

## FDAC AND PRE-PROCEEDINGS

### A review of cases where the London FDAC team was involved in pre-proceedings July 2018

#### Executive Summary

This report considers the role of the FDAC specialist team in pre-proceedings work. It describes the findings from a review of cases where the London FDAC specialist team worked with parents in pre-proceedings. The review was carried out by the FDAC National Unit in 2017/18. We were interested in three main questions:

- What are the advantages of FDAC working in pre-proceedings?
- In what way, if at all, does FDAC specialist team involvement in pre-proceedings create problems for the FDAC model?
- In the light of answers to the above two questions, what changes might be made to FDAC work in pre-proceedings?

The review looked at cases referred into FDAC from July 2013 onwards and only included completed cases. There were 37 completed cases where the London FDAC team worked with the family in the pre-proceedings period and 51 completed cases where there was no pre-proceedings work by the FDAC team

#### Main findings

- One third of the cases worked with by the team in the pre-proceedings period were diverted from court and two thirds went into proceedings.
- The average time in pre-proceedings for all cases was 13 weeks, with a range from 1 week to 46 weeks.
- Cases which went into proceedings spent on average 11 weeks in pre-proceedings, overall slightly less time than those cases which were diverted.
- Cases which went into proceedings after pre-proceedings work lasted on average 25 weeks whereas the average time for cases where FDAC became involved at the start of proceedings was 34 weeks.
- Outcomes of cases worked with in pre-proceedings were similar to outcomes of cases where involvement with FDAC began in court: in around half the cases children stayed at home or returned home, care orders were made in around one third of cases, and SGOs were made in between one fifth and one quarter of cases.
- In all cases, whether FDAC had worked with the family in pre-proceedings or not, cases where children returned home lasted on average longer than those cases where a care order or SGO was made.
- In those cases where children returned home, FDAC involvement with the family was on average longer in cases worked with in pre-proceedings than in those

cases where FDAC involvement began at court, 48 weeks compared with 41 weeks.

- Advantages and disadvantages to involving the FDAC team pre-proceedings were identified.
- Clear protocols between FDAC teams and local authorities about timescales of pre-proceedings work are essential.
- Cases where FDAC involvement in the pre-proceedings period was identified as particularly helpful included pre-birth cases.
- The longer period of time for parents to demonstrate capacity to change and the possibility of diverting cases from court altogether suggests that it may be helpful for FDAC teams to begin work in the pre-proceedings period.

## Introduction

This report considers the role of the FDAC specialist team in pre-proceedings work. It describes the findings from a review of cases where the London FDAC specialist team worked with parents in pre-proceedings. The review was carried out by the FDAC National Unit in the summer of 2017. We were interested in three main questions:

- What are the advantages of FDAC working in pre-proceedings?
- In what way, if at all, does FDAC specialist team involvement in pre-proceedings create problems for the FDAC model?
- In the light of answers to the above two questions, what changes might be made to FDAC work in pre-proceedings?

## Background

FDAC is an alternative, and more successful, approach to care proceedings where parental substance misuse is one of the main concerns of the local authority bringing proceedings. It is a problem-solving court and as such is underpinned by the principles of therapeutic jurisprudence<sup>1</sup>. Problem-solving courts combine therapeutic treatment with adjudication in the belief that change cannot be achieved without addressing the problems which have led to a person appearing in court. Crucially the court itself is seen as an agent of change, rather than a place of last resort<sup>2</sup>.

FDAC's main features are a specially trained judge and a multi-disciplinary, specialist team working closely together. The aim is for the judge and team to build a relationship with the parents to help motivate them to change. The specialist team advises the court, provides intensive treatment and support to parents and co-ordinates other agencies working with the family. The same judge hears the case throughout and uses regular fortnightly court reviews without lawyers present as the forum for engaging parents in tackling the problems that put their children at risk of harm. These reviews are attended by the judge, the parents, the FDAC key workers and local authority social worker, and the children's guardian.

The first FDAC began in central London in 2008. An independent evaluation was funded by the Nuffield Foundation and carried out by a team based at Brunel University. The evaluation was carried out over the first four years of the court's operation. It compared FDAC cases with similar cases going through ordinary care proceedings and found that in cases heard in FDAC, significantly more parents achieved control of their substance misuse and were reunited with their children. The researchers concluded that as the

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<sup>1</sup>Winick BJ. 2002. Therapeutic jurisprudence and problem solving courts. *Fordham Urban Law Journal* 30(3): 1055–1103

<sup>2</sup> Bowen P and Whitehead S (2016) Problem Solving Courts: An Evidence Review. Centre for Justice Innovation <http://justiceinnovation.org/our-work/publications-index/>

offer of FDAC was the factor which distinguished the cases in the two samples, there was good reason to attribute the higher success rate to the FDAC approach<sup>3</sup>.

In 2011, the third year of operation of FDAC, the three local authorities taking part in the FDAC pilot suggested that it would be helpful if the team could become involved in pre-proceedings assessment and intervention work with pregnant women with substance misuse problems where the intention was to issue care proceedings once the baby was born. The thinking behind this was that support from the multi-disciplinary specialist team at the earliest stage possible would give the mother a greater opportunity to demonstrate her capacity to change. There was no intention that these cases should be diverted from court. A protocol was developed so that in such cases the FDAC team would begin the process of assessment and intervention in the third trimester of pregnancy. Overall 9 pre-birth cases were referred to the FDAC team between January 2011 and February 2013, all but one case came into proceedings, 6 of the cases subsequently dropped out of FDAC (suggesting that in those cases the child did not go home) and in 3 cases children returned home under a supervision order.

