Ministry of Justice

Department for Levelling Up, Housing & Communities

Rental Mediation Service Pilot:

Post Implementation Review

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Executive Summary

The Rental Mediation Service pilot was a joint venture between the Ministry of Justice (MoJ) and the Department for Levelling Up Housing and Communities (DLUHC), launched in February 2021. It enabled tenants and landlords to access a free, independent mediation service during the landlord possession process in the county court to resolve disputes, sustain tenancies and reduce pressure on the courts. Mortgage cases were not in the scope of the pilot. Mediation allows an independent, trained, third party (a mediator) to bring two parties who are in dispute (in this case the tenant and the landlord) together to negotiate and agree a workable way forward which is suitable to both.

The pilot ended in October 2021, having been extended from July 2021 with the intention to maximise the number of referrals and therefore the learning from the pilot. The pilot had a lower than anticipated uptake (22 referrals), and this report provides an assessment of the pilot and what lessons might be learned from it. These findings will be used by the government to determine how it can best facilitate or encourage non-adversarial forms of dispute resolution, such as mediation, as part of the landlord possession process and more widely. We will seek to understand, and therefore avoid replicating, those factors which reduced the effectiveness of the pilot, whilst retaining and building upon those aspects which worked effectively.

There was a lack of quantitative data on which to base the review due to the low volume of referrals to the pilot. A qualitative Post Implementation Review (PIR) was therefore conducted, involving 64 in depth interviews with participants (tenants, mediators and judges who were directly involved in the mediation sessions or interpreting the agreements reached at mediation) and with stakeholders exploring the perceptions and experiences of those directly involved in the pilot and those who have extensive knowledge of the possession process. Although an attempt was made to contact all landlords and tenants who were referred to the pilot (including those landlords who were contacted but declined to take part), only three tenant participants agreed to an interview.

Fieldwork and analysis were carried out by independent external researchers on behalf of the MoJ and DLUHC. Although it takes a pragmatic and mainly qualitative approach, this PIR adds to the limited body of research on the use of, and perceptions towards, dispute resolution as a means of resolving private rented sector disputes (Dr Jennifer Harris' 2020 report 'Alternative approaches to resolving housing disputes' is the main publication in this field - https://www.tenancydepositscheme.com/wp-content/uploads/2020/02/TDS_SDS_CaCHE_ADR_Report.pdf) and builds the evidence base for future policy development.

It should be noted that types of legal problems and the people who experience them vary considerably. What works well for resolving some types of dispute may be unsuitable for others. Although many useful lessons can be drawn from this review, the outcome of the pilot is not general to mediation more widely, and results should be interpreted as issues to consider rather than automatically transferable.

Key findings

- A common general perception by respondents was that mediation was offered too late in the possession process for it to be attractive for large numbers of tenants and landlords. By that point, landlord and tenant goodwill had often been eroded and considerable time and expense had potentially been invested. Tenants tended to have disengaged and landlords sought a court order that would be final. It was felt by many that additional dispute resolution efforts should be prioritised *before* court proceedings, although views on the exact location and form it should take varied between stakeholders. Attempts at earlier dispute resolution should seek to preserve goodwill between tenants and landlords, follow a process that is fair and balanced between the parties, and take account of the broader contextual challenges that tenants face (such as poverty, mental health, accessing benefits for example) which are better able to be resolved before a court claim is made. The COVID-19 pandemic created additional contextual conditions that impacted on referrals; for example, various government interventions reduced claim volumes, and parties were less incentivised to pursue claims.

- Concerns about the absence of specialist legal advice during mediation and whether the tenant might enter into inappropriate agreements – particularly

given the complexity of housing law and the possessions process – were also cited by participants. Although a degree of 'bedding in' would be expected over time, during the pilot period some respondents felt that mediation did not always deliver an agreement that aligned with legal requirements. Moreover, some of the agreements were presented in a format or language that was difficult for the judiciary to interpret and translate into a court order. The limited time available for mediation in the pilot was also cited as problematic given the high pace of the court process.

- Despite the above, in the few cases where mediation appointments did take place, the chances of reaching an agreement were relatively good. The available court data shows that four out of the nine cases in which a mediation appointment took place were successful, with an agreement reached between the parties. In one of the four successfully mediated cases, an order based on the terms of the mediation was made by the judge, whilst in another, the mediation agreement was rejected. In one of the other two cases, a suspended possession order was made, whilst in the final case the claim for possession was adjourned. It is reasonable to assume that the mediation process and the mediation agreement was taken into account by the judge in these latter two cases, affecting their decision in the case - but this cannot be definitively confirmed. Whether agreements made have been complied with or led to improved longer-term outcomes is unclear.

- Respondents felt that there was a lack of awareness of mediation and what it could offer, especially for tenants who generally struggle to understand the possession process. Some tenants reported feeling confused, overwhelmed and intimidated by the possession process, which may have contributed to their lack of engagement in the process itself, and there were difficulties gathering insights into their experiences. In addition, tenants had limited awareness of the availability of duty advice.[1]

[1] Duty advice is offered to tenants through the Housing Possession Court Duty scheme in England and Wales. Advice is provided by legal aid practitioners. They offer emergency face-to-face advice and advocacy to anyone facing possession proceedings.

- Awareness and communication between the different organisations involved in the pilot was not optimal at times. This dampened referral volumes, for example some Duty Advisers were reluctant to refer clients to the service because they were not fully aware of how the mediation process would operate in practice.

- In terms of planning and implementing the pilot, the pandemic and lockdown was an exceptionally challenging professional and personal environment for all individuals and organisations involved. The circumstances of the pandemic naturally imposed limitations on how the pilot could be resourced, operated and monitored. Respondents noted the need to balance the pace of delivery with the time needed for activities such as identifying and checking critical assumptions before implementation.

- Although the original intent was to run a full independent evaluation in parallel with the service, an initial invitation to tender received no bids. Such an evaluation would have proved inappropriate in the context of the pilot's low uptake. However, monitoring and communications activities were put in place throughout. A fully formative and iterative 'test and learn' process, with an in-built evaluation mechanism, could be an effective way of trialling future dispute resolution interventions within the possession process.

Overview of the pilot and its operational context

The rental mediation pilot ran between February and October 2021. It enabled tenants and landlords to access a free, independent mediation service as part of the landlord possession process in the county court.

Whilst the pilot was also open to social tenants and landlords, social landlords tend to be better able to engage with their tenants directly to resolve disputes compared to private landlords, for example through dedicated tenancy relations officers. Furthermore, the Pre-Action Protocol for Possession Claims by Social Landlords[2] already makes provision for tenants and landlords to communicate and work together to resolve disputes before court action is taken. It requires a social landlord to make contact with a tenant as soon as rent arrears accrue, to discuss the cause of the arrears (and associated issues such as the tenant's financial circumstances and entitlement to benefits) and to try to reach an agreement on how the arrears can be repaid by the tenant. Failure to comply with the Protocol can be taken into account by the judge at the court hearing and can affect the outcome of the case, particularly when discretionary grounds for possession are used when the judge has greater power to decide whether granting a possession order is reasonable. There is no similar Pre-Action Protocol for private landlords.

The pilot was established to test the provision of mediation later in the process for parties who were unable to agree an earlier solution. This might have occurred because tenants did not engage with initial contact by their landlord due to a lack of understanding or capability, or behaviours such as 'head burying' driven by anxiety[3] over their situation. Mediation could not begin until the landlord had served a notice of possession to their tenant (a point at which the situation becomes tangible), and

2 https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/pre-action-protocol-for-possession-claims-by-social-landlords - introduced in 2015

3 Behaviours often typical for those struggling with debt problems, as evidenced by legal needs research e.g. https://www.gov.uk/government/publications/the-varying-paths-to-justice

thereafter made a claim for possession in the county court if the tenant had not vacated the property within the notice period provided.

The pilot had two key aims:

1. To minimise evictions by helping landlords and tenants to work together to sustain tenancies, thus reducing the risk of homelessness for tenants and saving landlords the costs associated with the possession process and reletting the property.

2. To reduce the burden on the courts, ensuring that court time was focussed on the most serious cases following the lifting of the stay, or suspension, of possession cases in September 2020.

