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The Role of the Court in Cases Concerning Parental Substance Misuse and Children at Risk of Harm

Judith Harwin & Mary Ryan

This article explores the potential of a specialist family drug and alcohol court, a new court-based intervention to be piloted by government, for children at risk of care proceedings due to parental substance misuse. It examines the reasons for the initiative and considers its potential to improve outcomes for children. It concludes with a discussion of the key issues to be tested out through an independent evaluation of the pilot.

Keywords: care proceedings; problem-solving courts; child protection; substance misuse; parenting; child outcomes

Introduction

Parental substance misuse[1] (PSM) is now recognised to be a major risk factor for child well-being (Advisory Council for the Misuse of Drugs 2003; Cleaver *et al* 1999; Prime Minister's Strategy Unit 2004; Rutter *et al* 1998; Newman 2002; Barnard and McKeganey 2004; Velleman and Templeton 2006). It touches the work of every discipline that deals with children, but interventions are often piecemeal and informed by different, and sometimes clashing, disciplinary ideologies and objectives on how best to safeguard children (Kroll and Taylor 2003; Hart and Powell 2006; Ryan *et al* 2006; Forrester and Harwin 2007).

In this article we focus on those children who are referred to children's social-care services because of parental substance misuse and who are at risk of, or subject to, s 31 care proceedings under the Children Act 1989[2] due to actual or likely significant harm that is attributable to the parent. If proven, these proceedings may result in a care order with short-term or permanent removal from the birth parent through a range of out-of-home placements and, in the case of babies or young children,

Correspondence to: Professor Judith Harwin, Department of Health Sciences and Social Care, Brunel University, Uxbridge, Middlesex, UB8 3PH. E-mail: Judith.harwin@brunel.ac.uk

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adoption proceedings may follow. Against a background of mounting evidence to suggest that the current interventions are inadequate to the nature and scale of the problem, we discuss the potential of a new development, a specialist family drug and alcohol court operating within the framework of care proceedings.

The UK government, having referred to the testing of this approach in the October 2006 Green Paper *Care Matters: Transforming the Lives of Children and Young People in Care* (Department for Education and Skills 2006) and its recent White Paper, *Care Matters: Time for Change* (Department for Education and Skills 2007),[3] has now committed funds to set up an experimental family drug and alcohol court (FDAC) in London to run for three years (January 2008–December 2010) with an inbuilt evaluation. The authors of this article are involved in this development, which is based on an adaptation of an approach widely used in the United States of America that shows promising results (Worcel *et al* 2007; Green *et al* 2007).

The decision by the UK government to fund a court-based intervention is particularly striking at a time when its major policy direction in relation to children and families is in favour of early interventions (Department for Education and Skills 2003; Children Act 2004). In this article we examine the reasons for the FDAC initiative, drawing extensively on the findings of a feasibility study carried out by the authors (Ryan *et al* 2006). We then consider the potential of FDAC to improve outcomes for children and conclude by looking at some of the key issues which will need to be tested through an evaluation of the pilot.

The Feasibility Study

The feasibility study was commissioned to examine practitioner and consumer views about the model of a Family Drug and Alcohol Court, how it might fit within the English legal and social-care systems, what the creation of such a court might achieve and the likely challenges to its success. Views were also sought on the operation of the current court system and how well services were meeting the needs of families where parental substance misuse is an issue.

The study was commissioned by a steering group made up of representatives from UK government departments, the court involved in the pilot, the Children and Family Court Advisory and Support Service (CAFCASS), and managers from both adult and children's services in the three inner London boroughs involved in the project and carried out in association with Brunel University. A total of 57 semi-structured interviews were conducted with members of the steering group, practitioners from adult and children's services, providers of specific services for both children and adults, children's guardians, solicitors and a small number of mothers who were, or had been, users of Class A drugs[4] and had experience of involvement with children and families social services and the courts. Relevant literature was identified and the range of services in the three boroughs was mapped in order to provide a small-scale detailed case study of substance misuse and child welfare in the three pilot London authorities. Although modest in scope, the study helps to fill a gap in the literature on the problems relating to dealing with parental

substance misuse in the court arena. The study should also help in identifying ways forward for addressing those problems.

Findings from the Feasibility Study

The feasibility study identified a range of issues which support the piloting of the FDAC initiative. A major catalyst for the study was the increasing number of care proceedings in which PSM is a key factor in the local authority's decision to compulsorily intervene to protect children from harm. Although no national data are collected by court services, government or children's social-care services on the number of care cases involving PSM, a survey conducted as part of the feasibility study found that in the three participating inner London authorities 60% to 70% of all care proceedings in 2004–05 involved PSM (Ryan *et al* 2006). This is at least twice the rate (20–30%) cited in a research briefing commissioned for the Department for Constitutional Affairs (DCA) child-care proceedings review (Brophy 2006) and significantly higher than the 44% in a study of court care plans and their implementation (Harwin *et al* 2003). No national data are available to indicate how many children whose parents misuse drugs and/or alcohol will end up permanently removed from their parents, but 70% of all children subject to care orders end up living away from their parents permanently (Department for Constitutional Affairs 2006).

