

EVALUATION OF THE DEFENDANT CENTRED COURTROOM PILOT

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FOR THE:

MINISTRY OF JUSTICE

MARCH 2014

EXECUTIVE SUMMARY

The Defendant Centred Courtroom (DCC) pilot trials a reconfigured District Court courtroom where defendants who are not in custody sit or stand beside their counsel at the front of the court instead of standing in the dock. It is anticipated that placing the defendant at the centre of the courtroom will make the court process more understandable and accessible for defendants. It is expected that increasing understanding and engagement will culminate in a reduction in reoffending and an increase in sentence compliance among participating defendants.

The aims of the evaluation are:

- To examine the perceived impact of the DCC on participating defendants;
- To explore the impact of the DCC on the court.

The impact of the pilot on rates of recidivism and sentence compliance will be assessed at a later stage. The findings in this report are from interviews with 20 participating defendants, interviews with 38 professionals who work in the court (including judges, court staff, prosecution and defence lawyers) and the evaluators' observations of the court.

Key findings

The expected outcomes of the DCC pilot were that defendants would become more engaged with, and have a better understanding of, court proceedings. Findings from defendants indicate that these outcomes are being achieved. Defendants were able to hear, see and communicate more easily with their counsel, the judge and other court professionals and consequently felt they were part of the proceedings rather than on the periphery. The better access to counsel during proceedings also facilitated understanding and the ability to get correct information to the judge.

Findings from the key informants are mixed. Findings from some key informants (including most participating judges) indicate that the DCC increases defendants' engagement and facilitates better understanding of court proceedings. However, many key informants thought the pilot had limited impact as they felt that defendants' engagement and understanding was largely based on defendants' individual circumstances and attributes including their willingness to engage.

It was anticipated that, ultimately, the DCC pilot would lead to increased sentence compliance and reduced recidivism for participating defendants. There was a general consensus among key informants that the DCC was unlikely to achieve these outcomes. Many key informants believed offending was driven by multiple factors that pervade defendants' lives and addressing offending through the DCC pilot was seen as unlikely to have an impact.

Findings

Engagement and understanding

Overall the defendants were very positive about the DCC concept. Of the defendants interviewed 15 had previously appeared in the dock and were able to compare their experiences. Most defendants felt very engaged and involved in their hearing, and of those who had previously been in the dock, most said they were more involved than when they were in the dock. The reasons they felt more involved included: the closer proximity made them feel like they were part of the proceedings with better access to speak to the judge and their counsel; being able to see the judge's facial expressions more clearly; and being able to hear the judge, counsel and prosecutor more easily.

While key informants acknowledged there were increased opportunities for engagement in the DCC, such as being able to hear and converse with the judge and counsel more easily, many thought that this did not necessarily lead to more meaningful engagement. Many were of the view that engagement was dependant on defendants' individual attributes and how willing they were to engage. However of all the key informant groups most judges were more positive and thought that many defendants were engaged in the DCC.

Most defendants said they understood all of what was said by the judge and their counsel, more so than when in the dock. They felt that being at the front of the courtroom had contributed to their understanding because they were able to clearly hear what was being said. They also had easier access to their counsel if they needed something explained.

Most defendants also said they understood their sentence and what was entailed, often because they had been briefed by their counsel on what to expect prior to their hearing or had spoken to a probation officer from Corrections Services if they were a repeat offender. However several indicated they were unclear about all the details of their sentencing.

Some key informants who engaged regularly with defendants said it was not only up to the defendant to understand but also the responsibility of the people who worked in the justice sector to ensure they had explained the terms of the sentence to the defendant in a manner they would understand. They said it was the role of counsel and, where appropriate, court staff and Corrections Services staff to explain the details of the sentence to ensure understanding of sentence conditions.

Courtroom 1 at North Shore District Court has some problems with acoustics resulting in defendants and key informants commenting on the difficulty hearing the proceedings from the dock. Most key informants identified the perspex screen as the major barrier to defendants hearing what was said during proceeding. Some of these key informants thought removing the perspex screen from the dock, thus ensuring that defendants could hear what was said, would be just as effective at facilitating engagement and understanding as the DCC.

Defendants' perspectives on other impacts of the DCC included:

- Some defendants who had appeared in the dock previously thought that being in front of the judge made them feel more responsible for their offending because they were not able to hide behind the dock.
- For first time defendants, being at the front of the court with their back to the public gallery seemed preferable to being in the dock where they were more visible to everyone else in the courtroom.
- Several defendants commented that being at the front of the courtroom gave them an opportunity to present themselves in the best way to the judge.
- Some defendants said that not being in the dock distinguished them from what they called 'bad criminals'.

Sentence compliance and reducing recidivism

Generally, key informants did not think the DCC pilot would reduce recidivism and if it had any impact it was more likely to be on defendants appearing on their first charge or a repeat appearance for low level offending. Some key informants argued that this group would be unlikely to reoffend even if in the dock so it would be very difficult to attribute the lack of reoffending to their appearance in the DCC. Several key informants thought the use of the dock had a powerful impact on some young first offenders that may be lost if they were in the DCC.

Impact on the court

Several key informants raised the concern that the DCC breaches some tenets of justice and creates a two tier system where some defendants are able to stand/sit by their counsel whereas others are in the dock, in the same court session. It was suggested that in this respect not all defendants are presented equally in court and they thought there was potential for differential treatment.

Many key informants from all professions indicated that their objections to the pilot were primarily related to security concerns and they found the potential for something to go wrong quite stressful.

Some lawyers did not feel comfortable sitting next to the defendant in the DCC, particularly when acting as duty lawyer, as they had often not met the defendant so were unable to make an assessment of risk. Some key informants thought that the screening process operating at North Shore District Court was very limited and this exacerbated their security concerns

North Shore District Court staff had found that the pilot has not impacted on the through-put of cases as the same number of cases are scheduled at each sitting as prior to the pilot commencement. Some key informants thought that counsel having immediate access to defendants could lead to matters being resolved during the hearing rather than having to appear again at a later time or date. Several lawyers thought that being able to talk to their client in the DCC without having to take leave to approach the dock saved time.

Victim advisors and Police prosecutors noted that the court process generally was defendant focused with limited accommodation to victims and the DCC seemed to increase this. For example they thought that victims generally wanted to see the defendants' held to account and the dock was regarded as part of this process. Victim advisors also observed that victims often wanted to know what the defendant's demeanour was and the DCC had reduced the victim's ability to observe the defendant's facial expressions.

Many key informants were concerned about what they perceived as reduced formality in the DCC. One concern was that the DCC would have less of an impact on the defendant and would lessen the deterrent impact if the defendant was not standing in the dock, particularly for sentencing. Another concern regarding formality raised by some key informants was the perceived lack of agreed protocols regarding movement around the court for professionals participating in the DCC. Some key informants also perceived the DCC as the 'trampling on' and 'watering down' of the traditions of the court, and thought there was potential for the lack of respect towards the judge.

Adaptation to other courts

Most key informants were not confident that the DCC would work elsewhere and considered it unfortunate that the North Shore District Court was chosen as the pilot site. The reasons given for this lack of confidence were that the North Shore District Court: does not have much exposure to violent offenders; is not an accurate reflection of what happens in busier, larger courts; gets many non-recidivists because a lot of cases are traffic, EBA (excess breath alcohol) and disorderly behaviour.

Some key informants thought it would be prudent to pilot the DCC in several other sites where there are larger volumes of cases and higher risk categories of defendants.

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1 INTRODUCTION

1.1 Background

The Defendant Centred Courtroom (DCC) pilot is part of a wider effort to modernise the way that courts operate in New Zealand, ensuring that court processes are more accessible, effective and inclusive. The DCC aims to achieve this by moving the physical location of defendants from the dock to stand or sit beside their counsel in the centre of the courtroom. It is anticipated that this change will make the court process more understandable and accessible for defendants. It is expected that increasing understanding and engagement will culminate in a reduction in re-offending and an increase in sentence compliance among participating defendants.

The DCC pilot commenced in mid-April 2013 and operates in Courtroom 1 at North Shore District Court. The DCC operates for list, case review, and sentencing hearings only and is restricted to defendants not in custody at the time of their hearing.

1.2 The Evaluation

There are two phases to the evaluation of the DCC pilot. Phase one examines the immediate, perceived impact of the DCC by defendants and professionals who work in the court. Phase two will assess the impact of the DCC on rates of recidivism and sentence compliance. This evaluation report is for phase one of the evaluation only.

1.2.1 Evaluation methodology

The evaluation aims are twofold:

- To examine the perceived impact of the DCC on participating defendants;
- To explore the impact of the DCC on the court.

Key evaluation areas/questions are:

- How does the central position of the defendant affect their perceived understanding of court proceedings?
- How does the central placement of the defendant affect their sense of engagement in court proceedings?
- In what ways does altering the placement of the defendant affect courtroom dynamics during hearings?

This phase of the evaluation was primarily qualitative and data was collected from multiple sources in order to triangulate findings and ensure robustness. The evaluation involved the following components.

- Document review: the evaluators reviewed documents relating to the set-up of the DCC pilot.
- Observations: the evaluators observed proceedings at the pilot court for five days and also observed at another District Court location for comparative purposes.
- Interviews with defendants: to obtain a detailed understanding of the pilot's impact on engagement and understanding of defendants, immediately after sentencing interviews were conducted with 20 defendants who appeared in the pilot courtroom immediately after sentencing. Of the 20 defendants interviewed 15 had previously appeared in the dock. These defendants were asked to compare their experiences in the DCC to being in the dock.
- Interviews with key informants: in-depth interviews were conducted with 38 professionals who worked in the DCC in a variety of roles. The professional groups interviewed included: judges; court staff; lawyers – private lawyers (including duty lawyers) and Public Defence Service (PDS); Corrections Services staff (colloquially known as court fronters); Police

escorts and Police prosecutors; victim advisors; Court Security Officers (CSOs); Restorative Justice Court Coordinators; and court interpreters.