Possession proceedings during the Coronavirus Pandemic

Most possession proceedings in the county court were suspended, or stayed, between March and September 2020 in response to the coronavirus pandemic. Following the resumption of possession proceedings from September 21st 2020, new court arrangements were introduced which were intended to manage the volume of cases within the court system through the provision of earlier advice, whilst also taking into account the effect that the coronavirus pandemic had had on all parties.

These new processes were developed by a cross-sector working group convened by the Master of the Rolls and were known as The Overall Arrangements[4] (see Annexes A and B). They were introduced either directly in partnership with HM Courts and Tribunal Service (HMCTS) or through changes to the Civil Procedure Rules where this was required.

Measures which were introduced as part of the Overall Arrangements included:

- A review date at least 28 days before the substantive hearing, at which the tenant could access advice on their case from a duty solicitor. Judges were also able to issue orders at this stage, for example if the case had been

[4] For more information about the Overall Arrangements, please see the Archived website 'Resumption of possession cases', available at: https://webarchive.nationalarchives.gov.uk/ukgwa/20201219233053/https://www.judiciary.uk/announcements/resumption-of-possession-cases/

settled between the parties. This was the stage in the process at which tenants were signposted to the mediation pilot by the Duty Adviser.

- The requirement for claimants, including landlords, to provide a coronavirus notice setting out any information they were aware of about how their tenant, or any dependant of their tenant, had been affected by the coronavirus pandemic. Where the claim related to rent arrears, landlords also needed to provide an updated rent account for the previous 2 years in advance of the hearing. Where this information was not provided, judges could adjourn proceedings.

- A requirement for landlords who had made a possession claim to the court before 3rd August 2020 to notify the Court and their tenant that they still intended to seek possession before the case could proceed.

- The prioritisation of the most serious cases for action. Priority was given to claims issued before the stay commenced in March 2020, and to cases including those involving anti-social behaviour, extreme rent arrears, domestic abuse, fraud and deception, illegal occupiers and squatters or abandonment of a property, unlawful subletting, and cases concerning what was allocated as temporary accommodation by an authority.

The majority of these Arrangements were removed in November 2021, but individual judges had the discretion to keep measures in place beyond this date if they felt that they were needed to manage local caseloads. The requirement for a landlord to provide any information they had about how their tenant had been affected by the coronavirus pandemic remained in place until 30th June 2022.

Operation of the mediation pilot

The Society of Mediators (SOM) was chosen as the preferred bidder to deliver the mediation pilot following an open procurement exercise in December 2020. SOM is a charity that aims to promote the use of mediation as an alternative to litigation in conflict resolution. The pilot launched in February 2021 with an initial end date of 31st July 2021. In March 2021, MoJ and DLUHC agreed to extend the pilot to 31st October 2021 to maximise opportunity for engagement following lifting of final COVID-19

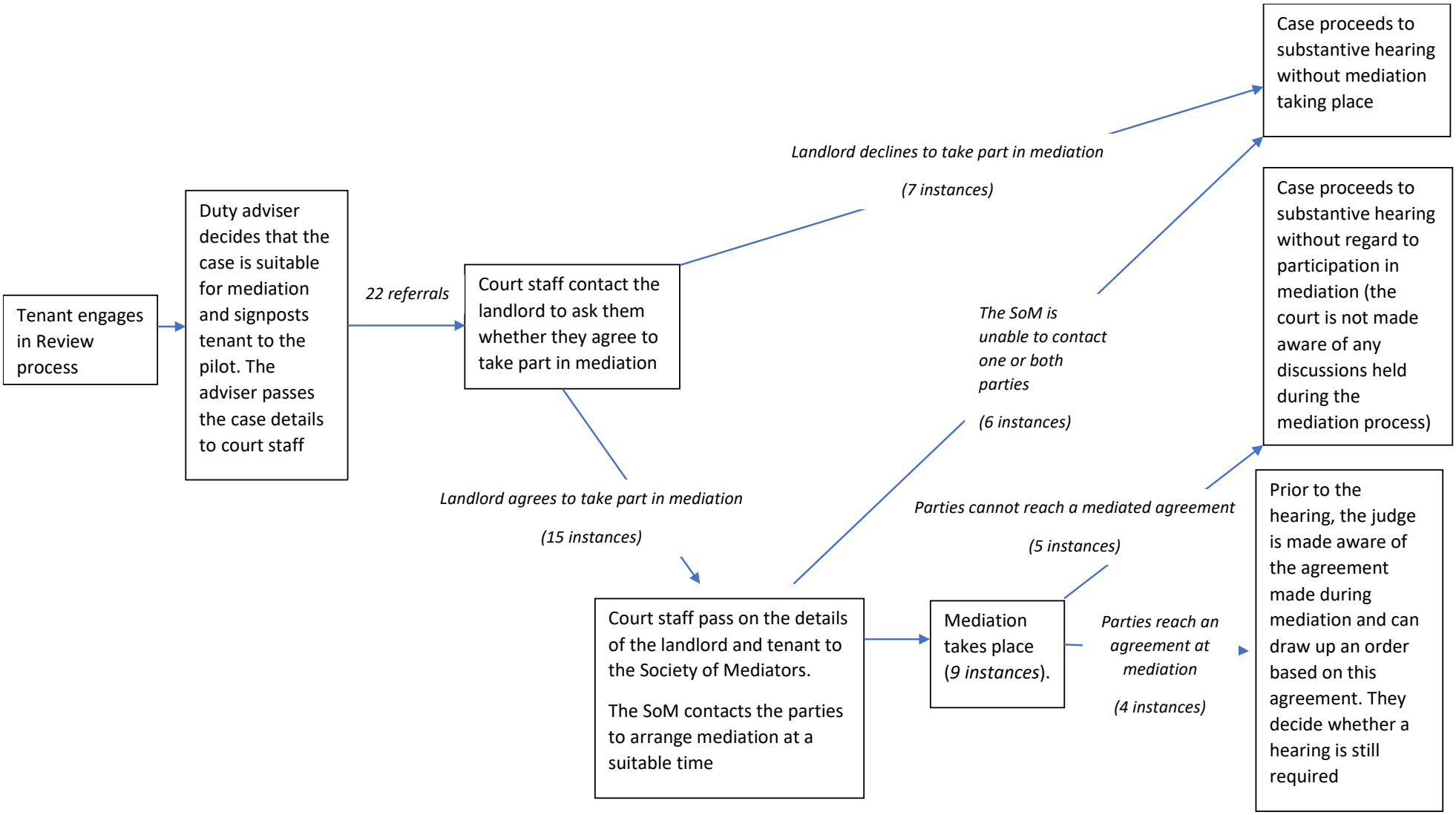
restrictions on possession proceedings. This allowed additional time for cases to be considered for mediation, but the pilot then operated with reduced budget to reflect the low volume of referrals to the pilot and possession claims at that time.

Figure 1 provides more information about how the mediation pilot operated, including indicative numbers of how many cases reached each stage of the process.

Tenants could be signposted to the pilot on the date of the review by the Duty Adviser, where no other agreement had been reached between the parties and the case was thought to be suitable. Once the tenant had been signposted to the pilot, and had agreed to take part, the consent of the landlord was required for mediation to proceed. If the landlord agreed, the case was referred to SOM for mediation and the process would be explained by the Duty Advisor. SOM had a ‘bank’ of mediators available, hired by them for the duration of the contract who were ready to work on cases via telephone appointment. Where an agreement was reached in mediation, the court was informed. If an agreement was not reached, then the case proceeded in the usual manner.

Initially, it was considered whether Duty Advisers would be responsible for contacting the landlord to obtain consent for mediation, and for passing details of the case onto mediators. However, due to concerns it would place an unacceptable extra burden onto adviser’s workload, this process was transferred to court staff.

Figure 1. Diagram showing the operation of the mediation pilot within the possession process



Project Governance

The pilot was overseen by a Project Board of officials from MoJ, DLUHC, HMCTS and representatives of SOM, who held monthly meetings to discuss the implementation of the pilot and how to resolve any barriers to its operation. There was also a judicial-led Advisory Support Group of external interested stakeholders including Duty Advisers, who acted as a sounding board and 'critical friend' to the Project Board, providing ideas and advice on how the pilot was run and how it could be improved.

