

## Articles

# How does the Family Drug and Alcohol Court fit with the current changes to family justice?

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The Family Justice Review (FJR) concluded that: 'The Family Drug and Alcohol Court in Inner London Family Proceedings Court shows considerable promise. There should be further limited roll-out to continue to develop the evidence base.' (p 132, *Family Justice Review, Final Report*, 2011). This article examines the extent to which the Family Drug and Alcohol Court (FDAC) approach fits with the current changes to family justice. It concludes that the model has considerable potential to contribute to the improvement of care proceedings and, by doing so, improve outcomes for children and parents.

### Background and rationale for FDAC

FDAC has been operating at the Inner London Family Proceedings Court since January 2008, initially as a government-funded pilot with co-funding from three local authorities. From April 2012 the funding has come from the five inner London local authorities who now use FDAC. Promising messages emerging from research into a problem-solving family court approach to parental drug and alcohol misuse in the USA (S Worcel et al, *Family Treatment Drug Court Evaluation Final Report* (US Department of Health and Human Sciences, 2007)) provided the impetus to examine the feasibility of testing such an approach in England. The feasibility study (M Ryan, J Harwin and C Chamberlain, *Report on the feasibility of establishing a family drug and alcohol court at Wells Street Family Proceedings Court* (prepared for LB Camden; LB Islington; LB Westminster; Cafcass; Inner London FPC

and Brunel University, 2006, [www.brunel.ac.uk/fdacresearch](http://www.brunel.ac.uk/fdacresearch)) concluded that a problem-solving court approach could fit within the framework of care proceedings.

Problem-solving courts have a number of key features. They are concerned with trying to improve longer-term outcomes rather than focusing simply on which order or sentence should be made. Professionals work in non-traditional ways in the court room. There is multi-disciplinary collaboration within the court setting, and specially-trained judges play a key role in the regular monitoring of a defendant's or party's progress in complying with, for example, substance misuse services. This is the model on which FDAC is based.

### How does FDAC work in practice?

FDAC deals with care proceedings under s 31 of the Children Act 1989, where parental drug or alcohol misuse is a key feature of the case. Cases in FDAC are heard by the same district judge throughout. Guardians are appointed to FDAC cases immediately. Working with the court is a dedicated, multi-disciplinary team. Attached to the team are volunteer parent mentors to provide support to parents. Members of the team meet the parents at the first court hearing and, if the parents agree to take part in FDAC, the assessment process, carried out by the team, begins straight away. An initial assessment is completed within 2 or 3 weeks. The team then immediately formulate an intervention plan, which is agreed at a meeting attended by the team,

parents, local authority and, time permitting, guardians. The assessment and the plan are available for the court at the second hearing. Parents sign a formal agreement to take part in the FDAC process at this point.

Legal representatives attend the first two court hearings and subsequent case management hearings in line with the Public Law Outline, but in addition there are regular, usually fortnightly, court reviews which legal representatives do not attend unless there is a particular issue requiring their input. The non-lawyer court reviews are the problem-solving, therapeutic aspect of the court process. They provide opportunities for regular monitoring of parents' progress and for judges to engage and motivate parents, to speak directly to parents and social workers, and to find ways of resolving problems that may have arisen. Members of the multi-disciplinary team provide written updates of the progress made by parents, brief the judges on the morning of the review hearings, and take part in review hearings, in addition to co-ordinating the intervention plan.

## Evaluation of FDAC

An independent evaluation of FDAC, funded by the Nuffield Foundation and the Home Office, was carried out by Brunel University. It followed all cases entering FDAC during the first 18 months of its operation and compared the progress and outcomes of FDAC cases with similar substance misuse cases from two comparison local authorities being heard in ordinary proceedings over the same period of time in the same court. All 86 cases (55 FDAC, 31 comparison) were followed up for 6 months from the first hearing and it was possible within the research timescales to follow 60 of them (41 FDAC, 19 comparison) as far as final order. Quantitative data was collected through file reviews and end-of-case questionnaires, and qualitative data through court observations, interviews and focus groups over a 2-year period.

The results of the evaluation are described in detail in the final report (J Harwin, M Ryan and J Tunnard, with S Pokhrel, B Alrouh, C Matias and S Momenian-Schneider, *The Family Drug and*

*Alcohol Court (FDAC) Evaluation Project Final Report* (Brunel University, 2011, [www.brunel.ac.uk/fdacresearch](http://www.brunel.ac.uk/fdacresearch)); and *Highlights from the Final Report* (Nuffield Foundation, 2011, [www.nuffieldfoundation.org](http://www.nuffieldfoundation.org)). They showed better outcomes for FDAC cases in relation to control of substance misuse, reunification of children with parents, and swifter alternative permanent placements for FDAC children if reunification was not possible. The average cost of the FDAC team per family was £8,740 over the life of the case (this is now £12,000) but FDAC was found to reduce costs through shorter care placements, shorter court hearings and less need for legal representatives at hearings.

