

**PROBLEM SOLVING IN COURT:
CURRENT PRACTICE IN FDACs IN ENGLAND
Final Report
(December 2016)**

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“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

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About the report

This new report is about the way in which FDAC judges are running the new and more-established FDAC courts in England. It expands on a shorter version – “*Introducing the highlights from “Problem solving in court: current practice in England”*” – launched in September 2016. Both reports are available at <http://wp.lancs.ac.uk/cfj-fdac/publications/> and <http://fdac.org.uk/better-justice/>.

The report authors are members of the FDAC research team, a partnership between Brunel University London, Lancaster University¹ and RyanTunnardBrown. The team 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.

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¹ In April 2016, the project transferred from Brunel University London to the Centre for Child and Family Justice Research at Lancaster University.

1. OVERVIEW

This report provides findings 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, demonstrating strong fidelity to the model that we evaluated over a five-year period.² 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.³ As a growing number of courts operate the FDAC model 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 and to parent them safely. If such improved outcomes are achieved, they in turn are likely to bring 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 current practice 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
- gaining regular feedback from FDAC families and the professionals involved
- exploring which other types of care proceedings would benefit from the FDAC approach, and
- testing the findings of this small study against practice in the few other FDAC courts that we did not visit, and in courts that are operating ordinary care proceedings.

² Harwin J, Alrouh B, Ryan M and Tunnard J (May 2014) *Changing lifestyles, keeping children safe: an evaluation of the first Family Drug and Alcohol Court (FDAC) in care proceedings*. Brunel University London.

³ For the better outcomes from FDAC, see the 2014 evaluation study (footnote 2) and the 2016 report published alongside this one: Harwin J, Alrouh B, Ryan M, McQuarrie T, Golding L, Broadhurst K, Tunnard J and Swift S (December 2016) *After FDAC: outcomes 5 years later. Final Report*. Lancaster University. <http://wp.lancs.ac.uk/cfj-fdac/publications/>.

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 (see footnote 2), 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.

5. METHODOLOGY

Preparation and fieldwork

We gained permission from Her Majesty's Court and Tribunal Service (HMCTS) to observe care cases in the courts in England that were using the FDAC model described in the Brunel 2014 report. In addition, the President of the Family Division granted us a Privileged Access Agreement to seek an interview with the FDAC judges in the courts that we visited.

The fieldwork was carried out in early 2016. The practical arrangements for our attending each court on an FDAC day, and for asking the judges for an interview, were organised through the local Family Court Delivery Managers. In addition, the local specialist FDAC team alerted parties to our wish to sit in court on the appointed day. All agreed to this request, although on one day a parent asked us not to observe her review hearing because she was upset at the prospects of discussing her drug lapse with the judge.

In addition to the hearings, we also observed any pre-court briefing meeting between the judge and the FDAC specialist team. These briefings are a normal part of the FDAC process. They last between 30 and 60 minutes and provide an opportunity for the team to update the judge on key aspects of the cases listed for the day.

We then sat in court, observing all the FDAC cases heard during the full- or half-day session, and completing the recording form that we had developed for the original evaluation study. Finally, we interviewed the judge after the last case of the day.

For each case, we recorded some basic (anonymised) details: a brief summary of the issues, the people present, and the type and length of hearing. We also noted information that would enable us to summarise findings on specific questions about the FDAC problem-solving approach used by the judges. These were the questions used for the Brunel 2014 report, drawn from the national evaluation of Family Drug Treatment Courts carried out in the USA and modified for work about care proceedings in England.

One researcher sat in court at any one time. All notes were typed and circulated, and read by all three researchers.

The courts and judges involved

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 (London, North England, South East England, South West England and The Midlands) and we observed and interviewed a mix of male and female judges.

All the judges had welcomed the opportunity provided by their Designated Family Judge to take on FDAC cases. They had experience of adjudicating in ordinary care proceedings, some in the past and others continuing to do this work alongside hearing FDAC cases. Before

becoming a judge most had long experience (up to 20 years) as a solicitor acting for children, parents or LAs in care proceedings.

We spoke to 12 FDAC judges sitting in the 10 courts that spanned each stage of implementing FDAC :

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

Court visited	Start date as FDAC court	Hearings observed: with lawyers	Hearings observed: without lawyers	Total
1	2008	3	6	9
2	2014	-	8	8
3	2014	2	3	5
4	2014	-	6	6
5	2015	2	4	6
6	2015	1	2	3
7	2015	1	2	3
8	2015	1	1	2
9	2015	1	1	2
10	2016	2	-	2
Total		13	33	46

The 46 cases observed

We observed all the FDAC cases listed for the day of our visit. We had no prior information about the cases, other than an indication of how many were listed and the likely length of the court's work that day.

Thirteen (13) of the 46 cases that we observed were hearings with lawyers present: they were a mix of first hearings in the case; second hearings, where parents who wished to opt into FDAC signed a written undertaking with the judge and FDAC team; and subsequent hearings, where a legal issue had arisen and required the participation of legal representatives. The average length of these lawyer hearings was 27 minutes, with a range of between 7 and 70 minutes.

