

Problem-solving courts

A guide to practice in the United Kingdom



Purpose of guide

This guide provides an overview of problem-solving court practice in the United Kingdom for practitioners and policymakers working in or seeking to develop problem-solving courts. It provides information about different types of problem-solving court, including a description of each, a summary of the evidence on them and case studies from the UK on each.

About problem-solving courts

Problem-solving courts are a diverse family of court models, and can be found in adult criminal courts, youth courts and family courts in the United Kingdom. Their common features are that they:

- Specialise in a specific set of issues such as substance misuse or domestic abuse or around a specific target group, such as women at risk of custody;
- Deploy a multi-agency team/partnership to provide intervention and supervision;
- Integrate intervention and supervision with judicial monitoring, a process in which individuals are regularly brought back in front of the same judge to discuss progress and future challenges and opportunities for change;
- Endeavour to create a procedurally fair environment;
- Focus on improving outcomes.¹

About this guide

This guide looks at the following types of problem-solving court in the UK:

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We are aware that there are other problem-solving courts in the UK not covered in this typology. We are also aware that, internationally, there are other types of problem-solving court, for example, those focused solely on mental health issues. However, for the sake of brevity, we have limited this guide to the main types extant in the UK.

Substance misuse courts



Substance misuse, crime and public health

Substance misuse is a significant driver of crime. Use of opiates and / or cocaine is particularly associated with lower-level acquisitive crimes such as shoplifting and prostitution² and estimates are that as much as half of acquisitive crime is drug-related.³ Use of alcohol is particularly associated with violent crime, with people in nearly two in five violent crimes believed to be under the influence of alcohol.⁴ Moreover, there are significant public health challenges created by substance misuse: in 2020, there were 6,118 drug related deaths in the UK, with both Scotland and England and Wales recording the highest number of deaths since records began.

Substance misuse treatment

There is significant evidence to suggest effective drug treatment can have a significant impact on drug-related crime.⁵ Substance misuse treatment often combines psychosocial interventions such as Cognitive Behavioural Therapy (CBT) with pharmacological interventions such as the provision of substitute drugs such as methadone. One UK study, which looked at people who use opiate and crack found that starting treatment in the community was associated with a 46% reduction in all offending and a 49% reduction in acquisitive crime.⁶ A wider-scale study estimated that in 2010/11 drug treatment and recovery systems in England may have prevented about 4.9 million crimes, with an estimated saving to society of £960 million in costs to the public, businesses, the criminal justice system and the National Health Service (NHS)⁷

However, it can be difficult to support and motivate those who uses substances to engage with treatment. Half of people who use opiate and crack are not in any form of treatment.⁸ In England and Wales, the Drug Rehabilitation Requirement (DRR) and Alcohol Treatment Requirement (ATR) elements of community and suspended sentence orders are intended to provide a route for individuals in the community to be given access to specialised substance misuse treatment. However, use of these requirements has been consistently low, due in part to difficulties in undertaking timely assessments. Similarly, the analogous Drug Treatment and Testing Order (DTTO) in Scotland is not extensively used, and the numbers of orders given fell to a historic low during the pandemic.

Substance misuse court model

One approach to improving uptake of treatment by those who misuse substances has been the development of problem-solving substance misuse courts. Originating in the USA in the late 1980s (sometimes known simply as drug courts), substance misuse courts have spread to more than 25 countries. In general, these substance misuse courts are reserved as an alternative to custody and/or targeted at more complex, repeat offending.

Substance misuse courts engage individuals in multi-agency treatment, supervision and intervention, while subject to regular judicial monitoring. Generally, the multi-agency team involves probation, substance misuse specialists and clinical input around mental health, trauma and other related issues. The team develop a supervision and intervention plan with the individual and in concert with the supervising judge. The supervision and intervention plan often involves regular drug testing (where practices about what type of testing and how regularly varies across the UK).

The judicial monitoring is characterised by regular review hearings in front of the same judge, held in existing courthouses where all the relevant substance misuse review hearings are listed together. Good practice in these reviews emphasises procedural fairness, where dialogue between the team, the individual and the judge is facilitated, where the individual has a voice in the process and where issues and aspirations for the future are discussed. In some substance misuse courts in the UK, this monitoring is supplemented by a clearly communicated system of graduated incentives and sanctions to motivate compliance.

It is worth highlighting that while individuals subject to either the DTTO in Scotland or the DRR and ATR in England and Wales can be subject judicial monitoring, its deployment is restricted to certain circumstances, and these reviews do not include many of the other features of the substance misuse court model, such as consistency of judge conducting the monitoring⁹ or the use of appropriate and graduated sanctions and incentives schemes.

Substance misuse court practice in the UK

In England and Wales, two dedicated drug court pilots, in the magistrates' courts, were set up in the mid-2000s. These pilots were subject to a process evaluation¹⁰ but no outcome evaluation.¹¹ These pilots ended in the early 2010s. The Ministry of Justice announced its

intention to pilot a new substance misuse court model in up to three Crown Courts by 2023. In Scotland, two dedicated substance misuse courts were opened in the early 2000s, of which the court in Glasgow remains open and the court in Fife was closed in 2013. In Northern Ireland, the Belfast Substance Misuse Court opened in 2018 (more details can be found in our case study, below).

