

## THE PRINCIPLES OF PROBLEM-SOLVING COURTS

### Purpose of the document

The Family Drug and Alcohol Court (FDAC) is one of the foremost examples of problem-solving justice in the UK.<sup>i</sup> As the FDAC National Unit supports roll out of FDAC across a wide range of areas in England it would be helpful to articulate what problem-solving justice is and what the components of a problem-solving court are. This document sets out:

- the principles of problem-solving justice, and
- the components of problem-solving courts (one model of problem-solving justice practice).

The purpose of the document is to set out the broad principles of problem-solving justice within which FDAC sits, rather than focusing on the detail of the key components of the FDAC model or the competencies required for FDAC professionals.

### The principles of problem-solving justice

Problem-solving justice is a strand of theory and practice in international jurisprudence. Problem-solving justice borrows heavily from theories of therapeutic jurisprudence,<sup>ii</sup> the idea that the substantive rules, legal procedures, and the role of legal actors can produce therapeutic or anti-therapeutic responses from those involved in the justice system. Therapeutic jurisprudence proposes that special regard should be given to shaping the justice system in such a way as to help increase the psychological well-being of those who come into contact with the system. Developing from that starting point, problem-solving justice sees contact with the justice system as an opportunity to address social problems and to strengthen the legitimacy of justice institutions.<sup>iii</sup>

The five principles of problem-solving justice<sup>iv</sup> are:

- **Enhanced information:** Whether it be offenders, victims or families in distress, problem-solving justice projects enhance the information available to decision makers (whether they be judges, court professionals etc.) about client groups coming through the justice system. They do this through providing specialist insight and assessment into the problems faced by clients and enhanced information about the options available to decision makers that may work in resolving these issues.
- **Collaboration:** Problem-solving justice projects bring together multi-disciplinary teams with a common goal of addressing social problems and increasing public safety. These collaborative teams work together to provide rounded responses to complex problems by combining their resources and expertise.
- **Procedural fairness:** Moving beyond ensuring individuals rights are observed and realised, problem-solving justice projects emphasise the value of fair and respectful handling of people, treating them with dignity, and listening to what they have to say when making justice system decisions. Problem-solving projects therefore recognise that how decision are made and how processes feel is as important as what interventions and services are provided.
- **Accountability:** Hand in hand with fair treatment and better services, problem-solving justice projects recognise the importance of holding people accountable for their actions. They insist on regular and rigorous compliance monitoring—and clear consequences for non-compliance—and use the authority and leverage of the justice system to hold people accountable.
- **Focus on outcomes:** Problem-solving justice projects have a clear focus on improving the outcomes of the justice system. First, they focus on implementing what works to address the

problems that underlie the behaviour of people coming through the system and to work on the strengths they have. Second, through the active and ongoing collection and analysis of data, and by measuring outcomes and costs and benefits, problem-solving projects are focused on changing people's and communities' lives through effective operations and encouraging continuous improvement of the justice system.

## **Problem-solving courts**

### *Origins and growth of the problem-solving court movement*

Perhaps the most prominent form of problem-solving justice is the problem-solving court, which originated in the USA. The growth of problem-solving courts across the United States has been swift since the creation of the first drug court in Dade County, Florida, in 1989, and the Midtown Community Court in New York City in 1993. Following the creation of those first courts nearly twenty years ago, problem-solving courts have spread across the country and entered new jurisdictions. At present, there are well over two thousand problem-solving courts in the US, including courts in the criminal, family and juvenile jurisdictions.

Problem-solving courts now exist all over the world. In particular, drug courts have spread to Barbados, Bermuda, Brazil, Canada, Cayman Islands, Chile, Ireland, Jamaica, Mexico, New Zealand, Norway and Trinidad and Tobago. In other instances, countries have been directly inspired by the US problem-solving court movement, as in the example of the Collingwood Community Justice Centre in Australia and the Downtown Community Court in Vancouver Canada, based on the Red Hook Community Justice Center in New York. There are also domestic abuse courts in Australia, New Zealand and Canada.

### *Problem solving in the UK*

In line with most common law countries in the Western developed world, aspects of problem-solving exists in many areas of current court practice in England and Wales.<sup>v</sup>

Perhaps the most widespread problem-solving reform has been the creation and implementation of court-mandated drug treatment in the adult criminal system. The Drug Rehabilitation Requirement (DRR) mandates treatment and testing as the courts regularly review offender progress on the order. However, alongside mainstream attempts to implement problem-solving, there have also been attempts to create more comprehensive and dedicated problem-solving court models. There have been pilots established to develop a more intensive drug court model in west London, Glasgow and Leeds. There has been one attempt to comprehensively replicate the community court model, in North Liverpool, which in turn inspired 11 small scale pilots of aspects of the community court model. While North Liverpool was closed due to financial and operational reasons, some of the pilots have survived with adapted successor models, in Plymouth, Stockport, Salford and Sefton.