In August 2013 the revised Public Law Outline (PLO) was introduced in London, before the implementation of the Children and Families Act 2014 in April 2014. This revised outline took account of the time limits for proceedings set out in the Children and Families Bill. Guidance re-emphasised the importance of using the pre-proceedings period to prepare adequately for court and at the same time to provide support so that cases might be diverted from proceedings altogether. The Local Authorities commissioning the London FDAC were all involved in projects focused on reducing delay in care proceedings. They were keen for FDAC to extend its pre-proceedings work with families beyond pre-birth cases so that parents could have a reasonable amount of time in which to demonstrate capacity to change even though court proceedings would be shorter. The evaluation of FDAC indicated that cases entering FDAC between 2008 and the end of 2010 took an average of 60 weeks to complete, which was the same as the time taken by comparison cases<sup>4</sup>. The Family Justice Review reported that nationally care proceedings were taking an average of 61 weeks to complete<sup>5</sup>. An audit of London FDAC cases, carried out in 2014 and looking at cases entering FDAC between April 2011 and September 2013, indicated that the average time taken in cases had reduced to 46 weeks, but this was still some way off the 26-week time limit introduced in the 2014 legislation.

While local authorities commissioning FDAC were primarily concerned with reducing the length of time cases spent in proceedings, the researchers evaluating FDAC noted that a number of the cases coming into FDAC could have come into the court system sooner than they did, which might have improved positive outcomes still further. The

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<sup>3</sup> Harwin J, Alrouh B, Ryan M and Tunnard J (2014) Changing Lifestyles, Keeping Children Safe: An Evaluation of the First Family Drug and Alcohol Court (FDAC) in Care Proceedings (May 2014) <http://wp.lancs.ac.uk/cfi-fdac/publications/>

<sup>4</sup> Ibid

<sup>5</sup> Family Justice Review (2011) Final Report. MoJ, DfE, Welsh Government

involvement of the FDAC team in pre-proceedings assessment and intervention thus had potential to enable families to benefit from intensive support at the earliest opportunity.

Statutory guidance on pre-proceedings suggests that it may be possible to avoid taking proceedings if parents are able to demonstrate their capacity to safely parent their child 'by working with relevant services to improve their parenting capability'<sup>6</sup>. No time limits are given for pre-proceedings work, but local authorities are advised to review progress of the plan agreed with parents at the pre-proceedings meeting after 6 weeks<sup>7</sup>.

The London FDAC team agreed a protocol for referral and intervention in pre-proceedings cases with the commissioning local authorities (Annex 2). This provided for:

- Early identification of potential FDAC cases during child protection processes
- Referral to FDAC to be considered at the legal planning meeting and FDAC involvement in pre-proceedings to be proposed to parents
- If parents agreed, FDAC team members to attend the pre-proceedings meeting with parents
- A timetable of 13 weeks assessment and intervention
- Child protection processes to continue as normal
- FDAC process of assessment, formulation and intervention planning meeting as normal
- A review Intervention Planning Meeting (IPM) after 6 weeks
- A final IPM at 12 weeks
- Fortnightly reports by FDAC

At the 12 week point the options were:

- No further action and child remaining at home
- Child remaining at home but an extension of 8 weeks to the pre-proceedings work
- Care proceedings issued in FDAC

If care proceedings were issued in FDAC then there would be a continuation of the trial for change with the parent, with a review IPM three weeks after the start of proceedings.

In the FDAC model as evaluated the work of the FDAC team starts at the first hearing in care proceedings. Part of the purpose of this review was to explore whether there were any differences in outcomes between those cases where work began in pre-proceedings and those cases which came straight into court.

## Methodology

Data held by the London FDAC team in relation to pre-proceedings cases was analysed for process information in relation to timescales, whether cases went into proceedings,

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<sup>6</sup> DfE (2014) Court Orders and Pre-Proceedings for Local Authorities (para 28)

[http://www.justice.gov.uk/courts/procedure-rules/family/practice\\_directions/pd\\_part\\_12a#para](http://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_12a#para)

<sup>7</sup> DfE (2014) Court Orders and Pre-Proceedings for Local Authorities (para 34)

[http://www.justice.gov.uk/courts/procedure-rules/family/practice\\_directions/pd\\_part\\_12a#para](http://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_12a#para)

and where the child was living at the end of proceedings or at the end of pre-proceedings work if the case was successfully diverted away from proceedings. The report is based on 37 cases where the FDAC London team was involved in pre-proceedings work in cases referred to them from July 2013 onwards and where these cases had concluded by the time the review was carried out in June 2017. These 37 cases do not include the 9 pre-birth cases worked with by the team between 2011 and 2013. The data on all FDAC cases over the same period, where the team was not involved in pre-proceedings work (51 cases), was also analysed to see whether there was any difference in time scales or orders made at the end of proceedings.

Qualitative data is from nine interviews carried out with FDAC team members, social work and legal staff from local authorities, private practice lawyers and one FDAC Judge. The interviews were carried out over the telephone by two members of the FDAC NU. They were semi-structured interviews guided by a set of questions with the aim of obtaining the interviewees perspectives on the involvement of the FDAC team in pre-proceedings work. All those interviewed had experience of FDAC functioning as a problem-solving court, as well as cases where the FDAC team worked with the parents in the pre-proceedings period.

The interview questions were designed to help answer our key questions:

- What are the advantages of FDAC working in pre-proceedings?
- In what way, if at all, does FDAC specialist team involvement in pre-proceedings create problems for the FDAC model?

The FDAC NU were also interested in:

- the overall length of FDAC involvement with the family
- whether the length of involvement made a difference to outcomes (in terms of where the child was living)
- whether parents would be harder to engage in the pre-proceedings process compared to once in proceedings
- whether parents would opt not to have their case heard in FDAC if they had been involved with FDAC pre-proceedings
- whether parents would see the FDAC team as less independent of the local authority if the team had worked with the parents during pre-proceedings.

Three case histories provide examples of some of the different outcomes in cases in which the team worked with the family in the pre-proceedings period.

## **FINDINGS FROM THE DATA**

### **Number of cases**

From July 2013 the FDAC team worked during the pre-proceedings period on 37 cases which had reached a conclusion by June 2017. These cases had been referred to FDAC

between July 2013 and January 2017 by six local authorities in London. Over this same period, (cases issued from July 2013 which had concluded by June 2017) there were 51 other FDAC cases which were issued directly into court, without the FDAC team being involved in pre-proceedings work.