Our 2020 review of UK substance misuse court practice identified several features which were seen to improve their effectiveness compared to standard practices. These included:

Effective judicial monitoring ● Practitioners repeatedly highlighted the importance of judicial monitoring, where judges monitor the progress of those who have offended. The sites stressed the importance of the consistency of the same judge appearing at each review hearing, to ensure there is continuity and consistency of approach. In addition to consistency, practitioners in the four sites also highlighted the importance of the skills of the judges to offer regular feedback directly to individuals, to motivate and inspire them to do better than they thought they were capable of.

Fast-tracked access to treatment ● Acceptance onto one of these community treatment programmes means quicker assessments and speedier access to interventions. For people with chaotic lifestyles and insecure accommodation, sending appointment letters for a couple of weeks' time can lead to missed appointments and missed opportunities.

Customised support ● Once accepted onto a programme, participants receive a comprehensive and tailored treatment plan. They must agree to engage in treatment, regular drug and alcohol testing, but also receive additional support from third sector agencies for needs such as mental health.

Recognition of success ● A number of the practitioners we spoke with emphasised the value of holding 'graduations' to acknowledge the participants' progress and achievements.

Evidence on substance misuse courts

There is a robust and extensive international evidence base that substance misuse courts are effective at reducing reoffending and drug and alcohol misuse. There have been several meta-analyses on the efficacy of substance misuse courts for adults in the United States.¹² These meta-analyses consistently show better re-arrest or reoffending rates compared to randomized or matched comparison samples of substance misusing individuals who were on other forms of probation or who had had their cases heard in traditional courts. These studies also show a marked decrease in drug use and other outcomes.

There is little direct evidence on courts which target problematic alcohol use but drug court studies do show improvements in levels of alcohol misuse. Components of substance misuse courts that have been suggested as being associated with reduced reoffending include the judge's level of experience, the amount of time a person spends in front of the judge during the status review hearing, collaboration between different agencies, and a programme length of at least one year.

Moving to evidence in the UK, a 2009 evaluation compared outcomes for offenders given DTTOs in Glasgow and Fife to offenders given the same sentence in other Scottish courts. It found that 47% of drug court DTTOs were completed successfully, compared to 35% in other courts.¹³ More recent evaluations of the Belfast Substance Misuse Court (see below) found that clients completing their sentence "showed a significant reduction in problem scores for both drug and alcohol misuse over the duration of the programme, a significant reduction in risk of reoffending, and significant increases in self-efficacy and well-being."¹⁴

Case study: Belfast substance misuse court

According to the Probation Board of Northern Ireland, around three-quarters of people under probation supervision in Northern Ireland have an alcohol or drug-related problem that contributes directly to their offending behaviour. The Belfast Substance Misuse Court (SMC) was established by the Northern Ireland Department of Justice in 2018 as part of a programme of problem-solving initiatives which aims to reduce reoffending rates by tackling underlying problems.

The SMC offers eligible individuals the opportunity to engage in an intensive treatment programme before sentencing, to help tackle their addiction and change their behaviour. Eligibility screening is carried out by staff from the Probation Board for Northern Ireland and Addiction Northern Ireland. The court works with adult who have pled guilty to committing a substance misuse related crime and who expressing willingness to cooperate with supervision, to not offend and to stay away from the misused substance. It excludes those involved in the supply of drugs, people found in possession of offensive weapons and anyone with a history of sexual offences, as well as those whose mental illness would impede participations.

People in the SMC will receive a comprehensive and tailored treatment and supervision plan which may include custom therapeutic interventions for substance misuse, opportunities to address issues underlying offending behaviour and access to social support. They are also subject to random drug and alcohol testing and regular reviews of progress with a dedicated judge.

While completing the programme, the individual is subject to court bail conditions and must attend review hearings with the Judge to monitor progress. If the Judge feels that progress is not being made, they can terminate the programme and pass sentence. Upon successful completion of the programme, the judge presides over a final review where they pass sentence. The sentence takes into account the individual's engagement with the programme and any other evidence before the court.

