

## Briefing

# Family Drug and Alcohol Courts under Covid-19: A Practice Briefing

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Family Drug and Alcohol Courts (FDACs) are courts that aim to provide a fairer and more humane means of running care proceedings for children at risk of significant harm due to parental drug and/or alcohol misuse. Independent evaluations by Lancaster and Brunel Universities have found that parents who engage with FDAC are more likely to stop misusing substances and reunite with their children than those in standard proceedings.<sup>1</sup>

FDACs use a problem-solving approach. Parents have the same judge throughout; the court is supported by a multi-disciplinary team (MDT); and the focus is on providing a comprehensive response to the problems that led to care proceedings. The MDT includes social workers, substance misuse specialists, psychologists, domestic abuse specialists and parent mentors. They broker, coordinate and provide the monitoring, support, and treatment required by parents, working intensively with them throughout the proceedings. The team provides regular updates and a final recommendation to the court on the parents' ability to care for their children safely. The period of specialist team support and assessment is called the Trial for Change.

FDACs are rooted in a therapeutic and relationship-based model. They use the power of trusting relationships to provide a supportive but challenging atmosphere in which parents can address their substance misuse and improve their parenting. Integral to its success are the interpersonal relationships that develop, both between parents and the practitioners in the MDT, and parents and the judge (who meet fortnightly for an informal court hearing without lawyers present - the Non-Lawyer Review).

Is it possible for such a service – which is so reliant on the power of human relationships – to operate effectively during times of social distancing?

Many sites have been innovative in adapting their support to families during Covid-19, but all face significant challenges in offering parents a full and fair Trial for Change.

In this briefing we examine how the nine existing FDACs across England are adapting to service delivery during the current crisis. We focus on five key areas: Hearings, Issuing New Cases, Court Timescales, Direct Work, and Drug Testing. We highlight the practical challenges facing practitioners, judges and families and, under the heading of Innovative Practice Spotlight, we shine a light on some of the specific solutions that have been developed in response to the Covid-19 pandemic.

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<sup>1</sup> Harwin J, Alrouh B, Ryan M and Tunnard J (May 2014) *Changing Lifestyles, Keeping Children Safe: an evaluation of the first Family Drug and Alcohol Court (FDAC) in care proceedings*. Brunel University; Harwin J, Alrouh B, Ryan M, McQuarrie T (December 2016) *After FDAC: outcomes 5 years later Final Report* (December 2016). Lancaster University.

## Court Hearings

### *Non-Lawyer Review Hearings*

Non-Lawyer Reviews (NLRs) are regular informal hearings that bring together parents, judge, children's social worker, guardian and the FDAC key worker. They are a significant procedural difference between FDAC and standard care proceedings with the judge engaging directly with parents, receiving updates on their progress from both them and the professionals. Through conversation, the group work to find ways of solving problems, and the judge explains the next stage of proceedings.

Given that this frequent contact with the judge is key to the success of the model, most FDACs have searched for ways of switching to remote NLRs during the pandemic. Some are using video-conferencing platforms, like Skype for Business, or telephone-conferencing.

### *Lawyer Hearings*

The normal court hearings in all care proceedings - for example Case Management Hearings and Issue Resolution Hearings - are known in FDAC as Lawyer Hearings. At present, these too are largely being conducted remotely, though some areas have continued with face-to-face hearings in court, observing social distancing guidance.

### *Strengths*

Parents have been enthusiastic about their NLRs continuing, albeit remotely. They feel supported by the extra efforts judges have made to maintain their relationship.

Most teams report that, as a short-term measure, remote NLRs are working well.

### *Concerns*

Limited access to equipment for parents creates barriers to having remote hearings via video conferencing, and only a minority of local authorities and FDACs are providing parents with video devices.

Not every area can find a video-conferencing platform that is acceptable to the requirements and/ or needs of the court, local authority, parents and FDAC staff. As a result, some FDAC hearings have been replaced by written reports or phone calls. This is an issue across the Family Justice System and is under review by HMCTS and the MOJ. The Nuffield Family Justice Observatory's rapid consultation on the use of remote hearings, undertaken on behalf of the President of the Family Division, outlines the variability in practice and the concerns raised regarding remote hearings in the family court.<sup>2</sup>

Remote hearings with parents who need an interpreter poses particular problems. Pausing each time that the interpreter translates is disruptive, as is having the interpreter and parent speaking simultaneously.

Parents with anxiety, sensory processing difficulties, or learning difficulties find it very difficult to understand the hearing and to participate only via audio.