Parents and professionals were overwhelmingly in support of the FDAC approach to care proceedings being more widely rolled out. Professionals were clear that this was a better model than ordinary care proceedings. The main reasons for this were:

- the efficiency and expertise of the specialist team;
- judicial continuity and the ability of the judges to motivate parents; and
- the non-lawyer court reviews.

The positive findings from the evaluation contributed to the recommendation in the FJR for wider roll-out of the model.

## Congruence between Family Justice Review recommendations and FDAC

The FJR recommendations for judicial continuity and improved case management (pp 68 and 71 *FJR Final Report*) were part of the original ethos of FDAC. A key feature of the problem-solving court approach is the same judge dealing with the case throughout. The evaluation found that judicial continuity, together with regular non-lawyer reviews, did indeed improve case management. In making its recommendations in relation to improving the quality and supply of expert witnesses the FJR identifies the FDAC multi-disciplinary team as an example of good practice (p 125, *FJR Final Report*).

The FJR recommends ongoing discussion about thresholds for bringing care proceedings and expresses concern that proceedings are seen as the 'absolute

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last resort' (para 3.51). A high threshold for care proceedings is potentially at odds with a problem-solving court approach. One of the hopes when FDAC was set up was that cases would be brought to court earlier because of the opportunity provided for a real trial for change approach, which was supportive of parents while rigorously testing their capacity for change. The evaluation found that parents who entered FDAC had long-standing, multiple and entrenched difficulties which made effecting change difficult. A majority of families had a history of previous, although not necessarily continuous, contact with children's social care services. Although some families did well, some children may have had better outcomes if their case had come to court earlier. Earlier proceedings might have also increased the chances of parents addressing their substance misuse successfully and have improved the capacity of the problem-solving approach to resolve other psycho-social difficulties.

**Is FDAC in conflict with the FJR?***Time limits*

The FJR recommendation for a 26-week time limit for care cases, apart from in exceptional circumstances, poses a challenge for FDAC cases. The evaluation showed that on average FDAC cases took as long as the comparison cases (52 weeks), in line with the London average. One of the aims of FDAC was to speed up decision making for those children who could not return home, and the evaluation found that there were differences in average case duration when a comparison was made on placement type:

- It took on average 8 weeks longer for the children in FDAC to be reunited with their parent(s).
- It took on average 7 weeks less for children in FDAC to be placed in an alternative permanent home.

The FDAC team have developed a staged approach to assessment and intervention which can be varied depending on the age

of the child and their developmental needs. Other factors that will influence timescales are the prognosis for change identified in the initial assessment and whether or not the child is in a stable placement, usually with a family member, that is likely to be their permanent placement if they cannot return home. Overall timescales being aimed for in each case are negotiated as part of the intervention plan, and this will influence the time allowed for each stage. This child development approach to timescales is at odds with a fixed timescale for all cases.

The first two stages of the assessment process are focused around parents gaining control of their substance misuse (frequently this means abstinence from street drugs and alcohol) and retaining that control. If parents are not able to do this, and the evidence of this will have been monitored by the court at the regular non-lawyer reviews, parallel planning should be underway and the case can be concluded. If the case is progressing well, the next stage focuses on parenting. The amount of time spent on this element of the assessment and intervention will depend on whether it appears that the parent or parents are going to be able to safely resume care of the child within the child's developmental timescales. Some cases do not progress sufficiently well at this point. This will be identified in the non-lawyer reviews so parallel plans can be set in train and the case brought to a conclusion. Alternatively, if reunification is the plan, then the final stage of the process is supporting and monitoring the reunion.

Qualitative findings from the evaluation of FDAC showed that there was acceptance among professionals of the need for time to support and monitor reunification and there was also praise for cases where the process had identified early on that the parents were not going to be able to care for the child. There were, however, concerns that in some cases the decision that reunification would not be possible had not been made sufficiently quickly. These concerns were acknowledged by the judges and the team, and the issue remains a subject of discussion among all those involved in FDAC.

It is as yet unclear what the impact of the 26-week time limit will be overall, and whether the challenges for FDAC will be

any greater than those faced by courts dealing with ordinary care proceedings. Since 2011, FDAC team has engaged in pre-proceedings work with pregnant women, and the hope is that this will lead to a speedier conclusion of cases once proceedings start. In addition, a number of the local authorities using FDAC are also part of exploratory work across London to improve case management and address some of the causes of delay in proceedings.

In the *Family Justice Modernisation Programme: Fourth Update* (March 2012), Mr Justice Ryder commented, at p 3, that in cases where a court has identified in principle that a parent can resume care of the child by 26 weeks 'it follows that planned and purposeful delay might include the use of court based supervision under validated and research based options such as the FDAC court whose success has been clearly established.' Thus it would appear that FDAC cases may well be accepted as 'exceptional' under the new arrangements, but possibly only where a decision has been made at 26 weeks that the parent can resume care.

