

Introducing the highlights from

**PROBLEM SOLVING IN COURT:
CURRENT PRACTICE IN FDACs IN ENGLAND**

A report by Jo Tunnard, Mary Ryan and Professor Judith Harwin

"We have all been part of the normal care process for years. In many cases outcomes are predictable and the process is perceived to be unfair. Parents are assessed and the prospects for change assessed but, often, inadequate support is given to parents which means that very little does change.

That is why FDAC works. It is more fair.

It gives parents a real chance to change with appropriate support. Importantly, it is humane. Even parents who do not succeed come away acknowledging that they have had a proper chance. That is why so few cases end in contested final hearings.

More importantly, the outcome for children is, as a consequence, better."

FDAC District Judge who participated in the study

Prepared for the DfE Children's Social Care Innovation Programme

September 2016

CONTENTS

1. Overview	2
2. FDAC	3
3. Background to the study	3
4. Aims of the study	3
5. Methodology	4
6. Findings in relation to problem-solving practice	6
7. Findings in relation to problem-solving principles	10
8. What we learnt from interviewing the judges	13
9. Conclusions and recommendations	16

About the report

This document introduces the main findings from a longer report, *Problem solving in court: current practice in FDACs in England*, published by Lancaster University. It is published alongside another new report, *After FDAC: outcomes 5 years later*. See back page for where to download the reports.

The report authors are members of the FDAC research team, a partnership between Brunel University London, Lancaster University and RyanTunnardBrown. It combines expertise in research, policy, law, data science, social work and evaluation. Team members have carried out research and consultancy for government departments, local authorities and other agencies and have published widely on child care policy and practice, including the impact of parental substance misuse on children and their families.

We are extremely grateful to the FDAC judges who made this study possible. We thank Patrick O'Shea and Umesh Mistry from HMCTS for their guidance with our application to undertake the study; the local Family Court Delivery Managers and the FDAC project managers and specialist team managers for arranging our court visits and interviews with the judges; and the parents who gave us permission to observe their hearing in court.

A number of other people have contributed to the study and we thank them, too: Judge Nick Crichton, and our partner agencies Coram, the Centre for Justice Innovation, the Tavistock and Portman NHS Foundation Trust, and the FDAC National Unit.

1. OVERVIEW

This report provides highlights from a study of the approach used by judges hearing care proceedings in Family Drug and Alcohol Courts (FDACs) in England. The study consisted of observations of 46 hearings in 10 FDAC courts and interviews with 12 FDAC judges. It gives a picture of how new and longer-standing FDAC sites are implementing the FDAC problem-solving approach.

The essence of FDAC is that a specially trained judge, backed by a multidisciplinary specialist team working with other professionals, uses regular court reviews without lawyers present as the problem-solving forum for engaging parents in tackling the problems that put their children at risk of harm.

The findings are positive. The judges are implementing FDAC's distinctive approach to care proceedings.¹ They demonstrated a commitment to fidelity to the FDAC model as evaluated. There is a strong appetite on the part of the judges for operating a court process that they regard as fairer than ordinary care proceedings, while keeping to the forefront the central importance of the child's welfare. All the judges were keen to extend the FDAC approach to care proceedings more generally, as a way of giving parents a voice in court and having the best chance of turning around their life and the future life chances of their children.

The findings give confidence that, across the sites we visited, the pre-requisites for achieving the better outcomes from FDAC are in place.² As a growing number of courts operate the FDAC model successfully (in line with the London FDAC), there is greater likelihood that more children will benefit from their parents being supported to stop misusing drugs and alcohol so that they can return home safely. If such improved outcomes are achieved, they are in turn likely to have longer-term cost benefits for courts, local authorities, and health and criminal justice services.

The main recommendations arising from this small-scale snapshot study of court practice in most of the FDACs currently operating in England are about:

- Continuing to roll out and sustain the FDAC model
- Using problem-solving practice and principles to measure success in implementing FDAC
- Ensuring fidelity to the FDAC model through continued training and networking
- Embedding mechanisms for collecting and using regular feedback from the parents and other professionals involved in FDAC court hearings
- Exploring which other types of care proceedings would benefit from the FDAC approach, and
- Testing the findings of this small study against practice in other FDAC courts and in ordinary proceedings.

¹ Harwin J, Alrouh B, Ryan M & Tunnard J (2014) *Changing lifestyles, keeping children safe: an evaluation of the first Family Drug and Alcohol Court (FDAC) in care proceedings*. Brunel University, London.

² The 2014 report, see footnote 1.

