

## CENTRE FOR JUSTICE INNOVATION

### CONSULTATION RESPONSE: RECOMMENDATIONS TO ACHIEVE BEST PRACTICE IN THE CHILD PROTECTION AND FAMILY JUSTICE SYSTEMS INTERIM REPORT (JUNE 2019)

#### BACKGROUND

1. The Centre for Justice Innovation's vision is a justice system which every citizen believes is fair and effective. We work across the United Kingdom and seek to draw and share lessons from each jurisdiction in the UK, and, through our special relationship with the Center for Court Innovation in New York, internationally.
2. We are grateful for the opportunity to offer our views into the Public Family Law Group's deliberations, and as the primary organisation running the new Family Drug and Alcohol Court (FDAC) national partnership, we make special reference to the evidence and practice of problem-solving courts and wider problem-solving justice initiatives.
3. We share the President's view and the view expressed in this interim report that the public family justice system needs to both reduce the volume of cases coming to court, and to enhance the ability of the courts to resolve cases efficiently and effectively, drawing on a range of agencies to resolve the multiple and complex issues that bring families into court.

#### LOCAL AUTHORITY DECISION MAKING

##### **Recommendation ii: A shift in culture to one of co-operation and respect that values and equally questions the contribution of all parties.**

4. We welcome the report's recognition that all parties' involved in family justice benefit from a less adversarial and more co-operative approach to child protection and care-proceedings. An adversarial approach can entrench mistrust between families and Children's Services, fuelling misconceptions about the role of social workers in family life.
5. Evidence from FDACs has shown that a collaborative approach to proceedings is more effective at engaging parents and supporting them to change, both in the short and long term.<sup>1</sup> The shift in culture is achieved through adaptations to standard proceedings which answer the need to give parents an equal voice. For example, bi-weekly Non-Lawyer Reviews give parents the opportunity to speak directly to the judge, who will value and question their contribution equally to that of the social workers and FDAC team. Non-Lawyer Reviews provide the judge an opportunity to openly encourage and challenge both parents and practitioners to work together to a common aim. By insisting on transparency

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<sup>1</sup> This is demonstrated through outcomes such as: a significantly higher proportion of FDAC than comparison families were reunited or continued to live together at the end of proceedings (37% v 25%). A significantly higher proportion of FDAC than comparison reunification mothers (58% v 24%) were estimated to sustain cessation over the five-year follow up. Harwin J, Alrouh B, Broadhurst K, McQuarrie T, Golding L, and Ryan M. (2018) *Child and Parent Outcomes in the London Family Drug and Alcohol Court Five Years On: Building on International Evidence. International Journal of Law, Policy and The Family*, 2018, 0, 1–30

and empathy, the reviews encourage both parties to understand each other's motivations and imperatives.

6. We propose that embedding a similar collaborative approach to working with parents within child protection is likely to engage parents at an earlier stage and prevent the need to enter formal pre-proceedings. Key components of FDAC practice, such as a key worker who helps parents to navigate services and who is empathetic and hopeful, is likely to enable strong relationships to form between parents and professionals. The success of a project such as Love Barrow Families in Barrow-in-Furness, Cumbria, indicates that focusing on these relational elements of practice at the stage of Child Protection is likely to prevent cases coming into court. Parental engagement and good relationships are significant, as evidence and practice wisdom suggests that parental non-compliance with the social work process at the child protection and pre-proceedings stage is likely to cause cases to escalate to court, even when the parenting concerns have not become more severe.

### **Recommendation iii: A renewed focus on pre-proceedings work and managing risk**

7. The Centre for Justice Innovation believes in proportionate justice: seeking to do no harm, concentrating on the right intervention at the right time with the right people and no more. A renewed focus on pre-proceedings work fits with a vision of proportionate justice. Pre-proceedings interventions should be aimed at preventing the need to issue care proceedings, rather than simply preparing for court, which means undertaking focused and collaborative work with the family.
8. However, the success of the FDAC model, which combines judicial monitoring with the intensive support of a multi-disciplinary team, has shown how the court process itself can also be re-imagined to complement intensive support. While issuing should always be a last resort, the court can be an agent for change, so we disagree with the proposal that 'completing all work prior to going to court' is necessary. The FDAC model has shown that continuing supportive services through the proceedings process gives parents a final and powerful chance to make necessary changes they haven't managed to make or sustain at pre-proceedings.