The evidence from the evaluation of FDAC indicates that while some cases should and could be decided more quickly, there will be others where this may be more difficult. The question then likely to arise will be whether the age of the child, and whether or not they are in a secure placement, will be factors that influence the decision as to whether the case is 'exceptional'.

### *Monitoring care plan*

Also challenging is the recommendation that the court should not monitor the local authority care plan. The intervention plan, formulated by the FDAC team following the initial assessment, and then agreed with all the parties, becomes the care plan, and is regularly monitored by the court through the non-lawyer reviews. As well as hearing about the parents' progress and motivating their continuing engagement with services, the judge and specialist team are also attentive to other aspects of the plan and to problems that may have arisen – the problem-solving aspect of the process. These include issues around contact and placement; problems in accessing local services; and problems with housing,

domestic violence, and finance. This monitoring and involvement is not seen as obstructive or leading to unnecessary delay by the professionals involved. Instead it is recognised as an essential element of the case management process, as important as judicial continuity. It allows problems to be identified quickly and responded to if possible. In addition, a majority of professionals noted that cases in FDAC were far less antagonistic than ordinary care proceedings and that parents were much more engaged in the process. This was attributed in large part to the regular non-lawyer reviews, which provide a very clear picture of how a case is progressing.

### *Experts only when necessary*

The involvement of the specialist team in all FDAC cases could be seen as contrary to the aim to reduce the number of expert assessments required in care proceedings. Multi-disciplinary collaboration is a key feature of the problem-solving court approach and the FDAC model was designed to ensure that good quality assessments would be provided quickly and also that effective services were provided in a timely and co-ordinated way for parents, while keeping a focus on the welfare of the child. The FDAC team thus play a very different role to other multi-disciplinary teams providing expert evidence. The key differences are the close relationship and communication between the team and the court, the direct work carried out by the team with the family, and the team's role in co-ordinating the implementation plan and providing regular feedback to all the parties on progress. The team work in partnership with adult treatment services, children's social care and the guardian, and have named links within local housing and domestic violence services. The expectation when setting up FDAC was that this would reduce the number of additional expert assessments ordered and the evaluation found that this was indeed the case. It also found that the FDAC team was highly valued by both parents and professionals for their:

- specialist, multi-disciplinary knowledge,
- ability to engage parents,
- speedy initial assessments,
- efficient co-ordination of services, and

- partnership working.

### **Challenges for wider roll-out of FDAC**

In making the recommendation for wider roll-out and testing of FDAC the FJR acknowledged that 'our support for the longer court directed FDAC process could seem at odds with our aim to reduce delay.' (p 131 *FJR Final Report*). They went on to suggest that the FDAC approach might be one used for a minority of cases alongside ordinary proceedings for the majority.

Roll-out of the model would provide opportunities to test whether this is a correct assumption, or whether there are a wider range of cases, beyond substance misuse, where the approach of a trial for change within a court setting could achieve improved outcomes for children and families: speedier decision-making when reunification is not possible or greater support and monitoring to ensure successful reunification. It may be that the approach would be particularly helpful where there is a need for co-ordination between adult and children's services. Roll-out would also provide opportunities to test whether other findings from the evaluation can be sustained in other courts and geographical areas. These include findings that parents in FDAC have access to a wider range of services than parents in comparison cases, and stay engaged with services and with the court proceedings for longer. It would also be helpful to test further the findings from focus groups and interviews that professionals and parents report a reduction in antagonism in FDAC cases and that professionals consider that the ability of the team to engage parents helps parents gain insight into the impact of their behaviour on their children, even when reunification is not possible, which in some cases enables them to support their child into a timely permanent placement elsewhere – whether within or outside of the family.

Another aspect of the process that would benefit from being tested through wider roll-out would be the capacity of the courts to provide the level of judicial involvement through the non-lawyer reviews that has been achieved at Inner London Family Proceedings Court. If the recommendations in the FJR in relation to



greater specialisation in family matters, greater alignment of the roles of district judges and improved judicial training are taken forward, this would be likely to increase the number of judges able and willing to take part in problem-solving court approaches such as FDAC.

Finally, wider roll-out would provide opportunities to test the size and make-up, and costs, of the multi-disciplinary team needed for dealing with an increased number and/or wider range of cases. Sustaining and rolling out FDAC is likely to prove challenging in times of severe financial restraint and in addition to the major changes and developments facing family justice. Although the evaluation identified direct cost savings from the use of FDAC, and there are indications of longer-term cost benefits if changes to parental behaviour can be sustained, this

may not be sufficient to encourage the initial investment needed. Yet what FDAC offers is a radically different approach to care proceedings, which has much to offer developments in family justice and certainly merits opportunities for wider use. This was the prevailing view from the qualitative evidence from the evaluation, neatly summarised by one solicitor as: 'It's effective – it's how care proceedings ought to be.'

*The authors are members of the team from Brunel University who carried out the evaluation of FDAC's first 2 years. They are now carrying out a follow up study. Mary Ryan and Jo Tunnard are consultants to the team and are also part of Ryan Tunnard Brown, which offers policy and practice development for children and families.*