### **How many pre-proceedings cases went into proceedings?**

Two thirds (25) of the 37 pre-proceedings cases went into proceedings at the end of the pre-proceedings period and one third (12) were concluded without going into proceedings. Of the cases that went into proceedings 24 went into FDAC and one into ordinary proceedings. One of the cases that went into FDAC subsequently moved into ordinary proceedings after 6 weeks in FDAC.

### **Time in pre-proceedings**

The average length of time cases spent in pre-proceedings was 13 weeks with just under two thirds of cases (23) completing pre-proceedings in 12 weeks or under. One fifth of cases (7) spent between 13 and 20 weeks in pre-proceedings and a further fifth (7) spent between 21 and 46 weeks in pre-proceedings. The longest period in pre-proceedings was 46 weeks (1 case).

The cases which subsequently went into proceedings spent on average less time in pre-proceedings than those cases which were diverted from going into court (11 weeks on average for cases which went into proceedings and 18 weeks on average for those which did not). There was one exception where a case spent 46 weeks in pre-proceedings and then went into proceedings.

Of the 12 cases which did not go into proceedings one third (4 cases) spent between 21 and 34 weeks in pre-proceedings.

### **Timescales in court**

The average length of time that cases took to reach a final order in FDAC, following the pre-proceedings work, was 25 weeks. This is based on the 23 cases that entered and stayed in FDAC. Over two thirds of these 23 cases (16) completed in 26 weeks or under. Four cases were granted an extension of 8 weeks, two cases had two extensions of sixteen weeks or under, and one remaining case had three extensions of 8 weeks. The longest period of time in court for a case that the FDAC team had worked with in pre-proceedings was 59 weeks and this case had spent 13 weeks in pre-proceedings.

The average length of time that the 51 cases issued directly into FDAC took to complete was 34 weeks, with a range from 17 weeks to 63 weeks. Nine of these 51 cases dropped out of FDAC as the proceedings progressed, and the average length of time for cases which stayed in FDAC throughout was 33 weeks. Thus, cases which had been worked with by the FDAC team in the pre-proceedings period spent on average between 8 or 9 weeks less in court, but if the time spent in the pre-proceedings period is taken

into the account, the overall average period of time during which the FDAC team worked with the families is similar.

### **What decisions were made?**

In relation to the cases which did not go into proceedings, the children stayed living at home in 11 out of the twelve cases and in the remaining case the child went into s.20 accommodation.

In relation to the 23 pre-proceedings cases that moved into proceedings in FDAC a supervision order enabling the child to return home was made in one third of cases (8), a care order was made in just over half of the cases (11) (in 3 of these cases a placement order was also made). An SGO was made in just over one quarter of the cases (6)<sup>8</sup>.

Overall, in relation to the 37 cases worked with in pre-proceedings by the FDAC team, in just over half of the cases (19), children stayed at home or returned home at the end of proceedings, care orders were made in just under one third of cases and an SGO was made in just under a fifth of cases.

In relation to the 51 cases where there was no FDAC pre-proceedings involvement, at least one child returned home in just under half (23) of the 51 cases, in just under one third of cases (14) at least one child was made subject to a care order and in just over one quarter of cases (14) at least one child was made subject to a Special Guardianship Order.

Outcomes in terms of orders made and the placement of children at the end of proceedings in cases worked with in pre-proceedings are therefore very similar to those that go straight into proceedings, except that in the pre-proceedings group one third of cases did not go into court at all.

### **Overall timescales linked to court decisions in cases in proceedings<sup>9</sup>**

Pre-proceedings cases where children returned home under a supervision order tended to last longer than cases which ended in care orders or SGOs. The range for cases ending in a supervision order, if length of time in pre-proceedings is added to the time in proceedings, was 31 to 72 weeks (48 weeks on average). The overall time for cases to complete when a care order was the final order ranged from 18 weeks to 72 weeks (29 weeks on average). There were two cases which lasted 72 weeks overall, one was in the care order group and the other in the supervision order group and in each group this case was an outlier. The case which ended in a care order after 72 weeks (13 in pre-proceedings and 59 in care proceedings) had been moving towards the return home of

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<sup>8</sup> The total number of cases here is 24 rather than 23 because in one case one child was made subject to an SGO and another child was subject to a care order and placement order.

<sup>9</sup> See Annex 1 for a table setting out timescales



the child, but at the last moment the mother had a major relapse and alternative plans needed to be made.

In cases which went straight into FDAC there was a similar pattern, with cases ending in care orders or SGOs taking less time on average (34 weeks, range 17 to 63 weeks) than cases where children returned home (41 weeks on average, range 18 to 70 weeks).

In cases ending in a supervision order, the overall length of the family's contact with the FDAC team was longer in those cases where the FDAC team had worked with the family in the pre-proceedings period ( 48 weeks on average compared to 41 weeks).

### **Pre-birth cases**

Just over one third (14) of the 37 pre-proceedings cases entering FDAC from July 2013 onwards were referred while the mother was pregnant. In relation to these cases the majority (10) went into proceedings. This is not surprising, given that the original intention of involving FDAC in pre-proceedings in pre-birth cases was to give the parents a longer period in which to receive the FDAC intervention. In 3 of these cases the children remained with their mother under a supervision order, babies went to relatives in 4 cases, and in 1 case a care order was made. In the 4 cases which did not go into proceedings, 2 babies stayed with their mothers and 2 went to live with relatives.

### **Summary**

- In those cases worked with in the pre-proceedings period, two thirds of the cases went into proceedings after the pre-proceedings period and one third were diverted from proceedings
- The pre- proceedings period was usually completed within 12 weeks when cases went into proceedings but lasted longer when cases were diverted away from proceedings
- Around one third of the cases that went into proceedings after pre-proceedings involvement with the FDAC team resulted in children returning home and half resulted in placements outside the family
- The average length of court proceedings following FDAC involvement pre-proceedings was 25 weeks and a majority of cases completed within 26 weeks
- Cases which resulted in a supervision order to the parent took longer overall than all other cases
- Cases ending in placement for adoption were dealt with speedily
- There were some particularly long cases when pre-proceedings and care proceedings time was added together
- Cases which went straight into court spent longer in court than if the FDAC team had worked with the family pre-proceedings, but the overall period of FDAC involvement with the family was similar if the pre-proceedings and in-proceedings periods are combined, with pre-proceedings cases having on average 7 weeks longer of FDAC input

- Court orders made and the placement of children at the end of proceedings was similar whether FDAC worked with the parents in the pre-proceedings period or whether the case went into court, but some pre-proceedings cases were diverted from court altogether.

