



**Ministry of
JUSTICE**

The Family Courts Information Pilot

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Executive Summary

- i) This paper reviews the working of the Family Courts Information Pilot (FCIP). The pilot made written anonymised judgments available to the parties in certain Children Act cases (listed at paragraph 9) and to the wider public through the British and Irish Legal Information Institute (BAILII) website.
- ii) Between November 2009 and December 2010, five family courts took part in the pilot. The pilot courts were Cardiff and Wolverhampton County and Magistrates' Courts and Leeds Magistrates' Court. The Ministry of Justice contributed towards the cost of additional court administrative duties which arose as a direct result of participation and funded transcription services relating to pilot cases.
- iii) The pilot sites and criteria for cases to be included were agreed by the President of the Family Division, and views on the precise definition of cases sought from a wide range of stakeholders including other senior members of the judiciary, lawyers groups and social workers who had been part of an Advisory Board prior to the pilots being launched.
- iv) Under section 20 of the Children Schools and Families Act 2010, which received Royal Assent in April 2010, a review of the results of the pilot is a prerequisite to the commencement of phase two of the Part 2 provisions, which allow the media greater freedom to report on family court proceedings. The current Government announced in October 2010 that no decision would be taken on the commencement of the Act until the outcome of the Family Justice Review.
- v) This review reports and analyses the available, relevant information pertaining to the pilot in order to meet the commitment set out in the 2010 Act. It does not make specific recommendations concerning national rollout of the scheme, but highlights issues for consideration in making such a decision.

Aims of pilot

- vi) The pilot tested the feasibility of issuing written judgments in certain types of family cases in county courts and magistrates' courts, and putting anonymised judgments and written reasons on the public BAILII website. The pilot aimed to review the impact of the process on those working in the courts, the benefits to the parties and the wider public of the availability of a wider range of judgments and the potential costs of rolling out the scheme nationally. There were three strands to the work:
- Publishing anonymised versions of judgments and written reasons on the BAILII website.
 - Providing the parents/guardians involved in the cases with written versions of the judgments in their case.
 - Scoping options for retaining written versions of the judgments or reasons for the children involved in the cases to look at when they are older.
- vii) In order to complete this review, views were sought from the judiciary, magistrates, legal advisers and court staff in the five pilot courts. The views of local lawyers, local authority, Cafcass and CAFCASS CYMRU representatives were also sought.
- viii) The local press was monitored in the pilot areas and views of the wider public investigated through an online user survey on the BAILII website.
- ix) Administrative data was collected to monitor the time spent on additional tasks arising from the pilot by court staff, magistrates, legal advisers and the judiciary. Economic estimates of the pilot costs and implications of a national roll-out were also derived from this.

Findings

- x) The views expressed on the pilot by those working in the pilot courts and comments from the wider public on the BAILII website indicate support for greater transparency and better public understanding of the family justice system. However, the pilot approach to achieving this gave rise to

concern particularly among lawyers, the judiciary and court staff about the protection of the privacy of the families involved. Only a small group of members of the public replying to the BAILII survey took the opposite view on anonymity and privacy.

- xi) There were also practical concerns that the vast amount of material on the website would be difficult to navigate even by those familiar with BAILII. Whilst we did not expect the parties to cases to be greatly interested in the direct use of the website, no evidence was found of any impact of the scheme on the families concerned. Nor was any evidence of press interest found.
- xii) The information would, however, be of great value to researchers, policy analysts, those training the professionals involved and the judiciary. Local authorities were enthusiastic about the pilot scheme, as it offered additional backup in case of lost files, free access to judgments from the county courts with the additional provision of judgments in cases where the evidence was not contested but where it was nevertheless helpful to have a clear statement of what had taken place.
- xiii) For children, there would be benefit in having county court judgments available on the local authority file in all cases, as these are kept for 75 years. The Ministry of Justice is only able to store Children Act files for 18 years in county courts and until the child reaches the age of 25 in the magistrates' courts.
- xiv) There were understandable concerns from the pilot sites about national roll-out at a time of constraints and cuts. Although the work had been managed during the pilot period by court staff and the judiciary, it had made use of resources which may be required for other work in the current period of financial constraint.
- xv) The pilot captured 165 cases, of which 148 were used to assess the administrative cost. Cases going through the pilot were predominantly public law Children Act proceedings. In the majority of cases the number of children involved in the cases was recorded in the transcript (in some cases this information was not recorded or was not clear), where this data

was present the average number of children per case was approximately 1.5. This implies 222 children were captured by the pilot. This is just under 2 % of all the children subject the public law care or supervision orders for roughly the same time period nationally¹.

- xvi) If we assume that the costs are proportionate to the number of children involved in care and supervision orders this would imply a national economic cost of approximately £500,000 in 2010. It should be noted that that this cost is based on a series of assumptions and should be considered uncertain. The assumptions used to estimate the costs are detailed in Annex C.

Issues for further consideration

- xvii) The provision of written judgments in all county court cases might be considered separately from the question of the publication of anonymised judgments in all cases. It is a matter for debate whether there is any real benefit in a national roll-out which would include each and every case falling within the criteria, as tested in the pilot, or whether the cases to be published might be sampled in some way. Options could include allowing judicial discretion to publish only those cases worthy of noting publicly, or where either the parties or the media have specifically requested publication². This could reduce the burden on the judiciary, legal advisers and court staff caused by the anonymisation process.
- xviii) There may be a stronger case for arguing that, for all other cases falling within the criteria, unredacted judgments or reasons only might be prepared to be given to the parties and stored on the local authority case file for later life access. This approach would mean a change in current practice in the county courts only by requiring the routine production of written judgments for parties and the local authority. Cases requiring

¹ The pilot ran at slightly different times in the different courts. Therefore there was a period at the beginning and the end of the pilot where only some of the courts included were participating in the pilot. The national data used here relates to the entire period of the pilot (Nov. 2009 to Dec. 2010). This means that costs presented here are likely to be an over estimate.

² It would need to be made clear to parties that they must not identify themselves or their children as the subjects of an anonymised published judgment

anonymisation and publication across both tiers of court would be a minority.

Introduction and background

1. The Family Courts Information Pilot (FCIP) was a set up in response to the recommendations of the Ministry of Justice consultation paper *Confidence and Confidentiality: openness in the family courts – a new approach* published in June 2007. The paper emphasised improving openness in the family courts not only by changing the frequency and category of people going *in* to the courts, but by increasing the amount and quality of information coming *out* of the courts.
2. The FCIP exercise required the courts selected for participation by the President of the Family Division to carry out several additional tasks. The first was to provide written judgments to all parties in certain types of serious Children Act cases. Written reasons for the decisions made in such cases are already routinely provided to parties in the family proceedings courts but, at present, orders made in uncontested cases in the county courts are not always accompanied by a written judgment. Under the FCIP, all cases were to be accompanied by a written judgment to provide a record for those involved of the reasons behind the decision.
3. The pilot also examined the possibility of retaining a written record of the court's decision which could be accessed by the child in later life. At present, copies of decisions made in the family proceedings courts are lodged with local authority children's services, whose records on a child's case will be kept for 75 years and can be made available to the child in later life. But written copies of judgments from the county courts are not currently available in every case. Where oral judgments have not been transcribed, tapes are retained by the court for a period of three years only and are not available to the local authority unless a transcript is requested and paid for.
4. Finally, the pilot required anonymised versions of these judgments to be placed on a public website, the British and Irish Legal Information Institute (BAILII), with the aim of improving public understanding of, and confidence in, the family justice system. BAILII provides access to the most comprehensive set of British and Irish primary legal materials that are available without charge and in one place on the internet.

5. Under section 20 of the Children Schools and Families Act 2010, which received Royal Assent in April 2010, a review of the results of the pilot is a prerequisite to the commencement of phase two of the Part 2 provisions, which allow the media greater freedom to report on family court proceedings. The current Government announced in October 2010 that no decision would be taken on the commencement of the Part 2 provisions of the Act until the outcome of the Family Justice Review.
6. This review of the available, relevant information pertaining to the pilot does not make specific recommendations for national roll out, but highlights issues for consideration in making decisions about taking the matter forward.
7. The pilot sites were Cardiff and Wolverhampton County and Magistrates' Courts, and Leeds Magistrates' Court. Cardiff and Leeds commenced the pilot in November 2009 and Wolverhampton in January 2010. Each continued for 12 months to enable sufficient information to be gathered about the estimated costs and feasibility.
8. This report presents the views of those working in the family justice system on the impact on parties of receiving a written judgment in their case, and also on the work of the courts in preparing and anonymising the judgments for publication. Administrative data was collected by court staff during the pilot which describes the time spent on the additional work and enables estimates to be made of the costs. The impact on the wider public of publishing anonymised judgments and reasons was investigated through a user survey of those accessing the BAILII website and through a check on press coverage.
9. The following types of Children Act cases were included in the pilot³:

Interim care/supervision order or a final order made at a hearing in either:

- a) the family proceedings court (by magistrates or a DJ (MCs))

³ The criteria of cases to be included in the pilot was agreed by the President of the Family Division and views sought from a wide range of stakeholders including other senior members of the judiciary, lawyers groups and social workers who formed part of an advisory board prior to commencement of the pilot.