In the feasibility study, practitioners working with misusing parents singled out pregnant mothers who were misusing Class A drugs as a group who were particularly vulnerable to having their children removed at birth by local authorities initiating care proceedings without giving the mothers the opportunity to demonstrate their capacity to change and to parent satisfactorily. Other research has confirmed that this practice is widespread, in London at least, and tends to be used as a blanket strategy (Forrester and Harwin 2006, 2007). For the practitioners in the feasibility study, there was an important question as to whether these parents could and should, as a matter of justice, be given the chance, with appropriate support, to try to overcome their substance misuse problem and begin to parent satisfactorily. Respondents questioned whether our knowledge base is sufficiently robust to reliably predict capacity to change in these circumstances. Some therefore argued that there was a moral issue to be considered here as well. These arguments need to be weighed against the fact that the limited available evidence shows that babies removed at birth from Class A misusing parents have good outcomes two years post-referral (Forrester and Harwin 2007). Clearly, in these cases, the care order achieved its child protection objectives. A conclusion of the feasibility study was that an approach is needed that can address both perspectives and identify, on a case-by-case basis, which children might be successfully reunited to which parents and when swift removal is the best option.

Survey respondents identified another group of children who caused them as much concern as the infants removed at birth from new mothers who misused Class A drugs. However, there were contrasting reasons for such concern. These were children who had been left at home in situations where they were experiencing

serious harm for some time before court action was taken. These were children who had been left at home in situations where they were experiencing serious harm for some time before court action was taken. A particular feature of these cases was that interventions by social workers and other professionals were sporadic. Such interventions resulted in a number of assessments without coordinated services and support, with court proceedings frequently precipitated by the removal of children by the police. Many of these cases involved parental alcohol misuse, where the response of practitioners, mirroring that of society as a whole, is less consistent. Other research evidence suggests that the children of parents misusing alcohol are particularly likely to experience actual significant harm before their cases are brought to court. As a result of such harm, these children are very unlikely to find permanent secure placements and have poor welfare outcomes (Harwin and Forrester 2007).

In such cases, bringing the case to court earlier, before the onset of significant harm, could be a far more effective use of the care order and could increase the prospects of finding good placements. Research shows that by the time children have reached the age of four it is already difficult to find adoptive placements for them. This is particularly the case if the child has developmental delay, a disability or is one of a large group of siblings (Hunt *et al* 1999; Harwin *et al* 2003; Lowe *et al* 2002). There are no follow-up data on the specific outcomes of older children affected by PSM who subject to care orders. However, the evidence for all children subject to care orders is of concern and suggests an inverse relationship between a child's age of entry into the care system and good outcomes for the child. Research repeatedly shows that, despite substantial investment by government in recent years, children from the care system have poor educational performance, and, compared to children who are not in care, they are at greater risk of offending, early pregnancies, unemployment and imprisonment (Department for Education and Skills 2006 and 2007a).

Against this background, it must be asked why some children are being left at home so long that they experience serious harm before court action is taken. Once again, the findings of the feasibility study were consistent with the substantial body of research which shows that children's social-care personnel have many difficulties in dealing with substance misuse cases. Lack of training and knowledge hinder the ability of social workers to effectively engage parents who have substance misuse problems. Such parents are often reluctant to engage with services generally and are particularly apprehensive about children's social-care services because of a fear that their child will be removed (Klee *et al* 2002; Tunnard, 2002a, 2002b; Hart and Powell 2006). Lack of knowledge and training also hinder accurate identification and assessment of parental substance misuse and its impacts on children's needs (Forrester and Harwin 2006). This results in poor care planning, whereby families undergo repeated initial assessments without services being put in place, as well as delays in bringing cases to court (Hart and Powell 2006; Ryan *et al* 2006; Forrester and Harwin 2007).

Interviews with parents and practitioners for the feasibility study confirmed that parental substance misuse when families are in contact with children's social-care services is rarely the only parental problem. Such abuse typically goes hand in hand with low incomes, housing problems, offending behaviour, domestic violence, mental

health problems and poor parenting (Forrester and Harwin 2006, Kearney *et al* 2003, Social Care Institute for Excellence 2004; Harbin and Murphy 2003, Kroll and Taylor 2003; Templeton *et al* 2006). Despite this, parents report that they rarely receive help for their full range of problems (Commission for Social Care Inspection 2006; Kroll and Taylor 2003, Tunnard 2002a, 2002b).

Difficulties in the inter-agency framework exacerbated problems in coordinating a response to the range of needs faced by families affected by parental substance misuse. The study singled out four key problems: lack of focus on the whole family; poor communication and collaboration across services; differences in professional ideologies; and, finally, delays in accessing services. The lack of a family focus is closely linked to the problems of communication between adult and children's services, the different approaches taken by both services, and the absence of a coherent approach across different government departments (which have set different targets and performance indicators for the different services involved). Services working with all members of the family affected by parental substance misuse tend to be small-scale projects dependent on short-term funding. Information-sharing between adult and children's services is problematic between the different disciplines working within child and adult services. There are tensions around whether the expectation should be parental abstinence from drink or drugs or whether a harm minimisation approach would be more realistic for the parent and sufficiently safe for the children. There were also tensions concerning the timescales within which change should be expected. Delays in accessing substance-misuse services such as residential detoxification or prescribing, or children and family support services such as day care for children or counselling, also have a negative impact on the effective delivery of a package of services. Other studies have reported similar problems (Social Care Institute of Excellence 2004; Commission for Social Care Inspection 2006; Kroll and Taylor 2003; Hart and Powell 2006)

It is recognised that more needs to be done by all agencies at an earlier stage in order to prevent the escalation of problems which increase the probability of court intervention (Department for Education and Skills 2006, 2007a; Social Exclusion Task Force 2007). However, although improvements are underway (Advisory Council for the Misuse of Drugs 2007), there is still a long way to go. Family-support services and policies are fragmented and illegal drug and alcohol misuse are often treated as entirely separate issues. This is despite evidence of parents frequently misusing both substances (Templeton *et al* 2003; Harwin 2006; RSA 2007). New service initiatives, such as the Drug Interventions Programme, have been driven by the criminal justice agenda. They are often targeted at male offenders and especially at those who misuse illegal drugs. This focus has been at the expense of family support. Help to families misusing alcohol has been, and still remains, a Cinderella service (Turning Point 2006). Furthermore, for family support to be effective, better therapeutic services for children and adults are needed. At present there is a shortage of both, though the UK government is making efforts to expand child and adolescent mental-health services (Department of Health 2004; Social Exclusion Task Force

2007). Finally, there is a dearth of proven effective community-based services for parents who are at risk of their children being taken into care.