Monitoring and evaluation

It was originally planned that an external evaluation of the pilot would take place while it operated. An Invitation to Tender which was submitted in December 2020 did not receive bids and it also became apparent that volumes were too low to gather robust impact data to warrant a full evaluation. However, monitoring data and procedures were in place throughout the pilot which led to interventions to improve processes and communication. This Post Implementation Review was carried out retrospectively to maximise learning and document lessons for the future.

Outcome of the pilot

The mediation pilot did not attain the expected level of referrals for mediation. When the pilot was being developed, it was estimated that up to 3,000 cases could be resolved, but only 22 cases were referred by Duty Advisers, of which 9 cases were mediated by SOM. Four of those cases could be classified as successful in terms of an agreement having been reached between the landlord and tenant. However, a substantive hearing was still listed in each of these 4 cases, and in one of the 4 cases, the mediated agreement was rejected by the judge and the possession claim was ultimately struck out.

The low level of referrals can, to some extent be attributed to the lower volume of possession claims that were being processed through the court. Between January and September 2021 there were 44% fewer private landlord claims and 83% fewer social landlord claims compared to an equivalent period prior to the pandemic (quarters 1 to 3 2019). There were 10,218 private landlord claims and 8,669 social landlord claims for possession between January and the end of September, compared to a forecast

of 40,000 claims that were expected to enter the court system in the six months from December 2020[5].

This was due in part to the success of government measures introduced to protect public health and to ensure that people were not made homeless as a result of the pandemic. These included the extension of notice periods which landlords are required to provide before making a possession claim, court restrictions on bailiff enforcement at the end of the court process and financial support that helped renters to afford their housing costs (notably the furlough scheme and the uplift in Universal Credit). These emergency government measures endured for a longer period than was envisaged at the time that the pilot was conceived.

Extended notice periods provided a longer period of time for tenants to seek advice on their case and to resolve difficulties with their landlord. This, and the additional financial support provided, may have led to more cases being resolved outside of court.

The prioritisation of cases such as anti-social behaviour and significant rent arrears following the coronavirus pandemic meant that only the most serious cases were being considered. Many of those cases were deemed by Duty Advisors as not suitable for mediation. They were not cases that could be easily resolved between the two parties. Longer notice periods and the stay of possession cases in 2020 meant that the underlying issues causing the possession claim may have continued to be unresolved for a long period of time, making resolution even more challenging.

Nevertheless, given that between 10% and 30% of incoming cases were envisaged as being suitable for mediation at the time that the contract was awarded in December 2020, the pilot fell well short of the anticipated referral rate even allowing for the lower than anticipated possession claim caseload.

[5] https://www.gov.uk/government/statistics/mortgage-and-landlord-possession-statistics-january-to-march-2022

Background to the Post Implementation Review

Recognising that there was a need to learn lessons from the operation and outcomes of the Rental Mediation Service pilot, MoJ and DLUHC elected to commission a Post Implementation Review (PIR). A PIR, primarily using qualitative interviews of court users and stakeholders, was preferred to an Impact Evaluation in this instance due to the low number of referrals to the pilot. It was recognised that there were many individuals and organisations who would be able to provide rich insights, based on first-hand experience and knowledge about the pilot and the context in which it operated.

The research and analysis was carried out by two external independent researchers, who drew findings and conclusions from the material which they had collected. The PIR was supported throughout by MoJ and HMCTS analysts and the final report was written jointly by the independent researchers and a MoJ professional social researcher.

While the primary aim of the PIR was to understand why the pilot failed to achieve the predicted rate of uptake, it was also important to understand how the mediation process operated in practice to gather feedback on what could be improved upon in future. This involved covering a range of topics including: the fundamental suitability of mediation in the possessions context; the behaviour of the parties and others involved; the pilot structure and processes put in place; cooperation and communication channels; and other contextual factors affecting design and delivery.

Specific questions included:

- Why did the pilot fail to achieve the predicted rate of uptake, in terms of the number of referrals received?
- What were the key behavioural drivers of engagement, and lack of engagement, in the mediation process?

- What processes and structures were put in place around the pilot and were these adequate?

- What were the key factors that influenced design and implementation, and what lessons can be drawn for future attempts to trial other forms of dispute resolution as part of the possession process?

It should be noted that the evidence base on so-called ‘alternative’, non-adversarial dispute resolution is generally weak, with evaluations of historic schemes often lacking. Despite being unable to carry out an impact evaluation in this instance, the PIR demonstrates a commitment to learning lessons and improving the evidence base for the future.

Research approach

The research approach consisted of multiple interviews with stakeholders, carried out face to face online, followed by analysis of key themes and then summarising results in a report format. Those who were interviewed included key external stakeholders representing both tenants’ and landlords’ interests, the Society of Mediators (SOM), Duty Advisers, tenants who took part in the pilot, members of the Judiciary, and government officials involved in the design and operation of the scheme. In total, 64 individuals were interviewed for the PIR.

Despite efforts, the researchers were unable to speak directly to landlords who took part in the pilot. The difficulty of reaching landlords and tenants involved in possession cases is well known. Landlord representative groups were included in the research, which to some extent compensated for the lack of direct landlord experience. However, it should be noted that only a small proportion of the landlord population join representative groups, and that these individuals tend to be those who are operating as a professional business.

More information about the research approach used in the PIR is available at Annex C.

Results

In this section, results are grouped into structural, behavioural, process and contextual factors that influenced the pilot.

- Structural factors: the positioning of the pilot within the existing possession process, and within housing law.
- Behavioural factors: issues arising from the psychology and behaviour of those involved in the process.
- Process factors: the processes put in place to support the pilot, including how users were engaged and guided, and how communication channels between different stakeholders operated.
- Contextual factors: such as the backdrop against which the pilot was implemented, and aspects of the planning and implementation process.

Structural factors

Suitability of mediation as a technique to resolve possession cases

Mediation has been successfully embedded within other case types across civil and family law. For example, analysis of a recent scheme run by the MoJ to provide vouchers for mediation in family cases found that a full or partial agreement was reached in 77% of the first 2,000 cases that were mediated[6]. HMCTS' Small Claims Mediation Service (SCMS) offers free mediation in claims of up to £10,000, providing that all parties agree to use the service.

However, this was the first time that mediation had been tried as part of the landlord possession process in England, and some respondents were sceptical that it would work in this context for large numbers of disputes. They felt it was typically not possible to find a mediated solution between the two parties once a claim for possession has been made to the court as there is no middle ground for discussion. The landlord wants

6 https://www.gov.uk/government/news/family-mediation-scheme-to-help-thousands-more-parents

possession of their property as soon as possible whereas the tenant wishes to remain in their home. Landlords have an automatic right to possession if they use the relevant grounds and fulfil the necessary requirements which, it was felt, disincentivises the use of mediation.

Respondents indicated that there are sometimes limited opportunities for a judge to find a compromise in possession proceedings. Mandatory grounds for possession leave no room for negotiating once the case has reached the final hearing. In these cases, the judge must grant possession, and an outright possession order is usually granted. Even if a compromise was found through mediation, the case would be required to be overridden by the judge where the ground can be proven. However, in these cases we would expect the landlord to ask the court to adjourn the case if mediation led to an agreed outcome.

Many respondents also raised concerns that where defendants entered into mediation without legal representation, or a robust understanding of the complexities of housing law, they could be at risk of settling the case to their detriment. The mediators involved in the pilot had limited detailed understanding of housing law, although some training was offered.

> "...concern about the complexity of housing law and the potential outcomes for clients … which reinforced … why at this stage of the process, it's just inappropriate to look at mediation in almost all cases." Judge.

Positioning of mediation within the possession process

This pilot utilised the unique opportunity provided by the Overall Arrangements to embed mediation within the landlord possession process at the county court. The additional Review stage provided a new juncture in the court process, prior to the substantive hearing, at which tenants could receive advice and be signposted to the mediation offer, and the mediation needed to be positioned within the existing framework and court process.

