



Ministry  
of Justice

# **Process evaluation of the private law children cases expert evidence pilot**

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# 1. Summary

## Policy background

Legal aid reforms introduced in April 2013 removed public funding for the provision of expert evidence in private family law cases. This included funding for DNA, drug and alcohol tests to establish parentage or substance use. Concerns have subsequently been raised that the lack of this expert evidence may be causing delays in private law children cases and compromising the welfare of the child.

As a result of these concerns, the Ministry of Justice implemented a pilot scheme to fund DNA, drug and alcohol tests in private law children cases. In line with section 13 of the Children and Families Act 2014, to commission a test under the pilot, the judge must consider the expert evidence 'necessary' to resolve a case justly. The administration of the testing process was supported by Cafcass and a third party, Oxfordshire Family Mediation (OFM), and the tests were conducted by test provider DNA Legal/ Eurofins Medigenomix Forensik (DNA Legal). The pilot commenced on 16 June 2014 in two Designated Family Judge (DFJ) areas and will continue until early 2015.

## Evaluation aims and methodology

This report summarises the findings of the evaluation of this pilot. This research takes the form of a *process evaluation* which relays primarily qualitative evidence relating to how the pilot was implemented, how the pilot operated in practice, and perceptions of participants in relation to benefits and challenges. The evaluation provided costs of the pilot. It was also designed to identify lessons and areas of good practice that could be used to inform the model and delivery of potential national funding arrangements.

A mixed methods approach was adopted. A workshop with a range of professionals was conducted in each pilot area and interviews were carried out with the judiciary, OFM and DNA Legal. A workshop was also undertaken in a comparator area to explore the impact of a lack of expert evidence. In total, 11 interviews were conducted (including seven with members of the judiciary) and three workshops were held, with attendance ranging from 7 to 14 participants in each. Alongside this, data was collected on the type of expert evidence ordered, as well as the cost of the tests and their administration in the pilot areas. For the purposes of the evaluation, data was collected from 16 June 2014 to 31 October 2014.

## **The pilot process**

A total of 101 referrals for any test (DNA, drug or alcohol) were made during the pilot. Of these, 19 referrals (19%) involved dual tests, resulting in 120 tests being ordered. Over half of these were drug tests (56%), 36% were alcohol tests and 9% were DNA tests. At the end of the evaluation period, 89 referrals were completed by OFM. Overall, almost a quarter (24%) of all private law children cases in the two pilot areas were referred for a DNA, drug or alcohol test. The majority of referrals were made following a child arrangements application.

Representatives from across key professional groups were positive about the provision of funding for expert evidence in the pilot, and expressed a commitment to work collectively to ensure it worked effectively. Good communication between the agencies involved was essential. However, there was strong agreement amongst professionals that the pilot was leading to duplication of work between Cafcass and OFM. Both were involved in the administration of the testing process, such as liaising with the court when an order was made. Whilst professionals reported that an intermediary third party was invaluable, they were unclear on the distinction of the roles between Cafcass and OFM.

## **Benefits of the pilot**

Professionals reported that the expert evidence provided increased knowledge and awareness relating to safeguarding issues and questions around parentage. They therefore felt it supported the overriding principle that the child's welfare should be the family court's paramount consideration in making decisions about a child's upbringing.

Throughout the evaluation, professionals consistently told us that a key benefit of the pilot was the reassurance that expert evidence provided. This was identified in terms of enabling the judiciary to be more confident in their decision making, and also for improving parties' engagement with orders. In the comparator area no public funding exists for DNA, drug or alcohol tests and it was reported that parties were largely unable to pay for tests themselves. Professionals in this area reported that without such evidence the judiciary may have to make unsatisfactory orders. Orders made without expert evidence were perceived as less likely to be followed, and professionals suggested that cases would often be returned to court as the underlying issues had not been dealt with.

Expert evidence, and the reassurance it provides, was seen as essential in cases where issues are raised about parentage. Professionals suggested it was difficult to progress cases without the result of a DNA test. Without DNA, drug or alcohol tests, additional fact-finding

hearings were often required to gather more evidence from the parties and there was general consensus that cases became more adversarial as a result.

### **Impact on the court**

The majority of test result reports were delivered to the court on time. The pilot areas felt that the availability of DNA, drug or alcohol tests meant that they were able to timetable cases with more certainty. Some members of the judiciary expressed frustration at the amount of time that was required to ask relevant questions and give instructions to the parties about the testing process, although it was felt this improved during the pilot.

### **Challenges faced**

Although professionals welcomed the availability of DNA, drug and alcohol tests during the pilot, they experienced some challenges with the process. DNA Legal and OFM reported difficulties with obtaining the required information from the court to commission a test. The biggest challenge to test providers DNA Legal was the obstruction or refusal of parties to be tested, although this was still observed relatively infrequently.

A significant challenge identified in the evaluation related to the funding of expert evidence. This pilot was not means-tested. However, if a party was eligible for legal aid, it was initially intended that the cost of the expert evidence test would be split between the pilot and legal aid fund. In reality, during the pilot, no costs were split this way and all tests were funded entirely by the pilot.

The communication of information about test results presented another challenge during the pilot. Whilst solicitors and their clients assumed that they would receive the test results simultaneously, in practice this did not happen, and only the parties themselves were sent the results. This led to solicitors being unaware of the results and caused confusion in a number of cases. In cases where the party was represented, it was suggested that solicitors should also be informed of the results directly.

### **Financial cost of the pilot**

The total cost of the pilot was £61,500 (£53,500 in the larger pilot area and £8,000 in the smaller). There was considerable variability in cost across the different types of tests. DNA was the most expensive at an average cost of £784 (the average cost of an alcohol test was £721 and the average for a drug test was £518). These costs include payments to DNA

Legal for testing and to OFM for the administration of the process. Information on the variation in cost per test is provided later in this report.

The referral rate varied by test type and by the two pilot areas. The overall referral rate during the pilot evaluation period was 24% across both pilot areas. The referral rate in the larger pilot area was 27% and in the smaller pilot area it was 16%. The referral rate, overall, was 16% for drug tests, 10% for alcohol tests and 2% for DNA tests.

### **Lessons learnt and implications**

The perceived duplication of effort between OFM and Cafcass, identified across professions and by these agencies themselves, suggests that the pilot model was not providing optimal value for money. A simpler administrative structure could be considered for the design of any national funding model.

OFM and Cafcass told us that the design of the pilot enabled them to dedicate time to support parties through the testing process, and this had particularly beneficial implications for managing cases with litigants in person. Professionals also reported that there was considerable commitment to make the pilot a success. It may be questioned whether this level of dedication and resource would be feasible on an ongoing and national scale, and some of the perceived benefits of the pilot should be interpreted with this in mind.

As in practice all tests were paid for by the pilot fund, and were not part-funded with legal aid as initially intended, this is likely to have significant implications for the cost of the pilot. The way in which expert evidence could be jointly funded with the Legal Aid Agency could be further explored. Further, although this pilot was not means-tested, the feasibility of means-testing could also be considered for any national funding arrangements.

Training to support the implementation of the pilot was received positively. The evaluation suggested that additional training for the judiciary and legal advisors to enable them to make informed decisions on which tests to commission, and how to interpret them accurately, would enhance the benefits of the availability of expert evidence.

## 2. Background

### 2.1 Policy context

The Legal Aid, Sentencing and Punishment of Offenders Act (LASPO), introduced in April 2013, removed public funding for the provision of experts in most private family law cases. This included the funding of DNA, drug and alcohol tests to establish parentage or substance misuse. Anecdotal concerns have since been raised, primarily by members of the judiciary and Cafcass,<sup>1</sup> that the lack of expert evidence from these tests may be causing delays in private law children cases. This delay is perceived to be because additional fact-finding hearings are required to obtain more evidence from the parties in an attempt to resolve underlying key issues of substance misuse or questions around parentage. Particular concerns have been raised about the lack of DNA evidence to establish parentage because it may be difficult to progress cases when allegations of parentage are made. These concerns are exacerbated as delay in family law proceedings may compromise the welfare of the child.

Without the availability of public funds, parties in private law children cases can either pay privately for DNA, drug or alcohol tests, or the case continues without this expert evidence. There is no routinely collected data on the prevalence of private family law children cases where an issue is raised about parentage or substance misuse, or how often expert evidence is commissioned. There is also no robust national data revealing the impact that legal aid changes may have had on the provision of expert evidence or the associated costs.

As a result of these concerns and the lack of available data, the Ministry of Justice (MoJ) implemented a pilot scheme to fund DNA, drug and alcohol tests in private law children cases. In line with section 13 of the Children and Families Act 2014, to commission a test under the pilot, the judge must consider the expert evidence 'necessary' to resolve the case justly.<sup>2</sup> The pilot commenced on 16 June 2014 in two Designated Family Judge (DFJ) areas.

The pilot was funded by the MoJ and administered locally by Cafcass and Her Majesty's Courts & Tribunals Service (HMCTS). The administration of the testing process was supported by a third party, Oxfordshire Family Mediation (hereafter 'OFM'). The tests were conducted by DNA Legal/ Eurofins Medigenomix Forensik (hereafter 'DNA Legal').

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<sup>1</sup> The Children and Family Court Advisory and Support Service, a non-departmental public body that exists to ensure the welfare of the child is put first in legal proceedings relating to children.

<sup>2</sup> This legislation created the 'necessary' threshold, replacing the previous threshold of a test being 'reasonably required' to resolve a case.

