

Evidence & Practice Briefing: FDAC Non-Lawyer Reviews

The late founding FDAC Judge, Nick Crichton, once said “Develop your own style. Be considerate, tolerant, empathetic, supportive, sometimes sympathetic, and above all human and humane. Remember how hard it must be to be taken to court about the thing that we all care about most –our children.”¹

Executive summary

Non-lawyer reviews are integral to FDAC’s therapeutic, motivational, problem-solving approach to care proceedings. The relationship between the judge and parent is developed through regular, fortnightly non-lawyer reviews. During the reviews, the same judge meets with the parent throughout their case to provide motivation and support, remind them of consequences and timescales, and resolve problems.

The purpose of non-lawyer reviews is to motivate and support parents, not to gather evidence, resolve legal conflicts or revise the intervention plan. Since no lawyers are present, reviews do not have legal standing but this absence of lawyers removes the traditional adversarial aspect of hearings and allows the judge to be flexible and creative in their approach to eliciting motivation to change.

The benefits of non-lawyer reviews are evidenced by research. Research on FDACs supports non-lawyer reviews as a key mechanism by which parents achieve change. The regularity and frequency of non-lawyer reviews allows for barriers to progress to be promptly resolved and early progress to be boosted, and judges are highly effective at motivating parents to change. When asked, parents speak overwhelmingly positively about their experiences in non-lawyer reviews.

Effective practice in non-lawyer reviews

Effective preparation: In advance of the review, the FDAC team should circulate a report on each parent’s progress over the previous fortnight to the court, parent, and all parties. Reviews should be preceded by a “pre-court briefing” in which the FDAC team provides updates to the judge and explores the most effective approach for engaging with each parent.

Effective communication practices: Research has identified a range of tools which judges can use to meaningfully engage with parents in reviews. These include: setting clear expectations for parents about what FDAC entails and asking questions to gauge parents’ understanding; building rapport with parents by expressing interest in parents’ hopes, concerns, and their lives outside of court; and using techniques like motivational interviewing to harness parents’ internal motivation to change.

Open and transparent communications with lawyers and other stakeholders: Given their exclusion from this aspect of the FDAC process, lawyers and other family court stakeholders may be understandably sceptical or concerned about FDAC. FDAC practitioners should clearly communicate that the purpose of pre-court briefings is not to influence the judicial decision-maker, but to support the judge to create a supportive relationship that will put the parent in the best possible situation to succeed. Practitioners should be transparent about what kind of discussion happens in the pre-court briefings and non-lawyer reviews, and should listen to and recognise concerns from other family court stakeholders and invite feedback.

About this briefing

This Evidence & Practice briefing, intended for FDAC practitioners and judges, covers FDAC's non-lawyer reviews, pre-court briefings, and progress reports. It seeks to help readers understand the basics of non-lawyer reviews and how to prepare for them, the evidence base around non-lawyer reviews, and promising practice principles.

The first part of the briefing discusses how to prepare for reviews by submitting progress reports about each family and by holding pre-court briefing meetings between the judge and FDAC team, both of which facilitate a critical exchange of information and expertise between the specialist team and FDAC judge. The briefing also discusses how to communicate with other family court stakeholders and address concerns about the purpose of pre-court briefings and non-lawyer reviews.

The second part of the briefing focuses on practice within the reviews. It discusses the current evidence base supporting non-lawyer reviews, describes how the reviews are structured, and details promising practice 'dos and don'ts' for judges.

The briefing draws heavily on existing qualitative research, as well as insights shared from informal interviews with FDAC team managers and FDAC virtual training events in 2021.²

What is a non-lawyer review and how does it fit in with the FDAC model?

The Family Drug and Alcohol Court (FDAC) is a therapeutic, problem-solving court approach which offers an alternative way of conducting care proceedings for parents with drug or alcohol, domestic abuse, and/or mental health issues. FDAC is based on principles of therapeutic jurisprudence, the study of how the law and those who enact it may support or damage people's well-being and mental health, and sees the judge as playing an active role in resolving the problems that bring people into court.³ Thus, a key component of FDAC's relationship-based approach is the role of the judge as a catalyst for change. The relationship between the judge and parent is developed through regular, fortnightly non-lawyer reviews. During these reviews, the judge meets with the parent[s] to review their progress with the intervention plan they signed up to.

Parents begin attending regular non-lawyer reviews after they have signed up to take part in FDAC, which typically happens at their second FDAC court appearance, around week 4 in proceedings. Reviews usually take place every two weeks on the same day of the week, but might be held less frequently under certain case-by-case circumstances, such as if a parent's treatment programme is particularly time-consuming, if one of the participating parents has a full-time job and does not have a substance misuse problem, and when a case is winding down after a positive recommendation and reunification/after a negative recommendation and lack of any further progress.⁴ These non-lawyer reviews are listed to take place at specific times during the judge's FDAC day, and usually last between 15 and 30 minutes.