The living arrangements of many parents makes it difficult for them to be in a separate space from children and others during their hearings. Practitioners are concerned about the privacy of remote hearings and about the need to safeguard parents and children in the home. It is not possible to know if children or other parties remain in the room or can hear the proceedings.

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2 Ryan M, Harker L, Rothera S (May 2020) Remote hearings in the family justice system: a rapid consultation. Nuffield Family Justice Observatory.

This is of particular concern where parents are living together and domestic abuse has been, or still is, an issue. Remote hearings where serious orders are being made, such as removal hearings, have been very tough for parents given the absence of the normal face-to-face support from the team or their legal representative.

### **Innovative Practice Spotlight**

To ensure that parents can engage as fully as possible in remote hearings, practitioners have:

1. Increased informal NLR hearings from fortnightly to weekly in order to maintain parental motivation and engagement whilst their access to other services has been reduced or temporarily stopped.
2. Provided a quasi-court space with a laptop so that parents can access their remote hearing safely if they do not have a suitable device at home.
3. Enabled parents with social anxiety, sensory processing, or learning difficulties to attend hearings via video-conferencing.

### **Issuing New Cases**

Normally, potential FDAC cases are selected and referred to the team by the local authority. In some places, FDAC also works with families in pre-proceedings. The criteria for inclusion in FDAC is that parental drug and/or alcohol misuse does, or is likely to, impact on the child's health and development. Most families have a range of other problems too, including domestic abuse and parental mental health difficulties. The standard threshold for care proceedings applies and, if families are not selected for FDAC or choose not to accept the offer, the case is heard in care proceedings as standard.

During the present crisis, some local authorities are issuing emergency cases only, with other applications put on hold because the risk has been assessed as manageable in the short term through pre-proceedings work. In contrast, other areas report that care applications have risen because the crisis means that risk cannot be managed safely in the community.

### **Concerns**

FDAC teams envisage that a significant number of proceedings will be issued when the situation becomes more settled and they are concerned about the likely strain on their service, and the wider Family Justice System, in coming months.

Many ongoing and new cases are being adjourned as it is considered that it would not be possible to hold a fair and just final hearing via virtual means. Teams and judges are concerned about the increased backlog of business in courts, and of additional delay in case scheduling. FDAC funding from local authorities is normally based on providing a certain number of cases per year; most teams are concerned that they will face significant capacity issues when the crisis subsides as new cases are issued, and adjourned cases resume.

Initial assessments and key planning sessions - like Formulation Meetings and Intervention Planning Meetings - are very difficult to conduct remotely, especially if the parent is digitally excluded.

It is impossible for parents to engage properly if they only have a phone, while the professionals meet by video. Issues such as limited data capacity and access to key reports that are being discussed can also be excluding factors.

In addition, it is extremely challenging to try and build a therapeutic relationship by phone with a parent who is new to FDAC. It is easier, though far from ideal, trying to maintain relationships with parents where trust was beginning to develop before the crisis started.

### **Innovative Practice Spotlight**

To help when local authorities are considering whether to issue new proceedings, practitioners have:

1. Developed a triage system for new referrals to determine whether a parent's communication and language skills are sufficient to make a remote assessment viable.
2. Agreed with the local authority to provide digitally excluded families entering the service with a device that enables them to access video hearings and key work.
3. Where possible, supported children's social care by offering the time of specialists in the team to deliver remote domestic abuse training to social work staff, or to provide families in pre-proceedings with independent support and interventions.

## **Court Timescales**

Like all care proceedings, FDAC operates under the legislation that requires proceedings to be concluded within 26 weeks, barring exceptions. The FDAC Trial for Change runs between weeks 4 and 18 of proceedings, with the team making recommendation to the court at week 19. If the judge agrees to an extension to the 26-week timescale it is usually because an FDAC parent is engaging well and making the necessary changes; the extension will not be detrimental to the child; and the extra time will help consolidate the promising progress.

These requirements and provisions remain unchanged during the current pandemic.

### **Strengths**

While FDAC's work with parents continues remotely, teams will be able to continue assessing some aspects of motivation and compliance – especially the extent to which parents are engaging with their keyworker, and whether there is any shift in their insight about their children's needs and their own circumstances. These are an integral part of the Trial for Change and progress here will help lay the groundwork for other interventions and treatments that typically follow.

### **Concerns**

However, the ability of parents to demonstrate the sustained change required by the Trial for Change is severely compromised by the lack of other social care and health services that are available during the pandemic. At present, many community drug treatment and domestic abuse services can offer only much reduced support.