- b) county courts (by Circuit or District judges or Recorders) or
- c) the High Court

where the case falls into at least one of the following categories:

- Either parent is given leave permanently to remove a child from the UK
- The final order prohibits direct contact between a child and either or both parents
- A final order is made in a Children Act public law case, including where contact continues
- The final order has depended on contested issues of religion, culture or ethnicity
- The court has had to decide between medical or other expert witnesses where there were significant differences of opinion
- The court has had to decide significant human rights issues
- The Interim Care/Supervision Order was contested

Publication of judgments in other types of cases was also encouraged, for example:

- Contested cases where the facts, outcomes or solutions of the case would, in the discretion of the judge, be worthy of reporting publicly
- Contested adoption applications, applications to make and revoke placement orders; cases involving dispensation with consent and contact
- Emergency Protection Orders

10. In total, 99 cases went through the pilot in the family proceedings courts and 66 in the county courts. 89 of the FPC cases and 59 of the county court cases were final orders made in public law cases. The remainder of cases were as follows: in the FPC, eight contested interim care or supervision orders, one order relating to contested issues of culture, religion or ethnicity, and one unclassified; in the county court, five cases prohibiting direct contact, two orders relating to contested issues of culture, religion or ethnicity, one order giving leave to remove from the UK and one unclassified.

Sources of information

11. This report is based on the following sources of information:

- The views of the judiciary, magistrates, legal advisers and court staff in the five pilot courts. Views were sought in structured interviews carried out at the early stage of the pilot (four to six months from commencement) and again at the end of the pilot period (12 months from commencement) by Ministry of Justice staff with the academic adviser. The interview questionnaire schedule is appended at **Annex A**. A detailed note was taken at the meetings, transcribed and analysed, but comments quoted in the report are not attributed to individuals.
- The views of local lawyers, local authority and Cafcass and CAFCASS CYMRU representatives were sought in group discussions at the end of the pilot period.
- The local press in pilot areas was monitored by the Ministry of Justice for any response in the local community to the pilot.
- The views of the wider public were investigated through a user survey run by the BAILII website.
- Administrative data was collected to monitor the time spent by court staff, magistrates and the judiciary on work arising from the pilot including the preparation, circulation and checking of anonymised judgments. This is reported at **Annex B**.
- Economic estimates of the cost of the pilot and the implications of a national rollout of the process were made using the administrative data. This is reported at **Annex C**.

12. The views of the parties themselves are of high importance, but difficult to ascertain without causing additional distress. After lengthy consideration the FCIP Advisory Board decided that parties should not be put under any pressure to respond to questions about their experience, but should be given the opportunity to comment through a written invitation to give their views. This invitation was not subsequently taken up by any of the parties to the cases. Given the timescale of the pilot it was not possible to look at the long term impact on children.

Views of the judiciary, legal advisers and court staff working at the pilot sites

Identifying the cases to be included

13. Members of the judiciary and court staff at each of the pilot sites reported that they were confident that almost all cases in scope were being identified, although numbers were lower than first envisaged and did not reflect their expected workload. An ongoing problem with social services in one of the areas had impacted on numbers of pilot cases due to the local authority adjourning a number of hearings. No difficulties were reported in identifying the types of cases to include. These were predominantly public law with very few private law matters.
14. No parties had objected to their judgment being published on BAILII, although the overriding view of those we spoke with was that the parties in these types of cases did not appreciate what the website was or the implications of publishing anonymised judgments.
15. In a small number of cases a decision had been taken by the pilot court not to publish a judgment despite the criteria being met. The reasons given included risk associated with a father's volatile behaviour, but in most cases the decision was based on the potential risk that children could have been identifiable due to a parent being involved in criminal proceedings already in the public domain. Members of the judiciary believed that this could be an ongoing problem and not one that could necessarily be foreseen if criminal proceedings should follow later.

The additional tasks of preparing, checking and processing anonymised judgments for all county court cases and written reasons

16. In the family proceedings courts, legal advisers reported that carrying out the work themselves was burdensome, especially in the court with the heaviest workload, where the 56 day anonymisation target could not always be met. Legal advisers at the other courts felt that the extra burden was manageable but that there would be time constraints if their workload increased, and also

possible problems with transferring files securely. Some family proceedings courts found that a speedier outcome to producing pilot reasons was achieved by telephoning the local authority in advance to advise when a case fell within the pilot, enabling the local authority to attend with agreed facts (where possible) and draft reasons together with an anonymised version. The parties could then approve the anonymised reasons while still at court so that the whole process could be completed in a day. (This would only be appropriate where the parties had agreed or had no objection to the reasons that were adopted by the Bench; it would probably not be applicable where the Bench had heard a contested case and had to make their own findings). Some legal advisers reported that reasons took more time to prepare for pilot cases as they felt additional care was needed with the wording to make the decision clear to the wider public when published.

17. Members of the judiciary cited two main additional tasks arising from the pilot; the need for checking anonymised judgments and the obligation to provide a short judgment where an order was agreed. Although the pilot tasks were not reported as being too onerous, they were nonetheless described as an additional burden on judicial time. One judge thought that the occasional pilot case might be missed by visiting judges who did not routinely sit at the pilot courts. Some members of the judiciary described being able to anonymise judgments as they wrote them, but also felt that they spent more time on preparing pilot judgments due to the knowledge that they would be made public, requiring them to give a clear narrative account and avoiding any form of “shorthand”.

18. Court staff reported that the administrative tasks associated with the pilot were an additional burden but one that could be fitted in around normal workload. There were occasional problems covering annual leave although these might not apply if there were to be national rollout, as at the pilot stage court managers had understandably trained only a small group of staff. They were concerned that the additional work would become harder to accommodate if the current pressure on resources increased.

Carrying out the transcription process and anonymisation

19. Legal advisers expressed differing views on how they should prepare anonymised written reasons – one option was to produce the reasons exactly as they otherwise would be save for anonymisation; the other was to vary the way pilot reasons were produced in order to ensure clarity after anonymisation. There had been some initial problems, quickly remedied, where dates of birth or the name of a hospital or local authority had been left in published reasons. Legal advisers prepared and anonymised their own reasons, except for those which were produced in advance by local authorities. Take up of 'Dragon' voice recognition software was low, and it did not lend itself to use by a bench of three magistrates. It was, however, a useful tool for members of the courts administration if typing handwritten anonymised facts and reasons

20. The judiciary were largely content with the transcription service, where tape recorded judgments are typed by an external contractor, although a few errors had been made, such as leaving in names of judges or county councils. Two errors were found in the 165 cases on BAILII at the end of the pilot period; a child's first name and a father's family name in two separate cases had been published. Judges were also confident in preparing and anonymising their own judgments locally, but the time available for checking the anonymisation was limited. 'Dragon' software was again unpopular.

21. Court staff had experienced a few problems with the transcription service such as a lost or poor quality tape, but overall found it satisfactory save for a few reported delays. It was sometimes difficult to match the judgments back to cases once the case number had been removed, and one member of staff suggested that a serial numbering system would assist.

Developing good practice

22. Legal advisers cited the agreement and preparation of drafts in advance where possible and omitting dates of births of siblings as examples of best practice. None of the courts reported a need for further legal adviser training – one court reported that an hour's training on the pilot had been sufficient, another that the small team dealing with family had many years experience,

23. The judiciary favoured anonymising judgments from the outset and use of the 'edit/find/replace' facility on Word. One judge found it helpful to insert a temporary paragraph at the start of the judgment outlining how individuals would be referred to (e.g. Mr Jones will be referred to as father) then removing this paragraph on completion. The judiciary expressed a wish to see consent orders published for the purposes of transparency.
24. Court staff had found the creation of a tracker/monitoring sheet helpful and a coloured front sheet attached to pilot files to make them easily identifiable. Although no specific need for further training was identified, one member of staff thought that background knowledge of the transcription process and some experience of Excel would have been beneficial for pilot staff. It was reported that the guidance packs provided had been helpful. Staff thought that the purpose of the pilot could have been made clearer to court users as there had been misconceptions that it was related to press attendance, which had increased enquiries at the public counter.
25. The main challenges were reported as being an initial caution to ensure that cases were anonymised correctly following some early errors and time management, particularly for managers in checking the work. Court managers were concerned about roll-out of the pilot at a time when there were likely to be cuts in resources, and concerns that judicial sitting days might be reduced making the workload more difficult to manage.

Impact to those using the courts and to the wider public

26. No evidence was reported of any impact of the pilot, positive or negative, on those using the courts, particularly the families and children involved or any local improvement in knowledge of the family justice system. More than one member of the judiciary expressed concern that there may be an occasion where a family would be identified.

27. Various measures had been taken locally to inform court users of the pilot which ranged from displaying posters, distribution of letters, court user and business meetings and seminars. However, no increase in media interest had been observed as a result of the pilot. In general, there had been initial press interest on the first day following the April 2009 rule changes but none thereafter, an experience borne out by the January 2010 Ministry of Justice study into the impact of the changes to the media attendance rules⁴.
28. There was agreement among those spoken to that members of the public would be unlikely to log on to the BAILII website and that, even for researchers or professionals, the format would make it difficult to find a particular case or type of case. A legal adviser suggested better understanding about how the family justice system fits into everyday life could be achieved by introducing modules in schools as part of citizenship studies, and arranging more visits to the courts. A member of court staff felt that the pilot was too limited as, although examples of judgments were helpful, more information was needed about procedures and what a typical case might entail, together with an explanation for why the process might take so long.
29. There was some agreement that there was a public perception of secrecy in the family courts and comments were made about this being fuelled by pressure groups and unhelpful reporting. There was also agreement that family cases should remain private due to their highly sensitive nature and that opening cases to the press was not the way to achieve transparency. There were concerns that the published judgments would either be so brief that they would be unhelpful or, if more details were included, that they would cause further distress to the parties even though anonymity was protected.
30. There was some concern across the pilot courts that a key benefit of the online judgments might be as a training tool and, in particular, that social workers might be helped by a site such as BAILII to learn what the court required from them. The question was also raised that, if this was found to be a key benefit, should the Ministry of Justice fund it? One legal adviser suggested that local authorities should anonymise the reasons themselves

⁴ *A study of the impact of changes to court rules governing media attendance in family proceedings – summary of responses to stakeholder feedback*

(which they receive as a matter of course from the family proceedings courts) and use them in training as they wish.