Non-lawyer reviews are where the problem-solving, therapeutic aspects of the court process happen. In addition to monitoring the parents' progress, the judge motivates and supports parents, reminds them of consequences and timescales, and works with parents and the FDAC team to overcome barriers to progress. The same judge will see the parents throughout their case (barring annual leave and sickness, where another specially trained FDAC judge will cover).⁵ Since no lawyers are present, these reviews are voluntary to attend and do not have legal standing; no court orders or directions can be issued and the review is not for purposes of gathering evidence. The absence of lawyers removes the traditional adversarial aspect of hearings, enabling parents to have their voice heard by speaking directly to the judge, and allows the judge to be flexible and creative in their approach. For example, a judge might change the seating arrangement to come down from their bench and sit in the body of the court in a horseshoe style seating arrangement, or might hold the review in their private chambers. Practitioners stress that parents are most likely to participate in these reviews with 'their' judge, even when parents are otherwise disengaging from the FDAC process. Practitioners also point out that these reviews prevent drift across the board by providing a space for those working with the family to come together, check in and troubleshoot any issues. Non-lawyer reviews are thus critical opportunities to motivate and re-engage parents and ensure that everyone working with the family is on the same page about where the family is at, barriers to progress, and next steps.

Preparing for a non-lawyer review

FDAC progress reports

Before the FDAC court day, the FDAC team will have circulated a report on each parent's progress over the previous fortnight to the court, parent, and all parties, which will form the basis of the discussion in court. The progress report is a short update on each parent and child, including the parent's work in key sessions and their level of engagement/attendance; what is going well and not so well for the parent and child; results from the parent's substance misuse testing; feedback from other agencies and any practical difficulties to resolve and the timeframe by which to resolve them.⁶

Pre-court briefing meetings

Before the non-lawyer reviews begin, there is a short meeting between the judge and the FDAC team to discuss the cases listed and for the team to provide specialist advice to the judge on how to best engage and motivate the parent during the review. Most FDAC sites allocate time at the beginning of the FDAC day, ranging from 30 minutes to an hour, for a pre-court briefing on all cases listed that day. However, some sites will ask that the FDAC team join each review a few minutes early (particularly if the court is virtual) to have a pre-court briefing on that case. Usually, this meeting is between the judge, the FDAC team manager or senior social worker, and one or two FDAC key workers.⁷

As only the FDAC team is present with the judge, the briefing is not a place for any legal discussion. While the FDAC team is sharing information with the judge about the family, the FDAC team must be mindful to conserve the independence of the judge as the purpose is not to influence the judge's decision-making; no information should be shared in the briefing that would not be shared more widely with the parties.

There is no one "right" way to conduct a pre-court briefing. Some judges lead the pre-court briefings by running through the case list. Other judges let the FDAC team take the lead on structuring the briefing agenda. Some judges appreciate lengthy discussions, and will ask for a detailed account of what happened in each case, what approach to take with each parent, and how to best support them. Other judges keep the discussions brief, and focus on whether there are any updates since the progress report was submitted. No matter what structure is followed, the briefings should adequately prepare the judge for the non-lawyer reviews, which will follow later in the day.

Importance of pre-court briefings

Pre-court briefings are a critical point of exchange of information between the FDAC specialist team, which is conducting ongoing and dynamic assessments of the parent, and the FDAC judge. Research in other court contexts, such as in Drug Courts, has shown that outcomes are significantly better when judges regularly attend pre-court meetings with the staff members working closely with the service user.⁸

During these pre-court briefings, the FDAC team discusses each parent and child's progress with the judge, and guides them on the appropriate tone and approach to take with the parent based on the FDAC team's professional understanding of what each parent needs. The judge will already have read the progress report, which covers timescales, progress, barriers to progress, and how each child is doing and progressing. The pre-court briefing is focused on three key areas, which will be discussed in turn below:

1. Reviewing important points in the progress report and flagging if there are any significant updates since the progress report was submitted;
2. Highlighting particular areas that require motivation from the judge and guiding the judge on how to best engage with parents;
3. Establishing who will be attending the non-lawyer review and updating the judge on interactions with other key professionals.

Content of pre-court briefing meetings

1. Reviewing important points in the progress report and flagging if there are any significant updates since the progress report was submitted

The pre-court briefing is an opportunity for the FDAC team to remind the judge about each of the cases and alert the judge to any issues to bear in mind—including whether the parent is in a particularly vulnerable emotional state, whether there has been a recent lapse, and whether there are any concerns about parental engagement or honesty.⁹

As one judge described their pre-court briefing process:

“In London the court sits on Monday and the report is sent by email on Friday afternoon. The judge’s briefing is a one-hour meeting with the FDAC team before the court opens. In London a judge might see 15 cases over the course of a busy day, and the briefing is a chance for the judge to make sure he or she has a clear picture in their mind of each family. Sometimes the judge will want to discuss the content of FDAC reports, or the team will warn the judge that a particular parent is in a fragile state of mind.”¹⁰

Due to the dynamic nature of FDAC cases, there may have been new developments in the case since the progress report was written. As one FDAC judge put it:

“[Pre-court briefings] are essential. The reason for that is quite simple. By the time you get the report, anything can have happened...what is really significant about these briefings is it helps me set the right tone for how I’m going to approach that brief discussion with parents... The briefings are five minutes per case. It’s not a great deal of time.... But I usually jot a couple of notes down on the report itself... if there’s anything I’ve got a query about that I didn’t quite understand in the report, I quickly raise it.”