The Ministry of Justice's Research and Evaluation Team analysed administrative data about the DCC. This included court hearing and cost data and security incidents. This analysis was carried out separately from the qualitative evaluation. The findings from the analysis are attached as Appendix 3.

A detailed outline of the methodology is attached as Appendix 1 and the interview guides, information sheets and consent forms are attached as Appendix 2.

1.2.2 The report

Terminology used

When reporting findings, unless a specific professional group is named such as judges or lawyers, the term 'key informants' is used to refer to individuals from multiple professional groups.

Use of quotes

Verbatim quotes from participants are used in the report to illustrate findings. To avoid identifying individual evaluation participants, most verbatim quotes are attributed to the speaker's professional group with minimal additional description.

2 EVALUATION FINDINGS

The report starts with a description of how the DCC operates, including criteria for participating defendants and courtroom layout. The next section examines any changes to defendants' engagement and understanding of court proceedings from the perspective of defendants and key informants as well as observations conducted by the evaluators. The implications for sentence compliance and reduced recidivism are also examined. The final section looks at how the DCC has impacted on court dynamics such as security concerns, case disposal time, impact on victims, and any unintended consequences of the pilot. This section concludes with key informants' views on whether the DCC model could be adapted to work in other courts.

2.1 Description of how the DCC operates

The DCC operates in Courtroom 1 at North Shore District Court. Generally, it operates from Tuesday to Friday depending on the availability of judges. It is a judge's list court and operates for lists, case reviews and sentencing.

The DCC operates with the approval of the presiding judge and he/she has the inherent power to regulate procedures and protocols in the court. This includes the positioning of the CSO, staff practices and whether the pilot operates. There are three main judges who preside regularly over the DCC and there has been a number of visiting judges since the pilot commenced. At least two visiting judges have declined to participate in the pilot.

2.1.1 Criteria for defendants to participate in the DCC

The DCC pilot operates for defendants who are not in custody. Defendants sit or stand next to their counsel, while those in custody must remain in the dock during their hearing.

There is provision for defendants who are part of the DCC to be sent to the dock if they are considered a security risk. This risk could be identified by their counsel, Police prosecutors, Corrections Services staff, or the CSOs and they would notify the court taker prior to the hearing.

Key informants could only recall this having happened on a couple of occasions since the beginning of the pilot.

2.1.2 *Layout of the courtroom*

In the normal courtroom layout at North Shore District Court the judge sits in a raised area facing the body of the court and the court taker sits below the judge also facing the court. The prosecutor's desk is positioned below the court taker, to the right of the judge, with three rows of seats for counsel behind. The dock is to the left of the judge about a third of the way down the courtroom set against the wall. The entrance to the court cells and bail room leads directly into the dock. The dock has had a barrier of perspex installed on top of the waist high partition and metal railing, which forms a barrier that is above head height for most people. This was apparently installed as a result of a security incident some years ago.

The DCC pilot configuration is shown in Figure 1. The only physical difference from the normal court layout is that the three rows of benches for counsel have been divided in the middle to create a centre aisle. The pilot configuration involves up to two non-custodial defendants¹ sitting or standing, as directed, at the front of the court alongside their counsel. The defendant is positioned so they are facing the judge, and slightly to the judge's left. When the defendant's case is called, she/he moves from the seating gallery at the back of the court to the front bench. Defendants are required to walk around the side of the court rather than using the middle passage way. Counsel approach the front bench from the body of the courtroom via the centre aisle positioned between the benches and sit adjacent to their client. If the defendant is remanded into custody or needs to sign bail or community service orders they then exit to the cell area via the dock entrance.

The Police prosecutor is positioned at the front bench to the left of the defendant's counsel. The desk of the prosecutor is slightly forward of the defendant and their counsel.

The desk for the Corrections court fronter, who prosecutes probation matters, is adjacent to the left of the judge and to the side but in front of the defendant, to their right. When they are in the court the victim adviser sits adjacent to and to the right of the judge.

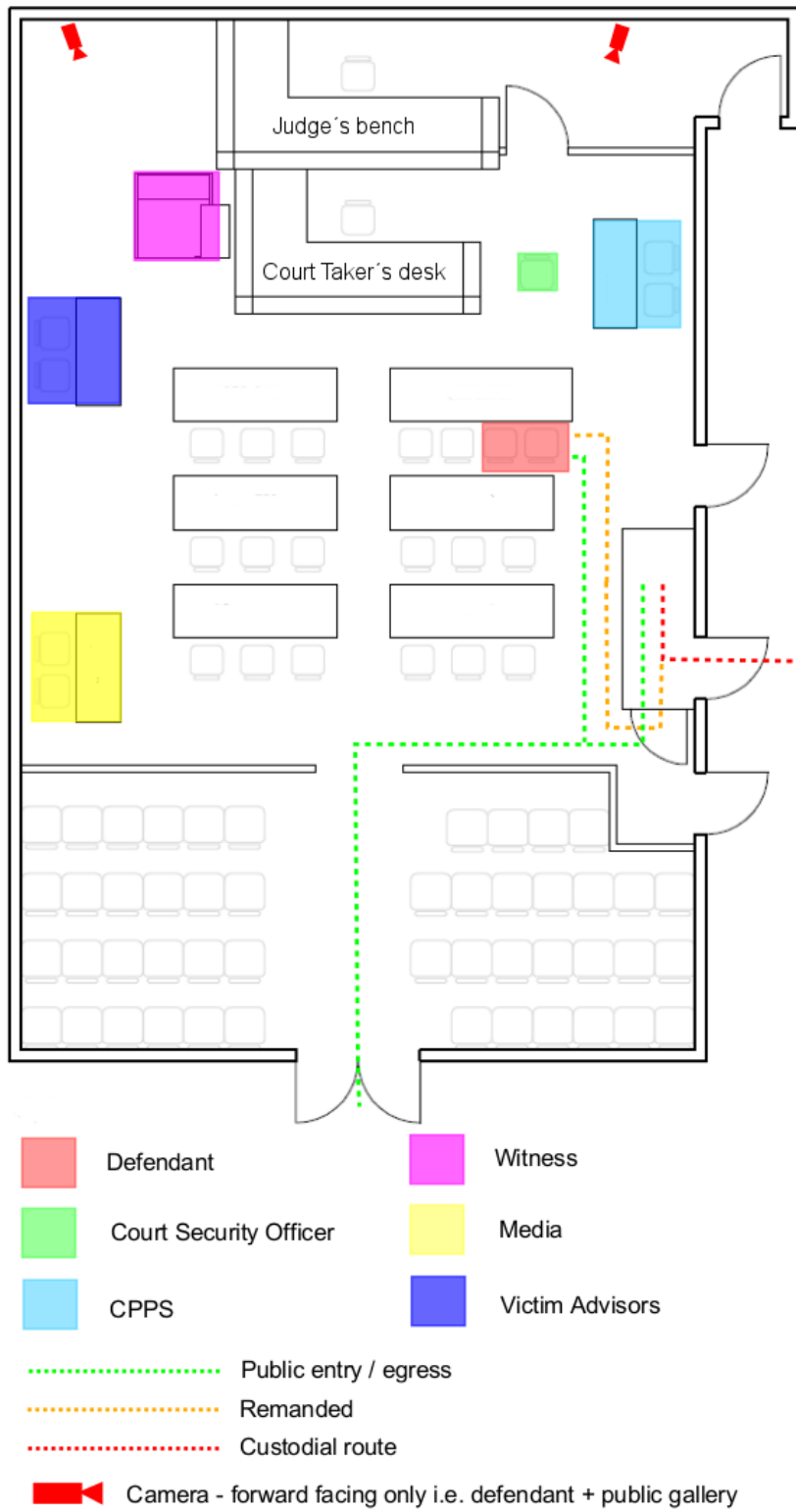
There is also a designated pilot CSO who is located in the courtroom in front of and slightly to the left of the judge during all pilot court hearings. They are seated facing the defendant. The CSO sits behind a desk which has a lectern type structure on top of it, although not high enough to obstruct the CSO's vision.

The Police escort is present in the courtroom, positioned by the dock as they are in a normal courtroom.

The layout allows for flexibility, as during a sitting the Court can operate both the DCC and with defendants in the dock. Court staff set up the room with the configuration for the DCC pilot on days it is operating and then return the room to its previous state if not being used for the DCC pilot the following day. This primarily involves pushing the two sets of counsel's tables together so there is no centre aisle.

¹ While the guidelines in the *Information for Court and Security Staff* states 'the pilot configuration will involve up to two non custodial defendants ...' some key informants commented that sometimes there are more than two defendants and they all stand in front of the judge.

Figure 1. Diagram of the Defendant Centred Courtroom



2.2 Defendants' engagement with, and understanding of, the court process

The purposes of the DCC pilot are to increase defendants' engagement with, and understanding of, the court proceedings. It is anticipated that this will lead to increased sentence compliance and reduced recidivism.

This section presents findings about the impact of the DCC on defendants' engagement and understanding from the interviews with defendants, interviews with key informants, and observations made by the evaluators.

2.2.1 Defendants' perspectives

Defendants' perspectives on their engagement in the DCC

Most defendants felt they were very engaged and involved in their hearing and, of those who had previously been in the dock, most said they were more involved when appearing in the DCC than when they were in the dock.

[When I'm in the dock] I'm just standing there with the lawyer and judge sorting it out – I didn't even need to be there.

I felt involved as it's my fault that I'm here and I wanted to be involved and listen and take on board what the judge, lawyer and probation had to say so I can do what has to be done and make things better.

I felt very involved because everything I said to the lawyer was said to the judge. I felt like I was a part of it instead of not having much to say.

I was very involved. It felt like the judge was talking to me more directly and I felt like I was answering the judge's questions.