31. All those involved in the pilot seemed unsure of the value to the public at large. However, members of the judiciary highlighted the benefit for children of being able to access the filed judgment as adults. Most noted that the local authority file can already be accessed in later life and should include a copy of the unredacted reasons, but would not always include a county court judgment.

32. Court staff and the judiciary expressed concerns about the sheer volume of online judgments if the pilot were to be rolled out nationally and about subsequent navigation issues around the website. One member of staff suggested that a filtering system could be introduced on BAILII to divide the database into different types of cases, making it easier for users to find a specific type of judgment. A legal adviser suggested that national roll-out was unnecessary for the purposes of what seemed to be a training tool or that a better way might be for each HMCTS area to pick out one example judgment at intervals. Another argued that, if a published sample of a variety of judgments was all that was required, one now existed as a direct result of the pilot.

Views of local practitioners

*(including lawyers working in private practice and for the local authority, social workers, guardians and Cafcass officers)*⁵

33. Some of the local private practitioners shared the views of the judiciary and court staff operating the pilot scheme that, while transparency is desirable, this scheme may not be the best way to achieve it. Protecting the privacy of the families was considered essential, for example, in the words of one solicitor; “the majority don’t want their business put up on a website”. Others were concerned that it was already difficult to get parents to open up in front of the court and that more scrutiny could push people away altogether. The view was expressed that there would always be those who believed that they had been unfairly treated.
34. Some of the local authority lawyers, however, were enthusiastic about placing judgments on BAILII; it would provide back up in the event of a local authority losing a file and a readily available judgment would be helpful, especially when looking at patterns of family behaviour over a long period of time, across generations. The short judgments in non-contested cases were particularly appreciated, as sometimes a matter may not be actively opposed but the lawyer may be without instructions, the parents may not be present, or may change their minds at a later date.
35. Lawyers agreed that it was important to have a record. It would also be useful for the child who could seek information later. A local authority lawyer said “There can be a lot of information floating round about a family, such as about a non accidental injury or sexual abuse. It can be very, very helpful to have a document setting it out, it helps you not to go down the wrong path.....it would be easier and cheaper for the local authority to have the information, and it’s a way of getting the judgment for free. There can be different views on file and it is not always clear what was decided.” It was also suggested that, if the proposed legal aid changes resulted in more litigants in person in the courts, it would be even more important that justice was seen to be done.

⁵ We met with local practitioners at the invitation of the court in Leeds and in Cardiff, and took part in the Family Court Business Committee in Wolverhampton

BAILII user survey responses

36. The anonymised judgments on the BAILII website were accessed 56,887 times during the pilot period between January 2010 and March 2011. BAILII arranged a survey for website users asking how respondents had accessed the site, whether they were professionally or personally involved in these kinds of family cases, whether the information was helpful and whether the scheme should be extended to cover other kinds of case. Only 77 replies were received, but the information provided was helpful in indicating the range of views expressed, though it should not be used as a basis for wider generalisation.
37. The largest group of users were professionals, 33 from the legal profession, including 19 who identified themselves as practising and 10 academic lawyers, two judges and two magistrates; 28 users from the social welfare field, comprising 12 social workers, five Cafcass social workers, four guardians, two Cafcass guardians, three Cafcass officers, one retired guardian and one expert witness. In addition there were four members of the press, a documentary film maker, a probation officer and 10 members of the public, some of whom who appeared have involvement in a case.
38. All the academic lawyers found the information useful for teaching and research. Only half of the legal practitioners found the website helpful and in three cases referred to the need for confidentiality to be maintained. The judges found the information clear and helpful, though there were again concerns about privacy. Of the welfare sector replies, 25 out of 28 were positive, finding the reasons clear and concise and one social worker said that “transparency is invaluable to society”. Only one member of the press found the site useful in describing both sides of the case.
39. Others were disappointed with the level of detail and lack of identifiable information. The members of the public, some of whom were involved in cases, were variable in their replies, one describing the pilot as “a hoax” designed to mislead the public, while others said how good it was to see how much care was taken in reaching decisions and that the reasons given were “cogent and helpful in understanding the outcome.”

Reading the judgments

40. The judgments give a more complete picture of decision making by the courts in these serious children cases than is available in any other published source. Law reports focus on cases of legal interest, and research studies can look at only a sample of the full range of cases.⁶ The judgments and reasons are written in a variety of formats. Many are clear and concise, setting out the chronology and issues, the evidence heard, the view taken and the decision reached in terms which avoid jargon and are accessible to a layman. Some, it must be said, are less clear and, in a few cases, may fail to convey what has been decided or why.
41. What is clear, however, is the complexity of these cases and the high levels of distress involved. It is difficult to make a clear distinction between contested and non-contested cases as it is not unusual for a parent, after contesting the case until a late stage, to then accept - just before the final hearing - that contesting the evidence on threshold will be painful and make little difference to the outcome. Nor is it unusual for there to be different approaches by the parents to evidence concerning different children within the family at a different time. Finally, a clear distinction is made between accepting a part of the care plan, particularly freeing a child for adoption, and refraining from opposing it.
42. The volume of materials on the website from five courts after one year is daunting – around 1,000 pages. Without some form of indexing it is difficult to see how a reader would select which items to read. As has been suggested by court staff, it might be more useful to the general public to have information which has been analysed to show the proportion of types of case, the involvement of different parties, the areas where parents contest, accept or do not oppose the various elements in the local authority's case, how often kinship placements are made and what types of orders accompany them (supervision, residence, special guardianship), how often a consent order is made and the child sent to live with mother, how often orders are refused or revoked, the ages and medical condition of the children and their parents. Or, as suggested by legal advisers, a sample of cases might be chosen for the

⁶ see for example Judith Masson, Julia Pearce and Kay Bader Care Profiling Study Ministry of Justice March 2008

website either to represent the case load or to offer simply a random sample of the work of the courts.

43. At the close of the pilot, 66 county court decisions had been published on BAILII and 99 family proceedings court decisions. The website publishes the decisions but not always the orders made.
44. According to the BAILII judgments, of the 66 county court cases, 49 were decided by circuit judges, 2 by recorders, 15 by district judges and in the remaining cases the information was not clear. 59 cases involved final care orders and in just under half of these a placement for adoption order was also made. In five cases an application was made for an order to be revoked. The remaining cases included two where no order was made, a complex relocation case, a difficult cross national contact case and a care order related to a forced marriage. There were also contested interim care and supervision orders and special guardianship orders.
45. In the family proceedings courts, of the 99 cases published, 58 were decided by the lay bench of magistrates with their legal advisers, 37 by district judges and in the remainder the information was unclear. There were 66 final care orders, 37 placement for adoption orders, 11 special guardianship orders, 11 contested supervision or residence orders, and in one case no order was made.⁷

⁷ There is often more than one order made per child

Principal observations

46. The FCIP had a number of aims:

- to increase transparency and improve public understanding of the family justice system by publishing anonymised judgments in all serious children cases
- to help parties by providing written judgments in all cases, even where a matter was not contested
- to provide judgments which the children involved could access in later life

47. The views expressed on the pilot by those working in the pilot courts and comments from the wider public on the BAILII website indicate support for greater transparency and better public understanding of the family justice system. However, the pilot approach to achieving this gave rise to concern particularly among lawyers, the judiciary and court staff about the protection of the privacy of the families involved. Only a small group of members of the public replying to the BAILII survey took the opposite view on anonymity and privacy.

48. There were also practical concerns that the vast amount of material on the website would be difficult to navigate even by those familiar with BAILII. No one expected the parties to cases to be interested in the direct use of the website. No evidence was found of any impact of the scheme on the families concerned. Nor was any evidence of press interest found.

49. The information would, however, be of great value to researchers, policy analysts, those training the professionals involved and the judiciary as it provides a more comprehensive account of decision making in these cases than is currently accessible in court reports, which are limited to cases of legal interest. Local authorities were enthusiastic about the pilot scheme, as it offered additional backup in case of lost files, free access to judgments from the county courts with the additional provision of judgments in cases where the evidence was not contested but where it was nevertheless helpful to have a clear statement of what had taken place.

50. For children, there would be benefit in having county court judgments available on the local authority file in all cases, as these are kept for 75 years. The Ministry of Justice is only able to store Children Act files for 18 years in county courts and until the child reaches the age of 25 in the magistrates' courts. A retention summary is at **Annex D**.
51. This report can do no more than present the views of those working in the five pilot courts, together with the views of the 77 BAILII website users. There were understandable concerns from the pilot sites about national roll-out at a time of constraints and cuts. Although the work had been managed during the pilot period by court staff and the judiciary, it had made use of resources which may be required for other work in the current period of financial constraint.
52. The view expressed by judiciary and court staff was that the online aspect of the pilot was not of great value or interest to parties or to the general public. This view was largely supported by the responses received to the online questionnaire. The main value of posting these judgments online seemed to be to local authorities and family practitioners, particularly social workers, and to analysts, (including those commenting on the work of the family courts).

Issues for further consideration

53. The provision of written judgments in all county court cases might be considered separately from the question of the publication of anonymised judgments in all cases. It is a matter for debate whether there is benefit in a national roll-out which would include each and every case falling within the criteria, as tested in the pilot, or whether the cases to be published might be sampled in some way. Options could include allowing judicial discretion to publish only those cases worthy of noting publicly, or where either the parties or the media have specifically requested publication⁸. This could reduce the burden on the judiciary, legal advisers and court staff caused by the anonymisation process.
54. There may be a stronger case for arguing that, for all other cases falling within the criteria, unredacted judgments or reasons only might be prepared to be given to the parties and stored on the local authority case file for later life access. This approach would mean a change in current practice in the county courts only by requiring the routine production of written judgments for parties and the local authority. Cases requiring anonymisation and publication across both tiers of court would be a minority.