2. Highlighting particular areas that require motivation from the judge and guiding the judge on how to best engage with parents

Pre-court briefings are an opportunity for the FDAC specialist team to share with the judge their expertise and advice around therapeutic language to use, such as when speaking about sensitive topics like domestic abuse or motivating a parent after a lapse. During the briefings, the FDAC team can informally and continuously guide the judge on the specialist’s area of expertise, such as by explaining different therapeutic interventions. Because the FDAC team has such frequent and ongoing interactions with the parent, the pre-court briefings allow judges to better understand what is happening in each parent’s life and what each parent needs motivation and encouragement around, and to guide the judge’s trauma-informed, individualised approach to each parent.

As an FDAC judge described:

“The team will give me a steer- ‘Look, this is going really well, this isn’t,’ ... or ‘Her grandmother has died. I know we’ve written this, but can you go quite gently because she’s really quite fragile,’ ...it’s those sorts of things and it really does help me pitch things correctly for parents.”

3. Establishing who will be attending the non-lawyer review and updating the judge on interactions with other key professionals

In addition to discussing the appropriate tone to take with parents, these pre-court briefings are also an opportunity for the FDAC team to establish whether the local authority social worker, guardian, or any other involved professionals will be attending the review. If they are, the FDAC team can make suggestions on how to bring other professionals into the review and to advise the judge as to any sensitivities to bear in mind. Much like the FDAC team and judge will encourage parents to engage in the non-lawyer reviews, they should also encourage other professionals to share their contributions, and the pre-court briefing can provide a helpful opportunity to ensure this happens. As an FDAC practitioner explained:

“Some social workers may feel a little left out of FDAC, and this is a time to highlight that and give the judge a little bit of a prompt. ‘Can you bring the social worker in a little more? They’re feeling a little on the outs.’ The focus is on the social-emotional exchange of information. It’s about sharing the best approach rather than the facts of the case.”

If the child’s guardian and/or local authority social worker cannot attend the non-lawyer review, the pre-court briefing is an opportunity for the FDAC team to share their input and perspective with the judge, so that the judge has a deeper understanding about how the children are doing and progressing before the non-lawyer review begins.

Communicating with family court stakeholders

FDAC is unusual in that much of the court time does not involve lawyers and is not adversarial, which other family court stakeholders may find disconcerting. The pre-court briefing in particular is only between the FDAC team and judge; because the local authority social worker, guardian, parents, and lawyers are not present at the pre-court briefings, they may wonder what actually happens and why the FDAC team is having a private meeting with the judge. Indeed, in a traditional adversarial proceeding it would be inappropriate for one party to have private, ex parte meetings with the judge, and it is understandable why other family court stakeholders and service users would be sceptical.

To mitigate this, FDAC practitioners must clearly communicate that FDAC is not a ‘party’ to the proceedings; they are an independent expert and not legally represented. Practitioners must also communicate the purpose of pre-court briefings; they are not intended to sway or bias the judge, but to communicate updates and key information that will put the parent in the best possible situation to succeed. Practitioners should be transparent about what kind of discussion happens in the pre-court briefings; it is widely suggested that pre-court briefings be recorded to reinforce the transparency of the process and mitigate against accusations of collusion.

Practitioners should also listen to and recognise concerns from other family court stakeholders and service users and invite feedback. While this might initially feel uncomfortable, the FDAC team should be open to having challenging conversations to understand concerns and provide reassurance. Building trust takes time, and it is to be expected that some family court practitioners will be initially wary or sceptical of FDAC. However, seeing the results of FDAC within the first year or two is likely to gradually change minds.

Building trust can be done creatively. One FDAC site sends out an ‘FDAC Team CV’ along with all initial assessments and intervention plans to help build trust with other family court practitioners and allow them to see the rich expertise and experiences of the FDAC team. *One practitioner suggested that delivering training for other stakeholders can establish professional relationships and build trust. The FDAC team could also consider facilitating and delivering regular training and re-training for solicitors, guardians, and the local authority to emphasise the importance of each person’s role within FDAC and the purpose of pre-court briefings and non-lawyer reviews. The Centre for Justice Innovation can provide resources and assist in creating and delivering training for other practitioners.*

Non-lawyer reviews

Who participates in a non-lawyer review?

Non-lawyer reviews are typically attended by the parents, the local authority social worker, the FDAC key worker and FDAC manager or senior practitioner and, where possible, the children’s guardian. In some cases, babies and very young children who have not been removed are brought to the reviews as well. Non-lawyer reviews are opportunities for everyone supporting the family – the judge, FDAC team, child’s social worker and guardian – to work together to keep the parents motivated and on track, check whether all elements of the plan are working, and find ways to resolve any problems that might have arisen. The judge uses techniques like motivational interviewing to engage parents in discussion about the progress made, the issues that need resolving and goals for the next fortnight.