2. FDAC

FDAC is an alternative, problem-solving approach to care proceedings in cases where parental substance misuse is a key trigger for the local authority bringing proceedings. It aims to support parents to overcome their entrenched problems while the case is being determined in proceedings.

FDAC's main features are judicial continuity, fortnightly judge-led review hearings without lawyers present, and a specialist team – independent of the local authority – that advises the court and provides intensive treatment and support to parents as well as close monitoring of their progress. Unlike FDAC, in ordinary care proceedings there is no independent multidisciplinary team and no judge-led review hearings where the judge seeks to motivate parents to change. Nor do parents in ordinary proceedings engage in conversation with the judge.

The problem-solving approach in court is about hearing cases in a collaborative rather than an adversarial manner, using motivational interviewing techniques with parents, providing regular scrutiny of the intervention plan approved by the court, and encouraging parents to seize every opportunity to turn their lives around for the benefit of their children.

3. BACKGROUND TO THE STUDY

FDAC was piloted in the central London court between 2008 and 2012 and, prompted by encouraging evaluation findings, it has subsequently been extended to other English courts. The 2014 independent evaluation of this pilot,³ conducted by Brunel University for the Nuffield Foundation, found that FDAC produced better outcomes for parents and children: a higher proportion of parents ceased to misuse drugs and alcohol and a higher proportion of children returned to their parents. The evaluation also explored whether the elements of a problem-solving court approach, as identified through problem-solving courts in the USA, were present in the pilot English version. We concluded that FDAC did use a problem-solving approach to help reduce the difficulties that had brought parents to court. We also found that the majority of parents and professionals consulted thought that the FDAC model was a better way to run care proceedings.

4. AIMS OF THE STUDY

This new study, exploring practice in 10 FDAC courts, had two main aims.

The first was to test whether FDAC judges are currently using a problem-solving approach during court hearings. The second was to collect the views of judges about differences between FDAC and ordinary care proceedings, local implementation of the FDAC model, and the value of extending its problem-solving approach to other types of care cases.

³ See footnote 1.

5. METHODOLOGY

The fieldwork was carried out in early 2016. We observed cases in the pilot court established in 2008, the three courts running for longer than a year, and six new courts that had been operating for several months. The sites visited provided a geographical spread, and we observed and interviewed a mix of male and female judges.⁴

We observed 46 cases, with hearings at different stages of the case process. Thirteen (13) were hearings with lawyers present. The other 33 were the fortnightly non-lawyer review hearings that are a distinctive aspect of FDAC. They are where the judge meets the parents, the FDAC key workers, the local authority social worker, and – if present – the children’s guardian.

We approached the data collection and analysis in two different ways, expanding on the approach we had used in 2014.

(a) Problem-solving practice

For recording our court observations we used the lens of problem-solving **practice**. We noted what people did and said in court, under the headings of the nine questions developed for our earlier evaluation.⁵

Our questions were about the extent to which the judges succeeded in:

1. talking to parents
2. inviting their views
3. expressing interest in their progress
4. acknowledging family strengths
5. offering praise to parents
6. explaining the aims of FDAC
7. explaining decisions made
8. urging parents to take responsibility for their actions, including the consequences of prioritising their own needs over those of their children, and
9. using time in court to tackle the range of problems faced by parents (that is, using a problem-solving approach).

(b) Problem-solving principles

For analysing our observations we also used the lens of problem-solving **principles**. These are principles that service commissioners and managers can be expected to incorporate into the development of a local FDAC service. Here we drew on the growing national and

⁴ The courts visited were in London, North England, South East England, South West England and The Midlands. See the full report for more details of methodology, including limitations and challenges.

⁵ For the 2014 evaluation we adapted the questions used by researchers in the USA when testing for problem-solving practice in their large study of Family Drug Treatment Courts.

international work to codify principles of problem-solving justice⁶ and on the work of the FDAC National Unit to develop FDAC Service Standards.⁷ This is a new dimension to the evaluation of the FDAC model.

For each of the following problem-solving principles we looked for evidence of the elements that we deemed to be relevant indicators of whether the principles were being followed by FDACs:

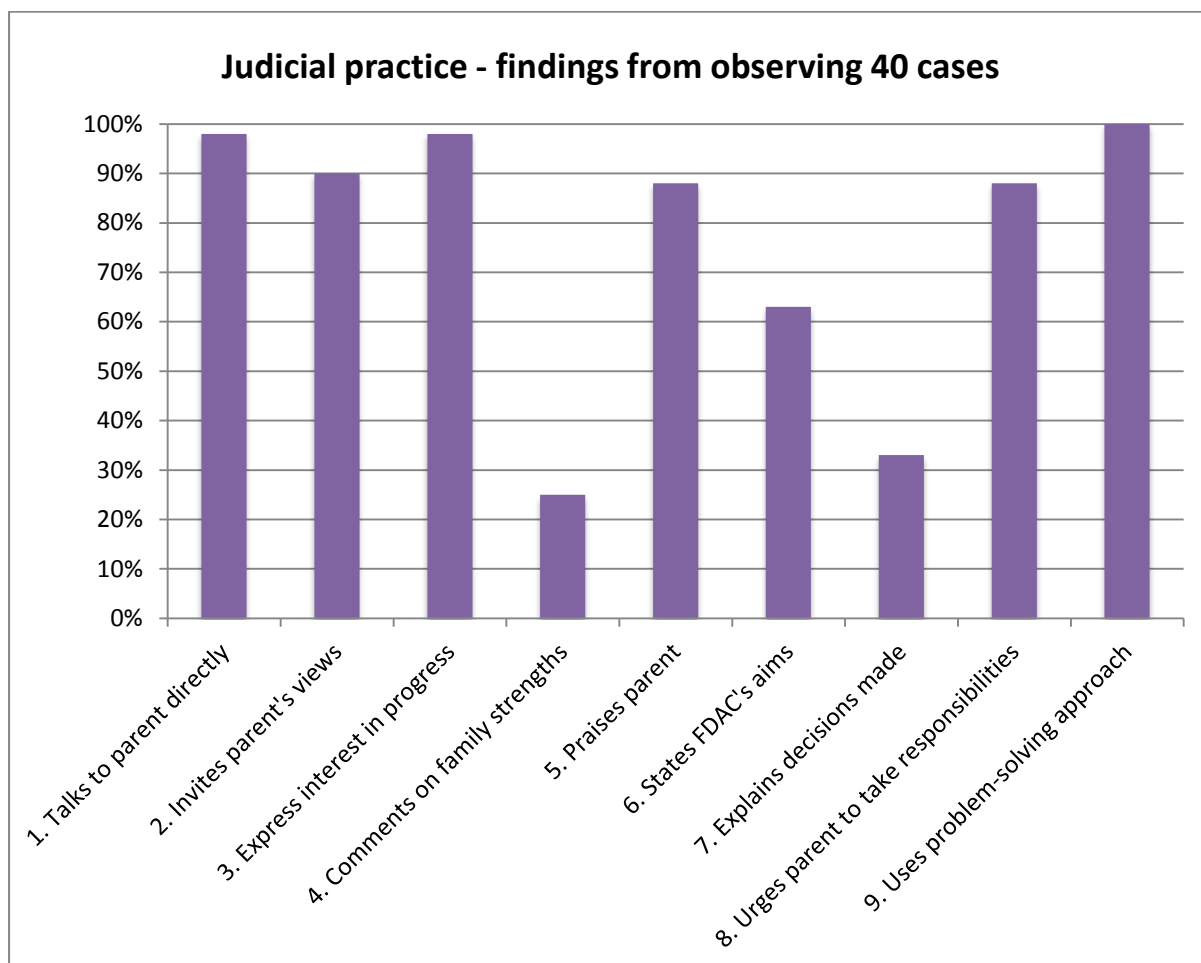
1. Enhanced information (*to and from all parties*)
2. A collaborative approach (*solving problems through joint thinking and action*)
3. Fair decision making (*using a non-adversarial and an honest, transparent approach*)
4. Judicial review and monitoring (*by a specially-trained judge*)
5. A focus on outcomes (*to achieve the changes needed in parental behaviour and lifestyle*).

⁶ We have drawn on the development of problem-solving service principles by the USA Center for Justice Innovation, adapted subsequently by the Centre for Justice Innovation (in the UK), and the FDAC National Unit.

⁷ Access the FDAC Service Standards at <http://fdac.org.uk/fdac-service-standards/>

6. FINDINGS IN RELATION TO PROBLEM-SOLVING PRACTICE

Here we present the findings in relation to the nine questions about problem-solving practice. The chart shows the extent to which we found this practice in evidence overall and after the chart we give summary findings for each question. We have analysed data from 40 of the 46 hearings observed; we excluded the other six cases from this section because the questions are testing the interaction between judge and parents and neither parent was present at court that day. The 40 hearings included 11 with lawyers present and 29 that were non-lawyer review hearings.



Note: While questions 4 and 7, like the others, are calculated from the 40 cases analysed, these 2 questions apply to a smaller number of cases only (see text below).