Defendants said they felt more engaged in the process for several reasons. All defendants said they could hear everything that was said to them. More than half of those who had previously appeared in the dock commented on how much better they could hear what was being said than when in the dock. Several commented on the issue of the perspex above the dock, which is perceived as a barrier to hearing.

Yes, it is a bit hard to hear [in the dock]. The glass stops you hearing, it's higher than head level.

Another reason for being more engaged was that defendants could speak directly to the judge and their counsel. Just under half of the defendants that were observed in this evaluation spoke to the judge during the hearing. Those who had appeared in the dock previously found it easier to talk to the judge from their position in the DCC.

I talked to the judge. Maybe I would've done it in the dock but it would depend on whether I was able to hear what was being said.

I was more involved today. In the dock I was less involved as I didn't understand and if something was incorrect I couldn't speak up. The dock is further away in the corner out of the way so you feel that it [the hearing] is going on about you rather than you actually having a conversation [with the judge].

It would be hard [in the dock] to explain stuff from so far away. I had to explain about a [health condition] re doing community work.

A couple of defendants felt that being positioned closer to the judge and being able to more clearly see their facial expressions enhanced their engagement with the judge.

I liked that I could see the judge's face clearly and see his expression. This made me feel more involved.

I appeared in another city previously, I thought today the judge was more engaged with me as it's easier when you're closer.

Many defendants spoke to their lawyer during proceedings. Some gave instructions to their lawyer while others responded to lawyer's request for information. Most of those who were previously in the dock found it much easier to speak to their lawyer and they felt better supported.

Easier today. If you're in the dock the whole courtroom would have to stop. I felt more supported, had a secure feeling they [counsel] is more there for you.

Being next to them is better as you can whisper to them which is an advantage. It's easier, as you can't have a conversation [from the dock]. I felt more supported 'like a team'.

Yes, I gave consent for the lawyer to go for sentencing rather than just case review. The lawyer was very good with communicating what was happening. When you're in the dock distance is a factor but side by side made it easy to communicate.

Several defendants also emphasised that it was important that the correct information was being put forward to the judge and if counsel did not know something they could more easily inform counsel than from the dock. Other defendants said they had no reason to talk to their lawyer as they were well prepared prior to coming into the courtroom and their case was straightforward.

No, I already knew what was going on and the case was straightforward so I didn't have to speak.

Defendants' perspectives on understanding court proceedings

Most of the defendants reported that they could understand all of what was said by the judge and their counsel, more so than when in the dock. The Police prosecutors do not speak in all defendants' cases. However where they had spoken, most defendants commented that they understood what the prosecutor was saying. They felt that being at the front of the courtroom had contributed to this because they were able to clearly hear what was being said.

Most defendants said they understood their sentences and what was entailed, often because they had been briefed by their counsel on what to expect or had spoken to Corrections Services before their hearing if they were a repeat offender.

I was informed by the lawyer that community service would be the right sentence.

I liked the lawyer, it was really useful for the lawyer to explain the sentence, the judge's language was fine. The case was short and simple.

However, several defendants commented that while they understood what their sentence would be they did not understand the details of what they had to do to comply with their sentence. Different factors impacted on this level of understanding, including the complexity of the sentencing and the use of legal language. Several defendants commented that they could not understand all the legal 'jargon' and had to ask their lawyer to explain clearly to them what they would have to do to comply with their sentence.

Defendants' perspectives on other impacts of the DCC

Overall the defendants were very positive about the DCC concept. For first time defendants, being at the front of the court with their back to the public gallery seemed preferable to being in the dock where they were more visible to everyone else in the courtroom.

I think it would be more stressful in the dock. Standing at the front I couldn't see anyone else and vice versa so it was less intimidating.

Yes I felt more comfortable and not on show, sitting up front with my back to the public gallery.

Some defendants who had appeared in the dock previously thought that being in front of the judge made them feel more responsible for their offending because they were not able to hide behind the dock.

When I was at the front I was the person things were directed towards. I felt more responsible. I had already decided I didn't want to keep reoffending so the positioning reinforced that for me.

Several defendants commented that being at the front of the courtroom gave them an opportunity to present themselves in the best way to the judge.

It gave a connection with the judge which was important as the judge needs to be able to see you're sorry, so it's good he can look at you.

There was also a sense from some defendants that not being in the dock distinguished them from what they called 'bad criminals'.

Today felt a lot better where I stood. When in the dock I felt like I was treated like 'those violent criminals'.

It gives you a feeling you're not such a bad criminal –like being treated like everyone who is incarcerated. It would make you seen as bad as people who do really bad stuff.

However there were a couple of defendants (one repeat and one first time), who preferred to be in the dock because it was more formal and the 'right place' for defendants to be.

The dock feels like the right place to be in court, like being part of the furniture. Walking past lawyers and waiting to move through [to the front] put more informality into that area – it doesn't feel like you're in a courtroom, it feels like a queue in the post office. Formalities are good; they give you a place and space to be. Helps you to control emotions.

2.2.2 Key informants' perspectives

Key informants' perspectives on defendants' engagement in the DCC

There were mixed findings from key informants as to whether taking part in the DCC pilot affected defendants' engagement in the court process. Most of the judges who participated in the evaluation supported the pilot and reported that the defendants were brought right into the court process, rather than being disconnected from it, and as a result they were more engaged. These judges had observed that the defendants appeared to listen and look at the person speaking more so than when they were in the dock.

Many key informants were of the view that engagement was dependant on defendants' individual attributes and how willing they were to engage. They thought that shifting the position of the

defendant would be unlikely to impact defendants' engagement, especially for recidivist offenders and those with drug and alcohol problems. A common response from these key informants was along the lines of *'if the defendant wants to be engaged they will be regardless of where they're standing'*.

[You] need to change people's mindset, and that doesn't happen in a courtroom. Not everyone wants to be helped, and not everyone is able to be helped. ... [You] can't be engaged if you're drunk or drugged. (Court Taker)

Despite many of the key informants stressing the importance of individual attributes in engaging, they also commented on certain aspects of the DCC which they thought had the potential to enable defendants to engage. Several key informants described the DCC as *'more humane'* approach or a *'humanization of proceedings'* which made it more personal to the defendant. These key informants thought that this might facilitate better engagement for some defendants. This view is reinforced by the comments from some of the defendants who felt they were treated less like *'bad criminals'* when they were in the DCC rather than the dock.

All key informants agreed that one aspect which had the potential to increase defendants' engagement in court processes was that the defendants were able to hear what was being said in the DCC. As described in section 2.1, the dock is surrounded by perspex which is higher than most defendants' heads. Almost every participant in the evaluation commented on the inability of defendants to hear clearly from behind the perspex despite the addition of a speaker above the dock.

The perspex is quite a significant barrier, a psychological barrier and an audio barrier because I find people cannot hear what [I am] saying, in fact what anyone is saying. (Judge)

Several judges also commented that they sometimes could not see the defendant very clearly over the perspex screen if they were a short person or due to the reflection. Furthermore, the interpreter who took part in the evaluation commented that it was much easier to communicate with defendants without the perspex barrier. They were able to better understand defendants and more accurately relay communications between the parties during the court proceedings.

Some key informants commented that removing the perspex barrier would be an equally effective way of encouraging engagement as the DCC layout. These key informants were of the view that engagement was reliant on individual attributes and resolving the audibility problem would encourage engagement for the more *'willing'* defendants.

Some key informants noted that in the DCC the defendants could hear what counsel was saying and confer with them if necessary and this might lead to greater engagement and understanding. Several lawyers said they had taken the opportunity to engage with the defendant if, for example, there was a query from the judge or prosecutor which required input from the defendant. Some said that when they were acting as a duty lawyer they might not have met the defendant before they appeared in the court and only had information from their file. In this regard the DCC afforded the lawyer more opportunity to speak to the defendant, get more information, take instructions if needed and explain what was happening. These findings are consistent with findings from defendants who said they found it easier to speak to their lawyer compared to when they had been in the dock.

However, some key informants reported that they had not observed greater communication between defendants and their counsel in the DCC, although they acknowledged there was more potential for this to happen. Some lawyers also said that they could just as easily converse with the defendant from the dock.

Another aspect of the DCC which most judges thought promoted engagement, was the ability of the defendant to respond directly to questions from the judge or more readily ask to speak to the judge. One judge said they liked the accessibility of the defendant:

...because you can really get quite close to a defendant and talk to or confront him or her about issues she/he may find uncomfortable, say if they have addiction. (Judge)

Another judge said the closer proximity allowed them to more clearly see the defendant's face and if it appeared that the defendant was not happy with what the lawyer was saying the judge was then in a position to directly ask the defendant a question. When the defendant was in the dock the judge would be looking at the lawyer and it was more difficult to gauge the defendant's reaction.

If they [defendants] were clearly not happy and there is a disconnect about what they want and what the lawyer is saying, it's very easy to ask their counsel 'do you mind if I speak to your client'? (Judge)

Other key informant groups, especially most of the lawyers, did not think the increased direct communication between the judge and defendant was a good thing, even if it led to the defendant being more engaged. They argued that it was counsel's role to represent their client so any communication with the defendant should go via counsel. Several lawyers also expressed concern that their clients might implicate themselves when speaking directly to the judge without input from counsel.

Key informants' perspectives on defendants understanding of court proceedings

As described in the section on defendants' perspectives, most defendants in the evaluation said they understood what their sentence entailed. Most judges reported that defendants in the DCC appeared to be attentive when they received their sentence. They thought that as defendants appeared to be paying attention it was likely that they would have a better understanding of their sentence. Some key informants from other professions also thought that being in the DCC facilitated better understanding for the defendants because they were directly in front of the judge and were able to hear what was being said and make eye contact with the judge which might not be the case in the dock.

If they are under the nose of the judge they can hear and understand what the judge is saying because he [judge] is looking your client in the eyes. (Lawyer)

Although these key informants thought the DCC facilitated better understanding for defendants, it was thought that there was no guarantee that the defendants would understand or be engaged enough to comply with the sentencing requirements. Key informants' views about the DCC in relation to sentence compliance are discussed further in section 2.3.