Problem-solving courts for women



Female offending

Women account for only 26% of all the people arrested, charged, prosecuted, convicted and imprisoned by the criminal justice system each year,¹⁵ however, the women who are convicted are:

- More likely to have experienced trauma: 60% have experienced domestic abuse;¹⁶ 53% of women in prison report having experienced emotional, physical, or sexual abuse as a child, compared to 27% of men,¹⁷ and 71% of women in prison report having mental health issues, compared to 47% of men;
- More likely to be primary carers of children: a 2013 study found that 66% of women in prison had dependent children and at least one third were lone parents before imprisonment;¹⁸
- More likely to offend due to their relationships: nearly half of women prisoners (48%) reported having committed offences to support someone else's drug use, compared to 22% of male prisoners;¹⁹
- Less likely to be violent: In 2017, women who were convicted were 27% less likely to be charged with violence against the person, 46% less likely to be charged with robbery and 53% less likely to be charged with possession of weapons. They were 59% more likely to be charged with theft and 113% more likely to be charged with fraud. 30% of women were prosecuted for TV license evasion, compared to only 4% of men.²⁰

A distinct approach to women in the justice system

The distinctive needs profile of women who offend necessitates a distinctive approach to providing support. The Ministry of Justice's rapid evidence review, Better Outcomes for Women Offenders, identifies that gender-responsive approaches to female offending are more effective at reducing rates of re-offending than gender-neutral interventions.²¹ This was recognised in the Government's 2018 Female Offender Strategy, which outlines its commitment to reducing

women's offending via specialist, gender-responsive approaches, prioritising the use of early intervention and community-based solutions.

Based on the evidence reported in the evidence review, the Ministry of Justice set out seven priority areas for intervention: (i) addressing substance misuse problems; (ii) addressing mental health problems; (iii) improving family contact; (iv) building skills in emotion management; (v) helping women to resettle and build social capital; (vi) helping women to develop a pro-social identity; and (vii) helping women to believe in their ability to control their lives and have goals.²²

Women's problem-solving court model

Developing a problem-solving court specifically for women who are likely to receive either a multi-requirement community sentence or short custody is not a model with significant parallels in the international practice. As far as we know, it is a model completely unique to the UK. Currently, there are two examples of them in the UK, the Manchester women's court and the Aberdeen problem-solving approach (which is targeted both at young adult men and women with complex needs).

These courts have a number of common features. Potentially eligible individuals are identified early, and both courts seek to identify women who have particularly complex needs, such as addiction, mental health issues or unstable housing, who have offended. This early identification may lead to referral into women's centres early, prior to sentencing.

In both areas, court report writers can propose a referral to the problem-solving court to the judge at the pre-sentence stage. If accepted, the individual is placed onto the programme (practice differs as to whether individuals are offered a deferred sentence (Aberdeen) or a community order (Manchester)).

Supervision and intervention is delivered in a gender-responsive manner, with specially trained practitioners from a range of agencies. These agencies meet to discuss the sentence plan, within which the objectives will serve to improve the women's welfare needs.

While on the sentence, individuals appear regularly in front of specially trained judge (or bench of magistrates), with agencies who need to present concerns with the progress of the case. As far as possible, these reviews should ensure there is continuity of sentencer throughout the order. These reviews should also be used as to offer incentives. Judicial monitoring can be used to recognise achievements made achieved and consideration of early completion of the order for progress, with continued support on a voluntary basis.

Evidence on problem-solving courts for women

Our review of the evidence on problem-solving courts in 2016 identified that there is promising evidence that problem-solving court approaches may work for specific groups of individuals where they have identified multiple and complex needs, with one of these groups being women who are at risk of custody.²³ We concluded that problem-solving courts have the potential to reduce reoffending and address criminogenic needs for women who have multiple additional needs and who are at risk of custody, and "we see a strong theory of change for a specialised approach informed by evidence-led trauma-informed and gender-responsive practice which responds to the distinctive needs of women offenders."²⁴ Moreover, we suggested that implementing a women's problem-solving court as part of a wider Whole Systems Approach to women's offending, which includes access to women's community services/women's centres delivering individualised wrap-around support, could provide an opportunity to holistically and comprehensively address the seven priority areas for intervention outlined above.

Nonetheless, given there are only two examples of projects taking this approach mean the research on this model specifically is limited, especially on the evidence of their impact on outcomes. Significantly, however, research already suggests that Manchester women's court has an impressive level of multi-agency commitment,²⁵ and that it is a significant addition to Manchester's overall Whole Systems Approach. While not direct evidence of the impact of the women's problem-solving court on outcomes, recent data suggests that this wider Whole Systems Approach is working, with Greater Manchester reporting lower rates of reoffending for women who have offended in comparison to similar metropolitan areas, as well as England and Wales as a whole (15% compared to 23% for the period April 2017 to March 2018).²⁶ Moreover, in the first of two evaluations of Manchester's Whole Systems Approach, the court was recognised for the impressive level of multi-agency commitment at the outset of the project, describing it as a "gold standard", though some concerns about "up-tariffing" (increasing the punitive burden) were noted.²⁷

Notably, an evaluation of Aberdeen's Problem-Solving Approach also shows evidence of increased compliance with community sentences by individuals involved in the court. This evaluation also noted the importance of the women's centre in the delivery of the court, both during clients' engagement and as a provider of after-care.²⁸

Case study: Manchester Women's Court

Manchester Women's Court began operating in 2014 as part of the city's Whole Systems Approach to women in the justice system. Central to the approach was the establishment of women's centres across Greater Manchester, as well as a problem-solving court focused on women, which aims to deliver gender-responsive joined-up support to women at the key stages of arrest, sentence and release from custody.

