

Parenting Hearings Programme Pilot: Evaluation Report

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Overview

This is a summary of an evaluation report on the Parenting Hearings Programme (PHP) pilot. Both this summary and a full copy of the evaluation report are available on the Ministry of Justice website.

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Introduction

The Parenting Hearings Programme (PHP) 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. The PHP is also designed to be less adversarial, and provide opportunities for parents to participate more in the court process.

The pilot was initiated by Judge P Boshier, the Principal Family Court Judge, and began in the Auckland, Tauranga, Rotorua, Palmerston North, Wellington and Dunedin Family Courts on 1 November 2006.

The evaluation began with exploratory work at two PHP courts. This was followed by interviews at the six pilot court sites with Family Court judges, Family Court staff, lawyers, parents, psychologist and CYF social worker report writers, and community group representatives. A postal survey of parents, an internet survey of Family Court lawyers involved in the PHP, and statistical analysis of Case Management System (CMS) data were also conducted. Although originally intended, the statistical analysis did not allow for making definitive statements on the effects of the PHP versus non-PHP process. The low overall incidence of PHP cases and their high variability meant that a robust comparison group could not be identified.

Main findings

The PHP process

The suitability of cases for the PHP is determined by a judge at the PHP Judge's List. Suitable cases are then set down for a Preliminary Hearing which Guidelines indicate should be held within two weeks. The PHP 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, and a Lawyer for the Child is appointed in nearly all the PHP cases.

A Final Hearing, which should be held within two months, is scheduled for cases not resolved at the Preliminary Hearing. This hearing generally follows the traditional hearing model.

How to obtain a copy

The full report is available on the Ministry of Justice website:

<http://www.justice.govt.nz>

Nineteen percent of the completed PHP cases¹ had neither a Preliminary Hearing nor a Final Hearing. Presumably these were resolved in some way prior to the Preliminary Hearing, perhaps at the Judge's List. Two thirds of the completed PHP cases (66%) had just a Preliminary Hearing, and only 14 percent had both a Preliminary and Final Hearing.

Aspects of the PHP considered beneficial by those involved in the process included parents' participation at the Preliminary Hearing, and the same judge being involved in the PHP cases from start to finish. In addition, it was viewed as very worthwhile if parents completed the 'Parenting through Separation' course before going to a PHP Preliminary Hearing.

PHP case numbers

Fewer than expected cases were placed on to the PHP. Of the 4554 care of children cases in the six pilot sites which were current² or new³, 319 (7%) were placed on the PHP (as at 4 August 2008). Re-examining how potentially suitable cases for the PHP are identified, and their subsequent allocation to the programme, may increase case numbers for the PHP.

Cases suitable for the PHP

Two types of cases are considered potentially suitable for the PHP and suitability is determined by a judge at the PHP Judge's List. 'Track A' cases are urgent applications and other high-risk cases, often involving domestic violence, abuse or mental health issues. 'Track B' are those not resolved through counselling or mediation.

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

During interviews judges, lawyers and court staff indicated that cases considered least suitable for the PHP included those involving allegations of sexual abuse of children, significant safety issues, violence, significant and complex issues. Cases relating to s60⁴ 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 also considered unsuitable for the PHP.

Views differed as to whether domestic violence cases should be included in the PHP. Judges and lawyers generally acknowledged that most domestic violence issues will be dealt with at a s60 hearing. If considered suitable for the PHP, the case then will go to a PHP Preliminary Hearing as soon as possible. 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 the PHP were also cited. These included the potential for wrong decisions due to information not being available in the PHP timeframe, a faster timeframe might be counter-productive, and parties being pressured to compromise or reach agreement, in spite of safety concerns.

Timeliness of the PHP

Time between entry on to the PHP and the Preliminary Hearing

Once a judge has decided a case is suitable for the PHP it is directed to a two hour Preliminary Hearing which should be held within 14 days. The statistical analysis identified that only one in five of the PHP cases that had a Preliminary Hearing⁵ had this hearing within two 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 prescribed timeframes are not generally being met, overall the PHP is considered a faster process than non-PHP. This faster process is viewed very positively, and believed to be a key advantage of the PHP for both parents and children. There was much support from judges, lawyers, parents and court staff for a faster process, and the benefits of a timely resolution for children. It was also noted in some interviews, however, that a faster process may not always be appropriate.

Timeliness for 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% as effective and 81% more effective than non-PHP).

Timeliness for Lawyers for the Child

When 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.

Timeliness for specialist report writers

All groups interviewed reported difficulties obtaining specialist reports within PHP's timeframes, particularly if requests for such reports were broad in scope.

The lawyers' survey asked about the effectiveness of the PHP in ensuring psychologist or social worker reports were requested when appropriate. Thirty-eight percent of lawyers who responded to the survey believed the 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, the PHP was not

¹ Cases in the analysis dataset which had a cut off date of 4 August 2008.

² Cases in the court system when the PHP began.

³ Cases which started after the introduction of the pilot on 1 November 2006.

⁴ Procedure for dealing with proceedings in s59(1) Allegation of violence made in proceedings relating to parenting orders.

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

generally considered less effective than non-PHP so this issue does not appear to be specific to the PHP.

