report that disputants 'usually want to include us in their fight', they remain keen to encourage people to take their own responsibility in the dispute. It is recognised to be in housing officers' interests to encourage people into mediation. As one put it: 'I get mediation in as quickly as possible so they can't complain about me doing nothing, then they have to do something about it'.

9.7 Officers recognised the value of mediation across a range of disputes, and that, in the majority of cases, things improve. If a dispute was considered to be relatively trivial there was a sense that mediation was an ideal route forward. Examples given were things like litter, grass cutting, washing lines and parking - although it was recognised that trivial issues can soon escalate into more heated disputes and that again early intervention might work best. However, even if the dispute was considered to be quite serious and perhaps less suited to mediation, housing officers were still keen to recommend mediation as a first step. In part this was due to a hope that mediation might indeed work, but there was also an attempt to avoid the mediation process being used unscrupulously. This was highlighted in one example where a disputant had initially refused mediation and officers had helped to prepare a court case against the alleged perpetrator. At the eleventh hour, with the court case ready to go, the alleged perpetrator agreed to mediation. Officers felt they had to advise the disputant to go to mediation, or face their court case being fatally weakened. There was a suspicion that, having taken legal advice, the alleged perpetrator had deliberately used mediation as a tool to get themselves 'off the hook'. An agreement was reached at mediation, but lately officers' initial misgivings appear to have been confirmed. After less than one year the parties are now back in dispute and a court case is again looking likely.

9.8 Across a wide range of circumstances there is a sense that mediation should be tried, and that many disputants potentially have a lot to gain from going through the process. Overall, referrers are therefore very positive about mediation and are keen to report successes. Yet mediation appears as the option that requires most effort by the parties or is threatening to them. Some officers commented that how mediation is perceived may be related to how it is presented within the range of options offered. This is particularly the case where there is 'competition' from other initiatives such as neighbourhood support teams. There is also evidence that there may be some differences between in-house and independent mediation services. In one authority where the mediation service was independent there was a sense that some housing officers were more aware than others about what mediation involved. Hence, while links here were generally perceived to be 'quite good', it was felt that presentations to staff by the mediation service and the training of housing staff as mediators would be useful ways of providing a more 'joined-up'

approach. One officer commented that 'the more we all know about mediation, the better chance there is of us being able to sell it to people'. This suggests the need for detailed research on how housing (and other) officers explain and present the option of mediation.

Refusers' perspective

9.9 Many of the issues identified by referrers were confirmed as important in our discussions with refusers. In particular, analysis of the interviews conducted indicates that refusers were fearful of facing up to their neighbours, being out-manoeuvred by them during mediation, and/or provoking an escalation of hostilities. Additionally, the people we spoke to were often frustrated (or simply fatalistic) about authorities power to deal with disputes, and tended to lose interest when they realised that mediators were unable to offer a definitive judgment on their case. Several respondents explained that they had withdrawn from the mediation process because they did not wish to face their neighbour:

'I decided mediation wasn't for me. I didn't think it would help and I didn't want to sit in the same room as my neighbours to face the same abuse.'

'I didn't want to be in the same room as her... Because I see the kind of company she keeps. There's drug abuse in there, it's frightening. I just don't want to get involved with anybody like that.'

'I had already tried talking to them face-to-face myself and they didn't want to know. In fact the more I tried the worse things got. I didn't want that to happen again.'

9.10 There was also recognition that the other party might abuse or manipulate the mediation process. In many cases, relationships had clearly broken down to the point where some respondents did not feel able to trust the other party to keep their side of any bargain. One person claimed that her neighbour was 'as nice as pie' when the mediators called at her house, that they had tried to make out that she was the problem, and that as soon as the mediators had gone again the noise problem had restarted. On one occasion when the police were called, she claimed that the same thing happened but that this time the neighbour came and stood outside her house making obscene gestures as soon as the 'coast was clear'. This person felt that there was little chance that mediation would do any good, and that it was more likely to give a platform to her neighbour to make false accusations about her. Other respondents foresaw that a mediated agreement between them and their neighbours could itself cause problems:

'The mediators thought it would be a good idea to set a time period during the day in which music could be played freely, i.e. where I couldn't complain. I thought, 'This is nonsense - that guarantees me four hours of torture every day, no matter what. Why should I have to put up with that? I've done nothing wrong.'