Only DNA, drug and alcohol testing were part of the designated expert evidence for this pilot. It did not include, for example, psychological or psychiatric evidence. The pilot fund was available to parties who were not receiving legal aid. Where one or both parties were in receipt of legal aid, it was initially intended that the cost of tests would be split between the pilot fund and legal aid. Eligibility for the pilot fund was not subject to any formal means testing. The implications of this are discussed further in section 4 of this report.

## **2.2 Evaluation of the pilot**

Ministry of Justice Analytical Services (MoJ-AS) led on a process evaluation of the pilot, with the support of Cafcass and HMCTS. The evaluation was designed to provide qualitative evidence on how the pilot worked and to identify lessons to inform discussions on the potential for funding of DNA, drug and alcohol tests to be rolled out nationally. The evaluation was not intended to provide quantitative data for a cost–benefit analysis, nor was it within the scope of this evaluation to make recommendations on the implementation of national funding. The evaluation period ran from 16 June to 31 October 2014, although the pilot fund will remain available for these tests in the pilot areas until early 2015.

### **Research objectives**

The research objectives for this process evaluation were to:

- Explore how the pilot was implemented and worked in practice.
- Understand any perceived benefits of the pilot.
- Identify challenges, lessons learnt and good practice to inform the design and delivery of any future proposals.
- Explore the views of the judiciary, Cafcass, HMCTS and the test providers OFM and DNA Legal on how the pilot worked and possibilities for future arrangements.
- Provide broad indicative costs of the pilot (including the tests and their administration) in the two pilot areas.

### 3. Methodology

A mixed methods approach was used for this process evaluation. This consisted of workshops in the two pilot DFJ areas and in one comparator DFJ area. Semi-structured interviews were also undertaken with members of the judiciary, OFM and DNA Legal. Quantitative data were collected for each case where drug, alcohol or DNA tests were commissioned under the pilot. Each of these elements is outlined further below. Approval to carry out this research was obtained from the HMCTS Data Access Panel and the Judicial Office. The pilot and comparator areas are not identified in this report, to protect the anonymity of research participants. Participation was voluntary.

#### 3.1 Qualitative data collection

Workshops were held with Cafcass staff, members of HMCTS, and solicitors who had been involved with the pilot cases.<sup>3</sup> Semi-structured interviews were conducted with members of the judiciary in both the pilot areas and a comparator area. Interviews were also conducted with staff from the third-party provider, OFM, and test provider, DNA Legal. Throughout the report, workshop participants and interviewees are referred to collectively as 'professionals'. The purpose of the interviews and workshops was to explore the experiences and perceptions of the pilot scheme. They explored how the pilot was implemented, including perceived benefits or challenges, and any improvements that could be made to the pilot scheme. The workshop and interview guides are contained in Appendix A of this report. Table 3.1 outlines the breakdown of professionals involved in the workshops and interviews.

**Table 3.1: Professionals involved in interviews and workshops**

	<b>Number</b>
<b>Total interviews</b>	<b>11</b>
Family Judiciary	7
DNA Legal	2
OFM	2
<b>Total workshops</b>	<b>3</b>
<b>Pilot areas</b>	<b>2</b>
Cafcass	10
HMCTS	7
Solicitors	4
<b>Comparator area</b>	<b>1</b>
Cafcass	2
HMCTS	6
Solicitors	5

<sup>3</sup> Some professionals were also Local Family Justice Board (LFJB) members.

Attendance at the workshops ranged from 7 to 14 professionals. Each workshop lasted between 60 and 90 minutes. The seven judicial interviews were carried out with a combination of DFJs, County Court Judges and magistrates. Judicial interviews lasted up to 30 minutes. The interviews with OFM and DNA Legal lasted up to one hour. All interviews were conducted on the telephone at the convenience of interviewees. MoJ analysts conducted both the interviews and the workshops. All qualitative fieldwork was conducted between September and November 2014.

The interviews and workshops were audio recorded and transcribed verbatim by an external transcription company. MoJ analysts quality assured all data by re-examining all transcripts. The qualitative data was analysed thematically. No qualitative data analysis software was used and all coding was conducted manually. Verbatim quotes have been used throughout this report to demonstrate consistent themes throughout the research. When quotes are instead demonstrating distinct themes, these have been clearly labelled. The analysis was based on a triangulation of different data sources – workshops, interviews and quantitative data collection.

### **Identification of pilot and comparator areas**

The two pilot areas were not intended to be representative of England and Wales. Both were in south-west England; one was rural and the other urban. The urban area has over four times the population of the rural area and notably larger case volumes.<sup>4</sup>

A comparator area was identified to strengthen the findings of the qualitative research. The research undertaken in the comparator area aimed to explore any perceived impacts on the courts relating to the lack of funding for DNA, drug and alcohol expert evidence. This provided more reliable data than relying on retrospective accounts of professionals in the pilot areas before the pilot funding was made available.

It was important that this comparator area had a similar profile to one of the pilot areas as far as possible (in relation to the size of the DFJ area, court timeliness data and population characteristics) to ensure that the findings were relevant to the evaluation of the pilot.

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<sup>4</sup> HMCTS FamilyMan Case Management System (unpublished management information).

The primary criteria for selecting the comparator area were the case volume and timeliness data across DFJ areas in England from April 2013 to April 2014.<sup>5</sup> This was based on the assumption that a DFJ area with similar court volumes and timeliness would have similar processes and experiences to the pilot area in terms of how the courts manage their private law cases, and therefore increases the validity of the comparative findings. The larger pilot area was matched against all DFJs in England<sup>6</sup> to create a list of DFJs with similar court volumes and timeliness.

The 2010 English Indices of Multiple Deprivation (IMD) data, which measures the extent of deprivation in different geographical locations,<sup>7</sup> was then applied as a secondary criterion. A preferred comparator area was selected based on its similarity to the large pilot area on both criteria (case volume/ timeliness data and IMD data). The selection was weighted towards the primary criteria because similarity of court processes was considered relatively more important.

Whilst all appropriate measures were taken to reduce the risk of bias throughout the qualitative data collection period, some sampling bias may have occurred. Professionals in the interviews and workshops were largely self-selected. It may therefore be assumed that those who chose to participate may have been keen to have their voices heard on this issue. Furthermore, some professionals at the comparator area workshop were under the mistaken belief that their DFJ area may be asked to join the funded pilot study and may have attended on that basis.

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<sup>5</sup> Data was based on a monthly breakdown of a) case duration of private family law children cases and b) number of children involved in private family law disposals between April 2013 and April 2014. HMCTS FamilyMan Case Management System (unpublished management information).

<sup>6</sup> The larger pilot area was selected for comparator area matching because it has larger case volumes. It was therefore assumed that a comparator area with similar high court volumes would have more experience to draw upon for the purposes of the pilot.

<sup>7</sup> The IMD provides a comprehensive assessment of deprivation. IMD data are relevant to selecting an appropriate comparison area because an individual's socio-economic status has major impacts on family life and their access to, and experience of, the family justice system. Datasets can be found here: <http://data.gov.uk/dataset/index-of-multiple-deprivation>

## 3.2 Quantitative data collection

The findings from the qualitative research were supplemented by quantitative data collected throughout the evaluation period (16 June–31 October 2014). Where a DNA, drug or alcohol test was deemed ‘necessary’ to resolve a case justly, judges were required to complete a ‘Directions’ (order) form to commission a test (see Appendix B). This form provided information including the type of test ordered, the timescale for return of the test samples and reports, and the source of funding for the test. This information was collated by OFM to provide data on the total number, type and costs of all tests commissioned during the pilot evaluation period.

The case-level data was then linked by Cafcass (using the Cafcass case number) to the administrative data sources Cafcass Case Management System (CMS) and to HMCTS FamilyMan, in order to provide some supporting and contextual information on the type of cases that had tests commissioned under the pilot. CMS provided data on the type of application and the type of order. HMCTS FamilyMan provided data on whether the parties involved in a case had legal representation. Although data was collected for each individual case, Cafcass anonymised all cases for the purposes of analysis and reporting.

In all cases where an issue of parentage or substance use was raised, the judiciary were required to complete an ‘Annex B’ form (see Appendix C). This form recorded information on whether a substance use or parentage issue was raised and outlined the reasons why a test was deemed ‘necessary’ or not. This information was intended to estimate the proportion of private law children cases where issues of parentage, drugs, or alcohol were raised and a test was commissioned (see section 3.3, ‘Issues with data collection’).

There are some limitations to the data used for the quantitative analysis. As only two DFJ areas were included as part of the pilot study, the sample on which to base quantitative analysis is relatively small. There were a total of 101 test referrals across the pilot areas. This relatively small number of referrals limits the extent to which the outcomes of the quantitative analysis may be considered fully robust. Further, the pilot areas were not selected on the basis that they were representative of the socio-demographic and court-level characteristics across England and Wales. The findings of this evaluation should therefore be interpreted with the proviso that the referral rate and average costs associated with providing DNA, drug and alcohol tests in private law children cases are likely to vary across DFJ areas in England.

Results are also limited because not all tests ordered during the pilot evaluation period have yet been completed and processed. This has reduced the 101 referrals to 89 completed returns. This means that average costs and timeliness data are based on 89 cases (from which 107 tests were ordered). Other findings are drawn from all 101 referrals made during the pilot.

