

# Family Solutions Group *Language Matters* – Important next steps for everyone

**Lydia Holland, Kingsley Napley**  
**FSG Language Group**

Lydia Holland is a trainee solicitor at Kingsley Napley and is currently in her second seat with the Real Estate and Construction Team, having completed her first seat with the Family and Divorce team.

(Family Solutions Group: Helen Adam, Wells Family Mediation; Gillian Bishop, Family Law in Partnership; Kate Daly, amicable; Lauren Evans, Kingsley Napley; Emma Nash, Rayden Solicitors; Nicole Phillips, Family Law in Partnership)

Following the Family Solutions Group recommendations in the ‘What about me?’ report, the President of the Family Division commissioned a paper on language. ‘Language Matters’ was published in October 2022, and calls for a fresh look at the way family law is framed and delivered to those who need it.

We hope by now you will have heard of this important review into the language of family law. The FSG *Language Matters* paper was commissioned by Sir Andrew McFarlane last year and he now invites us all to become involved in devising and implementing the roadmap ahead. Language will not change overnight, nor by rule change nor by a few well-wishers; if the changes needed are to come to pass, we all have a crucial part to play.

This article examines the feedback received since our *Language Matters* paper was published. We summarise the challenges identified and the action points proposed for moving this forwards.

## Introduction

The Language Matters project was commissioned by the President of the Family

Division following recommendations in the FSG’s report, *What about me?*.

After distilling feedback from a range of consultees and literature, the FSG produced a report in October 2022, about the importance of language used for separating families and the changes needed to shift mindsets away from adversity and battles, towards safety, wellbeing and child welfare.

As well as providing glossaries for language change (aimed at the court, legal professionals, families and the wider public), the report recommended five core principles for legal professionals to adhere to (known as ‘the five Ps’), which are:

1. Plain English – avoid legal jargon and use words which can be easily understood;
2. Personal – use family names rather than legal labels;
3. Proportionate – use language which is proportionate to the family issues being considered;
4. Problem-Solving – use constructive problem-solving language rather than battle language;
5. Positive Futures – the emphasis is not on past recriminations but on building positive futures.

In early 2023, the FSG hosted a series of events to explore professionals’ feedback about these suggestions. Feedback has been collated through workshops, one online and one in person, through social media and through an online survey. We have feedback from several hundred professionals from all parts of the family justice arena.

The Right Honourable Sir Andrew McFarlane, President of the Family Division,

strongly supports the project and addressed both workshops (online recording available here). He said:

‘It’s blindingly obvious that the language we have been using is not appropriate and only goes to stoke the minds of those in a combative mindset, rather than direct them in a different way.’

## The issues

Language for separating families has evolved out of an adversarial legal system so, inevitably, has been accusatory and divisive. Despite the radical shift in focus towards child welfare and away from parental rights introduced by the Children Act 1989, combative and harmful language remains in use today.

Over the last 100 years, society has changed considerably: we have multicultural and blended families, no-fault divorce, an increased awareness of the nature and prevalence of domestic abuse, and a real focus is placed on children’s voices (no longer are they to be ‘seen and not heard’). The language of family law needs to adapt to changing societal values, as the law has.

## The evidence

We also now have scientific evidence about the impact of family separation and inter-parental conflict. We shared a simple bullet point summary of the research by Professor Gordon Harold and others<sup>1</sup> into inter-parental conflict and family separation.

‘Family separation is always a stressful experience for children and teens in the short term. But what drives the long-term impact on them is the level of conflict they witness before, during and following parental separation. It’s normal for it to take about 2 years for children and teens to adjust to a family separation. The higher the levels of

conflict, however, the harder it is to adjust and the longer the ripple effects continue for poor outcomes (e.g. mental health).

High levels of conflict between parents are shown to have many poor outcomes for children. These include anxiety and depression, academic failure, substance abuse, conduct problems, criminality, peer problems and adversely affected brain development. Patterns of conflict can even be passed on to the next generation. These outcomes stretch on into adulthood. Acrimonious parental conflict is a common childhood factor in adults who experience mental ill health, relationship difficulties, substance abuse, homelessness, criminality.

By contrast, actions designed to reduce the level of inter-parental conflict are associated with positive long-term outcomes. There are clear improvements in mental health, behaviour, school outcomes and long-term relationships. These positive outcomes have benefits not just for the individuals but for the whole of society. They produce widespread cost savings, ranging from the education system to the health and social care system, the civil and criminal justice system and they also produce positive future employment outcomes.’