While the focus of the review is the discussion between the judge and the parent, the FDAC key worker and the local authority social worker (and the guardian, if present) are encouraged to contribute, share feedback and raise any other issues that the judge should be aware of. The local authority social worker and / or children's guardian should also be asked to update the judge on the child or children and their progress and wishes.¹¹

The FDAC key worker or team manager in attendance will take a brief note of what is discussed, to be circulated soon after the review to all parties. Some judges also record the non-lawyer reviews. Care needs to be taken with the wording of the notes and difficult decisions must be made about whether to include sensitive material - such as childhood trauma or sexual abuse experienced by one parent - as copies go to each parent's solicitor. Before including information in the report, the FDAC team member should consider whether the information is relevant and necessary to share with all parties, especially if domestic abuse between parents is a concern.

Research on non-lawyer reviews

The value of non-lawyer reviews in FDAC has been demonstrated by research and feedback from judges, parents, and practitioners. Specifically, research has evidenced the following key aspects of reviews:

- Judicial continuity is an important driver of impact:** Judicial continuity has been identified as a key element in the effectiveness of problem-solving court approaches generally.¹² Specifically, within FDAC, parents appear to deeply value the relationship built with 'their judge,' which is only possible when the same judge meets with them throughout their case. A 2014 study found that almost all parents participating in FDAC felt they had developed a strong relationship with their judge over time and were keen to have judicial continuity.¹³ As one FDAC parent described, "*We don't want to see lots of different judges, we want one person directing things all the way. Otherwise they don't know what's going on.*"¹⁴ In a 2016 study, consisting of court observations and judicial interviews, judges also viewed judicial continuity as critical; only with judicial continuity could parents demonstrate what they could achieve with someone who knew where they had started and how much they had struggled along the way.¹⁵
- The regularity and frequency of non-lawyer reviews allows for problems to be promptly resolved and early progress to be boosted:** Research indicates that rewards (i.e. praise from a judge) and consequences are most effective when they are individualised and delivered close in time to the desirable or undesirable behaviour, which a fortnightly non-lawyer review can accomplish.¹⁶ In the context of Drug Courts, a substantial body of research demonstrates better outcomes and engagement when service users are required to appear before the judge every two weeks as opposed to only appearing in response to violations.¹⁷ The importance of regularly scheduled check-ins appears beneficial in the context of FDAC: in a 2016 study consisting of interviews with 12 FDAC judges, judges specifically praised the frequency and regularity of non-lawyer reviews, which meant that early progress could be praised and a lack of progress could be promptly noted and addressed. This stood in sharp contrast to ordinary care proceedings, where time "*drift[ed] for weeks on end, from one court day to the next.*"¹⁸ Parents interviewed in a 2014 study thought having fortnightly reviews "*stopped problems from escalating*" and "*kept everybody up to date.*"¹⁹ Professionals also noted the regularity of the non-lawyer reviews was helpful for everyone "*because it kept cases on track, kept the court informed of progress, and reduced drift.*"²⁰
- Judges were highly effective at motivating parents to change:** A 2014 five-year study of FDAC found that judges effectively used non-lawyer reviews to "*motivate parents to change their lifestyle and make good use of services on offer, whilst keeping the case on track and being clear with parents about the court's power to remove children from their care.*"²¹ Judges were "*supportive, friendly and empathetic, but were also able to be firm, encouraging parents to take responsibility for their actions and pointing out the consequences of non-compliance.*"²² Parents in the study also cited the personal authority of a judge and their role as important in motivating them to change.²³

3. **Parents and judges alike perceived the court process as fairer and more humane than standard care proceedings:** Research has found a key strength of the FDAC model is that proceedings are collaborative and less adversarial than ordinary proceedings, whilst retaining due formality.²⁴ Whereas research on standard care proceedings has described parents as feeling isolated, excluded, intimidated and confused, FDAC parents have described feeling engaged in the court process, comfortable coming to court, and that the court process has been fair.²⁵ Importantly, parents valued the fair way the judge treated them regardless of whether or not they liked what the judge was telling them.²⁶ Similarly, a 2016 study found that judges preferred FDAC because they regarded the court process as fairer and more humane than ordinary care proceedings, whilst keeping the central importance of the child's needs at the forefront.²⁷

Parents' experiences of non-lawyer reviews

Parents speak overwhelmingly positively about their experiences in non-lawyer reviews. Although seemingly simple, the power of an authoritative figure like a judge who is taking an interest in the parent[s] and their children - asking them how they are, praising their strengths, being non-judgmental, treating them with compassion, and listening to them - cannot be overstated. In interviews conducted as part of a 2014 study, two-thirds of parents interviewed were positive about non-lawyer reviews. Parents tended to value the praise from judges more than praise from other professionals; they spoke warmly about judges, who they described as 'reasonable', 'encouraging', 'sensitive' and 'calm'. They explained that judges 'treated you like a human being', 'talked about normal things' and 'put you at your ease'. The study also found that whatever the judges had said to parents, whether supportive or cautionary, had stuck in parents' minds.²⁸

