

RESEARCH REPORT

The Parenting Hearings Programme Pilot: Evaluation Report



MINISTRY OF
JUSTICE
Tāhū o te Ture

The Parenting Hearings Programme Pilot: Evaluation Report

**Trish Knaggs and Anne Harland
Research, Evaluation and Modelling Unit**

September 2009



Published September 2009

Ministry of Justice
PO Box 180
Wellington 6140
New Zealand
www.justice.govt.nz

ISBN 978-0478-29070-5
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Acknowledgements

Trish Knaggs and Anne Harland wish to thank the judges, lawyers, parents, court staff, report writers and community representatives who participated in this evaluation. Without your contribution this evaluation would not have been possible.

We would also like to thank:

- The members of the Parenting Hearings Programme Evaluation Advisory Group – Judge Sarah Fleming, Antony Mahon (representing the Family Law Section of the NZ Law Society), Michelle Haigh, Craig Walker, Pam Southey and Angela Lee (Ministry of Justice);
- Felicity Leahy who contributed significantly to this evaluation before her departure from the Ministry of Justice to travel abroad;
- Karin Schofield (Ministry of Justice) who reviewed the draft report;
- Roy Wyatt and Su-Wuen Ong (Ministry of Justice) and Elizabeth Bartlett (Knoware) who undertook the statistical analysis;
- Omar Aziz (Ministry of Justice) who completed the multivariate regression;
- Mickayla Vickers (Consumer Link) who managed the internet survey of lawyers and postal survey of parents;
- Elisabeth Poppelwell for transcribing interviews and the NVIVO analysis; and
- Judith Spier for transcribing interviews and formatting this report.

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Executive summary

Introduction

The Parenting Hearings Programme (PHP) pilot is a new process initiated by the Principal Family Court Judge, Judge P Boshier. It commenced in six courts on 1 November 2006. The pilot is intended to provide an early response to urgent applications under the Care of Children Act 2004, and to cases not resolved through counselling or mediation.

A key feature of the PHP is to deal with cases faster than the usual court system, thus reducing damage to co-parenting and parent–child relationships, and producing better results for children. PHP also intends to be less adversarial, and provide opportunities for parties to participate more in the process, particularly at the Preliminary Hearing.

The evaluation included exploratory work at two PHP courts, followed by key informant interviews,¹ a postal survey of parents, an Internet survey of Family Court lawyers involved in PHP, and discussions with a small number of key PHP stakeholders. Statistical analysis of Case Management System (CMS) data was also undertaken. The statistical analysis report does not include definitive statements on the effects of PHP versus non-PHP because the small number and variability of PHP cases meant that a robust non-PHP comparison group could not be identified.

The PHP process

The PHP process has generally been implemented as described in the PHP Guidelines. Two types of cases are considered potentially suitable for PHP. ‘Track A’ cases are urgent applications and other high-risk cases, often involving domestic violence, abuse or mental health. ‘Track B’ are those not resolved through counselling or mediation.

A key component of PHP is that cases will be dealt with faster than in the usual court system, thus reducing the impact of protracted court proceedings on families. The suitability of cases for PHP is determined by a judge at the PHP Judge’s List. Those deemed suitable are set down for a Preliminary Hearing which the Guidelines indicate should be within two weeks. Cases considered not suitable for PHP continue in the usual Family Court process.

The Preliminary Hearing is less adversarial than a traditional hearing. It tends to be judge-led, focuses on a narrow range of issues identified at the Judge’s List, and provides opportunities for parents to speak directly to the judge. Parents are encouraged to resolve issues at the Preliminary Hearing. A Lawyer for the Child has been appointed for nearly all PHP cases.

A Final Hearing, which is supposed to be within two months, is scheduled for cases not resolved at the Preliminary Hearing. Final hearings in the PHP process generally follow the traditional hearing process, rather than the less adversarial procedures in the Preliminary Hearing.

¹ Family Court judges, Family Court staff, lawyers, parents, psychologists and CYF social workers (s132 and s133 Care of Children Act report writers), and community group representatives.

PHP cases

The number of cases placed on the PHP was smaller than expected. Of the 4554 care of children cases in the six pilot sites which were current (in the court system when the PHP began), or new (started after the introduction of the pilot on 1 November 2006), 319 (7%) were placed on the PHP (as at 4 August 2008).² Of this number, 225 (71%) cases were new and 94 (29%) were current. This finding raises questions about how case numbers might be increased. An increase may be achieved by re-examining how potential PHP cases are identified and suitable cases subsequently allocated to the PHP.

Nineteen percent of completed PHP cases had neither a Preliminary Hearing nor a Final Hearing. Two-thirds of the completed PHP cases (66%) in the analysis had just a Preliminary Hearing, and only 14 percent had both a Preliminary and Final Hearing.

Aspects of PHP considered beneficial included parents participating in the Preliminary Hearing, the same judge being involved in PHP cases from start to finish, and parents completing the 'Parenting Through Separation' course before they went to a Preliminary Hearing.

Variation between PHP judges and between PHP courts

Variation in practice between both PHP courts and PHP judges became evident during interviews with key informants. While some lawyers were not concerned about this as they had experienced variation in other Family Court processes, others were more concerned. Of those lawyers who responded to the survey, half believed there is a lack of consistency between judges that impacts negatively on the PHP **process** (19% 'strongly agreed'). Just under a half (46%) reported a lack of consistency between judges that impacts negatively on the PHP **outcomes** (18% 'strongly agreed').

Some lawyers indicated during the interviews that a more consistent approach would help them prepare their clients. They suggested protocols or more guidance might reduce the PHP's variation. A particular concern here was that the introductory DVD's portrayal of the PHP process very often differed from that experienced by parties.

Other examples of variation reported during interviews included differences in extent to which specialist reports are requested, the degree to which judges and lawyers participated in the Preliminary Hearing, and under what circumstances a case might be suspended or removed from the PHP.

Involvement of children and young people

PHP appeared to have little or no impact on the extent to which children and young people participated in the process. Stakeholders suggested their greater involvement in court processes had occurred as a result of the Care of Children Act 2004, rather than through the PHP pilot.

² A cut-off date of 4 August 2008 was required to create the PHP database and undertake analysis.

Changes in PHP after the pilot started

The PHP process appears to have changed in a variety of ways after its implementation. For example, some judges now spend more time at the start of the Preliminary Hearing putting parties at ease, and ensuring parties have the opportunity to participate than they did when the pilot was first introduced. Some administrative changes have also been instituted.

Suitability of cases for PHP

Types of cases considered generally most suitable for PHP were those where parties were willing to resolve matters, where issues had not become too entrenched, and where cases involved narrow issues. Eighty-two percent of lawyers who responded to the survey indicated suitable cases were being included in PHP.

In the interviews cases considered least suitable for PHP included those involving allegations of sexual abuse of children, significant safety issues, violence, significant and complex issues. Cases relating to s60 Care of Children Act 2004,³ particularly those involving domestic violence, drug use, as well as those relating to discharge of Child Youth and Family orders, were also considered unsuitable for PHP.

Domestic violence and PHP

Views differed about the extent to which domestic violence cases should be included in PHP. There was, however, general acknowledgement by judges and lawyers that the majority of domestic violence issues will be dealt with at a s60 hearing, and then, if considered suitable for PHP, the case will go to a PHP Preliminary Hearing as soon as possible. This was particularly so for domestic violence cases involving less serious or 'minor' allegations. A number of judges, lawyers and court staff, acknowledged the need for a faster process for domestic violence matters.

Disadvantages of including domestic violence cases in PHP were also cited. These included a lack of information to the court because of faster process, in some circumstances an early response may be counter-productive, and that the emphasis on a quick resolution may pressure parties to compromise or reach agreement, in spite of safety concerns.

Timeliness

Entry on to PHP and Preliminary Hearing

Once a judge has decided a case is suitable for PHP it is directed to a two-hour Preliminary Hearing which should be held within 14 days.

Using CMS data to measure timeframes of the PHP cases, the evaluation identified that only one in five of the PHP cases that had a Preliminary Hearing⁴ had this hearing within two

³ Procedure for dealing with proceedings in s59 (1) Allegation of violence made in proceedings relating to parenting orders.

⁴ 252 cases (both completed and not completed) had a Preliminary Hearing.

weeks of entry on to the PHP. Only approximately half the cases that had a Preliminary Hearing had this hearing within four weeks of entry on to the PHP.

Although the prescribed timeframes are not generally being met, overall PHP is still seen as faster than non-PHP. This faster process is viewed very positively, and is considered a key advantage for both parents and children. There was considerable support from judges, lawyers, parents and court staff for a faster process, and the benefits of a timely resolution for children. This faster response may simply include the court system engaging with parties at an early stage, as well as holding a hearing in a timely fashion.

It was also noted in some interviews that a faster process may not always be appropriate. In some situations, an early hearing may be counter-productive, and could lead to parents having more, rather than less, court involvement. Some parents may benefit from further counselling. Others might require additional time for damaged relationships to heal before they can make constructive decisions about the care of their children.

Some interviewed judges, lawyers, and court staff were concerned PHP was not achieving its recommended timeframes. A few wondered whether these timeframes were realistic, given delays in receiving specialist reports, insufficient judge time, and other resource issues.

The evaluation investigated whether urgent interim hearings in the non-PHP system would provide the same benefits as PHP Preliminary Hearings. Responses suggested support for some form of early response. Most lawyers believed similar benefits would be provided, the main reason being that issues could be resolved quickly. Reasons why similar benefits would not be provided, according to lawyers, were because urgent interim hearings did not have the same flexibility as PHP, and did not use a less adversarial approach. Indicative information suggests judges are less likely to agree that urgent interim hearings in the non-PHP system would provide the same benefits as PHP Preliminary Hearings.

Parents and children

Lawyers who responded to the survey believed the PHP process is very effective at providing a timeframe appropriate for the parents (80% rated it as effective and 81% as more effective than the non-PHP process), and for the children (83% effective and 81% more effective than non-PHP).

Lawyer for the Child

Some interviewed Lawyers for the Child commented that the tight PHP timeframes could create additional work pressures for them.

When the Lawyers for the Child who responded to the survey were asked to indicate whether they had enough time to prepare for specific stages in the PHP process, seven out of ten stated they had enough time to prepare before the Judge's List. Eight in ten reported they had enough time prior to the Preliminary Hearing.

Specialist report writers

All groups interviewed reported difficulties obtaining specialist reports within PHP's timeframes, particularly if requests for these reports were broad in their scope. Insufficient psychologists and CYF social workers were considered the main reason for these difficulties. The court sometimes granted extensions when requested, but occasionally hearings might proceed without these reports.

The lawyers' survey asked about the effectiveness of PHP in ensuring that psychologist or social worker reports were requested when appropriate. Thirty-eight percent of lawyers who responded to the survey believed PHP was not effective in ensuring psychologist reports are requested when appropriate, and 35 percent believed this was the case for social worker reports. However, PHP was not generally considered less effective than non-PHP so this issue does not appear to be specific to PHP.

Judicial resources and case scheduling

While not solely related to PHP, insufficient judicial resources, case scheduling difficulties and court staff turnover were considered factors impacting on the PHP, particularly the extent it was able to achieve the expected timeframes.

PHP's less adversarial model

The PHP seeks to apply a less adversarial model than the usual Family Court process. Most judges, lawyers and report writers interviewed believed the PHP was generally less adversarial because of its lack of formality, length of the hearing, and the judge-led approach.

When asked to what extent PHP provided a less adversarial process overall for the parties, 77 percent of lawyers who responded to the survey believed PHP was effective. Seventy percent believed PHP was more effective than non-PHP in this respect.

Seventy-four percent thought PHP was effective in providing a less adversarial experience at the court hearings. Seventy-five percent of lawyers believed the PHP was more effective than non-PHP in providing a less adversarial experience at the court hearing.

Opportunities for parties to participate

Providing opportunities for parties to participate in the court process is a key component of the PHP pilot, and most parents interviewed had appreciated this opportunity. Nearly all lawyers who responded to the survey (91%) agreed it is useful for parties to be able to speak directly to the judge. Six in ten (61%) 'strongly agreed' that this was useful.

Views were mixed on the extent to which PHP's less adversarial process suited everybody. Generally considered more 'user friendly' than the traditional court process for self-represented litigants, the potential for it to be less helpful, for example, to people who are less articulate was acknowledged. In these situations, however, it was reported that lawyers spoke more on behalf of their clients, and judges asked parties more questions than might otherwise be the case.

Courts' firmer control

Depending on the case, judges tended to firmly control PHP proceedings by, for example, limiting issues to be addressed so the court can focus on the most relevant issues. Seventy-eight percent of lawyers who responded to the survey believed the PHP was effective in appropriately limiting issues to be addressed.

Limiting opportunities for cross-examination, another component of the court firmly controlling the PHP process, was generally considered a positive development as it helped, for example, to speed up the process. Some lawyers, however, mentioned that limiting or denying cross-examination raised natural justice concerns with them.

Seventy-three percent of lawyers who responded to the survey believed the PHP was 'effective' at appropriately limiting cross-examination (28% 'very effective' and 45% 'quite effective'). Sixty-nine percent responded that the PHP was more effective than non-PHP in appropriately limiting cross-examination.

Limiting affidavits or information in affidavits was a further component of PHP's less adversarial nature. Sixty-two percent of lawyers who responded to the survey believed the PHP pilot was effective in appropriately limiting information in affidavits.

Outcomes

PHP seeks to provide a better response to cases that have the potential to become intractable, and aims to encourage parties to focus on future parenting proposals. Although a faster process is important, processes should also be fair and just, and outcomes durable.

Fair for parties and children

All interviewed judges and most of the interviewed lawyers and report writers stated PHP outcomes were fair, or the best that could be achieved given the circumstances of the case. Providing parties with the opportunity to have their say and input into the outcomes was considered by judges and lawyers to be an important part of parties thinking the outcome was fair.

Less positive, and less frequent, comments about fairness of outcomes included the possibility that parties could feel "bullied" into agreeing because of PHP's short timeframes, and some issues not being dealt with.

Almost three-quarters of the lawyers who responded to the survey rated the PHP process as being effective in resulting in fair and appropriate outcomes. However, the PHP process was rated by many lawyers as being about the same as the non-PHP process in achieving this (42%). Of the remainder, 35 percent rated PHP as more effective than non-PHP in resulting in fair and appropriate outcomes, and 14 percent less effective than PHP.

Satisfaction

A reasonable level of satisfaction with PHP outcomes was evident, both from interviews and the parents' survey, in that more parents were satisfied than dissatisfied.

Interviewed lawyers believed most of their clients were reasonably satisfied, and some indicated PHP's faster timeframe contributed to people feeling happier with the outcome.

Durability

The extent to which PHP cases were completed and parties did not return to court was measured through CMS data⁵ and interview and survey questions. A higher proportion of completed cases with a Notice of Defence⁶ filed returned in pilot site courts (18% PHP and non-PHP) over the specified time period, than returned in non-pilot court sites (16%). An even higher proportion of the PHP cases returned (21%).

As the numbers are small this finding should be treated with caution. It may also be a reflection that more complex cases are being placed on the PHP. Close monitoring of the extent to which PHP cases are returning to court is required.

Stakeholder views

Stakeholder groups were divided as to whether PHP outcomes would be more durable than non-PHP case outcomes. The largest group of judges indicated they would wait to see the statistics before commenting. Those who considered PHP outcomes would last longer or be more durable believed this was because of the parents' involvement in the process. Some lawyers believed it was too soon to tell, and others thought there would be no difference between PHP and non-PHP.

PHP and natural justice

Approximately half the interviewed lawyers commented about PHP and issues of natural justice, and around half of these reported they had these concerns. The other half were aware of the discussion but were not concerned. As some of the lawyers who had these concerns acknowledged they had no direct experience of this happening with PHP, some appear to be 'potential' concerns, rather than actual experiences of PHP breaching natural justice.

When lawyers were asked whether they had philosophical concerns about PHP almost half (47%) indicated they did. Fifty-three percent of lawyers with more than 10 years' experience practising family law reported these philosophical concerns, compared to a third of lawyers with up to 10 years' experience.

Limiting cross-examination in PHP was the most frequent natural justice concern identified by interviewed lawyers. Twenty percent of lawyers who responded to the survey reported they had not been given the opportunity to cross-examine when necessary.

⁵ An analysis was undertaken of CMS data on cases completed before February 2008, which gave a period of at least six months (ie, up to August 2008) for a case to return to court after disposal.

⁶ When comparing proportions of completed cases for PHP and non-PHP that returned to court, it is more relevant to compare only those where a Notice of Defence was filed, rather than compare all PHP and non-PHP cases.

The faster PHP process was another concern raised by some lawyers in relation to natural justice. This appeared to be related to the faster process creating potential for the court to miss relevant information. Forty-four percent of lawyers who responded to the survey agreed that PHP does pressure people too much to come to an agreement, but 34 percent disagreed with this.

An additional concern mentioned by interviewed lawyers was the limited opportunity in PHP for lawyers to speak on behalf of their clients. Nineteen percent of lawyers who responded to the survey reported they did not have the opportunity to raise issues of interest not raised by their client. This aspect of PHP may require further consideration.

Further concerns included judges being overly directive, and the role and involvement of support people at hearings.

Interviewed judges reported no concerns about natural justice and PHP, although a few acknowledged that the process might potentially give rise to these concerns. Judges considered these concerns can be allayed if they ensured that all relevant issues were covered and checking this with parties' lawyers and Lawyers for the Child.

Expansion of PHP

All the interviewed judges and most lawyers and report writers were positive about the PHP. When asked, they indicated that the pilot should be extended to all courts because of the opportunities it provides for parties to participate, the quicker timeframe, early judicial intervention, less adversarial approach, and its focus on key issues.

If PHP is to be implemented nationally, interviewed judges, lawyers and report writers believed that scheduling and resource issues would need to be addressed. These include, for example, increasing judge time and courtroom availability.

Review and further development of the guidelines was suggested as a way of improving consistency in the PHP process, and might help allay lawyers' concerns about natural justice issues. In addition, better consultation with lawyers prior to and throughout implementation would increase support for the initiative, and help disseminate information about PHP's objectives and processes.

Conclusion

In conclusion, this evaluation has identified that the PHP process offers a number of important benefits. While some findings may not have been entirely positive, the evaluation found the pilot has provided a less adversarial process and greater opportunities for parents to participate. Although PHP cases have not been resolved within the targeted timeframes, the PHP process appears to be faster than that available in the usual Family Court process. Overall the PHP pilot provides a very worthwhile opportunity for courts to enhance their response to Care of Children Act 2004 cases.

1 Introduction

1.1 Background

The Parenting Hearings Programme (PHP) pilot was initiated by the Principal Family Court Judge, Judge Boshier. The PHP is a new process intended to address urgent applications under the Care of Children Act 2004, including those where domestic or sexual abuse allegations indicate families may be at risk, and cases not resolved through counselling or mediation.

In mid-2006 the Ministry of Justice commenced its funding and management of the implementation of the PHP pilot. The pilot began on 1 November 2006 in six Family Courts – Auckland, Tauranga, Rotorua, Palmerston North, Wellington and Dunedin. The pilot was set up to run for two years, and will continue in these six courts until its future is decided.

Key features of the PHP include a less adversarial process than traditional Family Court hearings, a more proactive role for PHP judges, and a focus on minimising delay. These features are expected to reduce the damage that protracted cases can have on co-parenting and parent–child relationships, and thus enhance the durability of outcomes.

If a case is deemed suitable for PHP, a Preliminary Hearing should be scheduled within two weeks. At this hearing the parties take part in proceedings and judges focus on a narrow range of issues. Lawyers for the Child have a large role in the PHP, and depending on the case, reports from psychologists or Child, Youth and Family social workers may be requested. A Final Hearing should be scheduled within two months if matters cannot be resolved at the Preliminary Hearing.

The PHP is loosely based on a model which was piloted in the Sydney and Parramatta registries of the Family Court of Australia in 2004–2005, and was subsequently implemented in all Family Court registries in Australia from 1 July 2006.

1.2 The Parenting Hearings Programme objectives

When established, the objectives⁷ of the PHP were to:

- achieve a less adversarial model
- seek a better response to a class of case that has the capacity to turn intractable and cause economic or psychological detriment
- shorten the relevant family's involvement
- tighten the court's control of the proceedings
- increase the level of participation in the proceedings by children

⁷ Judicial Guidelines 'Procedure for Parenting Hearings Programme Pilot' May 2007. These objectives have since changed a little.

- reduce costs, delay and introduction of irrelevant material and unnecessary harm being done to long-term relationships
- reduce the adverse effect on children of delay
- focus parties on future parenting proposals.

1.3 Evaluation objectives

The evaluation was designed to describe the PHP processes and procedures. Where possible, the evaluation also assesses the extent to which the PHP pilot is meeting the objectives listed above. The programme's objectives have since changed a little, but the evaluation has continued to focus on those established during the development of the programme.

1.4 Evaluation Advisory Group

An Evaluation Advisory Group was established to support the evaluation and the evaluation team. This Group included a member of the judiciary, a representative from the Family Law Section of the NZ Law Society, and Ministry of Justice policy and operational staff.

1.5 Report structure

This evaluation report consists of two publications: this Research Report and a Technical Report. This report summarises the methodology in Chapter 2, and Chapter 3 describes the PHP process and cases. The suitability of cases for PHP is examined in Chapter 4, followed by the PHP and domestic violence in Chapter 5. The timing of PHP cases is presented in Chapter 6, followed by PHP's less adversarial nature in Chapter 7. Chapter 8 describes the involvement of children and young people in PHP, and PHP outcomes are presented in Chapter 9. Chapters 10, 11 and 12, respectively, describe issues relating to PHP and natural justice, some other findings, and views on expanding PHP. The report concludes with a discussion of key evaluation findings in Chapter 13.

The Technical Report includes the evaluation methodology, survey instruments and lawyers' survey tables.

2 Evaluation methodology

This section gives a brief outline of the evaluation methodology. Further detail is available in Appendix 3.

The evaluation of the Parenting Hearings Programme (PHP) consisted of six phases which took place during 2008 and 2009:

- exploratory work at two PHP courts
- key informant interviews
- statistical analysis of Case Management System (CMS) data
- a postal survey of parents of PHP and non-PHP parents
- Internet survey of Family Court lawyers involved in PHP
- discussions with key PHP stakeholders.

2.1 Exploratory work

Early exploratory work undertaken prior to the evaluation helped identify people to interview, questions to include in the interview schedules, and aspects of PHP to be examined in the statistical analysis. This preliminary work involved visits to two court sites, discussions with a range of key personnel and stakeholders, and reading background material. Once this phase was complete and key issues for examination had been identified the evaluation commenced.

2.2 Key informant interviews

Interviews were conducted with 105 key people who had some involvement with PHP and included:

- Family Court judges
- Family Court staff
- lawyers
- parents
- s132 and s133 Care of Children Act 2004 report writers (psychologists and Child, Youth and Family social workers)
- community group representatives.

2.3 Statistical analysis of Case Management System (CMS) data

An analysis of CMS data was undertaken by the Data Analysis and Modelling Team in the Ministry of Justice. The statistical analysis sought to:

- describe the characteristics of the cases that are entered onto PHP – demographics, outcomes, service provision (eg, social worker reports)
- make suitable comparisons with non PHP cases in both pilot and non pilot sites regarding timeliness, service provision, outcomes and durability.

The statistical analysis has not allowed for definitive statements on the effect of PHP versus non-PHP because a comparison group could not be identified. It was originally hoped a comparative analysis would allow the identification of a group of characteristics associated with a high incidence of PHP. These characteristics could then be applied to non-pilot sites to select a comparison group of cases to test for the effects of PHP. Despite considerable work grouping cases with different combinations of factors to try and isolate such characteristics, development of a comparison group was not possible due to the low overall incidence of PHP and the high degree of variability of case types placed on PHP.

An 'analytical case' was chosen as the unit of measure. An 'analytical case' is defined as the activity in the Family Court (applications, outcomes) for a particular family group within a specified time. Each 'analytical case' has a start date and an end date. These dates are determined by when an application is first filed, and when all applications are disposed.

All care of children applications were split into cases. For the study, only cases that had a start or end date between 1 November 2006 and 4 August 2008 were used. The first date is when PHP was introduced, and the second date is when the analysis began.

Selected findings from the statistical analysis have been presented in the body of this report. See Appendix 1 for the full statistical analysis.

2.4 Postal survey of PHP and non-PHP parents

A postal survey was developed for two groups of parents, those who had experienced PHP and those who had no experience of PHP but had been involved in the Family Court process.

Names were selected from Case Management System (CMS) data.

2.5 Internet survey of lawyers involved in PHP

Information from exploratory work and stakeholder interviews helped develop an Internet survey which was emailed to 451 Family Court lawyers in the six pilot court areas. Lawyers involved in the PHP were invited to complete the survey.

2.6 Discussions with key stakeholders

Initial findings were discussed with several key stakeholders to help the evaluation team place the findings in perspective. These discussions were not recorded and are not directly reported in this document.

3 Description of ‘Parenting Hearings Programme’ cases

3.1 Introduction

The operation of the Parenting Hearings Programme (PHP) is described in a number of documents,⁸ and the Judicial Guidelines (2007), for example, describes the various stages of the PHP process. Bearing in mind that there is some variation between courts and between PHP judges (see later discussion), the PHP process appears to generally be operating as described in these Guidelines. Figure 3.1 on the next page presents the PHP process in diagrammatic form.

