

CENTRE FOR JUSTICE INNOVATION: COMMISSION ON JUSTICE IN WALES

BACKGROUND

1. The Centre for Justice Innovation's vision is a justice system which all of its citizens believe is fair and effective. We work across the United Kingdom and seek to draw and share lessons from each jurisdiction in the UK, and through our special relationship with the Center for Court Innovation in the USA, internationally.
2. We have been asked to submit a short response to the Commission on how problem-solving can promote "better outcomes in terms of access to justice, reducing crime and promoting rehabilitation." As requested, we have placed a special emphasis on problem-solving justice and the particular contribution problem-solving courts can make in the criminal justice and family justice systems.

THE SPECTRUM OF PROBLEM-SOLVING JUSTICE INITIATIVES

3. The fair and effective justice system we work toward would be:
 - **Problem-solving:** Seeking to resolve the factors that underlie crime and social harm;
 - **Procedural fair:** Ensuring that those who go through the justice system understand what's happening to them and that they feel treated with humanity;
 - **Proportionate:** Seeking to do no harm, concentrating on the right intervention at the right time with the right people and no more;
 - **Innovative from the ground up,** recognising that sustainable innovation is best developed in response to local context and capacity.
4. Problem-solving is therefore a core principle which we believe should underline a range of justice system responses, and not just matters that get to court. For example, there is overwhelming evidence which demonstrates that the overuse of sanctions, especially early on in a person's life, is counterproductive and can extend and deepen people's criminal careers. We know that, for young people and children in particular, outcomes get worse the further people progress into the system.¹
5. We therefore work to help practitioners and policymakers to provide a proportionate and problem-solving set of responses to low-level crime. In particular, we support practitioners using point of arrest diversion as a way of addressing low-level criminal behaviour, ensuring that people are given a proportionate resolution and, where appropriate, avoiding putting people through the formal criminal justice processing (either through out of court disposals or prosecution) that can result in a criminal record.

¹ The evidence strongly points in this direction. An international meta-analysis, based on a major systematic review of 29 outcomes studies involving more than 7,300 young people over 35 years represents the most comprehensive analysis to date of the impact of formal justice system processing on young lives and future offending. This study concluded that formal processing "appears to not have a crime control effect, and across all measures, appears to increase delinquency. This was true across measures of prevalence, incidence, severity, and self-report." For more on this, see: Centre for Justice Innovation. (2015). *Valuing youth diversion: A toolkit for practitioners*.

6. This type of early diversion is therefore an example of problem-solving justice which seeks to avoid individuals going to court. Similarly, we have worked with prosecutors looking at deferred prosecution schemes whereby charges are made but held in abeyance pending the completion of activities which seek to resolve the factors that underlie crime and social harm. We are also interested in exploring ways, in the public family law system, to investigate ways to problem-solve prior to cases going into care proceedings.
7. In short, efforts to introduce problem-solving approaches within the court system (whether that be criminal court or family court) should also be preceded by efforts to avoid cases going to court in the first place, if appropriate to do so.

PROBLEM-SOLVING COURTS

What are problem-solving courts?

8. Problem-solving courts put judges at the centre of rehabilitation and recovery. Generally operating out of existing court buildings, problem-solving courts yoke together the authority of the court and the services necessary to reduce reoffending and improve outcomes. They embrace a wide family of distinct models, all of which seek to improve outcomes and the legitimacy of the justice system in the eyes of the public.
9. The key features of problem-solving courts are:
 - Specialisation of the court model around a target group: Problem-solving courts specialise by focusing on (i) particular needs that drive people to offending/care proceedings, such as drug addiction; (ii) specific forms of unacceptable behaviour, such as domestic abuse; (iii) specific and distinct groups of individuals, such as vulnerable women or veterans, that require a specialised approach; or (iv) particular neighbourhoods. Problem-solving courts tend to take place in specialised settings (often housed within mainstream court buildings), are staffed by specially trained court professionals; and have adapted procedures, including specialised assessment tools for defendants.
 - Collaborative intervention and supervision: All problem-solving courts involve the use of treatment or social services to change behaviour and often combine different doses of treatment and social service to respond to complex and multiple needs and risks. Problem-solving courts co-ordinate supervision and interventions from multiple agencies to motivate the offender through their sentence plan and ensure that the information available to the court on compliance represents a complete view of the offender's progress.
 - Accountability through judicial monitoring: Perhaps the most distinctive feature of problem-solving courts is that they employ judicial monitoring for identified individuals, bringing them back to court for regular reviews with a designated judge at which their progress is discussed. Judges can use a range of tools to respond to progress, including incentives such as early termination of orders or expungement of criminal records and sanctions such as additional community service hours, imposition of curfews, or even short custodial stays. In this way, rather than mandating offenders to a sentence, and then hearing little of the case except perhaps on breach, problem-solving courts use intensive and ongoing judicial oversight throughout the community sentence.
 - A procedurally fair environment: Problem-solving courts aim to change offenders' behaviour by emphasising the courts' role in making justice feel fairer and more transparent. By setting clear rules, incentives, and sanctions; by engaging with people with neutrality and respect; and by giving them a voice, problem-solving courts places a strong emphasis on making a material impact on individuals' perceptions of fair treatment. In particular, procedural fairness is delivered through judicial monitoring. Therefore, judicial monitoring