## **THEMES ARISING FROM INTERVIEWS**

Interviews were held with two members of the FDAC team, one of the London FDAC judges, two local authority solicitors, one private practice solicitor, two social work managers and one social worker. The local authority interviewees were from the four local authorities who were still commissioning FDAC in 2017.

The interviews consisted of open ended questions about the advantages and disadvantages of the FDAC team being involved in pre- proceedings and with follow up questions seeking more detail on issues such as the relationship of the team to the local authority, the relationship of the team with the parents and any specific differences from cases where the FDAC team is only involved when the proceedings start. Interviewees were also asked for suggestions for improving the FDAC team role in pre- proceedings.

### **What are the advantages of the FDAC team working in pre-proceedings?**

Interviewees gave different perspectives on why it was advantageous to involve FDAC in pre-proceedings work. Only one person specifically said that it helped avoid delay:

*'I think that, especially for a baby case, it does avoid delay.'* (private practice solicitor)

Others tended to focus more on the fact that it was beneficial because it brought in the FDAC multi-disciplinary and intensive approach at an earlier stage:

*'One of the strengths of the FDAC pre-proceedings model is that it enables a more focused approach during this period, assessing risks early.'* (LA manager)

*'The LA is able to call on a multi-disciplinary assessment. FDAC is really valuable for complex cases during pre-proceedings. The expertise, model and structure has helped work with families and helped inform local authority recommendations, particularly on complex cases. In particular, dual diagnosis is clearly identified and FDACs therapeutic support in pre-proceedings for this is effective'. (LA TM)*

Others noted that if a case did go into proceedings from pre-proceedings in which the FDAC team had been involved then there was clarity among all the parties about what the FDAC process was all about, clarity about the plan and about what was going to happen once the case came into court:

*'As soon as proceedings started there was a very clear plan about what was going to happen, and this also means that the parents, or in this case the mother, are a bit clearer about what the plan is.'* (solicitor private practice)

*'The difference I have noted is that parents and professionals are familiar with FDAC language and approach if they have been in FDAC pre-proceedings. This avoids the usual 'bedding down' period. The trial for change in proceedings is clear, there is much more understanding of all respective roles and there is an element of working better together from the outset.'* (Judge)

Although a number of those interviewed did comment that parents could be less engaged in the process during the pre-proceedings period, they were also all able to identify cases where parents had been engaged right from the start:

*'The parents were very determined to change. I can see how the requirement that they go all the way to FDAC every week might have been very difficult, but they always made it there.'* (SW)

*'Some FDAC workers have been able to engage parents where social workers haven't, and that relationship with parents enables/motivates parents to engage fully and has been the basis of some cases resulting in children remaining with parents and cases not going into court.'* (SW TM)

*'When parents engage with FDAC in pre-proceedings it is fantastic and works very well. Where there is ambivalence then it works less well.'* (SW TM)

Finally, there was praise for the team's work in a case which was successfully diverted from going into proceedings:

*'I thought the work done by FDAC with the family in the pre-proceedings period was really thorough and in depth and very helpful for the family. I believe that without the involvement of FDAC in this case there would have been a very different outcome. As it was the outcome has been really good. We diverted the family from proceedings and we are now about to drop the case down from a CP case to a CIN case.'* (SW)

One hypothesis raised in discussions about involving the FDAC team in pre-proceedings work had been that parents would be less likely to agree to their case being heard in FDAC if the team had recommended to the local authority that the case needed to go into court. This was not borne out by the data, which indicates that in all but two of the cases which went into court, the case was heard in FDAC. The FDAC team thought that parents' willingness to keep working with them in court proceedings was probably because of the way in which the team work and the fact that they are now reasonably well known to lawyers who represent parents:

*If we go into court and we are quite quickly recommending that the child will need to live away from their parents, we find that the relationship with the parents does not seem to break down. I think possibly that is because we are honest all the way through and also possibly because their solicitors usually tell them that going into FDAC is going to give them the best chance to get their children home. We do have very good relationships with solicitors who act for parents. This makes it more likely that they are going to accept our recommendations. Lawyers respect our views.* (FDAC team)

### ***Are there types of cases where FDAC involvement in pre-proceedings works well?***

Suggestions as to the sorts of cases where the FDAC team involvement pre-proceedings works well were:

- Pre-birth cases. One respondent described these as 'the ideal cases' for having FDAC involved pre-proceedings. The intensive multidisciplinary assessment helps local authorities assess whether proceedings should be issued
- If a local authority is considering the need to remove a child but is not completely sure, involving the FDAC team is a way of ensuring a more robust trial in the pre-proceedings period to assess if parents can continue to safely parent their children
- The FDAC team's pre-proceedings approach can help ensure a more co-ordinated response to ensuring that families get the extra support they need to ensure that the case can stay out of proceedings
- Where FDAC involvement in pre-proceedings work enables proceedings to be completed very quickly because it has become clear that parents will not be able to make the change needed in time for their children
- Where FDAC involvement in pre-proceedings gives parents the chance to show enough change within the very tight timescales of care proceedings.