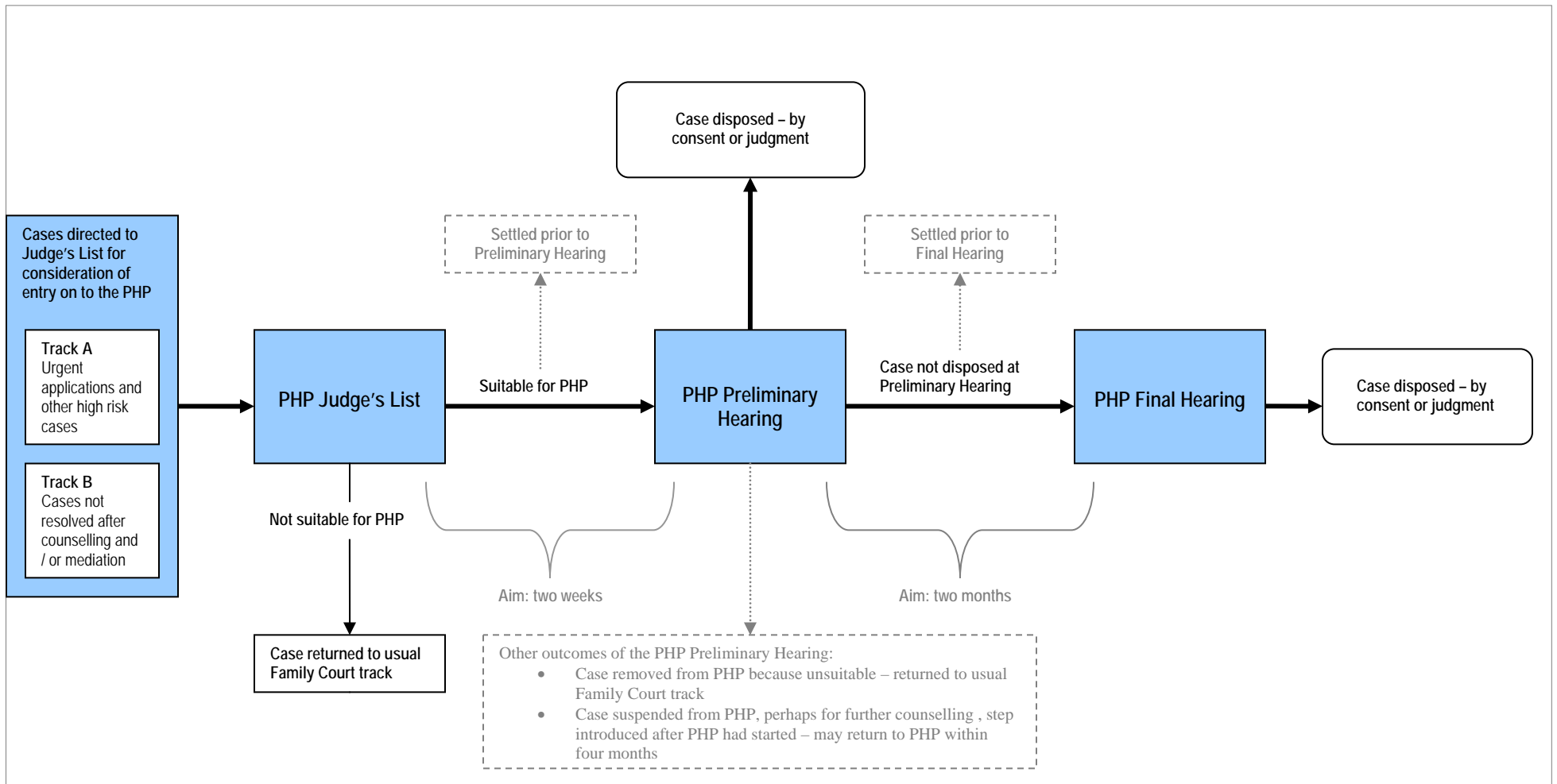
In general terms, the PHP process involves particular types of cases being selected as potentially suitable to go in to PHP, and then their suitability is later determined by a PHP judge at the PHP Judge’s List.

Cases considered suitable by the judge are then set down for a Preliminary Hearing within two weeks. One of the key features of the PHP is that cases are dealt with faster than in the usual court system. By providing faster resolution of cases, the process is intended to significantly reduce the damage that lengthy court battles can do to co-parenting and parent–child relationships and therefore produce better results for children.

The Preliminary Hearing tends to be judge-led, issues covered tend to be very narrowly focussed, and parties have the opportunity to participate by speaking directly to the judge. If resolution appears likely parties are encouraged to resolve issues themselves at the Preliminary Hearing. If not, the judge can make orders, such as Interim Orders, Final Orders, or directions for a Final Hearing. A Final Hearing is scheduled within two months from the date of the Preliminary Hearing, in the event issues are not resolved at the Preliminary Hearing. This means that a case should be fully dealt with within three months (90 days) of going to the PHP.

⁸ “Parenting Hearings Programme (Less Adversarial Children’s Hearings)” (September 2006), “Parenting Hearings Programme: The new process and the role of lawyers and Lawyers for the Child” (October 2006), and Courts Operational Circular (October 2006).

Figure 3.1: Diagram of PHP process



3.2 Track A and Track B cases

Two types of cases were to be considered potentially suitable for the PHP, and this tends to be happening in the pilot courts. In some instances, the PHP judge might make this preliminary identification, and in others it might be the Registrar or Family Court Coordinator. Depending on the judge, the agreement of both parties is usually, but not always, required before a case goes on to PHP.

The first group, Track A, were urgent applications and other high-risk cases, often involving domestic violence, abuse or mental health issues.

The second group, Track B, includes cases not resolved after counselling or mediation. On their review date, or sometimes after mediation, court staff, and in some cases lawyers, suggest these cases might be suitable for PHP. These cases tend to be those where parties have been involved with the Family Court for quite some time, the issues are becoming increasingly complex, and there is an element of intractability.

Each court undertakes a process of determining whether cases will go in to PHP, and these decisions are made by the PHP judge at the Judge's List. Track A cases may go straight to a PHP Preliminary Hearing.

3.3 PHP Judge's List

At the PHP Judge's List, which is a list of cases to be heard by a judge on a given day⁹, suitability of cases for PHP is determined by the PHP judge. Fifteen minutes is usually allocated in the Judge's List for a case to be considered, and parties may or may not attend. In any event lawyers for both parties are present, as well as Lawyer for the Child if appointed. At the PHP Judge's List, lawyers tend to have a greater role than parties, and may also participate in discussions with judges as to the suitability of a case for PHP, or options available for resolving the case.

Some judges and lawyers indicated that a few cases were resolved at the Judge's List, and that these were more likely to be newer, rather than long-standing cases. In addition, cases may not go to a Preliminary Hearing from the Judge's List because parties want to continue with counselling and try to resolve issues themselves. When judges consider cases unsuitable for PHP, these proceed through the usual Family Court process.

3.4 Number of PHP cases

Of the 4554 care of children cases in the six pilot sites which were current (in the court system when the PHP began), or new (started after the introduction of the pilot on 1 November 2006), 319 (7%) were placed on the PHP (as at 4 August 2008).¹⁰ Of this number, 225 (71%) cases were new and 94 (29%) were current.

⁹ <http://www.justice.govt.nz/family/about/glossary.asp#J1>

¹⁰ Cut-off date of 4 August 2008 was required to create the PHP database and undertake analysis.

Table 3.1: Number and percentage of care of children cases in the six pilot sites

Pilot sites	Total cases (PHP and non-PHP)	Number of PHP cases	% of cases put on the PHP
Auckland – eligible docket ¹¹	547	64	12
Tauranga	1048	67	6
Rotorua	815	48	6
Palmerston North	861	36	4
Wellington	511	46	9
Dunedin	772	58	8
Total	4554	319	7

Table 3.2: Number of current and new cases within the PHP

Pilot sites	Total cases (PHP and non-PHP)	Number of PHP cases	% of cases put on the PHP
Auckland – eligible docket	64	14	50
Tauranga	67	22	45
Rotorua	48	10	38
Palmerston North	36	14	22
Wellington	46	14	32
Dunedin	58	20	38
Total	319	94	225

3.5 Hearings for completed ‘Parenting Hearings Programme’ cases

At the time of the data analysis, 235 of the 319 cases (74%) placed on PHP had been completed.

Of the 235 completed PHP cases, 19 percent had neither a Preliminary nor a Final Hearing, and so were presumably resolved in some way prior to the Preliminary Hearing, perhaps at the Judge’s List. Eight in ten cases (80%) had a Preliminary Hearing, and only 15 percent had a Final Hearing.

Table 3.3: Hearings held for completed PHP cases

Hearings held	Number	%
Preliminary Hearing and Final Hearing	33	14
Preliminary Hearing and no Final Hearing	155	66
Final Hearing and no Preliminary Hearing	3 ¹²	1
No Preliminary Hearing and no Final Hearing	44	19
Total completed PHP cases	235	100

Note: Consists of completed cases only

3.6 Preliminary Hearings

If a case is considered suitable for PHP, it should go to a PHP Preliminary Hearing within two weeks. It is intended that the same PHP judge would see the case right through the PHP process. The format of PHP Preliminary Hearings appears to depend much on the personal

¹¹ Only ‘Docket C’ cases in Auckland were eligible for inclusion in the PHP pilot.

¹² This is an unexpected result, and may be due to data entry error.

style and approach of the PHP judge. Some judges, for example, adopted a less adversarial approach than others, according to both judges and lawyers interviewed.

PHP judges generally, however, proceed with the intention of reaching a decision at the Preliminary Hearing, either through an order or with parties' consent. Depending on factors such as the circumstances of the case, time taken for Preliminary Hearings could be as short as 10 minutes or longer than two hours.

The judge may have spoken to the children prior to the Preliminary Hearing, with the Lawyer for Child present. Parties are sworn in at the beginning of the Preliminary Hearing and remain under oath for the duration of the hearing.

Parties are invited to speak directly to the judge and to answer questions during the PHP Preliminary Hearing. The Lawyer for Child may have a prominent role at the Preliminary Hearing, and depending on the circumstances of the case, the lawyers for parties may have much less of a role to play than in a traditional hearing. Some judges and lawyers noted they had experienced PHP hearings which had involved whānau and other support people, and believed PHP's flexibility had enhanced opportunities for these groups to be involved in the process. Psychologists may also be present at the hearing if they have provided a specialist report. Some level of cross-examination may take place at Preliminary Hearings, at which point parties may be required to move to the witness box.

Judges usually take a break in Preliminary Hearings for a short time to allow parties to discuss available options with their lawyers, and to decide how they wish to proceed. They may, for example, need to decide whether an agreement by consent is possible, or they may need to leave it to the judge to make an order. Parties may also use this adjournment to decide whether further counselling may also help them resolve matters.

Most PHP cases are resolved at the Preliminary Hearing. Interviews suggested that interim orders might be common outcomes if insufficient information is available for final orders, or if parties require a little more time to resolve issues or attend counselling. In these situations, psychologist reports might be requested and matters then go to a Final PHP Hearing.

3.6.1 Parents' views on Preliminary Hearings

On the whole, parents appeared to view their experience of the Preliminary Hearing positively. These are some examples of their comments:

[Judge] was really nice and I came out of there quite happy ... she listened to what you had to say. She had things to say too. (Parent)

I just think its great the way the judge gets stuck in and asks questions ... unravels things really really quickly ... rather than lawyers going at it for a couple of days... (Parent)

A number mentioned it was hard speaking in front of the other party, and two commented:

...I was sworn up from where I was sitting ... which meant I didn't really have to look at [partner] which made a huge difference for me. (Parent)

I wasn't very confident and comfortable initially ... I felt quite threatened by my ex-partner ... (Parent)

Other parents described less positive experiences, and one said:

I didn't feel my lawyer prepped me ... I sort of got tongue-tied...my lawyer said she felt like kicking me under the table ... the judge was quite challenging too and quite confronting ... it was just a horrible process really. (Parent)

3.7 Final Hearings

If matters are not resolved at the Preliminary Hearing, a Final Hearing is scheduled within two months.

A small proportion of cases that have been to a Preliminary Hearing proceed to a Final Hearing, and judges and lawyers indicated during the interviews that these tended to be cases which had become protracted, when a psychologist or social worker report had been received and this evidence needed to be heard, or when parties were not happy with the outcome of the Preliminary Hearing. Relocation cases¹³ were also suggested as being more likely to go to a Final Hearing.

The judge who presides over the PHP Final Hearing has been involved in the Preliminary Hearing, and is therefore familiar with the detail of the case. Depending on the judge, PHP Final Hearings can be different in a number of respects to a traditional court hearing. Judges and lawyers interviewed, for example, indicated that Final Hearings tended to be shorter because the judge has limited the issues and evidence to be heard. While the PHP Final Hearing tended to follow a more adversarial process than the Preliminary Hearing, they were less so than a traditional court hearing. Lawyers and Lawyers for Child speak on behalf of parties and children, and cross-examination usually occurs. Psychologists or social workers, if they have provided reports, may also be asked to attend the Final Hearing.

If parties have reached agreement, judges may make orders straight away at the PHP Final Hearing. In other situations, judges may reserve their decisions to a later date, usually within two or three weeks.

3.8 Court-ordered services

3.8.1 Lawyer for Child

Virtually all (95%) of the PHP cases had a Lawyer for Child appointed.

¹³ When the custodial guardian of a child changes his or her place of residence, along with that of the child, and another guardian opposes the relocation.

A higher proportion of PHP cases with a Notice of Defence had a Lawyer for Child appointed (96%) than did non-PHP cases in the pilot sites with a Notice of Defence (74%).¹⁴

3.8.2 Psychologist reports¹⁵

Two psychologists, who commented on having attended a PHP hearing, found the experience very positive, and appreciated the opportunity to more actively participate in the process. By being seated in the room and present for the whole hearing, they thought this enabled the court to make better use of their experience. Such participation did not appear to be widespread, and would seem to depend on the circumstances of the case.

Of the lawyers who responded to the survey, only 42 percent indicated that PHP was effective in ensuring that specialist psychological reports are requested when appropriate. Thirty-eight percent believed PHP was not effective in this regard, and 18 percent did not know.

Forty-three percent thought PHP and non-PHP were about the same in ensuring that psychological reports are requested when appropriate, 21 percent that PHP was more effective, and 15 percent that PHP is less effective than non-PHP.

3.8.3 Child Youth and Family social worker reports¹⁶

Most CYF social workers interviewed believed PHP briefs were narrower and more focussed. They considered this helpful because they knew exactly what they had to report on, and it was also easier to provide this type of report within the timeframes required given the number of reports requested from them.

Forty-five percent of lawyers who responded to the survey believed that PHP was effective in ensuring social worker reports are requested when appropriate. Thirty-five percent believed PHP was not effective in this regard and 19 percent did not know.

When asked to compare PHP and non-PHP, 44 percent thought that PHP and non-PHP were about the same in ensuring that social work reports are requested when appropriate, 23 percent that PHP was more effective, and 12 percent that PHP is less effective than non-PHP.

3.9 Changes in PHP after pilot started

The overall view expressed during the interviews was that the PHP process has changed since it was first implemented. In some respects the process has changed due to the increasing familiarity of judges, lawyers and court staff with the PHP process, and could be quite judge-specific. For example, a small number of judges indicated that they now spend

¹⁴ When comparing proportions of Lawyer for Child appointments for PHP and non-PHP cases, it is more relevant to compare only those where a Notice of Defence was filed, rather than compare all PHP and non-PHP cases.

¹⁵ See 'Timing' section for further findings relating to psychologists' reports.

¹⁶ See 'Timing' section for further findings relating to Child Youth and Family social worker reports.

more time at Preliminary Hearings putting parties at ease, and ensuring they have the opportunity to contribute to proceedings.

Changes of an administrative nature included those made to Auckland Family Court's docket system, such as backing up cases to fill timeslots when cases were resolved just before the hearing, or on the hearing date, and scheduling one Preliminary Hearing in the morning and another in the afternoon, rather than having three Preliminary Hearings per day. In other courts, Preliminary Hearings were allocated three hours, when they had been two hours previously.

Other, perhaps more substantive, changes related to timeframes and an overall lengthening of PHP timeframes was also noted. For example, increasing delays were noted in relation to obtaining psychologist reports, although this appeared to depend on the area as some lawyers noted these were becoming easier to get.

Two slightly different aspects of change were also mentioned. One lawyer commented that while PHP was very responsive when it was first implemented, it was now more like mainstream mediation as increasing numbers of cases are put on PHP. Another change reported in one site was a tendency over time for more lawyers seeking approval for their cases to be referred to PHP because of its fast track process.

3.10 Judicial resources and case scheduling

One of the PHP's objectives is to provide a quicker response than that in the traditional court system. Achieving this faster response is largely dependent on the extent to which the PHP initiative is supported by adequate judicial resources, court time and courtrooms. When these are not available, court staff, particularly those in the larger courts, experienced considerable case scheduling difficulties. The extent to which a Preliminary Hearing could, for example, be scheduled within two weeks was likely to be problematic if PHP judges or courtrooms were not available.

Although not factors which impact solely on PHP, insufficient judicial resources, case scheduling difficulties, and court staff turnover were mentioned during the interviews by some judges, court staff and lawyers as challenges to achieving PHP's shorter timeframes. PHP's tight timeframes, for example, appear to have presented some court staff with considerable case scheduling difficulties, and one considered PHP to be very 'resource intensive'.

3.11 PHP's impact on other cases

One issue raised in the initial scoping phase was the extent to which PHP may have a negative impact on non-PHP cases in the court. There is diverse opinion about this issue, and it varies by court, and by role.

When interviewed, lawyers were more likely than others to think other cases were being delayed.

I am concerned that there are cases that are not getting heard as quickly as they should be because they are not in the PHP. (Lawyer)

There is a bit of a sense of unfairness that 'well you have been accepted into PHP so you are going to get a hearing more quickly than in my case, which has deemed not to be suitable for PHP' ... I think there is a perception, particularly from lawyers who don't do PHP work or haven't done any as yet, that their cases are getting bumped as a result. (Lawyer)

Some court staff held similar views, as shown by these comments.

Property matters because they don't have care and protection issues they are ones that actually really get to the backburners in getting hearing time. (Court staff member)

I do get the impression that other things tend to be neglected. (Court staff member)

Everything except Care of Children, which is under PHP, gets pushed to one side because we haven't had judges available ... (Court staff member)

Some court staff had noticed a change over the time the pilot has been running, with initial delays to other cases but then an overall reduction in delay. There was also comment from both court staff and some judges that other factors, such as turnover in staff and an increase in judicial sitting time, had a greater impact on case delay.

One judge expressed the opinion that the PHP process has both a positive and negative impact on non-PHP cases. The positive side is the belief that the PHP system should cut down on the number of hearings that are required and so it should free up more time. The negative side is that other cases have to take a 'bit of a back seat' in order for the PHP cases to meet the PHP timeframes as time is taken out of usual court time for the PHP cases.

A further feature of PHP which might be having an impact on other cases was mentioned by one court staff member:

judges have become more decisive because of the PHP ... carrying over methods they use in PHP into other hearings ... become a lot more forceful ... has had positive impact'. (Court staff member)

This summary, together with stakeholder views and other evaluation findings, describes how the PHP is operating in broad terms, bearing in mind the variability which appears to exist across the six sites.

4 Suitability of cases for PHP

Two types of Care of Children Act 2004 cases were to be considered suitable for PHP, and would benefit from ‘early intervention’ as offered by PHP. As mentioned, these were ‘urgent applications’ and those where issues had not been resolved through conciliation or mediation. By including questions about case suitability in the interview schedule and in the lawyers’ Internet survey, the evaluation sought to identify stakeholders’ views on the ‘suitability’ or ‘non suitability’ of cases going into PHP.

4.1 Cases most suitable

Types of cases considered to be generally most suitable for PHP were those where parties were willing to resolve matters, when issues had not become too entrenched, or where cases involved narrow issues.

...when you get two people who despite their hurt are clearly wanting to focus on problems in a realistic practical problem-solving way, then no problem really is too difficult because you can rely on them to be constructive. (Judge)

...narrower issue, the proceedings have just been filed ... get them into court quickly ... it stops the ante ... especially for new cases... (Judge)

...just at a stage where are starting to disagree ... get them into PHP ... don't let it become a massive big argument. (Lawyer)

...where things have just fallen over, where there is an amount of goodwill anyway but they just haven't able to do it on their own. (Lawyer)

Opinions about suitability were mixed for some case types. For example, some judges and lawyers supported cases involving domestic violence going on to the PHP while others did not.¹⁷ There were also differing views about the suitability of relocation cases, and the degree of relocation appeared to be a factor. For example, relocation within New Zealand appeared to be considered by some interviewed judges and lawyers as more appropriate for PHP than relocation beyond New Zealand.

Eighty-two percent of lawyers who responded to the survey indicated that suitable cases were being included in PHP. A quarter (25%) stated that suitable cases were ‘definitely’ being referred to PHP at the court and 57% stated they ‘probably’ were.

¹⁷ Further findings about the extent to which cases involving domestic violence were considered suitable for the PHP are presented in Chapter 6.

Types of cases considered suitable for PHP by lawyers who responded to the survey included those which were relatively simple and straightforward (92%), ones which were urgent (81%), those not settled following conciliation (80%), those involving allegations of less serious or 'minor' family violence (66%), and long term intractable cases (59%). Fifty-eight percent believed that relocations (within the same NZ island) were also suitable for PHP.

4.2 Cases least suitable

Cases least suitable as reported in the interviews included those involving allegations of sexual abuse of children, significant safety issues, violence, significant and complex issues to be considered, and cases requiring many witnesses and lengthy hearings. In addition, cases relating to s60 Care of Children Act 2004, particularly those involving domestic violence, drug use, as well as those relating to discharge of Child Youth and Family orders, were considered unsuitable for PHP.

Least suitable cases, according to the lawyers' survey, were those where there were allegations of child sexual abuse (only 9% considered these suitable), where one or both parties have significant mental health issues (18%), where there were allegations of child physical abuse (20%), where there was child psychological abuse (25%), and in care and protection cases where Child, Youth and Family is a party to the proceedings (25%).

4.2.1 Removal of unsuitable cases from PHP

One-third of lawyers had been involved in a PHP case they considered unsuitable for PHP, but for most this only applied to one or two cases. These were considered unsuitable because of concerns about natural justice, cases being too complex, and because domestic violence or sexual abuse issues had not been dealt with first. Relocation concerns, timing too rushed, cultural issues, safety concerns, need for specialist input, mental illness, and drug use were other reasons given by lawyers as to why they believed particular cases were not suitable for PHP.

A little over one-third of lawyers who had been involved in cases they considered not suitable for PHP, had attempted to have them removed from PHP or not entered into the programme. The survey also suggested the small number who had attempted this had experienced some difficulty in having these cases removed.

5 PHP and domestic violence

The extent to which cases involving domestic violence should be included in PHP was the subject of considerable discussion during interviews, and questions about this were also included in the lawyers' survey.

5.1 Suitability of domestic violence cases for PHP

Many judges, lawyers and court staff noted that Domestic Violence Act 1995 and s60 Care of Children Act 2004 matters followed a different timeframe to PHP. When domestic violence is alleged to have occurred, the court is required to determine whether, for example, a protection order will be granted, or make a finding of fact in relation to the safety of the child, before such cases can go on to PHP. There appeared to be a general acknowledgement by judges and lawyers that the majority of domestic violence issues will be dealt with at a s60 hearing, and then if considered suitable for PHP at the Judge's List, the case will go to a PHP Preliminary Hearing as soon as possible. Lawyers and court staff noted that the process can become more complicated if criminal court matters are pending.

Several judges reported they were willing to deal with the domestic violence issues quickly at one hearing, and then the two-hour PHP Preliminary Hearing would immediately follow. This, however, depended on the circumstances of a case, particularly where the violence was thought to be 'less serious' and did not involve children, and issues appeared to be reasonably straightforward. In some courts, parties and their lawyers would need to consent to this, and judges ensured lawyers were aware that they would have to be prepared to deal with both matters on the one day.

If significant violence is alleged to have taken place, then a separate s60 hearing takes place, and at this point the case may come out of PHP, or be suspended from the programme.

Sixty-six percent of lawyers surveyed believed cases involving allegations of less serious or 'minor' domestic violence were suitable for PHP. When asked, however, about suitability of cases involving serious domestic violence going to PHP, 44 percent believed they were not at all suitable particularly where there **have been** applications for protection orders (30% suitable, 23% not suitable).

For cases where serious domestic violence was alleged but there have **not** been protection order applications, a third of lawyers considered these were suitable for PHP, a third 'not that suitable', and 31% 'not at all suitable'.

About a fifth (19%) of all care of children cases, across all pilot sites, had a concurrent domestic violence case. Across all sites, over a fifth (22%) of PHP cases had a concurrent domestic violence case. Dunedin had the highest proportion (31%), followed by Rotorua (29%), Auckland (23%), Palmerston North (22%), and Tauranga (19%). The proportion of PHP cases that had a concurrent domestic violence case was substantially lower in Wellington (7%). Only 8 percent of cases with a concurrent domestic violence case were placed on the PHP across all pilot courts.

5.2 Faster process for domestic violence

The advantages of a faster process for domestic violence matters were mentioned by a number of judges, lawyers and court staff. These included the benefits for children of dealing with matters quickly, so that there are fewer situations where children do not see one of their parents for long periods of time. One judge noted that although clearly dependent on circumstances, it is better to resolve issues quickly in the best interests of the child.