⁸ It would need to be made clear to parties that they must not identify themselves or their children as the subjects of an anonymised published judgment

Annex A - FCIP interview questionnaire

THEME / TOPIC
i) Your experience of the scope of the pilot:
Can you tell us how many judgments you have given/prepared/or are aware of that have been published on BAILII to date?
<p>Are you aware of or have you experienced any difficulties in identifying which cases should be included within the scope of the pilot?</p> <ul style="list-style-type: none"> • If so, which kinds of cases have been difficult to categorise? • Can you say how the difficulties arose and How were they resolved?
Although not within scope of the pilot, the President of the Family Division encouraged the publication of judgments in other types of cases including adoption and placement proceedings. Have there been any occasions which you are aware of where judgments have published judgments in such cases?
Are you aware of any occasions where a party has objected to publication of a judgment on BAILII? If so how was this dealt with?
Have you taken, or are you aware of, a decision to not publish a judgment on BAILII in a pilot case? If so what were the reasons?
ii) Impact of the pilot on working practice
In the cases which were included in the pilot, how did the work required for the purposes of the pilot scheme differ from your usual practice?
In general, how has the pilot impacted on your time? Were additional written judgments required in any particular kind of case? Were longer judgments required? Were there additional administrative issues?
Has the additional work required under the pilot impacted on your other work, or the way in which others are able to work with you? If so, how was this managed?
When producing judgments have you made use of technology such as dragon voice recognition software or Dictaphones? Would/have these been helpful?
(Court managers only): What do you estimate additional costs to be which are directly related to the pilot e.g. hiring additional staff, training, purchase of dragon software?

iii) The transcription process and anonymisation of judgments/written reasons
Were you content with the quality of the transcription process (includes typing of written reasons) and in particular the anonymisation?
Did any particular problems arise? How were these resolved?
Were there administrative difficulties within the court?

iv) Identifying Best Practice
Have you identified any ways of carrying out the work which might provide models of best practice?
Have you found the template for written reasons useful? Have there been occasions when it needed to be adapted and why? Was there a particular type of case for which it was not suitable?
Have you identified any need for further training?
What would help with this pilot process or a future national rollout?
What were the main challenges and how did you overcome them?

v) Public impact
Are you aware of how, in any way, the pilot has impacted on the experience of court users, Particularly the children families involved?
How have parties and their advisers locally been made aware of the pilot?
Do you feel that locally, awareness of the family justice system in general has improved as a result of the pilot? If yes please explain.
Has there been increased press interest as a result of the publication of judgments in pilot cases, either through increased enquiries to court or increased attendance at hearings?
Are there other ways in which public knowledge of the family justice system and confidence in the family courts might be improved?

vi) General
In general what do you see as the main benefits arising from the pilot process and for whom?
Do you feel the benefits outweigh the costs to judicial/court time in producing the judgments?

Annex B – FCIP Administrative data report

This annex is the final report analysing the data gathered during the 12 month period by the pilot courts in respect of the time taken to carry out the additional tasks, and data from BAILII on the number of the anonymised judgments and reasons viewed.

1. Limitations of the Data

Please note that the number of cases so far picked up by the pilot is small; 99 cases in family proceedings courts and 66 cases in county courts. Table 2.1 also shows that the Family Proceedings Court cases were predominantly clustered in just one of the pilot courts (Leeds).

These limitations should be borne in mind at all times when reading this report. **It would not be appropriate to assume that the findings presented here provide a reliable indication of the situation for all cases in England and Wales.**

2. Family Proceedings Courts

This section focuses on the data provided by the Family Proceedings Courts (FPCs) involved in the pilot.

The data was provided using a tracker sheet to record various details for each case. These include general characteristics of the case such as the court it was heard in, the category it was in, and whether the order was made by consent. They also include information on the time spent doing various aspects of work related to producing the anonymised judgments, and the dates of major events. At the time of this analysis the tracker sheet contained records of 99 cases.

The following analysis looks at the information provided on this tracker sheet.

2.1 General case characteristics

Table 2.1: Courts involved in the pilot

Court Name	No of cases
Cardiff	10
Leeds	74
Wolverhampton	15
TOTAL	99

74 of the 99 cases entered on to the tracker sheet for FPCs came from Leeds Family Proceedings Court. There were 15 cases from Wolverhampton and 10 from Cardiff.

Table 2.2: Type of cases involved in the pilot

- A. *Either parent is given leave to remove the child from the UK;*
- B. *The final order prohibits direct contact between a child and either or both parents;*
- C. *A final order is made in a Children Act public law case, including where contact continues;*
- D. *The final order has depended on contested issues of religion, culture or ethnicity;*
- E. *The court has had to decide between medical or other expert witnesses where there are significant differences of opinion;*
- F. *The court has had to decide significant human rights issues; or*
- G. *The Interim Care/ Supervision Order was contested*

Type of order A-G	No of cases
A	0
B	0
C	89
D	1
E	0
F	0
G	8
Unclassified	1
TOTAL	99

89 of the 99 cases entered on to the tracker sheet for FPCs were classified as category C (a final order in a Children Act public law case). There were also 8 cases in category G (contested interim care or supervision order), one case in category D (order depended on contested issues of culture, religion or ethnicity) and one case unclassified.

Table 2.3: Orders made by consent

Order by consent?	No of cases
No	62
Yes	37
TOTAL	99

In 37 of the 99 cases entered on to the tracker sheet for FPCs the order was made by consent. In the other 62 cases the order was contested (see paragraph 41 for discussion of the definition of a contested case).

2.2 Burden imposed by Pilot Work

Table 2.4: Person carrying out the Typing/Reading/Anonymising Activity

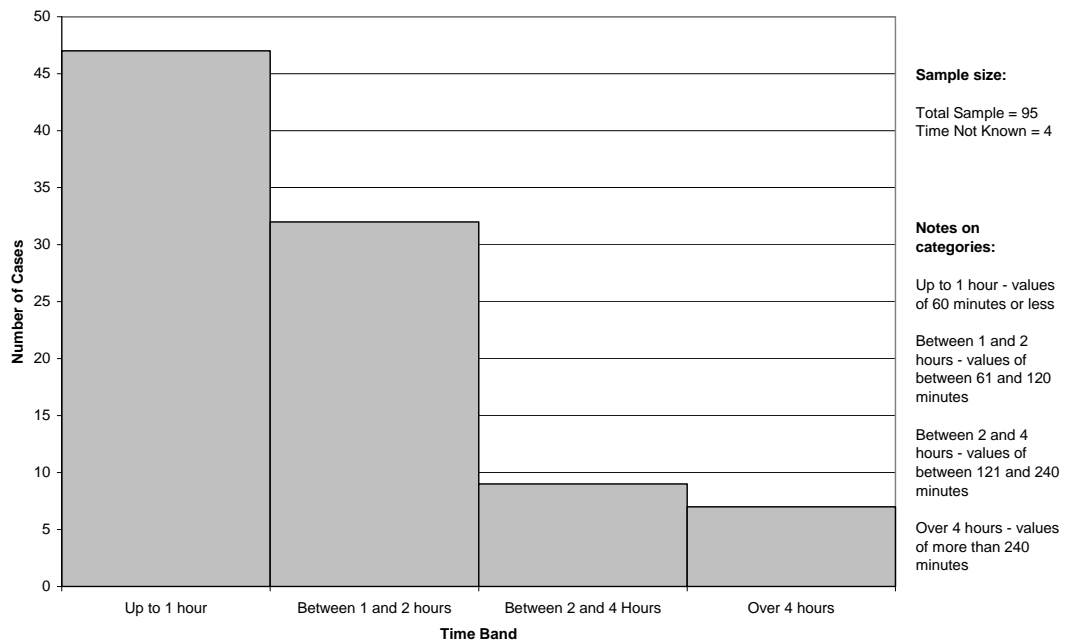
Person undertaking activity	No of cases
Court Staff	3
Legal Adviser	83
Magistrate	13
TOTAL	99

In 83 of the 99 cases entered on to the tracker sheet for FPCs the person carrying out the activity was the Legal Adviser. In 13 of the cases it was a magistrate carrying out the activity. In the final 3 cases the activity was carried out by court staff.

The following charts and commentary relate to the time spent on various activities in each case. **It should be noted that the information provided has clearly very often only been provided very approximately:** e.g. a response of “2 hours” is presumed to reflect that work took somewhere in the vicinity of 2 hours rather than being accurately recorded to the nearest minute. The charts in this section deliberately do not show many different time bands to reflect this uncertainty in the accuracy of the information recorded.