within problem-solving courts is not simply a compliance check-in, but rather an opportunity to engage, motivate, praise and admonish.

- Focus on outcomes: The purpose of problem-solving courts is to deliver realistic behaviour change. Therefore, problem-solving courts collect monitoring data in order to measure the outcomes they generate for their client groups. They reflect on these as part of a continuous improvement ethos. Monitoring data informs a process of self-reflection, including user insight, and an understanding of evidence and outcomes. Problem-solving courts seek to improve themselves by providing a better service to the offenders they work with, to their communities, and to other stakeholders.

Do problem-solving courts work?

10. In 2016, we published a review of the international evidence on problem-solving courts.² This review suggested that:

- There is strong evidence that adult criminal drug courts reduce substance misuse and reoffending. They are particularly effective with offenders who present a higher risk of reoffending.
- The evidence on juvenile/youth drug courts (exclusively from the USA) is negative. It suggests they have either minimal or harmful impacts on young offenders.
- The evidence on family treatment courts and family drug and alcohol courts is good. It suggests that they are effective in reducing parental substance misuse and can reduce the number of children permanently removed from their families.
- The evidence on mental health courts is good. High-quality international evidence suggests that mental health courts are likely to reduce reoffending, although they may not directly impact offenders' mental health.
- The evidence on the impact of problem-solving domestic violence courts on outcomes for victims, such as victim safety and satisfaction, is good. The evidence on their ability to reduce the frequency and seriousness of a perpetrator reoffending is promising. This is encouraging when set against the lack of other effective options for reducing reoffending by perpetrators of domestic violence.
- The international evidence that community courts reduce reoffending and improve compliance with court orders is promising. However, the evidence of their impact in England and Wales is mixed (though drawing conclusions from a single pilot site is difficult).
- There is promising evidence to support the application of the key features of problem-solving courts to two specific groups of offenders where they have identified multiple and complex needs: female offenders at risk of custody and young adults.
- The evidence suggests that key features of problem-solving courts may be especially relevant for young offenders with complex needs at risk of custody in youth court. However, any enhancement of problem-solving features in youth court needs to take into consideration clear evidence that, where possible, youth offenders should be kept away from the formal system through triage and diversion, as prosecution and court appearances themselves can be criminogenic, i.e., producing or tending to produce crime.

Why do problem-solving courts work?

² Bowen & Whitehead. (2016). *Problem-solving courts: An evidence review*. Centre for Justice Innovation. Available at: <https://www.justiceinnovation.org/sites/default/files/media/documents/2019-03/problem-solving-courts-an-evidence-review.pdf>

11. Our review suggested that:

- Procedural fairness – the evidence that perception of fair treatment leads to better compliance with court orders – may be the most important factor in driving better outcomes and is not simply a nice-to-have. Perceptions of the courts are as important, if not more important, than both the decisions the court reaches and the treatment a problem-solving court can deliver.
- Effective judicial monitoring rests on certainty and clear communication. These factors are more important than the severity of the sanctions which the court can bring to bear. This may be especially relevant for mental health courts, where a more therapeutic and procedurally fair environment may be more important than a set of drug court-like incentives and sanctions.
- The evidence on the importance of the responsivity principle in the risk-need-responsivity model supports the tendency for problem-solving courts to specialise in working with specific groups of offenders such as women with complex needs, problematic drug users, or those suffering from mental illness.

What are the problems with problem-solving courts?