These interim measures do not amount to the FDAC Trial for Change: parents are not receiving the same enhanced service and that means that any judgment of progress will be more limited.

As a result, teams are clear that, in the interest of justice, it will be inevitable that some cases will need longer than 26 weeks. An extension will likely be recommended in a number of cases so that parents can have the treatment and services they would expect from FDAC, and demonstrate their capacity to change. This will further exacerbate capacity issues for FDAC teams later in the year.

### **Innovative Practice Spotlight**

To address concerns that parents are not able to access the usual FDAC service and make enough progress within their child

1. Added a heading to court reports and parenting assessments in this period so that it is clear what has been completed during Covid-19 working arrangements.
2. Had conversations with parents, children's services and the judiciary to identify cases where a recommendation for an extension may be likely.

### **Direct Work**

In FDAC, each parent is assigned a keyworker in the specialist team who gives them intensive support during proceedings. This one-to-one direct work runs alongside other interventions from team members who are specialists in substance misuse, domestic abuse or mental health issues. Some teams also run therapeutic groups. Parents may be meeting the team as much as four times a week during their Trial for Change.

Alongside direct work with the specialist team, parents in FDAC engage in key-work sessions and group interventions offered by local treatment agencies and community services. The brokerage and coordination of services provided by local peer networks - such as Alcoholics Anonymous (AA), Narcotics Anonymous (NA), and Cocaine Anonymous (CA) - are integral to parents' recovery plans.

It is a huge challenge to maintain these busy treatment schedules during Covid-19. Most FDACs are offering almost all team interventions and groups remotely. Some continue with face-to-face direct work, undertaking assessments in person following an individual assessment of risk.

Many local treatment agencies have reduced their drug testing, are undertaking initial screening only (rather than continuing with keyworker sessions), and have reduced contact with clients to once a week. Teams also report that other community services, such as domestic abuse services, are more limited in what they can offer to support parents during the pandemic. FDAC teams are feeling under pressure to fill the gaps in these community services and are concerned for their existence beyond Covid-19.

Children's services vary in the frequency of home visits and direct work they can offer. Some continue as before, whilst others have scaled back and reduced most home visits. The variation is particularly challenging to manage by the FDAC teams who are commissioned by more than one local authority.

### **Strengths**

Some sites report that parents are responding positively to remote key-work delivered by phone or video, especially those who are already engaging well with the service. Some group interventions, such as Circle of Security, work well in virtual formats.

## Concerns

Remote key-work is problematic for parents already struggling to engage. Carrying out meaningful treatment and therapeutic work is particularly difficult for parents with children at home in need of care and attention. Practitioners are very concerned about managing challenging conversations with parents remotely and the impact that this may have on their parenting.

As mentioned above, there is concern about supporting parents affected by past or current domestic abuse. Trying to undertake key-work with parents who are living together or where children are present is especially difficult.

One team has stopped its 'healthy relationship' sessions in these circumstances because the risk is too high and they cannot mitigate against problems that might arise.

Teams are finding that parents need IT support to download programmes (like Egress and Skype) that are necessary in order to be able to receive electronic reports securely, or engage in remote key-work. Many parents do not have the knowledge, equipment, and/or data capacity to access the IT required. As a result, it is necessary to send parents hard copies of documentation by recorded delivery.

Teams report that parents are living in increased states of deprivation. There is more need for them to resolve issues, especially over accommodation, medical prescriptions, and food shortages.

Contact with separated children and home-schooling are also emerging as new areas where parents need support.

Some FDAC teams are depleted significantly by the redeployment of staff, self-isolation, or shielding due to staff health conditions. This limits the number of staff available for direct work, even in cases where it has been assessed as safe to do so.

### **Innovative Practice Spotlight**

To ensure that parents can engage as fully as possible in direct work, practitioners have:

1. Increased key-work, contacting parents every day (sometimes multiple times) for some form of intervention or catch-up.
2. Ensured that parents who live together in a domestically-abusive relationship each have a separate keyworker, and have scheduled key-work simultaneously, providing one route to discourage couples overhearing the other's sessions.
3. Reviewed each parent's intervention plan as a team, adapting the plan to support remote working.
4. Made sure to deliver negative messages or recommendations one-to-one over the phone, rather than have parents hear them in group video-conference meetings.
5. Contacted NA, CA and AA and linked parents with these peer networks, who are providing very supportive virtual contact and groups.
6. Sent resource packs to parents via email and post, which include homework, but also nappies, baby wipes, cleaning materials and fun activities.