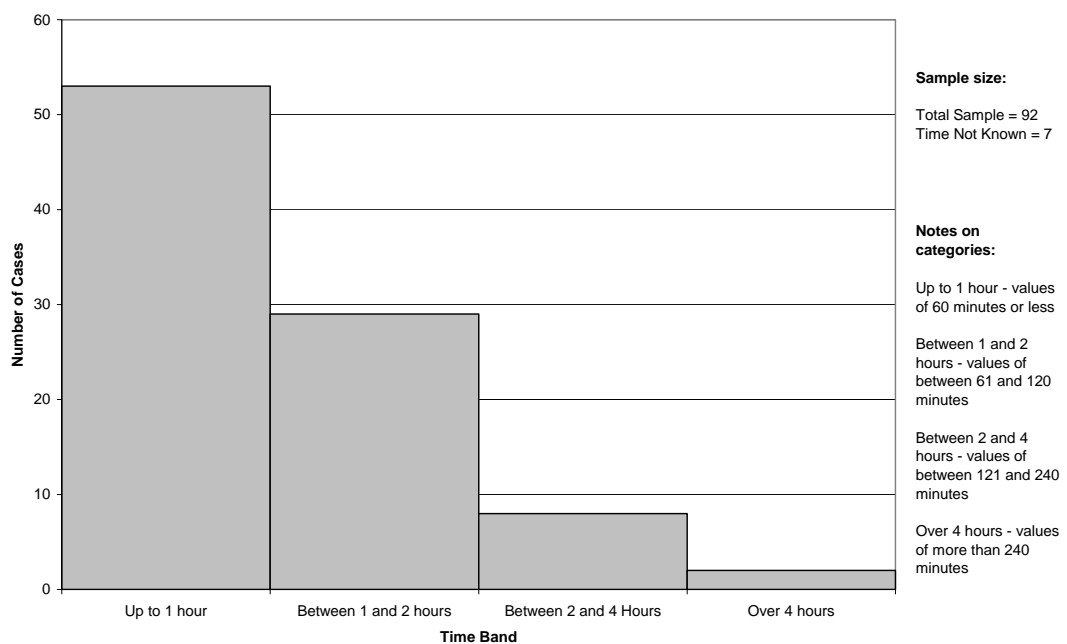
The pilot exercise has also recorded whether cases were contested or were by consent. However given the small numbers involved, these have not been separately identified.

Graph 2.1: Distribution of time spent typing written reasons



Graph 2.1 shows the distribution of times spent typing written reasons. For 79 of the 95 cases where values were given this was up to two hours. 9 of the remaining cases had times between 2 and 4 hours. The five longest cases took between 6 and 12 hours.

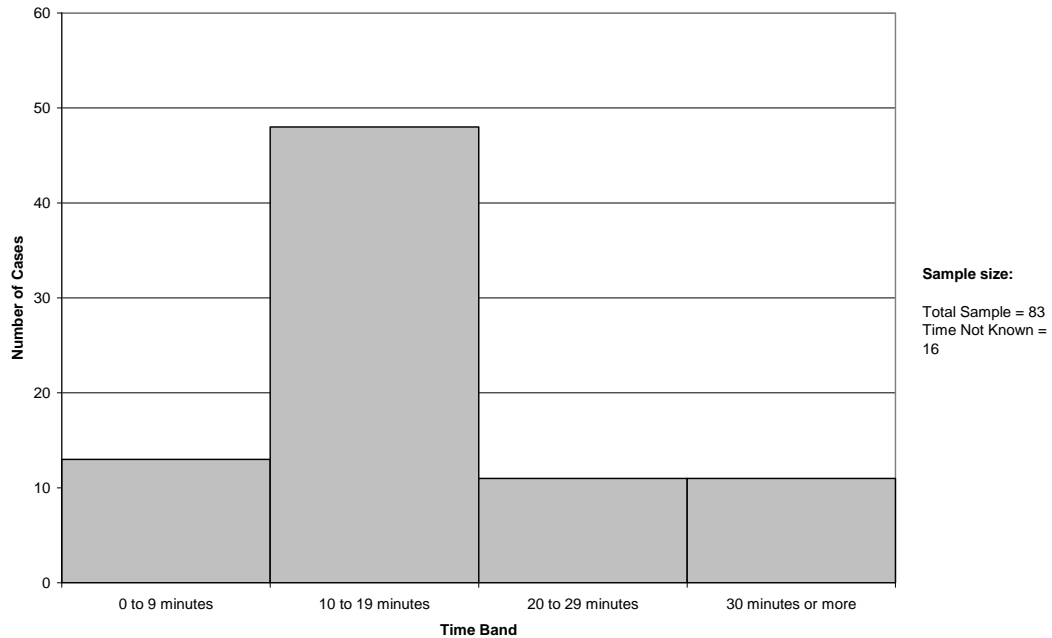
Graph 2.2: Distribution of time spent anonymising written reasons



Graph 2.2 shows the distribution of times spent anonymising written reasons. For 53 of the 92 cases where values were given this was up to 1 hour. A further 29 cases

had times between 1 and 2 hours. The longest case took 350 minutes (nearly six hours) but this was exceptionally long. The second longest case took 255 minutes (4 and a quarter hours).

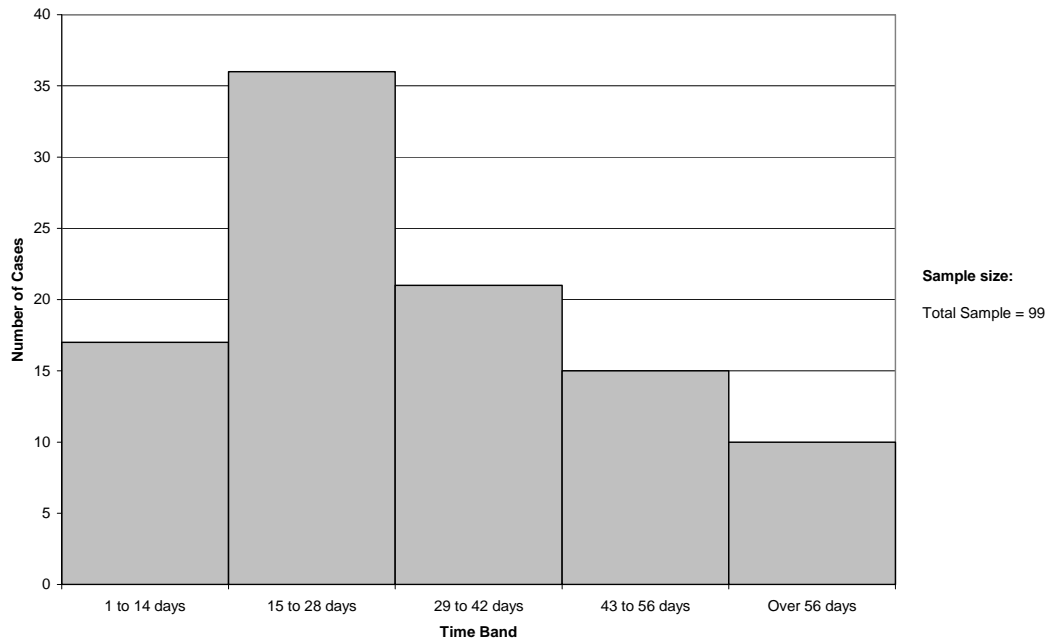
Graph 2.3: Distribution of times spent reading the written reasons and noting amendments



Graph 2.3 shows the distribution of times spent reading the written reasons and noting amendments. In 61 of the 83 cases where values were given the activity took up to 19 minutes. A further 11 cases had times between 20 and 29 minutes. The longest case took an hour, with the second longest case taking 34 minutes.

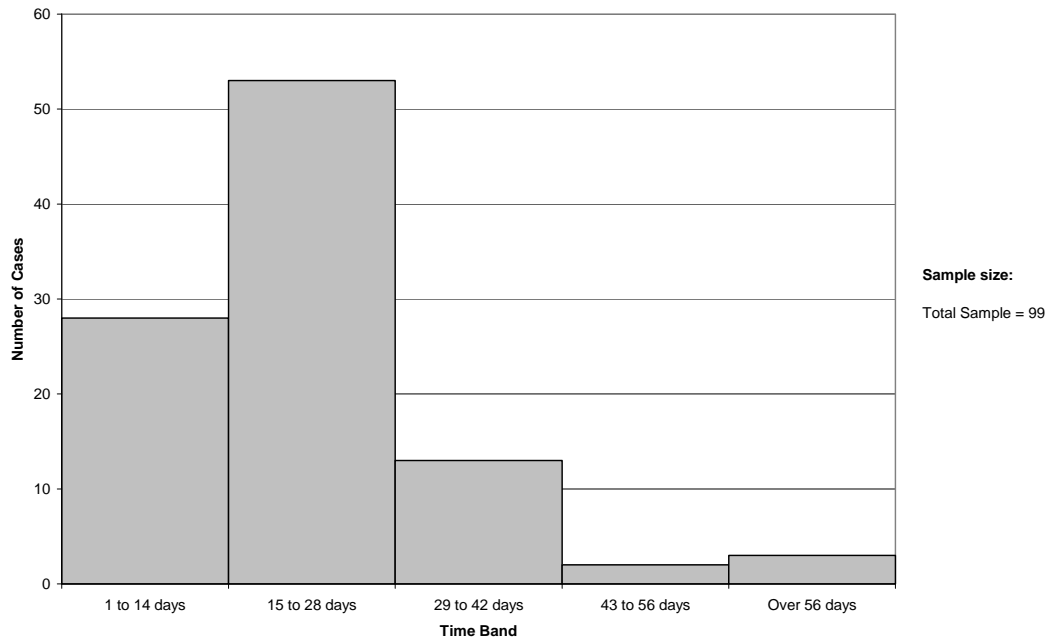
2.3 Timeliness of the Pilot process

Graph 2.4: Distribution of the length of time between an order being made and a draft of the anonymised reasons being sent to the parties



Graph 2.4 shows the distribution of times between the order being made and the draft of the anonymised reasons being sent to the parties. In 53 of the 99 cases this was done within 28 days (4 weeks). 10 cases took more than 8 weeks. The three longest cases took between 103 and 108 days (roughly 14 or 15 weeks).

Graph 2.5: Distribution of the length of time between a draft of the anonymised reasons being sent to the parties and the anonymised reasons being sent to BAILII



Graph 2.5 shows the distribution of times between the draft of the anonymised reasons being sent to parties and the anonymised judgments being sent to BAILII. For 81 of the 99 cases this was less than or equal to 28 days (4 weeks). 28 cases had times shorter than two weeks and 18 cases had times longer than four weeks. The three longest cases took between 65 and 92 days.

