

Research into Participant Perspectives of Dispute Resolution in the Scottish Courts

Final Report for Scottish Legal Aid Board

February 2016



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1. Introduction

1.1 The Scottish Legal Aid Board (SLAB), with funding support from the Scottish Government Justice Directorate and the Scottish Civil Justice Council, commissioned Blake Stevenson Ltd in July 2015 to undertake research about the drivers and motivations underlying the different dispute resolution paths which people choose in relation to small claims– level civil disputes (that is, claims of a value up to £3,000), focusing on two geographical areas, Edinburgh and Tayside.

1.2 The research brief set out the key research questions as follows:

- What motivates people to use one route to resolve their disputes rather than another?
- What is it about alternative routes that deter people from using them?
- What are people’s expectations of the routes that they choose and don’t choose to resolve their disputes?
- What are people’s perceptions of their dispute resolution experience?

1.3 Insights from the research which show why people make particular choices about dispute resolution will assist in the development of policy options for resolving civil disputes in the future, before they come to court and once they have become court actions.

Methodology

1.4 We adopted a qualitative methodology for this research focused on gathering the views of different groups of people through telephone and face to face interviews covering:

- people with civil disputes who have used either the Tayside In-Court project or the mediation project in Edinburgh, termed “project users”;
- people who have not made use of these routes but who have come to one of the sheriff courts with a dispute, termed “project non-users”;
- sheriffs;
- court staff;
- project staff.

1.5 There is some bias in the sample of non-project users as we were not able to access interviewees other than through the courts: there will be other project non-users who have managed to resolve their dispute before it gets to the court stage but we were not able to access them.

1.6 We met with the Research Advisory Group for the research on three occasions:

- at the outset (July 2015)
 - to present interim findings and to discuss the outline of the final report (November 2015)
 - to discuss the draft final report and agree amendments (December 2015).
- 1.7 We collaborated with SLAB staff on refining the research tools for the interview process and kept in touch by email and occasional meetings throughout the research process.
- 1.8 We accessed the interviewees through different ways:
- for those who have used either the Tayside In-Court project or the mediation project in Edinburgh we asked the projects to supply the names and contact details of those who had agreed, in principle, to take part in the research. We then telephoned all those on the lists supplied to see if they would be willing to take part.
 - for those who had not used either of the projects we arranged to attend a session of the small claims court at each of Edinburgh, Dundee and Perth courts and to approach people attending these courts to see if they would agree to participate in the research.
 - with agreement from the Sheriff Principal in each jurisdiction we were able to interview sheriffs and court staff based at Edinburgh, Dundee and Perth courts.
- 1.9 The table below provides a summary of numbers interviewed in each area:

Location	Stakeholder	Format	Method of contact	Number interviewed
Edinburgh	Project users – pursuers and defenders (includes 3 corporate)	Telephone interviews	Project contacted all project users going back 12months+	11 (7 pursuers, 4 defenders)
Dundee/ Perth	Project users – pursuers and defenders (including those who seek advice before and during small claims court processes)	Telephone interviews	Project contacted all project users going back 6 months	25 18 pursuers, 7 defenders)
Edinburgh/ Dundee/ Perth	Project non-users – disputants who are in court or have dispute experience without having had contact with the court projects	Face-to-face and telephone interviews	Interviewing people attending court and others signing up through an online link distributed through CABs and Twitter	13 (3 pursuers and 10 defenders)
All locations	Sheriff – Edinburgh	Face-to-face interviews	Direct	5 (Edinburgh (2), Perth (1), Dundee (2))

All locations	Senior court staff	Face-to-face interviews	Direct	4 (1 in each court location: Civil Court Manager or Court Clerk plus one additional staff manager in Perth)
All locations	Project staff	Face-to-face interviews	Direct	2 (1 from each project)

1.10 The interviews with project users and project non-users reflected a range of types of disputes and the broad categories are outlined in the tables below, together with the numbers of pursuers/defenders in each category.

Project Users					
Dispute Issue	Edinburgh	Tayside	Defender	Pursuer	Total
Trades- quality of work / cost	6	8	7	7	14
Landlord/tenant/property management	3	3	1	5	6
Car related	1	4	1	4	5
Financial (insurance, credit, fees, bookmakers)		4	1	3	4
Family / close friend disputes		3	1	2	3
Employment		2		2	2
Goods bought / faulty	1	1	1	1	2
Total	11	25	12	24	36

Project Non Users					
Dispute Issue	Edinburgh	Tayside	Defender	Pursuer	Total
Landlord/tenant/property management	2	3	4	1	5
Financial (insurance, credit, fees, bookmakers)	1	3	4		4
Trades - quality of work / cost	1	2	2	1	3
Family - close friend disputes	1		1		1
Total	5	8	11	2	13

1.11 The telephone interviews with project users were recorded and transcribed and inputted to the software analytical programme NVivo.

- 1.12 The findings from this research are set out in the following chapters. Chapter 2 provides contextual background for the work; chapters 3–6 address the research questions; Chapter 7 analyses the factors that make a dispute amenable to dispute resolution and Chapter 8 provides conclusions.

2. Context

- 2.1 The wider context of the research is that reform of the civil courts is a key commitment for the Scottish Government, originating in a judicially led review of the Civil Justice System and leading to the 'Report of the Scottish Civil Courts Review' (2009). Further developments led to the Court Reform (Scotland) Act 2014. Key changes contained in the Act include:
- the creation of a third tier of the judiciary to deal with lower value financial disputes, called Summary Sheriffs; and
 - the Simple Procedure replacing Small Claims and Summary Cause procedures and dealing with all cases up to the value of £5,000. An aim of the new Simple Procedure is to support an interventionist approach by the judge to identify the issues and assist the parties to settle if possible, and to determine how the case progresses and facilitate access to justice.
- 2.2 The Scottish Government's Strategy for Justice in Scotland is delivered through a series of programmes. One of these is Making Justice Work, a portfolio of programmes and projects which have the aim of modernising Scotland's justice system, working to make it fair and accessible, cost effective and efficient, and to better meet the needs of the people of Scotland.
- 2.3 The Scottish Legal Aid Board has commissioned this current research in the light of the above changes. There is a need to understand user perceptions of the civil justice process and of the options people have in trying to resolve such disputes.
- 2.4 SLAB was set up in 1986 and is a non-departmental public body responsible to the Scottish Government. As well as administering legal aid which pays for solicitor and advocate services, the Board employs solicitors to provide advice and grant funds local money, welfare, debt and rights advisory services across many local authority areas as well as court advice services.

Dispute resolution

- 2.5 The foreword to a 2014 review of publicly funded legal assistance¹ noted that "civil problems and disputes can have adverse consequences for people, affecting their confidence, well-being, financial situation and health...Problems and disputes can escalate from simple, minor issues into major, complex challenges. The early resolution

¹ Scottish Government (2014), 'Making Justice Work Enabling Access to Justice Project – Landscape Review of Publicly Funded Legal Assistance'

or avoidance of these problems can improve people's lives." This understanding summarises numerous research studies².

- 2.6 There are many ways of sorting out complaints and legal problems which can avoid or reduce the need for court proceedings. They include things like mediation, ombudsmen schemes and arbitration.
- 2.7 According to The Scottish Office (1998)³ alternative dispute resolution is described as "any method of resolving an issue susceptible to normal legal process, without resorting to that process." Depending on their structure these services can be accessed before people resort to litigation or as support during a court process.
- 2.8 Wide-ranging research in the UK and internationally covers the use of different forms of dispute resolution (frequently mediation), and charts an increase in its use across a range of settings such as the workplace, in family settings and with regard to planning and property issues.
- 2.9 Proponents of these alternative approaches to resolving disputes argue that their advantages can include flexibility, faster problem solving, reduced stress and lower costs.
- 2.10 Critics of these approaches highlight that they might encourage compromise where this is not appropriate, or be unfairly advantageous to those who are more articulate or assertive. The fact that this form of dispute resolution does not go on any public record or lead to issues being publicly scrutinised is also seen as a potential shortcoming.
- 2.11 In Scotland, wide-ranging mediation projects and other conflict resolution services have become accepted forms of support service in various settings in recent years. There are national organisations promoting and supporting these such as the Scottish Mediation Network (established in 1990) and the Scottish Centre for Conflict Resolution (established in 2014).

Court advice projects

- 2.12 SLAB funds a number of court advice projects, some of which are based within court premises with allocated office space, some of which are based in other premises such as Citizens Advice Bureaux (CABx). The two projects which this research is focused on, the

² For example, Genn, H. and Paterson, A. (2001) *Paths to Justice Scotland: What People in Scotland Do and Think About Going to Law*. Oxford – Portland Oregon: Hart Publishing; Pleasance, P., Buck, A., Balmer, N., O'Grady, A., Genn, H., and Smith, M. (2004) *Causes of Action: Civil Law and Social Justice. The Final Report of the First LSRC Survey of Justiciable Problems*. United Kingdom: The Stationery Office; Pleasance, P., Balmer, N., Patel, A., Denvir, C. (2010) *Civil Justice in England and Wales 2009: Report of the 2006-09 English and Welsh Civil and Social Justice Survey*. London: Legal Services Commission; Pleasance, P., Balmer, N., Buck, A., Smith, M., and Patel, A. (2007) 'Mounting Problems: Further Evidence of the Social, Economic and Health Consequences of Civil Justice Problems' in Pleasance, P., Buck, A., and Balmer, N. (eds.) *Transforming Lives: Law and Social Process*. United Kingdom: The Stationery Office.