> "As far as the overall arrangements are concerned almost the only opportunity for mediation was between review and hearing" Civil Servant

However, many respondents indicated that mediation, when used as part of the landlord possession process, may be more effective for a larger number of disputes at an earlier stage, before court proceedings have commenced.

Amongst many respondents, there was a sentiment towards 'the earlier the better' although different suggestions were made regarding where exactly and what form it should take. Some respondents suggested that the ideal location for mediation would be part of a pre-action protocol before a claim was made. Others suggested that a pre-action process should be prescribed for private landlords before a possession notice has been issued (as exists for social landlords) which could, for example require the landlord to try to agree repayment of rent arrears with the tenant as soon as they start to accrue.

When asked about whether mediation could have worked at this stage. One judge responded:

> "No, I don't think so. I think… when you've got a binary outcome, it's difficult. There's nothing to mediate. It's either X or Y." – Judge

Some participants also felt the placement of the mediation pilot was not optimal as a means to reduce pressure on courts.

> "If mediation has been preferred as a solution to reduce demand for courts, for judicial time, for all of that, why do we wait until the point at which they're already involved in a court process? Why, why doesn't it appear at a much earlier point?" – Duty Adviser

Other respondents suggested that mediation was best placed later in the court process. It was felt that offering mediation pre-proceedings would result in a very high volume of more easily resolved cases being offered mediation that would otherwise have been resolved between the parties. Also, the Duty Advice scheme could not be adjusted to an earlier point. In addition, it was felt that tenants are more likely to engage later in the process. This is because the situation becomes more serious and more tangible the closer they get to the possibility of losing their home through a possession order or a bailiff warrant.

> “The jury is very much out as to where is the best point to intervene. Some people argue that it's definitely pre-action, because that's when you've got the best chance of sustaining the tenancy. [Others] argue very strongly that tenants won't engage with the process until they're kind of forced to do so.” -Civil Servant

As noted, research evidence does highlight how those with certain legal problems (money problems in particular) are often reluctant to reach out for early help, sometimes feeling a sense of shame, thinking their situation might improve, or because they become paralysed with stress and anxiety. Action is sometimes only taken at a late stage or when a trigger point such as eviction is reached, by which point the opportunity for negotiation may have passed. An offer of help at this stage can be welcomed, as one tenant put it:

> “Both my husband and I were relieved because [we felt] okay, you’re not going straight to the possession hearing tomorrow. You'll have the chance to hopefully work it out.” -Tenant

Some suggested that mediation should take place as late in the court process as possible because tenants do not engage until the point at which their home is at immediate risk. This may mean that they attend the substantive possession hearing- when the tenant can receive legal advice from a Duty Adviser and the judge decides whether to make a possession order - or perhaps later, after the possession order provided by the judge has expired and the landlord has applied for a warrant for a bailiff to possess the property. A tenant can make an application to suspend this warrant, which is heard at a further court hearing.

> “a few of them (defendants) turn up and see (the) duty solicitor on the day, but more often it's a bailiff's notice. It's the point where they then get some advice and make any applications. So giving it to them earlier in the process…doesn't really achieve anything because people…don't engage earlier in the process.” - Judge

However, whilst some tenants may engage at this late stage of the process, there may be less goodwill on the landlord’s side (see Behavioural Factors below). Landlords will have waited for the notice period to expire, been through the court process over

several months incurring court and legal fees, whilst any rent arrears are likely to have continued to accrue. There is also likely to be less time to resolve underlying issues such as debt problems or access to welfare benefits, although the government's Breathing Space[7] scheme, where applicable, does provide for a 60 day period during which enforcement action, including the repossession of an individual's home, cannot proceed where an individual is placed in the scheme by their debt advisor.

Possession statistics show that the majority of cases do not progress to the stage at which possession is enforced by a bailiff, which indicates that the tenant must have taken some action - for example by moving out or reaching an agreement with their landlord - even if they do not formally engage with the court process. The statistics do not, however, show how these situations were resolved or the outcomes for the tenant.

Lack of tenant engagement also potentially points to weaknesses in processes to successfully engage them and encourage active dialogue. In relation to review hearings, one adviser who responded to this study suggested that attendance by tenants could have been increased if they had been able to call them in advance.

Legal representation during mediation

Where cases progress to a substantive hearing, tenants are offered free legal advice via the Housing Possession Court Duty Scheme on the day of the hearing. While the Overall Arrangements were in place, the Review date provided an additional opportunity for tenants to access legal advice through this scheme. A Duty Adviser can inform the client whether they have a valid defence to the landlord's possession claim (for example the landlord failed to comply with their legal responsibilities when making a claim or provided insufficient evidence). This 'handholding' of clients was seen by many respondents to serve a vital role of protecting vulnerable clients from a complex and consequential legal process.

Whilst those who accessed the mediation pilot were able to receive duty advice at the Review date - and could only be signposted to the pilot by the Adviser – tenants and landlords who could not afford privately funded lawyers did not have any legal advice

[7] The Debt Respite Scheme (Breathing Space) provides people in problem debt with the right to legal protections from their creditors. More information is available at: https://www.gov.uk/government/publications/debt-respite-scheme-breathing-space-guidance/debt-respite-scheme-breathing-space-guidance-for-creditors

during the mediation itself. This was perceived by some respondents as putting participants at risk of agreeing to something that could undermine their legal rights. This is because, if the case was resolved during the mediation process and the case did not progress to a full hearing, the tenant would have agreed to an outcome - such as a repayment plan to pay off outstanding arrears - without having received legal advice on whether this was the optimal or most beneficial option available to them. This contrasts with a full possession hearing at which, as detailed above, the tenant can receive free legal advice through the Housing Possession Court Duty Scheme. However, the Duty Adviser was able to consider the circumstances of the case when deciding whether to refer the tenant to mediation, while in practice a substantive hearing was listed in all four cases which went through the mediation process.

As well as potential defences being missed during the mediation process, concern was also raised around the issue of intentional homelessness. Under the Housing Act 1996 a person may be treated as intentionally homeless if they deliberately did something as a consequence of which they ceased to occupy accommodation that was available, and it would have been reasonable for them to have continued to occupy. An applicant will also be intentionally homeless if they enter into an arrangement resulting in them giving up accommodation in order to access the homelessness duties. Local authorities have to judge whether an applicant is intentionally homeless on a case-by-case basis. Participants in this Review raised the risk of this potential outcome because once an individual is found to be intentionally homeless, they will be owed a lesser homelessness duty.

The government took steps to address these concerns whilst the pilot was operational. DLUHC wrote to local authorities in September 2020 to clarify that giving consent to vacate the property during mediation would, not, in itself be a reason to find an applicant intentionally homeless. However, some households may be found to be intentionally homeless for another reason if, for example, they were found to have wilfully not paid rent on a property they could have afforded.

Other participants suggested that agreeing to an outcome without legal representation and litigation undermines the principles of the Rule of Law. This, along with the concern of tenants not knowing their rights to a defence as well as the perceived risk of intentional homelessness, meant that Duty Advisors were reluctant to refer clients

to mediation in order to protect their best interests. When asked about the risk of a tenant becoming intentionally homeless one participant stated:

> “It could. Because that's often what the problem is. People, you know, they know they've got to go. They just want the possession order; they're not hiding this… I think …I think a lot of people who are going to be reliant on social housing, the local authority would be reluctant to, to agree for that reason.” – Judge

Counter arguments were also put forward as to the importance of specialist legal advice versus an ability to foster dialogue and facilitate a negotiation.

> “[Some stakeholders] put forward a very compelling case, which is that it's not necessarily about the law, but it is about having skills to arrive at a mutually acceptable outcome for both landlord and for tenant”. Civil Servant

Vulnerability of parties

Mediators are independent and impartial and are trained to deal with situations where there are perceived power imbalances to help parties find a workable practical solution.

It should also be noted that many users, especially tenants, can be emotionally, mentally or financially vulnerable. It has been reported that tenants can in some cases lack the capacity to represent their interests without legal representation.