The disadvantages of a faster process mentioned by judges and lawyers included the danger of wrong decisions being made because information was not available at the time of PHP Preliminary Hearing. One judge noted that dealing with these issues too quickly created additional concerns for women who might have to sit in the same room as a perpetrator perhaps only three weeks after the domestic violence hearing. Another judge also acknowledged that a faster timeframe might be counter-productive in some situations and that it would be better if relationships had time to heal. A community sector representative suggested the PHP's faster process may be placing pressure on parties to compromise or reach agreement, in spite of safety concerns.

At least one lawyer interviewed considered the PHP timeframe too tight for dealing with domestic violence matters. A longer timeframe was considered preferable by some lawyers in the best interests of the children, so that more thought could be given to whether psychologist reports and additional evidence might be required.

One lawyer also noted that, from the client's perspective, the process may simply have reduced from six months to two or three, and they considered that was still too long.

5.3 Safety

Most parents appeared to have felt safe during the PHP hearing when they were asked about this during the interview. Of those who did not feel safe, one woman reported she felt unsafe when the judge left the room, another felt unsafe and intimidated being in the same room as her ex-partner during the hearing, and a third felt unsafe because the judge, someone she did not know, was making decisions.

Some judges and lawyers were obviously aware some women might be uncomfortable speaking in front of the person who had been violent towards her, and in these situations, invited lawyers to speak on her behalf.

6 Timing

6.1 Introduction

One of the key features of the Parenting Hearings Programme is that cases are supposed to be dealt with faster than in the usual court system. By providing faster resolution of cases, the process is intended to significantly reduce the damage that lengthy court battles can do to co-parenting and parent–child relationships and therefore produce better results for children.

Once a judge has decided to enter a case on to the PHP it is directed to a two-hour Preliminary Hearing which is to be held within 14 days. If the Preliminary Hearing does not resolve all issues there is a second hearing known as the Final Hearing. This Final Hearing is required within two months from the date of the Preliminary Hearing. This means that a case should be fully dealt with within three months (90 days) of going to the PHP.

The evaluation used CMS data to measure the timeframes of the PHP cases. It also sought views from stakeholders about perceived advantages and disadvantages of PHP’s faster process.

6.2 CMS data

6.2.1 Preliminary Hearings

The analysis of CMS data showed that only 19 percent of the PHP cases that had a Preliminary Hearing (n=252), had the hearing within two weeks of entry on to the PHP. A higher proportion of current cases (24%) had the Preliminary Hearing within two weeks than did new cases (16%).

Only approximately half the cases that had a Preliminary Hearing had this hearing within four weeks of entry on to the PHP. Almost three-quarters (72%) had a Preliminary Hearing within six weeks. Thus it took longer than six weeks from entry on to the PHP for 28 percent of these cases to have a Preliminary Hearing.

Table 6.1: Length of time between entry on to the PHP and Preliminary Hearing

	Total		Current		New	
	Cumulative Count	Cumulative %	Cumulative Count	Cumulative %	Cumulative Count	Cumulative %
All pilot courts						
Within two weeks	47	19	20	24	27	16
Within four weeks	123	49	45	54	78	46
Within six weeks	182	72	63	76	119	70
Number of cases that had a Preliminary Hearing	252		83		169	

Note: Consists of only cases (both completed and not completed) which had a Preliminary Hearing.

A higher proportion of cases in the Wellington court (59%) had their Preliminary Hearing within two weeks of entry on to the PHP. This finding may reflect a difference in process at this court, as well as possibly a faster process. Please note when considering the table below

that some courts have had very small numbers of PHP cases and therefore the percentages should be viewed with some caution.

Table 6.2: Length of time between entry on to the PHP and Preliminary Hearing, by court

Pilot sites	Within two weeks		Within four weeks		Number of cases that had a Preliminary Hearing Count
	Count	%	Count	%	
Auckland – eligible docket	7	11	34	54	63
Tauranga	8	16	23	45	51
Rotorua	3	9	12	36	33
Palmerston North	1	4	6	24	25
Wellington	24	59	33	80	41
Dunedin	4	10	15	38	39
All pilot sites	47	19	123	49	252

6.2.2 Final Hearings

Only 36 cases had a Final Hearing. Around a quarter of these cases had the Final Hearing within eight weeks of the Preliminary Hearing and a half had the Final Hearing within ten weeks of the Preliminary Hearing.

6.2.3 Case completion

Table 6.3 presents findings for the completed PHP cases, and those not completed which have been active for 90 days or more (91% of the PHP cases were completed or still active after 90 days). Of these cases, half were completed within 90 days and half were not.

A higher proportion of current cases (59%) were completed within 90 days, than new cases (46%).

Table 6.3: Proportion of PHP cases completed within 90 day timeframe

	Total		Current		New	
	Count	%	Count	%	Count	%
All pilot courts						
Completed within 90 days	145	50	52	59	93	46
NOT completed within 90 days	146	50	36	41	110	54
Total cases	291	100	88	100	203	100

Note: Cases not completed and which have been active for less than 90 days have been excluded from this analysis.

A higher proportion of cases were completed within 90 days in Tauranga (76%), compared to Wellington (49%), Dunedin (44%), Rotorua (43%), Auckland (42%), and Palmerston North (39%). This variability is not due to a difference in the proportion of current and new cases in the courts.

6.3 Stakeholder views on timing of the PHP

The faster process of PHP was the feature of the process viewed most positively and seen as a key advantage by many judges, lawyers, parents and court staff. There was

considerable support from all groups for a faster process, and some acknowledged that a fast resolution was desirable for the children involved in the cases.

I think speed overall is of the essence in involving, especially care arrangements regarding children ... the danger is the longer you let it go the harder it is to get parties to agree ... Children's welfare is not governed by the emotional adjustments of the parents because our law says children's interest are first and paramount and therefore that is how we approach them. (Judge)

Getting the cases early is really important for this custody and access type stuff, you know, parenting orders ... because people put themselves in the positions and they all tend to positional bargain, and that often doesn't work because then you have to get into face saving ... the benefit of the system is to identify the issues quickly and to be able to get the parties to work on a more values based negotiation because the best solution really is negotiation if you can get there. (Lawyer)

I think [the parties] are fairly satisfied. A lot more than going down the other route ... If they feel that they are hanging around forever and a day, they feel really quite aggrieved. But I think if you can get them in as quickly and get some kind of solution, even if it is just temporary, that is just great ... it provides some kind of certainty for them and the kids as well. (Lawyer)

[PHP] is a really good way to deal quickly with cases involving children's welfare. Because the biggest problem in a lot of care of children cases is delay, and some of the intractable cases that you go back and you plot the history there are numerous delays. It is systemic delays. (Judge)

...once that whole sort of court thing is out of the way, you can sort of get on with things and you can sort of get a bit of a communication going. (Parent)

Specifically, early intervention by a judge was reported as being a significant advantage. This may not necessarily mean an early hearing, but rather early engagement of the parties with the court system and specifically the judges.

...the fact that you get before a judge quickly is actually really important because they feel like the system is working ... At least with this they see the judge, they have a say, they go away again. It may never have a Final Hearing but at least they are feeling they have engaged with the Family Court, rather than just with the lawyer and paperwork and things. (Lawyer)

Well the key advantage, as I see it, is exactly what it was put there for. Early contact with a judge for the parents. It gives them sometimes a rude awakening as to the fact that they have to focus on what is put in place for their children. (Judge)

When asked whether a shorter timeframe was always the best approach for cases, one judge identified that early intervention does not necessarily also mean an early hearing or finding on the case.

If ... I see that the nerves are still too raw, I will suggest counselling. ... But I still don't mind them getting it in front of you early to identify that ... under the old system a judge wouldn't get near it for six months. By then all those opportunities to focus people on the real issues had gone. So I think the timelines are good because they allow us to say to people well do you really want these things happening? I think the early intervention is fantastic. (Judge)

While the principle of a faster process was clearly considered by many to be advantageous, a few did comment that in some cases time can aid in the resolution of the issues. Those who spoke of cases benefiting from a slower process admitted that it was hard to identify these cases. And a lawyer admitted that it can depend on which party is their client as to whether a faster process is an advantage or disadvantage.

Sometimes people just need time ... You might act for a party who you think this case needs to be heard really quickly, this person has emotionally and intellectually kind of moved on ... but the other person is still ... so wrapped up in their own emotional issues ... speed wouldn't do them any favours, it wouldn't actually put them in a good light. So it would depend which party you are acting for as to what you think. ... Speed, both an advantage and a disadvantage. (Lawyer)

Some interviewed judges, lawyers, and court staff were concerned the PHP was not achieving its recommended timeframes. While judges and court staff commented that they were doing their best to try to achieve the timeframe, a few questioned whether the timeframes were realistic or possible. Reasons include delays with receiving reports (covered elsewhere in this report), and insufficient judicial resources and courtrooms.

[The timeframe] should be able to be achieved but certainly in this court it is not. ... I think we are probably looking at six weeks, at least [for the Preliminary Hearing]. (Judge)

I don't think we have been given the judicial resource to actually adequately cover it. ... what we were promised was we would have our allocation and then we would have the PHP allocation on top of that, a day and a half a week. It hasn't worked out like that. (Court staff)

Lawyers who responded to the survey believed that the PHP process is effective at providing a timeframe appropriate for the parents (80% rated it as effective and 81% as more effective than the non-PHP process) and for the children (83% effective and 81% more effective than non-PHP). These are the two highest effectiveness ratings of the 15 aspects they were asked to rate.

A representative from the voluntary sector suggested that the faster PHP process may be placing pressure on parties to compromise or reach agreement, in spite of safety concerns.

One area of concern identified was that the PHP process can pressure people too much to come to an agreement.

The parents interviewed were aware that the PHP was a faster process than the usual court process, and many had been told of the benefit of this approach by their lawyers. Most welcomed the faster resolution and considered this a significant advantage of the PHP process.

I am not sure how long it was. I think it was only a few weeks. I thought it was good, to get it sorted out. No mucking around and waiting and waiting for the court. (Parent)

A few were more hesitant and commented that they would have preferred a slightly slower process that would have enabled some issues concerning their relationship with their ex-partner to have settled down prior to the hearing. Other parents stated a preference for an even faster process.

These findings are supported by the parents' survey, where the majority of parents who had been through the PHP stated the speed was 'about right' and the remainder were split between those who said it was too fast and those who said it was too slow. This is in marked contrast to the parents who had been through the usual court process where the majority stated it was too slow and virtually all other parents stated it was 'about right'.

Those parents (both interviewed and surveyed) who were on the PHP pilot and who had previous (non-PHP) Family Court experience, generally considered the faster PHP process to be preferable.

6.3.1 Benefits of quicker timeframe for children and young people

Parents as well as others interviewed tended to think this quicker timeframe and subsequent participation was very beneficial for young people. One lawyer commented:

...their wishes appear to have a higher weight in the PHP hearing than they would in a longer hearing where there is evidence of school teachers and neighbours and grandparents. (Lawyer)

Eighty-three percent of lawyers' surveyed believed PHP was effective in 'providing a timeframe appropriate for children'. When asked to compare this for PHP and non-PHP, 81 percent of lawyers felt PHP was more effective, although one lawyer noted in the interview that the PHP process is still not that fast for children, even though it might be quicker than the usual court processes.

6.4 Timeframes and timing issues for lawyers

The interviewed lawyers generally considered the PHP timeframe was fast, and generally workable although some were concerned about the short time available for case preparation. Those lawyers who believed a faster process was an advantage for the parties were especially committed to the faster timeframe.

Many lawyers were aware that the set timeframes were in fact not being met, and it is likely that many comments reflect extended timeframes that were achievable.

As counsel I have found it is fine. It is perfectly workable. I think it is really good that it gets things moving quickly, because a lot of the time the parties are very frustrated by how long things take. So I have found it to be really good that we have things moving along a particular timeframe. ... And in terms of getting affidavits and things done in time, there is always enough time to do that. (Lawyer)

Yes [the timeframe] brings its own pressures but sometimes the value of getting something decided before it starts to explode outweighs the more measured approach. (Lawyer)

Over seven in ten of the lawyers who responded to the survey stated they generally have sufficient time to prepare for:

- the Judge's List (78%)
- the Preliminary Hearing (70%)
- the Final Hearing (75% of those who had been involved in a Final Hearing).

6.4.1 Lawyer for the Child

Virtually all (95%) of the PHP cases had a Lawyer for Child appointed. Lawyers who acted as Lawyer for the Child generally considered that acting in this role under the PHP pilot was not significantly different to undertaking non-PHP work. Some commented that the role of Lawyer for the Child generally involves a tight timeframe where the lawyer has to work under pressure. A couple stated that Lawyer for Child work takes priority over other work.

As lawyer for child [preparation for a hearing] is not such an issue as it doesn't require the same prep as for the party. (Lawyer)

...so I have adjusted my workload that if a PHP hearing gets set down, great. Just cancel whatever else I had on the day. (Lawyer)

The Lawyers for the Child who responded to the survey were asked to indicate whether they had enough time to prepare for specific stages in the PHP process in that role. Seven out of ten stated they had enough time to prepare before the Judge's List and eight in ten stated they had enough time before the Preliminary Hearing. Nine out of ten of those who had been involved in a Final Hearing stated they had enough time to prepare for the Final Hearing.

It appears that in comparison to all lawyers (refer to section 6.4), Lawyers for the Child were less likely to consider they had sufficient time to prepare before the Judge's List, but more likely to consider they had sufficient time before the Preliminary and Final Hearings. A direct comparison is not possible as the questions differed, so this finding should be considered to be indicative only.

Some court staff stated that sometimes it was not realistic to expect to appoint a Lawyer for Child and have them report back within the 14 days prior to the Preliminary Hearing. Court staff from other areas commented that there were 'quite a few' Lawyers for Child in their area and thus they did not have problems with timing for Lawyers for Child.

6.5 Timeframes and timing issues for specialist report writers

Reports from CYF social workers and psychologists under ss 132 and 133 Care of Children Act 2004 can be requested under PHP. The evaluation sought to identify any issues relating to the provision of these reports.

If specialist reports are obtained this is generally done between the Preliminary and the Final Hearings, although CYF social work reports may be required at the Preliminary Hearing. In addition, for some of the ongoing PHP cases, there were existing psychologist reports that were dealt with at the Preliminary Hearing.

All of the groups interviewed commented on difficulties with obtaining specialist reports in the relatively tight timeframe of the PHP, particularly if they were broadly focused. It was understood that reports may not be able to be provided in time, and that for cases where a specialist report was ordered, it was possible there would need to be an extension of the timeframe.

A shortage of specialist report writers (both psychologists and CYF social workers) was considered by many to be the main reason for the difficulties in obtaining a report within the PHP timeframe. This was acknowledged by judges, lawyers, court staff and report writers.

Psychologists simply aren't on the ground to be able to do that. So we have to still wait for them to do their reports and that is frustrating the timetable that was put in place. We are getting matters now that are dragging out way over the time limits, because there is a psych report [ordered] and there is no point in going anywhere until we get the psych report. (Judge)

Timeframes between the Preliminary Hearing and the Final Hearing if need be for report writers can be hard. We don't have enough report writers as it is, and the general timeframes are probably about 12 weeks... (Court staff)

In addition to the shortage of report writers, whether or not the information requested by the court was limited was seen to be a significant aspect in delivering a report on time. The PHP Guidelines state that briefs requesting specialist reports should be clear and defined about specific issues. Interviewed judges, lawyers and report writers believed that tightly focussed reports were more likely to be available within the shorter PHP timeframes. Opinions varied as to whether the briefs requesting specialist reports were actually more focussed under the PHP system.

Other factors that report writers mentioned as compounding delays were when parents could not be contacted, were ill, or their address had changed.

One lawyer was concerned that judges were making decisions about children without requesting a psychologist report. A judge reported that because of the problems getting reports, they were resigned to the issue not being resolved at the Preliminary Hearing and that a Final Hearing would be required. In the absence of a report, another judge referred to making interim orders in the Preliminary Hearing, and then having a Final Hearing when reports were available.

One judge who was conscious of the delay in obtaining reports stated “I am hard to persuade to get one” because “you have to compare the benefits of getting the report with the impact of the delay on the family and the children”.

Comment was made that the specified PHP timeframe may be too tight to allow for specialist reports to be undertaken within the timeframe.

Now we have got a real lack of psychologists available in the [] area to take on briefs ... and the quickest timeframe is six weeks. ... So that doesn't quite fit into the PHP model of getting things done quickly. It is not necessarily the PHP programme's fault, but the two things simply don't match up. (Lawyer)

Despite the difficulty in obtaining reports within the set timeframe, there was acknowledgement that even with the delay in the PHP timeframe this was still preferable to the even longer non-PHP process. And there was a belief that report writers, both psychologists and CYF social workers, tried to meet the timeframes.

While it is quite difficult, but it is not unachievable, and it is most certainly in the best interests of the children to work within that timeframe I think. (Report writer)

...from the clients' point of view it must be pretty difficult having to wait such a long time for a hearing and I don't think that is very good service. So I think the two months ... would be desirable from the customers' point of view. It might be a bit tight for the psychologist. (Report writer)

7 The less adversarial nature of the ‘Parenting Hearings Programme’ process

The PHP seeks to provide a less adversarial model than the usual Family Court process. Proponents believe this approach will contribute to more durable outcomes, and reduce damage caused to family relationships by lengthy court proceedings.

Most judges, lawyers and report writers interviewed believed the PHP was generally less adversarial than non-PHP. For some, as the comments below show, this less adversarial approach was believed to be due to a variety of factors, including the process itself, the lack of formality, length of hearing and judge-led approach.

I didn't have to prepare detailed submissions and back it up by case law. All that sort of thing. Because the parties had an opportunity to talk themselves and work things out...
(Lawyer)

Because it is more like a little formal meeting. (Lawyer)

...it is such a truncated process you don't have quite the same level of personal accusations, the bulk of affidavit material that you can end up with in big hearings, and people dragging in six or seven witnesses. (Lawyer)

I think because it is very judge-led. I think that helps because the judges don't allow it to become too adversarial. (Lawyer)

When asked to what extent PHP provided a less adversarial process overall for the parties, 77 percent of lawyers who responded to the survey believed PHP was effective.

Seventy percent of lawyers surveyed believed PHP was more effective than non-PHP in providing a less adversarial process overall for parties (20% thought PHP and non-PHP were ‘about the same’).

Less experienced lawyers (ie, those with up to 10 years practising family law) were more likely than the more experienced lawyers to believe that PHP was effective in providing a less adversarial process overall for the parties. Ninety percent considered it effective, compared to 71 percent of lawyers with more than 10 years’ experience.

Seventy-four percent thought PHP was effective in providing a less adversarial experience at the court hearings. Seventy-five percent of lawyers believed the PHP was more effective than non-PHP in providing a less adversarial experience at the court hearing.

Less experienced lawyers were also more likely to rate the PHP as effective in providing a less adversarial experience at the court hearings (92%) than more experienced lawyers (65%).

7.1 Opportunities for parties to participate in the PHP process

Providing opportunities for all parties, as far as possible, to participate in the PHP process further builds on PHP's less adversarial approach. Such opportunities include allowing parties to communicate directly with the judge, and ensuring self-represented litigants are not disadvantaged by the PHP process. Although not specific to PHP, allowing whānau and support people to attend PHP hearings, and providing interpreters for parties whose first language is not English, further enhance parties' participation in the court process.

7.1.1 Speaking at the PHP Preliminary Hearing

Allowing parties to have their say contributes to a less adversarial approach. Most parents interviewed believed they had the opportunity to have their say in PHP. These are examples of some of the comments from parents.

You are really reliant on how your lawyer preps you for a lot of it. Though I had anxiety ... I would have felt more nervous if I had had to go up and sit somewhere else and be cross-examined by his lawyer and all that. (Parent)

I felt I could say what I wanted ... [the judge] was really nice and made you feel comfortable... (Parent)

It is a lot less intimidating to talk to [judge] directly than to have my ex-husband's lawyer asking me and battering me with questions. (Parent)

Judges, lawyers, report writers, were also asked about the extent to which PHP provided parties with an opportunity to have their say. These people commented:

...they probably like being able to address the judge directly and say what is troubling them or not. (Judge)

She really liked the fact she got to talk to the judge ... the judge made the decision, but ... they were the ones ... talking about things. (Lawyer)

...parties appreciate having a chance to speak. They seem to feel that they have more power over the process ... more involved. (Lawyer)

...where there are high levels of acrimony, people need to feel like they have been heard, but in a controlled kind of way. (Court staff member)

Nearly all lawyers who responded to the survey (91%) agreed it is useful for the parties to be able to speak directly to the judge. Six in ten of the lawyers (61%) 'strongly agreed' that it was useful.

The PHP process is considered by surveyed lawyers to be effective in allowing parties to feel they have had their say. Seventy-six percent believed the PHP was effective in this respect (42% rated it 'very effective'). Sixty-seven percent of lawyers in the survey believed the PHP was 'more effective' than non-PHP in allowing parties to feel they have had their say.

Some parents interviewed, however, felt that the PHP process had not been entirely positive for them. Some believed they had not been given the opportunity to speak, and that the process may not have always been entirely positive. This comment from a lawyer represents a similar view.

...some people felt that the process has just sort of glossed over the past problems, and they haven't felt heard in terms of having to manage a very difficult situation.
(Lawyer)

Lawyers' reduced role at PHP hearings was another concern for some parents, and one lawyer noted that sometimes parties *"felt that we as lawyers weren't really doing our job...we sat there while they did all the talking and we weren't saying much..."*

7.1.2 People who are less articulate

During the interviews judges and lawyers acknowledged less articulate parties may find PHP hearings difficult, given that a key component of the Preliminary Hearings allows for parties to speak directly to the judge. In these situations, judges reported trying to help parties feel more comfortable about participating in the hearing, asking more questions than they might usually, confirming all parties had understood or interpreted the issues correctly, or requesting lawyers' assistance. A number of lawyers indeed acknowledged that judges endeavoured to ensure the PHP process was not a barrier to less articulate people.

...I would let lawyer do much more talking. (Judge)

...in these cases ... asked lawyer to assist. (Judge)

You do help them out a bit ... you try and make them understand ... I will ask questions. (Judge)

...judges have to ... make sure there is fairness ... ours are pretty good at that ... drawing out the person. (Lawyer)

Judges and lawyers also believed that, in these situations, lawyers needed to prepare their clients well, and tell them that they could, for example, refer to a written statement if needed. Lawyers also indicated that on these occasions they tended to speak more on behalf of their clients than might usually be the case at PHP hearings.

...having representations from a lawyer [in these situations] makes a huge difference.
(Lawyer)

...see it as much role to step in and help advocate... (Lawyer)

7.1.3 Parties whose first language is not English

Using interpreters at PHP hearings was considered a little problematic by some judges and lawyers, because of its potential to slow the process down and perhaps remove one of the perceived benefits of the PHP process. On the other hand, others indicated they would have no concerns about this.

7.1.4 Self-represented litigants

PHP's less adversarial process was considered to be more 'user friendly' for self-represented litigants than the traditional court process, according to several judges and lawyers interviewed. Overall, disadvantages usually experienced by self-represented litigants were thought to be considerably reduced by PHP because of the emphasis on parties talking for themselves.

7.2 Firmer control by court

Judges commented in the interviews that, depending on the case, they tended to firmly control PHP proceedings by, for example, limiting issues to be addressed, limiting opportunities for cross-examination, and restricting affidavits or information in affidavits. This approach contributed to PHP's less adversarial nature, and was generally considered positive by all those interviewed, as these comments indicate.

I think if you can be directive ... that is the whole idea of shortening the hearing. You limit what you are actually there about. (Judge)

...it is certainly a good way of cutting out the chaff so that you don't end you up with stuff that is just going to muddy the waters really. (Lawyer)

...the Judge was moving things on ... making decisions that such and such stuff wouldn't be dealt with... (Lawyer)

7.2.1 Limiting issues to be addressed

According to most judges, lawyers, and report writers, limiting issues to be addressed in the PHP hearings allowed the court to focus more closely on relevant issues, helped resolve matters, and assisted in maintaining a child focus.

Seventy-eight percent of lawyers who responded to the survey believed the PHP was effective in appropriately limiting issues to be addressed. When asked to compare this, 78 percent believed the PHP process was 'more effective' than non-PHP. Forty-one percent believed the PHP was 'much more effective' than non-PHP, and 37 percent 'a little more effective'.

Some interviewed lawyers and report writers noted the information required in briefs had also become more focused. An issue for some psychologists when writing reports was the extent to which issues can be focused without potentially compromising their professional thoroughness. Sixty-three percent of Lawyers for Child who responded to the survey believed the briefs they received for PHP cases were no more restricted than those they received for non-PHP cases. Just over a third thought PHP briefs were a little more restricted than non-PHP.

7.2.2 Limiting cross-examination

Limiting cross-examination was generally considered a positive development because, for example, it helped speed up the process, helped maintain the focus on relevant issues, and contributed to parties feeling more at ease in the court. Some lawyers, however, mentioned that limiting or denying cross-examination, raised concerns about natural justice for them.

Seventy-three percent of lawyers who responded to the survey believed that the PHP was 'effective' at appropriately limiting cross-examination (28% 'very effective' and 45% 'quite effective'). Sixty-nine percent responded that the PHP was more effective than non-PHP in appropriately limiting cross-examination.

7.2.3 Limiting affidavits or information in affidavits

Judges, lawyers and report writers mentioned during the interviews that the PHP had contributed to more focused affidavits.