12. Our review suggests:

- There is a perceived risk that problem-solving courts can lead to net-widening, i.e., drawing greater numbers of people into the justice system, especially if they are treated as additions to existing community sentences rather than as alternatives to higher-level sanctions.
- Without the appropriate support from experts in managing offenders, problem-solving court judges can cause harm by benignly ‘overdosing’ low-risk offenders with multiple requirements or can unwittingly use inappropriate, non-evidence-based interventions.
- Like many new and innovative interventions, advocates for problem solving courts can run the risk of overpromising. Problem-solving courts are not silver bullets. The impact they have on reoffending is positive but also modest, like any other evidence-based intervention. There is evidence that problem-solving courts can reduce the use of custodial sentences when compared to traditional courts. However, there is scant evidence that they can, on their own, significantly reduce the overall numbers of the people in prison where there is continued increases in sentencing tariffs.

PROBLEM-SOLVING COURTS IN THE UK

Family Drug and Alcohol Courts in England

13. In England, there are currently eight Family Drug and Alcohol Courts (FDAC) teams, serving 10 family courts and 18 local authority areas. FDACs are modelled on other problem-solving courts to provide a problem-solving, therapeutic approach to care cases where parents who are addicts are at risk of having their children taken into care. FDACs are a partnership between the family courts and teams of substance misuse specialists and social workers, and help parents change their lifestyles to safely reunite families or ensure swift placements with alternative carers where reunion is not possible.

14. The first FDAC was established in London in January 2008. In 2014, an evaluation published by Brunel University,³ showed that reunification rates compared favourably with

³ Harwin et al. (2014). *Changing Lifestyles, Keeping Children Safe: an evaluation of the first Family Drug*

standard cases (45% compared to 15%), parents had better experiences in court and there were far fewer contested cases.

15. In 2016, a further evaluation published by Lancaster University⁴ looked at the durability of outcomes up to over 5 years following engagement with FDAC. It found that FDAC mothers are 50% more likely to stop using drugs and are much more likely to have stayed off drugs five years after going through FDAC than mothers who go through ordinary care proceedings. It made four statistically-significant findings:
 - Substance misuse cessation – A significantly higher proportion of FDAC than other mothers had ceased to misuse by the end of care proceedings (46% v 30%).
 - Reunification at the end of care proceedings – A significantly higher proportion of FDAC than other families were reunited or continued to live together at the end of proceedings (37% v 25%).
 - Substance misuse at the end of the 5-year follow up – A significantly higher proportion of FDAC than other reunification mothers were estimated to sustain cessation over the five year follow up (58% v 24%).
 - Durability of family reunification at 3-year follow up – A significantly higher proportion of FDAC than other mothers who had been reunited with their children at the end of proceedings were estimated to experience no disruption to family stability at three year follow up (51% v 22%).
16. In 2016, a value for money study conducted by the Centre for Justice Innovation⁵ found that while FDAC cases cost more initially (primarily in additional upfront treatment costs), they avoid legal and expert witness costs that otherwise would be incurred while the case is ongoing and more importantly save the much greater costs incurred when drug or alcohol addiction continues and the consequent damage to children. The better outcomes attributed to FDACs produce further cost savings, in avoided care placements, avoided returns to court, and avoided future treatment costs. Overall, the evidence from the London FDAC evaluation is that the initial investment in an FDAC is recouped within two years, and over five years for each £1 spent £2.30 is saved to the public purse.
17. In 2015, the Department for Education part-funded, through its innovation programme, the expansion of FDAC into ten new areas and combined this funding with the support of a National Unit, made up of five partner organisations from the NHS, the third sector and higher education. The National Unit received funding from the UK Government's Department for Education, with local FDACs relying on financial support from a range of local commissioners, especially local authorities.
18. However, the funding from the Innovation programme ceased and budget constraints meant that two FDAC sites, in West Yorkshire and in the South west, closed and, in September 2018, the Department for Education ceased funding the National Unit, which also closed.

and Alcohol Court (FDAC) in care proceedings. Brunel University. Available at: http://wp.lancs.ac.uk/cji-fdac/files/2018/04/FDAC_May2014_FinalReport-V1.1.pdf

⁴ Harwin et al. (2016) *After FDAC: outcomes 5 years later. Final Report*. Lancaster University. <http://wp.lancs.ac.uk/cji-fdac/publications/>

⁵ Whitehead & Reeder. (2016). *Better Courts: the financial impact of the London Family Drug and Alcohol Court*. Centre for Justice Innovation. Available at: <https://www.justiceinnovation.org/sites/default/files/media/documents/2019-03/better-courts-the-financial-impact-of-the-london-fdac.pdf>

19. Between September 2018 and February 2019, efforts were made to re-establish a national centre of excellence for FDAC practice. In April 2019, the Centre for Justice Innovation was funded to create a new national partnership to support current and new Family Drug and Alcohol Courts (FDACs) across the country. This new national work has been funded by a consortia of private funders, including two family law firms, Hall Brown Family Law and Family Law in Partnership, LCM Wealth, which advises high net worth families, AddCounsel, a provider of bespoke behavioural health programmes, and the Hadley Trust.