Access to effective family support and improved collaboration between adult and children's services is essential. However, even with better early interventions, improved professional expertise and inter-agency collaboration, it is inevitable that in some cases there will be a need for compulsory state intervention through court proceedings in order to adequately protect children. In some cases, the evidence of actual or significant harm will come to light late. In other cases, family support will not succeed. It is therefore also important to address some of the problems that have been identified in relation to the courts and care proceedings in this field.

Respondents in the feasibility project who were involved in court proceedings all raised concerns about costs, delays and the use of experts. Although these difficulties have been identified in earlier research (Booth 1996; Brophy *et al* 1999; Hunt *et al* 1999), our study suggests that they persist. Using a range of experts in these cases is common for multiple reasons. First, the court lacks confidence in social-work assessments of the extent of the substance misuse, its impact on parenting and on the welfare of the children. Second, courts, lawyers and, frequently, children's guardians do not believe that they have sufficient knowledge of these issues themselves. A third reason often cited by respondents was the issue of quality. Social-work assessments were considered to lack focus, and reports from children's guardians were regarded as uneven in quality. Respondents reported that frequently the same experts tended to be instructed in these cases, and as a result, all of the professionals involved, could predict what the expert opinion would say. Delays in arranging for these assessments to be carried out were a further problem. So was the over-concentration on straightforward assessment, as opposed to assessing whilst also intervening and working with the parent and the family as a whole. There is a tendency for the different assessments to happen in sequence, which can, again, lead to delays (Ryan *et al* 2006). Finally, case decisions and research have also highlighted concerns over care planning. In particular, they question whether care plans are properly prepared, whether they are over-optimistic in the case of substance-misusing parents, and whether they are actually followed through once the proceedings have been completed (Hunt and MacLeod 1999; Harwin and Owen 2003; Thorpe LJ and Clarke 1998).

All of these factors provide the rationale for developing and testing out a new approach within care proceedings, one which will try to address the needs of the adults and also see if it is possible to align timescales for their treatment with those of the child's need for permanence (Department for Education and Skills 2007: para 2.23).

Time for a New Approach: The Potential of Family Drug and Alcohol Courts

Local authorities have duties to children in need and at risk, but, as we have shown above, a lack of adequate skills among social workers, and poor coordination between adult and children's services, means that the response in many cases is inadequate.

Once court proceedings have begun, opportunities to engage the parent in both substance misuse services and child and family support services are often lost because of the traditional way in which cases are dealt with. There is, thus, merit in testing out a new approach within the court setting to see whether this would be effective in enabling decisions to be made more quickly, while at the same time encouraging more parents to engage with services and maintain engagement.

The feasibility study looked at the Family Treatment Drug Court (FTDC). This was a model which was first developed in the US in the late 1990s, when the juvenile dependency courts – dealing with compulsory intervention to protect children – became concerned at the number of cases where the harm to the children subject to proceedings was linked directly to parental substance misuse. By April 2006 there were 183 such courts operating in 43 states (Worcel *et al* 2007).

The FTDCs are specialist, 'problem-solving' courts, based originally on the drug court model within the criminal justice system. However, they have been developed extensively in other jurisdictions. These courts acknowledge the fact that some problematic behaviours cannot simply be addressed by a legal 'solution': they are complex and require a mix of interventions from other disciplines. However, it is also acknowledged that only the courts can provide the element of authority that may be necessary. So, it is argued, 'problem-solving' courts can use the authority of the court to:

> Forge new responses to chronic social, human and legal problems that have proven resistant to conventional solutions. They seek to broaden the focus of legal proceedings, from simply adjudicating past facts and legal issues to an early intervention into the behaviour of litigants. (Berman and Feinblatt 2001)

Problem-solving courts have a number of key features. These include a focus on case outcomes, non-traditional roles in the court room, multi-disciplinary collaboration and specially trained judges or magistrates who play a key role in regularly monitoring the progress of defendants in relation to, for example, their compliance with substance misuse services, (Plotnikoff and Woolfson 2005; Stewart 2005). These courts are based on the principles of 'therapeutic jurisprudence'. This approach has developed in the last 15 years or so as a practical and more interventionist approach to particular problems within the criminal justice system.[5] A main principle of the approach is that the health, welfare and rehabilitation of the offender, as well as their punishment, are key issues to be addressed in sentencing. Other commentators describe therapeutic sentencing as addressing the 'revolving door' syndrome with repeat offenders and giving hope of change in a positive and non-coercive manner (Phelan 2003; Berman and Feinblatt 2001; Wexler and Winnick 1992). This approach has been extended to civil cases, where personal, notably parental, behaviour is the issue and it provides the theoretical underpinning to FTDCs.