The interpreter reported that defendants were also more easily able to tell the lawyer, via the interpreter, that he/she could not understand what was being said in the courtroom. The interpreter said feedback from several defendants indicated that the DCC did make a difference to their engagement and understanding and potentially recidivism. The interpreter also reported that close proximity to the judge had a positive impact on some non-English speaking defendants.

One defendant said that 'the Judge looked at me and looked into my eyes and said "stop it" which really touched the defendant. Others had also said they were really impressed by what the Judge said. (Interpreter)

However there was feedback from some lawyers that some defendants still did not understand their sentence, even though they were in the DCC.

[Defendants] still have the same number of questions, there's no difference to their understanding whether they're in the dock or not. (Lawyer)

General barriers and enablers to engagement and understanding

One of the reasons given by some key informants as to why defendants may not fully understand both the process of the hearing and the sentence they received related to the complexity of the case and the amount of legal language or 'jargon' used. Defendants also reported not being able to understand some of the 'jargon' used in the courtroom.

Some key informants who engaged regularly with defendants commented that justice sector professionals were responsible for ensuring the terms of the sentence had been explained to the defendant in a manner they would understand. If the defendant was not clear about details of their sentence it was the role of counsel and, where appropriate, court staff and Corrections Services staff to explain these details.

Duty lawyers reported that they were not always able to explain the hearing outcome to defendants as they might be representing the defendant in the next case and would be unable to leave the courtroom. The Duty Lawyers' Supervisor at North Shore District Court reported that the following solution was developed: for cases where the defendant is remanded to appear in court again, the duty lawyer hands the defendant a slip of paper with the date of the next court appearance on it. If sentencing, the duty lawyer will write the sentence outcome on the Summary of Facts, for example, the duty lawyer will write on the form, 'six months disqualification, \$200 fine and \$130 court costs'. The form is then given to the defendant and they are directed to the fines office.

It was thought that the provision of simple information, such as date of next appearance was working as people were coming to court for their hearings with the piece of paper provided by the duty lawyers at the earlier hearing.

I'm quite satisfied that the number of the warrants issued by this court has reduced as a result of the actions of the duty lawyers . . . duty lawyers are giving simple information to people that they otherwise didn't have and that is reducing the amount of churn. The problem with bail bond is the date should on the very top – it's buried in the bottom and is quite hard to find – no wonder people don't turn up to court because people don't realise they have to. (Duty Lawyer)

An issue identified by a lawyer in regard to both bail bonds and community orders is that important information can be "hidden" within these forms, such as date of next appearance in a bail bond, which some people find difficult to access, particularly if they are semi/illiterate or have English as a second language.

Several lawyers commented that in a sentencing hearing lawyers usually had an idea of what the sentence was likely to be and that the likely sentence outcomes should be discussed with the defendant prior to the hearing. Corrections Services staff indicated that they had often spoken to their clients prior to the hearing about likely outcomes. In both these instances the defendants have an opportunity to ask questions and have details explained to them.

Several key informants commented that there were significant general barriers to defendants' ability to engage and understand what was happening when they were in the court room. These included:

- Defendants being drunk or on drugs at the hearing;
- Defendants having mental health issues, or not having the mental capacity to engage and understand what is happening;
- First time appearance in a courtroom which could be a frightening and extremely stressful experience and defendants can find it difficult to engage or remember what had been said.

2.2.3 Observations

The observations by the evaluators (refer Appendix 1 for the observation method) revealed that almost all of the defendants, both those in the DCC and in the dock generally appeared to be visibly engaged in the court process. However, the defendants positioned in the dock did not appear to have the same opportunity to actively engage as those in the DCC by talking to their counsel and the judge.

The evaluators made the following observations:

- Most defendants, (both DCC and dock) appeared to look at the judge throughout their hearings, nodding in acknowledgement at things that were being said and responding to questions directed to them by the judge;
- DCC defendants talked to their lawyers and on many occasions the lawyers conferred with their clients. Of the 14 defendants who the evaluators observed appearing in the dock, lawyers were observed approaching the dock to speak to their client on only two occasions;
- On several occasions defendants in the DCC responded directly to the Corrections Service court frontiers to clarify their situation;
- Defendants in the DCC did not look around the courtroom, except maybe initially. However defendants in the dock scanned the courtroom more frequently and acknowledged people in the public gallery;
- Several defendants in the dock attempted to say something to the judge but there was no response. It is unclear whether the judge heard the defendant.

These observations suggested that it was much easier for defendants in the DCC to speak to both the judge and their counsel and, therefore, actively engage, than those in the dock.

2.3 Sentence compliance and recidivism

Generally key informants from all professions did not think the DCC pilot would reduce recidivism or have an impact on sentence compliance and if it had any impact it was more likely to be on defendants appearing on their first charge or a repeat appearance for low level offending. One judge thought the closer proximity enabled hearing and direct dialogue which could lead to increased understanding of what their sentence was and the reasons why they have a certain sentence, which may help compliance for some people. However, some key informants argued that this group would be unlikely to reoffend even if in the dock so it would be very difficult to attribute a reduction in reoffending to their appearance in the DCC.

Conversely, several key informants thought the use of the dock had a powerful impact on some young first time offenders that may be lost if they were in the DCC.

'This is it' the clank of the door behind them, that is very imposing I think on first time offenders having to stand in the perspex box while the public watches you realising that the cells are just behind you verses walking up there quite casually and sitting there slouched in your seat next to your lawyer. (Police Prosecutor)

When describing why the DCC would be unlikely to impact recidivism and sentence compliance, some key informants were of the view that hardened recidivist defendants *'just didn't care what happened'* and their positioning in the courtroom would make no difference to either their sentence compliance or ongoing recidivism. Many ultimately thought it was up to individuals whether they wanted to comply or not.

Whatever sentence the person is given their compliance is a mental position that they have to adopt, if they want to comply with a sentence they will do that of their own volition not by having someone talk to them physically closer. (Police Prosecutor)

Other key informants talked about the complexity of the underlying causes of offending and how a courtroom intervention would be unlikely to change defendants' behaviour. Key informants raised the following drivers or underlying causes of offending:

- Inter-generational recidivism
I've sometimes had three generations of the one family appearing [in court] on the same day for different offences. The DCC would do nothing to prevent this. The causes are far more complex. (Judge)
- Abuse of alcohol and other drugs
Drug and alcohol counselling would make [more of] a difference for some offenders [rather than appearing in the DCC] (Lawyer)
- Age of offenders
Young people, when they grow up often change, but otherwise do what they want. No changes in courtroom layout will make a difference. (Lawyer)
- Environmental and personal factors such as mental health, relationship issues, poverty, and trauma.
I think there are far more powerful influences out there on their environment and in their background impacting on them. (Judge)

2.4 Impact on the court

Key informants were asked how the DCC affects courtroom dynamics and if there were any unintended outcomes that impacted the operation of the court. This section presents key informants' responses and draws on findings from the interviews with defendants and the evaluators' observations where relevant.

2.4.1 Preparation for the pilot

Key informants, generally, reported that they had not been consulted about the concept of the pilot. Many key informants said that they had attended a meeting where the concept of the DCC was, according to most, presented to them as a *fait accompli*.

If there are any changes in procedures those who live/work in the courtroom should be consulted. You need people who work in the courtroom to have a say. (Judge)

We were invited to a meeting. It was information only. We were told 'this is what is going to happen'. There was no opportunity to have any constructive input. (Lawyer)

The court management and security team leader said they had input into the courtroom layout proposals². However, some key informants from other professional groups felt that they had very little input into how the pilot might proceed.

2.4.2 Issues with the criteria for inclusion in the DCC pilot

Several key informants raised the concern that the DCC breaches some tenets of justice and creates a two tier system where some defendants are able to stand or sit by their counsel whereas others are in the dock, in the same court session. It was suggested that in this respect not all defendants are seen as equal and that this could lead to different treatment for those in the dock and those in the DCC. This concern is supported by comments made by some defendants who said they did not feel like *bad criminals* when at the front of the court rather than in the dock.

² There was also a meeting with key stakeholders to discuss how the DCC would operate. Court staff, Corrections Services staff and defence counsel were invited to attend the meeting. The Ministry of Justice advised the evaluators that those who attended the meeting also had the opportunity to comment on the draft protocols.

Several key informants suggested that even those defendants held in custody (and therefore consigned to the dock) should be part of the DCC unless considered high risk.

This [DCC] creates a two tier system in the same session – some defendants in the DCC and some in the dock. There are real issues of natural justice for clients (Lawyer)

I think there should be a relaxation of putting the defendant in the dock, unless there is a high risk – even if the defendant is under arrest. (Judge)

2.4.3 Issues with DCC layout

Some key informants reported that the DCC layout could be confusing for defendants who had not been briefed by counsel prior to entering the court. Similarly, over half the defendants interviewed indicated they did not know where to go before their case was heard. This finding was confirmed in the evaluators' observations as they observed many defendants initially heading for the dock and being redirected to the front of the courtroom by the Police escort. Of the defendants who did know where to go, most said that their counsel had told them where to go before they had entered the courtroom.

The reconfigured courtroom layout could also be confusing for visiting counsel if they had not been briefed by the court taker. Court takers indicated that they tried to brief counsel prior to a hearing but for various reasons this was not always possible. The evaluators observed this confusion with one lawyer who was making their first appearance in the DCC. When the case was called the lawyer stood and was about to start speaking when asked to move forward to present the case. Their client also experienced the same confusion, being directed by the Police escort to the front of the courtroom.