³ Scottish Office (1998), 'Alternative Dispute Resolution in Scotland – Research Findings'

Edinburgh sheriff court mediation project and the Tayside In-Court project are both in-court projects and represent different models of support to resolve disputes. One (Tayside) provides advice and support and can be engaged at any stage of the dispute, both before and after court action begins; the other (Edinburgh) provides mediation within the court process itself (that is, once court action has started). For further information about the range of projects funded by SLAB see Appendix 2.

- 2.13 The first in-court advice project in Scotland was introduced into Edinburgh sheriff court as a pilot in April 1997 funded by the European Commission and managed by Citizens Advice Scotland and the Scottish Consumer Council. In the second phase of the project it linked with the mediation project operating out of Edinburgh Central Citizens Advice Bureau (now Citizens Advice Edinburgh).
- 2.14 Since then, research into the value of Scottish-based in-court advice projects and in-court mediation projects and the experience of their users have produced positive findings. In-court advice services were seen to be “uniquely placed within the court house⁴”, and “particularly able to address unmet legal need for people involved in court proceedings”, while users of the service found the in-court mediation service satisfactory in terms of cost, effectiveness and use of time compared to litigation.
- 2.15 In the 2010 study⁵ of the Glasgow and Aberdeen-based in-court mediation work, mediation was described as providing “an early opportunity to air the case in conversation and explore solutions” and that “it was valued by the parties even if it did not lead to settlement”.
- 2.16 The Edinburgh sheriff court mediation project has been operating since 2005, offering a free mediation service to small claims and occasional summary cause litigants in Edinburgh sheriff court, taking referrals from sheriffs and some self-referrals from litigants. The project deals with court actions, and not pre-action disputes. A Service Co-ordinator and Caseworker manage the mediation process with a panel of volunteer mediators carrying out many of the mediations. The project operates alongside the Edinburgh court advice project (which has been a separate project since 2012) with both being managed by Citizens Advice Edinburgh.
- 2.17 The Tayside In-Court project is an extension of a project that operated in Dundee court from 2004 and since 2012 has covered Dundee, Perth and Forfar courts. It provides free advice and assistance to small claims court-users at both the pre-action and court action stages of their dispute, explaining processes and guiding people on their options, as well as practical tasks such as letter writing or form filling. The project focuses on settling cases but will assist court users whose matters have proceeded to court, including

⁴ Morris, Richards et al (2005) Uniquely Placed: Evaluation of the In-Court Advice Pilots

⁵ Ross, M and Bain, D (2010) In Court Mediation Pilot Projects, Edinburgh: Scottish Government

assisting at Proof stage if required. In the Perth court a room has been made available on the ground floor for use by project staff on days when the small claims court meets and sheriffs will refer cases they think could be resolved to the project. The project can only act for one side in a dispute once one party has engaged its support, but it can support communication between the two sides either before the court appearance, through letters and phone calls, or on the day of the court itself where it provides a service akin to “shuttle negotiation”. Paid staff undertake the project’s work and are assisted by volunteer law students from Dundee University Law Faculty and Diploma course. The project is managed by Dundee Citizens Advice Bureau. Referrals come from the CABx (around a third), from sheriff clerk’s office and court publicity (a third) and from other sources (a third) including self-referral and word of mouth.

3. What motivates people to use one route to resolve their disputes rather than another?

3.1 This section addresses the above question first from the point of view of the project users and non-project users and secondly from the perceptions of sheriffs and court staff.

3.2 We have set out the findings under two main headings:

- early stages in trying to resolve the dispute; and
- how people come to the In-Court /mediation projects.

Where quotes are used we record in brackets whether it relates to a Tayside (T) or Edinburgh (E) case, whether Pursuer (P) or Defender (D) or Corporate (C) and the code number for the interview. (Only quotes from project users are used as project non-users' interviews were not recorded as they took place in the corridors outside court hearings.)

Early stages of dispute resolution

Project users and non-users

3.3 Interviewees' motivation to use one route rather than another links in part to their expectations (see Section 5). The main motivator is that people want to resolve their dispute and expectations of which route will best help them achieve this may not be that explicit at the outset, although for project non-users who have chosen to employ solicitors it is clear they hope this route will help them achieve a positive resolution at court.

3.4 Both project users and non-users have attempted at the outset to resolve their disputes by communicating with the opposite side. The communication may take the form of emails, letters, telephone calls, texts, Facebook messages or direct conversation. This is true of both defenders and pursuers. The research found examples where this very early stage may in itself take some time as various attempts are made to communicate and negotiate.

"Yes I initially contacted them, and I contacted him by phone then someone else was responding to his emails and then I got no response." (T/P 17)

3.5 This behaviour of stalling and refusing to respond was described of defenders, with research interviewees speculating that this was a tactic employed in the hopes that the pursuer will give up.

"Well obviously I phoned them. And I told them the issue. And it went back and forth. They...made up excuses like the company director was on holiday and stuff like that. I had to phone back at certain times, things like that." (T/P 22)

- 3.6 On the other side the defenders can also experience pursuers as aggressive. One example showed how behaviour can become quite threatening in the efforts to get a defender to pay a disputed bill:

“So I then got a bill from this guy for £1,400. And I told him to stuff it. And we had a lot of correspondence and arguments, and he kept threatening me. He also added to the bottom of all his bills, every one of the invoices he had sent, subsequently any more, that if this bill is not paid within seven days...the charge will be £180 or £260 or as much as £500. This scared a lot of people I subsequently found out into paying.” (T/D 19)

- 3.7 As previous research in this area has indicated⁶ some civil disputes are resolved at this initial stage where the disputing parties are able to communicate with each other and the matter goes no further. Likewise some people simply “give up” or “give in” at this very early stage and decide that the matter is not worth pursuing or they are too scared not to pay, even though they haven’t resolved it fairly in their own minds. We do not have direct evidence of this from this research as all our interviewees had either used the court process or the two projects. We do know from this research that project users who have continued with their disputes refer to “nearly having given up” at different points related to the stress and lack of understanding about what to do and a few stated that the support from the Tayside project helped them to keep going.

- 3.8 The research also found that some project users and non-project users believed that the matter had been resolved at this initial stage but then, from their point of view, out of the blue, the matter arose again. For example an interviewee who had withheld part of a tradesman’s bill because of a disagreement over the quality of work and assuming that this had been accepted by the other party, received a summons some months later.

- 3.9 If the matter is not resolved between the two parties at this initial stage there are a variety of routes that people choose, both informal and formal, and these may be used more than once and may involve more than one at a time (for example getting advice from family and from the CAB). The diagram at Figure 3.1 serves to show the routes that people may use to resolve their disputes. In addition we illustrate three specific cases using this diagrammatic approach, contained in Appendix 1.

- 3.10 The informal routes include talking to family, friends and acquaintances and searching online for help. For example:

“My niece is a barrister so I was getting her to give me advice...” (T/D 8)

“It was actually my motor mechanic that has a business himself, I was speaking to him...” (T/P 3)

⁶ H. Genn and A. Paterson (2001) Paths to Justice Scotland: what people in Scotland think and do about going to law. Hart Publishing

“We got another builder involved to try and resolve matters, but that didn’t work either.”
(T/P 9)

- 3.11 Most project users and non-users we interviewed have used these informal routes of family, friends and acquaintances as a starting point. Only a few, including project users and non-users, have said they use online searches and these tended to be people who have a bit more experience or understanding of how to navigate the system. For example:

“I knew [already about small claims courts]...as a landlord you sometimes have to use courts. It probably took me an hour on the internet to confirm what I needed to know.”
(E/P 16)

- 3.12 However a few of those we interviewed commented that seeking advice online was not that straightforward:

“I spent hours online, hours and hours and hours and hours online...” (T/D 20)

- 3.13 When a dispute involves a family member or someone close the communication at this initial stage can be more difficult. In one case the interviewee’s ex-boyfriend owed her money and she felt she couldn’t speak directly to him so she contacted his mother instead using Facebook. [The boyfriend said he would pay back the money but in fact that had not happened at the time of interview. Although the interviewee has received advice she is reluctant to raise an action as she wishes to give him a chance to pay it back.]

- 3.14 The “formal” routes cover a range of organisational sources of advice that people turn to such as CABx, solicitor, consumer advice, Ombudsmen or Trading Standards. Some people choose to go straight to these rather than to family and friends. For example a few project users said they went straight to a solicitor for advice and several people said they went to the CAB as the first port of call.

“I first went to CAB and they mentioned the in-court services so I phoned them, arranged a meeting and explained all the details.” (T/P 11)

“The only thing that really helped me was the consumer helpline. They guided me through and told me what to write, the letter, told me to phone back once I’ve done this, phone back when I’ve done that. And showed me the next step on what to do. They took me so far until they couldn’t take me further. That’s when I went to in-court advice.” (T/P 22)

- 3.15 Of the 13 project non-users we interviewed, six had been to a solicitor for advice and two of these had used the solicitor to take the dispute forward for them. (In comparison six of the 33 individual project users had spoken to a solicitor for advice but none of them had used the solicitor to take it forward due to the costs.) The remaining seven project non-users had used informal advice, the CAB, a local land agent, and had looked online

for help. One person said they had received no advice whatsoever and another that they had still been trying to sort it out directly with the housing association involved. None of the project non-users had contacted an Ombudsman or Trading Standards.