Criminal problem-solving courts in England

20. There are a small number of problem-solving court projects in England though they are not coordinated or centrally endorsed and often rely on the enthusiasm of local practitioners and judges.
21. In December 2015, the then Lord Chancellor Michael Gove MP announced the creation of a working group on problem-solving courts. This working group was to 'examine models of problem-solving courts and advise on the feasibility of possible pilot models to be taken forward in England and Wales in 2016/17'.
22. However, the working group's report was never published nor its findings implemented following the dismissal of Michael Gove MP in June 2016. Despite requests from the Justice Select Committee for updates on this work, these have never been forthcoming.
23. The Centre for Justice Innovation is currently in the middle of a two-year research project looking into problem-solving court approaches in the youth court system in England.

Problem-solving courts in Northern Ireland

24. Problem solving justice is a new approach in Northern Ireland aimed at tackling the root causes of offending behaviour and reducing harmful behaviour within families and the community. Under the banner of the Programme for Government, the Department of Justice have set up three courts (and we understand are planning a fourth around mental health cases in the criminal justice system).
25. The Belfast Substance Misuse Court is aimed at offenders who commit crimes related to their drug or alcohol abuse. It allows a judge to send them on an intensive treatment programme, before sentencing, to help them beat their addictions and change their behaviour. In the Substance Misuse Court, the offender will sign up to a strict treatment plan aimed at tackling their substance misuse, instead of going immediately to prison. As part of the plan, the offender will have regular contact with staff from the Probation Board as well as other health professionals. They will also have regular and random drug and alcohol testing. The offenders progress and any risks they pose to the public will be closely monitored and reported back to the court. They will appear at least once a month before a judge. Participants will be under the supervision of a judge throughout the entire process. If the offender successfully completes the programme they will be sentenced by the judge, who will take into account their participation in the programme.
26. The Pilot Domestic Violence Perpetrator Programme is offered to defendants convicted of a domestic violence-related offence in Londonderry Magistrates Court if the Judge thinks it will help them understand that domestic violence is wrong and change their behaviour for

the better. It is delivered by the Probation Board Northern Ireland (PBNI). PBNI carefully assess whether a defendant is suitable for taking part in the programme and if so, the Judge holds off on passing sentence. The programme involves defendants attending weekly group sessions for around nine months.

27. Whilst completing the programme, defendants are on court bail and have to return to court regularly to see the Judge for a review. Before the review, PBNI provides the Judge and the defendant's solicitor with a written report on how the defendant is doing on the programme. If the Judge isn't happy with a defendant's progress on the programme, he can remove the defendant from the Programme and go ahead with sentencing. This may be because for example, the defendant isn't turning up for programme sessions, breaches bail conditions or commits further offence(s). If the defendant successfully completes the programme, this will play an important part in helping the Judge decide what sentence to impose.
28. The Department of Justice has also concluded a pilot of Family Drug and Alcohol Court, helping families involved in care proceedings because of parental substance misuse in the Newry Family Proceedings Court and the Southern Health and Social Care Trust. An evaluation is due to be published.

Criminal problem-solving courts in Scotland

29. Since Glasgow Drug Court opened its doors in 2001, problem-solving has become a recognised part of the Scottish justice system. The Angiolini Commission's 2012 support⁶ for the approach launched a new wave of problem-solving courts which have been adapted to meet local challenges. A briefing by the Centre for Justice Innovation in 2017⁷ explores three of Scotland's newest problem-solving courts: The Aberdeen Problem-Solving Approach, Forfar Problem-Solving Court and Edinburgh Alcohol Problem-Solving Court.
30. The Aberdeen Problem Solving Approach seeks to reduce the use of short custodial sentences by providing new community disposals to women and young adult males with complex needs and multiple previous convictions. A recent review of the progress of the approach found that compliance rates were better than would be expected for the target group and that clients valued the support they received and their engagement with the sheriff.⁸ However, it is too early in the project's life to assess its long-term impact and the evaluation did raise concerns that there might be a need to increase the "aftercare" offered by the project to clients who had completed the programme.
31. The Edinburgh Alcohol Problem Solving Court seeks to provide alcohol-dependent offenders with quicker assessment, speedier access to interventions, and regular