Key elements of FTDCs include having specially trained judges who deal with the case from start to finish. Attached to the court is a specialist team of substance misuse, childcare and other professionals. These assess the extent of substance misuse and the support needed by the children and parents in relation to parenting, health

and other issues, including housing and domestic violence. They advise the court about the package of services needed by the parents and children. If the parent is in agreement with the plan, this is then put into action. The judge maintains regular contact with the parents and plays an important role in motivating them, keeping them engaged with services, and helping to resolve any problems that may arise. Parent mentors, who themselves have successfully completed the programme and regained their children, provide additional support to the parents.

The main aims of the FTDCs are to enable more children to be reunited successfully with their parents and to ensure that those who cannot return home have permanent placements as quickly as possible. It is made clear to parents that success in dealing with their substance misuse problems is not an automatic guarantee that their children will be returned to them, but will be an important factor to consider when that decision is made (Edwards and Ray 2005; Worcel *et al* 2007).

The USA national evaluation of FTDCs is encouraging. It found that more children were reunited with their parents, fewer cases ended in termination of parental rights and more children were placed faster in permanent homes when reunification was not possible. These child-welfare outcomes were also associated with cost savings, particularly on foster-care services. A crucial question is what mediates the results. The US evaluation suggests that the court process and the associated services that are provided play a central role. Parents were more likely to enter treatment and to complete substance misuse programmes than comparison parents. They were also more likely to return to treatment following relapse. Research shows that retention is positively associated with better outcomes and satisfaction with services is also important (Morris and McKegany 2005). Also, completion of treatment was a very strong predictor of child reunification (Green *et al* 2007).

Adapting the Model to English Law and Practice

Clearly it would not be possible simply to import this model of practice from a different system and culture, no matter how encouraging the results. Thus a central goal of the feasibility study was to examine how the model could work within the legal and social-care systems operating in England and Wales. The feasibility study found that there was widespread support for testing a model which incorporates the problem-solving approach into care proceedings. Indeed, there are a number of similar initiatives currently underway in England and Wales. The problem-solving specialist court is being piloted within the criminal justice system with specialist drug and domestic violence courts. It is also being piloted within the civil system with a specialist Family Justice Centre. All of these initiatives are currently being evaluated. What they share is the development of a new, more involved and proactive role for judges and magistrates. They also share the use of the court as a mechanism for bringing a coherent package of services together for individuals or families and as a centre for access to specialist advice (Cook *et al* 2004; Plotnikoff and Woolfson 2005).

The model will be called the Family Drug and Alcohol Court in order to make it clear that substance misuse refers as much to alcohol misuse as to the misuse of illegal

drugs. Two judges will be assigned to the court and will be specially trained. They will play a proactive role, meeting parents regularly at reviews, motivating and encouraging them to engage with services and helping to resolve problems that may arise in accessing services. Since the FDAC will operate within care proceedings, these judges will also be adjudicating in those proceedings. This is not always the case in USA, where different courts operate different systems.

A specialist team to advise the court will be set up and will be run and managed by an organisation, or consortium of organisations, independent of the three local authorities taking part in the pilot. This is to ensure that the team is seen to be separate and independent from the local authority bringing the proceedings, which will be particularly important for parents, children and other family members who may be involved in the case.

The specialist team will be smaller than many of those linked to the FTDCs in the USA, but it will include a senior substance-misuse practitioner and a senior child and family social worker with expertise of substance misuse. There will also be domestic violence and housing link workers, along with sessional time from adult psychiatrists and from child and adolescent psychiatrists. The main functions of the team will be to assess the level of parental substance misuse and the parent's capacity for change. They will also review any assessments already carried out in relation to the children's health and development, the parenting capacity of the parent and family functioning. They will then agree a plan with the parent and submit this for the approval of the court and the other parties to the proceedings. They will oversee the parent's engagement with services and will report to the judge and the other parties to the proceedings on the parent's progress. The team will liaise closely with local services and the expectation is that the plan agreed with the parent will utilise local services as far as possible, rather than external experts.

The specialist team will also provide support and supervision to a team of parent mentors. These will be recruited to support parents going through the court process. The parent mentors will be volunteers who are parents and who have successfully addressed their own substance misuse problems. They will also be a new departure for the FDAC. Although parents have been parties to care proceedings in England and Wales since the implementation of the Children Act 1989, research by Freeman and Hunt (1998), echoed by parents in the feasibility study, indicates that parents report feeling ill-prepared for care proceedings. They also report finding the process confusing and intimidating and feeling marginalised and unsupported. Moreover, their solicitors may lack specific expertise in this area of law and little support is available once care proceedings have finished (Hunt *et al* 1999; Ryan *et al* 2006).

A major objective of the pilot is to help parents to feel more engaged in the court process and in community services through receiving support both from the judge and from parent mentors who are positive role models. A further important role for the specialist team and parent mentors will be to support parents who do not succeed in having their children returned to their care. Such support is rarely available (Hunt *et al* 1999; Ryan *et al* 2006). The new support systems are also being developed to establish whether, over the longer term, they can reduce the numbers of substance

misusing parents who, with the birth of each new baby, end up in care proceedings on a regular basis, only to face the baby's removal. Finally, intensive support may enable more parents to maintain contact with their children.

How the Process Will Work

There will be training on the process and an explanation of the ethos and aims of the court for all relevant practitioners in the three boroughs taking part in the pilot. The two judges, magistrates and court staff and legal representatives and children's guardians will be encouraged to join this training. Care proceedings will be started in the usual way, except that the local authority will notify the court that the case concerns substance misuse. This notification will lead to the case automatically being allocated to the specialist FDAC. Proceedings will continue largely as they do now, but with some key differences.