The other 33 hearings were the fortnightly non-lawyer review hearings that are a distinctive aspect of FDAC: they do not happen in ordinary care proceedings. They are the regular meetings that the judge holds with the parents, the FDAC key workers, the local authority social worker, and – sometimes – the children's guardian. As with the lawyer hearings, these non-lawyer reviews were at various stages of the case process. The average length was 19 minutes, with a range of between 6 and 45 minutes.

In one court, we observed only hearings with lawyers present while in two others we observed non-lawyer hearings only. In the other seven courts, there was the usual mix of lawyer and non-lawyer hearings.

Approach to data collection and analysis

One researcher clustered the information we had collected and interrogated the observations and interviews using framework analysis.⁴ The other researchers reviewed this analysis separately and all three then discussed the cases and findings until we reached consensus. The framework for analysis included two elements: problem-solving **practice** and problem-solving **principles**, and there was some difference in how we measured adherence to the two. For checking evidence that problem-solving practice was used by the judges, we conducted a quantitative analysis of our observations. For testing for evidence of the indicators of the problem-solving principles we used a more general, qualitative approach.

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

Problem-solving approaches in court draw on therapeutic jurisprudence,⁶ the study of how the law and those who enact it may help or harm people's well-being and mental health,

⁴ Jane Ritchie et al (2013) *Qualitative Research Practice*, London: SAGE, and see <https://www.surrey.ac.uk/sociology/research/researchcentres/caqdas/files/Session%201%20Introduction%20to%20Framework.pdf>

⁵ Worcel S et al (2007) Family Treatment Drug Court Evaluation Final Report. Submitted to Center for Substance Misuse Treatment, Substance Abuse and Mental Health Services Administration, US Department of Health and Human Sciences.

⁶ Wexler D and Winick B (eds) (1996) *Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence*. Carolina Academic Press.

and what alternatives there might be, including specialist courts for particular problems. Therapeutic jurisprudence sees the judge as having an active role in resolving the problems that bring people before the court. It makes use of motivational approaches to promote adherence to treatment. The benefits of this approach are considered to derive from a combination of style and technique. The style needs to be warm and empathetic. The technique includes reflective listening, encouraging parents to believe that change is possible, exploring their ambivalence about the action needed, and using negotiation rather than conflict to promote change.

(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 international work to codify principles of problem-solving justice⁷ and on the work of the FDAC National Unit to develop FDAC Service Standards.⁸ 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. In relation to the principles, and for the purposes of the study, we have made some slight adaptations to the *general* description of each principle as published by colleagues at the Centre for Justice Innovation (see footnote 7). We have done so to highlight the *specific* elements of the FDAC court that were the focus of this study. The amended wording for the heading for each principle, and for their relevant indicators, is set out below.

Principle 1: Enhanced information (to and from all parties)

The court receives specialist insight into the problems faced by parents, early and specialist assessment by the FDAC team of parents' circumstances, and detailed information about the service options available to help resolve their difficulties. The regular review process ensures that people keep up to date with what is happening and hear about the progress of parents and children throughout the case. Parents get clear explanations about the processes in court and outside court, the help that is on offer, and how decisions are made.

Principle 2: A collaborative approach (solving problems through joint thinking and action)

A multi-disciplinary team attached to the court works with parents, using intensive treatment to try to bring about change. The team and the judge work closely together, and with the range of agencies and services involved. Everyone is expected and encouraged to play their part in solving the problems to be resolved. This includes parents: they are helped

⁷ 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. See *The Principles of Problem-solving Courts*, at <http://fdac.org.uk/wp-content/uploads/2015/10/Paper-on-problem-solving-principles-for-web-6-October-2015.pdf>; *Principles of Problem-Solving Justice*. Center for Court Innovation: New York, at <http://www.courtinnovation.org/sites/default/files/Principles.pdf>; Bowen P and Whitehead S (2013) *Better Courts*. Centre for Justice Innovation: London, at <http://www.neweconomics.org/publications/entry/better-courts-cutting-crime-through-court-innovation>

⁸ See Appendix 3 and <http://fdac.org.uk/fdac-service-standards/>

to understand their weaknesses and strengths and to use that knowledge in working to reduce their difficulties.

Principle 3: Fair decision making (*using a non-adversarial, transparent approach*)

How decisions are made, and how the process is perceived by parents, are regarded as central to the FDAC approach. Compliance and success are more likely if the court adopts a non-adversarial approach and if parents are in agreement with the plan of work. All engaged in the process are expected to work in a transparent way to help the court decide on the child's welfare. Parents are treated with dignity and respect. They are involved in the process, and they feel that their views are welcomed and that they can make a difference to the decisions that are made.

Principle 4: Judicial review and monitoring (*by a specially-trained judge*)

A specially trained judge motivates parents and monitors their progress through an agreed treatment plan. Judicial continuity provides parents with regular and consistent encouragement over time, as well as holding them accountable for meeting the conditions and expectations of the court.