### **Are there problems for the FDAC model when the FDAC team is involved in pre-proceedings?**

#### ***A lack of structure to the process***

The disadvantages identified were varied but the overall concern was that pre-proceedings lack the clear timescales and structure of court proceedings and, as a result, problems can arise. These include delays or difficulties in information being exchanged between local authorities and the FDAC team:

*'the timetabling for reporting can be less structured in pre-proceedings as there is no court to dictate time-frames' (SW TM)*

*Pre-proceedings feel trickier, messier, less structured and less clear – both for us and for the parents. (FDAC team)*

*In pre-proceedings it is harder to keep on top of what the local authority is thinking. Reviews in pre-proceedings only happen once every 6 weeks - so by the second Intervention Planning Meeting (IPM)<sup>10</sup> you are already having to get ready to make*

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<sup>10</sup> Intervention Planning Meetings are multi-agency meetings co-ordinated by FDAC, involving the parents, which take place at set points during FDAC team involvement pre-proceedings and in-proceedings.

recommendations<sup>11</sup>. With pre-proceedings work there are less opportunities to work closely with the local authority. (FDAC team)

### ***Lack of priority given to pre-proceedings cases by social workers***

Other interviewees noted that in pre-proceedings social workers do not always give cases the time or priority that they give to cases in care proceedings:

*'Without the court process, cases can drift. Social workers tend to prioritise care proceedings'. (LA solicitor)*

*'Social workers are under less pressure than they are in care proceedings and parents are under less pressure too. There are different dynamics for parents in pre-proceedings – I suspect that is why most cases do end up going to court'. (FDAC team)*

*'Sometimes I notice an unhelpful attitude from the social worker towards FDAC during pre-proceedings and that makes it harder for the FDAC team to complete a robust assessment.' (LA sol)*

### ***Parental engagement in assessment and intervention pre-proceedings***

In relation to whether parents were harder to engage in intensive assessment and intervention work in pre-proceedings in comparison with FDAC care proceedings interviewees noted that this varied from case to case. It was also pointed out that parents might hold back from full engagement with the FDAC team because they were aware that the team were going to have some influence on the local authority's decision as to whether or not to issue proceedings:

*'There are challenges for parents and for the FDAC team when a case is in pre-proceedings. Parents might want to engage in a clinical in-depth relationship to address issues, but they know, because of the FDAC transparent approach, that that information in their trial for change assessment is going into reports for the local authority, and parents' anxiety that their engagement with FDAC will result in a decision to move their case into court can prevent them engaging fully in pre-proceedings (LA TM)*

It was also acknowledged that parents could be less engaged with the FDAC team because there was less pressure on them in the pre-proceedings phase. This could lead to drift as this issue was not always picked up as quickly as it should be, sometimes because of lack of clarity about who should be doing that:

*'Cases can run on for a long period of time in pre-proceedings, whereas parents' lack of engagement is picked up quickly in proceedings due to the court's involvement.' (SW TM)*

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<sup>11</sup> The LAs commissioning the London FDAC have protocols that pre-proceedings work should last for 12 weeks only

*'Pre-proceedings lack a defined protocol around parental non-attendance at treatment or FDAC key work sessions.'* (SW TM)

*'Delays in pre-proceedings can arise from a lack of clarity around the roles of LA social worker and FDAC keyworker in pre-proceedings. The Social Worker may feel that FDAC keyworker should explain to parents the seriousness of their lack of engagement when they are not engaging. When the court is involved the onus on parents is clearer.'* (SW TM)

It was generally agreed that there were clear benefits resulting from the early involvement of the FDAC team when parents were able to commit to working with the team but fewer benefits when they were not. In particular it could be difficult to deal with situations where parents were failing to turn up for their initial assessment with the team:

*'When parents engage with FDAC in pre-proceedings it is fantastic and works very well. Where there is ambivalence from the parents then it works less well. In pre-proceedings there is a lack of authority from court to assess parents in a timely way.'* (SW TM)

### ***Disagreements with the local authority in the pre-proceedings period***

FDAC team members noted that there could be some tensions if a local authority were not in agreement with their recommendations, and there had been examples of this both when the FDAC team had been recommending early issuing of proceedings and when the team had suggested the case should remain in pre-proceedings.

### ***There is a difference when cases are in court for some parents***

Interviewees acknowledged that for some parents the reality of being in court was a final wake-up call which they needed. They also identified that an important disadvantage of pre-proceedings in FDAC cases was that any interventions at this point were missing a central element of the FDAC approach, which is the relationship between the judge and the parents. The fortnightly non-lawyer reviews, overseen by the judge and attended by the parents, their FDAC keyworker, the social worker and, where possible, the guardian, are the forum where the judge motivates parents to change and where the progress of the case overall is kept under close review.

*'Without court parents don't grasp how serious things are – there are no 'sands of time running out' so to speak. Parents having to attend court gives added value, it motivates them and helps them understand the consequences.'* (Judge)

*'The court arena adds seriousness, Parents don't always grasp the seriousness of the situation in pre-proceedings and this can impact on their engagement in the process. The court and judge illustrate the seriousness of their situation and that there is no going back from that point. The court timeframes, directions and judge led review hearings also keeps professionals on track*

*and ensures they action their work responsibilities around the family situation. This helps momentum of work with families. (LA sol)*

*In principle it is a good idea to start the intervention in the pre-proceedings phase, but it lacks the judicial oversight that makes such a difference once cases are in court. Working in pre-proceedings makes us realise how valuable that judicial oversight is. (FDAC team)*

*Parents do get a lot from the non-lawyer review hearings with judges. They may not realise it at the time, but particularly when they are successful they always mention the importance of the judge. I think this is because the judge is the person who will make the decision ultimately whether they are going to keep their children or not. (FDAC team)*

*From our perspective we benefit from the problem-solving role of the judge. Also, it's a very effective structure (being in court) for feedback between FDAC and the LA which helps us all to understand where we are – we might disagree, but we know what each other is thinking. We are sitting in court with each other every 2 weeks. (FDAC team)*

### **What changes might be made to improve FDAC involvement in pre-proceedings work?**

It was clear from responses from both lawyers and social workers in local authorities that it was very important for the local authority to have clear systems and protocols in place to ensure that pre-proceedings work did not drift. It was also suggested, by a local authority lawyer, that

*'Court directions to the local authority to provide information to FDAC in the pre-proceedings period and to keep to time limits would be helpful.'*

## **CONCLUSIONS**

Where the FDAC team is involved in pre-proceedings work with families, families are successfully diverted from proceedings in around one third of cases. This figure of one third of cases diverted is line with the findings of research carried out into the impact of pre-proceedings prior to the reforms of 2014 coming into force<sup>12</sup>.

When cases do come into proceedings after FDAC involvement pre-proceedings, the majority of parents agree to their case being heard in FDAC.