Sixty-two percent of lawyers who responded to the survey believed the PHP pilot was effective in appropriately limiting the information in affidavits. Thirty-three percent, however, believed PHP was not effective in this respect.

Sixty-four percent believed the PHP was more effective than non-PHP in appropriately limiting information in affidavits. A quarter of the lawyers (26%) believed the PHP was 'much more effective' than the usual non-PHP process, and 24 percent considered PHP and non-PHP were 'about the same'.

By limiting issues to be addressed at the hearing, restricting affidavits or information in affidavits, and providing opportunities for parties to have their say, PHP appears to have provided a less adversarial approach to resolving care of children issues in the Family Court. The less adversarial approach was viewed favourably by most evaluation participants.

8 Involvement of children and young people in the PHP

One of the objectives of the PHP is to ‘increase the level of participation in the proceedings by children’.

8.1 Level of participation

While interviewed judges, lawyers, and report writers believed children and young people now tended to participate more in court proceedings, they thought this was probably due to the Care of Children Act 2004, rather than PHP. For example:

...because of the Care of Children Act ... a much greater emphasis now on ascertaining their views... (Judge)

...it is a move generally ... PHP has enhanced and encouraged it. (Judge)

...the Care of Children Act is something to do with it. (Lawyer)

...in terms of the children’s involvement in the psych assessment ... children are more involved ... because of the Care of Children Act ... (Report writer)

In some respects, these views are reflected in responses to the lawyers’ survey. When lawyers were asked about PHP’s effectiveness in encouraging children’s participation, 37 percent believed PHP was effective and 42 percent not effective. Seventeen percent did not know how effective the PHP process is at encouraging children’s participation.

Asked to compare the effectiveness of PHP and non-PHP in encouraging children’s participation, 45 percent of lawyers reported this was ‘about the same’ for the two processes. A quarter (25%) of the lawyers stated PHP was more effective, and 11 percent that it was less effective.

Of the 51 Lawyers for Child who responded to the survey, 61 percent believed there was no difference between PHP and non-PHP in the extent to which children and young people participate in the process. The remainder were polarised in their opinion: 20 percent of them stated that children participate more in the PHP process and 20 percent stated they participate less in the PHP process.

8.2 Views on participation

When parents were asked about the participation of their children in the PHP process their views were mixed. In situations when the judge did not speak to the children, some parents believed this may have been helpful. One parent, whose children had spoken to the judge, commented ‘...they said [the judge] was quite funny ... I don’t think talking to the judge was overly stressful on the children...’

The extent to which children and young people are willing, or able, to participate in the PHP process differs. One report writer noted: *'In my experience most children do not want to see the judge'*. (Psychologist)

Another, commenting on a specific case, noted that it *'...was quite good ... the manner in which [the judge] sought the views of children according to their age and stage'*. (CYF social worker)

Inviting children to participate in any court process was not, however, always beneficial according to some people interviewed. For example,

...children's participation in any court process is quite fraught ... not always sure how helpful it is for the children and how much good information the judge gets from those encounters... (Lawyer)

...needs to be reigned back in because I think it is quite destructive for kids ... kids shouldn't be dragged into it... (Lawyer)

One report writer remarked that *'I end up seeing them when they are completely confused about it all ... whether the judge is the person to do that or not is what I query'*. (CYF social worker)

Although opinions differed, the overall view was that most people saw the benefits in children and young people participating in the PHP process, and appreciated that PHP provided these opportunities.

9 Outcomes

The PHP seeks to provide a better response to cases that have the potential to become intractable, and aims to encourage parties to focus on future parenting proposals. It is important that while the PHP process is fast, it is also fair and just and the outcomes are durable. The evaluation included questions about these issues and examined cases returning to court to assess the extent to which the PHP was achieving these objectives.

9.1 Outcome fair for parties and children

All interviewed judges and most of the interviewed lawyers and report writers stated that the outcomes achieved under PHP were fair or the best that could be achieved given the circumstances of the case.

Every one has been the right one ... Even if it has gone against my client. They have always made the right decision. (Lawyer)

The fact that the parties have been able to have their say and have had a lot of input into the outcome was considered by judges and lawyers to be an important aspect in the parties thinking the outcome was fair.

Yes, they're fair because they can speak, and they've been heard. (Lawyer)

One court staff member commented about feedback they had received from lawyers on this.

...overall their clients were happier with the outcomes, even if they didn't agree with the outcomes because they had had their chance to say everything they needed to say. (Court staff)

A psychologist report writer commented that the judges leading the questioning can be important in the outcome.

I think this was a better outcome because the parties got the opportunity to talk to the judge directly, not being just cross-examined, by the judge leading the questioning. I think things were revealed in that hearing... (Report writer)

Some judges and lawyers commented that the outcomes were the same as would have been achieved through the usual non-PHP system, but the fact that they were made more quickly meant that it was a better outcome overall for the parties.

The same outcome would have been achieved under the old system but nowhere near as quickly. (Lawyer)

A few interviewed lawyers did refer to specific cases where there had been an issue with the outcome. One lawyer commented there was 'one glaring exception' that did not result in the best outcome. Another believed that one particular case would have benefited by a longer process.

While many cases settle by consent, two lawyers raised the possibility that parties could feel “bullied” into agreeing because of the timeframe of the PHP.

Care is needed to ensure parties are not bullied into consent. There is really potential for this. (Lawyer)

So I think from the clients’ perspective they do work, as long as they don’t feel bulldozed or pushed into an agreement. (Lawyer)

A few lawyers indicated that sometimes when there is a decision or agreement not all the issues have been dealt with. This might mean that a time is set for another hearing outside the PHP or that the case might need to come back to court in the future.

I think probably each time there has been a result it has been something which has been agreed and the judge has then left other issues, put aside for another day. (Lawyer)

Sometimes you will end up with implementation issues which haven’t been properly dealt with in the decision ... you sometimes just get a broad framework out of a PHP hearing and it can be quite tricky. (Lawyer)

Almost three-quarters of the lawyers who responded to the survey rated the PHP process as being effective in resulting in fair and appropriate outcomes. However, the PHP process was rated by many lawyers as being about the same as the usual non-PHP process in achieving this (42%). Of the remainder, more lawyers (35%) rated the PHP as more effective than non-PHP in this respect, than rated the PHP as less effective (14%) than non-PHP.

When parents were asked about the outcome of their case and whether it was fair or the best in the circumstances, many of them described the order or decision rather than commenting on its quality. Most of those who did comment on the outcome were reasonably happy. For example:

The outcome has been good. We have both agreed that it is a positive step. (Parent)

[Judge] did what we wanted. He listened to what the children had to say and made a decision based on the information he had. It was well thought out. He obviously researched it. (Parent)

9.2 Satisfaction with PHP outcomes

Not surprisingly, parents who perceived they had received a favourable outcome were more positive about the PHP process delivering a satisfactory outcome. There appeared to be a reasonable level of satisfaction with the outcome, both from interviews and the survey, in that more parents were satisfied than dissatisfied. For example:

It did bring a final conclusion which we were quite happy about. We haven’t had any problems since. (Parent)

The interviewed lawyers believed that their clients were reasonably satisfied with the PHP outcomes, or that most of their clients were. Some of the interviewed lawyers mentioned that the faster timeframe of PHP meant that people were happier with the result.

Four in ten of the surveyed lawyers believed that parties are generally more satisfied with the outcome from the PHP process than with the outcome from the non-PHP court process. Just over one in ten disagreed with this statement. The remainder neither agreed nor disagreed (three in ten) or did not rate the statement (almost two in ten).

One report writer commented, as had some judges and lawyers, that what is important is that the outcome is best for the children involved in the case.

So I think that was an example of where she wasn't satisfied, but from the child's point of view, and I think that is the important thing, it was by far the better outcome. (Report writer)

A small number of the interviewed parents were initially satisfied with the final outcome but felt that the outcome was then changed. One believed that the Lawyer for Child and her ex-partner changed the arrangement the following year. Another considered that what was agreed in court was not the same as the order made. A third parent commented, *"Well we left the room and the next day my ex-husband's lawyer started renegotiating the goal post with the Counsel for the Child"*. This parent stated they received a sealed final order that had been made by another judge and believed it was not what was agreed at the PHP hearing.

9.3 Durability of PHP outcomes

The PHP aims to provide a better response to cases that have the potential to become intractable. The evaluation took this to mean that PHP cases are resolved and stay resolved. The durability of the PHP outcomes was measured through CMS data and perceptions of durability were discussed in the interviews and surveys.

9.3.1 CMS analysis

An analysis was undertaken of CMS data on cases completed before February 2008, which gave a period of at least six months (ie, up to August 2008) for a case to return to court after disposal.

As shown in Table 9.1 it is interesting to note that a higher proportion of completed cases returned in pilot site courts (16%) over this time period, than returned in non-pilot court sites (13%). An even higher proportion of the PHP cases returned (20%). Most of these returned only once, with only a small proportion returning twice. This may reflect the type of cases placed on the PHP, but would need to be closely monitored if the PHP was to be extended throughout New Zealand. It also appears more current cases (21%, n=15) than new (18%, n=20) returned to court, but these findings should be treated with caution as the numbers are small.

Table 9.1: Number of completed cases that returned to court before August 2008

	Count	%
All cases	1742	14
Non-pilot sites	1397	13
Pilot sites (PHP and non-PHP)	345	16
PHP	35	20

Of those PHP cases that returned to court, over half applied for a s56 Variation of Parenting/Other Order when they returned. In many cases, other applications were also made at the same time as the s56 Variation application. Please note that the numbers of cases being considered is small (only 35) and thus this finding should be treated with some caution.

The picture is very similar when considering only cases where a Notice of Defence was filed. A high proportion (80%) of PHP cases had a Notice of Defence filed (compared to 49% of all cases). Comparing only cases where a Notice of Defence was filed is therefore a better comparison than comparing all cases.

Table 9.2: Number of completed cases with a Notice of Defence filed that returned to court before August 2008

	Count	%
All cases	843	16
Non-pilot sites	666	16
Pilot sites (PHP and non-PHP)	177	18
PHP	28	21

As with the previous analysis of all completed cases, a higher proportion of completed cases with a Notice of Defence returned in pilot site courts (18%) over this time period, than in non-pilot court sites (16%). An even higher proportion of the PHP cases with a Notice of Defence filed returned (21%).

9.3.2 Stakeholder views on the durability of PHP outcomes

The stakeholder groups were split in their opinion as to whether or not PHP outcomes would be longer lasting than non-PHP case outcomes. There was comment that it was too soon to be able to judge this, or that the stakeholder had not been involved in sufficient cases to offer an opinion. Other stakeholders commented that they did not expect there to be much difference in the durability of the outcomes from the two processes.

The main reasons offered for believing that PHP outcomes would be more durable are because the parents are more involved and have input into the decision and also that they had spoken to a judge. The main reasons offered for believing that PHP outcomes would be less durable are because decisions may be hurried and not detailed enough and that the issues covered had been too restricted.

The views from the different groups regarding the durability of PHP outcomes are now detailed.

The interviewed judges were split in their opinion as to whether PHP outcomes would last longer than outcomes under the usual non-PHP system. The largest group stated they were not in a position to comment and would wait to see the statistics. The remainder were fairly evenly split between those who considered the PHP outcomes would last longer and those who did not. The judges who considered they would last longer thought this would be because of the parents' involvement in the process.

I am hopeful because of that very fact, that they have been involved more in the process. I think that they perhaps go away, even if they haven't got their result they wanted. They go away knowing that they have got to give it their best shot. (Judge)

Three judges commented that PHP outcomes would probably not last longer than non-PHP outcomes. One stated that there would be no difference between the durability of the two processes. The other two judges were concerned that they were starting to become aware of a few PHP cases coming back into court. In relation to this, one judge commented that it is important to ensure that the parents do not feel they had a decision "foist on them". The other judge commented that returning cases would be reason to reconsider the approach taken in the hearing.

I pulled out the files ... I was concerned at the number that seemed to come back ... there was just a little concern there that made me think, 'well okay what didn't we do in the hearing that we should have done?' But ... I think you are constantly thinking about your approach... (Judge)

Interviewed lawyers were also split in their opinion as to whether PHP outcomes would be more lasting than outcomes under the usual non-PHP system. Some stated it was too soon to tell, and others believed that it would be no different to the non-PHP system. More thought that they would be longer lasting, than believed the opposite. The reasons given for a longer lasting outcome were that the parents had input into the decision and that they had spoken directly to a judge. The reason given for the possibility of reduced durability is that decisions may be hurried and not detailed enough. For example:

I have had a couple ... where I guess the decision was a bit hurried. There wasn't enough thought or input into the actual contact provisions, so they have broken down already because interpretation of what the judge said. (Lawyer)

This split of opinion among lawyers is reflected in the survey results. Half of the surveyed lawyers stated that PHP is effective in achieving durable outcomes and 17 percent that it is not effective. Approximately a third of the surveyed lawyers stated they did not know how effective PHP is in terms of resulting in long lasting solutions without the parties coming back to court. This supports the interviews where some stated that there had not been enough time lapsed to be able to comment on the durability of the outcomes.

In terms of comparison with the usual non-PHP process, PHP was considered more effective by 28 percent of the lawyers who responded to the survey, as having the same level of effectiveness by 26 percent and being less effective by 8 percent. Again a large proportion (35%) stated they did not know the relative effectiveness of PHP.

Of those interviewed parents who commented on whether the outcome was lasting, approximately a half indicated that it was. Others indicated that the arrangement was holding but that there were difficulties over the detail of the agreement or decision.

In fact there wasn't enough detail in it so we had these ongoing little niggly problems. I don't know whether it will spark up ... It is an interpretation thing. (Parent)

A few interviewed parents stated that the outcome had worked for a while but was not currently. These parents had not necessarily gone back to court about the arrangements.

Court staff were also split in their opinion on the relative durability of outcomes under the PHP and the usual non-PHP systems. The issues raised reflect those of other groups.

One court staff member indicated that none had come back to court to their knowledge and believed that under non-PHP they probably would have. Another stated that few PHP cases come back to court and those that do are the difficult cases.

The ones that have reactivated are ones that are at the further end of the continuum in terms of complex dynamics and again acrimony... (Court staff)

One court staff member stated that people were less likely to come back to court if they had come to an agreement and they considered this was a difference under the PHP process. However, another court staff member believed that aspects of the PHP process, that is the faster process and the restriction of issues, may mean that more PHP cases come back to court.

9.4 Changes in parenting behaviour

The PHP aims to encourage parties to focus on future parenting proposals. The evaluation considered the extent to which it is believed the PHP process can assist parents work out arrangements for the future care of their children.

Interviewed judges and lawyers were generally of the opinion that the PHP process does focus the parties on the future.

That is our focus. I am not interested in the past. I want to know what is happening from now on. Your children have suffered because you can't sort this out. Let's work it out so that the children get the benefit of both of you. (Judge)

I think there is more focus in the Parent Hearing Programme and the judges are quite good about being directing, that they are not to dwell on the past, to look at where to. (Lawyer)

Many commented that the PHP process is one of many Family Court processes that encourage a future focus, and in this respect a few judges and lawyers commented that the PHP process is not different from the usual non-PHP process. More of them, however, referred to other aspects that, when combined with PHP, provide a future focus. The

Parenting through Separation¹⁸ programme was mentioned by many as providing a complementary educative focus.

You certainly notice the difference where people had both done Parenting through Separation and they are sort of working from the same page of the book and they know what issues are going to be looked at. (Lawyer)

I think we try to do that [a future focus] in every aspect of our work, not just the PHP hearing. It is just dependent on the parents. Other stuff we can put them through as well. Like Relationship Services, the Parenting through Separation, and just outside agencies we can point them to try and get them focused. (Lawyer)

Both judges and lawyers commented on the value of parenting plans to focus the parents on the future. The role of judges in talking to the parents about their decision-making was also discussed.

So the judge does become a bit of a lecturer in that sense. 'Remember you have got to think of this, you have got to think of that.' So I think that really it does make them focus on what is happening in the future. (Judge)

Comment was made that these various 'tools and aids' are used in combination to try to focus the parents on their future parenting behaviour.

Well I think by sending the parents to Parenting through Separation, by emphasising the need to file a parenting plan ... to look at the outcome for the children. ... I think that is where the judges have grown in their role in running these PHP hearings because that is the flavour that comes through much more now. (Lawyer)

In the survey results, lawyers were fairly positive about the ability of the PHP process to help parents work out arrangements for the future care of their children. Almost eight in ten (79%) stated that the PHP is effective; this is one of the higher ratings of effectiveness given by the lawyers. A quarter stated the PHP is 'much more effective' than the usual non-PHP process in helping parents work out arrangements, and in total 62 percent stated the PHP is more effective than the non-PHP process. Seven percent stated the PHP is less effective in this respect than non-PHP.

However, the picture is not so positive among the interviewed parents. Some parents believe the PHP will help them work out future child care arrangements.

We couldn't come to an agreement without the judge. We could now. We have moved on, can live with it. It got me and [ex] to realise that we should sort it out. (Parent)

Other parents, however, commented that the PHP will not help them work out future child care arrangements. The main reason given for this was poor communication between the parents.

¹⁸ 'Parenting through Separation' is a free voluntary information programme that aims to educate parents about the effects of separation on children.

We don't talk. We don't talk at all. (Parent)

*To put it bluntly I don't think there would be anything that would have helped us. ...
I am still not having any conversations or any contact with her, apart from what I hear
back through the children basically, which makes life extremely hard. (Parent)*

10 The ‘Parenting Hearings Programme’ and natural justice

As preliminary exploratory work suggested some lawyers had concerns about PHP and natural justice¹⁹, this issue was raised during interviews and included in the lawyers’ Internet survey.

Approximately half of the lawyers expressed a view on this during the interviews, and half of these reported natural justice concerns about PHP. Some of these also acknowledged, however, they had no direct experience of this happening with the PHP. Concerns expressed related to limited opportunities for cross-examination, the faster PHP process, over-directive judges and lawyers not being able to speak on behalf of their clients, or cross-examine the other party.

In the lawyers’ survey approximately half indicated they had philosophical concerns about the PHP, and most concerns related to natural justice. Philosophical concerns were more likely to be reported by lawyers with more than 10 years practising family law than those with lesser experience.

10.1 Lawyers’ natural justice concerns

Lawyers indicated during the interviews that their concerns about PHP and natural justice had arisen because of cross-examination being limited, the faster process, overly-directive judges, and lack of opportunity to speak on behalf of their clients.

Just under a half (46%) of lawyers reportedly had the opportunity to raise any issues of interest not raised by their client (only 13% ‘strongly agreed’). Nineteen percent indicated they did not have this opportunity. Both these results indicate aspects of the PHP process that may require further consideration.

10.1.1 Limiting cross-examination

Limiting or removing lawyers’ opportunity to cross-examine, and issues relating to cross-examination, were among concerns expressed by these lawyers during interviews.

...I think it is a major issue. Are we supposed to only be re-examining therefore asking stuff that came out of the cross? Or do we actually then lead properly, and we get to then put the stuff before the court via the evidence in chief that should have been there in the first place? That is very unclear and I think evidentially that is a real problem.
(Lawyer)

¹⁹ Natural justice can be described as ‘A concept which requires the observance of certain minimum standards and procedures in the conduct of a hearing, the breach of which may found an application for judicial review’ (Butterworths New Zealand Law Dictionary, Spiller, 1995).

...[parties] are being sworn and being questioned from the bench while they are sitting there in a non-cross-examination form, which is inherently dangerous ... real risk ... one or other of the parties will be disadvantaged. (Lawyer)

...if I was a party I would be seriously forgetting I was under oath because you stand up there ... and we have a talk for two and a half hours and everyone is pitching in. (Lawyer)

Almost six in ten (59%) of the lawyers believed they had the opportunity to cross-examine when necessary (31% 'strongly agreed' and 28% 'slightly agreed'), and 20 percent believed they had not.

10.1.2 Faster process

Although lawyers generally acknowledged the benefits of PHP's shorter timeframes, the faster process raised natural justice concerns for a small group of lawyers. Their comments appear to reflect concerns that PHP's focus on resolving issues quickly could create potential for breaches of natural justice, for the court to miss relevant issues, and for outcomes to be of short duration.

...sometimes rush job in Preliminary Hearing ... perhaps principles of natural justice aren't quite there. (Lawyer)

...perhaps in the court's haste to deal with the matter and disregard certain thing ... things might be missed. It is a possibility. (Lawyer)

...people who reach decisions because they are under threat, are reaching decisions that are bound to fail ... it might be a good result in terms of not clogging the system but it is actually what the Family Court is there for ... It is there to make decisions. You are not a bad parent if you can't decide something. (Lawyer)

Some ambivalence is also apparent in the survey in relation to the suggestion that the PHP process pressures people too much to come to an agreement. Forty-four percent agreed that PHP does pressure people too much to come to an agreement but 35 percent disagreed. Eighteen percent neither agreed nor disagreed.

10.1.3 Other concerns

Less frequent concerns relating to PHP and natural justice expressed during interviews were judges being too directive, limited opportunities to speak on behalf of clients, and the involvement of support people at hearings.

The extent to which judges can direct the PHP raised concerns about natural justice for this lawyer:

...what you run the risk of if the judge is quite directive is a breach of natural justice argument. Especially if you haven't actually been allowed to have a say in what these issues are not ... If you are too directive in what is going to be heard, you run the real risk of having people feeling seriously aggrieved... (Lawyer)

Another concern raised was a lack of opportunity for lawyers to speak on behalf of their client during a PHP Preliminary Hearing.

...in some areas lawyers are not allowed to [speak]. You do it at your peril. (Lawyer)

The way in which support people were involved in PHP hearings also raised natural justice concerns for two lawyers.

...if you bring in other parties who haven't sworn affidavits, suddenly there is all this stuff coming out ... where is it coming from? ... is it evidence?... no chance beforehand to look at it ... I guess there is a natural justice issue. (Lawyer)

...huge natural justice issues ... I don't think they can be reconciled. Yesterday we had two support people in there who were actually witnesses as well. (Lawyer)

10.2 Lawyers' philosophical concerns

The lawyers' survey provides some additional information on this issue. When asked if they had any philosophical concerns about PHP, 53 percent of the surveyed lawyers indicated they did not. However, 47 percent stated that they did have a philosophical concern about the PHP. Less experienced lawyers were less likely to have philosophical concerns than more experienced lawyers. Only a third (33%) of lawyers with up to 10 years' experience stated they had a philosophical concern, compared to 53 percent of lawyers with more than 10 years' experience.

Most of the philosophical concerns expressed related to issues of natural justice. These concerns included delays, the extent to which opportunities exist for lawyers to cross-examine and speak on behalf of clients, and what evidence is allowed. Additional philosophical concerns about PHP related to power imbalances at the Preliminary Hearing when, for example, parties are self-represented, vulnerable, less articulate, and parties' first language is not English.

10.3 Judges' views on PHP and natural justice

Interviewed judges reported no concerns about natural justice and PHP, and these are some of their comments:

...[lawyers] have ample opportunity to say what they think, on anything that has been forgotten. (Judge)

No concerns ... I think it is natural justice for parties to speak to the judge ... without the words of a lawyer ... or an affidavit. (Judge)

...the fact that you haven't followed a particular procedure, I don't think justifies an argument that natural justice has been denied. (Judge)

A few judges acknowledged that PHP might at times lend itself to natural justice concerns, but they considered they could prevent these by ensuring all relevant issues had been covered, and by checking this with lawyers and Lawyers for the Child.

...have got to be clear parties have opportunity to express and comment on other positions ... provided you are conscious of that ... natural justice is met' (Judge)

...the important step in the process I believe is to keep the parties and their lawyers absolutely informed about what you are doing and why... (Judge)

Judges' efforts to prevent breaches of natural justice were supported by some lawyers, who commented:

I never had a problem that the court doesn't listen ... if you bring an issue to the judge, the judge is always going to listen ... and make a ruling. (Lawyer)

...don't see it as a problem ... our new judge seems to be really good at being quite strict on evidentiary rules... (Lawyer)

...most judges want parties to have a say.

Lawyers' natural justice concerns about PHP vary, and appear to depend on their level of experience with PHP. Nevertheless, the fact that these concerns remain among a group of lawyers suggests this particular aspect of PHP may warrant further attention.

11 Other findings

Further evaluation findings are presented here and, together with those described earlier, further build on our knowledge of the 'Parenting Hearings Programme' pilot.

11.1 Training and information sources

The interviews and lawyers' survey included questions to gauge people's views on information provided about PHP, their early and current understanding of the PHP process, and their roles in PHP.

While information leaflets distributed at the start of the pilot seem to have helped develop people's understanding of PHP, a need for more information was also identified. Some judges, lawyers and report writers admitted they had not fully understood PHP when it began, and there is a suggestion a few people may still not fully understand PHP.

I don't think the role is clear ... each judge runs it a bit differently ... you learn as you go. (Lawyer)

There wasn't any formal training ... you learn as you go. (Lawyer)

There are a lot of lawyers that wouldn't have a clue about this. (Lawyer)

...apart from a consultation meeting ... I haven't had any specific training for it. (CYF report writer)

One judge also considered it would also be useful to have '*rules that prescribe a process, procedural rules ... practice notes, guidelines, that type of thing*'.

In the survey, lawyers' views were mixed on the adequacy of information they received. With regard to information received when the PHP initiative began, half of the lawyers who responded to the survey reported they had received sufficient information about the PHP process when they did their first PHP case. However, 37 percent disagreed that this was the case. Sixty-nine percent agreed they have received enough PHP information from the Ministry of Justice and the Family Court.