### **3.3 Issues with data collection**

Some of the data required for the pilot was not recorded consistently or not collected when required. This was particularly evident with the collection of 'Annex B' forms, where forms were returned for only 90 cases.<sup>8</sup> This has some implications for our ability to estimate the prevalence of cases where relevant issues were raised, and where these issues did not meet the 'necessary' threshold. Whilst the data provides some useful information on the reasons underpinning 'necessary' decisions, it does not reveal how judges assess the necessary threshold and utilise their discretion in cases where the threshold is not met.

The original evaluation design included the aim to collect data on the number of hearings in cases where an issue of DNA, drugs or alcohol was raised, and in cases where a test was deemed necessary and commissioned under the pilot. This was intended to provide some indicative data on whether the availability of funding for expert evidence had any quantitative impact on the number of hearings and progression of a case. It was also intended to compare the average number of hearings in cases before, during and after the pilot in both the pilot and comparator areas. This was not possible for a number of reasons. Firstly, the sample size of 101 referrals (of which 89 were completed and returned) is relatively small. Secondly, at the point of data collection for the purposes of the evaluation (at 31 October 2014), only 13 of these cases had closed. It was therefore not appropriate to draw any conclusions about the quantitative impact of the pilot in terms of the number of hearings and progression of a case on the basis of this data.

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<sup>8</sup> If the Annex B form was completed for all cases where there was a parentage or substance use issue, you would reasonably expect at least 101 forms to be returned (as 101 referrals for tests were made).

## 4. Findings

### 4.1 The pilot process

During the pilot there was a total of 101 referrals for any test (DNA, drug, alcohol) made across the two pilot areas: 86 in the larger DFJ area and 15 in the smaller. Of these, 19 referrals (19%) involved dual tests, resulting in a total of 120 tests being ordered.<sup>9</sup> Table 4.1 outlines the number of tests ordered in the evaluation period between 16 June and 31 October 2014. This includes the 19 referrals where both a drug and alcohol test was ordered in one case. Of these, by 31 October 2014, 51 drug tests, 33 alcohol tests, and 9 DNA tests were completed. Of the 101 referrals, 63 (62%) were cases where at least one party had legal representation, whilst the remainder were either unrepresented or their representation status was unknown.

**Table 4.1: Breakdown of tests ordered**

Type of test	Number of tests	Percentage of total tests (%)
Drug	68	56
Alcohol	43	36
DNA	9	8
Total	120	100

Of the total referrals made, the majority followed a child arrangements application<sup>10</sup> (either alone or combined with another application); 87% of alcohol referrals resulted from a child arrangement only application, as did 56% of drug referrals and 67% of alcohol and drug referrals (where both were ordered as part of the referral). Only four applications did not include child arrangements, and three were unknown. Tables D.1 and D.2 in Appendix D outline the breakdown of cases by application and order.

#### The 'necessary' test

Under section 13 of the Children and Families Act 2014 the court must give permission for expert evidence to be used in children cases in private family law. To allow expert evidence to be put before the court, the judge must consider it 'necessary' to resolve a case justly. The threshold for commissioning a DNA, drug, or alcohol test during the pilot was in line with this legislation.

<sup>9</sup> Note that the number of tests ordered exceeds the number of referrals (101) because there was often more than one test ordered per referral.

<sup>10</sup> Child arrangements applications incorporate contact and/or residency arrangements under both the new Child Arrangement Orders system, and the old system of Contact Orders and Residency Orders. Due to inconsistency in the data, it is not possible to differentiate between these categories for analysis.

When drug, alcohol, or parentage issues were raised in a case, the court had to decide whether a relevant test was necessary. The court was required to complete two forms: one to outline why it was deemed 'necessary' (an 'Annex B' form; see Appendix C) and another to instruct the expert to provide evidence (a 'Directions' form; see Appendix B). Analysis of these forms demonstrated that the judiciary were ordering tests on the basis of questions over an individual's ability to care for the child, or concerns of a risk to the child. Drug and alcohol tests were also ordered where there had been a proven history of drug or alcohol misuse and it was deemed necessary to determine whether this was ongoing. Cases included a father who had previously taken an overdose of paracetamol and alcohol, a father who had been previously convicted of cannabis possession, and another who accepted that he had used cocaine seven weeks prior to the test being ordered, but denied any subsequent use. DNA tests were often deemed necessary where one party denied parentage. Cafcass support or recommendation in ordering the tests was valued by judges and heavily emphasised on the Annex B forms. In some instances, this was the primary justification for the ordering of the expert evidence.

Both HMCTS staff and solicitors placed emphasis on the importance of not overusing the pilot resource and stated that unnecessary testing had not been encouraged during the pilot period. It was, however, acknowledged by a HMCTS representative that the provision of a national roll-out for expert evidence in the form of DNA, drug and alcohol tests could provide a 'temptation' to use it whenever possible. Conversely, it was also suggested that the provision of funds may act as a deterrent for false allegations. A Cafcass representative in a pilot area workshop stated that in cases where a test can be offered after allegations are made, parties have often changed their stories or retracted their initial claims. Professionals in the workshops also described cases under the pilot scheme where a request for drug testing was refused by the judiciary as it was not deemed necessary. In these cases the outcome of the test was thought unlikely to impact on the outcome of the overall case; for example, a father's occasional cannabis use may be viewed as unlikely to influence the judge's decision of whether he should be allowed residency or contact with his child.

### **Role of the agencies**

Representatives from Cafcass, LFJBs, HMCTS, DNA Legal, OFM, and solicitors were invited to take part in the qualitative research as part of this evaluation. Communication between these agencies was seen as essential for the process to run smoothly, as information had to be shared with multiple individuals and agencies. All agencies shared a positive perception of the expert evidence pilot and emphasised their determination to work collectively to ensure its success.

The formal process for commissioning tests under the pilot was described as follows. Members of the judiciary were responsible for completing the Directions form to order the test. A member of HMCTS at each pilot area then sent this order form to both Cafcass and OFM. OFM had initial responsibility for contacting the parties who required testing. OFM contacted the parties on up to three separate occasions (if necessary) to arrange for the party to be tested by DNA Legal. DNA Legal were responsible for conducting the testing. Collectors went to the homes of the parties if they preferred, or another appropriate location such as a GP surgery, to collect a test sample. Some tests were conducted in prisons if the client was incarcerated. Once the testing was complete, the report was sent by DNA Legal to Cafcass and then to both the court and the parties. If the party was represented, the report was not sent to the parties' solicitors (see section 4.4).

In non-compliant cases, where parties did not respond to efforts by OFM to arrange contact with DNA Legal, DNA Legal would attempt to contact the party themselves, via email, phone or text message. If no response was received, the court was informed that the party was non-compliant.

There was almost unanimous agreement amongst professionals across workshops and interviews that the pilot scheme was leading to duplication of work. During the pilot, Cafcass and OFM were both involved simultaneously at the beginning of each testing process, for example liaising with the courts when an order was made. Whilst this was not perceived to negatively impact on the progression of cases, professionals believed that this duplication of work was not providing optimal value for money. Both OFM and Cafcass themselves specifically raised this during the qualitative data collection. A member of Cafcass staff said:

*Part of me still questions the value that, I know it's going to sound horrible because I've actually got a really good working relationship, the value that OFM has, being brutal... Because [Cafcass] receive the orders and OFM receive the orders. OFM make those initial appointments for those tests to be made, for the samples to be taken, but that's where their role ceases. So at the end of the day actually could that role be absorbed either by whoever's going to administer this or by the firm who's going to carry it out... at the end of the day [Cafcass is] doing that role anyway, so there's a duplication... All of those things have got to be ironed out, but I don't see the point in them and [us] if you get what I mean.*

(Cafcass Representative, Pilot Area)

Professionals were keen, however, to stress that only using HMCTS and a test provider, such as DNA Legal, would not be sufficient to manage this process smoothly and effectively. The need for an intermediary third party was seen as invaluable to provide administrative support between the court and the test provider (in this case DNA Legal), but the split of the work and roles between staff in Cafcass and OFM appeared unclear to most of the professionals in the evaluation. To recommend which agency may be most appropriate to take responsibility for the administration of any potential future model was not within the scope of this evaluation.

## 4.2 Benefits of the pilot

### Welfare of the child

Section one of the Children Act 1989 outlines that the overriding principle when a court is deciding on matters relating to the upbringing of a child is that ‘the child’s welfare shall be the court’s paramount consideration’. Professionals saw the impact on the welfare of the child as a key benefit of the availability of expert evidence in the pilot, due to the increased knowledge it provided in relation to safeguarding issues and questions about parentage. The following quotes are both from Cafcass representatives, one working in a pilot area and the other in the comparator area that does not have this funding for expert evidence:

*The fact is that the law is supposed to be that the welfare of the child is the paramount consideration and you’re having to have half-hearted orders, half-cock orders, because the judges don’t have sufficient evidence in front of them, and that can’t be right for the child surely?*

(Cafcass Representative, Comparator Area)

*I mean, ultimately, we’re able to make more accurate risk assessments for children and at the end of the day that’s what we should be doing. So the fact that we can do assessments and we have the evidence that means our assessments are accurate and they’re evidence based, rather than a hunch, or a what if, or a maybe, that means our grounds [for assessments] for children are so much better when we get them to the court arena. So I think what works well, is that we can do assessments that the court can now believe in, because we’ve got the actual factual evidence there for us to use, rather than somebody saying maybe, or it might be an issue ... we can find out either way.*

(Cafcass Representative, Pilot Area)

The contrast between the pilot and comparator areas in terms of how expert evidence (or the lack thereof) could influence judicial decision making and the welfare of the child was evident throughout the qualitative data. The 'welfare of the child' included not only the child's physical safety, or risk of exposure to harmful scenes, but also the child's emotional welfare. For example, knowledge of parentage was seen as an important benefit for the long-term stability, identity and emotional welfare of the child involved. Professionals in the comparator area told us that DNA evidence was unavailable for many private law children cases and highlighted the negative implications this may have for the children involved.