- 3.16 From the research with project users we found that while these formal routes can provide advice, they had not helped these interviewees to actually resolve their dispute. In order to achieve this, the interviewees had then gone to court or sought advice from the In-Court project (in Tayside). For the project non-users there was a similar pattern: that the use of CABx and a land agent had not resolved the issue: a few were still trying to resolve the dispute directly right up to the appearance in court; for two they had decided to pay a solicitor to help them through the process.
- 3.17 Although Trading Standards and Ombudsmen have a role to play in solving disputes, some of the project user interviewees identified that while these bodies were able to provide advice on their rights in a given situation, and on the standards which they might have expected of the companies they are in dispute with, they were not able to provide as much assistance as the interviewee was looking for and this is why they had proceeded to court. Project non-users did not mention using these specific routes.
- 3.18 For example one interviewee (a pursuer in Edinburgh) went to an Ombudsman and said:
“I went to the Ombudsman and I had a discussion with him. They said they couldn’t really rule on what were damages, but ...they could ask for compensation up to a certain level but couldn’t give me any confidence that they could get more than had already been offered to me.”(E/P 16)
- 3.19 In the above case the dispute eventually went to mediation and the interviewee received *“four times”* what had been originally offered suggesting that this would not have been achieved had he not proceeded to court and through that to mediation.
- 3.20 We had one instance where the interviewee, a defender, had tried to seek mediation help from another organisation in the early stages:
“So I responded to the credit agency firm basically saying I didn’t think I owed them any money for the reasons I mentioned at the beginning of the interview. And I also attempted to find a sort of mediation service which wasn’t the Citizens Advice court mediation service, it was I think something called Mediation Scotland or something a bit like that. And they tried to contact the firm to enter into a mediation process, but the firm didn’t reply at all.” (E/D 34) [Interestingly this interviewee was put in touch with the court mediation service by the court staff. A letter from the court mediation service led to a resolution of the dispute before it came to court with the suggestion from the interviewee that court correspondence had been a factor in this, *“you know we were actually pretty close to the first hearing in the sheriff court”* when it was resolved].

Figure 3.1 Routes to Resolution

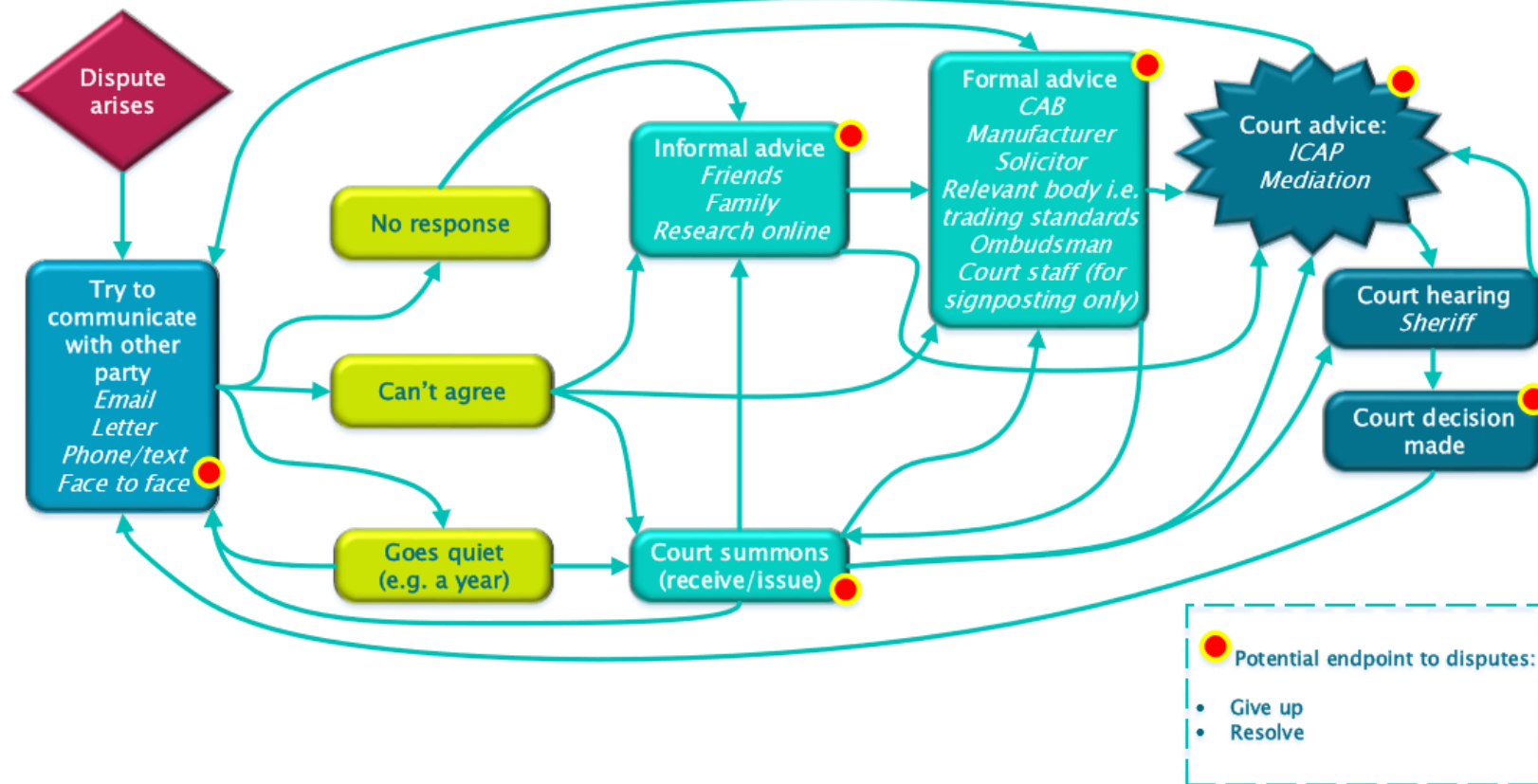
Pathways to Dispute Resolution



Dispute establishes

Early stages of dispute resolution

Court experience



- 3.21 The project non-users we were able to interview at the courts had either made use of solicitors to help them and/or were confident enough to handle the case themselves (or were at such an early stage they were not sure what would happen next), although several referred to seeking advice from the CAB or from another formal organisation such as a land agent. For example in Tayside one interviewee had met the In-Court project representative for the first time that day in the court but was clear that he would not need her assistance as he could manage it himself. Another person was acting for a group of people involved in a dispute with a property developer and they had clubbed together to employ a lawyer. A third person was in court for the first time, had taken advice from no-one, but was clear that he would simply pay the amount being demanded.
- 3.22 We spoke to two corporate bodies both in Edinburgh who both clearly had set procedures in place:
- “We have a strict debt recovery process in place. We send out invoices. We send out a reminder so many weeks later. They get a second reminder to advise them that there will be action taken, and a late payment fee is normally installed at that stage. ... We try to make contact, either a credit controller or the property manager try to make contact with the individual to advise them this is the next step. Then we use a debt collection specialist from there, and they continue to recover the funds we're chasing.” (E/C 32)*
- 3.23 These early stages can cover a very wide range of time periods. In one dispute, involving a credit card company and a disputed final bill payment, the interviewee, a project user, said the dispute had lasted intermittently over a period of five years, with letters coming from the credit card company, the defender responding asking for their evidence of money owed and finally a debt recovery agency sending a letter and then a summons to court. The credit card company was never able to produce the evidence and so the case was closed at the second court hearing. The project user had not taken any advice from anyone during the five years as he knew he had paid the disputed amount and it was only when he received the summons that he contacted the court who put him onto the In-Court project.
- 3.24 In another case the dispute had lasted over a year. The pursuer was owed money for work she had undertaken and the defender was refusing to pay it. She tried contacting the person herself a few times and they did not respond so she then went to the CAB and they in turn suggested she contact the In-Court project. She received help from them in the form of writing letters and the dispute was resolved for the full amount before it went to court. This provides an example of early dispute resolution, avoiding the need for expensive court time.
- 3.25 In other disputes the time period may be more a matter of a few months. For example in a case where the interviewee had not been paid wages due to him, the interviewee tried first of all by phone to get the wages. However the employer was variously ignoring the calls and becoming aggressive so the employee approached the CAB. The CAB wrote to the employer but it had no effect. They passed the pursuer on to the In-Court project and

they too wrote letters to the employer again with no effect. So they decided to pursue it in the small claims court and when the employer received the court summons he paid the wages owing. In this instance the initiation of court proceedings appeared to have been necessary to resolve the dispute.

Sheriffs and court staff

- 3.26 The sheriffs' perspectives which we gathered focused more on the main reason why people reach court, as opposed to the detail of the routes they have been through to get there. Most of the sheriffs we spoke to identified that people go to court because communication has broken down in the dispute, although one commented that court is not necessarily a last resort as for some it might be thought of as a first resort in order to *"exert pressure"*.

"Everyone is here because of failure. Every case has reached an impasse to the point where it is a failure."

- 3.27 Sheriffs took the view that *"They want you [the sheriff] to do the thinking for them."* They believed that a pursuer coming to court wants a third party with authority to be involved to make a decision on their dispute, and that they want the dispute tested against the law.

- 3.28 Court staff believed that people mainly came to court when other methods had failed to resolve a dispute. However they also referred to the point where people are motivated by *"wanting their time in court"*, in order to have their dispute brought before a sheriff. They described people feeling wronged and wanting this to be publicly recognised.

"Some are there on a point of principle. When they say "it's not about the money" you know that's the case."

- 3.29 We also found examples of party litigants using the court process less emotively and more mechanically; for example debt collection agencies issuing a summons, or a tradesman repeatedly placing penalties on customers for late payment (when there was an outstanding dispute about the quality of work) and then using court processes to pursue people for defaulting on payment.

How people come to the in-court advice/mediation projects

Project users and non-users

- 3.30 As has been seen above people can be referred directly to the Tayside In-Court project by the CAB or they may hear about it through friends and family or from the court staff when phone in or call in to collect forms. The project can assist them to try and resolve the dispute before it goes to the small claims court, as in some of the examples provided, or it can support them to take their dispute through the court. It offers the potential to achieve early dispute resolution and for some people this is clearly a huge relief; where

this is not possible it offers the ongoing hand-holding support through the court process, which again was highly valued by interviewees. Project users spoke very highly of the Tayside project and this in itself could be seen as a motivator: as a couple of interviewees stated, if it weren't for the project they might have been tempted to give up.