- **Talking to parents, inviting their views, expressing interest in their progress (Q1-3 above)**

The very high scores (90-98 per cent, see chart) reflect how successful the judges were in engaging with parents in these three ways. They greeted parents and conversed with them throughout the hearing. Their style was warm and friendly, with open questions used to elicit from parents reflections rather than brief replies. The judges listened carefully,

explored what parents were meaning, thanked them for their comments, and gave a clear steer on how they would take account of their views. They asked parents if they had questions, or more questions, and they gave clear answers, with most of them checking whether their answers were understood.

"I'd like to hear what you have been told about the very intensive work ahead. It will be like having a spotlight on you ... So tell me why you have agreed to accept FDAC."

"Replay that for me. Tell me what happened ... and how it happened ... what do you think are the concerns of the team and the other professionals?"

"Don't forget what you have heard today. People speak the truth, and everyone is very pleased with the progress you are making."

There were six exceptions: three cases where parental views were not invited, and three others where interest in progress was not mentioned specifically. These were all hearings with lawyers present and all were at an early stage of the proceedings. In each case (as in the other five with lawyers present, and in all 29 non-lawyer reviews) the judges were welcoming and friendly towards the parents.

- **Acknowledging family strengths, and praising parents (Q4-5)**

Praise to parents featured in almost all cases (88 per cent, see chart). The judges were consistent in acknowledging each positive action that took parents closer to keeping or regaining care of their children, while not ignoring anything that was not going well. Other decisions were praised, too, as when a parent told the judge that she had come to realise that her son should not return to her care because she had not made enough progress in changing her lifestyle.

"I am always impressed when parents can recognise that they cannot be the main carer. It doesn't mean they won't continue to have a role in their child's life."

There was no specific praise to parents in 5 hearings. These were 4 of the 11 lawyer reviews, all first or second hearings, and one non-lawyer review. In the latter case, the parents arrived late and the judge focused his discussion on the importance of keeping appointments and arriving on time.

To gauge the extent to which the judges acknowledged family strengths, we scrutinised the hearings where parents were accompanied by a relative, as well as checking all the hearings for comments about the contribution of family members. In three hearings a relative (the paternal grandmother) was present, and in seven other hearings there was clear mention of support provided to children and/or parents from the wider family. In each of these ten cases the judges commented positively on the help that was in place. They acknowledged

the practical and emotional support parents were getting from their own parent or adult sibling, and they reinforced the value of people's efforts to mend or strengthen family relationships in order to have a strong support network for children and/or parents.

"Your mum will want to rebuild her relationship with you. All mums want that. Think about you and your children and how you'd want them to stay in touch with you. I know this is hard for you, and I don't want to make you cry, but you've got to try and tackle the issues with your family, for your children's sake. Family will be important for them, whatever decision I make."

- **Explaining the aims of FDAC and decisions made (Q6-7)**

FDAC's aims were explained in 62 per cent of hearings (see chart) and, as we expected, these included all the early hearings, as parents were becoming familiar with the FDAC approach. Parents were told that the professionals wanted them to do well, hoped that changes would be made in time for their children to be able to return to their safe care, would do everything possible to help them succeed in that, and were committed to working alongside them throughout the court case. When the judges mentioned FDAC's aims in later hearings it was usually to mark which aims parents were taking on board or to clarify those needing more attention. The judges were consistent in how they stated and explained the aims, and some were particularly clear in giving parents concrete examples of what the aims meant for their particular family and circumstances.

"The guardian is not pointing a finger of blame. It's important that we are all aware of what's happening and that we understand that there's a problem to discuss if children are saying things that worry the professionals."

There were 13 hearings where a specific decision was made – specific in the sense of being about, for example, a change in a child's contact or living arrangements. We are not including here the frequent comments about carrying on with the work plan, or staying focused, or being sure to put appointments into diaries. In all these cases where a specific decision was made, the judges explained the decision clearly and, in most of them, they asked parents to confirm that they understood the decision.

- **Urge parents to take responsibility, explaining the consequences of prioritising their own needs over those of their children (Q8)**

Here we wanted to know whether the judges succeeded in striking a helpful balance between praising parents for their progress and challenging them when progress wasn't enough, or quick enough, to meet their children's needs. We concluded that the judges kept this balance in almost all cases (88 per cent, see chart).

“You have the right positive approach and I agree with what you are saying. I can see that you are sticking to the agreement.”

“I’ve said it before. It doesn’t happen overnight, but abstinence is not negotiable. You’ve got to do it or there will be long-term problems. Think about it.”

In the other five cases the researcher judgement was that we expected the judge to have probed parents more about their commitment to change. Examples included not pursuing a mother’s reluctance to attend a meeting with professionals to discuss her child’s needs and not exploring with parents a concern raised in the hearing by one of the professionals.