### Judicial decision making

A benefit of the availability of expert evidence funding that was consistently reported throughout the evaluation was how it provided reassurance to those involved in private law children cases. This was identified in terms of enabling the judiciary to be more confident in their decision making, and also for improving parties' engagement with orders.

The criteria for determining whether expert evidence is 'necessary' is considered further below, but providing reassurance to one party (usually the resident parent), that the other party was no longer misusing drugs or alcohol was quoted as a justification for the judiciary to assess that a case met the 'necessary' threshold, and would therefore commission a test. As an HMCTS representative said:

*And in the few cases I have seen it being used, I've seen people walk out of court and I use the word 'reassurance'. There was a degree of reassurance which gives you some sort of hope that they will actually work with the order. Whereas sometimes they'll walk out of the court and you know fine well that the case is coming back very, very quickly because no-one's got any intention of working with it, because they don't have that reassurance.*

(HMCTS Staff, Pilot Area)

A member of the judiciary in the comparator area commented that, in the absence of expert evidence, the 'general approach' is that one 'just keeps some fingers crossed'. They considered this unsatisfactory when taking into account the risk to the child. Judges reported that they would often have to go against a Cafcass recommendation for DNA, drug or alcohol testing, as there was no public funding available and the parties were unable to pay themselves.

In the absence of expert evidence to resolve a case satisfactorily, professionals indicated that supervised contact was most regularly offered as a temporary measure. Professionals across workshops told us that contact centres have limited spaces and long waiting lists. One judge also said that these were not a satisfactory alternative as they frustrate children who get bored in these environments. Another alternative included asking neutral family members to provide support, but often they are not able to facilitate this or do so over long periods of time. The difficulties with these alternatives meant that arrangements were likely to break down. Judges told us, therefore, that they felt they were forced to make judgements without expert evidence. This sat uncomfortably with the professionals as the judgements are often made based on one party's word over another, and can increase the adversarial nature of proceedings. One HMCTS staff member said:

*It would boil down to who's the more credible out of the witnesses when you've heard the evidence rather than actually, yes, you've got the cold, hard evidence there that tells you what you need to know. So, instead of the judge reading the report that gives him what he needs to know... you've got the situation where you've got the judge sort of listening to evidence on how many times someone goes to the pub or has a drink each week as opposed to your testing which will actually show you.*

(HMCTS Staff, Comparator Area)

Reassurance for both the judiciary and parties involved was seen as essential in cases where issues of parentage were raised. Professionals explained that once an allegation has been made that a party is not the biological father of a child, it is difficult to proceed without expert evidence. Doubts about parentage proved a 'sticking point' when no funding was available for a DNA test.

The impact on case progression, and cases 'getting stuck' without the availability of DNA, drug and alcohol tests was a recurring theme. This was raised in both the comparator area, where no funding exists for this expert evidence, and in the pilot areas, when professionals reflected on the period between LASPO and the introduction of the pilot. Additional fact-finding hearings were often required. Professionals suggested that even if members of the judiciary take an inquisitorial approach, using fact-finding hearings to determine the truth of the matter, allegations cannot be definitively refuted. This often led to parties discussing their break-up history in court in a manner that is inappropriate and irrelevant to the case. There was general consensus that unresolved allegations added to the adversarial nature of proceedings. Orders made without expert evidence in such cases were perceived as less

likely to be followed, and cases would often be returned to court as the underlying issues had not been dealt with.

### **Litigants in person and emotional support**

The benefits of the funding for expert evidence in the pilot extended to litigants in person (LiPs); parties who represent themselves in proceedings. In the pilot, 35 referrals were made relating to cases with at least one unrepresented party. Professionals believed that the pilot had helped to mitigate some of the specific difficulties presented by LiPs. Members of HMCTS, Cafcass, DNA Legal and OFM all reported that they spent considerable time communicating with parties, particularly LiPs, during the pilot. For example, both OFM and DNA Legal told us they often provided detailed explanations of the testing process to parties, and attempted to put them at ease:

*I said 'pop it in an email, email me, I don't mind answering any of your questions', because at the end of the day we are taking personal samples from people to test and you've got to remember that that's a person. I would always try and place myself in that person's situation. We can't be cold and calculating and go, 'you need to give a drugs test, here's a drugs test, so we're just going to take four samples of your hair'. We need to explain to them how we're going to collect the hair, why we need so much and this and this and this.*

(DNA Legal Representative)

Qualitative evidence suggested that the pilot reduced the number of fact-finding hearings required to obtain further evidence from parties in an effort to resolve the underlying issues of the case. Although there is no quantitative data to support this perceived reduction in fact-finding hearings, it was perceived to be particularly beneficial for managing cases with LiPs during the pilot. Professionals believed LiPs may struggle in this situation if there is an imbalance of power. It was reported that LiPs often saw fact-finding hearings as an opportunity to present their point of view in a way that was inappropriate during proceedings; for example, discussing irrelevant details of their relationship history. It was further suggested, therefore, that the perceived reduction in LiP fact-finding hearings during the pilot had positive resource implications for HMCTS.

Whether parties were LiPs or represented, it was highlighted across the professions that private family law cases are an emotional and fearful time for the parties. The considerable support given to parties throughout the pilot, as described above, was seen as an area of

good practice that professionals believed could be considered in the event of a national roll-out, as outlined further in section 5.

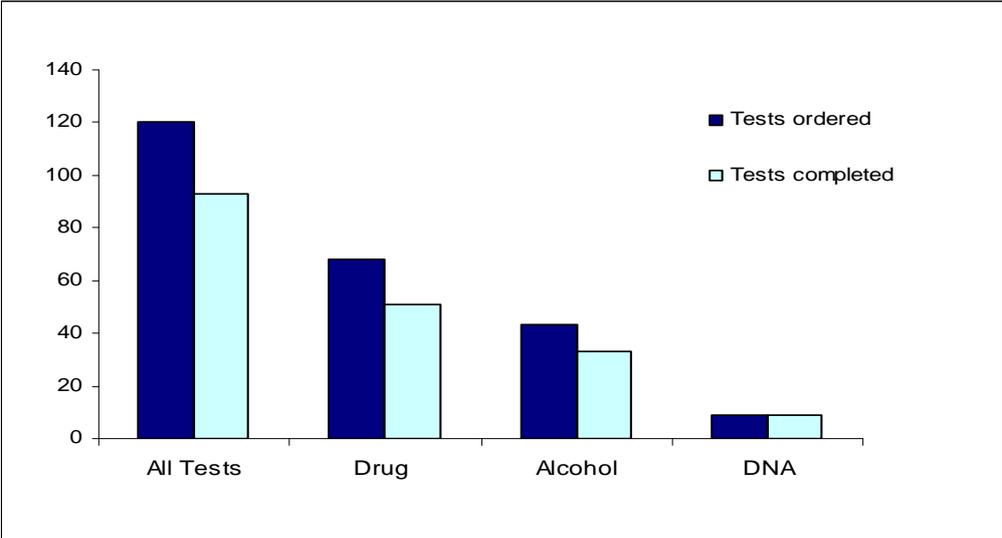
*I think it's difficult because we're here and we live and breathe this every single day, we have hundreds of clients calling us up daily and they're all in a very similar state. No matter what they're looking to establish, they're scared. They don't know what to do. They have got a limited time to sort this out and they feel judged and they have no-one else they can talk to.*

(DNA Legal Representative)

### 4.3 Impact on the court

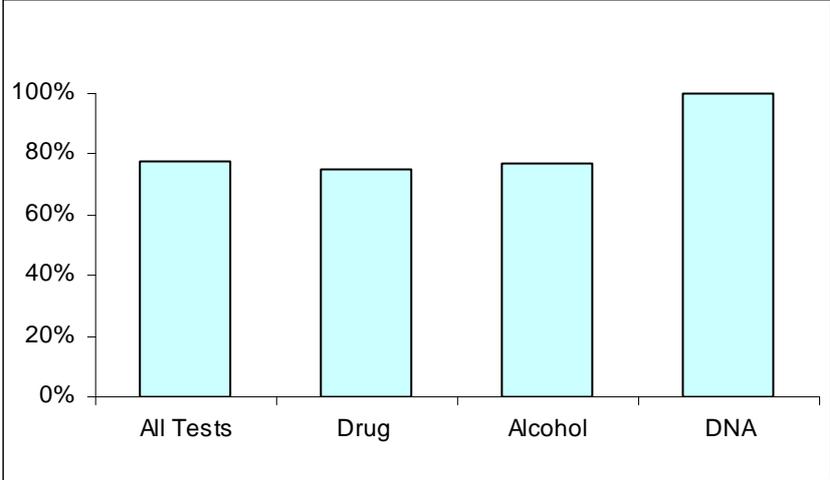
The majority of tests were completed and returned to the court by the end of the evaluation period, although 23% remained outstanding.<sup>11</sup> Overall, 75% of drugs tests, 77% of alcohol tests and all DNA tests were completed and returned to the court by the end of the evaluation period.