- 3.31 In Edinburgh the route to mediation is through the court, as the mediation project is only available when a court summons has been issued. As a result all those we interviewed had arrived at mediation after an initial hearing at the court, except for the instance when someone reported that it was the court staff who told him about the mediation service (this was the person who had themselves tried to find mediation help through Mediation Scotland). For those who have come to court it is often the sheriff who has suggested they try mediation. We found interviewees who described this is a suggestion they feel they can't refuse while others saw it as the next step in the process which is made available to them.

"The sheriff said maybe we should go to mediation and we were an ideal candidate for that. I think the over-riding factor is that both when the sheriff suggested it, and when we go to mediation you're aware that if you say "no" then it sounds unreasonable and I think the mediator's report would reflect that." (E/P 14)

"The tradesperson at that point indicated that he wanted to go to mediation. The judge suggested that was the best route available and suggested that might be a pragmatic solution." (E/P 26)

"We only went to court once and it was called, the sheriff read through it and she at that stage very quickly went to "Would we consider mediation?"" (E/P 16)

Sheriffs and court staff

- 3.32 Most of the sheriffs we interviewed said that in highlighting the option to use court-based projects they were raising the profile of these services when people didn't know about them. They also felt that they had an important role in drawing attention to the length of time and the costs which might be incurred by court processes, and in doing so highlight that a process which assists in resolving the dispute might be the best case scenario in terms of speed, cost, outcome and for some small businesses, a "repaired relationship".
- 3.33 One sheriff commented that as people came to court seeking 'judgement', a sheriff giving the view that court-based support was the best option might be an unforeseen outcome, but was still the external opinion they had sought. *"There's still a residue of respect for the courts, so if a judge says speak to the co-ordinator people will consider that."* Only one sheriff commented that people may feel that it would "look bad" if they didn't follow the sheriff's advice.
- 3.34 Sheriffs described the factors which would make them less likely to refer people for court-based support in resolving their dispute:

- where there appears little willingness to compromise;
- where there is a perceived power imbalance between the parties and a mediation process might become one-sided; and
- where there is a clear cut case where adjudication should decide.

“Where views are entrenched and hostile –some disputes have become increasingly abusive and less conciliatory – mediation can only do so much.”

“[Referring to mediation is] less likely if they seem to be wanting a stamp of fairness.”

“For example if it’s an elderly person or where English not first language, or it is someone who is fragile and there is a risk that they might get bullied.”

“If it is absolutely clear that A has a point and B is ‘at it’, it goes to adjudication.”

- 3.35 Sheriffs commented that the value of the dispute resolution projects was that they opened up communication where it had broken down. *“Their [the disputees] own ability to communicate has failed them – they need help to move one step.”*
- 3.36 On a practical level, sheriffs commented on the immediate availability of supportive project staff increasing the profile of the project, and enabling the sheriff to directly refer people for immediate guidance.
- “It [mediation] becomes of interest because it’s immediate, it’s in the building and it won’t prejudice their case.”*
- 3.37 Court staff felt that the influence of the sheriff in suggesting to party litigants that they consider using a court-based project could be a strong one, simply because people have come to get the sheriff’s opinion and because they are in a position of authority.
- “If the sheriff is advising them to use it [project] the vast majority would think it’s a good idea. I imagine it’s a big influence.”*
- “Because the sheriff is in a position of authority, sitting in front of a coat of arms, with a wig and a gown saying “I think you should do this” – it carries more weight.”*

Summary of key points

- 3.38 The primary motivating factor for both project users and non-users is a route that will resolve the dispute.
- 3.39 The first steps are usually informal routes such as family and friends to seek advice and support. At this stage a few people reported looking online for assistance as well.
- 3.40 If the dispute is not resolved through informal assistance, people turn to more formal organisations and routes such as the CABx, Trading Standards, and Ombudsmen. Some

(both project users and non-users) go to solicitors at this stage but for those who went on to be project-users, the costs of using a solicitor had been prohibitive.

- 3.41 Corporate bodies tend to have set procedures in place so the routes are pre-determined to some extent.
- 3.42 The time period for disputes can be variable from a few months to over a year.
- 3.43 Sheriffs and project users commented on the value of communication that the dispute resolution projects provide.
- 3.44 Court staff perceive that sheriffs wield quite a lot of influence in persuading disputants to try the dispute resolution projects.

4. What is it about routes that deter people from using them?

4.1 People use the routes they know about and so lack of awareness of any given route is a deterrent to its use. Interviewees from both the project user and non-user group were aware of CABx and had an understanding that these were a potential source of advice. CABx were also shown to be important in directing people to court-related projects. For example, none of the people we interviewed in Tayside went straight to the In-Court project: they all had to be referred to it by the CABx, signposted by court staff or because friends/acquaintances knew about it. Some of the project non-users had heard of the project, many of them on the same day they were in court when we interviewed them.

4.2 Cost was named as a deterrent for some interviewees (both project users and non-users) in using solicitors, making the free support offered by court-based projects attractive in comparison.

"I phoned a solicitor. And they said for them to send out a letter would cost £80, because it's not covered with legal aid. So they advised me to get in touch with the Citizens Advice. And that's what I did. And they got back to me. And they put me onto the court services." (E/P 16)

4.3 For one of the corporate interviewees there was a sense that once a dispute has reached a certain stage, only the court process will sort it out. The interviewee had used mediation for larger commercial disputes and when asked whether mediation would be useful for smaller claims he said:

"I'm not saying I wouldn't use it. But sometimes until court papers land on someone's door, they're not going to take something seriously. If they're not responding in the first place, then of course they're not going to respond to requests to go to mediation. So sometimes you just need to kick off the court action."(E/C/D 31)

4.4 However this same interviewee had had experience of using mediation for a smaller claim, as *"it was offered at the first calling of the case"*, and had found it useful as they reached settlement. He had even enquired about it at Glasgow, as they were dealing with a similar case there, *"but they didn't have the same service."*

Sheriffs and court staff

4.5 Sheriffs described why they believed that people continued to opt for court rather than resolving their disputes through court-based support available. These were:

- where people's views are entrenched, they believe they know what the outcome should be and there is no desire to compromise.
- where people want enforcement; and

- where people want to impact on their opponent by costing them in time and public ‘shaming’.
- 4.6 On a practical level one sheriff mentioned that the location of the project in Dundee could be problematic if staff were not immediately available in the court room, as the project is in the basement of the court building and is not easy to find.
- 4.7 Court staff identified that the lack of knowledge of projects can lead to them being less well used and agreed with the location issue in Dundee.
- 4.8 In relation to the mediation project it was suggested that mediation could present some challenges as people might have to *“swallow pride, not wanting to see the other person’s point of view, and trusting a third party with details like financial information, personal details or information about a car accident.”*
- 4.9 It was also noted by court staff in Tayside that a party litigant may have been to the In-Court project and been advised that they don’t have a case or may face difficulties in raising an action but still want to pursue. *“They’ve not heard what they want to hear.”*
- 4.10 Court staff also noted that in Tayside the project can’t act for both sides⁷ and that sometimes people are *“a bit disgruntled about this”*.

Summary of key points

- 4.11 Deterrents can be either general or specific to certain projects. The main general deterrents are:
- lack of awareness/knowledge;
 - cost;
 - sense that a certain route won’t resolve the dispute (that only the court will);
 - the fact that having to compromise is simply not easy for some people.
- 4.12 The main specific deterrents related to the Tayside project and included:
- the project cannot act for both sides formally (although it can communicate between the two sides where appropriate);
 - the physical location, in the basement of the Dundee court building, is not publicly accessible.

⁷ This is due to the project providing advice, which necessarily means acting on behalf of one party.

5. What are people's expectations of the routes they choose and don't choose?

Project users and non-project users

- 5.1 From this research we found that project users and most non-project users do not have explicit expectations of the routes they choose: they wish to resolve their dispute and keep going until they do. Interviewees described the steps taken as they went through their dispute with each step chosen as the best option for them to try at the time, without them necessarily having strong expectations of the outcome. The exception to this general finding were the project non-users who had used solicitors to help them as the expectation there was that they were paying for a service and would get a result.
- 5.2 In the early stages people are seeking advice about what to do and where to go: so the informal routes are more about the process and what steps they should or could take, rather than expecting friends/family or acquaintances to actually help resolve the dispute. An example of an exception to this was in a dispute over poor workmanship where the pursuer tried to ask another builder to help resolve the dispute (which did not achieve resolution).
- 5.3 This is true also of the formal routes: from this research we found that project-users wanted advice from the CABx about what to do, or that they approached the Ombudsman or Trading Standards for advice and a specialist view of their situation. However from these interviews (and we were speaking to people whose problem had by definition not been resolved by the time they reached the projects) we found examples where there was higher expectation of the latter (Trading Standards and Ombudsman) than it is always possible for them to deliver and there may be reasons why the disputant still needs or wants to go to court.

"I went through the Trading Standards process, which came through citizen's advice and they agreed to have the van MOT tested, which they did in xxx and said it was not fit for purpose, it was dangerous and unsuitable for the road. Trading Standards advised to go the sheriff court to trace the seller as he wasn't responding to letters and attempts at contacting him" (T/P 17)

Some of the project non-users had made use of the CAB (and understood that they could provide them with advice) but more had sought advice from solicitors, one had sought advice from a land agent and one appeared not to have taken advice from anyone at all.