> “I think it has been raised that at times, mediation can actually disadvantage the tenant in a way that a sort of more adversarial system wouldn't. - Judge

Behavioural factors

Propensity for parties to engage with mediation

Respondents indicated that one of the reasons for low uptake was that mediation requires buy-in from both landlords and tenants. It was acknowledged by the majority of respondents that parties can be extremely difficult to engage, and that this was underestimated prior to the pilot. The pilot relied upon tenants engaging at the review hearing, because this was the stage at which they could be signposted towards mediation by the Duty Adviser.

Tenant engagement at the review stage was reportedly very low[8]. However, even when a tenant had attended the review hearing and been directed to the pilot, landlords were often reluctant to engage in the process. Of the 22 cases which were referred to the pilot, 7 (32%) did not proceed because the landlord declined to take part.

It was reported that landlords and tenants who are able to find mutual ground are inclined to do so early in the possession dispute and avoid entering the court system to start with.

One of the key points regarding engagement voiced by stakeholders was the importance of goodwill between parties in order for mediation to work. This was conceptualised by respondents as a currency upon which alternative methods of dispute resolution can be fuelled. As parties moved through the possession process goodwill was seen to be declining, making a mediated outcome increasingly unlikely.

> "If you're already in the process, I think you've lost that goodwill and the motivation is gone." Duty Adviser

[8] See Whitehouse, L and Liosi, S. (2022) *Asssesing the Court Systems' Response to the Covid-19 Pandemic in Housing Possession Cases in England and Wales* University of Hull

"...if you get into the process early enough, there may still be enough goodwill to be motivated to try and find a way to save the tenancy." Landlord representative group

It was seen to be crucial, therefore, that attempts to implement non-adversarial forms of dispute resolution preserve goodwill as carefully as possible. Some respondents noted its fragility and warned that if any pre-action protocol for private landlords was not worded sensitively, it could itself create an adversarial stance between landlords and tenants.

However, some respondents raised questions about whether low uptake is inherent to any mediation effort within housing possessions, even where it takes place earlier in the process. This question was supported by some other comparable mediation initiatives which also report relatively low uptake such as the Tenancy Mediation Service and TDS Resolution. These schemes are endorsed by the NRLA and seek to facilitate constructive dialogue between landlords and tenants, with the aim of resolving tenancy issues, such as rent arrears, without court action becoming necessary. They are aimed at reducing the timeliness and cost of resolving disputes for landlords.

Some respondents also reflected on awareness and perception of mediation generally, acknowledging that more time might be required for a culture of mediation to bed in and for communication channels and processes to become more established and refined.

> "Mediation has always met with an element of suspicion because there is a lack of understanding and education around it. In Ireland it worked in possession cases. However, that culture change took years to embed". - Civil Servant

> It was felt that the pilot did not allow for this trust and confidence to manifest. "In the pilot…everything was done at pace. In the ideal world, we would've done things differently. It requires people's confidence in something to grow." - Judge

Complexity of party situations

Another issue raised by stakeholders was the multidimensional complexity of challenges that tenants (and sometimes landlords) face leading up to possession notices being issued.

> “The problem is poverty. The problem is the benefit system. The problem is debt recovery and personal finances, and it's unemployment, it's family breakdown, and it's mental health, and it's a whole range of triggers that lead to possession proceedings.” Duty Adviser

This again points to the need for early intervention to resolve underlying issues before they escalate and result in proceedings being sought. Although beyond the scope of the PIR, several suggestions were offered as to how this might be achieved. One of these was the establishment of a pre-action protocol or escalation process, in which private landlords would be required to ensure that certain steps had been taken prior to approaching the courts.

> “...the creation of protocols and an escalation process that would require trying to contact the occupier and work out if they can resolve these underlying problems around benefits and debt before they issue possession claims.” - Duty Adviser.

Access to early advice so that participants gain more understanding of their situation and options was also suggested.

> “Access to early legal advice will ensure the participants understand their choices, whether to progress their dispute or to settle, and their rights.” – Legal reform charity

There were also calls for efforts to be made to communicate the availability of free legal advice to tenants, thereby encouraging their engagement.

> “...absolutely nothing is done to promote availability [of legal advice]. Everybody knows that there’s a health service, when you're sick, nobody knows that there's legal aid...” - Judge

Whilst Duty Advice was available on the Review date as part of the Overall Arrangements, some stakeholders suggested that this should have been further supported and strengthened rather than introducing new measures.

Process factors

Communication issues and barriers

Communication issues were raised by a variety of respondents. This related to a lack of tenant awareness of, and engagement in, the court process, compounded by a lack of guidance about how the mediation process would work. Respondents pointed to difficulties in bringing disparate organisations (who sometimes had different perspectives on the legal process and had not necessarily worked together before) together to deliver a novel intervention in the court process.

Tenant engagement and awareness of the court process and mediation

Tenants appeared to have had a very limited understanding of the court possession process and the elements it involved. They do not typically engage in the possession process and are only broadly familiar with the most prominent aspects such as the eviction notice and the court hearing. Other elements (and especially those under the Overall Arrangements) were not properly understood and tenants were inclined to feel overwhelmed, confused and intimidated by the court process.

> “...if someone emotionally is going through it, [the possession process] definitely, I think throws you for a curve ball if you're expecting one thing and it doesn't go that way.” - Tenant

> “I'm a very, you know, a person who can usually kind of cope with most things... but I am finding [the possession process] pretty, pretty daunting and difficult.” - Tenant

When considered alongside other challenges that tenants might be facing, many had limited resources (both legally and psychologically) to navigate the more complex possession process under the Overall Arrangements and mediation pilot. At times, respondents felt this might risk them getting into something that they did not

understand (at least from a legal perspective) and making agreements that were not in their best interest.

One tenant described how the mediation was promoted to them:

> "The way it was described to us sounded really great in practice…. You know, like having an impartial person, [that] nothing that you say will go back to the court and somebody who can kind of help work between [the landlord and tenant] especially in our situation." - Tenant.

However, it was not clear that tenants were fully briefed on the process in terms of timings and logistics. Some respondents noted that potential issues with non-engagement were raised before the pilot was implemented and that more could have been done to bolster tenants' awareness and psychological resources, such as offering clear process information and consistent and reliable communication throughout the process. The government took steps during the pilot to improve communication, notably the introduction of a government webpage to provide guidance on processes, which was introduced towards the middle of the pilot's lifespan.

Tenants reported not being kept up to date on their referral to mediation, which compounded their disorientation during the possession proceedings. This was a particular issue in those cases in which the landlord declined to take part in the mediation process. If a landlord refused or did not respond to the invitation to attend mediation and did not tell the tenant themselves that they had declined to take part, then the tenant would not have been informed about this. There was no mechanism by which the court, Duty Adviser or SOM could inform the tenant that the landlord was unwilling to participate in mediation.

> "So, we were thinking, okay, [mediation] sounds good. Sounds like a lifeline, especially when you're going through it…we thought it sounded great. We didn't hear anything back. The next thing we heard was three months later that we had a hearing and we had thought that we would have this mediation in the middle and so [it was] big for us." - Tenant

Guidance through the tenant journey

The lack of communication with tenants was exacerbated by points of discontinuity along the housing possession journey (from review date, to mediation, and hearing). Cases progressed relatively smoothly to the review date. Between the review date and mediation however, some barriers to progress emerged. Duty Advisers felt some reluctance to direct cases to mediation because they did not adequately understand how it would be conducted, were unsure about mediators' experience of housing law, and had concerns about the lack of legal representation in the mediation process.

Tenants reported needing help to navigate the process and being disorientated and unsure of what was happening to their case.

> "...if, you know, the [mediation] program shut down…I think it would be nice to know the case won't be progressing any further…Because at the time we didn't have legal representation. So [when we found out the mediation pilot had ended] we were really worried and like, okay, do we need to go find a lawyer tomorrow? We have this hearing, and this case is quite long. And we relied on the assumption that you do mediation, then go from there." - Tenant

It is not clear, however, whether the lack of communication was the result of a lack of any update on the landlord's position or a lack of communication that the mediation pilot had ended. Elsewhere,

> "...it sounded like all systems were going, like we were definitely enrolled in [the mediation program] ...but then we just didn't hear anything else about why it didn't go forward…So I think it's quite daunting, I would say stressful." - Tenant

Communication between stakeholders

The pilot required close collaboration between government, judiciary, and practitioners during its design and operation. As noted, various working and advisory groups were put in place to share information and guide decision making.