For this question we did an extra analysis, to test whether there was sufficient attention to the needs of the children. Here we looked at all 46 cases, rather than the 40 with at least one parent present, because the question is relevant irrespective of who is at the hearing. In six cases the researcher judgement was that some aspect of the child’s situation might have been pursued further. They included the possibility that a slower return home might have been better for the children, the lack of attention to the unhappiness of an older child in foster care, and a father’s difficulty in coping with his children’s anxiety during contact visits.

“If this happens again it will feed into my decision making. You have to show you can sustain it for the children. If not, it will be better to take the children away, because we don’t want them to be disappointed. That’s the question for me, even though I want them to stay with you for the rest of their childhood.”

- **Using a problem-solving approach in court (Q9)**

Here we were checking for evidence of problem solving in each hearing. We found that the judges were effective in identifying issues for discussion and in steering the conversation towards looking for solutions. There was positive evidence of the way in which practical solutions were found – such as for counselling sessions, suitable housing, and help with travel and other costs. The judges were good at engaging parents, too, to think about answers, reinforcing the view that problem solving was not just for professionals. While in three hearings we concluded that *more* discussion might have been helpful, to find a new approach to a pressing problem, we found evidence of a problem-solving approach in all 40 cases (100 per cent, see chart).

“Before the next review in two weeks, I’d really like to see the FDAC team, the guardian and the local authority meet with the father and see if they can agree a placement package, and bring the children into that discussion. Could you do that?”

“Who will help the mother get to her domestic abuse programme after the key worker leaves?”

7. FINDINGS IN RELATION TO PROBLEM-SOLVING PRINCIPLES

This section summarises our observations against the five principles of problem-solving justice. Here our comments focus more broadly than on the practice of the judges that we reported in the previous section: they touch on how the FDAC service operates and the ethos that underpins it. In our analysis we were looking for evidence of the indicators that would show that the principles were being followed.⁸

Principle 1 - Enhanced information

This principle is about everyone, including parents, having the information they need for the smooth and fair running of the case.

We found consistent evidence, in our observations of different hearings and across different sites, of the high priority attached to ensuring that comprehensive information was made available to all who needed it. At early hearings parents were given clear explanations about what was to happen in court and what would happen in between hearings. We heard specialist FDAC team members give the court their insight into the problems faced by parents. We watched as judges used the team's specialist assessment of parents' circumstances in their review meetings with parents. We could see that discussion in both lawyer and non-lawyer hearings was informed by the detailed knowledge held by professionals of local service options that could be drawn on to help resolve difficulties.

It was clear that the regular review process by the court, and what we gleaned in court about the intensive work of the intervention team, meant that everyone involved could keep up to date with what was happening and with the progress of parents and children throughout the case.

Principle 2 - A collaborative approach

This principle is about problem solving being everyone's business, and likely to be more effective if done in conjunction with others.

Our observations indicated that the FDAC specialist team attached to the court works closely with parents, using intensive treatment to try to bring about change. Equally evident was the fact that the team and the judge work closely together, and expect to be able to work well with the range of other agencies and services involved. The judges conveyed the message that they wanted everyone to play their part in solving the problems to be resolved: questions like 'who can help with this?' and 'what can we do about that?' were recorded in notes from several hearings. The wish to use the skills of everyone extended to parents, too: we saw judges and other professionals use the time in review hearings to help parents understand their strengths and weaknesses and then encourage them to use that knowledge in working out how to tackle problems.

The chance of collaborative work was reduced in some hearings by the absence of a key person or by their silence in court. As noted earlier, neither parent was present in six of the 46 hearings. Attendance by children's guardians was more frequent in sites with a firm

⁸ The indicators for each problem-solving principle are set out in the full report.

agreement or expectation from Cafcass that guardians would attend regularly. In several sites we noticed that some local authority social workers did not always take up the judge's invitation to join in the discussion. We do not know why this was so. It might have been that they felt they had nothing to add to the comments of the other professionals, or that they were unsure of their role in FDAC, or that they disagreed with what was being said but did not want to introduce a negative comment. Otherwise, almost every non-lawyer hearing was marked by the professionals present reinforcing the problem-solving approach of the judges and raising any concerns in a sensitive and positive manner.

Principle 3 - Fair decision making

This principle is about ensuring that the process feels fair to parents brought before the court.

In the court hearings we observed the judges and other professionals treating parents with dignity and respect. They involved them in the process and engaged them in discussion. They told parents that they hoped for a good outcome for their children and themselves, that they would listen carefully to what they had to say, and that they would challenge them if they were failing to comply with the plan that they had signed up to. We saw many examples of judges doing just that.