'The mediators suggested shuttle mediation as a way forward. One mediator was going to stop in my house while the other one went to my neighbour, and between them they were going to set the level of TV noise. But this would have left us completely open - my neighbour would have known exactly what level to set their TV or radio at to annoy us, and I wasn't going to let that happen.'

9.11 In this way, there was a suggestion that the agreement could provide the basis for reprisals. This was not an uncommon concern. One respondent expanded one of the main fears that had led to them not taking mediation any further:

'Police were being called all the time to parties at 2 or 3 a.m. I was frightened mediation might escalate the problem, scared it might get worse. I had a feeling of panic - were we doing the right thing?'

9.12 However, fear of reprisals often went beyond an escalation of the dispute. It also included the threat of violence or deliberate damage to property. Indeed, when one refuser was asked what would have needed to happen for them to have gone ahead with mediation, their response was 'Police protection - although even with this I would have felt uncomfortable'. Another person stated that 'Mediation's no good for conflicts. In them [sic] situations it has to be impersonal - if they know who's reporting them you become a target.' Almost all respondents said that they were concerned that they or their families might face verbal or physical retaliation after mediation. This was a key factor in people's decision not to go ahead.

9.13 Refusers shared agencies' frustrations about not being able to gather evidence easily about other parties behaviour, particularly with regard to noise. One respondent detailed how there had been a procession of different agencies through her neighbour's flat, including housing officials, social workers and the police, and how they all appeared to be hamstrung by different regulations in taking further action:

'It's not the council's fault. There are housing regulations, human rights regulations - lots of things they can't do. The police have to go through social work but it's hard to get them both here at the same time, and anyway [my neighbour] behaves herself when they're around. Everybody says that getting proof is difficult and they need concrete evidence.'

9.14 Many refusers would like to see a definite resolution to the situation. In some cases, they even believe that the other party's behaviour warrants their eviction. Housing officers seldom agree, but where they do they readily confirm the difficulty in providing the burden of evidence required to follow this course of action. One respondent asserted that it was easier for councils to evict tenants for rent arrears than antisocial behaviour, and (rhetorically) asked whether this meant that money was considered to be more important than quality of life issues.

9.15 Although one person felt that it would still be better to come to a mutual resolution than 'having something imposed that you're not happy with', the desire for a definite resolution was a key factor for many of the refusers we talked to. As one respondent put it:

'I needed mediation to have the ability to say who is right or wrong - not to be impartial. I needed a decision to be made. Mediation were not going to say either way who was right or wrong and I thought - what's the point of that?'

9.16 Mediation does not appear to meet these people's expectations. They also tend to have been disappointed in the support they have received from authorities such as the council

and the police. This is usually for the same reason - that these authorities won't make judgments about who is right or wrong. Rather than mediation, they want arbitration (and binding arbitration at that). Hence, there seems to be little faith in agreements where there are no effective sanctions attached. Yet even where respondents have rejected mediation and their problems are ongoing they do not appear to see the courts as an appropriate alternative option. None of the people we spoke to had any immediate plans to pursue legal action in relation to their dispute.

9.17 A lack of confidence in their own ability to participate effectively in the mediation process did appear to affect some respondents. This appeared to be based on their anxieties about how they would be able to respond if the other party did not co-operate with process and tried to make life difficult for them. Some respondents also felt that the dispute itself had taken its toll on their personal resources: 'It's hard when it is going on day in, day out. You can't sleep, and you go to work irritable'. However, those who had made contact with the mediation service were clear that it did *not* relate to any sense that they had insufficient information to understand the purpose of mediation or how it worked. Most respondents stated that they had been provided with this information, and that the mediation service had checked to make sure they understood it. Neither did refusals seem to stem from a lack of confidence in mediators themselves. Almost all respondents thought that mediators had the necessary skills, resources and approach to manage the mediation process effectively. Indeed, in one case mediation did not proceed because the problem sorted itself out after the mediators first made contact with the second party in the case. Just the 'threat' of mediation worked to eliminate the problem. Predominantly, respondents' contact with mediation services had been relatively positive, and there was general support for what the mediation service was trying to achieve. For most refusers it was therefore their neighbours, rather than the mediation service, that they did not trust to help bring about a satisfactory outcome to their dispute.