Another issue raised by key informants was the reduced number of seats available for counsel. The area for counsel was reconfigured with the long tables removed and two lots of smaller tables installed. This has been done to provide a middle passageway which is used by counsel to access the front bench. In a normal courtroom at North Shore District Court, counsel is provided with 12 places which participants said have now been reduced to eight causing 'overcrowding' on busy list court days. Several reported that some counsel have to sit in the public gallery while waiting for their case to be called.

One prosecutor and some Corrections Services court frontiers commented that the size of their desks had been reduced which meant they were unable to lay out all their files for easy access. They now had to stack the files instead.

There were also specific safety concerns expressed with regard to the layout. These are discussed in section 2.4.6: Security concerns.

2.4.4 Protocols for how the DCC operates

Findings from key informants showed that there was a lack of clarity around how the body of the court could be used in the pilot configuration. Counsel walked down the middle passageway to access their position for the DCC while the defendant walked around the outside. However several key informants commented that when waiting for a case counsel sometimes used the middle passage to pass notes and/or talk to the prosecutor for disclosure purposes or communicate with the court taker. This was seen as a possible distraction for the judge during proceedings and counsel had been asked to go around the outside of the desks.

Some judges did not appear too concerned about this issue. However one judge said they thought there should be a clear rule that counsel only comes down the middle when their case is being called to take up their position at the front bench. They thought that counsel should not come up the

middle to see the prosecutor while other cases were being heard as they found it could be disruptive.

It is quite distracting. It also it cuts off the line of communication with the prosecutor if there is a case being heard and another lawyer is crouching down talking to him/her. (Judge)

Some key informants suggested during the evaluation that there needed to be a clear set of widely disseminated agreed protocols for behavior specific to the DCC, which were acceptable to the judges. These key informants were not aware of any existing protocols³. Having clear protocols was seen as a way of alleviating any confusion. Some key informants suggested that signs on each desk in the DCC explaining these protocols could also be considered.

2.4.5 New role for CSO

The only role change in the DCC is for security staff. A CSO is required to be present in the pilot courtroom at all times. The pilot CSO follows all expected security practice/Judicial direction while in the courtroom and when the pilot court is not in session the CSO resumes normal duties. It is also expected that the CSO take some role in directing defendants to the appropriate seating position.

2.4.6 Security concerns

Many key informants from all professions indicated that their concerns about the pilot were primarily related to security in the DCC. They found the potential for something to go wrong very stressful and appeared to be waiting for 'when' not 'if' something went wrong. For example, some judges and court takers said they were aware of security all the time, checking defendants' demeanour and ensuring that the CSO was alert and watchful. One Police prosecutor commented that being constantly vigilant was a distraction from their work.

Having to look over your shoulder is a distraction away from the actual business, that you still have to check each and every person that comes up. (Police Prosecutor)

One of the judges who participated in the evaluation expressed concerns with security as the main reason for their refusal to participate in the pilot.

[We] deal with people who are volatile and difficult and this is not always obvious. So for the protection of the staff and the public the defendant needs to be in a position where they can be contained. (Judge)

Some judges were not concerned about their safety because of where they were positioned in the court. One judge said they thought counsel were more at risk than they were as they were standing or sitting alongside the defendant.

Some lawyers did not feel comfortable sitting next to the defendant, particularly when acting as duty lawyers as they said they had often not met the defendant so were unable to make an assessment of risk. One lawyer said if they had security concerns about the behaviour of the defendant, they might not alert security or other court staff because they do not want to show the defendant as being potentially violent as it might impact the sentence they receive.

There's huge safety concerns. I've felt unsafe a couple of times. I know if I don't feel safe I can ask for the person to go in the dock. But that sends a message to the judge that the person is not safe. So lawyers put themselves at risk for the sake of the client. (Lawyer)

³ There are existing written protocols for how the DCC operates which were disseminated to court staff in the initial stages of the pilot courtroom's operation. These key informants were not aware of the protocols.

When key informants were asked what was different about having a defendant next to counsel in the DCC as opposed to in a defended hearing, lawyers responded that in a defended hearing they had spent time with their client beforehand and had assessed the potential risk. Lawyers reported feeling particularly unsafe in situations where the defendant was under the influence of drugs as their behaviour may be unpredictable and they had not had the opportunity to make an assessment of the defendant beforehand. Also, in hearings of a volatile nature, for example family violence or a sentence that would impact a defendant's right to access their children, they said that without having spent time with the defendant beforehand, it was difficult to predict how defendants would respond if they were unhappy with decisions handed down.

Some lawyers were also concerned about their personal property being more vulnerable to theft, both when sitting next to the defendant and also from people in the public gallery if their belongings were left at a desk towards the back of the court.

Many key informants from all professions were concerned with the screening process operating at North Shore District Court. Screening only occurred at the main entrance on certain days until 11.00am and did not include x-ray screening of a person's belongings. No screening occurred at the other two entrances to the courthouse. As a result there were concerns that anybody could bring a weapon of some kind into the courtroom. This, of course, did not only apply to the DCC.

Several key informant participants commented that if the Ministry of Justice wanted the DCC to continue they should provide adequate screening to ensure that the DCC pilot did not compromise the safety of court staff and visitors.

Security concerns were expressed at the placement of both the CSO and the Corrections Services desk, but for different reasons. The Corrections Services court frontier was considered to be very vulnerable should a defendant become violent, as they were about a metre from the defendant. If an incident were to occur a defendant would be able to reach the court frontier before either the CSO was able to manoeuvre around his/her desk and/or the Police escort could reach the defendant. The CSO was doubly restricted by the lectern on the desk which would make it very difficult for them to jump the desk and have more direct access to the defendant.

Several lawyers reported that their clients had felt uncomfortable or intimidated by the positioning of the CSO, directly facing them. However, no defendants who participated in the evaluation reported feeling intimidated, and a couple commented they appreciated the CSO showing them where to go.

Suggestions were made by several key informants as to how to reconfigure the courtroom to allay these particular concerns. The main one was to move the Corrections Services desk to the other side of the courtroom and reposition the CSO to where the Correction Services desk is currently situated, but slightly closer to the defendant.

2.4.7 *Speed of court processes*

Some key informants reported that they had concerns at the start of the pilot that the court process would be considerably slowed. It was expected that there would be initial delays while people got used to the changes but North Shore District Court staff had found that the pilot has not impacted on the through-put of cases as the same number of cases are scheduled at each sitting as prior to the pilot commencement. One judge thought that the DCC took more time because the judge would spend more time engaging with defendants.

Several lawyers thought time was saved by not having to seek leave to speak to the defendant in the dock. Some key informants also thought that counsel having immediate access to defendants could also lead to matters being resolved on the day rather than having to be stood down to later in the day or a later date.

Some lawyers thought that the way cases were called could be better organised so that all the cases a lawyer was defending could be called back to back. This would save time for lawyers as they would not have to relocate to another desk each time a case is called.

The sequence in which matters are called doesn't flow very well. If better organised a lawyer could have all matters called back to back. (Lawyer)

Court takers indicated they tried to the best of their ability to ensure all cases being defended by an individual lawyer were heard back to back. Sometimes, due to the nature of the court list and having a case stood down till later in the day, this was not possible.

2.4.8 Costs of the DCC

The additional cost of the DCC in its first year of operation is \$43,119.00. The additional cost includes the cost of setting up the courtroom and the ongoing cost for the additional part time CSO role. A breakdown of the cost is shown in Appendix 3⁴.

2.4.9 Impact for victims

Victim advisors and Police prosecutors commented that generally court processes are defendant focused with limited accommodation to the needs of victims and the DCC pilot seemed to enhance the offender focus.

Where we do have victims attending the court we leave them in the back of the court, they are never brought forward unless they want to read their victim impact statement. There has been no proviso made for them to be closer. (Police Prosecutor)

Victim advisors and Police prosecutors thought that victims generally wanted to see the defendants' held to account and the dock was regarded as part of this process. The dock was seen as a way of conveying the seriousness of the situation and, for some, would be regarded as shameful. It is possible that victims might not think justice has been served if the defendant is sitting or standing next to their counsel.

The dock is also a bit more shameful, having to stand there in the dock, rather than just being part of like the lawyers and being part of the body of the court. Takes away the gravity of the situation. (Victim Advisor)

The victim advisors said that it was not that easy for victims who are in the gallery to hear and feel engaged in the normal District Court courtroom process and they often got feedback from victims that they could not hear what was being said. Victims also often wanted to know what the defendant's demeanour was and the DCC had reduced their ability to observe the defendant's facial expressions.

It makes it harder for the victims to identify who they are. Or even see any facial expressions, it's often really helpful for victims to see if there is a little bit of remorse or that they are serious and engaged in the process, rather than smirking. (Victim Advisor)

Victim advisors sit almost parallel with the defendant in the DCC so were still able to observe defendants. However the victim advisors did not think it was appropriate for victims to sit in this position as many did not want to be identified and it would also cause more movement in the body of the court.

⁴ An analysis of administrative data from the DCC was carried out in-house by the Ministry of Justice Research and Evaluation Team. This included court hearing and cost data and security incidents.

The inclusion of victims in the court process was dependant on the way the judge acknowledges the victims. The victim advisors provide information on the sentencing coversheet about whether victim[s] are likely to be present and whether they are willing or not to be identified. Several judges emphasised the importance of being mindful if victims were present.

We need to be conscious of victims, particularly if they're in court. The process needs to reflect their presence and ensure they're treated fairly. (Judge)

Some lawyers thought that victims might be intimidated by the defendant sitting in the court rather than the dock if they chose to read their victim impact statement. However they said it was up to the judge to determine where the defendant sat or stood while the victim read their statement. While it is not known whether victims do feel intimidated about standing near the front to read their statement in the DCC, victim advisors had not received any negative feedback about this from victims.

Many other key informants had not given any or much thought to the impact of the DCC layout for victims. These key informants generally thought there would not be much impact for victims, although they agreed that it was necessary to always consider the needs of victims while the DCC was operating.