Principle 5: A focus on outcomes (*to achieve change in parental behaviour and lifestyle*)

The court works with parents to break unhelpful patterns of behaviour. It uses approaches and interventions that acknowledge and attempt to tackle the range of problems that parents experience and that put their children at risk. It takes an interest in the progress that parents and children are making over the course of the proceedings.

Strengths and limitations of the study

Strengths

The study covered a wide range of family justice and local authority areas, including courts in a mix of urban and rural settings. There was also a good range in the length of time that judges had been sitting, both as family court judges in ordinary care proceedings and as FDAC judges. This was particularly valuable for the interviews.

Although we had no control over which cases we observed, this had its benefits. It gave us the opportunity to see in each court a spread of cases on any given day. There was no reason to think that the cases were not representative of a typical day. They included cases at an early stage in the proceedings, those in the middle of the process, and others nearing final hearing. There was also a reasonable mix of lawyer and non-lawyer hearings, though with a weighting to the latter.

Limitations

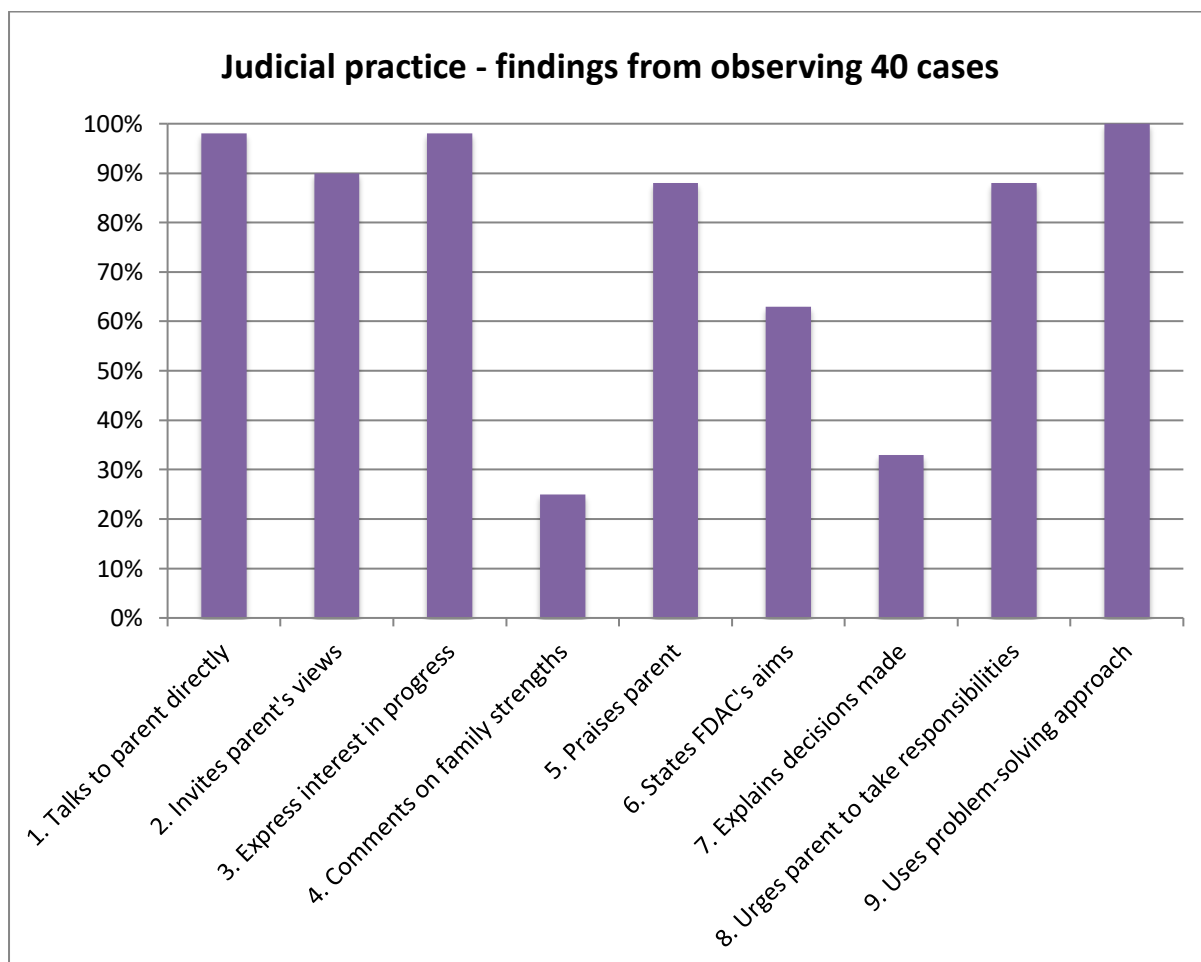
We did not see any final hearings (either graduations or those where children were not returned to parents) and we were not able to return to a court to observe the progress of a case over time. We were unable to interview parents to hear about their experiences of FDAC, as we did not have permission to do so. Nor would it have been possible to seek

parental consent in advance, given that we did not know which hearings we would observe. Moreover, within the timescales for the work (under six months) and the resources available, the process of applying for ethical consent to interview parents and arranging the interviews would have taken too long and been too costly. Pressure of time also made it impossible to interview any professionals apart from the judges.