> “I remember thinking how good it was that the judiciary had got together with external stakeholders to really build a relationship with the people within the government, to actually tackle this. Because we were in a situation where there was a bit of an unknown about what would happen when the stay ended in September. Would there be a tsunami of claims coming in all at once? That was big. And this was probably the first time that there was a forum including the judiciary, with people at Shelter and advice providers and others”. - Civil Servant
>
> I was pleased that officials had included the expertise of a group representing a cross-sector of experts in this area. However, there wasn’t as much interfold as there could have been and an argument for combining the groups that provided governance to the project - Judge.

The data and monitoring processes put in place meant that insights were fed in during the pilot allowing steps to be taken to improve processes and communication.

> “There was a lot of work that we were doing behind the scenes to try and resolve some of those issues. One was educating the Duty Advisers about mediation and mediators about Duty Advisers. In terms of that information sharing, we set up information sessions to exchange ideas, workshops involving sort of both parties to increase knowledge. We also looked at providing leaflets that HMCTS drew up to be passed to legal advisors and then to tenants.
>
> DLUHC was speaking to their tenant groups, third sector housing, the landlord association, the courts, the judiciary, the law society, etc” – Civil Servant

Despite this, given the pilot’s national coverage and rapid deployment, some Duty Advisers, judges, tenants and landlords reported being unaware of the pilot initially. Some Duty Advisers felt they were expected to dispense information about the pilot to each other rather than it coming centrally, and there was a concern they would be blamed for the lack of uptake:

> “There's an assumption there that Duty Advisers were somehow at fault, that this wasn't going to work properly, and there was a fair bit of work being done with HMCTS officials and others to try and create better written communications

and better communication channels with as little input from HMCTS as proper as possible, mind you. So again, this was relying on the people on the ground, on Duty Advisers, doing a lot of the reaching out, reaching across, explaining to people making the case not just for their own service, but another service that they didn't actually deliver, and that people were not aware of." – Duty Adviser

As well as issues over external communication, those directly involved in providing and running the service also reported issues with communication channels between one another. For example, Duty Advisers reported some issues when asking for detailed information to explain how the service would work, which was seen as commercially sensitive by the mediation provider.

Time allowed for mediation

Contractually, the mediation needed to be carried out in the 10 days following the Review and referral, with the outcome report submitted to the court no later than 3 days after the mediation session, to allow the court a period of at least 15 days to delist the substantive hearing if a judge agreed that it was no longer required.

It was reported that, at least in the context of housing possession, the mediation itself requires a reasonable amount of time to be carried out effectively. Some respondents thought that an hour was not enough time to carry out mediation properly. Therefore, there may have been issues, if the pilot had had a higher level of uptake, with workload and meeting demand within the specified timeframes.

"I think limiting it to one hour per person it was unrealistic. I've got to say it put too much pressure on people to form a solution, rather than giving people time to talk. If you…try and resolve something that people couldn't agree on over a two-year period in one hour, including filling in all the forms, finding out the background too." - Mediator

"By the time I'd managed to get the agreement drawn up, it was two and a half hours in. [That was] a pretty speedy mediation in itself…So two and a half hours is realistic. Two hours to mediate, half an hour sort of a final bit." - Mediator.

Contextual factors

Contextual factors are those that exist beyond the mediation pilot itself and provide the backdrop to which it took place. The prevailing circumstances of the coronavirus pandemic in which the pilot was launched were an important contextual factor because of the profound impact which the virus, and the lockdowns put in place to prevent its' spread, had on the lives of landlords and tenants, and the operation of government, stakeholder and court services. However, other contextual factors such as the lack of pre-existing examples of mediation and knowledge of best practice, inaccurate estimates of demand and the lack of a formal evaluative function, were also of significant importance in affecting the outcome of the pilot.

COVID-19 and associated pressures

The pandemic and lockdown had a major impact on all aspects of the pilot and, although not felt to be solely responsible for the low uptake, respondents indicated how this introduced a high degree of unpredictability and uncertainty.

> "There were further lockdowns... It was a very unpredictable context." - Civil Servant

> "All of this was done to try and protect the courts, the public and the service that we deliver. To make sure that we were trying to be as effective as we could. So that was our starting point". - Civil Servant

> The usual housing possession court process was altered by the introduction of a stay on housing possession cases, which was lifted immediately prior to the pilot and the Overall Arrangements. While this was anticipated, and one of the reasons the service was felt to be needed, the impacts on demand and throughput were difficult to predict.

The difficult context created by the lockdown also placed all stakeholders under additional pressure and the pilot was therefore delivered with an urgency that shortened planning and implementation times. As one respondent indicated,

"The months following COVID were and still are, I think the busiest time of my professional life…days were both long and intense, a large number of things going on." - Civil Servant.

"This was one of a number of policies… to try and improve a difficult situation [at] greater pace and under greater pressure than we would ideally like" - Civil Servant

Issues predicting demand estimates

It was estimated that up to 10,000 cases would be suitable for mediation in the first six months of 2021, and that 3,000 of these would be successfully resolved. However, only 22 cases were referred to the pilot by Duty Advisers, of which 9 cases were mediated by SOM and 4 could be classified as successful in terms of an agreement having been reached between the landlord and tenant.

The unrealised predictions of demand for the pilot can, to some extent, be seen as part of a broader overestimation of the volumes of cases coming through the system. It was anticipated that 10,000 cases had built up which the court needed to process, and that a further 40,000 would enter the court system in the 3-6 months from December 2020. However, as described in the Outcome section of this document, fewer than 19,000 landlord claims were made between January and September 2021.

The estimate of 40,000 cases had been drawn up based on case volumes quickly returning to or exceeding pre-coronavirus levels as pandemic public health restrictions were eased. However, the reintroduction of a further lockdown to prevent the spread of coronavirus, and the implementation or continuation of government interventions in the possession process, such as bailiff restrictions, suppressed claim volumes at the time that the pilot was launched.

Initial demand estimates were also reliant on cases coming through the system that were suitable for mediation, such as those with lower rent arrears caused by shorter term issues. It was estimated that around 20% of total cases (10,000) would be suitable for mediation, with a success rate of 30% (3,000) based on the success rates seen in pre-existing schemes such as the mediation process used for small money claims.

In hindsight a range which modelled a more pessimistic scenario may have been more accurate as respondents reported that many cases coming through the process were unsuitable for mediation for various reasons. Often an adversarial stance had developed between tenant and landlord. As one respondent put it,

> “If you're already in the process, I think you've lost that goodwill and that motivation is gone.” - Landlord representative group.

The increase in the timeliness of cases brought about by the suspension of possession proceedings between March and September 2020 also meant that many cases were coming through with especially high rent arrears, which several stakeholders suggested would render them unsuitable for mediation.

However, the lower than anticipated level of possession cases also had positive implications more generally. It suggests that, during the difficult period experienced by many, more informal negotiation of issues was taking place between landlords and tenants and that social landlords refrained from bringing cases after the stay on possessions was lifted. As indicated by one of the stakeholders:

> “...it's the social landlords that are not bringing the vast numbers of cases.”- Judge

The difficulties in assessing demand for the pilot, and of determining case volumes more broadly, can be seen as part of the pressure and unpredictability of the pandemic, which as detailed above also had a direct impact on the implementation and operation of the pilot itself. There were, however, other contextual factors which would still be significant were a pilot to be run at another time outside of a pandemic and lockdown.

Lack of existing evidence or examples to draw from

Mediation in the context of housing possession is rare, and existing dispute resolution schemes applied to other areas are problematic to generalise. There were few comparable schemes from which to draw, and while similar examples such as the Irish housing possession mediation scheme were taken into consideration, it was difficult to extrapolate fully to this implementation.

> “There was nothing really out there for us to look at in terms of [how to do the pilot], so we did go and look at the small claims procedure and we looked at Ireland and Northern Ireland, but obviously there's no complete parallels to trying this.” - Civil Servant.