First, there will be a different role for the judges. It is fair to say that judges who deal with care proceedings are already specialists in the sense that they are specially appointed to hear such cases and receive training to do this. What will be different is that the same judge will deal with the case throughout. This development is likely to be widely welcomed since it has long been argued that this would ensure best practice in care proceedings generally. Also different will be the judges' role in regularly monitoring the parent's progress and in motivating and encouraging them to stay engaged with substance misuse and other services. Commentators on problem-solving courts note that the approach requires a very different role for judges from that common in adversarial systems:

> Judges go from being a detached, neutral arbiter to the central figure in the team … the judge is both a cheerleader and stern parent, encouraging and rewarding compliance, as well as attending to lapses. (Chase and Fulton Hora 2000)

Research into problem-solving courts in other countries, including the FTDCs in the US, suggests that this involved and proactive judicial role is more effective in getting people to engage with services and maintain that engagement (Green *et al* 2007; Edwards and Ray 2005; Burton 2006, Petrucci 2002). However, it does raise problematic issues. Criticism of problem-solving courts has focused on the less acceptable outcomes of the operation of the extensive discretion accorded to the judge in these schemes. Lack of uniformity of outcome might be viewed as 'injustice by geography', whilst discretion allows for particular professional or personal values to influence outcomes. There are also fears that this is bringing in an inquisitorial system of justice which may place too much pressure on its 'clients' to agree to desired outcomes. Finally, there is the risk of possible bias if the same judge then adjudicates on issues of conflict in the case (Johnson 2005; Plotnikoff and Woolfson 2005). This question of judicial bias will be one of the issues that the evaluation of the pilot will consider.

The judges' meetings with the parent will take place at regular reviews. The parent will attend court initially fortnightly, and thereafter monthly, for a fixed appointment with the judge. The feasibility study established that legal representatives should not

attend these reviews. A member of the specialist team will attend to report to the judge on the parent's progress. The report will be short and will be circulated to the other parties shortly in advance of the review. Children's social workers and guardians will be able to attend the reviews if they wish. As well as motivating the parent, the judge will also discuss with the parent and the specialist team whether there have been any problems in ensuring that services are delivered. Also, changes to the plan may be made if necessary. If parents are failing to cooperate or if there are clear disagreements that cannot be resolved, the case will be listed for a full hearing with all the parties present. Although this type of review is used within the specialist drug courts, and as part of drug treatment requirements, such reviews occur after a person has pleaded or been found guilty of an offence. The difference here will be that they are occurring while proceedings are ongoing. This means that, as well as the issue of judicial bias, there is also the possibility of issues being raised at the review that are relevant for interim or final decisions in the case. This is another feature of the court's procedures that will need to be carefully considered as part of the evaluation.

Another key difference in cases being dealt with by the FDAC will be the restriction on the use of experts. The expectation is that it will be the specialist team, and not the parties' legal representatives, who will decide whether or not any further expert assessments are needed. If they are, a further expectation is that these assessments will be carried out by local professionals and services, wherever possible. The support services identified as necessary in the plan agreed with the parents and by all the parties will also be local services.

Key Issues

First, it will be important that the lawyers representing children and parents are prepared to support this approach. Research into problem-solving courts in other jurisdictions has identified the importance of having legal representatives sympathetic to, and prepared to support, the aims of the court (Stewart 2005; Plotnikoff and Woolfson 2005). As previously noted, lawyers will be encouraged to take part in the training for personnel to be involved in the FDAC. It is also true that lawyers representing children in care proceedings are appointed from a panel of specialist lawyers, as are many of those who represent parents. There is an expectation already of a minimal adversarial approach in care proceedings and there are already some limitations on the instruction of experts, with an expectation that all parties will cooperate in the appointment and instruction of experts. Lawyers interviewed for the feasibility study indicated a willingness to test out this new approach. The evaluation will need to investigate the views of all the different parties in relation to this further reduction in choice of experts.

Second, the approach relies on a sufficient range of services being available locally and accessible quickly, so that plans agreed with the parent and accepted by all parties can be put into effect quickly. This raises the question of whether parents within the FDAC process should be 'fast tracked' into local services. There are those who would argue that this is unfair on parents who have cooperated with services and thus not experienced the local authority taking proceedings in relation to their children. Practitioners may share

this view, as may members of the public. It should be noted, however, that adults who commit criminal offences related to substance misuse have for some time now, through the Drug Intervention Programme, been fast-tracked into substance misuse services. Considerable amounts of money have been spent on this programme, while the research into its effectiveness shows that those taking part in it are mainly male. There is no information on how many of these males are parents, but clearly the focus of the programme is on reducing offending rather than benefiting children.

Another key issue concerns the opportunities and risks of bringing cases to court earlier. As already discussed, research shows that local authorities already use court intervention very quickly in cases concerning pregnant women misusing Class A drugs. There will be little change in approach here. However a goal of the pilot is to encourage practitioners to bring other cases to court earlier — those where research indicates that there can be long delays before proceedings are finally taken, and where such action is often prompted by a crisis rather than careful planning. This raises the possibility that the numbers of children removed from their families through care proceedings will increase. However, given the evidence of poor outcomes for children left too long in neglectful or harmful situations, this may be a positive outcome for many children. Another possibility is that bringing cases to court earlier, using the authority of the court, the new proactive role of the judge and the expertise of the specialist team will ensure better engagement of parents and better protection for children than currently. It may also result in more successful service delivery to the family as a whole. Further, and importantly, it may also enable the court to make a fuller use of the range of options open to it than is currently the case. For example, it may prove possible for the court to allow children to remain at home more frequently during the course of proceedings and to make more use of interim and final supervision orders.