In their own words, this is how some parents have described their experiences of non-lawyer reviews:

- *"It wasn't like the experience I'd had of the criminal court. Very early on a relationship started to build up. I was given the opportunity to speak and build up this relationship with the judge, the social worker and the professionals. I knew what was happening. I knew the plan. It makes me want to cry thinking back to it. I was given the opportunity to speak about myself, and to learn, and to gain trust."*²⁹
- *"At first I thought the judge would judge me badly, take my children away and tell me to get out. Instead he was soft spoken, and I found the trust in him. I was used to people always being shouty with me. The judge got me talking, he wanted to hear about myself and what was wrong. I was scared of telling him to begin with and for about four months I wouldn't and then one time in court I got very emotional and thought I would tell him. I was very surprised because I found that he was even nicer to me then."*³⁰
- *"[T]here's obviously the praise, and that's wonderful but then if you're having a bit of a rubbish week and things haven't gone so good, it's that kind of non-judgement that slowly becomes more obvious, and that willingness to help becomes more obvious. That is what kind of essentially, yes this is kind of different."*³¹

Non-lawyer reviews in practice

There is variation among FDAC judges in how they structure and approach their non-lawyer reviews. Each judge will find a structure that works best for their courtroom and their particular judging style, but all of them use techniques such as motivational interviewing to engage the parent, ask about challenges and successes, and help problem-solve any issues. For some, the review is mostly an informal conversation between the parent and the judge, with practitioners contributing at various points to provide information or highlight a particular strength or concern. In other courtrooms, the review occurs in a consistent, structured order: the FDAC key worker speaks first, then the parent, then the local authority social worker and guardian (if present). In other courtrooms, the judge addresses the parent first, then opens the floor to anyone else, and then returns to the parent.

Case example - Leeds

In the Leeds FDAC, each judge has their own style, but they all tend to follow a similar structure. The judge begins by welcoming the family and using open ended questions to ask about how they feel the last two weeks have gone and how they are feeling. There is usually confirmation that the judge and parents have received and read the progress report from the FDAC team. If there is a specific incident or concern to address, the judge will look to address this in the discussions; there is the hope the family will raise this when reflecting on their last two weeks but if not, this can be encouraged by the judge. Typically, the parent talks first. Then, the FDAC team, local authority social worker and the guardian are all invited to speak as well as provide updates on the children. If families present as struggling or maybe being a little nervous, then the FDAC team can be invited to support in starting the discussion. Finally, the judge reviews any actions to be addressed over the next fortnight. If there are any contested issues or related issues that the judge wants to address (such as issues about housing or requesting additional family time), the judge can request an additional lawyer hearing.

Promising practice principles of non-lawyer reviews

Judges have a complicated role during these reviews: they are neutral arbiters wielding great power over a family, but are being asked to build an empathetic, non-hierarchical relationship with parents and to refrain from making any orders or directions over contested issues. They are supposed to be motivational, whilst also challenging and reminding parents about timescales. They are also supposed to bring the local authority social worker and/or children's guardian, with whom the parent may have a contentious relationship, into the conversation. As one judge put it, *"You have two different hats, which some might see as polar opposites. You are a decision-maker looking at weighing up evidence and making a decision and giving reasons on the one hand. On the other hand, you're part of a therapeutic motivational team building a relationship ... with parents which can evoke quite powerful emotions ..."*³² While there is no one right way to approach a non-lawyer review and each judge's style will be different, there are promising judicial practices that effective non-lawyer reviews typically share.³³ Here are some recommended "dos" and "don'ts" when conducting non-lawyer reviews.

Dos

- 1. Implement motivational interviewing techniques:** All FDAC judges receive training in motivational, therapeutic techniques. One of these techniques, Motivational Interviewing, is designed to support behaviour change in people who are ambivalent about change by helping them explore their thoughts and feelings about the consequences of their behaviour and promoting an atmosphere of acceptance and compassion that facilitates taking positive steps toward change. Rather than telling parents what to do, which can increase resistance to change, Motivational Interviewing uses open questions, affirmation, reflective listening, and summary reflections ("OARS"). There is promising evidence that Motivational Interviewing strengthens commitment to a specific goal by eliciting and exploring the person's own reasons for change.³⁴
- 2. Use a strengths-based approach to build positive relationships with parents:** At the heart of an effective non-lawyer review is a positive relationship between the parent and judge. This strengths-based approach is about recognising that parents are doing the best they can in difficult circumstances and are more likely to progress by building on strengths; this approach is also less likely to elicit shame, which is a disabling emotion that tends to cause withdrawal and disengagement. Building a positive relationship can be done by a judge warmly greeting parents, asking how they are doing, and making it clear that they want to know what parents have to say.³⁵ Judges are encouraged to end a review by summarising key points, demonstrating that they have heard what parents have said, praising parents for their hard work, and ending on a positive.³⁶ As one Judge explained: *"It is part of the judge's role in motivating parents always to try to turn negatives into positives. If a parent has had a lapse, perhaps having a drink to celebrate a birthday, and they have owned up to their key worker, I congratulate them. I tell them that a lapse*

can be part of the progress to recovery, and that owning up to it is a very positive sign. A severe relapse is more difficult. I always try to be sympathetic, unless it is undeserved. Sometimes I will say, 'please don't let me and the team down again, but above all please don't let yourself down again.'³⁷