## Drug Testing

Drug testing is an important part of FDAC. It provides motivation to parents to maintain abstinence and provide evidence to the court. In most cases, testing for drugs and alcohol is undertaken routinely when the FDAC team sees a parent, typically at least once a week. It normally involves breathalysing for alcohol, and urine testing for a range of drugs. Blood testing and hair strand sampling is also done routinely; these are processed by testing laboratories, and are methods for screening longer-term substance or alcohol use.

The crisis has led to most sites suspending all drug screening because of the health risks to parents, staff, and their families.

The exception is where testing is required by a court order or is needed for safeguarding concerns about children in the home. The drug testing that continues is mostly that which is processed by a testing laboratory.

### Strengths

The testing required as evidence for the court, and completed whilst wearing full personal protective equipment (PPE), enables cases to progress and reduces delay.

### Concerns

Any testing could threaten the health of staff, parents and their families. Breathalysing and urine testing are particularly risky for the spread of Covid-19. As most FDACs have stopped this form of screening, it is more difficult to confidently assess abstinence in the short-term.

Practitioners are concerned about the power imbalance in court-ordered testing because it forces parents to break social distancing rules, exposing them to the risk of catching coronavirus.

In addition, staff are provided with PPE for essential testing, but parents are not.

Some laboratories are unable to undertake testing because of PPE shortages, but there are increased costs associated with switching contracts to another testing provider.

### Innovative Practice Spotlight

To maintain the important role of drug testing, practitioners have:

1. Worked with the local authority to ensure that full PPE is available for FDAC practitioners undertaking home testing.
2. Reminded parents that they will have hair strand tests in the future, and that this will be able to detect any current substance misuse.
3. Begun discussions with testing laboratories - and offered to foot the additional cost - for undertaking hair strand testing and blood sampling at parents' homes, addressing concerns around power imbalance and parent safety.
4. Increased their remote contact and support to continue to develop a trusting relationship with parents, enabling them to feel able to disclose and deal with any lapse or temptation to use.

## Conclusion

The pandemic places a huge strain on everyone involved in care proceedings and on our family justice system in general. For many parents engaged in FDAC, the social distancing and other pressures of Covid-19 impacts their ability to achieve the changes needed for a successful outcome. Unable to access the full services and support that would usually be available as part of FDAC's Trial for Change, they are vulnerable to reverting to problematic behaviours and habits that they have worked hard to address.

*At present, three key findings emerge from the work of the FDAC network during the crisis:*

### **The deficits created by the interim arrangements under Covid-19**

To succeed in FDAC, parents must prove that they can change their lifestyle and then sustain that change. Ordinarily, support for parents to bring about this change is carefully considered as part of their individual Trial for Change. At best, while the pandemic restrictions continue, parents can be tested on their willingness to engage in discussions with the team and judge, but it is not possible to judge how well they would respond to the tailor-made intensive treatment package that is not available to them for now.

No amount of creativity can remove the grave concern about the injustice of making potentially life-changing decisions for children without due regard to the test that is applied in normal circumstances. As a result, extra time in care proceedings is likely to be needed for many parents, so that they have the chance to demonstrate their commitment – and their ability – to work intensively and put their learning into practice.

### **The commitment of everyone involved to keep the service running as well as it can**

The creative approaches being implemented by FDAC teams, judges, stakeholders and partners help to continue building and maintaining trust with FDAC families. This is especially so at a time when parents report a sense that other community services are falling away. Of equal importance is the readiness of parents to continue engaging with their specialist team and judge, despite the new technical, financial and emotional challenges confronting them. This success is testimony to the value and strength of the relationship-based principles that underpin the FDAC model.

### **Lessons beyond FDAC**

At this time of unprecedented uncertainty, it is heartening to hear many FDACs report that parents have been keen to check in regularly with the team by phone and video calls, and they are pleased that judges are making special efforts to use similar methods to continue holding fortnightly Non-Lawyer Reviews. FDAC's non-adversarial and therapeutic approach in court boosts parental goodwill and engagement with the judge, as well as providing routine and reassurance during such challenging circumstances. In a context where judges and lawyers are reporting the daily challenges of enabling parents' participation in remote hearings, the style and practice used by FDAC judges and practitioners might be of interest to other courts, and it is clearer than ever that the FDAC model has a wealth of good practice to share with the system more widely.

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