These parental and professional views would have provided independent evidence on the extent to which the courts were operating with fidelity to the FDAC model. They would have also provided insights into levels of satisfaction with FDAC, as well as suggestions for possible changes. Future studies would need to address these gaps.

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 small 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, courteous and respectful, with open questions used to elicit from parents reflections rather than brief replies.

"It's nice to see you. Come and sit down."

"I can see that you are worried. Can you tell me why?"

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."

Parents were encouraged to say how they felt, as much as to say what they were doing. They had conversations about their situation, explaining why they thought things were going well or what was getting in the way of their making progress. The judges were good at commenting on reactions that were to be expected, putting parents at ease in a situation that was far from easy for them. They were also skilful at dealing with individual people differently, judging whether to get a point home by a series of questions in quick succession, or a light-hearted comment, or a smile. Some were particularly adept at using imagery from everyday life to reinforce or clarify what they were saying.

"It's natural to feel like that. Your worries are based on what has happened."

"I know what you mean. It's easier for you to turn up to the service when it suits you, without an appointment. But it's like someone knocking on your front door when you're busy. Could it be better for the service to know that someone is coming?"

Other judges were good at giving parents feedback about the comments they made. They were told why their contributions were valued.

"It's interesting when you tell me these things, in your own words, because what you say about services shows that you are taking things on board."

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 two parents told their judge that they realised that their child should not return to their care because they had not made enough progress in changing their 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."

"I support your aim to get clean even though your child is not coming home. I encourage you to pursue the idea of residential rehab. I will go on seeing you."

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.

"You have everyone here around you ... and we break the work into small two-weekly chunks ... and there is a high level of services for you."

"It's easier to work with you if you are honest. If you aren't, we can't trust that you will do something. Instead we'll worry and think we have to check up on you."

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.

"We are here to help you. Don't be worried about the appointment next week. Seeing the psychiatrist is about trying to work out how you tick. If we understand that we can use the information to help you. Looking at the past is a tool, and it can say hard things, but not to use against you."

"It's only by seeing you and talking to you that the FDAC team can help you. We can be very flexible, but if we don't know where you are we have to assume things aren't going well."

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.

One aspect of fairness in decision making is clarity about who will be making decisions, and when and how. This was a focus of conversation between judges and parents in the non-lawyer reviews. Parents were comfortable enough to make suggestions and ask questions and judges were willing to give honest replies, sometimes accepting what was being requested and at other times explaining why that was not possible or reassuring parents about their worries. These discussions and negotiations were wide ranging in content, as the examples that follow indicate.

In one case, a mother asked the judge if she could go into a residential rehabilitation unit with her children. The judge thanked her for raising it and said she would need to seek the guardian's view about the likely impact on the children. The mother pressed her case, asking for it to be considered, whilst explaining that she was preparing herself for the worst. The judge undertook to consider it seriously but said she could not give any indication of what decision would be made. She urged the mother to focus on her recovery, whatever decision was made.

"Your raising this gives everyone a chance to have a view. Thank you. I do promise to take it seriously."

In another case, a couple were fearful that their lapse risked their losing their children. The judge praised them for their honesty in admitting it and asked how they would prove it was a blip only. When the father asked if he could demonstrate that by his future behaviour he was urged to think where they were in the case – at week 15 – and reminded that his mistake was a big one and would be part of the evidence that the judge would decide on. At the same time, the parents were reassured that they were making huge steps in the right direction, urged to take strength from their honesty, and encouraged to engage with the FDAC team to learn from what had gone wrong. It was clear that everything that was happening would be taken into consideration by the judge.

"If this happens again it will feed into my decision making. You have to show you can sustain it for the children ... that's the question for me, even though I want them to stay with you for the rest of their childhood."

In a third case, a father caring for his baby alone was worried about the consequences of his ex-partner attending the final hearing. There had been very little contact during the proceedings and the father asked what would happen if she did come next time. The judge said: *"We will hear what she has to say. Then I will decide what to do."*

In these and other examples, we were struck by the careful way in which the judges listened to what parents were saying, explored what they meant, thanked them for their comments and gave a clear steer about how they would respond. There was a marked sense of the judge having, and taking, responsibility for making the important decisions in the case.

- **Urging 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 the majority of cases (88 per cent, see chart).

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

"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."

We also heard judges advising parents to try to move on positively from their mistakes and to be realistic about putting learning into practice.

"Life is hard and being a parent one of the hardest things. Often in life it's not about being perfect but about trying very hard to get it right. You know your child best and what they like and how to make things better and what to steer away from. Hold these things in mind."

"Learning comes from mistakes."

"The important thing is that you have been honest about your lapse ... you will always have moments that are difficult ... the evidence is that you are asking for help and wanting to make changes. Keep doing that."

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.