Almost six in ten lawyers (58%) agreed the guidelines they received about the PHP pilot were clear. Twenty-one percent, however, disagreed with this, and 19 percent neither agreed nor disagreed.

In terms of PHP information from all sources, 53 percent believed they had received enough information. Twenty-four percent, however, disagreed and 22 percent neither agreed nor disagreed.

Although almost half (47%) of the lawyers agreed they had received sufficient training about PHP, 29 percent disagreed, and 23 percent neither agreed nor disagreed.

These results suggest the PHP information and training may not have addressed all the needs of judges, lawyers and report writers involved in the initiative.

11.2 Understanding of roles under PHP

There was an acknowledgement by some during the interviews that their roles under PHP were different to those in the non-PHP process.

For example:

I probably spend more time with the client on PHP than in an ordinary hearing.

(Lawyer)

...the Lawyer for the Child has got a greater role in representing the views of the child.

(CYF report writer)

As judges', lawyers' and report writers' experience with PHP has grown, so it appears has their understanding of PHP and their role in the pilot. As this judge commented, '*...counsel are used to it now ... people seem better prepared ... seem quite content with the whole idea*'.

Eighty-five percent of lawyers who responded to the survey reported they understand the PHP process. In addition, 70 percent were confident they could prepare their clients for PHP hearings.

Lawyers appeared to suggest, however, that variation in the PHP process was a factor in the extent to which they were clear about their roles. For example:

[Lawyers] feel uneasy about us shifting between a sort of mediator and adjudicator ... I think there is some confusion. (Judge)

There is huge uncertainty ... what on earth is going to happen and how do I prepare for it. (Lawyer)

...I don't know whether I am just re-examining or am I actually leading? (Lawyer)

I don't always know what to expect of a hearing ... feels a little ad hoc at the moment. (Lawyer)

Almost two-thirds (64%) of the lawyers were clear about their role as lawyer for the parties in PHP cases. Eighteen percent stated they were not clear.

However, only half (49%) stated they knew what the judges expect of them when they represent parties in PHP cases and 30 percent disagreed that they knew what the judges expected.

It is interesting that four in ten lawyers (42%) indicated that PHP cases were harder for them than non-PHP cases because they were uncertain about their role in the Preliminary Hearing. A smaller proportion of lawyers (33%) disagreed with this statement.

Sixty-nine percent of Lawyers for Child who responded to the survey reported they were clear about their role under PHP. Three in ten (31%) believed their role was not clear, however most (27%) believed it was 'not that clear' rather than 'not at all clear' (4%). Nearly eight in ten (77%) thought their role as Lawyer for Child was no different under the PHP system.

Reasonably large proportions of lawyers who responded to the survey are not sure of their role under PHP, particularly when compared to their understanding of their role in traditional court processes.

11.3 Parents' understanding of PHP

Because of parents' greater role in the PHP process, particularly at the Preliminary Hearing, information about the extent to which parents understood PHP was the focus of several questions during the interviews and the postal survey.

The importance of lawyers explaining PHP to parents is exemplified in these parents' comments:

[My lawyer] *made it very clear to me, and she sat beside me the entire time.* (Parent)

[My lawyer] *guided me right through.* (Parent)

One lawyer commented:

I spend a lot of time ... education ... you have to do it ... because they are going to come to a judge very quickly and if they are not up there, they are going ... to miss out. (Lawyer)

Nearly all parents interviewed, and most of those who responded to both the PHP and non-PHP parents' postal survey, had a lawyer, and their lawyer had explained either PHP or Family Court process to them. The majority in these three groups found this explanation 'helpful'.

Most PHP parents had watched the DVD and seen the pamphlets that explained the pilot, and found both useful. Although lawyers generally agree that the PHP DVD was helpful for parties, some were concerned the actual process experienced by parents was frequently different to that described in the DVD. They believed this not only confused parties but frequently undermined the time they spent preparing their clients for hearings.

11.4 Variation between PHP judges and between PHP courts

The extent to which there is variation in the PHP, either between courts or between judges, was considered in the evaluation. The exploratory work suggested variation between PHP judges and PHP courts did exist, and this was a concern for some lawyers.

Results from the lawyers' survey suggest variation between courts and in some respects between judges is quite a concern for lawyers, particularly the extent to which they believe it impacts on PHP process and outcomes. Approximately six in ten (62%) believed the PHP

process appropriately allows for flexibility in dealing with cases (29% 'strongly agreed'). Half, however, believed there is a lack of consistency between judges that impacts negatively on the PHP **process** (19% 'strongly agreed'). Just under a half (46%) reported a lack of consistency between judges that impacts negatively on the PHP **outcomes** (18% 'strongly agreed').

One view expressed during the interviews was that there was generally little variation in PHP either between judges or courts. One group of court staff and lawyers, for example, believed PHP judges they had some experience of were reasonably consistent and that there was very little variation in practice between them. One noted, by way of example, that judges' frequent practice of referring parents to the 'Parenting Through Separation' (PTS) programme²⁰ was evidence of a level of consistency or agreement.

Others believed there was variation but they had no problem with this. One lawyer also noted that as they now had some experience of PHP, they had a better idea of how each judge would run the hearings and so variation was less of an issue for them. Another noted that although there may be differences in judicial style, judges were still going through the PHP process.

According to some judges, court staff and lawyers, any variation in the PHP appeared to depend very much on the judge, and they also believed that judicial variation existed in non-PHP hearings. Such variation was considered, therefore, a reflection of judicial or personal style, and was inherent in judicial independence. One lawyer also commented this variation was more likely to be people-related or case-dependent, rather than being associated with PHP.

Examples of this variation included how cases get on to the PHP, whether psychologist or social worker reports are required at the Judge's List or the Preliminary Hearing, whether witnesses were required to give evidence from the witness box or not, and the extent to which lawyers were able to talk at the hearing. Other ways in which PHP varied included the same judge not always being involved in a case throughout the PHP process, some hearings being more controlled by judges while others tended to be counsel-led, and differences in the degree to which cases could be removed from PHP at some point, and later re-entered on to the programme. In addition, some lawyers mentioned current PHP practice was now different to what it was when the initiative began, and different between the DVD and with what actually occurred in the PHP.

Such variation and inconsistency in PHP was a concern for some lawyers and report writers. These lawyers tended to prefer a more consistent approach and less variation, because they believed this lack of consistency made it difficult for them to advise their clients. One lawyer commented that non-PHP was more consistent, and a report writer noted that parents have a right to consistency.

The development of a protocol or guidelines for PHP was suggested as useful so that everybody was clear on the PHP process.

²⁰ See Footnote 18.

11.5 Urgent interim hearings

The faster timeframe is one of the key features of the PHP process. In order to investigate this, further opinions were obtained as to whether, for similar types of cases, urgent interim hearings in the non-PHP process would provide the same benefits as PHP Preliminary Hearings.

This issue was not canvassed through the in-depth interviews so we have not gained a complete understanding of the opinions held.

Judges and surveyed lawyers were asked 'For similar types of cases, would urgent interim hearings in non-PHP provide the same benefits as PHP Preliminary Hearings?'

The question was included in the lawyers' Internet survey, and emailed to judges who had been interviewed. The responses from judges can only be indicative, as it was not possible to probe or further question the judges' responses. In spite of this caution, however, responses suggest the issue warrants further consideration.

11.5.1 Judges

Nine of the 12 judges interviewed responded to the question when it was emailed to them. Five of the nine indicated that such hearings would **not** provide the same benefits (one 'definitely not' and four 'probably not').

Reasons provided for this were that non-PHP does not allow for broad ranging issues to be discussed, or for parties to participate in decision-making. As well as non-PHP urgent hearings being adversarial and not being scheduled as frequently as PHP, it was also believed that urgent non-PHP hearings currently do not have "a prerequisite education element, more focussed evidence, a process for early reports".

Four judges, however, expressed a contrary view. Two believed urgent interim hearings in non-PHP 'probably' **would** provide the same benefits as PHP Preliminary Hearings, and two indicated such benefits would 'definitely' occur. These judges reported this was because urgent interim hearings are focused and do offer opportunities to resolve issues under urgency.

11.5.2 Lawyers

Of those who responded to this question in the lawyers' survey, 69 percent believed urgent interim hearings in the non-PHP system **would** provide the same benefits as PHP Preliminary Hearings. Seventeen percent believed that this would **definitely** provide the same benefits and 52 percent believed that this would **probably** provide the same benefits.

These lawyers believed urgent interim hearings in non-PHP **would** provide similar benefits because issues could be resolved quickly, parties would have prompter access to the court, and such hearings would allow for a focus on a limited number of issues. Some lawyers who responded that urgent interim hearings would provide the same benefits believed that non-PHP urgent interim hearings are currently providing similar benefits to PHP.

Approximately a quarter of lawyers (26%), however, believed urgent interim hearings would **not** provide similar benefits. They reported this was because urgent interim hearings did not have the same flexibility as PHP, nor do they operate in the same less adversarial way. In addition, urgent interim hearings in non-PHP do not provide for limiting issues, for parties to have their say, or the same opportunities for issues to be resolved.

The more experienced lawyers were more likely to believe that urgent interim hearings would not provide the same benefits as PHP Preliminary Hearings. Approximately three in ten of those lawyers who had been practising family law for more than 10 years did not think they would provide the same benefits as PHP. This compares to two in ten of those who had been practising for up to 10 years.

Table 11.1: Whether urgent interim hearings in non-PHP would provide the same benefits as PHP Preliminary Hearings – lawyers’ views

	Total	Years practising family law		
	(n=118)	Up to 10 years (n=39)	Over 10 to 20 years (n=43)	Over 20 years (n=36)
	%	%	%	%
Definitely yes	17	15	19	17
Probably yes	52	56	49	50
Total yes	69	72	67	67
Probably no	22	18	26	22
Definitely no	4	3	2	8
Total no	26	21	28	31
Don't know	5	8	5	3

Note: Numbers may not add up to totals and subtotals due to rounding

11.6 PHP and the ‘Parenting through Separation’ programme

Exploratory work revealed that parents were often referred to the ‘Parenting through Separation’ (PTS) programme when they were placed on to PHP.

Although a small number of judges said they did not know of the programme, or had only recently become aware of it, most reported they ‘strongly suggested’, ‘actively encouraged’, or ‘directed’ that parents complete the PTS programme. Some judges also mentioned that parents were made aware at the hearing that an adverse inference would be drawn if they did not complete PTS. Although some parents could not recall during the interview if they had attended PTS, most who had attended the programme reported that it had been helpful.

Some judges, and this was also mentioned by lawyers, considered PTS such an important part of PHP, that they required evidence that parties had completed the programme. This usually involved the judge sighting the PTS Certificate of Completion.

Several interviewed judges and lawyers noted parents frequently experienced delays in completing PTS within the timeframes required, usually before a PHP Preliminary Hearing. This was because some parents could not find a provider, or because providers had long waiting lists. Reasons given by parents as to why they could not attend PTS were that it was

never suggested to one parent that they go to PTS, one reported they could not attend because they could not afford childcare, and another stated their second session was cancelled due to lack of numbers. A further parent described her concerns at discovering her ex-partner at the same PTS session.²¹ Although she did the PTS later on a one-to-one basis with the provider, she said that she missed the interaction with other parents. One lawyer believed that parents were 'all coursed out', and because this was compounded by long waits for the first session, they were reluctant to attend the PTS programme.

Nevertheless most interviewed judges, lawyers and report writers believed it was very useful if parents attended the PTS programme. Several lawyers and judges believed that parties who had completed the programme tended to be more understanding and accepting of PHP outcomes, and to look at issues quite differently, when compared to those who had not completed PTS. Several lawyers went so far as to suggest their clients attend PTS prior to the PHP hearing, and provided them with information about it, because they knew judges would view this favourably. Most parents, according to these lawyers, tended to follow their advice on this and enrolled in the PTS programme.

When PTS could not be completed because of waiting lists, for example, judges tended to proceed to the Preliminary Hearing and expected parents to complete the PTS programme as soon as they could. Judges indicated they preferred not to delay the PHP process because of its focus on children. One judge considered it self-defeating to delay the Preliminary Hearing when PTS could not be completed. On the other hand, however, one judge reported the Preliminary Hearing was usually delayed until the PTS course had been completed.

²¹ PTS providers recognise that it is inappropriate and potentially unsafe for both parents to attend the same PTS session, and try to ensure that this does not happen.

12 Views on expanding the PHP

All of the interviewed judges and the vast majority of lawyers and report writers viewed the PHP process positively and believed that it should be extended to courts throughout New Zealand. Features described elsewhere (the timeframe, early judicial intervention, parties' involvement in the process, being less adversarial and focusing on the key issues) were reasons given for an overall positive response.

A couple of areas of concern were expressed if the PHP were to be introduced nationally. Court staff were concerned about scheduling and resourcing issues, and a couple of lawyers were concerned that advocacy and cross-examination skills may be lost with time if PHP becomes the standard process.

There were two aspects of scheduling and resourcing that caused concern among some court staff when commenting on PHP being extended nationally. First, some very small courts do not have judges visiting with sufficient regularity for PHP to operate within the set timeframe. Second, as judges sit at different courts, scheduling would be difficult to ensure that PHP cases are dealt with by the same judge each time, and within the set timeframe.

A number of questions in the lawyers' survey were designed to obtain a numeric understanding of the overall perceptions of the lawyers who had been involved in PHP cases. These questions came at the end of the survey, once the lawyers had the opportunity to think about the different aspects of the PHP, and to compare PHP with the usual non-PHP process.

When asked to rate the PHP process overall, seven in ten of the lawyers rated it as good, with three in ten rating it 'very good'. Those lawyers who had been practising family law for up to ten years were the most positive, with approximately eight in ten stating the process was good. Those lawyers who had been practising for between ten and twenty years were the most negative, with approximately two in ten rating the process as poor. Of those lawyers who had been practising for over twenty years, a quarter were neutral about the PHP, with 64 percent positive and 11 percent negative.

Table 12.1: Overall rating of the PHP as a new process in the Family Court – lawyers' views

	Total (n=118)	Years practising family law		
		Up to 10 years (n=39)	Over 10 to 20 years (n=43)	Over 20 years (n=36)
	%	%	%	%
Very good	30	28	26	36
Quite good	41	51	42	28
Total good	70	79	67	64
Neutral	18	15	14	25
Quite poor	8	3	14	6
Very poor	4	3	5	6
Total poor	12	5	19	11

Note: Numbers may not add up to totals and subtotals due to rounding

Lawyers who have acted as Lawyer for the Child in the Family Court were less positive about the PHP as a new process than were those lawyers who have not acted as Lawyer for the Child. Eighty-one percent of lawyers who have not acted as Lawyer for the Child rated the PHP as 'good' in comparison to 63 percent of Lawyers for the Child. Similar proportions of these two groups rated the PHP process as poor (11% not Lawyer for the Child) and 13% Lawyer for the Child). However a higher proportion of Lawyers for the Child gave a neutral response (24% compared to 9%).

In order to understand more about the lawyers' overall rating of the PHP process, multi-variable regression was undertaken on the lawyers' survey data.²² It was found that the lawyers who were more likely to rate the PHP positively (ie, overall 'very' or 'quite' good) were those who rated the following statements about the PHP more positively:

- resulting in fair and appropriate outcomes
- the PHP is a fair and appropriate process
- appropriately limiting the information in the affidavits
- the PHP process appropriately allows for flexibility in dealing with cases.

Positively rating the first of these statements – that the PHP results in a fair and appropriate outcome – was found to be by far the strongest predictor of an overall positive rating of the PHP. It is interesting to note that it is the outcome, rather than the process, that is the key predictor of overall perceptions of the PHP.

In the survey, lawyers were asked to rate the following statements concerning their perceptions of the parties' satisfaction:

- I believe that parties are generally more satisfied with the PHP **process** than with the non-PHP court process
- I believe that parties are generally more satisfied with the **outcome** from the PHP process than with the outcome from non-PHP court process.

The level of agreement was greater in relation to perceptions of the parties' satisfaction with the **process** than with the outcome. For both process and outcome, however, many more agreed with the statements than disagreed. In terms of process, 48 percent agreed that parties are more satisfied with PHP than non-PHP process and only 10 percent disagreed. For the outcome, 41 percent agreed that parties are more satisfied with the outcome from the PHP process than the non-PHP process and only 13 percent disagreed.

The surveyed lawyers were also asked to rate whether PHP should be continued in the areas in which the pilot has been running and whether it should be extended nationally.

Almost eight in ten (78%) stated that PHP should be continued in the areas in which it has been running, and over seven in ten (74%) that it should be extended nationally. In both cases those lawyers who have been practising for up to ten years were more positive and those practising over ten years were less positive. The lawyers who had acted as Lawyer for

²² Refer to the Methodology section for details.

the Child were less positive in both these respects than were those lawyers who have not acted as Lawyer for the Child and reflected the results of lawyers with more than 20 years' experience.

Table 12.2: Whether PHP should continue at the end of the pilot in the areas in which it has been running – lawyers' views

	Total	Years practising family law		
	(n=118)	Up to 10 years (n=39)	Over 10 to 20 years (n=43)	Over 20 years (n=36)
	%	%	%	%
Definitely yes	43	51	33	47
Probably yes	35	38	42	22
Total yes	78	90	74	69
Probably no	7	5	7	8
Definitely no	8	3	12	11
Total no	15	8	19	19
Don't know	7	3	7	11

Note: Numbers may not add up to totals and subtotals due to rounding

Table 12.3: Whether the PHP should be extended nationally – lawyers' views

	Total	Years practising family law		
	(n=118)	Up to 10 years (n=39)	Over 10 to 20 years (n=43)	Over 20 years (n=36)
	%	%	%	%
Definitely yes	35	44	26	36
Probably yes	39	39	47	31
Total yes	74	82	72	67
Probably no	5	8	2	6
Definitely no	12	5	16	14
Total no	17	13	19	19
Don't know	9	5	9	14

Note: Numbers may not add up to totals and subtotals due to rounding

At the end of the survey, lawyers were asked to record any suggestions they had to improve PHP.²³ A quarter of the surveyed lawyers stated that they did not require either any small or practical operational changes or any 'big picture' changes so the PHP operates more effectively.

The main changes suggested are as follows.

- The identification of which cases are suitable for PHP. Comment was that some types of cases are not suitable for PHP, and also that some cases considered by the lawyers to be suitable have been rejected.
- A request for greater consistency, both between courts and by judges. This relates to process and the PHP format, rather than a comment on outcome.

²³ This was asked as two separate questions: recommendations about small or practical changes to the PHP's operation, and changes that are more significant in terms of the design or functioning of the PHP. However, the same suggestions for improvements were given by the lawyers as responses to both questions.

- The need for an increased understanding of process and roles. Associated with this is the need to increase training and provide up to date information about the PHP.
- There were specific comments about the need to review or amend aspects of the process, but these were quite diverse.

Examples of comments follow.

Clearer guidelines in what cases are and are not appropriate.

Not appropriate for clients with mental health issues where a report is required from experts.

...More consistency of approach by judges...

...uniform implementation throughout the country. We have a variation to the PHP system where we are.

Full training should be given to all lawyers so that they can understand what it is that is to be sought to be achieved.

Clarity around process by further education in the centres that operate PHP.

13 Concluding discussion

The Parenting Hearings Programme (PHP) pilot is intended to provide an early response to urgent applications under the Care of Children Act 2004 and cases not resolved through counselling or mediation.

This chapter presents an overview of the key features of the pilot that have emerged from the evaluation. Further findings are provided in the body of the report.

Positive features of the PHP process include a less adversarial approach, parents being able to speak directly to and answer questions from the judge, as well as the same judge being involved throughout. The two-hour Preliminary Hearing was also viewed positively as it provided sufficient time for consideration of the issues. In general, it was considered that suitable cases were being placed on to PHP. Many parents benefited through participating in the Parenting through Separation course prior to going on to the PHP.

Insufficient PHP judge time, scheduling difficulties, and the suggestion that PHP's priority may be creating delays for other types of cases, such as those under the Property (Relationships) Act 1976, were some of the concerns noted. Delays obtaining s132 and s133 reports, also mentioned, may be creating situations where reports are not requested, when they might have been if delays were not an issue. In addition, some lawyers were uneasy about limited or no opportunities to cross-examine, or to raise issues of interest not raised by their clients.

The six pilot sites had generally implemented the PHP process as described in the initial PHP Guidelines. Some variation in process existed between PHP courts and between PHP judges. Lawyers would prefer a more consistent process so that they can better prepare their clients. Review and further development of the Guidelines or rules might increase consistency.

Fewer than expected cases were placed on to PHP. Re-examining processes for the identification of potentially suitable cases and their subsequent allocation to PHP may increase PHP case numbers.

Although the prescribed timeframes are generally not being met, PHP cases are believed to be proceeding more quickly than non-PHP cases. While an early response is not appropriate for all cases, PHP's faster process is viewed very positively, and considered a key advantage for both parents and children.

The evaluation investigated whether urgent interim hearings in the non-PHP system would provide the same benefits as PHP Preliminary Hearings. Findings suggest lawyers are supportive of some form of early response and faster resolution. Most of those lawyers who responded to the survey believed similar benefits would be provided by urgent interim hearings, the main reason being that issues could be resolved quickly. Lawyers who did not believe this, thought this was because urgent interim hearings would not offer the same flexibility as PHP, nor use a less adversarial approach.

Judges were divided as to whether urgent interim hearings in the non-PHP system would provide the same benefits as PHP Preliminary Hearings. Their reasons were similar to those provided by lawyers.

The PHP is clearly considered less adversarial than the non-PHP process because it provides opportunities for parties to have their say, limits issues discussed at hearings and information included in affidavits, and reduces the number of affidavits.

PHP outcomes are generally considered fair, and in this respect are probably no different from non-PHP outcomes. Both parents and lawyers commenting on their clients' behalf stated they were reasonably satisfied. There was some indication that PHP's faster timeframe contributed to people feeling happier with outcomes.

A higher proportion of PHP than non-PHP cases returned to court, and this raises concerns about the durability of PHP outcomes. The small number of PHP cases means that this finding should be treated with caution, and it may also be a reflection that more difficult and complex cases are being placed on to PHP. This finding suggests, however, that the extent to which PHP cases are returning to court should be monitored on an ongoing basis.

Lawyers raised concerns about PHP and natural justice. This unease, however, appears to relate to 'potential' risks rather than actual experience as there were few, if any, lawyers who could specify where natural justice issues had occurred. Concerns related to limiting cross-examination, PHP's faster process, limiting opportunities for lawyers to speak on behalf of their client, judges being overly-directive, and the role and involvement of support people at hearings. Lawyers with more experience were more concerned about natural justice issues in relation to PHP, than those with less experience.

Judges reported no concerns about natural justice and PHP, although a few acknowledged this potential existed. Judges believe this issue is addressed if they ensure all relevant issues are covered, and check this with lawyers and Lawyers for the Child.

Overall, there was general agreement and much support for implementing the pilot throughout New Zealand. This was within the context of general support for providing an early response to care of children cases. PHP's benefits included its quicker timeframe, early judicial intervention, involvement of parties, less adversarial approach, and its focus on key issues. These features could be considered when designing other court processes and early response initiatives.

A range of issues, such as insufficient judge time, scheduling and resource issues, would need to be resolved before PHP could be introduced nationally. In addition, the durability of outcomes requires monitoring. Further, enhanced communication with lawyers prior to and throughout implementation would increase support for the initiative, help disseminate information about the process, and clarify objectives and participants' roles.

In conclusion, this evaluation found the PHP process offers a number of very worthwhile features. Although hampered in some respects by the small number of PHP cases, and some findings that may not be entirely positive, the evaluation indicates PHP is less adversarial and

provides opportunities for parents to participate more in the court process. The faster PHP process was also considered a definite benefit. Overall the pilot has provided the six pilot courts with opportunities to improve their response to Care of Children Act 2004 cases.

Appendix 1: Statistical analysis of Case Management System (CMS) data

Overview

This paper presents the findings of the data analysis of the Case Management System (CMS) data on care of children cases involved with the Parenting Hearings Programme (PHP) pilot. The paper describes the methodology, presents the findings, and attempts to draw some conclusions about PHP cases and processes from the administrative dataset where such processes are recorded.

The purpose of the data analysis was to both describe the actual cases that were placed on PHP and to assess the effects of PHP on the timeliness and durability of decisions made in care of children cases.

There are three main parts to the analysis:

- 1 A description of the PHP process showing timelines and the number of hearings for actual PHP cases. The primary purpose of this was to determine whether PHP Guidelines have been met. The secondary purpose of this part of the descriptive analysis was to establish whether it was possible to distinguish between tracks A (urgent cases, including where domestic violence is involved) and B (those cases placed on PHP after counselling or mediation).
- 2 A comparison of those cases placed on PHP with cases in the six pilot sites not placed on PHP. The purpose of this was twofold – firstly to identify the type of cases that were placed on PHP, and secondly the findings from this part of the analysis would be used to determine the appropriate comparisons to use when assessing the impact of PHP.
- 3 An assessment of the effects of PHP on timeliness, durability and the uptake of the various types of service provision. Comparisons between sets of cases in pilot and non-pilot sites were made.

Objectives, Methodology and Limitations

This document analyses some Family Court statistics that deal with the care of children proceedings. The analysis uses the Ministry of Justice's management database – called Case Management System (CMS).