- 5.4 By the time project-users reach the In-Court project (Tayside) it is another step along the way and as with other steps taken many interviewees said they did not really know what to expect from this one. Research interviews found that interviewees had little knowledge

of the project and how it could help before contacting it, and it was only when they meet the project staff that they begin to understand how it might be able to support them. We met a couple of project non-users who had heard about the In-Court project for the first time at their court appearance, one of whom said they might now use it while the other said he was confident to act on his own behalf.

- 5.5 Court staff in Tayside noted that the project can't act formally for both sides and that sometimes people who would have liked to use the project's help cannot because the project is already working for the other side.
- 5.6 Interviewees who had been through mediation (Edinburgh) perceived it as a potential way to resolve the dispute and that it might be a quicker route:

"...we felt it was probably the right thing to do [going to mediation] to have the sensible discussion in the context of mediation rather than in court. And it seemed to be a more pragmatic and quick solution." (E/P 26)

"In retrospect I can tell you I hoped they'd resolve the situation, take a much more active part. Much more you know... sitting on the fence comes to mind. That's what I thought they did. But in all honesty they said that. I won't interrupt, I won't advise, we'll just listen. And I feel they should have taken a more proactive position with it....They could have said look, you or you are being unreasonable. This guy has made a reasonable offer, and you're being unreasonable...I would like to have got the arbitration service to be more proactive and get their teeth in to it. And they could have saved me a lot of trouble." (E/D 25)

"I probably didn't know to be honest [what to expect]. Other than you know the expectation everyone would sit round a table and have a discussion about it." (E/P 26)

- 5.7 Some people welcomed the opportunity to communicate away from the more formal court setting:

"But at that point we were asked if we'd agree to mediation. It's the first time I'd ever heard of it. And I thought well mediation, that's talking, which wasn't really something I felt comfortable doing standing up in front of a judge, because it's quite nerve-wracking." (E/P 4)

- 5.8 The opportunity for communication which mediation offered was also valued by one of the corporate interviewees who said:

"I found the whole idea of getting round the table and speaking to the client was immensely beneficial, because the communication had broken down between us." (E/P 32)

- 5.9 Another interviewee clearly hadn't understood what would be involved prior to the mediation and was pleasantly surprised:

“...assumed there would be one person sat in the middle listening to our stories and making a judgement of some sort but turns out they helped us arrive at an agreement.”
(E/P 14)

5.10 The court, on the other hand, is clearly understood to be the place where a dispute will finally be resolved one way or the other. Interviewees in this research described this stage as coming to a third party (the sheriff) for that person to make a decision about the rights and wrongs of their dispute. In contrast with other steps taken in the route to resolving their dispute, both project users and non-users had high expectations of this part of the process as providing a decision and a solution.

5.11 One corporate interviewee commented on the weight that court action brings as follows:

“But sometimes until court papers land on someone’s door, they’re not going to take something seriously. If they’re not responding in the first place, then of course they’re not going to respond to requests to go to mediation. So sometimes you just need that to kick off the court action.” (E/C 1)

Sheriffs and court staff

5.12 Sheriffs identified that court turns out to be different and more difficult than people anticipate in a number of ways; in terms of the realities of the sheriff’s role, the length of time taken to resolve a dispute through court processes, the cost of the time involved, other costs relating to the case, and the fact that that as the dispute is looked at by others, that they may take the view that pursuers and defenders may each have a case.

“It doesn’t occur to them to think what the law is – they assume that if they air their grievance articulately they will assume that the sheriff will do what’s fair.”

“They don’t grasp the adjudicative role of a judge. They conflate mediation, arbitration and adjudication. They think you are going to fix it.”

5.13 Court staff gave similar views about the incorrect perceptions of some party litigants about the court processes they were entering into. One said *“it’s massively variable from some who know exactly what to do, to others who haven’t a clue”*. Another noted that those who did know what to do had previous experience, *“They are rarely well prepared – the only ones who are, are the ones who continually raise actions.”*

5.14 The court staff we interviewed said that most people they met in relation to small claims were new to a court experience and that they found it difficult. One court staff member described people being *“totally bamboozled”* by the process, by the requirements expected of them and by language involved.

“They are not well prepared in all ways – filling out forms – they don’t know what to expect – the terminology like ‘jurisdiction’ and ‘decree’ – terms we use freely.”

“They think it will be like ‘Judge Judy’ [TV programme] – you say what happened and the sheriff will decide.”

- 5.15 The strongest common feature identified by both sheriffs and court staff interviewed in this research was people’s lack of appreciation for the time involved. They described how many are under the impression that the first court appearance would see the end of the dispute with their case being heard in some detail and a decision being made by a sheriff.

“What disappoints them most is that they only came for one day but they may be told to come back in 12 weeks’ time. Court timeframes are accepted by us – we are used to big cases taking a year so 10–12 weeks seems like nothing. The first appearance in court is the beginning of the investigative process. They [party litigants] think it’s the end.”
[Sheriff]

- 5.16 In terms of court processes, sheriffs noted people’s lack of knowledge about particular processes, for example that evidence has to be submitted beforehand so that the other party knows what is being produced; *“They don’t understand the rule of ‘no surprises’.”* Sheriffs also noted that people did not understand the processes beyond court in relation to settlement; *“They quite often haven’t thought through what happens next [after their day in court].”*

- 5.17 Court staff focused more on the overall process and people’s lack of understanding of what will be expected of them.

“They have to stand up in court, be cross-examined, get a stern talking to from the sheriff, it takes a long time – we do need assistance with projects like the in-court advice project”.

Summary of key points

- 5.18 In summary:

- people generally seek advice about what to do from the early informal stages of the process rather than expecting them to be able to resolve the dispute itself;
- the more formal routes such as the CABx, Trading Standards and Ombudsmen, are seen in this research as offering more specialist forms of advice but not necessarily being able to resolve the dispute (but there is bias in the sample of interviewees as all had either used one of the projects or were engaged in court proceedings to some extent);
- mediation is perceived by some interviewees as a quicker route to dispute resolution and therefore better than court for this reason;
- the dispute resolution projects are welcomed as they offer a means to open up communication between the two parties in a setting that is less intimidating than a court;

- if all else fails, people have a sense that the court is there to finally resolve the dispute, which is what people want to happen.

6. What are people's perceptions of their dispute resolution experience?

6.1 This chapter pulls together a number of perceptions and comments from those interviewed about the dispute resolution experience (project non-users we interviewed were still in the midst of their court action and were less able to reflect on this). For some these views may be coloured by the final outcome and whether they see it as fair to themselves.

6.2 The perceptions and issues raised are presented under the following headings:

- Perceptions of the outcome
- Perceptions on the court and justice system
- Issues of health
- What they would do if they had another dispute

Perceptions of the outcome

6.3 We asked interviewees who had resolved their dispute whether the outcome was what they had expected and whether they regarded it as fair.

6.4 In terms of whether they achieved the outcome they expected there were very mixed views: for some the answer was an unequivocal yes; for others they had not succeeded; others again thought they had succeeded to a degree but qualified it by saying that they had not received as much money as they had hoped for, or that there were still difficulties getting the person to pay the amount that had been agreed.

"Almost in that I won. I didn't get the monetary recoup that I wanted so it was successful to a limited degree." (E/P 14)

"I don't think I had an expectation- I had a hope/aspiration that I would get fairly near the figure I had asked for. I got about 60% of what I asked for." (E/P 16)

6.5 For some people the hoped-for outcome is not just financial: they want to be proved right or to show up the other side for being in the wrong.

"I paid exactly what I expected to pay, and offered to pay before. And I had discredited him to some extent." (T/D 19)

6.6 We found examples of interviewees who had not got exactly what they wanted, but who felt that it had been good not to have to go to court or keep going with a process which cost them in time and money:

“Not exactly. I actually thought I’d have to go to court. But it was the best kind of outcome because I didn’t need to in the end.” (T/P 2)

“I expected probably to walk away having to pay nothing. Maybe it would have been the case if I’d carried on. But to be honest with you it was costing more and more in petrol, my time, having to employ staff to cover for me. So basically it was probably, the outcome was probably ok really compared to what it probably would have been.” (T/D 24)

- 6.7 In response to whether the outcome was considered fair there were mixed views again. Our interviews found examples where an outcome was seen as fair if it was at least some way towards what the person had expected, but if the outcome had completely gone against what they expected then they did not see it as fair:

“No I don’t really. I think, I feel like the law protects the other person rather than me. I mean I’m the one who has to jump through the hoops so to speak until I can prove this car is sold with a fault, even though I’ve already got a letter from a garage. I’ve got a £2000 bill and I’m still getting told that’s not enough. And the seller just sits there and does nothing. He’s fine, as far as he’s concerned, until I can prove otherwise.” (T/P 22)

- 6.8 We also found examples of people who had been helped to a negotiated resolution with the assistance of the In-Court project, and who while recognising that they had had to compromise, still saw the process as fair:

“Well. Clearly I would have liked everything I claimed for. But certainly in the interests of coming to some form of agreement, yes.” (T/P 5)

“It was modified. I think it was a very fair, reasonable way of resolving a dispute between two people when there’s not much evidence to go on.” (T/P 9)

Perceptions of the court process, sheriffs, justice system

Court process

- 6.9 Most people we interviewed admitted to at least being nervous about the court appearance and for a few it was a very daunting experience. The quotes below illustrate these variations in views.