Almost all the judges had a background in ordinary care proceedings work before becoming a judge and they were strong proponents of a non-adversarial approach in court. Even in the more formal hearings with lawyers present they set the tone for agreement rather than conflict and for everyone to be working in an honest and transparent way. Judges who had heard cases through to final hearing commented on parents saying that they had been dealt with fairly throughout proceedings, including those who did not succeed in having their child returned to their care.

Principle 4 - Court review and monitoring

This principle is about offering parents the best chance of remaining motivated to succeed.

Here we were looking to see what techniques were being used in court, with a particular interest in whether the specialist training from the FDAC National Unit was proving helpful. We found evidence in almost every case that judges, FDAC team members and some of the other professionals were using motivational interviewing techniques, and that parents responded to this approach.

The techniques helped create an atmosphere where it was possible for the judges to probe for information, to encourage parents to do the right thing even when that was hard, and to be firm in pointing out the seriousness of the situation if parents were falling short in meeting the conditions and expectations of the court. When the judge was direct and firm in their challenge (as in the majority of cases), we saw parents reflect on what had been said and offer ideas for what they would do about it, either on their own or by committing to discuss the matter with their FDAC key worker or another service.

Principle 5 - A focus on outcomes

This principle is about supporting parents to understand their children's needs and the changes required in their own behaviour and lifestyle.

We observed judges checking that the services available were those with the best chance of helping parents to break unhelpful patterns of behaviour. They drew the other professionals into discussion with parents about the importance of using the services in their intervention plan and they were interested in hearing what parents felt about the many different sessions that they were attending. The judges also encouraged parents to take a long-term view of what would help them stay on track after proceedings ended. They encouraged them, for example, to recognise signs of tension and ask for early help, and to focus on strengthening relationships with family and others close to them, to boost the prospects of having a good support network for their children and themselves.

A key feature of the judges' practice was that they did keep the children firmly in mind, both the few babies who attended court with their parent and the older children who were not seen by the judge. They did this in various ways, depending on the age of the children and their particular circumstances and needs. Discussion was prompted by questions or comments from parents, local authority social workers or guardians; in some cases concern about children led the judge to ask lawyers to attend the next hearing or to make an order for the child's protection.

8. WHAT WE LEARNT FROM INTERVIEWING THE JUDGES

We conducted brief, 30-minute, interviews with 12 judges, covering a range of topics. We wanted to understand their views about the FDAC approach and about how the model was working locally. We asked, too, about the idea of widening the type of cases dealt with by FDAC, because we were keen to start a debate about problem-solving justice in general with family judges who were using the approach already.

The judges were working in courts at each stage of implementing FDAC:

- **long term:** 1 judge was from the original site, established nine years ago
- **medium term:** 3 judges were from sites in their second or third year of operation, and
- **new:** 8 judges were from sites that had opened in the previous six months.

In analysing the interviews for recurring themes and differences of opinion, we drew out several key findings that we summarise below.

- **Support for the FDAC approach**

The judges were unanimous in their support for the FDAC approach. FDAC was described repeatedly as a “*compassionate*” or “*humane*” experience for parents, compared with ordinary care proceedings. This was because parents were required to engage in the process – they had to talk to the judge and were then listened to and their views discussed with them. They were given choices and expected to take responsibility for achieving change in themselves.

The judges also highlighted the transparency of the process, with parents knowing what everyone was thinking and saying and thus avoiding any last-minute surprises. One commented that the children involved in FDAC cases would be able to look back in future and see that their parents had been given every opportunity to succeed. She felt that the same could not be said of ordinary care cases.

- **The value of the frequent non-lawyer reviews**

The non-lawyer review hearings were seen by all to be of real advantage: the general view was that something had always been done in between these hearings, unlike in ordinary proceedings where time was described as “*drifting for weeks on end, from one court day to the next.*” The frequency of FDAC hearings meant that early progress could be praised and boosted, and early signs of lack of progress noticed and challenged.

The judges welcomed what judicial continuity brought to review hearings. It provided an incentive to parents to demonstrate what they could achieve and to do this with someone who knew where they had started and how much they had struggled along the way. If things were not going so well, it also enabled judges to challenge parents from this same starting point.

- **The benefits of the specialist team**

The judges valued the high quality of the assessments and written reports of the FDAC specialist team. In addition, the judges felt that the team’s direct treatment intervention with parents, and their work in linking parents with other services, as appropriate, ensured that time in FDAC *“is not an empty process.”*

“It’s a gold-standard team. In other care cases we all know that parents won’t get the therapy they need.”