Objectives of the quantitative evaluation

The objectives of this data analysis are:

- 1 Describe the characteristics of the cases entered on to PHP
- 2 Make suitable comparisons with non-PHP cases in both pilot and non-pilot sites regarding timeliness, service provision, outcomes and durability.

To achieve these objectives, our methodology called for the analysis to be undertaken in two phases. The first focused on exploratory data analysis to determine the most appropriate unit of analysis and how and to what extent the variables could be extracted from the data.

The second phase used the findings from the first phase and extracted the appropriate data for analysis.

Methodology phase 1 – units of measure

Exploratory data analysis

The purpose of this phase was to make decisions about the unit of analysis and main measures. Phase 1 was also to ensure that Phase 2 takes into account any limitations from the data. These are the conclusions from the exploratory analysis.

The appropriate unit of analysis

One option for the unit of analysis would simply be the applications which had PHP directions. However, there are two main disadvantages:

- it is not always possible to accurately identify the application that truly has the PHP direction
- it is more realistic to associate the PHP direction with a particular set of parties (a family group) rather than a specific application.

Based on this, we decided to use a measure based on the family group.

Case definition

CMS assigns a unique identification number to every 'family group' (ie, all parties to a proceeding) involved in a care of children proceeding. Whenever the same family group applies to the court, the same unique identifier is used. This is quite common as family groups return to the court (often more than once) for a reconsideration of issues.

Having a unique identifier for each family group means their entire court history is easily accessible for analysis. However, it does make it difficult to measure some court performance statistics. These statistics relate to discrete blocks of time when the court was actively considering a particular family group.

To get around this, the current analysis uses a unit of measure – referred to here as an 'analytical case', shortened to just 'case'. This measure defines specific start and end dates that are distinct in terms of time despite involving the same family group. That is, a case start date is determined as the date at which the first application was made to the court. The case end date is defined as the date at which all applications within that case were recorded in CMS as closed. Where a new application was made after that clearly defined end date a new

case was recorded with a different start date.¹ Defining cases in this way meant that court processing times would not be overestimated when the same family groups return to court.

Defining cases in this way also means there could be multiple analytical cases relating to a single CMS family group identifier – and these can contain multiple applications.

Measures of case length and timeliness

Previous analysis on care of children cases (or previously guardianship cases) defined a case closure as when no further activity was recorded for 90 days. This definition was used because of historical data quality problems. In the past, many applications were not closed, despite having reached an outcome.

This study only considers relatively recent data, where such data quality problems are not apparent. Thus a case is considered closed when there are no open applications at that point in time. The case end date is the last outcome date.

Methodology phase 2 – what and what not to measure

Cases of interest for this analysis

This data analysis focuses only on care of children cases started after the introduction of PHP on 1 November 2006 (defined as new cases) and those cases started prior to this but still active on that date (defined as current cases).² Some of these cases began under the Guardianship Act before it was repealed.

The dataset was compiled on 4 August 2008. Information on CMS up to 4 August 2008 has been included. This was the date that the analytical dataset was developed, from which all the analysis reported here was carried out.

Two categories of cases were excluded from the compiled dataset.

- Cases with PHP directions that were subsequently suspended or removed from the programme.³
- Cases with PHP directions but made only under the domestic violence (DV) proceedings.⁴

¹ Applications for counselling under section 65 of the Care of Children Act 2004 are ignored. Such applications do not actually involve any court deliberation. Also, such applications can be filed some time after the actual case disposal date. Including applications for counselling could therefore make cases appear much longer than they were.

² The exception to this is the data used to extract the trends used as baseline information.

³ Fifty-one cases were subsequently suspended or removed.

⁴ As at February 2009, there were 19 PHP (DV type) directions pertaining to 18 family groups. Fourteen of these family groups also had care of children type PHP directions (ie, they are included in the analysis dataset).

Limitations of the analysis

Timing of the evaluation

One limitation of the data analysis is the time available to pick up the effects of PHP. PHP only started in November 2006 allowing less than a two-year follow up for cases current at the start of PHP and much less for cases starting after. This, in addition to the low number of cases placed on PHP over this time (319), makes it particularly difficult to look at the effects of PHP on timeliness and durability.

The timing of the evaluation means that results will also be influenced by cases that were current at the start of PHP rather than just those starting after the introduction of PHP. There are more than twice as many new cases (a total of 225) than current cases (94). Where possible an attempt has been made to distinguish between the two types of cases but low numbers have limited the extent to which this can be done.

PHP and non-PHP comparisons

The ideal comparison would be between PHP cases (in pilot courts) and a control group of cases in non-pilot courts. The control group would have characteristics almost identical, or at least very close, to the real PHP cases.

It was intended that the comparative analyses would allow for the identification of a group of characteristics associated with a high incidence of PHP. These characteristics could then be applied to non pilot sites to select a comparison group of cases to test for the effects of PHP. Further investigations were also undertaken by grouping cases with different combinations of factors to try and isolate such characteristics. This did not prove possible due both to the low overall incidence of PHP and the variability of the type of cases placed on PHP. As it was not possible to reliably generalise a set of characteristics of PHP cases, a robust 'control' group could not be formed.

Comparisons were therefore mainly limited to pilot versus non-pilot site cases and subgroups of cases with a higher incidence of PHP ie, those filed with a Notice of Defence, and those filed without notice. Such comparative analyses cannot show how much PHP reduced the time taken to hear the cases actually placed on PHP. Rather it investigates whether PHP has had an effect on the overall timeliness of all care of children cases in courts where PHP is available and on the overall timeliness of the two subgroups.

Low numbers placed on PHP

The analysis dataset contained only 319 PHP cases. This low number, combined with the variability within PHP cases (and therefore the fact none of the variables were reliable in predicting whether a case would enter PHP), meant that a control group of non-PHP cases could not be developed. Significantly greater PHP case numbers may have allowed for the development of a model that would predict PHP-likely cases.

Low numbers are not an issue with the pilot site versus non-pilot site comparisons as there were 4554 pilot cases and over 20,000 non-pilot cases. The differences reported for these

comparisons are 'real'. However an assessment needs to be made of the extent to which they are attributable to PHP or just an underlying variability between sites – trend analysis is used for this purpose.

Despite the low numbers of PHP cases analysis by subcategory is possible – for example individual pilot sites.

Limitations of the analytical case

While the analytical case measure was considered best fit for the purpose, it may not always work. For instance, family groups that return very quickly to court to dispute the same issue may be counted as one case.

Furthermore, the assumption that 'analytical cases' are independent clearly does not always hold – especially when looking at whether cases return to court (which assumes dependence). This point is discussed further later in this report.

Data quality

Time constraints have prevented in-depth assessment of the quality and coverage of data collected through CMS. Data quality issues in CMS are most likely to arise where data entry is 'optional' – ie, not required for accounting, correspondence or scheduling purposes. Findings based on, for example, commitments for service provision are likely to be more reliable than those based on directions.

Thus it cannot be ruled out that some of the differences/effects identified in this analysis are due to data issues.

Other limitations

Other considerations when interpreting these analyses include:

- some variable practices by different courts about the type of cases to go on to PHP and about recording directions onto Judge's Lists
- directions (particularly directions on to the Judge's List) were frequently not recorded (see later analysis)
- the relatively small number of PHP cases compared to the total number of care of children cases
- the nature of a live, operational database and the need to select a 'lock down date' in developing the analytical dataset
- some missing information suspected (ie, Judge's List entry dates).

Main findings

Cases placed on PHP

Number of PHP Cases

Table A1 shows the breakdown of cases in the analysis dataset.

Table A1: Number of cases considered in this analysis

Court	Total cases	PHP cases	% PHP	Had PHP direction (non-pilot court)
Pilot sites	4554	319	7.0	
Dunedin	772	58	7.5	
Palmerston North	861	36	4.2	
Rotorua	815	48	5.9	
Tauranga	1048	67	6.4	
Wellington	511	46	9.0	
Auckland - Docket C	547	64	11.7	
Non-pilot sites	22760			17
Auckland – non-docket	287			13
Auckland dockets B&D	729			0
Other	21744			4

It is unclear why 17 non-pilot court cases had a PHP directive. These have not been included in the dataset. The most likely explanation is that these cases were at some point transferred between courts (perhaps because a family had moved geographically) and CMS was not updated immediately to reflect this.

Track A or Track B

Cases can be placed on PHP from two routes:

- Cases where there is some urgency, including where domestic violence is involved (Track A).
- Cases that do not settle after counselling or mediation (Track B).

The next section compares characteristics of cases placed on PHP with those not so placed. It shows that although cases with an associated DV case were more likely to be placed on PHP than cases without, most of them were not. Similarly, a minority of all cases that did not settle after counselling or mediation were placed on PHP. Some cases that were placed on PHP had none of the expected indicators. This meant that it was not possible to clearly identify the type of case placed on PHP let alone identify whether these cases were track A or B.

Problems distinguishing PHP tracks are probably compounded by the number of cases current at the start of PHP. Different factors may have been taken into account when placing these cases on PHP.

In summary there were no clear patterns to clearly distinguish PHP tracks A and B, and this was particularly difficult due to some cases being current at the start of the pilot and low numbers on PHP. Therefore no analysis by track type was attempted.

Cases referred for PHP

From July 2007 the facility to record referrals to the Judge’s List for cases to be considered for PHP was available on CMS. Of the 225 care of children case referrals recorded only 72 (32%) were directed to enter PHP.⁵

This means that the majority of cases which proceeded to PHP were not recorded as being placed on the Judge’s List for an entry decision.

Type of cases placed on PHP

To investigate the type of case placed on PHP, cases placed on PHP and other cases in pilot sites were compared. There were 4,554 cases in this phase of the analysis.

Discussions with court staff involved with the pilot, and reading of PHP material, indicated that the following factors might influence the decision to place a case on PHP:

- whether or not a Notice of Defence was filed
- whether or not there was also a domestic violence case
- an indication of urgency (a without notice application or an application for reduced time)
- whether or not the case had been to counselling/mediation.

Other indicators such as violence indicated by the requirement for supervised access were discussed but these have not been used due to the paucity of data.

Simple comparisons between PHP and non-PHP (pilot sites only) cases are shown in table A2.

Table A2: PHP and non-PHP case characteristics

Indicator	% of all pilot cases with indicator	% of PHP cases with indicator	% of cases in pilot sites with indicator put on PHP
Notice of defence	45	80	11
An application made without notice	43	57	9
Application for reduced time	14	29	14
Direction to any type of counselling	36	52	8
Associated DV application	20	22	8

The table shows that PHP cases were more likely to have these indicators than cases not placed on PHP. It was difficult to identify types of cases likely to be placed on PHP because only a small proportion of cases with these indicators were referred to PHP.

⁵ Not all the 72 cases would ultimately be counted as PHP because some may have been in non-pilot courts whilst others could have been removed or suspended. We have used 24 July 2008 as the dateline for entry on to the Judge’s List and 4 August 2004 as the dateline for direction to enter PHP.

Differences by pilot sites

There was considerable variation between pilot sites in the overall proportion of cases put on PHP – ranging from 4 percent of cases in Palmerston North to 12 percent of Auckland Docket C cases.

There were also differences in the types of cases put on PHP – for example in Dunedin and Rotorua about 30 percent of cases put on PHP had a concurrent DV case whereas in Wellington only 7 percent of cases did – even though the incidence of associated DV cases in Wellington (19%) was the same as the national incidence.

Similarly there was a wide variation in the proportion of PHP cases with an application for reduced time. In Dunedin only 12 percent of cases had this application compared with 47 percent in Auckland and 48 percent in Wellington.

Summary

- Only a small proportion of care of children cases were placed on PHP – 7 percent of all cases in pilot sites.
- Certain cases – such as those with a Notice of Defence, or with an indication of urgency, or with an associated DV case – were more likely to be placed on PHP **but** the majority of these cases were not placed on PHP.
- No clear rules were discernable from the data about the type of cases that were placed on PHP.
- This lack of rules was further evidenced in the wide variation between pilot sites in the type of case put on PHP.

PHP case flow

PHP cases by pilot site

Table A3 shows the distribution of all PHP recorded cases across the pilot sites. The table also shows the number of PHP cases at each site recorded in CMS as being open (or current) at the start of the pilot (1 November 2006) and those that were started (or new) after that date.

Table A3: Number of PHP cases by pilot site and whether the case was current on 1 November 2006

Court	Current on 1 November 06 or not		Total
	Current	New	
Auckland Docket C	14	50	64
Dunedin	20	38	58
Palmerston North	14	22	36
Rotorua	10	38	48
Tauranga	22	45	67
Wellington	14	32	46
Total pilot sites	94	225	319

As shown in table A3, 94 PHP pilot site cases (29% of all PHP cases) were current (or open) when the pilot began in November 2006. Seventy-one percent of pilot site cases were new cases, begun after the introduction of the PHP pilot.

Hearings

Table A4 shows the number of disposed (ie, completed) PHP cases that had Preliminary and Final Hearings. All active cases are excluded here.

Table A4: Number of PHP completed cases with Preliminary and Final Hearings

	Had Final Hearing	No Final Hearing	Total
Had Preliminary Hearing	33	155	188
No Preliminary Hearing	3	44	47
Total	36	199	235

Eighty percent of disposed PHP cases had a Preliminary Hearing, while only 14 percent had both the preliminary and Final Hearings. Nineteen percent of cases were disposed with neither a preliminary or Final Hearing recorded in CMS. There were three cases that were recorded in CMS as having had a Final Hearing without a Preliminary Hearing.

Table A5 shows the number of disposed PHP cases that were disposed at the varying stages of the PHP process.

Table A5: PHP case disposal (completion) stage

Stage at which case was disposed	Current on 1 November 06 or not				Total	
	Current		New			
Disposed with no hearing	9	11%	35	23%	44	19%
After Preliminary Hearing	55	68%	100	65%	155	66%
After Final Hearing	17	21%	19	12%	36	15%
Total	81	100%	154	100%	235	100%

For cases that were current at the start of the pilot (1 Nov 2006), 68 percent were disposed after the Preliminary Hearing and a further 21 percent after the Final Hearing. Eleven percent were disposed without the need for any PHP hearing. For cases that began after the start of the pilot, the picture was slightly different. That is, there was a higher proportion of cases that were disposed without a hearing (23 percent) and fewer cases that reached the Final Hearing (12 percent).

Timeframe for PHP cases

The 319 PHP cases were analysed to determine whether the timing guidelines for PHP were met.

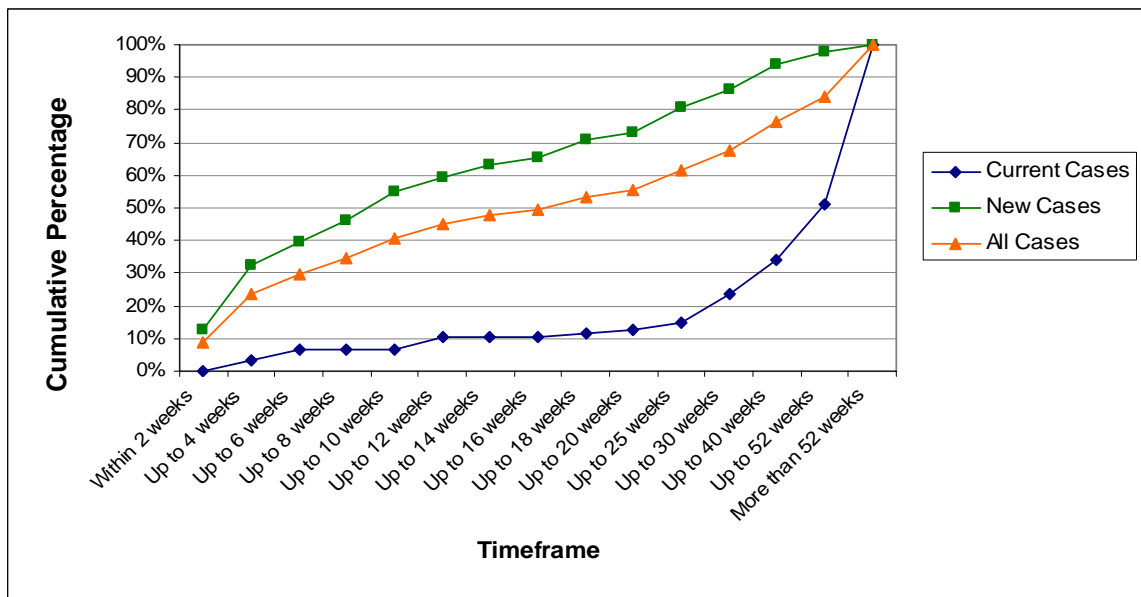
Hearings related to PHP cases

Of the 235 completed PHP cases, 19 percent settled without a hearing, 66 percent settled after a Preliminary Hearing and 15 percent after a Final Hearing (see table A5 earlier). These proportions may well change significantly in the future as PHP was only recently introduced. Hence, some of the more complex cases are yet to settle – this is likely to increase the proportion of cases going to a final PHP hearing.

Timeframes for PHP hearings

Figure A1 highlights the difference between PHP cases that began after the start of the PHP and those already current. The figure shows the time it took for cases to enter on to the PHP programme after the case started. As expected, a high proportion of cases current at the start of PHP had been open for some time before going in to PHP. For cases that were new after the start of the pilot, just under 50 percent of cases were put on to PHP within eight weeks of the initial application to the court.

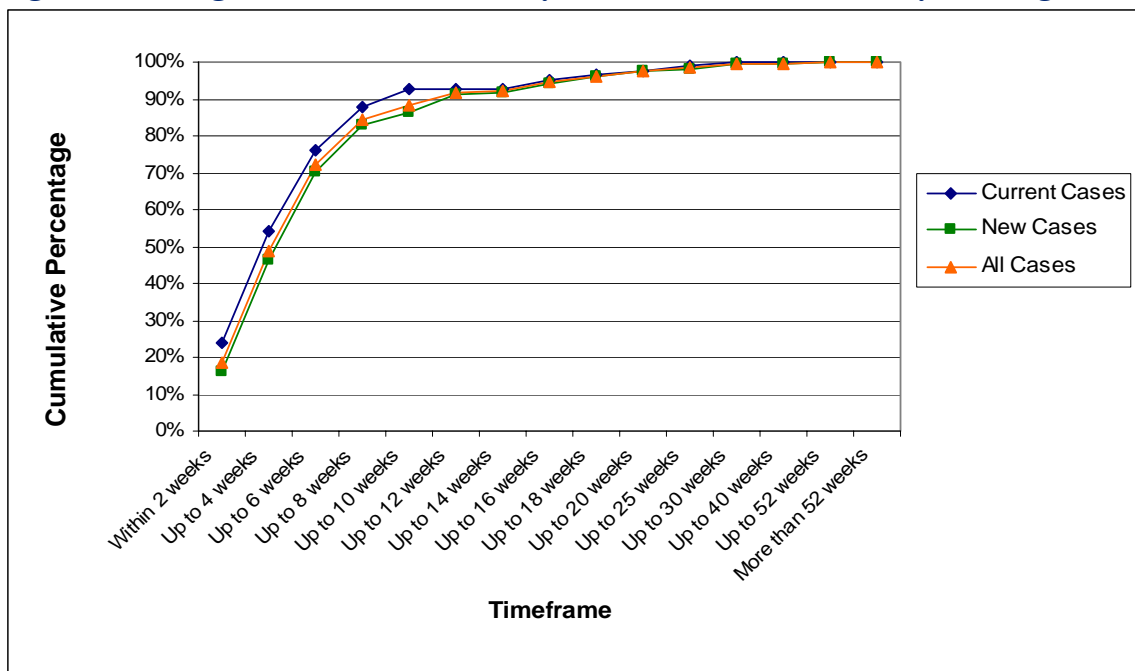
Figure A1: Length of time between case start and entry onto PHP (PHP cases only)



Because ‘current’ and ‘new’ cases are so different in terms of the time that the cases had been open, much of the analysis relating to timeframes separates current and new cases as in the above figure.

Figure A2 shows the time it took for PHP cases to have a Preliminary Hearing after entry on to the PHP programme.

Figure A2: Length of time between entry on to PHP and Preliminary Hearing



Notes:

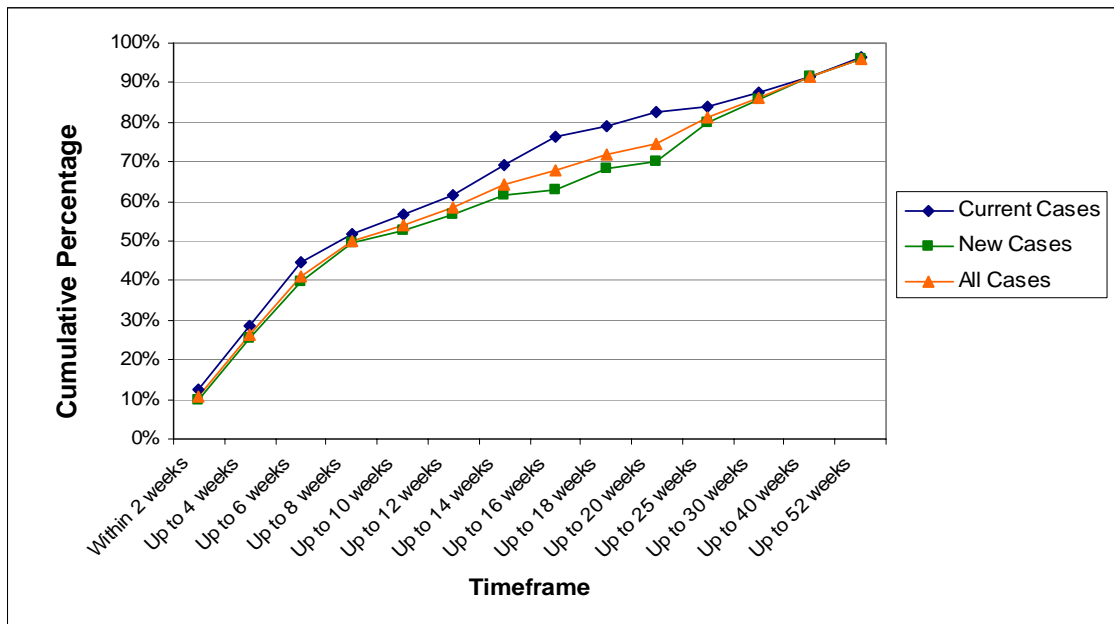
(1) Only those PHP cases that were recorded as having gone to a Preliminary Hearing were counted here.

As shown in figure A2, current cases were only very slightly quicker to get to a Preliminary Hearing than new cases. Around 19 percent of PHP cases with a Preliminary Hearing had one scheduled within two weeks. Of the 252 cases which had a Preliminary Hearing, 83 were current, and 169 were new. For around half of cases (50%), the Preliminary Hearing was held within four weeks of being put on PHP.

Because only 36 cases had a Final Hearing, no attempt has been made to represent these time frames pictorially. Around 16 percent of cases that went to Final Hearings had them within seven weeks of the Preliminary Hearing, 27 percent within eight weeks, 40 percent within nine weeks, and half (50%) of those cases had the Final Hearing within 10 weeks of the Preliminary Hearing.

Figure A3 shows the time it took for PHP cases to be disposed from the time of entry on to the PHP programme. Again, the figure presents new (154 cases) and current (81) cases separately, as well as all PHP cases. There is, however, very little difference between current and new cases up to the eight week mark. Thereafter, there is some divergence. The 70th percentile new case took 20 weeks to dispose, compared to only 14 weeks for a current case.

Figure A3: Time between entry onto PHP and case disposal



Notes:

(1) Only disposed cases were counted here.

Timeframes by pilot site

PHP Guidelines indicate that a Preliminary Hearing must be held within two weeks of a case being directed on to the programme. Another requirement is that a Final Hearing must be held two months after the Preliminary Hearing.

Both of these guidelines, when combined, imply a timeframe within which cases should be concluded. For the purpose of this study, we have used a period of 90 days as the target completion time for cases.

Table A6 shows the number and proportion of PHP cases that were completed within 90 days. Note that table A6 counts both completed cases and active (ie, not complete) cases that were not complete 90 days after direction on to PHP. It does not count or consider active cases that have not reached 90 days since direction to PHP.⁶

Only 46 percent of these cases (ie, completed and still active 90 days after direction to PHP) completed within 90 days. 'Current' cases (ie, cases begun before PHP was introduced) performed slightly better than 'new' cases. Fifty-five percent of these current cases met the 90 day target compared to 41 percent of these new cases.

⁶ Whilst this is logical, it does mean that table A6 presents a 'best picture' snapshot at a given point in time as some of the cases that have been excluded (as they have not reached 90 days since starting) will not complete within 90 days.

Table A6: Proportion of PHP cases completed within 90 day timeframe, by court (includes active cases that have already exceeded 90 days)

	Current		New		All	
	Count	%	Count	%	Count	%
All pilot sites (PHP only)						
Completed within 90 days	52	59.1	93	45.8	145	49.8
NOT completed within 90 days	36	40.9	110	54.2	146	50.2
Total cases	88	100.0	203	100.0	291	100.0
Auckland						
Completed within 90 days	5	41.7	19	42.2	24	42.1
NOT completed within 90 days	7	58.3	26	57.8	33	57.9
Total cases	12	100.0	45	100.0	57	100.0
Dunedin						
Completed within 90 days	9	45.0	15	42.9	24	43.6
NOT completed within 90 days	11	55.0	20	57.1	31	56.4
Total cases	20	100.0	35	100.0	55	100.0
Palmerston North						
Completed within 90 days	6	46.2	7	35.0	13	39.4
NOT completed within 90 days	7	53.8	13	65.0	20	60.6
Total cases	13	100.0	20	100.0	33	100.0
Rotorua						
Completed within 90 days	8	80.0	12	32.4	20	42.6
NOT completed within 90 days	2	20.0	25	67.6	27	57.4
Total cases	10	100.0	37	100.0	47	100.0
Wellington						
Completed within 90 days	5	41.7	15	51.7	20	48.8
NOT completed within 90 days	7	58.3	14	48.3	21	51.2
Total cases	12	100.0	29	100.0	41	100.0
Tauranga						
Completed within 90 days	19	90.5	25	67.6	44	75.9
NOT completed within 90 days	2	9.5	12	32.4	14	24.1
Total cases	21	100.0	37	100.0	58	100.0

Notes:

- (1) Completion times calculated from the date of entry in to PHP to the case end date (date that all applications are disposed).
- (2) Those cases that have been active for less than 90 days have been excluded from this analysis.