## **PRE-PROCEEDINGS AND THE PLO**

### **Recommendation xiv: Better use of assessments, services and support and fuller record keeping**

9. We are pleased that the report has recognised that the 'multi-agency, problem-solving approach of the sort seen in the Family Drug and Alcohol Court is the key to successful and better outcomes for the children, and this should become the standard rather than the exception'. There are several points to draw out from this observation.
10. The first and obvious point is that not every family who needs one has access to FDAC currently. There are only eight FDAC specialist teams, serving eleven family courts. There is therefore a postcode lottery both between and within local authorities, as to whether a family can access an FDAC. Given that the evaluations of FDAC clearly show it consistently delivers better reunification and substance misuse outcomes compared to standard proceedings, this lottery is unjust. We believe that every family who could benefit from an FDAC should have access to one. This is a question of policy and funding but not one that requires legislative or procedural change. We suggest that the Ministry of Justice and the

Department for Education actively work on how to make FDAC a more sustainable model, by considering changes to court fees and recognising the cashable savings FDAC already produces within how FDACs are funded.

11. Moreover, there are several variations or extensions to the FDAC model which we believe could be fruitfully explored, including using a multi-agency problem-solving approach to care proceedings where the main concern is parental domestic abuse or child neglect. It is likely that we, at the FDAC national partnership, will be able to work with existing FDAC areas to develop a prototype problem-solving court response to these common triggers for proceedings.
12. Outside of replicating FDACs across the country, and developing the model for other types of cases, we believe the different components of the multi-agency, problem-solving approach exemplified by FDAC should be considered and tested more broadly within child-protection. For instance, could Independent Reviewing Officers or chairs of a Child Protection conference incorporate into their work the tools of the FDAC judge and specialist team? Furthermore, collaborative thinking is needed across different agencies within local authorities. At the pre-proceedings stage, parental mental health or material needs like inappropriate housing are often identified as concerns or risks within Children's Services' assessment, but the relevant authority cannot act to mitigate that risk due to different eligibility criteria or thresholds. Joint protocols and 'thinking together' meetings could be better and more punctually used to prevent it becoming necessary to issue proceedings.

#### **Recommendation xxxvi: Renewed emphasis on judicial continuity**

13. We agree that judicial continuity should be a priority and is key to making proceedings more humane for parents. Parents in FDAC frequently talk about building a relationship with the judge which helps them to trust the judge's decision and to experience the courts as procedurally fair. This should be the goal for all proceedings.
14. The evidence that problem-solving approaches can promote procedural fairness and lead to better outcomes is compelling. A multisite evaluation of US treatment courts which use a problem-solving approach emphasised the importance of the relationship that individuals established with the judge, finding that "perceptions of procedural justice – and especially attitudes towards the drug court judge were the strongest predictor of reduced drug use."<sup>2</sup> The study also found substantial evidence that perceptions of fairness increased compliance and improved outcomes. An evaluation of FDAC similarly highlighted the importance of people's interactions with the judge, and the impact that this approach had in promoting a sense of fairness, with fewer appeals being pursued than in standard proceedings.<sup>3</sup> There is also substantial evidence for a number of different specific types of court that improved perceptions of fairness increase compliance and improve outcomes.<sup>4</sup>

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<sup>2</sup> Rossman et al. 'The multi-site adult drug court evaluation' Urban Institute' 2011).