Manchester's problem-solving approach targets women with additional support needs, such as addiction, mental health issues or unstable housing, who have offended. Needs are identified as part of a pre-sentence assessment process and probation officers can propose a referral to the problem-solving court as part of the woman's Pre-Sentence Report (PSR).

If a woman receives a sentence with a problem-solving approach, she is allocated a keyworker from a local women's centre. The woman, along with her keyworker, probation officer and any other community and voluntary sector agencies involved, meet to develop a tailored package of support, which will be provided to her throughout the sentence. As part of their sentence, women are required to attend the women's centre on a regular basis. These centres provide a 'one-stop-shop' women-only environment, where women can access wrap-around support, including advice and guidance with a range of issues such as substance misuse, domestic abuse, family and parenting support, debt and benefits, and housing.

Women must also regularly attend the court for review hearings to monitor progress. In some circumstances, review hearings can take place remotely from the women's centre, allowing keyworkers to provide support to women during their hearings. The reviews are much more informal than a standard court hearing and the magistrates adopt an asset-based approach, emphasising individual skills and strengths and recognising the importance of building relationships, to encourage the woman to comply with the order, take responsibility for her actions and to engage with agencies that can help her move forward with her life. The review hearings are supported by specialist teams including legal advisors, probation officers and a panel of magistrates.

Problem-solving courts and domestic abuse



Domestic abuse, crime and harm

Domestic abuse represents a growing issue for the UK justice system. Although overall crime rates have fallen, there has been a significant increase in domestic abuse in recent years, especially since the onset of the Coronavirus pandemic in the spring of 2020.²⁹ Moreover, in England and Wales, there were 362 domestic homicides recorded by the police in the three-year period between year ending March 2018 and year ending March 2020. This represents 19% of all homicides where the victim was aged 16 years and over during this period. Of the 362 homicides, 214 (59%) were female victims who were killed by a partner or ex-partner. In contrast 33 (9%) were male victims who were killed by a partner or ex-partner.

Innovative approaches to domestic abuse in court

Evidence suggests that victim-survivor experiences in the criminal courts is inadequate— victims often report feeling excluded from the court process, and that their safety is not properly addressed, both inside and outside of the court room. Issues such as poor information sharing agencies and a lack of awareness of domestic abuse issues from criminal justice system agencies contribute to disjointed and delayed process for victim-survivors. As a consequence, support for prosecution from the victim is often withdrawn, which contributes to low charge, prosecution and conviction rates of domestic abuse in comparison to other offences.³⁰

In response to issues like this, there are three main types of specialised court responses to domestic abuse: (i) specialist domestic abuse courts; (ii) problem-solving domestic abuse courts; and (iii) integrated domestic abuse courts.

Specialist Domestic Abuse Courts

Specialist Domestic Abuse Courts (SDACs) aim to increase the rate of successful prosecutions for domestic abuse, improve the safety and satisfaction of victim-survivors, and increase public confidence in the criminal justice system. Despite this widespread adoption of the model in the early 2000s, SDACs have suffered closures and deterioration over the past 10 years as a result of reduced government funding and court reorganisations and restructures.³¹ Today, there are an estimated 35-40 SDACs in operation in England and Wales (when in 2013, there were 137) and we are aware of two in Scotland, one in Glasgow and one in Edinburgh.

SDACs adopt a specialist rather than a full problem-solving model. This means there is no post sentence monitoring. In SDACs, Domestic abuse cases are to be heard in fast-tracked, specially convened hearings with specialist court professionals. Victims-survivors are to be provided support through Independent Domestic Violence Advocates (IDVAs) with specialist training and experience of the criminal justice system.³² The evidence on the impact of SDACs on outcomes for victim-survivors is good, with high-quality evidence suggesting that they are likely to provide a better experience of justice for victim-survivors and are more likely to keep victim-survivors safe. However, it is unclear how recent changes in resources may have impacted on the operation of SDAC models.³³

Domestic abuse problem-solving courts

Domestic abuse problem-solving courts do not currently operate in the UK. However, the Ministry of Justice recently confirmed that, as part of their upcoming pilots, they are keen to pilot a domestic abuse problem-solving court. As far as we are aware, this domestic abuse problem-solving court will adopt the similar features to SDACs during pre-sentencing proceedings. In addition to these features, the domestic abuse problem-solving court will involve post-sentence

intervention and supervision, and ongoing judicial monitoring of individuals on community sentences, with a focus on ensuring that victims are kept safe. It is important to underline this— unlike many other problem-solving courts, the focus of domestic abuse problem-solving courts is primarily on victim safety, and not just on offender rehabilitation.