There are, however, also some risks that need to be recognised. First, there is a risk of net-widening. This particularly applies in those cases where evidence is not clear-cut and the risks are not immediate. These so-called grey cases may involve parents who binge drink but provide good care at other times, or those involving ongoing and chronic low-level neglect the impact of which only becomes more evident as the children grow up and start to demonstrate troublesome behaviour. Although social workers may believe that the facts of these cases reveal the child that is likely to suffer significant harm, the evidence before the court will necessarily be more future-oriented and therefore more difficult to obtain and more open to legal challenge. A second main risk is that once the child is removed from home reunification may be more difficult, particularly if a care order is made. Finally, there is a risk that bringing cases to court early, may be regarded as disproportionate interventions within the terms of Art 8 of the Human Rights Act 1998.

All these risks will need to be addressed through a system of careful checks and balances within the FDAC. The FDAC team and judge will need to be satisfied that, when a case is brought to court, the relevant agencies have made reasonable efforts to provide family support whenever possible. It will be particularly important for the judge to test out the threshold criteria in court. This may, indeed, provide better protection to the parent than if they had agreed to their child being 'looked after' by

the local authority under s 20 of the Children Act 1989. In their study of the operation of s 20 of the Children Act 1989, Packman and Hall found that parents were, in effect, being coerced to agree to their child being accommodated in order that the local authority never had to test out the threshold conditions (Packman and Hall 1998). At the same time, particular attention will be given to explaining that participation is voluntary and carries no repercussions with respect to the individual case if the FDAC route is rejected. However, the evaluation will need to establish whether parents do feel pressure to enrol in the programme.

Conclusions

The 2006 Green Paper *Care Matters* invited consultation on an interesting question – should government work towards a smaller care population as a goal in itself? The consultation drew mixed responses (Department for Education and Skills 2007b) but a broad message was that decisions should be taken on the basis of individual needs rather than as a policy strategy. This latter could, it was argued, produce unintended consequences. These might include raising thresholds so high that children could be left at home in danger. This individualised approach is in line with the goal of the FDAC initiative – to help establish, on an individualised basis rather than as an *a priori* policy strategy, whether it can achieve as promising results as its US counterparts. In particular will it be able to improve child outcomes by helping parents overcome their substance misuse or by placing children in permanent alternative homes before they have experienced actual significant harm? The evaluation will need to establish whether the FDAC will generate substantially different kinds of services from those offered currently and whether the resources will be available to provide timely and accessible multi-agency help. How will parents and practitioners view the strengths and weaknesses of the FDAC? Will it lead to financial savings? Above all, what explains the results? In particular, how far is the model of a specialist court led by a proactive judge a key factor in the results. These are some of the main questions that the evaluation will address. We hope to report back on interim findings in due course.

Notes

[1] For the purposes of this article the term substance misuse refers to the problem use of illegal drugs or alcohol that has a negative impact on parenting capacity.

[2] A court may only make a care or supervision order if it is 'satisfied':
(a) that the child concerned is suffering, or is likely to suffer, significant harm; and
(b) that the harm, or likelihood of harm, is attributable to: (i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or (ii) the child's being beyond parental control' (s 31(2) of the Children Act 1989).

[3] The Green and White Papers apply to England and Wales only.

[4] These include illegal drugs such as heroin, cocaine and crack. For fuller information see: <www.homeoffice.gov.uk/drugs/drugs-law/Class-a-b-c/>. Accessed 20 November 2007.

[5] See, for example, *Contemporary Issues in Law*, vol. 7, no. 1 (2003–04), which was devoted to articles on therapeutic jurisprudence; the article by P Fulton and D Chase looks at its

relevance to drug treatment courts. See also the website of the International Network on Therapeutic Jurisprudence. Available at <http://www.therapeuticjurisprudence.org/>. Accessed 4 August 2007.

References

Advisory Council on the Misuse of Drugs (2003) *Hidden Harm: Responding to the Needs of Children of Problem Drug Users*, Report of an inquiry by the Advisory Council on the Misuse of Drugs, Home Office, London.

Advisory Council on the Misuse of Drugs (2007) *Hidden Harm Three Years On: Realities, Challenges and Opportunities*, Report of an inquiry by the Advisory Council on the Misuse of Drugs, Home Office, London.

Barnard, M. & McKeganey, N. (2004) 'The impact of parental problem drug use on children; what is the problem and what can be done to help?' *Addiction*, vol. 99(5), pp. 552–559.

Berman, G. & Feinblatt, J. (2001) 'Problem-solving courts: A brief primer', *Law and Policy*, vol. 23, no. 2, pp. 125–140.

Booth Dame Margaret (1996) *Avoiding Delay in Children Act Cases*, Lord Chancellor's Department, London.

Brophy, J., with Bates, P., Brown, L., Cohen, S., Radcliffe, P. & Wale, C. J. (1999) *Expert Evidence in Child Protection Litigation: Where do we go from Here?*, TSO, London.

Brophy, J. (2006) *Research review: Child care proceedings under the Children Act 1989*, DCA Research Series 5/06, Department for Constitutional Affairs Research Unit, London.

Burton, M. (2006) 'Judicial monitoring of compliance: Introducing 'problem solving' approaches to domestic violence courts in England and Wales', *International Journal of Law, Policy and the Family*, vol. 20, pp. 366–378.

Chase, D. & Fulton Hora, P. (2000) 'The implications of therapeutic jurisprudence for judicial satisfaction', *Court Review*, Spring, pp. 12–20.