“For anybody going to court, it is daunting. I think if you find it difficult to put things together then it is quite scary.” (T/P 9)

- 6.10 Some people believe that the court is the way to have justice delivered, and that the threat of court is what brings resolution:

“When you’re faced with the court room and realise it’s serious, it sobers people up. It adds a bit of gravitas. It did its job. It achieved justice on both cases.” (T/P 9)

However one interviewee reported disappointment with the court process because despite having “won” in the court they were still having difficulty securing the money owed: *“I’m disappointed with the court process cos there seems to be no way to enforce him to pay it back so I’m going to have to get in touch with the project again.”* (T/P 11)

- 6.11 The research interviews highlighted the issue of the number of sheriffs people could see during the court process and the fact that it was not the same sheriff each time. This led to them feeling that they started again each time. The quote below illustrates this very clearly:

“To be honest until the last court session, we had three more [court sessions] before. So in total we had three different sheriffs. The first sheriff, then the second, then again the first appeared on the third session as well, and on the last session another sheriff. And I felt for the first three like they were just, like it felt to me that the sheriff wasn’t on top of the case, he maybe just read it...you know he was not getting enough understanding of the case. I felt like that. And from this on to the next one again you’re going back to square one again...” (T/P 7)

Perceptions of the justice system

- 6.12 People’s perceptions of the justice system overall are, as might be expected, fairly varied but it was common in our interviews that people were surprised by the amount of time and effort it took:

“I think it’s good. I think it’s quite slow. But I’m sure that’s just the same everywhere. I probably expected things to be a little faster moving, but then it is small claims. It was maybe three months after the incident that I got my initial hearing date and time. So slightly surprised by that. But aside from that I think people treat your cases very seriously, even though mine was just a small amount of money. And I suppose I was pleasantly surprised by the attention they gave to it and yeah, they make you feel very much at ease. And that you’re not doing something wrong.” (T/P 2)

“I’m a wee bit frustrated by the amount of time it takes. It’s a long drawn out process. If I had got the impression that nothing was going to come to a head on that first visit to court, even when you submit the documents you get a court date that could be 8 weeks away...my experience is when you’re trying to evict someone every four weeks that go by cost you £500.” (E/P 16)

“I don’t think it’s very good to be honest with you. Things like this should be resolved in one or two hearings. I don’t think carrying on, I think it’s a total waste of time and money, 5 or 6 times I have to go down there just for £900. I think it was a bit silly.” (T/D 24)

- 6.13 The research found that people have had to search to find out what they need to do and to get advice and support and that this process is not easy. There is also a perception from research interviewees that those who can afford solicitors are in an advantageous position:

"I don't think it's there for the individuals. It's there for the people who can afford solicitors and businesses. It was a real struggle to get any information or advice or support from the system. Which left me feeling just...a very small person on a very big planet. There was no support, advice or information, or if there was it was like hen's teeth. And you had to try and trawl through it and find it yourself. I literally spent hours and hours and hours trawling various websites and court websites and things trying to find out systems and processes and things. It's not straightforward or easy." (T/D 20)

"Difficult. Not an easy process if you're not familiar with it. I'm a qualified nurse, I'm not stupid."(T/P 17)

"And I don't think that's fair. Because I think if one person decides they can't afford a lawyer, for the obvious reasons, then the sheriff should say no lawyers will be involved in this. Because there are some cases that come up and there are two people, and neither of them have lawyers. And he has to deal with them then. And I think lawyers should be taboo in this. Let him judge the point of law, hear what people say and decide what is important. And if he wants to clarify something, he does, as he did with me and my case. He asked us to clarify things. But I don't think it's fair where one side has a lawyer and the other side doesn't." (T/D 19)

- 6.14 There was some positive feedback about mediation as being a less stressful process than the court:

"... I think mediation is a good thing. And I think it's much less stressful than being in a court. That's my real feeling about it. Yeah. It's nice to have someone who is impartial. That's the way I felt about both the gentleman who were there to help both of us try and resolve it. They did feel reasonably impartial. And they were able to remain, you know, I don't know what you would call it. But there were several times we had to leave it because it was becoming too heated. But not, you know what I mean, we were losing the thread I think a bit." (E/P 4)

- 6.15 There was a high degree of positive feedback about the Tayside In-Court project. Interviewees commented on the added confidence it gave them and that without the support they might not have continued.

"The project basically put my mind at ease they were going to handle it. And the bonus side of that was there wasn't going to be a fee." (T/P 3)

“She was brilliant...Without her, and I rang her up several times, without her help I probably wouldn’t have known what to do. And how to get where we got anyway.” (T/D 24)

“..it was reassuring for me. Because I didn’t think it was going to be quite as formal a court room setting as it was. And probably if I’d known it was going to be like that I might not have gone down that route. So actually it was reassuring to have her there saying this is what you should be doing.”(T/P 5)

- 6.16 We received comments from some research interviews with suggested improvements. One person stressed the need to simplify the process and another advocated that school pupils should be taught about their legal rights.

“It certainly it seemed to be quite formal. And I thought for this small claims court, for that amount of money, it should have potentially been more informal. I didn’t expect there to be a judge and everyone standing up. And if we got into a... I would have expected it to be simpler and more straightforward.”(T/P 5)

“I think we should all be taught our legal rights at school but we’re not so we don’t know what we’re entitled to and what we’re not. I went through life without a parking ticket so I don’t know the legal system at all apart from what you see on the telly.” (T/P 11)

Health issues

- 6.17 It is apparent that for many people the dispute itself and the experience of trying to resolve it is extremely stressful resulting in health problems. This is particularly true of defenders, rather than pursuers, from our interview sample.

“It’s causing me sleepless nights, feeling sick.....I’m not generally an emotional person but I could burst into tears at any moment when anyone mentions that car...” (T/D 15)

“I’m on anti-depressants, it’s turned my world upside down.”(T/D 8)

“I was on sleeping tablets. I was on anti-depressants. I was on barely the kind of stuff to relieve the stress of it. You know I was absolutely scraping the barrel in terms of sanity.” (T/D 20)

“I was quite ill for the five months with everything with him, the arguing, the fighting over it, him not doing anything about it. Then to find he dragged me through the court, that made me quite ill, just for £900...” (T/D 24)

What they would do if they had another dispute

- 6.18 The majority of those in Tayside said they would go first or sooner to the in-court advice project now that they are aware of it.

“I would do it exactly the same way. I would take her advice. I would take her advice earlier. And I would let her know more about the case. And she would probably give me

some advice that I might or might not take. She'll give me good advice, there's no doubt about it." (T/D 19)

- 6.19 Project users interviewed were able to say that they had learned more about the system and how it works and would put this learning to use if they had a further dispute:

"I'd probably be a bit more diligent in documenting things. I may deal with the company differently from the outset – escalating it further, I would escalate it higher up the ladder every time." (E/P 16)

"I'd be a lot more savvy as to... I mean it's been a learning curve. I wouldn't go into it thinking so naively that as I was the wronged one everything would go smoothly. So I'd be a lot more savvy as to how I was going about it." (T/P 7)

- 6.20 Involving others in order to be supported through a dispute was seen as an important action by project users for any future situation:

"I would start again seeking advice from Citizens Advice, or directly get in touch with in court advisors. Since I have some experience I know more or less what's going on but also I would search online, I would try to see what people advise on line. And try to get in touch with the right people, the right institutions." (T/P 6)

"I still wouldn't do it on my own. I spent a lot of hours trying to find information about him, I didn't sit on my backside expecting anyone to do it for me. Knowing the system now I have more idea of the process and stuff and what is expected so I would probably still go to the in-house project." (T/P 17)

- 6.21 Two contrasting quotes illustrate differing views about whether to take forward a further dispute: in the first, the person says that despite how difficult it is, it is important to stand up for your rights; in the second the person says that it probably was not worth the effort and for that reason they probably wouldn't pursue a similar dispute again. These illustrate the fact that part of what motivates people to resolve a dispute is the kind of person they are in the first place: whether they want to stand up against a perceived wrong or whether they prefer to let it go as not being worth the trouble.

"It was a hellish experience but I guess I know a bit more about my rights and about the court system. A lot of friends and family, when the red letters came said just pay, just pay, even though I didn't have the money pay, because I always knew I was in the right. But yeah, I think a lot of people would have. And I think a lot of businesses and scumbags out there know they can frighten people. So I guess it would teach me to just stand my ground, if I believed I was still in the right, even though it was a very stressful experience." (T/D 20)

"Probably would have thicker skin. Bearing in mind the time and effort involved. The in-court place was good, but certainly you would have to consider at what, there would probably need to be quite a lot of money involved. For £470. I live in Edinburgh. Two trips

to Dundee. One overnight to stay. Lots of time spent on the phone, filling out forms, gathering evidence. And you think was it really worth it? Probably not? Would I do it again? Probably not.” (T/P 5)

- 6.22 One interviewee who was very disappointed with the outcome had the view that she would go private the next time and pay a solicitor. But another made the point that they would not spend money hiring a lawyer:

“I certainly wouldn’t go and hire a lawyer or private detective or anything because that would make it so much more expensive. And there’s no guarantee at the end of the day you’ll get your money back. So I think I would act quicker.” (T/P 7)

- 6.23 One interviewee was very clear that they would start with the court if they had another dispute:

“I would always go to the court first, only because there’s a statement of your intent.” (E/P 16)

Sheriffs and court staff

- 6.24 Sheriffs were unable to comment on people’s perception of their dispute resolution experience because they rarely see them after this has taken place, although one commented that if he did see the parties involved after the successful involvement of the mediation service they were *“all smiles”*. One sheriff believed that even in those cases which go to mediation but return to court, there is then a *“better focus”* and mediation has helped to *“narrow the issues”*. The sheriff commented that this was also a successful outcome for mediation and that mediation success rates could be underestimated if success is simply seen as resolution achieved at mediation. However the other sheriff involved in referring to mediation had not experienced this effect.