The international evidence on domestic abuse problem-solving courts is promising and shows that they improve the experience of victim-survivors, are more likely to impose requirements to hold perpetrators accountable than traditional court processing and can reduce the frequency and seriousness of perpetrator reoffending. This is encouraging when set against the paucity of effective options for reducing reoffending by perpetrators of domestic abuse.³⁴

Integrated domestic abuse courts (IDACs)

IDACs extend the domestic abuse problem-solving court model by having a single presiding judge cross-trained to handle all matters – criminal and civil – relating to a family. The aim is to improve defendant monitoring, operate with greater efficiency, and provide better services for victims. The UK's first IDAC was launched in Croydon in 2006. The court was a pilot which sought to bring together cases with a criminal element and concurrent Children Act or civil injunction proceedings at magistrate's court and Family Proceedings Court level.³⁵

The international evidence on IDACs is promising and indicates there are advantages to bringing together family, civil, and criminal cases; family cases that go through integrated domestic violence cases are significantly more likely to be settled or withdrawn than comparison cases and were significantly less likely to be dismissed and IDAC defendants were significantly more likely than comparison defendants to be rearrested in cases that included criminal contempt charges, implying a violation of a previous protection order. These findings suggest that IDACs may be particularly effective in detecting ongoing (and forbidden) contact with the victim-survivor.³⁶

Case study: The Westminster Specialist Domestic Abuse Court

Standing Together Against Domestic Abuse (STADA) is a national charity dedicated to eradicating domestic abuse. STADA developed the pioneering West London SDAC at Hammersmith Magistrates court, in partnership with the court and other statutory and voluntary sector partner agencies in 2002, and later established another SDAC at Westminster Magistrates' Court in 2012. Following the closure of Hammersmith Magistrates' Court, both SDACs continue to operate within Westminster Magistrates' Court, and are regarded as leading models of SDAC practice in England and Wales. The intended outcome of this approach is to improve the experience of the victim-survivor and increase their confidence in the process, ultimately to encourage the reporting of future crimes and increase the successful prosecution of cases. A recent evaluation of the model by the Centre for Justice Innovation elicited the core elements of SDAC and how they work to create impact:³⁷

- **Domestic abuse cases are grouped into a single hearing** overseen by magistrates or a district judge and dedicated court staff, who receive training in domestic abuse issues and apply this training to their conduct in court and decision making regarding bail, protective orders and sentences.
- **Court coordinators track each case and help the relevant criminal justice agencies** to stay informed on the developments in the case, and access and share information on the risks to the victim, so they are able to make appropriate safeguarding decisions.

- **Victim-survivors are supported during the process by a specialist independent domestic abuse advocate (IDVA)** employed by the domestic abuse charity Advance who has specialist knowledge of the criminal justice system. The IDVA provides emotional support and explains the criminal justice system, assists with safety planning throughout proceedings and provides updates about case hearings.
- **There is an emphasis on making special provisions for victim-survivors** to minimise the fear of threat or intimidation, such as providing a separate entrance and video links or screens inside the court.
- **Partnership working is the key to the model**, which unites disparate actors under a structure of governance and multi-agency protocols, to provide a coordinated and consistent approach. This strengthens the ability of busy and strained services to work together and keep the experience of the survivor at the centre of the process.
- **Regular court management steering and operational groups** are hosted with third sector and criminal justice agencies to discuss court practice, to improve coordination and accountability between key statutory and non-statutory agencies.

Problem-solving in the youth court



Responding to the changing youth justice system

Recent years have seen a welcome decline in the size of the youth justice system in England and Wales. The number of first time entrants to the youth justice system fell by 81% in the decade ending March 2021, with the number of children proceeded against at court falling by 80% over the same period.³⁸ These developments are very welcome as evidence suggests that prosecution can itself be criminogenic for children, extending and deepening their involvement in offending and damaging their life chances.³⁹

However, the paradox of this success is that those remaining in the system tend to have a more extensive history of offending, with a greater concentration of vulnerabilities and complex needs. The drop in court volume offers a prime opportunity to develop new approaches to better respond to this more challenging caseload. In our research report, *Time to get it right: Enhancing problem-solving practice in the Youth Court*, we recommend a greater focus on problem solving to best leverage this opportunity.⁴⁰ The Carlile Inquiry (2014),⁴¹ Taylor Review (2016)⁴² and Lammy Review (2017) also advocate further adoption of problem solving to address children's underlying needs.⁴³

Existing problem-solving practice in the youth court

Problem solving is already somewhat embedded in youth courts in England and Wales. Take specialisation, a key marker of problem solving: youth court cases are informed by youth-specific assessments and heard by specially-trained magistrates and district judges often in a specialised courtroom designed to promote engagement with children. In terms of collaborative intervention and supervision, Youth Offending Services (YOSs) are present at court, inform decision-making, supervise orders, and are typically involved with youth court user groups where these exist. Moreover, youth courts' mandate encourages a problem-solving orientation, i.e. an approach that targets the underlying issues of a child's offending. The principal aim of the youth justice system is to prevent offending and youth courts must pursue this aim while having regard to the welfare of the child. One of their six key objectives according to the Youth Justice Board (as cited in the Judicial College's Youth Court Bench Book) is to order 'intervention that tackles particular factors that lead youths to offend'.⁴⁴ Guidelines from the Sentencing Council – directing courts to pay greater attention to the child's background and personal circumstances – further enable youth courts to address the inter-connectivity between offending and life circumstances.⁴⁵

However, our research highlighted problems on the ground, including: long delays, especially in cases coming to court; lack of availability of professionals with the required specialisms for youth court; poor engagement of children in court; limited services to respond to children and young people's speech, language and communication or mental health needs; limited engagement by children's services (understandable given their resource constraints); and generally, a more difficult operational environment, resulting from the twin impacts of constant court modernisation (including court closures and mergers) and reductions in funding.⁴⁶ These shortcomings limit the problem-solving potential of youth courts.