Urgent interim hearings in non-PHP

The evaluation investigated whether urgent interim hearings in the non-PHP system would provide the same benefits as PHP Preliminary Hearings.

Although not explored in depth, responses to this question 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. Those lawyers who did not agree thought this was because urgent interim hearings would not offer the same flexibility as the PHP, or its 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.

Outcomes

Fair outcomes for parties and children

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

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. 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 the PHP as more effective than non-PHP in resulting in fair and appropriate outcomes, and 14 percent less effective than non-PHP.

Satisfaction

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

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

Durability

The extent to which the PHP cases were completed and parties did not return to court was measured through CMS data⁶ and interview and survey questions.

Considering completed cases with a Notice of Defence⁷ filed, a higher proportion returned in pilot court sites over the specified time period, than returned in non-pilot court sites. Eighteen percent of the completed PHP and non-PHP cases in pilot court sites returned compared to 16 percent in non-pilot court sites. An even higher proportion of the PHP cases returned (21%).

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

PHP's less adversarial model

The PHP seeks to apply a less adversarial model than the usual Family Court process, and most judges, lawyers and report writers interviewed believed that the PHP was generally achieving this.

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

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

The Parenting Hearings Programme was considered less adversarial for a variety of reasons, and one of these was the opportunities it provides for parties to have their say. This is a key component of the programme, and most interviewed parents appreciated this opportunity. Nearly all lawyers (91%) who responded to the survey agreed it is useful for parties to be able to speak directly to the judge. Six in ten (61%) strongly agreed this was useful.

Another reason why the PHP was considered less adversarial was because of the courts' firmer control. Depending on the case, judges tended to firmly control the PHP proceedings by, for example, limiting issues to be addressed, so that the court could 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 aspect of the courts' firm control of the PHP process, was generally considered a positive development. It helped to speed up the process, 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 natural justice concerns with them.

Seventy-three percent of lawyers who responded to the survey believed that the PHP was effective at appropriately limiting cross examination. Sixty-nine

⁶ An analysis of CMS data was undertaken 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.

⁷ 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.

percent responded that the PHP was more effective than non-PHP in appropriately limiting cross examination.

Variation between the PHP judges and between PHP courts

Some variation in practice between both the PHP courts and the PHP judges became apparent during interviews with key informants. The six pilot sites had, however, generally implemented the PHP process as described in the initial guidelines.

Variation was of little concern for some lawyers as they had experienced this in other Family Court processes. Others, however, 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. Just under a half (46%) reported a lack of consistency between judges that impacts negatively on the PHP outcomes.

Some lawyers indicated during the interviews that a more consistent approach would help them prepare their clients. A particular concern here was that the introductory DVD's⁸ portrayal of the PHP process very often differed from that actually experienced by parties. Other examples of variation reported during interviews included differences in the 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. Lawyers suggested more guidance or protocols might increase consistency.

PHP and natural justice

Lawyers raised concerns about the 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 breaches of natural justice had occurred. Concerns related to limiting cross examination, the PHP's faster process, limiting opportunities for lawyers to speak on behalf of their client, and judges being overly-directive. Lawyers with a greater number of years experience were more concerned about natural justice issues in relation to the PHP, than those with less experience.

Judges reported no concerns about natural justice and the PHP, although a few acknowledged the process might give rise to these concerns. Judges believe they can address this by ensuring all relevant issues are covered, and if they check this with lawyers and Lawyers for the Child.

Expansion of the PHP

All the interviewed judges and most lawyers and report writers were positive about the PHP. When asked to rate the PHP process overall in the survey, seven in ten of the lawyers rated it as good. Those lawyers who had been

practising family law for up to ten years were the most positive.

Almost eight in ten (78%) lawyers who responded to the survey stated that the 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 had been practising for up to ten years were more positive and those practising over ten years were less positive.

Overall, there was general agreement and much support for implementing the pilot throughout New Zealand. Quicker timeframes, early judicial intervention, involvement of parties, the less adversarial approach and focus on key issues were identified as benefits of PHP. Support for implementing the PHP throughout New Zealand was within the context of general support for providing an early response to care of children cases.

Issues, such as insufficient judge time, scheduling and resource issues, would need to be resolved before the PHP could be introduced nationally. The durability of outcomes also 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.

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.

Conclusion

Positive features of the PHP process include a less adversarial approach, parents speaking directly to and answering questions from the judge, as well as the same judge being involved throughout a case. The two hour Preliminary Hearing was also viewed positively as it provided sufficient time for consideration of the issues. In general, judges, lawyers and court staff believed suitable cases were being placed on to the PHP. In addition, many parents benefited through participating in the 'Parenting through Separation' course prior to going on to the Parenting Hearings Programme.

Insufficient PHP judge time, scheduling difficulties, and the suggestion that PHP's priority may be creating delays for other types of cases, 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.

In conclusion, the evaluation found that the PHP process offers a number of very worthwhile features. The faster and less adversarial PHP process was considered a definite benefit. Overall the PHP pilot has provided worthwhile opportunities for these pilot courts to improve their responses to care of children cases.

⁸ Parents are required to watch a DVD which explains the Parenting Hearings Programme process.