10. CONCLUSION

10.1 This study has concentrated on calculating the cost of taking neighbour disputes to mediation or to law. It is clear that, in general, the disputes that are dealt with by legal action are of a different nature than those that mediation services handle as a matter of course. A typical mediation case is likely to involve two households and a dispute over noise, either the noise of domestic appliances that has become highly irritating or what could be termed 'anti-social' noise of exceptionally loud music and parties. Many neighbour disputes tackled by means of legal process are not just neighbour disputes, but problems of anti-social behaviour. They often involve mental health and alcohol or drug abuse, and/or police involvement due to public order offences and crimes of violence. Mediation services do deal with serious and persistent disputes, although none were found in the sample of cases used in this study.

10.2 The dramatic difference in costs between mediation cases and legal cases is therefore a reflection of the seriousness of the disputes, but it also reflects the nature of the processes involved. Most mediation cases involves a small number of hours' work by mediators, whereas legal cases involve tens or hundreds of hours' work on the part of housing officers, investigation officers, solicitors and others to prepare cases for court.

10.3 This is the context in which figures must be understood. Of the mediation cases examined in this study, 61 percent had a 'positive' outcome in terms of agreement or improvement recorded by the mediation service. Mediation is also far less costly than legal action, by a factor of 20 or more. On average, costs of legal measures, although in general far higher, also vary significantly; this is due not only to the seriousness of the dispute but to the local organisational arrangements and policy choices, and in particular the amount of evidence-gathering deemed necessary. Mediation services too work in different ways, with contrasting profiles of referrals, interventions and outcomes. Although it was not the purpose of this study to compare mediation services, it is clear that there are differences between and within the two categories of community mediation and local authority mediation services which merit further investigation.

10.4 It is particularly difficult to compare the effectiveness of mediation and legal remedies, because of the different criteria of effectiveness used by the relevant agencies. Mediation services measure outcomes in a detailed manner, but these measures are not always reliable because services follow up only the cases where an agreement is reached at the end of the intervention. Moreover, mediation services also consider their work to have additional positive outcomes that cannot readily be measured, in terms of education and raising awareness of alternatives to conflict. For local authorities pursuing legal remedies, often what counts is whether an order is granted against the perpetrator. This can be seen as a positive outcome for the neighbours affected, but may not solve the problem in the long term. This is also the case for other outcomes of legal action, such as the perpetrator being re-housed elsewhere, imprisoned or referred for community care services. Very few legal cases have an unequivocally positive outcome, that is, lead to an improvement of the situation. This is because anti-social behaviour orders and evictions do not seek to address the underlying causes of anti-social behaviour, such as alcohol abuse. In future, more detailed research might aim to investigate and track both types of case in detail over a period of at least six months to compare longer-term outcomes.

10.5 This study compared cases that had been to mediation with those in which a decision had been taken for legal action; however, there are 'middle ground' cases in which mediation has been tried unsuccessfully, but which are not deemed serious enough to warrant legal proceedings. A further study might extract from study of these cases some understanding of what the limits of mediation are and the need for alternative forms of intervention.

10.6 This study did not include mediation cases of a very complex or difficult nature. It is likely that there is potential to extend the scope of mediation to more serious anti-social behaviour cases, but how this would be combined with addressing the causes of such behaviour is unclear. The ethos of mediation is to avoid distinguishing between perpetrator and victim; and for most of the anti-social cases studied, such a distinction would be difficult not to make. This does not mean that mediation has no role to play in such cases, and further research into how mediation works in more extreme cases could elaborate on this.

10.7 In general, many people do not wish to take part in mediation because they are afraid of potential reprisals, of an escalation of the dispute or simply of facing the other party. This suggests that in cases involving serious anti-social or abusive behaviour, mediation services may have to do more preparatory work with each side to allay such fears. Some of

the reasons why some people refuse the offer of mediation appear to be precisely because of its basic principles: handing responsibility to the parties themselves, opening up communication and refusing to make an external judgement about right and wrong. It is therefore unlikely that most people refuse mediation because they are wrongly informed about it; although the some refusers' fear that mediation will lead to escalation of the conflict may be based on a misunderstanding of mediation processes. These findings confirm the views of mediation services, that part of their role is a long-term educational one to change attitudes towards conflict. There may be scope for mediation services to work separately with parties to disputes even after legal action has concluded, to prevent re-escalation of conflicts, or for consideration of how restorative justice approaches used as an alternative to criminal proceedings could be applied to anti-social behaviour cases.