- 6.25 One court staff member described the positive impact of mediation on those involved and in changing perceptions of the dispute. *“People can see the other side is considering their point of view – it personalises things – they begin to see it [the dispute] as a person not a problem.”*

Summary of key points

- 6.26 People’s perceptions of their dispute resolution experience can be partly affected by the outcome they have achieved. Perceptions include:
- court is daunting for the majority of people;
 - court brings resolution if nothing else does;
 - having different sheriffs each time a case is heard is not helpful;
 - it can all take more time than people are expecting;

- finding your way through it all can be difficult;
- mediation is seen as being less stressful than court;
- people's health and wellbeing can be affected by the stress of having a dispute.

7. Conclusions

7.1 This final chapter reflects on the factors that might make people more or less amenable to certain routes for dispute resolution and draws some broader conclusions from the research. It sets out some of the issues for consideration by those concerned with civil justice administration in Scotland.

The factors that make a dispute amenable to the types of dispute resolution that are available

7.2 We found that some disputes can be resolved with a ‘light touch’ from a project that has the appearance of court backing. For example, in a couple of instances a letter from the Tayside project, helped by the fact that it can use a letterhead with a court address on it, proved sufficient to alert a defender to an impending court case and to take action to avoid this and resolve the dispute.

7.3 In other cases the disputes were not solved until the actual hearing in court, but even then in both the Tayside and Edinburgh projects it was possible to resolve the case without having to go through all the evidence in court. In Edinburgh this took the form of formal mediation while in Tayside this took the form of “shuttle negotiation” with the project worker moving between both parties to help them reach agreement. There were examples where the initiation of a court process was enough to encourage people to try and settle. There was evidence that the sheriffs’ encouragement to use mediation in Edinburgh was an influencing factor in people going down this route.

7.4 For some people however the need to “have their day in court”, particularly where they feel that wrong is being done, not just for themselves but also for others, was so strong that settling in any other way would not have satisfied them. It is likely that there will always be some people for whom nothing less than the court will suffice: they want the opportunity to be heard in public and for some formal judgment to be made. As stated earlier in the report this is often not about money but more to do with the “principle of the thing”.

7.5 According to sheriffs the factors which make a dispute more amenable to dispute resolution are:

- the nature of the dispute – where it is not entirely ‘black and white’ and there is scope for both sides to compromise;
- the nature of the people involved in terms of their willingness to discuss and compromise and be able to see the dispute from an objective viewpoint, and where they believe that there is not a power imbalance between the parties which could lead to a more one-sided negotiation.

Broader conclusions

- 7.6 Most people we spoke to during this research had no idea at the start as to how to go about resolving their dispute, once they had found it impossible to resolve it directly with the other party themselves (unless they had had previous experience of solving a dispute). There was typically a lack of awareness and knowledge about the routes open to them and so, as the illustration in Chapter 3 (Figure 3.1) highlighted, in the early stages there were many paths that people took to try and get advice and support. These included informal as well as formal options and although many of these sources of support were able to give advice, they were not geared up to help resolve the dispute as such. The research found that people ‘feel their way’ through each stage of their dispute, hoping that they will get closer to it being resolved.
- 7.7 Because of lack of knowledge, interviewees’ expectations about what they might receive in support or what they might achieve in results from each stage are relatively low. The one exception to this is people’s higher expectations of a court process as a time when their dispute will be heard in full and be resolved with a judgment from a sheriff. However our research interviews found that these expectations are often misplaced as they have not appreciated the nature of court processes, the role of the sheriff and the potential costs in terms of time, money and personal stress which are likely to be involved.
- 7.8 The In-Court project in Tayside and the mediation project in Edinburgh are both focused on supporting people to resolve disputes: in the former this may happen before a court hearing and in the latter it usually takes place once court proceedings have begun.⁸ It is clear from the research that the In-Court project in Tayside is able to fulfil a number of roles: from helping to fill in forms to sending letters (which sometimes get the dispute resolved immediately) to supporting people to prepare evidence for the court process. They can also play an important role negotiating between the two sides directly before a court hearing. Their role can therefore assist in bringing a dispute to an earlier end, or in supporting people through their dispute in court, reducing the stress and confusion which many people believe this brings. The mediation service offers a more specific activity focused on dispute resolution, however it is important to note, given the roots of every dispute which we have described, that enabling communication where this had otherwise broken down is a key role for this project.

Issues for consideration

Awareness of, and access to early dispute resolution

- 7.9 Resolving disputes early is clearly of benefit to all parties involved, yet the projects which can enable this are not well-known about. The people interviewed in this research typically accessed them when they were signposted there by other organisations, court staff or sheriffs and this could be when court proceedings had already been initiated or

⁸ For detail on how each project operates see Paras. 2.16–17

were taking place. There is a need to consider how In-Court advice (with the advantage of a court address) can be given a higher profile and made more widely available, and the potential for mediation to be offered before a court summons. These would be ways of trying to make the justice system support an earlier and therefore more efficient resolution at the same time offering a better experience for those involved.

Awareness of the projects within the system

- 7.10 Within the court system there is a need to ensure that the support which the in-court projects can offer and the outcomes which they can achieve are fully known about. From the interviews it was clear that in Edinburgh and Perth the respective projects were well-known and well-used by those we interviewed, but there are opportunities for stronger communication and better understanding in Dundee sheriff court which would ensure that the project is used to maximum benefit of the court and the party litigants.

Critical evaluation

- 7.11 The research shows that considerable time and effort can be required to resolve disputes which can also place a potentially high level of stress on at least one party. This can often be for disputes that may involve relatively small amounts of money. There is therefore a need to look critically at the system to evaluate whether it supports people early enough towards resolution, thus maximising efficiency and minimising adverse effects of disputes.
- 7.12 The reforms in the civil courts proposed by the Court Reform (Scotland) Act 2014 provide opportunities to address the issues raised in this research and to take action which leads to improved civil dispute resolution for the people involved.