**Figure 4.1: Number of tests ordered and completed**



<sup>11</sup> There will inevitably be some outstanding tests where a cut-off is made for the purposes of the evaluation. The proportion of outstanding cases is also likely to be increased due to the short evaluation period.

**Figure 4.2: Proportion of tests completed in evaluation period (as % of tests ordered)**



Data recorded on the samples collected by DNA Legal from parties for the purposes of testing indicated that 90% of drug samples were collected on time and 79% of alcohol samples were on time. As described below, professionals believed this could support the ability of the court to timetable cases more accurately. Data on the timeliness of DNA samples was not collected.

The majority of test reports were delivered to court on time (98% of drug reports, 91% of alcohol reports and 78% of DNA reports). The average time from ordering the test to receiving the report was 20 working days (four working weeks). Timeliness was based on OFM’s expected time for each activity as defined prior to the evaluation period.<sup>12</sup>

**Fact-finding hearings**

As described in section 4.2, professionals believed that without DNA, drug and alcohol test evidence, it was difficult for judges to make final orders. This often resulted in additional hearings to monitor the situation, or fact-finding hearings to obtain more evidence from the parties to help resolve the underlying issue in dispute. Professionals felt this delay in proceedings led to a less stable environment for the child and had resource implications for HMCTS. It was also noted across the professional groups that when final orders are made without expert evidence, members of the judiciary often expected the case to come back to court as judgements can be disputed and arrangements commonly break down.

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<sup>12</sup> The expected time to collect drug samples was 22–31 days, and to deliver reports was 26–35 days. The expected time to collect alcohol samples was 25–34 days and to deliver reports was 29–38 days. The expected time to deliver DNA reports was 24–28 days. Note that these times also included five days for OFM to receive the order from the court, and this was contingent upon the court dispatching completed forms.

In the pilot areas, expert evidence was believed to be beneficial to the court because they could timetable cases with more certainty:

*There wasn't any question of it might take this period of time, it might take that period of time. We knew what we were working to because the formula had been given to us. So I would say the impact that it had was that it helped resolve matters much quicker.*

(Magistrate, Pilot Area)

The timescales of the testing process in the pilot were viewed positively by professionals. One magistrate in a pilot area reflected on the short period between LASPO and the implementation of the pilot scheme. They said that 'DNA testing had become almost impossible... just because of the length of time that it took for anything to happen'. The same magistrate also said that when initially presented with the timescales for DNA results their thoughts focused on how big an improvement it would be. This was reflected in the views of other interviewees. Overall, professionals believed that expert evidence had been delivered to the agreed timeframes, which they felt were appropriate. When parties were non-compliant with the testing process, OFM notified the court promptly and the case was able to progress. The general consensus from our qualitative research suggested that this was because the judiciary would be able to draw negative conclusions on the basis of non-compliance.

#### **4.4 Challenges faced during the pilot**

The pilot presented some challenges to those involved, particularly at the outset of the process. OFM and DNA Legal both highlighted difficulties in obtaining the information that was required from HMCTS and Cafcass so they could progress with the testing process. This often related to not being able to obtain the correct contact details for the parties from the court, which meant OFM were unable to make arrangements for sample collection.

Members of the judiciary expressed concerns about the amount of time that was required to ask questions of the parties to be tested and to give instructions. These included instructions about not dyeing or cutting hair, and being available when OFM contacted them to arrange testing. This was particularly noticeable with LiPs, who had no representation to fulfil this role and ensure that instructions were followed. Our workshops and interviews, however, showed that this process improved over the pilot period, as it took less time once all professionals were comfortable and familiar with the process.

Other problems encountered included one report where the introductory and final paragraphs contained contradictory results relating to the parentage of a child, although this was quickly rectified before the parties received the results.

Ongoing challenges throughout the pilot related to the obstruction or refusal of parties to be tested. Based on their previous experience, OFM and DNA Legal representatives reported that many parties do not wish to undergo testing. This was seen as the biggest challenge to test providers generally, although cases of non-compliance were observed relatively infrequently in the pilot. This was believed to be because parties were grateful for having the tests paid for, and were more co-operative than initially anticipated by OFM and DNA Legal. In non-compliant cases, DNA Legal felt innovative testing methods could be beneficial. For example, new techniques such as fingernail testing have been used on individuals who have decided to shave all their body hair before their sample testing appointment. Combinations of head hair and body hair can also be used when individuals ignore instructions and cut or dye their hair. Furthermore, DNA Legal estimated that around 5% of drug test cases can be problematic due to individuals getting a positive result and claiming justification through passive exposure. Following this, forensic techniques allow them to wash the hair when it enters the laboratory to ensure no contamination, and test the wash to clarify whether the wash sample is positive or negative. The wash sample is then compared with the hair testing to determine whether there could have been any passive exposure influence. Whilst these obstruction-related issues were not felt to be a major challenge during the pilot, they should be considered in any potential future funding arrangements. Professionals raised the issue of variability in the quality of test providers. If innovative forensic techniques could not be maintained by other providers this may lead to obstruction or challenge to test results.

Another challenge experienced during the pilot was the issue of funding the expert evidence. As the pilot evaluation period lasted for only about four months, it was decided the availability of funds would not be means-tested. Parties who did not receive legal aid were eligible, and if one party had legal aid but the other did not, the cost of the tests should have been split between legal aid and the pilot fund. However, during the course of the pilot no test costs were split in this way, despite qualitative evidence highlighting eligible cases. As this was only discovered through analysis of the data following the qualitative evaluation period, MoJ analysts were not able to explore this issue. Nonetheless, this is an important consideration for any potential future funding arrangements.

The communication of information about test results presented another challenge during the pilot. There was general consensus that at the beginning of the pilot, solicitors assumed that

they would receive their client’s DNA, drug, or alcohol test results. The parties being tested were also under this impression and therefore did not inform their solicitor that results had arrived. This led to solicitors being unaware of results and caused confusion in a number of cases. It was suggested that for represented parties, solicitors could also be informed of the results directly, removing this confusion from the process.

## 4.5 Financial cost of the pilot

### Average cost of the pilot

The average cost of a case in the pilot, including both the cost of the test, paid to DNA Legal, and its administration, paid to OFM, was £691. There was, however, considerable variability in cost both within each test type and across the different types of tests. Table 4.2 outlines the breakdown of average costs (including the range within each test type) by type of test and by payments to DNA Legal (for the tests) and OFM (for their administration). Across the test types, DNA was the most expensive test (including administration), with the average cost at £784.

**Table 4.2: Breakdown of average cost by test**

	DNA test	Drug test	Alcohol test	Average cost for all tests
<b>Referral rate</b>	2%	16%	10%	N/A
<b>Cost of case in the pilot – average and range</b> (including DNA Legal cost for test and OFM cost for administration)	£784 (£596–£1,190)	£518 (£97–£1,759)	£721 (£187–£979)	£691
<b>Cost for test alone paid to DNA Legal – average and range</b> (excluding OFM administrative cost)	£667 (£479–£1,073)	£420 (£90–£1662)	£622 (£90–£882)	£590
<b>Cost for administration alone paid to OFM – average and range</b> <sup>13</sup> (excluding DNA Legal test cost)	£117 (£117–£117)	£98 (£97–£193)	£99 (£97–£193)	£100

The variability of cost within each test type is due to the number of available options of what specific test is carried out and how. This is determined by a number of factors, such as the nature and the history of the substance misuse. The more expensive tests can determine a month-by-month history of misuse. These tests involve segmenting the hair. This is particularly important where the relevant party is alleged to have misused drugs or alcohol

<sup>13</sup> OFM charged £193 in one case, but this was an anomaly that was being addressed by OFM in the months following the pilot.

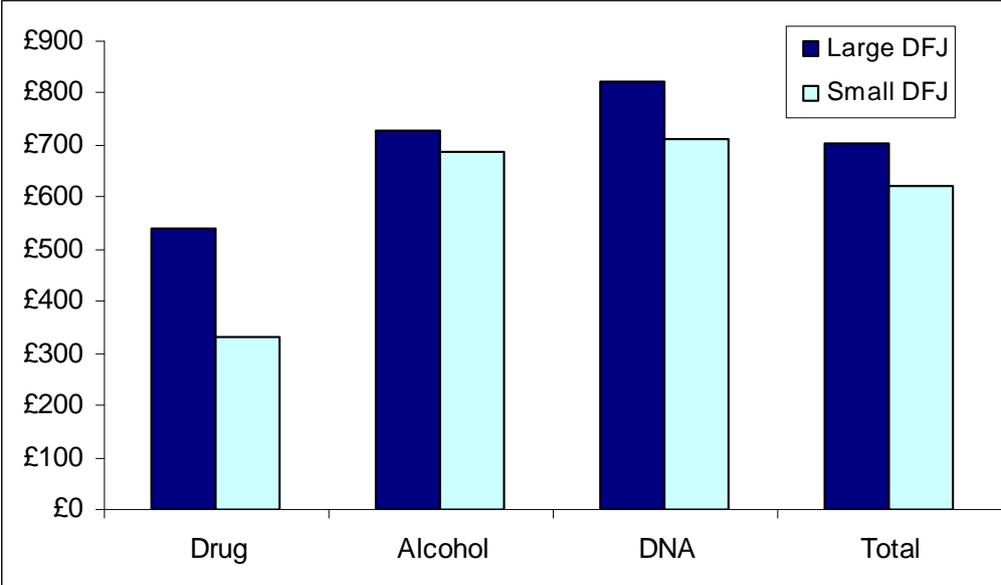
within the last six months because it can take a period of several months to indicate a negative reading with less complex testing methods. If, on the other hand, the relevant party has misused drugs or alcohol over six to nine months earlier, there is no need for these more complex tests and costs will be lower. Due to the factors that determine the cost of individual tests, there was no set cost structure in this pilot.