10.8 From the findings of this study, it can be concluded that there is great potential for the expansion of mediation in tackling neighbour disputes, because it is effective in the majority of cases and inexpensive compared to legal action. Mediation alone is not enough, however, when many serious neighbour disputes are associated with obvious social and health care needs.

10.9 Several recommendations arise from this study, which can be summarised as follows.

- a. for housing, police and mediation services to work together to raise awareness of mediation among all staff who may come across neighbour disputes, and to ensure that they have a sufficient understanding of mediation to convey this to potential participants;
- b. for mediation services to ensure that they have robust monitoring and evaluation systems in place, which allow for comparison between services, and for accurate medium term measurement of outcomes, including the views of participants;
- c. to carry out detailed research into: i. the degree to which mediation can prevent escalation in cases of anti-social behaviour; ii. how mediation is used in disputes that are serious, or complex or involve vulnerable participants, and its potential for expansion in this area; and iii. the medium and long-term outcomes of Anti-Social Behaviour Orders and evictions or transfers in anti-social cases.

ABBREVIATIONS USED IN APPENDICES

Tenure

CT: council tenant

OO: owner occupier

PT: private tenant

HA: housing association

Referred by

AHO: area housing office

ENV: environmental health

LO: Council local office

SW: social work

HIT: housing investigation team

Mediation type

FTF: face-to-face

Legal cases

OOH: out of hours

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Ref /Refer	Tenure	Case Issues	Stage Reached	Outcome	Case Time	Gender	Mediator hrs	Case Costs
26	2CT	Hi-fi Noise	Tel call N1 only	Situation Improved	2 days	2 women	1	58.8
27	OO/CT	Verbal Abuse	Joint Session	Agreement	5 wks	2 women	6.5	223.12
28	2CT	Children fighting	Session arranged, sorted themselves	Situation improved	7 wks	2 women	5	190.91
29	n/k	Hi-fi noise	sorted out themselves	Situation improved	2 wks	2 women	1	58.8
30	PR	Noisy baby, clash of lifestyles	shuttle	Part Agreement	3 wks	woman, couple	3	113.46
31	2CT	Music & parties, harassment	Joint Session	Agreement	3 wks	3 women	6.5	220.87
32	2CT	Music, laminate flooring	Visit both parties	N2 unwilling to proceed	3 wks	2 women	4	124.92
33	OO/OO	Boundary Fence	Joint Session	Agreements	4 wks	man, couple	5	245.33
34	OO/CT	Verbal abuse, harassment	Joint Session	Agreement	6 wks	man, couple	5	178.41
35	2CT	Noise from children	1st visit to both parties	N2 unwilling but both neighbours say sit imp	3 wks	man, woman	4.5	165.83
36	2CT	Music, verbal abuse, damage to property	Tel Call N.1 only	N1 unwilling to proceed.	2 wks	2 men	1	58.8
37	2CT	TV Noise, hi-fi, domestic noise	Joint Session	Situation improved	8 wks	2 women	4	158.86
38	OO/OO	Domestic Noise	Joint Session	Agreement	5 wks	2 men	5	174.4
39	OO/CT	Intimidation /harassment	Joint Session	Agreement	4 wks	man, couple	6	201.08
40	2CT	Children /intimidation	Joint Session	Agreement	4 wks	woman, couple	4	169.5
41	2CT	Communication breakdown	Joint Session	Amicable resolution	5 wks	couple, woman	4	185.42
42	OO/CT	Children fighting, namecalling	Joint session	Situation Improved	4 wks	2 women	5	185.96
43	2CT	Noise, banging doors	Joint session	Agreement	5 wks	man, woman	4	166.71
44	OO/CT	Boundary dispute	Joint session	Amicable resolution	4 wks	2 women	4	177.6
45	O/PT	Noise, laminated flooring	Joint Session	Agreement	7 wks	couple, woman	6	253.95
46	OO/CT	Noise, intimidation	Shuttle session	Agreement	8 wks	2 couples	8	292.69
47	OO/CT	Children, name-calling	Shuttle session	Agreements	4 wks	2 women with children	4	133.72
48	OO/CT	Boundary	Joint Session	Part Agreement	5 wks	2 couples	5	200.33
49	OO/CT	Noise, clash of lifestyles	Joint Session arranged	one withdrew	4 wks	2 men	5	173.53
50	OO/CT	TV noise	Noise level set	Agreement	3 wks	woman, couple	5	181.65
								171.786
Average Case Costs dividing total budget by no. of cases= £219. 37								