3. **Highlight children's needs and encourage parental engagement:** While children are typically not present at the non-lawyer review, the children's needs should be highlighted and the judge should engage both the parent and local authority social worker in a discussion around the children's needs and how they are progressing.³⁸ These can include both practical decisions, like upcoming doctor's appointments and school arrangements, to more complex discussions about the child's emotional needs and areas of concern. Judges might consider using the child's timescales to help motivate the parents, or asking the parent to see photos of their child. One FDAC practitioner suggested that judges ask parents to see photos of their children, because "when the parent and judge are side by side looking at photos of the children together, this really helps build rapport."
4. **Set clear expectations and ask questions to gauge parents' understanding:** Judges should be clear and unambiguous when introducing the aims of FDAC, and intersperse their explanation with questions to gauge the parents' understanding. This clarity should continue throughout the case, as judges should clearly explain what they are looking for and remind parents of the importance of engagement whilst remaining respectful and empathetic.³⁹ As a Practice Note for Judges, written in close collaboration with three FDAC Judges, describes: "You will be reminding everyone about the stage reached and how much time is left. You will be building rapport with parents, mixing fairness with compassion, motivating parents whilst also highlighting the consequences of not complying with what has been agreed."⁴⁰
5. **Engage in creative problem-solving:** Judges should strive to engage the parents and professionals present at these reviews in creative problem-solving, and to take a broad view of the problems that parents are experiencing. Non-lawyer reviews can be used to collaboratively address practical difficulties such as housing, benefits, child care, and family time.⁴¹ These are also opportunities to work on subtler challenges, such as addressing tensions in the relationship between the parent and local authority. During these reviews, judges should harness the unique cross-disciplinary and cross-agency approach of FDAC to encourage everyone to think about solutions, ask for advice, and be imaginative about new things to try.⁴²
6. **Recognise that parents may feel anxious:** Many parents express feeling anxious and nervous about attending the non-lawyer reviews, particularly in the beginning of the FDAC process, and express fear about forgetting what they want to say; entering court in any form may also be a triggering or re-traumatising experience for them.⁴³ As one judge observed, "I had a [parent] once who... could barely say two words to me when she first came in. I just used this technique to say 'write down what you'd like me to hear and what you want me to know.' And so she started doing that and by the end of it she was . . . talking about ... everything."
7. **Be comfortable with silences:** Although silences may feel uncomfortable, these can be moments of deep thinking and reflection. As one judge reflected, parents might need that space to open up: "As judges, we are trained to listen, and we do that really well. What I think we sometimes struggle with, however, is silence. And in the non-lawyer reviews, there is nothing wrong with a few moments of silence. So when a parent is trying to express themselves, or they've said something, or they're thinking about something that someone else has said, I might let things hang there for a moment or two."
8. **Build rapport with parents by expressing interest in parents as people:** Judges can build rapport by getting to know and understand parents as people, their day-to-day lives and their interests and values.⁴⁴ As one researcher described, "Parents tend to respond positively when judges address them before members of the FDAC team, take an active interest in them by being well informed and remembering previous hearings, get to know them well, and ask how they feel things have gone since their last hearing."⁴⁵ One judge recommended keeping a special notebook for FDAC reviews: "I make a note of anything personal a parent tells me, such as visits by relatives, family birthdays, important appointments that lie ahead. Then, when they next appear, I have a note to

remind me to ask them about that event and how it went. This makes them feel that I do know who they are and that I am genuinely interested in them.”⁴⁶

9. **Where possible, modify the courtroom environment to facilitate communication:** Traditional courtroom layouts, in which a judge is elevated on a platform, are not ideal for a collaborative, problem-solving approach. Where possible and safe, it is helpful to identify how the physical space of the courtroom can be made more inclusive, such as by sitting together in a horseshoe-style seating arrangement.
10. **Engage with local authority social workers and guardians and recognise their work:** Some social workers and guardians have expressed feeling excluded during non-lawyer reviews or concerned that there is not enough emphasis on the children. To counter this, judges should strive to bring local authority social workers and guardians in by asking about their visits with the child. As an important part of the problem-solving team, their perspective and views on the children’s progress and needs should be actively solicited. When possible, the judge should also acknowledge the hard work that these professionals are doing, just as they would acknowledge a parent’s work. One practitioner suggested that judges ask social workers and guardians how they are feeling after asking parents how they are feeling, as this is a way of modelling a “*supportive professional relationship*.”