The test we applied was the degree to which the children were discussed during the hearing, whether any problems identified were given due attention, and what action was taken in response. We were interested in these things because the outcome the court was seeking from proceedings was a safe future for the children and this meant attending to their needs, as well as to their parents' difficulties in caring for them.

Some children were kept in mind by virtue of being at court with their parents. This was so for several babies, and in each case the judge expressed pleasure at seeing the child and commented on how well they were doing. In several other hearings, both with and without lawyers present, judges asked to see photos or video clips of children not in court. In almost all the hearings, parents spoke of their children with energy and pride, and – in the case of older children – with anxiety if they were experiencing difficulties.

None of the few older children involved in proceedings were present in court during our visits, although in one hearing the judge offered to meet with a sibling group if their parent thought that would be helpful, and another judge explained in interview that he had been happy to meet a young teenager at court (at her request) after her mother's final review hearing.

The particular needs of individual children, especially the older ones, were explored, prompted by comments from judges, parents, social workers or guardians. For example, there was detailed discussion in one review about how to manage the action arising from the decision that a lone parent needed a short break from full-time care of the children in order to tackle his drug misuse. The father acknowledged that he needed the space to focus on his problem, but he was worried that the children would feel let down by the suggestion of foster care and he was concerned that a temporary separation should not become long term. The judge and workers were sensitive to these concerns, discussing with him how best to inform the children whilst not shying away from expressing their worries.

Judge: *"Who will explain this plan to the children?"*

Father: *"I can do so much. It needs someone they trust."*

Judge: *"Who do they trust?"*

Father: *"Not many at the moment. They like the social worker."*

Judge: *"Think about it. It might be you, the social worker and the guardian. I agree with you, you do need time to get to the bottom of why you top up every couple of days."*

Later in the discussion:

Guardian: *"The children all want you to abstain ... Their needs are substantial ... I don't mean to put you on the spot ... could they be hyper-sensitive, because you might go back to where you were before? Could little signs be making them feel insecure?"*

Father: *"I'm not going to negate that. It is a possibility."*

Other cases reflected different ways of addressing children's needs, as when judges determined that lawyers should attend the next review hearing because of a particular child-related concern, or when a judge made an order to prohibit a parent from taking her children away from school and away from home overnight.

Overall, the researcher judgement about the degree of attention to children's needs was that, in six cases, some aspect of the child's situation might have been pursued further. These included the possibility that a slower return home might have been better for the children, to allow more time for the transfer arrangements to be agreed; the lack of attention to the unhappiness of an older child in foster care, who was described as being very angry but not getting help to deal with her feelings; and a father's difficulty in coping with his children's anxiety during contact visits, and where there was no discussion in court about how the father might try to manage the situation.

- **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?”

“If the decision is for you and baby to move from residential to community housing, the local authority have to think creatively about where to house you. I flagged this up at the last hearing and they might have to come back and explain where they have got to.”

The other professionals in court contributed to the problem-solving approach, offering information about the child or children, as well as bringing useful insights about how parents were engaging with workers and services. As observed in many hearings, the professionals reinforced the positive messages from the judge and suggested fresh avenues to explore or new ways of returning to topics raised earlier in the hearing. At times their presence also seemed to provide a bit of respite from intense conversation between judge and parents, giving judges time for reflection and the chance to dip in and out of difficult discussion.

One example of professionals reinforcing the positive message from a judge was when a mother explained that she had decided she would not be able to care for her baby and that she wished to seek more intensive help to get clean from drugs:

FDAC key worker: *"We will help mother find a residential placement and work with her on her motivation."*

Guardian: *"I admire mother's honesty. I recognise how difficult the decision must have been. I hope she will keep with the rehab package so that her child can have good contact with her."*

Social worker: *"Making this hard decision has really helped mother talk to people, including her supportive parents, about the extent of her drug use, and to ask for help."*

In another case, the judge was encouraging a mother to think positively about the good progress she was making. This was picked up by the guardian, then the FDAC worker, and then again by the guardian.

Guardian: *"Yes, and we need to work with the local authority to put in place a good support plan, bringing the family on board, so everyone knows who is supporting [mother] and how."*

FDAC key worker: *"We've used Family Group Conferences for this sort of work in other places and it's been very positive."*

Guardian: *"I've made a note to ask the child's solicitor to ask for an FGC."*

While this convergence of professional support was much in evidence, some hearings required judges to handle tense situations, all the more so where professionals were challenging parents, and sometimes doing that in a way that seemed to run counter to FDAC's motivational and problem-solving approach. Judges varied in how they responded in these circumstances. Often, they calmed the atmosphere, sometimes leaving the issue in the air and returning to it later in the hearing. At other times they responded immediately, encouraging parents, and occasionally professionals, to reflect on what they had said.

To a parent: *"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."*

To a social worker: *"Thank you for your comments about what is not going well. Is there something positive that you would like to add to the discussion?"*

Problem solving was not just for professionals. We observed ways in which the judges and the specialist team encouraged and enabled parents to play their part in identifying problems and thinking of possible solutions.