	tenure	parties	referrer	nature	medn type	outcome	length	time	time costs	mileage rtn	travel costs	total costs	notes
76	2 CT	A man B woman	LO	noise: loud music, appliances	fff	1 agreement	1 m	4h10	58	25	22.5	105.5	
77	CT, OO	A couple B couple	LO	A's children being chased away by B	verbal	1 verbal agreement, B refused FTF	1 m	2h30	32.5	3	2.7	38.2	
78	2 CT, 1 OO	A & C women, B couple	HIT	C playing loud music	none	4 assistance: A moved	1 m	7h15	104.5		0	104.5	
79	n/k	A couple, B man	police	alleged verbal abuse by B in street	fff	1 agreement	1m	7h	100	35	31.5	166.5	
80	2 CT	2 families	self	verbal abuse, assaults	fff	2 part	under review	8h40	125.5	30	27	182.5	police inv.
81	2 OO	A man, B woman	self	A's bin and parking	fff	9 irreconcilable	2m	6h40	95.5	30	27	152.5	
82	OO, HA	A couple, B woman	self	B makes noise on stair, noise of A's car	fff	1 agreement	1m	9h05	131.5	30	27	188.5	
83	n/k	A man, B woman	Env	noise: loud music	fff	1 agreement	1m	7h50	112	20	18	150	
84	2 CT	A couple, B woman	LO	noise: loud music, voices	fff	1 agreement	1 m	6h25	91	27	24.3	142.3	
85	2 OO	2 couples	self	fence that prevents weeding	none	3 no agreement, B refused mediation	1m	5h20	74.5		0	74.5	
86	2 OO	2 couples	self	noise from deliveries to shop	none	3 no agmnt; spoke to both parties	1m	6h00	85		0	85	health/language difficulties
87	2 CT	2 women	LO	B making banging noises	none	community care referral	2m	4h30	62.5		0	62.5	
88	2 CT	2 women	LO	noise: banging doors, loud music	none	3 no agreement; B moved	1m	2h25	31		0	31	
89	4 OO	woman, 3 couples	self	B's children frighten others'	none	8 withdrew; B refused to meet	1m	3h02	40		0	40	
90	2 CT	2 women	LO	noise: banging on wall	none	8 withdrew; A refused to meet	1m	7h05	101.5		0	101.5	
91	2 CT, 1 OO	2 men, woman	LO	unspecific allegations from all parties	none	5 no intervention, two refused to meet	1m	1h44	21.25		0	21.25	
92	2 CT	A man, B woman, C woman	LO	noise: doors, children running about	shuttle	verbal agreement	2m	6h13	88	30	27	145	
93	2 PT	A woman, B couple	self	disputes between children of parties	none	resolved themselves	1m	4h11	58		0	58	police inv.
94	2 CT	A woman, B man	SW	barking dogs	fff	1 agreement	2m	8h35	124	30	27	181	disability
95	2 CT	2 families	LO	disputes between children of parties	fff	1 agreement between children	2m	11h10	163	20	18	201	
96	CT, OO	A woman, B 2 men	self	noise: parties	none	resolved themselves	1m	1h10	13		0	13	
97	2 CT	2 women	HIT	verbal abuse, loud music: both complain	fff	1 agreement	1m	7h30	107.5	20	18	145.5	
98	2 OO	A woman, B couple	HIT	loud music, shouting, fighting	none	no agreement, neither wanted to meet	1m	3h55	53.5		0	53.5	
99	2 CT	2 women	HIT	noise: loud music	fff	1 agreement	2m	9h40	140.5	30	27	197.5	
100	2 CT	2 women	self	disputes between children of parties	fff	2 part agreement	1m	4h05	56.5	30	27	113.5	