The factors that determine cost also vary by the test type. With alcohol testing it is necessary to test both hair and blood. If both drug and alcohol tests are required, and the drug testing is complex, the cost of the test will be at the higher end of the scale.

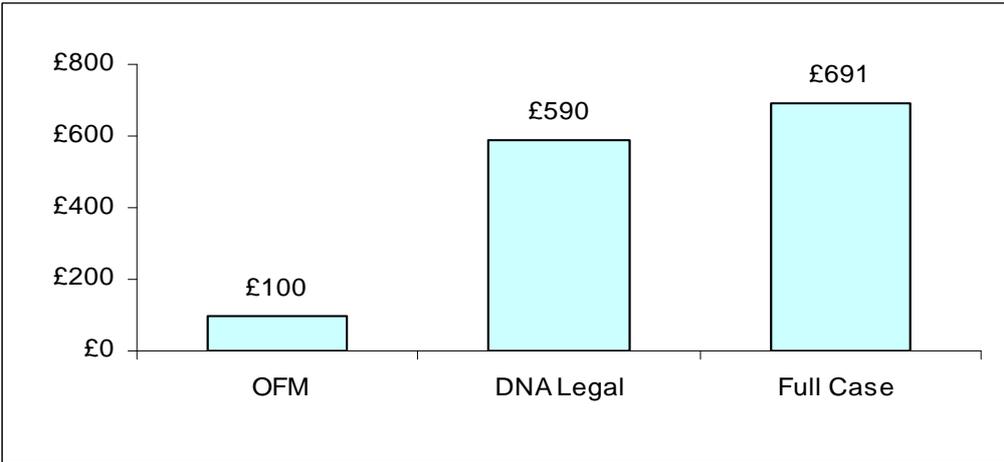
The referral rate varied by test type and pilot area, and had a significant impact on the average costs of each test. The overall referral rate was 24%, i.e. almost a quarter of all private law children cases were referred for a DNA, drug or alcohol test during the pilot period. The referral rate was 27% in the large pilot area and 16% in the small area. We do not have any clear indication of why the referral rates varied substantially between the two pilot areas. It is possible that this was due to socio-economic differences between the two areas. Alternatively, the training provided to support the implementation of the pilot was provided later in the small pilot area than the large one, and professionals in the small pilot area told us that it would have been helpful to have more information at the start of the pilot. This may have impacted on referral rates. It is also possible that the interpretation of the necessary criteria for testing was different across both areas.

The average cost of a case was £704 in the large pilot area and £620 in the small pilot area, as illustrated in Figure 4.3. This difference in cost may be explained by the different combination of the type of tests ordered in each pilot area, and because OFM costs vary according to the type and number of tests commissioned. Another factor which may account for this is the low number of referrals in the small DFJ. For instance, there were a number of high-cost referrals in the large pilot area (including those over £1,000), but none in the small pilot area. This will have pushed the average cost of a test upwards in the large pilot area, and may account for the difference between the average costs in the two areas. There is no data to suggest that this is due to an inherent difference between large and small pilot areas.

**Figure 4.3: Average cost by pilot area**



**Figure 4.4: Average cost by agency**



**Total cost of the pilot**

The total cost of the pilot in both pilot areas, for completed cases only, over the evaluation period was £61,500. The total paid to DNA Legal for the tests was £52,500 and the total paid to OFM for their administrative role was £8,900.<sup>14</sup> This cost relates to completed cases only and the funding continued in the pilot areas until early 2015. Including all test referrals, and not only completed tests, the cost of the pilot was £70,000 (the total paid to DNA Legal was £60,000 and total paid to OFM was £10,000).

<sup>14</sup> These costs do not sum to £61,500 due to rounding.

The cost of the pilot, based only on completed cases, was £53,500 in the large pilot area and £8,000 in the small pilot area. Extrapolating this out to include all referrals, the total cost in the large pilot area was £60,000, and in the smaller it was £10,000.

## 5. Lessons learnt and implications

This process evaluation explored how a pilot scheme to provide DNA, drug and alcohol tests in private family law cases worked in practice in two DFJ areas over a period of four months. Professionals involved with the implementation of the pilot were positive about the provision of this expert evidence. Across both pilot areas, professionals identified the benefits the availability of DNA, drug and alcohol tests had on enabling sound judicial decision making, the progression of private law cases, and in providing reassurance to all those involved in private law family proceedings.

The availability of DNA testing in particular was seen as essential in cases where questions are raised about parentage. Professionals told us it was very difficult to progress a case if doubts about parentage had not been satisfactorily resolved, and these cases would generally become more adversarial when fact-finding hearings were required.

Representatives from across professions told us that the design of the pilot scheme enabled them to dedicate time and resources to support parties through the testing process, and this had particularly beneficial implications for managing cases with LiPs. Questions were raised, however, as to whether it would be feasible to allocate this level of resource nationally. Those involved in the pilot felt the ability to provide this level of support was based on a collective commitment to make the pilot work as effectively as possible, which may not be feasible on a national level. Some of the benefits identified in the evaluation of this pilot should be interpreted with this in mind.

The evaluation was also designed to identify lessons and areas of good practice from the pilot to inform the model and delivery of any potential national funding arrangements, although it is not within the scope of this evaluation to recommend whether funding should be made available nationally.

### The role of agencies

The pilot scheme involved the contribution of both Cafcass and a third-party provider, OFM. Professionals in the pilot areas told us they were unclear of the distinction between the roles of these agencies, and there was almost unanimous agreement, including from OFM and Cafcass themselves, that there was some duplication of effort. In the potential event of national funding arrangements, it seems sensible to suggest that a simpler administrative structure than the pilot model should be used to avoid duplication of work and to provide value for money.

Conversely, professionals discussed the benefits of having an increased number of testing companies such as DNA Legal available in the design of any national model. Whilst concerns were raised in one workshop that this may reduce consistency and quality, most professionals, including representatives from DNA Legal, saw the value of having two to three suppliers available for courts to commission tests. This suggestion was based partially on the large geographical area to be covered (and the possibility of two parties not living in the same vicinity), but also for quality purposes and increased price competitiveness. These types of expert evidence tests are highly scientific and the competition between multiple test providers would encourage the development of new and innovative methods, such as fingernail testing, which may help overcome some difficulties in the testing process (as described in section 4.4).

## Training

The implementation of the pilot was supported by training events in both pilot areas. Although received positively, some professionals in the pilot areas told us that these events would have been more beneficial if they were held earlier in the planning stage to allow stakeholders to grasp the requirements of the pilot and evaluation in advance of its implementation.

The evaluation suggests that there were some features of the pilot scheme that could have been explained more clearly, notably the funding arrangements for parties eligible for legal aid. Many professionals also mentioned ‘teething problems’, such as OFM having difficulties in obtaining the necessary contact details of parties from HMCTS (see section 4.4).

An understanding of the science behind the DNA, drug or alcohol expert evidence was seen as extremely beneficial. An improved understanding of what specific type of tests would be most appropriate in each case can avoid the ordering of unnecessary tests, prevent delays and increase accuracy and relevance of results. This knowledge can also prevent a misinterpretation of results. For example, it was noted that phrases such as ‘chronic dependency’ were used in test results, but both solicitors and clients often misunderstood the definition of the term in this context. DNA Legal have also found, from their experience outside the pilot scheme, that courts often order the wrong tests or too many tests for their requirements without this training, causing delays and creating the need for additional court hearings. It was suggested that any potential national funding arrangements would need to make more effective use of training.

Of course, increased training does not negate the need for test results to be presented and explained in a format that is accessible to a layperson. Solicitors, Cafcass and HMCTS representatives all raised issues with the use of jargon in the test result reports. This was seen as particularly worrying for LiPs who may not fully understand the results they receive. DNA Legal substantiated this by discussing the additional support they were giving parties when they received the results, and the regular need to undertake further explanations at this point.

### **Funding arrangements**

It was intended that the pilot fund would only be available to parties who were not in receipt of legal aid. Where parties had legal aid, the cost of the test should have been split between the pilot and legal aid funding. This did not happen during the pilot, and all tests were paid for with the pilot fund. This is likely to have significant implications for both the total cost of the pilot and for estimated national costs. The way in which expert evidence could be jointly funded with the Legal Aid Agency (LAA) could be further explored. Further, this pilot was not means-tested, which could also be considered in the design of national funding arrangements. It is likely that if means-testing was introduced, the total cost to public bodies of providing funding for DNA, drug and alcohol tests will reduce. Also, if joint funding with the LAA is introduced, the total cost to the other public body co-funding the expert evidence would be lower. However, the cost of implementing and maintaining means-testing and a joint funding scheme would need to be considered, and may lead to higher overall aggregate costs. The implications for timeliness of individual cases whilst joint funding arrangements are made or means-testing is assessed should also be taken into account.

### **Further considerations**

Other lessons learnt from the pilot are more specific but equally important. For example, if parties were represented, and full consent was given, then it would be beneficial for the solicitors to receive test results as well as the parties. This prevents issues that have been observed during the pilot, as outlined in section 4.4, where solicitors were not aware that test results had arrived.