Cleaver, H., Unell, I. & Aldgate, J. (1999) *Children's Needs - Parenting Capacity*, TSO, London.

Commission for Social Care Inspection (2006) *Supporting parents, safeguarding children, meeting the needs of parents with children on the child protection register*, CSCI, Newcastle. Available at <http://www.csci.org.uk/publications>. Accessed 20 November 2007.

Cook, D., Burton, M., Robinson, A. & Vallely, C. (2004) *Evaluation of Specialist Domestic Violence Courts/Fast Track Systems*, CPS, DCA, Criminal Justice System Race Unit, London.

Department for Constitutional Affairs (2006) *Review of the Child Care Proceedings System in England and Wales*. Available at <http://www.dca.gov.uk/publications/reports_reviews/childcare_ps.pdf>. Accessed 11 June 2007.

Department for Education and Skills (2003) *Every Child Matters: Change for Children in Social Care*, Cm. 5860, TSO, London.

Department for Education and Skills (2006a) *Care Matters: Transforming the Lives of Children and Young People in Care*, Cm 6932, TSO, London.

Department for Education and Skills (2007a) *Care Matters: Time for Change*, Cm 7137, TSO, London.

Department for Education and Skills (2007b) *Care Matters: Consultation Responses*, DfES Publications, Nottingham. Available at http://www.dfes.gov.uk/publications/carematters/index.shtml. Accessed 20 November 2007.

Department of Health (2004) *National Service Framework for Children, Young People and Maternity Services – Department of Health, London.*

Edwards, L. P. & Ray, J. A. (2005) 'Judicial perspectives on Family Drug Treatment Courts', *Juvenile and Family Court Journal*, Summer, pp. 1–27.

Eley, S. (2005) 'Changing practices: The specialised Domestic Violence Court process', *The Howard Journal*, vol. 44, no. 2, pp. 113–124.

Freeman, P. & Hunt, J. (1998) *Parental Perspectives on Care Proceedings*, TSO, London.

Forrester, D. & Harwin, J. (2006) 'Parental substance misuse and child care social work: Findings from the first stage of a study of 100 families', *Child and Family Social Work*, vol. 11, no. 4, pp. 325–335.

Forrester, D. & Harwin, J. (2007) 'Outcomes for children whose parents misuse drugs or alcohol: A 2-year follow-up study', *British Journal of Social Work*, BJSW Advance Access published on 3 August 2007. Available at <doi:10.1093/bjsw/bcm051>. Accessed 4 August 2007.

Goldberg, S. (2005) *Judging for the 21st Century: A Problem-solving approach*, National Judicial Institute, Canada.

Green, B., Furrer, C., Worcel, S., Burrus, S. & Finigan, M. W. (2007) 'How effective are Family Treatment Drug Courts? Outcomes from a four-site national study, *Child Maltreatment*, vol. 12, pp. 43–59.

Harbin, F. & Murphy, M. (2003) 'The Assessment of Parental Substance Misuse and its Impact on Child Care', in: M. Calder & S. Hackett (eds) *Assessment in Child Care*, Russell House Publishing, Lyme Regis.

Harbin, F. & Murphy, M. (eds) (2006) *Secret Lives: Growing Up with Substance*, RHP, Dorset.

Hart, D. & Powell, J. (2006) *Adult Drug Problems, Children's Needs: Assessing the impact of parental drug use – a toolkit for practitioners*, National Children's Bureau, London.

Harwin, J., Owen, M., Locke, R. & Forrester, D. (2003) *Making Care Orders Work: A study of care plans and their implementation*, TSO, London.

Harwin, J. & Owen, M. (2003) 'The implementation of care plans and their relationship to children's welfare', *Child and Family Law Quarterly*, vol. 15, no. 1, pp. 71–83.

Harwin, J. & Owen, M. (2002) 'A study of care plans and their implementation and relevance for *Re W and B and Re W (Care Plan)*'. In L. J. Thorpe & C. Cowton (eds) *Delight and Dole: The Children Act 10 years On*, Jordans, pp. 63–74.

Harwin, J. (2006) 'Comparing child outcomes when parents misuse alcohol and illegal drugs', paper presented at the XVI International Congress on Child Abuse and Neglect (ISPCAN), 'Children in a Changing World: Getting It Right', 3–6 September, University of York, UK.

Hora, P. J. (2006) '*Family Dependency Treatment Courts in the United States*', paper presented at the XVI Congress of the International Society for Prevention of Child Abuse and Neglect (ISPCAN), 'Children in a Changing World: Getting It Right', 3–6 September, University of York, UK.

Hough, M., Clancy, A., McSweeny, T. & Turnbull, P. (2003) *The Impact of Drug Treatment and Testing Orders on Offending*, Home Office, London.

Humphreys, C. & Stanley, N. (eds) (2006) *Domestic Violence and Child Protection: Directions for Good Practice*, Jessica Kingsley, London.

Hunt, J., Macleod, A. & Thomas, C. (1999) *The Last Resort: Child Protection, the Courts and the 1989 Children Act*, TSO, London.

Hunt, J. & MacLeod, A. (1999) *The Best Laid Plans: Outcomes of Judicial Decision-Making in Child Protection Proceedings*, TSO, London.

Johnson, D. F. (2005) *Judicial Ethics in Family Drug Treatment Courts*, in 'The Judges' Page'. Available at <www.nationalcasa.org/download/Judges-page/0502>. Accessed 20 November 2007.

Judicial Review Team (2005) 'Thematic Review of the Protocol for Judicial Case Management in Public Law Children Act Cases'. Available at http://www.judiciary.gov.uk/docs/judicial_reform_team_final_report_141205.pdf Accessed 22 November 2007.