“We have a ready-made supply of expertise. In ordinary proceedings if you do use experts they only spend a limited time with parents, assessing them. They don’t do any work with them.”

- **The value of training and networking**

The judges valued the joint training that they and their specialist team had received from the FDAC National Unit, in particular about the motivational approaches to help parents change their lifestyle. Several said that knowing more about motivational interviewing might help some of the other professionals involved to understand the technique – that it is not about ignoring the negative aspects of a parent’s behaviour but, rather, about focusing on those negatives in a positive way. They also commented that approaching families in this way was consistent with the expressed wishes of professionals to revert to the helping role that had brought them into social work in the first place.

The judges also valued opportunities for networking with their judicial colleagues, to test their ideas for running hearings and to share tips for acting as FDAC champions. The FDAC National Unit was seen as an important source of information and support for honing their problem-solving skills, as well as for the practicalities of establishing a new court model and keeping it functioning smoothly.

- **Views about local implementation**

The judges were generally pleased and impressed with the way the FDAC service was being developed in their area. Most were involved in giving advice and help with local implementation issues, and several had taken opportunities to promote the new way of working and to foster greater understanding and confidence in the model by local legal and social work practitioners. Without exception, the judges were taxed by the lack of secure funding for FDAC from one year to the next and by the uncertainty that this generated.

- **Extending the remit of FDAC**

The judges were keen for the FDAC approach to be extended to other care cases. This included other cases featuring substance misuse that did not get referred to FDAC for some reason. It also included proceedings triggered for other reasons besides drug and alcohol misuse. In at least one court the FDAC cases are already more about parental mental health and domestic abuse problems, and in all areas cases that are triggered by substance misuse also tend to include neglect, domestic abuse and difficulties arising from parental mental health problems.

There was a strong appetite for extending the FDAC process to parents in these other types of cases, and the judges had a strong sense about the way forward. They needed to decide which type of other care case to add to their current remit, expand the capacity of the team to provide the new expertise required, and then apply the FDAC approach to these cases. They acknowledge that the speed of progress would be tempered by the need to provide continuing judicial continuity, by team capacity, and by the availability of intervention programmes that had a good evidence base for addressing the difficulties that hampered parenting ability.

On a personal level, the judges found the work deeply satisfying (albeit emotionally taxing). They could see the value of the judge as a catalyst for change, encouraging parents to take advantage of FDAC's unique assessment and intervention programme. Some of those new to the role wondered whether they were "*getting it right*" and these sorts of thoughts prompted comments about the value of ongoing training and networking.

9. CONCLUSIONS AND RECOMMENDATIONS

Conclusions

This first study about judicial practice in the new FDAC courts gives confidence about the ongoing implementation of the FDAC model. The study found that the model is being rolled out successfully beyond the original London pilot site, and that adherence to the practice and principles of FDAC's distinctive problem-solving approach is at the heart of what happens in court. The quantitative analysis of the judges' style and behaviour reinforced the narrative evidence. The judges scored very highly on the essential components of judicial problem solving. They acted in line with the FDAC service standards, working as catalysts for change by giving parents a voice in the proceedings and fostering a positive relationship with them in a court process that was collaborative but firm.

We gave close scrutiny to anything we observed that might merit a low score in terms of good practice, and we have commented on what we found in those very few instances. Similarly, we looked for – but did not find – evidence that the courts fell short of implementing the principles of problem-solving justice.

The interviews with the judges provided evidence that they could translate into practice their liking for the concept of the FDAC approach to care proceedings. Their previous experience of working as solicitors and judges in ordinary proceedings had clarified the changes they felt were needed, in and out of court, in responding to the needs of children put at risk of harm by their parents' behaviour. They had enjoyed learning about the FDAC problem-solving style of court hearings, which they were finding was both do-able and rewarding, albeit emotionally demanding. The finding applied across the sites, irrespective of differences in geography and in local arrangements for managing the court and the FDAC service. We also found that this was the case across the judges; there was very little overall difference between them, irrespective of the fact that some had been hearing cases in FDAC for longer than others.

There was consensus among the judges that the problem-solving approach would be appropriate for many other types of care proceedings, and they were keen to extend the remit of FDAC and test how this might work. This view stems from the wish to make available to more parents the benefits of the FDAC approach. It is consistent with the evidence from the US research that people who have experience of a problem-solving court are more likely to understand, and agree with, the decisions made by the court.