It is clear that many cases do not meet the 90 day target. But table A6 does not show if the extent of this failure to meet the target is slight or prolonged. Table A7 attempts to show that. Table A7 considers completed cases only.

As with table A6, table A7 appears to show that 'current' cases perform better than 'new' cases. A greater proportion of 'current' cases were completed within 6 months (180 days) compared to 'new' cases.

**Table A7: PHP cases that took longer than 90 days to complete, by court
(completed cases only)**

	Current		New		All	
	Count	%	Count	%	Count	%
All pilot sites (PHP only)						
91–180 days	16	55.2	30	49.2	46	51.1
181–365 days	10	34.5	25	41.0	35	38.9
More than 365 days	3	10.3	6	9.8	9	10.0
Total cases that took more than 90 days	29	100.0	61	100.0	90	100.0
Auckland						
91–180 days	4	80.0	5	41.7	9	52.9
181–365 days	1	20.0	5	41.7	6	35.3
More than 365 days	0	0.0	2	16.7	2	11.8
Total cases that took more than 90 days	5	100.0	12	100.0	17	100.0
Dunedin						
91–180 days	6	60.0	6	54.5	12	57.1
181–365 days	4	40.0	4	36.4	8	38.1
More than 365 days	0	0.0	1	9.1	1	4.8
Total cases that took more than 90 days	10	100.0	11	100.0	21	100.0
Palmerston North						
91–180 days	1	33.3	4	57.1	5	50.0
181–365 days	2	66.7	2	28.6	4	40.0
More than 365 days	0	0.0	1	14.3	1	10.0
Total cases that took more than 90 days	3	100.0	7	100.0	10	100.0
Rotorua						
91–180 days	0	0.0	8	66.7	8	57.1
181–365 days	1	50.0	2	16.7	3	21.4
More than 365 days	1	50.0	2	16.7	3	21.4
Total cases that took more than 90 days	2	100.0	12	100.0	14	100.0
Wellington						
91–180 days	3	42.9	3	27.3	6	33.3
181–365 days	2	28.6	8	72.7	10	55.6
More than 365 days	2	28.6	0	0.0	2	11.1
Total cases that took more than 90 days	7	100.0	11	100.0	18	100.0
Tauranga						
91–180 days	2	100.0	4	50.0	6	60.0
181–365 days	0	0.0	4	50.0	4	40.0
More than 365 days	0	0.0	0	0.0	0	0.0
Total cases that took more than 90 days	2	100.0	8	100.0	10	100.0

Notes:

(1) Completion times calculated from the date of entry into PHP to the case end date (date that all applications are disposed).

(2) Those cases that have been active for less than 90 days have been excluded from this analysis.

Assessing the effects of PHP

This section assesses the effects of PHP on the timeliness and durability of cases, and the uptake of service provision.

Suitable comparisons for estimating the effects of PHP

Two main issues were considered when defining the comparisons to test the effects of PHP:

- identifying a suitable group of comparison cases
- differences between pilot and non-pilot sites due to factors other than PHP.

The ideal comparison would be between PHP cases (in pilot courts) and a 'control' group of cases in non-pilot courts. The 'control' group would have characteristics almost identical, or at least very close, to the real PHP cases.

It was hoped that the comparative analyses would make it possible to identify a group of characteristics associated with a high incidence of PHP. These characteristics could then be applied to non-pilot sites to select a comparison group of cases to test for the effects of PHP.

Further investigations were undertaken by grouping cases with different combinations of factors to try to isolate such characteristics. This did not prove possible due both to the low overall incidence of PHP and the variability of the type of cases placed on PHP.

As it was not possible to reliably generalise a set of characteristics of PHP cases, a robust 'control' group could not be formed.

Although less than ideal, the only comparison possible is between pilot and non-pilot courts. To improve the chances of detecting the effects of PHP, comparisons are made for the two groups of cases where the incidence of PHP is high. Thirteen percent of all cases with Notice of Defence were put on PHP, and 11 percent of all cases with a without notice application were put on PHP.

Effects of PHP on case lengths

Median case lengths for completed cases are presented in table A8. It shows only a small, almost negligible, difference of five days when all cases are compared. There are more noticeable differences in timeliness for those cases where the incidence of PHP is higher – ie, defended cases⁷ and cases where an application has been made without notice.

The median time for defended cases is considerably lower in pilot sites (271 days) compared with non-pilot sites (304 days). Cases with an application filed without notice are also disposed of more quickly in pilot sites with a median of 198 days compared with 217 days in non-pilot sites.

⁷ For example, cases where a Notice of Defence has been filed.

Table A8: Median case lengths for all complete cases (days)

	Non-pilot site		Pilot site	
	Number of cases	Median	Number of cases	Median
All cases	15174	193	3137	188
Only those with notice of defence	5972	304	1401	271
Only those with a without notice application	6327	217	1334	198

Notes:

(1) Case length was defined as the length of time between the start of the case (first application filing date) and the end of the case (when all applications were disposed).

Table A9 gives the median case lengths of completed PHP cases only. The table compares all PHP cases to those that were current at the start of PHP (expected to have longer case lengths) and those that were new at the start of PHP.

Table A9: Median case lengths for completed PHP Cases (days)

	Number of cases	Median
All PHP cases	235	230
PHP cases current at start of PHP	81	434
PHP cases new since the start of PHP	154	185

Notes:

(1) Case length was defined as the length of time between the start of the case (first application filing date) and the end of the case (when all applications were disposed).

(2) See Figure A3 for time between entry onto PHP and case disposal for current cases.

Case Completions

The pattern of improved timeliness was further investigated. Tables A10–A12 compare the proportion of cases completing in 3 months, 3–6 months, 6–12 months and more than 12 months. Comparing all cases in pilot versus non-pilot sites, there was a higher proportion of pilot site cases resolved slightly sooner than in non-pilot sites. This is evident in that 77.4 percent (aggregating the timeframe categories) of pilot site cases were completed within one year compared to 73.1 percent of non-pilot site cases. This difference becomes slightly more apparent when looking at the more complex case types (those with notice of defence and those filed without notice).

Table A10: Case completion times for all completed cases

Completion timeframe	All cases					
	Non-pilot site		Pilot site		Total	
	No.	%	No.	%	No.	%
Less than 90 days	3932	25.9	832	26.5	4764	26.0
91–180 days	3273	21.6	674	21.5	3947	21.6
181–365 days	3883	25.6	921	29.4	4804	26.2
More than 12 months	4086	26.9	710	22.6	4796	26.2
Total completed cases	15174	100.0	3137	100.0	18311	100.0
Cases still active	7586		1417		9003	
Total cases	22760		4554		27314	

Notes:

(1) Completion times calculated from the start date of the analytical case (date of first application) to the case end date (date that all applications are disposed).

Table A11: Case completion times for all cases with notice of defence

Completion timeframe	Only those with notice of defence					
	Non-pilot site		Pilot site		Total	
	No.	%	No.	%	No.	%
Less than 90 days	533	8.9	141	10.1	674	9.1
91–180 days	1087	18.2	262	18.7	1349	18.3
181–365 days	1869	31.3	507	36.2	2376	32.2
More than 12 months	2483	41.6	491	35.0	2974	40.3
Total completed cases	5972	100.0	1401	100.0	7373	100.0
Cases still active	4103		852		4955	
Total cases	10075		2253		12328	

Notes:

- (1) Completion times calculated from the start date of the analytical case (date of first application) to the case end date (date that all applications are disposed).
- (2) Only cases with a Notice of Defence lodged have been counted here.

Table A12: Case completion times for all cases having a without notice application

Completion timeframe	Only those with without notice application					
	Non-pilot site		Pilot site		Total	
	No.	%	No.	%	No.	%
Less than 90 days	1713	27.1	374	28.0	2087	27.2
91–180 days	1084	17.1	258	19.3	1342	17.5
181–365 days	1521	24.0	357	26.8	1878	24.5
More than 12 months	2009	31.8	345	25.9	2354	30.7
Total completed cases	6327	100.0	1334	100.0	7661	100.0
Cases still active	3522		638		4160	
Total cases	9849		1972		11821	

Notes:

- (1) Completion times calculated from the start date of the analytical case (date of first application) to the case end date (date that all applications are disposed).
- (2) Only cases with a without notice application have been counted here.

Longer term trends in case lengths

The following two charts are presented to allow comparisons in timeliness before and after the introduction of PHP. Median case lengths have been calculated for cases completed in 2004, 2005, 2006, 2007 and up until August 2008 for both non-pilot and pilot (both PHP and non-PHP) cases.

Figure A4 shows the recent historical trend in case lengths for pilot and non-pilot courts. The trends do not immediately suggest that the introduction of PHP in November 2006 had a significant effect on case lengths.

Note that these measures are derived from all cases completed within a year – no matter when they started – and cannot be directly compared with the medians for completed cases (or the percent completed measures) as they are based on different sets of cases.

Figure A4: Median case length for completed care of children cases, 2004–2008

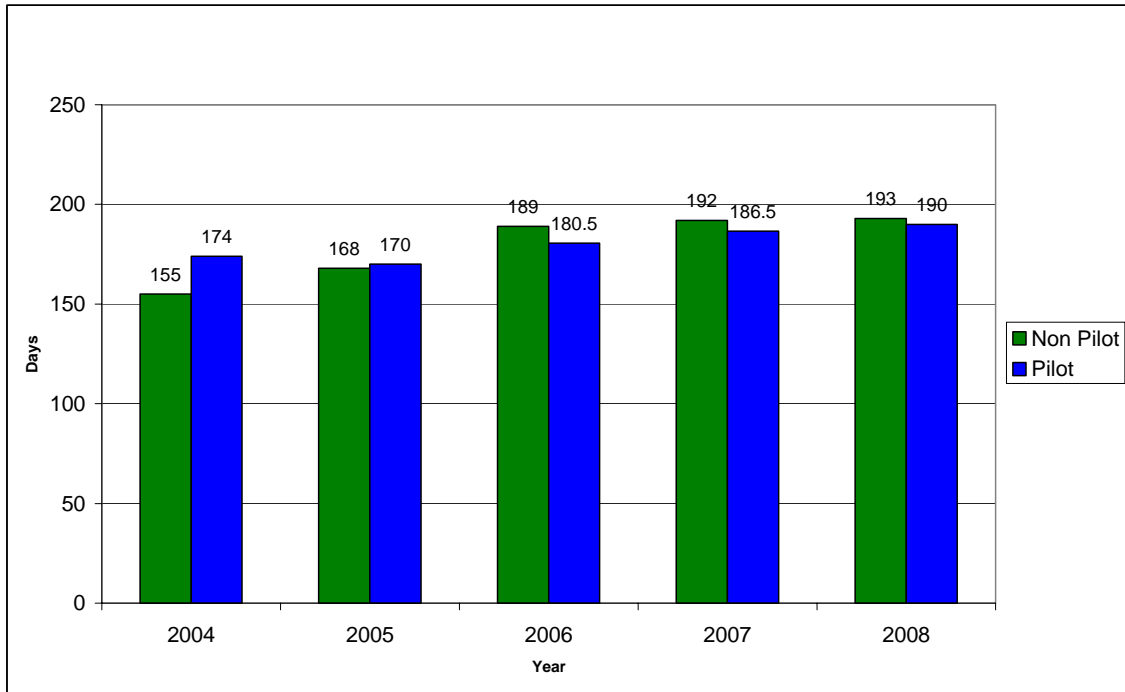
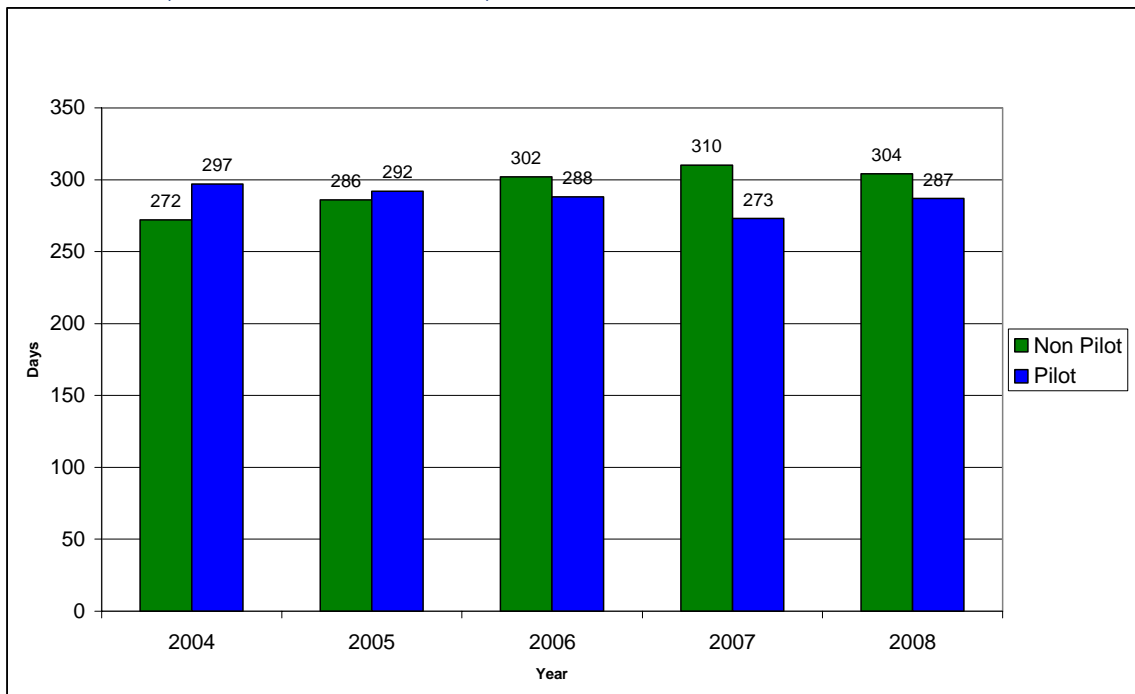


Figure A5 shows timeliness comparisons for cases with a Notice of Defence only. This graph shows that the median case lengths in non-pilot sites have generally increased between 2004 and 2007, although show a decrease in 2008. In contrast median case lengths have fallen each year in pilot sites, except for 2008.

Figure A5: Median case length for completed care of children cases (with Notice of Defence)



Effects of PHP on the timeliness of property relationship cases

Figure A6 attempts to determine whether PHP has had an impact on the time taken to hear non-care of children cases. It shows timeliness for completed property relationship cases for pilot and non-pilot courts.

Figure A6: Median case length for completed property relationship cases

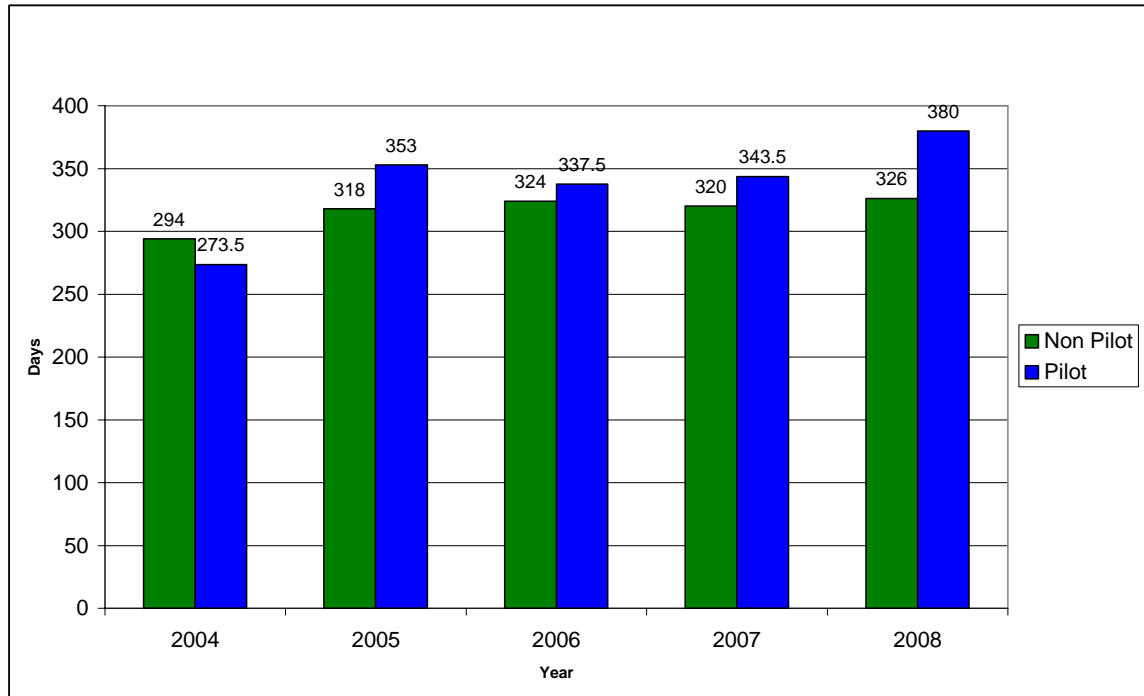


Figure A6 shows that historically cases have generally taken longer to complete in pilot sites compared to non-pilot sites. Though there are some indications that this gap seems to have widened over the past two to three years the differences are not enough to make any clear conclusions.

Effects of PHP on durability

One of the aims of PHP is to have more enduring outcomes. It was hoped that parties in PHP cases would be less likely to return to court for further litigation.

As CMS assigns unique identifiers for unique 'family groups', it is possible to tell if parties return to court. Table A13 shows the percentage of completed cases that returned to court. Note that for this analysis, a period of at least six months was set aside for cases to return.

Table A13: Number of completed cases that returned to court

	All cases		Pilot		Non-pilot		PHP		PHP (current)		PHP (new)	
	%	Count	%	Count	%	Count	%	Count	%	Count	%	Count
All cases	13.7	1742	15.7	345	13.3	1397	19.7	35	21.1	15	18.2	20
Cases with notice of defence filed	16.4	843	18.0	177	16.0	666	21.2	28	20.7	12	21.6	16
Cases with an application filed without notice	17.4	916	20.3	188	16.8	728	19.2	18	26.5	9	15.0	9

Notes:

- (1) Includes only those cases that were active at or started after 1 Nov 2006 and first disposed before 1 Feb 2008, giving a period of at least six months for a case to return after disposal.
- (2) Each analytical case counted as having returned if there was another analytical case with the same case id appearing after the disposal date of the previous case (and before 4 Aug 2008).
- (3) The requirements of this analysis required two competing case measures: the 'analytical case' measure is consistent with the rest of the analysis already carried out (assuming independence of analytical cases), however to ascertain whether a case has returned to court after initial disposal, only the first analytical case sharing the same CMS case number is counted (thus assuming dependence of analytical cases with the same case number).
- (4) Where a CMS case had a non-PHP 'analytical case' followed by a PHP analytical case, the PHP case was counted as the first case in ascertaining whether it returned.

Table A13 shows that the proportion of cases returning in pilot sites (15.7%) is greater than those returning in non-pilot sites (13.3%). The table also shows that a higher proportion of PHP cases return to court (19.7%). This is contrary to the intentions of PHP.

The picture is very similar when considering only cases where a Notice of Defence was filed, a better comparison than 'all cases'. A higher proportion of completed cases with a Notice of Defence returned in pilot site courts (18.0%) over this time period than in non-pilot site courts (16.0%). An even higher proportion of the PHP cases with a Notice of Defence filed returned (21.2%). It should be remembered that PHP cases may be more difficult and complex. In addition the number of PHP cases being considered is small and thus this finding should be treated with some caution.

These returning cases were further investigated by looking at the number of times the cases return. This is presented in table A14. Across all cases, it was relatively rare for cases to return more than once in the time period.

Table A14: Number of times cases returned to court after initial disposal

Number of times a case returned after initial disposal	All cases		All cases pilot sites		All cases non-pilot sites		PHP cases only		PHP (current at 1 Nov 2006)		PHP (new after 1 Nov 2006)	
	%	case count	%	case count	%	case count	%	case count	%	case count	%	case count
0 *	86.3	10942	84.3	1850	86.7	9092	80.3	143	77.9	53	81.8	90
1	12.4	1575	14.1	309	12.1	1266	17.4	31	20.6	14	15.5	17
2	1.2	153	1.6	34	1.1	119	2.3	4	1.5	1	2.7	3
3	0.1	13	0.1	1	0.1	12	0	0	0	0	0	0
4	0.0	1	0.0	1	0.0	0	0	0	0	0	0	0
Total	100.0	12684	100.0	2195	100.0	10489	100.0	178	100.0	68	100.0	110

Notes:

- (1) Includes only those cases that were active at or started after 1 Nov 2006 and first disposed before 1 Feb 2008, giving a period of at least six months for a case to return after disposal.
- (2) Only the earliest analytical case for each CMS case is included in the analysis. For cases involved with PHP, the earliest PHP case was used and any prior case activity was excluded.
- (3) * The zero denotes those cases that did not return to court in the specified timeframe.
- (4) Each analytical case counted as having returned if there was another analytical case with the same case id appearing after the disposal date of the previous case (and before 4 Aug 2008).
- (5) The requirements of this analysis required two competing case measures: the analytical case measure is consistent with the rest of the analysis already carried out (assuming independence of analytical cases), however to ascertain whether a case has returned to court after initial disposal, only the first analytical case sharing the same CMS case number is counted (thus assuming dependence of analytical cases with the same case number).
- (6) Where a CMS case had a non-PHP analytical case followed by a PHP analytical case, the PHP case was counted as the first case in ascertaining whether it returned.

Table A15 is similar to Table A14 above, however it counts only those cases that had a Notice of Defence filed.

Table A15: Number of times cases returned to court after initial disposal (cases with Notice of Defence only)

Number of times a case returned after initial disposal	All cases		All cases pilot site		All cases non-pilot site	
	%	case count	%	case count	%	case count
0 *	83.6	4298	82.0	805	84.0	3493
1	14.8	759	16.4	161	14.4	598
2	1.5	79	1.5	15	1.5	64
3	0.1	4	0.0	0	0.1	4
4	0.0	1	0.1	1	0.0	0
Total	100.0	5141	100.0	982	100.0	4159

Notes:

- (1) Includes only those cases that were active at or started after 1 Nov 2006 and first disposed before 1 Feb 2008, giving a period of at least six months for a case to return after disposal.
- (2) Only the earliest analytical case for each CMS case is included in the analysis. For cases involved with PHP, the earliest PHP case was used and any prior case activity was excluded.
- (3) * The zero denotes those cases that did not return to court in the specified timeframe.
- (4) Each analytical case counted as having returned if there was another analytical case with the same case id appearing after the disposal date of the previous case (and before 4 Aug 2008).
- (5) The requirements of this analysis required two competing case measures: the analytical case measure is consistent with the rest of the analysis already carried out (assuming independence of analytical cases), however to ascertain whether a case has returned to court after initial disposal, only the first analytical case sharing the same CMS case number is counted (thus assuming dependence of analytical cases with the same case number).
- (6) Where a CMS case had a non-PHP analytical case followed by a PHP analytical case, the PHP case was counted as the first case in ascertaining whether it returned.
- (7) Only cases for which a Notice of Defence was filed are counted here.

Effects of PHP on the use of services provided by the Family Court

For many types of disputes, a range of services can be provided to assist in the resolution of cases. These include lawyers for children, social worker and psychologist reports, and counselling.

At the start of PHP there was no clear expectation about the effect of PHP on the use of such court-provided services. Tables A17 to A21 attempt to assess the effect of PHP on services. Table A16 shows the population counts for the percentage data shown in tables A17 to A21.

**Table A16: Population counts (n) for data presented in tables A17–A21
– completed cases only**

	Non-pilot sites	Pilot sites (PHP and non-PHP)	PHP in pilot sites	Non-PHP in pilot sites
All cases	15174	3137	235	2902
Cases where defence was filed	5972	1401	181	1220
Cases that involved without notice application(s)	6327	1334	127	1207

Lawyer for Child

Table A17 shows the proportion of cases where a Lawyer for Child had been appointed. PHP cases have a noticeably higher percentage of cases with Lawyers for Child appointed, compared to the other categories. Virtually all (95%) of the PHP cases had a Lawyer for Child appointed.

A higher proportion of PHP cases with a Notice of Defence had a lawyer for child appointed (96%) than did non-PHP cases in the pilot sites with a Notice of Defence (74%) or than non-pilot site cases with a Notice of Defence (73%).