2.4.10 Unintended impacts

Many key informants were concerned about what they perceived as reduced formality in the DCC. This was a concern to these key informants for several reasons. One concern was that the defendants' position in the DCC would have less of a deterrent effect on the defendant, compared to being in the dock, particularly for sentencing.

When the defendant is in the dock it is a formal place, an imposing environment but at the table, well they could be anywhere. (Police Prosecutor)

However some other key informants thought that standing in the centre of the court could make an offender feel more accountable as they are positioned in the centre of the proceedings. The findings from defendants, described in section 2.2.1, lend support this perspective. Some defendants said that compared to when they had appeared in the dock they felt more responsible when positioned at the front of the court.

(Defendants are) more in the line of fire of the public and everyone in the courtroom – they have no structures around them to hide behind. (Judge)

Another concern in regard to reduced formality was the perceived lack of agreed guidelines for the DCC, such as when to use the centre aisle. Some key informants thought that having clear protocols would ensure that formality was maintained in the DCC.

If everyone knows what the rules are then it's helpful to the running of the court. Firm rules about acceptable behaviour are important. (Judge)

Some of the key informants who were concerned with the growing informality were distressed at what they saw as the 'trampling on' and 'watering down' of the traditions of the court, and the potential for the lack of respect towards the judge.

This is not like a bank, a travel agency or a library, it's the court We're dealing with criminals, addicts etc. But none of this is being taken into consideration. (Court Taker)

I worry about the formality and respect being accorded to the judge. We've lost that a bit but now there's more engagement between the defendant and the judge (Court Manager)

The dynamics change when the lawyer is closer to the judge – it's more like having a chat, more face to face with the judge. There's less formality – is that a good thing? (Lawyer)

Maintaining formality, and thus authority, was one of the reasons given by some of the judges in regard to their preference for defendants to stand rather than sit when appearing in the DCC.

2.5 Adaptation to other courts

Many key informants thought that North Shore District Court was a poor choice of location to pilot the DCC. They felt that the size of the court and the make-up of the North Shore population meant that findings from the evaluation could not be applied to larger courts with higher security risks. Key informants commented that North Shore District Court:

- Does not have much exposure to violent offenders;
- Is not an accurate reflection of what happens in busier, larger courts;
- Gets many non-recidivist defendants because a lot of cases are traffic, EBA (excess breath alcohol) and disorderly behaviour.

Choosing North Shore as the pilot was a mistake. It's not a good representation. We're not dealing with huge numbers of big criminals – crime is more minor than other places. (Lawyer)

For these reasons the key informants did not think the pilot would necessarily translate well to other courts. Security concerns expressed about the DCC would be even more acute at some other courts according to key informants. It was suggested that the DCC pilot should be trialled at one of the larger courts such as Manukau or Christchurch to ascertain the viability of holding the DCC in a busier court with a potentially greater security risk.

Some key informants who also worked at other courts thought the courtroom which houses the DCC at North Shore District Court lent itself to the DCC because it was large enough to be reconfigured for multiple uses whereas this might not be the case at other courts. Courts with small courtrooms or different layouts might find it difficult to reconfigure the courtroom to suit the needs of the DCC and be used for other purposes if it was important to maintain flexible use.

3 CONCLUSION

3.1 DCC consultation

Key informants generally reported that they had not had the opportunity to give feedback on the concept of the pilot. In terms of consultation about how the court would operate, some professional groups said they had provided input into the courtroom layout proposals. Although there had been some consultation⁵, there was still a feeling among some key informants that they had not been sufficiently involved. This is something to consider if the DCC is implemented in other courts.

3.2 Engagement and understanding

Most defendants taking part in the evaluation felt they were very engaged in their hearing. The defendants who had previously appeared in the dock overwhelmingly indicated that they felt more engaged in the DCC. Reasons for being more engaged included being able to hear what was being said, being able to more easily speak to the judge and confer with their counsel. This aligns with findings from most of the judges, who thought that the DCC resulted in greater engagement from defendants. Judges reported having observed defendants appearing to listen to what was being said

⁵ As noted in footnote 2, key stakeholders including court staff, Corrections staff and defence counsel were invited to a meeting to discuss how the DCC would operate. The Ministry of Justice advised the evaluators that those who attended the meeting also had the opportunity to comment on the draft protocols.

and look at the speaker more so than when they were in the dock. They also thought being better able to speak with the defendant encouraged engagement.

While key informants acknowledged there were increased opportunities for engagement such as being able to hear and converse with the judge and counsel more easily in the DCC than the dock, many thought this did not necessarily lead to more meaningful engagement. Many were of the view that engagement was dependant on defendants' individual attributes and how willing they were to engage.

All key informants commented that the perspex screen on the dock was a significant barrier that prevented defendants from hearing what was said. Many key informants thought that removing the perspex screen from the dock, would be just as effective at facilitating engagement as the DCC. Removing the perspex screen seems vital for improving access to court proceedings for all defendants. However, while this might improve concerns about audibility at North Shore District Court it does not give defendants closer access to either the judge or their counsel which defendants and some key informants viewed as important.

Defendants also indicated that being positioned at the front of the courtroom and not in the dock did not make them feel like such '*bad criminals*'. Several key informants described the DCC as '*more humane*' or a '*humanization*' of proceedings which made it more personal to the defendant and it was thought that this might facilitate engagement for some defendants.

There is an opportunity in the DCC for defendants' understanding to be increased by being able to more clearly hear what is being said by all parties. Being next to counsel also provides the opportunity for the defendant to ask counsel to explain during the hearing things being said by the judge, counsel or prosecutor that they may not understand. However, there are still barriers to defendants' understanding such as the use of legal language (jargon) and the complexity of their case.

3.3. Sentence compliance and reducing recidivism

Generally, key informants from all professions thought the DCC pilot would be unlikely to affect sentence compliance and recidivism and that, if there was an impact, it would be for defendants appearing in court for first time or for low-level offences who would be unlikely to reoffend. Key informants commented that there are multiple and complex factors underlying recidivism that are far outside the scope of this pilot such as poverty, addictions, mental health, relationship issues, intergenerational offending, and the impact of trauma. Those who believed that standing in the dock had a deterrent effect on defendants did not think the DCC would lead to reduced recidivism.

3.4 Key informants' concerns

For many key informants, their concerns about the pilot were primarily related to security in the DCC. Having the new CSO in the court had not addressed their concerns, and for some, the perceived lack of screening at the North Shore District Court had exacerbated their concerns. Key informants made a range of suggestions about how to address the perceived security issue.

Concerns were expressed about the criteria for defendants being included in the DCC pilot (not being in custody). Treating custodial and non-custodial defendants differently raised the possible risk of a two tier justice system operating in the same court session. Further exploration of how to involve defendants in the pilot who are in custody without risking security could be undertaken to mitigate the possible effects of the differential treatment.

Concern about the court becoming too informal and the judge losing their authority is an issue for many key informants. For some judges, having the defendant stand rather than sit was seen as a way of maintaining formality.

Some key informants were thought there was a lack of clarity about how the court space could be used during hearings by professionals who work in the court. It would be useful for the court to develop and disseminate some protocols, agreed to by judges and other professionals to provide clarity about how professionals who work in the court can use the court space while cases are being heard. Some key informants suggested having signs on the desks explaining the protocols.

There were also concerns that the DCC did not address the needs of victims. Some key informants thought that victims generally wanted to see the defendants' held to account and the dock was regarded as part of this process. It is possible that victims might not think justice has been served if the defendant is sitting or standing next to their counsel.

3.5 *Adaptation to other courts*

Many key informants across the professions were not confident that the DCC would work elsewhere. They considered it unfortunate that the North Shore District Court was chosen as the pilot site because it differs from other courts in terms of case volume as well as the profile of the defendants. It would be prudent to pilot the DCC in at least one other site where there are larger volumes of cases and where there are more high risk offenders.

3.6 *Overall intended outcomes of the pilot*

The expected outcomes of the DCC pilot were that defendants would become more engaged with, and have a better understanding of, court proceedings. Findings from defendants indicate that these outcomes are being achieved. Defendants were able to hear, see and communicate more easily with their counsel, judges and other court professionals and consequently felt they were part of the proceedings rather than on the periphery. The improved access to counsel during proceedings also facilitated understanding and the ability to get correct information to the judge.

Findings from the key informants were mixed. Findings from some key informants (including most of the judges) indicate that the DCC increases defendants' engagement and facilitates better understanding of court proceedings. However, many key informants thought the pilot had limited impact as defendants' engagement and understanding was largely based on defendants' individual attributes including their willingness to engage.

An objective of the DCC pilot is that it will lead to increased sentence compliance and reduced recidivism for participating defendants. There was a general consensus among key informants that the DCC was unlikely to achieve these outcomes. Many key informants believed offending was driven by multiple factors that pervade defendants' lives and therefore the DCC pilot was seen as unlikely to have an impact.

Appendix 1 Methodology

Document Review

The evaluators reviewed documents relating to the implementation of the pilot to provide context for the evaluation. The documents that were reviewed described the layout of the court, changes to security arrangements and the court process.

Courtroom observations

One day of courtroom observations were carried out in the early stages of the evaluation to enable evaluators to get a feel for the courtroom process within the DCC and helped inform the development of interview questions for key informant and defendant interviews.

Further courtroom observations were carried out during the fieldwork stage of the evaluation, to observe the hearings of participating defendants so that they could be identified and followed-up for interviews at the conclusion of their hearing. During the three days of fieldwork the evaluators observed 85 defendants: of those 71 were part of the DCC pilot and 14 stood in the dock.

The aim was to observe the process of the DCC rather than the individuals involved or the specifics of individual cases. Consequently, no attempt has been made, in the report, to subsequently link details from the individual cases observed with interview data.

A further half day observation was carried out by one of the evaluators at another District Court at a judge's list court, to provide some comparison with the DCC at North Shore District Court.