3. County Courts

This section focuses on the data provided by the County Courts involved in the pilot.

As with the Family Proceedings Court data, the data for County Courts was provided using a tracker sheet to record details of each case. This was similar to, although not exactly the same as, the one used by the Family Proceedings Courts. At the time of this analysis this tracker sheet contained records of 66 cases.

The analysis below looks at the information provided on this tracker sheet.

3.1 General case characteristics

Table 3.1: Courts involved in the pilot

Court Name	No of cases
Cardiff	39
Wolverhampton	27
TOTAL	66

39 of the 66 cases entered on to the tracker sheet for County Courts came from Cardiff County Court. The other 27 came from Wolverhampton.

Table 3.2: Type of cases involved in the pilot

Type of order (A-G) ¹	No of cases
A	1
B	5
C	59
D	2
E	0
F	0
G	1
TOTAL	66

1 – see page 29 for full definition of categories

2 – Two cases were categorised as B and C. These have been counted in both categories, meaning that the figures add up to 68 rather than 66.

Similarly to the FPCs, C (final order in a Children Act public law case) was the most common category of case, involving 59 of the 66 cases. 5 of the cases were category B (final order prohibits direct contact between a child and either or both parents). The remaining cases were split between categories A, D and G.

Table 3.3: Orders made by consent

Order by consent?	No of cases
No	34
Yes	32
TOTAL	66

In 32 of the 66 cases entered on to the tracker sheet for County Courts the order was made by consent. The remaining 34 cases were contested.

3.2 Burden Imposed by Pilot Work

Table 3.4: Type of Judge overseeing the case

Type of Judge	No of cases
Circuit Judge	48
District Judge	18
TOTAL	66

Table 4.4 shows that in 48 of the 66 cases entered on the tracker sheet for County Courts, the case was overseen by a Circuit Judge rather than a District Judge.

Table 3.5: Type of judgment produced

Type of judgment produced	No of cases
Long judgment	22
Short judgment	44
TOTAL	66

The table above shows that a short judgement was produced in 44 of the 66 cases. A long judgment was produced in the remaining 22 cases.

Table 3.6: Whether the Judgment was transcribed or handed down

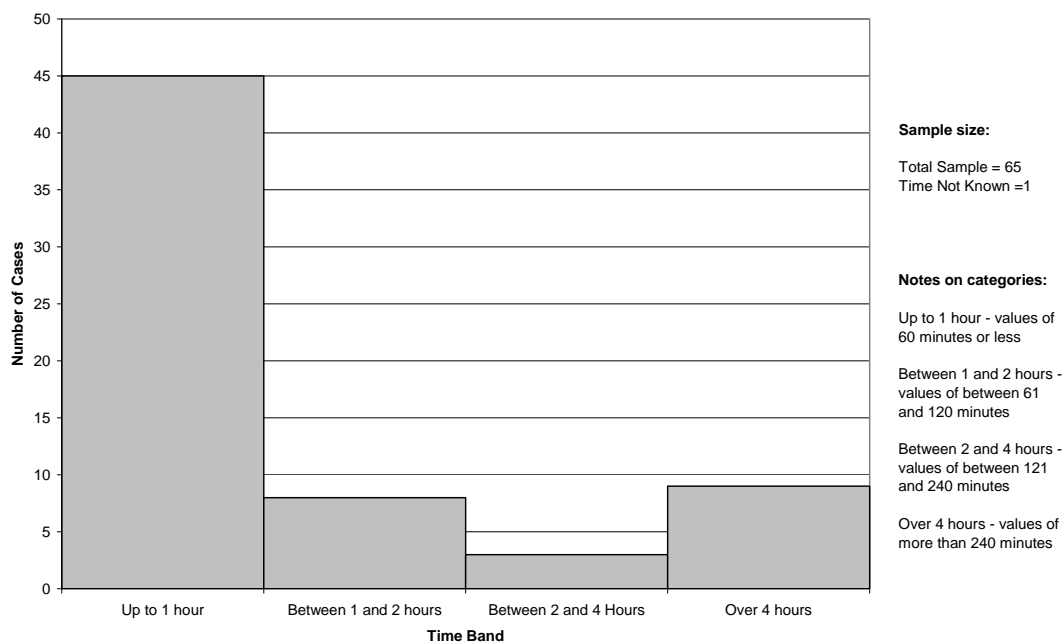
Transcribed or handed down	No of cases
Handed down	19
Transcribed	47
TOTAL	66

The table above shows that in 47 of the 66 cases the judgement was transcribed. The judgment was handed down in the other 19 cases.

The following charts and commentary relate to the time spent on various activities in each case. **It should be noted that the information provided has clearly very often only been provided very approximately:** e.g. a response of “2 hours” is presumed to reflect that work took somewhere in the vicinity of 2 hours rather than being accurately recorded to the nearest minute. The charts in this section deliberately do not show many different time bands to reflect this uncertainty in the accuracy of the information recorded.

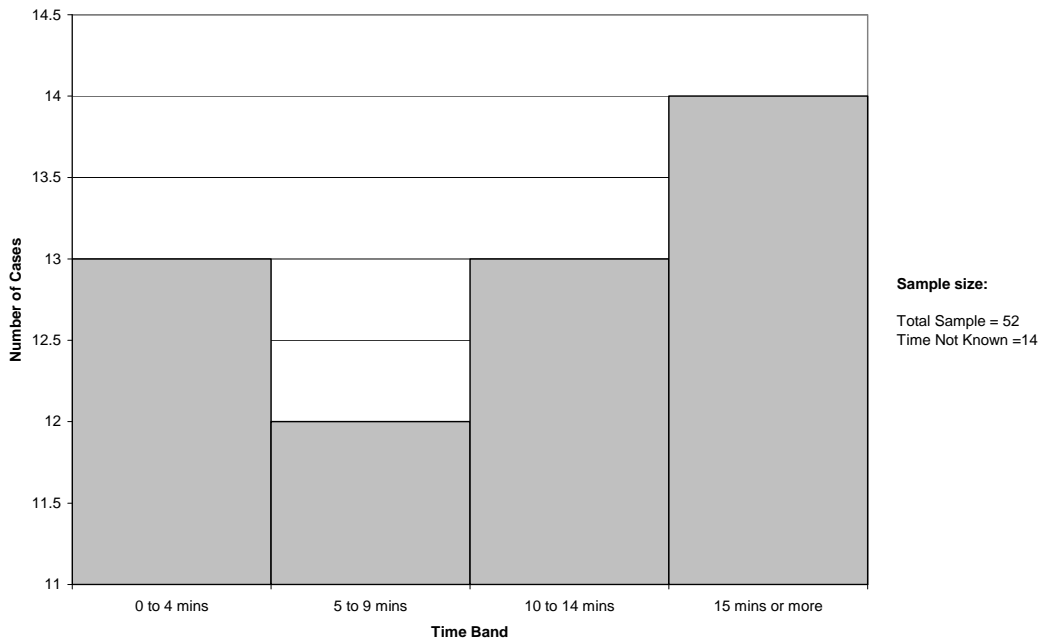
The pilot exercise has also recorded whether cases were contested or were by consent, whether the judgment was a long judgment or a short judgment and whether the judgement was transcribed or handed down. However given the small numbers involved at this stage, these have not been separately identified.

Graph 3.1: Distribution of time spent composing and delivering judgments



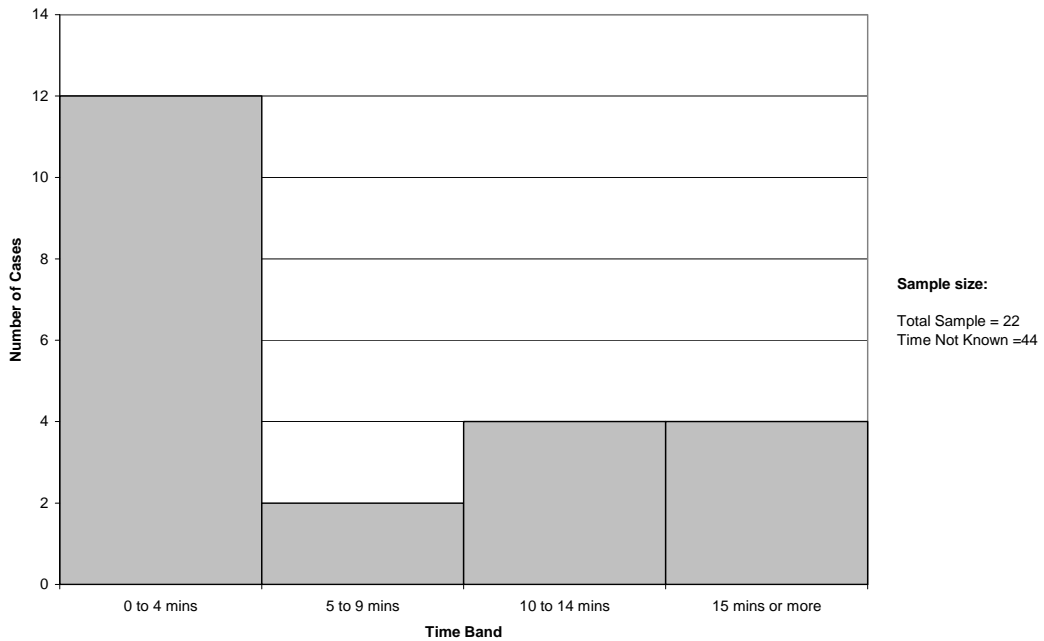
Graph 3.1 shows the distribution of time spent composing and delivering judgments. In 53 of the 66 cases where information was given this was up to two hours. The four longest cases took between 600 and 1500 minutes (10-25 hours).