Enhancing problem-solving practice in the youth court

In contrast with adult problem-solving courts, there is limited research evidence on the comparative effectiveness of specific problem-solving youth court *models*.⁴⁷ However, wider research suggests that the *principles* of the problem-solving approach may help courts better address youth offending, such as procedural fairness, specialisation and accountability.⁴⁸ In our research and wider engagement with youth court practitioners, we have seen examples of local creative and innovative practice inspired by these problem-solving principles. For example, in order to enhance procedural fairness, a core aspect of which is understanding, practitioners have designed 'child-friendly' leaflets outlining court processes and the role of different court professionals. Some areas have co-designed these materials with children or have had them reviewed by a speech and language specialist to ensure they are clear for young people with communication needs. In some areas, there are YOS protocols in place for identifying first time court attendees and targeting them with information about what to expect in court. To enhance specialisation, some areas are working on peer training programmes for youth court practitioners to share their expertise with others from different organisations or roles. To enhance accountability, as seen in the case study below, some areas operate post-sentence judicial monitoring.

We made the following recommendations in our research report: strengthen the youth court specialism of legal practitioner: develop magistrates' communication skills; enhance relationships between courts, YOSs and children's services; and extend and evaluate trials of the innovative judicial monitoring 'problem-solving' review model.⁴⁹ These are vital to ensure practice better aligns with the problem-solving aspirations of the Youth Court.

Case study: Review Panels in Northamptonshire

Northamptonshire Youth Offending Service, in collaboration with the Northamptonshire Youth Magistrates Panel, deliver out-of-court reviews of Youth Rehabilitation Orders. These reviews aim to track progress against the interventions proposed by the original sentencing court. The informal, child-friendly reviews are held at the YOS office, with magistrates, children, their carers, and the practitioners involved in the management of the orders in attendance. Children and young people are encouraged and supported to ensure that their voices are heard, they understand the progress made, and they can take more ownership of their intervention programme. The reviews adopt a collaborative approach to best troubleshoot problems and take solutions forward. Although they involve the participation of magistrates, the reviews are not a formal part of the work of the court and they do not have the power to make amendments to orders or to make a formal response to non-compliance. Northamptonshire's reviews panels have been overwhelmingly positively met. A few of the benefits reported include: securing the ongoing positive engagement of children; actively tackling negative attitudes towards the criminal justice system; and magistrates gaining a fuller understanding of the issues facing the children and young people they sentence.

Northamptonshire also operate problem-solving hearings whereby the child and their family, together with the broad range of professionals needed to tackle complex cases, are brought together in court to help collaboratively determine the dimensions of the court order.

Family problem-solving courts



Although problem-solving originated in criminal courts, it has also been extended to other courts which deal with entrenched social problems, most notably within the family justice system.

Complex problems in family court proceedings

Over the last 5 years there has been a 17% increase in the number of children and young people in England and Wales involved in family court proceedings. This figure has risen from 127,670 children in 2017/2018 to 149,018 in 2021/2022.⁵⁰ Abuse and neglect, stemming from complex issues such as parental substance misuse, mental health concerns and the impact of domestic abuse, can lead families into contact with the courts through public law care proceedings. Parental conflict, not uncommonly arising from similar issues, may bring families into the courts through private law proceedings. Unfortunately, a significant number of these families will return to the courts. A third of children in private law cases have been subject to previous proceedings,⁵¹ while one in four mothers enter into a second set of public law care proceedings within seven years, with 60% of these happening in short succession of one another.⁵² The harms and trauma that children whose parents are in conflict and/or are involved in harmful behaviours are often deep and long-lasting, marked by an increased likelihood of emotional and physical abuse, neglect, as well as a range of further negative impacts on their future life chances.

The difficult issues facing the family courts are only compounded by the additional strain of court delays and case backlogs.⁵³ HMCTS has previously estimated that it may take three years for the family courts to return to pre-pandemic levels. On average, care cases in England and Wales took 49 weeks in January to March 2022, up six weeks compared to the same quarter in 2021. There are also significant delays in private law family cases, impacting on children's contact with their parents. The Law Society note that family courts

are under immense pressure, and people with private law cases are experiencing unprecedented and unacceptable delays⁵⁴. Additionally, cuts to legal aid provision and the introduction of the no-fault divorce has led to reports by those working in family law of higher numbers of litigants in person (LiPs) – parties representing themselves through often highly stressful legal proceedings. In most cases, LiPs require more time and support from the court, which is likely to slow down the system and increase overall costs.