Sometimes they achieved this through direct questions, as part of an exploration of the things that parents said were worrying them. For example, when a father was having

difficulty adjusting to the changed style of a service he was required to attend, the judge said: *"I can't imagine you want to go back to prison. How can you avoid that?"* And when a mother was struggling to get out of the house more the judge said: *"Do you remember we talked last time about you looking for a part-time job? What can you tell me about that?"*

In some cases the judges raised a problem but did not pursue or expect an immediate solution, instead asking parents to think about the issue, discuss it with their solicitor or another professional, and be ready to discuss it with the judge at the next hearing. We regarded this as a helpful way of encouraging parents to see themselves as problem solvers.

In other cases the judges advised parents to tackle things at a steady pace, to see the value of not rushing at everything at once. This approach, too, was in line with the principles of motivational interviewing that the judges had been trained to use.

"It's good to do things in small steps. If you are doing everything right and moving forward, don't feel you are being held back ... don't get frustrated if things seem slow."

"You have to check your diary. You mustn't miss an appointment, time flies too fast to risk that. Let's make sure you know what's coming up. Why not put your appointments onto your phone, now?" (and the judge helped the mother do that)

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.

- **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.

There was good rapport between the judges and the specialist team in the pre-court briefing meetings observed (they occurred in just over half the cases). Team managers and parents' key workers gave verbal updates to their written reports and the judges checked that the approach that they (the judge) proposed taking, and the topics they planned to discuss with parents, were in line with the work of the FDAC team and other services. We observed the judges picking up these issues with parents later; the briefing meetings seemed, to the researchers, to provide the judges with helpful insights that they valued and used appropriately.

"I think I need to nudge the parents on this point. Is it about encouraging more of the same? Is there anything else I need to highlight?"

The judges expected to be able to work well with the range of other agencies and services involved. In court, they conveyed the message that they wanted everyone to play their part in solving the problems to be resolved: legal representatives; FDAC team managers and colleagues with specialist expertise in substance misuse, health and family work; children's guardians and local authority social workers and managers. 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.

"It's important to attend every time from now, and to be on time. That shows that you are getting on top of things and have moved on from the disorganisation of the past."

"If you have a bad day it's not that everything is a failure. We're all human and make mistakes. Please keep going."

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 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.

As we observed cases on one day only, and were not interviewing parents and professionals other than the judges, there was a limit to how far we could comment on whether hearings in FDAC were always non-adversarial.

We did, though, observe the way in which the informal atmosphere of the non-lawyer hearings was created from the outset by some judges, even at the initial hearings attended by lawyers. While all the judges were courteous and welcoming, taking time to ensure that everyone had a place to sit in what was sometimes a cramped courtroom or chambers, some judges addressed parents more directly than others. These judges tended to address their opening (and closing) remarks to the parents, rather than the lawyers present, conveying a powerful message about the case being in FDAC. They introduced themselves to parents and explained who else was in court. They told parents they were welcome, thanked them for coming, expressed hope that they would sign up to FDAC, and said they looked forward to meeting them more informally in the future.

How a judge described FDAC at a **first** hearing, with lawyers present:

“We will plan everything that we have to do and meet every fortnight after that. You have got to be honest with me. I’ve got a really good radar for sussing things out, so don’t not be honest! The meetings will be time for me to get to know you, and you me. You can say anything and ask me anything.

I know it’s not like that in other courts you’ve been in. But this court is different. We will see if there are problems to sort out.”

How another judge explained the process at a **second** hearing, also with lawyers present:

“I am glad that you have decided to sign up to FDAC. We are going to try and work together and achieve the aim of the children staying with you, because that is what we all want. It will be intensive and I don’t want you to quit. You have got to be in the right place.

It’s a contract – I agree to meet with you, and you with me. We’ll meet every 2 weeks, not always with the lawyers. I’ve got to manage the case and there will be checks. I’ll challenge you if things are not going well.”

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.

In longer-running cases we observed that the judges had built a positive relationship with the parents they had been seeing every fortnight and, in the early hearings with lawyers present, they indicated their clear aspiration to do the same with new parents. They developed this rapport by showing interest in each parent and their child or children, and by helping parents see that they could make choices, develop confidence, and be responsible for finding solutions to their problems rather than being seen as the problem to be sorted.

"I'm very pleased to hear you say that you are now more confident about saying how you feel. It's good not to be afraid to express yourself."

"It is a major step forward for you to say that you are alcoholic and that alcohol was the cause of your violence."

The use of open questions that enabled parents to set the agenda for discussion, and rephrasing and summarising what parents were saying, were other ways of motivating parents. All these techniques helped create an atmosphere where it was possible for the judge to probe for more information, to challenge parents where they were falling short, to be firm in pointing out the seriousness of the situation.

"How do you think the children will react to you having time out to get on top of things?"

"Can you tell me what's been going on?"

"I know detox is top of your list to pay attention to. But what are you doing about it?"