Graph 3.2: Distribution of time spent reading/amending judgments



Graph 3.2 shows the distribution of time spent reading and amending judgments. In 13 of the 52 cases where information was given this was between 0 and 4 minutes. The longest times spent on this activity were 180 and 240 minutes (3 and 4 hours).

Graph 3.3: Distribution of time spent reading/approving judgments

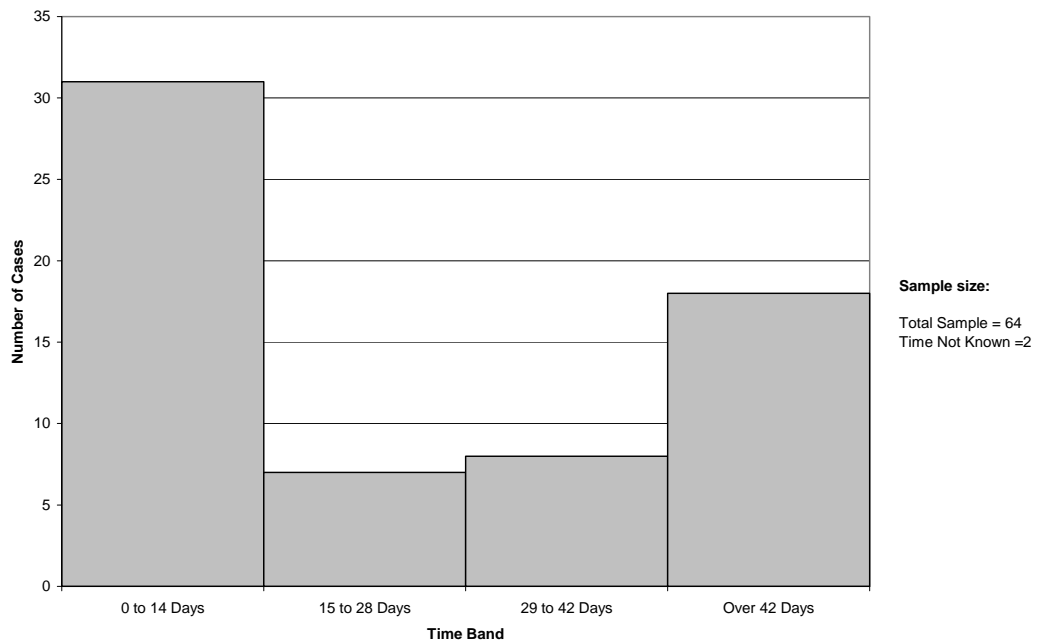


Graph 3.3 shows the distribution of times spent reading and approving judgments. For 14 of the 22 cases where values were given this was up to 9 minutes. The

longest cases took 15 minutes. However for two-thirds of the cases, no information was given.

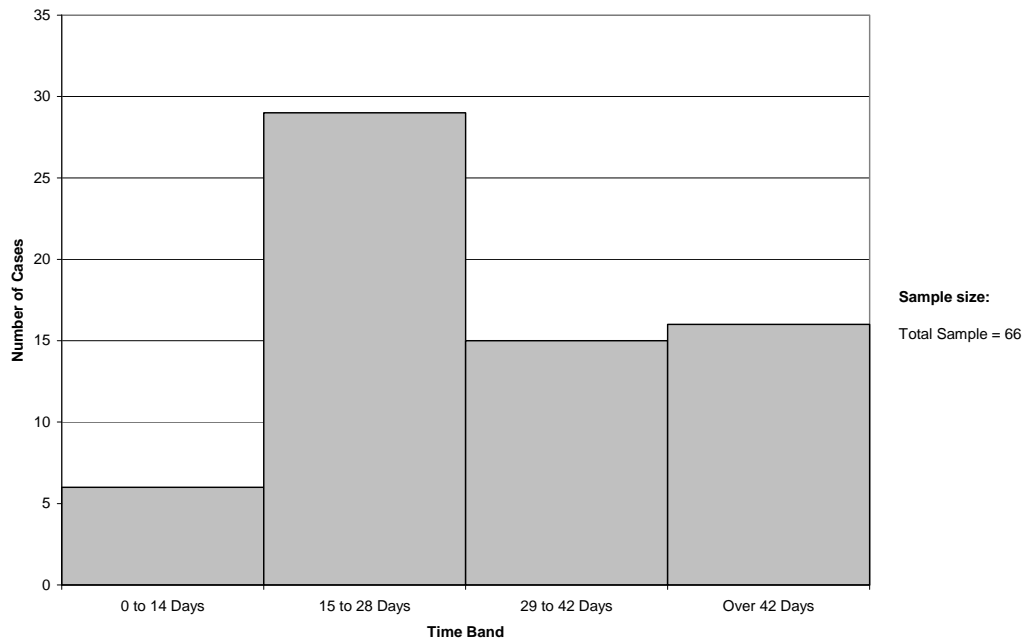
3.3 Timeliness of the Pilot process

Graph 3.4: Distribution of times between the order being made and the transcript being received by the court



Graph 3.4 shows the distribution of times between an order being made and the transcript being received by the court. For 38 of the 64 cases where values were given this was between 0 and 28 days. The longest cases took 189 days, and 207 days.

Graph 3.5: Distribution of times between the transcript getting judicial approval and the judgment being sent to BAILII

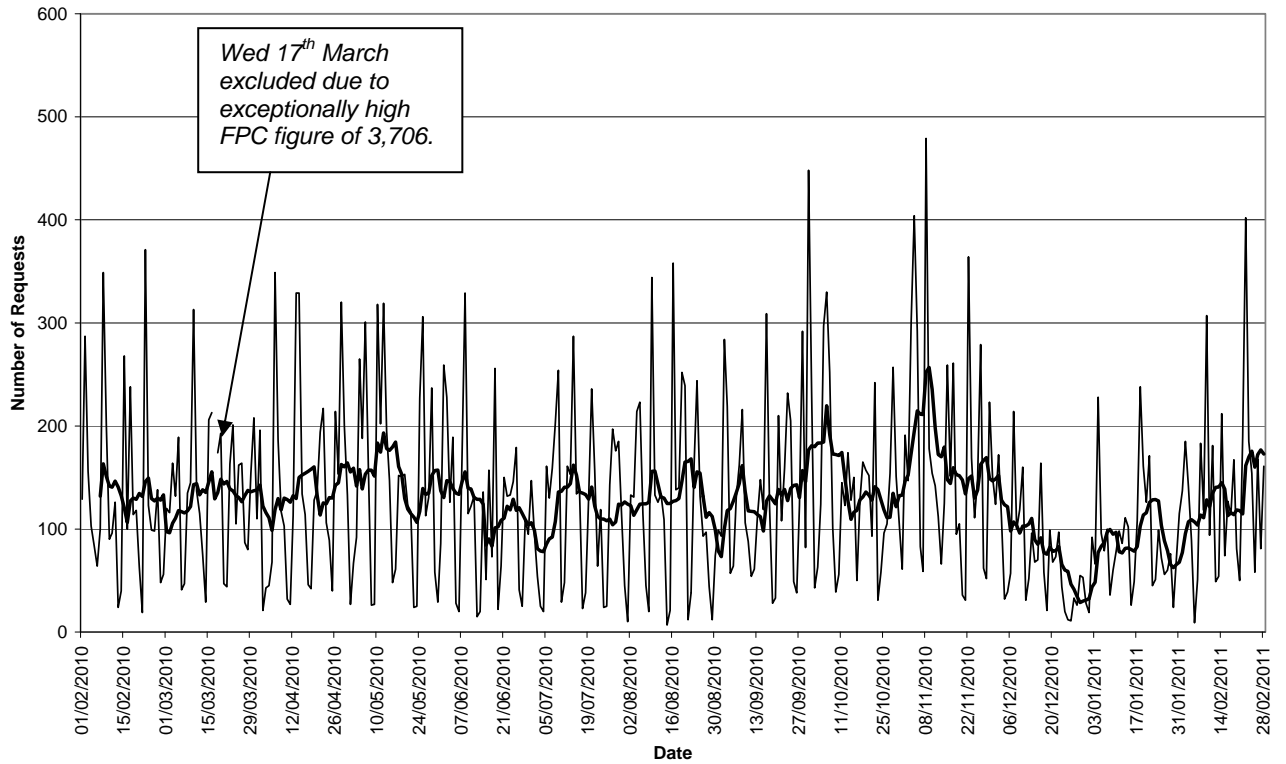


Graph 3.6 shows the distribution of times between the transcript getting judicial approval and the judgment being sent to BAILII. For 31 of the 66 cases this was over 28 days. The shortest case took just one day.

4. Hits on BAILII Website

This section focuses on the number of Family Court pages (judgments) viewed on the BAILII website (for a full description of the responses, see page 20).

Graph 4.1: Trend in the number of family page requests on the BAILII website.



Graph 4.1 shows the trend in the number of Family page requests on BAILII between 01st February 2010 and 28th February 2011.

Table 4.2 shows the above graph in figures:

Table 4.2: Average number of page requests made per day between 1st February 2010 and 28th February 2011, by month and day of the week

MONTH	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Month Averages
Feb-10	279	178	146	103	117	50	54	132
Mar-10	156	177	173	151	165	63	50	136
Apr-10	131	242	257	173	95	53	39	141
May-10	175	231	193	188	165	37	42	141
Jun-10	141	173	156	117	189	27	32	122
Jul-10	149	179	195	136	136	29	33	120
Aug-10	214	149	153	176	140	27	20	126
Sep-10	144	178	134	276	159	47	49	145
Oct-10	133	171	203	183	175	54	73	138
Nov-10	303	159	207	198	197	62	67	174
Dec-10	64	95	89	110	75	24	50	74
Jan-11	93	159	100	94	112	30	65	90
Feb-11	187	183	201	126	124	77	59	137
Week Day Averages	169	174	167	157	141	44	49	

Wednesday 17th March has been excluded because of the exceptionally high FPC figure (3,706)⁹.