Some sites had begun to work in this way, drawing into FDAC cases where domestic abuse and/or parental mental health difficulties were the most pressing problems to be resolved. These developments raise questions for local and national debate, about when the FDAC approach might be appropriate and when not. The judges were clear that it was suitable for parents committed to work towards changing their lifestyle. Less clear cut were questions about the specialist treatment or intervention needed for different types of problems and how to measure progress in tackling them.

Extending the scope of FDAC in this way was considered to be the next logical step in moving towards the wider problem-solving justice that is gaining currency in the UK. Incorporating the problem-solving **principles** into the new study (alongside the problem-solving **practice** that we evaluated previously) has the advantage of being able to place our findings into the growing debate about the future development of problem solving in criminal and youth justice proceedings, as well as in family proceedings.⁹

The judges we observed and interviewed were clear that they were carrying out better justice than was possible in ordinary care proceedings. They valued in particular the opportunity to help support parents gain the courage to do what they knew was the right thing, even when that was very hard. They were taking charge of the proceedings and adjudicating in a manner that was fairer than ordinary proceedings, but equally robust.

We can also extract the specific learning for further developments in FDAC itself. The messages about practice in the courtroom will, we hope, be useful as more new FDAC judges come on board. The judges valued the opportunity to learn from the experience of those with a remit for the national roll out of FDAC and from their colleagues in other sites. The findings about the principles of FDAC will be of particular value – nationally and locally – to those involved in planning and managing emerging new FDACs. There was concern in all sites about the pressure of work on the specialist FDAC team and the urgency of finding the resources needed for the service to continue.

The collaboration of all stakeholders was another topic that arose in our observations and interviews. The contribution in court of children’s guardians was more likely in sites with a protocol or firm expectation between Cafcass and FDAC that guardians would attend regularly. The particular role of local authority social workers was another issue that in some places would merit discussion by those with operational responsibility for the local FDAC service.

Other issues for discussion include the value of sharing ideas in working towards service standards and good practice indicators, the importance of gathering continuous feedback from parents and professionals about their experience of FDAC, and the advantage of collecting and comparing data about what happens to children and their parents after the final court hearing in FDAC.

⁹ See *Problem-Solving Courts Working Group Terms of Reference*, at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/499465/tor-problem-solving-courts.pdf; Lord Carlile, chair (2014) *Independent Parliamentarians’ Inquiry into the Operation and Effectiveness of the Youth Court*, at http://www.ncb.org.uk/media/1148432/independent_parliamentarians_inquiry_into_the_operation_and_effectiveness_of_the_youth_court.pdf; and Centre for Justice Innovation (2015) *Problem-solving courts: An evidence review*, at http://www.justiceinnovation.org/sites/default/files/attached/Problem-solving%20courts%20-%20An%20evidence%20review_0.pdf

Recommendations

The recommendations arising from our findings and conclusions are as follows:

- **Extending availability** Given the new evidence from this study that the model can be replicated, we conclude that FDAC should be sustained in its existing sites and continue to be rolled out into new Designated Family Judge (DFJ) and local authority areas.
- **New tools for practice** The questions and indicators used in our study to gauge success in implementing problem-solving practice and problem-solving principles could be helpful tools for use by the judiciary and FDAC service commissioners and managers.
- **Opportunities for training and networking** Given the importance of support to sites for maintaining fidelity to the FDAC model, and the value the judges attach to learning from the experience of colleagues, the FDAC National Unit should continue to provide this support to the judges, local specialist teams and other professionals involved in FDAC cases.
- **Using feedback from parents and professionals** To help shape the development of courtroom practice in applying FDAC's problem-solving approach, sites should continue to gain regular feedback from parents and professionals, using the National Unit data tools and creating opportunities for local discussion of progress reports about the FDAC service.
- **Broadening the remit of FDAC** Given the interest in using the FDAC model for a wider variety of care proceedings, there is merit in having national and local discussion about which types of cases are likely to benefit from a problem-solving approach to family justice. Crucial to this debate is a discussion about whether the goal is about access to fairer justice for all or whether entitlement should be on the basis of problems being solvable and underpinned by a sound evidence base.
- **Ongoing learning** In due course, a further study of practice in FDAC courts would be helpful, including some elements that we were not able to incorporate in this small study – interviewing parents and professionals other than the judges, observing more than one hearing in a case, and observing practice in ordinary care proceedings.

Published by Lancaster University, Bailrigg, Lancaster LA1 4YW
Date of publication: 22.09.2016
Copyright © Lancaster University

The briefing paper and full reports, *Problem solving in court: current practice in FDACs in England*, and *After FDAC: outcomes 5 years later*, are available to download at <http://www.lancaster.ac.uk/law/research/research-centres/centre-for-child-and-family-justice-research/> and at <http://fdac.org.uk/>