In a few cases, we observed that one parent was more ambivalent than the other, or further back in changing their lifestyle. These cases presented a particular challenge for the judges – how to encourage the progress of one parent and at the same time alert them both to the possibility that the goal of caring for the children was put at risk by the behaviour of the other adult. We saw judges dealing with these situations sensitively, and we saw parents reflecting on what was said.

“You want your children home with you as a couple but this means you have to be safe as a couple. How do you feel when she isn’t doing so well?” Father: “I worry about it.”

“All our hopes will be blown away if this doesn’t work. But your partner and the child will be most disappointed, and your partner most affected.” Father: “Yes, I see that.”

- **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 talking positively to parents about the services they were receiving, passing on tips about why those particular services offered parents a good chance of breaking unhelpful patterns of behaviour. They drew the other professionals into discussion with parents about the importance of using the different services in their intervention plan and they were interested in hearing what parents felt about the 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.

“Life throws up surprises, so how will you cope in the future? It’s not going to be easy and it’s very important that you ask for help if you need it.”

“It’s really important for your baby if you can alert workers if you feel a low mood coming on.”

“I can see a huge shift in the way you both see your relationship to each other and about the value of having one-to-one support as well as attending together.”

“I have seen you do some amazing problem solving in court, like deciding to talk to the professionals, rather than bottle things up. It’s worked very well for you, hasn’t it?”

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.

We touch on these issues here, under the principle relating to outcomes, because they are important considerations in thinking about the desired outcome for children at the end of

proceedings. There is more detail about the practice implications in the earlier section about question 8, about the judges getting the right balance between praising parents and keeping children at the forefront of their thinking.

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.

As explained in Section 4 on methodology, the judges were working in courts that were at each stage of implementing FDAC. One judge was from a well-established site, three were from sites in their second or third year, and 12 were from sites open for less than a year.

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 transparency of the FDAC process was commented on, with parents knowing what everyone was thinking and saying and thus avoiding any last-minute surprises. This meant that FDAC parents could see what was in their grasp and reach for it, knowing that those around them had power and commitment to help make things happen. Ordinary proceedings felt very different:

“We’ve all done it. Outcomes are so predictable in ordinary care cases. You go through the motions, needs get assessed, but nothing gets done. It’s cruel to people.”

Even if parents did not achieve what they were hoping for, the judges stated that being in FDAC meant that they had been given a fair chance and had been treated with dignity and respect. The judges commented that the likely outcome for their children emerged as the case progressed: “*I’m finding that if parents can’t make it they get to that realisation themselves.*” They explained that other parents disengaged along the way, and they too were spared the pain of sitting through a painful contested final hearing, with legal arguments and a replay of the evidence against them.

The benefits of FDAC for the children involved was highlighted by several judges. This was about taking a long-term perspective on the disruption to family life and aspirations, and about understanding what might help children cope in the future. One judge commented:

“The celebration of success is really important, whether or not children go home. In a recent case the children were going to be cared for by family members, but it was important for them to hear how well their parents had done, and to see this being acknowledged.”

She added that in FDAC cases children would be able to look back and see that their parents had been given every opportunity. She was not sure that the same could be said of ordinary care cases. Another judge, the one who had met a young teenager at the end of the FDAC case, reflected on her request for a meeting:

“She asked to see me. She is in care. She sees her mum and wants to be at home but knows it won’t work out. She asked me where her mum had just been sitting during the non-lawyer review meeting. She wanted to touch the chair.”

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

The non-lawyer review hearings were seen by all the judges 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 (every two weeks) 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 knowledge that had accumulated over weeks and months meant that there was a growing bank of information to draw on each time: judges could agree with parents about past positive achievements but then drive forward the discussion about any recent stalling of progress.

The judges were critical of the time wasting and inefficiency caused by lack of judicial continuity in non-FDAC proceedings.

- **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.”

Several judges commented that their team’s independence from the local authority had been crucial at the start of some proceedings, when parents were upset by the decision to bring proceedings and resistant to hearing the case against themselves from children’s services. Over time, however, this concern has reduced. The judges commented that teams had succeeded in fostering a good working relationship between parents and the local authority staff and in helping parents understand the role of the different professionals involved. A comment from one judge captured the sentiments of others:

“At the last review the mother said that FDAC had been very helpful to her but the most important thing, now that the proceedings were about to end, was to keep the same social worker because she had now developed a really good relationship with her. I don’t think this would have happened without FDAC. Luckily this social worker will be keeping the case, under the supervision order.”

- **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.

Some of the judges new to the FDAC role wondered whether they were *“getting it right”* and these sorts of thoughts prompted comments about the value of ongoing training and networking. They 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. They commended the hard work and commitment of local authority and other champions of FDAC and they were keen to see FDAC continue.

Most were pro-active in promoting FDAC locally. Some were members of local Steering Groups or Operational Groups. Some used their other responsibilities locally as a means of raising issues with colleagues. Some had set up information meetings, bringing together local practitioners to exchange views about how FDAC was working.

Getting the message across to local practitioners was also something the judges thought needed attention. They felt that it was important for professionals to be supported as they got accustomed to the way the FDAC model worked, knowing that concerns about it tended to reduce as social workers, guardians and lawyers gained experience of how it worked in practice.