The average number of pages viewed per day is much higher during the week than it is at the weekend. This situation occurs in each of the months and suggests that people may be viewing the pages more for work related reasons than out of personal interest.

The average number of page requests per day has remained fairly stable for most of the period, staying between 120 and 145 for each of the months between February 2010 and October 2010. There was a slight rise in November to an average of 174 page requests per day, followed by a dip in December 2010 and January 2011. This then picked up again, in February 2011, to an average of 137 page requests per day.

⁹ 3622 of which were from a single IP address in Spain. Although there is no way to confirm, BAILII suggested that the high result could be due to several classes in law where students were instructed to examine the judgments

5. Summary

The main points to take from the very limited data gathered so far are as follows:

The most common type of case, in both the County and Family Proceedings Courts, was a final order in a Children Act public law case.

The person most likely to be carrying out the work is either a Legal Adviser or a Circuit Judge.

The average number of page requests each day on BAILII is higher during the week. The average number of page requests per day has, overall, remained fairly steady between February 2010 and February 2011, with a slight rise in November 2010 and a dip in December 2010 and January 2011.

Annex C - Administrative costs of the Family Courts Information Pilot

This note draws on the data provided by court staff, presented in Annex B, to assess the additional administrative burden placed on the courts from completing and anonymising the judgments. We have estimated the economic costs of this administrative burden and estimated the likely costs if the pilot had run in all courts in England and Wales. The cost presented here are economic, not just financial costs. Therefore they estimate the financial costs of the pilot as well as the value of the time taken to complete the tasks associated with the pilot, even though this may not require additional money (i.e. it is encompassed in normal duties). This cost has been calculated to give an idea of the possible magnitude of the administrative burden that would be placed on the courts if the pilot was rolled-out nationally. The administrative cost of publishing the transcripts is dependent on the volume and complexity of the cases concerned, as such the costs presented here only apply to the year of the pilot.

The costs presented are estimates for the administrative burden placed on courts in producing and publishing written judgments. The costs do not include any estimates for the impacts on the parties in the case or the general public as a result of publication of the judgments.

Methodology and Assumptions

The costs presented in this paper have been calculated using the following methodology:

For cases in the County Court

Information provided by court staff on the time taken to compose, amend and anonymise the judgment was recorded in the pilot.

If the order was made by consent then all recorded time (composing, reading and anonymising) is treated as additional time because of the pilot and counted. This is because before the pilot there was no requirement to produce a written judgment where the order was made by consent.

Where the order is not made by consent all reading/amending, reading/ approving and anonymising minutes but not composing minutes are considered an additional time cost of the pilot.

In some cases the transcript of the judgments was typed and anonymised by an external contractor. In these cases the costs of transcripts are considered additional and included in the costs presented here. However it should be noted that these services were paid for by MoJ as part of the pilot. If the policy was rolled-out nationally it is unlikely that these payments would continue. Courts would therefore have to fund this service from existing budgets or prepare the transcripts internally.

In some cases no separate anonymising time was recorded, in these cases we have assumed that the anonymising time is 27% of composing and anonymising time. This is the average value of the cases where separate anonymising time has been recorded.

The additional minutes are then used to estimate the economic costs using the appropriate judicial salary.¹⁰ The assumption means that we have valued judicial time at the wage rate. This is an economic, not financial cost. It is unlikely that if the pilot was rolled-out nationally any additional payments would be made and so this work would form part of normal duties.

Family Proceedings Court (FPC)

In the FPCs written reasons are routinely produced for all cases, although they are not anonymised. Because of this the time spent typing the reasons is not counted as it is assumed that this activity would have taken place regardless of the pilot. It should be noted however that, in some instances, parties are provided with handwritten facts and reasons at the hearing, which are not subsequently typed. Therefore, on occasions, the typing of some pilot reasons could be an additional task

¹⁰ Salary information was taken from <http://webarchive.nationalarchives.gov.uk/+http://www.justice.gov.uk/publications/judicial-salaries-2009-10.htm> and internal HMCS Management information. Salaries have been updated by 25% to account for additional costs such as pension and National Insurance. This is a general estimate of additional employer cost across all occupations. Judicial salaries have been updated by 45% to account for pension contributions and National Insurance. This is a general estimate of additional costs and is not specific to particular types of judges. Annual salaries have been converted to per minute rate by assuming a 37 hour working week.

but one that it is not possible to accurately quantify.

The time spent reading, reviewing and amending are counted as an additional cost of the pilot. In some case no reading and reviewing time was recorded and so no additional time has been assumed.

All anonymising time is counted as an additional cost. In some cases no additional separate anonymising time was reported so we have assumed that the time spent anonymising is 50% of typing and anonymising time (this is the average of the cases where separate anonymising time has been recorded).

The additional minutes spent are then used to estimate the economic costs using the appropriate salary (the pilot recorded if court staff¹¹, legal advisers or magistrates undertook the review). In all cases it assumed that reviewing and amending the judgment is done by a magistrate, it is likely that in some cases it was actually a District Judge who heard the case in the FPC and not a Magistrate. This information was not collected centrally in the pilot and so we can not account for this. This will mean that the costs of the pilot estimated here is likely to be less than the actual total. We have also assumed that the minutes recorded for review the judgment are total magistrates minutes i.e. they are not the time each magistrate took. If this is incorrect it will lead to a further underestimate.

Magistrates do not receive a salary so their time costs are based on payments made by HMCS to magistrates as compensation for lost earnings. These payments are set rates and are only made to magistrates who are employed or self employed; some magistrates do not receive them. To account for this an average payment per hour (including those hours sat by magistrates who received no payment) has been used. This is lower than the set rates.

Excluded Cases

The pilot covered cases where an interim care/supervision order was made and:

- A. Either parent is given leave to remove the child from the UK;*
- B. The final order prohibits direct contact between a child and either or both parents;*
- C. A final order is made in a Children Act public law case, including where contact continues;*
- D. The final order has depended on contested issues of religion, culture or ethnicity;*

¹¹ Court staff are assumed to be band D, salaries have been increased by 25% as above (expect magistrates payments).

- E. The court has had to decide between medical or other expert witnesses where there are significant differences of opinion;*
- F. The court has had to decide significant human rights issues; or*
- G. The Interim Care/ Supervision Order was contested*

However, the vast majority (about 90%) of cases captured by the pilot were from category C. Very few cases were captured from the other categories and, because the sample size is too small to allow the costs to be scaled-up to a national level, these have been excluded from the estimates of administrative cost. This will mean that the final estimates are likely to under estimate the total cost.

Estimated administrative costs of the pilot

Using the assumptions detailed above we estimate the administrative costs of the pilot to be approximately £10,000.

National cost

The pilot captured 165 cases, 148 of these cases have been used to assess the administrative cost. In the majority of cases the number of children involved in the cases was recorded in the transcript (in some cases this information was not recorded or was not clear), where this data was present the average number of children per case was approximately 1.5. This implies 222 children were captured by the pilot. This is just under 2 %) of all the children subject the public law care or supervision orders for roughly the same time period nationally¹².

If we assume that the costs are proportionate to the number of children involved in care and supervision orders this would imply a national cost of approximately £500,000 in 2010. It should be noted that that this cost is based on a series of assumptions and should be considered uncertain.

Limitations of the data

The courts and cases chosen for the pilot are not a random sample; they are not necessarily representative of the types and volume of cases heard nationally. In addition they are a very small sample of all the cases. It is possible that the cases in

¹² The pilot ran at slightly different times in the different courts. Therefore there was a period at the beginning and the end of the pilot where only some of the courts included were participating in the pilot. The national data used here relates to the entire period of the pilot (Nov. 2009 to Dec. 2010). This means that costs presented here are likely to be an over estimate.

the pilot were particularly complex and required more time to transcribe than would be usual, likewise they may have been particularly straightforward. If this is the case our estimate for the national cost could be too high or too low.

The costs presented here reflect the specific conditions of the pilot. In the county court additional transcription services were paid for by MoJ; if the pilot was rolled-out nationally it is unlikely that this funding would continue. Courts would have to decide whether to continue to fund this or to have the transcription completed internally. This would impact on the administrative costs. In addition we believe that courts who participated in the pilot began to complete the transcripts in anonymous form as a matter of course and additional anonymising work was not required. The courts adapted to pilot and we would expect this to continue if the pilot was rolled-out nationally.

Annex D - Retention summary

The options for retaining judgments and written reasons for later life access as follows:

- 1 Ministry of Justice files – Children Act files are currently retained for 18 years in the county court and up to when the child reaches the age of 25 in the FPCs. There is a desperate shortage of storage space already and 49 county courts and 93 magistrates are proposed to close as part of the court estate rationalisation proposals. TNT provide offsite record management archive service in Derbyshire managed by the MoJ Outsourced Archival Services Section as part of MoJ Records Management Service but OASS agreement would be required plus a full cost analysis.
- 2 Cafcass / CAFCASS CYMRU file - Cafcass is already sent written reasons by the FPCs so the only change to practice would be the additional inclusion of county court judgments. Cafcass retains case information until the child (or youngest child if more than one) reaches 22, CAFCASS CYMRU has recently extended this to 35.
- 3 Local authority files - social services records created after 1991 must be retained until the child's 75th birthday. The case file can be accessed for a fee of £10. FPCs already provide the local authority with the written reasons so the pilot, if rolled out, would just need to ensure county court judgments are also included on local authority files.