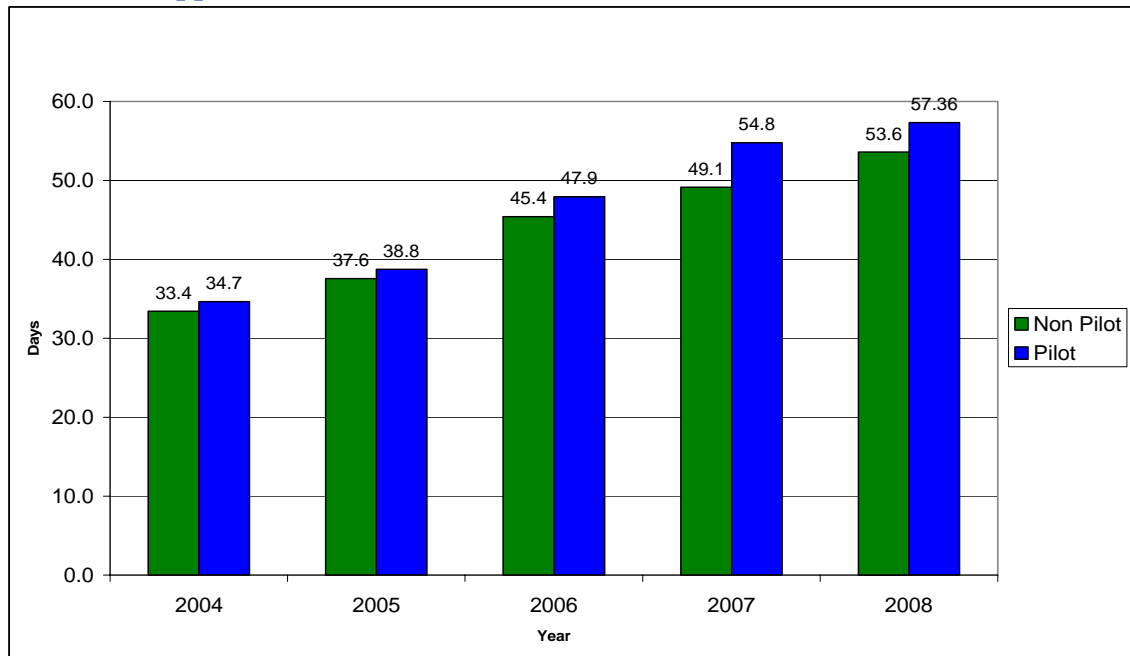
When comparing proportions of lawyer for child appointments, it is more relevant to compare only those where a Notice of Defence was filed, rather than all cases, as these are the cases where an appointment is to be expected.

Table A17: Percentage of completed cases with Lawyer for Child

	Non-pilot sites		Pilot sites (PHP and non-PHP)		PHP in pilot sites		Non-PHP in pilot sites	
	Count	%	Count	%	Count	%	Count	%
All cases	7607	50.1	1732	55.2	222	94.5	1510	52.0
Defence filed	4371	73.2	1078	77.0	174	96.1	904	74.1
Without notice application	4004	63.3	959	71.9	120	94.5	839	69.5

Figure A7 looks at differences in trends in the appointment of Lawyer for Child by year. Only completed cases are included for each year. This prevents comparisons with the figures in the table above as these are based on all (not just completed) cases current or starting after PHP.

Figure A7: Percentage of completed care of children cases with a lawyer for child appointed



The graph indicates that prior to PHP (which includes most of 2006), these differences between pilot and non-pilot sites were relatively small. However, this difference has grown larger since the introduction of PHP (2007 and 2008). For example for cases completed in 2005, Lawyers for Child were appointed in 38 percent of non pilot cases compared with 39 percent of cases in the pilot sites. This difference had increased for cases completed in 2008 – 54 percent for non-pilot sites compared with 57 percent in pilot sites. (Note that the increase over time in the percentage of cases with Lawyer for Child in both pilot and non pilot sites is due to changes introduced by the Care of Children Act in 2005.)

It appears that the introduction of PHP has led to an increase in the number of cases with lawyer for child appointed.

Specialist (Psychologist) Reports

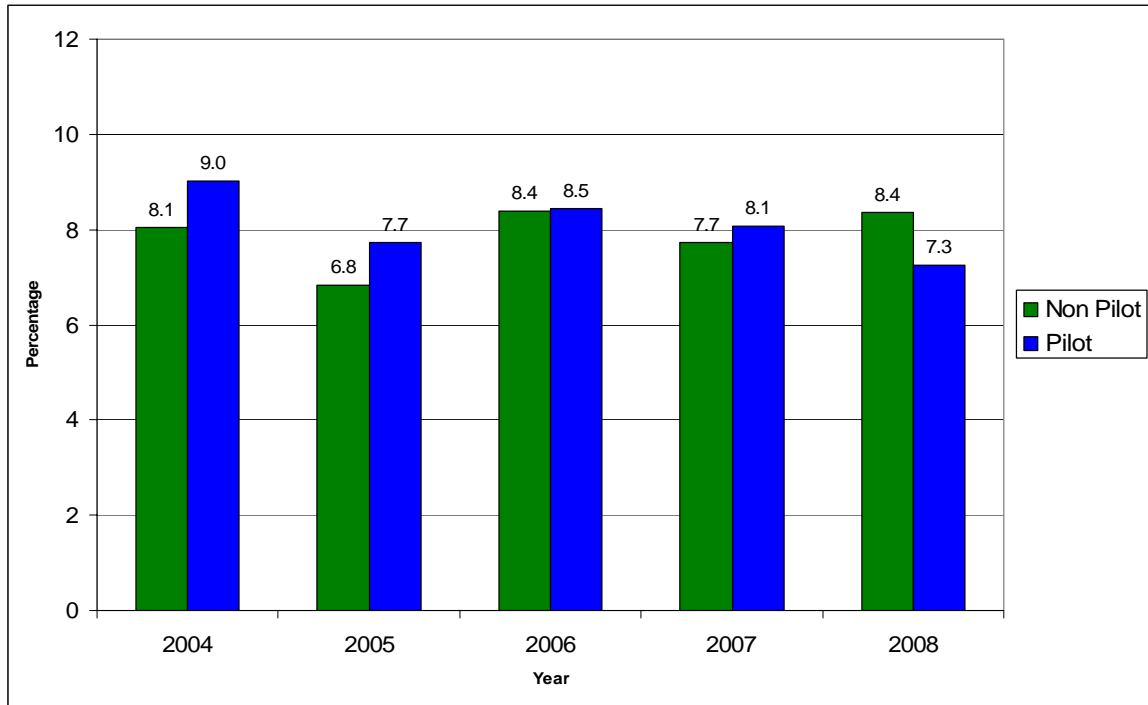
Table A18 shows that there is higher usage of psychologist reports for PHP cases than for either non-PHP cases in pilot sites or cases in non-pilot sites. This pattern is the same for all completed cases, for completed cases where a defence has been filed (where a quarter of the PHP cases had a specialist psychologist report written) and for completed cases that had a without notice application.

Table A18: Percentage of completed cases for which specialist psychological reports were written

	Non-pilot sites		Pilot sites (PHP and non-PHP)		PHP in pilot sites		Non-PHP in pilot sites	
	Count	%	Count	%	Count	%	Count	%
All cases	1214	8.0	239	7.6	46	19.6	193	6.7
Defence filed	986	16.5	208	14.8	46	25.4	162	13.3
Without notice application	679	10.7	134	10.0	23	18.1	111	9.2

Figure A8 shows the trends for the use of specialist psychological reports in pilot and non-pilot sites from 2004 to 2008.

Figure A8: Percentage of completed cases for which specialist psychological reports were written



The use of specialist psychological reports appears to differ between pilot and non-pilot sites but the pattern is unclear. There is higher usage of psychologists for PHP cases than for either non-PHP cases in pilot sites or cases in non-pilot sites.

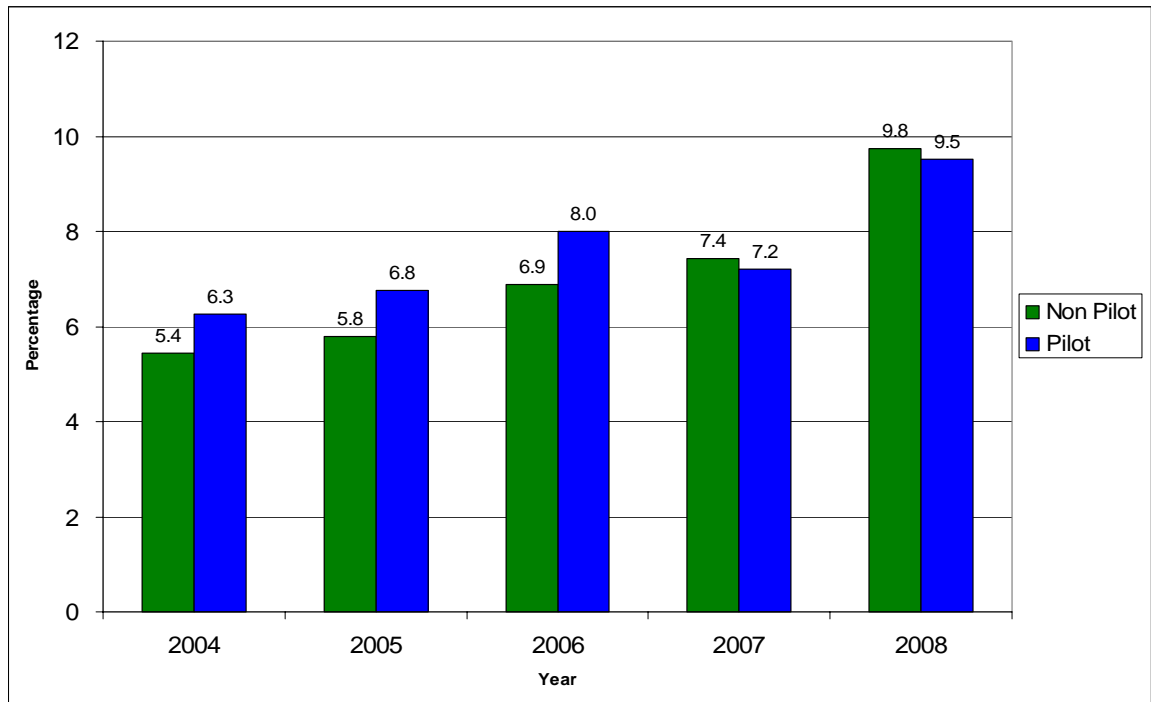
Social Worker Reports

A pattern similar to that for psychologist reports is apparent for social worker reports. Table A19 shows that there is considerably higher usage of social worker reports for PHP cases than for either non-PHP cases in pilot sites, or cases in non-pilot sites. This pattern is the same for all completed cases, for completed cases where a defence has been filed and for completed cases that had a without notice application.

Table A19: Percentage of completed cases for which social worker reports were written

	Non-pilot sites		Pilot sites (PHP and non-PHP)		PHP in pilot sites		Non-PHP in pilot sites	
	Count	%	Count	%	Count	%	Count	%
All cases	1062	7.0	222	7.1	42	17.9	180	6.2
Defence filed	687	11.5	151	10.8	35	19.3	116	9.5
Without notice application	736	11.6	150	11.2	29	22.8	121	10.0

Figure A9: Percentage of completed cases for which social worker reports were written



Counselling

It was expected that section 10(4) counselling would occur prior to Track B cases being placed on PHP. Hence we would expect there to be little difference in the uptake between pilot and non-pilot sites due to PHP. Table A20, however, shows that there was a large difference with section 10(4) counselling being much more widely used in pilot sites compared to non-pilot sites. Higher proportions of non-PHP cases in pilot sites than PHP cases were referred to section 10(4) counselling.

Table A20: Percentage of completed cases referred for section 10(4) counselling

	Non-pilot sites		Pilot sites (PHP and non-PHP)		PHP in pilot sites		Non-PHP in pilot sites	
	Count	%	Count	%	Count	%	Count	%
All cases	3988	26.3	1207	38.5	75	31.9	1132	39.0
Defence filed	2052	34.4	692	49.4	62	34.3	630	51.6
Without notice application	1121	17.7	392	29.4	29	22.8	363	30.1

Figure A10 below shows that to some extent the difference observed in table A20 was apparent before the introduction of PHP. This suggests that the practice of referring parties to section 10(4) counselling is not uniform across pilot site and non-pilot site courts, irrespective of PHP. It could also mean greater use of section 9 counselling in some non-pilot sites.

Figure A10: Percentage of completed cases referred for section 10(4) counselling

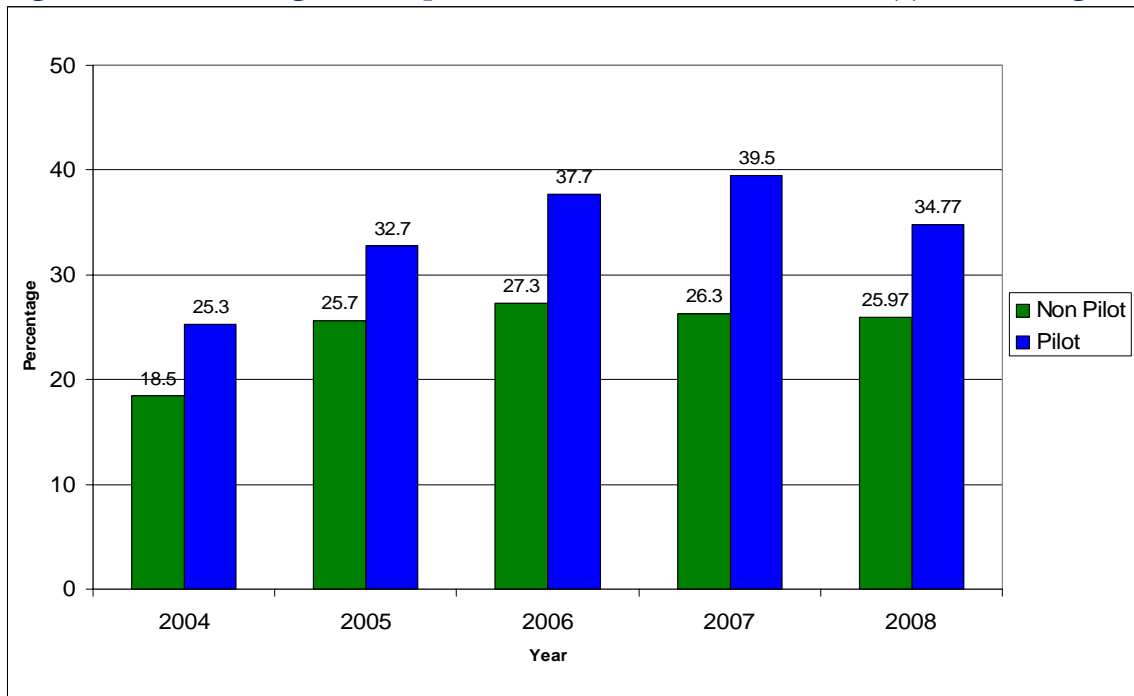


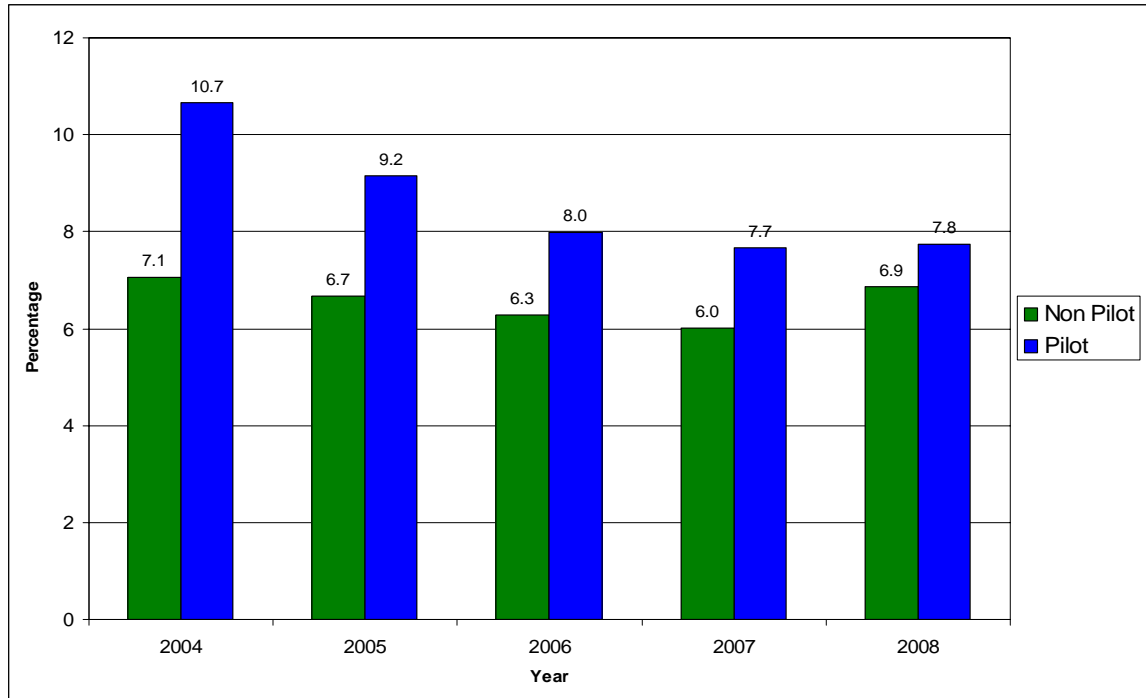
Table A21 shows that section 19 counselling is slightly more likely to be used in pilot sites. PHP cases have a considerably higher use of section 19 counselling than non-PHP cases in pilot sites. Interestingly, this is the reverse of the situation with section 10(4) counselling where non-PHP cases had a higher use than PHP cases.

Table A21: Percentage of completed cases with section 19 counselling

	Non-pilot sites		Pilot sites (PHP and non-PHP)		PHP in pilot sites		Non-PHP in pilot sites	
	Count	%	Count	%	Count	%	Count	%
All cases	978	6.4	258	8.2	46	19.6	212	7.3
Defence filed	710	11.9	195	13.9	42	23.2	153	12.5
Without notice application	513	8.1	175	13.1	32	25.2	143	11.8

Baseline historical data is presented in figure A11 for section 19 counselling, showing a general downward historical trend up till 2007. Figures in 2008 suggest that the decline at both pilot sites and non-pilot sites may have been arrested.

Figure A11: Percentage of completed cases with section 19 counselling



Pilot site descriptive information

Table A22 below divides Table A1 from the Main Findings section into cases that were:

- current at the start of the pilot on 1 Nov 2006; and
- those new cases begun after the start of the pilot.

Table A22: Pilot site PHP case counts by status at start of pilot

Court	Current at introduction of PHP			Started after PHP introduced		
	Total cases	PHP cases	% PHP	Total cases	PHP cases	% PHP
Auckland	138	14	10.1	409	50	12.2
Dunedin	236	20	8.5	536	38	7.1
Palmerston North	213	14	6.6	648	22	3.4
Rotorua	244	10	4.1	571	38	6.7
Tauranga	319	22	6.9	729	45	6.2
Wellington	125	14	11.2	386	32	8.3
All pilot sites	1275	94	7.4	3279	225	6.9

This table shows that Wellington and Auckland put a higher proportion of current cases (ie, were open at the start of the pilot) on to PHP pilot than did the other pilot courts. Rotorua put the lowest proportion of current cases on to the PHP pilot.

Auckland also put a higher proportion of new cases on to the PHP pilot than did the other pilot courts. Palmerston North put the lowest proportion of new cases on to the pilot.

Table A23 below shows the number of cases where the initial applications were made on a without notice basis.⁸

Table A23: Cases with applications filed without notice

Pilot site	All cases	PHP cases	Proportion of all cases with without notice applications	Proportion of PHP cases with without notice applications	Proportion of cases with without notice applications put on PHP
Auckland	547	64	42%	41%	11%
Dunedin	772	58	31%	52%	12%
Palmerston North	861	36	48%	75%	7%
Rotorua	815	48	51%	75%	9%
Tauranga	1048	67	43%	61%	9%
Wellington	511	46	44%	48%	10%
All pilot sites	4554	319	43%	57%	9%

As shown in the table, the proportion of PHP cases that involve without notice applications was higher than the proportion of all cases that involved such applications. Overall 43 percent of all pilot site care of children applications involve a without notice application whereas 57 percent of PHP cases involve a without notice application. When looking at the individual pilot courts however, the proportions vary greatly. For example, in Palmerston North and Rotorua three-quarters (75%) of PHP cases involve without notice applications, whereas in Auckland only 41 percent of PHP cases involve such applications. The table also shows that, overall, nine percent of all cases (at pilot courts) involving without notice applications are put on PHP.

Table A24 shows the proportion of cases that had a Notice of Defence filed.⁹

Table A24: Cases with notices of defence filed by pilot site

Pilot site	All cases	PHP cases	% All cases with defence	% PHP cases with defence	%Defence cases on PHP
Auckland	547	64	48%	75%	18%
Dunedin	772	58	56%	79%	11%
Palmerston North	861	36	44%	89%	8%
Rotorua	815	48	48%	71%	9%
Tauranga	1048	67	51%	82%	10%
Wellington	511	46	48%	87%	16%
All pilot sites	4554	319	49%	80%	11%

⁸ Applications for parenting orders can be made on either a without notice or on notice basis. Generally where parenting orders are made regarding the parenting arrangements of children, it is necessary to serve the respondent with notice of the application, which gives them the opportunity to lodge a defence. However, where there are grounds for urgency, an application can be made without notice. This means that an order can be made about parenting arrangements without the need to serve the respondent with notice, subsequently the process is much quicker. Importantly, a judge will decide where it is appropriate that the application has been made without notice, and if necessary may direct an application to proceed on an on notice basis instead.

⁹ A Notice of Defence can be filed when an application is served on a respondent and the respondent wishes to oppose the application. That is, an application for a parenting order may be received by the court in order to gain care of, or contact with, a child. Where a respondent wishes to dispute the grounds for granting such care, the respondent will file the Notice of Defence.

PHP cases were more likely to have a defence filed than cases in general. This is evident in that over three-quarters (80%) of PHP cases had a defence filed compared to around half (49%) of the total cases in pilot sites. However in saying this, only a relatively small proportion of cases with a defence filed are placed on PHP (11%).

Table A25 shows the proportion of cases, both PHP and total cases, that had concurrent domestic violence (DV) cases for each pilot site.

Table A25: Cases with concurrent domestic violence cases by pilot site

Pilot site	All cases	PHP cases	% All cases with concurrent DV case	% PHP cases with concurrent DV case	% Cases with concurrent DV case on PHP
Auckland	547	64	21%	23%	13%
Dunedin	772	58	15%	31%	16%
Palmerston North	861	36	16%	22%	6%
Rotorua	815	48	24%	29%	7%
Tauranga	1048	67	18%	19%	7%
Wellington	511	46	19%	7%	3%
All pilot sites	4554	319	19%	22%	8%

About a fifth (19%) of all care of children cases, across all pilot sites, had a concurrent DV case. Across all sites, over a fifth (22%) of PHP cases had a concurrent DV case. However, this proportion was substantially lower in Wellington where only 7 percent of PHP cases had a concurrent DV case. Conversely Dunedin had a larger proportion of PHP cases with a concurrent DV case (31%). Furthermore, across all pilot courts only 8 percent of cases with a concurrent DV case were placed on PHP.

Table A26 shows the number of cases that included an application for reduced time.¹⁰

Table A26: Cases where reduced time applications were made, by pilot site

Pilot site	All cases	PHP cases	% All cases with reduced time	% PHP cases with reduced time	% Reduced time cases with PHP
Auckland	547	64	23%	47%	24%
Dunedin	772	58	14%	12%	6%
Palmerston North	861	36	8%	14%	7%
Rotorua	815	48	11%	19%	10%
Tauranga	1048	67	15%	31%	13%
Wellington	511	46	23%	48%	19%
All pilot sites	4554	319	15%	29%	14%

The proportion of PHP cases with applications for reduced time was generally higher for PHP cases than for all cases. Twenty-nine percent of PHP cases include applications for reduced time whilst only 15 percent of all care of children cases include such applications. Noteworthy

¹⁰ Applications for parenting orders that are filed on notice or those which are filed without notice but are subsequently directed to proceed on notice can be requested to proceed more quickly through the court, by way of making an application for reduced time, where a case can be made for the need for increased urgency.

is that there was a particularly high proportion (almost half) of PHP cases in Auckland and Wellington that included applications for reduced time, while in Dunedin and Palmerston North much fewer (12 and 14% respectively) included such applications. The table also shows 14 percent of all pilot site care of children applications that included applications for reduced time were put on PHP.

The number of cases which were referred to counselling programmes is shown in table A27. The table also shows the proportion of cases at each site referred to counselling that were entered onto the PHP pilot.

Table A27: Number of cases referred to counselling programmes

Pilot site	Total number of cases	PHP cases	Proportion of all cases with counselling	Proportion of PHP cases with counselling	Proportion of cases with counselling on PHP
Auckland	547	64	31%	50%	19%
Dunedin	772	58	49%	57%	9%
Palmerston North	861	36	50%	69%	6%
Rotorua	815	48	44%	48%	6%
Tauranga	1048	67	54%	51%	6%
Wellington	511	46	39%	43%	10%
All pilot sites	4554	319	46%	52%	8%

A higher proportion of PHP cases were referred to counselling programmes (52%) than the proportion of all cases referred to counselling (46%). There is a greater difference within some courts. For example, Auckland had a higher proportion of PHP cases (50%) than of all cases (31%) that were sent to counselling. This was similarly the case with Palmerston North. In Tauranga, on the other hand, a slightly smaller proportion of PHP cases (51%) than of the total cases (54%) were sent to counselling.



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ISBN 978-0478-29070-5

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