Don'ts

Practitioners caution that non-lawyer reviews can run into challenges if judges are so positive during the reviews that they minimise real challenges; when judges attempt to persuade rather than motivate parents; if the reviews are used to revise the parent’s intervention plan or address contested issues; or if parents participate in non-lawyer reviews jointly rather than separately (especially if domestic abuse is a concern). The following is recommended to address these potential challenges:

1. **Do not shy away from addressing real issues and challenges:** Some practitioners raise concerns that judges can be so positive during the reviews that they risk minimising real challenges, which can take a parent by surprise if the ultimate recommendation is not reunification. While it is important to stay positive, judges should be continuously reminding parents of timescales and next steps and being open and honest about the issues that continue to cause concerns; the judge should always be keeping a close eye on how the clock is ticking, how many weeks are left, and what they are looking for from parents each time they meet.⁴⁷ One judge explained, “*The way we tend to work with lapses is [to] try to use them as a learning tool for parents and a motivation. . . We don’t skirt around them . . . It’s about trying to help them think through how they might do things differently, what was happening at the time, and helping to channel what the team are doing in supporting [them].*”
2. **Avoid the ‘righting reflex’:** When speaking with someone who is ambivalent about change, it is tempting to try to persuade them and push them toward the ‘right’ path, an impulse known as the ‘righting reflex.’⁴⁸ However, this can have the opposite effect as people often respond to being told what to do with resistance. Instead, acknowledge that a person’s freedom and right to choose is what makes change possible.
3. **Do not revise the intervention plan, address contested issues or gather evidence during non-lawyer reviews:** The purpose of the non-lawyer review is to review progress with the agreed-upon intervention plan, rather than to revise the plan, address contested issues, or gather evidence. Where significant problems arise and revision of the plan is needed, it will be necessary to make the next court appearance one with lawyers and/or to bring forward the date of the next Review Intervention Planning Meeting.⁴⁹ If issues arise that the judge considers to require legal representation of the parties (such as allegations of domestic abuse or conflict over contact arrangements), a hearing should be scheduled with lawyers present.

4. **Do not combine non-lawyer reviews for parents without making an individualised assessment of whether this is appropriate:** It is essential that parents undergoing FDAC as a couple have separate non-lawyer reviews if there are concerns about domestic abuse or for other reasons, such as a power imbalance between parents or differing treatment needs. Some sites always separate non-lawyer reviews for parents, regardless of whether couples are together or separated and regardless of whether domestic abuse is thought to be an issue. If the non-lawyer reviews are combined, one judge recommended beginning by separating the reviews to allow for each parent to develop their own relationship and rapport with the judge before their reviews are combined. One judge explained: - “We’ve developed a practice here so even when we’ve got a couple where there’s no domestic abuse, we start off seeing them separately [in non-lawyer reviews]. One of the reasons for that is we’ve found that some parents speak more for their partners than their partners do themselves. So I will maybe start off with them both coming to see me separately and then bring [them] together.” Once reviews are combined, judges should continue to dynamically assess whether combined reviews are appropriate or whether parents should have separate reviews, such as if the parents are progressing in treatment at different rates.

Conclusion

Non-lawyer reviews are a key component of FDAC’s therapeutic, non-adversarial approach to care proceedings. This briefing was designed to help FDAC practitioners and judges understand the importance of non-lawyer reviews and how to prepare for them by submitting progress reports and exchanging information during pre-court briefings. This briefing also outlined promising practice principles and “dos and don’ts” for judges when interacting with parents during the non-lawyer reviews. The Centre for Justice Innovation holds regular FDAC trainings and collects resources for FDAC practitioners. More information on FDACs can be found at the [FDAC website](#), or at [the Centre’s website](#).