Existing problem-solving practice in family court: public law proceedings

Within public law proceedings, there has been a growth of problem-solving approaches to improve the way courts hear applications for the state to remove children from their parents owing to abuse or neglect. Public law problem-solving courts do this by offering an intensive package of support during the already-long duration of a removal case. Typically, parties also attend regular review hearings with a specialist judge, who remains consistent across the duration of the case. Parents are not subject to intermediate sanctions or incentives in the way that they might be in a criminal drug court, but they are aware that their parental responsibility or continued relationship with their children is dependent on their progress in the intervention.

Case study: Family Drug and Alcohol Courts (FDACs)

By far the most established and evidenced problem-solving court model in public law care proceedings is the Family Drug and Alcohol Court (FDAC). Piloted in London in 2008, the FDAC model now operates across 36 local authorities and 24 family courts in England and Wales.

Developed from the Family Treatment Court model originating in the US, FDAC is a therapeutic, problem-solving court approach to care proceedings for parents with substance misuse, domestic abuse, and/or mental health issues. FDAC employs motivational and

trauma-informed approaches designed to support parents in making the changes necessary to safely care for their children. The model follows the Public Law Outline but also includes intensive support from an independent specialist multidisciplinary team who provide expert advice and assessment to the court, as well as deliver and coordinate tailored intervention programmes for the family. Parents are regularly drug tested and the specialist team work collaboratively with the court, children's social care, and other key agencies to provide parents with the best possible chance to overcome their problems and meet the needs of their children. In addition to the support from the expert multi-disciplinary team, families benefit from a specially trained FDAC judge who remains consistent across the duration of the case. Parents meet every 2-weeks with their FDAC judge without the lawyers present, providing an opportunity for the judge to motivate parents about the progress being made, problem-solve around the remaining issues, and remind parents of the timescales and consequences.

FDAC has a strong evidence base. Research suggests that compared to the outcomes of similar standard care cases, FDACs significantly increase safe, stable family reunification and parental substance misuse cessation, and decrease the likelihood of future child neglect and abuse and recurrent care proceedings.^{55 56} Moreover, research, looking at a five-year follow-up period after proceedings end strongly suggests that FDACs' positive outcomes are durable over time⁵⁷. Qualitative research suggests that these positive outcomes are due to FDACs' intensive, holistic approach and the non-antagonistic supportive culture it creates around families.⁵⁸ There is clear evidence that parents find the FDAC process much more supportive, with a high number of parents identifying the role of the judge as a key factor in motivating them to change.^{59 60} These dynamics, found in the original pilot, have also been successfully replicated in other sites.

As a result of the strong evidence base, there have been a number of calls to implement FDAC more widely in England and Wales. In 2019, the Commission on Justice in Wales recommended establishing FDAC,⁶¹ leading to a pilot and ongoing evaluation of an FDAC in Wales

in January 2022. In May 2022, the Independent Review of Children's Social Care recommended bringing 'learning from FDACs and other problem solving approaches into public law proceedings, to make proceedings less adversarial and improve parents' engagement'.⁶² In June 2022, DfE funded research on supervision orders and care orders at home recommended setting up a task force to review possibilities of incorporating features of FDAC into mainstream care proceedings.⁶³

Case study: Glasgow Infant Family Team (GIFT)/ London Infant Family Team (LIFT)

This programme aims to improve the placement stability and long-term mental health outcomes of infants in foster care through clinical intervention. It is based on the New Orleans Intervention Model - a mental health assessment and treatment service for children aged 0-5 who are in foster or kinship care placements and subject to family court proceedings. The focus of the service is on the child's key attachments to caregivers. An early evaluation of the model in Louisiana indicated that children were more likely to achieve permanency of placement, less likely to be subject to future child maltreatment proceedings, and experienced improved mental health in middle childhood compared to children in proceedings who had not received the programme. This model was implemented as a randomised controlled trial (BeST trial) in Glasgow (Glasgow Infant & Family team - GIFT) and London (London Infant & Family Team - LIFT).

The GIFT & LIFT service is delivered by multi-disciplinary teams, who deliver assessment and intensive treatment using structured clinical tools and evidenced based interventions. In England, these cases sit outside the Family Court 26-week timetable, and cases are expected to last for up to 40 weeks. At the end of the intervention, the team provides a final report and makes an expert recommendation to the court on whether the child should be reunited with his/her parents or move to an alternative permanent placement.