Inter-parental conflict has the potential for far-reaching impact, not just on children, but parents and all of society. If nothing else, this scientific evidence must lead our efforts to reduce adversity in family law, rather than stoke it with the language of combat.

The words we use shape our mindsets which, in turn, affect how we think and behave. Appropriate language is needed through every part of a family’s separation: at the school gate, with family and friends,

1 Feinberg, M.E., Jones, D.E., Kan, M.L., and Goslin, M.C. (2010). Effects of family foundations on parents and children: 3.5 years after baseline. *Journal of Family Psychology*, 24, 532–542. Grych, J. H., & Fincham, F. D. (1992). Interventions for children of divorce: Toward greater integration of research and action. *Psychological Bulletin*, 110, 434–454. Harold, G. T., Sellers, R. (2018). Interparental Conflict and Youth Psychopathology: An Evidence Review and Practice Focused Update. *The Journal of Child Psychology and Psychiatry*, 59 (4). Hetherington, E. M. (1989). Coping with family transitions: Winners, losers, and survivors. *Child Development*, 60, 1–14. Hodges, W. F. (1991). Interventions for children of divorce. New York: Wiley.

in the media, on government websites, with support services and throughout any legal process.

## The challenges

During the recent FSG events, the following were highlighted as the main challenges:

### 1. Media

Various media outlets including television, newspapers, radio and websites are littered with unhelpful language, many of which are influenced by celebrity stories, international systems (such as the US system and terms including 'custody') and adversarial language reported from court. Little is reported on alternative forms of resolution out-of-court and the positive impact this can have on children.

'In our Twitter poll, 30.4% of people said it is the media's responsibility to reframe the language of family separation.

At our online webinar, 74% of people said the issue with the media (and general public) is due to a lack of education.'

### 2. Government departments and website

There is a lack of clarity over which government department takes responsibility for separating families and the Ministry of Justice is not the right fit to address family relationships following a separation. But where does the responsibility lie? Should there be a Minister in charge of family separation? Investment would be needed, but which department is to pick up the bill?

The gov.uk website is the first place many separating families turn to but the language online is written in the shadow of the justice options. It does not offer a comprehensive DVLA-type website with information and signposting for all who separate.

### 3. Education

Schools and teachers are dealing with the impact of family separations but have no training or resources to help parents and young people. The FSG is due to publish a separate paper to highlight this issue later this year.

### 4. Pressures on lawyers

A practice based on out-of-court solutions might risk a reputation as 'soft'. There is no public recognition of the skill of negotiators in settling cases, nor of the long-lasting value of a settlement for the whole family.

By contrast, there are clear financial incentives for lawyers to take cases to court and reported cases will raise a lawyer's profile. Too often the legal directories advertise accolades between peers using battle language.

'She always goes in hard for her client. If you're against her you know it's fists up and a fight.'<sup>2</sup>

Some lawyers even become known for using hostile and inflammatory language, which shows a total disregard for the impact of words on clients and also the other lawyers.

'96% of survey participants said language affects them and their colleagues. Numerous lawyers reported having felt stressed, sick or upset by adversarial language or felt it knock their confidence.'

If this is the impact on professionals, one can only imagine the impact on the families concerned.

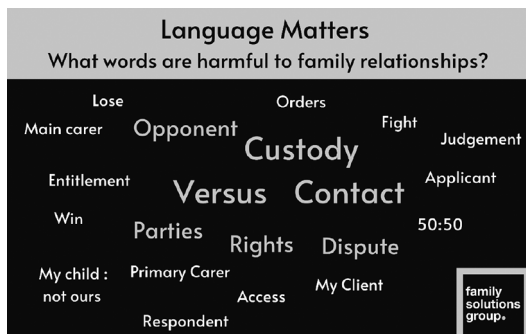
### 5. Judicial training

The importance of language is not covered in training for family court judges. Many said it is hard for practitioners to use moderated language if this is not led by the bench. Their client will perceive them as weak if judges allow other advocates to use inflammatory language without any checks.

## 6. Habits

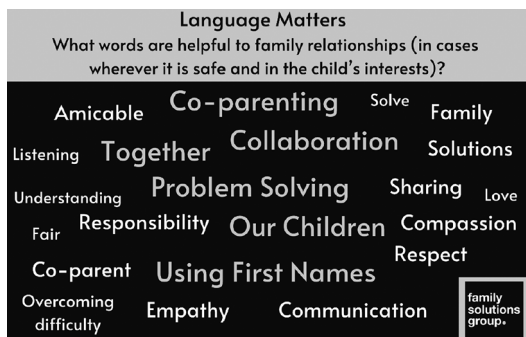
‘40% of participants said obstacles to changing language, from a lawyers’ perspective, centre around habit.’