All the judges were, or had been, taxed by the lack of secure funding for their FDAC from one year to the next and by the uncertainty that this generated. Some described this in terms of the risks posed to the specialist team by under resourcing, the lack of cover during staff absence, and the drain on energy and resources created by time spent travelling between different courts.

- **Extending the remit of the FDAC approach**

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. The judges with local responsibility for Public Law Outline case allocation said that seeing details of all the cases coming before the court left them in no doubt about the suitability of the problem-solving approach for a fair proportion of cases. The judges had a strong sense, too, about the way forward. It was about deciding which type of other care case to add to their current remit, expanding the capacity of the team to provide the new expertise required, and then applying the FDAC approach to these cases. They acknowledged 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.

There was a recurring sense of both enthusiasm and optimism about the opportunities that FDAC was creating for making care proceedings fairer and more humane. It was something that they wanted to see available to other families and professionals.

"Parents need help to parent their children well, and to keep well enough themselves. We should stop criminalising them for things they need help with."

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. The findings serve as a strong echo of the comment to parents by the judge in the original FDAC pilot:

"This court is different. We don't do conflict. We minimise hostility.

This is about problem solving."

The research team 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 few instances. Similarly, we looked for – but did not find – evidence that the courts fell short of implementing the principles of problem-solving justice.

We found that the judges kept the needs of the children at the forefront of their thinking, and we comment on the few cases where we considered that they might have been more explicit in doing so. In a couple of cases we were told about older children meeting the judge, separate from court hearings. This rarely happens at present in FDAC or ordinary proceedings (and most FDAC cases involve babies and young children) but, if a judge wished to pursue the option of meeting older children, there is nothing in FDAC practice that would prevent them from doing so.

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, and how best to contribute to

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

the discussion in court, was another issue that in some places would merit discussion by those with operational responsibility for the local FDAC service.

Another issue raised by the study was the possibility of increasing court attendance by the extended family. On the days that we attended, there were few relatives in court. Some of the judges raised this in discussion and they placed a high value on the contribution relatives could make in supporting parents and problem-solving with them. This view is underpinned by the treatment and research evidence which highlights the importance of the social network in recovery.¹⁰ A further question that emerged from the study was whether it might be of benefit for more older children to meet the judge. This does happen occasionally, and is an approach that is consistent with the principles that underpin the FDAC model.

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 sites collecting and comparing data about what happens to children and their parents after the final court hearing in FDAC.

Our study was limited in that we observed hearings on only one particular day in each site visited. Nevertheless, the comments from the judges, in court and in interview later, leave us in no doubt that the judges, as well as others involved, will value having information about the statistics and trends about the cases that come to court and about the outcomes for the families involved.

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.

¹⁰ Copello A, Orford J, Hodgson R and Tober G (2009) Social Behaviour and Network Therapy for Alcohol Problems. Routledge, East Sussex.

- **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. Sites should also ensure that the specialist team and the judges have opportunities for regular discussion about their work.
- **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.

Appendix: The FDAC Service Standards

Standard 1: FDAC is a therapeutic problem-solving family court with specially trained judges and an independent, multidisciplinary assessment and intervention team.

Standard 2: Parents can make an informed choice about whether to accept the offer of FDAC.

Standard 3: All parents who choose to work with FDAC are offered a 'trial for change'.

Standard 4: The assessment and intervention work of the FDAC specialist team starts promptly and proceeds without delay.

Standard 5: Once the FDAC Intervention Plan has the authority of the court the 'trial for change' begins, and parents and professionals have clear tasks to perform and a timescale to adhere to.

Standard 6: FDAC work is collaborative – there is regular communication between the judge and the specialist team, and both work closely with parents, the local authority and others involved with the children and their families.

Standard 7: Parents have the opportunity of support from a parent mentor.

Standard 8: The procedure in court, including the use of non-lawyer hearings, acknowledges the role of the judge as a catalyst for change, nurturing a relationship with parents and giving families a voice in the proceedings.

Standard 9: The FDAC intervention plan is agreed at the Intervention Planning Meeting and is informed by the FDAC assessment of the needs of the children and the parents. The intervention plan is revised as necessary during the court process, whilst remaining mindful of the timescales required by (a) the law and Public Law Outline, and (b) the importance of responding to children's needs in a timely fashion. The local authority will decide whether to consider incorporating the FDAC Intervention Plan into their interim Care Plan.

Standard 10: The FDAC specialist team uses the National Unit data collection tools to measure the health and well-being of each child and parent during their time in FDAC, with a view to understanding the impact of FDAC on families and highlighting potential areas for improvement and service development.

The FDAC National Unit calls these the **FDAC Service Standards** because, taken together, they summarise the Unit's expectations about (a) the provision and ethos of an FDAC service and (b) what a service in development will be working towards. The Unit is developing a set of **Practice Indicators** to sit alongside the Service Standards, to help FDAC sites measure the progress they are making towards fidelity. See <http://fdac.org.uk/fdac-service-standards/>

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