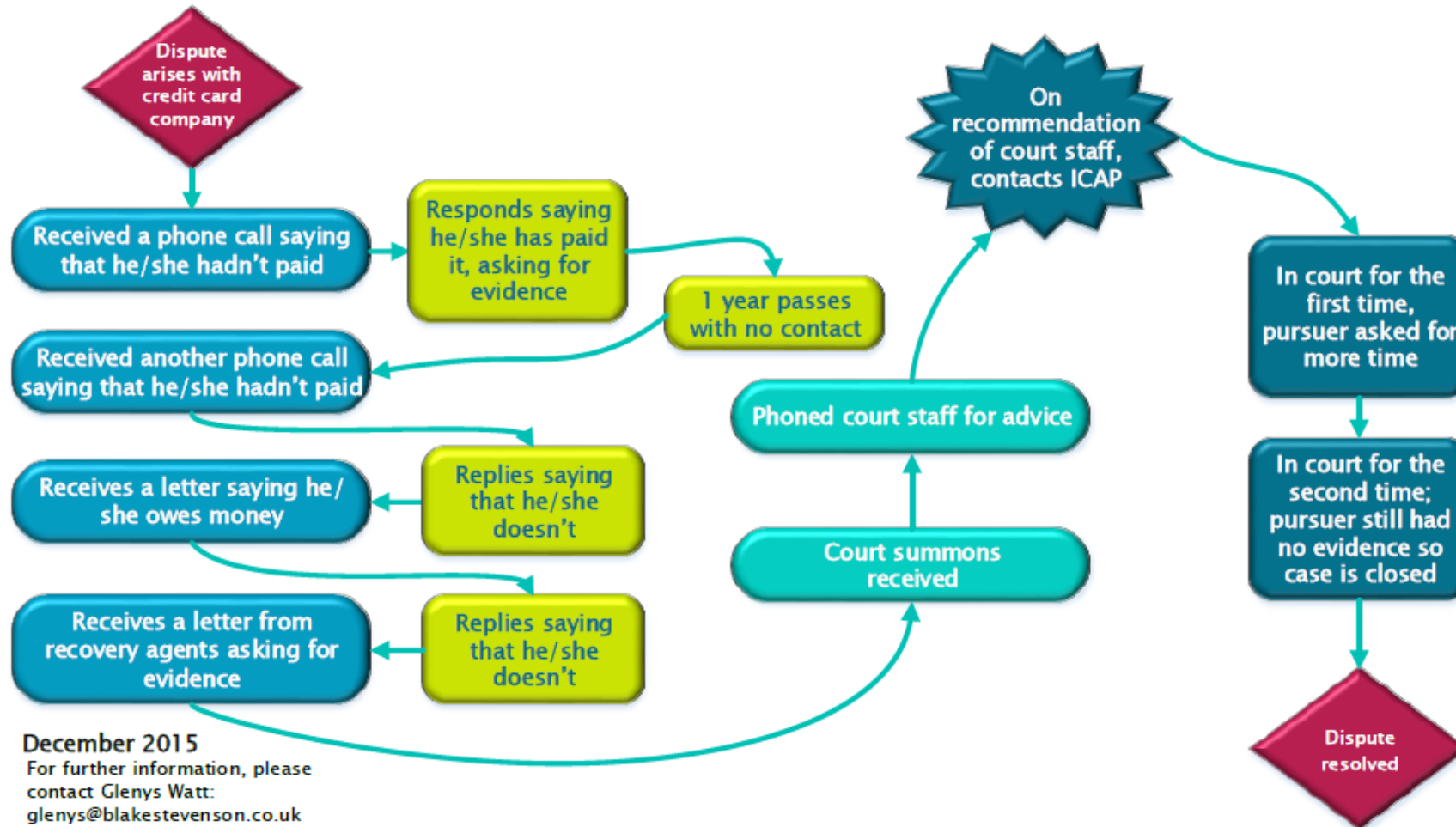
APPENDIX 1 – CASE STUDY DIAGRAMS

CASE STUDY 1 – DEFENDER, TAYSIDE

Dispute establishes

Early stages of dispute resolution

Court experience



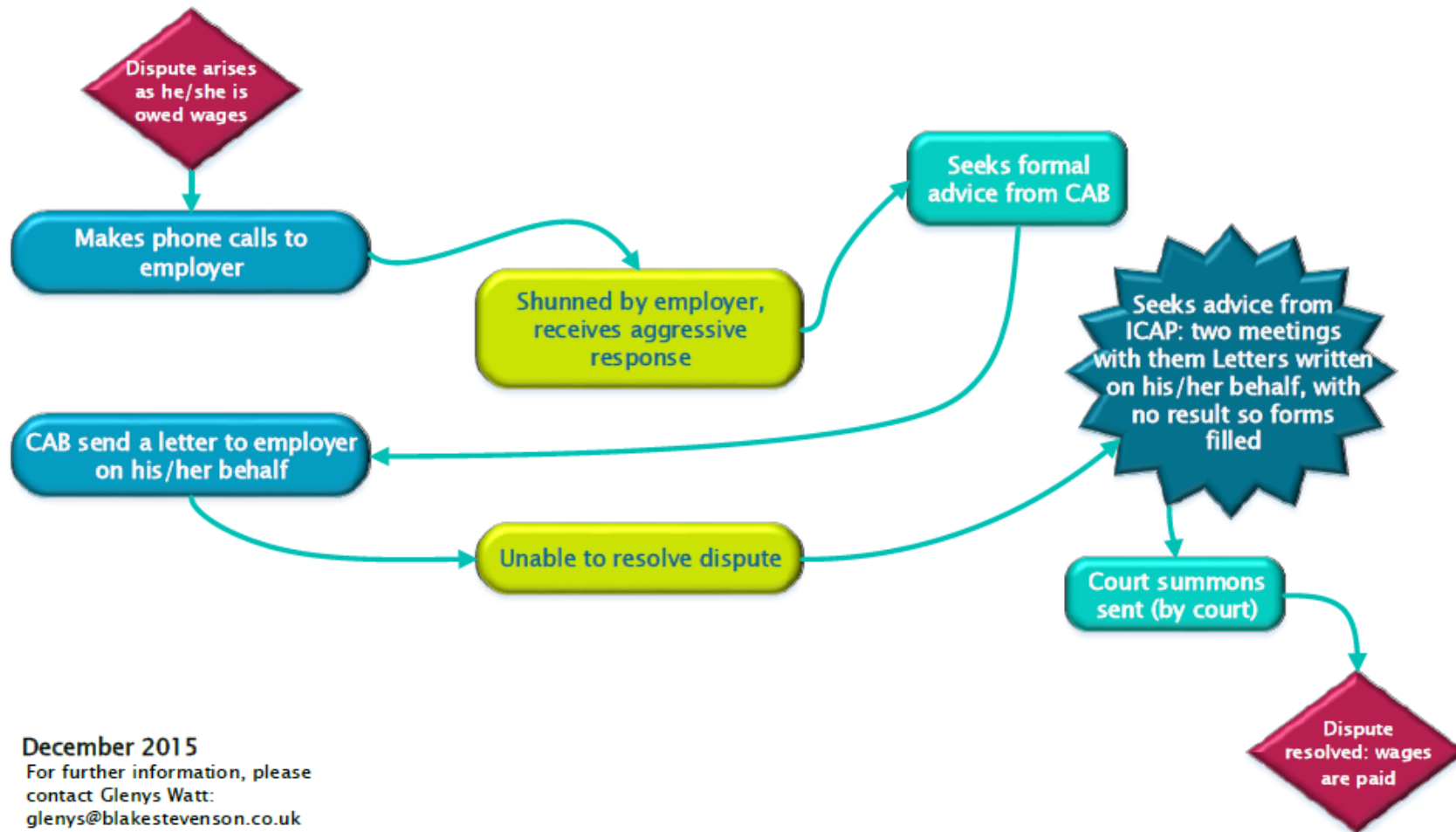
APPENDIX 1 – CASE STUDY DIAGRAMS

CASE STUDY 2 – PURSUER, TAYSIDE

Dispute establishes

Early stages of dispute resolution

Court experience



December 2015
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 glenys@blakestevenson.co.uk

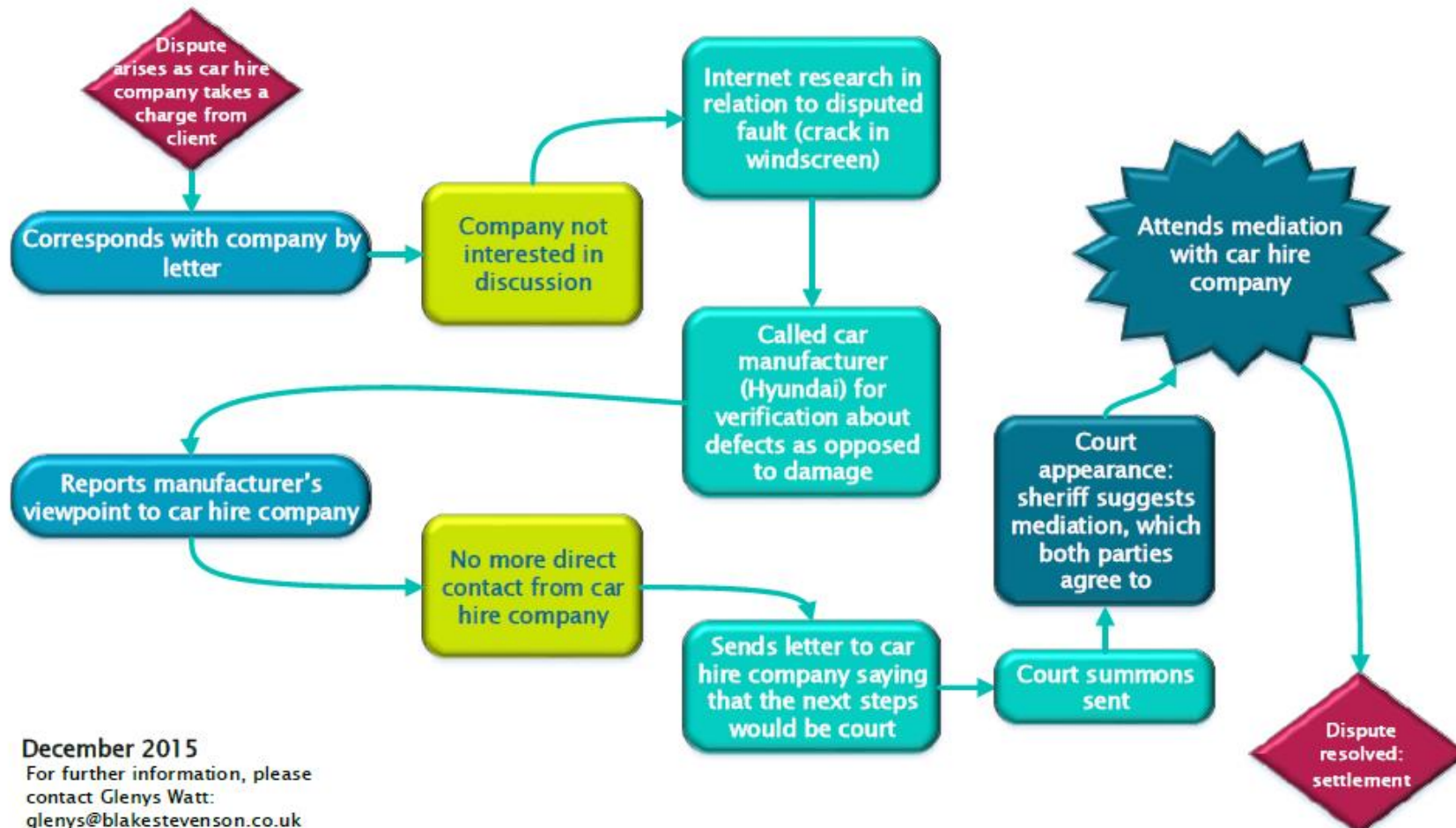
APPENDIX 1 – CASE STUDY DIAGRAMS

CASE STUDY 3 – PURSUER, EDINBURGH

Dispute establishes

Early stages of dispute resolution

Court experience



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APPENDIX 2 BACKGROUND INFORMATION ABOUT SLAB GRANT-FUNDING

There are nine projects in the SLAB Economic Downturn advice programme providing assistance with small claims-level disputes. They cover the Orkney, Western Isles, Dumfries and Galloway, Airdrie, Hamilton, Tayside, Edinburgh, West Lothian and East Ayrshire areas. They are all managed by Citizens Advice Bureaux, except for the East Ayrshire project, which is managed by East Ayrshire Council.

The Tayside and Edinburgh projects deal almost exclusively with small claims matters. All the other projects deal with small claims matters and a range of debt-related matters including rent arrears eviction and mortgage repossession. There are a further eleven projects in the Economic Downturn programme across Scotland, which deal with debt-related issues, eviction and mortgage repossession disputes.

The Airdrie, Hamilton, Tayside, Edinburgh and East Ayrshire projects are based in the Airdrie, Hamilton, Dundee, Edinburgh and Kilmarnock court building. All the other Economic Downturn projects are based in advice agencies but regularly attend court when required.

SLAB also funds the Making Advice Work programme and the Tackling Money Worries programmes. The Making Advice Work programme has three streams, two of which focus on welfare benefits and related debt advice, with the third aims to tackle barriers in accessing debt advice or to test new ways of resolving problems for people with disabilities or those facing domestic abuse. The Tackling Money Worries programme is designed to focus on improving outcomes for low-income families with children facing a change in their circumstances which places them at higher risk of debt and money problems.

More information about these programmes can be found on SLAB's website:

<http://www.slab.org.uk/providers/advice/grant-funding/>