The data and the interviews suggest that involving the FDAC team in assessment and intervention with the parents in the pre-proceedings period works well in some cases and not in others. Clear protocols for the involvement of the team in pre-proceedings work, agreed with local authorities and applied by the team and the local authority are important in ensuring that cases do not drift and that the team are provided with the information they need to carry out their role effectively. It is also clear that there are particular aspects of the FDAC approach to cases once they are in proceedings which are missing from pre-proceedings, most notably the role of the judge, and in the view of those interviewed, this does have an impact for some parents.

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<sup>12</sup> Masson J (2017) Using the formal pre-proceedings process to prevent or prepare for care proceedings. In Dixon L et al (eds) Wiley handbook of what works in child maltreatment: an evidence-based approach to assessment and intervention in child protection. Chichester: John Wiley

Overall, outcomes for children at the end of proceedings were similar in cases whether the FDAC team worked with the family in pre-proceedings or whether the case went straight into court. In cases where children returned home, the team had a longer period of time with which to work with the family if the work had begun in the pre-proceedings period. This possibility of more time with the family, and the successful diversion of some cases from court altogether, suggests that there are advantages in the FDAC team being involved in pre-proceedings work.

**Mary Ryan and Jo Maycock**  
**July 2018**



## Case Studies (all names changed)

### **Case 1 – a case where a parent made good progress in pre-proceedings, where care proceedings were not issued, but where the children remained in s.20 placement**

Mother – Anna

Father – Shaun (not involved in the FDAC process)

Children – Victoria (aged 6) & James (aged 2)

Prior to entering FDAC Anna had a 15-year history of alcohol use, linked to her emotional and psychological welfare as a result of trauma both as a child and an adult. Over the most recent 4 years, her alcohol use had escalated to physical dependence. Anna's mother and stepfather both drank heavily, and she has memories of incidences of domestic violence between them. She also reported experiencing a lot of racism, bullying and abuse as a result of her ethnic background. Anna has two adult children from previous relationships and her son Adam is currently in prison serving a sentence for manslaughter, having become involved in gang activities. Victoria and James were placed in the care of their uncle approximately 5 months before the pre-proceedings and the FDAC intervention commenced.

Anna was supported by the FDAC team to engage with her local community treatment provider and progressed into the 12-week intensive treatment programme at [xx]. In addition to community treatment Anna was offered weekly key work sessions with the FDAC team which provided her an opportunity to develop coping strategies and significantly reduce her feelings of anxiety and depression. She was therefore able to spend quality time in contact with Victoria and James, as well as to reconnect and strengthen her relationship with her adult children. Anna made significant progress during the 12 weeks of the pre-proceeding process and it was identified that after completing the intensive treatment program she would attend the 12-week after care program. Anna agreed with this plan and showed increased insight into the cause of her alcohol use as well as its impact on her and her family.

The decision was taken to bring the pre-proceedings process to a close after the initial 12-week progress. Anna was evidencing her capacity to address her own needs, but she did however require a significant further period of intervention. Victoria and James were thriving in the care of their uncle, a placement which was supported by Anna. They were having regular good quality contact with their mother, and there was an understanding given by the Local Authority that their living arrangements would be re-considered in the future should Anna continue with her progress in treatment.

### **Case 2 - a case where there was poor engagement by parents in the pre-proceedings phase, the case went into proceedings and the parents then demonstrated capacity to change**

Mother – Lisa

Father – Andrew

Child – Olivia (aged 1 year 9 months when pre-proceedings started)

Local Authority had been working with the family due to concerns regarding parental substance use (cocaine) and alleged history of significant domestic violence between the parents, who were now separated. Lisa had experienced Local Authority involvement during her childhood and had been made subject to a Child Protection Plan. As a teenager she had alleged her father assaulted her, and there were further concerns regarding a possible eating disorder. As an adult, Lisa has complicated relationships with her parents, including a strong attachment to her father despite his previous physical abuse and domestic violence perpetrated against her mother.

During the initial phase of pre-proceedings there was very little change observed and the concerns for Olivia's welfare continued. Lisa had already been receiving support from a local drug treatment agency prior to pre-proceedings commencing, however her engagement had been patchy. Furthermore, based on the consistent positive testing results, there was an indication that Lisa was not being honest regarding the severity of her drug use. Much of the pre-proceedings time was spent developing a relationship with Lisa to encourage her honesty, and in linking her in more effectively and consistently with the treatment service.

Andrew presented as quite dismissive of any concerns related to him – drug use or domestic violence – and was reluctant to engage with the FDAC team meaningfully. Whilst there were consistent negative drug screens from Andrew, he was unwilling to acknowledge any of the reports of domestic violence.

After 9 weeks the case was brought into care proceedings by the Local Authority, a decision FDAC agreed with. Following this, the parents really began to engage with the process. As part of the care proceedings, Olivia was placed in the care of her maternal grandmother. The case remained in proceedings for 12 months, during which time both parents made significant progress with their respective problems. Lisa completed a 12-week community treatment programme and progressed to a residential rehab programme. Andrew undertook a 26-week domestic violence perpetrators programme. The case was able to conclude with Olivia at home in Lisa's care, and the beginnings of a more co-operative working relationship between the parents. Lisa became a more confident and reassured parent as she had been afforded the time and opportunity to address not only her substance misuse but the issues underlying it.

### **Case 3 - a case which remained in pre-proceedings for 30 weeks, with a positive outcome for the mother and baby**

Mother – Elizabeth

Father – Darren (not involved in FDAC)

Child – Natalie (new born baby)

FDAC began working with the family during pregnancy. Elizabeth had five older children ranging between the age of 10 and 4 who were all living outside of her care. She was having no contact with any of her elder children. Local Authority concerns had been long standing regarding her alcohol use. She had on occasions engaged with treatment and achieved abstinence, however was unable to maintain this, with her episodes of alcohol use being severe and destabilising. Furthermore, there were concerns regarding Elizabeth's vulnerability to abusive relationships with men who have their own substance misuse difficulties. Elizabeth reported a history of childhood trauma including sexual abuse from a childminder, her father's alcoholism and a lack of love and affection from her mother.