Defendant interviews

Short structured face-to-face interviews were undertaken with 20 defendants participating in the DCC immediately following their sentencing. Demographic characteristics of the defendants were:

- Gender: male - 13, female - 7;
- Ethnicity: Māori – 7, NZ European – 11, Other – 2;
- Age: Ranged from 18 years to 64 years.

Three-quarters (15) of the defendant sample had stood in the dock on at least one previous appearance in the court and therefore had the ability to compare experiences of being in the dock with the defendant-centred approach.

Interviews were restricted to defendants whose case has been concluded to ensure that defendants' legal rights were not compromised by the evaluation. Those defendants who appeared under the influence of drugs and/or alcohol or who had mental health issues were not approached for an interview. Participants were sentenced in sentencing and list hearings. The decision to interview defendants directly after their sentencing hearing was made to:

- Increase the likelihood that defendants had appeared multiple times in the DCC across the duration of their case. These defendants would be in a better position to comment on their experience of the pilot compared to those who had only appeared briefly in the DCC;
- Increase the accuracy of the defendants' recall of the DCC.

Prior to the start of the fieldwork, the evaluators liaised with the custody sergeant and the Court Manager to ensure a suitable venue was available for these interviews to occur onsite. The interviews were designed to be relatively short (approximately 10 minutes in duration) to minimise respondent burden. A \$20 Warehouse voucher was offered as acknowledgement of the defendant's time.

Prior to the interview, defendants were provided with information about the evaluation and informed consent to take part in the interview was obtained.

The focus of the interviews was on the defendants' perceived understanding of proceedings/hearing outcomes and their sense of engagement in the process. For those who had previously appeared in court, information was sought about whether they observed any physical difference in the courtroom layout and whether it had enhanced their engagement in the court process and their understanding of their sentence requirements.

The interview guide, information sheet, and consent form used in the interviews with defendants are attached as Appendix 2.

Key informant interviews

Semi structured interviews were undertaken with judges and court staff (including the court taker, court victim advisors and security staff) as well as probation staff, prosecution, and defence lawyers who have participated in the DCC. Potential participants were identified via North Shore District Court staff and the evaluators contacted potential participants directly to set up the interviews.

In total 38 key informants were interviewed. The majority of these interviews were conducted face to face, with two by telephone.

Key informants from the following professions were interviewed.

- Judges ;
- Lawyers: a combination of Public Defence Service (PDS)/ Duty/legal aid/private⁶;
- Corrections Services staff (colloquially known as court fronters);
- Police Prosecution Service (PPS);
- Court managers;
- Court takers/ registrars);
- Victim advisors;
- Police escorts;
- Court Security Officers (CSOs) and management;
- Restorative Justice Court Coordinators;
- Court interpreters.

The interviews explored key informants' views about the impact of the DCC on defendants, themselves, the courtroom dynamics more generally, and the court process. Interview guides for the key informant interviews were developed and varied slightly depending on the professional role of the participant. The interview guides, information sheet and consent form for those who took part in the key informant interviews are attached as Appendix 2.

The Ministry of Justice's Research and Evaluation Team carried out an analysis of administrative data relating to the DCC. The analysis was carried out separately from the qualitative evaluation. The findings from the analysis are attached as Appendix 3.

Data Analysis

An analysis workshop was conducted by the evaluators, where all sources of data collected were analysed using content and discourse analysis approaches, to identify themes relating to the evaluation objectives.

Challenges and limitations

During the planning phase of the evaluation the following challenges and limitations with the proposed method were identified, and the following mitigations were used.

⁶ Duty lawyers are private or PDS lawyers who also form part of the roster to provide legal advice to clients who do not have their own lawyer.

- *Limited ability to compare defendant's experience of the DCC to what they would have experienced in mainstream District Courts:*
To mitigate this limitation, the defendants were asked to reflect on any former mainstream court experiences they had and compare it (them) with the DCC experience;
- *Presenting the evaluation as separate from defendants' cases when inviting defendants to participate in interviews:*
It was thought that how both the evaluators and the project were introduced to defendants would be crucial. It was made clear to the defendants that the purpose was to focus on the court process, that the interview was confidential and that participating in an interview would have no impact on their case;
- *Seeking defendants' views on their engagement and physical position in court rather than other aspects of their case, including the sentence they received:*
To address this limitation, the evaluators stressed that the focus of the interview was on the court process rather than their actual case. However it was acknowledged that defendants might want to comment on their particular case, in which instances the evaluators made no comments about the defendants' case or sentence;
- *Ensuring interviewers' safety during courtroom observations and fieldwork with defendants:*
Evaluators attended the court together and ensured that the court staff and security were advised of whom the evaluators were and the reasons they were at the court.

Ethical considerations

Ethics

The evaluators adhere to the ethical standards of professional bodies such as Australasian Evaluation Society and Aotearoa New Zealand Evaluation Association.

Informed consent

Prior to the interview all participants were given an information sheet which explained: the purpose of the research and how it would be used; what their involvement would be; their right to not participate; that they could refuse to answer any of the questions and that they could stop the interview at any time. Defendants were also told that they could withdraw their consent and/or any answers until the end of the interview.⁷ Key informants were told it was their right to withdraw their consent up until the time their information was incorporated into the research analysis. Once a potential participant agreed to proceed with the interview they were asked to sign a consent form before the interview commenced.

Confidentiality

It was important that participants clearly understood that their feedback would remain confidential which means that the research material collected about them would not be seen by anyone other than the evaluators involved in the project.

Defendants were advised that identifying information specific to them would not be included in the evaluation report. Key informants were informed that every endeavour to ensure anonymity would be made by aggregating data. However participants who were interviewed in their professional capacity were informed they might be identifiable by their professional position and they were offered the opportunity to check any quotes or identifiable text within the draft reports for accurate representation of their views.

⁷ In order to ensure anonymity for defendants no name or contact details were recorded about the defendants. This is the reason why defendants were only able to withdraw their consent until the end of the interview.

APPENDIX 2 INTERVIEW TOOLS

North Shore Defendant Centred Courtroom Pilot Defendant Questionnaire

- Ensure participant has understood information sheet and signed consent form
- Use prompts as appropriate and shaded boxes specify comparative questions if participant has also

Questions
<p>1. Today, before you went in to court, did you know where you would be standing in the court room? Yes No</p> <p>Who told you?</p>
<p>2. Have you ever stood in the dock at court? Yes No</p>
<p>3. We'd like to know if you could hear what was being said about your case today by:</p> <p>The judge: Not much half of what they said most of what they said everything</p> <p>Your lawyer: Not much half of what they said most of what they said everything</p> <p>The Police Prosecutor: Not much half of what they said most of what they said everything</p> <p>If you had problems hearing why was that?</p>
<p>3.1 <i>If previously in the dock:</i> Thinking about when you have stood in the dock compared to today, was there any difference in how well you could to hear what was being said about your case? Yes No</p> <p><i>If Yes:</i> What was the difference</p>
<p>4. How much of what the judge was saying about your case did you understand?</p> <p>Not much half of what they said most of what they said everything</p> <p><i>If they had problems understanding ask:</i> Why was that? What part didn't you understand?</p>
<p>5. How much of what your lawyer was saying about your case did you understand?</p> <p>Not much half of what they said most of what they said everything</p> <p><i>If they had problems understanding ask:</i> Why was that? What part didn't you understand?</p>
<p>6. How much of what the Police Prosecutor was saying about your case did you understand?</p> <p>Not much half of what they said most of what they said everything</p> <p><i>If they had problems understanding ask:</i> Why was that? What part didn't you understand?</p>

7. Were you clear on what your sentence was and what you would have to do for your sentence?
7.1 <i>If previously sentenced in the dock:</i> Thinking about when you have been in the dock compared to today, today was it easier, harder or no different to understand what your sentence was and what you would have to do? Easier/ no different/ harder <i>If there was a difference:</i> What made it easier or harder to understand?
7.2 <i>If previously in the dock and if evaluators have observed defendant conversing with the judge:</i> <i>Evaluators:</i> I noticed you were talking to the judge in your hearing Do you think you would have talked to the judge if you had been standing in the dock?
8. Did you talk to your lawyer during the hearing or did they talk to you? Yes No <i>If yes:</i> Did you give any instructions to your lawyer about what you wanted to happen with your case? Did speaking with your lawyer help you understand what was happening?
8.1 <i>If previously in the dock:</i> Thinking about when you have been in the dock compared to today, <i>today</i> was it easier or harder to talk to your lawyer or no different? Easier/no different/harder Was there any difference in how supported you felt by your lawyer? More supported/about the same/ less supported
9. Today, how involved in the court hearing did you feel you were? Not at all a little involved somewhat involved very involved
9.1 <i>If previously in the dock:</i> Compared to when you have been in the dock, because of where you stood today did you feel more or less involved in the hearing or did it not make a difference? More involved/no difference/less involved <i>If it made a difference ask:</i> Was there anything in particular that made you feel more or less involved?
9.2 <i>If previously in the dock:</i> Thinking about when you were in court today, and compared with when you stood in the dock, did it feel any different? <i>If yes,</i> What was the difference?
10. Is there anything else that could happen in the court that would help you to understand and be involved in what is going on?
11. Is there anything else that you think would help improve how the court works?

Gender: Male Female

Age:

Ethnicity:

Evaluation of the North Shore Defendant Centred Courtroom pilot Information Sheet – Defendants

Purpose of study:

The Ministry of Justice is trying a new court layout which puts the defendant in a different place in the court. We would like to hear your views on this change.

Who we are:

Michele Lennan and Sue Carswell are independent evaluators who have been contracted by the Ministry of Justice to see how well the new court layout is working.

What the interview will involve:

The interview is voluntary and is private and confidential. The interview will involve 10 minutes of your time to answer questions about your experiences of the new court layout.

At the end of the interview we will give you a \$20.00 Warehouse voucher to thank you for helping us.

How will your information be used?

We are interviewing 20 people about their experiences and all the information will be summarised together in a report. We will not use your name or any information about your case in the report.