### *Common components of problem-solving courts*

The way that problem-solving courts implement the principles of problem-solving differs significantly from court to court and model to model in but all of them include a number of the following elements:

#### *Enhanced information*

- **Targeting:** Most problem-solving courts (with the exception of some community courts) focus on a specific issue. That can be defined by an underlying problem (such as drug addiction) or a form of crime (domestic abuse) or a type of defendant (homelessness or veterans). In order to do this, most problem-solving courts have a set of targeting criteria, often brokered with and shared across a multi-agency team (see below).

- **Specialised assessment:** Problem-solving courts tend to have developed their own assessment capabilities or evolved existing tools to more specifically diagnose the risks, needs and assets of their client groups.

### *Collaboration*

- **Specialisation:** Problem-solving courts tend to place a high level of emphasis on ensuring that client group cases are heard in specialised settings with specially trained court staff, probation staff, social and health worker staff and judges trained in the particular needs, risks and assets of the client group.
- **Pre-hearing collaborative meetings:** Problem-solving courts often use multi-agency pre-hearing meetings to ensure there is a collaborative approach to the case, both prior to disposal and in subsequent review hearings.
- **Effective case management:** Placing an emphasis on the accountability of the client to meet the court's conditions and expectations, problem-solving courts tend to have a comprehensive, multi-agency case management tools to ensure that rounded and full information is available on the progress of clients throughout their court case.

### *Fairness*

- **Clear understanding:** Problem-solving courts tend to make efforts to clearly explain the court and non-court processes, the options available, the consequences of actions and decisions.
- **Respectful treatment:** Problem-solving courts attempt to emphasise that all those engaged in the process treat each other with respect, upholding the worth, autonomy and dignity of each individual.
- **Neutrality:** Problem-solving courts tend to emphasise that decisions are made and seen to be made with impartiality, transparency and neutrality.
- **Voice:** Problem-solving courts tend to involve clients in the process and make sure they feel that they have a voice that is listened to and which can make a difference to the decisions made.

### *Accountability*

- **Judicial monitoring:** Problem-solving courts utilise the authority of the court and judicial behaviour to motivate clients through a structured regime which emphasises accountability and certainty about the sanctions and rewards for progress. The monitoring needs to be regular, consistent and informed. This can take place either before a sentence or other disposal is made or can be incorporated into a disposal.
- **Legal leverage:** Problem-solving courts often hold significant legal leverage over clients as part of holding them accountable, for example retaining the option to vary their sentence depending on progress against an agreed plan.

### *Focus on outcomes*

- **Strengths-based programming:** Many problem-solving courts utilise a menu of programmes and interventions to tackle the root causes of the problems in hand. Adapting risk-need responsiveness evidence to incorporate a framework which places an emphasis on client agency and desistance as well, problem-solving courts tend to work with clients to help them out of their pattern of behaviour.
- **Rewarding success:** Problem-solving courts mark and celebrate the success of clients.
- **Monitoring outcomes:** Problem-solving courts take an interest in measuring the outcomes they generate for their client groups.

- Reflecting on outcomes: Problem-solving courts reflect on the outcomes they are generating as part of a continuous improvement ethos.
- Shaping new services and innovation: Through a process of self-reflection, including user insight, and an understanding of evidence and outcomes, problem-solving courts seek to improve themselves by providing a better service to their clients, their communities and their stakeholders.

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<sup>i</sup> Harwin, J & Ryan, M. 2007. *The Role of the Court in Cases Concerning Parental Substance Misuse and Children at Risk of Harm*. Journal of Social Welfare & Family Law Vol. 29, Nos. 3–4, September–December 2007, pp. 277–292

<sup>ii</sup> The Center for Therapeutic Justice describes therapeutic justice as meaning that “any involvement, and all contact with the criminal justice system, would offer an opportunity for education, healing, and restoration for the victim, the offender, the community, and the criminal justice system staff.”

<sup>iii</sup> Donoghue, J. 2014. *Transforming Criminal Justice? Problem-solving and court specialisation*. Routledge: London.

<sup>iv</sup> See *Principles of Problem-Solving Justice*, Center for Court Innovation, at <http://www.courtinnovation.org/sites/default/files/Principles.pdf> and Bowen, P & Whitehead, S. 2013. *Better Courts*. Centre for Justice Innovation: London at <http://www.justiceinnovation.org/sites/default/files/attached/Better%20Courts.pdf>

<sup>v</sup> Bowen, P. & Fox, A. 2015. *Is there a problem with English and Welsh problem-solving courts?* In: Herzog-Evans, M.. ed. *Offender release and supervision: The role of Courts and the use of discretion*. Wolf Legal Publishers: pp. 447-463.