In addition, existing schemes utilising mediation or other forms of dispute resolution such as arbitration or conciliation tend to lack robust evaluations and pointers toward best practice.

This lack of evidence was acknowledged at the beginning and was one of the reasons the scheme was implemented as a pilot. It was also a key reason for carrying out this review, to ensure learning could be captured and disseminated for wider benefit.

Monitoring and evaluation mechanisms

Although the pilot was monitored throughout via management information, and via stakeholders and governance groups, a full parallel evaluation was not implemented alongside it. This was originally planned and a tender was put out, but no bids were received.

As noted, a full external evaluation would not have been proportionate because of the low case volumes and therefore lack of meaningful data. However, it is possible that extra qualitative and process insights might have been gathered as part of a more formative evaluation approach. Whether this would have altered the pilot outcome is uncertain; it may not have led to a direct increase in demand although more insights might have been fed back into the operation of the pilot and used to suggest improvements.

While the pilot was running, officials at MoJ, HMCTS and DLUHC maintained a regular engagement with the SOM in an effort to ascertain how the pilot was progressing. The SOM provided a regular break-down of volumes and what had taken place in each mediated case. Project Boards and wider Advisory Support Group meetings were held to assess performance of the pilot and consider actions to increase uptake.

A selection of providers of the Housing Possession Court Duty Scheme were consulted on a fortnightly basis. In addition, officials engaged with housing legal aid providers at the Advisory Support Group and consulted on a more local court by court basis to

explore ways to increase uptake. Officials also met regularly with landlord and tenant stakeholder groups to gather insights into the process and to gather ideas on how use of the pilot could be encouraged.

However, some respondents felt that the presence of a formal evaluator may have allowed for deeper and more timely insights. In addition, some respondents pointed out that courts do not have a robust data culture, and that there is limited court data readily available for monitoring mechanisms. This was said to be a major obstacle to understanding the housing possession process generally.

Were the pilot to be run again, a more formative embedded monitoring process might be considered to deliver rapid insights, facilitate communication between different stakeholders, and allow swifter action to be taken.

It should also be noted that this PIR is an attempt to provide insights and lessons retrospectively. Although it takes a pragmatic and mainly qualitative approach, it goes beyond the independent assessment of most existing schemes in which dispute resolution has been trialled, and it will add to the evidence base for future policy development.

Conclusion: key factors which affected the outcome of the pilot

A multitude of structural, behavioural, process and contextual factors that affected the outcome of the pilot have been discussed above. These factors are interlinked, and it is challenging to place them into a hierarchy. However, there were five key factors which appeared to play a pivotal role in determining the outcome of the pilot.

1. The location of the pilot within the possession process

Some fundamental questions were raised about the potential impact of mediation at the point in possession proceedings at which the pilot was situated. Respondents suggested that parties are not incentivised to engage at a relatively late stage, as it is likely that previous resolution attempts had already been attempted and failed. Therefore, the pool of cases where mediation might be effective was reduced by the point in the possession process at which the pilot was situated, and respondents almost unanimously agreed that additional mediation would be more effective further upstream. However, this needs to be balanced with the perspective (backed by research evidence) that anxiety driven behaviours such as 'head burying' can be common amongst those with financial problems meaning people often wait until the situation becomes critical to engage. As noted by participants, other dispute resolution attempts are likely to have been attempted and failed by the time a case comes to court. With that in mind a 'whole system approach', which considers user behaviour and different forms of advice and support, while significantly more complex, might be considered in the longer term to assess different points and mechanisms for dispute resolution.

It was also suggested that a private landlord pre-action protocol (or other upstream intervention) might steer parties toward discussion and negotiation sooner, and that if the landlord fails to comply with a pre-action protocol, the judge might be able to impose sanctions such as an order for costs or an order adjourning the claim or take failure to engage into account at the hearing.

2. Concerns regarding the potential for tenants to enter into inappropriate agreements

The suitability of mediation in the context of the possessions process was also a key factor which affected the outcome of the pilot. There were issues around practitioner perceptions about what mediation would involve, and the role and skill sets of the mediators themselves, with some concerns expressed around ethics and the rule of law. For example, where Duty Advisers lacked confidence that mediators understood housing law, they were reluctant to make referrals, fearing that parties could end up agreeing to something inappropriate. Specifically, tenants might enter into agreements that they did not fully understand, leaving them in more difficult situations. Being inadvertently classified as 'intentionally homeless' was one risk, meaning that the tenant was owed a lesser homelessness duty.

Where mediations did take place the chances of success were relatively good, although the small number of cases prevents generalisation. 4 of the 9 mediated cases resulted in an agreement between the parties. However, a barrier to further success lay in the difficulties which judges had translating agreements into orders. In some instances, they reported that agreements were hard to interpret or turn into a legally sound order. This might have been expected to change over time as expectations and requirements became clearer between judges and those drafting the details of the mediated agreement and the culture of mediation within possession cases had more time to bed in.

3. Communication barriers, both with participants and between delivery partners

The parties involved in disputes, particularly tenants, struggle to understand the possession process and housing law and lacked awareness of what mediation involved or how it could help. Tenants who did want to mediate also reported a lack of clear information about the process and information about what was happening in their case and why mediation had not proceeded as planned.

This review has also shown that although a clear governance and engagement structure was in place, with meetings of the pilot's Project Board and Advisory Steering Group happening regularly, there were some communication difficulties between the

parties responsible for delivering the pilot. Duty Advisers were pivotal to the success of the pilot as they were responsible for signposting tenants to participate, but efforts to engage practitioners could have been more effective, particularly in advance of the pilot commencing, as participants from this group reported being unsure about how the pilot operated and whether it would be beneficial to their clients.

4. The context of the coronavirus pandemic

In relation to planning and implementation, the pandemic clearly required a rapid and urgent response, against a backdrop of reduced court capacity, resource shortages and additional pressure on all parties. This meant that design decisions had to be made at pace and certain assumptions made about demand and behaviour. Relatedly, the initial expectations of case volumes, and of the number of cases suitable for mediation, appear to have been too high. Whilst this was due in part to the unforeseen reintroduction of coronavirus restrictions which dampened possession claim volumes in court, the expectations of demand were also based on overly optimistic assertions about the proportions of claims which would be suitable for mediation.

With more time, the assumptions about demand for the pilot and the behaviour of participants could have been properly tested, leading to more accurate estimates. Where mediation or another form of dispute resolution is trialled in the future, it is recommended that the robust testing of demand estimates is prioritised to avoid carrying excessive risk into implementation.