Endnotes

1. Quoted in the [FDAC Handbook](#).
2. The qualitative research is largely attributed to Jo Tunnard, Judith Harwin, Mary Ryan , and others who observed FDAC court proceedings and interviewed judges, practitioners, and parents about their courtroom experiences. The briefing also draws on a [Practice Note for FDAC Judges](#) assembled by Jo Tunnard and Mary Ryan in close collaboration with three FDAC judges.
3. Tunnard J., Ryan, M., & Harwin, J. (2016). Problem solving in court: current practice in FDACs in England. Available at: http://wp.lancs.ac.uk/cfj-fdac/files/2016/12/FDAC_COURT_OBS_REPORT_2016.pdf
4. Centre for Justice Innovation, (2019). FDAC- Legal Processes and Procedures Notes for Sites. Available at: <https://fdac.org.uk/practice-resources-for-the-judges-and-court/>
5. Ibid.
6. [The FDAC Handbook Appendix](#) contains a review report template for the FDAC team to structure these progress reports. See Appendix, Section 5.
7. Centre for Justice Innovation, (2019). FDAC- Legal Processes and Procedures Notes for Sites.
8. National Association of Drug Court Professionals (2018). Adult Drug Court Best Practice Standards, pp. 22-23. Available at: <https://www.nadcp.org/wp-content/uploads/2018/12/Adult-Drug-Court-Best-Practice-Standards-Volume-I-Text-Revision-December-2018-1.pdf>
9. Centre for Justice Innovation, (2019). FDAC- Legal Processes and Procedures Notes for Sites.
10. Quoted in the [FDAC Handbook](#), p. 60.
11. Centre for Justice Innovation, (2019). FDAC- Legal Processes and Procedures Notes for Sites.
12. Harwin, Alrouh, Ryan, & Tunnard (2014). Changing Lifestyles, Keeping Children Safe: an evaluation of the first Family Drug and Alcohol Court (FDAC) in care proceedings. Available at: http://wp.lancs.ac.uk/cfj-fdac/files/2016/11/FDAC_FinalReport_2014.pdf
13. Ibid
14. Parent quoted in *ibid*, p. 100
15. Tunnard, Ryan, & Harwin (2016). Introducing the highlights from problem solving in court: Current practice in FDACs in England. Available at: https://www.drugsandalcohol.ie/26137/1/Problem_solving_in_court_current_practice_in_FDACs_in_England.pdf
16. What Works for Children’s Social Care (2019). How Do Family Drug and Alcohol Courts Work with Parents to Safely Reduce the Number of Children in Care? A rapid realist review. Available at: https://whatworks-csc.org.uk/wp-content/uploads/WWCSC_FDAC_rapid_realist_review_Oct2019_Updated3.pdf
17. National Association of Drug Court Professionals (2018). Adult Drug Court Best Practice Standards, p. 23.
18. Tunnard, Ryan, & Harwin (2016). Problem Solving in Court: Current Practice in FDACs in England, p. 13.
19. Harwin, Alrouh, Ryan, & Tunnard (2014). Changing Lifestyles, Keeping Children Safe: an evaluation of the first Family Drug and Alcohol Court (FDAC) in care proceedings, pp. 100-101.
20. *Ibid*, p. 111.
21. *Ibid*, p. 13.
22. *Ibid*, p. 93.
23. *Ibid*, p. 128.

24. Ibid, p. 11.
25. Ibid, pp. 126-127.
26. Ibid, p. 100.
27. Tunnard, Ryan, & Harwin (2016). Problem Solving in Court: Current Practice in FDACs in England.
28. Harwin, Alrouh, Ryan, & Tunnard (2014). Changing Lifestyles, Keeping Children Safe: an evaluation of the first Family Drug and Alcohol Court (FDAC) in care proceedings, p. 100.
29. Parent quoted in the [FDAC Handbook](#), p. 56.
30. Ibid.
31. Parent quoted in Research in Practice (2021). [Evaluation of Pan Bedfordshire FDAC](#).
32. Judge quoted in *ibid*.
33. For comprehensive advice for judges during non-lawyer reviews, see [Practice Note for FDAC Judges](#) (revised 2020), assembled by Jo Tunnard and Mary Ryan in close collaboration with three FDAC judges.
34. Miller & Rollnick (2013). *Motivational Interviewing: Preparing People for Change* (3rd ed.). New York: Guildford Press.
35. Harwin, Alrouh, Ryan, & Tunnard (2014). Changing Lifestyles, Keeping Children Safe: an evaluation of the first Family Drug and Alcohol Court (FDAC) in care proceedings, p. 95.
36. [Practice Note for FDAC Judges](#)
37. Judge quoted in the [FDAC Handbook](#), p. 62.
38. [Practice Note for FDAC Judges](#)
39. Harwin, Alrouh, Ryan, & Tunnard (2014). Changing Lifestyles, Keeping Children Safe: an evaluation of the first Family Drug and Alcohol Court (FDAC) in care proceedings.
40. [Practice Note for FDAC Judges](#)
41. Ibid.
42. Ibid.
43. See, e.g., Harwin, Alrouh, Ryan, & Tunnard (2014). Changing Lifestyles, Keeping Children Safe: an evaluation of the first Family Drug and Alcohol Court (FDAC) in care proceedings (parents express feeling anxious, nervous, and forgetting what they wanted to say in court).
44. [Practice Note for FDAC Judges](#)
45. What Works for Children's Social Care (2019). How Do Family Drug and Alcohol Courts Work with Parents to Safely Reduce the Number of Children in Care? A rapid realist review, p. 60.
46. Judge quoted in the [FDAC Handbook](#), p. 62.
47. [Practice Note for FDAC Judges](#)
48. Miller & Rollnick (2013). *Motivational Interviewing: Preparing People for Change* (3rd ed.). New York: Guildford Press.
49. For more information, see [FDAC Handbook](#).

About the Centre for Justice Innovation

The Centre for Justice Innovation seek to build a justice system which all of its citizens believe is fair and effective. We champion practice innovation and evidence-led policy reform in the UK's justice systems. We are a registered UK charity.

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