Bad habits centre around terminology and specific words. The top three most harmful words to family relationships were ‘Custody’, ‘Versus’ and ‘Contact’.



At the online webinar, Sir Andrew McFarlane noted that the words ‘custody’ and ‘access’ were long removed from our vocabulary, prior to the introduction of the Children Act 1989. The Law Commission and Parliament recognised these words were loaded with entirely inappropriate connotations of possession, property and chattels. People have been stubborn to change their language, but as the President explained:

‘it doesn’t cost anything for all of us to change the way we speak . . . it is just a matter of speaking in a different way, it couldn’t be easier to describe.’



### What next?

To bring about change, the following proposals were suggested:

## 1. Change of language by HMCTS and the Family Court

There needs to be a recognition that family law is different from other forms of litigation. It looks forward to future arrangements, rather than looking back. Unless there are safety concerns, the people involved will often have continuing parenting responsibilities and family relationships over many decades following separation.

There is a universal call to remove ‘versus’ from all court headings, notices and case reports. Court forms and guidance notes should also be re-drafted.

## 2. Change of language on gov.uk

Improving the language on the gov.uk website would not only promote the right mindset, but also provide greater clarity for users. Signposting on this busy platform could also be a prime opportunity to give families better information about the many out-of-court options. amicable are working with gov.uk on this.

## 3. Family Procedure Rules

There was a strong call for a practice direction or rule change specifically to address the language used in the family court. This needs to be led from the top because:

- It will help the judiciary to understand the shift needed from traditional adversarial language to problem-solving language and the promotion of positive futures for the family.
- The judiciary at all levels and legal professionals would be given confidence to call out and report bad practice in any court setting, both written and verbal.
- It will help lawyers under pressure from clients to write aggressively to justify lowering the temperature without being perceived as ‘weak’.
- Judicial training could be expanded to include mandatory modules on language. There was a specific recommendation to make the ‘Judge as

a Communicator' course compulsory for everyone who sits in a family court (cf the domestic violence module). There is much to learn from the problem-solving approach of the FDAC.

- e. Legal directories would need to change how barristers and solicitors are lauded – battleground accolades would no longer be acceptable and other measures of success beyond reported cases might even be introduced.

In our survey, 98% of people said formal guidance issued by the President or Rules Committee would or might help improve language for separating families.

#### **4. The rise of reflective practice and family law supervision**

We are becoming increasingly aware of the emotional and psychological impact of working in family law. Practitioners themselves need proper support from trained professionals to ensure they are best placed to support their clients. Supervision can help lawyers to understand and reflect on the emotional dynamics involved in family law work. This should underpin improved use of language and so better outcomes for separating families.

#### **5. A new legal directory**

Family law professionals are looking for a new legal directory, for both barristers and solicitors, to champion and record excellence in problem-solving and settling cases (including via private FDR hearings and early neutral evaluations). Anonymised reports of significant settlements could be published with key learning points. This could influence the way in which junior barristers at the family bar apply for silk, giving recognition to a successful practice which is not solely assessed by a court-focused CV. Judicial support for this project was seen as essential to its credibility and longevity.

#### **6. Media input**

Journalists, producers and scriptwriters need to be educated about the wider impact of

language on separating families. Journalists have reporting restrictions on suicide and it is suggested similar restrictions and standards could be introduced when the media report on separating families, given the risk of harm to children. To assist with this, a simple short glossary of acceptable terms (and harmful terms to avoid) could be sent to all media outlets.

#### **7. Education**

PHSE lessons in schools could be expanded to cover family separation and modern family dynamics (building on the recent Resolution lesson plans aimed at dispelling the myth of common law marriage). School staff could be provided with training and resources.

#### **Conclusion**

We all need to play our part if the changes needed are to come to pass. We can:

- pledge to change the way we practice and the language we use;
- commit to the 'five Ps' for the benefit of our clients and their families;
- discuss these issues with our professional networks;
- introduce policies, training and reflective practice within our firms;
- support local family justice boards in promoting reformed language.

We are also doing all we can. We have made suggestions for a rule change, we have requested inclusion in judicial training programmes, and we are speaking at conferences and events.

The FSG is thankful to Sir Andrew McFarlane for his continued support. He and we invite all to keep this conversation alive.

The words we use shape our mindsets, which in turn affect how we think and behave.

Language matters.