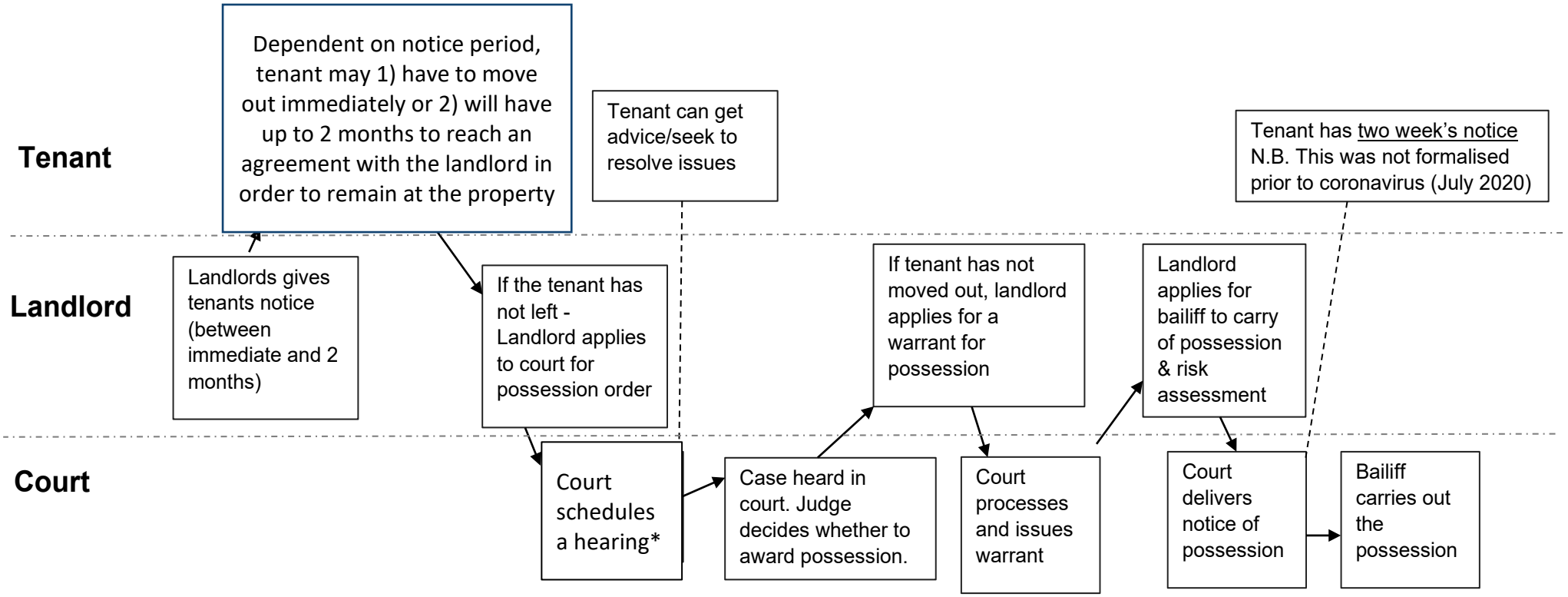
5. The pilot's evaluative functions

Related to the above, while a full parallel evaluation was unnecessary here and monitoring took place which led to steps to improve processes and communication, a more formative 'test and learn' approach might have been adopted to test critical assumptions and open up channels of communication more rapidly so that issues could be quickly diagnosed. This approach would have required some compromises on speed of delivery and for additional resources to be allocated.

We would like to offer our thanks to all respondents who provided evidence for this review. We will use the findings and lessons learned to determine how mediation, as

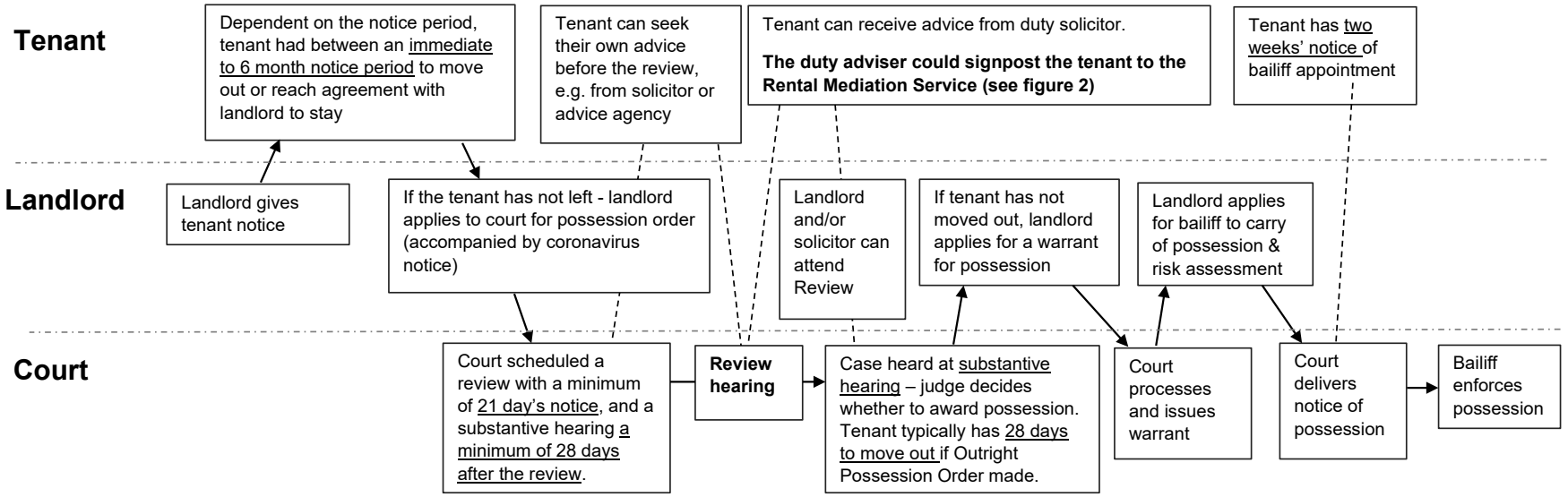
one form of dispute resolution can help to resolve landlord and tenant disputes in the future.

Annex A: Diagram illustrating how the possession action process in the county court operated before the coronavirus pandemic



*Unless the accelerated possession process was used and the claim was decided on the papers without a hearing by the judge.

Annex B Diagram illustrating the Overall Arrangements introduced to respond to the coronavirus pandemic, from 21 September 2020



Notes:

- Possession proceedings in the county court were stayed, or suspended, from 27 March until 20 September 2020. Possession proceedings recommenced from 21 September 2020.
- Notice periods were lengthened during the coronavirus pandemic, as follows:
  - 3 months in all cases between 26 March and 29 August 2020
  - 6 months between 30 August 2020 and 30 June 2021, with exemptions for notices relating to anti-social behaviour, rioting, false statement, rent arrears of six months or more, where a tenant had passed away and where a tenant was in breach of immigration rules and had no right to rent
  - 4 months between 1 July and 30 September 2021, with exemptions for notices relating to anti-social behaviour, rioting, false statement, rent arrears of four months or more, where a tenant had passed away and where a tenant was in breach of immigration rules and had no right to rent (an additional exemption for rent arrears of less than four months came into force from 1 August 2021)
- Bailiffs must provide 14 days' notice of an eviction to the occupants of a property. This was a permanent rule change introduced in July 2020.

Annex C- PIR Technical Details

The respondents

Approximately 36 hours of interviews were conducted virtually across a period of two months (February – April 2022). The interviews averaged 1 hour, and 64 respondents were interviewed in total. The breakdown of the participants can be seen below.

Numbers of participants interviewed	
Stakeholder	**Number of interviews**
Tenants	3
Landlords	0
Duty Advisors	15
Civil servants	8
Mediators	4
Representatives of stakeholder groups	24
Judges	10
Total	64

It should be noted that the range of interview participants had some limitations. The number of tenants and landlords involved in the pilot was very low. Along with lack of engagement from these groups this meant only 3 out of a possible 22 tenant interviews were held and no landlords participated. Inferences were therefore drawn from stakeholders and representative groups based on their insights into their experiences.

With respect to Duty Advisers, the interviews took a variety of formats including one on one and round table discussion. There was an attempt to interview Duty Advisers from different geographical areas although there are some regions that have not been as comprehensively covered as others. Generally speaking, there was much agreement amongst this group, with Duty Advisers reporting similar issues and perceptions regardless of location.

Number and locations of duty advisers interviewed	
Region	**Number interviewed**
London	6
Midlands	2
North East	4
North West	2
South West	1
Wales	0
Total	15

Interview practicalities

The interviews and round table discussions were organised by officials at the MoJ and DULHC. Following this the interviews were scheduled and carried out by the researchers.

The interviews took place over Microsoft Teams. At the start of each interview consent was given to audio record (for use of the researchers only) the interview. Upon completion of the analysis these recordings were destroyed. Participants were told that participation was voluntary and that they could withdraw at any point during the interview.

Interview Questions

The interviews were comprised of a series of open-ended questions in a semi-structured script format due to the exploratory nature of the review. The aim of the interviews was to elicit information that would help in answering the research objectives as well as to get an understanding of the experience of participants during the lifetime of the pilot. The interview scripts for each group are included in appendix B.

Interview questions were compiled before the interviews were conducted. As interviews progressed, and as the researcher's understanding evolved, the interviews diverged from the initial interview schedule and questions were asked that were more tailored to the researchers' emerging understanding, i.e., they were directed to areas in our that were unexamined, unclear or insufficiently detailed.

Analysis

Following data collection, a period of immersion was undertaken. The researchers read each interview transcript or reviewed each recording several times and made notes before analysis commenced. Thematic analysis was then undertaken to collate sub themes into larger overarching themes that best represented the data.