In both pilot areas, the provision of DNA, drug and alcohol evidence was welcomed across professional groups. This evaluation has highlighted a number of important implications for further consideration on whether, and how, this provision could be most effectively modelled across England and Wales.

# Appendix A

## Research Templates

### Private Law Expert Evidence Pilot

#### Workshop and judicial interview topic guide: PILOT AREAS

Hello,

My name is XXX and I work as a XXX at the Ministry of Justice.

Thank you for meeting with me. I'm here to learn about your experiences and views of the pilot scheme that provides funding for DNA and drug and alcohol tests that has been operating in the courts in your area since June.

Your feedback is very important to us. It will help inform the decisions we make about whether we provide publicly funded DNA and drug and alcohol tests across England and Wales and how this service may best be delivered.

The main areas that I would like to explore in this workshop/interview are:

- Your views about how the pilot has been delivered
- Your views about the impacts of the pilot, including what worked well or not so well, for who and why
- Your views on whether any improvements could be made to the process for providing DNA or drug and alcohol tests in private family law cases

We will not be asking for any personal information that may mean you or any individual cases can be identified. With your permission, I am recording this workshop/ interview to help with the analysis. Please let me know if you don't feel comfortable with answering any questions and we'll move on.

Do you have any further questions about this workshop/ interview?

*For the researcher: questions to the judiciary only in italics.*

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#### **1. Before the pilot scheme was implemented in your area, had you experienced any impacts from the removal of public funding for the provision of DNA and drugs and alcohol tests?**

##### **If so, what impacts have you experienced?**

If not cited, prompt in the following areas:

- Was there any impact on case progression or time taken to resolve cases? How?
- Was there any impact on the satisfactory resolution of cases? How?
- Was there any impact on wider court processes? How?
- Was there any impact on the experience of court users involved in proceedings? How?

## 2. What has been the experience of the pilot scheme so far?

Prompt in the following areas:

- How easy was it to order the tests and understand the process for ordering?
- What is your view of the timeframes from ordering tests to receiving results?
- Do you think that the service provided was professional and appropriate? Why do you think/ do not think so?
- Were the results of the tests easy to understand?
- Were any of the results contested and/or did any tests have to be re-ordered?
- How did the joint funding between the pilot fund and the Legal Aid Agency work in practice?
- What happened in cases where Cafcass no longer had a role in the ordering of the test?
- *Judiciary only: How did you assess that a test was deemed necessary?*
- *Judiciary only: Did you receive any advice from OFM that helped inform the decision on the type of test to be ordered?*
- [Researcher to probe any differences between types of tests on relevant areas above]

## 3. What do you think the main impacts of the pilot scheme have been in your area?

If not cited, prompt in the following areas:

- Has there been any impact on case progression or time taken to resolve cases? How?
- Has the availability of tests impacted on the resolution of cases? How?
- Has the availability of tests impacted on wider court processes? How?
- Has the availability of tests had any impact on the experience of court users involved in proceedings? How?
- Have there been any other impacts of the pilot? Please describe.
- *Magistrates only: Has the pilot provided an opportunity for magistrates to order tests and thus avoid the need to transfer the case to another tier of the judiciary?*
- [Researcher to probe any differences between types of tests on relevant areas above].

## 4. Have there been any challenges to the delivery of the pilot?

If not cited, prompt in the following areas:

- Have you experienced any difficulties with:
  - Ordering the tests, or receiving the results?
  - Completing the necessary paperwork?
  - Working with a third party?
  - Understanding the results of the tests?
  - Issues of capacity or Litigants in Person?
  - Parties refusing to take the test?
  - Parties obstructing the process, for example, dyeing their hair?
  - Were these difficulties dealt with, and how?
- [Researcher to probe any differences between types of tests on relevant areas above].

## 5. Based on your experience of the pilot; would you make any changes to improve the service?

If not cited, prompt in the following areas:

- What worked well during the pilot?
- What improvements could be made?
- Why do you think we should make these changes?

**6. Do you have any other comments about the delivery of the pilot?**

-----

Thank you very much for your time today. If you have any questions about the evaluation of the pilot please contact *[insert contact details here]*.

**Private Law Expert Evidence Pilot**

**Workshop and judicial interview topic guide: COMPARATOR AREA**

Hello,

My name is XXX and I work as a XXX at the Ministry of Justice.

Thank you for meeting with me. As you may be aware, the Ministry of Justice are providing funding for DNA and drugs and alcohol tests as part of a pilot scheme in two DFJ areas. We are seeking views from those working within the pilot areas to understand how the pilot is being delivered, including what is working well and not so well.

We are also interested in seeking the views and experiences of private family law cases where DNA or drug or alcohol tests are required to resolve issues but there is no public funding available.

Your feedback is very important to us. It will help inform the decisions we make about whether we provide publicly funded DNA and drug and alcohol tests across England and Wales and how this service may best be delivered.

We will not be asking for any personal information that may mean you or any individual cases can be identified. With your permission, I am recording this workshop/ interview to help with the analysis. Please let me know if you don't feel comfortable with answering any questions and we'll move on.

Do you have any further questions about this workshop/ interview?

-----

**1. Have you experienced any impacts from the removal of public funding for the provision of DNA and drugs and alcohol tests?**

**If so, what impacts have you experienced?**

If not cited, prompt in the following areas:

- Has there been any impact on case progression or time taken to resolve cases? How?
- Has there been any impact on the satisfactory resolution of cases? How?
- Has there been any impact on wider court processes? How?
- Has there been any impact on the experience of court users involved in proceedings? How?

**2. Do you have any further comments on the provision of public funding for DNA, drug or alcohol tests?**

-----

Thank you very much for your time today. If you have any questions about the evaluation of the pilot please contact *[insert contact details here]*.

## Private Law Expert Evidence Pilot

### OFM Interview Template<sup>15</sup>

Hello,

My name is XXX and I work as a XXX at the Ministry of Justice.

Thank you for meeting with me. I'm here to learn about your experiences and views of the pilot scheme that provides funding for DNA and drug and alcohol tests that has been operating in the courts in your area since June.

Your feedback is very important to us. It will help inform the decisions we make about whether we provide publicly funded DNA and drug and alcohol tests across England and Wales and how this service may best be delivered.

The main areas that I would like to explore in this workshop/interview are:

- Your views about how the pilot has been delivered
- Your views about the impacts of the pilot, including what worked well or not so well, for who and why
- Your views on whether any improvements could be made to the process for providing DNA or drug and alcohol tests in private family law cases

We will not be asking for any personal information that may mean you or any individual cases can be identified. With your permission, I am recording this interview to help with the analysis. Please let me know if you don't feel comfortable with answering any questions and we'll move on.

Do you have any further questions about this interview?

---

### 1. What has been your experience of the pilot scheme so far?

Prompt in the following areas:

- What has been the role of Oxfordshire Family Mediation (OFM) within the pilot?
- What do you consider has been the main contribution of OFM to the delivery of the pilot?
- How well did the collaboration between the courts and OFM work?
- How well did the collaboration between OFM and DNA Legal work?
- How easy was it to order the tests and understand the process for ordering?
- What is your view of the timeframes from ordering tests to receiving results?
- Do you think the service provided was professional and appropriate? Why do you think/ do not think so?
- How did the joint funding between the pilot and the LAA work in practice?
- Did court staff or the judiciary seek your advice in order to inform their decision on the type of test to be ordered? If so, how did this take place? Did you seek further advice from DNA Legal?

---

<sup>15</sup> The template used for the interviews with DNA Legal was identical to this template except 'OFM' was replaced with 'DNA Legal' as appropriate.

- Did OFM provide any service to parties that were being tested, e.g. answering routine or specific enquiries about testing? What was the impact of this?
- Do you consider that parties that were being tested receive sufficient support throughout the process? If yes, who provided this support at what stage? If not, what support would be appropriate, provided by whom and at what stage?
- [Interviewer to probe any differences between the type of tests on relevant areas above]

**2. Have there been any challenges to the delivery of the pilot?**

If not cited, prompt in the following areas:

- Have you experienced any difficulties with:
  - o Ordering the tests, or receiving the results?
  - o Receiving sufficient information from the courts to order the appropriate tests?
  - o Liaising with the courts to obtain necessary information if any were missing?
  - o Parties refusing to take the test?
  - o Parties obstructing the process, for example, dyeing their hair?
  - o Delays in receiving the test results? What were the reasons for these delays?
  - o Were these difficulties dealt with, and how?
- [Interviewer to probe any differences between the type of tests on relevant areas above]

**3. Based on your experience of the pilot, would you make any changes to improve the service?**

If not cited, prompt in the following areas:

- What worked well during the pilot?
- What improvements could be made?
- Has the pilot identified any areas of good practice?
- Why do you think we should make these changes?

**4. Do you have any other comments about the delivery of the pilot?**

-----

Thank you very much for your time today. If you have any questions about the evaluation of the pilot please contact *[insert contact details here]*.

# Appendix B

## Directions Form

Directions pursuant to the Private Law Expert Evidence Funding Pilot: [name removed] DFJ areas

1. Case No.:

2. Order No.:

3. The children

Names	Girl/boy	D.O.B.	Living with

4. The Parties

4.1 The applicant (mother/father as appropriate) is [name]

Address:

Daytime Tel number:

email:

4.2 The [first] respondent (mother/father as appropriate) is [name]

Address:

Daytime Tel number:

email:

4.3 The [second] respondent (possible father as appropriate) is [name]

Address:

Daytime Tel number:

email:

[ ] 5. Testing for drugs:

5.1 [ ] Upon the [applicant] [respondent] agreeing to submit to hair strand testing for evidence of drug use/non-use, permission is given to the parties to rely upon an expert report in that respect.