Appendix 5

Legal Cases 1 - 15

	10	11	12	13	14	15
h/hold	woman	woman w children	woman	woman w children	man w children	woman
problem	music, shouting, racial abuse	music, doors, rubbish, vandalism	shouting, doors, residency question	noise, doors, music, rubbish, drug use	threats, vandalism, assaults	music, shouting, swearing
length	2m+2m	2m	4m	3m	3m	4m
phone	25	24	25	35	38	28
visit	7	5	12	6	10	4
OOH visits	2	2	44	2	4	40
OOH hrs	4	5.3	96	5.2	8.5	160
HIT hrly costs	243	278	3843	312	460	5692
inc admin	279	320	4419	358	529	6546
outcome	bail conditions temp displaced problem; when reopened, no evidence	insuff evidence	decree, eviction	insuff evidence, neighbours evidence unreliable - try voluntary transfer	lack of evidence and T also victimised; accepted rehousing	transfer
notes	charges against T and family	SW involved w many children visitors to the property	drugs related		custodial sentence after accepted rehousing	EH noise monitoring, police confiscated equipment, charges of breach
legal hrs						
legal hrs costs						
inc admin						
fees						
total legal costs						
total HIT costs	279	320	4419	358	529	6546
police callouts						25+
police cost						1250
meetings		20	20 at court		4	
meetings cost		400	400		80	
total costs	279	720	4819	358	609	7796
HIT rates: normal £20						
lawyers rate £32/hr						
assume average visit						
meetings cost £20/hr						
police average call co						

	household	tenure	problem	notes	length	outcome	police incidents	other agencies	hsg costs	legal calls	legal calls costs		total legal costs	total costs	inc ohds @ 40%
37	man	private	shouting, swearing, verbal abuse, fighting, self and visitors	history of convictions	2m legal	ASBO, later breached, then calmed down	19 in 5m	MSP, Comm Cncl, Directors of SW/Hsg, Blg Control	700	30	87.5		357.5	1057.5	1480.5
38	man	council	music, shouting, swearing, fighting, self and visitors	abdmnt notice cancelled	NoP to ASBO 3m	ASBO, moved away			150	25	72.9		342.9	492.9	690.1
39	woman	council	dogs, music, shouting, swearing, damage to stair, doors, self and visitors	abmt notice cancd	NoP to ASBO 9m, 3m legal	ASBO, later breached, no prosecution; main complainers moved	several		195	25	72.9		342.9	537.9	753.1
40	woman + children	council	music, shouting, swearing, doors, dogs; self and visitors	mediation failed	NoP to ASBO 11m, warning to ASBO 4m	ASBO, later breached, no prosecution; main complainers moved	20	SW, Health Visitor	700	25	72.9		342.9	1042.9	1460.1
41	man		music, doors, gen noise	breach of peace conviction	NoP to hearing 7m	sisted for good behaviour, calmed down	6		150	25	72.9		342.9	492.9	690.1
42	man	council	music, shouting, swearing, fighting, self and visitors	custody	NoP June, calling Oct	sisted for good behaviour, custody, then calmed down	23		150	25	72.9		342.9	492.9	690.1
43	man	council	vandalism, disturbance by visitors	mental health and alcoholism	NoP to hearing 2m	custodial sentence	numerous	SW	500	35	102.1		372.1	872.1	1220.9
44	woman	council	music, shouting, swearing, doors	breach of peace charges, mediation failed	NoP to ASBO 9m, 3m legal	ASBO; defence withdrawn on day; recently breached	21 in 2m	SW	700	60	175.0		445.0	1145.0	1603.0
Assumptions															
Legal costs assume average call or letter takes 5 minutes solicitor's and 5 min admin time															
Total legal time includes 2h case meeting, 3h solicitor and 2h admin on writ, 1 hr in court, and court/sheriffs officers fees of £100															
Solicitors cost £25, admin £10 ex overheads (based on 40/15 inc overheads)															
Cases 3 and 8: housing costs calculated; other cases housing costs are estimated.															
Housnig costs: housing mileage = 50p, assume only one travel claim; HO costs £10/hr, area officer £13/hr ex overheads															
Case 3: 17 hrs HO/AO time; 2 visits of 15 miles = £30															
Case 8: inc travel, 34 hrs HO/SO time; 5 visits of 15 miles = £30															