At the commencement of the pre-proceedings process Elizabeth was already engaged with a local community treatment programme. Through the FDAC process Elizabeth was supported to continue her engagement with the programme, completing the initial 12 weeks and progressing on to the step-down programme, whilst living in the community with Natalie. As part of the programme Elizabeth undertook psychodynamic counselling sessions, and following the completion of the programme, accessed further counselling through her GP. FDAC worked with Elizabeth weekly, offering key work and testing which evidenced she had been abstinent from alcohol and cannabis throughout the duration of the proceedings.

Due to the positive progress Elizabeth made in the community within pre-proceedings, it was agreed to continue to work with her under this framework throughout the intervention, rather than escalating to care proceedings. The case was extended within pre-proceedings for a duration of 30 weeks before concluding with Natalie at home with her mother.

## **Annex 1 – Data**

### **Number of pre-proceedings referrals 2013-2017: 37**

2013/14 – 2 cases –

2014/15 -15 cases –

2015/16 – 17 cases

2016/17 – 3 cases –

### **Length of Pre-proceedings:**

12 weeks or under: 23 cases

13-20 weeks: 7 cases

21-46 weeks: 7 cases

### **Average length of pre-proceedings work in 12 cases which did not go into proceedings:**

#### **18 weeks**

12 weeks or under: 3 cases

20 weeks or under: 5 cases

Between 21 and 34 weeks: 4 cases

### **Average length of pre-proceedings in 25 cases which did go into proceedings: 11 weeks,**

12 weeks or under (and most were under): 20 cases

Under 20 weeks: 2 cases

21 weeks or over (24,28,46 weeks): 3 cases

### **Average length of court proceedings where cases moved into proceedings (based on 23 cases) : 25 weeks**

Cases completing in 26 weeks or under: 16 out of 23

Remainder of cases lasted between 27 and 59 weeks (27, 29, 30, 31, 49, 53, 59)

4 cases with one 8 week extension

3 cases with two or more 8 week extensions.

Care order and placement order: 3 (in one of these cases there was also SGO for other children in the family)

## **Timing of all cases by final placement of children – timing in weeks**

	Pre-proceedings Weeks	Court proceedings Weeks	Total
<b>Children stay at home/no proceedings</b>			
	No info		
	1		1
	9		9
	12		12
	13		13
	13		13
	14		14
	17		17
	21		21
	30		30
	32		32
	34		34
<b>Children at home under SO (cases worked with in pre-proceedings)</b>			
	12	9	31
	8	30	38
	10	29	39
	15	25	40
	24	27	51
	2	49	51
	9	53	62
	46	26	72
<b>Children under SGO at end of case (cases worked with in pre-proceedings)</b>			
	10	2	12
	4	18	22
	4	20	24
	8	17	25
	7	21	28
	12	18	30
<b>Children under S.20 (cases worked with pre-proceedings)</b>			
	13		13
<b>Children under CO at end of case (cases worked with pre-proceedings)</b>			
	6	12	18
	4	22	26
	8	20	28
	7	21	28
	9	26	35
	9	26	35
	9	26	35
	13	59	72
<b>Children under a care order and a Placement Order</b>			
	4	20	24
	7	21	28
	4	18	22

### FDAC Pre-proceedings protocol

#### For referrals for assessment and intervention under the Public Law Outline

#### Process through which cases are identified, referred and intervention is agreed upon

1. Cases to be identified early when there are significant concerns due to alcohol and/or drug misuse and it is highly likely that the case will progress to a Legal Planning meeting.
2. Cases can also include substance misuse and domestic violence, and/or mental health dimension. A protocol has been developed to assess and intervene in cases with domestic violence and/or mental health.
3. The cases should otherwise follow the normal Local Authority processes:
  - Strategy meeting
  - Core assessment
  - Conference
  - Legal planning meeting
  - PLO Meeting/Pre-Proceedings Meeting
4. At the child protection conference and/or legal planning meeting, the possibility of referring on to the FDAC pre-proceedings should be flagged up. If it is decided to follow this route, the FDAC Service Manager should be contacted to discuss eligibility and availability to take the case.
5. A letter before proceedings should then be sent to the client and in this letter FDAC should be mentioned as the Local Authority's preferred option. On the basis that the parent/client instructs a solicitor to represent them, a pre-proceedings meeting would then take place where FDAC is discussed and agreement sought for a formal referral to be made.
6. A member of the FDAC team can be invited to attend the first pre-proceedings meeting, or subsequent PLO meeting if this has already taken place, to discuss the FDAC process with the parent so they can make an informed choice about opting in.
7. The pre-proceedings meeting should be scheduled to take place for 1.5 hours. A member of the FDAC team will meet with the parent and their solicitor before the meeting for 30 minutes. The LA will arrange a room space for this to take place. This is an opportunity for the parent to meet the FDAC team and decide whether they will opt into the assessment in advance of the LA presenting their concerns at the pre-proceedings meeting. The FDAC team will stay for the meeting for information purposes only.

8. FDAC will provide at the pre-proceedings meeting a provisional timetable for assessment and for the Intervention Planning Meeting. An outline should also be given of the 13 week assessment and intervention process, the protocol and timescale for decision making and the possible outcomes of the FDAC pre-proceedings program.
9. It should be made clear to the parent(s) at the pre-proceedings meeting that their engagement with FDAC pre-proceedings program (if the case is accepted) may have a bearing on the care plan the Local Authority will adopt going forward, and that if proceedings are initiated this will be into the Family Drug and Alcohol Court in the first instance. Any assessment and intervention carried out pre-proceedings will be carried into the FDAC proceedings.
10. Further to agreement from the parent(s) to engage with FDAC, an agreed set of papers relating to the case should be sent to FDAC. Once FDAC have received all papers, they will then be in a position to start the assessment process. The papers should be received no less than 3 working days before the scheduled assessment date.
11. The FDAC assessment and IPM will then be confirmed and carried out. The primary aim is to complete a comprehensive assessment and then to link the parent to the appropriate drug/alcohol misuse resources to assist with addressing their difficulties. This will contribute to the prognosis/care plan. Following the IPM the FDAC team will produce an assessment and Intervention Plan which will form the basis of the FDAC work within the Public Law Outline or until proceedings are initiated, if deemed necessary.
12. The child protection process will continue in parallel and FDAC will not have a direct involvement in this process, although the team will provide updates to any review conference.
13. A review IPM (with FDAC) to review the intervention plan and progress will be held within 6 weeks of the first IPM. The level of engagement/progress is likely to influence whether the Local Authority continue to work with the family under the PLO or whether an order should be sought and the case be brought into FDAC. A final IPM will be held 6 weeks after that at which FDAC will share their final recommendation which may be:
  - 13.2 That the child(ren) remain with the parent(s) and exit FDAC pre-proceedings.
  - 13.3 That the child(ren) remain with the parent(s) but there is an extension of the FDAC pre-proceedings program to address some residual concerns up to a maximum of 13 weeks.
  - 13.4 That the Local Authority initiate care proceedings and the case is brought into the FDAC court.