5.2 [ ] The test is to be in respect of the following drugs: [ ] a. The six most common prohibited drugs

[ ] b. The nine most common prohibited drugs

and/or [ ] c.

Specific drug [name] *See separate list*

and shall cover use within the past [number ] of months *\*Up to a maximum 12mths hair length dependent*

5.3 [ ] that for that purpose hair samples shall be taken on or before 4pm on [date]

*\*Allow 15 business days*

5.4 [ ] The tests are to show a. [ ] as a monthly breakdown i.e. segmented

*\*recommended if history of drug abuse*

**or** [ ] as an overview (up to three months at a time) i.e. non-segmented

5.5 [ ] The written expert report as to the results of the test shall be sent to the court by

4pm on [date] *\*Allow 35 business days from today*

5.6 [ ] The costs of the testing and expert report shall be paid by:

[ ] the applicant [ ] the applicant's Legal Aid

[ ] the respondent [ ] the respondent's Legal Aid

[ ] both/all parties equally [ ] both parties Legal Aid

[ ] in full by the fund administered by CAF/CASS pursuant to the pilot scheme.

5.7 [ ] The [applicant] [respondent] agreeing to be tested confirms that he/she has/has not bleached or chemically treated their hair within the past 6 months.

5.8 [ ] The [applicant] [respondent] agreeing to be tested has been advised by this court not to (additionally) bleach, chemically treat or cut their hair from this day and until testing has been completed.

5.9 [ ] The [applicant] [respondent] agreeing to be tested will provide photo identification at the time of testing and allow the medical practitioner to take photographs for identification purposes at the time of testing.

**[ ] 6. Testing for excessive Alcohol use:**

6.1 [ ] Upon the [applicant] [respondent] agreeing to submit to hair strand and blood testing (where appropriate) for evidence of excessive alcohol use/non-use, permission is given to the parties to rely upon an expert report in that respect.

6.2 [ ] The test is to be in respect of alcohol use.

6.3 [ ] that for that purpose the samples shall be taken on or before 4pm on [date] \*Allow 15 business days

6.4 [ ] The written expert report as to the results of the test shall be sent to the court by 4pm on [date] \*Allow 38 business days from today

6.5 [ ] The costs of the testing and expert report shall be paid by:

[ ] the applicant [ ] the applicant's Legal Aid

[ ] the respondent [ ] the respondent's Legal Aid

[ ] both/all parties equally [ ] both parties Legal Aid

[ ] in full by the fund administered by CAF/CASS pursuant to the pilot scheme.

6.6 [ ] The [applicant] [respondent] agreeing to be tested confirms that he/she has/has not bleached or chemically treated their hair within the past 6 months.

6.7 [ ] The [applicant] [respondent] agreeing to be tested has been advised by this court not to (additionally) bleach, chemically treat or cut their hair from this day and until testing has been completed.

6.8 [ ] The [applicant] [respondent] agreeing to be tested will provide photo identification at the time of testing and allow the medical practitioner to take photographs for identification purposes at the time of testing.

**[ ] 7. Paternity testing:** It is directed pursuant to section 20(1) of the Family Law Reform Act 1969 that DNA tests be carried out to ascertain whether the [applicant] [respondent] is or is not excluded from being the biological father of [name(s) of child(ren)

[D.O.B(s)]

7.1 [ ] that for that purpose, mouth swab sample shall be taken on or before 4pm on [date]

\*Allow 15 business days

by the appointed medical practitioner from the following persons:

- a. the child/ren:
- b. the mother:
- c. the putative father(s):

7.2 [ ] that the person appearing to the Court to have care and control of [child's name] who is under 16 years of age, is the [applicant] [respondent].

7.3 [ ] There is/is not (delete as appropriate) communication between the two parties

7.4 [ ] The written report as to the results of the test shall be sent to the court by 4pm on [date] \*Allow 25 business days from today

7.5 [ ] The costs of the testing and expert report shall be paid by:

- the applicant  the applicant's Legal Aid
- the respondent  the respondent's Legal Aid
- both/all parties equally  both parties Legal Aid
- in full by the fund administered by CAFCASS pursuant to the pilot scheme.

7.6 [ ] The [applicant] [respondent] agreeing to be tested will provide photo identification at the time of testing and allow the medical practitioner to take photographs for identification purposes at the time of testing.

Name of contact at court for report to be sent to

**District Judge**

**Dated**

# Appendix C

## 'Annex B' Form

### Annex B: Cafcass Private Law Expert Evidence Funding Pilot

#### Evaluation Data Collection Template

Please complete this form for all cases where there are issues of parentage or drug or alcohol misuse, regardless of whether an expert evidence test is ordered. Please return this completed form (along with the *Directions*, where applicable) to Cafcass.

Case number	
-------------	--

1. Please select what issue was relevant to the case:

Parentage	
Alcohol	
Drugs	

2. Was a test ordered?

DNA	
Alcohol	
Drugs	

3. If there are parentage or drug/alcohol issues in the case, but a test was not deemed 'necessary' in line with PD25, please outline the reasons.

--

4. If a test was ordered, please outline how it complied with the 'necessary' test, in line with PD 25?

--

5. Please provide any further comments.

Please send the completed form together with the *Directions* (where applicable) to Cafcass.

## Appendix D

### Applications and Orders Tables

Table D.1: Applications and orders

Applications	Orders				
	Alcohol (only)	Drug (only)	Alcohol and drugs	DNA	Total
Child Arrangements (only)	20	27	14	6	67
Prohibited Steps (only)	0	1	1	1	3
Specific Issue (only)	0	1	0	0	1
Parental Responsibility (only)	0	0	0	0	0
Enforcement Order (only)	0	0	0	0	0
Unknown	1	1	0	1	3
Child Arrangements and Parental Responsibility (both)	1	7	0	1	9
Child Arrangements and Prohibited Steps (both)	1	4	2	0	7
Child Arrangements and Specific Issue (both)	0	6	2	0	8
Child Arrangement, Prohibited Steps and Specific Issues (all)	0	0	2	0	2
Child Arrangement and Enforcement Order (both)	0	1	0	0	1
<b>Total Applications</b>	<b>23</b>	<b>48</b>	<b>21</b>	<b>9</b>	<b>101</b>
Disaggregated Applications	Orders				
Child Arrangements (all)	22	45	41	7	115
Prohibited Steps (all)	1	5	5	1	12
Specific Issue (all)	0	7	4	0	11
Parental Responsibility (all)	1	7	0	1	9
Enforcement Order	0	1	0	0	1
<b>Total Applications (disaggregated)</b>					<b>148</b>

**Table D.2: Applications and orders (%)**

<b>Applications (as % of total)<sup>16</sup></b>	<b>Orders (%)</b>			
	<b>Alcohol (only)</b>	<b>Drug (only)</b>	<b>Alcohol and drugs</b>	<b>DNA</b>
Child Arrangements (only)	87	56.3	66.7	66.7
Prohibited Steps (only)	0	2.1	4.8	11.1
Specific Issue (only)	0	2.1	0	0
Parental Responsibility (only)	0	0	0	0
Enforcement Order (only)	0	0	0	0
Unknown	4.3	2.1	0	11.1
Child Arrangements and Parental Responsibility (both)	4.3	14.6	0	11.1
Child Arrangements and Prohibited Steps (both)	4.3	8.3	9.5	0
Child Arrangements and Specific Issue (both)	0	12.5	9.5	0
Child Arrangement, Prohibited Steps and Specific Issues (all)	0	0	9.5	0
Child Arrangement and Enforcement Order (both)	0	2.1	0	0
<b>Disaggregated Applications<sup>17</sup></b>				
<b>(as % of total disaggregated applications)<sup>18</sup></b>	<b>Orders (%)</b>			
Child Arrangements (all)	21.8	44.6	40.6	6.9
Prohibited Steps (all)	1	5	5	1
Specific Issue (all)	0	6.9	4	0
Parental Responsibility (all)	1	6.9	0	1
Enforcement Order	0	1	0	0

<sup>16</sup> The top two sections of this table count the type of application as registered by the court. This may combine a number of otherwise frequently separate application types: some applications are for 'Child Arrangement and Parental Responsibility', while in other cases the application type may be simply 'Child Arrangement'. The statistics in the top two sections of this table therefore tell us what percentage of each order type was the result of a specific type of application. Therefore, 87% of alcohol only orders resulted from Child Arrangement (only) applications, while 4.3% came from Child Arrangement and Parental Responsibility applications.

<sup>17</sup> 'Disaggregated' totals break down combined applications into their constituent parts and count each separately. As such, 'Child Arrangement and Parental Responsibility' would count twice as 'Child Arrangement' and 'Parental Responsibility'. This explains why the Disaggregated Total Applications is larger than Total Applications.

<sup>18</sup> The bottom section of this table shows us what percentage of disaggregated applications resulted in each type of order. So, for instance, of all applications, 21.8% were applications involving (but not limited to) child arrangements, that resulted in an alcohol (only) order. The sum of these percentages exceeds 100% due to the fact that many applications had multiple aspects (see footnote 13).