You can ask for a summary of the findings of the evaluation.

Evaluation of the North Shore Defendant Centred Courtroom pilot

Consent Form – Defendants

I have been fully informed of the purpose of the above evaluation in which The Ministry of Justice is trying a new court layout which puts the defendant in a different place in the court.

I understand the information provided. All my questions have been answered to my satisfaction.

My participation in the evaluation is voluntary. I know I can stop the interview at any stage and do not have to answer any questions I do not want to answer. The individual answers I give will only be seen by the evaluators, Michele Lennan and Sue Carswell but the information I give, as well as some of my quotes, may be used in the report but in a way that does not identify me. Hard copies will be kept locked in a secure cabinet and electronic information will be kept password protected.

My signature below indicates that I have read and understood this consent form and that I have agreed to take part in the interview.

Signature:

Date:

I would like a summary of the report. Please circle: Yes/No

If yes:

Name:

Address:

Evaluation of the North Shore Defendant Centred Courtroom pilot

Key Informant interview guide

Ensure participant has read information sheet and signed consent form.

Grid specifies which questions will be asked to which designation.

Question	Judges	Lawyers	Police Prosecutors	Corrections Services	Victim Adviser	Court Taker	CSO	Court Mgmt	Police escort
What is your role at the Court?		X	X	X	X	X	X	X	X
How /when did you first hear about the DCC pilot?	X	X	X	X	X	X	X	X	X
How long have you been working at the Pilot Court?	X	X	X	X	X	X	X	X	X
How much experience do you have of working in the DCC?	X	X	X	X	X	X	X		X
How do defendants interact with the judge/their lawyer/prosecution (speaking, eye contact etc)? How does this compare to the level of interaction that would usually occur in a normal criminal court?	X	X	X	X		X	X		X
Do defendants appear to be more engaged in the court proceedings than in a normal court?	X	X	X	X		X	X		X
Does defendants' level of engagement appear to differ for different types of hearings held in the DCC? How?	X	X	X	X		X	X		X
Generally, what do you think would	X	X	X	X		X	X		X

help to engage defendants in their hearing?									
In your view, does having the defendant positioned in the centre of the court affect their understanding of: what is being said by the different parties; their charge; the sentence they receive; what their sentence entails? How?	X	X	X	X					
If so, does the affect of positioning the defendant in the centre of the court vary for different types of hearings held in the DCC? How?	X	X	X	X					
Is there anything else you think would help defendants to understand what happens in the hearing?	X	X	X	X					
Do you think appearing in the DCC will have any lasting effects for defendants in terms of sentence compliance or recidivism? Probe reasons for positive or negative response.	X	X	X	X					
<i>Defence Counsel</i> – Does sitting next to your client change the amount you communicate with clients during their hearing? Does this		X							

proximity affect your client's understanding of their case/sentence/court proceedings? And if so, how? Are there any other benefits or disadvantages of being seated next to your client									
In what ways does altering the placement of the defendant affect courtroom dynamics during hearings?	X	X	X	X	X	X	X	X	X
Does this initiative have impacts for victims positive and negative?	X	X	X	X	X				
Does the central placement of the defendant affect your role? How?	X	X	X	X	X	X	X	X	X
Are there any unintended impacts of positioning the defendant in the centre of the courtroom? And if so, what are they?	X	X	X	X	X	X	X	X	X
Does the defendant-centred courtroom project appear to have an impact on hearing length or case disposal time? Does this differ for hearing type?	X	X	X	X		X		X	
What, if any, are the costs associated with the DCC?								X	
What are the security arrangements and how are they working? Have	X	X	X	X	X	X	X	X	X

there been any security incidents? How safe do you feel in the court?									
Are there any other practical implications associated with the courtroom?	X	X	X	X	X	X	X	X	X
Do you think the DCC would work in other courtrooms in District Courts, considering the differences in courtroom size and layout?	X	X	X	X					
What did you think of the original concept? And has your view changed?	X	X	X	X	X	X	X	X	X
Is there anything else you'd like to add?	X	X	X	X	X	X	X	X	X

Evaluation of the North Shore Defendant Centred Courtroom pilot

Information Sheet – Key Informants

The Defendant Centred Courtroom pilot is an initiative to place the (non custodial) defendant more centrally in the body of the court and forms part of the Government's wider thrust to make the court process more user-friendly and understandable, delivering effective and accessible justice that is inclusive of everyone who engages with it.

The Ministry of Justice has contracted independent evaluators to carry out an evaluation of the Defendant Centred Courtroom. This evaluation will provide an early understanding of immediate perceived benefits, issues and concerns about the reconfiguration and opportunities for improvements. The evaluation is being undertaken by independent evaluators Michele Lennan and Dr Sue Carswell.

As part of the evaluation, we are inviting professionals who regularly work in the court to take part in an interview. This will involve a semi-structured interview of approximately 30 to 45 minutes. We are interested in hearing your views on whether the Defendant Centred Courtroom affects defendants' understanding of, and engagement in, court proceedings and how defendants' positioning impacts the wider courtroom dynamics.

Your participation in the evaluation is voluntary. If you choose to participate, you can stop the interview at any stage or withdraw your answers at any stage prior to the analysis of the data. The individual responses you give will only be seen by the evaluators. Hard copies will be kept locked in a secure cabinet and electronic information will be kept password protected.

Findings from the interviews will be summarised together and presented in an evaluation report. Anonymised quotes may be used verbatim in the evaluation report. You will not be identified by name, although you may potentially be able to be identified by your professional position as the Defendant Centred Courtroom is only being piloted at one site. If this occurs you will be offered the opportunity to check quotes and any other identifiable text before they are inserted into the report. It will be necessary for you to indicate this in the appropriate space on the consent form.

If you have any questions at any time please contact either:

Michele Lennan: mlennan@ihug.co.nz or 09 445 7478

Or the Ministry of Justice project manager:

Bryony Cornforth-Camden: Bryony.Cornforth-Camden@justice.govt.nz or 04 913 9170

Evaluation of the North Shore Defendant Centred Courtroom pilot

Consent Form – Key Informants

I have been fully informed of the purpose of the evaluation of the Defendant Centred Courtroom.

I have read and understood the information provided. All my questions have been answered to my satisfaction.

My participation in the evaluation is voluntary. I know I can stop the interview at any stage or withdraw my answers at any stage prior to the analysis of the data. The individual responses I give will only be seen by members of the Evaluation Services Team. Hard copies will be kept locked in a secure cabinet and electronic information will be kept password protected.

I understand that:

- Findings from the interviews will be summarised together and presented in an evaluation report.
- That anonymised quotes may be used verbatim in the evaluation report.
- While I will not be identified by name, I may potentially be able to be identified by my professional position as the Defendant Centred Courtroom is only being piloted at one site. If this occurs I will be offered the opportunity to check quotes and any other identifiable text before they are inserted into the report.

My signature below indicates that I have read and understood this consent form and that I have agreed to participate in the interview. I have had enough time to consider my participation and know who to contact if I need more information about the study.

I would like to check my quotes and other identifiable text if used in the report.

Please circle: Yes/No

I agree to the interview being audio-recorded.

Please circle: Yes/No

Signature:

Name:

Date:

APPENDIX 3: ANALYSIS OF ADMINISTRATIVE DATA

The Ministry of Justice's Research and Evaluation Team analysed administrative data about the DCC to provide descriptive quantitative information about how the DCC operates, including costs associated with the court. The analysis also included reviewing any security incidents that may have occurred in the DCC's first six months of operation.

Descriptive information about the DCC

Over the first 6 months of operation, 1,295 people had their cases heard in the DCC. This figure does not include defendants who were positioned in the dock during a DCC session.

Different hearing types for the DCC in the first six months of the pilot's operation are shown in the table below.

Hearing type	% of hearing types in the first six months of the DCC's operation*
List hearings	46%
Case review (and Status Hearings pre CPA**)	24%
Sentencing (and Summary Sentencing Hearings pre CPA)	20%
First Appearance	10%
Sentence Indication	1%
Other***	3%

* The percentages do not add to 100% as a defendant may have more than one event type per court date. Percentages are calculated per court date per person.

**The final stage of the Criminal Procedure Act 2011 (CPA) commenced on 1 July 2013. Status and Summary Sentencing Hearings no longer occur under CPA. In the table above, Status Hearings have been combined with Case Reviews, and Summary Sentencing Hearings have been combined with Sentencing.

*** Other includes sentence review, discharge without conviction hearing, and bail application variations, among others.

Of the 1,295 participating defendants, only eight were recorded as having started their hearing sitting next to their lawyer and then had been moved into the dock.

Twenty-six judges have presided over the pilot courtroom, most of them as visiting judges. There are three main judges who preside regularly in the courtroom.

Security incidents

No security incidents have been recorded for the pilot courtroom in the first six months of operation.

Costs associated with the DCC

The additional costs associated with the DCC Pilot are shown in the table below. Additional costs are defined as costs of implementing the pilot courtroom and ongoing costs supplementary to the costs associated with running a courtroom in the District Court. The costs for implementing the court were for new audio and security equipment and alterations to court furniture. The ongoing cost of running the DCC is for an additional part-time Court Security Officer (shown as cost per year rather than to date).

Court Security Officer (CSO)	
Salary for additional CSO (.8 FTE) per year	\$29,068
Vest	\$2,000
Uniform	\$1,000
Radio	\$1,000
Courtroom setup	
Dock speaker	\$1,890
Security cameras (two analogue cameras; recording devices and installation)	\$3,368.56
Furniture: to alter existing tables and new tables and desks	\$4,792.90
<i>Total</i>	<i>\$43,119</i>

Wireless microphones have been suggested if the pilot courtroom layout is implemented in other courts. Wireless microphones are an approved ICT solution and would remove the need to relocate existing floor boxes. Microphone cables are currently taped down to the floor which could be a safety hazard.