Existing problem-solving practice in family court: private law proceedings

In 2020, the 'Harm Report' recommended that the family courts should pilot and deliver a reformed Child Arrangements Programme in private law children's cases, advocating for a 'non-adversarial, problem-solving approach in which judicial continuity is a key feature'.⁶⁴

Case study: Pathfinder courts

The Ministry of Justice has implemented the pilot of Pathfinder courts in Dorset and North Wales to explore how problem-solving in private law proceedings can improve the way in which courts respond to allegations of domestic abuse in child arrangement proceedings. The Pathfinder courts allow judges to review gathered information and request more documentation before a case gets to court. The pilot aims to avoid the circumstances of the case being debated in the courtroom, which can often exacerbate conflict between parents. Pathfinder courts aim to encourage proceedings to be less adversarial so that more emphasis can be put into investigating and addressing allegations of domestic abuse and other harmful behaviours.

Implementing problem-solving courts



The key ingredients

There is also now significant research on why problem-solving courts work. In general, this research highlights four factors:

Procedural fairness ● Procedural fairness refers to the strong evidence⁵⁵ indicating that individuals' perceptions of being treated fairly during the court process is an important influence on their future behaviour and compliance with court orders.⁶⁶ In practice, problem-solving courts have been shown to deliver greater procedural fairness through judicial monitoring, the process by which individuals are regularly brought back in front of the same judge to discuss progress and future challenges and opportunities for change.

Risk, need and responsivity ● The evidence indicates that problem-solving approaches should ensure the principles of risk, need and responsivity (RNR) are applied equally. RNR provides an empirical foundation on who should be treated, what should be treated (needs that specifically drive behaviour identified using empirically validated assessment tools, rather than secondary needs that are not empirically linked to that behaviour), and how treatment should be administered.⁵⁷ In the context of problem-solving court, RNR emphasises the need to develop customised sentence plans which respond to the individual circumstances of the individual, targeting the issues which are driving their behaviour, as well as avoiding “overdosing” lower-risk individuals with complex and intensive interventions.

Integrated intervention and supervision ● The evidence indicates that effective collaboration between agencies ensures service users have co-ordinated access to the necessary treatment and support services, with clear, understandable treatment plans and their goals and the rules for compliance clarified, which aids service user engagement in their treatment plans.

Legal leverage ● There is consistent evidence that perception of the severe consequences of failure to comply (a concept sometimes known as legal leverage) can be an important motivating factor in compliance. In practice, this is often delivered by positioning problem-solving courts as explicit alternatives to imprisonment (in criminal justice settings) or as the alternative to child removal in public family law.⁶⁸

Implementation lessons

Through our work, and the work of similar organisations like our sister organisation, the Center for Court Innovation and the National Association of Drug Court Professionals in the USA, we highlight the following lessons:

Build sustainable projects ● A successful practice development approach should place a strong emphasis on co-design of approaches with the people and institutions who will deliver them. This is not only essential for ensuring adequate ownership to implement an approach effectively, but is also required so that any approaches implemented are appropriate within the local context. Moreover, setting up problem-solving courts so they are sustainable rests on integrating them with local services, and within existing court processes. While, in the early stages, investment to build the sites' capacity to set up and deliver projects is necessary, problem-solving courts need to live within their means and the resourcing of additional, new services should primarily be resolved locally.

Provide training ● Problem-solving courts require services and judges and court staff to work in a new and different way. Their focus on effective, multi-agency joint working and their focus on procedural fairness require practitioners to re-think processes, procedures, court environments and also their interactions with service users. Our experience of training and supporting new teams and judges to work together underlines the need for dedicated and focused training and its re-enforcement through team-building. Second, while we recognise that this is a sensitive subject, training needs to encompass support for judges. There is a perception that problem solving is the preserve of a finite number of naturally charismatic individual judges. The evidence counters this view. Rather, there are specific, well-understood techniques that judges can deploy to secure the best outcome. For example, simple procedurally fair practices such as eye contact and offering individuals opportunities to be important to effective judicial monitoring. Effective problem-solving practice is a skill which judges can learn – both from the evidence base about what works and from each other.

Build communities of practice ● In our experience, after the initial set up phase, practitioners need to be encouraged to learn, reflect and improve as their practice matures. Creating fora in which practitioners working in complementary problem-solving courts can swap ideas, share problems and be inspired by emerging new practice help problem-solving court practitioners feel part of a dynamic and learning community.

Evaluate ● Once problem-solving courts have been set up and had a period to bed in and become sustainable, they should welcome rigorous outcome and qualitative evaluation. Initial success criteria, and the data needed to judge success, should be established in this development phase. Given models for different types of problem-solving are likely to vary in terms of their aims, their target populations services and their court procedures, it is worth exploring whether different sites are evaluated separately or whether a single evaluation can be commissioned for a collection of sites together.

Document wider benefits ● Non-justice providers and commissioners should be made aware that justice resources are being committed to deliver outcomes which meet the goals of many different agencies, such as reduced drug use. Moreover, even with justice resources, problem-solving courts may produce (non-cashable) benefits i.e. substance misuse courts may entail a small increase in the immediate caseloads of probation services, but this will likely be balanced out by savings in custody and post-custodial supervision.

Find out more

For more information on problem-solving courts, our work and how we can support you, please go to our website:

<https://justiceinnovation.org/areas-of-focus/problem-solving>.



Endnotes

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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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