Kearney, P., Levin, E. & Rosen, G. (2003) *Alcohol, Drug and Mental Health Problems: Working with families*, Research Report No. 2, SCIE, London.

Klee, H., Jackson, M. & Lewis, S. (2002) *Drug Misuse and Motherhood*, Routledge, London.

Kroll, B. & Taylor, A. (2003) *Parental Substance Misuse and Child Welfare*, Jessica Kingsley, London.

Lowe, N., Murch, M., Bader, K., Borkowski, M., Copner, R., Lisles, C. & Shearman, J. (2002) *The Plan for the Child – Adoption or Long-term Fostering?*, BAAF, London.

Morris, Z. M. & McKeganey, N. (2005) *Retention in Drug Treatment in Scotland: Accounting for Retention and its Implications for Policy and Practice.* Available from: http://www.nad.fi/pdf/47/McKeganey%20SloteMorris.pdf Accessed November 21 2007.

Murphy, M. & Harbin, F. (2003) 'The Assessment of parental substance misuse and its impact on childcare'. In M. Calder & S. Hackett (eds) *Assessment in Childcare: Using and Developing Frameworks for Practice*, Russell House.

Newman, T. (2002) *Promoting Resilience: A Review of Effective Strategies for Child Care Services*, Barnardo's, Barkingside.

Packman, J. & Hall, C. (1998) *From Care to Accommodation: Support, Protection and Control in Children's Services*, TSO, London.

Petrucci, C. (2002) 'Respect as a component in the judge-defendant interaction in a specialised domestic violence court that utilises therapeutic jurisprudence', *Criminal Law Bulletin*, vol. 38, no. 2, pp. 263–295.

Phelan, A. (2003) 'Solving human problems or deciding cases? Problem-solving courts', paper presented at Promising Practices for Victims and Witnesses in the Criminal Justice System Conference, Victims of Crime Coordinator's Office and ACT Attorney General's Department, Canberra, ACT.

Plotnikoff, J. & Woolfson, R. (2005) *Review of the Effectiveness of Specialist Courts in Other Jurisdictions*, DCA Research Series 3/05, Department for Constitutional Affairs, London.

Prime Minister's Strategy Unit (PMSU) (2004) *Alcohol Harm Reduction Strategy for England*, Cabinet Office; London. Available at <www.strategy.gov.uk/downloads/su/>. Accessed 12 Apirl, 2006.

Rutter, M., Giller, H. & Hagel, A. (1998) *Anti-social behaviour by Young People*, Cambridge University Press, Cambridge.

Ryan, M., Harwin, J. & Chamberlain, C. (2006) *Report on the feasibility of establishing a family drug and alcohol court at Wells St Family Proceedings Court*, prepared for LB Islington, Westminster, CAFCASS, Wells St Inner London FPC and Brunel University.

RSA Commission on Illegal Drugs, Communities and Public Policy (2007) *Drugs-facing facts*. Available at <http://www.rsadrugscommission.org/>. Accessed 21 June, 2007.

Social Care Institute for Excellence (SCIE) (2004) *Parenting Capacity and Substance Misuse*, Research Briefing 6, Social Care Institute for Excellence, London.

Social Exclusion Task Force (2007) *Reaching Out: Think Family: Analysis and Themes from the Families at Risk Review*, Cabinet Office, London. Available at <www.cabinetoffice.gov.uk/social_exclusion_task_force/documents/think_families/think_families.pdf>. Accessed 18 November, 2005.

Stevenson, O. (2007) *Neglected Children and their Families*, 2nd edn, Blackwell Publishing, Oxford.

Stewart, J. (2005) *Specialist Domestic/Family Violence Courts within the Australian Context*, Issues Paper 10, Australian Domestic and Family Violence Clearinghouse, University of New South Wales, Sydney, NSW.

Templeton, L., Zohhadi, S. & Velleman, R. (2003) *Working with the Children and Families of Problem Alcohol Abusers: A toolkit*, Final Report to the Alcohol Education and Research Council from the Alcohol, Drugs and the Family Research Programme, Mental Health Research and Development Unit, University of Bath and Avon and Wiltshire Mental Health Partnership NHS Trust, University of Bath, Bath.

Thorpe, Rt Hon, Justice, Lord & Clarke, E. (1998) *Divided Duties: Care Planning for Children Within the Family Justice System*, Jordans, in association with Family Law, Bristol.

Tunnard, J. (2002a) *Parental Drug Misuse – A Review of Impact and Intervention Studies*, Research in Practice, Dartington.

Tunnard, J. (2002b) *Parental Problem Drinking and its Impact on Children*, Research in Practice, Dartington.

Turning Point (2006) *Bottling It Up: The Effects of Alcohol Misuse on Children, Parents and Families, London.*

Velleman, R. & Templeton, L. (2006) 'Reaching out: Promoting resilience in the children of substance misusers', in: eds F. Harbin & M. Murphy. *Secret Lives: Growing with Substance*, Russell House Publishing, Lyme Regis.

Wexler, D. B. & Winnick, B. J. (1992) 'The potential of therapeutic jurisprudence: A new approach to psychology and the law'. In J. R. P. Ogloff (ed.) *The Law and Psychology: The Broadening of the Discipline*, Caroline Academic Press, Durham, NC.

Worcel, S. D., Green, B., Furrer, C. J., Burrus, S. W. M. & Finigan, M. W. (2007) *Family Treatment Drug Court Evaluation*, NPC Research, Turning Point, Oregon.