⁶ Scottish Government. (2012). *Commission on Women Offenders. 2012 Final Report*. Available at: <http://www.gov.scot/Resource/0039/00391828.pdf>

⁷ Whitehead. (2017). *Problem-solving in Scotland: New developments*. Centre for Justice Innovation. Available at: <https://www.justiceinnovation.org/sites/default/files/media/documents/2019-03/problem-solving-in-scotland-new-development-web.pdf>

⁸ Jane Eunson and Lorraine Murray (Ipsos MORI Scotland), Hannah Graham, Margaret Malloch and Gill McIvor (University of Stirling) (2018) Review of the Aberdeen Problem-Solving Approach (Edinburgh: Scottish Government). Available online at: <https://beta.gov.scot/binaries/content/documents/govscot/publications/research-publication/2018/09/review-aberdeen-problem-solving-approach-report/documents/00540003-pdf/00540003-pdf/govscot:document/>

oversight by the Sheriff through progress reviews. The project is a partnership between the court, the local authority and CLG a local treatment provider.

32. The Forfar Problem-Solving Court, which opened in January 2017, provides support and supervision to persistent offenders through a specialist court hearing and tailored support services. The Forfar project has its origins in a partnership between sheriffs sitting in Arbroath Sheriff Court and the Glen Isla Project, a women's community justice centre run by Criminal Justice Social Workers from Angus Council.
33. We are aware of other problem-solving developments but have not studied them in depth.

THE FUTURE FOR PROBLEM-SOLVING COURTS

Family justice

34. The Department for Education announced in May 2019 that they will be investing in expanding FDAC through their *Supporting Families: investing in practice* programme. This programme is being run in partnership with the What Works Centre for Children's Social Care, which will oversee the implementation of the FDAC programmes in local authorities and gather evidence of their effectiveness in keeping children and parents together, with the aim of spreading best practice in the future.
35. As the evidence base for FDACs grow, the key policy dilemma however remains: if FDAC (and wider problem-solving approaches) consistently outperform standard care proceedings, how do we shift the public family law system into one where problem-solving becomes the default way of hearing family proceedings?

Criminal justice

36. As the Commission is aware, there is considerable change and uncertainty about the future of probation services in England and Wales. The Commission will be aware also of the policy impulse of the current Lord Chancellor to reduce the use of short prison sentences. In that context, our view is that problem-solving courts should be *part* of the future configuration of community sentencing.
37. We have written extensively on how reforms are needed to improve the relationship between the courts and probation, by improving the training, guidance, information (especially on the effectiveness of sentences) and liaison between them.⁹ Moreover, we have recommended that any new community sentencing framework needs to reduce the intensity and length of community sentences for low-risk offenders. We recommend trialling the use of deferred sentences for low-level community order cases and shortening the overall community sentence length given to low risk offenders, in order to reduce the burden on and caseloads of probation officers.
38. With that additional space to concentrate efforts on reducing the use of short prison sentences, we have recommended introducing a presumption against very short prison sentences, expanding the use of deferred sentences as an alternative to short prison

⁹ Whitehead and Ely. (2018). *Renewing trust: How we can improve the relationship between probation and the courts*. Centre for Justice Innovation. Available at: <https://www.justiceinnovation.org/publications/renewing-trust-how-we-can-improve-relationship-between-probation-and-courts>

sentences especially for female offenders, and piloting the use of judge led problem-solving orders as alternatives to over 6 months prison sentences.¹⁰

39. We therefore remain convinced the wider adoption of problem-solving approaches in court would be a powerful means to improve outcomes and make society safer. We continue to work at making this case and welcome the opportunity to lay this evidence before the Commission.

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About the Centre for Justice Innovation

The Centre for Justice Innovation seek to build a justice system which all of its citizens believe is fair and effective. We champion practice innovation and evidence-led policy reform in the UK's justice systems.

We are a registered UK charity (charity number is 1151939).

¹⁰ Centre for Justice Innovation. (2018) *Strengthening probation, building confidence consultation response*. Centre for Justice Innovation. Available at: <https://www.justiceinnovation.org/publications/strengthening-probation-building-confidence-consultation-response>