	45						
household							
tenure	Council						
problem	General disturbance by loud music, verbal abuse, shouting & swearing						
outcome	ASBO						
length	5m						
meetings/visits	4.0						
visit hrs incl travel	6.0						
phonecalls/letters	13.0						
phonecalls/letter hours	2.2						
OOH visits	4.0						
OOH x2 at 1.5 incl travel	16.0						
OOH rtn miles	20.0						
rtn miles	12.0						
rtn travel hours	0.5						
rtn travel OOH	0.5						
casework hours	24.2						
admin hours	3.6						
total team hours	27.8						
total daytime miles	48.0						
total OOH miles	80.0						
total mileage costs	44.8						
total time costs	555.8						
total team costs	600.6						
solicitor hrs							
legal admin hrs							
legal staff costs							
total case cost							
<i>Assumptions</i>							
Average time spent on daytime meeting or visit to party or neighbours (ex.travel) is one hour.							
Average time spent on letter or phonecall is 10 minutes.							
Average mileage costs 35 pence per mile.							
Average daytime return mileage is 12. Average out of hours return mileage is 20.							
Average staff hourly rate £20 (applies to specialist team staff and also other officers - Social work, housing, health professionals, lawyers, police)							
Administration of case (to open, close, report, record and discuss the case) requires 15% of the casework hours.							
Casework hours are visits + travel + letters/calls + out of hours visits multiplied by £30 + travel. Two officers attend out of hours visits.							
Other Officers' costs are based on 1.5 hours per meeting (£30) inc. travel.							
Length is time with specialist team from referral to case closed.							

	46	47
household	Man	Man
tenure	Council	Council
Initial Complaint	Alcoholic. Complaints from neighbours regarding harassment, threats and assaults.	Alcoholic. Complaints of disturbances in house and street, shouting and swearing, loud music and sectarian music at all times of day, night and early morning.
Offending Behaviour	The suspect continually harassed neighbours by making false accusations, threatened violence and subsequently carried out the threats and assaulted a neighbour. Continually caused disturbances in house and common areas by shouting, swearing and playing loud music.	Suspect has been a continual source of annoyance at his address with his loud music, sectarian music, disturbances in the street and constant abuse of neighbours. His behaviour is becoming more irrational entering local shops dressed bizarrely and offering money to young children.
outcome	Notice of Proceedings served. Interdict (Sisted).	Interdict (Absolute)
length from 1st complaint to team referral	5 mths	6 mths
length from referral to team to interdict	16 days	47 days
meetings/visits	17	39
visit hrs incl travel	17	39
phonecalls/letters	54	65
phonecalls/letter hours	13.5	16.25
rtn miles	9	9
casework hours	30.5	55.25
admin hours	15.25	27.625
total team hours	45.75	82.875
total daytime miles	153	351
total mileage costs	55.08	126.36
total time costs	503.25	911.625
total Investigation Team costs	558.33	1037.985
solicitor hrs	7	7
legal admin hrs	3.5	3.5
legal staff costs	280	280
legal admin costs	38.5	38.5
court costs	165	165
total legal costs	483.5	483.5
Total case cost	1041.83	1521.485
<i>Assumptions</i>		
Average time spent on daytime meeting or visit to party or neighbours (incl.travel) is one hour.		
Average time spent on letter or phonecall is 15 minutes.		
Average mileage costs 36 pence per mile.		
Average daytime return mileage is 9.		
Average hourly rate for an Investigation Officer is £11. Average hourly rate for a Solicitor is £40.		
Administration of case (to open, close, report, record and discuss the case) requires 50% of the casework hours.		
Solicitors average 7 hours per case. Legal admin hours charged at £11 per hour.		
Casework hours are visits including travel + letters/calls + admin.		
Court costs include Warrant Dues £50 and Sheriff Officer Fee £115.		

Appendix 11

Legal Cases 48 - 50

		48	49	50
solicitor hrs		5	20	5
writ		250	250	250
legal fees		100	100	100
other agencies	HA		SW*	
police		80	300	80
cost x hsg		2100	6950	2100

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