## Premise under which the pre-proceedings FDAC intervention should be offered

14. The FDAC pre-proceedings approach is to offer an assessment and intervention pre-proceedings which is analogous to that offered within FDAC proceedings.
15. The client would be presented with an option to opt in or out of FDAC at the pre-proceedings meeting. There is no compulsion to engage at this stage, although this may be referenced during any subsequent court proceedings, and the court may be invited to make inferences from a decision to opt out.
16. Any referral to the FDAC pre-proceedings program must be agreed by the client through a legal representative. Only legally represented clients (under public funding for PLO) will be accepted into the pre-proceedings FDAC process.
17. The pre-proceedings FDAC intervention will represent an assessment under the Public Law Outline process, in accordance with the requirements of the Experts Practice Direction 2008, which states that:

*“When experts’ reports are commissioned before the commencement of proceedings, it should be made clear to the expert that he or she may in due course be reporting to the court and should therefore consider himself or herself bound by this guidance. A prospective party to family proceedings relating to children (for example, a local authority) should always write a letter of instruction when asking a potential witness for a report or an opinion, whether that request is within proceedings or pre-proceedings (for example, when commissioning specialist assessment materials, reports from a treating expert or other evidential materials); and the letter of instruction should conform to the principles set out in this guidance.”*

18. FDAC will be treated as an independent expert in the case prior to any initiation of public law proceedings. They will not be involved in any of the Local Authority’s parallel processes (i.e. Child Protection) prior to the initiation of proceedings but will provide reports to all parties and receive minutes.
19. If the case does proceed into court, the case should be issued into the FDAC court, this will essentially take out the initial assessment stage of the FDAC process. Parents should be made aware from the outset that if the case proceeds into court the Local Authority will issue into FDAC for their first Hearing. It may be at the first hearing the court endorses a move to alternate child care proceedings.
20. If the case remains in FDAC, a Review Intervention Planning Meeting will be convened in the place of the Initial Intervention Planning meeting within 3 weeks of the case entering the Court process.



21. Any parent/s entering FDAC court will be given the opportunity of a further trial for change.
22. If a parent attends the FDAC pre-proceedings assessment and treatment programme they will be able to retain the right to revert to normal proceedings if an application to the Court is initiated. However, if the case exits FDAC at any initial or subsequent hearings, the FDAC team will be available to give evidence as a "pre proceedings expert" when the case reverts to usual proceedings.

### **Reviewing, reporting and decision making**

23. FDAC will provide fortnightly review reports giving a brief update on the key areas of progress, key barriers and actions going forward.
24. Intervention Planning Meetings will be held every 6-8 weeks to which the parent(s), the Local Authority and all collaborating treatment providers will be invited. FDAC will provide minutes of the IPMs to the Local Authority.
25. FDAC will maintain ongoing communication with LA and treatment agencies to ensure that any new information is being fed back into the FDAC assessment and intervention plan, to ensure effective client-centred co-ordination of services and to monitor any risks.
26. The Local Authority will share minutes from any relevant meetings with FDAC.
27. FDAC will meet with the Local Authority prior to sharing their final recommendation with the parent. This is to ensure adequate co-ordination and planning, and to allow the Local Authority time to consider their care plan prior to the feedback being given to the parent. This is to avoid situations where parents are given conflicting messages which creates a great deal of anxiety.
28. At the conclusion of the initial 13 week trial for change, FDAC will provide a substantive parenting report with recommendations for next actions.

### **Specific circumstances**

29. In case of disengagement/poor engagement.
  - 29.2 If parents do not engage with the pre-proceedings program sufficiently, this may result in a situation where there is insufficient information for FDAC to give a well-evidenced appraisal of risk. This can lead to extension of the process with no benefit to the child. In cases where engagement is poor, the FDAC and Local Authority should meet to consider the implications and the risks to the child in the absence of any progress. One consideration may be that the case enters FDAC proceedings prior to the conclusion of the 13 week pre-proceedings intervention.
30. In case of sudden escalation of concerns.
  - 30.2 Should there be a sudden escalation of concerns identified either by the Local Authority or FDAC, a professionals meeting should be convened at the earliest opportunity to consider

appropriate steps to safeguard the child and the possibility of the case entering FDAC proceedings prior to the conclusion of the 13 week pre-proceedings intervention.

30.3 FDAC must advise the Local Authority of any significant risks that emerge during the course of the pre-proceedings intervention, if necessary providing an interim report to assist the Local Authority in care planning and decision making for the child(ren).

31. In the case of a change in the Local Authority care plan.

31.2 The Local Authority should contact FDAC to inform of any significant change of care plan so as to ensure that FDAC's ongoing intervention takes into account the change in circumstances and is able to make recommendations on the basis of the intervention to date.

### **Funding**

32. Cases referred into FDAC pre-proceedings will count as one case of the Local Authority's commissioned cases for the year. If the case enters proceedings this will count as the same case provided that the case enters proceedings prior to or at the end of the 13 week intervention period. A maximum 4 week interval is allowed beyond the conclusion of the 13 week intervention and issuing proceedings to allow for preparation of the necessary paperwork.

33. For cases that extend in FDAC pre-proceedings, the maximum extension is 13 further weeks. Cases that enter FDAC proceedings during or after this extension phase will be subject to extra charge depending on the duration of the additional intervention.