<sup>3</sup> Harwin, Alrouh, Ryan and Tunnard, 'Family Drug and Alcohol Court (FDAC) - Evaluation Research Study', Brunel University, 2014 [<http://fdac.org.uk/wp-content/uploads/2016/09/FDAC-Report-final-1.pdf>]

<sup>4</sup> See evidence on procedural fairness: (Lee et al. 'A Community Court Grows in Brooklyn: A Comprehensive Evaluation of the Red Hook Community Justice Center', Williamsburg VA: National Center for State Courts, 2013.); on housing court (Abuwala and Farole, 'The Perceptions of Self-Represented Tenants in a Community-Based Housing Court', Court Review, 2008); on drug courts (Marlowe et al. 'The judge is a key component of drug court.' Drug Court Review, 2004, Gottfredson et

**Recommendations xl & xli: Experts: a reduction in their use and a renewed focus on “necessity” and a shift in culture and a renewed focus on social workers and CGs**

15. The report is right to be concerned with the expense and delay that a proliferation of expert assessments in care-proceedings can cause. However, we would question whether the shift in culture which is necessary to make proceedings both timely and less adversarial can be achieved by giving more weight to social worker’s reports, when they are agents for the local authority which is a party to proceedings. Parents often do not believe that their children’s social worker is in a position to objectively assess their familial bonds and feel they will get a fairer assessment from an Independent Social Worker or psychologist. The long-term distrust which this indicates will not be solved by dispensing with expert reports and could instead lead to a deepened sense that proceedings are ‘rigged’ against parents.
16. The FDAC model has lessons for creating a culture which is timely and cost-efficient, while shifting proceedings to a culture of ‘co-operation and respect that values and equally questions the contribution of all parties’. The FDAC multi-disciplinary team takes the place of an expert witness, independent from the local authority, but significantly, provides treatment as well as assessment. This holistic treatment and assessment reduces the delays caused by commissioning several different expert reports. Significantly, evaluations have indicated that the team’s independence from the local authority social worker is prized by parents, enabling them to form strong relationships with the FDAC team and to experience it as fairer than normal proceedings. As a result, parents are less likely to contest at the final decision, reducing costs and allowing proceedings to conclude in a timely fashion.<sup>5</sup>
17. The social workers and judiciary who work with FDAC cases report that parents’ increased confidence in the fairness of the court also improves their respect for these professionals’ expertise. Social workers express feeling more valued in FDAC cases, as the whole process is less adversarial and they have more time to conduct meaningful work with the children subject to proceedings.

**Recommendation xlii: Judicial extensions of the 26- week limit**

18. We are concerned that this recommendation suggests cases should only be extended when ‘the way forward for the child is clear’. Extending the 26-week statutory time limit can be in the ‘interest of justice’ even when the way forward is not completely certain. For example, if a parent is engaged and making good progress, but has made a change relatively late in the assessment or has not sustained the change for a long period. Extending the case at this point can allow the parent time to stabilise, sustain the changes and ultimately have their child remain or returned to them. Within FDACs, experience suggests that judicial extension has been well-utilised in cases where parents are demonstrating their willingness to change but are not quite ready to care for their children at 26 weeks. We are grateful that FDACs, which take on average around 33 weeks from

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al. ‘How Drug Treatment Courts Work: An Analysis of Mediators.’ *Journal of Research in Crime and Delinquency*, 2007. See also Lagratta and Bowen, ‘To be fair: procedural fairness in courts’, Criminal Justice Alliance, 2015.

<sup>5</sup> ‘Fewer FDAC than comparison cases were contested at final hearing (whether concluded in FDAC or in ordinary proceedings). This would have meant less delay in obtaining a final hearing and reduced costs and indicates greater agreement among the parties about the proposed course of action.’ Harwin J, Ryan M and Tunnard J, with Pokhrel S, Alrouh B, Matias C and Momenian-Schneider S (May 2011) *The Family Drug and Alcohol Court (FDAC) Evaluation Project Final Report*. Brunel University, p.5.

start to finish, have been given a clear exemption from the 26 weeks' target, given that they are delivering real time change in proceedings. We hope and expect this crucial insight to continue for FDACs and indeed would argue it should be extended if new innovative, problem-solving models are being trialled for different cases (see para 10.)

**Recommendation xlvii: The promotion nationally of consistency of outcomes**

19. Consistency of outcomes depends on consistency of method. As set out above, a postcode lottery for interventions can only encourage inequity of outcomes.

**About the Centre for Justice Innovation**

The Centre for Justice Innovation seeks 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 (charity number 1151939).